

Report by Jean-Claude Juncker, Council of Europe — European Union: ‘A sole ambition for the European continent’ (11 April 2006)

Caption: On 11 April 2006, Jean-Claude Juncker, Luxembourg Prime Minister, submits to the Parliamentary Assembly of the Council of Europe a report on relations between the Council of Europe and the European Union. The report, drawn up in a personal capacity at the request of the Heads of State or Government of the 46 member States of the Council of Europe, meeting at the Warsaw Summit on 16 and 17 May 2005, sets out recommendations for the improvement of cooperation and coordination between the two organisations.

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Report by Jean-Claude Juncker, Council of Europe — European Union: ‘A sole ambition for the European continent’ (11 April 2006)

Report by Jean-Claude Juncker, Prime minister of the Grand Duchy of Luxembourg, to the attention of the Heads of State or Government of the Member States of the Council of Europe

Index

Introduction

1. Co-operation in the human rights field
 - a. Accession to the European Convention on Human Rights
 - b. Use of the Council of Europe’s human rights monitoring machinery
 - c. Using the Commissioner for Human Rights
 - d. The European Fundamental Rights Agency
 - e. Relations between the European Court of Human Rights and the Court of Justice of the European Communities
 - f. Co-ordination of legislative initiatives in the human rights field
2. Democracy
 - a. New expectations of democracy
 - b. The Venice Commission and constitutional issues
 - c. A Forum on the Future of Democracy
 - d. Gender equality – a pan-European question
 - e. Strengthening local and regional democracy
 - f. Making the most of civil society initiative
3. The Rule of Law
 - a. Towards a pan-European legal and judicial area
 - b. Disconnection clauses
 - c. Towards a joint platform for evaluation of standards
 - d. Towards increased legal co-operation
4. The EU’s European Neighbourhood Policy, and Stabilisation and Association Process
5. European values on the ground
 - a. Youth
 - b. Education
 - c. Cultural co-operation
 - d. Inter-cultural dialogue
6. Joint programmes
7. Inter-institutional consultation and co-operation
 - a. Top-level meetings
 - b. Inter-parliamentary co-operation
 - c. The role of member states in inter-institutional co-operation
 - d. Towards appropriate reciprocal representation
8. EU accession to the Council of Europe

Final recommendations

Introduction

The Council of Europe and the European Union were products of the same idea, the same spirit and the same ambition. They mobilised the energy and commitment of the same founding fathers of Europe. Both the Council and the Union adopted as their watchword the maxim coined by Count Richard Coudenhove-Kalergi between the wars: “A divided Europe leads to war, oppression and hardship; a united Europe leads to peace and prosperity.”

For over twenty years, the European Union has been my daily business, first in the Council of Ministers, later at the European Council. I have always, however, had a special relationship with the Council of Europe – a relationship which is personal and even irrational. The link goes all the way back to my student days in Strasbourg, a city symbolic of Franco-German reconciliation and the Mecca of European parliamentarianism.

I thus had great pleasure in accepting, at the Council of Europe Summit in Warsaw on 17 May 2005, the task of preparing a personal report on relations between the Council of Europe and the European Union. Wisely, my fellow Council of Europe Heads of State and Government asked me to present this report in my own name, thus giving me that freedom to comment and make suggestions which consulting, reflecting and writing on this kind of question requires.

What a long way our continent has come in the last sixty years! – our Europe, ravaged by warfare for centuries, which has produced humanity’s noblest works, but has also perpetrated the vilest atrocities on its own territory. In spite of our current problems and constraints, I would say that Europe has never been as easy to live in as it is today. Comparing the problems which confront us today with the appalling trials our parents and grand-parents had to face, we can only say that history has been kind to us. As the Warsaw Summit’s conclusions remind us, we are witnessing pan-European unity of a kind never seen before.

At the same time, we must not underestimate the challenges we face. This is a delicate phase in the building of Europe and, more generally, the development of European society.

Europe is no longer something people dream of. The deeply held convictions of the founding fathers, for whom “more Europe” – applied judiciously and in the right places – was the basis of progress for all the citizens of our complicated continent, are increasingly the target of hostility and scepticism. The European project cannot move forward unless we manage to regain the confidence of our fellow citizens. To do that, we must put European integration back into perspective, involve people more on all levels, and ensure that the benefits of Europe are visibly distributed.

Europe and the states which compose it must also resist the temptation to turn inward. They cannot escape the accelerating process of economic and cultural globalisation. On the contrary, they must embrace and shape it. Europe’s rare internal diversity, the mobilising power of its shared values, the lessons learned from its experience of violence and division, and also its first steps towards collective responsibility, will allow it – if it wishes and gives itself the means to do so – to make a major contribution to the dynamic changes at present under way.

We are rightly proud that democracy and the rule of law have taken root firmly in our continent – but the task of disseminating democratic, human rights and rule-of-law principles has still to be completed.

It would be a mistake to delude ourselves that democracy, once acquired, is unshakeable. On the contrary, we have a burning duty constantly to reaffirm our democratic principles. We must not allow democracy to dwindle into mere empty ritual. We must resist the trend towards alienation of politicians and state structures from the public. Democracy is a living thing. Although it has solid foundations, it needs to adapt and reinvent itself, to respond to the new political demands of our fellow citizens.

Pan-European co-operation is still, undeniably, a key issue. The Council of Europe and the European Union are its leading exemplars. Using its own instruments, pursuing its own goals and working within its own boundaries, each has developed a distinctive co-operation model. Although each has enriched the other, the two organisations remain at best a shaky team. Although each has borrowed from the other, they have never

been able to make themselves permanently complementary. It was realisation of this fact by the Heads of State and Government of the Council of Europe's member states which led to their giving me this task.

I would like to see co-operation between the Council and the Union become more intense, indeed intimate. The Council and the Union are both necessary, different and unique bodies. "We need not waste our time in disputes about who originated this idea of United Europe", Winston Churchill insisted in 1948, at The Hague. There is no room for rivalry on essentials between the two organisations. In what they do, and in what they have done, they complement each other closely. I have therefore tried to highlight the main features of possible improved co-operation between them – a genuinely aware, calm and structured partnership, a partnership working towards a single Europe on a human scale.

I know what a complex business building Europe is. I know only too well how ponderous the structures are – in our capitals, in Brussels and in Strasbourg. I did not, therefore, aim at root- and-branch solutions. My approach is pragmatic and seeks to exploit systematically a real potential which we all too frequently overlook.

The complementarity we want must be based on continuous strengthening of democracy, human rights and the rule of law in a Europe of 800 million people. It will involve revitalising democratic practices, and giving the Council of Europe's Commissioner for Human Rights, parliamentary bodies and Congress a bigger role. Increased civil society involvement will be another aspect.

Both organisations want a Europe without dividing lines, and this shared aim could be emphasised by increasing the number of joint projects. I am thinking particularly of youth questions, education, culture and inter-cultural dialogue. My proposals here are fairly modest – but it would be wrong to neglect the symbolic significance or even snowball effects of this kind of co-operation.

To the Heads of State and Government who asked me to prepare this report, I would like to say that the Council of Europe is as relevant today as it ever was. It is not in crisis, and it has not lost its *raison d'être*. A full-scale factory for democracy, it plays an indispensable and unrivalled part in steering Europe in the right direction. Its work is necessary for Europe and necessary for the European Union. But I reject any suggestion that it should become a mere waiting room for access to the European Union. Indeed, the European Union is building many of its policies – enlargement, the European Neighbourhood Policy, the Stabilisation and Association Process – on foundations laid by the Council.

I can therefore affirm once again that the Council of Europe and the European Union are partners – different but complementary organisations. However, we need to remodel that partnership, so that we can, in due course, give it an exemplary institutional form.

The conclusion I have drawn in this report, after much valuable consultation, is deliberately optimistic. There are broad areas where worthwhile co-operation between the two organisations is natural, and the added value of a renewed partnership seems to me undeniable. We must all summon up the determination we need to meet the challenges before us.

To succeed, we must develop new types of relationship between our organisations, and more natural contacts between the people who run our various institutions. The last part of my report will discuss this.

I would be honoured to accept my colleagues' invitation to play a part in establishing a new partnership between the Council of Europe and the European Union. The first step, in the short term, will be to finalise an ambitious memorandum on relations between the two organisations.

This will be a first step only. To attain our shared objectives in the longer term, we shall have to press ahead confidently and perseveringly.

1. Co-operation in the human rights field

a. Accession to the European Convention on Human Rights

Should the European Union (EU) accede to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR)? Accession has long been discussed, and is now expected at political level. At their meeting in Warsaw (May 2005), the 46 Heads of State and Government of the Council of Europe's member states also reiterated their wish that the EU accede without delay to the ECHR. The first purpose of its doing so, is to ensure maximum consistency of human rights protection in Europe.

As well as keeping the policy-makers busy, this question has long been exercising legal experts at the Council of Europe and the European Community and/or Union¹ – not to mention the judges at the European Court of Human Rights in Strasbourg and the Court of Justice of the European Communities (CJEC) in Luxembourg. The latter is already taking great care to avoid any conflict with the case-law of the Strasbourg Court. Thus, when questions relating to the rights and freedoms enshrined in the ECHR are raised before the CJEC, the latter treats the ECHR as forming a genuine part of the EU's legal system.

EU accession to the ECHR will not affect the division of powers between the EU and its member states provided for in the Treaties. Nor will one organisation – the European Union – be in any way subordinated to the other – the Council of Europe. Accession will, however, subject the EU institutions to that external monitoring of compliance with fundamental rights which already applies to institutions in the Council's member states. Accession will also allow the EU to become a party in cases directly or indirectly concerned with Community law before the European Court of Human Rights. This will allow it to explain and defend the contested provisions. The binding effects on the EU of any decision by the Court that the ECHR has been violated will also be strengthened, and the execution of judgments by the EU, when this is a matter for it, will be guaranteed.

On a technical level, contacts between experts in the two organisations have already answered most of the questions raised concerning the practical implications of EU accession to the ECHR. The methodology adopted for accession must preserve the integrity of the EU legal system. Efforts to clarify these questions are continuing without any serious problems.

The EU Charter of Fundamental Rights, which is largely inspired by Council of Europe instruments, has been proclaimed. At the Council of Europe end, EU accession to the ECHR has been made possible by the coming into force of Protocol No. 14 to the Convention, which amends its supervision system.

If, in spite of all this, preparations for accession are currently at a standstill, then the general situation regarding development of the EU Treaties is to blame.

I believe that there is no alternative to the draft Treaty establishing a Constitution for Europe. However, since EU accession to the ECHR is of fundamental importance for Europeans, and since all the member states are agreed on it, there is no reason why it should not go ahead as soon as possible. Taking an exceptional step, and already building an institutional bridge between the EU and the Council, will neither undermine nor subvert the draft Constitutional Treaty.

I therefore suggest that the Governments of the member states act under Article 48 of the Treaty on European Union², and submit to their parliaments, in protocol form, a decision paving the way for EU accession to the ECHR.

b. Use of the Council of Europe's human rights monitoring machinery

On the basis of its long experience, the Council of Europe has devised a whole series of structures to monitor respect for human rights in its member states. These same structures will serve as a benchmark for co-operation between the Council and the EU. They are:

- supervision by the Committee of Ministers of member states' compliance with judgments given by the

European Court of Human Rights under the ECHR, which is an integral part of their domestic law;

- verification by the Parliamentary Assembly that undertakings given and obligations accepted by member states on joining the Council have been honoured;
- inspections carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which operates under Article 3 of the ECHR and under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in 1987;
- the European Commission against Racism and Intolerance (ECRI), which has the task of combating racism, xenophobia, anti-Semitism and intolerance throughout Europe, from a human rights standpoint;
- assessment of implementation in practice of the Framework Convention for the Protection of National Minorities;
- reports, conclusions and recommendations submitted by the Commissioner for Human Rights to the Committee of Ministers and the Parliamentary Assembly on the basis of inspection visits to the member states;
- monitoring machinery which will be introduced when the Council of Europe's Convention on Action against Trafficking in Human Beings takes effect.

The decisions, reports, conclusions, recommendations and opinions of these various monitoring bodies are constantly consulted by EU institutions and working groups dealing with issues relating to Council of Europe member states, whether or not they are members of the EU. These texts are cited, explicitly or otherwise, in various policy areas and contexts,

(e.g. community policy, external relations, justice, liberty and security, to name but a few) when the political situation in general, or the fundamental rights situation in particular, in a Council of Europe state is being discussed.

It would thus seem appropriate to me that EU bodies should give formal effect to the spirit of Article 6.2 of the Treaty on the European Union, on which co-operation with the Council of Europe is based, by making it a working rule that the decisions, reports, conclusions, recommendations and opinions of these monitoring bodies:

1. will be systematically taken as the first Europe-wide reference source for human rights;
2. will be expressly cited as a reference in documents which they produce.

In fact, this proposal merely confirms existing practice. But it does mean taking something which today is simply a practice, and turning it into a rule for EU institutions on all levels. This explicit formula will enhance the status of the Council of Europe's human rights instruments and monitoring machinery in all its member states, both EU members and others. It will also make for more effective co-operation between the two organisations.

c. Using the Commissioner for Human Rights

Sophisticated as it is, Council of Europe's monitoring machinery cannot answer every question. It is thus possible, and indeed probable, that the EU will occasionally face problems which this machinery does not cover. When this happens, its institutions will, like Council of Europe member states, have to rely on the expertise of the Commissioner for Human Rights.

The Commissioner's terms of reference allow him to act more freely in specific cases than the other supervisory bodies which are bound by conventions or have a stricter mandate. His general usefulness for

Council of Europe states is obvious. It is even more obvious when he complements the action of the existing EU bodies, regardless of whether enlargement, the European Neighbourhood Policy or the Stabilisation and Association Process is the issue.

The Commissioner acts with total independence and impartiality in identifying shortcomings in the law and practice of states with regard to human rights. He operates in direct contact with individuals, and thus their daily problems. He publishes reports on his inspection visits to member states, supplies practical advice and offers to mediate. He has even, in some cases, negotiated practical solutions on the ground.

He acts in consultation with the control bodies established under the ECHR and other Council of Europe human rights instruments. He must thus respect their powers, and his functions are not the same as theirs.

In practice, the Commissioner, although directly answerable to the Council of Europe, does not operate solely in that context. He also works with the United Nations, the International Committee of the Red Cross and the Office of the High Commissioner for Refugees, and also with individual member states. He responds to requests to act in his various capacities – reporting, negotiating, mediating and providing advice. He often acts quietly, without publicity, and informally. He can act by contacting individuals direct, mobilising networks or even putting the relevant people in touch with one another.

Although his work is still in its infancy, the Commissioner has succeeded in winning the respect of all the Council's member states. His intervention concerning the treatment of refugees on the island of Lampedusa, and prison reform in Turkey, could be cited as examples. The EU, too, has frequently expressed its confidence in him. There are also, of course, his frequent contacts with the European Parliament and with the EU's High Representative for Joint Foreign and Security Policy. Above all, there was his co-ordination, at the request of European Commissioner Günter Verheugen, of reports on the human rights situation in ten countries applying for membership of the EU.

Things done successfully so far must now be formalised, made more systematic and consolidated. That is why I propose – and here I am in line with the general view shared by the EU and the Council of Europe that the latter should remain the prime reference for human rights in Europe – the explicit introduction of machinery which would allow the EU to apply to the Commissioner, who would deal with all human rights issues, affecting Council of Europe member states, which were not covered by the existing monitoring and control procedures. This machinery would be open to the EU institutions and to all the Council of Europe's member states.

If the Commissioner is to do his job properly, his resources and budget at the Council of Europe will have to be substantially increased. He should also be authorised to submit his own budget proposals. A voluntary, no-strings-attached contribution to his Office by the EU should also be seriously considered. Finally, the Council's member states should propose the secondment of independent national human rights experts, chosen by the Commissioner, to reinforce his services.

d. The European Fundamental Rights Agency

The European Fundamental Rights Agency (AEDF) is a sensitive issue in EU/Council of Europe relations. A lot has been said about the threat which this new institution might pose to unity of the European human rights protection system.

The Council of Europe must remain the benchmark for human rights in Europe. This means that the EU must systematically draw on its expertise. This applies to members, candidate countries and non-EU states in the Council of Europe, in respect of its bilateral relations, neighbourhood policy, association agreements, and also the stabilisation and association process.

The Council of Europe will remain responsible for monitoring and for ensuring that its member states respect human rights. It will make regular evaluations in each of its 46 member states, including those in the EU, on a country-by-country basis, and produce reports on its findings. The reference value of its thematic

reports must also be maintained and strengthened.

This means that the future Agency must be strictly complementary to the Council of Europe's human rights observation and monitoring instruments. It is essential that its mandate be limited to human rights issues which arise in connection with the implementation of

Community law, i.e. strictly within the EU's internal legal system. It may never be extended to general observation, using its own procedures and resources, of the human rights situation in Council of Europe member states.

The Agency will still be able to decide whether to commit its own resources to thematic observation, in the EU states, of matters which primarily relate to the EU's internal legal system.

It is generally accepted that the Agency will co-operate with the Council of Europe and avoid any overlap with its activities. At this stage, these intentions are formulated in very general terms in the proposal for a regulation on the statute of the AEDF. It seems to me that some clarification is necessary.

For example, the regulation on the AEDF should indicate how it is to recognise the Council of Europe's reports on its own member states – whether or not they are in the EU – as a benchmark for its work.

Like the Treaties, the EFRA Statute should expressly mention the ECHR and the Council of Europe's other key instruments in this field, as fundamental reference texts. It goes without saying that the Council should be represented on the Agency's managing bodies. It would also be useful if the Commissioner were mentioned in the Statute as an essential partner of the agency, and could be involved, in a non-consultative capacity, in the work of its managing bodies. This would in no way reduce his independence.

e. Relations between the European Court of Human Rights and the Court of Justice of the European Communities

Although the European Court of Human Rights³ and the Court of Justice of the European Communities both have excessive case-loads, and in spite of the reforms carried out at the Court of Human Rights, co-operation between the two gives great satisfaction to both sides. There is no institutional link between them, but they work together fruitfully, since both are concerned about legal security in a field as sensitive as that of fundamental rights. Luxembourg case-law follows that of Strasbourg very closely, while Strasbourg case-law regards Community protection of fundamental rights as "equivalent" to that guaranteed by the ECHR.

Regular contacts between judges in the two courts ensure a permanent exchange of information on matters of mutual interest. The courts provide an outstanding example of co-operation between EU and Council of Europe institutions, in the interest of ordinary people. I think it important to emphasise this here.

Of course, no special recommendation are needed from me here. At most, I can hope that this co-operation will deepen and focus on interpretation of the concept of "human rights", helping the case-law of the two courts to develop on convergent lines.

f. Co-ordination of legislative initiatives in the human rights field

It is a well-established practice that the Council of Europe involves the EU whenever new conventions are being prepared. The European Commission speaks for the Community on all issues for which the latter is responsible, at meetings where conventions are being drafted. It can do this, even though the Community has not acceded to the Council.

There is no Council of Europe presence when the Community bodies are preparing a Community directive, or when political and/or legal measures are being planned at the EU. The transfer of sovereignty, which is the distinctive feature of the EU institutions, does not allow international organisations, which are not contracting parties to Community treaties, to participate in internal deliberations.

There is, however, no reason why the EU should be deprived of the Council's legal and human rights expertise, when it is preparing directives or other political and/or legal measures. This has already happened in the past, when the Council has been called on in the same capacity as non-governmental organisations – a procedure which takes no account of the central position which it occupies, as an international organisation, in the European human rights protection system.

The spirit of the working rule I advocated earlier means that work done by the Council of Europe's human rights monitoring bodies should always be regarded as the first point of reference in this area. It also means that the Commissioner for Human Rights should be available to assist the EU. To forestall any legal insecurity in the human rights field, I accordingly propose that the EU co-operate systematically with the Commissioner and the Council's legal experts on any issues of human rights relevance in new proposals. The Council's experts on preventing torture, combating racism, protecting national minorities and putting a stop to trafficking in human beings should also participate in this strengthened co-operation.

2. Democracy

a. New expectations of democracy

The institutions of the EU and its member states have started to focus on the nature and functioning of our democracies. The work done by the Council of Europe in this area is generating great interest. Although democratic government is a condition for joining the EU, the EU itself has no special mandate on this issue – which underlines the crucial importance of the Council's expertise.

The Council of Europe was, and still is, a school for democracy – a place where parliamentary practices are learned, and the use of "soft power" and dialogue in politics is disseminated throughout Europe. But democracy is changing all the time. To retain its people-based legitimacy, it has to be constantly reinvented.

The European Commission has shown interest in the Council of Europe's becoming even more active in promoting democracy. It is worth recalling that it has recently launched its own Plan D for Democracy, Dialogue and Debate, which will run well beyond 2006.

I believe that synergy is possible and even necessary between the Commission's Plan-D and the Council's projects in these areas.

Co-operation might focus on: constitutional problems, citizen participation on all levels of the political process, gender equality, citizenship and identity, "sustainable communities", local and regional government as a place for the exercise of democracy, participation in politics by immigrant communities, and inter-cultural dialogue. The field for discussion is a vast one, and nearly all of it is central to the Council's work.

b. The Venice Commission and constitutional issues

Co-operation between the EU and the European Commission for Democracy through Law (the Venice Commission) already has a long history.

Founded in 1990, the Venice Commission has played a vital part in helping the countries which opted for democracy after 1989 to adopt constitutions consistent with the standards embodied in Europe's constitutional heritage. It is now internationally recognised as an independent research body. It helps to provide states with a "constitutional repair service", and plays a unique role in conflict management and prevention by laying down standards and supplying advice on constitutional matters. Moreover, the European Commission participates actively in its sessions.

The Venice Commission wants increased, institutionalised co-operation with the EU, and sees this as a way of strengthening democratic security and security of minorities. On the EU side, no decision has been taken.

For my part, I feel that co-operation with the Venice Commission should eventually be formalised by the

EU's officially acceding to it.

c. A Forum on the Future of Democracy

What can an intergovernmental organisation like the Council of Europe do to help promote citizen participation, which is falling away at national, regional and local level? How can we rekindle people's interest in that formidable integration project, the EU?

The first meeting of the Forum for the Future of Democracy, held in Warsaw on 3-4 November 2005, produced some new ideas. The participants highlighted the need to give ordinary people a real opportunity to influence the democratic decision-making process on all levels. This approach must be taken on board. I believe that it offers great scope for co-operation between the Council of Europe and the EU.

This being so, the Forum itself should be as large and representative as possible, independent, effective, flexible and creative. Above all, it must be closely watched by decision-makers, field-workers, and working parties and study groups at the EU and the Council of Europe. It is only when information, ideas and good practices are freely exchanged that new instruments can emerge.

d. Gender equality – a pan-European question

Gender equality is a principle which runs through all the EU's policies, but it is not uniformly applied in its member states – and the same is true of the Council of Europe.

Today, implementation of this principle is questioned – implicitly and sometimes explicitly – in discussion of all the major social issues.

Economic, social – and also political – equality of men and women is today a basic, constituent principle of European societies, and something on which we cannot compromise.

The Council of Europe works on these issues within the general context of human rights protection and promotion. It is committed, for example, to combating trafficking in, and violence against women, and is also campaigning for democratic equality and a place for women in politics and decision-making.

The EU uses sophisticated instruments to monitor the economic and social rights of women, but has no direct mandate to work on issues connected with equal participation by women and men in political and public decision-making. This is another area where there is scope for profitable co-operation between our two organisations.

e. Strengthening local and regional democracy

The Congress of Local and Regional Authorities gives the Council of Europe an instrument which it can use to promote decentralisation of powers, increased local autonomy and a better deal for regional and local communities. This is one of the promising paths towards the necessary revitalisation of democracy.

The Council and the EU have already started to work together in this field, particularly under the Co-operation Agreement between the Congress and the EU's Committee of the Regions. This co-operation must be continued and intensified.

Several potential areas of co-operation can already be discerned:

1. The development of new-style "Euroregions", covering regions in both EU and non- EU countries, on the lines of the Adriatic Euroregion, which was launched in February 2006. The establishment of such "Euroregions" on the Black Sea and Baltic will make for closer political and economic ties between local, regional and national authorities in EU and candidate countries, and Council of Europe countries outside the

EU.

2. The establishment of the Centre for Inter-Regional and Cross-Border Co-operation. I fully support the siting of this Centre in Saint Petersburg, Europe's flagship city. It should encourage the development of local and regional autonomy, particularly by monitoring the new "Euroregions", and open up opportunities for co-operation between local and regional authorities in Europe. I also recommend that the EU, and the relevant Council of Europe institutions, consider how it could participate in this.

3. New networks of local authority associations. Following the establishment of the Network of Associations of Local Authorities of South-East Europe (NALAS), joint EU/Council of Europe programmes might support similar networks in the South Caucasus and Western Balkans.

4. The Association of Local Democracy Agencies (ALDA) in South-Eastern Europe, founded by the Congress to promote local democracy and confidence-building measures in countries affected by the recent Balkan wars, should also be supported by the EU, particularly since they may eventually join it. This initiative could be extended to other European regions.

5. European society is regularly hit by urban, social and community crises. The Congress might serve as one platform to promote the inter-cultural and inter-religious dialogue which is vitally needed at local level. It might, for example, draw up codes of conduct for managing inter-cultural conflicts, and also take action to promote integration and participation of immigrants and foreign residents.

f. Making the most of civil society initiative

Democracy cannot exist without a strong civil society, which helps to satisfy collective needs in a manner which complements the efforts of the authorities, and makes sure that those efforts are transparent and responsible. It seems to me that the Council of Europe has grasped this. It ensures that all our states have laws which make it easy for non-governmental organisations (NGOs) to be founded and function effectively, while respecting the rule of law. This facilitates the exchange of good practices between NGO networks. Finally, by giving them participatory status, it associates many international NGOs with its work.

3. The Rule of Law

a. Towards a pan-European legal and judicial area

At the Warsaw Summit, the 46 Heads of State and Government committed themselves firmly to "strengthening the rule of law throughout the continent", building on "the standard-setting potential of the Council of Europe and on its contribution to the development of international law". Vital to this are the existence of independent and effective legal systems in the member states, and optimum protection for individuals throughout the continent.

The Council of Europe has done an immense amount of work on fundamental rights, and on legal co-operation and internal matters. On the EU side, enlargement, the establishment of the Schengen area and the framing of policies in the field of "justice and internal affairs" have led EU policy-makers and legal experts to incorporate in treaties, directives and framework decisions clauses taken from thirty or so of the Council's 200 conventions.

This applies to human rights, the prevention of torture, social rights (via the European Social Charter), the rights of minorities, data protection, bio-medicine and nationality. In these fields, the Council's conventions are a fundamental reference source for the EU.

In the field of criminal law, the EU regards the following Council conventions as vital in the fight against organised crime: the European Convention on Extradition (ETS No. 24) and its Second Protocol (ETS No. 98), the European Convention on the Suppression of Terrorism (ETS No. 90), the Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 99), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ETS No. 156). Its rules on the transfer of prisoners are already applied in 70 countries. Similar action will shortly be taken on the problem of counterfeit medicines.

In other fields, such as transfer of proceedings, execution of penalties, protection of victims, the fight against terrorism, trafficking in human beings, protection of the environment, and computer crime, the EU and the Council have drawn inspiration from each other and attempted to harmonise clauses in accordance with their respective fields of competence⁴.

Family Law, the fight against corruption, movement of persons, the powers of local authorities in respect of transfrontier co-operation, participation of foreigners, and also action to curb spectator violence and misbehaviour at sports events, and doping – all these would seem to be areas where Council and EU texts might be aligned more closely, depending on how their respective powers develop.

I have gone into more detail on these various elements, in order to show how much the Council of Europe has done to generate a standard-setting potential which serves as a general basis for a pan-European legal area, i.e. a minimum- standards area, which covers its 46 member states, and complements – but does not contradict – the area covered by EU law.

This pan-European legal and judicial area is desirable in the interests of all Europeans. It holds the promise of a Europe without dividing lines. It is rooted in shared basic values and a shared constitutional and legal heritage, which are twin pillars of European identity and unity. It is a weapon in the battle against organised crime, cybercrime and terrorism, to give just a few examples – a battle which cannot be waged and won solely in Europe of the 25. Finally, promoting this pan-European legal and judicial area in all the Council of Europe countries is all the more important for the fact that not all of them will be joining the EU.

Development of this pan-European legal area across the Council's member states depends on a number of conditions:

- the Council and the EU must systematically co-ordinate their legislative initiatives in areas where their responsibilities overlap and complement each other;
- they must try, by co-operating on legal questions, to achieve increased complementarity of their texts;
- they must ensure that Community law is not diluted by the effect of EU states' acceding to intergovernmental Council of Europe conventions;
- they must set up – having regard to their respective areas of competence – a joint platform to evaluate standards and assess, without prejudice to future policy decisions, the feasibility of the EU's taking over Council standards, and vice-versa;
- they must ensure that the rule-of-law monitoring machinery (e.g. action against terrorism, money laundering, corruption and trafficking in human beings, and legal co- operation in criminal matters) is designed to prevent duplication's interfering with application of the standards;
- they must encourage all their member states to accede to the legal instruments of both organisations, thus maximising their geographical coverage;
- they must intensify their co-operative efforts to strengthen the rule of law in areas and structures where these have proved effective, e.g. the Venice Commission, the European Commission for the Efficiency of Justice (CEPEJ) and the Group of States against Corruption (GRECO), to name just a few;
- in defining its policies, the EU must base itself on the evaluations carried out by the Council's various legal

co-operation systems, and participate in these in an appropriate manner.

b. Disconnection clauses

The idea of promoting a pan-European legal and judicial area of this kind has encountered a few difficulties. A year ago, when three conventions were being negotiated, there were sometimes sharp exchanges concerning inter-institutional relations, and also the obligations of EU member states to one another, and to Council member states outside the EU. The conventions in question were the Convention against Trafficking in Human Beings, the Convention on the Prevention of Terrorism, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the financing of terrorism. The debate was also fuelled by the Council's fear that the EU might, in applying its conventions, fall short of the minimum standards accepted.

After lengthy discussion, the Luxembourg Presidency of the EU Council suggested that the need for, and scope of, a "disconnection clause" should be clarified. The Declaration made by the European Community and the EU states when the Council of Europe's Committee of Ministers adopted the three conventions, on 3 May 2005, explained how the disconnection clause would work, particularly in relations between EU states and other, non-EU members of the Council of Europe:

"The European Community/European Union and its member states reaffirm that their objective in requesting the inclusion of a 'disconnection clause' is to take account of the institutional structure of the Union when acceding to international conventions, in particular in case of transfer of sovereign powers from the Member states to the Community.

This clause is not aimed at reducing the rights or increasing the obligations of a non- European Union party vis-à-vis the European Community/European Union and its Member states, inasmuch as the latter are also parties to this convention.

The disconnection clause is necessary for those parts of the convention which fall within the competence of the Community/Union, in order to indicate that European Union Member states cannot invoke and apply the rights and obligations deriving from the Convention directly among themselves (or between themselves and the European Community/Union). This does not detract from the fact that the Convention applies fully between the European Community/European Union and its Member states on the one hand, and the other Parties to the convention, on the other; the Community and the European Union Member states will be bound by the convention and will apply it like any party to the convention, if necessary, through Community/Union legislation. They will thus guarantee the full respect of the convention's provisions vis-à-vis non-European Union parties."

The essential question here is how Community law, which transfers extensive powers, including many external powers, from member states to the EU, can be linked more effectively with international law, which is also evolving.

In our continent, we are seeing rapid, and to some extent unique, changes in Community law, and also less rapid, but substantial changes in international, convention-based law.

The EU, like the Council of Europe, also has Europe-wide responsibilities. In exercising them, it is often obliged to connect with laws which are alien to it.

The legal security of all the citizens of Council of Europe member states thus stands to gain if there is appropriate technical or political consultation between the EU and the Council before any legislative initiatives are taken in areas where their powers overlap.

This is not a case of the Community's EU dynamic being slowed down by contact with intergovernmental machinery, but of averting legal insecurity and major incompatibilities between Community and international law – particularly European law, whose standard-setting potential must remain a judiciously shared asset, and not become a cause of dissension.

Linking changes in Community law with changes in international law through consultation with the Council of Europe is essential. The EU should tackle this task in a co-operative spirit, seeing it as an opportunity to give the law its own distinctive impetus. On the Council side, member states outside the EU must not use this consultation machinery to slow down a Community dynamic which openly accepts its continental responsibilities.

This process of change has started. Since the negotiations on the three above conventions were concluded, the debate has grown calmer, and the impact of disconnection clauses has largely been played down.

Despite everything, the EU will probably be unable to dispense with disconnection clauses. In fact, these clauses are simply EU clauses – and I wonder whether it would not be better to call them that.

c. Towards a joint platform for evaluation of standards

To move forward on the path to this pan-European legal and judicial area, the EU and the Council of Europe should also set up a joint platform to assess the feasibility of the EU's taking over Council standards, and vice-versa, each in accordance with its own responsibilities.

I know that the European Commission is already prepared to examine certain Council of Europe conventions, with a view to accepting them. It goes without saying, however, that dialogue between legal experts on a platform of this kind would in no way prejudice policy decisions, or the right of either party to accept or reject a given text.

A platform of this kind, before texts were adopted, would complement prior consultation on legislative initiatives, and would be a further pledge of legal consistency in Europe.

d. Towards increased legal co-operation

Co-operation between the Council of Europe and the EU functions best in the legal field.

The Council's current priorities for legal co-operation are action to combat trafficking in human beings, corruption and organised crime (including cybercrime), and also bioethics. The "child welfare" segment is also becoming increasingly important.

To a large extent, the legislative work done in these areas by both coincides. It is important that the EU and the Council should determine shared priorities more systematically. For one thing, there should be more co-operation with the Council on child welfare policy, which will shortly be the subject of a communication from the European Commission.

The Council of Europe deplores the EU's failure to accede to monitoring structures like GRECO⁵ or Moneyval⁶. The European Commission participates in the work of GRECO, but has postponed acceding until the process for amendment of the EU Treaties has been restarted. In this connection, I should like to make the point that EU accession to this structure, of which the US is a member, is not the same thing as EU acceptance of an international treaty. It is, rather, a question of participating more formally in the monitoring structures and so avoiding widespread duplication. The EU did participate in Moneyval, and even contributed to it financially, but withdrew later. It seems to me that it might usefully reconsider its attitude to

these two structures, with a view to playing a more active part in them, acceding to them in due course, and applying the results more systematically.

The EU could also derive major benefits from the networks set up across Europe in the last fifteen years, thanks to legal and judicial co-operation at the Council of Europe. Forums like the Consultative Committee of European Judges, the Meeting of Presidents of European Supreme Courts and the Conference of Attorneys General of Europe have led to the setting-up of networks to which the EU could turn directly for practical help or expert advice.

The Council of Europe-“Justice and Internal Affairs” troika has proved a useful strategic structure, and must be kept going. At the same time, the co-operation it has generated in the field of criminal law should be extended to all fields of law, and particularly civil and administrative Law.

4. The EU’s European Neighbourhood Policy, and Stabilisation and Association Process

The Council of Europe’s work contributes usefully to attainment of the EU’s objectives in connection with enlargement, its European Neighbourhood Policy, and its Stabilisation and Association Process. But it must not be seen as a mere contribution to EU policy, or be allowed to lead to instrumentalisation of one by the other. I prefer to speak, firstly, of shared objectives in respect of action to protect human rights, promote democracy and strengthen the rule of law, and secondly, of complementary powers in relation to those objectives.

The Warsaw Action Plan sees the EU’s European Neighbourhood Policy, and its Stabilisation and Association Process, as an opportunity for increased co-operation in the countries which participate in them.

In the spirit of complementarity which underlies co-operation between the two organisations, EU reliance on the Council’s expertise (through monitoring structures taken systematically as points of reference, recourse to the Commissioner for Human Rights open to all the Council’s member states, the joint structure for assessment of standards, the co-ordination of legislative initiatives, etc.) must not be the exception.

On the contrary, the Council’s contribution to the European Neighbourhood Policy, and the Stabilisation and Association process, is a natural consequence of its mission: it is the only Europe-wide structure for the defence of human rights, it promotes democracy and the rule of law at pan-European level, and its standard-setting activity serves human rights and makes for increased legal consistency. Depending on circumstances, that activity may produce binding, incentive or indirect effects. Its contribution to EU policies derives from the proposals on increased co-operation contained in earlier chapters, which themselves merely extrapolate, formalise and systematise the best practices already current between the EU and the Council.

This obviously means that the material and geographical scope of co-operation between the two organisations must be clearly defined.

The material scope of co-operation is implicit in the Council of Europe’s mission, which was reaffirmed at the Warsaw Summit: it is a pan-European organisation “the essential mission” of which is “to preserve and to promote human rights, democracy and the rule of law”. As for geographical scope, I feel that co-operation should focus on the Council countries and Belarus, which will certainly join at some time in the future. Council involvement in inter- cultural dialogue under the Euro-Mediterranean Policy would exceed its capacities – particularly in view of the major role it has to play in the many inter-cultural dialogues which have become necessary in the area covered by its 46 Member states.

Already, various action plans negotiated and concluded as part of the EU’s Stabilisation and Association Process, and its European Neighbourhood Policy, include among their detailed institutional and legal objectives statutory or specific commitments accepted by states on joining the Council of Europe. Some of them even make fulfilment of all the undertakings they have given the Council the primary objective of the action plans they conclude with the EU. Partnership and co-operation between the EU and the Council is accordingly being up- graded, for the purpose of giving democracy, human rights and the rule of law deeper

roots in those countries. This process should be taken further.

5. European values on the ground

Co-operation between the EU and the Council of Europe must not stop there. By launching programmes in fields chosen for their knock-on effects, the two organisations must also give themselves the means of disseminating their values at grass-roots level. I am particularly thinking of joint action in the fields of youth, education and culture, and also inter-cultural dialogue. The last is becoming increasingly important in societal debate in a radically changing Europe. Here, I shall merely make a few remarks and suggestions.

a. Youth

The Council of Europe has a long tradition of working with young people and, relying on co- management by civil society (youth organisations and networks) and governments, has perfected a working model which can be used to promote participation by young people in democratic institutions and processes throughout Europe. It is preparing to launch, in June 2006, a new European youth campaign for diversity, human rights and participation under the slogan, “All different – all equal”, which has constantly influenced our thinking in the last ten years. The European Commission is taking part in this campaign. I can only appeal earnestly for increased co-operation between the Council and the EU, which already has a long tradition, during this operation.

In the youth field, the Council and the EU are pursuing almost identical policies, admittedly with different resources. There are a few bridges, however. For example, three youth programmes⁷ are being conducted under partnership agreements between the Council of Europe and the European Commission.

These agreements expire at the end of 2006, and have not yet been renewed for the period from 2007 to 2013. This is an opportunity to think about new joint initiatives, which would give the idea of a Europe without dividing lines more substance, and exploit some of the Council’s strong points: its networks, especially regional networks, which include both EU and non-EU countries, its long experience of training youth organisers and leaders, and its exchange schemes for young people from all its member states.

b. Education

There are few fields where national and regional authorities exercise their sovereignty more rigorously than they do in education. However, national or regional confinement is incompatible with the basic aims of all education, i.e. to transmit, disseminate and create knowledge. For knowledge to be transmitted, disseminated and created, teachers and students must also circulate, and their experience and skills must be recognised and developed.

Our continent has an age-old tradition of teachers’ and students’ moving from country to country, school to school, university to university. The division of Europe greatly restricted that tradition, and the highly technocratic educational reforms carried out in Western Europe in the sixties and seventies made things even harder by introducing relatively closed training cycles.

In secondary education, exchanges are proving hard to revive while, at university level, transatlantic migration is assuming brain-drain proportions. Ostensibly, Europe has great ambitions in the fields of knowledge and research, but the facts belie this. Worse, university systems in Central, Eastern and South-Eastern Europe owe their dynamism, not to exchanges with European countries, but essentially to exchanges with the US. In education, a real gulf is opening up between Europe’s ambitions and the real situation.

Any action by European institutions – and *a fortiori* any co-operation between the Council of Europe and the EU – in the field of education must allow for this.

For fifteen years, the Council of Europe’s Legislative Reform Programme (LRP) has been supporting the reform of laws on higher education and research, as part of the Council’s efforts to strengthen democracy in

the countries of Central and Eastern Europe. Although under-funded, the LRP has been a success. It has much to offer the EU, particularly in candidate countries and countries covered by its Neighbourhood Policy, and Stabilisation and Association Process. I believe that we must envisage intense co-operation – backed by funds on a par with the issues involved – between the Council and the EU in this area.

This co-operation must involve EU universities, which I would urge to adopt a more aggressive stance on this.

The political desire to proceed in this direction exists in the EU. It is manifest in the Bologna Process, which seeks to create a European Higher Education Area by 2010.

The Council of Europe and the EU are both helping, each in its own way, to establish this area. The Council is notable for its work on recognition of qualifications, and its active role on the steering bodies, e.g. the Bologna Process monitoring group. The EU contributes via the Erasmus and Erasmus Mundus programmes, which together have very large budgets.

Despite the disparity of their budgets, the contributions of the two organisations complement each other. In accordance with their respective powers and strengths, they should try to create new, clearly targeted synergies in this field.

Links could also be established between the Council's secondary school exchange schemes and the EU's Comenius programme, which also covers school education up to the end of the higher secondary cycle.

The two organisations share the aim of promoting understanding and appreciation of Europe's cultural diversity among young people and teachers. They organise inter-cultural exchanges and ease the school-to-work transition by helping young people to acquire the basic qualifications and skills they will need for personal development, future professional activity and active citizenship. In this context, all forms of co-operation which offer the two organisations added value must be envisaged.

Finally, I feel that the EU should support the Council's project for a Centre of Excellence for teachers specialising in human rights, democratic citizenship, inter-cultural dialogue and religious diversity.

c. Cultural co-operation

Co-operation between the Council of Europe and the European Union in the field of culture is of long standing.

The Council's European Cultural Convention, which dates from 1954, is still the regulatory basis of all cultural policies in Europe. Its standard-setting potential is also reflected in agreements on crimes involving cultural assets, cinema co-production and protection of the archaeological heritage. These agreements constitute a kind of joint fund, and have inspired countless EU projects.

The Council's current political priorities include promoting identity and respect for diversity, supporting creativity and encouraging participation.

The EU's Culture 2000 programme has similar goals. The EU, and its member states, are co-operation with non-EU countries and international organisations active in the field of culture – and “in particular with the Council of Europe”.

In the field of culture, this co-operation covers awareness-raising campaigns (European Year of Languages, European Heritage Days), and also the funding of projects relating, for example, to the heritage trades and the setting-up of co-operation networks centred on the world heritage or policies for the development of archaeological sites. It might be extended to the European Cultural Routes project.

Outside the EU countries, it covers joint cultural programmes in connection with EU enlargement, the

Neighbourhood Policy, and the Stabilisation and Association Process.

In the cinema and audiovisual field, co-operation between the Council and the EU takes several forms.

The Commission is a member of the European Audiovisual Observatory, which has the task of providing professionals with comprehensive, up-to-date information on the audiovisual industry and markets. However, it does not at present participate in the Council's audiovisual co-production support fund, better known as "Eurimages", which is undeniably one of its most successful ventures. In fact, it is the only instrument providing aid for cinema and audiovisual production at European level. The EU and its Media Plan intervene before and after, but not during, production. Co-operation between the Council and the EU in this area thus takes care to avoid duplication. I nonetheless think it would be useful to explore the desirability of the EU's joining Eurimages at some time in the future, since this might lead to definition of a joint strategy, make the help provided for audiovisual production more effective and cohesive, and generate financial synergies which would inevitably benefit all the players in this sector.

d. Inter-cultural dialogue

Inter-cultural dialogue is an objective shared by the Council and the EU.

In October 2005, the Conference of Ministers of Culture held in Faro (Portugal) launched the Council's strategy for the development of inter-cultural dialogue. The European Commission also intends to proclaim 2008 "Year of Inter-Cultural Dialogue".

For the last century, European societies have been affected by the problem of minorities, and by exoduses and migrations of all kinds. They have absorbed new communities from all parts of the world, becoming pluri-cultural in the process. The purpose of inter-cultural dialogue is to make all the members of our societies share the fundamental values which give Europe its identity and unity. These values – human rights, democracy, the rule of law, gender equality, diversity, tolerance and rejection of discrimination based on ethnic origin or religion – are not negotiable. It is both useful and necessary to state this clearly.

Promoting and disseminating these "*minima moralia*" is a huge and complex task. The nature of inter-cultural debate is determined by the geographical location of the countries concerned, and by the communities which live in, or come to them. Inter-cultural dialogue cannot be reduced to discussion centred on a single religion. That would simply play into the hands of those who speak of a clash of civilisations – a concept so simplistic, so fraught with unresolved contradictions and so productive of tensions that it needs to be utterly rejected.

In Europe there are as many types of inter-cultural dialogue and discussion as there are points of contact – and sometimes friction – between individuals and groups with different cultures. The aim of synergy between the Council and the EU is not to exacerbate the differences and so turn them into conflicts, but to advocate equality *in* difference, and use shared basic values to build unity. The aim, above all, is to make it possible for communities – often pushed into confrontation in the past by a perverted understanding of history, culture and identity, with results ranging from minor clashes to genocide on an unspeakable scale – to live peacefully together.

These basic values can be differently invoked at national, regional or local level, and inter-cultural dialogue modulated accordingly. But they cannot be relativised without jeopardising the efforts made in the last sixty years to turn Europe – until recently a highly violent continent – into an area which, though still imperfect, is gradually coming under the sway of shared values, promising peace and stability.

This means that inter-cultural dialogue must be seen, first of all, as intra-European dialogue – a debate between the various components of our European societies. We have no need to go overseas and consult ideological authorities who certainly merit our respect, but are in many respects alien to the European inter-cultural dialogue we are talking of here. Inter-cultural dialogue in Europe must not be confused with Euro-Atlantic or Euro-Mediterranean dialogue. Of course, they are necessary too – and the EU's Joint External

and Security Policy gives it the means to conduct them.

The important thing for the Council of Europe is, first of all, to focus, with the EU, and via its governmental, parliamentary, local and civil society relays, on a pan-European inter-cultural dialogue which leads to sharing of our fundamental values by all members of European societies, regardless of their origin, and cultural, ethnic and religious affiliations. Europe must be able to absorb its differences through its own efforts, relying on the authority of its values and arguments, and, above all, the conviction reflected in its actions.

6. Joint programmes

In the last ten years or so, the Council of Europe and the EU have implemented numerous programmes in support of democratic reforms, planned in consultation with the beneficiary states, co-funded by the two institutions and carried out by the Council of Europe. These joint programmes are intended for countries covered today by the EU's Neighbourhood Policy and Stabilisation and Association Process, and for other countries, such as Turkey and Russia.

Great importance must continue to attach to the two organisations' joint programmes in the Council of Europe's areas of excellence: democratic institutions (including those at local and regional level), human rights promotion, and independence of the judiciary.

In 2005, EU/Council of Europe joint programmes cost a total of over 47 million euros.

The most significant include: modernisation of the judicial system and criminal law reform in Turkey, establishment of an independent, reliable and operational judicial system in the Western Balkans, and the setting-up of police forces capable of combating crime in the countries of South-Eastern Europe.

The EU's financial contribution to these programmes exceeded 90% of total cost – which reflects its very great interest in the Council's implementing potential.

The joint programmes agreed concluded with EIDHR⁸, TACIS and CARDS⁹ covered, among other things:

- the setting-up of machinery to protect human rights, and promotion of a human rights culture;
- the development of new local and regional democratic institutions;
- access to social rights;
- support for the construction of social sectors;
- media law reform and action to promote a free press;
- promotion of citizenship in schools;
- programmes for Roma in South-Eastern Europe;
- political training for leaders;
- action to strengthen university education;
- rehabilitation of the architectural and archaeological heritage of the Balkans.

Joint programmes are the practical expression of a Europe without dividing lines – which is why it is necessary, not only to run more of them for countries which genuinely need them, but also to get involved in them at the planning stage. The Council of Europe is not just another competitor in this area – the EU must regard it as an essential partner.

If European Commission, Council of Europe and national policy-makers met in advance to discuss priorities for co-operation under joint programmes, this would help to make those programmes more effective, and also more relevant to specific objectives. The 2001 declaration on partnership and co-operation has yet to produce its full effects. Mutual consultation structures should be strengthened, and steering committee meetings on joint programmes should be the preferred forum for the definition of strategic choices for co-

operation.

7. Inter-institutional consultation and co-operation

a. Top-level meetings

In theory, the “quadripartite meeting” is a half-yearly summit meeting, attended by the Secretary General of the Council of Europe and the Chair of its Committee of Ministers, and by the Presidents of the EU Council and the European Commission. Over the years, the formula has lost some of its substance. It is true that the last “quadripartite meeting”, on 15 March 2006, saw a welcome intensification of discussions between the two organisations – but this does not alter the fact that these meetings need to be up-graded, and more effective inter-institutional relations developed in general.

We need to think about changing the timing of these meetings, preparing them differently and focusing on just a few genuinely important issues, leaving time to discuss them thoroughly.

Sticking to the concept of complementarity, which is central to this report, I am accordingly making several suggestions:

- From now on, the quadripartite meeting will be an annual meeting, at which the more salient aspects of co-operation between the two organisations will be discussed in- depth.
- At the same time, it should be agreed that ad hoc meetings will be held, as necessary, by the various Council of Europe bodies and agencies (Secretary General, Committee of Ministers, Parliamentary Assembly, Congress, Commissioner for Human Rights) and the Commissioner(s) and Council representatives directly concerned by the matter at issue.
- Inviting the Secretary General of the Council of Europe to the “General Affairs and External Relations” Council on an ad hoc basis, and inviting the Commissioner for Human Rights to the “Justice and Internal Affairs” Council, would also be useful.
- Relations between the Secretary General and the Policy and Security Committee (PSC) should also be regulated by the requirements of the moment.

Ultimately, these proposals would make for more frequent – and above all more natural and more intense – contacts. After all, substantial questions concerning Europe’s democratic security are the issue. Contacts would also be more effective, since they would focus on solving immediate problems.

The enquiry into the illegal transport and detention of prisoners in Europe was one recent example of effective co-operation between the Council of Europe and the European Commission. The Council conducted the enquiry, and the European Commission – through Commissioner Franco Frattini – passed on all the information it had on the matter. This perfectly exemplified a new approach to relations between senior officials on both sides, and should lead to the striking of a new and better balance between the Council and the EU.

To make that fully possible, it would be useful for the Council of Europe – particularly the Committee of Ministers and the Parliamentary Assembly – to review the criteria applied in selecting candidates for the post of Secretary General. The Council of Europe speaks, first of all, through its Secretary General. He/she is the first point of contact for governments and the leaders of the EU institutions. He/she is primarily dealing with heads of state, heads of government and foreign ministers. Regardless of the high standards set by distinguished people who have held the post at various times in the past, I am firmly convinced that the

Council of Europe should move towards selecting leading political figures, whose previous work for democratic security has already given them a high and positive profile among their peers and the people of Europe. Ideally, and following the EU's example, it should envisage electing someone who has already served as a head of state or government. This approach would certainly make it easier to move ahead more rapidly on the pan-European issues for which the Council is responsible.

b. Inter-parliamentary co-operation

Contacts between the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) are not easy. Two joint sessions have been held since 1995, but these cannot be termed a success. People in the EP Parliament know little about the Council's resources, and this leads to duplication of effort. To take one example, although the EU as such refers to the monitoring procedure of the Committee for the Prevention of Torture, the EP once set up an ad hoc committee on torture-related issues.

Of course, there is a glaring discrepancy between the resources of the PACE and the EP, and there is also a considerable difference between their political cultures.

The EP is a legislative body, and its agenda is strictly dictated by the Directives it has to adopt, and by the agenda of the Council of Ministers, whose tight timetable is a severe constraint. It is largely structured on political groups. The PACE, whose members are drawn from national parliaments and have a double mandate, is a "para-legislative" body. The major European political families are less strongly organised than the national delegations. Its agenda is less restrictive. This gives it the advantage of being extremely free, and sometimes imaginative. It can boast of having launched a large number of conventions.

Co-operation between the PACE and the EP must constitute a real plus for Europe's democratic security and avoid duplication of effort. Among other things, it should make it possible to identify the best forum for solution of some of the social and legal problems which arise in an enlarged Europe.

The two assemblies can also act as a lever in aligning or harmonising legislation in Greater Europe.

The PACE currently provides added value in four ways:

1. by making people aware of the need to establish a law-governed Europe, in a pan-European legal area where an absence of regulations can sometimes result in "non-law" zones of varying size;
2. by providing a political impetus and formulating standards on problems which need to be solved in a broader geographical area than that of the EU;
3. by verifying compliance with commitments and obligations accepted by member states on joining the Council of Europe, which partly coincide with the conditions for joining the EU and participating in other EU policies;
4. by investigating acts which may have seriously violated the principles enshrined in Council of Europe conventions.

As I see it, the most useful points of contact between the two assemblies would be:

1. meetings between the Conferences of Presidents of the political groups on both sides
2. meetings between the committee chairs on both sides.

Meetings between the Conferences of Presidents of the two assemblies' political groups would probably make for a stronger political group approach within the PACE. They would also facilitate exchanges of a more political kind between MEPs and national MPs. Co-ordination would obviously be useful for MEPs. On the PACE side, national MPs from non- EU countries would be more deeply involved in a general process of Europeanisation of the political families and parties.

Committee chairs from the two assemblies already hold meetings, but the way in which those meetings function needs to be reviewed. Their frequency should be agreed with the EP committees. Provision should also be made for ad hoc meetings on urgent European issues. These meetings should focus on a limited number of strategic topics, clearly defined by the two institutions and co-ordinated between them.

c. The role of member states in inter-institutional co-operation

Co-operation between the Council of Europe and the EU cannot be strengthened without the commitment of the member states. The Foreign Ministers, and particularly those of the 25, must involve themselves more in the Council's work. Although they have heavy agendas, and sometimes too many multilateral commitments, I think it essential that they should attend the Council's ministerial meetings.

Their ministries should also ensure, with other specialised ministries, that their countries' policies in the legislative, educational, social and cultural fields are better co-ordinated within the two organisations, having due regard to the ways in which they differ from, and complement, each other. The Council of Europe's conferences of specialised ministers would also provide a good opportunity to extend the scope of the collective reflection process by involving, in addition to the European Commission, representatives of the relevant PACE and EP committees.

All the subjects dealt with at the Council of Europe have basic connections with human rights, democracy and the rule of law, and are thus fields of action with pronounced political connotations, which need consistent monitoring.

Finally – and this point scarcely needs making – consistency also requires that our states, if they really want to exploit the things the Council of Europe does under the strengthened partnership with the EU which is the subject of this entire report, initiate a process of medium-term budget planning, to ensure that the organisation of the 46 always has the resources it needs to do the things we ask of it. This is a question of responsibility and good governance.

d. Towards appropriate reciprocal representation

Balanced reciprocal representation is not a feature of relations between the EU and the Council of Europe.

The EU has a non-resident representative at meetings of the Ministers' Deputies. EU experts are free to attend meetings of all the Council's working parties, and the European Commission speaks for the 25 EU countries whenever questions for which the Community is responsible are tackled. The EU is given systematic notice of Council projects.

The Council of Europe, for its part, has a liaison office in Brussels – but its representative does not enjoy the same level of official recognition or the same systematic access to information as the EU representative in Strasbourg. It is true that the Council's experts are consulted, but not within the EU's working groups. Consultation takes place beforehand, and is not systematic. This situation is unsatisfactory and needs, at the very least, some adjusting.

It is not possible, under the EC and EU Treaties, for Council of Europe representatives to participate in the meetings and deliberations of the Committee of Permanent Representatives and the EU's working groups.

However, it is not acceptable that senior officials and experts from the Council should be consulted on a merely ad hoc basis, and on the same footing as non-governmental organisations. This is why I am proposing – as I have already said elsewhere in this report – systematic co-operation in all areas (human rights, democracy, rule of law) where the responsibilities of the two organisations coincide or complement one another. This co-operation would be organised beforehand, when legislative initiatives were being taken and co-ordinated, or joint programmes planned, and after the event, when standards were being applied or work done on the ground.

The European Commission's decision to open an office at the Council in the near future is positive. Also positive is the fact that the Community representative is becoming resident. Less encouraging is the EU Council's decision not to participate in this operation. It would help to strengthen the ties between the two organisations if the EU established an office with resources commensurate with the strategic importance of co-operation with the Council.

To restore the balance in Brussels, the work done by the Head of the Council's Liaison Office should be recognised by giving him official diplomatic status and maximum access to information.

8. EU accession to the Council of Europe

It follows logically from the complementary relationship between the Council of Europe and the EU, which I have described at some length, and from the increased co-operation between the two bodies, which is necessary for the democratic security of people in our continent, that a further step in the relationship should be envisaged, once the EU has acquired legal personality – EU membership of the Council by 2010.

Why membership?

If the EU accedes to the ECHR, if it participates, as such, in the debate on democracy in Europe, if it joins in establishing a pan-European legal and judicial area with appropriate sharing of standards, if it plays a synergetic part in the Council's projects in the fields of education, youth and culture, if it commits itself to inter-cultural dialogue in Europe, if its approach to inter-institutional co-operation deepens and diversifies towards building a Europe without dividing lines, if it continues to evolve in this direction – then there is nothing to stop it acceding to the Council. This will allow it to speak directly for itself in all the Council bodies, on all issues which affect its interests and which fall within its area of competence – all within the context of a pan-European dynamic which it will help to push ahead in the general interest of the continent.

Why membership by 2010?

The next European elections will be held in 2009. By then, the debate on changes in the EU Treaties will have moved ahead. Accession to the Council of Europe will also have to be the focus of in-depth debate on the meaning and utility of democratic security in Europe. That debate will, I hope, allow EU representatives in the Parliament, the Commission and the Council to secure a genuine mandate from Europeans to take the EU into the Council of Europe. Its acceding will have just one purpose: to help the European organisations to develop in the interest of Europeans, and so facilitate progress towards a Europe without dividing lines, in which the liberties, dignity and security of its citizens are fully guaranteed.

Final recommendations:

The partnership between our two different but complementary organisations will be strengthened by adopting the following measures, which I think necessary, because of their significant lever effect:

1. The governments of the EU's member states should immediately open the door to EU accession to the European Convention on Human Rights (ECHR) and, under Article 48 of the Treaty on European Union, submit a protocol to their parliaments for that purpose.
2. The EU bodies should recognise the Council of Europe as the Europe-wide reference source for human rights. The decisions and conclusions of its monitoring structures should be systematically cited as a

reference. The EU should consult the Council of Europe's Commissioner for Human Rights and legal experts whenever new draft directives or political and/or legal measures with a bearing on these questions are being prepared.

3. The Commissioner for Human Rights should become the institution to which the EU, like all the Council of Europe's member states, could refer all human rights problems which were not covered by the existing monitoring and supervisory machinery. It is understood that the Commissioner's Office must be given the resources which he needs to carry out that task.

4. The future European Fundamental Rights Agency (AEDF) should deal with respect for fundamental rights solely in connection with the implementation of Community law. It should not interfere with the unity, validity or effectiveness of the instruments used by the Council of Europe to monitor the application of human rights. The ECHR and the Council of Europe's monitoring machinery should be named in its Statute as the basic reference source, and the Commissioner for Human Rights as an essential partner. The Council of Europe should be represented on the Agency's managing bodies. The Commissioner for Human Rights should be associated with those bodies, in a non-voting capacity.

5. The European Union and the Council of Europe should together devise machinery to promote and strengthen democracy. They should make full use of the Venice Commission's expertise. They should make the new Forum on the Future of Democracy a central body for reflection and the making of proposals on citizen participation. They should make gender equality a central part of both projects. They should use the Congress of Local and Regional Authorities to strengthen local and regional democracy, for the purpose of associating Europe's 800 million people closely with the work of our organisations.

6. The European Union and the Council of Europe should place a pan-European legal and judicial area at the service of a Europe without dividing lines. In this minimum-standards area, covering 46 States, they should co-ordinate their legislative initiatives, establish a joint platform for assessment of standards, seek complementarity of texts and, when appropriate, adopt each other's standards. They should intensify their co-operative activities through the Venice Commission, the European Commission for the Efficiency of Justice (CEPEJ), the Group of States against Corruption (GRECO) and Moneyval. Accession to these instruments should be envisaged in due course.

7. Co-operation between the two organisations under the European Union's European Neighbourhood Policy should focus on the Council of Europe's member states and Belarus, a country which will certainly join the Council in due course. In implementing this policy, and in implementing the European Union's stabilisation and association process, joint programmes should be the preferred vector for co-operation between the two organisations, which should plan, implement and assess them together.

8. To facilitate progress towards a more human Europe without dividing lines, the two organisations should develop exemplary co-operation in the fields of youth, education, culture and inter-cultural dialogue. The new European youth campaign for diversity, human rights and participation "All different – all equal" should be organised and funded jointly.

9. The two organisations should act together to stimulate inter-cultural dialogue, i.e. an intra-European debate between the various components of European societies, complementing the inter-cultural dialogue which the European Union has initiated outside Europe.

10. The European Union and the Council of Europe should make their institutional relations more

substantial. From now on, the regular institutional meetings between senior European Union and Council of Europe officials should focus on a few strategic issues. Senior officials from the two organisations should meet, in an appropriate form, whenever topical issues of interest to both sides, and relating to the democratic security of Europeans, make this necessary.

11. The forging of closer inter-parliamentary ties should take the form of meetings between the Conferences of the Presidents of the political groups in the EP and the PACE, and of regular and ad hoc meetings between the committee chairs of both assemblies.

12. The Council of Europe should move, in electing its Secretaries General, towards choosing leading political figures, whose past work for democratic security has already given them a high and positive profile among their peers and the people of Europe. Ideally, and following the EU's example, it should envisage electing someone who has already served as a head of state or government.

13. Increased involvement of Foreign Ministers, particularly those of the 25, in the Council of Europe's work is highly desirable. They should attend ministerial meetings. They should ensure, in their own ministries and with other specialised ministries, better co-ordination of their countries' policies in the two organisations.

14. The desire to make full use of the Council of Europe as a major partner in our shared ambitions for the continent should lead our states to introduce medium- term budget planning, to ensure that it has, over time, the resources it requires.

15. The logical extension of these various measures would be EU membership of the Council of Europe, which, in my opinion, might reasonably be envisaged by 2010.

¹ In many instances, to give a fully exact picture of responsibilities, we would have to speak sometimes of the European Community and/or Union, and sometimes of the member states. The author of this report is fully aware of this. However, for ease of reading, the term "European Union" has been used systematically in the body of this paper, which is primarily a political report.

² "Article 48: The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

Amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements."

³ A Group of Wise Persons is currently examining this matter, so this report will not consider it.

⁴ An example in the criminal field: The EU conventions on extradition and mutual assistance in criminal matters are largely based on the corresponding Council of Europe conventions, dating from 1957 and 1959 respectively from, and supplemented and updated by several protocols. When the EU Council was drawing up its Convention on Mutual Assistance in Criminal Matters, the Council of Europe was simultaneously working on the 2nd Protocol to its convention on the same subject. Thanks to the synergy which developed between them, this 2nd Protocol closely follows the Convention of May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. In some other provisions, it follows the Schengen Convention.

Another example in the data protection field, which is closely connected with action in the criminal field: the European Communities' Directive of 1995 "on the protection of individuals with regard to the processing of personal data and on the free movement of such data" almost entirely replicates the content of the 1981 Council of Europe Convention on Data Protection. It should also be noted that the Schengen Convention and the Europol Convention expressly refer to the Council of Europe Convention, and that no country can accede to the Schengen Convention without first ratifying the Council of Europe instrument. An example of positive co-operation on civil and commercial law: Council of Europe and the European Commission co-operated very closely on the Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS N° 180). This aims to set up an information and legal co-operation system in the field of new communications services, and extend application of European Parliament and Council Directive 98/48/EC of 20th July 1998 amending Directive 98/34/EC providing for

an information procedure in the field of technical standards and regulations (OJEC L 217 of 5th August 1998) beyond the EU area. The European Commission is party to this Convention.

⁵ A body which uses a dynamic process of evaluation and mutual pressure to monitor application of the guiding principles for action against corruption, and of international legal instruments.

⁶ A select committee of experts on the evaluation of anti-money laundering measures, which relies on mutual evaluation and peer pressure in examining measures against money laundering and the funding of terrorism adopted by Council of Europe states which do not belong to FATF (Financial Action Task Force on Money Laundering).

⁷ The partnership programme for the training of youth organisers is aimed at promoting citizenship and an active civil society in Europe. The youth research programme seeks to pool knowledge on research, youth policies and educational practices, and provides follow-up to the European Commission White Paper on Youth. The programme for Euro- Mediterranean co-operation in youth matters aims to strengthen capacities for inter-cultural dialogue and awareness of human rights through activities involving young people in that region.

⁸ European Initiative for Democracy and Human Rights

⁹ Community Assistance for Reconstruction, Democratisation and Stabilisation