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REPORT

on the constitutionalisation of the Treaties
(2000/2160(INI))

Committee on Constitutional Affairs

Rapporteur: Olivier Duhamel

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PROCEDURAL PAGE

At the sitting of 8 September 2000 the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the constitutionalisation of the Treaties, and that the Committee on Legal Affairs and the Internal Market had been asked for its opinion.

The Committee on Constitutional Affairs had appointed Olivier Duhamel rapporteur at its meeting of 6 July 2000.

The committee considered the draft report at its meetings of 11 September, 19 September and 11 October 2000.

At the last meeting it adopted the motion for a resolution by 18 votes to 2, with 6 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Ursula Schleicher and Johannes Voggenhuber, vice-chairmen; Olivier Duhamel, rapporteur; Teresa Almeida Garrett, Christopher J.P. Beazley, Georges Berthu, Jens-Peter Bonde, Carlos Carnero González, Charlotte Cederschiöld (pursuant to Rule 153(2)), Richard Graham Corbett, Andrew Nicholas Duff, Olivier Dupuis, Monica Frassoni, José María Gil-Robles Gil-Delgado, Sylvia-Yvonne Kaufmann, Alain Lamassoure (for François Bayrou), Jo Leinen, Cecilia Malmström, Iñigo Méndez de Vigo, Gérard Onesta (for Johannes Voggenhuber), Jacques F. Poos (for Enrique Barón Crespo), Alonso José Puerta (for Armando Cossutta), Lennart Sacrédeus, Mariotto Segni, The Earl of Stockton and Reinhard Rack (for Hanja Maij-Weggen).

The Committee on Legal Affairs and the Internal Market decided at its meeting of 9 October 2000 not to deliver an opinion.

The report was tabled on 12 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the constitutionalisation of the Treaties (2000/2160(INI))

The European Parliament,

– having regard to its resolution of 14 February 1984 on the draft Treaty establishing the European Union,[1]

– having regard to its Declaration of Fundamental Rights and Freedoms of 12 April 1989[2],

– having regard to its resolution of 11 July 1990 on the European Parliament's guidelines for a draft Constitution of the European Union[3],

– having regard to the Declaration of the Conference of the Parliaments of the European Community of 30 November 1990,

– having regard to its resolution of 12 December 1990 on the constitutional basis of European Union[4],

– having regard to its resolution of 20 January 1993 on the structure and strategy for the European Union with regard to its enlargement and the creation of a Europe-wide order[5],

– having regard to its resolution of 10 February 1994 on the Constitution of the European Union[6],

– having regard to Declaration No 57, annexed to the Treaty of Amsterdam, by Belgium, France and Italy on the Protocol on the institutions with the prospect of enlargement of the European Union,

– having regard to its resolutions of 18 November 1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference[7], 3 February 2000 on the convening of the Intergovernmental Conference[8] and 13 April 2000 on its proposals for the IGC[9],

– having regard to its resolution of 16 March 2000 on the Charter of Fundamental Rights[10],

– having regard to the outcome of the European Council meeting of 19 and 20 June 2000 in Feira on the proceedings of the Intergovernmental Conference,

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[1] OJ C 77, 19.3.1984, p. 53.
[2] OJ C 120, 16.5.1989, p. 51.
[3] OJ C 231, 17.9.1990, p. 91.
[4] OJ C 19, 28.1.19991, p. 65.
[5] OJ C 42, 15.2.1993, p. 124.
[6] OJ C 61, 28.2.1994, p. 144.
[7] OJ C 189, 7.7.2000, p. 104.
[8] Not yet published in OJ.
[9] Not yet published in OJ.
[10] Not yet published in OJ.

– having regard to the meeting with representatives of the parliaments of the Member States and the applicant countries held on 11 and 12 July 2000 by the Committee on Constitutional Affairs,

– having regard to the work on the reorganisation of the Treaties carried out by the European University Institute in Florence at the request of the Commission,

– having regard to Rule 163 of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs (A5-0289/00),

A. whereas the French Presidency has made the conclusion of the IGC on institutional reform one of its top priorities, acknowledging that the success of that reform is essential in order to be able to prepare for enlargement under the best possible conditions and to ensure that the Union can operate smoothly in the future,

B. whereas in the time left to it the IGC must achieve real progress in improving the way in which the institutions operate, rather than closing with an agreement based on the lowest common denominator,

C. whereas the proceedings currently under way form part and parcel of a global look at the long-term future of the Union and of Europe, which means that careful consideration must now be given to issues which have not yet been tackled and that a broad public debate with the citizens in all Member States is called for,

D. whereas the forthcoming enlargement of the Union towards the east and south coincides with the legitimate wish of the public and peoples of the EU for the institutional structure, the principles and the aims of the Union to be made more consistent and easier to understand, and whereas now appears an appropriate time to set about this new task,

E. whereas the 1996 IGC 'simplified' the Treaties to a certain degree and increased the European Parliament's powers of legislative codecision but did not enhance the decision-making capacities of the Council and was unable to complete the work which it had undertaken with a view to rendering the institutions more effective,

F. whereas the adoption of the European Union Charter of Fundamental Rights will increase the legitimacy and relevance of the institutions in the eyes of the general public, subject, however, to its incorporation in the Treaties,

G. whereas all legal systems are founded on fundamental laws which define the nature and powers of their institutions,

H. whereas membership of the Union entails unconditional acceptance of the ideals and democratic values on which it is based, as set out in Articles 6 and 7 of the TEU and in the Charter of Fundamental Rights,

I. whereas the founding Treaties already lay down the form of the government of the Union by defining the composition of its institutions and stipulating how and to what extent they shall exercise their powers,

J. whereas the Court of Justice has ruled that the Treaties establishing the Communities

constitute a ‘constitutional charter’,

K. whereas the Treaties stipulate that the Union shall respect the national identities of the Member States and that citizenship of the Union shall complement and not replace national citizenship,

L. Regrets that the reorganisation of the Treaties is not to be tackled during the present Intergovernmental Conference, and agrees with the Commission that a procedure and a specific timetable for carrying out this work should be decided at the Nice summit,

M. whereas a European Constitution could only be adopted following a broad public debate conducted as part of a democratic process within the European Union and whereas the procedure followed therefore must not on any account be based solely on intergovernmental negotiations,

1. Reiterates its desire to incorporate fundamental values, citizens’ rights and an efficient organisation of its institutions in a constitutional instrument and welcomes the wide-ranging debate on the re-founding of the Union which opened recently at the highest political level;

2. Reiterates the view that the IGC should amend the procedure for the revision of the Treaties with a view to the ‘constitutionalisation’ of the Treaties and the democratisation of the revision process by means of the introduction of a power of joint participation in decision-making for the institution which represents the States and that which represents Union citizens; in no way, however, intends to reduce the role of national parliaments in ratification;

I. Need for simplification and reorganisation of the Treaties

3. Notes that, despite the simplification brought by the Amsterdam Treaty, the Union’s structure is out of step with the desire for democracy, transparency and simplification expressed by the citizens of the European Union and the applicant countries; stresses that a more rational and readily-understandable approach to the aims of the European Union and how they are to be achieved can only come through a revision of the texts;

4. Considers that the product of the successive IGCs, namely an accumulation of long and complicated Treaties, has become difficult to use both for experts and for the general public, and that the current Treaties should therefore be replaced by a single ‘framework Treaty’ which is clear and concise and which provides for the merging of the European Union and the three Communities into a single entity; that Treaty would be restricted to fundamental constitutional provisions, covering the objectives of the Union, the protection of fundamental rights, citizenship, the allocation of powers, and institutional matters; all other provisions, including those governing common policies, would be set out in protocols annexed to the ‘framework Treaty’;

5. Considers that the work carried out at the Commission’s behest by the European University Institute in Florence goes a good way towards meeting this need for clarity and shows that the recasting of the Treaties is perfectly feasible from the technical point of

view; this constitutes a first step in a 'constitutionalisation' process starting with a revision of the Treaties without departing from the law as it stands, regardless of the positions taken on the necessary institutional reforms;

II. Reasons for a 'constitutionalisation' of the Treaties

6. Considers that the existence of a European Constitution would have the twin advantages of providing the citizens of Europe with a reference text and simplifying the rules governing the European institutions, which is essential;

7. Stresses that the future Constitution must clearly and strongly state:

- the common values of the EU,
- the fundamental rights of European citizens,
- the principle of the separation of powers and the rule of law,
- the composition, role and functioning of the institutions of the Union,
- the allocation of powers and responsibilities,
- the subsidiarity principle,
- the role of European political parties,
- the objectives of European integration;

8. Hopes that the debate to be opened in December 2000 in Nice, when the IGC concludes, will initiate a process whereby a hierarchy of texts will be established, which should lead to the drafting of a Constitution for Europe, with differentiated procedures being used for the adaptation of the texts and with no risk of the process being blocked;

III. Method

First stage: reorganisation of the Treaties to be initiated in Nice

9. Considers that an initial Treaty can be drafted in keeping with the existing legal and institutional situation; proposes with a view to this that the Nice European Council give a mandate to the Council to adopt such a reorganised Treaty on a proposal from the Commission, following consultation of the Court of Justice and after seeking the opinion of the European Parliament and the approval of the national parliaments;

10. Proposes that the constitutional process be initiated at the Nice Summit in December 2000 with the adoption of a declaration annexed to the next Treaty, laying down a mandate, procedures and a timetable for the commencement of the drafting of a Constitution for Europe;

11. Considers it legitimate for the Commission and the European Parliament to be the driving force behind this constitutional process and for contributions from the national parliaments and the public, both in the Member States and the applicant countries, to be taken into account to a very large extent;

Second stage: drafting of the Constitution by a 'Convention'

12. Points out that the Charter of Fundamental Rights currently being drawn up provides the underpinnings for a common constitutional platform (the Charter could be incorporated into the Treaty in the form of a first chapter of the Constitution);

13. Proposes that, in view of the collegial, transparent and valuable work being carried out by the Convention, which has drawn up the draft Charter of Fundamental Rights, the same formula be used in order to draft the future Constitution of the Union;

14. Proposes however that the formula be suitably adapted, taking into consideration all the preparatory work in order to perfect the discussion and decision-making procedures within the Convention;

15. Considers that the Convention should have a maximum of one year in which to draw up the preliminary draft Constitution;

16. Considers that the timetable for the preparatory work should be so organised that the Constitution can be concluded before the European elections in 2004;

17. Calls on its Committee on Constitutional Affairs, during the preparatory work, to conduct a dialogue with the Convention and periodically to hear representatives of the corresponding committees of the national parliaments;

18. Restates, for the benefit of the applicant countries, its firm belief that under no circumstances will the above work be allowed to block or delay the accession process; considers, in this connection, that representatives from those countries should take part in the proceedings of the Convention and calls therefore for them to be made parties thereto;

19. Proposes that, once the European Parliament has given its assent, the adoption of the Constitution be made subject to a referendum held simultaneously in all the Member States which have opted for this ratification procedure;

20. Calls on the parliaments of the Member States and the applicant countries to submit to it their views and any proposals they wish to make on the above procedures from the moment the process is initiated up to the adoption of the final version of the Constitution;

21. Instructs its President to forward this resolution to the Intergovernmental Conference on the revision of the Treaties, the Council, the Commission, the national parliaments and the applicant countries.

EXPLANATORY STATEMENT

Introduction

1. On 21 and 22 June 1996 the European Council meeting in Florence called on, among others, the Intergovernmental Conference (IGC) convened with a view to preparing the Amsterdam Treaty 'to seek all possible ways of simplifying the Treaties so as to make the Union's goals and operation easier for the public to understand[1]'. Even though the rapporteur does not agree with all of the negative comments made in both political and scientific circles since its entry into force, it must be admitted that the Treaty went very little way towards meeting the European Council's wishes, since the basic structure of the Maastricht Treaty remains essentially the same. Most important of all, the reforms contemplated in the Protocol on the institutions with the prospect of enlargement of the European Union, which is annexed to the Amsterdam Treaty, have yet to be made and are currently being considered by the present IGC.

2. In the meantime, the swift progress made in the enlargement negotiations and in establishing a common foreign and defence policy have made this aspect of institutional reform still more important. Moreover, respect for fundamental rights within the European Union has become a major political issue, not only owing to the Charter of Fundamental Rights, but also because of the concern to which the inclusion of an extreme right-wing party in the government of one of the Member States has given rise. The political responses to that event have included proposals from many quarters to strengthen the measures provided for in Article 7 of the Treaty on European Union. Such developments confirm the fact that the Union is today founded on a system of shared values - namely, peace, liberty, equality, tolerance, solidarity, justice, human rights and democracy - which are enshrined in most national constitutions in the Member States and the applicant countries. Respect for and furtherance of those principles are the European Union's *raison d'être.* Given their importance, it is therefore only logical for them to be set in stone in a European Constitution and for this to be made a priority.

3. Recently, several statements have been made at the highest political level on the long-term prospects for the Union and the problems to be solved once the current Intergovernmental Conference has completed it work. On 12 May 2000 the German Foreign Minister, Joschka Fischer, set out his personal vision of a three-stage process leading to a 'European federation'. In his view, the forthcoming enlargement required a choice to be made between 'erosion and integration'. To avoid such erosion, Mr Fischer proposed that the Union move over to 'full parliamentarism within a European federation that Robert Schuman was already recommending fifty years ago', with a European 'government'. He was, however, careful to point out that 'the step leading from closer cooperation to a constitutional treaty' would call for 'a deliberate political re-founding of Europe'.

Speaking in Berlin on 27 June 2000, the French President, Jacques Chirac, proposed that the Nice Summit be followed immediately by the launch of a process enabling Europe to find answers to the other institutional issues facing it. It would be necessary first to 'reorganise the

[1] Part V of the conclusions.

Treaties so as to make their presentation more consistent and easier to understand for the general public. Then, to define clearly the allocation of powers between the different levels in Europe. [...] On completion of that work, which will no doubt take a few years, the governments and the peoples would be asked to vote on a text which could then be enshrined as the first European Constitution'. In a statement made during a reception held for French ambassadors on 28 August 2000, Mr Chirac restated his wish to see deliberations on 'a fundamental text that would become the first European Constitution' start after the French Presidency.

On 6 July 2000 in Leipzig the Italian President, Carlo Azeglio Ciampi, argued in favour of a European Constitution made up of two sections, the first comprising the Charter of Fundamental Rights, and the second covering the allocation of powers between the Union and the Member States. If not all the Member States were ready, a core group comprising in particular those founding Member States that were willing and able to take part could show the way.

4. All the above developments have once again highlighted the need to make the Community mechanisms more effective and transparent and to emphasise the constitutional nature of the Treaties. The Court of Justice has found on numerous occasions that, taken as a whole, the Treaties form a 'constitutional charter' for the Union. The rapporteur will therefore not be going in to the question being asked in some quarters, namely: 'Does the European Union need a constitution?'[1]. He will confine himself to noting that a European Constitution would be a unique act in the same way as the European Union constitutes a unique legal order. In practice, we already have a constitution in the form of the Treaties, but that constitution is dense, piecemeal, confused, nameless, unreadable and invisible. The time has come for greater openness and clarity.

Action taken by the European Parliament in support of a European Constitution

5. When it was directly elected for the first time in 1979, Parliament embarked on a quest for institutional reform aimed at establishing, in line with the vision put forward by the founding members of the ECSC and the EEC, an ever closer union among the peoples of Europe, the logical conclusion of which would be a political Union open to the outside world, democratic and close to the people.

With a view to meeting this objective, in the 80s and 90s Parliament based its approach first on a strategy consisting of draft constitutional texts such as the draft Treaty establishing the European Union, then a strategy of 'small steps' to be taken within the bounds of the existing Treaties as the opportunity presented itself and where the political situation allowed. These two approaches proved complementary. The 'Spinelli draft' was a fully-fledged outline European Constitution and sparked off a process that led to the signing of the Single Act, which took account of a sizeable number of the proposals contained in the text adopted by Parliament on the basis of Mr Spinelli's report.

[1] See for example Jean-Claude Piris, 'L'Union européenne a-t-elle une constitution? Lui en faut-il une?' Revue trimestrielle du droit européen 35(4), 1999, p. 600.

6. Unlike the Spinelli draft, the Herman draft was designed more to establish a framework for and consolidate an *acquis communautaire* marked by two recent treaty revisions than to give the Union a new impetus. During its work on a draft Constitution of the European Union, out of concern that its draft Constitution might be 'distorted' by an Intergovernmental Conference, Parliament took care not to leave the national governments out of its deliberations. Like its predecessor, the Herman draft failed to lead anywhere, but it did have the important effect of paving the way for the subsequent stages in the European integration process.

7. The Maastricht Treaty which established the European Union could thus be seen as a result of the various initiatives taken by Parliament, even though the introduction of an intergovernmental component in the 'pillars' structure was certainly not in keeping with the proposals it made during the Intergovernmental Conference. The authors of the Maastricht Treaty sought to integrate all the constitutional provisions into a three-pillar structure, but did not tackle the problem of reducing the large number of provisions contained in the previous treaties and, above all, failed to establish a hierarchy; rather than simplifying the Treaties, they further complicated them. Nonetheless, the Treaty did establish a number of far-reaching constitutional principles (e.g. European citizenship, codecision, the Protocol on the application of the subsidiarity and proportionality principles), without, however, drawing all the appropriate conclusions from them or getting rid of the contradictions remaining within the system. Given that it was almost unreadable, the Treaty, which was the product of exclusively intergovernmental negotiations which were not preceded by any preparatory work carried out by a committee along the lines of the Spaak or Dooge committees and which took account of only some of the views expressed by Parliament, had a difficult time in getting through the referendums held in Denmark and France.

In its resolutions on the Maastricht Treaty and the 1996 Intergovernmental Conference, Parliament proposed ways of replacing the system of legal rules currently in force with a more transparent system that would be easier to use. Furthermore, in its 1996 opinion for the Intergovernmental Conference which culminated in the signing of the Amsterdam Treaty, Parliament followed the Commission's example in emphasising the need to make a distinction between the fundamental Treaty articles and the other provisions. This idea was recently taken up by Mr Dehaene, Mr von Weizsäcker and Lord Simon in the report on the institutional implications of enlargement which they submitted to the Commission on 18 October 1999 (report by the 'Three Wise Men').

The 2000 IGC: the issue of the constitutionalisation of the Treaties

8. Throughout the duration of the preparatory work for the current Intergovernmental Conference, and in particular in the meetings with representatives of the national parliaments organised by its Committee on Constitutional Affairs, Parliament focused on the three institutional issues not settled in Amsterdam (not to be confused with the three technical 'left-overs' which, together with the issue of closer cooperation, currently constitute the draft agenda for the IGC), namely:

- the possible expansion of the agenda for the IGC;
- constitutionalisation of the Union;
- ways of stepping up dialogue between the European Parliament and the national parliaments.

In its resolution of 18 November 1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference (rapporteurs: Mr Dimitrakopoulos and Mr Leinen), Parliament stressed that 'the prospect of a wider Union calls for a constitutional process to be launched which must involve the simplification and rationalisation of the Treaties with a view to making them transparent and intelligible to citizens'. It took the view that constitutionalisation of the Union implies the unification of the Treaties in a single text divided into two sections: a constitutional section comprising the objectives of the Union, citizenship and fundamental rights and the provisions concerning the institutions and decision-making procedures; and a second section defining Union policies. The same proposal was also put forward by the Three Wise Men led by Mr Jean-Luc Dehaene, and was endorsed by the Commission.

9. Parliament also called for the IGC to alter the procedure for the future revision of the Treaties in order to democratise the revision process and ensure it reflected the Union's dual legitimacy by introducing a power of codecision for the institution which represents the States and that which represents Union citizens. Unfortunately, the Feira European Council decided to add only one further topic to the IGC agenda, namely closer cooperation.

Why a Constitution rather than a Treaty?

10. Treaties are normally concluded between sovereign States which remain sovereign. They are binding on and applicable to those States alone. They are not directly binding on the people of those States and do not directly give them either rights or obligations. Treaties which establish a new legal order can normally only be implemented with the consent of the signatories. No obligations other than those set out in the treaty may be imposed on them against their wishes.

Conversely, by signing the Treaty of Rome, the Member States deliberately founded a Community based on its own specific law and with its own bodies, which is independent of the Member States and is able to generate legislation with which they comply and which is directly applicable to their citizens. These supranational attributes (e.g. majority voting in Council, regulations directly applicable to citizens, the enforceability of Court of Justice judgments, review by that Court of the legality of Council acts) have been considerably consolidated by Court of Justice case law, which, over the years, has established:

- the existence of a constitutional legal order ('constitutional charter');
- the primacy of Community law over national law[1];
- the possibility for citizens directly to secure recognition and enforcement of the rights conferred upon them by the Treaty or by Community law (direct effect of certain provisions).

That case law today forms part of the *acquis communautaire*. Furthermore, the ECSC and Euratom Treaties contain various interesting institutional developments that it would be a waste to allow to lapse, as some people would like. Incorporating them in a Constitution would be a means of ensuring that they live on.

[1] See also the European Parliament's resolution on the basis of a report on the relationship between international public law, Community law and the constitutional law of the Member States, OJ ....

11. The complexity of the Community's workings, the confusion between powers and responsibilities, the opacity of Community legislation and the unreadability of the Treaties themselves have done little to foster public support for the European project. The backward step of a renationalisation of policies, using subsidiarity as a pretext, can unfortunately no longer be ruled out. In some Member States, the champions of sovereignty have taken fright at the threat posed to their national identities by the bureaucratic centralism which the Brussels Commission represents in their eyes. Some national and, in particular, regional parliaments, which are already concerned at the fact that they have lost some influence at national level, are worried that their powers might be further reduced[1]. As long as it is simple and readable, a Constitution of the European Union should reassure everyone by establishing a stable political and legal framework within which powers and responsibilities are clearly defined.

12. At the same time, enlargement of the Union will necessarily call for rules capable of governing a legal system based on a much larger number of Member States. Constitutional rules will be required to govern such a system. In the absence of such rules, the system will be excessively rigid: by definition, the Treaties contain provisions that are sufficiently general to be defined as constitutional, and others which cannot have the same permanence as constitutional provisions. The provisions must be simplified and a clear distinction must be made between them; the same applies to the methods used to revise them.

European integration is based on a dual democratic legitimacy: that of the citizens represented by the European Parliament, and that of the Member States represented by the Council. Even if the national parliaments had greater powers of scrutiny than they do today, a Treaty signed only by the Member States, who are seen as the only source of power in Europe, would not be fully in keeping with those democratic principles. The Member States are no longer the sole 'masters of the Treaties'. This is why, from a democratic viewpoint, a Constitution is superior to the Treaties. By calling for the adoption of a Constitution which would gradually replace the Treaties, all we would be doing is to make both terminology and texts reflect reality more closely. In view of this, the actual term chosen for the European legal order, be it 'constitution', 'constitutional charter', 'constitutional pact' or 'constitutional treaty', appears a matter of secondary importance. It must be admitted, however, that the term 'Convention' better reflects the depth of our European commitment.

13. The failure of the draft European Constitution drawn up by Fernand Herman in 1994 led Parliament to adopt a new, pragmatic, strategy of 'small steps'. Nonetheless, given that broad areas of the monetary policy of the Member States have been placed in the hands of and are run by an independent Central Bank, that external policy (including defence policy) will probably soon be run partly on a common basis, and, lastly, that there will soon be more than twenty Member States, the cohesion and effectiveness of Community action can no longer be guaranteed by a set of multilateral obligations deriving from an accumulation of long and complicated Treaties.

So where do we go from here?

[1] See Committee of the Regions Opinion 302/98 of 11 March 1999 (rapporteurs: Mr Delebarre and Mr Stoiber).

14. The European Parliament must continue with its basic strategy of advocating clarity, simplicity, readability and the establishment of political and legal principles that everyone can understand and that are capable of upholding the fundamental political interests of the two main component parts of the Union: the Member States and the citizens. This strategy must be Parliament's main contribution after the revision of the Amsterdam Treaty scheduled for the summit in Nice, and must also prevent the Union's political *acquis* from being called into question.

15. A decentralised cooperative federal model[1] is based on a dual democratic legitimacy (citizens and Member States). Under this model, the Member States and the Union are involved at all stages of the decision-making process, but implementation of the decisions taken is left mainly up to the former. This joint involvement extends to all acts with legal implications: laws, budgets, appointments, treaties with non-member countries, and the Constitution. Equality of status between the Council and Parliament should be achieved either in respect of all types of act, or by means of the division of acts into two more or less equal groups, with the Council having the last word on one group, and Parliament on the other. Whatever the case, Parliament's aim must be to ensure that a Constitution is adopted by the Member States and by the peoples of Europe.

16. As far as practical considerations are concerned, the views of the people must be respected. Their representatives at European level must therefore approve the Constitution, which must then be adopted at national level by the parliaments and directly by the people, by referendum (a healthy development). Given that the Constitution will also be binding on the Member States themselves, the national institutions – the parliaments, governments and, where provided for in the national constitutional system, regional authorities - must be able to express their views and take part in preparing it. Lastly, the Community institutions must be directly involved in the procedure.

First stage: reorganisation of the Treaties to be initiated in Nice

17. An initial Treaty could thus be drafted in keeping with the existing legal and institutional situation[2]. The Nice European Council could give a mandate to the Council, acting unanimously on a proposal from the Commission, to adopt that Treaty following consultation of the Court of Justice and after seeking the opinion of the European Parliament.

18. The constitutional discussions could also be opened at the Nice Summit in December 2000 with the adoption of a declaration annexed to the next Treaty, laying down the procedure and timetable for commencement of the drafting of a European Constitution. Throughout the procedure, contributions from the national parliaments and the public, both in the Member States and the applicant countries, should be taken into account to a very large extent.

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[1] See for example Ingolf Pernice, 'Multilevel constitutionalism and the Treaty of Amsterdam: European constitution-making revisited?', Common Market Law Review 36, 1999, p. 703.

[2] See the text submitted on 15 May 2000 by the EUI in Florence, which has been placed on the Commission's Internet site:
in French: http:/europa.eu.int/comm/igc2000/offdoc/repoflo_fr.pdf
in English: http:/europa.eu.int/comm/igc2000/offdoc/repoflo_en.pdf
in German: http:/europa.eu.int/comm/igc2000/offdoc/repoflo_de.pdf

Second stage: drafting of the Constitution by a 'Convention'

19. The proceedings of the Convention responsible for drawing up a Charter of Fundamental Rights have been conducted in a transparent and constructive manner. It is felt in some quarters that this exercise could serve as a useful basis for establishing new treaty revision procedures. The rapporteur also considers that the Charter currently being drawn up provides the underpinnings for a common constitutional platform (the Charter could be incorporated into the Treaty in the form of a preamble to the first chapter of the Constitution). In view of the collegial work being carried out by the Convention, the same formula could be used for discussion of the political aims of the Union and for preparing a European Constitution.

However, the formula must be suitably adapted so as to enable all the preparatory work to be taken into consideration and to ensure that effective decision-making procedures are introduced for the new Convention. Under no circumstances must the Convention's work be allowed to block or delay the accession process; it is therefore essential for representatives from those applicant countries to be involved in that work.

20. Our fellow citizens are in favour of a European Constitution. In the Spring Eurobarometer survey they were asked the following question for the first time: 'Do you think that the European Union should or should not have a constitution, that is a core document which brings together the various current Treaties?'. Seventy per cent of EU citizens replied 'Yes', 6% 'No' and 24% 'Don't know'. Over 50% of respondents replied 'Yes' in each of the Member States, with the exception of the United Kingdom (47%), and fewer than 10% replied 'No', with the exception of Denmark (24%, although 59% replied 'Yes') and Finland (19%, although 66% replied 'Yes'). When expectations are so high, we cannot afford to disappoint them. The rapporteur proposes that, once the European Parliament has given its assent, the Constitution be adopted in accordance with the relevant national rules, and, if possible, by means of referenda held simultaneously in all the Member States – or at least those which accept to hold one. The first European referendum should have at least consultative status. In those countries which have no tradition of holding referenda, the national parliament's sole decision-making powers would be respected. In those which do, it could have binding status. This would enable a common forum for public debate at last to take shape throughout Europe, in which everyone would be able to discuss their shared future together and at the same time. The parliaments of the Member States and the applicant countries will be asked to submit their views and any proposals they wish to make on the procedures put forward by the European institutions and the national governments from the moment the process is initiated up to the adoption of the final version of the Constitution.

This would enable all of the Union's citizens to state their views before the first Constitution is finally promulgated, and would thus confer full legitimacy on this fundamental act.

MINORITY OPINION

by Georges Berthu, on behalf of the Union for Europe of the Nations Group
and
Jens-Peter Bonde, on behalf of the Group for a Europe of Democracies and Diversities

Parliament's report on the constitutionalisation of the Treaties manages to propose that the process of drafting a European Constitution be initiated at the forthcoming European Council meeting in Nice, without ever stating clearly exactly what additional benefits such a text would bring.

The resolution states that the Constitution would constitute a 'reference text', that it would be a means of 'simplifying the rules governing the European institutions', that it would clearly state the 'common values of the EU', the 'principle of the separation of powers', the 'functioning of the institutions', the 'allocation of powers and responsibilities', the 'subsidiarity principle' and so on. However, all of these issues could be covered in a Treaty, and if the current Treaty is deemed unsatisfactory in this respect, a new, clearer, Treaty could be drawn up.

The ultimate goal of a European Constitution would, in fact, be to assert: (1) that the Union is a State; and (2) that it is has greater legitimacy than individual nations. This would lead to: (3) the introduction of collective decision-making procedures which no individual nation would have the power to block. Paragraph 8 is moving in this direction when it calls for the future Constitution to be based on 'differentiated' revision procedures (i.e. procedures different from those obtaining under the current system of national ratification), 'with no risk of the process being blocked' (i.e. with no opportunity for a given people to object).

The report calls for this 'Constitution' to be drafted by a 'Convention' made up of representatives of governments, the Commission, the European Parliament and national parliaments, along the lines of that which recently drew up the Charter of Fundamental Rights. However, the 'Convention' was not all it is now being claimed to be: no one has as yet been able to understand exactly how that body, whose constituent parts were mixed together in an impenetrable way, actually took its decisions. That did not prevent it from seeing itself as superior to all the institutions and claiming a legitimacy that it did not have.

We oppose this report so as to draw attention to the fact that the Union is not a State which takes precedence over nations. It is the nation which holds the primary legitimacy in the eyes of the people. The Union can therefore be no more than an association of nations, each of which obeys in the first instance its national Constitution, i.e. the free and sovereign will of its people.