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Med venlig hilsen

Christian Dubois

**CONFERENCE OF SPEAKERS
OF THE EUROPEAN UNION
PARLIAMENTS**

Athens – 23 - 24 May 2003

NATIONAL PARLIAMENTS
AND THE INSTITUTIONAL EVOLUTION OF EUROPE

REPORT PRESENTED BY MR. JEAN-LOUIS DEBRÉ,
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Foreword

The future of national parliaments in the European Union is unfurling today at the Convention. Largely in the majority - they form 56 of the 105 members of the Convention on the Future of Europe - the delegates of national parliaments are nevertheless experiencing difficulties in

expressing themselves in an organised manner within an assembly where, divides are complex: 'big' countries and 'small' countries, 'sovereignists' and 'communitarists', 'supranationalists' and 'intergovernmentalists', current member countries and future member countries, governments and parliaments... Far from favouring one component rather than another or giving greater importance to such or such an interest, the aim is to make headway towards clear objectives serving a joint project and a community of peoples.

The Declaration on the Future of the Union, appended to the Nice Treaty, mentions the role of national parliaments in the European architecture among the four important questions with a view to the enlargement and democratic strengthening of reunified Europe. The decision, taken at Laeken in December 2001 by the Heads of State and Government, to convene a Convention tasked with proposing a reform of the institutions is a positive signal sent to national parliaments. Never before had the revision procedure of the Treaties been so transparent, so democratic, so political and consequently so ... parliamentarised.

The citizens we represent place high expectations in Europe which they don't always understand. As parliamentarians it is our duty to strengthen the daily involvement of our assemblies in European affairs which, we all know, are not foreign affairs. The engagement of national parliaments in European construction has been a recurrent topic since the election in 1979 of European deputies by direct universal suffrage. In 1999, the entry into force of the protocol on the role of national parliaments, appended to the Amsterdam Treaty, amounted to explicit recognition of the contribution of parliaments to European construction. Whereas the Union is criticised for its democratic deficit, the European Convention has opened new prospects which we must seize. The involvement of na-

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tional parliaments forms a key factor in the deepening of the Union which we so fervently desire.

The work started fifteen months ago, and which should be concluded in a few weeks time, has shown on several occasions the parliamentary dimension of the Union. The present report intends to underscore the challenge of the reforms envisaged by the Convention regarding the future role of national parliaments.

Whether it is a matter of the monitoring of the subsidiarity and proportionality principles, suppression of the pillars and its consequences on the Union's policies, promotion of European citizenship and the Union's democratic life, recognition of international legal personality or the revision procedure of the treaties, all these subjects have a parliamentary dimension which we should promote. In a spirit of interinstitutional exchange and dialogue, national parliaments can play, each for its part, an active role with each of the institutions of the Community 'triangle'. Collectively, they will also have to imagine in the future flexible but efficient forms of interparliamentary cooperation, which will participate in redefining their role in an enlarged Europe.

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FIRST PART

INTERINSTITUTIONAL DIMENSION OF THE ROLE OF NATIONAL PARLIAMENTS WITH RESPECT TO THE WORK OF THE CONVENTION ON THE FUTURE OF EUROPE

I – National parliaments and the European Commission

Never in the history of European construction have national parliaments had direct relations with Community institutions¹. They have always made their views known through their respective governments acting within the Council of the European Union. This organic isolation has, to a certain extent, set national parliamentarians aside from the major European political challenges, causing a certain ignorance of the Union's institutional operation. A major innovation examined by the Convention consists therefore in organising direct institutional dialogue between national parliaments and the European Commission.

U Towards direct access to Commission documents by national parliaments

Existing state of law

The entry into force in 1999 of the protocol on the role of national parliaments in the European Union, appended to the Amsterdam Treaty, marked an important step forward in the recognised rights of national parliaments, by setting forth that *'all Commission consultation documents (green and white papers and communications) shall be promptly forwarded to the national parliaments of the Member States.'* Referring to

'proposals for legislation', 'they shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate.' In practice this means that the Commission never sends its documents directly to national parliaments and the latter are informed of Union legislative activities through their governments.

The Convention's proposal

The draft protocol on the application of the principles of subsidiarity and proportionality, presented by the Convention Praesidium², sets forth in its point 3 that *'the Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union legislator.'*

As for the draft protocol on the role of national parliaments, it sets forth

¹ While, until 1979, the members of the Strasbourg Assembly were indeed delegates of national parliaments, the Assembly had merely a consultative role and did not have the powers it has today.

² CONV 579/03 (27 February 2003)

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that *'all Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national parliaments'* and adds that *'the Commission shall send all its proposals for legislation **directly** to Member States' national parliaments **at the same time as to the European Parliament and to the Council.***' This drafting takes up a recommendation made by the Convention *'National parliaments'* working group chaired by Mrs Gisela Stuart. In a contribution to this working group³, Commissioner Michel Barnier, a member of the Convention, therefore specified that *'the Commission would not have any difficulty in envisaging direct transmission if the Member States felt that this would not jeopardise constitutional relations between national governments and national parliaments.'*

As the scope of documents subject to automatic transmission may appear restrictive, several amendments have been filed within the Convention in order to broaden the fields covered by the protocol⁴: transmission of the multiannual strategy, annual report of the European mediator, financial and regulatory consequence of legislative proposals. Some amendments also suggest that the Commission should promptly answer requests for information or clarifications on the part of national parliaments. In effect, while European Union official documents can now be accessed on Internet, and parliaments can obtain them directly and instantaneously, institutional dialogue with the Commission could contribute substantial added value by supplying national parliaments with the necessary explanations to analyse thoroughly the texts on which they are required to vote.

³ WG IV - WD 9 (15 July 2002)

⁴ CONV 610/03 (12 March 2003)

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∪ **An institutional innovation: the early warning right**

Procedure envisaged for monitoring the subsidiarity principle

The subsidiarity principle, introduced by the Maastricht Treaty, refers to the most appropriate level of intervention when a competence is shared between the Union and the Member States. In the event of 'shared' or 'competing' competences, European action is justified only if the Union is really in a position to act more effectively than Member States individually.

Application of the subsidiarity principle is one of the four priority topics appearing in the Declaration on the Future of Europe appended to the Nice Treaty. This is a subject closely related to that of the role of national parliaments because the absence of appropriate monitoring of compliance with subsidiarity may well lead to parliamentary competence being lost.

The recommendations of the Convention 'Subsidiarity' working group, chaired by Mr Inigo Mendez de Vigo⁴, advocate the recognition of an '**early warning right**' for national parliaments by which each national parliament could send the Commission a reasoned opinion on the supposed infringement of the subsidiarity principle. Early warning is therefore aimed at allowing national parliaments to express their position individually and directly at the beginning of the Community legislative procedure. It is a matter of *ex ante* monitoring that does not set out to allow national parliaments to intervene directly in the Community legislative procedure. This justifies the fact that the Commission cannot be legally bound by the opinions given. Consequently, the draft protocol on the application of the subsidiarity and proportionality principles specifies that **in the event where at least one third of national parliaments would give a justified opinion** on infringement of the subsidiarity principle by the Commission's proposal, the Commission would be obliged to reconsider its proposal. Following this reconsideration, the Commission could decide either to maintain its proposal, or amend or withdraw it.

Many amendments have been filed on this draft protocol aimed at introducing a 'red card' which would oblige the Commission to withdraw its proposal whenever two-thirds of national parliaments would give a negative opinion. The perverse effects of such a proposal should not be underestimated; by intervening so brutally in the

legislative procedure, parliaments run the risk of appearing as a source of blockage of European construction. However, there are many other means of involving national parliaments than placing them exclusively in a position of opposition.

In any case, even if it is not legally bound by parliamentary opinions, the Commission will in practice receive a political signal which will naturally have consequences on the content of its legislative proposals. The history of European construction is a process of permanent negotiations; in this respect, the early warning right fits fully into Community logic.

The Convention 'Subsidiarity' working group had also envisaged the possibility for national parliaments to exercise an *ex post* right to bring actions before the

⁵ CONV 286/02 WG I 15 (23 September 2002)

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European Union Court of Justice after entry into force of legislative acts. In its draft protocol on the application of the principles of subsidiarity and proportionality⁶, the Convention Praesidium recognised a right of appeal for national parliaments only via their respective governments. This restrictive interpretation caused disappointment since the working group proposals had nevertheless achieved consensus at the Convention plenary session of 3 and 4 October 2002⁷. That's why the Praesidium could be led to proposing improvements on at least two points:

- First, each national parliament should have two votes in implementing the early warning right, in order to take into account the specific situation of bicameral parliaments;
- Second, each chamber should be able to bring an action directly before the European Union Court of Justice, within the framework of *ex post* actions envisaged in the draft protocol.

⁶ CONV 579/03 (27 February 2003), mentioned above.

⁷ CONV 331/02 (11 October 2002)

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A desirable extension of the early warning mechanism to fundamental rights

The area of security, freedom and justice is at the centre of the competences of national parliaments and of the life of European citizens. The measures adopted in this field, particularly in penal matters, should be the subject of a democratic and transparent debate both at European and at national level..

The evolutions contemplated by the Convention in the justice and home affairs (JHA) field deeply affect the competences of national parliaments, and should in this respect be combined with a strengthening of their role in elaborating Union law. The nature of the competences and of the issues addressed by the Union is indeed changing radically. Member States' policies in criminal, asylum and immigration matters are being increasingly defined in Brussels. The issues addressed at each session of the 'Justice and Home Affairs' Council therefore concern the central aspects of the rights and of the life of each citizen and of the competences of their representatives.

The Convention '*Freedom, security and justice*' working group chaired by Mr John Bruton therefore mentioned in its final report⁸ the creation – suggested by several Convention members – of a similar early warning mechanism for the cases where national parliaments feel that an initiative – of the Commission or of a group of Member States – would go against fundamental aspects of their national penal law. It would be advisable for such a possibility to be planned in the protocol on the role of national parliaments.

* *

II – National parliaments and the Council of the European Union

The relationship between national parliaments and the Council is complex as the Council, made up of representatives of governments, holds both legislative power and executive competences within the European Union. Europe indeed does not have the same type of separation of powers characterising the member countries. Further, if one considers that the Council is the Community institution representing the interests of States, national parliaments could have their place there, as a component of States, alongside their respective governments. In this respect everyone agrees in considering that the relationship between governments and parliaments is a matter for the specific constitutional practices of each country; this however does not exclude the formulation of proposals aimed at better informing national parliamentarians of the work of the Council of the European Union. In this framework, the major concern of national parliaments is that of a greater transparency of Council work, the prerequisite for a better access to Community information.

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∪ *Challenges of a greater transparency of Council work*

The Convention, in keeping with the conclusions of the '*Simplification of Instruments and Procedures*' working group chaired by Mr Giuliano Amato⁹, recommends a clearer distinction between the legislative and executive activities of the Council of the European Union. Draft Article 36 of the Constitutional Treaty therefore sets forth that the legislative debates of the Council in its legislative form shall be public. This proposal breaks with the confidentiality of negotiations which characterises the Council's work. It is also consistent with the strengthening of the powers of the European Parliament as the ordinary law co-legislator of the Union and whose proceedings, as far as they are concerned, are public. In this spirit, point 5 of the draft protocol on the role of national parliaments sets forth that '*the agendas for and the outcome of Council meetings shall be transmitted directly to Member States' national parliaments.*' This is a strengthened guarantee offered to national parliaments.

Transparency of work by the Council in its legislative form will now allow national parliaments to be informed not only at the beginning of the legislative procedure but throughout the Community process. This will promote the intensity and scope of parliamentary scrutiny.

∪ *Elaboration of a code of conduct*

The relations between governments and national parliaments are a matter for the specific constitutional requirements of each State. However, practice shows that some national systems are more supportive of parliamentary scrutiny than others, and that it can be very useful to list the best practices seen in the European Union. In its final report, the Convention '*National parliaments*' working group therefore felt it was useful to analyse the various national systems in order to define minimum standards. Two aspects can be distinguished: the nature of information sent to national parliaments and compliance with minimum timeframes for assessing proposals.

Nature of information communicated to national parliaments

The report by the '*National parliaments*' working group argues for regular hearings of ministers, both before and after Council sessions.

COSAC has also elaborated instructive minimum standards in accordance with the recommendations of a working group created within it

⁹ CONV 424/02 WG IX 13 (29 November 2002)

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in November 2002 during the Danish chair of the European Union¹⁰. These '*Copenhagen guidelines*', adopted in January 2003 during the XXVIIIrd extraordinary COSAC in Brussels, state that: 'Opportunities should be provided for meetings with ministers in the national parliaments well in advance of Community meetings. The government should give an account of its attitude to Community proposals at such meetings.' Furthermore 'The national parliament should be informed by the government well in advance as regards decisions to be made in the European Union and concerning the government's proposals regarding decisions. This concerns ordinary meetings of the Council, summit meetings, and inter-governmental conferences. The national parliaments should also subsequently be informed of the decisions taken.'

Information is constantly evolving; it must be transmitted in a continuous flow so that national parliaments can enjoy information updated as Community negotiations actually take place. Further, the transmission by each government of an impact study stating the provisions of national law that may be modified by European legislation would strengthen the relevance of parliamentary scrutiny.

Timeframes for assessing proposals

Currently, the protocol on the role of national parliaments, appended to the Amsterdam Treaty, sets forth that, subject to exceptions on the ground of urgency, a period of six weeks shall elapse between the time when the Commission transmits a legislative proposal to the Council and to the European Parliament, and the inclusion of this proposal on the Council agenda with a view to a decision. However difficulties arise when, without formally adopting an Act, ministers reach a political agreement before the six week period elapses. That is why the Convention working group recommended that '*Council working groups and Coreper should not acknowledge preliminary agreements on proposals concerned by the six-week period set forth in the protocol on national parliaments, appended to the Amsterdam Treaty, before the end of said six-week period, exceptions being allowed for on the ground of urgency – as laid down in the protocol.*' However this proposal was not adopted by the Praesidium in the new draft protocol submitted to the Convention.

The final report of the working group chaired by Mrs Gisela Stuart also recommended that '*the Council's rules of procedure provide for a clear week to elapse between a legislative item being considered at Coreper and the Council.*' This is an important provision so that national parliaments can assert their viewpoint from the beginning of the procedure. However neither does this proposal appear in the draft presented by the Praesidium.

¹⁰ http://www.cosac.org/fr/precede/copenhagen_2002/wgdec.htm

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The new draft protocol on the role of national parliaments therefore falls short of the expectations of national parliaments and scarcely makes any improvement with respect to the present situation. This is nevertheless a major challenge so that national parliaments can exercise real influence on European decision-taking.

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III– National parliaments and the European Parliament

In 1979 the election of European deputies by direct universal suffrage broke the organic tie that existed between national parliaments and Community institutions. In effect, until then, each parliament appointed within itself representatives to sit at the Strasbourg Assembly. But the European Parliament of the time had none of the powers of a parliament like any other: the Rome Treaty did not grant it real decisional powers since it was merely empowered to formulate simple opinions on a limited number of texts. The 1979 reform was therefore essential to make the European Parliament a really democratic institution, by granting it undeniable popular legitimacy through direct universal suffrage.

There is no point in opposing two legitimacies – one European, and the other national – which complete each other far more than they oppose one another. The European Union is based on a double legitimacy: that of States and that of peoples. As they are directly elected by citizens, the European Parliament and national parliaments represent the peoples of European Union Member States. The Union's democratic legitimacy will therefore be strengthened by simultaneously strengthening these two poles of legitimacy (European Parliament and national parliaments).

∪ Clarification of roles: from competition to complementarity

Marking a fundamental step in the deepening of European construction, the Maastricht Treaty, which came into force in 1993, has transferred huge swaths of sovereignty from States to the European Union, dispossessing national parliaments of some of their competences. The Treaty on European Union has also considerably strengthened the prerogatives of the European Parliament by extending the scope of the co-decision procedure in the Community pillar.

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The Union's institutional architecture is indeed based on three pillars which correspond to different decision procedures. Whereas the first pillar refers to Community policies which are based on the exclusive right of initiative of the European Commission and a mechanism for adopting texts based mostly on the co-decision procedure, the second and third pillars are a product of intergovernmental logic where the role of States is preponderant. It is not the role of national parliaments to interfere in the Community legislative procedure even if the recognised competence of the European Parliament cannot exclude continuous dialogue with national parliaments. But the early warning right, which the Convention envisages to grant them to monitor subsidiarity, clearly shows that they should intervene only if the Union ignores the scope of their competences. Relations between national parliaments and the European Parliament are therefore closely related to the delimitation of competences between the Union and Member States. It is therefore particularly in the field of shared competences that thorough analysis should commence on the future relations between the European Parliament and national parliaments. This illustrates the deeply interparliamentary dimension in the European Union.

∪ *Interparliamentary dimension in the European Union*

A real intensification in the relations between national parliaments and the European Parliament has been seen for several years. This is a positive evolution and emphasises the complementarity between these two legitimacies.

Cooperation between the European Parliament and national parliaments can assume various forms. In several Union countries, it can therefore be observed that European affairs committees of parliaments are open to the national European deputies. For instance at the Bundestag, European deputies, allowed to participate in the work of the European affairs committee, are appointed by the Speaker on proposal by the parliamentary groups. However, while they can take part in the debates, European deputies are not generally entitled to vote within the parliamentary committee. It should also be emphasised that, in the majority of Union countries, European deputies are increasingly regularly invited to participate in joint meetings as part of the strengthening of interparliamentary cooperation.

Similarly, national parliamentarians are frequently invited to participate in European Parliament committee meetings. The rules of procedure of the European Parliament¹¹ indeed set forth that '*Parliament shall keep the national parliaments of the Member States regularly informed of its activities. The Conference of Presidents may give a mandate to the President to negotiate facilities for the national parliaments of the Member*

¹¹ Article 55

(Løbenr. 20352)⁶

The report by Mr Giorgio Napolitano, Chairman of the European Parliament Committee on Constitutional Affairs, adopted on 23 January 2002 on relations between the European Parliament and the national parliaments in European integration¹², proposes to develop and place on a systematic footing interparliamentary cooperation, particularly in the areas of the common foreign and security policy, Economic and Monetary Union, the area of freedom, security and justice and constitutional affairs. In this respect, the report suggests the formulation of an 'interparliamentary agreement' which might include '*outline reciprocal commitments with regard to programmes of multilateral or bilateral meetings on European issues of common interest or of a general or sectoral nature,*' as well as '*the exchange of information and documents.*'¹³

In the same spirit, the working group created within COSAC recommends the conclusion of such an agreement between national parliaments and the European Parliament in order to place exchanges on a systematic footing. The regular organisation of sectoral interparliamentary meetings would help to know the viewpoint of national parliamentarians before the European Parliament examines legislative proposals at first hearing. But the initiative of such meetings should not be exclusively reserved for the European Parliament. Exchanges between European political groups and parties should also intensify to develop and broaden a genuine democratic debate on the Union's legislative programme.

The impetus for and the follow-up of interparliamentary cooperation requires the setting in place of appropriate administrative structures. The increase in the number of liaison officials from national parliaments at the European Parliament bears witness to the concrete and daily dimension of interparliamentary cooperation. A supportive secretarial structure for COSAC, formed for instance from this network of liaison officials, would also contribute very usefully to strengthening this cooperation.

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¹² A5-0023/2002 (23 January 2002)

¹³ A draft cooperation agreement between the European Parliament and the Member States was therefore elaborated by the European Parliament Committee on Constitutional Affairs.

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SECOND PART:

THE COLLECTIVE ROLE OF NATIONAL PARLIAMENTS REMAINS A DIVISIVE SUBJECT

∪ *From the creation to the institutionalisation of COSAC*

In May 1989 the speakers of the parliaments of the European Community Member States agreed at their Madrid conference to strengthen the role of national parliaments in the Community process by bringing together the various European affairs committees of parliaments. The first meeting of the COSAC as an informal interparliamentary organisation was held in Paris in the month of November 1989. Since then, COSAC meets at least twice a year in the parliament of the country chairing the Union. Since 1994 the candidate countries have been involved in COSAC work with observer status.

It was in 1999, with the entry into force of the Amsterdam Treaty, that COSAC was officially institutionalised, through the protocol on the role of national parliaments. Yet COSAC has not become a new institution, but remains an 'interparliamentary conference' which can now submit any contribution it deems appropriate to the Union institutions. The protocol on the role of national parliaments also sets forth that '*COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals.*'

Each COSAC meeting generally ends with the adoption of a contribution - to date by consensus. Mention can be made, for example, of the declaration on terrorism (XXIIIrd COSAC, Versailles, October 2000), the appeal to voters in the European elections (XXth COSAC, Berlin, May-June 1999) or else the declaration on transparency (XVIth COSAC, The Hague, June 1997).

These declarations do not however express the position of national parliaments but only that of COSAC. In effect, COSAC represents European affairs committees of parliaments more than national parliaments,

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which means that the parliamentarians sitting in COSAC cannot commit their respective parliaments. Nor does the interparliamentary conference have its own budget, operating costs being borne by the parliament of the country chairing the Union.

It can be regretted that COSAC has not to date fully used its prerogatives recognised under the Amsterdam Treaty, not having examined any Commission legislative proposal.

In order to improve COSAC's operation, a working group was set up in November 2002 by the Danish chair of the Union. This working group held three meetings between November 2002 and March 2003, and has proposed a reform of COSAC's rules of procedure. The debates raised by the work of this group have nevertheless revealed divergent approaches regarding COSAC's future role and a collective organisation of national parliaments within the European Union.

U *COSAC's difficult evolution*

The draft reform submitted on 27 January 2003 to the examination of the extraordinary COSAC, Brussels, already formed a compromise with respect to the initial document presented in November by the Danish chair. The main proposals concern the following points:

- The adoption of a parliamentary code of conduct that is not legally binding ('Copenhagen guidelines') aimed at improving the quantity and quality of information supplied to national parliaments. This code of conduct should respect the constitutional requirements specific to each Member State;
- A reform of the voting rules, consisting in allowing the adoption of COSAC contributions no longer by unanimity but by a qualified majority of $\frac{3}{4}$ of the members voting thereon, which corresponds to more than 50% of the voting rights. However, in amending the rules of procedure the principle of unanimity among the delegations present at the meeting is maintained;
- The possibility of setting up a permanent COSAC secretariat in accordance with procedures to be defined;
- Support by COSAC for greater cooperation between the sectoral committees of national parliaments, yet without making COSAC the coordinating body of these meetings;
- The holding, each year, of a presentation by the European Commission of its legislative programme and the possibility for COSAC to offer sectoral support for implementing the 'early warning mechanism' as regards monitoring of the subsidiary principle;

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- The conclusion of interinstitutional agreements between COSAC and the European Commission, the European Parliament and the Council of the European Union.

The tone of the debate which has started on the working group proposals has revealed the omnipresent fear that a reform of COSAC will inevitably lead to its transformation into a new institution. Both the renunciation of voting by unanimity and the possibility of creating a light secretariat helping to ensure continuity of work, has strengthened this sentiment, especially among the delegations of the European Parliament, the Netherlands, Germany and Italy. Yet, owing to its very composition, COSAC cannot become a new institution since it already includes a Community institution, namely the European Parliament.

COSAC should on the other hand remain the focal point of inter-parliamentary cooperation and relations between national parliaments and the European Parliament should thereby be calmed. Yet COSAC has been more than an informal forum ever since its existence was enshrined in the protocol on the role of national parliaments, appended to the Amsterdam Treaty.

In any event, COSAC must decide on its future now that the Convention is drawing the Union's future institutional architecture. Will a

reformed COSAC on its own, however, be able to meet the concerns of national parliaments? It appears necessary to explore other pathways, not excluding a strengthening of COSAC but probably more visible to the European citizen.

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II – Absence of consensus on the forms of collective representation of national parliaments

U Rejection of a second chamber

The idea of creating a second European chamber is not new. Many political leaders and institutions argue for its creation. Yet the physiognomy of this new institution varies considerably depending on the proposals, and opinions are evolving rapidly on this politically sensitive subject. Some desire the creation of a Chamber of States composed of representatives of governments and national parliaments, alongside a Chamber of Peoples made up of the present European Parliament. Others feel it is necessary to form a second chamber composed of representatives of national parliaments but whose competence – non-legislative – would be limited to political scrutiny of matters coming under the present second and third pillars. The Assembly of the Western European Union (WEU) for instance recommends the establishment of an interparliamentary ‘second chamber’ to follow-up and accompany policies having remained mainly intergovernmental and fields of competence like the common foreign and security policy or police and judicial cooperation in penal matters¹⁴.

There are those, lastly, according to whom a second chamber of national parliaments should fit into a new European Parliament having become bicameral and composed of an upper chamber and a lower chamber (the current European Parliament).

But the idea of a second chamber is far from achieving consensus. A report by the House of Lords, published on 27 November 2001¹⁵, underscores the disadvantages. The setting up of a second chamber would in fact be likely to create the conditions of a conflictual relationship with the European Parliament and would be an argument used by governments to inform their respective parliaments less about European affairs. Lastly, a second chamber could exacerbate voter impatience and discontent to which it would have a very hard time responding. The impact of its work on opinion would be very low, even non-existent, while the dual mandate

¹⁴ *Assembly of the Western European Union / Interim European Security and Defence Assembly* - Document A/1778 (4 June 2002). 'The role of national parliaments in the European Union and more specifically in ESDP – a contribution from the Assembly to the Convention' – Presentation of the report tabled on behalf of the Political Committee by Mr Eyskens, rapporteur.

¹⁵ 7th report (session 2001-2002) 'A second parliamentary chamber for Europe: an unreal solution to some real problems'.

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imposed on its members would not allow them to be sufficiently available to scrutinise European institutions on a continuous basis.

For these reasons, in particular, there is no agreement today on the opportuniteness of creating a second chamber, and the Convention debates are not heading in that direction. However, everyone acknowledges the need to find a both visible and useful formula which will involve national parliaments – and through them citizens – in European construction. In this spirit the President of the Convention, Mr Valéry Giscard d'Estaing, put forward the idea of a 'European Congress.'

∪ *Uncertainties regarding the creation of a 'European Congress'*

A 'European Congress', composed of representatives of national parliaments and of the European Parliament, would make it possible to bring together in the same structure two distinct but non-competing legitimacies. President Valéry Giscard d'Estaing therefore spoke personally in favour of a Congress composed of 700 members (one third of European deputies and two thirds of national parliamentarians), which would debate once a year on the 'state of the Union' and could ultimately elect a president of Europe.

This proposal has not to date been welcomed in the Convention. European Parliament delegates in particular have mostly declared themselves opposed to it, at least in its present state. Admittedly many misunderstandings have arisen on this Congress, which some wrongly perceive as a new Community institution. However the Congress would be far more of an occasional, non-permanent meeting, without any legislative competence. It would be a political arena for debate on the Union's major orientations. The Congress could also serve as an electoral college participating in the appointment procedure of the highest officials in the Un-

ion. Lastly it could be competent to revise, by a qualified majority, some provisions of European treaties. In this precise case, the Congress represents an alternative to the impasse that would be created by maintaining the unanimity rule in a Europe enlarged to 25 countries or more.

But the Convention has not yet reached an agreement on this subject, which explains the ongoing vibrant discussions on other possible forms of involving national parliaments and strengthening interparliamentary cooperation. These proposals would not exclude the creation of a Congress.

An idea is gaining ground: that of specialised conventions or of *ad hoc* interparliamentary conferences, as suggested by the conclusions of the working group on the role of national parliaments. The example of the Convention on the charter of fundamental rights of the European Union

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has shown the efficacy of the convention 'method' which could be transposed to other subjects where political impasses occur. Why then not imagine, particularly in matters coming under the present-day third pillar, the European Council giving a mandate to a specialised convention, meeting for a limited period, to formulate reform proposals? Such conferences should be open to all the stakeholders concerned and their proceedings should be governed by the principle of disclosure. This is the prerequisite to involve citizens and, more widely, civil society in the challenges of European construction, which should attract more media attention to be better understood.

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