

# The Role of the Council of Europe in the One Europe: the Relationship with the Enlarged European Union

Walter Schwimmer\*

Original paper  
UDC 061.1EU  
Received in April 2003

---

*Europe is on the move. Croatia's recent application for the membership to the European Union has been excellent news in the headlines. In the new European architecture the proper definition of the Council of Europe's place and role will be our most important challenge. With 800 million Europeans, at present, in 44 member states, we are Organization of the One Europe. The Human Rights Convention is the Council of Europe's quality seal – the heart and basis of the European Community of peace-loving states. As a next step, accession to the European Cultural Convention should take place. The third step would be the accession to the European Social Charter. Like the Council of Europe, the EU wants to create a common legal area in Europe. The Council of Europe closer partnership with EU is political necessity.*

**Key words:** Croatia, EU, Council of Europe, EU enlargement

---

## 1. Introduction

Europe is on the move. Enlargement and the consolidation of the overall process of European unification are in the headlines and frequently subject of editorials. Croatia's recent application or membership of the European Union has been excellent news in this context.

Romano Prodi, the President of the European Commission, welcomed this application as "a powerful signal of hope in future development, stability and growth and for peaceful coexistence throughout the region. It shows that this region, which is an integral part of Europe, is resolved to set behind it forever the dramas and traumas of its recent past".

When Prime Minister Ivica Račan submitted the application to the President of the European Council, the Greek Prime Minister Costas Simitis, he underlined that Croatia's political leadership as a whole, as well as public opinion, fully supported the country's accession to the EU. He also emphasised his government's will to introduce the necessary economic and institutional reforms.

As Secretary General of the Council of Europe, I warmly welcome Croatia's determination to further integrate into Europe and its institutions.

As far as the still necessary reforms are concerned, the Council of Europe offers co-operation and assistance in its fields of competence and which are of direct relevance to the European Union's membership requirements.

Over two-dozens of the Council of Europe's

---

\* Walter Schwimmer, Secretary General of the Council of Europe

basic legal texts are integral part of the so-called "acquis communautaire" to be fulfilled by the Union's future members. Furthermore, co-operation and partnership between the Council of Europe and the European Commission give political priority to the enhancement of complementarity of their respective activities, in order to ensure maximum benefit for countries applying for membership.

As for Croatia, the political changes in 2000 gave a new dynamic to the process of democratic and legal reforms, tacking advantage of the close co-operation with the Council of Europe.

My visit to Zagreb provides me with the opportunity to make with my interlocutors the very positive assessment of this co-operation. We can, of course, still do better. More visible results should, for example, be achieved with regard to the return of refugees and IDPs. The Council of Europe is ready to assist and support the Croatian authorities' endeavour in this matter.

There is a clear linkage between present membership in the Council of Europe and future membership in the European Union.

Inter-institutional co-ordination and co-operation has become indispensable in a Europe which has undergone historical changes over the last 13 years and which will move ahead with increased integration. The decision for an EU-enlargement from 15 to 25 will fundamentally change Europe's political architecture.

In this new architecture, the proper definition of the Council of Europe's place and role will be our most important challenge for the coming years. With 800 million Europeans, at present, in our 44 member States, we are the Organisation of the One Europe.

I would, therefore, wish to share with you some thoughts as regards to both  
 - the special partnership between the EU and the Council of Europe, and  
 - our ongoing enlargement, as well as the consolidation of our past enlargement.

## 2. Consequences of the enlargement of the European Union

The European Union will soon, i.e. in May 2004, have 25 members. Others, including Croatia, are hoping to join too in a few years. However, many European states will not join for the moment.

This fact should not create new dividing lines! There is only **One Europe**: the continent with its over 800 million Europeans. Since 1989, the Council of Europe, which was founded forty years earlier

to overcome conflicts, has made it possible for the One Europe, based on common values, to come about.

As I stated in my contribution to the Convention on the future of Europe, I consider that the European Union should make full use of the Council of Europe's instruments and institutions. I, therefore, was very pleased to note in the report, submitted by Mr Giscard d'Estaing to the Copenhagen European Council, that there is now a very strong tendency in favour of **accession by the European Union to the European Convention on Human Rights**. Furthermore, last week, the Presidium submitted to the Convention on the future of Europe draft articles for the future constitutional treaty, which would provide a legal basis for the accession by the EU to the ECHR. Such an accession is indeed essential.

The Human Rights Convention is the Council of Europe's quality seal - the heart and basis of the European community of peace-loving states. All of the Council's 44 member states have ratified it, and all of them - a unique and unprecedented point - accept the jurisdiction of the European Court of Human Rights.

There is still, however, one serious gap in human rights protection. It is true that the Convention and the case-law of the Court protect our human rights against violation by any of those 44 states. But what happens if, as is perfectly possible, the so-called European institutions violate those rights? The only possible way of involving the Court in such a case would be to invoke the liability of an individual EU state, relying on its incorporation of EU law into domestic law - an approach which is clearly indirect, laborious and not always likely to succeed.

If we commit ourselves to this European community of values, then the EU must commit itself to those values as well, and it can do that by formally undertaking to respect them itself - and not simply requiring would-be members to satisfy the Copenhagen criteria, which embody them. There must be no double standards.

The EU and its institutions must also subscribe to these values and accept that there may be cases in which a court finds that they themselves have violated the rights of an EU citizen or a person living on EU territory. This is why I regard EU accession to the European Convention on Human Rights, and EU acceptance of the European Court's jurisdiction, as a wholly logical consequence of developments in Europe since 1950.

The European Union has adopted the Council of Europe's flag and the Council of Europe's anthem. It should also adopt the Council of Europe's fundamental Convention. Who shares our symbols should

also share our commitments!

As a next step, accession to the European Cultural Convention should take place. I firmly believe that 800 million Europeans do have a culture in common. Tolstoy is as European as Shakespeare, Shostakovich as European as Mozart or Chopin.

The third step would be the accession to the European Social Charter, acknowledging that the One Europe is built on social cohesion and a spirit of solidarity.

The Council has approximately 190 European conventions and agreements, replacing some 20,000 - 25,000 bilateral agreements between European states. The EU has already accepted eight of those instruments, a small percentage.

Like the Council of Europe, the EU wants to **create a common legal area in Europe**, and we are backing its efforts to promote harmonisation of law and legal co-operation throughout our continent.

But the EU is already being forced to admit that there are **problems which cannot be solved at EU level alone**.

Some problems indeed are genuinely and fully European. Even Schengen, for example, cannot solve all the problems of **migration** in Europe. These problems need pan-European solutions - and probably solutions even broader than that, since we must have the non-European countries, the countries where migration starts, at the table before we can tackle them properly.

Drug **trafficking** and **organised crime** are important issues for both the EU and the Council of Europe - and these, too, are problems we need to tackle together. **Money laundering** is not restricted to the 15 or 25, but is far more widespread than that. Sometimes involving multinational companies, this, like corruption, has become a major problem - and one which, again, we must tackle together.

The Council of Europe has instruments and agreements in all these areas, and the EU must play a part - a vital, and possibly even preponderant part - in them too. In all events, this is a field where we must have institutionalised co-operation between the two European institutions.

But I want to go a step further than that. I have always been convinced that we need to get Europe and nearly all its states involved in political debate, in **political dialogue** - in short, what we need is a pan-European political forum.

Much reflection is currently going on on how to structure the European Union's foreign policy with regard to those European States that are either unable, or unwilling, to join the European Union at present. To all those involved, I have a very clear message: Do use what is there and what has proved

its value. There is no need to invent new structures for political cooperation, or set up elaborate new mechanisms for consultation. The Council of Europe brings together, as equal partners, all the states of the One Europe. Its Parliamentary Assembly and Committee of Ministers are the natural fora for political dialogue and cooperation. For over 50 years, they have proven their effectiveness.

Europe's attitude towards a military intervention in Iraq is a highly controversial subject. It appears in the public debate even as a topic which provokes a dividing line between **the "old" and the "new" Europe**. The Parliamentary Assembly of the Council of Europe, as the political forum for both the representations of the old and the new Europe, however, took a very clear stand (In favour - 135; Against - 7; Abstention - 4) when the parliamentarians from the 44 member States discussed the issue at the sessions in September 2002 and on 30 January 2003. They called on all Council of Europe member states, observer states and candidate states: "to refrain from any action detrimental to the authority and role of the United Nations and to exclude any use of force outside the international legal framework and without an explicit decision of the United Nations Security Council."

There is a voice of the One Europe and we should be imaginative in structuring our relationship with the European Union, and dare to break new ground. We should reflect on the possibilities of how to make the **European Union an "associated member" of the Council of Europe** by taking into account the *sui generis* status of the EU as a supra-national entity with competences and sovereign rights, which are normally carried out by a state, but without (yet) being a state and certainly not having all the rights and competences of a sovereign state. So, as an "associate member" the EU should represent the 25 together in those areas where they have transferred the competence to the supra national level.

### 3. Council of Europe's ongoing enlargement

With regard to the Council of Europe's own enlargement, I share the hopes of so many that the now **Serbia and Montenegro** will soon be in a position to join our Organisation. Its natural place is amongst us. Recent worrying signals, such as the failed Presidential elections in both Serbia and Montenegro, which indicate a disappointment of the population with the speed of reforms, are best tackled together. *We welcome the adoption of the Con-*

*stitutional Charter and hope that the new common institutions will be in place soon.*

Let me also stress the extreme importance that the Council of Europe attaches to full cooperation with the International Criminal Tribunal for the Former Yugoslavia in The Hague. The voluntary surrender of Mr Milan Milutinovic was an encouraging signal, but more is expected.

**Co-operation with the International Criminal Tribunal for the former Yugoslavia** is a crucial matter for all the countries in the region concerned and a decisive political element for the ratification of Stabilisation and Association Agreements, as well as the consideration of applications for memberships of the Council of Europe and/or European Union.

I can, therefore, only strongly encourage the Croatian authorities to further fulfil their obligations with regard to ICTY, and I welcome President Mesic's recent assurance to guarantee for "co-operation without any reservations and exceptions", as well as Minister Picula's confirmation that Croatia is prepared to step up its co-operation with the Hague and that he was aware of the importance of the issue and what was at stake.

As regards **Kosovo**, we have responded favourably to the request of the Special Representative of the UN Secretary General and head of UNMIK, Mr Steiner, to take the lead for the presentation of a concept of decentralising local authorities. This project offers real possibilities to promote further democratisation and reconciliation. In our contacts with UNMIK, we are also putting much emphasis on the importance of the applicability of Council of Europe human rights standards in Kosovo. There should be no human rights gap in Europe.

Concerning **Belarus**, the recent agreement on the re-establishment of an OSCE mission in Minsk is encouraging, however, real progress has yet to be demonstrated, notably in the protection of human rights and freedom of the media, if closer contacts with the Council of Europe are to be established.

#### 4. Consolidation of enlargement

As regards the consolidation of our past enlargement, I welcome the positive developments in "**the former Yugoslav Republic of Macedonia**". The success of the parliamentary elections and the holding of the census must now be consolidated by the full implementation of the "Ohrid Agreement". At the request of the EU High Representative, Mr Solana, and the authorities of the country, a Council of Europe resident expert has been sent to Skopje to

assist in particular in the legislation concerning the crucial field of local self-government.

In **Bosnia and Herzegovina**, the first elections under full responsibility of the country's authorities took place. The results of the elections present a challenge to the major communities to confirm the policy of national and European integration. In this respect, the creation of a multi-ethnic government in the Republic of Srpska is encouraging. I am convinced that Council of Europe membership contributed to this development.

Let me add here, as a general remark for the European future of all the countries of the region: further progress in the development of good neighbourly relations and a sincere commitment to **increased regional co-operation** in all fields of daily life are key elements for the subsequent full integration into European institutions.

Last year's summit of the Presidencies of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia in Sarajevo was an important political signal and we welcomed that the Heads of State, in their joint Statement fully supported regional co-operation as an instrument for solidifying peace and stability in the region, as well as an unavoidable step of each of their countries towards European integrations.

Building on the success of the November 2000 Zagreb Summit and carrying forward the Stabilisation and Association Process, the present Greek Presidency in the European Union launched the initiative for the "Balkans European Integration Process" which aims at promoting regional political and economic co-operation.

In the last six or seven years, we, at the Council of Europe, have also often had to ask **ourselves whether we were not over-hasty in admitting certain countries** to the Council of Europe. This is an old question - as old as the one about glasses being half-full or half-empty. If we had not admitted **Russia** to the Council of Europe, there would be no Council experts present in **Chechnya** today. These experts are on the spot and poised to help. Of course, much remains to be done to restore the rule of law and the power of the judiciary, and this is an area where the Council's Anti-Torture Committee is extremely active. In February 2000, 3 years ago, it already visited the remand prison at Chernokosovo in Chechnya and put an end to various abuses there. The Chechen People deserve a normal life, in peace, like everybody else in Europe. Therefore, there can be no tolerance for violations of human rights, no impunity for perpetrators, whoever they are. Therefore, it was important to let Russia into the Council of Europe.

What about **Azerbaijan**? If we had not admitted Azerbaijan, many political prisoners would still be behind bars. We have already secured the release of 400, but there are still 250 unresolved cases, and we know for certain that some of those prisoners are political.

In 2003 there will be crucial Presidential elections in Azerbaijan and **Armenia**, as well as parliamentary elections in **Georgia**. All these are of vital importance for the strengthening of democracy and the peaceful development of a region full of frozen conflicts. The Council of Europe will actively contribute to the preparation, organisation and observation of these events. We do this in close co-ordination and co-operation with our partners in the EU and the OSCE.

There is deep concern at the lack of progress concerning the situation of media in **Ukraine**, a country which has now been a member of our Organisation for seven years. We are working with the EU to secure freedom of opinion and the media. The Council of Europe provides expertise concerning the adoption of new laws, non-interference in the activity of the media and protection of journalists. We stand ready to provide any additional assistance that may be required.

When referring to areas of concern, a few words on the forthcoming Chair of the Council of Europe's Committee of Ministers, **Moldova**, are necessary. This is a new, young State, only created after the break-up of the Soviet Union. It cannot be denied that we are preoccupied by the political situation in the country. An overwhelming parliamentary majority not only hampers the development of a constructive dialogue between the executive power and the opposition, it also endangers the progress of legal and democratic reform by attitudes reminding us of the political practices of the past.

Therefore, we have provided high-level expertise to make the existing Round Table of representatives of all political parties and NGOs an effective instrument for dialogue, compromise and mutual recognition in a developing pluralist democracy. Experts like the former Polish Prime Minister, Mr Mazowiecki, the last Foreign Minister of the German Democratic Republic, Mr Meckel, offer their experience gained in their respective countries during the time of transition towards democracy.

## 5. Final remarks

In the early 1990s, following the fall of the Berlin Wall, the Council of Europe successfully adapted its agenda to the challenges of the time. To-

day, at the beginning of this new millennium, we are again at a crossroads. The Council of Europe has the required know-how. We are already addressing many of the major challenges. However, we should do so faster and with more results.

To this end, closer partnership with the EU is a political necessity. I hope that the Convention on the Future of Europe really comes to something, for the sake, not just of the EU and the European institutions, but also for the sake of the One Europe united under the blue flag with the twelve gold stars, and for which the Council of Europe provides the perfect forum. We at the Council are planning to settle these issues with the EU at the **third Summit of Heads of State and Government**, which will probably be held some time between the end of 2003 and the beginning of 2005. Europe is bigger than the Europe of the 25, and Europe is also bigger than the Europe of the 44 - the Europe we have at the Council of Europe today. Together, we are assuming pan-European responsibility for all the 47 states which make up our continent, and I hope that we shall - with the EU - do full justice to it. ■