Seminar on the Reform of the European Charter
Helsinki, 8 February 2011

Concluding Remarks
By Jarna Petman, member of the European Committee of Social Rights

Your Excellencies, ladies and gentlemen,
Dear friends,

When an international institution reaches fifty years, the seminars commemorating the anniversary are usually organized in the style of a *festschrift*: they are meant to be honorific and evaluative, programmatic too, seeking to place the institution in history.[1] The anniversary of the European Social Charter, I suspect, will be no different. As was announced by Madam Deputy Secretary General earlier this morning, in the year ahead a number of seminars will be organized in the Charter's honour, no doubt to praise the Charter's conception, defend its execution, explain its shortcomings — and, importantly, like today, to call for its reform and renewal.

Throughout the day, we have heard a number of calls for such reform, not least of course from Mr Matti Mikkola, declaring a moment ago a ten-point Programme for Renewal. So many reform proposals, and, yes, I am for *all* of them, all *for* them. Perhaps this is because I am an international lawyer by training. A friend of mine maintains that international lawyers are a curious bunch in that we tend to see our field as a matter of personal and professional commitment. International lawyers, that is, are *for* the international in a way that, say, tax lawyers are not *for* taxing (I think). Accordingly, reform proposals to enhance the authority of international norms automatically induce a warm glow in us. Perhaps that is the reason. Or perhaps it is just because one tends to develop a genuine liking to and appreciation of the work that one is engaged in. Be it as it may, over the past two years that I have been a member of the Committee, I have developed precisely that sort of an appreciation and, by the same token, have come to regard proposals to reform the Committee with great approval. And I have come to consider the now fifty-year old Charter an unusual document in international human rights law – I mean that in a good way.

When adopted in 1961, the Charter truly was a groundbreaking instrument. It was in many ways the first attempt to give shape and meaningful content – meaningful *legal* content – to social rights. It was to be the counterpart in the field of economic and social rights to the European Convention on Human Rights. And yet, from its inception, the Charter was largely overshadowed by the Convention, gradually turning into what Madam President this morning so politely called a 'Sleeping Beauty'; not everyone would sketch the early years of the Charter with such politesse, but would rather, with notable chagrin, draw a picture of a 'low-profile', 'bureaucratized', 'invisible' instrument. To be sure, the general mood for the first thirty years was that of disillusionment. It was not until 1990 that the mood changed as the process of revitalization of the Charter framework was launched by the Council of Europe. In this process, the newly established collective complaints mechanism played an all-important role.

Indeed, it is no wonder that the collective complaints mechanism should have been the focus of so many of our speakers' reform proposals today, whether coming from inside or outside the Committee. The sixty-three collective complaints that the Committee has thus far received have undoubtedly made possible the development of considerable economic and social rights jurisprudence. As the Committee has articulated and elaborated on the values underlying the Charter, it has consciously employed techniques of reasoning drawn especially but not exclusively from the European Court of Human Rights; as was indicated by Mr Jimena Quesada, the newly elected President of the Committee and, indeed, as was evident from the presentation given by

[1] Cf. David Kennedy, 'A New World Order: Yesterday, Today and Tomorrow', *Transnational Law and Contemporary Problems* (1994) 330-375.

Madam Deputy Director General, Ms Samuel, the impact of the European Union law on the Committee's case-law has become increasingly important. Within a matter of few years, the collective complaints mechanism has introduced a decidedly judicial character into the proceedings, thus qualifying the Charter as a quasi-judicial instrument. From this a number of things now flow.

It is vital, as was urged by Mr Jimena Quesada, that the position and the status of the Committee, its members, and the staff of the Charter Secretariat be accordingly strengthened to ensure that the decisions be rigorous and well-argued. The workload is certainly becoming more and more complex – and it is growing. So far, the increasing number of rather specific complaints under the collective complaints procedure has enabled the development of more and more precise standards. Consequently, one quite expects that more and more contracting parties are now willing to accept the complaints procedure so as to be able to take part in such detailed interpretation of Charter rights – out of sheer self-interest, if nothing else. For its own part, it is safe to say that the Committee cannot in its interpretations go alone. And so, as many of you have emphasized, the Committee will need to reach out.

We will have to reach out to the States Parties, naturally, but also to the Council of Europe itself. As has so often been pointed out today, we'll have to try and find a better working relationship with the Committee of Ministers, in whose voice our decisions are delivered to the public (or muffled, as the case may be). It certainly is true that the supervision of the enforcement and compliance with the Charter is currently at something less than full potency, lacking as it so often does in political will. One way to alleviate this is, as has been suggested, through repetitive cases; another might be through engaging the potential of the Parliamentary Assembly in the follow-up process. All in all, there will have to be a more conscious reaching out to the rest of the monitoring bodies within the Council so as to assure a comprehensive approach to social rights. To avoid the fragmentation of rights, the Committee will also need, will specifically need, as has been discussed today, to reach out and establish a close communicative cooperation with not only the European Court of Human Rights but also the European Court of Justice. Now this will not be an easy task, as much is certain, since the three treaty bodies do not have the same grounds, or purposes, or motivations, and thus do not view rights from an identical perspective. But try we must, and hope that our acute awareness of the differences will go a long way towards reconciling them.

In striving to ensure the adequacy and the harmonization of international protection for social rights, the Committee will, as before, need the ILO (as was recounted by Mr Tapiola with zest, over sixty-seven per cent of the rights enshrined in the constitutive documents of the two treaty bodies are identical), *and* the United Nations Committee on Social, Economic and Cultural Rights, *and* the various regional courts. And the Committee will, perhaps even more than before, need the various social partners, trade unions and, to be sure, the NGOs – for they truly are in the key position in linking the Charter with civil society. Here, let me echo the passionate arguments put forward by Ms Dashkina in assurance of the need to reach out to all levels of the society, high and low, to those that make the decisions and those that are the objects of decisions, because of the real changes that the Charter can effect on the everyday life of ordinary people. In this regard, however, Ms Dashkina also offered a sobering reminder of how little known the Charter still remains. Many of you have alluded to this during the course of the day, and you are right: more will have to be done to promote the Charter. We will do better.

We will *need* to do better, you see, because the Charter is but an international treaty, a text – words on paper. As a colleague of mine has aptly argued, what is ultimately decisive of the success or failure of those words is whether they are actually 'taken up and used by individuals,

states, courts, administrators, ombudsmen, NGOs and international organizations'.[2] It is only through application that the rights in the Charter receive meaning.

In this, of course, social rights are no different from civil and political rights; their meaning too will differ with time and place. Invoked in particular contexts to defend or criticize particular distributive choices, rights reveal their partisan nature and become instruments in the allocation of resources and struggle over institutional competencies. Inevitably, they will turn into an intergovernmental administrative process in which rights are recognized, limited, weighed against each other and overruled as a matter of routine. That is the point at which well-dressed men and women begin meeting at rooms with high ceilings to talk to each other from behind enormous piles of paper. And that, ladies and gentlemen, is the moment when the language of rights starts to intermingle with the language of per diems, allowances, and flight schedules and before soon, the next meeting will be about co-ordination of the meetings that will follow. This should not, however, be taken as recipe for cynicism. As we were so very powerfully reminded by Ms Lydia Gall just a moment ago, the critical potential of rights is revealed at moments when liberal actors such as European states step beyond their own liberal principles. You see, a claim of right has a special nature. It is not just an assertion of privilege or an appeal to charity. To say, 'this is my *right*' – my right to housing, for example – is *radically* different from saying 'this is my interest': it constitutes the claimant as a member of the legal, and thus political, community. Engaging in legal discourse, we recognize each other as carriers of rights and duties who are entitled to benefits from or owe obligations to each other; not because of charity, not because of interest, but because such rights or duties belong to every member of the community in that position. This is what human rights do. And this, ladies and gentlemen, is what the European Social Charter does. – A document worth celebrating, and reforming, surely. Would you not agree?

[2] Colm O'Cinneide, 'Social Rights and the European Social Charter: New Challenges and Fresh Opportunities' in Olivier de Schutter (ed.), *The European Social Charter: A Social Constitution for Europe/La Charte sociale européenne: Une constitution sociale pur l'Europe* (Bruylant: Bruxelles, 2010) 167-183 at 183.