Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1314 (2003)[1]

Contribution of the Council of Europe to the Constitution-making process of the European Union

Parliamentary Assembly

1. The work of the Convention on the Future of Europe gives new impetus to the process of European construction and constitutes an opportunity for wide-ranging debate on the future of European political integration, to which the Council of Europe and its Parliamentary Assembly have always been committed.

2. The Parliamentary Assembly hopes that this huge consultation exercise will result in a great European design, commensurate with the challenges of the Laeken Declaration, and will pave the way for a European constitution, which it earnestly desires.

3. In this respect, the Assembly congratulates the Convention Praesidium which, eight months after beginning work, submitted a preliminary draft treaty establishing a constitution for Europe at the plenary session of 28 and 29 October 2002.

4. This future constitution must in any case include a section on fundamental rights. The Assembly accordingly favours the inclusion of the European Union's Charter of Fundamental Rights in the basic treaty and the accession of the European Union (once it has acquired legal personality) to the European Convention on Human Rights (ECHR), in order to strengthen the legally-binding mechanisms for the protection of human rights in Europe. The Assembly is convinced that effective protection of human rights continent-wide can be achieved solely if the European Union's institutions and organs are bound not only by the Charter of Fundamental Rights but also by the ECHR.

5. The Assembly considers that accession to the ECHR by the European Union will eliminate the present risk of divergence in the case-law of the European Court of Human Rights, on the one hand,and the Court of Justice of the European Communities on the other hand. It will make it possible for anyone coming within the jurisdiction of a European Union member state to lodge a direct application with the Court of Human Rights in Strasbourg and thereby verify the compatibility with the European Convention on Human Rights of decisions taken under the European Union's legal system, in the same way as those taken under the national legal systems.

6. The Assembly is determined to do its utmost to ensure that the Committee of Ministers agrees to European Union accession to the ECHR and enters into negotiations with the competent European Union authorities, with a view to drafting the legal instruments that will make such accession possible.

7. In addition, the Assembly points out that the Council of Europe and the European Union share the same values and pursue common objectives with regard to the protection of democracy, respect for human rights and fundamental freedoms, and the rule of law. Moreover, by fostering multicultural and inter-religious dialogue, the Council of Europe integrates the religious dimension of the different European heritages in its pluralist system, thus offering a model of tolerance to the whole of Europe.

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1. Assembly debate on 29 January 2003 (4th Sitting) (see Doc. 9666, report of the Political Affairs Committee, rapporteur: Mr Pangalos). Text adopted by the Assembly on 29 January 2003 (4th Sitting).

8. The Assembly attaches the greatest importance to strengthening the co-operation that has developed between the Council of Europe and the European Community in recent years. In this respect, it considers that interaction between the enlarged European Union and the Council of Europe should be mentioned in the future constitutional treaty.

9. Title IX of the preliminary draft constitutional treaty, entitled "The Union and its immediate environment", suggests defining a privileged relationship between the European Union and its neighbouring states. In that case, the opportunity must not be lost to capitalise on the role that the Council of Europe would have to play in such a scheme, owing to its pan-European character and the fact that all its member states co-operate on an equal footing. The Convention on the Future of Europe should take this state of affairs into account and give priority to making full use of this institution, rather than setting up new bodies or other institutional arrangements, which would result in duplication of efforts and wasted resources.

10. The members of the Convention on the Future of Europe should also bear in mind that the Parliamentary Assembly of the Council of Europe is the sole genuinely pan-European assembly in which all national parliaments in Europe are represented. It therefore constitutes a vital forum which meets regularly in order to maintain dialogue between the parliamentarians of the present and future member states of the European Union and those of the non-member states.

11. The Assembly welcomes the quadripartite meetings between the European Union and the Council of Europe. It reiterates its view that these meetings must have a parliamentary dimension. It therefore would like the presidents of the Parliamentary Assembly of the Council of Europe and of the European Parliament to be invited to forthcoming co-ordination meetings.

12. The Assembly asks the Convention on the Future of Europe to envisage, in its revision of existing treaties, consideration by the European Union of the Council of Europe's structures and work when framing and implementing its policies, so as to avoid overlapping. To that end, it would be desirable to extend the scope of Article 303 of the Treaty Establishing the European Community to all matters coming within the European Union's jurisdiction.

13. Many conventions concluded within the Council of Europe have helped to establish an area of freedom, security and justice, an objective shared with the European Union. The Assembly accordingly urges the European Community to adopt the Council of Europe's conventional acquis in the field covered by European Community law, so as to put in place a coherent legal order.

14. The Assembly calls on the European Community/European Union and its member states:

to incorporate the European Union's Charter of Fundamental Rights and the European Convention on Human Rights in the constitutional treaty, so as to give them binding legal force;

to include in the future constitutional treaty a clause on accession of the European Community/ European Union to the ECHR;

to start negotiations with the Council of Europe and its member states without delay so as to prepare the legal instruments needed for this accession;

to agree to amend Article 230, paragraph 4, of the Treaty Establishing the European Community with a view to broadening the use of direct appeals by individuals to the Court of Justice of the European Communities. An individual should have the right to appeal against a European Community measure where that measure damages or risks damaging their interests or rights to a substantial extent;

to consider redefining the concept of European Union citizenship by basing it on a criterion other than nationality. This could entail establishing citizenship founded on legal residence. This criterion would be a means of both laying emphasis on the extremely original nature of the European Community process in the history of international relations and defining the European Union's population through an autonomous concept specific to the European Community's legal order;

to take into account the role and the specific characteristics of the Council of Europe, inter alia, in its specific fields of activity, namely the protection of human rights, democracy, the development of culture and education and protection of the environment, by advocating relations between the organs of the Council of Europe and the European Union which are geared towards complementarity and cooperation;

to bear in mind and include in the future constitutional treaty:

a. *a reference to the Revised European Social Charter (ETS no. 163), which constitutes one of the pillars of the European social model and the standard-setting reference text with regard to fundamental social rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS no. 126), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS no. 108), the Charter of Local Self-Government (ETS no. 122), the European Cultural Convention (ETS no. 18), the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144), the Framework Convention for the Protection of National Minorities (ETS no. 157), the European Charter for Regional or Minority Languages (ETS no. 148) and the Convention on Human Rights and Biomedicine (ETS no. 164);*

b. *the contribution of the Council of Europe in establishing an area of freedom, security and justice, a common objective to both organisations;*

c. *the role of the Council of Europe as a pan-European forum in which the representatives of the whole of Europe at parliamentary, governmental and regional levels co-operate on an equal footing;*

d. *the work of the Council of Europe in preventing conflicts and consolidating peace underit common foreign and security policy;*

e. *the work of the Council of Europe concerning the monitoring of obligations and commitments entered into by member states upon accession in order to achieve the standards of the Organisation on democracy, human rights and the rule of law.*