

# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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Brussels, 13 January 2000 (25.01)  
(OR. f,d,es,p,s)

CHARTE 4105/00

## BODY 1

### RECORD

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Subject : Record of the first meeting of the Body to draw up a draft Charter of Fundamental Rights of the European Union  
(held in Brussels, 17 December 1999)

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- (1) The body entrusted by the Cologne European Council, on 3 and 4 June 1999, with drawing up a draft Charter of fundamental rights of the European Union held its first meeting in Brussels on 17 December 1999.

It met in accordance with the rules on the composition, method of work and practical arrangements set out in annex to the Presidency conclusions following the Tampere European Council on 15 and 16 October 1999.

- (2) Mr NIKULA, representing the President of the European Council, opened the meeting and spoke about the mandate given by the Cologne European Council and the rules of procedure established by the Tampere European Council. He then drew particular attention to three aspects of the mandate given to the Body, namely:

- the Body was not an Intergovernmental Conference within the meaning of the TEU,
- the purpose of its work was not to alter the responsibilities of the Union,
- the objective was to draw up a draft list of fundamental rights as they applied to the activities of the Union and not to prepare a text applicable to the Member States when exercising their own powers.

(3) The first act of the Body was to elect its Chairman. **Mr Roman Herzog** was elected, by acclamation, to be Chairman throughout the proceedings.

Each of the three main groups of members introduced its own elected Vice-Chairman. These were:

- for the group of representatives of the Heads of State or Government of the Member States, the representative of the rotating Presidency of the Council of the Union, namely:
  - for Finland, Mr Paavo NIKULA,
  - for Portugal, Mr Pedro BACELAR DE VASCONCELOS
  - and for France, Mr Guy BRAIBANT.
- for the group of representatives of the European Parliament, Mr Inigo MENDES DE VIGO
- for the group of representatives of the national parliaments, Mr Gunnar JANSSON.

(4) After these appointments, each of the following delivered a speech before the Body:

- Mr Roman HERZOG, newly elected Chairman of the Body,
- Mr Inigo MENDES DE VIGO, Vice-Chairman of the Body,
- Mr Gunnar JANSSON, Vice-Chairman of the Body,
- Mr VITORINO, European Commissioner,
- Mr Vassilios SKOURIS, representative of the Court of Justice (observer),
- Mr Marc FISCHBACH, representative of the Council of Europe, ECHR (observer).

The full text of these speeches is given in the annexes to this record.

(5) The last item on the agenda was the work programme, its presentation and its adoption by the Body.

This item gave rise to a debate primarily on the following issues:

(a) the name of the body

There had been discontent about the current name, so some members, starting with Mr Roman HERZOG himself in his inaugural speech, had called for further reflection and possibly a change of name. Thus, in particular, Ms Johanna MAIJ WEGGEN and Mr Martin SCHULZ argued for the term "convent" or "convention" .

(b) method of work

Three areas of concern emerged from the debate.

- Firstly, Mr José BARROS MOURA, supported by Mr Andrea MANZELLA and Mr Gabriel CISNEROS, thought it essential that the working methods should clearly reflect the political nature of the representation chosen by the European Council for this body, given the predominant place reserved in it for parliamentary representation. This could be achieved by the appointment of rapporteurs for the various subjects on the basis of their political affiliation.
- Secondly, Mr José BARROS MOURA, drawing conclusions from the fact that the Vice-Chairman from the group of national Parliaments had been elected for the entire proceedings of the Body, argued that the nature of the mandate conferred on the representatives of the national parliaments meant that their right to speak could not be satisfied by the statement of summary positions by the Vice-Chairman. Mr BARROS MOURA therefore asked for an assurance that he would be entitled to speak at any stage in the proceedings, regardless of the positions expressed by his group.
- Thirdly, Mr Gabriel CISNEROS emphasised that, without in any way wanting to bring issues into the debate which were clearly outside the remit of the Body, it would be wise for both the working parties and the plenary group to work on the assumption that the draft Charter under preparation would ultimately be legally binding and have full legal effect, and that it would constitute a bill of rights genuinely amenable to the courts. This position, in particular, echoed Mr José BARROS MOURA's question as to the purpose of the exercise and the correlation between working method and the desired result.

(c) the working parties

Three questions arose concerning the working parties, namely:

- the number: not everybody agreed on the proposal that there should be three.
- the titles: the division into political and civil rights (1), economic and social rights (2) and citizens' rights (3) was given a lukewarm reception, in particular by Mr Andrew DUFF, who would have preferred this proposal, which he found thus far unconvincing, to have been more methodical to ensure greater consistency between the work of the rapporteurs. On the same subject, Mr Andrea MANZELLA considered this triple structure acceptable provided only one was tackled at a time; thus, the working party on citizens' rights should commence work only once the other two working parties had finished, as this last working party constituted more than just a category of rights in that it was also a repository for some of the rights listed in the other two categories. At the end of the discussion Mr Roman HERZOG emphasised the need for work on the five central themes (liberty, equality, economic and social rights, procedure and the rights of citizens of the Union) to be shared between the three working parties envisaged.
- attendance at working parties: Mr Gabriel CISNEROS and Mr RODRIGUEZ-BEREJO placed great emphasis on this point. The main thrust of their argument was that none of the rights in question could be neatly compartmentalised into any one category. Therefore, as the demarcation between these rights was obviously blurred any member of a working party should be able to take part in the proceedings of any working party, whenever the subject matter for which he was responsible so required. Furthermore, as the way in which these rights would be formulated was bound to have repercussions on the constitutions of the Member States, it was essential to ensure that any knowledge or expertise relating to individual national law could be made available to the working parties at any time.

(d) independence of the Body

The majority of speakers were in favour of the Body's being autonomous, as this was a crucial aspect of its mandate.

(e) language arrangements

Mr Gabriel CISNEROS was in favour of full language cover both at plenary meetings and in the working parties.

(f) meeting dates

Apart from the issue of setting dates as soon as possible for meetings of the Body and the working parties, the question of which days of the week would be the most appropriate was raised, bearing in mind, as was pointed out by Mr François LONCLE, the commitments of the members, and especially those of the national parliamentarians who had to be with their peers on Tuesdays and Wednesdays, either for their regular appointments or in order to report back on the progress made in the Body.

(g) secretariat for the Body

Mr Martin SCHULZ asked for the secretariat to be provided jointly by the Secretariats of the Council, the Parliament and the Commission.

- (6) **In conclusion**, the Chairman, Mr Roman HERZOG, stated that a range of issues with which all the members were already familiar had been raised during the discussion, and that they were all interesting ideas which merited further attention, including the name of the Body, its independence, its working methods, membership of the working parties and the language arrangements.

As far as meeting dates were concerned the Chairman announced that a meeting of the Bureau was scheduled for 17 January 2000, at which all of these issues would be broached with a view to presenting detailed proposals at the next meeting of the Body.

The next meeting of the Body itself was due to be held **1 and 2 February 2000**. A record would be drawn up after every meeting.

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Speech by Mr Roman HERZOG

Ladies and Gentlemen, colleagues, companions in destiny! First allow me to thank you for electing me as Chairman of this body, the exact name of which still has to be discussed. It is for me a great honour even to be allowed to be a member of this body which is to deal with the highest values that Europe has to dispense and to safeguard, and on which Europe itself is built. It is an even greater pleasure for me to chair this body, and it is a strange coincidence that 42 years ago I wrote my doctoral thesis on precisely this subject, namely the European Human Rights Convention, when its ink was scarcely dry, and now towards the end of my political and legal career I find myself once again in a position of responsibility where I can further the cause of fundamental rights and human rights at European level. We all share the same basic conviction, or else we would not have agreed to join the body, that it is time to give a clear signal to the outside world that the European Union must not be any less bounden to its citizens than are the Member States under their own constitutional laws. We know how much has already been done over the years to turn the concept of fundamental and human rights into reality within the European Union. Just think of the excellent work done by the European Court of Justice in Luxembourg in this context, which will time and again constitute the foundation for us to build on. Then there is the extensive case-law of the European Court of Human Rights in Strasbourg, which will also inspire and enlighten us. With all due respect for both of these Courts, I feel it is now time to set down on paper everything that you and we individually have had cause to reflect on and put into practice in our respective political spheres in the area of human rights in the European Union. But let me make it clear from the outset that we should also leave it at that. I attach little importance to setting large-scale objectives, over and above drafting a list of human rights, and proclaiming them from the rooftops.

We are not talking about a European constitution here, and the issue is not whether in setting itself fundamental rights the European Union stands to gain in terms of statehood, which, incidentally, I don't believe it would. We are not talking about the emergence of a federal state, supervision by the Constitutional Court, or anything like that. Those are all issues which will have to be clarified and decided on in their own time. Our job is, faithfully, carefully and accurately, to put together a list of fundamental rights which will enable us together, all the members, all the citizens of the European Union including those due to join us in the next few years, to bring about a more "people-centred" approach in the European Union respectful of the dignity of man. There are two points which Mr NIKULA has already addressed that I would like to underscore straight away. We are going to draft a text that will not be immediately binding as European law or Community law. Despite this, we should constantly keep the objective in mind that the Charter which we are drafting must one day, in the not too distant future, become legally binding. This calls for a little discipline on our part, as I feel we should not draft a list which will need to be curtailed or revised when the time comes to make it binding. We should therefore proceed as if we had to submit a legally binding list, and we should not forget that our mandate is in principle to draft a list addressed to the bodies of the European Union, by which they will be bound. This being so, it must not only be our duty but also in our joint interest to take account of national traditions, national legal traditions, national decision-making structures, not to mention the dignity of the national parliaments, as after all it will be a list of fundamental rights addressed to the bodies of the European Union. If we keep all this in our minds, it should be possible to work efficiently, hopefully without too many problems, and complete our work in time. I would very much like us not only to meet the deadline set by the European Council, and I assume we will, but also that we will be able to look back and say that we have worked together conscientiously, even in the final stages of the discussions, thoroughly and pragmatically.

Now you know my wishes, and thank you once again for the trust you have placed in me.  
(Applause) Ladies and Gentlemen, I was not waiting for applause, but had to look for my agenda,  
and now I see that we have come to item 5: Speech by the Vice-President of the European  
Parliament.

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**Speech by Mr Inigo MENDEZ DE VIGO**

Thank you, Chairman. On behalf of the delegation comprising 16 full members and 16 alternates designated by the European Parliament to form part of this Body it is an honour for me to be the first person to congratulate you on your election as Chairman. I would like to assure you that the applause which greeted Mr NIKULA's proposal (whom I would like to thank for having conducted today's discussions so well) is much more than a mere formality. It is a token of our esteem for your career in politics, culminating in the presidency of the Federal Republic of Germany, our acknowledgement of your great abilities as an expert in law, and above all our appreciation for your European-mindedness. In congratulating you, Chairman, I am sure that I speak on behalf of everybody here today. All of the parliamentary groups in our chamber are represented in the delegation from the European Parliament, and the delegation comprises two Vice-Presidents of the Parliament and the rapporteurs or rapporteurs from four parliamentary committees which are responsible for determining the position of the Parliament in the matter before us. The list of representatives of Heads of State and of the national Parliaments is also very encouraging; there are some very important names from political, legal and academic circles, and I would also like to say how pleased I am to see six former colleagues from the European Parliament whose worth is well renowned. The Commission, the guardian of the Treaties, will be represented by Commissioner VITORINO, whose career, despite his youth, is also exceptional. And lastly, I would also like to thank the Court of Justice of the European Union, a prime mover in the defence of fundamental rights in the Community area, for being here today, along with the Council of Europe, whose hard work over the last half century via the Rome Convention needs no comment as it is well-known and admired by all. In short, Chairman, we have some excellent oarsmen to steer the mandate bestowed upon us. This mandate has arrived at a particularly symbolic moment, at the start of a new millennium, but also at a particularly important political juncture. Just a few days ago the Helsinki European Council gave a new endorsement to enlargement of the European Union to the Central and Eastern European Countries, the "Kidnapped West", to use the happy phrase of

Milan KUNDERA, where there was a conspicuous lack of respect for or observance of fundamental rights. I therefore believe it is a wise move to couple enlargement to the Charter of Fundamental Rights. The European Union is facing some tough challenges in the near future. We are on the verge of institutional reform in the Union, we are about to bring the euro into circulation to replace national currencies, the European system of security and defence is taking shape and in Tampere decisive steps were taken towards making Justice and Home Affairs Community matters. The mandate we have been given to draw up a Charter of Fundamental Rights of the European Union meshes well with these challenges. Furthermore, the task we have been given is the best illustration of the fact that the European Union is not just a purely economic undertaking, within Ortega y Gasset's meaning of the term, but on the contrary, that it reflects an overall view of political life in which fundamental rights are the identifying feature of the civilisation of Europe's political culture at the close of this millennium. Thirdly, we are faced with the need for renewal; fundamental rights are not static or something which can be recorded in a snapshot, but on the contrary they need to be rethought and reformulated as society progresses and moves on. But in addition to this, the task at hand can have a highly positive impact on people. The other day a good friend of mine was telling me how appealing tasks such as the one we have been given were hard to come by as, he said, it was an opportunity to do something useful and meaningful for the good of citizens, and I would have to agree with him. The European Parliament members, whom I represent in accordance with the Cologne and Tampere conclusions, will be helping to define these fundamental rights of the European Union. Equally, we will be defending the binding nature of these rights on institutions and governments. In so doing we will achieve something that has been one of the European Parliament's constant ambitions ever since the Spinelli Project. I would like to make it quite clear that for us a mere declaration is not enough, and this being the case we would like to work as you yourself said, Chairman, "bearing in mind" the second hypothesis sketched out in Tampere. The Charter of Fundamental Rights must be binding and must be incorporated into the Treaty. To the extent that the Treaties constitute the Constitutional Charter of the European Union, as reaffirmed by the case-law of the Court of Justice, the Charter of Fundamental Rights should be a part of it. I personally believe that the fact that our work will finish at the same time as the Intergovernmental Conference offers a good opportunity for us to meet this objective. We MEPs will focus particular

attention on the relationship between the Charter and other national and international mechanisms for safeguarding fundamental rights. Let me be quite clear that our aim must be to provide added value for our citizens and somehow avoid creating confusion or duplication of court systems. In carrying out this task, Chairman, this Body must be free to organise its work and discussions with a view to reaching the consensus we need to be able to submit our work exclusively to the European Council, the European Parliament and, I hope, for ratification by the national parliaments. So, we have an exciting task ahead of us. Fifty years ago, yes, nearly fifty years ago, in his historic declaration of 9 May, Robert SCHUMAN spoke of how to make progress in the construction of Europe, namely through *de facto* solidarity. At today's inaugural meeting, Chairman, I pray for *de facto* solidarity, so that to the internal market or the euro we will soon be able to add the Charter of Fundamental Rights of the European Union. Thank you for your attention.

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**Speech by Mr Gunnar JANSSON**

Thank you Mr Chairman. Ladies and Gentlemen, colleagues! I would also like to begin by congratulating our Chairman on his unanimous election. The task is a demanding one, but I find it difficult to imagine anyone more qualified for it than Roman HERZOG. Thank you! I would also, as a parliamentarian from Finland, holder of the outgoing EU Presidency, like to thank our ad hoc Chairman Paavo NIKULA, the Finnish Attorney-General, for the work he has done; it is a good starting-point for the future. Today, this morning, a meeting was held involving 27 members of national Parliaments of the EU Member States. As we know, the Tampere conclusions stipulate that this Organ, if I may call it that in Swedish, should have 30 members from the national Parliaments. Twenty-seven were able to come here to Brussels today, and I must say that that is a significant achievement. We come from 15 countries, know one another fleetingly – if at all – and even so we have been able, in a constructive and open atmosphere, to discuss how we are trying to approach this task, and how we from the national Parliaments hope to contribute to a good end result in the short time we have available. My own impressions can only be strengthened by the fact that my colleagues have chosen me as a Vice-Chairman of this Body, and therefore also as a sort of leader for those of us from the national Parliaments. I repeat: we are ready for open constructive cooperation, we will achieve this, we have many different views, we shall see how our colleagues in the European Parliament manage, of course we shall take account of the wishes of political groups, and of national wishes expressed both in our own countries and by countries in our political groups. I must also say that we shall of course abide by the Tampere conclusions and carry out our work in an open and businesslike manner. Mr Chairman, colleagues, I would just like to finish by saying that ten years ago the Berlin Wall fell. In that same year my country, Finland, became a member of the Council of Europe, whose task is above all to do what we are doing here. If anyone had told us ten years ago that we would be sitting here today, we would have found it hard to believe. Now we are here. That in itself is a significant achievement. The EU is to be enlarged. We must do as the Wise Men said in their report last year; we must have no dividing lines in Europe. It is our task to achieve this. And I think that in a body such as this we have every chance of success.

Great challenges lie before us, as my colleague from the European Parliament has already said: we are not a part of the Intergovernmental Conference, but of course we are going to work in close cooperation with its activities. And we shall watch other developments in the EU carefully. Finally, Mr Chairman, we represent our national parliaments, and consequently our European citizens in our Member States. The EU now has 15 members, and following the decision taken in Helsinki a week ago, we know that the Union is going to grow. At the same time, human rights and fundamental freedoms will be protected and improved. Thank you!

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**Speech by Mr António VITORINO**

Thank you Mr Chairman, and on behalf of the Commission and as the Commission's sole representative, I wish to join in the congratulations upon your election and give greetings to all members of this body. It is a great honour for me to represent the Commission on the body set up to elaborate a draft Charter of Fundamental Rights of the European Union. First, because this is the drafting of a text undoubtedly intended to mark a new stage in the construction of Europe which will contribute to the essential political and moral legitimacy of the European Union in the eyes of Europe's citizens. Second, because the actual formula devised by the Heads of State and Government for this drafting body's composition is completely new and innovatory. Indeed, never before was a Community act drafted by a gathering of this composition: Community and national sides, as well as their legislative and executive bodies, are together for the first time .

The Commission can only welcome this innovatory configuration where representatives who have been democratically elected by the citizens both nationally and at Union level form a majority. This body's composition is certainly no coincidence, but the political will of the Heads of State and Government as voiced in Cologne and restated in Tampere. I am convinced that this wise combination of the Community and national sides and, above all, the parliamentary predominance will help bolster the draft Charter's legitimacy in the eyes of a public which is often critical of the complex decision-making machinery at European level. The Commission welcomes the transparency that is to mark this body's work. In elaborating an act of such practical and symbolic relevance there would be no room for secrecy and confidentiality: the broadcasting of debates and, above all, the availability of all working documents on this body's own Internet website are praiseworthy examples that should be followed on other occasions. The work ahead of us – there is no point in denying it – is motivating but complex, not to say cyclopean. How to put together an

ambitious text of great political import that both yields genuine added value over the extensive legislation already existing in this area and is suitable for future inclusion in the Treaties? Obviously, as made clear in Cologne, the final decision on whether the Charter must be integrated into the Treaties and how this should be done is a matter for the Heads of States or Government alone. This body must, therefore, come up with a text which the Commission believes should meet the necessary format and content requirements for integration into the Treaties. For the Commission, the aim should be to provide the Union with a Charter of Fundamental Rights founded on judiciary control. I believe that this body should begin by addressing some core points for which it has to find answers. I would highlight two preliminary issues to be resolved, namely the type of rights to be included and the relationship between the future Union Charter and the Council of Europe's European Convention on Human Rights. Regarding the type of rights to be included in the Charter, thoughts should first focus on the brief adopted by the Cologne European Council. There it is stated that the Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention on Human Rights and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Heads of State or Government further want the Charter to include the rights reserved for the Union's citizens and account taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. Restating the point I have made about not losing sight of the ultimate aim, namely the Charter's integration into the Treaties, I believe that this body should concentrate on those fundamental rights deriving directly from the European Union's very existence. Whatever the Charter's nature, it will neither repeal nor render void any of the numerous national or international instruments concerning fundamental rights. Its ambition should be to explain clearly the fundamental rights already deriving from the Treaties and the whole Community law system including, obviously, the rich and innovatory case-law of the Court of Justice of the European Communities built up over the last few decades.

In line with the wishes of the Heads of State or Government, if we follow this approach the Charter will contain civil and political rights, social rights and also rights deriving from European citizenship. However, these will be included only if – and insofar as – they are rights conferred or protected by the Union. Thus, the Union Charter of Fundamental Rights will not seek to replace national constitutions or instruments of international law, but confine itself to supplementing them from the viewpoint of the Union's legal system. To me, that approach has the merit of enabling us to combine political ambition with the necessary dose of pragmatism. The second issue, which has, in fact, already caused much ink to be spilt and is now back in the limelight with the elaboration of the Charter, concerns the possibility of the Union acceding to the European Convention on Human Rights. Actually, that issue can be rephrased as two separate questions: who needs a European Charter of Fundamental Rights when there already exists a Convention with its own protection arrangements and, whether the Charter is adopted or not, should the Union not accede to the European Convention on Human Rights? Today the Commission's replies to these questions are the same as in 1979 or in 1990: the idea of the Union's accession to the Convention has always been backed by it together, in fact, with the European Parliament, which has come out in favour of accession in various resolutions. The idea was dropped following a Court of Justice ruling that the Commission had no competence regarding that accession. The issue has now arisen afresh, however, and we cannot avoid giving it some attention in our discussions. In the Commission's opinion the adoption of a Charter of Fundamental Rights will not block, or render redundant, accession to the Convention, nor will that accession block, or render redundant, the adoption of a Charter of Fundamental Rights by the Union. We clearly cannot prevent this issue surfacing during our discussions, but I feel no conclusive answer has to be found for it in this body – providing we agree with the Commission's analysis regarding the compatibility of possible accession to the Convention and adoption of a fundamental rights catalogue specific to the Union. Revision of the Treaties and their adaptation to the forthcoming enlargement are taking place simultaneously. Any treaty change to permit accession to the Convention will need to be discussed in the context of the Intergovernmental Conference. But, since the two issues are separate, the Conference's discussions and decisions need not interfere with this body's work. In conclusion, I should like to say a few things about procedural matters. Without repeating what I have said about the aim of

the work to be done by this body I would stress that, if we are to bring our mission to a successful conclusion we must first of all – as the Presidency has rightly suggested – opt for a traditional approach to this body's functioning based on global consensus. That method will require both a greater input from the Presidency and some discipline from us all, but I am sure it will be the most productive one. By choosing a working method based on consensus, approaching problems pragmatically and concentrating on areas and rights connected in some way with the European Union, we shall be able to bring our mission to a successful conclusion and place before the Heads of State and Government an ambitious text of high added value but based on reality and compatible with the ultimate aim of inclusion in the Treaty. One thing we may be sure of is that much is being expected of our work in many different sectors of European society. At our level we must do everything to avoid disappointing those expectations; as Chancellor SCHRÖDER said recently, the Charter of Fundamental Rights of the Union provides precious guidance for giving Europe an institutional framework. With this in mind I wish all of you, all of us, good luck. Thank you!

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**Speech by Mr Vassilios SKOURIS**

Thank you, Chairman. Allow me too to congratulate you most sincerely on behalf of the Court of Justice on your election as Chairman of this important body. I will continue in French because it is the working language of the Court of Justice of the European Communities. Chairman, Ladies and Gentlemen, it is with great interest that the Court of Justice of the European Communities is present today and is able to be represented by its observers at this conference for the drawing up of a charter of fundamental rights, which is an ambitious initiative. The Court would like to assure you that it appreciates the significance of this initiative which reflects the growing importance of protecting fundamental rights in the European Union. The idea of effective protection of fundamental rights has always been a matter of major concern to the Court since, when it emerged in the early 1970's that Community law and decision-making activities could impinge upon the fundamental rights of citizens, the Court managed to uphold this idea by finding a legal basis for the protection of human rights outside the texts of primary or secondary law. Thus, initially the Court had recourse to constitutional traditions that were common to the Member States, not as a formal or dogmatic source for fundamental rights but as a source of inspiration, and thereafter it combined this solution with that of fundamental rights recognised by the constitutions and also by referring to international instruments concerning the protection of human rights which the Member States had opted for or acceded to, in particular the European Convention on Human Rights. In a judgement of 13 December 1979 the Court also referred to the joint declaration of the Assembly of the Council and of the Commission of 5 April 1977 which, after recalling the jurisprudence of the Court of Justice, refers both to the rights guaranteed by the constitutions of the Member States and to the European Convention on Human Rights. In recent judgements the Court also refers to case-law of the European Court of Human Rights, indicating that account is taken of all aspects of fundamental rights.

It should be borne in mind, for instance, that the Court has sanctioned the right of ownership, the right to the protection of privacy and human dignity, the right of the defence to have access to relevant information, professional secrecy in relations between a lawyer and his client, the principle of "nullo crimen sine lege" and the right to a fair trial. In this context the Court has noted that its established case-law has been reaffirmed by the Community constitutional legislator firstly in the preamble to the Single Act, thereafter in Article F(2) of the Treaty on European Union, subsequently amended to become Article 6(2) of the Treaty on European Union currently in force. It is therefore against this backdrop that, as it had previously highlighted in its report of May 1995 on certain aspects of the application of the Treaty on European Union, in the event of an institutional act of the Communities infringing fundamental rights, it is already within the jurisdiction of the Court to verify observance of fundamental rights. It verifies not only acts of the legislative and executive powers of the Communities but also regulations of the Member States where the latter act within the scope of Community law. Thus, once the Charter of Fundamental Rights has been drawn up the Court of Justice of the European Communities will not be taking on a new role in monitoring observance of these rights, as it has always affirmed that fundamental rights are an integral part of the law which the Court is there to enforce. Thank you for your attention.

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**The Council of Europe's contribution  
to a European Union Charter  
of Fundamental Rights  
by  
Mr Marc FISCHBACH  
Judge at the European Court of Human Rights  
and  
Mr Hans Christian KRÜGER  
Deputy Secretary-General  
(Brussels, 17 December 1999)**

Ladies and Gentlemen,

It is a great honour and privilege for me to present to you this contribution of the Council of Europe. And I would like to add how pleased we are to have been invited to participate as observers in the proceedings of this distinguished forum.

The text of my address was prepared jointly by the Deputy Secretary General and myself. It therefore constitutes the position of the Council of Europe.

We welcome the decision to reinforce human rights protection within the European Union through a charter of fundamental rights. This is fully in line with developments in the Community institutions which, through the case-law of the Court of Justice of the European Communities and the successive amendments to the Treaties referring to the European Convention on Human Rights, have attached increasing importance to respect for fundamental rights in the Community legal system. As that system evolves towards ever greater integration, it is only logical that the Community authorities should wish to provide themselves with a catalogue of fundamental rights.

I can assure you that we will give you our full support and any necessary assistance to ensure that this process leads to genuine progress in the protection of fundamental rights throughout Europe.

In this brief statement I should like to deal with three aspects: first, the Council of Europe's achievements in the field of fundamental rights protection; secondly, the criteria to be taken into account in the drafting of a charter of fundamental rights; and, finally, the prospects for the protection of fundamental rights in Europe.

## 1. THE COUNCIL OF EUROPE'S ACHIEVEMENTS IN THE FIELD OF FUNDAMENTAL RIGHTS PROTECTION

Next year marks the fiftieth anniversary of the European Convention on Human Rights. During those fifty years, its Contracting Parties – including all Member States of the European Union – have created a unique and efficient system for the protection of fundamental rights.

When the Convention for the Protection of Human rights and Fundamental Freedoms was signed in 1950, its authors' avowed intention was to provide Europe with a system offering a collective safeguard against violations of the fundamental rights and dignity of individuals.

In ratifying the Convention, the Member States agreed not only to adapt their domestic law and practices to the rights enshrined therein but also to submit to international judicial supervision. Thanks to the Convention, everyone in Europe is entitled to refer alleged violations of the Convention to the Court in Strasbourg, which has set up what has come to be regarded as the most effective type of international machinery for the protection of human rights. The Court's existence has proved to be an important safeguard for Europe's citizens by virtue of the number of its judgments as well as the range of subjects covered and, above all, the many cases in which Governments have amended their legislation or practice in compliance with the court's findings. Being an institution outside domestic legal systems, the Strasbourg Court plays the role of an objective party, and this lends additional credibility to national systems for the protection of fundamental rights.

Improvements in the protection provided by judicial procedures, closer scrutiny of pre-trial detention and human rights violations by the police and armed forces, effective guarantees of a fair trial, enhanced protection from interference with the freedom of the press, recognition of the rights of illegitimate children, homosexuals and other minority groups – these are just some of the tangible results of the Court's activity.

In this connection, it should be stressed that the Convention, far from being static, is a living instrument that is constantly adapted to economic, political and social changes in our society.

Furthermore, some improvements in the Court's procedure have been made and new rights added by several protocols to the convention. Protocol No 11 recently amended the Convention to make it more effective and enable a larger caseload to be handled. It entered into force on 1 November 1998 and made the European Court of Human Rights a permanent institution. Next year, Protocol No 12 to the Convention, placing a general ban on discrimination, is expected to be adopted.

The European Convention has thus been transformed into a bill of rights for the entire continent or, in the words of the court, "a constitutional instrument of European public order". With 41 contracting States, its scope now extends from the Atlantic to the Pacific, covering an area inhabited by some 800 million people. This is an outstanding achievement of the process of European integration. Not only does it exemplify the political will clearly expressed by all Member States to create a Europe without dividing lines; it also encapsulates the universality of human rights, an idea which reflects the European conception of the value of each individual and which the same Europe steadfastly advocates in the international arena, especially in the United Nations, vis-à-vis countries that have a different approach to human rights.

In addition to the European Convention on Human Rights, the Council of Europe has drawn up several other legally binding instruments, including the European Social Charter.

## 2. CRITERIA FOR DRAWING UP A CHARTER OF FUNDAMENTAL RIGHTS FOR THE EUROPEAN UNION

Let me now turn to the question of the criteria that should be taken into account in the drawing up of a Charter of Fundamental Rights for the European Union.

As far as we know, the legal form of the future Charter of Fundamental Rights has not yet been determined. The choice of form will have a direct bearing on the wording of the rights and freedoms to be included in the charter. Whatever wording is adopted, it should be borne in mind that fundamental rights are by definition rights vested in each individual. This implies that criteria relating to an individual's origin or geographical, financial or cultural circumstances should be left out of consideration.

As far as civil and political rights are concerned, the Charter should build on the European Convention on Human Rights. The rights and freedoms contained in the Convention and its additional protocols are worded in such a way that they could be incorporated lock, stock and barrel into Community law. They constitute a body of rules which have been tested, developed and applied by the European Court and Commission over a period of more than forty years and to which the Court of Justice of the European Communities refers with increasing frequency.

As to whether the charter should include social and economic rights, we would first of all point out that, as the European Court of Human Rights itself has stated, there can be "no watertight division" between the various categories of rights. It is therefore desirable, in the interests of human rights protection, that the Charter be more than a catalogue of traditional civil and political rights. Progress within the European Union in this area would be a driving force for improvement of the European protection of human rights in general.

### 3. PROSPECTS FOR THE PROTECTION OF FUNDAMENTAL RIGHTS IN A NEW EUROPE

So far, the international protection of fundamental rights in Europe has been mainly developed by the European Court of Human Rights, whose case-law has fortunately been followed by the Court of Justice of the European Communities.

While the Luxembourg Court is mainly concerned with the freedoms connected with the objectives of the Treaties, the Strasbourg Court remains the sole international authority where individuals can directly challenge judicial decisions, administrative acts, statutes and even constitutional provisions. The European Union's Member States are also subject to its jurisdiction with regard to the implementation of Community law under domestic law.

However positive the results to date may be, there remains a risk of discrepancies arising between the two European Courts' bodies of case-law. This could prove highly detrimental to the legal certainty to which all European citizens are entitled.

The drafting of a charter of fundamental rights for the European Union provides a unique opportunity to construct a coherent system of human rights protection in Europe. Rather than search for new procedures, it would be preferable to devise an efficient system on the basis of the existing elements that have already proved their worth. Experience shows that a proliferation of codes with competing enforcement mechanisms tends to impair the effectiveness of all existing procedures. Furthermore, if the Charter were to be intended to set up an alternative European system for protecting fundamental rights, that might create a new divide in Europe – between the Member States of the European Union and the other European countries. Moreover, such an approach would lend weight to the idea that the substance of fundamental rights can be adjusted according to, for example, the economic situation of the countries expected to uphold them.

Accession to the European Convention on Human Rights remains a very effective manner of ensuring the necessary consistency between the convention and Community law. It would strengthen the protection of Europe's citizens.

Accession would obviate the risk of divergent interpretations being adopted in Strasbourg and Luxembourg. Of course, this is not the only way to integrate Community law and the Convention so as to form a coherent and efficient system. We could undoubtedly think of other options that would merit detailed consideration.

I am fully aware that accession to the Convention and all similar options would presuppose amendments both to the founding treaties and to the European Convention on Human Rights. But the same equally applies to any charter of fundamental rights that is more than a solemn declaration of principles. This opportunity should be seized to create a coherent and effective system of fundamental rights protection throughout our continent, which needs strong mechanisms for safeguarding fundamental rights both inside the European Union and beyond its frontiers.

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