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**AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW  
(CAHDI)**

**20<sup>th</sup> meeting  
Strasbourg, 12-13 September 2000**

**DEVELOPMENTS CONCERNING THE PREPARATION OF A CHARTER OF  
FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION**

Secretariat Memorandum  
Prepared by the Directorate General of Legal Affairs

## **Foreword**

At its 19<sup>th</sup> meeting, Berlin, 13-14 March 2000, in the context of the discussion of the report by Professor T. Meron on "The implications of the European Convention of Human Rights on the Developments of Public International Law", several delegations referred to ongoing work at the level of the European Union regarding the preparation of a Charter of Fundamental Rights and wondered about the implications of such a text on the European Convention of Human Rights.

A delegation proposed that the CAHDI served as a clearing house for information regarding this initiative, particularly in view of the fact that some member States of the Council of Europe are not members of the European Union (see 19<sup>th</sup> CAHDI meeting report, document CAHDI (2000) 12).

The CAHDI asked the Secretariat to forward Professor Meron's report to the Working Party (entitled "the Convention") responsible for the preparation of the draft Charter and decided to include this item in the agenda for its 20<sup>th</sup> meeting.

Further to that, the CAHDI asked the Secretariat to ensure that the CAHDI be informed about developments concerning the preparation of the draft Charter, possibly through the participation at the next meeting of the CAHDI of the Council of Europe representatives in the Convention, namely Mr Marc Fischbach, judge at the European Court of Human Rights and Mr Hans Christian Krüger, Deputy Secretary General.

Following the CAHDI's request, by letter dated 20 July 2000 the Secretary General of the Council of Europe forwarded professor Meron's report to the President of the Convention, Mr Roman Herzog.

In addition, the Secretariat invited Mr Fischbach and Mr Krüger to participate in the 20<sup>th</sup> meeting of the CAHDI.

The following document contains information about the Convention's activity. It has been prepared by the Secretariat on the basis of the information available at the internet site of the *Convention* hosted by the Council of the European Union; address <http://db.consilium.eu.int>, link "fundamental rights" (contact: [fundamental.rights@consilium.eu.int](mailto:fundamental.rights@consilium.eu.int)).

## **DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

### **I. Draft Charter of fundamental rights of the European Union of Fundamental Rights**

#### ***The Treaties***

Protection of fundamental rights is a founding principle of the European Union and an indispensable prerequisite for its legitimacy.

This fact is already reflected in the Treaty on European Union (TEU).

The first paragraph of Article 6 (ex Article F) of the TEU states that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States", whilst paragraph 2 asserts: "the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law".

A new provision was inserted into Article 7 (ex Article F1) by the Treaty of Amsterdam, whereby "the Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned above". If such a determination were made, the Council, acting by a qualified majority, could decide to suspend certain rights devolving on the Member State in question by virtue of the Treaty. In so doing, it would take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

It should also be remembered that the Union's duty to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice.

#### ***The draft Charter***

When the Heads of State or Government agreed at the Cologne European Council on 3 and 4 June 1999 that it was necessary, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens, they were therefore acting within an established, binding legal framework.

The European Council decided to set up an ad hoc body composed of representatives of various constituent bodies in order to draw up the draft charter. The precise composition of this body, already outlined at Cologne, was determined at the European Council in Tampere on 15 and 16 October 1999.

#### ***The Objective***

The Cologne European Council set the body the objective of drawing up a draft charter in advance of the European Council at the end of the year 2000, under the French Presidency.

On the basis of that draft, the European Council would then propose to the European Parliament and to the Commission that, together with the Council, they should solemnly proclaim a European Charter of Fundamental Rights.

Consideration of whether, and if so, how the charter might be integrated into the treaties would be left until after this whole process was complete.

### ***The Convention***

The Body will be composed as follows:

#### Members of the Body

The Body will be composed of 62 members<sup>1</sup> in four groups:

- Fifteen representatives of the Heads of State or Government of Member States
- One representative of the Commission
- Sixteen members of the European Parliament
- Thirty members of national Parliaments.

Members of the Body may be replaced by alternates if they are unable to attend meetings.

#### Observers

There will be four observers, two representatives of the Court of Justice of the European Communities designated by the Court, and two representatives of the Council of Europe, including one from the European Court of Human Rights.

#### European bodies to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

#### Other bodies, social groups or experts to be invited to give their views

The Tampere European Council also decided that an appropriate exchange of views should be held by the Body or by the Chairperson with the countries applying for accession to the Union.

#### Chairmanship

There will be one Chairperson<sup>2</sup> and three Vice-Chairpersons.

#### Working methods - openness

The Body's working methods are outlined in the conclusions of the Tampere European Council. However, they will be refined and expanded at the Body's first meeting on 17 December 1999.

A notable aspect of these methods is the openness of the proceedings, the Tampere European Council having established the principle that hearings held by the Body and documents submitted at those hearings should be public.

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<sup>1</sup> The actual list of members of the Convention appears in Appendix I. The Council of Europe is represented by Mr. Marc Fischbach, judge at the European Court of Human Rights and Mr Hans Christian Krüger, Deputy Secretary General.

<sup>2</sup> The Chairman of the Convention is Mr Roman Herzog, former president of Germany.

## II. Conclusions of the European Councils in Cologne (3 and 4 June 1999) and Tampere (15 and 16 October 1999)

### Cologne

(Annex IV)

#### EUROPEAN COUNCIL DECISION ON THE DRAWING UP OF A CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

*Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens.*

*The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union.*

*In the view of the European Council, a draft of such a Charter of Fundamental Rights of the European Union should be elaborated by a body composed of representatives of the Heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments. Representatives of the European Court of Justice should participate as observers. Representatives of the Economic and Social Committee, the Committee of the Regions and social groups as well as experts should be invited to give their views. Secretariat services should be provided by the General Secretariat of the Council.*

*This body should present a draft document in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties. The European Council mandates the General Affairs Council to take the necessary steps prior to the Tampere European Council.*

### Tampere

(Annex)

#### COMPOSITION, METHOD OF WORK AND PRACTICAL ARRANGEMENTS FOR THE BODY TO ELABORATE A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS, AS SET OUT IN THE COLOGNE CONCLUSIONS A. COMPOSITION OF THE BODY

##### (i) Members

##### (a) Heads of State or Government of Member States

*Fifteen representatives of the Heads of State or Government of Member States.*

*(b) Commission*

*One representative of the President of the European Commission.*

*(c) European Parliament*

*Sixteen members of the European Parliament to be designated by itself.*

*(d) National Parliaments*

*Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.*

*Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.*

*(ii) Chairperson and Vice-Chairpersons of the Body*

*The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.*

*The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.*

*(iii) Observers*

*Two representatives of the Court of Justice of the European Communities to be designated by the Court.*

*Two representatives of the Council of Europe, including one from the European Court of Human Rights.*

*(iv) Bodies of the European Union to be invited to give their views*

*The Economic and Social Committee*

*The Committee of the Regions*

*The Ombudsman*

*(v) Exchange of views with the applicant States*

*An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.*

*(vi) Other bodies, social groups or experts to be invited to give their views*

*Other bodies, social groups and experts may be invited by the Body to give their views.*

*(vii) Secretariat*

*The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European*

*Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.*

## **B. WORKING METHODS OF THE BODY**

### *(i) Preparation*

*The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.*

### *(ii) Transparency of the proceedings*

*In principle, hearings held by the Body and documents submitted at such hearings should be public.*

### *(iii) Working groups*

*The Body may establish ad hoc working groups, which shall be open to all members of the Body.*

### *(iv) Drafting*

*On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.*

*Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.*

### *(v) Elaboration of the Draft Charter by the Body*

*When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.*

## **C. PRACTICAL ARRANGEMENTS**

*The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.*

*A complete language regime shall be applicable for sessions of the Body.*

## **III. Time table of work**

I. meeting: Brussels, 17 December 1999

II. meeting: 1 and 2 February 2000 at the European Parliament in Brussels

III. meeting: Thursday 24 and Friday 25 February 2000

IV. meeting: Thursday 2 and Friday 3 March 2000

V. meeting: Monday 20 and Tuesday 21 March 2000

VI. meeting: Monday 27 and Tuesday 28 March 2000

VII. meeting: Monday 3 and Tuesday 4 April 2000

VIII. meeting : Thursday 27 and Friday 28 april 2000

IX. meeting : Wednesday 3 and Thursday 4 May 2000

X. meeting : Monday 5 and Tuesday 6 June 2000

XI. meeting : Monday 19 and Tuesday 20 June 2000

XII. meeting : Wednesday 28 June, Thursday 29 June and Friday 30 June 2000

XIII. meeting : Monday 10 and Tuesday 11 July 2000

XIV. meeting : Monday 17, Tuesday 18 and Wednesday 19 July 2000

#### **IV. Working Programme (as of 20 June 2000)<sup>3</sup>**

28 June: 09.00-12.30 28 June: 14.00-18.00 28 June: 19.00-24.00 29 June: 09.00-12.00 and 14.00-18.00 30 June: 09.00-12.00 and 14.00-16.00 <b>at Parliament/Chamber</b>	Praesidium Informal meeting Praesidium Informal meeting  Discussion of horizontal clauses and statement of reasons Continuation and completion of examination of Articles 1 to 30
10 July: 09.00-12.00 10 July: 14.00-18.00 11 July: 09.00-12.00 and 14.00-18.00 <b>at Parliament/Chamber</b>	Praesidium Informal meeting Examination of Articles 31 to 50
17 July: 09.00-12.30 and 17 July: 14.00-18.00 18 July: 09.00-12.00 and 14.00-18.00 19 July: 09.00-12.00 and 14.00-18.00 <b>at Parliament/P1A002</b>	Praesidium/Drafting Committee Informal meeting: Completion of examination of Articles 31 to 50 Structure – Preamble
11-12 September <b>at Parliament</b>	Formal meeting Examination of final text
25-26 September <b>at Parliament</b>	Formal meeting Consideration of a revised version based on discussions on 11 and 12 September

<sup>3</sup> Document SN/3295/00, Brussels, 21 June 2000, (OR. Fr).



**Appendix I**  
**MEMBERS OF THE CONVENTION**  
**(As of 7 June 2000)**

**Liste des nominations**

**Etat au 7 juin 2000**

Institution/Etat	Nom (« T » = titulaire/ »S » = Suppléant)
Parlement européen <i>Président délégation PE : --&gt;</i>	M. Inigo MÉNDEZ DE VIGO (T)
	Mme Charlotte CEDERSCHIÖLD (T)
	M. Thierry CORNILLET (T)
	M. Ingo FRIEDRICH (T)
	M. Timothy KIRKHOPE (T)
	Mme Johanna MAIJ-WEGGEN (T)
	M. David MARTIN (T)
	Mme Pervenche BERÈS (T)
	M. Hans-Peter MARTIN (T)
	M. Jo LEINEN (T)
	Mme Elena PACIOTTI (T)
	M. Andrew DUFF (T)
	M. Johannes VOGGENHUBER (T)
	Mme Sylvia-Yvonne KAUFMANN (T)
	M. Georges BERTHU (T)
	M. Jens-Peter BONDE (T)
	Mme Teresa ALMEIDA GARRETT (S)
	M. Rocco BUTTIGLIONE (S)
	M. Konstantinos HATZIDAKIS (S)
	Mme Marie-Thérèse HERMANGE (S)
	M. Peter Michael MOMBAUR (S)
	M. Reinhard RACK (S)
	Mme Ieke van den BURG (S)
	Mme Catherine LALUMIERE (S)
	Mme Ulpu IIVARI (S)
	M. Phillip WHITEHEAD (S)
	M. Jean-Maurice DEHOUSSE (S)
	M. Graham WATSON (S)
	Mme Alima BOUMEDIENNE-THIERY (S)
	Mme Pernille FRAHM (S)
	M. Mauro NOBILIA (S)
	M. Rijk van DAM (S)

<b>Institution/Etat</b>	<b>Nom</b> <b>(« T » = titulaire/ »S » = Suppléant)</b>
Cour de Justice	M. SKOURIS (Juge) M. ALBER (Avocat général)
Conseil de l'Europe	M. KRUGER (Secrétaire général adjoint) M. Alexander Bartling (S) M. FISCHBACH (Juge) M. Johan CALLEWAERT (S)
Commission	M. António VITORINO (Commissaire) M. Carlo TROJAN (Secrétaire général) (S)
Finlande Parlement finlandais :	M. Paavo NIKULA (Chancelier de la justice) (T) M. Holger Rotkirch (S) M. Gunnar JANSSON (T) Mme Tuija BRAX (T) M. Johannes LEPPÄNEN(S) Mme Riitta PRUSTI (S)
Allemagne Parlement :	M. Roman HERZOG M. Jurgen MEYER (T) M. Jürgen GNAUCK (T) M. Peter ALTMAIER (S) M. Wolf WEBER (S)
Belgique Parlement :	M. Jean-Luc DEHAENE (T) M. Erik DERYCKE (S) M. Roger LALLEMAND (T) M. Karel de GUCHT (T) M. Jacky MORAEL (S Lallemand) M. Fred ERDMAN (S. De Gucht)
France Parlement	M. BRAIBANT (T) Mme Jacqueline Duheil de la Rochère (S) M. François LONCLE (T) Mme Nicole Ameline (S) M. Hubert HAENEL (T) Mme Marie-Madeleine DIEULANGARD (S)
Espagne Parlement	M. Alvaro RODRIGUEZ-BEREIJO (T) M. Francisco SANZ GANDASEGUI (S) M. Gabriel CISNEROS (T) Mme Alicia DE CASTRO MASAVEU (S) M. Jordi SOLÉ TURA (T)
Grèce Parlement	M. George PAPADIMITRIOU M. Loukas APOSTOLIDIS (T) Mme Anna BENAKI-PSAROUDA (T)
Pays-Bas Parlement :	M. Frits KORTHALS ALTES (T) M. Bernard BOT (S) M. Michiel PATIJN (T) M. Ernst HIRSCH BALLIN (T) M. Erik JURGENS (S) M. Gerritjan van OVEN (S)
Luxembourg Parlement :	M. Paul-Henri MEYERS M. Ben FAYOT (T) Mme Simone BEISSEL (T)

Royaume-Uni Parlement :	Lord GOLDSMITH QC M. Martin EATON (S) M. Wyn GRIFFITHS (T) Lord BOWNESS (T) M. David CHIDGEY (S) The Baroness HOWELLS of St. Davids (S)
Suède Parlement :	M. Daniel TARSCHYS (T) M. Lars MAGNUSON (S) M. Göran MAGNUSSON (T) M. Lars F. TOBISSON (T) M. Ingvar SVENSSON (S) Mr. Kenneth KVIST (S)
Danemark Parlement	M. Erling OLSEN (T) M. Tyge LEHMANN (S) M. Claus Larsen JENSEN (T) Mme Ulla TØRNAES (T) M. Knud Erik HANSEN (S) Mme Pia CHRISTMAS-MØLLER (S)
Portugal Parlement	M. Pedro BACELAR DE VASCONCELLOS (T) M. Miguel DE SERPA SOARES (S) M. José BARROS MOURA (T) Mme Maria Eduarda AZEVEDO (T)
Italie Parlement :	M. Stefano RODOTÀ M. Andrea MANZELLA (T) M. Piero MELOGRANI (T) M. Furio BOSELLO (S) Mme Maria Pia VALETTO BITELLI (S)
Irlande Parlement	M. Michael O'KENNEDY (T) M. Mahon HAYES (S) M. Desmond O'MALLEY (T) Mme Madeline TAYLOR QUINN (S) M. Bernard DURKAN (T) M. Paschal MOONEY (S)
Autriche Parlement	M. Heinrich NEISSER (T) M. Harald Dossi (S) M. Caspar EINEM (T) M. Harald OFNER (T) M. Michael Holoubek (S) M. Willi BRAUNEDER (S)

Autres instances	Nom
Comité économique et social	Madame Anne-Marie SIGMUND M. Roger BRIESCH M. Manuel CAVALEIRO BRANDAO M. Alan HICK
Comité des Régions	M. Jozef CHABERT, M. Manfred DAMMEYER M. Albert BORE, Mme Claude du GRANRUT Mme Béatrice TAULÈGNE
Le Médiateur	M. Jacob SÖDERMANN