The Quest for Democratic Security

The Role of the Council of Europe and U.S. Foreign Policy

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Key Points

- The wave of democratization that swept Central and Eastern Europe after 1989 reshaped Europe's political geography and also forced a reconfiguration of Europe's institutional landscape. These changes provoked difficult and sometimes divisive questions: How will the new states of Central and Eastern Europe relate to the existing Western European structures? How can the instruments of Western European cooperation adapt to encourage stability in the region? In what ways can Western European states and structures promote peace in this historically volatile area?
- The Council of Europe's principal raison d'être is to promote and safeguard democratic values, human rights, and fundamental freedoms. At its 1993 Vienna Summit, the Council of Europe committed itself "to promote the integration of new member States and . . . the policy of openness and cooperation vis-à-vis all the countries of Central and Eastern Europe that opt for democracy." However, the question remains whether the Council of Europe would continue to be a community of values or if this community would be progressively diluted as a result of too-rapid enlargement.
- For some candidate countries, particularly those whose leaders feared renewed Russian expansionism, council membership was also seen as a stepping stone to NATO and European Union (EU) membership. The EU and NATO are also associations of democratic states, and adhering to democratic standards in three or more European or transatlantic organizations can only reinforce democratic security all over Europe. This effort to reinforce security through the proliferation and strengthening of democratic institutions, the growth of democratic civil societies, and the development of cooperation between states define the "quest for democratic security," foremost on the European political agenda following the events of 1989.
- The council has worked to integrate the continent's adherence to democratic norms through various multilateral treaties, such as the European Convention on Human Rights (ECHR), which has come to be part of what one may call the Council of Europe's "constitutional law." There is general agreement that no state can become, or remain, a member of the council without accepting the ECHR. With its supranational judicial machinery, the convention is so far the most effective regional instrument for the protection of human rights, and its area of application will soon cover the whole of the European continent. The Framework Convention on the Protection of National Minorities can be seen as a further extension of the ECHR and the council's statute.
- The expansion of the council to include the countries of Eastern and Central Europe made the admission process far more intricate, as the incorporation of the former communist states presented a unique set of problems: They had only just begun the process of democratization and did not measure up to the standards regarding protection of human rights, the rule of law, and political pluralism. Even where their

legal and constitutional orders reflected democratic principles,they lacked the support of a civil society to make them truly effective. In preparing its opinions on membership, the council's Parliamentary Assembly will consider the internal legal and political order of the candidate state in relation to council's standards. The first step is to appoint a group of eminent lawyers to undertake a legal appraisal. The opinion first evaluates the country's internal situation,including steps taken to adapt to Council of Europe standards: for example,free and fair elections, constitutional and legal reform, and accession to key conventions.

- The problem of evaluating members' democratic practices became significant, qualitatively and quantitatively, with the wave of new accessions beginning in 1990. The council introduced monitoring in 1993, consisting of *obligations* (generally applicable to all member states) and *commitments* (that is, specific pledges made at the time of accession to undertake certain action on democratic reform or to adhere to Council of Europe legal instruments, such as the Convention on the Prevention of Torture or the Framework Convention for the Protection of National Minorities). The Parliamentary Assembly's monitoring process also takes into account *expectations* it may have expressed in its respective opinion on a membership application.
- During recent years, the number of additional commitments by applicant states recorded in assembly opinions has become increasingly larger, particularly since 1995. Thus, the opinion on Latvia contains thirteen such commitments, that on Moldova eighteen, that on Albania seventeen, that on Ukraine twenty-three, that on Macedonia twenty, that on Russia twenty-five, and that on Croatia twenty-nine. This striking increase in the number of commitments entered into by new member states does not necessarily imply that the situation in one country is less satisfactory than in another. Rather, it reflects a tendency on the part of the assembly to become more "perfectionist."
- **Estonia** joined the Council of Europe on May 14, 1993. In its resolution closing the monitoring procedure, the assembly nonetheless mentioned some serious and ongoing problems with three aspects of Estonia's political and legal system: the detention of refugees and asylum-seekers; the treatment of members of the "nonhistoric" Russian-speaking minority; and the "deplorable" conditions of prisons and detention centers.
- **Romania** was admitted to the Council of Europe on October 7, 1993 on the understanding that it would complete certain reforms within given time limits; monitoring of these commitments began shortly thereafter. Most of these issues were mentioned in the assembly's opinion on Romanian accession in 1993; some are commitments that remain unfulfilled, and others are expectations expressed by the assembly. Although the Romanian government has not completed these reforms, progress has been made. For example, in keeping with the council's recommendations, a bill to reform the judicial system was sent to the Romanian parliament in late spring 1997 and was eventually adopted.

- The **Russian Federation** acceded to the Council of Europe on February 28, 1996. The approximately twenty-five specific commitments and a number of additional expectations of the Assembly centered on: 1) the signature or ratification of some key Council of Europe conventions—for example, Protocol No. 6 to the ECHR on the abolition of the death penalty, the Charters for Regional or Minority Languages,and conventions on extradition and on mutual assistance in criminal matters; 2) reform of Russian civil and criminal codes, the judicial and prison systems, the secret services, and the armed forces; and 3) Russia's compliance with specific areas of international law, particularly with regard to Chechnya and cooperation with international humanitarian organizations, and international treaties of which it is a signatory, such as the Treaty on Conventional Armed Forces in Europe.
- On the intergovernmental side,there are four general programs of democratic assistance that aim at assisting candidate and new member states to fulfill the statutory requirements of membership, as well as specific commitments undertaken when joining the organization, and that incorporate the council's various programs on human rights,minority rights, equality, legal cooperation, social affairs, youth,the media,cultural heritage, and education.
- The council conducts a variety of other initiatives to ensure new members' commitment to democratic practices and procedures,including *expert missions* to review host-country legislation or to make proposals regarding particular legal or constitutional problems such as citizenship for ethnic or linguistic minorities, election systems, gender equality in the law, broadcasting, protection of intellectual property rights, social security, and health care; *study visits* for officials,lawyers,magistrates, prosecutors, police, prison staff, journalists,civic leaders, and technical advisers from Eastern and Central Europe to gain first-hand experience in the conduct of their respective professions in democratic societies or to participate in relevant conferences; and *training programs* for civil servants, the media, prison officials, judges,lawyers,leaders of political parties,nongovernmental organization (NGO) officials, and others who work with various aspects of the rule of law, pluralist democracy, and human rights. In addition, the council established the *European Commission for Democracy through Law* to provide expert advice and opinions on constitutional and legal matters to new and prospective council members, as well as *information and documentation centers* in Eastern and Central Europe to enhance knowledge of and public access to the council's activities.
- While the United States is directly engaged in multilateral diplomatic relations with Europeans in the Organization for Economic Cooperation and Development (OECD), NATO, and the Organization for Security and Cooperation in Europe (OSCE), it is also dealing with them in two specifically European international institutions of which it is not a member: the geographically wider Council of Europe and the more close-knit European Union. However, the Council of Europe offers a yet insufficiently exploited potential for cooperation toward the common goal of democratic security. "The New Transatlantic Agenda," adopted at the December 1995 U.S.–EU Summit in Madrid, refers to a "new European security architecture in which

the North Atlantic Treaty Organization, the European Union, the Western European Union, the Organization for Security and Cooperation in Europe and the Council of Europe have *complementary and mutually reinforcing* roles to play."

- The U.S. and the Council of Europe should undertake an effort to coordinate their democracy-building programs and, where appropriate, enter into joint ventures along the lines of those agreed on between the Council of Europe and the European Union. To this end, the United States' observer status in the Council of Europe ought to be fully exploited in conformity with the original intent of the U.S.application. The United States could explore the usefulness of adhering to more "open" Council of Europe conventions, either because they are intrinsically of interest to the United States or because such action would extend the "common legal space" across the Atlantic. Specifically, the United States and the council should explore the feasibility of a joint European–North American research project on common elements in their respective constitutional and legal orders and how they could be further extended, with a view to creating a common transatlantic legal space. The U.S. Congress should be regularly represented in the council, not only through diplomatic observers but also by parliamentarians.

Foreword

There has been considerable public debate in the past year on the challenges NATO faces as it expands into "the other Europe"—the former communist nations of the Soviet bloc. But other, less well known, regional organizations that have worked to maintain the security of Western Europe for the past half-century—including the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe—also face profound post–Cold War challenges. To be sure,new and prospective members of these security organizations in East-Central Europe and the former Soviet Union have expanded their ranks, and such expansion has caused them to reassess their traditional missions.

The role of these non-military organizations in the European security architecture has been greatly enhanced in the post–Cold War era. Although NATO can protect its members through the force of arms,security involves much more than military might—it has crucial social, political, and economic components that are of heightened relevance in today's world. The other European security organizations alongside NATO work to ensure that such security has a firm foundation through the strengthening of newly established democratic institutions in the new member states.

The dilemma is that, while "the other Europe" is drawn into the European security framework,security can never really be achieved without a change in the political cultures of new member states that have ruled their people through decades of antidemocratic ideology and institutions. In essence, the problem is to ensure that Western Europe reunites with "the other Europe" in terms of its democratic values and other institutions that promote a pervasive and formidable foundation for continental—and transatlantic—security.

That is the mission of the Council of Europe. Although it is the oldest among the panoply of pan-European security organizations, the work of the council is perhaps the least well known—at least in the United States. However, as Heinrich Klebes explains in this Peaceworks, the council has what may be the most difficult task in the promotion of security across the continent: to inculcate in the people of East-Central Europe the values of democracy and the rule of law, and to assist governmental and judicial officials in putting those values firmly into practice. The council's work proceeds from the theory of democratic peace: democracies are deliberative political systems and are less prone to go to war with one another than are authoritarian regimes. Thus the spread of democracy is a vital objective of the work of security organizations devoted to keeping the peace.

While much of the literature on security focuses on its political and military dimensions, Klebes examines in this study the often neglected legal and normative foundations of security—the rule of law and parliamentary procedure as the bases for democratic security—and the Council of Europe's work in securing these foundations. The author is more than qualified to undertake such a study. With a long career as an international civil servant in several European institutions, Klebes has held a number of positions with the Council of Europe during a lengthy tenure in the organization; he held the rank of deputy

secretary general before his retirement from the council in 1996. Klebes researched and drafted this report as a 1996–97 senior fellow in the Institute's Jennings Randolph Program for International Peace.

Given the severe economic problems in practically all of the East-Central European communist regimes, it is not surprising that they began clamoring for membership in the Council of Europe when the first fissures appeared in the edifice of the Soviet bloc. After all, the council was viewed by them as the entry vehicle moving them toward membership in the European Union, with its attendant benefits. But membership in the council has come to mean much more than simply a gateway to the EU; indeed, to be a member of the Council of Europe requires at least a *commitment* to democracy and the rule of law.

While expansion of such concepts across East-Central Europe is hailed as the precursor of a united, democratic, and peaceful Europe, the Council of Europe's work in promoting the ideas and institutions of democratic governance has not been trouble-free. In his case studies of Estonia, Romania, and Russia, Klebes shows that the end of communist rule does not automatically mean a full embrace of democratic institutions. All three countries secured membership in the Council of Europe early on, but not without persistent monitoring by the council and other security organizations of issues that continued to set them apart from the other European democracies,particularly in the areas of minority rights, judicial systems, and security services. Further, as Klebes explains in the following pages, the rapidity of the council's expansion into East-Central Europe as a "school of democracy" could dilute its traditional function of a "community of values" for its original West European member states.

Is there a role for the United States in the mission of an organization that is essentially European? Klebes argues strongly in the affirmative. The United States has special guest status in the Council of Europe, and Klebes points to some of the "open" conventions the U.S. can join to firm up the vital link between U.S. and European security. However, it is in the realm of other security organizations, such as NATO and the OSCE, where the United States can have the greatest impact. Klebes makes an appeal for all European security organizations to develop much more synergy in their functions and to establish clearer complementary roles. In such a way, Klebes suggests, the United States can be more actively engaged in building a transatlantic political and security community. In short, Klebes argues, it takes much more than a focus on NATO's collective defense guarantees for the Atlantic Alliance to be a genuine partnership.

This Peaceworks is just one of a number of investigations of European security institutions the United States Institute of Peace has conducted in recent years,especially in its Bosnia in the Balkans Initiative and its Working Group on the Future of Europe. In fact, this is the first of a series of major publications from the Institute on the fundamental changes these European security organizations face in the post–Cold War era,including David Yost's book, *NATO Transformed: The Alliance's New Roles in International Security* (just published by the Institute's Press), and P. Terrence Hopmann's forthcoming study on the OSCE.

RICHARD H. SOLOMON, PRESIDENT
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Preface

This study is concerned with the Council of Europe and its efforts to promote democratic security—a political concept agreed on by thirty-one heads of state or government when they gathered in the Austrian capital in October 1993 and adopted what became known as the Vienna Declaration. The concept proceeds from the theory of democratic peace, which holds that democracies—even when there are temporary tensions among them—are unlikely to go to war with one another. Thus, the Vienna Declaration aims at establishing a "vast area of democratic security in Europe."

For the democratic peace theory to work as assumed,individual democracies must be stable. Therefore, the assistance extended to the new or emerging democracies in Central and Eastern Europe after 1997 is aimed not only at introducing democratic structures of government and democratic laws, but also at ensuring their stability. This includes transmitting democratic ideals and democratic thinking to the citizens of these countries.

Individual countries as well as European, transatlantic, and intercontinental institutions and numerous nongovernmental organizations (NGOs) offer such assistance and cooperation. Without underestimating their important contributions, this study concentrates on the Council of Europe for several reasons:

- First, as an association of democratic European states, the Council of Europe (as of March 1998) has already received in its midst sixteen former communist states of Central and Eastern Europe (see appendix 1).
- Second, while cooperating and coordinating with other organizations and governments, the Council of Europe has put into practice the most comprehensive program of technical assistance and cooperation for the emerging democracies. This is not surprising: Maintaining democratic values and protecting human rights and fundamental freedoms have been the Council's essential raison d'être since its inception in 1949.
- Third,although it was the first political association of states founded in Europe after World War II, the Council of Europe is little known in the United States (though well known in the countries of Central and Eastern Europe).

If it is true that American and European security are inseparable—and security cannot be conceived in military and economic terms only—the Council of Europe's important contribution to the democratic transition in the Eastern half of Europe, and to democratic security all over the continent,merits the attention of U.S. policymakers. As the United States pursues the same goal of promoting and strengthening democratic institutions in former communist countries,more cooperation with the geographically largest and specifically European organization (limited to states whose territory is wholly or partly situated on the European continent) would be in the interest of all parties concerned, as would information sharing and better coordination of efforts.

I am greatly indebted to my research assistant, Kimberly Cowell. In fact, she has been much more than an assistant. A good part of this study has grown out of our interchange of ideas. Needless to say, I owe much to the advice of my program officer, Sally Blair, as well as to the constructive criticism of editor Peter Pavilionis. Even before my arrival in Washington, I was privileged to benefit from the advice of Dr. Joseph Klaits, director of the Jennings Randolph fellowship program at the United States Institute of Peace.

I am grateful for the advice of Frederick Quinn and James Apple of the Federal Judicial Center, and of Professor Allen Weinstein and his colleagues of the Center for Democracy.

Naturally, it was important for me to particularly discuss parts 3 and 4 with State Department officials concerned with European affairs. I would like to thank them for the time they spared me—in particular, director Shirley Barnes, deputy director James Foster, senior policy adviser Dan Hamilton in the Office of the Secretary of State, and political officer Brian Walch.

Last but not least, I am grateful to three peer reviewers who carefully read my text and came forward with many useful suggestions to improve it. Farida Jamal and Deborah Matthew-Heys patiently helped me make the corresponding corrections on the computer.

One

Introduction—The Democratic Revolutions of 1989, European Stability, and the Council of Europe

Pressures for democratic reform in the countries of the former Soviet empire reshaped Europe's political geography after 1989. The wave of democratization that swept Central and Eastern Europe also forced a reconfiguration of Europe's institutional landscape. These changes provoked difficult and sometimes divisive questions: How will the new states of Central and Eastern Europe relate to the existing Western European structures? How can the instruments of Western European cooperation adapt to encourage stability in the region? In what ways can Western European states and structures promote peace in this historically volatile area?

Answers to these questions revealed different approaches and, sometimes, gave rise to controversy. Different observers evaluated differently the nature of the changes taking place in Central and Eastern Europe and the reality and progress of democratic transformation. For example, to what extent was the communists' transformation into "social democrats" genuine? What about party *apparatchiks*, who suddenly transformed themselves into business leaders? From this debate ensued queries as to (1) the possibility and risks of integrating the former communist states into the community of Western democracies and (2) the speed with which this process should take place. The Council of Europe was concerned more directly and immediately with this matter. The Organization for Security and Cooperation in Europe (OSCE) had made the political decision to take on board all European states as well as the Newly Independent States (former Soviet republics) in the Caucasus and Central Asia. The Council of Europe chose to stay geographically European, but could receive the "new democracies" on relatively short notice—as long as they were ready to accept the organization's democratic standards. Additional economic or military criteria did not complicate admission, as with the European Union (EU) or the North Atlantic Treaty Organization (NATO). But the question—passionately debated for some time—remained whether the Council of Europe would continue to be a community of values, or if this community would be progressively diluted as a result of too-rapid enlargement.[1]

A consensus has emerged among policymakers and academics that stability in the region requires the consolidation of democracy across the continent. Surveys of international conflicts over the past two centuries indicate with high levels of confidence that liberal democracies do not usually go to war with one another.[2] Hence, the best guarantee of security for all resides in the democratic aspirations of people in Central and Eastern Europe.

Existing institutions of European cooperation, such as the Council of Europe and the EU, together with intercontinental organizations like OSCE, NATO, and the Organization for Economic Cooperation and Development (OECD) thus find themselves engaged in a common project of promoting democratic institutions and practices in former communist

countries. This effort to reinforce security through the proliferation and strengthening of democratic institutions, the growth of democratic civil societies, and development of cooperation between states defines the "quest for democratic security," foremost on the European political agenda following the events of 1989. A new era had already begun a few years earlier with Gorbachev's reforms. However, we know today that it was not his objective to dismantle the Soviet Union. Rather, he meant to make it more efficient without undermining the essence of communism. The events of 1989 came unexpectedly to most observers, outsiders as well as those directly participating in the democratic revolutions.

The Council of Europe, the oldest international organization of democratic nations in Europe, was thrust into a new role—but one foreseen by its founders—in the 1990s, when it was about to become a truly pan-continental European organization open to the accession of the former communist states of Central and Eastern Europe.[3] However, contrary to the practice of the OSCE, these states had to pass a "democratic entrance examination" to join the Council of Europe, in accordance with its standards.

Beginning with Hungary in 1989, one former communist state after another applied for Council of Europe membership. This spate of new prospective members was unexpected, even by the council itself. In retrospect, there were a number of reasons the countries of Eastern and Central Europe, upon their release from the Soviet empire, should turn to the Council of Europe.

First of all, the council was reaching out to Eastern Europe, more so than was perceived in the West. Under consecutive secretaries general, the council undertook several initiatives to establish links with countries to the east of the Iron Curtain, beginning with Czechoslovakia, in fields of common concern and considered (no doubt erroneously) as nonpolitical, such as cultural cooperation or the protection of the environment. But renewed East-West tensions cut short promising beginnings after the Warsaw Pact's August 1968 invasion of Czechoslovakia and the Soviet Union's December 1979 invasion of Afghanistan. It was not easy for the West to assess the way populations on the other side of the divide perceived the council's institutions. Yet, we now know that those who stood up for democratic reform saw the Council of Europe as an organization of democratic values, the rule of law, and, above all, human rights and fundamental freedoms. Former dissidents who came to Strasbourg after 1989 as parliamentarians or members of government (Vaclav Havel and Tadeusz Mazowiecki, among others) have borne witness to the council's stature in this regard.

Second, the Helsinki process, which began in the early 1970s, also indirectly promoted knowledge of the council as an institution that defended human rights. Before and during the Conference on Security and Cooperation in Europe (CSCE, later to become the OSCE), the foreign ministers of the West consulted in different forums—NATO, the European Community, and the Council of Europe. Discussions in the council focused largely on human rights. These ideals were included in the Declaration of Principles of "Basket 1" (Principle VII: Respect for Human Rights and Fundamental Freedoms, including the Freedom of Thought, Conscience, Religion, or Belief) and in "Basket 3" of the negotiation package, concerned with "Humanitarian and Other Matters." In the course of the Helsinki negotiations, resulting in the Final Act of August 1, 1975, and in bilateral and informal contacts, member states' representatives helped to make the Council of Europe better known.[4]

Some observers have argued that democratic values were not the only incentive to apply for council membership, claiming that after 1989 and 1991 former republics of the Soviet Union and other ex-communist states would join any Western organization they could get into. There may be some truth in this; however, becoming part of the family of democratic nations represented by the council,after what is normally a lengthy "entrance examination," confers a sort of international recognition of a country's democratic credentials. Candidate countries may well have surmised that, at a later stage, council membership would facilitate their accession to the EU to promote their economic well-being. For some candidate countries,particularly those whose leaders feared renewed Russian expansionism, council membership was also seen as a stepping stone to NATO membership. Like the council, the EU and NATO are associations of democratic states; adhering to democratic standards in three or more European or transatlantic organizations can only reinforce democratic security all over Europe.[5]

The same holds true, of course, for OSCE membership. Though designed to be all-inclusive (which did not prevent the suspension of Yugoslavia's membership) and without specific entry conditions, the OSCE is an important actor in the attainment of democratic standards. OSCE and the Council of Europe cooperate in a spirit of complementarity, as do the council and the EU. This does not exclude a certain amount of competition,however.

Part 3 of this study describes the specific nature of the Council of Europe, explaining why it is called upon to play an essential role in offering Western assistance for the construction of viable democracies on the European continent. This section describes the council's genesis and its intention to create a bulwark against the resurgence of totalitarian regimes after World War II; the establishment of the only fully effective international machinery for the protection of human rights; the provisions of the council's statute aiming at a community of values; the step-by-step creation of a vast body of democratic European law through more than 150 conventions (though not of equal value),[6] as well as through the evolving jurisdiction of the European Court of Human Rights; the rapid expansion of Council of Europe membership toward Central and Eastern Europe after 1989; and the ensuing discussions of the council's *community of values* versus *school of democracy* concepts.

Part 3 will also show how the Council of Europe contributes to the democratic transition in Eastern Europe in different stages: evaluating a country's evolution toward democracy upon application for membership;applying pressure to meet basic membership conditions before accession; transmitting democratic "know-how";agreeing with the applicant country on commitments to legislative and other reforms upon acceptance as a member; monitoring the fulfillment of such commitments; and instituting possible sanctions, up to exclusion from membership in cases of noncompliance.

Parts 4 and 5 draw some foreign policy conclusions concerning U.S. relations with the Council of Europe in the wider framework of Euro-American cooperation for consolidating democracy on the European continent and establishing a vast area of democratic security.

Two

Toward a Community of Democracies on the European Continent

The Need to Safeguard Democracy and Human Rights: A Bitter Lesson of History

The Council of Europe's principal raison d'être, which gives it the legitimacy to play a leading role in the democratization process in Europe's eastern half, is sometimes forgotten. The council exists to promote and safeguard democratic values, human rights, and fundamental freedoms. Though it has evolved considerably in institutional terms since its founding, the council remains true to the original principles and goals of its architects.

After the experience of war and totalitarianism in Europe, many political and opinion leaders stood up for European unity to prevent history from repeating itself. The decisive initiative came from Britain's wartime leader, Winston Churchill. In his memorable speech on September 19, 1946 in Zurich, Churchill suggested that European states form "a kind of Council of Europe"—the first step toward creation of the United States of Europe.[7] Strength through unity was his advice to the European nations, both victors and vanquished. But the new organization was also to bar the resurgence of totalitarianism and the recurrence of the horrors of World War II. Churchill's own country could not join because it had worldwide obligations as head of the Commonwealth. Why did he exclude the Soviet Union? Apart from the fact that its participation was politically inconceivable at the time, balance-of-power considerations—traditionally a component of British political thought regarding the continent—cannot be dismissed. The participation of the Soviet Union and its satellites was simply not a practical proposition, the Iron Curtain (also a Churchillean concept) having split Europe into two parts.

The participants in the 1948 Congress of The Hague followed up on these ideas, conceiving the Council of Europe as *eventually* a pan-European regional organization of general competence.[8] Original federalist ambitions had already been watered down and were further thwarted in the subsequent intergovernmental negotiations. The United Kingdom was now to be a part, since the new organization would not trespass into domains reserved to national sovereignty.

The Congress of The Hague put special emphasis on democracy, the rule of law, and the respect for human rights and fundamental freedoms. In addition to a first outline of a Council of Europe Statute, participants called for a charter of human rights. Thus on May 5, 1949, ten European states signed the Council of Europe Statute and became its founding members.[9] The European Convention on Human Rights (ECHR) was signed in Rome one year later, in November 1950. Readers of the statute (Article 1 on the aim of the Council of Europe) will note that the council, in addition to being a community of democratic values, was originally meant to become *the* European organization for political and economic

cooperation. However, other organizations,notably the OECD and the EU, took over its potential tasks in the economic field.[10]

On the political side, whereas member states generally agreed on the basic objectives of democracy, the rule of law, and human rights,they sharply disagreed on the degree to which national sovereignty should be surrendered to achieve the council's objectives. Some members appeared ready to engage themselves on the path toward supranationality and federation. For example, Belgium, France,Germany, Italy, Luxembourg, and the Netherlands joined together in 1950 for the Schuman Plan—the European Coal and Steel Community (ECSC), which had significant supranational elements. At the time, the United States paid particular attention to the plan. On both sides of the Atlantic, it was thought that pooling the resources of Western Europe's coal and steel industries would render war between France and Germany henceforth impossible. This idea was not yet the concept of democratic security but, rather, a mechanical process to maintain peace based on diminishing the factors of war making at the time. This initial effort at forging European integration was followed in 1957 by the European Atomic Energy Community (Euratom) and the European Economic Community, later referred to collectively as the European Communities, then the European Community, and,since the 1992 Maastricht Treaty, as the EU.

At the end of the 1990s, there can be no doubt that the dynamic part of the movement toward European unity is the EU. As one of the world's greatest economic forces next to the United States, it also has increasing political weight.Like the Council of Europe (and NATO), the EU is engaged in a geographical enlargement process. EU heads of state and government confirmed at their 1993 meeting in Copenhagen their commitment to incorporate Central and East European countries holding partnership and association agreements with the EU when they meet the economic and political requirements. However, no Central or Eastern European country has attained full membership so far.[11] The EU is currently assisting these countries to develop market economies, which, in the Western view, are inseparable from democracy.

At its Vienna Summit, the Council of Europe committed itself "to promote the integration of new member states and . . . the policy of openness and cooperation vis-à-vis all the countries of Central and Eastern Europe that opt for democracy." By the end of 1997, the council had already extended itself virtually across the entire continent. The question remains, of course, whether this enlargement process was too rapid. However it may be,as long as the EU has not gone much further in its own geographical extension to the east, and as long as its substantive competence has not been further enlarged, the Council of Europe remains an indispensable structure of European cooperation. It is complementary to the EU and is politically indispensable for holding together the states of the continent that are committed to democracy, the rule of law, and the protection of human rights, even if such commitment is not always reflected in everyday practice.

Democracy in Council of Europe Law

The council's constitutive charter, the 1949 Statute, clearly characterizes the organization as an association of democratic states. True, it does not provide a detailed definition of democracy and the rule of law, nor does it spell out in detail what constitutes human rights.Like the signers of the American Declaration of Independence, the statute's drafters held certain

truths "to be self-evident." The word *democracy* appears in the statute's preamble, which refers to "the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty, and the rule of law, principles which form the basis of all true democracy."[12]

Article 1, to be read in conjunction with the preamble,stipulates that "the aim of the Council of Europe is to achieve greater unity between its Members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage." The aim is to be pursued through "the maintenance and further realization of human rights and fundamental freedoms." Article 3, concerning members' obligations, provides that "Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council."[13] Under Article 4, only those states "deemed to be able and willing to fulfill the conditions of Article 3 may be invited to become Members." The wording here is significant. It is not decreed that members must strictly abide by all the standards at the time of entering the organization;instead,they must be "able and willing" to meet them.

The 1949 Statute does not expressly refer to freely elected parliaments as a condition of membership. This gap was filled by the first protocol to the Convention on Human Rights, establishing a right of democratic governance by committing the contracting parties "to hold free elections at reasonable intervals by secret ballot,under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."[14] Furthermore, it is implicit from the statutory provisions for the council's Parliamentary Assembly that there must be elected parliaments in member states. When they disappear without new elections being called within a reasonable time, the member state concerned may have to leave the organization in accordance with Article 8 of the statute. In fact,the article has been applied only once in the history of the Council of Europe with regard to Greece, whereas its application has been considered on several occasions with regard to Turkey.[15]

Concerning the rule of law, the statute's drafters apparently took its meaning for granted. However, one can point to Article 6 of the ECHR (fair trial) and the jurisprudence of both the Commission and Court of Human Rights as an indication of the council's commitment to the rule of law among its members. The admirable detailed definition of the meaning of the rule of law in the June 1990 CSCE/OSCE Copenhagen Document also should be mentioned in this context.

The general references to human rights in the statute were spelled out in precise detail in the ECHR, which has come to be part of what one may call the Council of Europe's "constitutional law." There is general agreement that no state can become, or remain, a member without accepting the ECHR. With its supranational judicial machinery, the convention is so far the most effective regional instrument for the protection of human rights, and its area of application will soon cover the whole of the European continent.[16]

This does not imply that the ECHR offers European citizens flawless protection against the violation of their basic rights. Media reports reveal again and again that this is not so—and not only in the new member countries of the Council of Europe. One of the main reasons the convention is not fully effective is the lack of information;citizens are not

sufficiently aware of the rights these European institutions protect, and lawyers are often not familiar with existing procedures. Accordingly, the council greatly emphasizes information about the convention—the rights individual member states are obliged to respect and the legal machinery at the citizen's disposal.

In the council's founding member states, the ECHR has proved its efficacy, which does not mean that these states have perfect records in protecting their citizens' basic rights. The convention has prompted numerous changes in national law, and governments have always, if sometimes grudgingly, respected judgments of the court, even when they were asked to introduce reform legislation or to pay compensation to victims. It is too early to evaluate the convention's effect in the new member states. Apart from the problem of the information gap, some observers point to the time factor as a drawback in the court's procedure. Namely, cases can be brought before the court (in Strasbourg) only after all national remedies have been exhausted (in other words,after a final unsuccessful appeal under domestic law). This process usually takes a great deal of time.[17]

The Convention for the Prevention of Torture and Inhuman and Degrading Treatment allows preventive action.[18] A committee of independent experts can make visits to prisons, police stations, or other venues on short notice. It then drafts a report, which,initially, is confidential. If after a second visit, the committee concludes that conditions have not sufficiently improved, it can decide to publish the report. If the violation continues on a large scale, the state could be expelled from the organization under Article 8 of the statute. It has now become widely accepted for the state concerned to publish the committee's report, even when the report is critical, to avoid the negative connotations of withholding publication.[19]

The Framework Convention for the Protection of National Minorities can be seen as a further extension of the ECHR and the council's statute.[20] The Framework Convention states at the outset that the protection of national minorities is part of the international protection of human rights and thus an object of international cooperation. In other words, national minority rights are not an "internal affair" in the meaning of Article 2 (7) of the United Nations Charter.

One may argue that human rights scholars have held this position for decades. One can also point to the report of the 1991 CSCE/OSCE Meeting of Experts on National Minorities in Geneva, where the participating states agreed that "Issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them,are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective state."[21] However, this is the first time that the principle was incorporated in a legally binding multilateral treaty. It is also a good example of the complementary and mutually reinforcing role of international organizations and of how principles of international law are consolidated incrementally. At the same time, we have a long way to go before this principle is to be considered generally respected, even in Europe—recent events in Kosovo testify to this unfortunate reality.

The Framework Convention entered into force on February 1, 1998. By August 31, 1998 it had been signed by thirty-six of forty member states (including all member states of the EU, with the exception of France and Belgium) and by one nonmember state (Armenia). Twenty-three states have ratified the convention so far.

The convention includes a follow-up procedure under which contracting states are to submit reports on its implementation to the Council of Europe's Committee of Ministers. The latter, assisted by a consultative committee, is responsible for drawing conclusions and taking any steps it may consider appropriate. Admittedly, the convention's procedures are weak and in no way comparable to the control mechanisms of the ECHR (commission, court, and Committee of Ministers).[22]

Even where the convention is not legally observed, it is already widely used as a reference text, thus contributing to the formation of customary international law on this subject. Also, like other international legal texts (such as Section IV of the OSCE's Copenhagen Document concerning minority rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, adopted by the UN General Assembly on December 18, 1992), the Framework Convention was made legally binding before entering into force through its inclusion in bilateral treaties (for example, the treaties on good-neighborly relations and friendly cooperation concluded between Hungary and its neighbors Moldova, Romania, and Slovakia).[23]

Since the Framework Convention was opened for signature, the council's Parliamentary Assembly insists that a prospective member state promise to sign and, in due course, ratify the convention before the council votes a positive opinion on the state's membership application. One can argue that the assembly is applying different yardsticks—one for Western members of the Council of Europe and another for the newcomers from Central and Eastern Europe. This is true, but two reasons account for these different standards. First, the convention was opened for signature on February 1, 1995; its acceptance as a condition of membership cannot be made retroactive. However, before the convention came into being, the assembly insisted that candidate states "base their policy" on the principles laid down in its 1993 Recommendation 1201 to the Committee of Ministers for an additional protocol to the ECHR.[24]

Second, the Council of Europe, like the United Nations, the OSCE, the EU, and the United States, was preoccupied by the gravity of certain minority issues in Central and Eastern Europe and their threat to stability throughout the region. It is for this reason that the United States seems to have insisted that Hungary, Slovakia, and Romania come to an agreement to sign and ratify the aforementioned treaties on good-neighborly relations and friendly cooperation (which integrated the Framework Convention as obligatory among the parties). Europeans and Americans alike were, and still are, preoccupied with ethnic (and religious) conflict in ex-Yugoslavia, but also in other parts of Central and Eastern Europe. Such conflicts are obviously a threat to democratic security in the region.

The Committee of Ministers, in accordance with the decisions of the Vienna Summit, adopted the Framework Convention and never expressed disagreement with the assembly's insistence that new member states sign and ratify it. Still, it is clear that some of the older member states will not sign the convention, for either reasons of principle concerning the equality of all citizens before the law or the massive presence of noncitizens on their national territories. So far, the convention has not been signed by Andorra, Belgium, France, and Turkey. "Equality before the law" defines more particularly the position of France. When the convention was opened for signature, the French government asked the country's highest administrative court for an opinion on two questions. First, is the convention compatible

with the French Constitution? Second,if not, could France still sign it with a reservation referring to Article 1 of the constitution, "equality of all citizens before the law without regard to origin, race, or religion"?

The court's reply to both questions was no. Signing with the proposed reservation, it said, would be contrary to the international legal principle of good faith. Turkey's legal position is the same (according to Article 10 of its constitution),though obviously further complicated by its reluctance to grant minority rights to its Kurdish population. Andorra invokes the fact that the majority of its inhabitants are foreigners, and Belgium is torn by its constitutional problems of cohabitation by its Flemish and Wallonian populations.[25]

Democracy: A Dynamic Definition

Democracy is not a static concept. Whereas the fundamental precepts of democracy remain immutable, its practices have changed over time. They have been reinterpreted and adapted to changing societies and to economic,scientific, and technological transformations. Among the actors involved in this process in Europe is the European Court of Human Rights, which, like the U.S. Supreme Court, has been called upon to determine what limitations are necessary and which freedoms must be absolutely protected in democratic societies undergoing profound societal changes.

Because the Council of Europe was conceived from the outset as an association of democratic states, it became a kind of repository of democratic values in Europe. Unless Europe's institutional landscape changes radically some day—which would be the case if and when the EU extends across the entire continent—the Council of Europe will remain the widest European intergovernmental organization. In short, the Council of Europe represents a kind of continental consensus on democratic standards.[26]

The closest thing to an operational definition of democracy in Europe emerged from the first Strasbourg Conference on Parliamentary Democracy held in 1983.[27] The conference unanimously adopted the Strasbourg Consensus, which enumerated the indispensable ingredients of a genuine democracy:

> Human freedom and human dignity, freedom of speech, freedom of thought and freedom of conscience, the right to criticize and the right to freedom of movement are indispensable foundations of human co-existence. Their protection and enhancement are central to all action by the state.
>
> This protection is served by:
>
> - the citizen's right to choose and change government in elections conducted under universal suffrage and by secret ballot,
> - the responsibility of the executive to the elected representatives of the people,[28]
> - the right and duty of those elected representatives to regulate life in society by means of laws and to control the executive.
>
> *A democracy is an open society in which all state power is derived from the people.*
> This implies:
>
> - the right to participation and consultation in political decision making at the local, regional and national level.

- free access to information and free choice between different sources of information,
- the freedom of the press and the media,
- the freedom to form political parties and to stand for political office,
- freedom of association, including the right to form trade unions,
- the right to participate in the determination of working conditions,
- freedom from slavery and the exploitation of human labor.

Democracy guarantees human dignity. This implies:

- the right to life, liberty, and respect for the human person,
- freedom of speech, thought, and conscience,
- freedom of religious observance,
- free movement of persons, goods, and information,
- the right to school and post-school education, preparing the individual for life in a democratic society.

Equality before the law regardless of sex, race, color, creed or birth, requires:

- an independent judiciary,
- the possibility of subjecting all decisions of the executive to judicial scrutiny,
- the subordination of the police and the armed forces to the elected government,
- the right to privacy and protection of personal freedoms.

In a democracy, these rights and freedoms are subject to only such restrictions as to secure protection of the rights and freedoms of others.[29]

The dynamic process of defining democracy continues as new states from Central and Eastern Europe are incorporated into the "family of democratic nations." The particular challenges facing these countries in their transitions to democracy (with regard to national minorities, for example) have forced a further reexamination of the meaning of democratic freedoms and an extension of protection to cover cultural rights and minority languages.

The Rapid Pace of Eastward Expansion

The first East European state to make known its wish to join the Council of Europe was Hungary. In November 1988, Gyula Horn, then secretary of state for foreign affairs, announced that his country—still part of the Soviet bloc—wished to become the twenty-fourth member of the council. As evidence of its intent to distance itself from the Soviet bloc, Hungary could point to its unsuccessful armed uprising against the Soviet empire in 1956. Then, in the autumn of 1989, Hungary broke the law of the "Community of Socialist States," when the Hungarian and Austrian foreign ministers jointly set out to cut the barbed wire dividing East and West at the border between the two countries and let thousands of East Germans flee to West Germany via Hungary and Austria. Hungary held free and fair elections in March–April 1990, and in November 1990, Hungary became the first former communist country to join the Council.[30]

Poland was disappointed to have been bypassed by Hungary, considering that the Solidarity movement, founded in 1980 and crushed by General Jaruszelski in December 1981, entitled Poland to be the first to join the Council of Europe. There was much sympathy

for Poland's position, even more so after the (partly democratic) elections of June 4, 1989: In a spirit of democratic transition, General Jaruszelski called upon Tadeusz Mazowiecki to be the first noncommunist prime minister. Polish disappointment grew when, in February 1991, following free and fair elections in June 1990, the Federal Republic of Czechoslovakia became the second ex-communist member state of the Council of Europe.[31] In October 1990, the council's Parliamentary Assembly had recommended to the Committee of Ministers that Poland be invited to become a member as soon as free general elections were held.[32] Indeed, after the July 1989 elections, only the Polish Senate (where Solidarity had obtained an overwhelming majority) could be considered democratically elected. In the National Assembly, 40 percent of the seats had been reserved for the Communist Party, in accordance with an agreement between Lech Walesa (then the leader of Solidarity) and Interior Minister General Kiszak. Following new general elections, Poland became the third member from the East in November 1991.

After some discussion, Bulgaria was admitted in May 1992.[33] One year later, three new members joined the council the same day: Lithuania, Slovenia, and Estonia.[34] In these three cases, the countries accepted the classical references to Article 3 of the statute and the willingness to "cooperate sincerely and effectively in the realization of the aim of the Council of Europe." They promised as well to sign and ratify the ECHR, including the formally optional clauses in Articles 25 (right of individual petition) and 46 (jurisdiction of the court). Further, the council's opinion on Lithuania insisted on the importance it attached to the principles enshrined in the council's Charter of Local Self-Government (ETS 122)—a reaction to clashes between the central government and the city council of Vilnius.[35]

Having "divorced" on December 31, 1992, the two federated republics of the Federal Republic of Czechoslovakia—the Czech Republic and Slovakia—separately became members in June 1993.[36] In both cases, the assembly insisted on the respect of minority rights, in accordance with its proposal for an additional protocol to the ECHR, in addition to the "classical" conditions and the prospective members' promise to sign and ratify the convention.

Whereas the admission of the Czech Republic passed without difficulty, that of Slovakia met with resistance from Hungary, which was preoccupied with the rights of the large Hungarian minority in Slovakia, notably with regard to its cultural identity: language, education, and other relevant attributes. Two specific concerns were the right to use surnames and first names in the Hungarian language, and the display of bilingual road signs, street names, and other similar signage in areas where a "substantial number of a national minority" are settled. The Hungarian representative threatened to veto Slovakia's admission to the Council of Europe if these points were not met.[37] The impasse was overcome through an initiative of Tarja Halonen, a member of the assembly, now Finland's foreign minister. The proposal introduced a system of monitoring commitments assumed by new members. For Slovakia, this includes the commitment to base its minorities policy on Recommendation 1201; the aforementioned points are unambiguously covered by Article 7 of that text.

The admission of Romania, whose membership in October 1993 brought the number of Central and Eastern European states admitted during that year to six, proved to be much more controversial. The admission was warmly supported by France, which saw Romania as an outpost of Latin civilization and an ally in the defense of "Francophonie." Indeed, for

Romania's educated classes, French had traditionally been the first foreign language. Other Latin countries,like Italy and Spain, also gave strong support to Romania's accession. In the end, a large majority of the assembly's members voted for a favorable opinion on Romania's membership. However, a long list of specific commitments by Romania and expectations expressed by the assembly was included.

Many parliamentarians expressed their uneasiness on Romania's membership, asking themselves if the admission of that country had not been premature,if democratic reform had gone far enough. The European press was generally critical. Subsequent monitoring reports confirmed that democratic institutions in Romania required further consolidation. Most observers would agree that the election of Emil Constantinescu in 1996 to succeed President Ian Iliescu (an ex-Communist who had become an opponent of Ceaucescu before the latter's summary trial and execution in December 1989) constituted a positive development.[38]

After a temporary interruption in the enlargement process, 1995 again saw admission of five new members. In February, Latvia was finally admitted,two years after the two other Baltic states. The main reason for the delay, despite the confidence and sympathy this small country enjoyed,lay in the protracted discussions on its new law on citizenship, considered unfair to the country's ethnic Russian community and other minorities. It has been argued —not without justification—that on the question of citizenship, the Council of Europe and OSCE's human rights commissioner have treated Latvia much more severely than the Czech Republic. Again, this new member was admitted with a long list of specific commitments to undertake democratic reforms.

In July of the same year, Albania and Moldova were admitted.Once more, the process was not without hurdles, as indicated by the length of the assembly's opinions to the Committee of Ministers (188 and 189), with very specific indications and commitments on necessary reforms. The Moldovan case was further complicated by the problem of Transdniester, the ethnic Russian enclave, which still awaits a satisfactory solution. Under the rule of Igor Smirnov, Transdniester constitutes a relic of totalitarian communism.[39]

Regarding Albania's membership, the suspense continued until the very last moment. It was late in the night of June 26, 1995, when Speaker Arbnori agreed with the Swiss rapporteur of the Parliamentary Assembly to sign the commitments, which were included the next morning in the text to be voted on by the assembly. Three years later—confronted with a still chaotic situation in Albania and the international community's inability to resolve it—one cannot escape the conclusion that Albania's admission was premature. It seems that too much confidence was placed in President Berisha's image as a committed democrat, but his personal charm was not lost on many politicians of the Council's older member states. Events also have shown that the Council of Europe alone is not in a position to master such situations. As Russian Communist leader Gennady Zyuganov has warned,if an "Albanian situation" arose in Russia, it would be completely uncontrollable.

Macedonia and Ukraine joined the council in November 1995. Again,long lists of commitments and expectations were included in the assembly's Opinions 190 and 191 on the countries' membership. For Macedonia, with its multiethnic composition,minority rights were a particular issue. The opinion on Ukraine took note of reform measures promised by the Ukrainian authorities (such as the preparation of a new constitution and a series of

legal and judicial reforms) and Ukraine's commitment to sign and ratify a number of key conventions,including the abolition of the death penalty, the anti-torture convention,the Framework Convention for the Protection of National Minorities, and the Charter of Local Self-Government.

Whether or not to invite Russia to become a member of the Council of Europe was no doubt the most difficult decision in the organization's history. However, the Soviet Union had already staked an informal claim as early as 1989, when Gorbachev prepared to visit the council. On the same occasion, the director general for security and cooperation in Europe declared the Soviet Union's "readiness" to adhere to the ECHR.[40] In the summer of 1989, the USSR Supreme Soviet was granted the newly created special guest status in the Parliamentary Assembly, a status the Russian Federation inherited. Whereas the latter applied for full membership in May 1992, the procedure progressed slowly for two main reasons.

First, the council was divided on the question of whether Russia should be a member at all. A former president of the assembly had summed up this quandary with the phrase "part or partner?"[41] In other words, should Russia be integrated into the Council of Europe as a full member, or should some kind of cooperative relationship be established? In the beginning, a number of member states, such as the Netherlands and countries that had suffered under the Soviet empire—like Estonia and the Czech Republic—expressed opposition. Others were half-hearted in their support, and many diplomats expressed their anxieties behind the scenes. However, it soon became clear that the major member states,among them the "Big Four"(France,Germany, Italy, and the United Kingdom), wished the council to admit Russia for overriding political reasons. Russia could not, at least for a very long time, become a member of the EU or NATO, but it was important to link that country firmly to Europe. The council of the EU also appealed to the Council of Europe to admit Russia "as soon as possible."

Second, it was obvious that Russia's internal legal order did not meet the Council of Europe's standards.Given the sheer size of the country and the central government's insufficient control over its distant republics, it was clear that it would take a very long time before Russia could meet those standards. Indeed, the distinguished lawyers mandated by the Parliamentary Assembly to examine the country's conformity with council standards concluded in October 1994 that, "the legal order of the Russian Federation does not, at the present moment,meet the Council of Europe's standards as enshrined in the Statute of the Council and developed by the organs of the European Convention on Human Rights and Fundamental Freedoms." However, they added that they "were, of course, not asked to utter an opinion on the political question whether the Russian Federation should be admitted to the Council of Europe. . . ."[42] Was this not a tacit invitation to disregard their own findings?

Following the report, President Boris Yeltsin took the unprecedented step of sending the presidential chief of staff to Paris to meet the assembly's president and hand him a reaction to the report—not to refute the lawyers' conclusions, but to enumerate the measures Russia was undertaking to meet the Council of Europe's standards.

When Russian armed forces intervened in Chechnya, the council's member states,like most other Western governments (including the United States) were very careful in expressing their official opinions about the legality of the intervention. Indeed,some Western countries were wary about the possibility of secessionist movements within their own

borders. Therefore,criticism of Russia's action focused exclusively on massive violations of human rights, which—unlike Moscow's actions to prevent secession—were not an internal affair. The admission procedure was interrupted in February 1995, but resumed in September of the same year on the grounds that Russia was henceforth committed to finding a political solution.

Governmental pressure in favor of Russia's admission continued. Some of the assembly's parliamentarians admitted this during the January 1996 plenary debate. Others indignantly rejected the notion that a member of parliament could be pressured by the executive. However this may be, on January 25, 1996, the Parliamentary Assembly adopted by a large majority Opinion 193 in favor of Russia's membership. Not surprisingly, the opinion is the longest ever adopted by the assembly. It enumerates measures of legal reform and other steps taken by the Russian Federation in the direction of democracy, followed by a list of twenty-five precise commitments by the Russian authorities.[43]

The latest country to be admitted (as of March 1998) is Croatia. Its application led to another very controversial discussion in which the Austrian and German delegations were Croatia's strongest,if by no means uncritical, supporters. Criticism centered on President Tudjman's autocratic tendencies, restrictions on the freedom of expression,interference in the autonomy of local authorities, human rights violations against non-Croats,and lack of cooperation in the implementation of the Dayton Accords. Opinion 195, adopted in April 1996, contains twenty-one commitments by the Croatian authorities, to which is added a list of further expectations of the assembly. The case of Croatia is interesting in that, contrary to normal practice, the Committee of Ministers did not issue an invitation at the earliest opportunity following the assembly's opinion. The committee had serious doubts,shared by the council of the EU, about the democratic character of the Croatian regime. In May 1996, the assembly joined the ministers' position and declared that shortly after the adoption of Opinion 195, the behavior of the Croatian government indicated that it did not take its commitments seriously.[44] The Committee of Ministers decided to consider the matter again in the autumn. Croatia's admission finally took place in November 1996, but there is continued concern about the democratic progress of this country.

At present, four membership candidacies are under consideration in the Parliamentary Assembly: Armenia, Azerbaijan, Bosnia and Herzegovina, and Georgia. Bosnia and Herzegovina requires internal consolidation before Council of Europe membership can seriously be envisaged.[45] Concerning the three Transcaucasian states (Armenia, Azerbaijan, and Georgia),there seems to be a tacit agreement that they should all join at the same time, even if the official policy is that every country should be admitted on its own merits. It is Turkey's position, in particular, that there should be no discrimination between Armenia and Azerbaijan in terms of membership criteria. Both hoped to accede to the Council of Europe in 1997, but neither is ready yet in democratic terms. Nor is the territorial dispute between the two countries settled—a matter that requires good will on both sides and the cooperation of OSCE. The case of Belarus is shelved for the time being following the suspension of its special guest status. Until genuine democracy appears in what remains of Yugoslavia (Serbia and Montenegro)—and the brutally repressive policy, notably against the Albanian minority, is abandoned—membership of that state cannot be seriously

considered, no matter how far one stretches the interpretation of Article 4 of the statute and the council's "school of democracy" role. In the Yugoslav case, the council's democratic credibility is at stake. Thus it came as a surprise that Yugoslav president Slobodan Milosevic dispatched Deputy Foreign Minister Brankovic to Strasbourg on March 19, 1998 to hand the council's secretary general a formal letter of application.

If all the countries mentioned become members of the council, it will reach its geographical limits—unless new independent states are established. Contrary to OSCE practice,the Council of Europe has never considered membership of the Soviet successor states in Central Asia (Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). After some debate, the assembly and the Committee of Ministers agreed that membership should be geographically limited to European states, with the exception of states whose territory extends beyond the European domain;indeed, Turkey had already set a precedent.

The Council as a "Community of Values" or a "School of Democracy"

The Council of Europe's rapid geographical enlargement after the fall of the Berlin Wall provoked a wide debate in the council's statutory bodies—the Committee of Ministers and the Parliamentary Assembly—as well as in the Secretariat and in the media. The question was whether the Council of Europe would cease to represent a *community of values* by admitting states whose internal order did not conform with the standards and practices of established democracies.

Those who feared such a development recalled that the Council of Europe was founded in 1949 to promote and protect the rule of law, human rights, and fundamental freedoms, and to provide an institutional framework among the countries of Europe for common action "to achieve greater unity between its Members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage."[46] In the words of the statute's preamble, the council was created to enhance the community of "spiritual and moral values . . . which form the basis of genuine democracy."

In the forty years from its founding to the collapse of the Soviet empire between 1989 and 1991, the Council of Europe had admitted thirteen more members,incorporating every independent state in Europe, except those of the Soviet bloc and Andorra (and Monaco, to the extent that it can be considered a sovereign state).[47] During this period, admission was a relatively uncomplicated process, requiring an opinion of the Parliamentary Assembly and a formal invitation by the Committee of Ministers. According to statutory law, if a state were "able and willing" to accept the principles of the Council of Europe and work towards its goals, it could be invited to become a member.

The expansion of the Council of Europe to include the countries of Eastern and Central Europe made the admission process far more intricate, as the incorporation of the former communist states presented a unique set of problems. These countries had only just begun the process of democratization and did not measure up to the standards regarding protection of human rights, the rule of law, and political pluralism. Even where their legal and constitutional orders reflected democratic principles,they lacked the support of a civil society to make them truly effective. Perhaps no one better explained the problem than Sergei Kovalev, Russian president Boris Yeltsin's former human rights adviser, when he spoke before a joint

meeting of several committees of the Council of Europe's Parliamentary Assembly on January 30, 1995 on the situation in Russia:

> [T]he cause lies not only, or not so much, in ill will on the part of the authorities, whether local or federal. Nor does the problem lie merely in unsatisfactory laws. It is rooted above all in the extremely low level of legal awareness both of authorities and of the people. After all, what is the point of proclaiming civil rights and freedoms in the constitution if the people are incapable of asserting them and unaccustomed to doing so? What purpose is served by good laws if the individual citizen is not prepared to obey them? What is the point of reforming judicial procedures if people prefer not to go to the court but to defend their interests through other, often criminal channels? It will take years of intensive work before the majority of the population arrives at the necessary level of legal awareness.[48]

Thus, despite an obvious thirst for democracy after so many years of totalitarian rule,the reforms they had already undertaken, and their desire to join Western organizations,the countries of Central and Eastern Europe were not and could not immediately be considered part of the European community of values represented by the council. As a consequence,many critics believed the prospect of rapid expansion would be damaging to the council's integrity and credibility. Hasty enlargement,they argued, would dilute the community of values that the council was designed to preserve and to promote.

These concerns are certainly not unfounded. One can assume that in the enlarged Council of Europe, the overall degree of observing democratic standards,though formally accepted, is lower now than before enlargement.Only the future will show if this situation is limited to a period of transition or will endure and have repercussions in the older member countries.

In contrast to what might be called the "orthodox purist" notion of the council's purpose, others argue that the Council of Europe should be viewed as a *school of democracy*, transmitting democratic values and encouraging the practice of democracy in states where it is not well established. For example, despite his critical evaluation of the situation in Russia and the fact that he had fallen out with Yeltsin, Kovalev pleaded for his country's admission, believing that membership would speed up Russia's democratic transition. Proponents of this school of thought reasoned that the community of values was a principle and objective in the Council of Europe, but that it had never been a rigid doctrine. Time and again, the council admitted new states whose internal democratic order was not perfect. Countries that were in most ways solidly democratic, such as Switzerland and Liechtenstein,joined the council at a time when women were still deprived of the right to vote. Upon membership in the council, both fulfilled their pledge to remedy this situation in a short time.

Portugal was admitted in 1976 with a constitution that would certainly be unacceptable for a new member state today. Its contents had been strongly influenced by the left-wing forces that played a major role in the 1974 Carnation Revolution. Thus, the preamble fixed the establishment of a "socialist society" as an objective of the new republic.[49] Article 82 permitted expropriation without compensation (contrary to the first protocol of the ECHR). Above all, Articles 142–149 allowed a revolutionary council of military officers to veto any laws adopted by the country's legislature. In the subsequent revisions of the constitution, all the objectionable provisions disappeared. These examples suggest that it is better to

integrate "imperfect" candidates for membership and engage them in constructive dialogue than to exclude them.

This argument could be supported by maintaining that both Switzerland and Liechtenstein—despite their limited suffrage—were solidly democratic countries, and that council membership encouraged them to extend the voting right to women. The situation in Portugal was probably more serious, at least for a while. In any case, there is no common measure between these problems and the kinds of challenges the Council of Europe faces today. Yet there is a psychological aspect to this debate: The newcomers from Central and Eastern Europe should know that "Westerners" who joined earlier were also subject to scrutiny. Perhaps there is an unspoken hope that if, under the pressure of the Parliamentary Assembly, new member states accept standards not yet recognized by older member states, the latter will follow in due course.

Protagonists of the school-of-democracy concept consistently maintain that the basic legal standards of the Council of Europe have not been lowered to admit the emerging democracies in Central and Eastern Europe. The statutory rules have not been changed. Rather, partly in response to this concern, additional membership conditions were developed and imposed on candidate countries according to their specific situations. Such conditions commit new member states to undertake reforms, with the assistance of the Council of Europe, to bring their legal, political, and social systems in line with the council's standards. In such a way, the council will place the new member states in an institutional framework for constructive engagement,allowing the council to convey democratic know-how and evaluate progress.

Though not formally enshrined in a Council of Europe document, the school-of-democracy concept can now be considered the council's official doctrine, supported by the Committee of Ministers, the Parliamentary Assembly, and the secretary general. This doctrine is implicit in the council's decisions to extend membership to sixteen former communist states in Central and Eastern Europe between 1990 and 1996, as well as in its programs of assistance and cooperation. The council has obtained commitments from each of these new member states to undertake the reforms necessary to conform with democratic standards. It has also secured the signature, and the promise of ratification within constitutionally reasonable time limits, of the ECHR, as well as other key treaties such as the Convention for the Prevention of Torture and Inhuman and Degrading Treatment, the European Social Charter, and the Framework Convention on the Protection of National Minorities. The council insists on accession to these conventions as conditions of membership.

A key question, of course, is whether the commitments are implemented—a matter addressed in this study's section on monitoring and in the case studies.

Three

Building and Consolidating Democratic Security

This section addresses the practical application of the school-of-democracy concept. Before and after entering the council,member states go through a process of evaluation, assistance, and cooperation in democratic development and monitoring of commitments made at the time of accession. A few case studies (Estonia, Romania, and Russia) illustrate and assess the effectiveness of the council's procedures.

Evaluating Readiness for Membership: The Admission Process

If the council is to remain a community of values—even in its less stringent interpretation as a school of democracy—the various stages of the admission procedure should establish that the applicant country is ready to become part of that community. Accordingly, the procedure to assess the conditions of membership (namely, in Articles 3 and 4 of the statute and the Committee of Ministers' requirement to consult the Parliamentary Assembly before issuing an invitation) has become more refined over the years,particularly since the disappearance of the Iron Curtain.

First,there is now a preparatory stage of membership, in the form of special guest status with the Parliamentary Assembly. This was introduced in May 1989, before Gorbachev's visit in July of that year. The Parliamentary Assembly thereby applied the school-of-democracy concept, in a very practical sense, before the term came into general usage.[50] The assembly's rules of procedure stipulate that "the Bureau may grant Special Guest Status to national legislative assemblies of European Non-Member States which have signed the Helsinki Final Act of 1 August 1975, the Charter of Paris for a New Europe of 21 November 1990, accepted the other instruments adopted at the OSCE conferences, and which have signed and ratified the two United Nations Covenants of 16 December 1966 on civil and political rights and on economic,social and cultural rights . . . (Rule 55a)."[51]

Under special guest status,nonmember parliamentary delegations can participate in debates in plenary session and in the work of committees,though without the right to vote. They are accorded the same number of seats as if they were full members, except that they do not have substitutes. For countries where no genuine parliaments had been in existence until 1989, the new status offered practical training in the fundamentals of parliamentary democracy. Most of the Central and East European guest members, both former members of old communist assemblies and new members of parliament, quickly learned to participate in parliamentary debates and committee work and to abide by parliamentary rules of procedure.

The assembly instituted special guest status (an ingenious invention of Peter Sager, former member of the Swiss delegation) in 1989, and it became an important "preparatory

school" for full membership.[52] It taught politicians who had no previous experience with democracy the "rules of the game" to be observed in the plenary sessions and committees of a democratic assembly. These politicians, as well as their delegation secretaries and assistants,had to become familiar with the assembly's specific rules of procedure. As members of the assembly, they had to learn, for example, to respect the rulings of the chair, to distinguish between a genuine point of order and a disguised intervention on matters of substance, and to abide by limits on speaking time. It took some time for some of these guest politicians to understand that they were expected to speak as parliamentarians and not as representatives of their respective governments. This is not always easy when sensitive national interests pit one delegation against another. At the same time, guest politicians had to accept that the council's Parliamentary Assembly was not the place to sort out domestic political differences.

As of August 1998, four nonmember parliaments still hold special guest status: Armenia, Azerbaijan, Bosnia and Herzegovina, and Georgia. The special guest status of Belarus was suspended in January 1997 as a consequence of the 1996 unconstitutional election of a new parliament and limits on democratic freedoms (including freedom of the press) under the authoritarian regime of President Aleksander Lukashenka. All five of these countries have formally applied for Council of Europe membership.

A prospective member will normally make inquiries before submitting a formal application, to ensure that it will not be rejected outright. The application letter is addressed to the secretary general, who forwards it to the Committee of Ministers. In the past, the committee immediately transmitted it to the assembly for opinion. In recent years, it has become the practice for the Committee of Ministers to proceed to a preliminary exchange of views, after which it may communicate to the assembly some basic considerations on matters it wishes explored. Although the assembly's opinion is not legally binding, it does have political significance. There is now general agreement that the Committee of Ministers would not invite a state to become a member against the Parliamentary Assembly's will.[53]

In preparing its opinion, the assembly will consider the internal legal and political order of the candidate state in relation to council's standards. The first step is to appoint a group of eminent lawyers to undertake a legal appraisal. This step was introduced at the suggestion of the Russian special guest delegation when the council began considering the membership applications of the three Baltic countries. The Russian delegation maintained that these states,especially Estonia and Latvia, violated the human rights of their Russian minority communities and suggested that this situation be examined before the council proceed any further with the admission procedures. The assembly followed this suggestion by appointing for each of these states a team consisting of one member of the Court and one member of the Commission of Human Rights (who acted more in a personal capacity). The method has since been applied to all candidates—including Russia, for which a team of six judges and commissioners was appointed.

On the basis of the legal experts' report, the assembly rapporteurs continue their work. On average, the procedure takes two years,sometimes longer, as in the cases of Russia and Romania. When the competent committees (now the Political and Legal Affairs Committees) come to the conclusion that membership can be recommended,they prepare a draft opinion, which requires approval by a two-thirds majority in plenary session.

The opinion first evaluates the country's internal situation,including steps taken to adapt to Council of Europe standards (for example,free and fair elections, constitutional and legal reform, and accession to key conventions). In the past, the opinion then simply concluded, in the terms of Article 4 of the statute, that the applicant state was considered "able and willing to fulfill the provisions of Article 3" (that is, the basic membership conditions).Only occasionally, as in the case of Liechtenstein, did the assembly express additional expectations.

Since the mid-1980s, it has become a rule that no state can become a member without simultaneously signing and promising to ratify the ECHR. Since 1989, this includes accepting the right of individual petition and recognizing the court's jurisdiction. As mentioned earlier, the ECHR (the council's "Bill of Rights") is now considered part of the organization's "constitutional law," and the Court of Human Rights has developed into a kind of "Supreme Court of Europe" in matters pertaining to human rights.

During recent years, the number of additional commitments by applicant states recorded in the assembly opinions has become larger, particularly since 1995.[54] Thus, the opinion on Latvia contains thirteen such commitments; that on Moldova, eighteen; on Albania, seventeen; on Ukraine,twenty-three; on Macedonia,twenty; on Russia,twenty-five;and on Croatia,twenty-nine. This striking increase in the number of commitments does not necessarily imply that the situation in one country is less satisfactory than in another. Rather, it reflects a tendency on the part of the assembly to become more perfectionist. Some observers consider it unfair to new member states to impose conditions that have not been met by some of the older members. It could also be argued that the new members that acceded since 1990 were treated unequally simply because the council—like all other European organizations—was unprepared for the changes in Central and Eastern Europe, and that the subsequent enlargement process went too fast. As such, the council could not define a clear enlargement policy in good time.

Some have argued that in the Committee of Ministers, certain commitments imposed by the assembly go well beyond what is strictly required by the statute. For example, commitments to sign and ratify all protocols to the ECHR or to adhere to specific conventions (anti-torture,minority rights), which are not generally binding membership conditions, are seen as excessive. This is not surprising. If some of the same conditions were imposed on a number of older member states,they would indeed not qualify for membership. Yet, if the assembly asks more of the new member states, the additional requirements appear justified in countries that have been under totalitarian regimes for many years. Additionally, new members' adherence to Council of Europe legal instruments could possibly make the network of common legal standards weightier and place moral pressure on older members not to lag behind.

However, this asymmetry of commitments may have a negative effect in the long run. As new member states perceive that older members do not follow the same rules,new members may feel less obliged to abide by their commitments, and the community of values may indeed become a diluted community. In other words, the Council of Europe may indeed face a fundamental trade-off between its role as a community of values and that of a school of democracy for the new East-Central European member states. The debate on such a trade-off was rekindled in mid-1997 by none other than the council's outgoing

deputy secretary general, Peter Leuprecht, who seized the occasion of his resignation to express his disagreement with the council's enlargement policy.[55]

Cooperating for Democratic Development: Programs of Assistance and Cooperation

In the wake of the democratic revolutions that swept over Central and Eastern Europe during 1989–90, it was clear that toppling the communist regimes was necessary but not sufficient to establish democracy as the alternative to totalitarian rule. Institutions, expertise, and experience were all lacking. Furthermore, the collapse of Soviet-style command economies, doomed as they were, entailed the risk of serious economic crises. As a consequence, the emerging democracies of Central and Eastern Europe faced substantial obstacles to their consolidation. They required new constitutions describing the functions and offices of the state and the selection process for those offices, a thorough revision or replacement of laws inspired by communist ideology, civilian control of the military, and the development of human rights protections. All had to be put into action before these countries could even be considered "paper" democracies (that is, democracies in name only). Simultaneously, the states' leaders had to stabilize and liberalize their economies; protect their borders from international threats; address internal conflicts among ethnic, regional,and religious groups; and maintain their own authority and stability. Naturally, they sought assistance from outside.

Individual states, as well as intergovernmental organizations and NGOs attempted to facilitate and influence this transition process. In consultation with the countries concerned, and according to their needs, the Council of Europe developed two types of assistance and cooperation programs:intergovernmental and interparliamentary programs, the former being by far the more important in financial terms. Democratic development assistance is extended, where requested, before and after accession. The 1998 program covers activities in all sixteen new member states from Central and Eastern Europe as well as in five nonmember states that are candidates for membership (Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, and Georgia).[56]

On the intergovernmental side are four general programs of democratic assistance: Demosthenes and Demosthenes-bis (for new member countries and for candidate countries, respectively), Themis (and Demo-Droit), LODE (for "LOcal DEmocracy"), and the secretary general's New Initiative (for European countries of the Commonwealth of Independent States, or CIS).[57] Demosthenes and Demosthenes-bis are umbrella structures that incorporate the Council of Europe's various programs on human rights,minority rights, equality, legal cooperation,social affairs, youth, the media,cultural heritage, and education. Activities under the Demosthenes and Demosthenes-bis programs aim at assisting candidate and new member states to fulfill the statutory requirements of membership as well as specific commitments undertaken when joining the organization. As such,they contribute to the progressive,smooth integration of the states concerned in the various structures and the work program of the council and its legal and conventional practices. Particular attention is paid to the compatibility of existing (or planned) national legislation with European standards as enshrined in the various European conventions and, primarily, the ECHR.

In its Themis and Demo-Droit programs, the Council of Europe sponsors legal training for agents in the judicial and law enforcement process—from judges,lawyers, and notaries to prison officials and the police. The goal of these programs is to make law enforcement and the functioning of the judiciary compatible with the rule of law as understood in an established democracy. The programs focus on redefining the role of the police and public prosecutors and reforming the trial process, the prison system, the legal profession, and the justice ministries.Finally, in cooperation with the Congress of Local and Regional Authorities of Europe,[58] the Council of Europe has designed a variety of programs to enhance the functioning of democracy at the local level. These programs are in line with the principles enshrined in the 1985 European Charter of Local Self-Government, recognizing that overcentralization was a prominent,antidemocratic feature of these former communist systems. These activities for local officials and administrators are grouped together in the council's LODE program.

Each program seeks to address the specific problems within its jurisdiction through the training of Central and Eastern European officials, policymakers,lawyers,journalists, and other political or civic leaders. It is a cooperative endeavor, with individual projects set up at the behest of a member state or a membership candidate seeking technical advice from the council. In other words, democratic assistance programs are initiated by the executive or the legislature of the new or prospective member state. The programs consist of exchanges of representatives and officials, training sessions and seminars, and advisory reports tailored to the needs of the applicant country. The range of services the Council of Europe offers is broad and multifaceted.[59] The categories of democratic assistance activities include the following.

Expert missions. The Council of Europe sends teams of experts to review host-country legislation or to make proposals regarding particular legal or constitutional problems, such as citizenship for ethnic or linguistic minorities, election systems, gender equality in the law, broadcasting, protection of intellectual property rights,social security, and health care.[60]

Experts from the Council of Europe or those acting on behalf of the council advised the authorities in Estonia on the drafting of a new citizenship law, since the country had been criticized for making language tests for citizenship too difficult.[61] In fact, during the Soviet era, the Russian-speaking population had never found it necessary to learn Estonian, which is known to be a particularly difficult language. Experts from Council of Europe member states, employing similar tests, advised the Estonian authorities and thus directly influenced the form and content of the tests. The 1997 program for Estonia provided for specific legislative expertise from Council of Europe officials or experts from member countries on, for example, constitutional law, the penal code, and the code of criminal procedure.

For Romania, the subjects covered in 1997 concerned delinquency in meeting the council's commitments on tourism,immigration law, drug trafficking and money laundering, and the trafficking of arms and radioactive materials.

For Russia, expertise was provided concerning draft laws on the police and on the execution of sentences, and their compatibility with the ECHR.

Study visits. Officials,lawyers,magistrates, prosecutors, police, prison staff, journalists, civic leaders, and technical advisors from Eastern and Central Europe are hosted at the Council of Europe, or by institutions in member countries with the sponsorship of the

council, to gain first-hand experience in the conduct of their respective professions in democratic societies or to participate in relevant conferences.

For example, in the case of Estonia, the 1997 program included study visits by lawyers and members of the judiciary to the council's Strasbourg headquarters to acquaint them with the functioning of the Court and the Commission of Human Rights, and with the use of their databases. Another study visit was devoted to ascertaining the compatibility of domestic laws with the requirements of the ECHR.

The program of visits to the council headquarters and to member countries included seminars on the application of the European Social Charter, the anti-torture convention, issues of gender equality, the media,local authorities, police training and the prison system, and different aspects of European legal cooperation.

In the case of Romania, the 1997 program included similar types of study visits in the area of human rights, with emphasis on members of the judiciary.[62] One study visit concerned the role of notaries as guarantors of legal security.

Concerning Russia,study visits to Strasbourg were devoted to the European Social Charter (in preparation of its ratification by Russia), and to gender equality during visits to Italy and Denmark. Several visits are planned for the personnel of Russia's governmental Commission on Human Rights to examine the compatibility of domestic law with the ECHR.

Training programs. The council conducts or contributes to the organization of training programs in older and new member states, as well as to seminars, workshops, and conferences for civil servants, the media, prison officials, judges,lawyers,leaders of political parties, NGO officials, and others who work with various aspects of the rule of law, pluralist democracy, and human rights.

The 1997 program included a training seminar in Tallinn,Estonia, organized together with the Estonian Ministries of Foreign Affairs and Justice. It was designed for members of the procuracy and police on the implementation of the anti-torture convention. Another item in the program was a training workshop for police officers assigned to juvenile offenders.

In the case of Romania, the Council of Europe assists the country's magistrates school through the provision of expert lecturers (from the council or from member states) and documentation. "Training for trainers" and a training seminar on the European Social Charter are also foreseen. Further training programs concern conflict prevention in minority issues and interethnic relations.

For Russia, the 1997 program included training for judges and, with the participation of experts from the council's member states, for elected representatives at the local and regional levels on budgetary and taxation issues and on foreign economic relations. Other training programs concentrate on the ECHR, assistance in establishing a human rights center, the social charter, and the role and functioning of NGOs.

New units have been added to the council's secretariat to identify requirements and to manage programs.General responsibility for intergovernmental cooperation and assistance programs lies with the Directorate of Political Affairs. A new division was established within the Directorate of Legal Affairs for legal cooperation with the countries of Central and Eastern Europe. Similar specialized units now exist in the Directorate of Human Rights and the Directorate of Environment and Local Authorities.

In addition to the intergovernmental (or interexecutive) cooperation programs, the council's Parliamentary Assembly established a pan-European Program for Interparliamentary Cooperation (known as Demo-Parl) in 1991. Its purpose is to provide information and training to parliamentarians and their staffs in three general areas: the functioning of parliaments; the development of legislation in key areas, such as economic reform, human rights, international law, industrial relations, and agriculture and forestry; and documentation, translation, and interpretation. Under the Demo-Parl program, the council also monitors the obligations and commitments of member states and observes presidential, parliamentary, and local elections in new and prospective member states. It should be noted that the observation of elections has a specific significance for the Council of Europe, since it is part of examining a country's qualifications for membership.

Regarding the evaluation of these programs, it is not always easy to measure their effectiveness; however, in certain cases, the results are clear. For example, with the advice of council experts and the concurrent pressure of OSCE, Latvia finally adopted a citizenship law that is generally in accordance with the council's principles and thus removed the last obstacle to its admission to the council. Russia, Romania, and other prospective members at the time revised their codes of criminal procedure to weed out legal remnants of their totalitarian past. Romania's parliament considered draft legislation to ensure the independence of the judiciary. The same democratic reforms in constitutional and electoral laws are evident in other East-Central European states.

It is obviously much more difficult to evaluate the effect of seminars and training courses meant to convey to individuals democratic principles and democratic know-how and instill democratic behavior in office and in everyday life. Expenditures for such programs are "long-term investments" whose effects cannot be appraised in the short time since their inception.

The European Commission for Democracy through Law (otherwise known as the Venice Commission) was established in 1990 on an initiative of the Italian government to provide expert advice and opinions on constitutional and legal matters to "affiliated" states (new and prospective council members and others—for example, CIS states) on request.[63] The commission's experts focus on specific issues pertinent to the state in question, transnational legal issues, and the documentation of constitutional case law across Europe. The commission also engages in research, organizes seminars, and gives opinions on, for example, draft constitutions, electoral laws, and legislation for the protection of minorities.[64]

The creation of the Venice Commission was first met with a certain degree of skepticism. Was it necessary to establish yet another body inside the Council of Europe framework but independent of the council's institutional hierarchy—the Committee of Ministers, the Parliamentary Assembly, and the Secretariat—whose work would somewhat overlap the commission's? Experience has shown, however, that the services of the commission, perhaps because of their independence from governmental structures, are appreciated by Central and Eastern European countries as a useful complement to the council's official assistance and cooperation programs. However, not all Council of Europe member states are committed to the commission's work. The United Kingdom, among others, does not participate. The commission meets four times a year in Venice; subcommissions (on protection of minorities, federal and regional states, international law, constitutional law, and

democratic institutions,among others) meet as often as necessary. Members write opinions and studies throughout the year.

The Council of Europe also set up ***Information and Documentation Centers*** in Eastern and Central Europe to enhance knowledge of and public access to the council's activities. These centers are normally established in universities,public libraries, or NGO offices. In addition to providing information to individuals, organizations, and government bodies, some centers also conduct education and training programs to raise public awareness of democratic principles and their application to citizens' daily lives. Because Council of Europe publications and documents are usually published in the council's official languages (English and French) only, the centers also have translated and published key texts into the official languages of the respective countries. To date, centers have opened in Bulgaria, the Czech Republic,Estonia, Hungary, Latvia,Lithuania, Macedonia, Moldova, Poland, Russia, Slovakia, Slovenia, Romania, and Ukraine.

The effectiveness of these centers depends on several factors, such as the number and qualifications of staff,their sense of initiative, and their dynamism; the quality of available facilities; and the accessibility of the centers (most are located in capital cities, but some are in suburban locales and thus are used less frequently). Among other things, the centers' effectiveness is primarily a function of available funding. Thus, regarding the location of offices, the council largely relies on what the host country offers.

The democratic assistance programs, which account for approximately 10 percent of the council's total annual budget,are a major focus of council energies and resources. The council spent more than Fr 100 million, or 14.28 million European Currency Units (ECUs) —approximately $17.25 million—in 1997 to facilitate the consolidation of democracy in Central and Eastern Europe. To this amount should be added the substantial voluntary contributions of member states and observer states (like Japan), as well as the European Commission's contribution to various joint programs. Further, the Council of Europe often cooperates with other partners—governmental and nongovernmental—in the implementation of various activities.[65] This may be more than any other international organization spends on democracy-building in the region. Yet given the magnitude of the task, it is not enough. As the council's secretary general,Daniel Tarschys, said to the Parliamentary Assembly on April 22, 1997,"Penny-wise governments tell us that they have no money for this. Let us have the courage to expose the utter shortsightedness of that argument. The tragedies of the last few years [in the former Yugoslavia] have cost billions and billions to our taxpayers, not to mention the terrible human suffering involved. Preventive action, by comparison, costs peanuts."

Monitoring Democratic Reform

The 1949 Statute foresaw only the possibility of excluding a state that gravely violated its obligations under Article 3. It did not envisage a specific monitoring procedure. The problem of evaluating members' democratic practices became significant, qualitatively and quantitatively, with the wave of new accessions beginning in 1990. The council introduced monitoring in 1993, and even then only to overcome Hungary's resistance to the admission of Slovakia.

Under Order 488, the Parliamentary Assembly mandated the Political and Legal Affairs Committees "to report to the Bureau [of the assembly] at six-monthly intervals until all undertakings [by new member states] have been honored." Members of the Committee of Ministers criticized the order because it referred to "new member states" only. While this was justified on practical grounds, it implied a distinction among member states. Some representatives saw in this text an attempt to create a two-tier system (that is, older and newer members) inside the council. Therefore, the next text the assembly adopted on the same subject (Resolution 1031) referred to *all* member states:

> All member States of the Council of Europe are required to respect their obligations under the Statute, the European Convention on Human Rights, and all other Conventions to which they are parties. In addition to these obligations, the authorities of certain States [essentially, new members from Central and Eastern Europe] freely entered into specific commitments on issues related to the basic principles of the Council of Europe during the examination of their request for membership by the Assembly. The main commitments concerned are referred to in the relevant opinions adopted by the Assembly.

Under Order 508, persistent failure to honor commitments could lead the Parliamentary Assembly to revoke the credentials of delegations and, if the situation fails to improve, to recommend that the Committee of Ministers take action under Article 8 of the statute (suspension and exclusion).

What does monitoring consist of? Resolution 1031 refers to *obligations* (generally applicable to all member states) and to *commitments* (that is, specific pledges made at the time of accession to undertake certain action on democratic reform or to adhere to Council of Europe legal instruments, such as the Convention on the Prevention of Torture or the Framework Convention for the Protection of National Minorities). In fact, the assembly's monitoring process also takes into account *expectations* it may have expressed in its respective opinion on a membership application. For example, in its Opinion 195 on Croatia, the assembly lists nine expectations,including respect of international humanitarian law, effective guarantee of the rights and freedoms of national and ethnic minorities,freedom of the media, cooperation with the OSCE mission in Croatia, and revision of the local administration and autonomy act.

Monitoring is carried out by specially appointed rapporteurs. When they are in the member state concerned,they meet not only with ministers and other government representatives,parliamentarians,members of the judiciary, and police, but also with NGOs, religious representatives, representatives of ethnic minority communities, and human-rights and other groups.

What is the effect of monitoring? In most cases, monitoring cannot result in an immediate remedy to an imperfect democratic order. However, this does not necessarily reflect a lack of good will on the part of the states concerned. Certain promises may have been made hastily to meet the assembly's demands and thus obtain acceptance as a member of the council. Undue pressure after admission to fulfill these promises within a given period of time may lead to inadequate results. Important measures, such as reform of the criminal code or other key legislation, to make a new member more compatible with the standards

of a democratic society take time. What matters is that the assembly continuously reviews the implementation of member countries' commitments.[66]

If it becomes clear that a state is not moving beyond verbal assurances, the assembly should muster the political will to apply the means envisaged in its own adopted texts. One example is the aforementioned Order 508, which makes it possible to exclude a delegation from the assembly, or to initiate the procedure for the exclusion of a state from the council. But will there always be a majority to act when the membership of a major member state is in question, with all the political consequences suspension or exclusion may entail? For example, what would be the consequences if the council excluded Russia? This would no doubt give rise to grave concerns not only within the organization but beyond (including in the United States). At the same time, it can be argued that what may appear politically inopportune in the short term may have irreparable effects on the council's long-term credibility. Apart from collective moral pressure—the effectiveness of which should not be lightly brushed aside—the council has no other sanctions than those mentioned at its disposal.

In this vein, the assembly took an important step when it decided in Order 508 that monitoring reports should be submitted not to the bureau of the Parliamentary Assembly, but to the plenary.[67] Indeed, it may have been easier for the targeted state to induce members of the bureau (whose meetings are not public) not to pursue the monitoring process in general or on a particular issue. Reporting directly to the plenary has a double effect. On the one hand, it prevents negative reports from being swept under the carpet. On the other, the threat of a public debate in the presence of the media, including those of the country concerned, makes the authorities of that country normally more wary and more inclined to move ahead with the necessary reforms.

Numerous monitoring reports have already come to the assembly's bureau and to the plenary. Roughly, assembly monitoring covers the following areas:[68]

- Separation of powers, notably between the executive and the judicial branches of government.
- Independence of the judiciary, access to justice, criminal justice, the role and status of public prosecutors, the status of attorneys, and autonomy of the bar.
- Electoral law and proper conduct of elections, including campaign financing.
- The law of political parties.
- Parliamentary law, pluralist composition of parliament, minority representation, control over the executive, immunities, and rights and duties of the opposition.
- The use and control of special powers in emergency situations.
- Local and regional self-government.
- The relationship between domestic law and international human rights treaties.
- The effectiveness of constitutional and legal guarantees for human rights.
- Police training, prison conditions, and prison administration.
- Respect for privacy and property rights (restitution, fair compensation).

- Freedom of conscience and worship, freedom of expression, and independence of the media.
- Freedom of association,freedom of movement, and freedom of assembly.
- Equality between men and women.
- Minority rights,discrimination,citizenship legislation, and status of and education in minority languages.
- Policies to combat racism,anti-Semitism, and xenophobia.
- Settlement of international and domestic disputes by peaceful means.

After repeated discussions, the Committee of Ministers decided to set up its own monitoring procedure parallel to that of the assembly. To some extent, this was a kind of competition for influence between the council's two statutory bodies. The committee felt that a matter of such importance, which could lead to initiating the exclusion procedure for a member state, should not be left entirely in the hands of the assembly. Indeed,under the statute, it is for the Committee of Ministers to decide on the application of Article 8 (although it cannot do so without the assembly's advice and would not normally overrule the assembly). On November 10, 1994, the committee adopted a "Declaration on Compliance with Commitments Accepted by Member States of the Council of Europe." It agreed to "consider the question of the implementation of commitments concerning the situation of democracy, human rights and the rule of law in any member State which will be referred to it either by a member State, by the Secretary General, or on the basis of recommendations of the Parliamentary Assembly."[69] It also decided to seek relevant information available from other sources, such as the OSCE. The committee further asked the secretary general to "collect information or to furnish advice." Thereupon, the Secretariat assembled data on member states' respect of their obligations and specific commitments. So far, the reports it has submitted remain confidential.

If the Committee of Ministers succeeds in developing the 1994 declaration into an effective monitoring instrument, it could usefully complement and sustain the efforts of the assembly. However, the Committee of Ministers is a diplomatic body, with the strengths and weaknesses that implies. While it is backed by the authority of governments, it is more exposed to national pressures than is the assembly. The committee is unlikely to take decisive action unless there is a particularly grave and persistent violation of democratic rules and human rights (as in the case of the Greek Colonels' regime in 1969). This evaluation of the Committee of Ministers' role in monitoring member states' commitments,based on past experience,may need to be corrected in the future. However, for the time being, the assembly's continuous monitoring activities and the publicity of its reports promise to produce better results.

Case Studies: Estonia, Romania, and Russia

Estonia joined the Council of Europe on May 14, 1993. It agreed to sign and ratify the ECHR, base its policies regarding national minorities on the aforementioned Assembly Recommendation 1201, transfer responsibility for prisons from the Ministry of the Interior to the Ministry of Justice,institute a moratorium on executions,sign and ratify the

Convention on the Prevention of Torture, bring its criminal and civil codes into line with European standards, and treat fairly its "nonhistoric" Russian minority (that is, ethnic Russians who moved to Estonia following its annexation by the Soviet Union in June 1940).[70] Over the next three years,assembly rapporteurs visited Estonia three times.On each occasion the council published a report on their findings.[71]

Estonia ratified the ECHR with considerable delay in April 1996 and announced that ratification of Protocol No. 6, on the abolition of the death penalty, would be forthcoming shortly. It also ratified the Convention on the Prevention of Torture and the Framework Convention for the Protection of National Minorities. The rapporteurs considered these to be the "most important" of Estonia's commitments and therefore recommended closing the monitoring procedure, concluding that the Estonian authorities had made significant progress toward fulfilling their obligations and commitments. In January 1997, the Parliamentary Assembly followed this recommendation.[72] In March 1998, the Estonian parliament approved the ratification of Protocol No. 6.

In its resolution closing the monitoring procedure, the assembly nonetheless mentioned serious, ongoing problems with three aspects of Estonia's political and legal system:

1. *The detention of refugees and asylum-seekers.* Estonia's policy on these groups allows them to be detained as common criminals. In the opinion of the rapporteurs,this policy, especially in the absence of asylum procedures, violates the ECHR's Article 5 (right to liberty and security of person) and Article 6 (right to a fair and public hearing within a reasonable time by an independent and impartial tribunal). Unfortunately, Estonian public attitudes toward refugees reflect fears that the country will be overrun by asylum-seekers from Russia. The assembly thus reproached Estonia for detaining refugees and urged the authorities to both adopt appropriate legislation in keeping with international human rights standards and sign and ratify the UN Convention on the Protection of Refugees.
2. *The treatment of members of the nonhistoric Russian-speaking minority.* The rapporteurs noted a reluctance on the part of Estonian authorities to integrate nonhistoric Russians fully into Estonian society, finding that policies on both citizenship and residence permits for noncitizens,along with the lack of training facilities for learning the Estonian language,discriminated against Russian-language speakers.[73] In its resolution, the assembly urged Estonia to address these concerns.
3. *The "deplorable" conditions of prisons and detention centers.* The report, which included a description of Estonia's one pretrial detention center, noted that the Estonian prison system had not improved sufficiently since the country's accession. Though plans to reform the system are in the draft stages,money—and public willingness to spend it on prisons—appear lacking. The assembly urged Estonia to improve the state of its prison system, which violates the anti-torture convention, without delay.

Romania was admitted to the Council of Europe on October 7, 1993 on the understanding that it would complete certain reforms within given time limits (Opinion 176); monitoring of these commitments began shortly thereafter. The Political and Legal Affairs Committees drafted an initial report after two Council of Europe rapporteurs visited

Romania in March 1994.[74] A subsequent visit by three assembly rapporteurs in December 1995 resulted in an "introductory memorandum" addressed to the Romanian authorities.[75] Together with the response of the Romanian authorities, who answered point by point, the memorandum was made available to the public in November 1996.[76] The final report was issued in 1997, again on the basis of on-site information gathered by a group of assembly rapporteurs.[77]

In the opinion of the group, Romania had made sufficient progress by 1997 to warrant closing the monitoring process. The Romanian government had ratified the ECHR and all its protocols, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols, and the Framework Convention for the Protection of National Minorities. However, the monitors expressed concern that certain aspects of the Romanian legal and criminal codes and certain government practices were not in keeping with Council of Europe standards. The group's report focused on seven areas where reform is still necessary: the independence of the judiciary; provisions of the penal code classifying homosexuality as a criminal offense and prohibiting speech considered insulting or defaming; deplorable conditions in Romanian prisons; the situation of Romanian orphans; the disposition of property confiscated from churches (a matter where Romania, of course, does not stand alone); the treatment of former political prisoners and certain communities under the communist regime; and ongoing problems of intolerance, xenophobia, and racism,particularly regarding the Roma (Gypsy) population.

Most of these issues were mentioned in the Assembly's opinion on Romanian accession in 1993. Some are commitments that remain unfulfilled, and others are expectations expressed by the assembly. Although the Romanian government has not completed these reforms, it has made progress. For example, in keeping with the council's recommendations, a bill to reform the judicial system was sent to the Romanian parliament in late spring 1997 and was eventually adopted. The legislation sought to address in particular the concerns of the council's Parliamentary Assembly regarding an article in Romania's 1992 Judiciary Act that constituted a potential threat of executive interference in the independence of the judiciary.[78] In addition,although the provisions of the penal code regarding homosexuality have not been repealed, Romania's Constitutional Court struck them down, making it impossible to convict an individual on such charges.[79] Furthermore, the government appointed a secretary of state for minorities,set up a special parliamentary committee to review legislation dealing with minorities, and introduced a bill to amend education legislation so that individuals may learn in their mother tongues up to and including university education. All this shows that monitoring can indeed be effective.

Closing the monitoring process is not necessarily a permanent decision. It is done with conditions—in this case that Romania address the assembly's remaining concerns within one year or face a reopening of the monitoring process.

The **Russian Federation** acceded to the Council of Europe on February 28, 1996. Apart from Croatia, Russia entered into more commitments than any other new member state. Assembly Opinion 193 includes approximately twenty-five specific commitments and a number of additional expectations of the assembly. This is in itself not surprising, given the size of the country and its population, the division of the country into eighty-nine republics and autonomous territories, and the political difficulties facing Russia's leaders.

Three central themes dominate the Council's agenda regarding the Russian Federation:

1. The signature or ratification of some key Council of Europe conventions—for example, Protocol No. 6 to the ECHR on the abolition of the death penalty (signed in April 1997), the Charters for Regional or Minority Languages, and conventions on extradition and on mutual assistance in criminal matters.
2. Reform of Russian civil and criminal codes, the judicial and prison systems, the secret services,[80] and the armed forces.
3. Russia's compliance with specific areas of international law, particularly with regard to Chechnya and cooperation with international humanitarian organizations,and international treaties of which it is a signatory, such as the Treaty on Conventional Armed Forces in Europe.

Four months after Russia's accession, the Committee on Legal Affairs and Human Rights opened a procedure to monitor Russia's progress toward completion of its commitments. A year later the group of rapporteurs submitted an introductory memorandum to the committee and to the Russian parliamentary delegation for comment.[81] The delay stemmed from the cancellation of two scheduled visits by the Russian authorities.

Russia's record in honoring its commitments appeared to be not quite exemplary. Political circumstances obviously hampered the Russian government's efforts to comply with the council's commitments.[82] Nevertheless, the Duma (the Russian legislature's lower house) approved ratification of the ECHR in February 1998, two years after acceding to the Council of Europe. The Council of the Federation (the legislature's upper house) followed shortly afterwards. With Russia's ratification,all Council of Europe member states are parties to the ECHR.

However, the Duma signaled that, for the time being, it did not intend to approve the ratification of Protocol No. 6 on the abolition of the death penalty. This illustrates the relative value of commitments that are accepted by governments but not backed by legislatures. Russia has signed but not yet ratified a number of other protocols to the ECHR, as well as the Convention on the Prevention of Torture and Protocols Nos. 1 and 2, the Framework Convention on the Protection of National Minorities, the European Charter of Local Autonomy, and the European Conventions on Extradition and on Mutual Assistance in Criminal matters—all mentioned as commitments in Opinion 193. By August 1998, Russia had altogether ratified some thirty Council of Europe conventions or protocols—most of which, however, do not directly concern the democratization process.

Regarding further commitments in Opinion 193, Russia has not adopted a new code of criminal or civil procedure; transferred authority for the administration of justice from the Ministry of the Interior to the Ministry of Justice; reformed the Office of the Prosecutor, the secret service (particularly regarding the Federal Security Service's right to conduct criminal investigations and operate its own pretrial detention centers), and the armed services; developed an alternative to military service; revised Presidential Decree No. 1226 on banditry and organized crime (which, for example,allows for preliminary detention of up to thirty days where "sufficient evidence" exists of an individual's involvement in organized crime); or improved conditions in prisons and detention centers to prevent inhuman treatment.[83]

The problem with many of Russia's reforms is that even though the federation's constitution protects the human rights and fundamental freedoms of individuals within its borders, the practical application of the respective provisions is politically unpopular in a country where the crime rate is high, the population craves law and order, and the application of certain standards (for example, prison conditions) is considered too costly. Many rights are rendered illusory by the conduct of the police, or by the fact that the judicial system is overwhelmed by one of the highest rates of arrests and consequentially lengthy periods of pretrial detention. Political initiatives to address crime or homelessness—including Presidential Decree No. 1025 (which provides for the detention and forced deportation of "vagrants and beggars")—while intended to address significant threats to society, are nonetheless unconstitutional and in violation of international conventions and standards.

While awaiting the Monitoring Committee's full report, the Council of Europe's chief concerns with Russia's compliance have centered on the war in Chechnya and the refusal to sign and ratify Protocol No. 6 to the ECHR, on the abolition of the death penalty. As for Chechnya, in 1996 the assembly's ad hoc Committee on Chechnya reviewed the Russian military's violations of international humanitarian law—particularly its indiscriminate shelling and direct attacks on civilians—and condemned Russia for these acts. According to Human Rights Watch/Helsinki, Russia has not fulfilled its obligations to prosecute those responsible for human rights violations in Chechnya,initiating only a small number of judicial proceedings against Russian servicemen.[84]

Concerning Protocol No. 6, the State Duma, aware of the death penalty's popularity in Russia, rejected by a large majority the bill to reform the corresponding part of the penal code in March 1997. This is another example of how official promises or firm commitments can be thwarted if there is no majority in parliament to adopt the corresponding reform legislation. Though an unofficial moratorium on executions has been in place since August 1996, the Council of Europe's Parliamentary Assembly called an urgent debate in January 1997 on Russia's failure to comply with its commitment to halt all executions from the time of accession. In Resolution 1111 (1997), the assembly warned Russia that if it did not take steps to fulfill this commitment, the assembly would consider not ratifying the parliamentary delegation's credentials or would recommend more far-reaching measures to the Committee of Ministers. Since then, no more executions have been reported from Russia. In early August 1998, the country's justice minister declared that he expected capital punishment to be definitely abolished by April 1999.[85]

On the same issue, it is interesting to make a comparison with Ukraine. In January 1998, the credentials of the Ukrainian delegation were contested in the assembly because executions continued. The Rules of Procedure Committee concluded in favor of approving the credentials, arguing that the abolition of the death penalty was not a statutory condition of membership, that it was not in the ECHR, and that Protocol No. 6 was optional. The plenary approved the report. No doubt it considered the exclusion of the Ukrainian delegation politically inopportune. However, should one conclude from the Rules of Procedure Committee's reasoning that a country's commitments before joining the organization are legally irrelevant? In such a context, the committee may have done a disservice to the assembly's monitoring procedure.

With regard to Russia, the monitoring process will obviously continue for some time, but political setbacks cannot be excluded. In 1996, assembly president Leni Fischer had this to say: "Given the difficult situation in Russia, we cannot expect democratic reforms to be carried out with ease. Not admitting Russia to the Council of Europe would have had devastating psychological consequences. Acceptance of Russia, on the other hand, gives the Council a vested right to supervise its progress towards democracy and the rule of law, applying gentle pressure."[86]

Will "gentle pressure" eventually have the desired effect? The question is still open, and in this regard it may be appropriate to recall the discussion on the putative trade-off between the council's roles as a community of values and a school of democracy.

Four

European Democratic Security and United States Foreign Policy

Ever since the end of World War II, the United States has supported European unity. Recent confirmations of this policy were President Clinton's State of the Union Address on February 3, 1997, and Secretary of State Madeleine Albright's commencement address at Harvard University on July 5, 1997. Needless to say, this does not mean that Europe and the United States do not have diverging interests in certain areas, which may also produce political frictions from time to time.

U.S. Support for European Unity and Stability

After 1989, the United States became *the* leading international power, which implies the assumption of more responsibilities in world affairs—even more so, as the Europeans are often divided on international issues and thus unable to act in unison. The United States was led to intervene in two world wars and subsequently took the initiative for creating NATO to avert a third. After World War II, the United States undertook a momentous effort to shore up its own long-term security by facilitating economic recovery in war-torn Europe. The Marshall Plan, which celebrated its fiftieth anniversary in 1997, was unprecedented in history as an act of enlightened generosity.[87]

The United States encouraged the creation of the Organization for European Economic Cooperation (OEEC), later transformed into the OECD with American participation. The United States followed with interest the creation of the Council of Europe. In 1950, twelve U.S.senators and congressmen participated in a major European–American debate in Strasbourg at the invitation of the council's Parliamentary Assembly, then chaired by Paul-Henri Spaak (who later became NATO secretary general). Last but not least, the United States gave the creation of the European Communities,now the EU, its strong moral support.

Today U.S. foreign policy toward Europe is pursued through three types of relationships: bilateral relations with European states, multilateral diplomacy and cooperation in international organizations of which the United States is a member, and relations with European organizations.

Bilateral relations with individual nations will remain indispensable as long as Europeans, despite progress toward European unity, are incapable of speaking with one voice on certain policy issues that concern both Europe and the United States. Recent crises, such as the standoff between Iraq and the UN Special Commission over the weapons-inspection regime, revealed once again different political approaches between the United States and member states of the EU or the Council of Europe. As Henry Kissinger is said to have remarked once, "We would like to speak with Europe, but we don't know whom to call." We must also be aware that the geographical extension of European institutions to the East may temporarily reduce, rather than promote, political harmony inside these institutions.

While the United States is directly engaged in multilateral diplomatic relations with Europeans in OECD, NATO, and OSCE, it is also dealing with them in two specifically European international institutions of which it is not a member: the geographically wider Council of Europe and the more close-knit EU. In this regard, the EU is not only a negotiating partner on economic and trade issues but also, increasingly, a political interlocutor. However, the Council of Europe draws its moral force from standing up throughout its history for the principles of true democracy. It shares with the United States a community of values and, as a school of democracy, offers a yet insufficiently exploited potential for cooperation toward the common goal of democratic security. "The New Transatlantic Agenda," adopted at the December 1995 U.S.–EU Summit in Madrid, refers to a "new European security architecture in which the North Atlantic Treaty Organization, the European Union, the Western European Union, the Organization for Security and Cooperation in Europe and the Council of Europe have *complementary and mutually reinforcing* roles to play" (emphasis added).

International organizations become mutually reinforcing if they recognize each other's contribution to a common purpose; avoid "empire-building" competition (which does not mean there is no room for healthy competition); coordinate their activities (which means more particularly, in the context of this study, the manifold initiatives to spread and consolidate democracy); and make it clear that they are not working against each other, but toward a common goal.

A New Relationship between the Council of Europe and NATO

Not long ago, relations between the Council of Europe and NATO were practically nonexistent, in large part because of the council's statute and the presence of neutral states in its membership. Concerning the latter, informed public opinion in most of the neutral European states has evolved considerably in recent years. The day may not be far off when all or most of them would be ready for NATO membership.[88]

According to Article 1(d) of the statute, defense issues are excluded from the council's mandate, but the practical significance of this provision has receded over the years. Today it is understood that "the political aspects of defense" can be discussed in the council, with neutral states present. It should also be remembered that an organic link has always existed between the council's Parliamentary Assembly and the Assembly of the Western European Union (or WEU, sometimes called the "European pillar of NATO") because for Council of Europe states the parliamentary delegations in both assemblies are identical.

The common political purpose of NATO and the Council of Europe came into the public eye for the first time on January 30, 1997, when NATO secretary general Javier Solana addressed the council's Parliamentary Assembly.[89] Reiterating the tenets of democratic peace theory, Solana asserted that stability and security are built on the foundations of pluralist democracy, human rights, and the rule of law, leading him to pay tribute to the work accomplished by the Council of Europe within the "architecture of European security":

> If there is today general agreement on the fundamental importance of security ensured through the respect of democracy, it is because the Council of Europe, for so long, has entertained the vision of a Europe united around common democratic values. . . . The

> Council of Europe has played a leading role in spreading democratic values and practices to Central and Eastern Europe since the political watershed of 1989. It has given a powerful incentive to the process of democratization and reform among Central and Eastern European countries.

In this sense, Solana concluded that NATO and the council had a "joint agenda," namely, developing a "common security culture" across Europe. Cooperation between the two organizations, he argued, could enhance these goals,specifically with regard to engaging Russia in a closer relationship with European institutions.

The U.S. position essentially broadens such an agenda. In the State Department's February 24, 1997 report to Congress on NATO enlargement, the final chapter addresses the "impact of NATO enlargement on other institutions and treaties." It confirms the philosophy underlying the 1995 U.S.–EU declaration:"No single European or Euro-Atlantic institution provides all the requirements for maintaining transatlantic security. Each makes a unique contribution: NATO, the European Union, the Partnership for Peace, the Organization for Security and Cooperation in Europe, the Western European Union, the Organization for Economic Cooperation and Development in Europe, and the Council of Europe all play important roles."[90]

The integration of Russia into NATO is not a practical proposition at the moment,and there may be good arguments for not envisaging it even in the longer run.[91] At the same time, it has often been emphasized that no new lines of demarcation should be established in Europe: "An area of shared and collective security . . . must embrace the whole of Europe. The exclusion of any country would undermine the very foundations of the new order, as it would produce a real risk of new antagonisms leading in the long term to a return to defensive security based on military dissuasion."[92]

Russia is a member of both the OSCE and the Council of Europe, and there is hope that its still fragile and incomplete democracy will consolidate itself. The May 1997 Founding Act on Mutual Relations between Russia and NATO is another important step in this direction. Let us now turn to the respective roles of the Council of Europe and OSCE.

The Council of Europe and OSCE: Partners for Democratic Security

OSCE now stretches from North America across Europe and into Asia;therefore, it is not, despite its name, what one would call a specifically European organization. Since the 1975 Helsinki Accords, the reference has been to security and cooperation in Europe. The participation of the United States was legitimate—and desired by the Europeans—as a counterweight to the Soviet Union. When the Soviet empire imploded, the United States was the strongest supporter of extending CSCE/OSCE membership to all former Soviet satellites and republics,including those in the Caucasus and Central Asia. The United States is now firmly committed to OSCE's role in supporting democratic transitions.

When discussing the role of the Council of Europe in the democratic transition of Central and Eastern Europe, American foreign policy experts sometimes express the view that the council's work, valuable as it may be, is not indispensable to U.S. policy. This view holds instead that the U.S. government promotes democratic institutions, the rule of law, and

the protection of human rights through OSCE, in which the United States, as a member, plays an important part. However, as we have seen, the 1995 New Transatlantic Agenda and the 1997 State Department report on NATO enlargement support a different interpretation. These documents see European and transatlantic security as a cooperative concern, where different organizations make their contribution in accordance with their specific mandates, expertise, and possibilities.

The architecture of international cooperation is not the result of a rational blueprint. Certainly, one could imagine more efficient structures entailing less duplication of efforts and wasted energy. However, governments must work with what exists. To quote from the "Lisbon Declaration on a Common and a Comprehensive Security Model for Europe for the Twenty-First Century," adopted by OSCE heads of state and government in December 1996,"European security requires the widest cooperation and coordination among participating States and European and transatlantic organizations." This is yet another confirmation of the concept of complementary and mutually reinforcing roles. The links between European and transatlantic organizations should become ever closer as they all extend their incremental grasp of membership to Central and Eastern Europe.

The complementarity between OSCE and the Council of Europe arose implicitly from the Helsinki negotiations, beginning in 1973 and ending with the Helsinki Final Act of August 1, 1975. Both East and West joined the Helsinki process out of a mutual concern for military security. In addition, the Soviet Union sought international recognition of the borders resulting from World War II.[93] For its part, the West wanted all the participating states to guarantee human rights and fundamental freedoms. This was formally conceded by the Soviet-bloc countries, but long remained a concession on paper only. Moreover, the Helsinki Final Act is not a legally binding instrument—it is a political declaration,signed by heads of state and government. Nonetheless, the West's strategy proved to be farsighted: The ideological seed of Helsinki spread across the continent. Together with the economic contradictions of communism, this strategy was largely responsible for the collapse of the Soviet empire and totalitarian rule on the Eurasian continent.

Over the years, good cooperative relations have been established between the Council of Europe and OSCE, notably through the latter's Office of Democratic Institutions and Human Rights (ODIHR) in Warsaw. This cooperation includes, for example, the preparation and execution of election monitoring and cooperation in crisis situations in Bosnia and Herzegovina and, more recently, in Albania.[94] In the framework of its activities on the rule of law—one of ODIHR's major concerns—the office is preparing a manual for Russian judges, which devotes a large section to Council of Europe texts,including the ECHR and other relevant conventions, recommendations, and resolutions.[95] In the spirit of the mutual reinforcement concept,all governments concerned should encourage such cooperation and coordination.

The political obligations entered into by OSCE's participating states and the follow-up procedure foreseen by OSCE documents usefully complement the normative action and support the objectives of the Council of Europe.[96] In such a way, political commitments are transformed into legal obligations. One of the best examples is the 1990 Copenhagen Document of OSCE (then still CSCE), which details with remarkable precision the concept of the rule of law and the rights of national minorities. The rule of law is enshrined in

general in the Council of Europe Statute and in the ECHR. The latter is less detailed than the Copenhagen Document, but the relevant provisions have been elaborated further in the jurisprudence of the commission and the court, the control mechanisms established under the ECHR. The action of OSCE makes it possible to propagate democratic values beyond the frontiers of the Council of Europe, extending the school of democracy to the former Soviet Union's Central Asian and Caucasian republics.

The definition of minority rights in the Copenhagen Document was largely taken over by the Council of Europe's Parliamentary Assembly when it proposed an additional protocol to the ECHR. The objective was to combine the precision of OSCE's formulations with the legally binding character of an international treaty through an additional protocol to the ECHR and its control mechanisms. This ambitious project has been shelved provisionally due to resistance by some Council of Europe member states, but it has not been abandoned by the assembly. For the time being, the rights defined in the OSCE Copenhagen Document and the Parliamentary Assembly's draft protocol have been included in the Framework Convention for the Protection of National Minorities,although drafted in more flexible terms that offer states many loopholes. Nonetheless, this is the first comprehensive,legally binding multilateral treaty on minority rights, which an American scholar calls "a fascinating example of the manner in which regional and international institutions interact and complement each other."[97]

Close cooperation in the form of a regular exchange of information and, in certain cases, joint action characterize the relationship between the Council of Europe and the OSCE's High Commissioner on National Minorities, whose task is one of early warning on minority problems that might develop into a threat to peace. [98] The treatment of minorities under Estonia's and Latvia's citizenship laws is a good example of such institutional collaboration. High Commissioner Max van der Stoel knows both organizations well: He has had personal experience with the Council of Europe,having been a prominent member of the Parliamentary Assembly and, as Dutch foreign minister, a member of the council's Committee of Ministers.

The Council's Partnership and Cooperation with the European Union

Among the European organizations whose membership is limited to geographically European states, the EU now plays the preeminent role. The EU has become the United States' most important economic partner, and when European political cohesion increases, relations between the U.S. and the EU gain in political importance. It is also undeniable that an economic power like the EU normally carries more weight in international politics than an essentially "moral" force like the Council of Europe.[99]

The EU's engagement with Central and Eastern Europe stems primarily from economics. After all, at some stage in the next millennium,all or most Central and Eastern European countries may be members of, or have concluded association agreements with, the EU. Currently, the EU is not in a position to accept the Newly Independent States, with their struggling economies and still underdeveloped free markets. At the EU's June 1997 Maastricht Summit, it was understood that a further enlargement of the EU would probably not take place before the middle of the next decade.[100]

The Council of Europe, the first and geographically widest specifically European organization, has been relatively neglected in U.S. political thinking in recent years, both within the executive branch and on Capitol Hill. Technical cooperation has been practiced for years through the participation of U.S. observers in Council of Europe expert committees. The United States acceded to a few "open" (that is, open to nonmember states) Council of Europe conventions,although much of its interest has focused on the human rights aspects of the council's work.[101]

Through increased diplomatic contacts and visits to Strasbourg, the United States signaled renewed interest in the Council of Europe's political role after 1989 as the organization opened up to Central and Eastern Europe. Soon after the council's Committee of Ministers created an observer status within the organization, the United States applied accordingly.[102] The letter of application,signed by Assistant Secretary of State Richard Holbrooke,mentioned U.S.interest in cooperating with the Council of Europe to promote democratization in Central and Eastern Europe. While this was almost unanimously welcomed in the Council of Europe, the representative of one member state in the Committee of Ministers objected,stating that the Council of Europe was and should remain an exclusively European organization and not be open to extra-European influences.[103] This position was not founded on the wording of Committee of Ministers Resolution (93) 26: "Any State willing to accept the principles of democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and wishing to co-operate with the Council of Europe may be granted by the Committee of Ministers,after consulting the Parliamentary Assembly, observer status with the Organization."

In the end, observer status was granted after the Parliamentary Assembly came out very strongly in favor of it.[104] Indeed, an overwhelming majority of member states attached importance to seeing the link with the United States established before Russia entered the Council of Europe. Without publicly revealing their apprehension,many were concerned that Russia's "weighted"membership would create a political imbalance in the council. Apart from its size and its status as a nuclear power, Russia's population of more than 160 million is twice that of reunified Germany and almost three times that of the other "big" states: France, Italy, and the United Kingdom. In addition,many delegations feared that Russia would continue in its Soviet tradition and practice power politics inside the council, contrary to the organization's tradition of strictly observing the principle of "one state, one vote" (except in the Parliamentary Assembly, where population figures roughly determine the size of delegations).[105]

Formally, the U.S.ambassador to France is the U.S. observer with the Council of Europe. In practice, the State Department charged the U.S. consul general in Strasbourg with following the council's activities. Observer status automatically gives the right to participate in all expert committees and, upon invitation by the respective host country, in conferences of specialized ministers. Under Resolution (93)26, observer status does not give the right to be represented on the Committee of Ministers or the Parliamentary Assembly unless a specific decision is taken to this effect by either body. However, there is no doubt that a request by Congress for permanent observer status in the assembly (under its rules of procedure) would be favorably received. Since 1995, the consul general participates in the confidential discussions of the Committee of Ministers rapporteur groups. Normally, the consul

concentrates on work that is specifically of interest to the United States. The U.S. representative can also be present during the committee's dialogues with ministers from Central and Eastern Europe. As an observer, the U.S. representative cannot vote, but may sit at the same table with the representatives of member states and can express the American point of view in the meeting, as well as in personal contacts with diplomatic colleagues. Observers do not participate in plenary meetings of the committee, but normally the latter ratify decisions prepared in the rapporteur groups.

The "cohabitation" of the U.S. representative with the Russian Federation representative in Council of Europe meetings has not been a problem.Generally speaking, Russian representatives in both the Committee of Ministers and the Parliamentary Assembly have adapted remarkably well to the organization's "rules of the game." Members of the Russian parliamentary delegation have acted responsibly, except for occasional outbursts from politicians like Vladimir Zhirinovsky. The same holds true for initial pressures by the Russian authorities to disregard the council's staff recruitment procedures to place candidates of their choice in various council positions, or President Yeltsin's alleged instruction to the Russian parliamentary delegation to block any initiative running counter to Russia's interests.

With one exception (the creation of a School of Magistrates, a joint venture of the Council of Europe, the United States, and the European Commission), U.S. observer status has not yet led to concrete cooperation or to joint projects such as those undertaken by the Council of Europe and the EU. Such cooperation and better coordination would,however, be desirable in the interest of overall efficiency. It would also make the new democracies understand that there is no fundamental contradiction between U.S. and European democracy.[106]

Five

Conclusion

In this age of globalization, the security of nations is more indivisible than ever before. This is true in a geographical sense: America cannot be secure without a secure Europe and vice versa. It is also true in conceptual terms: Military, economic, and democratic security cannot be easily separated. Increasingly, nation-states are coming to view their own security in the context of cooperative international structures that promote democracy. The democratic peace theory holds that democracies are unlikely to go to war against one another. Therefore, to maintain peace, relevant organizations must spread the knowledge and the practice of democracy. But democratic peace would remain fragile as long as democracies remain fragile, susceptible to being overturned from within or through interference from outside. Thus, democratic stability is necessary for democratic security.

The stability of democracies depends in part on economic factors. While democratic systems have been made to function in poor countries, no real democracy can thrive in extreme misery. When a large part of a country's population is hungry, the right to vote or freedom of expression become secondary concerns. Yet democracy needs more than capitalist prosperity. For democracies to be stable,there must be a firm commitment to democratic values and a well-developed civil society. As President Clinton underlined during his African tour in March 1998, there is no generally applicable blueprint of a democratic system. Yet there are certain fundamental tenets of democracy that are valid for all societies. The 1983 Strasbourg Consensus constituted an attempt to codify such basic rules.

The 1989 democratic revolutions in Central and Eastern Europe provided a unique chance to have the credo of democracy accepted all across the continent. Europe could thus become a vast area of democratic security—to use the words of the 1993 Vienna Declaration—and,hence, contribute to the security of the United States. This process requires the transfer of democratic know-how to countries that lived under dictatorships for a half-century or longer. This transfer, which is under way, comes from many sources: bilateral assistance; cooperation of democracies within international organizations such as the Council of Europe,OSCE,EU, and NATO;and, last but not least, the work of NGOs.

By virtue of its origin, the Council of Europe has a unique role to play. It has a specific vocation with regard to democracy, the rule of law, and the protection of human rights and fundamental freedoms. Therefore, it is only natural that all Central and Eastern European countries turned to the council when they were freed from the yoke of totalitarian communism. Between 1990 and 1997, the council admitted sixteen former communist countries into its ranks.Five more have applied for membership. In accordance with its raison d'être, the Council of Europe initiated a vast program of technical assistance and cooperation to promote the consolidation of democratic rule in these new member states. It cooperates with individual states, as well as with intergovernmental and nongovernmental organizations, and it pursues joint projects with the EU.

The United States and the Council of Europe have a common purpose of establishing and consolidating democracy in the eastern part of Europe. It would be in the U.S.interest to lend the council's programs moral support in the international organizations of which the United States is a member, such as NATO and OSCE, in accordance with the concept of the complementary and mutually reinforcing roles of international organizations.

The United States and the Council of Europe should undertake an effort to coordinate their democracy-building programs and, where appropriate, enter into joint ventures along the lines of those agreed on between the council and the EU. To this end, the United States' observer status in the council ought to be fully exploited in conformity with the original intent of the U.S.application. The United States could explore the usefulness of adhering to more "open" council conventions, either because they are intrinsically of interest to the United States or because such action would extend the "common legal space" across the Atlantic.[107] Specifically, the United States and the council should explore the feasibility of a joint European–North American research project on common elements in their respective constitutional and legal orders and how they could be further extended, with a view to creating a common transatlantic legal space.

Because the United States is actively engaged in OECD, the U.S. Congress should be regularly represented, not only through diplomatic observers, but also by parliamentarians, at the Parliamentary Assembly's annual debate on the activities of OECD. The United States should bear in mind that under an agreement between the two organizations, the Council of Europe's Parliamentary Assembly acts as OECD's parliamentary forum.

Bringing democracy to the eastern half of Europe is a noble task in itself, but it is also essential for our common security. Therefore, the United States and the Council of Europe, and all governmental and nongovernmental actors concerned, should maintain present efforts to promote and consolidate democracy and complement them where appropriate. Accordingly, there should be more coordination among all the actors involved to avoid waste and duplication and to achieve the optimal effect from this common quest for democratic security in Europe—and beyond.

Appendix 1

Evolution of Council of Europe Membership

May 5, 1949	Ten founding members: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom.
August 9, 1949	Greece
March 7, 1950	Iceland
April 13, 1950	Turkey
May 2, 1951	Federal Republic of Germany
April 16, 1956	Austria
May 24, 1961	Cyprus
May 6, 1963	Switzerland
April 29, 1965	Malta
September 22, 1976	Portugal
November 24, 1977	Spain
November 23, 1978	Liechtenstein
November 16, 1988	San Marino
May 5, 1989	Finland
November 6, 1990	Hungary
February 21, 1991	Czechoslovakia*
November 26, 1991	Poland
May 7, 1992	Bulgaria
May 14, 1993	Estonia, Lithuania, Slovenia
June 30, 1993	Czech Republic, Slovakia
October 7, 1993	Romania
November 10, 1993	Andorra
February 10, 1995	Latvia
July 13, 1995	Albania, Moldova
November 9, 1995	Macedonia, Ukraine
February 28, 1996	Russia
November 6, 1996	Croatia

*The Czechoslovak Federation ceased to exist, by agreement between the two federated states, on December 31, 1992. The Czech Republic and the Republic of Slovakia, now independent, applied separately for Council of Europe membership and were admitted together in 1993.

Appendix 2

Vienna Declaration

Vienna
October 9, 1993

We, Heads of State and Government of the member States of the Council of Europe, meeting for the first time in our Organisation's history at this Vienna summit conference, solemnly declare the following:

The end of the division of Europe offers an historic opportunity to consolidate peace and stability on the continent. All our countries are committed to pluralist and parliamentary democracy, the indivisibility and universality of human rights, the rule of law and a common cultural heritage enriched by its diversity. Europe can thus become a vast area of democratic security.

This Europe is a source of immense hope which must in no event be destroyed by territorial ambitions, the resurgence of aggressive nationalism, the perpetuation of spheres of influence, intolerance or totalitarian ideologies.

We condemn all such aberrations. They are plunging peoples of former Yugoslavia into hatred and war and threatening other regions. We call upon the leaders of these peoples to put an end to their conflicts. We invite these peoples to join us in constructing and consolidating the new Europe.

We express our awareness that the protection of national minorities is an essential element of stability and democratic security in our continent.

The Council of Europe is the pre-eminent European political institution capable of welcoming, on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression. For that reason the accession of those countries to the Council of Europe is a central factor in the process of European construction based on our Organisation's values.

Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights. The people's representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership. An undertaking to sign the European Convention on Human Rights and accept the Convention's supervisory machinery in its entirety within a short period is also fundamental. We are resolved to ensure full compliance with the commitments accepted by all member States within the Council of Europe.

We affirm our will to promote the integration of new member States and to undertake the necessary reforms of the Organisation, taking account of the proposals of the Parliamentary Assembly and of the concerns of local and regional authorities, which are essential to the democratic expression of peoples.

We confirm the policy of openness and co-operation vis-à-vis all the countries of Central and Eastern Europe that opt for democracy. The programmes set up by the Council of Europe to assist the democratic transition should be developed and constantly adapted to the needs of our new partners.

We intend to render the Council of Europe fully capable of thus contributing to democratic security as well as meeting the challenges of society in the 21st century, giving expression in the

legal field to the values that define our European identity, and to fostering an improvement in the quality of life.

Attaining these objectives requires fuller co-ordination of the Council of Europe's activities with those of other organisations involved in the construction of a democratic and secure Europe, thus satisfying the need for complementarity and better use of resources.

In this connection, we welcome the co-operation established—in the first instance, on the basis of the 1987 Arrangement—with the European Community, particularly the development of joint projects, notably in favour of the countries of Central and Eastern Europe. We consider that such a partnership in increasingly varied fields of activity reflects the specific and open-ended institutional relationship existing between the two institutions.

Similarly, to foster democratic security we are in favour of intensifying functional co-operation in the human dimension sphere between the Council of Europe and the CSCE.

Arrangements could usefully be concluded with the latter, including its Office for Democratic Institutions and Human Rights, and its High Commissioner on National Minorities.

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We are resolved to make full use of the political forum provided by our Committee of Ministers and Parliamentary Assembly to promote, in accordance with the competences and vocation of the Organisation, the strengthening of democratic security in Europe. The political dialogue within our Organisation will make a valuable contribution to the stability of our continent. We will do so all the more effectively if we are able to initiate such a dialogue with all the European States that have expressed a desire to observe the Council's principles.

Convinced that the setting up of appropriate legal structures and the training of administrative personnel are essential conditions for the success of the economic and political transition in Central and Eastern Europe, we attach the greatest importance to the development and coordination of assistance programmes for this purpose in liaison with the European Community.

The creation of a tolerant and prosperous Europe does not depend only on co-operation between States. It also requires transfrontier co-operation between local and regional authorities, without prejudice to the constitution and the territorial integrity of each State. We urge the Organisation to pursue its work in this field and to extend it to co-operation between non-adjacent regions.

We express our conviction that cultural co-operation, in which the Council of Europe is a prime instrument—through education, the media, cultural action, the protection and enhancement of the cultural heritage and participation of young people—is essential for creating a cohesive yet diverse Europe. Our governments undertake to bear in mind the Council of Europe's priorities and guidelines in their bilateral and multilateral co-operation.

With the aim of contributing to the cohesion of our societies, we stress the importance of commitments accepted within the framework of the Council of Europe Social Charter and European Code of Social Security in order to provide member countries with an adequate system of social protection.

We recognise the value of co-operation conducted within the Council of Europe to protect the natural environment and improve the built environment.

We will continue our efforts to facilitate the social integration of lawfully residing migrants and to improve the management and control of migratory flows, while preserving the freedom to travel within Europe. We therefore encourage the "Vienna Group" to pursue its work, thus contributing, with other competent groups, to a comprehensive approach to migration challenges.

Fortified by our bonds of friendship with non-European States sharing the same values, we wish to develop with them our common efforts to promote peace and democracy.

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In the political context thus outlined, we, Heads of State and Government of the member States of the Council of Europe, resolve:

- to improve the effectiveness of the European Convention on Human Rights by establishing a single Court for ensuring compliance with undertakings given thereunder . . .
- to enter into political and legal commitments relating to the protection of national minorities in Europe and to instruct the Committee of Ministers to elaborate appropriate international legal instruments . . .
- to pursue a policy for combating racism, xenophobia, anti-Semitism and intolerance, and to adopt for this purpose a Declaration and a Plan of Action . . .
- to approve the principle of creating a consultative organ genuinely representing both local and regional authorities in Europe,
- to invite the Council of Europe to study the provision of instruments for stimulating the development of European cultural schemes in a partnership, involving public authorities and the community at large,
- to instruct the Committee of Ministers to adapt the Organisation's Statute as necessary for its functioning, having regard to the proposals put forward by the Parliamentary Assembly.

Appendix 3

Council of Europe Treaties and the United States

1. Conventions Ratified by the United States

112 Convention on the Transfer of Sentenced Persons (March 11, 1985)

127 Convention on Mutual Administrative Assistance in Tax Matters (February 13, 1991)

2. Conventions Open for Signature and Ratification by the United States

135 Anti-Doping Convention

141 Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

164 Convention on Human Rights and Biomedicine

165 Recognition of Qualifications Concerning Higher Education in the European Region

3. Other Conventions of Interest to the United States

62-97 Information on Foreign Law (Convention and Protocol)

92 Transmission of Applications for Legal Aid

105 Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children

108 Protection of Individuals with Regard to Automatic Processing of Personal Data

123 Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes

130 Insider Trading

157 Protection of National Minorities

Notes

1. For a more detailed discussion of this question, see Heinrich Klebes, "Wertegemeinschaft oder Schule der Demokratie?" in *Scritti in Onore di Giuseppe Vedovato* (Florence: Biblioteca della Rivista di Studi Politici, 1997).

2. For a review of this literature, see, for example, Bruce M. Russett, *Grasping the Democratic Peace: Principles for a Post–Cold War World* (Princeton: Princeton University Press, 1993).

3. The term "state," as used in this study, refers to sovereign entities under international law and not to states as part of a federation. "Government" and "governmental" refer to the executive branch of government only.

4. This process continued at subsequent CSCE follow-up meetings and then at OSCE conferences where the Council of Europe was represented as a "Guest" (only sovereign states are full partners in the CSCE/OSCE process) whenever matters related to democracy and human rights were discussed. The role of the Council of Europe was underlined in the Paris Charter for a New Europe, which heralded the official end to the Cold War, adopted by the CSCE Summit in Paris in November 1991.

5. For NATO, this has not always been the case. Until the mid-1970s it counted a dictatorship (Portugal) among its members. Concerning OSCE, notwithstanding its important work for democratic reform and human rights, it still includes quasi-authoritarian regimes in Central Asia.

6. The overall effectiveness of the conventions network merits a critical appraisal, yet it is difficult to assess. Council of Europe conventions are classical international treaties, though elaborated in the framework of an international organization (see Article 5 of the 1969 Vienna Convention on the Law of Treaties). To enter into force, a convention must be signed and ratified by a (variable) number of states. However, states may make reservations to the convention, and unless ratified by all, it is not a common law for all member states. These conditions clearly mark a weakness in comparison with EU law.

7. Churchill alternately used the terms *Council of Europe, European Union, and United States of Europe.* The latter, it seems, was meant to be the final stage. For the text of the speech and the general context, see *Winston S. Churchill: His Complete Speeches, 1897–1963*, ed. Robert R. James (New York: Chelsea House, 1974), 7379–82. For a brilliant historical study of the balance of power concept, see Henry Kissinger, *Diplomacy* (New York: Simon and Schuster, 1994).

8. See Chapter VIII of the United Nations Charter.

9. See appendix 1 for the evolution of membership until March 31, 1998.

10. Of the Council of Europe's various bodies, only the parliamentary organ now holds economic debates. Under agreements with the institutions concerned, and with the participation of parliamentary delegations from the interested nonmember states, it functions as a parliamentary forum for OECD and the European Bank for Reconstruction and Development (EBRD). Examples of Council of Europe conventions concerning economic matters include two conventions on the law of patents for inventions (European Treaty Series [hereafter, ETS] 17 and 44), the "management" of which was subsequently transferred to the World Intellectual Property Organization in

Geneva; the European Convention on Establishment (ETS 19); the European Convention on Compulsory Insurance against Civil Liability in Respect of Motor Vehicles (ETS 29); Convention on the Liability of Hotel-Keepers (ETS 41); Convention on the European Pharmacopoeia (ETS 50); Convention on a Uniform Law on Arbitration (ETS 56); Convention on Mutual Administrative Assistance in Tax Matters (ETS 127); Convention on Insider Trading and Protocol (ETS 130 and 133), prepared in collaboration with OECD; and Convention on Money Laundering (ETS 141). The European Community has become a party to some of the above and other conventions by reason of the progressive transfer of competencies from EC member states to the community. Apart from the areas covered in this study, the Council of Europe's activities include culture and education, the environment, legal affairs, social affairs (for example, social security, the fight against drugs), and so forth.

11. The European Commission is expected to open membership negotiations with Poland, the Czech Republic, Hungary, Slovenia, and Estonia in 1998.

12. Preambles set the tone of a treaty, describe its object and purpose, and serve to interpret—if necessary—operative provisions. See the Vienna Convention on the Law of Treaties, Article 31.

13. The words "within its jurisdiction" are important. They mean that the protection of their human rights is not only available to nationals of member states, but also to nationals of third states. U.S. citizens who consider that their rights (as defined in the convention) have been violated in a Council of Europe member state can, having exhausted available national remedies in the states concerned, turn to the European Commission of Human Rights in the first instance and, following the entering into force of Protocol No. 11, direct to the permanent Court of Human Rights, which will begin functioning on November 1, 1998.

14. Compare this provision with section I, para. 5.1 of CSCE's Copenhagen Document. A colloquy organized by the Association of French Constitutionalists on March 21, 1997 in Paris discussed the question, in the light of the ECHR, if states were still free to determine their electoral law. A summary of the report presented by J. F. Flauss appeared in *Revue française de droit constitutionnel*, vol. 30 (Paris: Presses universitaires de France, 1997), 387–97.

15. In Greece, a group of colonels seized power in April 1967 and made repeated promises to return the country to democratic rule through free elections; yet the promises were not fulfilled. In December 1969, the council's Committee of Ministers was at the point of voting a resolution requesting Greece to withdraw from the organization. In response, Foreign Minister Pipinelis submitted letters to the committee denouncing the Council of Europe Statute and the ECHR. Greece was readmitted in 1974 after the downfall of the military junta. Turkey's occupation of Cyprus's northern region continues to be a threat to regional stability, involving two NATO allies and three members of the Council of Europe.

16. The text of the convention (ETS 5) and the additional protocols can be obtained from the Council of Europe. For an overview of existing international documents on human rights, see Thomas Buergenthal, *International Human Rights* (St. Paul, Minn.: West Publishing, 1995). Contrary to the European Commission on Human Rights, the Inter-American Commission of the Organization of American States can investigate the human rights situation in member countries on its own initiative (that is, it need not wait until there is a specific human rights violation), and it has developed the habit of preparing country studies.

17. If national proceedings become too protracted, the Commission and Court of Human Rights could take up a case before a final judgment on appeal if the length of proceedings in fact

constitutes a denial of justice. On the jurisdiction of the court and commission, see J. G. Merrills, *The Development of International Law by the European Court of Human Rights* (Manchester, England: Manchester University Press, 1995), and Donna Gomien, David Harris, and Leo Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter* (Strasbourg: Council of Europe Publishing, 1996).

18. Though torture is forbidden under Article 3 of the ECHR, it was considered necessary to conclude this separate convention (ETS 126) because the Commission and the Court of Human Rights could only react to complaints and could not initiate action.

19. Compare the council's convention with the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its Committee on Torture can also investigate on a state's territory, but only with that state's consent. See Buergenthal, *International Human Rights*, 72–76.

20. The text and explanatory memorandum on the Framework Convention (ETS 157), together with a commentary by this author, can be found in *Human Rights Law Journal* 16 (1995): 92. It also can be found in Florence Benoît-Rohmer, *The Minority Question in Europe, Texts and Commentary* (Strasbourg: Council of Europe Publishing, 1996), a collection of texts on minority rights sponsored by the International Institute for Democracy.

21. See the penultimate paragraph of the report's section II.

22. Following its entry into force, the convention's Protocol No. 11 will establish only a court, to be constituted on November 1, 1998. The optional character of Articles 25 and 46 concerning the right of individual petition and the jurisdiction of the court disappeared. The same goes for the subsidiary judicial functions of the Committee of Ministers. Under the old system, a report of the commission on an alleged human rights violation would go to the Committee of Ministers for decision if one of the parties concerned, or the commission, had not made a request of the court within three months. Obviously, this was not a satisfactory solution, as the Committee of Ministers is a political body and not "an independent and impartial tribunal" in the meaning of the convention's Article 6. However, the committee appropriately retains its responsibility for supervising the execution of court decisions.

23. Concerning the two latter treaties, the relevant provisions will be found in Articles 15 and 16, respectively. Hungary insisted on references in the treaties to texts to be considered legally binding between the parties. These included not only relevant OSCE and UN texts but also Parliamentary Assembly Recommendation 1201 for an additional protocol to the ECHR. The latter contained a paragraph 11 on the right of persons belonging to national minorities to "local or autonomous authorities or . . . a special status." This was unacceptable to both Slovakia and Romania. The matter was solved by a unilateral interpretative declaration by Slovakia and an agreed footnote in the treaty between Hungary and Romania. The Committee of Ministers did not follow up on Recommendation 1201. Instead, the 1993 Vienna Summit agreed on the preparation of a Framework Convention. For more details, see Heinrich Klebes, "The European Framework Convention for the Protection of National Minorities," *Human Rights Law Journal* 16, nos. 1–3 (April 1995).

24. See Assembly Opinions 174 on the Czech Republic, 175 on Slovakia, and 176 on Romania. It is interesting, however, that a similar clause was not included in Opinion 182 on Andorra, the last West European newcomer to the Council of Europe (November 10, 1993).

25. See Heinrich Klebes, "La convention-cadre du Conseil de l'Europe pour la protection des minorités nationales—deux ans après son ouverture à la signature des Etats," *Revue trimestrielle des droits de l'homme*, no. 30 (April 1997).

26. All member states of the EU and all European members of NATO are also Council of Europe members, and all council states are members of OSCE. Certainly, this is not to suggest that European democracy is different in essence from the American and other major democracies in the world. There has been a long cross-fertilization, particularly between European and North American thinking on democracy, and the fundamental beliefs are the same. The founders of American democracy drew on European thinkers and, in turn, strongly influenced political thinking in Europe.

27. The conference was organized by the Council of Europe in cooperation with the European Parliament and the parliaments of the major non-European democracies of the time (namely, the United States, Canada, Australia, New Zealand, and Japan).

28. Some observers objected that this protection applied only partially to presidential forms of government. See the more precise wording of the CSCE Copenhagen Document of June 1990 (section I, 5.2) stipulating "a form of government, in which the executive is accountable to the elected legislature or the electorate."

29. The general ideas behind this and two subsequent Strasbourg Conferences (in 1987 and 1991) were the reinforcement of links between existing democracies in different continents, an idea in fact first proposed in the United States by the Committee for a Community of Democracies (see James R. Huntley, *Uniting the Democracies: Institutions of the Emerging Atlantic-Pacific System* [New York: New York University Press, 1980]); citizens' participation in and education for democracy; and specific problems of emerging and Third World democracies (illiteracy, economic underdevelopment, tribalism, and so on). Reports of the conferences have been published by the Council of Europe. The report on the second conference was also reproduced in the *Human Rights Law Journal* 9 (1988): 365, together with a general description of the Strasbourg conference system and the text of the Strasbourg Consensus. Regional seminars were held in between conferences in Central America, Africa, and the Far East. After 1991, the conference series was suspended because democratic reform in Central and Eastern Europe was the main preoccupation.

30. See Assembly Opinion 153.

31. See Opinion 155.

32. See Opinion 154.

33. See Opinion 161.

34. Indeed, Slovenia is among those former communist members whose transition to democracy posed very few problems. On these three countries' admission, see Opinions 168, 169, and 170, respectively.

35. For more details, see the report of the Political Affairs Committee, Doc. 6787.

36. See Opinions 174 and 175.

37. When the Committee of Ministers meets at ministers' deputies level, unanimity is required. Ministers themselves can decide with a two-thirds majority.

38. In the context of NATO enlargement, Defense Secretary Cohen said, "A good deal of progress has been made in a short time, but it is still a short time, and there needs to be a longer-term commitment to the progress that has been made in terms of democracy, civilian control over the military and the emphasis on human rights." *New York Times,* June 13, 1997.

39. See *Wall Street Journal,* July 8, 1997.

40. Well informed as he was, Ambassador Deriabin was no doubt aware that the convention is not open to nonmember countries.

41. Compare Churchill's position in 1946 with current Western policy regarding Russia's relationship with NATO.

42. See council document AS/Bur/Russie (1994), "Report on the conformity of the legal order of the Russian Federation with Council of Europe standards," prepared by Rudolf Bernhardt, Stefan Trechsel, Albert Weitzel, and Felix Ermacora.

43. For a more thorough study of the history of Russia's admission to the Council of Europe, see Despina Chatzivassiliou, "L'admission de la Russe au Conseil de l'Europe" in Catherine Schneider, ed., *Le Conseil de l'Europe, acteur de la recomposition du territoire européen* (Grenoble: Presses universitaires de Grenoble, 1997).

44. See Resolution 1089 of May 29, 1996.

45. It is interesting, however, that Gret Haller, a former member of the Parliamentary Assembly and former Swiss ambassador to the Council of Europe, who was appointed human rights ombudsperson by OSCE under the Dayton Agreement, said on June 26, 1997 in Strasbourg that the admission procedure for Bosnia should be accelerated because it would promote the pace of democratization and pacification. See *Neue Zürcher Zeitung*, June 27, 1997.

46. Council of Europe Statute, Article 1.

47. See appendix 1. The issue of sovereignty had played a part in the debates on the admission of Liechtenstein and San Marino. In both cases, the question was whether these very small states were economically (and thus politically) dependent on Switzerland and Italy, respectively. Monaco, though a member of other international organizations, including OSCE, has never applied for Council of Europe membership, no doubt owing to its awareness of the debates surrounding the admission of Liechtenstein and San Marino. Under the treaty between Monaco and France, the prince must choose the head of government from a list of three candidates proposed by France.

48. Council of Europe, Doc. AS/Pol (1995) 6.

49. It should be recalled that, for a time, the United States government was seriously preoccupied with the eventuality of a rapprochement of Portugal with the Soviet Union. One of the ablest American diplomats, Frank Carlucci, was posted to Lisbon at the time.

50. The council adopted the term "special guest status," since observer status (with the assembly) already existed and had been granted to parliaments of Western states that later also became full members. At present, the only state to enjoy assembly observer status (not to be confused with the observer status with the council as such) is Israel, which, however, cannot become a full member because it is not a European state in the meaning of the statute (that is, situated on the European continent).

51. The ECHR is not mentioned in Rule 55a, because the convention is open to member states only.

52. See Resolution 917.

53. See Heinrich Klebes, "Draft Protocol on Minority Rights to the ECHR," *Human Rights Law Journal* 14 (1993): 142.

54. See notably Opinions 175 (1993) on Slovenia, 176 (1993) on Romania, 182 (1994) on Andorra, 183 (1995) on Latvia, 188 (1995) on Moldova, 189 (1995) on Albania, 190 (1995) on Ukraine, 191 (1995) on Macedonia, 193 (1996) on Russia, and 195 (1996) on Croatia.

55. See his interview in *Dernières Nouvelles d'Alsace,* June 26, 1997; and Joel Blocker, "Council of Europe's Soft Standards for East European Members," *RFE/RL Newsline,* July 7, 1997.

56. See "Activities for the Development and Consolidation of Democratic Stability (ADACS), Programme for 1998," Doc. SG/INF (98) 2.

57. For a general overview, see Diana Pinto, *From Assistance to Democracy to Democratic Security: Co-operation and Assistance Programs for Central and Eastern Europe* (Strasbourg: Council of Europe Publishing, 1995); and her chapter, "Assisting Central and Eastern Europe's Transformation," in *The Challenges of a Greater Europe: The Council of Europe and Democratic Security* (Strasbourg, Council of Europe Publishing, 1996).

58. Established in 1994 under Committee of Ministers Resolution (94)3.

59. In 1997, the Council of Europe conducted or participated in close to 800 activities, including seminars or conferences, study visits, training programs, expert missions, and legislative advice. Among these, 135 concerned Russia, 86 Bosnia and Herzegovina, and 77 Ukraine. Some are organized in cooperation with other international institutions, particularly the EU and the OSCE's Office of Democratic Institutions and Human Rights. Thus, there are several joint ventures with the EU concerning Russia. For details, see *Assistance with the Development and Consolidation of Democratic Security: Cooperation and Assistance Programmes with Countries of Central and Eastern Europe, Annual Reports 1996 and 1997* (Strasbourg: Council of Europe, Directorate of Political Affairs, 1997 and 1998) and *Assistance with the Development and Consolidation of Democratic Security: Co-operation and Assistance Programmes with Countries of Central and Eastern Europe, Programme for 1997* (Strasbourg: Council of Europe, Directorate of Political Affairs, 1997).

60. For a detailed overview of all cooperation and assistance projects, see the above-mentioned annual reports and program produced by the Directorate of Political Affairs.

61. As already mentioned, similar advice was given to Latvia in cooperation with OSCE.

62. Mention should be made here of international judicial conferences organized by the Washington D.C.-based Center for Democracy in cooperation with the Council of Europe. Problems concerning the judiciary, and particularly its independence, have been debated by judges of Courts of Ultimate Appeal from America and Europe during all six of the conferences that have taken place so far.

63. The Venice Commission was created under a so-called Partial Agreement open to nonmember states; see Committee of Ministers' Resolution (93)38. It consists of distinguished individuals nominated by their respective governments, but acting as independent experts. All member states of the Council of Europe (excluding the United Kingdom and Andorra) participate in and contribute to the commission; many other states have associate, observer, or special status for cooperation with the commission. The U.S. representative is an observer.

64. The Venice Commission also produced a draft convention on the protection of minority rights intended to be open to the signature of nonmember states. In legal terms, it was halfway between the assembly's strictly worded Draft Protocol to the ECHR and the less stringent Framework Convention adopted by the Committee of Ministers. For this and other texts produced by the commission, see "The Protection of Minorities" in *Science and Technique of Democracy,* vol. 9

(Strasbourg: Council of Europe Publishing, 1993). After the Vienna Summit, the Venice Commission's proposal was referred by the Committee of Ministers to the government experts charged with drafting the Framework Convention.

65. Compare the EU's activities devoted to "civil society and democratization." From 1990 to 1995, the EU spent an annual average of 9.1 million ECUs (approximately $10.98 million) in its PHARE program devoted to these activities; the EU's total budget was 5,416.9 million ECUs during that period. See *European Commission: The Phare Programme Annual Report 1995* (Brussels: European Commission, 1996).

66. Under Resolution 1115, approved in January 1997, there is a single, specialized committee to monitor obligations.

67. The bureau consists of the president, eighteen vice presidents, and the leaders of the five political groups in the assembly. Especially because of the presence of the latter, the bureau wields considerable influence.

68. For its first year of activity, the Committee on the Honouring of Obligations and Commitments by Member-States, established in January 1997, presented a report (April 1997 to April 1998) to the April 1998 part-session of the assembly. See ADOC 8057 (1998).

69. The text of the declaration is reproduced in Assembly Document 7277 of April 10, 1995.

70. See Opinion 170 (1993) on the admission of Estonia to the Council of Europe and appendix 1 of ADOC 7715.

71. Doc. 7080, Add. IV in May 1994, AS/Jur (1995) 29 in September 1995, and ADOC 7715 in December 1996. On the honoring of Estonia's commitments, see also Rudolf Bindig and Tanja Kleinsorge, "Monitoring the Compliance of Member States with Obligations and Commitments: The Case of Estonia" in Bruno Haller, Hans-Christian Krueger, and Herbert Petzold, eds., *Law in Greater Europe—Towards a Common Legal Space. Collection of Studies to Honour Heinrich Klebes* (New York: Kluwer Law International, forthcoming).

72. See Assembly Resolution 1117 (1997) of January 30, 1997.

73. Naturalization requires knowledge of the Estonian language and constitution, as well as five years' residence.

74. Joint Memorandum AS/Jur (1994) 23–AS/Pol (1994) 18.

75. Memorandum AS/Jur (1996) 19.

76. AS/Jur (1996) 57.

77. Doc. 7795 of April 11, 1997.

78. Ibid., 13.

79. Homosexuality is an extremely sensitive issue in Romania, given the inveterate hostility against homosexuals by a large majority of the Romanian population and the Romanian Orthodox Church. Reform of the law is, therefore, not an easy matter for either the executive or the country's parliament. Thus, Romanian parliamentarians complained to the author that they had been attacked in the street for having spoken on behalf of reform in the National Assembly.

80. After the Soviet Union's dissolution, the KGB (Committee for State Security) has been replaced by the following intelligence and security agencies in Russia: the Foreign Intelligence Service

(SVR), the Federal Security Service (FSB), the Presidential Security Service (SBP), and the Federal Agency for Government Communications and Information (FAPSI).

81. AS/Jur (1997) 13, to be declassified following receipt of the Russian delegation's comments.

82. See the draft opinion AS/Pol (1997) 17, produced by the Political Affairs Committee concerning the difficulties Russia faces in tackling the problems addressed by the council.

83. In fact, some evidence exists that conditions have deteriorated since accession. It has been reported that prisoners sentenced to death have refused to ask for a presidential reprieve, which President Yeltsin promised to grant whenever requested. Apparently, the prisoners preferred execution to a life sentence in a Russian prison. See the article by Allesandra Stanley, "Russians Lament the Crime of Punishment," *New York Times,* January 8, 1998, and the 1998 *Report of Amnesty International* (London: AI International Publications, 1998); see also the U.S. Department of State's *Country Reports on Human Rights Practices* for 1998.

84. See "Russian Federation—A Review of the Compliance of the Russian Federation with Council of Europe Commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe," *Human Rights Watch/Helsinki* 9, no. 3 (February 1997).

85. Interfax, August 4, 1998.

86. AS/Pol (1997) 17.

87. From the perspective of a unified Europe stretching over the entire continent, it is appropriate to recall that Marshall Plan aid was also offered to the eastern part of Europe—but refused on orders from Moscow. Soviet leaders were determined to keep any "imperialist" influences from penetrating the Iron Curtain.

88. Before 1989, political literature and even international legal texts in the Soviet empire depicted the Council of Europe as a "prolonged arm of NATO," intended to undermine socialist society through "offers of technical cooperation." In this sense, see *Völkerrecht* (Berlin: Staatsverlag der DDR, 1983).

89. See AS (1997) CR6, minutes of the January 30, 1997 Parliamentary Assembly session.

90. The State Department's position was confirmed in Under Secretary Strobe Talbott's address to the U.S.-EU Conference, "Bridging the Atlantic," on May 6, 1997 in Washington, D.C. See also the special report, *Managing NATO Enlargement* (Washington, D.C.: U.S. Institute of Peace, April 1997), and David S. Yost, *NATO Transformed: The Alliance's New Roles in International Security* (Washington, D.C.: U.S. Institute of Peace Press, 1998).

91. See Yost, *NATO Transformed*.

92. Hans Peter Furrer and Jutta Gützkow, "The Concept of Democratic Security and its Implementation by the Council of Europe," *Romanian Journal of International Affairs* 2 (March 1996): 14.

93. On this point, Moscow was in agreement with its allies at the time, like Poland and Czechoslovakia, which had been able to gain or regain territory as a consequence of Germany's defeat. For Poland this was crucial because it had been forced to cede territory in the east to the Soviet Union.

94. When former Austrian chancellor Franz Vranitzki went to Tirana on behalf of the OSCE, one of his advisors was the Council of Europe's director of political affairs. Catherine Lalumière, former Council of Europe secretary general and now a member of the European Parliament,

was appointed by the OSCE to act as coordinator for observing Albania's June 29, 1997 general elections.

95. Frederick Quinn, *You and Human Rights: Basic United Nations, Council of Europe, and OSCE Human Rights Documents* (Warsaw: OSCE, forthcoming). Apart from the ECHR, the manual includes references to the European Social Charter, the Convention for the Prevention of Torture, the Declaration Regarding Intolerance, the Declaration on Freedom of Expression and Information, the Recommendation of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service, the Declaration on Equality of Women and Men, and the Resolution of the Parliamentary Assembly on the Declaration on the Police.

96. Membership is largely identical as far as European states are concerned. The following OSCE states are not members of the Council of Europe: Canada and the United States; Monaco and the Holy See; Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, and Georgia; Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan; and Yugoslavia (suspended from participation in OSCE's activities since July 8, 1992).

97. Buergenthal, *International Human Rights*, 173.

98. See the OSCE's Helsinki decision of July 10, 1992, section II (3), concerning the creation of the post of High Commissioner on National Minorities.

99. On the subject of the significance of moral forces and ideas in international relations, see John Norton Moore, "Morality and the Rule of Law in the Foreign Policy of Democracies" in W. H. Taitte, ed., *Morality and Expediency in International Corporations, The Andrew R. Cecil Lecture on Moral Values in a Free Society*, vol. 13 (Dallas: University of Texas Press, 1992).

100. *New York Times*, June 18, 1997.

101. The United States has acceded to the Convention on the Transfer of Sentenced Persons (ETS 112) and the Convention on Mutual Administrative Assistance in Tax Matters (ETS 127). Regular contacts have been established between European and inter-American human rights institutions. As Professor Buergenthal pointed out during a conference at the Federal Judicial Center on April 24, 1997, the Inter-American Court and Commission of Human Rights have essentially been modeled on the court and commission established under the Council of Europe's ECHR.

102. Observer status with the council as such should not be confused with observer status in expert committees or with the assembly.

103. While the Committee of Ministers meetings are private, it is not a secret that the opposing state was France. In fact, bilateral discussions took place at the time between France and the United States with a view to finding a solution.

104. See Recommendation 1282, adopted on January 10, 1996.

105. In principle, the composition of the Parliamentary Assembly is determined democratically. The number of seats for each delegation depends on the country's population. There are two exceptions. One, there is a *political* agreement that no state should have more than eighteen seats in the assembly (plus eighteen alternates); this exception was expressly accepted by Russia. Two, at the other end of the scale, every state is given "2 + 2" seats to ensure that the opposition is always represented. (The assembly does not approve the credentials of delegations that do not reflect the composition of the nation's legislature.) In proportional terms, this means that one of the very small member states may be several hundred times as heavily represented as a big member state.

Refer to the debate on proportional representation as it was differently understood in the United States and Europe during the Philadelphia Convention; see Christopher Collier and James Lincoln Collier, *Decision in Philadelphia—The Constitutional Convention of 1787* (Washington, D.C.: Ballantine Books, 1987).

106. Different models of democracy also exist in Europe. On the fundamental democratic consensus, see the Strasbourg Consensus.

107. See appendix 3.

About the Author

Heinrich Klebes is retired from a career as an international civil servant in European institutions. His last position was clerk of the Council of Europe's Parliamentary Assembly, having the rank of deputy secretary general. Currently, he is chairman of the governing board of the International Institute of Democracy in Strasbourg and a professor at Grenoble Law Faculty and the Strasbourg University Institute of European Studies. In 1995, Klebes was elected an honorary member of the Association of Secretaries General of Parliaments and received France's Order of Academic Merit. He is the author of numerous reports and chapters on human rights and democracy. He holds a doctorate of law from the University of Strasbourg and a Ph.D. from the University of Heidelberg. During 1996–97, Klebes was a senior fellow in the Jennings Randolph Program for International Peace at the United States Institute of Peace.

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