

# The European Convention

*The evolution of a  
Constitution for Europe*

Reports on the plenary sessions  
of the Convention

February 2002 - July 2003

## Joint Documentation

### Reports on the plenary sessions of the European Convention

February 2002 – July 2003

From 28 February 2002 to 10 July 2003, the European Convention worked on a draft Constitutional Treaty for the European Union. Members of the Convention met in plenary session on 26 occasions (52 days). They produced over 1800 oral interventions, 386 written contributions to the Convention as a whole, and 773 to the Convention's Working Groups and discussion circles. On 13 June 2003 the Convention adopted by consensus parts one and two of the draft Constitutional Treaty. On 10 July 2003 the Convention concluded its work by adopting a complete final draft including parts three and four. The President of the European Convention, Valéry Giscard d'Estaing, presented the final *Draft Treaty establishing a Constitution for Europe*<sup>1</sup> to the Italian Presidency on 18 July 2003.

In close ecumenical co-operation, the Brussels office of the Evangelical Church in Germany (EKD), the Church and Society Commission of the Conference of European Churches (CEC) and the Secretariat of the Commission of the Bishops' Conferences of the European Community (COMECE) monitored and accompanied the work of the European Convention, to which they also submitted a significant number of contributions, both individually and jointly. Most of these contributions can be consulted on the website of the "Forum" of the European Convention<sup>2</sup>.



Conference of European Churches - Church and Society Commission  
174 rue Joseph II, B-1000 Brussels  
Tel. +32 (0)2 230 1732 - Fax +32 (0)2 231 1413 - [www.cec-kek.org](http://www.cec-kek.org)



Evangelical Church in Germany - Brussels Office  
166 rue Joseph II, B-1000 Brussels  
Tel. +32 (0)2 230 1639 - Fax +32 (0)2 280 0108 - [ekd.brussel@ekd.be](mailto:ekd.brussel@ekd.be)



Commission of the Bishops' Conferences of the European Community  
42 rue Stévin, B-1000 Brussels  
Tel. +32 (0)2 235 0510 - Fax +32 (0)2 230 3334 - [www.comece.org](http://www.comece.org)

<sup>1</sup> O.J. C 169 of 18 July 2003.

<sup>2</sup> [europa.eu.int/futurum/forum\\_convention/index\\_en.htm](http://europa.eu.int/futurum/forum_convention/index_en.htm)

Staff-members of the COMECE Secretariat, the Church and Society Commission of CEC and the EKD office in Brussels attended all plenary sessions of the European Convention as observers. After each session a report was produced summing up the essential issues of debate. The joint briefings were distributed to Churches and Christian organisations in Brussels and throughout Europe. This documentation brings together the reports of all the plenary sessions of the European Convention in a single document.

It is evident that these reports reflect the subjective perspective of those who attended the meetings. While trying to reflect the discussions in the Convention plenary sessions as objectively as possible, they do not claim total accuracy and completeness. Verbatim reports of the Convention plenary sessions are available on the website of the European Parliament<sup>3</sup>.

Particular thanks is owed to those colleagues who spent much time observing the plenary sessions, drafting the reports and organising the joint briefings. We are particularly grateful to Monika Lüke and Katharina Schauer as well as to Marilena Missorici, Adriana Opromolla and Donatella Rostagno, for their great efforts to produce the reports on the plenary session of the European Convention.

<i>Rev. Rüdiger Noll</i>	<i>Mgr Noel Treanor</i>	<i>Sabine von Zanthier</i>
<i>Director</i>	<i>Secretary General</i>	<i>Director</i>
<i>Church and Society Commission</i>	<i>COMECE</i>	<i>EKD Brussels Office</i>

<sup>3</sup> [www.europarl.eu.int/europe2004/index\\_en.htm](http://www.europarl.eu.int/europe2004/index_en.htm)

## First session 28 February 2002

The European Council of Laeken (13-14 December 2001) decided to convene a Convention, made up of the main parties interested to the debate on the future of Europe, in order to “consider the key issues arising for the Union’s future development and try to identify the various possible responses”. It will pave the way for the next Intergovernmental Conference.

### *I. Composition of the Convention*

The Convention is composed of 105 members.

- Ⓐ The Chairman (Valéry Giscard d’Estaing) and two Vice-Chairmen (Giuliano Amato and Jean-Luc Dehaene);
- Ⓑ 28 representatives of the Heads of State or Government of the 15 Member States and of the 13 candidate countries;
- Ⓒ 56 representatives of the national parliaments (two from each Member State and candidate country);
- Ⓓ 16 members of the European Parliament;
- Ⓔ 2 representatives of the European Commission.

The representatives of the candidate countries take part in the proceedings as full members without, however, being able to prevent any consensus which may emerge among the Member States.

Thirteen people are invited to attend as observers: 3 representatives of the Economic and Social Committee; 6 representatives of the Committee of the Regions; 3 representatives of the social partners and the European Ombudsman.

The Convention meets in plenary once a month. A Presidium, which is composed by 12 members representing the different components of the Convention itself, will meet between the meetings of the plenary. The Presidium is tasked with preparing the work of the Convention and will play a guiding role. It may also decide to consult the staff of the institutions

or any expert whom it may be deemed necessary for the Convention to hear for proceedings to be conducted properly. The secretariat of the Convention is provided by the General Secretariat of the Council and is headed by Sir John Kerr.

## **II. First meeting**

The first session of the Convention was held on 28<sup>th</sup> February 2002. It dealt mainly with organisational matters. According to a first timetable, the Convention will meet, in plenary, two days each month and its work should be completed within one year. The President of the Convention, Mr Giscard d'Estaing proposed that the work of the Convention will be divided into three phases:

- ⊗ a first period in which Members of the Convention will discuss and listen to each other in order to find out what people want and expect from the European Union;
- ⊗ a second stage of analysis and discussion on specific issues;
- ⊗ a final phase which will seek to draw together the different proposals and draft recommendations.

## **Second session 21-22 March 2002**

The second session of the European Convention on the future of Europe took place on 21/22 March 2002. The meeting had the following agenda:

1. Request from the representatives of Candidate Countries
2. General debate: what is expected of the European Union?
3. Presidium proposal on Working Methods
4. Forum
5. Information from the President on the Youth session project

### **I. General debate**

A considerable amount of time of the 2<sup>nd</sup> session was spent on a very general debate. More than 80 delegates took the chance to state, within a time period of 3 minutes each, their vision of a Europe of the 21<sup>st</sup> century. Despite their manifoldness and diversity the statements allow to single out the following principal point of discussions:

*Partition of competences between the European Community and the Member States*  
Numerous delegates pointed out the necessity to clearly assign competences either to the European Community or to the Member State level. The delegates, however, did not necessarily seem to favour the creation of a catalogue of competences. Especially *Peter Glotz*, a German delegate nominated by the government, argued against such a catalogue. Partition of competences should evolve along the principle of subsidiarity. Hence, the Community level should only be competent to carry out those tasks which could not be carried out at the Member State level. In this context, the issue was raised, how potential conflicts of competences could be resolved. The issue of how to assign competences as between the Community and the Member States was also raised by *Commissioner Vitorino* in his intervention. He, too, emphasised the need not to concentrate all competences at the European level, but also to leave space to the Member States themselves to realise the objectives of Community policy. Among the members of the Convention, there was the predominant

idea that the transnational issues would preferably have to be organised at the Community level, e. g. transport policy, social policy issues, foreign and defence policy.

#### *Institutional reforms*

Numerous delegates mentioned the democratic deficit of the European Union and the need to give more power to the European Parliament, to strengthen the role of the Commission, and to make the discussions in the Council more transparent. Some delegates especially criticised the practice of changing the presidency of the Council every six months.

#### *Charter of Fundamental Rights*

The members of the Convention seem to assign great emphasis to the identification of the ethical and democratic values of the European Union. Another priority was the question of the incorporation of the Charter of Fundamental Rights into a future “constitutional treaty” for the European Union. All delegates who elaborated on the Charter promoted the incorporation of the document into the future treaty, and none of those talking about the protection of fundamental rights in the European Union proposed any amendment to its contents.

As far as European values are concerned French and Belgium delegates in particular recurred to the importance of the enlightenment movement. The Northern countries and also some of the Candidate States mentioned the importance of the principle of solidarity as a basic value for Europe. Two Italian members reminded the Christian-Jewish values, including those of the Greek-Roman tradition and of the laic world. The Italian delegate *Tajani* explicitly referred to the importance of the role of the churches in the social area and as far the European values are concerned. The Italian delegate *Follini* mentioned the “role of the religious traditions” and reminded the states not to forget about that aspect in their debates on the future of Europe.

#### *Definition of a “new” model for Europe*

The structural and institutional concepts for a model for a future European Union have not been much clarified yet. Nearly all speakers recurred to the importance of plurality and diversity. Nobody seems to favour a

federal European state. Among those explicitly rejecting the model of a European “superstate” were the German delegate *Glötz* and the Italian delegate *Fini*. It rather seems that the Convention is aiming towards a “new model for integration” (as it was defined by *Commissioner Vittorino* in his speech) which respects national identities. The terminology of a “federation of national states” was also used in this context.

Among the other topics raised in the constitutional debate were the following items:

- the importance of the dialogue with the citizens and the European youth;
- the necessity to create a proper European “people” in order to arrive at a rapprochement between European institutions and citizens;
- the possibility of a structural framework for external and internal security at European level;
- the role of the national parliaments;
- the possibility for the European Union to accede to the European Convention of Human Rights.

## **II. Procedural questions**

#### *Working methods*

The delegates adopted the revised rules of procedures. According to Article 16 of the said rules the working methods can be amended upon a proposal by a group of delegates thus allowing to carry out the proceedings with a certain amount of flexibility.

#### *Participation of the Candidate States in the Presidium*

Giscard d’Estaing agreed that one representative of the Candidate States should take part in the work of the Presidium as “invité”. Moreover, the candidate countries will also be represented in the Secretariat. The Secretariat will seek to provide the candidate countries with adequate interpreting services.

#### *Forum*

The former Belgium Prime Minister *Debaene*, as the member of the Presidium who is in charge of establishing the relations between the

Convention and the civil society, delivered five pieces of information with regard to the work of the Forum:

- the internet page of the Forum has meanwhile been opened;
- during one of the following days a letter will be published in numerous newspapers throughout Europe in order to sensitise the citizens for the debate on the future of Europe;
- the Convention asks for information about the organisation of the Forum at the national levels of the Member States and Candidate Countries;
- the Economic and Social Committee of the EU might organise a hearing with representatives of civil society. Those hearings should be attended by at least one representative of the Convention. It might be desirable also to organise a hearing with the academic world;
- public surveys shall be conducted, via *Eurobarometer*, in order to acquire information about the public opinion on the work of the Convention.

*The following meetings*

- next session: 15/16 April (tasks and objects of the European Union)
- session of 23/24 May (partition of competences)
- session of 24/25 June: hearing of the civil society
- a Convention of the Youth will take place in July. Young persons between 18 and 25 years of age are asked to become involved in the debate on the future of Europe. For that reason, a meeting will take place in July in parallel to the session of the Convention. The young delegates shall be chosen by the member states and candidate countries.

### **Third session 15-16 April 2002**

The third session of the European Convention took place on 15/16 April 2002. The meeting had the following agenda:

1. The mission of the European Union (documents CONV 16/02 and CONV 17/02)
2. Youth session of the Convention (document CONV 15/02)
3. Any other business

#### ***A. Introductory remarks***

The agenda set by the Presidium scheduled a general debate on the mission of the European Union. In fact, the session focused not only on the role of the EU but more on the question of competences and the distribution of powers between the European Union and the Member States.

A great number of delegates actively engaged in the debate (about 80-90); the number of contributions of delegates from the candidate countries was considerable.

#### **Main points in brief:**

- A majority does not want a reduction of EU competences, but an extension of competences in the 2<sup>nd</sup> and 3<sup>rd</sup> pillars (Common Foreign and Security Policy and Justice and Home Affairs).
- At the same time a majority of speakers called for the application of the subsidiarity principle (and the principle of proportionality) as means to restrict EU competences. Only where tasks could not effectively be fulfilled on Member State level or where a distinct added value is recognisable should the EU take action.
- Several speakers demanded the creation of a body to control the application of the subsidiarity principle. It was suggested that it could either be a legal or a political body made up out of MEPs and national MPs.
- A large number of delegates were against setting up a catalogue of

competences as it seems too rigid, lacks flexibility and therefore hinders future developments.

- Some speakers suggested abolishing the pillar structure.
- Some speakers wanted to enlarge the competences of the EU in the field of social policy.

## **B. Overview over the Discussion**

### **I. The role of the European Union**

There was a general consensus among the delegates about the core objectives of the European Union, which are peace, security, solidarity, democracy, human rights, sustainable development and the rule of law. Reference was made to the Charter of Fundamental Rights of the European Union as a core document of the European Union. Commissioner António VITORINO and Edmund WITTBRODT (MP, POL) suggested that the Charter of Fundamental Rights should be integrated in the future treaty.

#### **Strong foreign and security policy**

A large number of speakers, alluding to 11 September and the Middle East Conflict, expressed their view that one core mission of the EU should be a strong Foreign and Security Policy. The CFSP should be a priority of the EU. One such speaker was Olivier DUHAMEL (MEP, PES, F) who emphasised that Europe must contribute above all to peace, development and prosperity, and that a European foreign and a European defence policy are needed not just for Europeans but also for the rest of the world. Alain LAMASSOURE (MEP, EPP-ED, F) said that external policy must become a genuinely common policy rather than an add-on to national policies or even a contradiction to them.

#### **Expectations of citizens**

Commissioner Michel BARNIER summarised the expectations of the EU public regarding the role of the EU as the preservation of peace and security, combating unemployment and poverty, fighting organised crime and terrorism, environmental protection and product safety. From the

Commission's point of view, external policy and the economy were the two key areas for the future development of the Union.

Andrew DUFF (MEP, ELDR, UK) suggested to list, in a preamble, the following tasks or priority action areas for the EU: social and economic progress, security and justice and the environment. Economic issues were also of concern to Mr. DUHAMEL, who maintained that the economic and monetary union was so far only monetary in nature. Economic governance was needed for the Euro zone for reasons as much of political effectiveness as of democratic legitimacy.

Several speakers emphasised that the European Union must not limit itself to economic co-operation, but also has an important social role to play. Accordingly, one important task of the Union is to ensure solidarity between the member states as well as towards the third world. Also, the Community should provide for economic and social cohesion.

### **II. Competences and the distribution of powers between EU and Member States**

#### **Principle of subsidiarity**

A majority of the Convention's members were in favour of a more flexible distribution of powers between the EU and the Member States in order not to hold up future developments of European integration. The subsidiarity principle was regarded as the general rule to follow, even if interpretations thereof varied. Most speakers specified that according to the principle of subsidiarity, the EU is competent if a) the member states cannot effectively fulfil a task or b) if action at the Community level brings an "added value" (Peter HAIN, UK-government; Michel BARNIER, Commissioner; Jacques SANTER, Lux-government; Antonio VITORINO, Commissioner). Some delegates emphasised that the perspectives of the citizens have to be taken into account (Michel BARNIER, Commissioner; Hannes FAHRENLEITNER, Austrian government).

#### **Controlling body for the application of the principle of subsidiarity - a means to settle conflicts between community and member states in competence matters**

Several delegates suggested to set up a special conflict settlement body. Some argued this should be a judicial body, others emphasised that it should be a political body (MEPs and national MPs) because the question was of a political nature. Such political decision would be legally controlled by the European Court of Justice.

#### **Clear competences**

The need for clear-cut competences was widely expressed: On the one hand, the treaty has to be clear about what issues fall in the competence of the community and which into the competence of the member states; on the other hand, flexibility has to be maintained. Therefore, a large majority of delegates rejected the idea of a firm catalogue of competences. Several emphasised that the principle of limited community competences should be preserved (Peter HAIN, UK-government; Jürgen MEYER, MP, D; Gianfranco FINI, Italian government; Peter GLOTZ, German government). Only a minority favoured the identification of a list of competences (for example Pierre MOSCOVICI, French government). Several delegates expressed their view that the current system of competences should be maintained which distinguishes between exclusive and shared competences (Jürgen MEYER, MP, D; Peter GLOTZ, German government; Lamberto DINI, MP, I). It was stressed that the principle of proportionality must be applied in a serious way in order to limit the scope of community action; it must be limited to an adequate action (Peter HAIN, UK-government; Erwin TEUFEL, MP, D).

#### **Increase or decrease of competencies on the part of the European Union**

Some delegates (Erwin TEUFEL, MP, D; Peter GLOTZ, German government; David HEATHCOAT-AMORY, MP, UK; Jens-Peter BONDE; MEP, EDD) do not exclude the repatriation of Community competencies to the Member States, whereas others opposed any “way back” from the community level to the member state level (Johannes VOGGENHUBER, MEP, Green-EFA; António VITORINO, Commissioner). Some suggested that a future treaty should provide for the possibility of changing community competences more easily, in both directions. Joachim WÜRMEILING (MEP, EPP-ED, D) suggested that

a working group should scrutinise the current competences and question whether they were correctly assigned to the community level or the member state level.

#### **Questioning of the current pillar structure**

Some delegates suggested that the current pillar structure should be abolished (Jürgen MEYER, MP, D; Ana PALACIO VALLELERSUNDI, Spanish government; René VAN DER LINDEN, MP, NL; Reinhard RACK, MEP, EPP-ED, AU). Common Defence and Security Policy should in future be transferred into the scope of competence of the European Community. This attitude seems to have been triggered by the current problems in the Middle East, which according to a considerable number of delegates clearly reveals the need for the European Union to be able to undertake joint actions in the field of foreign policy.

#### **Social policy**

Henning CHRISTOPHERSEN (Danish government) emphasised that the regulation of the state-church relationship has to remain in the competence of the member states. Some delegates (Erwin TEUFEL, MP, D; Gianfranco FINI, Italian government; Reinhard RACK, MEP, EPP-ED, AU) also mentioned that as a general rule social services should be regulated at the member state level without the interference of the EU.

#### **National competences**

Among other areas, which were considered to fall under the scope of national competences were education, culture, and the international structure of the states.

Erwin TEUFEL (MP, D) suggested to set up a “negative list of competences”: those competences that should remain exclusively on the member state level. However, the idea of such a negative list did not receive much approval.

### **III. Youth session of the Convention**

It was referred to the document CONV 15/02 and its information: The



Youth Convention will be held in Brussels from 9-14 July. The number of participants has been fixed at 210, broken down as follows: 168 chosen by the full and alternate members of the Convention representing national Parliaments or governments (6 per country), 32 by the representatives of the European Parliament, 4 by Commission representatives and 6 by the Chairman and Vice-Chairman. The chosen people must be between 18-25.

As regards the appointment of Youth Convention members, the adult Convention members representing the national Parliaments and governments will take account of the proposals submitted by youth organisations active at national level. They make their choice individually or in cooperation with the other Convention members from the same country.

The Convention members representing the European Parliament and the Commission, as well as the Chairman and Vice-Chairmen, will take account of the proposals submitted to them by the organisations operating at European level.

In making their choice, the Convention members are asked to respect an overall balance in order to ensure representative diversity within the Youth Convention: age, sex, occupational status, rural/urban areas, members/non-members of associations etc.

In the discussion, several members emphasised the importance of a balanced participation (gender, member states, educational background, etc). Several asked the age limit to be lowered from 18 to 16 so that also pupils could take part. Giuliano AMATO, Vice-President of the Presidium, said this would be discussed in the presidium.

#### IV. Organisational issues

At the end of the meeting, Andrew DUFF (MEP, ELDR, UK) criticised the lack of any conclusion by the president and the lack of preparation for the next meeting. He urged the Presidium to implement working groups (especially concerning the delimitation of competences and the principle of subsidiarity) as soon as possible in order to promote serious work. He received a lot of applause. Giuliano AMATO replied that the presidium was not of the opinion that the implementation of working

groups is yet necessary. These general debates were necessary in order to locate the crucial topics. He did not specify when the presidium intends to implement working groups.

Valéry GISCARD D'ESTAING, President of the Presidium, further declared that Mr. Alojz PETERLE, a Slovenian MP, was chosen to represent the candidate countries on the Presidium of the Convention.

Valéry GISCARD D'ESTAING introduced a modification of the speaking procedure: he introduced the possibility that after 5 speakers (3 minutes each) members of the Convention can raise their "blue" card and make a comment on the interventions of 1 minute each. A re-reply is not possible.

#### V. The forthcoming sessions

- next session: 23/24 May (partition of competences)
- session of 6/7 June (dialogue with civil society)
- session of 24/25 June (democratic legitimacy)
- Convention of the Youth 10/11 June
- session of 11/12 June (democratic legitimacy)

### **Fourth Session** **23-24 May 2002**

The fourth session of the European Convention on the future of Europe took place on 23/24 May 2002. The meeting had the following agenda:

1. The EU carrying out its missions: efficiency and legitimacy (doc CONV 47/02 and CONV 50/02)
2. The Forum, and preparations for the Convention session devoted to civil society (24-25 June 2002)
3. Setting up of working groups

#### ***Introductory remarks***

In order to arrive at a more structured debate the Presidium sent out the following **questionnaire** to the members of the Convention:

1. Does the delimitation of competences between the EU and its member states as it is currently carried out correspond to the missions of the EU as envisaged by the Convention? Does the current delimitation of competences provide a sufficient degree of clarity?
2. How can compliance with the provisions for the delimitation or competences be guaranteed, including the principles of subsidiarity and proportionality?
3. Do the instruments of the EU have to be clarified? Does the number of instruments have to be reduced?
4. Do decision-making procedures in the EU provide for efficient solutions?
5. How can the democratic legitimacy of decision-making be assured?

**The debate centred around the missions of the EU, its efficiency and legitimacy.** As already in the debate of the April session, many members asked for a clear delimitation of competences between the EU and its member states and emphasised the importance of the principle

of subsidiarity. A majority of delegates argued against producing a catalogue of competences.

**They furthermore discussed the legal instruments of the EU and decision-making procedures.** The delegates agreed that the number of legal instruments needs to be reduced and the decision-making process simplified in order to achieve both more effectiveness and more clarity for the citizens. Some delegates, in particular from the candidate countries, emphasised the need to strengthen the social dimension of the EU; some also stressed the importance of the principle of solidarity.

Discussing the setting up of **working groups and the organisation of the hearing of civil society groups** on 24/25 May some delegates criticised the Presidium for taking decisions without considering the will of the members of the convention and the civil society.

A great number of delegates actively took part in the debate (about 110 contributions, among these around 25 from candidate countries).

#### ***Overview over the discussion***

#### **I. The missions of the European Union, efficiency and legitimacy**

##### *1. Delimitation of competences between European Union and member states*

As already during the April meeting a majority of delegates expressed the need for a clearer delimitation of competences. They asked for a stricter application of the principle of subsidiarity and proportionality on the basis of the principle of limited competences of the EU; they argued against a catalogue of competences.

In order to obtain more clarity and at the same time provide safeguards against overstressing EU competences the missions of the Union should be formulated more precisely. On the other hand, a certain flexibility with regard to community action was considered necessary. Therefore several members wanted to uphold Art. 94, 95 (EU competence in respect of approximation of laws as far as establishment or functioning of the Common Market so requires) and of Art. 308 (insofar as one of the objects of the European Community requires Community action). Many delegates repeated that co-operation in Justice and Home Affairs and the

Common foreign and security policy should be transferred into the supranational pillar.

#### 2. *Compliance with the provisions for the delimitation of competences*

Several delegates asked for the introduction of a mechanism to scrutinise proper exercise of competences. Whereas some preferred this to be a political body (for example Mayer, German parl.) who suggested a body consisting of members of the EP and of a (reformed) council, others, for example Mr. Brok (EP, GER) called for a judicial body. Furthermore, several delegates called for a right of action for national parliaments, the European Parliament and for regional bodies to control the subsidiarity principle (Di Rupo, Belgium parliament, Brok, EP, GER, Lamassoure, EP, F).

#### 3. *Simplification of legal instruments of the European Union*

There was a broad consensus among the delegates that the many legal instruments currently used are a source for confusion and that they have to be reduced. Some delegates favoured a limitation to only three kinds of instruments: regulations, directives and recommendations. The excessive Community legislation in the area of internal market policy should be reduced to essential framework regulation (Lichtenberg, Austrian parl.). Creating a clear hierarchy of legal instruments could contribute to clarity and certainty in the application of Community law. In this respect, some delegates proposed to distinguish between constitutional provisions, statutes and statutory instruments (Dini, Italian parl.; Brok, EP, GER; Duff, EP, GB).

#### 4. *Legislative procedures*

A majority of the Convention members supported the consequent application of the co-decision procedure. Hence, in a future treaty for the EU an affirmative vote of the EP would become a precondition for the entry into force of EU-legislation.

Many members of the Convention generally want to strengthen the rights of the European Parliament. Whether the right of initiative – currently exclusively assigned to the European Commission – should also be extended to the European Parliament was debated. Among those who

favour the EP's right of initiative were *Muscardin (EP, IT)*; *Kirchkehope, EP, UK*; *Voggenhuber (EP, Austria)*, *Van der Linden (Dutch parl.)*; whereas *Barnier (Commission)*, *Bruton (Irish parl.)* and *Glötz, (German gov.)* wanted the Commission to be the only institution who has the right of initiative. On the contrary, *Mr. Meyer* favoured that the right of initiative should be given not only to the EP but also to the Council. This was criticised by *Mr. Glötz* because in the end this would weaken the role of the EP and the Commission.

The delegates equally disagreed about the future role of the Council. Some members want to strengthen the role of the Council, whilst others have objections because a strengthened Council would strengthen the intergovernmental aspect and weaken the supranational integration (*Brok; Azevedo, Portuguese parl.*). The delegates are united in their request for more transparency in Community decision-making, e.g. by holding public Council meetings.

#### 5. *Democratic legitimacy of the European Union*

A great number of delegates expressed the need for more democratic legitimacy of the EU. Although nobody gave an explicit definition of the notion of democratic legitimacy, it appears that delegates considered that trust and responsibility are core factors in this respect.

The delegates pointed out the following mechanism which could contribute to greater democratic legitimacy of the EU:

- Clarification of the missions of the EU and of the relations and competences of the different EU institutions. As a result, citizens would be provided with a clear concept of responsibilities which could strengthen citizens' trust in the institutions (*Meyer, Altmaier, both German parl.*).
- Strengthening the visibility of EU policy, e.g. by having a unified foreign policy (*van der Linden, Dutch parl.*)
- Strengthening the role of the European Parliament, e.g. by assigning competence to the European Parliament to elect the President of the Commission (*Altmaier, German parl.*)
- Strengthening national parliaments and enabling them to carry out efficient control. In a EU structured as a Union of member states rather than a federal state national parliaments would necessarily

have an important function in that respect and thus be capable to contribute to the democratic legitimacy of the EU (*Muscardini, EP, IT; Meyer, Germ. parl.; Heathcourt-Amery, UK parl.; McSharry, Irish gov.; Majj-Weggen, EP, NL*).

- Strengthening the social dimension in EU policy. This claim has been primarily expressed by representatives of the candidate countries (also Mrs *van Lancker, EP, NL*).

## 6. Concepts for a future Treaty of the European Union

Several delegates addressed the issue about what kind of treaty the Convention was going to produce. Mr. *Duff* asked President *Giscard d'Estaing* whether the Convention would draft a “*traité-chapeau*” on the basis of the existing treaties or whether it would only rewrite the existing treaties. The President answered that the actual drafting process would not begin before the summer break. It seemed that the Convention does not want to limit itself to amending the current treaties, but is determined to draft a new document. Whereas several delegates demanded the abolition of the pillar structure, the President uttered doubts whether time was ripe to do so.

## II. Preparations for the Convention session devoted to civil society

The Convention session on 24/ 25 June will be devoted to civil society. It will be prepared through “contact groups” (not to be confused with the working groups of the Convention which consist out of members of the Convention). The Presidium agreed to establish 7 contact groups dealing with the following topics: social issues, environmental issues, human rights, development, “*academia*”, regional questions and cultural issues. The groups will meet once or twice to prepare the hearing of 24/ 25 June. Each contact group will choose one or two speaker organisations to represent the groups at the hearing in June.

The hearing will be prepared by the Convention Secretariat together with the Economic and Social Committee of the EU. For practical reasons the hearing shall only be open to European organisations; national organisations will not be invited to participate (otherwise the number of

groups involved would not be manageable). National organisations should use means on the national level to articulate their concerns. *Jean Luc Debaene*, the Presidium member entrusted with establishing relationships with civil society emphasised the importance of the Hearing in June. At the same time, however, he pointed out that the Hearing would not be the only occasion for input. He advised the groups also to make use of the virtual Forum and to participate in the hearings organised by the Economic and Social Committee, which regularly take place after the plenary meetings of the Convention.

In the course of the debate numerous members of the Convention criticised the fact that the hearing in June will be effectively reduced to very few organisations. It was also emphasised that in reality some important civil society organisations have got a national structure and are thus likely to be left out. *René van der Linden (Dutch parl.)* elaborated on the **importance of the Churches** for the development of civil society. He regretted that the current structure of the preparatory groups would not provide adequate space for them as churches can neither be reduced to social groups nor can their concerns be reduced to cultural issues.

## III. Setting up of working groups

The President outlined the presidium’s considerations on the working groups: The Convention will soon establish six working groups: Group no. 1 on the principle of subsidiarity, no. 2 on the possible incorporation of the Charter of Fundamental Rights of the EU, no. 3 on the legal personality of the Union, no. 4 on the role of the national parliaments, no. 5 on the partition of competences and no. 6 on economic and financial co-operation.

Delegates are requested to indicate their interest to participate in one of the working groups by 31 May. Subsequently the Presidium will assign the members of the Convention to the working groups taking into consideration their preferences as well as the need to obtain a balance in numbers, regions and gender representation. The Presidium reminds the delegates that they can attend the sessions of any of the working groups as observers. The Presidium would consider the establishment of further working groups at a later stage.

After listening to the presentation of the Presidium, many delegates accused it of carrying out an autocratic procedure and of not informing the plenary about the strategy which lies behind the choice of topics for the working groups. Two delegates (*Kaufmann, EP, GER and Fayot, Lux. parl*) asked that the issues social security and employment policy) should be included in working group no. 6. One delegate asked for a working group on the role of national parliaments (*Christensen, Danish parl*). Several delegates claimed that it was necessary for the working groups to have better defined tasks especially with regard to the “product” that they were expected to deliver (concrete proposals for the future treaty?).

The fact that each working group is to be presided by a member of the Presidium was accepted by most of the members of the Convention (a few attacked this as demonstrating the power of the presidium once again, such as *Voggenhuber, EP, AUT*). However, *Mr. Duff, EP, GB* suggested that the rapporteurs should be elected from the groups themselves.

#### IV. The next plenary meeting of the Convention

It will take place on 6<sup>th</sup>/7<sup>th</sup> June. The Convention will discuss police and judicial co-operation as well as the role of the national parliaments.

### Fifth Session 6-7 June 2002

The fifth session of the European Convention on the future of Europe took place on 6-7 June 2002. The meeting had the following agenda:

1. Area of freedom, security and justice: the role of the Union and of Member States (docs. CONV 69/02 and CONV 70/02)
2. Question time
3. Composition of working groups (docs. CONV 71/02 - 77/02)
4. The role of National Parliaments in the European architecture (docs. CONV 67/02 and CONV 68/02)

#### A. Introductory remarks

The fifth meeting of the Convention had two major subjects (In order to arrive at a more structured debate the Presidium sent out two questionnaires to the members of the Convention which can be found in Annex I):

**On Thursday, the Convention members shared their views on the role of the Union and of Member States with regard to the EU as an area of freedom, security and justice.** There was a strong consensus that the current challenges which the European Union has to face (terrorism, illegal immigration, asylum, cross-border crimes such as trafficking of drugs and weapons, trafficking of women) need stronger focus and more efficient action from the EU. To this end, most delegates favoured “communitarising” all Justice and Home Affairs policies and thus to abolish the so-called third pillar. More specifically the discussion dealt with the question of co-operation or harmonisation of the different judicial systems especially in the field of asylum and migration policy and trans-national crime. They discussed the role of Europol and Eurojust as well as the creation of a common border police body.

**On Friday the debate centred on the role of national parliaments in the European institutional architecture.** Although all Convention

members agreed that national parliaments should become more involved in decision-making processes at EU level, there was almost unanimity in rejecting the idea of creating a second chamber. Instead, the national parliaments should have more effective means of scrutinising their government representatives in the Council of Ministers; they should have better access at an earlier stage to EU documents, and co-operation between the EP and the EU committees of the national parliaments (COSAC) should be improved. It was also suggested that national parliaments should be included in a body which would decide on conflicts of competences between the EU and the member states.

The Chairman Valéry Giscard d'Estaing informed the members that six **working groups of the Convention** had been set up (see Annex II). In the course of the discussion he announced that **further working groups** would be set up to deal with 1) specific questions concerning the field of Justice and Home Affairs and 2) specific aspects of the Common Foreign and Security Policy. He envisaged setting up further groups at a later stage dealing with technical questions concerning the simplification of the treaties and with institutional issues.

The Chairman encouraged the Convention members to attend the next meeting which is devoted to a **hearing of civil society**.

## **B. Overview of the discussion**

### **I. Area of freedom, security and justice: the role of the Union and of Member States**

#### ***Communitarising the third pillar – Justice and Home Affairs***

Most Convention members favoured the abolition of the third pillar and the communitarisation of all Justice and Home Affairs policies (government representatives such as *Michel (B)*, *Santer (LUX)*, *Ioakimidis (G)*, *Kavan (Czech)*, *Akyol (Turk)*; national parliament members such as *Di Rupo (B)*; Members of the European Parliament such as *Paciotti (I)*, *Voggenhuber (AU)*, *Kaufmann (D)*). Some Convention members (such as *Vitorino (EC)*, *Kirkhope (EP)*,

*GB*), *Heathcourt-Amory (GB, parl)*, *Glötz (D, gov)*, *Teufel (D, parl)*, however, had reservations in this matter especially with regard to migration policy: it should remain the responsibility of the member states to decide on figures for the admission of immigrants in order to take into account different national needs (especially the employment situation). *Haenel (F, parl)* said that communitarisation of the third pillar would not solve the problem; he favoured stronger co-operation and a *sui generis* approach to justice and policy matters as they lie at the heart of sovereignty and could not be treated like economic matters. Representatives like *Fini (IT, gov)*, *Baroness Scotland of Asthal (GB, gov)*, *Duff (EP, GB)* did not speak for or against abolishing the pillar structure.

#### ***Co-operation or harmonisation of the different judicial systems? (especially in the field of asylum and migration policy and trans-national crime)***

In the field of asylum and migration, which is being transferred from the 3<sup>rd</sup> to the 1<sup>st</sup> pillars following the Amsterdam Treaty, many Convention members expressed the need for better co-operation and a harmonisation of legal definitions (such as on asylum).

Also in those areas of Justice and Home Affairs that are not yet communitarised, many Convention members favoured a harmonisation of law. Especially in terms of combating terrorism and trans-national crime, many asked for legal definitions and agreement on common minimum and maximum penalties; some supported the idea of a common penal law for international organised crime. *Kirkhope (EP, GB)*, however, said that the EU was a long way from full harmonisation of EU legislation; in his view, co-operation and full acceptance of court decisions would be the right way to go.

In both areas, Convention members were in favour of Council decisions being taken by qualified majority and the European Parliament being co-legislator (co-decision procedure).

#### **Security**

In the aftermath of 11 September, security issues have become very important to European citizens. Convention members agreed that fighting

terrorism and international organised crime should become a priority in the field of Justice and Home Affairs and that more effective measures were needed. To this end, **Europol** (*co-ordination of law enforcement activity against serious international organised crime, mainly carried out by collecting, exchanging and analysing data*) and **Eurojust** (*co-ordination of national investigation and prosecution in case of serious international organised crime*) should be strengthened. At the same time some Convention members expressed the need for better democratic control of these institutions.

### **Balance between security and freedoms**

Several members stressed the importance of finding a balance between providing security and safeguarding freedoms. Many members wanted the Charter on Fundamental Rights of the EU to be included in a future treaty (*Michel, B, Gov, Ioakimidis, G, Gov; Meyer, D, parl; Kutskov, Bulg, gov, Lopes, Port. gov, Lopez-Garrido Span. parl, Di Rupo and Nagy, both B, parl*). Several also asked for the EU to ratify the European Convention on Human Rights (and therefore for it to become a legal entity) – *Ana Palacio (Span gov), Di Rupo (B, parl), Michel (B, gov), Nagy (B, parl)*.

Several members expressed their opinion that the European Court of Justice's competences should be extended to cover the whole area of Justice and Home Affairs of the EU (*Vitorino, EC, Michel, B, gov*).

### **Border protection**

In order to guarantee effective protection of external borders, especially after accession of the candidate countries, most delegates agreed on the need to co-ordinate border control. Several speakers from candidate countries asked specifically for support in this respect (joint border control system: *Hübner, Pol, gov*). *Vitorino (KOM)* said that the burden of border control needed to be shared and that in the long run one might think about a joint border control body.

## **II. The role of National Parliaments in the European architecture**

The discussion was introduced by *Mrs Stuart*, the chairperson of the

Working Group on national parliaments. She pointed out two essential aspects of the discussion: firstly, the national parliament's task to scrutinise European action and secondly the role of national parliaments in providing a link between member states and the EU. She stressed that national parliaments had an important role to play in providing the connection with the citizens (who identify more with the national level). Furthermore *Mrs Stuart* mentioned a possible role of the national parliaments in the field of subsidiarity.

### **Scrutiny of the positions adopted by their respective governments in the Council**

Convention members stressed the crucial role of national parliaments in bringing Europe closer to its citizens and in improving the democratic legitimacy of EU decisions. To this end, many Convention members pointed out the importance of government representatives in the Council being controlled by national parliaments. In this respect two suggestions were made: government representatives in the Council could be accompanied to the Council meetings by two members of the national parliament in cases where the Council is adopting legislative proposals (*Barnier, COM, Pleuger, D, gov*); decisions of national parliaments could be binding on government representatives in legislative matters of the Council (*Kurzmann, AU, parl*). The practicability of these proposals was questioned given the need for Council representatives to make compromises (e.g. *Bruton, IRL, parl*). *Meyer (D, parl)* stated that the question of how the national parliaments could best scrutinise their government representative's work in the Council lies in the competence of the member states. Several members suggested setting up a catalogue of best practices (*Cisneros, S, parl; Christensen, DAN, parl*).

### **Role of national parliaments at EU level**

Almost unanimously the Convention members **rejected the idea of creating a second chamber** of national parliamentarians; this would lead to more confusion rather than more efficiency and clarity. Otherwise, many different proposals for a better integration of national parliaments

in EU policy were made:

- Many members called for national parliaments to receive better information at an early stage (*Christensen, Dan. parl; Inguanez, Malta gov*);
- and for better co-operation between the EP and national parliaments (e.g. *McCunman, EP; Kalides, Cyp gov*).
- Several members asked for COSAC to be strengthened (*Dini, I, EP; Lekberg, Swed. Parl, Peterle, Slov parl*).
- Some asked that national parliaments should be able to submit proposals to the Commission (*Bruton, IRL parl*).
- Furthermore, national parliaments should play an important role in monitoring the application of the principle of subsidiarity (*Fini, I, gov; Meyer, D, parl, Vanhanen, Fin. parl*).
- *Meyer (D, parl)* wanted the working method of the Convention to be used for any fundamental treaty changes.

#### *Conclusion of the Chairman*

Interestingly, the Chairman concluded the discussion stating that almost all comments limited themselves to improving the current systems and were not very ambitious or creative. In his view, public opinion expects more of the Convention. He therefore encouraged Mrs Stuart as the chairperson of the working group on national parliaments to take a more “audacious” approach.

### III. Setting up of working groups

The Convention has set up six working groups, which will start working as soon as possible; the chairman announced the first meeting dates of each working group (see Annex II); each group will have five to eight meetings according to the decision taken of the chairperson. Every member of the Convention is a member of one working group. They may be accompanied to the working group sessions by one advisor (who has no right to speak). The chairman pointed out that the working groups could arrange hearings on specific issues.

Whereas originally it was planned that the working groups should conclude their work between September and November, the chairman had been approached by several Convention members who would prefer the working groups to conclude their work earlier; therefore it was envisaged that the groups should conclude their work either by September or October at the latest. However, a final decision was left up to the working groups themselves.

### IV. The next plenary meeting of the Convention

The next Convention session will take place on 24-25 June and will be devoted to a **hearing of civil society**. The Chairman encouraged Convention members to participate in this meeting.

The hearing will be prepared with the assistance of “contact groups” where European organisations of civil society could register (not to be confused with the working groups of the Convention which consist of members of the Convention). The Presidium has established 8 contact groups dealing with the following topics: social issues, environmental issues, human rights, development, “academia”, regional questions, cultural issues and citizens and institutions. The groups will meet once in order to prepare the hearing of 24-25 June. Each contact group is supposed to choose three to four speakers to represent the group at the hearing itself.



**ANNEX I**

Questionnaire :

**Strengthening the area of freedom, security and justice**

CONV 70/02

- 1) What, in your opinion, do the citizens of Europe expect as regards freedom, security and justice? What are the activities in the area of crime which may necessitate closer cooperation at European level?
- 2) Is there a need to clarify and simplify the instruments available to the Union in the area of justice and home affairs?
- 3) In the light of experience, to what extent should the structures and procedures now in place be changed?
- 4) How can democratic legitimacy in decision-making in the JHA sphere be bolstered or strengthened? How do national parliaments intend to exercise their powers in the area of justice and security with regard to matters at present covered by the third pillar?
- 5) Should thought be given to the creation of new joint bodies to guarantee border protection and to allocating Europol an operational role? If so, what form should their cooperation with the national authorities take and what political and judicial control should be applied to them?

Questionnaire:

**The Role of National Parliaments in the European architecture**

CONV 68/02 1

- 1) How could one assist the national Parliaments to play their crucial role in ensuring the democratic legitimacy of Union action?
- 2) Arrangements for control by National Parliaments of the positions adopted by their governments in Council vary between Member States. Though such arrangements are of course entirely a matter for national

competence, would there be value in assessing which work best, and exchanging “best practice”?

- 3) Would it be appropriate to strengthen existing machinery for cooperation between national Parliaments? And with the European Parliament?
- 4) Should the possibility be considered of national Parliaments being represented collectively in a new institution? If so, how should this be composed and what should be its competences?
- 5) Should provision be made for the compulsory consultation of national Parliaments in the event of an enlargement of competences being considered? If so, in what form?

## ANNEX II

## WORKING GROUPS OF THE CONVENTION

No.	Topic	Chairman / Date of first meeting
1	How can verification of compliance with the principle of subsidiarity be ensured? Should a verification mechanism or procedure be introduced? Should such a Procedure be political and/or judicial in character?	Mendez de Vigo 7 June 2002
	<i>Deadline: September</i> <i>Secretariat: Arpio, De Poncins</i>	
2	If it is decided to include the Charter of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights?	Vitorino 12 June 2002
	<i>Deadline: originally November ; probably October ?</i> <i>Secretariat: Ladenburger, Bartol</i>	
3	What would the consequences be of explicit recognition of the legal personality of the EU, and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties?	Amato 18 June 2002
	<i>Deadline: originally November ; probably October ?</i> <i>Secretariat: Passos, Bribosia</i>	

4	How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level?	Stuart 26 June 2002
	<i>Deadline: originally November ; probably October ?</i> <i>Secretariat: van den Heuvel, de Peyron</i>	
5	How should “complementary” competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has Complementary competence, or should the limits of the Union’s complementary competence be spelled out?	Christophersen 17 June 2002
	<i>Deadline: October ?</i> <i>Secretariat: Martinez, Schiavo</i>	
6	The introduction of the single currency implies closer economic and financial cooperation. What forms might such cooperation take?	Hänsch 7 June 2002
	<i>Deadline: October ?</i> <i>Secretariat: Pilette, Milton</i>	

## Sixth Session 24-25 June 2002

The sixth session of the European Convention on the future of Europe took place on 24-25 June 2002. Apart from a brief report by the Chairman on the Seville meeting with the European Council and some organisational questions, the session was devoted to civil society.

The agenda of the session was as follows:

1. Report by the Chairman on Seville meeting with the European Council;
2. Session devoted to Civil Society (CONV 112/02 + ADD 1; CONV 120/02);
3. Preparation of the next plenary session of the European Convention on 11-12 July.

### I. Report by the Chairman on meeting with the European Council in Seville, 21 June

The Chairman updated the European Council about the work of the Convention. The Convention has nearly finished the first stage of its work, i.e. a period of listening. From the discussions in the plenary of the Convention the Chairman already perceives a growing consensus on the division of competences and decision-making: the overall majority of delegates do not seem to support a catalogue of competences, but rather the preservation of the system of limited competences of the Community. The delegates agree on the need for a simplification of procedures and instruments of decision-making in the European Union in order to increase transparency and efficiency. With regard to the call for greater democratic legitimacy, however, *Valéry Giscard d'Estaing* recalled that democratic legitimacy could not be provided solely by the Union but under the current structure must still essentially be guaranteed by the member states. He informed the Council that his intention is to draft a constitutional treaty, but that the drafting stage of the work of the European Convention will

not start until the beginning of 2003.

### II. Session devoted to civil society

In his introductory speech *Jean-Luc Debaene*, Vice-Chairman of the Convention and responsible for organising the contacts between the Convention and civil society, emphasised the importance of maintaining a close link to civil society. The input of civil society and its organisations in the work of the Convention is currently carried out through four channels: (a) the virtual Forum, (b) the national debates, (c) the information and dialogue meetings organised regularly by the Economic and Social Committee, and (d) the plenary session of the European Convention on 24-25 June;

#### *a. Virtual Forum*

More than 160 contributions have been delivered, which have produced the following conclusions: Europe should become closer to its citizens; the principle of subsidiarity should be strengthened; the role of civil society should be acknowledged and mentioned in a future constitutional treaty; decision-making procedures should become more efficient, for example by majority voting in the Council and, consequently, the co-decision procedure (requiring the approval of both the European Parliament and the Council for a legislative act to be passed).

#### *b. National debates*

*Mr Debaene* highlighted the importance of the national debates as another means by which the citizens can become involved in the discussion on the future of Europe. The Convention Secretariat has received reports regarding the participation of civil society groups in the debate at the national level.

#### *c. Information and dialogue meetings organised by the Economic and Social Committee*

Following plenary sessions of the European Convention, the Economic and Social Committee regularly organises hearings with European NGOs in order to follow up the debates in the Convention. According to *Mr*

*Debaene* these events are important contributions to the involvement of the civil society in the work of the Convention.

*d. Convention plenary session devoted to civil society on 24-25 June 2002*

According to *Mr Debaene* the plenary devoted to civil society constitutes just one important element in a long-term process of involving European citizens in the work of the Convention. He expects the Presidium to provide further initiatives for a successful continuation of the dialogue in the course of the Convention.

The debate on 24-25 June was dominated by the contributions of different civil society organisations. In order to ensure an efficient and coherent debate the meeting had been prepared by eight contact groups (“Social Issues”, “Environment”, “Academia”, “Citizens and Institutions”, “Regional and Local Authorities”, “Human Rights”, “Development” and “Culture”). European civil society organisations had been asked to register and take part in the discussions in the contact groups. Each contact group had chosen their speakers for the hearing on 24-25 June.

The debate took place in the following order:

1. Presentation of the social sector contact group
2. Observers from social partners
3. Environment contact group
4. Observers from the Economic and Social Committee
5. Academia and think-tanks contact group
6. European Ombudsman
7. Citizens and institutions contact group
8. Observers from the Committee of Regions
9. Regional and local authorities contact groups
10. Human rights contact group
11. Development contact group
12. Culture contact group

Among the presentations some common objectives could be identified. The speakers asked for a meaningful application of the principle of

subsidiarity. The principle of subsidiarity should be applied comprehensively, including horizontal as well as functional dimensions. The majority of the speakers supported the incorporation of the Charter of Fundamental Rights of the European Union, but without anticipating any decision on whether the contents of the Charter should be amended in the course of the treaty revision. Furthermore, the representatives called for the strengthening of democratic legitimacy and more transparency in the decision-making process.

**Social sector contact group and social partners (1 and 2)**

The NGOs in the social field were represented by the *Social Platform (3 speakers)*, the *European Women’s Lobby* and the *Conférence Européenne Permanente des Coopératives, Mutualités, Associations et Fondations*.

The social groups favour the incorporation of the European Convention of Human Rights. They wish to strengthen the social dialogue based on the method of open co-ordination. It is controversial whether the European Union should have more competences in the social field: some argued that more competences and more formalities in the co-ordination procedures could strengthen the role of the European Union in the social field (*van Lancker, EP*), whilst others argued against greater uniformity as it would not necessarily raise the standards of protection in the social field (e.g. *Hain, UK gov.*).

According to the speakers the social objectives of European integration have to be emphasised more clearly in a future Treaty. The representative of the *Conférence Européenne Permanente* also asked for a stronger and more explicit recognition of the role of services of general interest. Art. 16 of the Treaty of Amsterdam should therefore be extended. Non-profit organisations should be clearly exempted from the application of European competition law.

**Environment contact group(3)**

The three speakers of the NGOs in the environmental field were representatives of the *European Environmental Bureau*, the *European Agricultural Convention* and the *European Landowners Organisation*. They emphasised the

need for an intensified civil dialogue and for more transparency. They also highlighted the importance of a meaningful application of the principle of subsidiarity in order to ensure the involvement of civil society. They insisted that an article on animal welfare should be included in the future treaty.

#### **Observers from the Economic and Social Committee (4)**

In their contributions the observers from the Economic and Social Committee (ESC) referred to the important role of their institution in organising a regular dialogue with civil society. According to its representatives, the ESC should participate in the reform process, reconsider its role and composition, and promote more transparency in the selection of its members in order to provide a forum for a dialogue with virtually all representatives of civil society. The representatives of the ESC consider social and cultural issues a particularly important field of activity for the ESC. The members of the ESC define culture as the pursuance of common values, and thus apply a broad concept of culture.

#### **Academia and think tanks contact group (5)**

The group of academic institutions were represented by eight speakers. The chairman of the contact group, Vice-Chairman *Giuliano Amato* said that the contact group was particularly close to the work of the Convention; although it does not reflect civil society in its original meaning, it still recognises that the gap between the European Union and the people has to be overcome. All speakers favoured the drafting of a substantial constitutional treaty.

#### **Ombudsman and citizens & institutions contact group (6 and 7)**

The five speakers of the contact group on citizens and institutions (*Federalist Voice, Jeunes Européens Fédéralistes, Active Citizenship Network, European Network Against Racism, Polish NGO Office in Brussels*) supported the strengthening of participatory elements in European Union policy. Moreover, they made proposals for improvement of the decision-making in the European institutions as a means to increase democratic legitimacy. It was also suggested submitting the new European Treaty to a Europe-wide referendum (*Moscovici, French gov.; Abitol, EP*). The European Ombudsman

saw a lack of options for legal recourse for citizens, which he said should be changed in a new European Union treaty.

#### **Observers from the Committee of the Regions and the regional and local authorities contact group (8 and 9)**

The representatives from the Committee of the Regions and the five representatives of the regional and local contact group (*Assemblée des Régions d'Europe, Conférence des régions périphériques et maritimes, Conseil des Communes et régions d'Europe, Eurocities, l'Assemblée des régions frontalières de l'Europe*) emphasised the important role of the regions for the creation of a European identity. As the political developments in regions and local communities are in general closely linked to the residents, regions and local communities provide a possibility to connect people to policy, thus setting the roots for a European identity as well as for the democratic legitimacy of the European Union. Regions are both a source of diversity and at the same time a point for identification. The representatives of the Committee of the Regions wanted to strengthen the role of this Community institution.

#### **Human Rights contact group (10)**

The human rights contact group was represented by *Amnesty International, Organisation mondiale contre la torture* and the *European Women Lawyers Association*. Although the speakers advocated the incorporation of the essential human rights contained in the Charter and beyond, they did not necessarily favour incorporation of the Charter of Fundamental Rights of the European Union as such, for they still see some deficiencies in the document, e.g. with regard to discrimination against third country nationals. It was emphasised that protection of human rights must not be limited to formal recognition but must become a genuine priority in the internal and external policies of the European Union. The speakers saw a discrepancy between the way the EU asserts its values in the fields of human rights and the way the actual protection is provided, especially with regard to the current priorities in the fight against terrorism and in combating illegal immigration.

**Development contact group (11)**

The three representatives of development organisations (*Eurostep, Equilibres et Populations, Economic Development Foundation in Turkey*) asked for greater coherence between the development policy of the European Union and the other policy goals. The development policy of the European Union should be part of a comprehensive external policy framework and be linked to the protection of human rights, gender equality and democracy. Eradication of poverty and sustainable development are considered further priorities for a development strategy of the European Union. The European Union should increase its budget for development aid in order to fulfil international standards. The need for stronger involvement of civil society, and increased transparency and accountability also applies to the area of development policies.

**Culture contact group (12)**

The culture contact group reflects diverse aspects of culture in its broadest sense. The four speakers of that group came from *Europa Nostra, Forum Européen pour les Arts et le Patrimoine, Conférence des Eglises européennes, Bureau européen pour les langues moins répandues*.

According to the chairman of the group, *Alojz Peterle (Sloven. parl.)*, the value of culture for the process of European integration is still underestimated. The European Union does not originally have competence in the cultural field except for the promotion of all aspects of cultural activity (art. 151). *Mr Peterle* reminded the audience that culture is a fundamental source of the spirit of a united Europe and thus also important for the successful completion of the process of enlargement. The chairman mentioned the **important role of the churches for the creation of the cultural image of Europe as they have added values to the European project.**

Other contributions also emphasised the contribution of culture to the success of European integration, especially in the field of education and in response to global challenges. Culture helps us to discover our common roots as a starting point for European integration. That does not contradict national identity, as national identity and identification with a common European civilisation can be considered as two sides of one coin.

Keith Jenkins of the Conference of European Churches delivered a

contribution on behalf of the Churches and communities of faith and conviction.

**III. Preparation of the next plenary session of the European Convention on 11-12 July**

The next plenary session of the European Convention will be held together with the Youth Convention (which will take place from 9 to 12 July). The participants of the Youth Convention have been selected. A representative cross-section of young people will attend the meeting.

The plenary will debate the conclusions of the Youth Convention and discuss the actions of the European Union in the field of external relations and foreign policy.

## Seventh Session 11-12 July 2002

The seventh session of the European Convention took place on 11-12 July 2002.

Two new French members of the Convention were introduced: Mr Pierre LEQUILLER Mr Jacques FLOCH from the French parliament, replacing Mr Barrau and Mrs Idrac (substitute).

The agenda of the session was as follows:

1. EU external action: general debate (doc. CONV 161/02)
2. Presentation of report by Youth Convention
3. Continuation of debate on EU external action (Defence)
4. Procedural proposal by certain members of the Convention (doc. CONV 181/02)
5. Procedural issues

### I. EU external action

The debate on Common Foreign and Security Policy was divided into a debate on **European Foreign Policy** which took place on 11 July and a discussion of the **defence and security aspects** on the morning of the 12 July. The high number of contributions from representatives of the member states' governments was striking, but can be attributed to the close link between foreign policy and the core aspects of state sovereignty.

#### 1. Common foreign policy

Whilst the delegates agreed (a.) on the fundamental values which should underlie their foreign policy decisions and (b.) on the need for reforms in the area of common foreign policy, controversy remained surrounding (c.) the degree of common action desirable and (d.) the concepts for the future role of the High Representative.

#### a. Values and objectives of the European Union in the area of Common Foreign and Security Policy

Among the priorities of the European Union in the foreign policy field are peace and stability, protection of human rights, prosperity and sustainability. The delegates often emphasised the importance of a coherent development policy as one important aspect of a common foreign policy (*Meyer*, German parl.; *Maj-Weggen*, EP; *Giscard d'Estaing*, President; *De Rossa*, Irish parl). Foreign policy values correspond to common values in other policy areas and should also be mentioned in a future treaty. The importance of improving the European Union's conflict prevention strategies and peace keeping capacity was stressed. Mr *Serracino-Inglott* (Maltese government) suggested that an agency to deal with the Euro-Mediterranean relationship would make a special contribution to peace and stability.

#### b. The need for reform

Carrying out an effective foreign policy would considerably strengthen the role of the European Union in the world. Whilst the EU plays an important global role in the areas of trade, development, humanitarian assistance and environmental policies (*Barnier*, Commission; *Michel*, Belgium govern.), it is rather ineffective in other fields (*Barnier*, *Christophersen*, Dan. Government), e.g. in the Middle East. There was unanimity that the current system needs to be reformed. In the opinion of the delegates the ineffectiveness of the EU in the area of crisis management is due to the complicated decision-making structures in the EU on the one hand, but also to a lack of political will on the other. Only if the European Union seeks to speak with one voice in the field of foreign policy can it develop into a partner of equal strength towards the United States and thus take up a global role. However, Mr *McDonald* (substituting Mr *MacSharry*, Irish government) said that the European Union in his view should not become a global superstate competing with the US; foreign policy should remain closely aligned with national sovereignty. Mr *Duff* (EP) remarked that speaking with one voice was not enough; Europe would also have to be clear about what to say.

In addition to structural changes and simplification of decision-making,

giving the European Union an unambiguous legal personality and making available a foreign service of its own could strengthen its capacity for action in the foreign policy field (*Barnier*, Commission; *Catiforis*, Greek government; *Glötz*, German gov.; *Dini*, Ital. parl).

*c. The degree of common action desirable*

A recent survey undertaken by Eurostat shows that people in the European Union support the transfer of the Common Foreign and Security Policy into the competence of the European Community. However, it was not possible to establish a clear tendency in favour of communitarisation among the delegates of the Convention. Whereas the delegates agreed that Europe would have to speak with a common voice in order to carry out an efficient foreign policy, it is less clear whether that voice should become a “single” one.

In general the delegates’ concept of a future foreign policy of the European Union was influenced by their countries’ constitutional approaches towards foreign policy, which is sometimes considered essentially to be a governmental task. Other member states also require the consent of the legislature in situations of general political importance. Among the countries with a governmental tradition are the U.K. and Sweden. Therefore the representatives of the U. K. (*Hain*) and Sweden (*Hjelm-Wallen*) were in favour of maintaining the inter-governmental character, with accountability to the national parliaments, whilst the role of the EP would be limited to a general right of debate. On the other hand *Barnier* (Commission, French), *Glötz* (German gov.), *Avgerinos* (Greek parl.) and *Duff* (EP) followed an integrationist approach and supported extension of the Community method into the area of foreign policy as a means to obtain greater efficiency (*Duff*). Those following the integrationist approach in principle supported scrutiny, if not co-decision, by both the Council and the European Parliament in the area of common foreign policy. According to *Duff* (EP), *Avgerinos* (Greek parl.), *Tiilikainen* (Fin. govern) and *Meyer* (German parl.), foreign policy decisions should in future be taken by a qualified majority of Council votes.

Other proposals were of a more structural character, such as proposing harmonisation with a perspective of integration at a later stage (*Lamassoure*,

EP; *Meyer*, German parl.), the possibility of enhanced corporation for some member states (*Fini*, Italian govern.) or the concept of integration being limited to certain areas (*Lequiller*, French parl).

*d. The future role of the High Representative for Common Foreign and Security Policy*

The proposal to merge the role of the High Representative with that of the Commissioner for External Relations received considerable support among the delegates (*Brok*, EP; *Timmermans*, Dutch parl.; *Glötz*, German gov.; *Duff*, EP; *Avgerinos*, Greek parl.; *Dini*, Ital. parl.; *Meyer*, German parl.; *Maj-Weggen*, EP; *Kiljunen*, Fin. parl.; *Moscovici*, French gov.; *Van der Linden*, Dutch parl.; *Catiforis*, Greek gov). The delegates expressed the hope that uniting these two functions (double-hatting) would also contribute to greater effectiveness in EU foreign policy. The new position should have a link to the Council but at the same time be subject to some parliamentary scrutiny.

Mr *Hain* (U.K. gov.), however, clearly objected to the proposal. In his view a convincing and credible voice of Europe could only be obtained on the governmental level. Mr *Hain* favoured better co-operation between the external relations Commissioner and the High Representative; the role of the High Representative should be strengthened, according to Mr *Hain*, giving him the right of initiative in CFSP and more powers with regard to the budget in the field. Legitimacy should be ensured through national governments towards their parliaments.

Mr *Duff* (EP) suggested that in cases where Mr Solana and Mr Patten could agree on a joint proposal, the Council should act by qualified majority; this would bring more of the Community method to foreign and security policies.

## 2. Common security and defence policy

Although in the current treaty the areas of common foreign and security policy are regulated under the same title and in practice are substantially linked (as was pointed out by a number of delegates) they were separated in the discussions of the Convention. The debate highlighted the struggle



of the members to strengthen common security and defence policy and to seek a balance between the Community and intergovernmental approaches.

In the opinion of most delegates the focus in common security policy should be on implementation of the concepts of early warning and conflict prevention and, if required, also on peacekeeping (*Bonde*, EP; *McDonagh*, Irish gov.; *Van der Linden*, Dutch parl.; *Vitorino*, Commission; *Stuart*, U.K. parl.; *Lopes*, Port. gov.; *Santer*, Lux. gov.; *Kiljunen*, Fin. parl.; *Meyer*, German. parl.).

In general the delegates supported close co-operation in the field of arms procurement and control. Commissioner *Vitorino* suggested that this aspect of the European security and defence policy should be communitarised, while other aspects such as military intervention should remain the responsibility of the member states. This approach seemed to be shared by many of the Convention members (also *Giscard d'Estaing*, President; *Meyer*, German. parl.). Some delegates seemed to support the transfer of certain other aspects of common security and defence policy into the community competence: for example, *Pleuger*, Germ. gov. suggested that political crisis management could be decided by qualified majority in the Council; *Lopes*, Port. gov.; *Santer*, Lux. gov.). The necessity for increased participation of the European Parliament and the national parliaments was stressed by Mr *Meyer* (German parl) and Commissioner *Vitorino*.

Some Convention Members, however, were not willing to bring ESDP under Community competence at all. Mr *Seppänen* (EP), said that the "Community method does not suit either CFSP or ESDP. He was supported by Mr *Kvist* (Swedish gov) and Mr *Kiljunen* (Finnish parl); Mr *Kiljunen* said that he was very hesitant about the idea of making the EU a military alliance. This point of view was also supported by Mr *Abitbol* (EP) who saw the intergovernmental monopoly as a condition for the existence of CFSP.

A controversial point among the delegates was whether Europe in fact needs a military capacity of its own (in favour *Michel*, Belg. gov.; *Van der Linden*, Dutch parl.), at least in the area of civilian or military crisis management operations (*Baroness Scotland*, U.K. govern.; *Stuart*, U.K. parl.), or whether it should simply focus on close co-operation with Nato and

use Nato's operational means where necessary (*Pleuger*, Germ. gov.; *Vitorino*, Commission).

## II. Presentation of report by Youth Convention

After three days of activity, the 210 young people from 28 countries issued a final text focusing on clear proposals for reforming the institutions. The text which had been adopted by qualified majority, was presented by the Youth Convention President Giacomo Filibeck, accompanied by the two Vice-Presidents. He said that in order to build the European project, "we cannot continue to work by consensus but must have the courage to confront our opinion". About one quarter of the members of the Youth Convention refused to accept the text; they issued a minority statement criticising the "undemocratic functioning" of the Youth Convention which they saw as having been dominated by the European Youth Forum (an umbrella group of European Youth organisations).

According to the adopted text, the Youth Convention members want clearer structures and procedures. The Council should meet in public and "be reformed to a genuinely second chamber". The Commission should be transformed "into a true European executive". The European Parliament should have the right to initiate legislation and "all matters within the competence of the Union should be subject to the Court of Justice".

More generally, the Youth Convention called for the European Union to be not only economic and political "but also a social entity with great cultural diversity". They said lessons on "European culture, citizenship and institutions" should be given "in every primary and secondary school" as a way of bringing Europe closer to the citizen. Furthermore they emphasised Europe's role in a globalised world. They called on the EU to respect the 0.7% GDP target for development aid. With regard to foreign policy, the EU should speak with one voice; foreign policy should become "an exclusive competence of the European Union; however, no member state should be forced against its will to participate in any European defence structure".

Vice-president *Debaene* assured the young people that the Presidium would consider the proposal and advised the young delegates to make use of

the other existing possibilities to contribute to the work of the Convention.

### **III. Procedural proposals by certain Members of the Convention (CONV 181/02)**

Nine members of the Convention and nine alternates had submitted a proposal to the Presidium to prepare a draft basic constitutional treaty, on the basis of the proposals of the European University Institute, Florence, before the end of October. The draft treaty envisaged would consist of two parts: a basic treaty containing the fundamental principles of the European Union, a description of EU policies, a guarantee of fundamental rights and provisions on the structure of the institutions, and an implementing treaty of less important provisions.

The proposal was unanimously rejected by the Presidium. Instead the Presidium itself will elaborate some *guidelines* on a future treaty before the end of October. According to the President, a draft text would not be issued before the end of December/beginning of January.

### **IV. Any other business**

At a time when the Convention approaches the end of its “listening phase”, the Presidium has decided to establish four additional working groups on the following topics: freedom, (internal) security and justice; simplification of legislative procedures; foreign policy; defence policy. The members of the Convention should register for these working groups before the end of August. The new groups will take up their work in September with conclusions to be expected by late October or November respectively. Further working groups might be composed at a later stage. The Presidium has meanwhile set the agenda for the Convention’s plenary sessions in autumn: on 12-13 September the main topic of the debate will be a possible simplification of legal instruments and methods. On 3-4 October the plenary will discuss the report of the working group on subsidiarity. The second October session on 28-29 October will then receive the reports of the working groups on the legal personality of a future European Union and on the possible incorporation of the Charter of Fundamental Rights, which will be followed by a debate.

By that time the Presidium wants to publish its first guidelines/concept on a future treaty of the European Union. On this basis, and taking into consideration the results of the Convention working groups, the Presidium will then begin to prepare a first draft which it hopes to have available by the end of December or beginning of January. After that, plenary sessions were likely to take place twice a month.

## Eighth Session 12-13 September 2002

The eighth session of the European Convention took place on 12-13 September 2002.

The agenda of the session was as follows:

1. Simplification of instruments and procedures (Doc. CONV 225/02);
2. Progress report on the proceedings of Working Group I “Subsidiarity” by its Chairman *Iñigo Mendez de Vigo*;
3. Progress report on the proceedings of Working Group III “Legal personality” by its Chairman *Giuliano Amato*;
4. Any other business (further procedures, new working groups and tendencies with regard to a future constitutional treaty)

The main topic of the plenary session of 12 and 13 September was the simplification of legal instruments and legislative procedures in a future European Union. The delegates discussed the reduction of the legal instruments used, the need for clarification with regard to legal terminology, the possibilities for simplification at the procedural stage and the role of the Community institutions in the area of legislation. The delegates considered the Commission’s right to initiate Community legislation, the legislative function of the European Parliament and the majority requirements for the adoption of legislative acts in the Council.

### I. Simplification of instruments and procedures

All delegates agreed on the need to simplify legal instruments and procedures within the European Community. In his introduction, *Vice-Chairman Amato* pointed out that the co-existence of more than 20 different decision-making procedures was only due to historical reasons (they are the result of the successive treaties and negotiations). He also

criticised the average length of European Community procedures which is 16-17 months. The delegates considered that the long and complicated decision-making procedures and the great number of different types of legislation (legal instruments) contribute to the growing distance between the European Union and its citizens. They therefore demanded greater transparency and comprehensibility. *Valéry Giscard d’Estaing*, for example, suggested in his introduction that a future treaty should be comprehensible to all secondary school children in Europe.

Whereas the call for simplicity was most frequent in the debate, some Convention members on the other hand emphasised that efficiency was more important than simplicity. As *Hain, U.K. Gov.*, put it “*Delivery must not be sacrificed to the false god of simplicity*”.

#### 1. The system of Community legislation should be reformed

Unanimously, the Convention members called for a simplification of the legal instruments and for reducing their number. In order to make legal instruments of the EU better understandable to the citizens, a different language should be used, a language which is close to what people know from their home country (e.g. “(European) law” or “(European) framework law”). Only *Peter Serracino-Inglott, Malta Gov.*, expressed reservations with regard to using “national legal terminology” for EU instruments which in his view is not appropriate for the supranational level.

Furthermore, the overall majority of the delegates called for a clear and explicit hierarchy of acts in the Treaties. The delegates considered it necessary to make clearer the distinction between legislative and executive acts, thus making transparent the division of powers (*Glötz, German Gov.; Dini, Ital. Gov.; Brok, MEP; Barnier, EC*).

*Peter Glötz (German. Gov.)* and *Klaus Haensch (MEP)* presented concise concepts on a future system of European Union/Community legislation: accordingly, the European Union/Community should use “laws” and “framework laws” in order to regulate important issues; the form of “directives” should be chosen for instruments of an executive character implementing Treaty provisions or (framework) laws” (comparable to statutory instruments at the national level). Individual situations would be regulated through “decisions” (the concept was also supported by *Dini*,

*Ital. Gov; Barnier, EC.*) Moreover the legislation of the European Union/Community would have to reflect the fact that the European Union is not and will not constitute a federal state, but has the structure of a federation of states. Thus, even in areas where the European Union/Community is vested with legislative competence legislation at the Union/Community level should leave space for legislative activity on the part of the member states implementing the legal standards set by the Union/Community (also *Moscovici, French Gov.*). The concept of “framework legislation” as basic structure for European Union/Community acts of a legislative character was widely supported among the delegates (e.g. *Berger, MEP; van Lancker, MEP; Muscardini, MEP; Brok, MEP; Meyer, German Parl; van Mierlo, Dutch. Gov.*).

## 2. The procedures for the adoption of legal instruments should be improved

The delegates agreed on the need to accelerate and simplify legislative procedures. On the other hand, some delegates, particularly from the United Kingdom, pointed out that the credibility of the European Union towards its citizens would not only depend on the swiftness of the legislative procedures but essentially on the quality of legal acts (*Hain, U.K. Gov.; Heathcoat-Amory, U.K. Parl.; McCormick, MEP*).

As a general rule, legislative acts should be adopted by majority voting in the Council whilst the unanimity requirement should be limited to the most fundamental or sensitive issues (e.g. *Dini, Ital. gov.; MacDonagh, Irish Gov.*). There were different proposals with regard to the quorum needed in situations of majority-decisions, though most delegates stated that a “qualified” majority should be required.

The members of the Convention unanimously wanted to strengthen the role of the European Parliament in the legislative field, making co-decision the general rule. Accordingly, adoption of acts of European Union/Community legislation should require the assent of Council and European Parliament, thus creating a bicameral system. With regard to the budget, the distinction between compulsory and non-compulsory expenditure should be removed and the European Parliament should also be vested with full budgetary powers.

However, it remained controversial whether or to what extent co-decision between Council and Parliament should also cover decisions in the area of Common Foreign and Security Policy (supporting *Kauffmann, MEP; Wuermeling, MEP*). Nor could the delegates reach agreement on the scope of the competences of the European Parliament in the case of implementing acts of the European Union/Community or other acts of an executive character. Mr. *Amato* stressed that the European Parliament was overcharged with minor, mainly technical issues; therefore co-decision procedure would not always be the right procedure.

Some members of the Convention, among those *Michel Barnier as Commissioner*, recalled the value of the Commission’s right to initiate Community legislation: It was pointed out that the Commission serves as a useful and necessary filter for the various interests already at the initial stage of legislation and thus contributes to European integration. According to *Barnier* 60% of the Commission’s proposals in fact originate from initiatives on the part of the European Parliament or the Council. The discussion among the delegates revealed a tendency towards maintaining the Commission’s right in a future treaty of the European Union (*Rack, MEP; Duff, MEP; Nabtigal, Slov. Gov.; Majj-Weggen, MEP; McDonagh, Irish. Gov.*). Mr *Wuermeling (MEP)* proposed not to extend this right to the amendment of existing European Union/Community legislation. Mr *Haenel (French Parl.)* stated out that initiatives in the field of Common Foreign and Security Policy should not be covered.

A considerable number of delegates referred to the importance of inter-institutional balance in the process of legislation. Accordingly, the European Commission, the Parliament and the Council each have to be assigned a clearly defined function and also have to co-operate with one another. In this context, some delegates mentioned the successful co-operation through the “inter-institutional trilogue”. This informal conciliation procedure involves all three institutions mentioned and often helps to reach agreement between the institutions in situations of controversial legislation. Some delegates expressed the view that institutionalisation of the “trilogue” could contribute to accelerate the legislative process and to make it more transparent (*Giscard d’Estaing; Meyer, German Parl.; Lopez, Port. Gov.*).

The debate on the simplification of legal instruments and legislative procedures will be continued in a newly established working group chaired

by Vice-Chairman *Amato*.

## II. Progress report on the proceedings of Working Group I “Subsidiarity”

According to the report of the chairman of the group, Mr *Mendez de Vigo*, the working group does not favour the creation of new institutions or procedures, for it would only complicate the legislative procedures and thus contradict the efforts to simplify EU legislation. Instead, Mr *Mendez de Vigo* proposed to set up an early-warning system by involving national parliaments: Commission proposals should be forwarded to the national parliaments at earliest stage. Thereupon national parliaments would be vested with the right to deliver their objections regarding “subsidiarity” to the European Commission within a certain period of time (he did not specify a minimum number). The European Commission would then have to re-examine its proposal and to react with a reasoned opinion. However, the Commission would be entitled to keep its proposal unchanged. In the subsequent course of the legislative procedure the national parliaments should be kept informed, especially during a conciliation procedure. Moreover, the national parliaments should have access to the Court of Justice of the European Community to invoke a violation of the subsidiarity principle, provided that they had already forwarded their concerns to the European Commission in the course of the legislative procedure.

## III. Progress report on the proceedings of Working Group III “Legal personality”

According to its chairman, *Vice-Chairman Amato*, the working group on legal personality is following an approach according to which the new constitutional treaty should explicitly state that the European Union has legal personality. The European Union and the European Community should be united through a single legal personality. The report of the working group was largely supported by the delegates in the plenary of the Convention.

After his report, *Valéry Giscard d'Estaing* stated that the working group

would also have to discuss the question of what type of legal personality the European Union should become (a state, an international organisation or a legal personality *sui generis*); he emphasised the significance of this decision for future accessions to international treaties and organisations.

## IV. Other business: further procedures, working groups and tendencies with regard to a future constitutional treaty of the European Union

*Giscard d'Estaing* confirmed that the Presidium intends to present a first outline of a future treaty of the European Union on the second session of October (28-29). On this basis, and taking into consideration the results of the Convention working groups, the Presidium will then begin to prepare a first draft text which it hopes to have available by the end of December or beginning of January. Two members of the Convention have already presented a draft treaty, *Andrew Duff* (MEP) and *Elmar Brok* (MEP).

*Giscard d'Estaing* indicated that he currently prefers a single treaty, possibly supplemented by protocols to a document in two parts; however, he mentioned that within the Presidium there were also voices for the idea of two treaties (one on principles and objectives, the other on the functioning of common policies). He expressed his thanks for the “useful contributions” which meanwhile have been sent to the Presidium and explicitly referred to the model treaty drafted by *Andrew Duff*, calling it an “extremely remarkable” contribution.

The Convention has established four new working groups: on “external action” (chair: *Vice-Chairman Debaene*, ending beginning of December), “defence” (chair: *Michel Barnier*, ending November), “freedom, security and justice” (chair: *John Bruton*, ending November), and on “simplification” (chair: *Vice-Chairman Amato*, ending beginning of December).

The next meeting of the Convention will take place on 3-4 October. The session will be devoted to the final report on the working groups on “Subsidiarity” and “Legal Personality” and the debate about these issues. In the meantime, the timetable for 2003 has been published; meetings of the Convention are foreseen until June 2003.

### Ninth Session 3-4 October 2002

The ninth plenary session of the Convention had the following agenda:

1. Final report of Working Group III on Legal Personality (CONV 305/02) and discussion
2. Progress Report on the proceedings of Working Group II on the Charter of Fundamental Rights by Mr Vitorino
3. Progress Report on the proceedings of Working Group IV on the Role of National Parliaments by Ms Stuart
4. Motions submitted to the Presidium by Ms Anne Van Lancker, Mr Johannes Voggenhuber and Ms Sylvia-Yvonne Kaufmann and others (CONV 300/02)
5. Final report of Working Group I on Subsidiarity (CONV 286/02) and discussion

The session centred around the discussion of the final reports of the working groups III (Legal Personality) and I (Subsidiarity). The chairpersons of working group II (Charter of Fundamental Rights) and IV (role of National Parliaments) also presented progress reports.

#### 1. Working Group III: Legal Personality

This working group's mandate was to examine a) the consequences of explicit recognition of the Union's legal personality, b) the consequences of a merger of the Union's legal personality with that of the Community and c) the impact on the simplification of the Treaties.

##### a. Presentation of the final report

Vice-Chairman Amato presented the recommendations of the working group which had been adopted with a broad consensus (with one member against: Mr Abitbol, EP, EDD).

1. The Union should be explicitly vested with legal personality
2. The European Community and the EU should be merged into a single body with a single legal personality.

Consequences of these conclusions:

- ⊗ **Merging the Treaties:** The working group favours a merger of the EU and the EC Treaties. Although a unified legal personality could in principle be created without merging those Treaties, the Group's conclusion on this point was that joining together the two Treaties would be a logical consequence of a unified legal personality of a European Union and would furthermore contribute to a simplification of Treaties.
- ⊗ **Euratom Treaty:** The working group in principle regards merging the Euratom Treaty as necessary for the same reasons as the TEC. However, in view of certain specific problems relating to the Euratom Treaty, it was felt that the possible implications of merging this Treaty needed to be further investigated.
- ⊗ **Structure of a future treaty:** The working group's preference is to create a single new treaty consisting of two parts: a) a basic part comprising constitutional provisions, b) a second part, which would codify and reorganise all the provisions of the TEU and the TEC dealing with matters not covered by the basic part. This new Treaty would replace the current TEU and TEC (and, where appropriate, the Euratom Treaty).
- ⊗ **Pillar structure:** The working group concluded that neither the merger of legal personalities nor the merger of the Treaties had, in itself, any effect on the pillar structure. However, the group advises abolishing the current "pillar structure", as all institutional and procedural features specific to the two intergovernmental pillars (CFSP and co-operation in judicial matters) which the Convention considers appropriate to maintain could be preserved in the new constitutional treaty.
- ⊗ The Union would have a **right to sue** before an international court and to accede to international organisations and conventions
- ⊗ **International relations:** With regard to the Union's international relations Mr Amato pointed out that there were still problems to be resolved: who will represent the EU in international relations? who will have the right of initiative with regard to international agreements? what kind of procedure will be applied in situations of mixed-agreements, i.e. where both the Union and the member states are

competent? Mr Amato also emphasised the strong links with the working group on external relations. He stated that member states must be given the possibility of raising constitutional objections with regard to international agreements.

## b. Discussion

The results of the working group were very well received. There seemed to be almost unanimity among the convention members that the Union should be given a legal personality and that it should be a single legal personality; also that the Treaties should be merged. Most members welcomed these recommendations for the sake of clarity, simplification and effectiveness.

Several members stressed that the conclusions were an important qualitative step forward for the Union, which would improve its capacity to act in foreign affairs (Mr Duff (EP), Mr Fini (Italian Gov), Mrs Hjelm-Wallen (Swedish Gov). Two Italian members mentioned the advantage for the Union of becoming in itself a member of international organisations, e.g. the Security Council of the UN or the IMF (Spini, Ital. Parl.; Tajani, EP).

However, the remarks on external relations and the recommendation to abolish the pillar structure provoked some criticism:

Although welcoming Mr Amato's report in most points, Mr Hain (British government representative), made it very clear that the Common Foreign and Security Policy should remain inter-governmental. Mr Kirkhope (EP) disagreed with the fact that the single legal personality should go hand in hand with the abolition of the pillar structure. He favoured greater co-operation but not necessarily harmonisation in external policy as well as in Justice and Home Affairs (e.g. different asylum-seeking procedures).

However, the Chairman and several members clarified that abolition of the pillar structure would not necessarily lead to a unified procedure for all forms of Union action, e.g. Mr Fini (Ital. Gov.) wanted to maintain the peculiarities of the CFSP, whether by upholding the pillar structure or by another means. Likewise Mr Duff and Mr Brok (EP) favoured the abolition of the pillar structure and at the same time recognised the necessity to differentiate between procedures, mainly for foreign policy.

Several members favoured merging the roles of the High Representative

and the Commissioner for External Relation (Yilmaz (Turk. Gov.), Barnier (EC), Einem (Austrian Parl.), Brok (EP)).

## *Conclusion of the Chairman*

In his conclusion the Chairman stated that there was a broad consensus for the Union to have a single legal personality. However, it would not be a new legal personality but rather would replace the existing legal personality of the European Community, as that would provide the necessary continuity.

The Chairman saw a wide backing among the members of the Convention that the merging of personality would also result in the merging of the treaties into a single text. This would make the text simpler and more accessible to public opinion. This merger could be reflected in a single two-fold treaty: one first part with constitutional provisions and a second part codifying other primary law. The Chairman added that the second part could also be handled in a protocol or an annex and stressed that he did not want a hierarchy of norms to be established between the two parts. The Chairman furthermore expressed his preference for giving up the pillar structure in the new treaty.

## 2. Working group I: Subsidiarity

The mandate of the working group was to examine a) how compliance with the principle of subsidiarity can be monitored in the most effective manner possible, b) whether a monitoring mechanism or procedure should be established and c) whether this procedure should be of a political and/or legal nature.

### a. Presentation of the final report

Mr Méndez de Vigo, chairperson of the working group, started by saying that subsidiarity is already applied within the legislative work of the European institutions and reviewed by the ECJ through ex-post control; therefore the main task of the working group was to improve the existing methods of application of subsidiarity. Important corner-stones in the discussion of the working group had been that the decision-making process should not be made more lengthy or interfere with national provisions. The group made the following proposals:

- ⑩ The group proposed that the Commission's annual working programme should not only be discussed by the European Parliament but also by the national Parliaments, as it provides an opportunity for a preliminary debate on subsidiarity.
- ⑩ In the drafting phase, the responsibility to apply the principle of subsidiarity rests with the Commission; each legislative proposal should in the future contain a "subsidiarity sheet" setting out criteria for assessing compliance with the principle of subsidiarity.
- ⑩ The group suggests setting up an **early-warning system**:
  - The Commission should send their legislative proposals directly to each national parliament [footnote: "each national parliament" means each chamber of the same parliament when the parliament is composed of two chambers].
  - Within six weeks any national Parliament could issue a reasoned opinion on the compliance of the proposal concerned with the principle of subsidiarity.
  - The consequences of such opinions for the continuation of the legislative process could be modulated, depending on the number and substance of the reasoned opinions received: if the Community legislator received only a limited number of opinions, he would have to give further specific reasons in terms of subsidiarity for proceeding; if it received a significant number of opinions (one third of national parliaments), the Commission would have to re-examine its proposal. Whether this re-examination would lead to the Commission maintaining its proposal, amending it or withdrawing it, would, however, remain the responsibility of the Commission.
- ⑩ During the conciliation procedure, the national parliaments should be kept informed.
- ⑩ The group agreed that the **ex post judicial control** should be reinforced:
  - A national parliament (or one chamber thereof, in the case of a bicameral parliament) which has delivered a reasoned opinion under the early warning system, should be allowed to refer the matter to the Court of Justice for violation of the principle of subsidiarity.

- In cases where a proposal had been sent to the Committee of the Regions and where it had expressed objections as regards compliance with subsidiarity, the Committee should also be allowed the right to refer a matter to the Court of Justice for violation of the principle of subsidiarity.

Mr Méndez de Vigo stressed that there was a consensus in the group about these proposals in the sense that all members thought it was a suitable compromise.

#### b. Discussion

Mr Méndez de Vigo's report triggered a controversial and impassioned debate, which according to Mr Méndez de Vigo was a "microcosm of the debates in the working groups".

#### ⑩ Discussion of the legislative programme

The members of the Convention generally endorsed the proposal that the annual working programme of the Commission should be discussed by national parliaments vis-à-vis the correct application of the subsidiarity principle.

#### ⑩ "Subsidiarity sheet"

Likewise the subsidiarity sheet was welcomed; however, it was pointed out that the evaluation of the European Commission within the context of the sheet could not replace a proper subsidiarity review.

#### ⑩ "Early warning system"

The part of the report which was most fiercely argued over in the Convention plenary was the issue of the "early warning". Some members whole-heartedly supported the early warning system. In that respect, Mr Meyer (German Parl.) praised the delicate balance between the important inclusion of national parliaments in the scrutiny of the subsidiarity principle on the one hand and the need to maintain a swift timeframe for Community legislation on the other hand. Others supporting the early warning system were Mrs Stuart (chairperson of the national parliaments' working group), Lord Thomlin (EP), Mr Duhamel (EP), Mr Hain (GB Gov.), Mr Haenel (EP), Mr Fini (Ital. Gov.), Mr Bösch (Aus. Parl.).



® **Link between reasoned opinion and judicial recourse**

Many convention members expressed concerns about the link between the issuance of a reasoned opinion and the right to judicial recourse for national parliaments (Dastis (ES Gov.), Michel (B Gov.), Moscovici (F Gov.), Fini (Ital. Gov.), Tillikainen (Fin. Gov.), Lequiller (F Parl.), DiRupo (B Parl.), Van Lancker (EP), Duff (EP)). Many feared that national parliaments might give opinions during the “early warning” stage only in order to “reserve” a latter right to go to the ECJ. Mr Moscovici (F Gov.) emphasised his concerns that control of subsidiarity should be neutral and suggested invoking a “selfstanding arbitration body” which would deliver a (non-binding) opinion at the request of Council, Commission or the European Parliament.

“Each national parliament” means each chamber of the same parliament when the parliament is composed of two chambers. Opinions were split on whether in situations of bicameral systems each chamber should in fact receive the right to issue a reasoned opinion on subsidiarity problems. Mr Duff (EP) was strongly opposed, whereas the German members of the Convention Mr Glotz, Mr Teufel and Mr Meyer, as well as Mr Haenel, supported the second chamber’s right to intervene.

® **Rights of the Committee of the Regions and the regions with legislative powers**

Furthermore, it was discussed whether regions with legislative powers or the Committee of the Regions should have the right of recourse to the ECJ for a breach of subsidiarity – as proposed by the Working Group. Mr Duff (EP) in principle welcomed the working group’s proposal but questioned the “representative capacity” of the Committee of the Regions. Whereas Mr Dastis (ES Gov.) clearly objected to any such right for regions themselves as was demanded by Mr DiRupo (B Parl.), Mr Farnleitner (Austr. Gov.) and Mr Bösch (Austr. Parl.).

® **Information during the conciliation procedure**

Whether national parliaments should also be involved in the conciliation procedure did not become entirely clear in the debate.

® **Ex-post judicial control**

The possibility of ex-post judicial control over the implementation of subsidiarity was generally welcomed. However, some delegates were concerned that ex-post judicial control would constitute a rather lengthy procedure and thus not be entirely profitable (Maij-Weggen, EP; Tillikainen, Fin. Gov.)

® **New suggestions from the members of the Convention**

Mr Michel (B Gov.) suggested invoking an **independent arbitration college** which would deliver, on the request of Council, Commission or European Parliament, a non-binding opinion. Mr Moscovici (F Gov.) favoured an **ex-post control through a political-judicial body** (like the French Constitutional Council). Mr Bonde suggested that the national parliaments should not only discuss the legislative programme but be required to approve it. Several delegates (e.g. Glotz, Germ. Gov.; Stuart, U.K. Parl; Haenel, F Parl; Lenmarker, Swed. Parl.) discussed the possibility of a **congress** consisting of an equal number of representatives of national parliaments and the European parliament, which should be convoked once or twice a year to debate fundamental issues of European Union law. However, none of those promoting the idea of such a congress wanted to vest the institution with any kind of legislative competence.

*Conclusions of the Chairman*

In his conclusion, the Chairman stated that most voices were in favour of a political ex-ante control. He sees an agreement on the early warning system as such, but disagreement when it comes to the technical details (e.g. the link between the early warning and taking the case to the ECJ).

**3. Progress report on Working Group II on the Charter of Fundamental Rights, chaired by Mr Vitorino**

Mr Vitorino reported on the state of discussion in his working group: All members are **in favour of the incorporation of the Charter**. The precise method of incorporation, however, would depend on the overall structure of a future constitutional treaty. Currently, a large majority in the working group would favour an insertion at the beginning of the treaty; others prefer a reference to the Charter in one article and annexing the

Charter in a protocol or in some other form.

The working group has agreed that the contents of the Charter should not be reopened, although there are some elements of the Charter which should be revised, in particular the technical provisions in Articles 51 and 52. In that respect, the main concerns of the group members are:

- No revision of competences between the Union and the member states; the current art. 51 which explicitly states this principle should be preserved. The U.K. delegation (Peter Hain, Baroness Scotland, U.K. Gov.) called in particular for a provision clearly stating that the Charter should not have horizontal application, i.e. in situations between the member states and its citizens without a European Union element.
- The preamble of the Charter has been a crucial element of the political compromise behind the Charter; therefore it should be integrated into a future constitutional treaty; whether it would be used as the preamble for the future treaty itself was not yet decided by the group.

Within the group there is a favourable attitude regarding accession of the EU to the European Convention on Human Rights (ECHR). The consequence would be a harmonious development in the jurisprudence of both courts, the ECHR and the ECJ. The group, however, regards this accession not as an alternative option but as complementary. Aspects to be considered concerning the accession:

- The accession must not modify the share of competences between the EU and the Council of Europe.
- The accession must not effect the position of the individual member states in Strasbourg and the national references formulated by the member states towards the ECHR.

#### **4. Progress report on Working Group IV on the Role of National Parliaments, chaired by Mrs Stuart**

Mrs Stuart (U.K. Parl.) started by saying that it is a great step forward to give national parliaments a role in the European decision-making process. Her group's aim is to anchor the European decision-making process in the national parliaments; it has closely co-operated with the group on

subsidiarity and accordingly welcomes its report.

The group was in favour of strengthening the mechanism for scrutiny by national parliaments at the national level. However, it was emphasised that establishment of such mechanisms falls into the competence of the member states themselves.

There should not be competition between the national parliaments and the European Parliament, but both bodies should work together concerning scrutiny, e.g. the Commission's annual working programme could also be discussed in the national parliaments; on the other hand the national parliaments must not become "co-deciders".

The group also discussed the role of COSAC, the idea of inter-parliamentary conferences and of a congress as well as other options, without having yet taken a decision on these issues.

The group has unanimously rejected the idea of creating a second chamber.

#### **5. Procedural Issues**

##### **Motion**

44 Members of the Convention, lead by Mrs van Lancker, Mr Voggenhuber and Mrs Kaufmann, had presented a motion to the Presidium demanding a) that a debate on the issue of a social Europe be put on the agenda of the Convention by November at the latest and b) the setting-up of a working group on a social Europe.

In his response, the Chairman referred to the existing working groups, especially the one on economic governance, who would also look at social issues. In the name of the Presidium he suggested that the report of the working group on economic governance should be discussed at the first session in November and that it would feed into a debate on a social Europe.

Afterwards, the Praesidium would decide whether or not it would be useful to set up an additional working group.

##### **Next Convention session**

For the next plenary session on 28-29 October 2002, the presidium will present a framework for the structure of a future single treaty; it would not be a full proposal. This outline would have to be "filled in" with

content and will be approximately 10 pages in length.

In this session, the final reports of working groups II (Charter of Fundamental Rights) and IV (Role of National Parliaments) will be presented and discussed.

### **Tenth Session 28-29 October 2002**

The tenth plenary session of the Convention had the following agenda:

1. Presentation by the Chairman of the preliminary draft Constitutional Treaty (CONV 369/02) and discussion
2. Final report on working group IV “The role of national parliaments” by chairwoman *Gisela Stuart* and debate
3. Final report on working group II “Charter of Fundamental Rights” by chairman *António Vitorino* and debate
4. Progress report on the proceedings of working group VI “Economic governance” by chairman *Klaus Hänsch*
5. Progress report on the proceedings of working group V “Complementary competences” by chairman *Henning Christophersen*

Undoubtedly the main attraction of this Convention session was Mr *Giscard d’Estaing’s* presentation of the “architecture” for the future constitution of the European Union as drafted by the Presidium:

#### **1. “Architecture” of a future European Constitution**

Eight months after the launch of the Convention *Giscard d’Estaing* presented the first “preliminary draft”, on behalf of the Presidium, for a “Treaty establishing a Constitution for Europe”.

The draft consists of three parts: 1) “Constitutional structure”, 2) “Union policies and their implementation” and 3) “General and final provisions”. In its presentation *Giscard d’Estaing* stressed that some of the provisions of the draft were derived from the plenary debates while others were “proposals for debate”. He envisaged that the presidium would present a new draft for an architectural structure in December whereas fully fleshed-out sections of the proposed Treaty, based on the findings of the working groups and the plenary, will be presented in the first months of 2003.

The proposed first and “constitutional part” consists of 10 titles with 46

articles. According to *Giscard d'Estaing* this first part should be “particularly clear and incisive” and even attain “a certain lyricism”. The second part would set out and reorganise the existing provisions in the current treaties governing the policies of the EU. According to the chairman, of the 414 articles making up the current Treaties, 205 could remain unchanged, 136 should be slightly altered and 73 “substantially rewritten or regrouped”.

### Part I:

**The constitutional part**, to be preceded by a preamble, would first define **the Union, its values and its objectives** (arts. 1-4). The following title would deal with **“Union citizenship and fundamental rights”** (arts. 5, 6). Under this heading, the Charter of Fundamental Rights would be included, either by an article referring to an annexed protocol or by full incorporation of all the articles of the Charter. Title III on **“Union competences and actions”** (arts. 7-13) contains four categories: exclusive Union competences; shared competence between the Union and the Member States; areas in which the Union supports or co-ordinates action by the Member States but does not have competence to legislate; and common policies like the common foreign and security policy, common defence policy, police and judicial co-operation in criminal matters. One article would spell out the principle that any competence not conferred on the Union by the constitution rests with the Member States.

Under title IV - on the **institutions** (arts. 14-23) - the pillar structure would be replaced by a “single institutional structure”. It would contain provisions on the European Council, the European Parliament, the Council, the Commission, a “Congress of the Peoples of Europe”, the Court of Justice, the Court of Auditors, the European Central Bank and the Union’s advisory bodies, which according to the chairman should be the Economic and Social Committee and the Committee of the Regions. Title V deals with the **implementation of Union action** (arts. 24-32) and describes the legal instruments and procedures of European decision-making.

An entirely new title would then be included on **“the democratic life of the Union”** (arts. 33-37), which would contain an article on the principle of participatory democracy (art. 34).

Title VII deals with **the Union finances**. The subject of title VIII would be **Union action in the world** setting out who represents the Union in

international relations. The draft text suggests that a “privileged relationship” be established between the Union and its neighbouring states (title IX). Lastly, under the heading of **“Union membership”** (arts. 43-46), a number of articles would set out the procedures for accession of new Member States to the EU, for suspending EU membership rights and also for voluntary withdrawal from the Union.

### Part II:

The second part of the draft, dealing with Union policies and their implementation, would contain the legal bases for A) Policies and internal action (among this: A1: internal market, A2: economic and monetary policy, A3: policies in other specific areas, A4: internal security and A5: areas where the Union may take supporting action), B) External Action, D) Defence and E) The functioning of the Union. For each area, the type of competence and the acts and procedures should be determined in line with what is decided for Part One.

### Part III:

The third part “General and final provisions” would provide for the legal continuity in relation to the European Community and the European Union and would contain a limited number of protocols, revision procedures, duration, languages and others.

On Tuesday, the first debate on the preliminary draft text took place. The text was largely welcomed as presenting an excellent basis for the further work of the Convention (*Hänsch, EP; Palacio, Span. Gov.; Barnier, Com.*). All comments endorsed the simplification of the treaty structure through a merger of the existing treaties into a single constitutional document as contained in the draft (*Duff, EP; Hänsch, EP; Méndez de Vigo, EP; Majj-Weggen, EP, Hain, U.K. Gov; Roche, Irish Gov., Folini, It. Parl.*). Further comments welcomed the inclusion of the Charter of Fundamental Rights (*Frendo, Malt. Gov.; Brok, EP*). *Andrew Duff (EP)* suggested to include a reference to the people in the first article (followed by *Fayot, Lux. Parl.*). Further proposals were to include a reference to national parliaments at some point (*Haenel, French. Parl.; Borell, Span. Parl.; Lamassoure, EP*) and to formulate specific provisions on a social Europe (*Borell, Span. Parl.; Frendo,*

*Malt. Parl.; McCowan, EP; Hjelm-Wallén, Swed. Gov.*). Some members referred to the problem of institutional balance and the fact that institutional questions have not yet been discussed in the plenary (*Hain, U.K. Gov.; Píks, Latv. Gov.; Follini, It. Parl.*). The proposal of the Chairman to give the Union a new name, - the Chairman had already expressed a preference for “United Europe” - , was met with strong criticism. Instead, it was proposed to maintain continuity by preserving the name of “European Union” (*Hain, U.K. Gov.; Roche, Irish Gov.; Maij-Weggen, EP*). The debate will be continued at the next Convention plenary on 7-8 November.

## 2. Final report of Working Group IV on National Parliaments

The members of the Convention examined the conclusion of the working group on national parliaments. The chair of the working group, *Gisela Stuart (UK parl.)*, noted that a broad consensus had been reached on the need to involve national parliaments more in European affairs. However, *Ms Stuart* emphasised that national parliaments should not become European co-legislators, but be encouraged to follow more closely what their own governments are doing at the European level. In addition to the recommendations of the working group on subsidiarity to establish a rapid alert mechanism for parliaments regarding legislative proposals by the European Commission and the possibility of referring the issue to the Court of Justice later on, *Ms Stuart's* working group proposed that the annual programme of the Commission be debated by national parliaments. The idea of a Congress of the Peoples of Europe, bringing together national and European MPs on a periodic basis, had provoked strongly diverging views not only within the working group, but also in the discussion of the report among the members of the plenary.

During the debate the majority of speakers contested or at least called into question the idea of setting up a “Congress of the Peoples of Europe” (*Barnier, Com.; Brok, EP; Méndez de Vigo, EP; Maij-Weggen, EP; Lekberg, Swed. Parl.; Meyer, Germ. Parl.; Einem, Austr. Parl.; Voggenbuber, Austr. Parl.; Timmermans, Dutch. Parl.; Di Rupo, Belg. Parl. Vanhanen, Fin. Parl.; Fini, Ital. Gov.; Fischer, German. Gov.; Chevalier, Belg. Gov.*). The idea of a Congress was defended above all by French members of the Convention (*Lequiller, French. Parl.; Haenel, French Parl.; Moscovici, French Gov.; Abitbol, EP*). Among

the members of the Convention there seemed to be very wide agreement on the need for greater involvement of national parliaments in the monitoring of their respective governments (e.g. *Duff, EP*), for reform of COSAC (e.g. *Borell, Span. Parl.; Chevalier, Belg. Gov.*) and for ensuring that the Council holds its debates in public when acting in its legislative role (*Duff, EP; Dini, It. Gov.*).

## 3. Final report of Working Group II on the incorporation of the Charter of Fundamental Rights

The chair *Mr Vitorino (Com.)* delivered the final report of the working group on the incorporation of the Charter of Fundamental Rights. The mandate of the group was to examine the possibilities for incorporating the Charter of Fundamental Rights into a future Constitutional Treaty and to discuss the implication of a potential accession by the European Union to the European Convention of Human Rights.

All members are in favour of the incorporation of the Charter. The precise method of incorporation, however, would depend on the overall structure of a future constitutional treaty. Currently, a large majority in the working group would favour a full insertion at the beginning of the treaty; others prefer a reference to the Charter in one article and annexing the Charter in a protocol or in some other form.

The working group has agreed that the contents of the Charter should not be reopened. The group agreed, however, on certain technical amendments to the “horizontal articles” of the Charter (arts. 51, 52) in order to confirm and render legally watertight the provisions (a) that the incorporation of the Charter will not modify the allocation of competences between the Union and the Member States (see draft adjustments to arts. 51 (1) and (2)) and (b) that fundamental rights contained in the EC treaty are fully compatible with the guarantees of the Charter (see draft adjustment to art. 52 (2)). All but two members of the working group propose to include a rule stating that the Charter must be interpreted in harmony with common constitutional traditions (see new art. 52 (4)).

The preamble of the Charter was a crucial element of the political compromise behind the Charter - it should therefore contribute to the preamble of a future treaty. The report concludes that if the Charter

were to be fully inserted in the Constitutional Treaty, the Charter Preamble should be used as the Preamble to the Constitutional Treaty. If not, the Charter Preamble could remain attached to the text of the Charter without any changes. That would not preclude the Convention from using, for the drafting of the new Treaty preamble, the elements of the Charter preamble.

Within the group there is a favourable attitude regarding accession of the EU to the European Convention on Human Rights (ECHR). The consequence would be a harmonious development in the jurisprudence of both courts, the ECHR and the ECJ. The group, however, regards this accession not as an alternative option but as complementary.

In the discussion, the members of the Convention expressed their unanimous support for the incorporation of the Charter into a future constitutional treaty of the European Union. They stressed the fact that the incorporation of the Charter would strengthen the character of the European Union as a community of values (*van der Linden, Dutch Parl.; Meyer, Germ. Parl.*).

However, the delegates were divided as to the method of incorporation. Whilst a clear majority of the members of the working group support incorporation of the whole text, (supported by *Moscovici, French. Gov.; van der Linden, Dutch Parl.; Meyer, German. Parl.; Svenson, Swed. Parl.; Rack, EP*), the Convention members, especially among the governmental representatives, seem to favour a reference to the Charter in one article (*Peter Hain, U.K. Gov. ; Roche, Irish Gov.; Dastis, Span. Gov.; Fini, It. Gov.; de Vries, Dutch. Gov.; Christophersen, Dan. Gov.; Muscardini, EP; Haenel, French. Parl.*). The document would then be annexed to the Constitution.

Several members expressed the view that the adjustments in the horizontal articles as proposed by the report are purely of a clarifying nature (*Dubamel, EP; Majj-Weggen, EP; Meyer, Germ. Parl.; Lopez-Garido, Span. Parl.*) The relevance of the preamble of the Charter was emphasised. It could present a substantial contribution to a preamble of a future constitutional treaty (*Meyer, Germ. Gov.; Lopez-Garrido, Span. Parl.; Haenel, French. Parl.*).

#### 4. Progress report on Working Group VI on Economic Governance

According to the chair of the working group, *Klaus Hänsch, EP*, the debates

in the group were extremely controversial. The group agreed, however, that the current allocation of competences in the economic and monetary field should be maintained. A majority of the members furthermore supported inclusion of the method of open co-ordination into a future constitutional treaty. The most controversial issue in the deliberations of the group was the redrafting of the social objectives of the European Union. Therefore the debate on the social objectives of a future European Union should be left to the Plenary. In Hänsch's view the controversies among the members were rooted in their different concepts of economic and political integration and in their diverse views on the European social model.

*Giscard d'Estaing* recommended that the discussion of the final report of the working which is scheduled for the plenary on 7-8 November should be used for a general debate on social objectives.

#### 5. Progress report on Working Group V on Complementary Competences

The chair of the working group on “complementary competences”, *Henning Christophersen (Dan. Gov.)* focused largely on the question of allocation of competences. According to the chairman one of the central recommendations of the working group will be to uphold the principle of allocated powers as a basic principle for the allocation of competences. This should be expressly stated in a future constitutional treaty. Consequently, all powers not conferred on the Union by the treaty remain with the Member States. A general fall back clause as currently provided by article 308 should be maintained but used only exceptionally. The group will not propose any new areas of competences for the European Union nor will it specifically identify certain residual competences for the member states.

The final report of the working group will be delivered at the next Convention plenary on 7-8 November.

## Eleventh Session 7-8 November 2002

The eleventh plenary session of the Convention had the following agenda:

1. Co-ordination of economic policies
  - a. debate on the report by Working Group VI chaired by Mr Hänsch (*CONV 357/02*)
  - b. debate on a Social Europe (*CONV 300/02 + COR 2 and CONV 374/02*)
2. Resumption of the preliminary debate on the preliminary draft Constitutional Treaty (*CONV 369/02*)
3. Complementary Competence – debate on the report by Working Group V chaired by Mr Christophersen (*CONV 375/02*)
4. Progress report by Mr Amato on the proceedings of Working Group IX on Simplification of Instruments and Procedures
5. Progress report by Mr Bruton on the proceedings of Working Group X on Security and Justice

**1. Working group VI “Co-ordination of economic policies”:  
Report by working group chairman Mr Hänsch and debate,  
including a debate on a social Europe**

After explaining that the results did not satisfy him, the chairman of the working group, Mr Hänsch, introduced the main conclusions reached by his group. The discussions of the working group had been “extremely difficult” yet “fascinating” because it showed the deep diversity of opinions with regard to the very important question of economic governance.

The group recommends that the Union’s economic and social objectives should be included in a new constitutional Treaty. The current distribution of competences – whereby competence for monetary policy within the Eurozone lies exclusively with the Community, exercised by the European Central Bank (ECB), and competence for economic, social and fiscal policy lies with the member states – should be maintained. However, the group agrees that there is a need for improved co-ordination between

the economic policies of the member states; the group considers the Broad Economic Policy Guidelines (BEPG) to be the principal instrument for supporting economic policy co-ordination. The group could not agree, however, on whether the Commission should be given the right to make formal proposals rather than just recommendations based on the BEPG. With regard to monetary policy, the group considered that there is no reason to make any changes to the existing statute and mandate of the ECB (i.e. to maintain price stability). A majority of the group thinks that the Commission should be allowed to issue initial warnings on excessive deficits directly to the Member State concerned.

A majority of the group believed that the “open co-ordination method” should be anchored in the Constitutional Treaty as a useful instrument in policy areas where no stronger co-ordination instrument exists; however, it must be ensured that flexibility is maintained and Member States do not lose any powers.

With regard to taxation, many group members believed that there should be harmonisation of minimum rules on taxation, but not for taxation on individual persons, property or capital.

Concerning the role of the Eurogroup, the group could only agree that “no measures should be taken which would prevent the possibility of informal discussions amongst finance ministers of the Eurogroup, the ECB and the Commission”.

### Discussion

The members of the Convention who addressed the plenary generally agreed with the working group’s proposal not to change the mandate of the European Central Bank and the rules of the Stability and Growth Pact (Brok (EP), Lopes (Port. Gov.), de Vries (NL Gov.), Dini (Ital. Parl.), Muscardini (EP), Demiralp (Turk. Gov.) The working group’s proposal to enhance the role of the Commission in the BEPGs and the application of the Stability and Growth Pact was partly endorsed: Mr Moscovici (F Gov.), Mrs Hübner (Pol. Gov.), Mr Lequiller (F Parl.), Mr Bury (Germ. Gov.), Mr Fini (It. Gov.), Mr de Vries (NL Gov.), Mr Barnier (COM) and Mr Michel (B Gov.) all supported the view that the Commission should have the right to make proposals. On the contrary, Mr Kirkhope defended the view that the BEPGs should be defined by the governments and not

by the Commission. Some members expressed the view that the Commission should not be given any new powers as regards either the BEPGs or the Stability Pact (Mr Lopes (Port. Gov.), Ms McAvan (EP), Mr Roche (Irish Gov.)).

Opinions of the Convention members were also divided about the open co-ordination method: whilst a number of members (Mr Fini (It. Gov.), Ms Beres (EP), Ms Hjelm-Wallen (Swed. Gov.), Ms Stuart (UK Parl.), Mr Haenel (F Parl.) and Mr Michel (B Gov.)) argued that this method should be anchored in the Treaty, other members defended the idea that the method must remain informal (Teufel (Germ. Parl.), Bury (Germ. Gov.), Lopes (Port. Gov.), de Vries (NL Gov.), Hübner (Pol. Gov.)).

On the issue of taxation, the members of the Convention expressed divergent views: whilst a number of speakers favoured the abolition of unanimity voting on tax matters in view of the enlarged Union (Mr Moscovici (F Gov.), Mr Brok (EP), Mr Bury (Germ. Gov.), Mr de Vries (NL Gov.)), others defended the continuation of unanimity (Mr Hain (UK Gov.), Ms Hjelm-Wallen (Swed. Gov.), Mr Lopes (Port. Gov.) Mr Roche (Irish Gov.)).

With regard to the Eurogroup, a considerable number of Convention members argued in favour of its institutional reinforcement; Mr Moscovici (F Gov.), for example, asked for its role to be incorporated into the Treaty; several members argued for an external representation of the Eurogroup (Mr Brok (EP), Mr Barnier (COM)). Many members argued that the Member States of the Eurogroup should have the power to decide among themselves; Mr Michel suggested that the future constitution should recognise a “Council of the euro” within the Council.

### Debate on Social Europe

All the speakers favoured the creation of a working group on social issues (van Lancker (EP), Voggenhuber (EP), Kaufmann (EP), Brok (EP), Tajani (EP), Thorning-Schmidt (EP), Lequiller (F Parl.), Einem (Austr. Parl.), Nagy (B Parl.), Bruton (Irish Parl.), Meyer (Germ. Parl.), Brok (Germ. Gov.), Hübner (Pol. Gov.), Lopes (Port. Gov.)). The President announced that the Presidium will carefully consider the request and deliver its decision at the next Convention plenary.

Numerous speakers argued in favour of the integration of social objectives

in a future Constitutional Treaty (e.g. in art. 3 of the draft); in this context the following issues were mentioned: fight against poverty and social exclusion (van Lancker (EP), De Rossa (Irish Parl.)), maintenance of high-quality social services (van Lancker, Kaufmann (EP), Thorning-Schmidt (EP)), full employment (Thorning-Schmidt, Avgerinos (Greek Parl.)), gender equality (Thorning-Schmidt, Fayot (Lux. Parl.)) and the specific role of the social dialogue (van Lancker, Thorning-Schmidt, Fayot).

Several speakers emphasised that the economic Union must be accompanied by a social dimension (Lequiller (F Parl.), Hain (UK Gov.), Michel (B Gov.), van Lancker (EP), Kaufmann (EP)). Ms Kaufmann saw this as a precondition that the European citizens could identify with the integration process; she demanded that the European social model be anchored in the future Constitutional Treaty.

The speakers were, however, divided on the question of whether the Union should be given additional competences in the area of social policy (in favour: van Lancker (EP), Pieters (B Parl.); against: De Rossa (Irish Parl.), Dalggaard (Dan. Parl.), Dastis (Span. Gov.)).

## 2. Resumption of the debate on the preliminary draft Constitutional Treaty

The debate on the preliminary draft Constitution was continued. In general, all speakers welcomed the outline as a helpful instrument for further discussion. Unanimous support was given to the integration of the Charter of Fundamental Rights in the future Constitutional text and the legal personality of the future union. Mr Fischer (Germ. Gov.) and Mr Meyer (Germ. Parl.) also explicitly welcomed the use of the word “constitution”. However, the most disputed suggestion was the idea of a congress; in the discussion, only Mr Lequiller (F Parl.) supported this new institution whilst making clear that it would not have any legislative powers (explicitly against congress: Mr Lekberg (Swed. Parl.), Mr Duhamel (EP), Mr Rack (EP)).

The draft was further criticised for defining only a Union of states and not taking into account the specificity of the European Union as being not only a union of states but also a union of European citizens (Mr Fischer (Germ. Gov.), Mr Voggenhuber (EP)); Mr Chabert (Committee



of the Regions) suggested that the preamble should contain an explicit reference to the people of Europe and the specific role of the regions. Furthermore, Mr Christophersen (Dan. Gov.) and Mr Södermann (the European ombudsman) said that an article on the European ombudsman needed to be added to the draft; Mr Farnleitner (Austr. Gov.) criticised the draft for not taking up the working group's recommendation to include the Euratom Treaty as far as possible.

With regard to the name of the Union, Mr Leuqiller (F Parl.) proposed that it should be just "Europe" whereas Mr Kiljunen (Fin. Parl.) did not favour a change of name.

Several speakers stressed the importance of solidarity and of a social Europe (Mr Costa (Port. Parl.), Mr Farnleitner (Austr. Gov.)); some delegates asked for a thorough debate about the values and objectives of the European Union.

Mr Farnleitner specifically asked for a recognition of declaration no 11 annexed to the Treaty of Amsterdam, which protects national church-state relationships.

With regard to the further proceedings, Mr Fischer (Germ. Gov.) and Mr Meyer (Germ. Parl.) urged the Presidium to start working on the second part of the Constitutional text. Mr Fischer emphasised that if the Convention did not propose a complete text, it would be very unlikely that the intergovernmental conference would be able to reach an agreement. Many Convention members expressed the view that there was much need for further in-depth discussion, in particular in the area of institutional questions.

### 3. Working group V "Complementary competences": Report by working group chairman Mr Christophersen

The working group's mandate deals with one of the core tasks of the Convention, a clear-cut and effective delimitation of competences. Mr Christophersen, the chairman of the group, presented the main recommendations of the working group on complementary competences:

- ⊗ In a future treaty, a separate title devoted to all issues of competence should be included.
- ⊗ The group suggests to give a clear definition of the three categories

of Union competence:

#### a) Complementary competences - Supporting measures:

Complementary competences should be renamed "supporting measures"; they comprise Treaty provisions "giving authority to the Union to adopt certain measures of low intensity with respect to policies which continue to be the responsibility of the Member States, and where Member States have not transferred their legislative competence to the Union"; they "enable the Union to assist and supplement the national policies where there is a common Union and Member States interest to do so."

The group suggests that only certain instruments could be used as supporting measures: recommendations, resolutions, guidelines, programmes and other legally non-binding acts as well as legally binding decisions, whereas other instruments of Union legislation (regulations and directives) may not be adopted as supporting measures, unless exceptionally and clearly specified in the relevant Treaty Article.

The working group recommends the following subject matters to be considered matters of supporting measures: employment, education and vocational training, culture, public health, trans-European networks, industry, research and development.

#### b) Exclusive competences - Competences of the Union

"Exclusive competences" should be renamed "competences of the Union"; they concern those policy areas where the Member States may only act if authorised by the Union. The group recommended rewriting the tasks and responsibilities of the Union (currently described in Articles 3 and 4 of the TEC) in such a manner that policy areas where the Union shall be fully or primarily responsible are identified as Union responsibilities.

#### c) Shared competences

"Shared competences" comprise matters being neither "supporting measures" nor "Union competences".

- ⊗ Conditions for the exercise of Union competence: The Treaty should contain a provision that all powers not conferred on the Union by the Treaty remain with the Member States.

- ⊗ "Christophersen clause": The group recommends that the provisions

contained in Article 6 (3) of the TEU [*The Union respects the national identity of the Member States*] should be made more transparent by exemplifying essential elements of the national identity. The group proposes to include, among others, the **legal status of churches and religious societies** in such a list.

- ⑥ The group furthermore suggests including a chapter on conditions for the exercise of competences covering, among other points, the principles of subsidiarity, proportionality, common interest and solidarity.
- ⑥ The group recommends maintaining Article 308 and the requirement for unanimity in the Council; the assent or other substantial involvement of the European Parliament should be required.
- ⑥ The reference to “an ever closer Union” in TEU Article 1 should be rephrased or clarified in order to avoid the impression that future transfer of competence to the Union remains in itself an aim and objective of the Union.

### Discussion

The recommendations of the working group were received with criticism. Most disputed were the recommendation to change the reference to “an ever closer Union”, to change the name from “complementary competences” to “supporting measures” and to limit the number of available instruments for different areas of competence. Mr Lamassoure (EP) and Mr Dastis (Span. Gov.) went so far as to say that the findings of the group would render things more complicated instead of simplifying them.

Mr Fischer (Germ. Gov.) and Mr Teufel (Germ. Parl.) strongly supported the recommendation of a clear delimitation of competences between the Union and the Member States. This would be necessary in order to prevent a clandestine shift of competences. Mr de Vries, (NL Gov.), however, suggested that the working group tried to reintroduce a list of competences through the back door; this impression was shared by Mr van der Linden (NL Parl.) and Mr Lopes (Port. Gov.).

Many Convention members disagreed with the recommendation that legally binding Community legislation should generally not be admissible in the context of “supporting measures” (Mr Vitorino (COM); Mr Fischer

(Germ. Gov.); Mr Dastis (Span. Gov.); Mr Lequiller (F Parl.); Mr Dini (It. Parl.), Mr Frendo (Malta Parl.); Mr Hänsch (EP)). The term “supporting measures” was welcomed by Mr Dini (It. Parl.); Mr Heathcoat-Amory (UK Parl.); Mr Teufel (Germ. Parl.) and Mr Frendo (Malta Parl.).

Mr Duhamel (EP) and Ms Beres (EP) expressed their disagreement with the recommendation to change the formula “an ever closer union” (also Mr Dastis (Span. Gov.); Mr Lopes (Port. Gov.); Ms Thorning-Schmidt (EP), however, agreed that there was no longer a need for the aim “an ever closer union”. Mr Hänsch (EP) suggested to speak of a “federal Union”.

### *Christophersen clause:*

Mr Teufel (Germ. Parl.), Mr Wuermeling (EP) and Mr Farnleitner (Austr. Gov.) expressly welcomed the “Christophersen clause” stating the Union’s respect for the national identity. They confirmed that this national identity should comprise among other things the legal status of Churches and religious communities. Mr Serracino-Inglott also supported the national identity clause and specifically referred to the church/state relationship. Mr Fischer (Germ. Gov.), Mr Voggenhuber (EP) and Mr Heathcoat-Amory (UK Parl.) equally stressed the importance of the protection of the national identity without, however, referring to the status of churches and religious communities. Mr Frendo (Malta Parl.) said that ethical questions like euthanasia and abortion also belonged to national identity and should be added to the list of examples. Mr Lopes (Port. Gov.) suggested that every member state should decide on measures which constitute essential elements of their national identity.

The Christophersen clause was severely criticised by Mr López Garrido (Span. Parl.) because this could lead to negative competences of the EU. Mr van der Linden (NL Parl.) criticised the use of examples in the clause as it could hinder future developments.

In his response, Mr Christophersen pointed to the narrow and very technical mandate of the working group. With regard to the “national identity clause” he said that the clause just repeats what is already said in the present treaty; the only change being the introduction of examples in order to contribute to a better understanding of the clause.

#### 4. Progress report by Mr Amato on Working Group IX on Simplification of Instruments and Procedures

Mr Amato gave a very short progress report and started by saying that nothing is more complicated than simplifying. The group's starting point was to render instruments and procedures more democratic and less numerous (there are currently more than 50 combinations). In order to enhance democratic legitimacy, a better separation of powers is necessary; acts have to be distinguished between legislative, executive and political acts. With regard to the co-decision procedure the working group does not consider it necessary to introduce considerable changes. Serious problems arise, for example, with regard to the budget procedure; a majority wants to uphold the distinction between obligatory and non-obligatory expenditure whereas others do not. The final report will be presented in the next Convention session, 5-6 December 2002.

#### 5. Progress report by Mr Bruton on Working Group X on Security and Justice

Mr Bruton gave an overview over the working group, stressing that the deadline for his group (end of November) is extremely tight. He referred to the following points:

- An approximation of the national laws on evidence, on interviews with suspects, on legal aid and on the mutual recognition of criminal procedures are vital; they can only be achieved through the introduction of common standards.
- The Union needs more effective co-operation of police forces; national polices must become more familiar with what the police in their neighbouring countries does (e.g. through a common police college).
- With regard to enlargement, the working group discussed the necessity for financial solidarity, e.g. with regard to border controls
- Very little progress has been made on asylum and immigration policy.
- The working group also discussed the question of a European prosecutor.

The final report will also be presented at the next Convention session, 5-6 December 2002.

### Twelfth Session 5-6 December 2002

The twelfth plenary session of the Convention had the following agenda:

1. Presentation of the Commission communication on the institutional architecture of the future European Union by *Romano Prodi*
2. Simplification of instruments and procedures – debate on the report by Working Group IX chaired by *Mr Amato* (CONV 424/02)
3. Progress report by *Mr Debaene* on the proceedings of Working Group VII on External Action
4. Progress report by *Mr Barnier* on the proceedings of Working Group VIII on Defence
5. Freedom, Security and Justice – debate on the report by Working Group X chaired by *Mr Bruton* (CONV 426/02)
6. Formation of Working Group XI on Social Europe (CONV 421/02)

#### 1. Presentation of the Commission communication on the institutional architecture of the future European Union by President *Romano Prodi*

The Convention on the Future of Europe opened its twelfth plenary meeting with a statement by the President of the European Commission, *Romano Prodi*, presenting the Commission's second contribution to the Convention, a communication on the Union's institutional architecture. According to *Prodi* the last two intergovernmental conferences had not managed to initiate the necessary reforms. In *Prodi's* view the title of the communication 'Peace, Freedom, Solidarity' could be seen as the Union's slogan.

*Prodi* mentioned also a draft Constitution which had been written by a small group within the Commission on his request, together with Commissioners *Vitorino* and *Barnier*. However, he pointed out that this draft was not an official Commission document – as opposed to the Commission communication – because it was not agreed upon by the

College of Commissioners; it was merely a working document. “For transparency reasons” it would be published on the Commission’s website. *Prodi* then outlined the main points of the Commission communication concerning the institutional project: the President of the Commission would be elected by the European Parliament by a two-thirds majority, then confirmed by the European Council. The other members of the Commission would be appointed by the European Council, and the list of Commissioners would be submitted to the European Parliament for approval.

The Commission communication proposed that majority voting be made the general rule, on the basis of a “simple double majority”: a simple majority of the Member States representing a majority of the total EU population. The Commission proposes eliminating the unanimity requirement. In certain special cases, the Treaty could provide for a Council decision on the basis of an “enhanced majority”: i.e. the support of three-quarters of governments, representing two-thirds of the Union’s total population.

It recommended that the current six-monthly rotation system be retained for the Presidency of the European Council and the General Affairs Council. For the other Council formations, it suggested that the Presidency could be held by a member of the Council elected for a period of one year.

In the area of foreign and security policy, the Commission proposes creating the post of *Secretary of the European Union*, as a Vice-President of the Commission with a special status. The EU Secretary would be appointed by common accord by the European Council and the President-designate of the Commission. He would report personally both to the European Council and to the President of the Commission, both of whom would be able to terminate his job. As a member of the Commission, he would also report to the European Parliament in line with the College of Commissioners’ collective responsibility. The Secretary of the Union would represent the Union vis-à-vis third parties with regard to foreign policy action and would be responsible for implementing common decisions.

Although no debate was held on the Commission’s proposals at the meeting, institutional matters were discussed following the statement by

*Louis Michel (Belgian Gov.)* on the broad lines of the memorandum recently adopted by the Benelux countries. Michel said the memorandum sought to consolidate the Community method, and even to extend it. It recommended that the President of the Commission be elected by the EP and that the Commission be made accountable to the European Council and the EP. The Benelux countries were also in favour of enhancing the EP’s role, inter alia by making co-decision the general rule and getting rid of the distinction between compulsory and non-compulsory expenditure. *Mr Michel* drew attention to the fact that “the Benelux countries will never accept a presidency that does not involve the Council”.

## 2. Simplification of instruments and procedures

Introducing the report of the Convention working group on simplification of instruments and procedures, *Mr Amato* pointed to the direct link between the clarification of legal instruments and procedures and the democratic legitimacy of the European Union.

The group proposed that the number of instruments, currently 15, should be brought down to six, namely:

- two legislative instruments: ‘laws’ (now regulations) and ‘framework laws’ (now directives), which would be directly applicable and adopted by co-decision;
- one non-legislative but binding instrument: ‘decisions’ (with specific aims, particularly in the CFSP sphere);
- two non-legislative and non-binding instruments: ‘recommendations’ and ‘opinions’;
- one instrument reserved for the adoption of delegated implementing acts: ‘regulations’, which could be used by the Council as well as the Commission.

As regards procedures, ‘co-decision’ should be the general rule, ‘co-operation’ would disappear and ‘assent’ would be used only for the ratification of international agreements. Decisions in the Council should generally be taken by a qualified majority except for ‘areas of great political sensitivity for the Member States’.

The budgetary procedure would be simplified, getting rid of the current distinction between compulsory and non-compulsory expenditure. The

Council would have the final say on resources and the financial perspective ceilings, while the EP would take the final decision on expenditure .

The working group furthermore proposed that the method of open co-ordination, which involves the Member States acting together outside the competences attributed to the Union by the treaties, should be assigned constitutional status

#### *Discussion*

The results of the working group were generally well-received, especially the proposals to reduce the number of instruments, to introduce a hierarchy of norms and to establish as a general rule both the co-decision procedure and Council decisions with qualified majority. Some delegates expressed reservations with regard to certain areas of Union policy, e.g. *De Villepin* (French gov.) and *Dastis* (Span. Gov.) wanted to exclude the agricultural sphere. Several speakers called for unanimity to be retained for taxation matters (*Hain*, U.K. Gov.; *Lololei*, Est. Gov.; *Lenmarker*, Swed. Parl.).

The proposal of the working group on simplification to include the method of open co-ordination in a future constitutional treaty gave rise to much discussion. While some delegates welcomed the idea of enshrining this method in the Constitution (*Hänsch*, EP; *Hjelm-Wallen*, Swed. Gov.; *Frendo*, Malt. Parl.), others pointed to the risk that his procedure might be exploited as a means to undermine allocation of competences between the Union and the members states (*Duff*, EP; *Hänsch*, EP; *Voggenhuber*, EP; *Wuermeling*, EP; *Lenmarker*, Swed. Parl.);

In the course of the debate on simplification several government representatives also commented on the Benelux memorandum and welcomed it as an excellent contribution (*Lopes*, Port. Gov.; *Tilikainen*, Fin. Gov.; *Kobout*, Czech Gov.; *Korcok*, Slovak. Gov.)

### **3. Progress report on Working Group VII on External Action**

The chairman of the Convention working group on External action, *Mr Dehaene*, informed the plenary about the progress of the working group. The overall aim of the work of the group is to improve the coherence of the external action of the Union. Therefore the group is of the opinion that the current roles of the High Representative for the Common Foreign and Security Policy and the Commissioner for External Relations should

in future be carried out by a single person (“double-hatting”). The “European External Representative” would be appointed by the European Council, deciding by qualified majority voting, with the approval of the President of the Commission and endorsement of the European Parliament. Moreover, a special External Action Council should be established, formally distinct from the General Affairs formation and probably chaired by the “European External Representative”. The Commission’s external delegations should be turned into EU delegations thereby creating an EU diplomatic service. A majority of the group is in favour of extending the scope of qualified majority voting in Common Foreign and Security Policy.

Although the final report of the Group will be presented and discussed only at the next plenary session on 20 December, *Mr Hain* (UK Gov.) made a strong statement against any communitarisation in the field of foreign and security policy; and emphasised that many government representatives shared his view.

### **4. Progress report of Working Group VIII on Defence**

*Mr Barnier* pointed out that a large number of European citizens were in favour of a strong European role in international affairs. A majority of the group supports the explicit incorporation into a future constitutional treaty of the principles of solidarity and mutual protection. The Petersberg missions should be amended: situations of terrorist threats should be included and an additional focus should be laid on mechanisms for conflict prevention. In order to strengthen the military capabilities available to the Union the setting up of a European Defence Agency has been proposed. The group also discussed the need for strengthening the parliamentary control mechanisms in the field of defence policy.

The final report of the working group will be presented to the plenary on 20 December.

### **5. Freedom, security and justice**

The chairman of Working Group X “Freedom, Security and Justice”, *John Bruton*, presented the results of its deliberations: the working group considers that the current “Third Pillar” provisions on police co-operation and co-operation in the field of criminal justice should be brought under

a common general legal framework. With regard to asylum, refugees and displaced persons, areas which are already regulated under the Treaty of the European Community, the group submitted the following recommendations:

- The Treaty should make legislation on asylum, refugees and displaced persons subject to qualified majority voting and co-decision.
- Art. 63 (1) and (2) EC-Treaty should be re-drafted in order to create a general legal base for the adoption of measures to establish a common asylum system and a common policy on refugees and displaced persons. This legal base should ensure full respect of the Geneva Convention but enable the Union also to provide further complementary forms of protection.
- The objective of a common policy on immigration should be enshrined in the Constitutional Treaty.
- A legal base should be provided to allow the Union to provide incentives and support measures to assist Member States' efforts to promote the integration of legally resident third country nationals. The Member States should in principle remain responsible for the volumes of admission of third country nationals and their integration into the host country.
- Union legislation in these areas should be adopted by qualified majority voting and co-decision.
- The general system of jurisdiction of the Court of Justice should be extended to the area of freedom, security and justice, especially in situations where fundamental rights of the individual are affected.

Other areas covered by the work of the group were co-operation in the field of civil law and police and judicial co-operation in criminal areas, which are currently covered by the "Third Pillar". With regard to co-operation in the field of civil law the group proposed to enshrine the principle of mutual recognition of judicial decisions in the future Treaty. In the field of criminal law the group also supported a certain degree of approximation of procedural and substantive criminal law where it has a transnational dimension or is directed against a shared European interest in the form of a common policy of the Union (e.g. counterfeiting the

Euro). The role of Europol and Eurojust should be strengthened and they should be subject to democratic accountability in the form of the European Parliament as well as to comprehensive judicial control by the ECJ. The group wants to develop a genuinely integrated system of external border control through a common European border guard unit.

### **Discussion**

The proposals of the group to strengthen the role of Eurojust and Europol and to abolish the pillar structure (whilst taking into account the special sensitivity in the area of justice and home affairs) gained broad support. However, the plenary debate revealed diverging views on the scope and level of communitarisation in the area of "Freedom, security and justice". The British delegates especially made clear that they had strong reservations about intensified co-operation in the framework of European Union policy: e.g they objected to the application of qualified majority voting and argued against extending the review powers of the ECJ to national police action (*Hain, U.K. Gov.; Baroness Scotland, U.K. Gov. Heathcourt-Amery, U.K. Parl., also De Roche, Irish. Gov.*). Similarly other delegates expressed their concerns about the application of qualified majority voting (*Grabowska, Pol. Parl.; Abitbol, EP; Tajani, EP; Lopes, Port. Gov.*) whereas *Jürgen Meyer (Germ. Parl.)* and *Joschka Fischer (Germ. Gov.)* explicitly supported the introduction of qualified majority voting (also *De Vries, Dutch Gov.; Lekberg, Swed. Parl.; Angerinos, Greek. Parl.; Vassilo, Cyp. Parl.; López Garrido, Span. Parl.*).

### **6. Formation of Working Group XI on Social Europe**

The European Convention has established its 11<sup>th</sup> working group which will focus on "social Europe". The working group will be chaired by Mr *Katiforis (Greek. Gov.)*. More than 60 delegates have joined the group. The final report of the working group will be presented to the plenary on 6/7 February. According to *Giscard d'Estaing's* concept, the working group should concentrate on delivering input for the values and objectives of a future Union as currently embodied in articles 2 and 3 of the Preliminary Draft Constitutional Treaty.

The next Convention session will take place on 20 December 2002.

### 13th Session 20 December 2002

The 13th Convention session had the following agenda:

1. Presentation by the Chairman of the work programme for 2003
2. Presentation of the final report of two working groups:
  - a) Working Group VII on External Action, chaired by Mr Dehaene (CONV 459/02)
  - b) Working Group VIII on Defence, chaired by Mr Barnier (CONV 461/02)
3. Debate on both reports

#### 1. Presentation of the work programme for 2003

Mr *Giscard d'Estaing* emphasised that after the decision at the Copenhagen summit on the accession to the European Union of ten new Member States, the work of the Convention faces the challenge of making enlargement compatible with an EU that is democratic, efficient and transparent.

He outlined the work programme for the coming months:

- ⊗ The plenary debate on 20-21 January 2003 will deal with the “institutional architecture” of the Union. To this end, the Convention members will receive a working document around 10 January. *Giscard* considers that further debates will be necessary in order to draft the respective articles of the Treaty.
- ⊗ The plenary session of 6-7 February 2003 will focus on the final report of the working group XI on social issues and also on social and regional dimensions.
- ⊗ In parallel to these specific issues, the Presidium will, step by step, propose to the Convention plenary draft parts of the future Constitutional Treaty. The presidium decided not to present one complete draft text at a time, but rather to work “in slices”:
  - The first “slice” concerns titles I to III of the Treaty (articles 1-13) – “Definition and objectives of the Union”, “Union

citizenship and fundamental rights”, “Union competences and actions” – and will be presented to the Convention members in the course of January 2003. It is foreseen that it will be debated in February, probably in the session of 27-28 February.

- The second “slice” concerns titles V, VII and IX – “Implementation of Union action”, “Union finances” and “The Union and its immediate environment” – and will be presented to the Convention members in February.
  - The third “slice” concerning titles IV, VI, VIII and X – “Union institutions”, “The democratic life of the Union”, “Union action in the world” and “Union membership” – is foreseen for March/April.
- ⊗ The Presidium is also preparing a document for January outlining (a) which articles will be kept unchanged [approximately half of the articles], (b) which ones will have to be amended [this task will be given to experts of the legal services of the three institutions together with members of the Convention Secretariat], (c) which will be obsolete and (d) new articles that will be required, especially in the fields of foreign policy, defence, security and justice.

With regard to the adoption of the final text by the Convention plenary, *Giscard* explained that those draft articles which would be more or less acceptable to the Convention members would be debated principally in the plenary, where Convention members could propose written amendments. On the other hand, articles about which the Presidium anticipated more profound disagreement among the Convention members would be debated principally in “expert groups” to be set up.

#### 2. Report of the Working Group on External Action

Vice-Chairman Mr *Dehaene*, who chaired the working group on external action, presented its results. With regard to the powers of the EU in the field of external action, the group decided to stick more or less to the current competences and powers whilst improving the co-ordination mechanisms in order to make the EU more efficient and more coherent in external action.

With regard to the current roles of the High Representative for CFSP and the Commissioner for External Relations, a large trend emerged in the group in favour of a compromise solution which would bridge the gap between the different options, in particular between the intergovernmental and the community approach. Such a solution could provide for the exercise of both offices by a “European External Representative”. The person carrying out this function would have “a foot in both camps”: he/she would be appointed by the Council with the approval of the President of the Commission and endorsed by the Parliament. He/she would have two mandates: one from the Council for issues relating to CFSP (which remain subject to intergovernmental co-operation), another from the Commission for community issues. A number of members of the group made their agreement on this suggestion conditional on a satisfactory solution to the whole institutional setting. The group therefore did not adopt a recommendation on this issue but agreed that it had important institutional implications and thus has to be examined in a wider context.

The group furthermore supported the establishment of a specific External Action Council, formally distinct from the General Affairs formation (which brings together the Foreign Affairs Ministers). A significant number of members endorsed the idea that the High Representative should chair the External Action Council, though without being vested with voting rights.

The working group underlined that maximum use should be made of existing provisions for the use of qualified majority voting (QMV) in the area of Common Foreign Policy. In that respect, the working group recommended that a new provision be inserted in the Treaty, which would provide for the possibility of the European Council – agreeing by unanimity – to extend the use of QMV in the field of Common Foreign Policy. With regard to international organisations, the Union should try to secure an official status or, if possible, become a fully-fledged member, without prejudice to the status of Member States in these organisations.

### Discussion

A majority of the Convention members expressed their support for the recommendations of the working group. However, Mr Hain (UK Gov.)

expressed substantial reservations, and Mrs Hjelm-Wallen (Swed. Gov.) also supported maintaining the unanimity rule on foreign policy and defence issues. She emphasised that the Union should not become a “military alliance”. On the other hand, other speakers considered that the report did not go far enough (e.g. Mr Severin (Rom. Parl.) said “the mountain had brought forth a mouse, and a very tame one”).

### External representation

Whereas the “double-hatting” of the functions of the Commissioner for External Relations and the High Representative was supported by the majority of speakers (Fini (It. Gov.), Christophersen (Dan. Gov.), Fischer (Germ. Gov.), Lopes (Port. Gov.), Spini (It. Parl.), Roche (Irish Parl.), Borell (EP), Peterle (Sloven. Parl.), Meyer (Germ. Parl.)), there were some who clearly questioned the efficiency of such an approach: Mr Lamassoure (EP), for example, asked whether it was really “the difference between Mr Solana and the High Representative that has prevented us from having an effective foreign policy”. Mr Duff doubted the feasibility and effectiveness of such a double-hatting: He considered it improbable to be able to serve two masters at a time. The person responsible for foreign policy could easily be seen as “a Council cookoo in the Commission’s nest”. Other speakers called for a total merger of the functions of the HR and the Commissioner for External Affairs (Haenel (F Parl), Cushnahan (EP)). Mr Brok (EP) made it clear that the suggested double-hatting was already a compromise and that the majority of the working group had clearly supported a merger of the two functions. At the same time he emphasised that with the double-hatting the decision rests with the Council.

Mr Dastis (Span. Gov.) was in favour of keeping the HR and Commissioner separate, as at present. Mr de Villepin (French Gov.) called for the two functions to be merged in the person of a EU Minister for Foreign Affairs, within the Council.

### Decision-making procedures

Many speakers wanted more use to be made of Qualified Majority Voting (QMV) in the Council. Several said that QMV should be the rule (Van der Linden (Dutch Parl.), Michel (Belg. Gov.), Dini (It. Parl.), Spini (It.



Parl.), Cushnahan (EP), Brok (EP). Mrs Tilikainen (Fin Gov.), like Mr Hänsch (EP), thought that one could go even further if the Governments' engagement were not too weak. Mr Fischer (Germ Gov.) supported QMV with the exception of questions in security and defence policy. According to Mr Hain (UK Gov.), on the other hand, QMV bore the risk that important minorities would not be taken into due account. Mr Meyer (Germ. Gov.), who himself supported the use of QMV, suggested as a compromise with regard to Mr Hain's position that in certain fields instead of unanimity a special qualified majority should be required, for example 70%.

### 3. Working Group on Defence

Mr Barnier, chairman of the Working Group on Defence, pointed out that the main recommendations had received broad support within the working group. This was also the case in the plenary debate.

With regard to crisis management, the group recommended extending the "Petersberg tasks" (see article 17 of the Treaty of the European Union) by including: conflict prevention, joint disarmament operations, military advice and assistance and support for third countries in the fight against terrorism.

The group proposed to introduce a new solidarity clause which would also cover terrorists threats. The group also suggested closer cooperation between certain Member States. This would mean creating a "defence Eurozone" open to Member States wishing to carry out more demanding tasks and meeting certain criteria relating to capabilities and armaments. The group recommended setting up a European Armaments and Strategic Research Agency in order to improve the Union's capabilities.

Institutionally, the group considered that the future High Representative should be responsible for the implementation of operations and the co-ordination of Member States in the field of defence.

#### Discussion

A consensus could be seen with regard to the solidarity clause, the modernisation of the Petersberg tasks and the European armaments agency. Doubts and questions were raised about enhanced co-operation.

#### *Solidarity clause*

A majority of speakers supported the recommendation of introducing a solidarity clause into the future Constitution (Dini (It. Parl.), Vitorino (EC), Fini (It. Gov.), Dastis (Span. Gov.), Fischer (Germ. Gov.), de Villepin (French Gov.).

The members of the Convention representing neutral countries welcomed the working group's proposals. Mr Roche (Irish Gov.) was in favour of this clause provided it was drafted in a manner that was compatible with his country's constitutional provisions.

#### *Relations with NATO*

Whilst a minority of members expressed their concern that the Union would engage in activities rivalling those of NATO, a majority believed that the working group's proposals were still compatible with the undertakings made within the Alliance.

Mrs Kaufmann (EP) deplored, in general terms, the EU's tendency towards "militarisation" and opposed the extension of the Petersberg tasks and any moves towards military interventionism on the part of the Union which, in her view, should instead focus on maintaining peace.

#### *Closer cooperation and defence "Eurozone"*

Several speakers supported the proposal to establish a form of closer cooperation (along the lines of the Euro-zone) for those Member States wishing to do so. Mr Kiljunen (Fin. Parl.), however, said that closer cooperation was liable to create division and undermine the Union's unity. Mr Fayot (Lux. Parl.) wondered whether it was not contradictory to envisage excluding from the Eurozone the countries with the weakest defence capabilities. Mr Fini (It. Gov.) like many other speakers insisted that these forms of closer cooperation should remain open to subsequent participation for some Member States.

### 4. Next session

The next session on 20-21 January 2003 will be devoted to the functioning of the institutions.

### 14th Session 20-21 January 2003

During the Convention session on 20 and 21 January the debate focused on the institutional architecture of a future European Union.

In his introductory remarks *Chairman Giscard d'Estaing* also commented on the procedure for drafting the future Constitutional Treaty. The first fully-fledged articles (articles 1-13) are currently under consideration in the Presidium. These articles will be presented to the members of the Convention on the occasion of the next plenary to be held on 6-7 February. These draft articles will be discussed in the Convention plenary on 27-28 February; whether they would also be discussed in the course of the next session on 6-7 February was not entirely clear. The Presidium has meanwhile entrusted legal experts from both the Convention Secretariat and the Commission's Legal Service with working on possible amendments to the policy provisions of the current Treaties, which will be included in the second part of the future Constitution.

The Chairman welcomed the new members of the Convention, among these two new Foreign Ministers, one from Latvia (Sandra Kalniete) and one from Slovenia (Dimitrij Rupel).

The institutional debate covered the role of the European Parliament, the Commission and the Council in a future European Union, but focused mainly on the future organisation of the Presidencies of Council and Commission respectively. The role of the European Court of Justice was hardly mentioned. Many speakers referred to the recent joint Franco-German contribution on the institutional architecture of a future European Union

Should there be an elected President of the European Union as originally proposed by the French government? Or should the European Council and the Commission have one President each as recently promoted by the joint Franco-German proposal? What would be the relationship of these two top positions and what would be the role of the European Parliament in that respect? These were the overriding questions of the debate which also revealed a split between the larger member states France, Germany, the United Kingdom and also Spain, and the middle-

sized and smaller countries.

In the course of the institutional debate the speakers emphasised the importance of maintaining the balance of the current institutional triangle, i.e. between the European Parliament, the Commission and the Council (e.g. *Hänsch, EP; Katiforis, Greek Gov.; Attalides, Cypr. Gov.; Hjeltn-Wallen, Swed. Gov.; De Villepin, French Gov.; Stuart, U.K. Parl.; Fendo, Maltese Parl.; Vitorino, Commission*). The speakers also recalled the challenges contained in the Declaration of Laeken: to increase the democratic legitimacy and the transparency of the present institutions and to improve the efficiency of their work (e.g. *Christensen, Dan. Parl.; Heathcoat-Amory, U.K. Parl.; Boesch, Austr. Parl.*).

#### I. The Franco-German proposal (CONV 489/03)

In their joint contribution of 16 January concerning the institutional architecture of the Union, France and Germany propose to establish a new dual Presidency for the European Union: a President of the Commission and a President of the European Council. The President of the European Commission would be elected by the European Parliament and confirmed by the European Council, in each case by a qualified majority. He/She would determine the main lines of Commission policy and assign portfolios to the Commissioners chosen. The President of the European Council would be appointed for a two-and-a-half or five year term by a qualified majority of the heads of state or government of the member states. His/Her main tasks would be a) to prepare and to chair the meetings of the European Council and to control the implementation of its decisions, b) the representation of the Union on international level. The competences of the President of the Commission would remain, and the operational foreign and security policy would be carried out by a European Foreign Minister (see below). This would replace the current rotating presidency at the European Council.

The office of the High Representative for the Common Foreign and Security Policy (CFSP) would be combined with that of the Commissioner for External Relations to become the European Foreign Minister. This person would be appointed by the European Council with the approval of the President of the Commission.

The legislative and executive functions of the Council of Ministers should be separated; when carrying out legislative functions, meetings should usually be open to the public. It should be able to take decisions by a qualified majority and in co-decision with the European Parliament. The chair of the Council of Ministers would vary according to the different formations: the General Affairs Council would be chaired by the Secretary General of the Council of Ministers, the External Affairs Council by the European Foreign Minister. The Ecofin Council, the Eurogroup and Justice and Home Affairs Council, on the other hand, would elect among themselves a chairperson for a period of 2 years.

The reactions among the delegates were mixed. The concept of a double Presidency was met with strong criticism with the exception of all French, German, most British and some Italian and Spanish members.

Most members did, however, endorse less controversial parts of the proposal, such as the institution of a Foreign Minister of the European Union, increased powers for the EP, mainly through an extension of the use of co-decision, and the extension of qualified majority voting in the Council with legislative Council meetings being open to public. A large majority was also in favour of the President of the Commission being elected by the EP although some members favoured him/her being elected by European and national parliamentarians.

## II. The debate on the Presidencies of Council and Commission

The Franco-German proposal suggests electing a long-term President of the European Council. This idea was welcomed by the French (*De Villepin, French Gov.; Haenel, French Parl.; Lequiller, French Parl.*), the German (*Fischer, German gov.; Teufel, Germ. Parl.; Meyer, Germ. Parl.*), most British (*Hain, U.K. Gov.; Stuart, U.K. Parl.; against: Heathcoat-Amory, U.K. Parl.*), Polish (*Hübner, Pol. Gov.; Oleksy, Pol. Parl.*) and some Italian (*Amato, Vice-Pres.; Dini, Ital Parl.; Follini, Ital. Parl.*), Spanish (*Ana Palacio, Spanish Gov.*) and by *Hänsch (EP), Lamassoure (EP) and Barnier (Europ. Comm.)*.

It was made clear by *Peter Hain (U.K. Gov)* that the presidential function as envisaged by the large member states would not be a President of the European Union, but essentially a Presidency of the European Council

that will work in partnership with the Presidencies of the Commission and the EP. He stressed the necessity to guarantee that the functions of the two Presidents were sufficiently distinctive and that equality between countries were ensured in better presidency rotation in the Council sector groups. He emphasised the emerging consensus between France, Germany and the U.K. on that issue as one important step towards institutional reform.

In general the small and medium-sized countries were strongly opposed to the idea of a long-term President of the Council and wanted to maintain the current structure of a rotating Presidency (*de Vries, Dutch, Gov.; Michel, Belg. Gov.; Roche, Irish Gov.; De Rossa, Irish Parl.; Gormley, Irish Parl.; Farnleitner, Austr. Gov.; Voggenhuber, Austr. Parl.; Boesch, Austr. Parl.; Lopes, Port. Gov.; Tiilikainen, Finnish Gov.; Christophersen, Dan. Gov.; Katiforis, Greek Gov.; Martikonas, Lithuania Gov.; Lennmarker, Swed. Parl.; Fayot, Lux. Parl.; Skaarup, Dan. Parl.; Vitorino, Europ. Comm.; Duff, EP; Broke, EP; Rack, EP; Bonde, EP, Berger, EP; Hjelm-Wallén, EP*). Many delegates expressed their concerns about possible conflicts between the two Presidencies of the Council and the Commission which might hinder the proper functioning of the Union. (*Michel, Belgian Gov.; Balazs, Hungarian Gov.; Kristensen, Danish Parl.; Gricius, Lith. Parl.; Teufel, Germ. Parl.; Lennmarker, Swed. Parl.; Duff, EP; Majj-Weggen, EP*). Others pointed out the danger of an imbalance compare with the framework of the current institutional architecture (*Lopes, Port. Gov.; Azevedo, Port. Parl.; Gricius, Lith. Parl.; De Rossa, Irish Parl.; Gormley, Irish Parl.; Voggenhuber, Austr. Parl.; Majj-Weggen, EP*).

*Jaques Santer (Lux. Gov.)* brought up the old idea of a single presidency comprising both the European Council and the Commission.

## III. Other aspects of the institutional debate

### 1. The external representation of the European Union

An overall majority of the delegates supported the proposal to unite the functions of the High Representative for CFSP and the Commissioner for External Relations into a “European External Representative” (*e.g. Fischer, German Gov.; Fini, Ital. Gov.; Dini, Italian Parl.; Fendo, Maltese Gov.; Attalides, Cypri. Gov.; Roche, Irish Gov.; Serracino-Ingloft, Maltese Gov.; van Lancker,*

EP; Duff, EP; Lamassoure, EP; Barnier, *Europ. Comm.*).

## 2. *The role of the Commission*

The executive functions in the European Union are primarily carried out by the European Commission, which is currently composed of 20 members and presided by a President. With the accession of the new member states the number of Commissioners will increase to 27. In the course of the debate many members stressed the central role of the Commission which should be retained in future (*Hain, U.K. Gov; Tiilikainen, Fin. Gov; de Gucht, Belg. Parl.*). Most speakers stressed that the Commission should retain its exclusive right of initiative in legislative matters.

Most representatives of the smaller member states advocated that each member state should continue to be represented in the Commission, even after enlargement (*Tiilikainen, Fin. Gov.; Roche, Irish Gov.; Santer, Lux. Gov.; Fabrnleitner, Austr. Gov.; Hololei, Est. Gov.; Christophersen, Danish Gov.; Palacio, Span. Gov.; Rack, EP; Bonde, EP*). In their opinion the size problem would be outweighed by the benefits of equality of states (*Roche, Irish Gov.*). Others considered that maintaining one Commissioner per member states was particularly important to future member states, as they would need to become acquainted with the Community institutions (*Hjelm-Wallen, Swed. Gov.; Lopes, Port. Gov.; Palacio, Span. Gov.; Dini, Ital. Parl.*). But there was also a call for fewer Commissioners among the delegates, as that would increase efficiency of the work of the Commission (*Attalides, Cypr. Gov.; Follini, Ital. Parl.; Hasotti, Rom. Parl.*).

*Amato (Vice-Chairman)* expressed the view that the Commissioners should not be regarded as “representatives” of the member states; the Commission’s task was not to represent the member states but to serve the common interest.

A majority of the Convention delegates supported the concept that the President of the Commission should in future be elected by the European Parliament, an idea which was also contained in the Franco-German proposal (e.g. *Lamassoure, EP; van Lancker, EP; Michel, Belg. Gov.*). Some members, however, emphasised the risk of the Commission becoming politicised and losing some of its independence (*Hübner, Pol. Gov.; Hjelm-Wallen, Swed. Gov.; Krasts, Lithuania Gov.; Bruton, Irish. Parl.*). Under the

current Treaty provisions the President is chosen by the governments of the member states and confirmed by the European Parliament.

Some members suggested that the Commission President should be elected by a forum of European and national parliamentarians (*Christophersen, Dan. Gov.; Roche, Irish Gov.; Lopes, Port. Gov.*).

## 3. *The role of the European Parliament*

All the members who spoke about the European Parliament’s role stressed the need to strengthen its powers, in particular by extending co-decision to make it the standard procedure, abolishing the distinction between compulsory and non-compulsory expenditure and by conferring on it the responsibility for electing the Commission President.

## IV. Closing remarks

In his closing remarks, the Chairman referred to some points of consensus or near consensus, such as:

- the creation of a European Foreign Minister
- the extension of co-decision for the Parliament
- the extension of qualified majority voting in the Council

With regard to the election of the Commission President, the Chairman noted a strong support for him or her being elected by the European Parliament. He noted, however, also the questions and doubts with a view to the politicisation this could lead to. He wondered about the consequences on the monopoly of initiative and wondered about the legitimacy of such a monopoly, which would deprive the opposition of all initiative for five years.

Regarding the idea of a long-standing President of the European Council he stated that the role of the European Council and of the Council of Ministers had to be redefined. He considered that there was no reason for a conflict arising between a long-standing President of the European Council and the Commission President as the current functions of a rotating presidency of the European Council on the one hand and the President of the Commission on the other had not been a source for conflict.

He regretted that only few convention members had mentioned the role of

the Court of Justice. He proposed creating a “reflection group” consisting of members of the Convention in order to look at possible amendments with regard to the ECJ.

## V. Future agenda

The debate on institutional questions will be resumed in the Convention session of 27-28 February. The Convention plenary will then discuss each institution separately.

At its next plenary meeting on 6-7 February the Convention will discuss the conclusions of the Working Group on “Social Europe” and regional questions and possibly consider the first 13 fully-fledged draft articles.

## 15th Session 6-7 February 2003

### I. Presentation by the Presidium of an initial draft of articles 1-16 of the Constitutional Treaty (CONV 528/03)

The President, Valéry Giscard d’Estaing, presented the first draft articles 1-16 (Titles I - III) of the future constitutional treaty (attached). These articles set out to define the Union and its objectives, fundamental rights and citizenship, and the powers of the Union. Giscard insisted that it was not the presidium that writes the Constitution but the Convention; the presidium was just providing the basis for the Convention’s work. Giscard stressed that the presidium had “endeavoured to formulate them in a manner which is simple and incisive and at the same time, dignified without being pompous”.

*Procedure:* Convention members can propose amendments to the draft until 17 February. They will be published on the website. The presidium would then “consider” these amendments and prepare a second draft of articles 1-16 which would be discussed at the next Convention meeting on 27-28 February. At the same time, the presidium would present and propose the next slice of Treaty articles to the Convention members (titles V, VII and IX – “Implementation of Union action”, “Union finances” and “The Union and its immediate environment”).

*Overview on the draft articles:*

- ⊗ Contrary to art. 1 of the preliminary draft constitution, the current proposal puts the “will of *the peoples and* the States of Europe to build a common future” at the beginning of the draft Constitution.
- ⊗ Article 2 is about values of the Union: human dignity, liberty, democracy, the rule of law and respect for human rights; Article 3 lists objectives such as sustainable development, free single market, economic and monetary union, aiming at full employment, economic and social cohesion, equality between women and men, environmental and social protection, “scientific and technological advance including

the discovery of space”.

- Ⓒ Article 4 confers the Union a legal personality.
- Ⓒ Article 5 refers to the Charter of Fundamental Rights. A majority of the presidium wanted the full text to be included in a protocol to the Constitution, but the Convention might also choose to include the text of the Charta in the second part of the Constitution. The president did not mention the third option, as was stated by *Mr Meyer (Germ. Parl.)* later in the discussion, which is to include the whole text of the Charter including its preamble at the beginning of the Constitutional text.
- Ⓒ Article 6 provides for the principle of non-discrimination on grounds of nationality.
- Ⓒ Article 7 is about the Citizenship of the Union
- Ⓒ Articles 8-16 refer to the Union’s competences: “The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal co-operation” (Article 8 (1)). The existing principle of conferral therefore remains unchanged. The draft foresees three different categories of competences: exclusive competences (Article 11), shared competences (Article 12) and areas of supporting action (Article 15). In all areas, the Union shall respect the national identities of its Member States (Article 9 (6)).

No reference is made to Churches and religious communities; e.g. the “Christophersen clause” assuring the respect for the national identity of Member States and clarifying that this includes, among others, the legal status of churches and religious communities.

Although no discussion was foreseen on the draft articles, *Mr Hain (UK Gov.)* expressed “concern” that the results of the discussions within the Convention and the results of the working groups were not reflected in the draft. *Mr Tomlinson (UK Parl.)* and *Mr Bonde (EP)* expressed similar criticism.

## II. Presentation by Mr Katiforis of the report by Working Group XI on Social Europe (CONV 516/03)

The conclusions were presented by the working group’s chairperson Giorgos Katiforis:

- The group proposes to include the following values in *article 2*: social justice, solidarity and equality, in particular equality between men and women.
- *Article 3* should include 14 social objectives, for example full employment, social peace, sustainable development, social market economy, quality of work, lifelong learning, high degree of social protection, efficient and quality social services and services of general interest. Equality of men and women and social justice are repeated at this point.
- On the *competences of the Union in the field of social policy*, the group considers in general that the existing competences are adequate. However, specific extensions to existing competences in the area of public health should be envisaged (with the aim to prevent epidemics and bio terrorism).
- According to the majority of the group the *method of open co-ordination* should be incorporated into the treaty (part II).
- On the issue of *qualified majority voting (QMV)*, the group was much divided: the consensus reached was limited to the position that, as a minimum, the compromise achieved in Nice authorising the Council to seek in unanimity a changeover to co-decision and QMV should be upheld in the Constitution. A strongly expressed minority opinion remained strictly opposed to any extension of QMV to social security and employment relations while other members of the group proposed a majority decision system. A “super qualified majority vote” (of 75 %) was mentioned as a possible compromise.
- The group recommended that the *role of the social partners* be recognised explicitly in the Constitutional Treaty. Civil society organisations should also be given a role, especially in combating social exclusion, without prejudice to the existing special position of social partners in the social dialogue process.

### Debate

The group’s conclusions were largely endorsed, particularly regarding social values and objectives to be included in the future Constitution.

*Competences of the Union in social policy*

Most members were satisfied that, outside the field of public health, the group did not propose to extend the Union's competences in the field of social policy. However, some members demanded minimum social standards to be included at the European level (*Van Lancker, EP; Borell Fontelles, EP; Thorning-Schmidt, EP*). Ms Van Lancker went further in appealing for a horizontal clause which ensures that social policy objectives be guaranteed in all areas of European Union action. Economic and social policies should be put on an equal footing.

*Qualified majority voting*

On the issue of qualified majority voting, the reactions of the Convention members reflected the division within the working group: whereas many members supported wider use of qualified majority voting on social issues (*de Vries, NL Gov.; Hjelm-Wallen, Swed. Gov.; Roche, Irish Gov.; Farnleitner, Austr. Gov.; Petersson, Swed. Gov.; Chevalier, Belg. Gov.; Ruppel, Slov. Gov.; Czech Gov.; O'Sullivan, COM; Lekberk, Swed. Parl.; Floch, French Parl.; Kohout, Brok, EP; Würmeling, EP; Beres, EP; Borell, EP; Kaufmann, EP*), some members were strongly opposed (*Hain, UK Gov.; Lopes, Port. Gov.; Olesky, Polish Gov., Zile, Lith. Gov.; Zabradil, Czech Parl.; Liepina, Lith. Parl.; Kauppi, EP*). Mr Meyer (*Germ. Parl.*) tried to hit on a compromise by suggesting a 75% super-qualified majority voting procedure on social issues.

*Services of general interest*

Several Convention members emphasised the fundamental importance of services of general interest. This should be recognised by including special provisions which clarify that services of general interest must not only be seen from the economic and competition point of view (*Hjelm-Wallen, Swed. Gov.; Bury, Germ. Gov.; Andreani, French Gov.; Meyer, Germ. Parl.; Einem, Austr. Parl.; Muscardini, EP; Borell, EP*).

*Social partners*

In the debate about the role of the social partners, some Convention members mentioned that other parts of society should also be included in chapter VI (democratic life of the Union). Mr Brok (*EP*) mentioned Churches and religious communities in this respect.

*Method of open coordination*

Whereas most Convention members endorsed the method being included in the Treaty, several members expressed their opposition to this idea (*De Vries, Dutch Gov.; Roche, Irish Gov.; Hain, UK Gov.; Chevalier, Belg. Gov.; Brok, EP; Würmeling, EP; Lord Stockton EP*).

At the end of the debate, Mr Katiforis stated that the working group succeeded in "overcoming deep-seated divergences" and so went beyond what he could have hoped for at the beginning. He also emphasised the importance of Europe's social dimension and coherent action in the social field for the integration of the candidate countries.

**III. Debate on the regional and local dimension (CONV 518/03)**

In the general debate about the role of regional and local authorities, many Convention members acknowledged the key role of regional and local bodies in generating a European identity. Some MEPs referred to the Napolitano report of the EP which was adopted on 14 January 2003 (e.g. *McAvan, Mendez de Vigo*). This report describes the regions acting as mediators between the individual and the European institutions. It suggests conferring on the Committee of the Regions (CoR) the right to bring actions before the Court of Justice in certain situations specifically affecting the regions (in particular in case of a breach of the principle of subsidiarity). Most members of the Convention referred to the conclusions of the working groups on subsidiarity and national parliaments when they called for involving national parliaments in the European process of legislation (*Stuart, UK Parl.; Mendez de Vigo, EP; Tusek, Austr. Gov.; Andreani, French Gov.; Bury, Germ. Gov.; Teufel, Germ. Parl.*).

*Access to the European Court of Justice*

Whether the Committee of the Regions or regional bodies themselves should have direct access to the ECJ was much disputed. Many members wanted the CoR to be conferred the right to bring cases before the European Court of Justice (ECJ) in situations where a breach of the principle of subsidiarity is alleged: (*Barnier, COM; Wittbrodt, Pol. Gov.; Hain, UK Gov.; Majj-Weggen, EP; Lamassoure, EP; Tilikainen, Fin. Gov.; Tusek, Austr.*

*Gon.; Teufel, Germ. Parl.; Hain, UK Gov.; Meyer, Nagy, Belg. Parl.; Carlos Carnero, EP.* German and Austrian members wanted this right to be conferred also to regions with legislative powers (*Teufel, Germ. Parl.; Meyer, Germ. Parl.; Bösch, Austr. Parl.; Bury, Germ. Gov.*). Yet others did not even want to grant this right to the CoR (*Lekberg, Swed. Parl.; Dastis, Span. Gov.; Muscardini, EP.*).

#### *Role of the Committee of the Regions (CoR)*

Several members asked for the CoR to be strengthened (by early consultation and by access to the ECJ). Other members criticised the lack of representativity of the CoR (*Meyer, Germ. Parl.; Carnero Gonzales, EP; Teufel, Germ. Parl.; Duff, EP*). *Mr Duff* stated that the CoR as currently composed should not have a privileged position on subsidiarity questions; instead the general principles for *locus standi* should be applied, and actual and legal persons should be given the right to approach the Court if they are individually or directly affected. *Mr Meyer* proposed that the members of the Committee should be elected.

*Mr Lamassoure (EP), Mr Teufel (Germ. Parl.) and Mr Haenel (French Parl.)* asked that the specific role of the regions be explicitly recognized in the treaty. The fact that the regions were mentioned in art. 9 (6) of the current draft articles was regarded as a positive signal, but not sufficient. *Mr Haenel (French Parl.)* asked for the “Christophersen clause” to be included in the Treaty. *Commissioner Barnier and Mr Roche (Irish Gov.)* insisted that the diversity of regional models within the European Union needed to be preserved.

#### **IV. Iraqi Crisis**

On the request of *Mr Fayot (Lux. Parl.)*, the Iraqi crisis was briefly discussed in the Convention on 7 February. In his introduction the day before, *Giscard d'Estaing* had stated that the situation in Iraq must be followed carefully, but that it would not directly concern the work of the Convention. *Mr Fayot*, however, said that the Convention should not behave as if it were in an ivory tower, working without contact with reality. He deplored the fact that the aim of making Europe more visible and stronger in the

world was being faced with the reality of an international crisis where CFSP did not work. *Mr Debaene*, chairperson of the working group on external action, stated that without political will there is no common foreign and security policy. Political will could not be created “by decree”. It was not the task of the Convention to create this political will, but it could create the instruments allowing it to be expressed. *Mr Broke (EP)* and *Mr Teufel (Germ. Parl.)* stressed that Europe could only gain influence on the international stage if it spoke with one voice.

*Giscard d'Estaing* remarked that Europe had even moved a step back in relation to the Maastricht Treaty which, in article 2, paragraph 3 states: “Member States shall actively and unreservedly back the Union’s foreign and security policy in a spirit of loyalty and mutual solidarity... They shall refrain from any action contrary to the common interest...”. The current situation required it to be “vigilant and wary”. The Convention should concentrate on its mandate and on the question of what mechanisms would enable the EU to manifest such a will for a common foreign and security policy.

#### **V. New Discussion Group on the role of the ECJ**

The President announced the creation of a discussion group on the role of the ECJ, chaired by *Mr Vitorino*. It will have 10 members [3 members of national parliaments, 3 of the EP, 3 of governments, the Commission would be represented by *Mr Vitorino*], chosen according to their competence in the field.

He announced that similar bodies for other subjects would be set up in the future but did not give further details.

The next Convention session will take place on 27-28 February 2003.



**16th Session**  
**27-28 February 2003**

The plenary session of the European Convention on 27/28 February focussed on the debate of the first 16 articles of the draft constitution. In addition, the Presidium presented draft articles 24 et seq. on instruments together with two draft protocols on the application of the principles of subsidiarity and proportionality as well as on the role of national parliaments in the European Union. Moreover the Presidium indicated further details on the future procedure with regard to the elaboration of the draft Constitution.

*President Giscard* also commented on the worsening international situation in the Gulf region and expressed his concern. The President felt that Europe had never expressed its disagreement so openly on the international stage at any time in the past. He called on the members of the Convention to redouble their efforts in order to provide more effective foreign policy structures, even if “even the best designed international texts and structures are not effective without the determination to use them”.

**I. Presentation of the indicative programme  
of the Convention for its future work**

At the next plenary session on 17/18 March the Convention will debate on the draft articles on the Implementation of Union action (Title V) as well as on the protocols on Subsidiarity, Proportionality and National Parliaments, and the Presidium will present the draft provisions on Title VII (Finances) and a first draft of Part Two of the Constitutional treaty on the Union Policies and their Implementation except for the provisions on external Relations and defence.

These articles will then be discussed at the following plenary on 3 and 4 April, where the Presidium will present title IX (the Union and its Immediate Environment), provisions on the open method of coordination (which the Presidium intends to include into the Constitutional Treaty) and also Part III of the Future Constitutional Treaty, i.e. the General and Final Provisions.

Title IV of the First Part (on Institutions) as well as title VI (regulating the democratic life of the Union) are intended to be presented to the Convention members in mid-April.

The second plenary session in April on 24/25 April will then discuss all these provisions; at the same time the remaining provisions on External Relations and Defence will be presented.

Hence, the Presidium currently envisages to have a first complete draft ready at some point in May. The Presidium intends to follow the time scale and conclude in June. However, some extra informal sessions may become necessary in order to give enough space for debate. The first two of those informal meetings are scheduled for 5 and 26 March. These meetings will serve to conclude the debate on the first 16 draft articles.

**II. Presentation of draft articles 24 ff. on instruments**

*President Giscard* presented draft artt. 24 to 33 (title V of the Constitution) on instruments together with two draft protocols on the application of the principles of subsidiarity and proportionality as well as on the role of national parliaments in the European Union. The draft is based on the conclusions of Working Group IX (on Simplification) in the light of the discussion held in the plenary on 5 December 2002. The number of legislative acts available to the Union for the exercise of its competences will be reduced to two, i.e. “laws” and “framework laws”. Whilst “European laws” will have general application and be binding in its entirety and directly applicable to all member states (comparable to the current “regulations”), “European framework laws” shall be binding as to the result to be achieved on the member states to which it is addressed, but shall leave the national authorities free to choose the form and means of achieving that result (the current “directives”). Legislative acts of the European Union will have to be jointly adopted by the European Parliament and the Council. In addition to the European legislation, “European regulations” and “European decisions” will be available as non-legislative acts to be adopted by either the Council or the Commission as the two community institutions having executive powers. However, European Union acts in the field of Common Foreign and Security policy can only take the form of decisions. Under certain circumstances legislative

powers can also be delegated to the Commission which would then be able to adopt “delegated regulations”.

These drafts will be discussed at the next plenary meeting of the European Convention on 17/18 March.

### III. Debate on draft articles 1 to 16

The Convention Secretariat received 1187 amendments from the members of the Convention. In order to allow time for evaluation and formation of opinion the Convention will hold two additional sessions on 5 and 26 March.

#### 1. Churches and religious heritage in a future European Constitution

In his introductory statement *Giscard d'Estaing* pointed out that although the first 16 articles in the draft did not include any reference to churches or the religious heritage the Presidium would at a later stage propose clauses of relevance to religion and the churches in three areas of the future Constitution. In that respect he referred to the preamble where a reference to spiritual/religious heritage will be proposed by the Presidium and to Declaration No. 11 annexed to the Treaty of Amsterdam which the Presidium will likewise propose to be included in the Constitutional Treaty. A third church-related item was not mentioned by *Giscard*

In the course of the discussion a reference to religion in the Constitution was especially supported by a number of Italian delegates (*Fini, Ital. Gov.; Follini, Ital. Parl.; Tajani, EP; Muscardini, EP*). Some delegates explicitly specified the preamble as the adequate place where a reference to religion should be integrated (*Wittbrodt, Pol. Par.; Majj-Weggen, EP; Fini, Ital. Gov.; Follini, Ital. Parl.*). Two German delegates (*Teufel, Germ. Parl. and Broke, EP*), one Italian (*Tajani, EP*) and one Slovakian (*Figel, Slovak. Parl.*) took the floor and asked for a reference to God in the preamble. *Peter Skaarup (Danish Parl.)* wished that a reference in the preamble should be made not to religion but rather to ‘Christianity’ and went on saying that Europe should not open its doors to Turkey. Likewise *Fini (Ital. Gov.)* proposed a reference to Christian values in the preamble.

During the debate Mr *Follini (Ital. Parl.)* expressed a detailed reasoning

for his support for a reference to religion and incorporation of Declaration Nr. 11 in a future European Constitution. He referred to the existing relationships between the political institutions and religious communities and the civil value of religion. Both features would have to be considered as a reality in every European state. In order to uphold secularity and the separation of state and religions a balance would have to be struck between the spiritual values and the autonomy of public institutions. Therefore religion in its civil and institutional aspects would have to find its place in the constitution in order to make clear what is in the responsibility of God and what is not.

Some members (*Paciotti (EP), Kaufmann (EP), McAvan (EP); Duff (EP), de Rossa (Irish Parl.) and Einem (Austr. Parl.)*) explicitly objected to any reference to religion in a future Constitutional Treaty.

Other delegates emphasised the importance of religious freedom and the principle of laïcité without, however, explicitly commenting on the question whether or not Declaration Nr. 11 annexed to the Treaty of Amsterdam should be incorporated in a future European Constitution (*Di Rupo, Belg. Parl.; Michel, Belg. Gov.; Palacio, Span. Gov.; Hjelm-Wallen, Swed. Gov.; Villepin, French Gov.*). According to *Oguz Demiralp (Turk. Gov.)* the principle of laity is an important aspect of the European tradition.

#### 2. Values and objectives

The debate on values was dominated by remarks relating to the Charter of Fundamental Rights and religion (see above under 1 and below under 3). Some delegates especially from the social democratic parties wanted to avoid doubling the values and objectives in the Charter. Hence, they proposed to incorporate the Charter of Fundamental Rights at the beginning of the Constitution and then to reduce the provisions on values and objectives to those items which are not guaranteed in the framework of the Charter (*Fayot, Lux. Parl. for the socialist delegates; Borell Fontelles, EP; also President Giscard*).

One value very frequently referred to by members of the Convention was equality focussing on equality between men and women (e.g. *Giscard; di Rupo, Belg. Parl.; Borell Fontelles, EP*). A number of delegates also emphasised the importance of equality in all its aspects and the importance

to include a general anti-discrimination clause as is currently done by articles 12 and 13 EC Treaty (*Borell Fontelles, EP; Maj-Weggen, EP; Duff, EP; di Rupo, Belg. Parl.; Kiljunen, Fin. Parl.; Barnier, Com.*) although it became not quite clear whether it should be a value or rather an objective.

Many Convention members also wanted to stronger emphasise the social dimension of the European Union (*e.g. de Villepin French Gov.; Einem, Austr. Parl.; Meyer, Germ. Parl.; Brok, EP*). In this context, Mr Fayot (*Lux.Parl.*) speaking on behalf of the Socialist members of the Convention, stressed the need to include the fight against poverty and social exclusion among the objectives and for social justice to be considered a value.

Mr Fischer (*Germ.Gov.*) and Ms Majj-Weggen (*EP*) also mentioned the importance of the environment in the debate on values.

### 3. Integration of the Charter of Fundamental Rights

Mr Fayot (*Lux. Parl.*) and other socialist members believed that the debate on values and the wording of the relevant article would be easier if the Charter were included at the beginning of the Constitution. Preference to include the Charter at the beginning of the Constitutional Treaty was expressed by many more members (*e.g. Duhamel, EP; Majj-Weggen, EP; Lobo-Antunes, Port. Gov.; Fabrnleitner, Austr. Gov.; Fischer, Germ. Gov.; Lequiller, French Parl.; Meyer, Germ. Parl.; Arabadjev, Bulg.Parl.*).

Three governmental representatives wanted to see the Charter consigned to the end of the future constitutional treaty (*Baroness Scotland, UK Gov.; Lord Lennan of Rogart, UK Parl.; Roche, Irish Gov.; Kutsikova, Bulg. Gov.*). *Baroness Scotland (UK Gov.)* reiterated that the UK stood by its position that the Charter was a welcome political declaration but was not intended to be included in the Constitutional treaty itself.

*President Giscard* himself suggested that he would see the Charter to be integrated in the second part of the first section of the Constitution (*also Barnier, Com.*).

### 4. Competences

The general principles on competences and also the different categories proposed by the Presidium in articles 8 to 10 of the draft – exclusive

competences of the Union, shared competences, and supporting actions - were hardly contested.

When deliberating art. 11 on exclusive competences the delegates noted that certain areas would have to be added to the catalogue: area of freedom security and justice (*Carnero Gonzales, EP; Borell Fontelles, EP*), all questions relating to the internal market with the exception of fiscal policy (*Barnier, Com; Duff, EP*), competition policy (*Brok, EP; Lamassoure, EP*). Within the draft of the Presidium the policy on security and justice and the policy with regard to the internal market are listed among the shared competences (art. 12). On the other hand *Baroness Scotland (UK Gov.)* expressed considerable objections against the exclusive competence of the European Union for the conclusion of international agreements in areas which are related to internal competences of the Union (art. 11 (2)). In the debate on competences the social dimension of the future European Union came again under discussion. A considerable number of delegates proposed to extend art. 13 on the coordination of policies to include not only economic matters but also social and employment policy (*Borell Fontelles, EP; van Lancker, EP; Fayot, Lux.Parl.; Spini, Ital. Gov.*).

In the course of the debate on competences *Amato (Vice-President), Fabrnleitner (Austr. Gov.), Fayot (Lux. Parl.), Teufel (Germ. Parl.)* and *Haenel (French Parl.)* proposed to include the “legal status of churches” in a clause which would commit the Union to respect the national identities of its member states (draft art. 9 (6)) as had also been proposed by the working group on complementary competences (“Christophersen” clause).

### 5. Nature of the Union

Debating the foundations of the European Union some delegates, mostly from the U.K., criticised the use of the attribute “federal” when describing the nature of the Union in art. 1 of the draft treaty, as this would imply that the Union had become a de-facto federation (*Heathcourt-Amory, UK Parl.; Baroness Scotland, UK Gov.; Carey, Irish Parl.; Hololei, Est. Gov.*).

The majority of delegates, however, did not object to describing the Union as “federal” or even supported the use of this term (*Duff, EP; Duhamel, EP; Beres, EP; Wuermeling, EP; Majj-Weggen, EP; Borell Fontelles, EP; President Giscard; Vitorino, Com; Fabrnleitner, Austr. Gov.; Fini, Ital. Gov.*).

*Follini, Ital. Parl.; di Rupo, Belg. Parl.; van der Linden, Dutch Parl.*). President Giscard and Antonio Vitorino (Com) explained that in those areas where powers were transferred from the member states to the Union the management of these powers would actually be federal in nature as contrasted from inter-governmental procedures.

#### IV. Iraqi crisis and its repercussions on the future of Europe

The Foreign Ministers of France and Germany, *Dominique de Villepin* and *Joschka Fischer* expressed their concern about the European disagreement with regard to the situation in Iraq. Mr *Fischer* felt that the Convention had become even more important as a result and should undertake any effort to face that challenge. Also other delegates insisted that the Common Foreign and Security Policy should be strengthened in a future European Constitution (*Barnier, Com; Palacios, Span. Gov.; Michel, Belg. Gov.; di Rupo, Belg. Parl.; Lequiller, French Parl.; Brok, EP*).

The next plenary meeting will take place on 17 and 18 March.

### 17th Session 17-18 March 2003

The Convention session had the following agenda:

- I. Presentation of draft Articles on (a) Union's finances and (b) freedom, security and justice
- II. Debate on draft Articles 24 ff. on the exercise of Union competences (docs. CONV 571/03 and 609/03)
- III. Debate on (a) draft protocol on subsidiarity and proportionality and (b) draft protocol on role of national parliaments (docs. CONV 579/03, 610/03 and 611/03)

In his introduction, *President Giscard d'Estaing* referred to the Iraqi crisis and deplored the fact that, on the eve of military action, European peoples and governments were divided. Although this would certainly affect the work of the Convention, it must not interrupt the Convention's task of making the Union a simpler, more effective and more transparent place.

#### I. Presentation of the draft articles

The president presented two new groups of articles, articles 38 to 40 on the Union's finances and art. 31 on freedom, security and justice (further elaborated upon in part two of the future Constitution). These articles will be discussed at the next plenary session (3-4 April 2003).

##### 1. The Union's finances

The drafts are based on the results of the working groups and on the discussions in the plenary. The draft articles relate to the Union's own resources (article 38), fundamental budgetary principles: unity, equilibrium and annual cycle of the budget (article 39) and budgetary procedure (article 40) (joint adoption of the budget by EP and Council).

Regarding the important technical problems posed by the detailed modalities of the budgetary procedure, the Presidium has set up a discussion group, chaired by the Danish member of the Presidium, *Henning*

*Christophersen* (former European Commissioner for Budget and former Minister for Finance).

## **2. Area of freedom, security and justice**

The *President* presented draft articles which contain the abolition of the “third pillar”: article 31 of the first part of the Constitution and 23 articles contained in the second part of the Constitution.

The new draft provisions outline the area of freedom, security and justice, which should be ensured by (a) the approximation of national laws in the EU policy areas contained in the second part of the Constitution (the following are presently foreseen: asylum, immigration, external border control and the prevention and combating of crime), (b) the mutual recognition of judicial and extrajudicial decisions and (c) operational co-operation between all competent authorities of the Member States for internal security. The implementation of these policies will be “governed by the principle of solidarity between the Member States” (draft article 13 of the second part).

The abolition of the third pillar does not, however, mean that the same legislative procedure would apply as for other policy areas. Exceptions are foreseen in the legislative process: e.g. in matters of internal security, the Council will take decisions unanimously, after consultation of the European Parliament, (whereas the general rule will be co-decision of European Parliament and Council). The draft provisions also foresee the Member States’ right of initiative in the area of police and judicial co-operation on criminal matters, which would co-exist alongside the Commission’s right of initiative (whereas in other policy areas this right is exclusive to the European Commission).

The draft proposes that the European Court of Justice should also have competence in the area of justice and home affairs.

The work is based on the results of the working group chaired by *Mr Bruton*, which proposed abolishing the third pillar and introducing co-decision and qualified majority voting in the Council for most subjects. Amendments can be submitted to the Presidium until Wednesday 27 March, which would then draw up a background paper.

## **II. Debate on the draft articles 24 ff.**

The Presidium received 234 amendments to draft articles 24 ff. (which were presented to the Convention at the last session on 27-28 February 2003). These articles were therefore much less disputed than the previous articles 1-16, to which the Presidium received 1187 amendments.

The draft articles are based on the results of working group IV on simplification, chaired by *Vice-President Amato*, and on the plenary debate of 5 December 2002. In the future, the EU should have only two sorts of legislative act (draft art. 24): European Laws (now called regulations) and European Framework Laws (now directives). Legislative acts should be adopted jointly by the European Parliament and the Council of Ministers. The procedure now called “co-decision procedure” should just be named “legislative procedure” (draft art. 25). Exceptions would be foreseen for issues which until now fall under the third pillar (Justice and Home Affairs).

Apart from legislative acts, the draft articles foresee two forms of “non-legislative acts” (draft art. 26) - “European regulations” and “European decisions” - which can be issued by the Council or the European Commission.

One innovation is the possibility to authorise “delegated regulations” (draft art. 27): the Council and the Parliament can delegate – by European Law or European Framework Law – to the Commission the power to enact delegated regulations in order to supplement or amend certain non-essential elements of the law or framework law (the objectives, content, scope and duration of the delegation would have to be explicitly defined in the law or framework law).

The details about the legislative procedures would be elaborated in the second part of the Constitution.

Separate articles are foreseen for common foreign and security policy (art. 29), common defence policy (art. 30) and police and criminal justice policy (31).

### **Debate**

The majority of speakers welcomed the main lines of the proposal of the Presidium regarding the means of action available for the Union to exercise its competences. Several speakers acknowledged that the proposals

would significantly simplify the legal instruments and procedures and would thus render the legislative process more transparent.

Some members criticised the nomenclature used, in particular with regard to the notion of “non-legislative” acts, whereas a majority seemed to endorse the proposal.

Other members proposed to introduce a further category of acts, namely “organic law”, which would concern institutional matters and the most fundamental questions of constitutional relevance and would have a legislative procedure of their own (in particular *Chevalier, Belg. Gov.; Duff, EP*). However, *Vice-President Amato*, who chaired the discussion, explained that the Presidium had chosen not to propose this category in order to restrict the number of instruments.

Several members of the Convention suggested introducing the open method of co-ordination (*Andréani, French Gov.; Fayot, Lux. Parl.*). *Vice-President Amato* explained that the Presidium had envisaged introducing this method under title VI of the Constitution (democratic life of the Union) in order to make clear that it was an informal procedure and that it would not relate to legislative competences of the Union. *Mr Broke* (EP) considered it not to be necessary to include this method in the Treaty.

The members of the Convention very much endorsed the proposal that the co-decision procedure should become the standard procedure for legislative acts of the Union. The Convention members were divided, however, on the question of whether exceptions should be foreseen (as in draft art. 25, second paragraph, which states that specific provisions shall apply in the areas of the current third pillar – Justice and Home Affairs). This provision, which excludes the European Parliament from the legislative process, was heavily criticised, as was the reference to articles 29, 30 and 31 (relating to foreign policy, defence policy and police and criminal justice policy). Several members felt that these provisions would mark the return of the pillars, which should be abolished as agreed (*Lamassoure, EP; Voggenhuber, EP; Duff, EP; Carnero González, EP; Costa, Port. Parl.*). On the other hand, *Mr Dastis* (*Span. Gov.*) reminded the members that it had been decided to remove the pillars on condition that special procedures be maintained in relation to these areas (foreign policy and justice). His view was endorsed by *Mr McDonagh* (*Irish Gov.*), *Baroness Scotland* (*UK Gov.*) and *Vice-President Amato*. *Mr Bury* (*Germ. Gov.*) proposed

that only in certain rare cases could an exception be made to the co-decision procedure, and the Parliament would have to be consulted. *Ms Paciotti* (EP) said that if it were not possible to remove this paragraph, it would in any case be wrong to use the term “laws” to describe texts which were adopted only by the Council.

### III. Debate on the draft protocols on the application of the principles of subsidiarity and proportionality as well as on the role of national parliaments

The discussion concerned two draft protocols to be annexed to the future Constitution. These protocols are based on the conclusions of two working groups (on subsidiarity and on national parliaments) as well as on a plenary discussion of 3-4 October 2002.

On subsidiarity, the Convention’s innovation would be to set up an “**early warning mechanism**”: The Commission would be obliged to send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the European Parliament and the Council. The Commission would have to justify its proposal with regard to the principle of subsidiarity. Any national parliament may, within six weeks from the date of transmission of the Commission’s legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. The European institutions would have to take account of this reasoned opinion. If more one third of national parliaments issued reasoned opinions, the Commission would be obliged to review its proposal and give reasons for its decision to maintain, amend or withdraw its proposal.

There was a general agreement on the setting up of an “early warning system”, in particular on early notification of national parliaments. However, several issues provoked controversy. *Mr Haenel* (*French Parl.*) criticised the proposed early warning system because it would refer only to the principle of subsidiarity and not the principle of proportionality (as had been proposed by the working group). While some Convention members expressed their approval that the Commission could not be

forced by national parliaments to withdraw a legislative proposal, *Ms Stuart (UK Parl.)* proposed introducing a “red card” if two thirds of national governments issued an opinion that the proposal would infringe the principle of subsidiarity. However, this was largely rejected as it would impede the right of initiative of the European Commission; a large majority preferred the national parliaments to be given the power only to show a “yellow card”, i.e. to force the Commission to review its proposal. While there was discussion about whether the threshold for this should be one quarter, one third or half of national parliaments, a consensus emerged around one third – as proposed in the protocol.

It was also discussed whether the situation of member states with bicameral systems was sufficiently taken into account by the draft (according to the current draft, each member state would only have one vote). A consensus emerged to accept *Mr Dim’s* proposal that each country should have two votes which would be split in countries with bicameral systems.

Finally, the question of the access of national parliaments to the European Court of Justice was discussed. Whereas the draft foresees such a right only for national governments, several members argued in favour of granting the national parliaments a right of direct access to the ECJ (*Van der Linden, Dutch Parl. on behalf of the EPP group, Lequiller (French Parl.), Meyer (German Parl.), Bury (German Gov.), Lennmarker (Swed. Parl.), Borell Fontelles (Span. Parl.), Azevedo (Port. Parl.)*). On the other hand, *Michel (Belg. Gov.), de Vries (Dutch Gov.)* and *Muscardini (EP)* preferred to grant direct access only to national governments. With regard to the question of whether regions with legislative powers should have direct access to the court the discussion was postponed.

Several speakers spoke in favour of strengthening COSAC, the Conference of the Community Affairs Committees, which periodically brings together delegates from the national parliaments.

#### IV. Further procedure

The President reminded the members that there will be a supplementary plenary meeting on 26 March from 2 p.m. to 8 p.m., to continue the debate on the values and objectives of the Union. This session would be chaired by *Vice-President Debaene*.

The next ordinary plenary meeting will take place on 3-4 April where the newly presented draft articles will be discussed.

He referred to the draft second part of the Constitution which had been commissioned to experts of the legal services of the European institutions. While it existed at the moment only in French (CONV 618/03), translations were currently being done in all other languages.

Asked about the timetable of the Convention, the President replied that additional plenary meetings would “certainly” take place in May and at the beginning of June without being more specific.

**18<sup>th</sup> session**  
**3-4 April 2003**

At its 18<sup>th</sup> plenary meeting which took place in Brussels on 3 and 4 April the European Convention sat to discuss the draft articles on the “Area of freedom, security and justice” (art. 31 of the first part of the future Constitutional Treaty and the respective provisions in the second part of the future treaty). The delegates also debated the draft articles on finances (artt. 38 to 40). The Presidium had presented these draft articles at the preceding plenary on 17/18 March.

The Presidium presented new series of draft articles: - title VI: “The democratic life of the Union”; - title IX: “The Union and its immediate environment”; - title X: “Union membership”, and part III of the future treaty: “General and final provisions”. The articles on the democratic life of the Union included the draft for a “*church article*” protecting the status of churches and religious communities under national law (incorporation of Declaration No. 11 attached to the Treaty of Amsterdam). This provision referring to churches, religious, philosophical and non-confessional communities also states the obligation for the European institutions to maintain a regular dialogue with these organisations.

**I. Presentation of the new draft articles by Vice-president Dehaene**

**1. Draft Art. 37 of the future Constitutional Treaty**

According to the proposals of the Presidium which were presented to the Convention plenary on 4 April a church clause should be included at the end of title VI “The democratic life of the Union” of the Constitutional part of the future treaty.

The proposed article has the following wording:

*“(1) The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.*

*(2) The European Union equally respects the status of philosophical and non-confessional organisations.*

*(3) The Union shall maintain a regular dialogue with these churches and organisations,*

*recognising their identity and specific contribution.”*

According to the Presidium’s proposal, declaration No. 11 attached to the Treaty of Amsterdam would become an integrated part of the future Constitution and thus be legally binding. The third paragraph of the article providing for a regular dialogue with churches and religious associations as well as with philosophical and non-confessional organizations is new. When Vice-president *Dehaene* presented the proposals, he pointed out that the dialogue of the European institutions with the churches, religious, philosophical and non-confessional communities has to be clearly distinguished from other forms of regular dialogue with civil society organizations (which is provided for in draft art. 34 presented by the Presidium).

**2. The draft articles for part I of the Constitutional Treaty (articles 33-37, title VI: “The democratic life of the Union”, article 42, title IX: “The Union and its immediate environment”, article 46, title X: Union membership”) and part III of the Constitution Treaty: “The general and final provisions”**

*Articles 33-37: The democratic life of the Union*

The draft articles on the democratic life of the European Union relate to the participatory aspects of democracy and thus anchor the principle of participatory democracy in the future European constitution. The Presidium therefore currently considers redrafting the title of this chapter (“Democratic Life of the Union”) in order to clarify more strongly that it focuses on that particular aspect of democracy (e.g. “Participatory Democracy”).

Article 33 invokes the “principle of the equality of citizens, who shall receive equal attention from the Union’s institutions”. The principle of participatory democracy essentially includes the obligation for the European institutions to maintain an open, transparent and regular dialogue with civil society organisations (art. 34 of the draft), to be distinguished from the particular commitment to maintain a “regular dialogue” with churches, religious, philosophical and non-confessional organisations (art. 37).

The title furthermore recognises the office of a European ombudsman (art. 35) and the special relevance of political parties at the European level



(art. 35 a). It contains provisions on transparency of the proceedings of the Union's institutions (art. 36) and the protection of personal data (art. 36a) and concludes with the church clause (art. 37) as described above.

*Article 42: The Union and its immediate environment*

The Presidium has also proposed a special article on the relationship of the Union with its neighbouring states which recognises the need to develop a special relationship with those states and also confers competence upon the Union to conclude agreements with them.

*Articles 43-46: Union membership*

The proposals relating to Union membership generally follow the provisions in the current treaties containing regulation on eligibility and procedures for membership and likewise the procedure for suspending Union membership rights. There are two novelties: one is the explicit mentioning of the conditions for eligibility of EU membership (the incorporation of the Copenhagen Criteria which already now govern the accession of new members but which would be included in the Constitutional Treaty) and the provision on voluntary withdrawal from the Union (art. 46).

*Third part of the Treaty: General and final provisions*

The proposals on the general and final provisions state that the new treaty does not enter into force unless it has been ratified by all members who have signed it, thus not changing the current system. The new "European Union" entity will succeed to the European Community and the old European Union. Therefore the current treaties will be repealed once the new treaty has entered into force. According to the current draft, the new treaty can only be amended by consent of all member states.

*No draft article on the open method of cooperation*

Vice-president *Dehaene* explained why the Presidium was not proposing a draft article on the open method of coordination as it had been envisaged. The Presidium had considered it better not to introduce a constitutional article on this method not least for fear that it might lead to confusion as to the line between EU and member state competences.

The members of the Convention have the opportunity to submit written amendments to the draft articles until 13 April. The drafts will then be discussed by the plenary during the next Convention session on 24 and 25 April.

**II. Debate on draft articles on the Area of freedom, security and justice (CONV 614/03, COV 644/03)**

Whilst the Presidium had received nearly 800 written amendments from Convention members, most delegates who took the floor in the debate largely endorsed the Presidium's proposals. Vice-president Amato explained that the Presidium had taken into consideration the outcome of the respective Convention working group chaired by *John Bruton (Irish Parl.)*.

The future European Union policy in the areas of justice and home affairs will be regulated in art. 31 of the first part of the future Constitutional treaty and also in an entire chapter in the 2<sup>nd</sup> part of the future treaty implementing the different Union policies.

The discussions in the plenary about the policies in the areas of freedom, security and justice focused on the following issues:

- The abolition of the "pillar structure". The area of freedom, security and justice concerns matters known as the "third pillar", deriving from the Treaty of Maastricht, where decisions are still taken largely on an intergovernmental basis under the unanimity rule and without effective control by the European Parliament and the Court of Justice. The Convention members debated in how far the decision to "abolish the pillar structure" would or should leave space for upholding certain intergovernmental particularities in regard of procedure or acts.
- to what extent the possibility to take decisions by (qualified) majority voting should also apply to asylum and immigration policy,
- whether the European Commission's prerogative to initiate legislation should also cover the "area of freedom, security, and justice" or whether e.g. the member states should also be able to launch initiatives.
- the competence of the European Court of Justice to review the

- Union policy in the “area of freedom, security and justice” and
- the control of the external borders of the future Union. The latter topic was especially addressed by delegates from the candidate countries

The decision to formally abolish the pillar structure and the decision to transfer the whole policy area into the competences of the future Union received nearly unanimous support. Whilst the Dutch delegates came forward most clearly (*de Vries, Dutch Gov.; Van der Linden, Dutch Parl.; Maij-Weggen, EP*), reluctance was expressed by the British side by *David Heathcourt-Amory (U.K. Parl.)*. On the other hand, the *delegate from the U.K. government, Peter Hain*, on two occasions clearly endorsed the abolition of the pillar structure.

However, the delegates were divided as to the extent of substantial communitarisation of this policy area. *Teufel (Germ. Parl.); Brok (EP), Wuermeling (EP), Tajani (EP) und Christophersen (Dan. Gov.)* requested that in certain areas decisions should continue to be taken by unanimity. In that respect especially some of the German delegates (*Teufel, Germ. Parl.; Brok, EP, Wuermeling, EP*) made it clear that they wanted the decisions regarding access to the employment sector for asylum seekers and migrants to remain subject to unanimity. Against this line of argumentation *Mr Fischer, representing the German government in the Convention* expressed his support for a communitarisation of the areas of asylum and immigration. Due to the principle of subsidiarity, this could result in common minimum standards (*supported by Vitorino, Europ. Com.; Duff; EP; Einem, Austr. Parl.; de Villepin, French Gov.*). *Jürgen Meyer (Germ. Parl.)* introduced a compromise formula: he suggested that decisions in the area of freedom, security and justice should have to be taken by unanimity for a period of five years after which the quorum for the adoption of Union legislation would automatically turn into a so-called “super qualified majority” (requiring the majority of states and population, supported by *Fahrleitner, Austr. Gov.; van der Linden, Dutch Parl.*). Other delegates, especially those from the European Parliament, emphasised that in a Union with 25 member states a common policy in the areas of justice and home affairs could only be carried out if decision-making would not require unanimous support, but could also be taken by majority voting (*Duff, EP; Lamassoure, EP; Maij-Weggen, EP; Voggenhuber, Austr. Parl.; de Villepin, French Gov.; Fischer,*

*Germ. Gov.*).

Some Convention members pointed out that the Union policy in the areas of asylum and migration should be limited to setting minimum standards, whilst *Antonio Vitorino (Europ. Com.) and Ben Fayot (Lux. Parl.)* expressed their support for the creation of a substantial European asylum law.

Moreover the delegates in the plenary debated the proposal of the Presidium to supplement the European Commission’s prerogative to initiate legislative proposals with an additional right of initiative for the member states if they reach the quorum of  $\frac{1}{4}$  (*against: Meyer, Germ. Parl.; Lenmarker, Swed. Parl.; in favour: Brok, EP*).

The majority of speakers opposed the draft (draft art. 2 of the second part of the Constitutional Treaty) which provided for a special role of the European Council in the “area of freedom, security and justice”.

Most speakers supported the proposal to provide the European Court of Justice with a comprehensive competence to review European Union action in the field of justice and home affairs.

With regard to the future control of the European Union’s external borders the members of the Convention could not reach agreement whether or not the borders should in future be administered by a unified border police corps. *Rupel (Sloven. Gov.) and Balazs (Hungar. Gov.)* proposed a common administration, but *Vice-president Amato* clearly objected and supported various forms of cooperations instead (also *Hjelm-Wallen, Swed. Gov.*). On several occasions representatives from the accession countries emphasised the importance of the solidarity clause in draft art. 13 of the Presidium’s proposals and requested a fair burden sharing in the administration of external borders (*Hübner, Pol. Gov.; Rupel, Sloven. Gov.; Puvak, Rom. Gov.; Fini, Ital. Gov.; Horvart, Sloven. Parl.; Figel, Slovak. Parl.*).

### III. Debate on the Union’s finances (articles 38-40)

Mr Christophersen, member of the Presidium and chairperson of the “discussion circle” on budgetary procedures gave an overview on the work of this group. It emerged that significant agreement has been found that the financial perspectives should be included in the Treaty and that the distinction between obligatory and non-obligatory expenditures should

be removed. However, two important issues remained controversial: the abolition of unanimity decisions in the Council and the question of own resources.

#### IV. The future proceedings of the Convention

*Vice-president Amato* announced that the Presidium's proposals for articles on the institutional architecture as well as the draft provisions on the external policy of the European Union would be delivered to the plenary at the next session on 24 and 25 April. On that date the plenary would also discuss the new draft articles on "The democratic life of the Union" (title VI), the provisions on "The Union and its immediate environment" (title IX) and also the provisions on "The Union membership" (title X) and the "General and final provisions".

The articles on the institutional architecture and those on the external policy of the future Union would then be discussed during the plenary in mid-May. However, as the Presidium is of the opinion that the current practice of having 2 half-day meetings would not provide a sufficient time frame it intends to extend that session: Hence, the debate will already start in the morning of 15 May and might continue at least until Friday evening, and if necessary until Saturday, 17 May. In order to be able to finish the work of the Convention by the end of June, further additional plenary sessions might be necessary. In that respect *Vice-president Dehaene* asked the delegates to reserve sufficient time for additional meetings in June.

### 19<sup>th</sup> session 24-25 April 2003

On 24-25 April the European Convention sat to discuss the draft articles on "The democratic life of the Union" (art. 33-37), including draft article 37 on the churches, draft article 42 on "The Union and its immediate environment", draft articles 43 to 46 "Union membership" and part III of the future treaty: "General and final provisions".

The Presidium also presented new draft articles on the institutional structure of a future European Union (Title IV of the constitutional part of the new treaty) and on the external action of the European Union (draft art. 29 and 30 of the constitutional part and respective provisions in part II on the implementation of the Union policies).

#### I. Presentation of new draft articles on external action and the institutional structure of a future Union (CONV 691/03, CONV 685/03)

##### 1. The new articles on the institutional architecture (articles 14 to 23 of Part I, the constitutional part of the future Constitutional Treaty)

In introducing the new articles on institutions *Valéry Giscard d'Estaing*, President of the European Convention, expressed the view that the Convention was about to reach its most difficult stage. The fact that the **European Parliament** would be the first institution to be mentioned should highlight the democratic legitimacy of the system. The proposed articles gave new powers to Parliament, notably to elect the Commission President. On the controversial issue of introducing a longer and more powerful **Presidency of the European Council** *Giscard* pointed out that the President should in future be elected for a renewable period of 2 ½ years and be seen rather as a **Chairman** who prepares and organises the work of the European Council than as an executive President. The President would be assisted by a 'bureau' of three members, appointed in rotation, to ensure proper representation of the Member States. In future the decisions of the Council (representing the governments of the member states) should be generally taken by qualified majority voting (a majority of

Member States, representing at least three fifths of the population of the Union (draft art. 17b)). Draft article 18 provides an improved definition of the tasks of the **European Commission** being the executive organ of the European Union. The number of Commissioners would be reduced to 15, and these could be assisted by ‘associate commissioners’. A major innovation is the creation of the office of a **Union Foreign Minister**, to be appointed by the European Council in agreement with the Commission President. The person concerned would also be a Vice-President of the Commission. The proposed articles make no changes to the competence or composition of the Court of Justice, the European Central Bank or the Court of Auditors. However, they do retain the option of a Congress of the Peoples of Europe, as originally proposed by *Giscard* himself, but opposed by many members of the Convention. This body would be chaired by the President of the European Parliament, and would regularly bring together members of national parliaments (two thirds) and Members of the European Parliament (one third), but would not intervene in the Union’s legislative procedure.

#### 2. Common foreign, security and defence policy (articles 29 and 30 of Part I)

*Vice-President Debaene* then introduced two articles from Part I of the future Constitution and 35 articles from Part II, laying down provisions for the Common Foreign and Security Policy (art. 29) and the Common Security and Defence Policy (art. 30). The innovations highlighted by *Debaene* included a) the right of initiative enjoyed by the EU Foreign Minister, b) the enhanced consultation of the Member States and their mutual solidarity and c) the extension of the so-called Petersberg tasks (peace-making, support for third States against terrorism, post-conflict stabilisation operations). The proposed articles provided for the establishment of a European Armament and Strategic Research Agency and flexible forms of co-operation between States, such as mutual defence commitments. The new draft articles on the institutional structure and on common foreign, security and defence policy will be debated in the next plenary session of the European Convention on 15- 16 May.

## II. Discussion of the draft articles on the democratic life of the Union (articles 33a-37, CONV 650/03, CONV 670/03)

The draft articles on the democratic life of the European Union relate to the participatory aspects of democracy. Among others this title recognises the special relevance of political parties at the European level (art. 35a), contains provisions on transparency of the proceedings of the Union’s institutions (art. 36), the protection of personal data (art. 36a) and concludes with a “church clause” (art. 37).

The Presidium had received 245 amendments with regard to title VI (239 before the official deadline). During the debate in the Convention plenary many delegates emphasised the importance of the participatory aspects of democracy and the dialogue with different actors of civil society and welcomed the inclusion of a chapter on these aspects in a European Constitution. However, some aspects of its contents were also subject to criticism. Many members felt that the important role of the social partners had not been adequately reflected in the chapter (*Hjelm-Wallen, Swed. gov; Meyer, Germ. parl.; Peterle, Sloven. parl.; De Rossa, Irish parl.; Lökberg, Swed. parl.; Fayot, Lux. parl.; Brok, EP; Thorning-Schmidt, EP*). The delegates also pointed to the need to increase transparency in the work of the European institutions through a safeguard clause in the treaty (*Hjelm-Wallen, Swed. gov.; Attalides, Cypr. gov.; Ruppel, Sloven. gov.; Lenmarker, Swed. parl.; Antunes, Port. gov.; Kirkhope, EP*) and to specify the role of the political parties at the European level more clearly (*Barnier, Europ. Com.*). A considerable number of delegates also criticised the fact that the “open method of co-ordination” had not been included in the draft treaty (*Hjelm-Wallen, Swed. gov.; Wittbrodt, Pol. parl.; van Lancker, EP; Thorning-Schmidt, EP*). The issue will remain under consideration. Until now neither the Presidium nor the plenary had been able to come to a clear position on that issue. A considerable part of the discussion related to the evaluation of the “church clause” in article 37.

## III. Discussion on the draft church clause, art. 37 of the future constitutional treaty

The articles on the democratic life of the Union included the draft for a “church article” protecting the status of churches and religious communities under national law (incorporation of Declaration No. 11 attached to the Treaty

of Amsterdam). This provision referring to churches, religious, philosophical and non-confessional communities also states that “the Union shall maintain a regular dialogue with these churches and organisations, recognising their identity and their specific contribution”. There had been submitted more than 30 amendments to this article.

In the course of the debate a considerable number of delegates commented on the church clause. Supporters in particular raised their voices, but some criticism was also expressed. However, only two members objected completely to the church clause (*Demiralp, Turk. gov.; Helle, Finnish parl.*). The concerns expressed against the reference to the churches primarily related to paragraph 3 of article 37, which requires the European Union to carry out a regular dialogue with the churches.

18 delegates explicitly welcomed the inclusion of the church clause: *Fischer (Germ. gov.); Farnleitner (Austr. gov.); Speroni (Ital. gov.); Serracino-Inglott (Maltese gov.); Olesky, Wittbrodt (Polish parl.); Szajer (Hung. parl.); Meyer, Teufel (German parl.); Spini (Ital. parl.); Einem (Austr. parl.); Haenel (French Parl.); Cisneros Laborda (Spanish parl.); Heathcoat-Amory (U.K. parl.); Figel (Slovak. parl.); Tajani (EP); Boesch (EP); Brok (EP)*. Their arguments were: reflection that the European Union is a Union of values (*Fischer*), the relevance of these organisations for society (*Fischer, Olesky*), the need to ensure that the European Union respects the different state-church systems in the member states and does not interfere with them (*Einem, Haenel*) as they are part of the national identities (*Haenel, Brok*) and at the same time an emanation of the principle of subsidiarity (*Boesch*). The need for a special form of dialogue with the churches, religious, non-confessional and philosophical organisations was corroborated by a reference to their specificity (*Brok*), their particular contribution to public life (*Teufel, Wittbrodt*) and to the fact that there are many areas where EU legislation affects religious communities (*Serracino-Inglott*).

Those who expressed concerns with regard to article 37 (3) (*Demiralp, Turk. gov.; De Rossa, Irish parl.; Fontelles Borell, Span. parl.; Fayot, Lux. parl.; McAvan, EP*) were critical on the grounds that, through a clause providing the churches with a special form of dialogue with the European institutions, they would be unduly privileged in comparison to other civil society organisations in general and the social partners in particular.

The concerns with regard to article 37 (1) of (2) were of different nature:

some simply considered the clause to be unnecessary (e.g. *Nagy, Belg. parl.; Løkeberg, Swed. parl.*), whilst *Pierre Lequiller (Fr. parl.)* expressed doubts as to whether the new article 37 would add new substance to the treaty, given that the “necessary” provisions with regard to religion were already contained in the Charter of Fundamental Rights of the European Union. *Pascale Andreani (Fr. gov.)* expressed doubts about the legal consequences of a transformation of the current Declaration No. 11 annexed to the Treaty of Amsterdam into European Union law (also *Duff, EP*), namely in relation to non-confessional organisations. However, she also emphasised that the French government does not object to the content of the clause. *Proinsias de Rossa (Irish parl.)* expressed the fear that sects or organisations with an ambiguous or controversial character e.g. the church of scientology could profit from art. 37 (1) and (2), depending on the legal situations in the member states.

Most of those who expressed a preference for deletion of articles 37 conceded, however, that the clause had been neutrally drafted and would not privilege in favour or against a particular religions (*McAvan, EP; de Rossa, Irish Parl.; Duff; EP*).

*Helle (Finn. Parl.)* and *Demiralp (Turk. Gov.)* unambiguously expressed the view that the entire art. 37 should be deleted. *Demiralp* argued that paragraphs 1 and 2 of art. 37 would simply repeat the contents of art. 10 of the Charter of Fundamental Rights and paragraph 3 would unduly privilege the churches. *Helle* corroborated the need for the deletion of art. 37 on the one hand with the numerous wars which were somehow linked to religions and on the other hand due to the fact that often fundamental rights would not be respected by churches.

In his concluding remarks *Giscard* pointed out that it had not been surprising that supporters of a church clause had participated in the debate more actively than those having concerns. However, he also identified some objections. The tasks of the Presidium would now be to filter out the prevailing trend in the opinion of the members of the plenary. In this context *Giscard* referred to the remarks he had made a couple of weeks ago during the debate on values and objectives in response to requests to integrate a reference to religion into a future constitutional treaty: the Presidium had offered the prospect of incorporation of Declaration No. 11 into the future constitutional treaty. *Giscard* added that in the course

of the future proceedings the Presidium should not contradict itself.

#### **IV. Discussion on Title X: Union membership (CONV 648/03, CONV 672/03) and on the general and final provisions (CONV 647/03, CONV 673/03)**

The proposals relating to **Union membership** generally follow the model of the provisions in the current treaties, containing rules on eligibility and procedures for membership as well as the procedure for suspending Union membership rights. Draft article 46, however, which foresees the possibility of voluntary withdrawal from the Union, is a novelty and was thus the focus of the discussions in the plenary.

Most delegates objected to the possibility of unconditional withdrawal (*Vitorino, Europ. Com.; Andreani, French gov.; Bury, German gov.; de Vries, Dutch gov.; Borell Fontelles, Span. parl.; van Lancker, EP; Beres, EP; Brok, EP; Marinbo, EP; Lamassoure, EP; Huebner, Polish gov.; Fogler, Polish parl. Puvak, Roman; parl.*) or suggested that withdrawal should follow the same procedures as accession (*e.g. Lekberg, Swed. parl; Timmermans, Dutch parl.*). On the other hand, delegates of British nationality (*Hain, U.K. gov.; Stuart, U.K. parl., McCormick, Duff, EP*), some Danish MEPs (*Thorning-Schmidt, Bonde, Dybkjaer*) and also *Roche (Irish gov.)* and *Speroni (Ital. gov.)* endorsed the withdrawal clause.

The Presidium's proposals on the **general and final provisions** state that the new treaty does not enter into force unless it has been ratified by all members who have signed it, thus not changing the current system. According to the current drafts, the new treaty can only be amended by consent of all member states. These proposals were largely welcomed by the plenary. With the exception of *Marie Nagy (Belg. Parl.)*, all speakers expressed the view that entry into force of the constitutional treaty should require ratification by all member states. Different procedures might be used for amendments. A considerable number of delegates welcomed the possibility for amendments to enter into force once they are supported by a certain quorum of member states (*Andreani, French gov.; de Vries, Dutch gov.; Huebner, Polish gov.; Brok, EP; Lamassoure, EP*), thus providing a certain degree of flexibility. The delegates also suggested that the Convention method should be applied in order to prepare amendments

of the constitutional treaty.

#### **IV. The future proceedings of the Convention**

With the presentation of the draft provisions on foreign and security policy and on the institutional architecture all substantial provisions of the future treaty of the European Union have been presented. By the end of May, the Presidium will present a revised version of the Constitutional treaty which will then be discussed during the two plenary sessions in June (5/6 and 12/13).

The Convention will finish its work according to its original schedule and present its results to the Heads of State and Government at the European Union summit in Thessaloniki on 20 June. The expert group for the revision of the current primary law and the drafting of part II of a future European constitution on European Union policies might continue its work through the summer and even in parallel to the intergovernmental conference.

The next Convention session will take place on 15-16 May, when the newly presented draft articles on external action and the institutional architecture will be discussed.

**20<sup>th</sup> session**  
**15-16 May 2003**

The 20<sup>th</sup> plenary session of the Convention, which took place in Brussels on 15-16 May, had the following agenda:

**I. Working method of the Convention** during its last phase and consensus-building process, CONV 691/03 and 721/03

**II. Debate on draft articles on Institutions** (Part I, Title VI of the constitutional part of the new treaty), CONV 691/03 and 709/03

**III. Debate on the draft articles on External Action and Defence**, (draft art. 29 and 30 of the constitutional part and relevant provisions in part II on the implementation of the Union policies), CONV 685/03 and 707/03

**I. The future working method of the Convention**

While all substantial provisions of the future treaty of the European Union have been presented, a draft preamble is not yet available. The Presidium announced the presentation of a complete and revised version of the Constitutional Treaty for the next plenary on 30-31 May. According to the revised structure the future Constitution of the European Union will be composed of four parts: the constitutional part (I), the Charter of Fundamental Rights (II), the European Union policies (III) and the General and Final Provisions (IV).

After the session of 30-31 May, the Convention will have two further plenary meetings (4-6 June and 11-13 June), each of them scheduled for three days in order to reach a consensus on a draft constitution. The Convention is to present its results to the heads of states and governments at the EU summit in Thessaloniki on 20 June.

However, some delegates, in particular from the European Parliament, were highly critical that the plenary had not yet been sufficiently involved in the drafting of the third part of the future Constitution concerning the European Union policies (*Brok, Duff, Maij-Weggen*). *Elmar Brok* (EP) took the view that the proceedings should be completed before the summer

recess. 'If the draft text of Part III is submitted to us on 30 May, we must be given time to table amendments and then to discuss a fresh proposal,' he said. 'Part III is not technical, but extremely political,' he added, referring to the derogations from the majority rule or other provisions without which it would be difficult to assess Part I (his view was supported by *Bonde (EP)*, *Duff (EP)*, *Dubamel (EP)* and *Maij-Weggen (EP)*).

*President Giscard* reacted by referring to the prerogative of the European Council in Thessaloniki to decide either to let the Convention complete its work on part III during the summer or to accept a provisional draft and together with the other parts of the draft Constitution directly refer it to the Intergovernmental Conference for completion. Representing the Greek Presidency, the Minister of Foreign Affairs, *George Papandreou*, acknowledged the problems facing the members of the Convention in submitting Part III to the Thessaloniki Summit. Thus, it was implied that the Convention would submit to the Thessaloniki summit part I, II and IV of the Constitutional Treaty as well as a draft of part III and that the summit would probably give the Convention some more weeks to fine-tune the work on part III and to present a final version in the summer.

**II. Discussion of the draft articles on institutions (CONV 691/03 and CONV 709/03)**

During the debate the members of the Convention concentrated on the issue of how the Union could be made more effective whilst maintaining the three-way institutional balance. Many speakers emphasised the importance of respecting the principle of equality between the Member States.

The Presidium received 650 amendments concerning the proposals for the institutional architecture of a future European Union. The draft of the Treaty proposed by the Presidium would include the establishment of the office of **President of the European Council**, the **abandonment of the rotating system of six-monthly presidencies**, the establishment of a post of **Minister of Foreign Affairs**, who would also be a Vice-President of the European Commission, and a **reduction in the number of Commissioners to 15**.

The debate revealed that a consensus had been reached on two institutional

questions: the creation of the post of Foreign Minister for the European Union; and that in future the President of the European Commission should be elected by the European Parliament. On the other hand, the structure and the duration of office of a future President of the European Council, and the composition and size of the European Commission in a Union with at least 25 member states, were both highly contested.

#### *Long-term Presidency of the European Council?*

The draft of the Presidium proposes to establish the office of a President of the European Council who should be elected for a renewable period of 2½ years (draft art. 16a). The President would be assisted by a ‘bureau’ of three members, appointed in rotation, to ensure proper representation of the Member States. In future the decisions of the Council (representing the governments of the member states) should be generally taken by qualified majority voting (a majority of Member States, representing at least three-fifths of the population of the Union (draft art. 17b)).

In the plenary debate the French and German delegates referred to the joint Franco-German contribution on the institutional architecture of a future European Union which was presented to the Convention in January (inter alia *Fischer, Germ. gov.; Meyer; Germ. parl.; Teufel, Germ. parl.; de Villepin, French parl.; Lequiller, French parl.*). The Presidium’s proposals on the institutional architecture have taken up some of the Franco-German ideas, e.g. the long-term Presidency of the European Council. The concept of a long-term Presidency was also supported by the Italian (*Fini*) and Swedish (*Hjelm-Wallen*) governments.

The representative of the U.K. government, *Peter Hain*, backed in principle the proposals to introduce a full-time Presidency for the European Council and to extend the period of office. He suggested establishing a Presidency team. The members of the team would then alternate and in turns take up the position as acting President. *Commissioner Vitorino* and the representative of the Polish parliament, *Olesky*, agreed that the “team Presidency” would be an interesting concept.

In contrast to the draft of the Presidium and the Franco-German initiative, the three Benelux countries would prefer to maintain the current system of the Presidency of the European Council rotating every 6 months among the member states. According to the Benelux countries, the chair

of the General Affairs Council should in future be the President of the European Commission, who would be elected by the European Parliament (supported by *Costa, Port. parl.; Roche, Irish gov.; Attalides, Cypr. gov.; Giannakou, Greek parl.; Kiljunen, Finnish parl.*). With regard to the election of the President of the Commission by the European Parliament, nearly all members of the Convention agreed. The representative of the German government, *Foreign Minister Fischer*, emphasised that the Benelux proposal could be a good starting point for a compromise on institutional questions between the smaller and the larger member states.

Several delegates from the European Parliament expressed their objections to the establishment of a full-time Presidency of the European Council and also to the extension of its period of office (*Brok, Maij-Weggen, van Lancker, Duff*).

The representative of the Greek government, *Foreign Minister Papandreou*, sought to work towards a compromise in relation to the controversial questions surrounding the future Presidency of the European Council and thus proposed that the President of the Council should be directly elected by the European citizens. This would generate democratic legitimacy of the Presidency and thereby prevent the Council Presidency from becoming a directorate of the large EU member states (also supported by *Barnier, Europ. Com.; Bruton, Irish parl.*).

Another approach to a possible compromise on the Council Presidency was taken by *Dastiz, representing the Spanish government*: he proposed maintaining the rotation system but with extended periods of office. According to him, this could be a solution which would increase the efficiency of the work of the Council and at the same time ensure that the Presidency would not become a prerogative of the larger member states.

#### *The composition of the European Commission*

Draft article 18 provides an improved definition of the tasks of the **European Commission** as the executive organ of the European Union. The number of Commissioners would be reduced to 15, and these could be assisted by ‘associate commissioners’.

With regard to the composition of the European Commission, numerous delegates from the smaller member states and from the accession countries



took up the Benelux proposals and demanded that each member state should continue to be represented in the European Commission in the future European Union (inter alia *Santer, Lux. gov; Gül, Turk. gov; Puvak, Rom. gov; Liepina, Latvian parl.; Fayot, Lux. parl.; Szajer, Hung. parl.; Giannakou, Greek parl.*). The representative of the *German government, Fischer*, agreed that each member state should be adequately represented in the future Commission. On the other hand, the Commission should be strengthened and become more efficient. Therefore the number of Commissioners would have to be reduced. Alternatively a system of rotation could be considered as a possible solution.

Some delegates endorsed the proposals of the Presidium and accordingly proposed to reduce the number of Commissioners but to appoint associate Commissioners in order to ensure the representativity of the Commission (*Vitorino, Europ. Com.; Fabrnleitner, Austr. gov.; Lequiller, French parl.; Teufel, Germ. parl.; Meyer, Germ. parl.; Follini, Italian parl.*).

### III. Debate on the draft articles on External Action and Defence (CONV 685/03 and CONV 707/03)

The provisions for the Common Foreign and Security Policy (art. 29) and the Common Security and Defence Policy (art. 30) contain some innovations: the right of initiative for common foreign, security and defence matters to be enjoyed by the EU Foreign Minister; the enhanced consultation between the Member States and their mutual solidarity; and the extension of the so-called Petersberg tasks (peace-making, post-conflict stabilisation operations). The proposed articles provide for the establishment of a European Armament and Strategic Research Agency and flexible forms of co-operation between States, such as mutual defence commitments.

#### *EU Foreign Minister*

A major institutional novelty in the area of foreign policy is the creation of the office of **EU Foreign Minister**, to be appointed by the European Council in agreement with the Commission President. The person concerned would also be a Vice-President of the Commission.

In the debate the delegates unanimously endorsed the proposal that the

European Union should have its own Foreign Minister who would combine the current positions of the Commissioner for External Relations and the High Representative for the Common Foreign and Security Policy. The delegates expressed the hope that the “EU Foreign Minister” would be able to strengthen the co-operation between member states in foreign policy, thus contributing to the increased presence and effectiveness of the Union in international relations.

#### *Requirements for decision-taking in the Council*

Numerous delegates, among those the representatives of the French and German governments, requested that the new treaty should provide the possibility to take decisions in the area of common foreign policy by qualified majority voting instead of unanimity (e.g. *de Villepin, French gov.; Bury, Germ. gov.; Fini, Italian gov.; Tillikainen, Finnish gov.; de Vries, Dutch gov.; Christophersen, Danish gov.; Vitorino, Europ. Com.; Meyer, Germ. parl.; Teufel, Germ. parl.; Lequiller, French parl.; Haenel, French parl.; van der Linden, Dutch parl.*).

*Peter Hain* presented the concerns of the *U.K. government* and demanded that certain sensitive or important decisions in the area of foreign, defence and security policy should still require unanimous support by all member states and therefore could not be taken by majority voting (also *Hjelm-Wallen, Swed. gov.; Roche, Irish gov.*). On the other hand, *Mr Hain* supported decision-making by majority voting with regard to external trade.

A considerable number of Convention members endorsed *Peter Hain's* concerns with regard to qualified majority voting in relation to the area of common security policy, pointing at the fact that security policy touches the heart of state sovereignty (*Bury, Germ. gov.; de Villepin, French gov.*). However, for those members states interested, the treaty could provide mechanisms for enhanced co-operation on security questions. (*Bury, Germ. gov.; Brok, EP.*)

Some delegates from the European Parliament also pointed to the need to involve the European Parliament in decision-making in the foreign policy area (*Brok, Duff, McAvan*). It was also emphasised that development policy could constitute an important aspect of the common foreign policy and should therefore be further promoted (e.g. *McAvan, EP; de Vries, Dutch gov.*).

Moreover, the representative of the *Dutch government, de Vries*, asked for the development of a common strategy with regard to migration flows to be integrated into the foreign-policy concept of the European Union and consequently also be subject to majority voting.

Several *conventionnels* explicitly endorsed the newly introduced solidarity clause in article X of the draft (*de Villepin, French gov.; Hjelm-Wallen, Swed. gov.; Giannakou, Greek parl.*).

## 21<sup>th</sup> Session 30-31 May 2003

The 21<sup>st</sup> Convention session had the following agenda:

1. Debate on draft texts on enhanced co-operation (CONV 723/03)
2. Debate on draft texts on economic governance and on own resources and budgetary procedure (CONV 724/03, 725/03, 727/03)
3. Debate on draft texts on draft Part II and Part III of the Constitution (CONV 725/03, 726/03, 727/03)

It was the first session in which a full draft of all four parts of the Constitutional Treaty was available. In his introduction, *President Giscard d'Estaing* gave a short overview over the changes in the latest drafts:

In Part I, the **definition of the Union** had been clarified. Instead of speaking about a Union “*within which the policies of the member states shall be coordinated and which shall administer certain common competences on a federal basis*”, article 1 reads as follows: “*...the Union on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the member states aim to achieve those objectives, and shall exercise in the Community way the competences they confer on it*”. Thus, the word “federal” has been deleted in the first article; instead, it refers to the “community way”.

In article 2, the following **values** have been added: pluralism, equality and non-discrimination.

With regard to the Union **objectives** (article 3), it introduces the notion of *social market economy* (recommendation of Working Group XI), the notion of a *single market where competition is free and undistorted* and a *high level of protection and improvement of the quality of the environment*. The words “including the discovery of space” have been deleted whilst the notion of *linguistic diversity* has been added to that of cultural diversity.

Whilst the previous draft had foreseen the **Charter** to be annexed in a protocol, the current proposed includes the Charter in Part II of the Constitution. In article 7 of the Part I, it reads *The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution*.

The president emphasised that **Title IV on the Union's institutions** had not been changed, due to division within the Presidium mainly on the question of qualified majority voting. Giscard expressly left the responsibility of finding a compromise to the Convention plenary.

With regard to **participatory democracy**, a new article on dialogue with the social partners has been introduced (Article I-47). It reads: *The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners respecting their autonomy.*

In spite of the delicacy of the topic, the presidium had decided to uphold the draft article (now 59) on voluntary withdrawal from the Union.

Part III: The President pointed out that the Convention's mandate was not to revise the content of this part, but to define better the Union's competences, to allocate these better, to simplify the procedures and to ensure transparency and simplicity. The Presidium used the text compiled by the legal experts of the three institutions as a basis. He pointed out substantial procedural changes, such as the increase from 34 subjects for qualified majority voting (QMV) in the current treaty to almost 70 in the new draft.

### 1. Enhanced co-operation (Part I, art. 43 and Part II, arts. 318-325)

The mechanism for enhanced co-operation was introduced by the Treaty of Amsterdam and amended by the Treaty of Nice. Enhanced co-operation was conceived as a "last resort" mechanism, where an action cannot be carried out by all the Member States together. The Council could, acting by a qualified majority, authorise a minimum of 8 member states to go ahead. However, the method has so far never been used.

The presidium considered that the mechanism was an important tool for enhancing the enlarged Union (if used as a last resort). A key question is what the minimum threshold should be. Whereas currently, in a Union of 15 member states, the threshold is set at 8 member states, the current draft proposes a threshold of one third of the member states in a Union of 25 and more. The mechanism could be used in all areas covered by the Treaty except for military and defence issues (art. III-318).

Most Convention members supported the inclusion of enhanced co-

operation in the Constitution. Mr *Duff* (EP), however, supported enhanced co-operation only in the areas of security and defence policy. To admit it in other areas too, would fail to simplify the procedures of the Union and it would threaten the integrity of the Union. Peter Hain (UK Gov.), on the other hand, supported the mechanism but expressed reservations on using it for foreign policy and defence.

Mrs *Hjelm-Wallen* (Swed. Gov.) wanted to exclude from enhanced co-operation matters of CFSP for fear that it would adversely affect the overall credibility of the Union in its external action. She wanted military and defence issues to be excluded from enhanced co-operation (also *De Rossa*, Irish Parl., *Lenmarker*, Swedish Parl.).

Regarding the threshold, the majority supported the Presidium's proposal of one third of the member states (whilst some preferred an absolute figure – 8 member states); some Convention members wanted to increase the threshold to one half of the member states (*Kiljunen*, Finnish Gov.; *Kalniete*, Latvia Gov.; *Andriuskaitis*, Lithuania Parl.; *Gottfried*, Hungary Gov.).

### 2. Debate on economic governance, own resources and budgetary procedure

The debate revealed a strong division between the Convention members, in particular with regard to economic governance. With regard to taxation, the Convention members were split into two groups. A majority favoured introducing more QMV in certain areas: *Lequiller*, French Parl. (in all taxation policies), *O'Sullivan*, COM; *Andreani*, French Gov.; *Bury*, Germ. Gov. (for all taxation matters related to the internal market), *de Vries*, Dutch Gov.; *Christophersen*, Dan. Gov.; *Hänsch*, EP; *Dini*, Italian Parl., *Lequiller*, French Parl.; *Duff*, EP; *van der Linden*, Dutch Parl.; *Barnier*, COM, *Borrell*, Span. Parl.; *Kauppi*, EP; *Dubamel*, EP; *Chevalier*, Belg. Gov. (compromise: at least "super-qualified majority").

Other Convention members strongly opposed giving up unanimity in these areas because tax issues touched the fundamental relation between citizens and the state and were to remain clearly in the competence of the member states (*Hain*, U.K. Gov.; *Dasitis*, Span. Gov.; *Roche*, Irish Gov.; *Bruton*, Irish Parl.; *Tomlinson*, U.K. Parl.; *Lekberg*, Swed. Parl.; *Hololei*, Estonia Gov.; *Lang*, Estonian Parl.).

Commissioner Barnier regretted that the Commission could only formulate recommendations and not proposals on the Broad Economic Policy Guidelines (supported by *De Vries, Dutch Gov.*; *Lequillier, French Parl.*; *Borell, Span. Parl.*; *Dini, Italian Parl.*; *Einem, Austr. Parl.*).

Furthermore, the Commissioner re-launched the idea of a “European Minister of the Economy” who would have two hats – one as vice president of the Commission and the other as representative of the Euro externally.

The report on the Eurogroup was welcomed by several Convention members. Mr *Fini (Ital. Gov.)* proposed that the chair of the Eurogroup should be elected for a period of 6 months. Some members were against formalising the Eurogroup (*Hain, UK Gov.*; *Tiilikainen, Finn. Gov.*; *Kauppi, EP*; *Hololei, Estonia Gov.*).

### 3. Debate on Part II and Part III

#### *Part II – Incorporation of the Charter*

Part II of the draft Constitution contains the provisions of the Charter. The text reproduces exactly the wording of the Charter as proclaimed in December 2000, apart from amendments to the Charter’s general provisions on which Working Group II reached consensus, as well as some technical adaptations. The preamble of the Charter remaining unchanged, so the new Constitution will have two preambles.

In his introduction, Mr *Vitorino (COM)*, former chair of the working group on the Charter, made special reference to the “Explanations” to the Charter which had been drawn up by the first Convention (on the Charter). The working group had emphasised that these explanations were one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be integrated with the original explanations. Mr *Vitorino* explained that he was currently working on the revision of the commentary and would submit it to the members of the Convention in the course of the following week. The purpose of these explanations would be to clarify the rules of the charter. They would not have the rank of formal law, but would play an important role in interpreting the Charter.

The inclusion of the text of the Charter of Fundamental Rights was supported overwhelmingly by the Convention members (*Lequillier, French Parl.*; *Fini, It. Gov.*; *De Rossa, Irish Parl.*; *Chevalier, Belg. Gov.*; *Duff, EP*; *De Vries, Dutch Gov.*; *Azevedo, Port. Parl.*; *Kaufmann, EP*; *Severin, Rom. Parl.*; *Spini, It. Parl.*; *Fayot, Lux. Parl.*; *Demetriou, Cyprus Parl.*), although there were some members who expressed their preference for the Charter to be in Part I of the Treaty (*Brok, EP*; *Maij-Weggen, Swed. Gov.*; *Andriukaitis, Lith. Parl.*).

On the other hand, *Peter Hain (UK Gov.)*; *Mrs Kalniete (Latvia Gov.)*, *Mrs Fogler (Pol. Parl.)* and *Mr Løkkeberg (Swed. Parl.)* would favour the Charter in a protocol, not for legal but for stylistic reasons.

Some Convention members attached special importance to the Explanations: Mr *Hain (UK Gov.)* as well as Mr *De Vries (Dutch Gov.)* emphasised that it would be essential for their governments to have a cross-reference to the Explanations in the Constitution; it would be vital that it was being used by the ECJ for the interpretation of the charter.

On the other hand, Mr *Fayot (Lux. Parl.)* said that there should be no reference to the commentary on the charter in the Constitution; the text of the Charter would speak for itself (also *Duff, EP*).

#### *Debate on Part III*

##### *Qualified Majority Voting (QMV)*

A majority of Convention members welcomed the generalisation of the **co-decision procedure** and the **extension of qualified majority voting** in the council. However, many Convention members wanted to go further and reduce the exceptions where unanimity is required.

Mr *Hain*, however, while agreeing to “unanimity as a rule”, named the following areas as essential exceptions: foreign policy, defence, social security, own resources, taxes.

Mr *Roche (Irish Gov.)* stated that there was no consensus to be reached on this question and that therefore they should be tackled at the summit.

Mr *Fayot, Lux. Parl.*, proposed as a compromise a clause stating that, after 5 years, it should be decided either that qualified majority voting should apply or it should be referred back to the competence of the member states.

Many Convention members criticised the fact that the current draft of the Constitution makes unanimity the rule in CFSP and ESDP matters. The presidium was urged at least to return to the original proposal to allow for QMV in the event of a joint proposal by the Minister for Foreign Affairs and the Commission (e.g. *Fini, It. Gov.*; *Dini, It. Parl.*; *de Vries, Dutch Gov.*).

The unanimity requirement foreseen in article **III-5** (legal base for measures to combat discrimination) was also strongly criticised (*Andreani, French Gov.*; *Van Lancker, EP*).

#### *Services of general interest*

Several Convention members regretted the absence of a legal base for services of general interest in the Constitution. This would be necessary in order to preserve these services and to ensure free access and high quality (*Van Lancker, PE*; *Chevalier, Belg. Gov.*; *Andreani, French Gov.*; *Barnier, COM*; *Bruton, Irish Parl.*; *De Rossa, Irish Parl.*; *Einem, Austrian Parl.*; *Puwak, Roumanian Parl.*; *Berger, EP*).

On the contrary, *Mr de Vries (Dutch Gov.)* and *Mr Lennmarker (Swed. Parl.)* argued that these services had to be open to competition in order to ensure high quality.

#### **4. Preamble**

The newly presented preamble of the whole text of the Constitution was not the subject of a debate. It was nevertheless mentioned by the following members of the Convention:

- *Mr Tajani, EP*, stressed that the EPP group wants the Judeo-Christian roots to be mentioned; they were a historic fact and had tremendously influenced Europe.
- *Mrs Fogler, Polish Parl.*, expressed her dissatisfaction with the drafting of the preamble and wanted a reference to the Judeo-Christian roots to be mentioned in the preamble.
- *Mr Maimoni, Austrian Parl.*, stated on the one hand the importance of the religious heritage, at the same time he strongly opposed mentioning any specific religion; he emphasised that Christianity was the most important religion in Europe, historically and also today, but that it

- would be discriminatory to mention one religion and not another.
- *Mr De Rossa, Irish Parl.*, on the other hand, welcomed the preamble. He – after explaining that he was a humanist – urged that Christianity must not be mentioned in the preamble; if it was being mentioned, one would have to add a long list of religions. He would rather prefer to add a reference to humanist values.

#### **5. Working method**

The President announced in view of the Convention session next week, that the president and the two vice-presidents would meet the representatives of national parliaments at 9 a.m., of national governments at 3 p.m., of the European Parliament at 5 p.m. The meetings will focus mainly on the institutions, and will allow the presidium to present an amended text on institutions.

On Thursday, a plenary debate will take place dedicated to part I (except for title 4 on institutions). The debate on Friday will return to the issue of institutions; this debate would be continued in the week thereafter if necessary.

It appears that a plenary debate on the preamble is not foreseen.

## 22<sup>th</sup> Session

### 4-6 June 2003

The three-day Convention session was structured in the following way: The Convention met in plenary only on Thursday afternoon. The debate was dedicated to all parts of the Constitution except for title 4 of part I on institutions.

Other than that, presidium sessions to place as well as meetings of the members of the different “components” of the Convention (the representatives of national parliaments, of national governments, of the European Parliament and the Commission) and meetings between the presidium and these components. These meetings were not accessible for the public. These meetings were primarily aimed at finding a compromise on the institutional questions of the future Constitution (title 4 of part I). A newly revised draft of title 4 on the institution was presented to the different components of the Convention on Friday morning; the president announced that it should be publicly available on Friday afternoon (until 6 p.m. it was not).

*This report focuses on the plenary discussion which took place on Thursday, 5 June.*

In his introduction, *President Giscard d'Estaing* emphasised that the Convention members “would not see again except in its definitive version”, therefore it would be the last chance today to change it. He gave a short overview on the different amendments which had been brought forward on the revised draft of the Constitution. The *President* stated a fairly broad consensus on articles 1 to 8 of the first part with mainly two problems: regarding article 2 on the values of the Union, there were amendments proposing to move “equality” in the first sentence of the draft. Regarding article 3, it was proposed to add the environment more explicitly. He stated that there were hardly any amendments on the Charter. On the chapter “democratic life of the Union”, the president referred to few amendments on dialogue with civil society and that some amendments had asked for a deletion of article 51 on Churches and religious communities, “but very few in numbers”.

With regard to the entry into force of the Constitutional Treaty, it was questioned what was going to happen if a country would not ratify the new Treaty and whether one should not foresee provisions that it could enter into force anyway.

Furthermore, the *President* emphasised that the presidium had deleted the article on the congress of the people although he personally would consider this to be a very important article.

#### *Debate*

Although the institutions were not to be debated on Thursday, *Mr Dubamel, EP*, started straight away with this question and urged the convention members not to sabotage their work. If they would not manage to improve the agreements of Nice, it would be “suicidal” for the Convention. It had been their mandate to do what Nice failed to do. He furthermore emphasised the specificity of the Convention method (as opposed to an intergovernmental conference) where the 105 members have to act democratically and where one group of the components, the group of government representatives must not block progress. In this criticism he was supported by some other members (*Van der Linden, Dutch Parl.; Dini, Ital. Parl.; Barnier, COM; De Rossa, EP*).

On the other side, *Mr Roche (Irish Gov.)* defended the balance between the institutions found in Nice and defended the position of government representatives: they had to be realistic and to take their country’s positions into account. Regarding the Charter of Fundamental Rights, he emphasised that the commentary containing guidelines for the interpretation of the Charter and should be given an “appropriate position”.

Some members wanted “**competitiveness**” to be included in the objectives of article 3 in part I (*Hasotti, “in order to strike a balance between social progress and economic necessities”, Roman. Parl.; Van der Linden, Dutch Parl.*) *Mr Frendo, Malt. Parl.*, lamented that there had not been included a legal base on **tourism**; also *Mr Lopes* supported that tourism should be included in article 16 as a complementary competence.

Whilst several speakers welcomed the **protocols on subsidiarity and the role of national parliaments** (*Brok, EP; Lopes, Port. Gov.; McAven, EP*), *Mrs Azevedo, Port. Parl.*, wanted to enlarge the tasks of the national parliaments: They should not only be entrusted to check the application

of the subsidiarity principle but also how democracy and human rights were developed in the Union.

Several members asked for an extension of **qualified majority voting** (*Kiljunen, Fin. Parl.; Van der Linden, Dutch Parl.*: qmv as the rule; – *Timmermans, Dutch Parl.*: qmv for decisions on multiannual financial matters – *Brok, EP*: qmv for military, defense and structural cooperation – qmv for CFSP: *Fabrleitner, Austr. Gov.; Kaufmann, EP; Bury, Germ. Gov.; Meyer, Germ. Parl.; Lennmarker, Swed. Parl.*; – *Tiilikainen, Finn. Gov.*: qmv as general rule in CFSP except for defence; – *Dini, Ital. Parl.*: qmv for external policy, perhaps as a compromise super qualified majority; – *Lequiller, French Parl.*: super qualified majority in foreign policy, taxation, the setting up of a European public prosecutors office).

As a compromise it emerged that for certain issues one could move from unanimity to a super qualified majority (e.g. 2/3 of the member states and 4/5 of the population); it would have to be clearly defined in the Treaty (*Dini, Ital. Parl.; Lamassoure, EP*). *Mr Lamassoure*, emphasised once again the paralysing effect that unanimity would have. He proposed also to differentiate between two ways of revision procedure: for constitutional revision, the full ratification of all member states for real constitutional issues and a “lighter” procedure for the third part where decisions could be taken by super qualified majority in the Council without ratification of the member states.

*Baroness Scotland, U.K. Gov.*, on the other hand, made the point very clear, that for the U.K. unanimity must be retained for security and foreign affairs.

*Mr Meyer, Germ. Parl.*, notified the President that a proposal signed by more than 50 Convention members would be presented to the Convention in order to introduce a petition for the possibility of **citizens’ actions**. One member of the Convention, *Mr Leksberg, Swed. Parl.*, asked **article 51** (on churches and religious communities) to be dropped; one had to be careful to preserve the religious freedom in the Union.

*Mr Villepin, French Gov.*, gave a very engaged speak encouraging the Convention members to take their responsibility, to go beyond the status quo and not limit themselves to the national interest. The intergovernmental conference could never be a success if the Convention failed. He reminded the Convention members that they were not drafting a Constitution for

just 10 years, “but for our children and grand-children and grand-grand-children”.

#### Preamble

In the discussion on the preamble, 6 members spoke explicitly in favour of a reference to (Judeo-) Christian roots or to Christianity:

*Mr Brok, EP*, emphasised that in the preamble, on the basis of the historic background, Christianity should be included. *Mr Teufel, Germ. Parl.*, emphasised that as several elements of Europe’s history was enumerated but not Christianity, the belief in God of Christianity and other religions had to be mentioned; this would not be discriminative to anybody. *Mr Wittbrodt, Pol. Parl.*, emphasised that Christianity was one of the most important influence in Europe’s history and should be mentioned in the preamble; “like Christianity does not break the rights of others, dogmatic laicity must not break the rights of others either”. Also *Mr Szajer, Hungary Parl.* pleaded that it was not correct to move from Greece and Rome directly to the enlightenment; one should not deny Christianity as a fact of Europe’s history. *Mr Speroni, Ital. Gov.*, emphasised the “decisive contribution” of Christianity to Europe which should be recognised in the preamble. *Mr Roche, Irish Gov.* also urged the Convention not to overlook Europe’s Christian tradition “which is a proud and noble tradition”.

On the other hand, 5 members opposed any mentioning of Christianity in the preamble:

*Mr Duhamel, EP*, criticised severely any attempts to include Christianity or Christian roots to the preamble: Everyone who was asking for a change to the mentioning of the religious heritage would make a very big mistake, for there were many people in the Convention for whom it was already very difficult to accept the current wording; it would not be right to privilege one religion to another or religious belief to other convictions. Also *Ms van Lancker, EP*, strictly opposed a reference to Christianity; she could not see any intolerance of non-believers given that they already had to accept several references to religion in the Treaty (in particular article 51 and the reference to the religious heritage). *Mr Abitbol, EP*, was “amused” by the comments on the Judaeo-Christian heritage; it sounded to him like re-founding the “Holy Roman Empire” with God at its top.

He emphasised that Christianity divided Europe as much as it formed it and it led to many wars; thus religion had not always been a fountain of good. Furthermore, one should concentrate more on where Europe was heading to instead of where it was coming from (the latter point was supported by *Mrs Paciotti, EP*). Finally, *Mr Borell-Fontenelles* emphasised that the balance in the preamble between secular and religious value as currently proposed was the utmost of what the Convention could do.

Other comments on the preamble concerned the necessity to improve translations (*Ms McAven, EP*, for the English version, *Mr Duff, EP*, for all versions). *Ms McAven* and *Ms Kaufmann, both EP*, asked to include also the dark sides of Europe's past should be included and that we have learned from the past.

*Mr Duff, EP*, admired "the lyricism" of the draft but asked to improve it by shortening it.

### Next Convention Session

There will be Convention sessions from Wednesday, 11 June to Friday, 13 June. However, there was not a clear agenda available. *The President* emphasised that on part I the presidium will only present their finalised proposal. Thus, next week the provisions of part III would be discussed in the Convention. It is not clear at this point whether the Convention will finalise its discussions on part III in the next week or whether it will ask the Thessalonica summit on the 20 June to extend the Convention mandate exclusively to continue the debate on part III and to do some fine-tuning. The decision will be taken by the heads of governments and states.

### 23rd Session 11-13 June 2003

The 23<sup>rd</sup> session of the Convention was the last one before the Thessalonica European Council on 20 and 21 June. There the Convention's *President Giscard d'Estaing* will present the results of the Convention's work. However, he will ask the Heads of State and Government for a few more weeks to allow the Convention to finish its work on the more technical Part III, which deals with the policies and functioning of the Union. A plenary session is already scheduled for 9 to 11 July for this purpose.

### Plenary Sessions on Wednesday and Thursday

The members of the Convention were presented on Wednesday with the latest version of the Part I texts, particularly Title IV, on the subject of the institutions, and a new version of the preamble, as well as the two protocols dealing with the role of the national parliaments and application of the subsidiarity and proportionality principles (CONV 797/03).

On Wednesday and Thursday, the plenary meetings were interspersed with meetings of the various component groups (national parliaments, European Parliament, government and Commission representatives). Here the members of the Convention sought consensus on the main points to which they hoped to make final changes. Two main points emerged from these debates: one, a number of members of the Convention wish to amend the texts proposed by the Praesidium with a view to extending the area covered by qualified majority voting, thus reducing the cases where unanimity is required; two, many wished also to preserve the institutional balance by reinforcing the role of the Commission in relation to the planned fixed European Council Presidency, which some would like to see more clearly defined and delimited. However, several government representatives said that they could accept the Praesidium's proposals unchanged and that it would be difficult for them to agree to last-minute changes a few hours before the end of the Convention.

On Thursday night, when the Convention met in Plenary at 7 p.m., the



president presented some final amendments proposed by the Presidium on the basis of the comments received by the members of the Convention (CONV 811/03).

The latest changes include among others in the preamble the deletion of the reference to the Greek and Roman civilisations as well as to the enlightenment whilst keeping the reference to Europe's 'cultural, humanist and religious heritage' unchanged.

Regarding the new office of European Council Chair (art. 21), it was tried to clarify its role more precisely: As well as chairing, preparing and driving forward the work of the European Council meetings, the Chair would represent the Union externally 'on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister for Foreign Affairs'. The Commission would represent the Union externally 'for areas falling within its responsibility' (art. 25).

The two categories of Commissioner envisaged as of 2009 are retained: there would be 15 members belonging to the College, having voting rights ('European Commissioners'); the others, of whom there would be a maximum of fifteen, without voting rights, would be called simply 'Commissioners' (or non-voting Commissioners) rather than 'associate Commissioners'.

In article 25 paragraph 4 the possibility was introduced that the European Council could adopt – by unanimity – a decision allowing the Council to act by qualified majority in a particular area (where the Constitution foresees unanimous decisions), called "passerelle". Furthermore, article 46 paragraph 4 introduced the possibility of a citizens' initiative.

## Debate

Whilst the inclusion of the **Charter Fundamental Rights** was unanimously welcomed, there was one point of discussion: The presidium had proposed to add to the Charter preamble a reference to the explanations drawn up by the first Convention and updated by *Mr Vitorino (COM)* on the basis of the results of the working group: "[...]the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter."

The inclusion of the explanations was heavily criticized by several convention members. *Mr Broke, EP*, emphasized that the first Convention did agree explicitly not to publish the explanation. Doubts were expressed on the status of the explanations and on the fact that in a Charter the Preamble is normally not legally binding and that in the present case this issue is not very clear *Bonde, EP; Mr Roche, Irish Gov.; Mrs Majj-Weggen, EP*. Whilst several convention members opposed the reference to the explanations (*Mr Broke, EP; Mr van der Linden, Dutch Parl.; Mr Voggenhuber, EP; Mrs Kaufmann, EP; Mr Badinter, French Parl.*), others agreed that this was – as a compromise – the price the convention had to pay for the inclusion of the Charter into the Constitution and for it to become legally binding (*Meyer, Germ. Parl.; Fayot, Lux. Parl.* - who emphasized the problem that the explanations were drafted by civil servants and that the ECJ will have to interpret the explanations).

*Mr Vitorino, COM*, replied that the content of the explanations has no legally binding effect, but that "we acknowledge the fact that the explanations are a tool for interpretation". *Mr Roche, Irish Gov., Mrs Hjelm-Wallen, Swed. Gov. and Mr Hain, UK Gov.* supported the inclusion of the explanations. *Mr Hain* made it clear that for the U.K. the inclusion of the explanations was a precondition for the inclusion of Charter and added that there were five countries who would share this view.

A big debate took place on the question of **qualified majority voting (QMV)**.

*Mr Broke EP*, expressed his disappointment for not seeing any proposal to extend QMV to the CFSP. While *Mr Duff, EP* recognized the great progresses on the issue of the capacity of the Union to decide with QMV, he found it insufficient. He especially regretted that the "passerelle" system would not help in progressing. Critics to the "bridging system" (passerelle) were expressed by many including *Fayot Luxembourg Parl.; Mr Bonde, EP* and *Dini Italian Parl.*

Both *Mr Van der Linden Dutch Parl.* and *Mr Einem, Austrian Parl.* spoke about a lack of courage from the Convention's side on the QMV and would like to see it extended to CFSP, giving as a reason also that if the Convention could not be more courageous then we cannot expect the IGC to be on this issue.

The inclusion of **Citizens initiative**, giving citizens a fundamental role

in submitting proposals and requests to the Commission on matters of importance to them, was welcomed especially by *Mr Meyer, Germ. Parl., Mr Voggenhuber, EP; Mr Barnier, COM and Mr Lamassoure, EP.*

### Preamble

#### - Deletion of the reference to the Greek, Roman and to the Enlightenment

Several convention members explicitly welcomed this correction of history in the preamble; some emphasized that they would have preferred rather to add to the exemplification Christianity (or Judeo-Christian roots): *Mr Tajani, EP; Mr Teufel, Germ. Parl.; Mr Brok, EP; Mr Wittbrodt, Pol. Parl.) Mr Duhamel, EP,* on the other hand, emphasized that within the socialist and liberal group there was by no means an agreement to a reference to Christianity. *Mr Borell, Span. Parl.,* referred to the “famous topic of religion, in particular Christianity” and thought that the Convention has managed to strike a balance to which it should stick.

*Mr Fischer, Germ. Gov.,* introduced the notion of “religious values” as a compromise on the discussion about the preamble. *Mrs Palacio, Span. Gov.,* supported Mr Fischer and favoured the inclusion of “Christian values”.

#### - Reference to religious values

The final version of the second paragraph of the preamble introduced a new reference to the cultural, religious and humanist values; it reads as follows: “*Drawing inspiration from the cultural, religious and humanist inheritance of Europe, whose values are always present in its heritage, and which has embedded within the life of society its perception of the central role of the human person and his inviolable and inalienable rights, and of respect for law.*”

Mr Duff (EP) asked the president to confirm that “the mysterious extension of the preamble” would have no legal effect (supported by Mr Bonde).

### Concluding Plenary Session on Friday

The almost final plenary session of the European Convention on Friday 13 June had a predominantly festive atmosphere, with a good spirit and

satisfaction for the work done and the objectives attained. All speakers recognised that the draft Constitution is not perfect and no one can be entirely happy with its content. However it was underlined by all that the works were held in a spirit of co-operation and respect and that the compromise reached is acceptable to all. Almost every speaker expressed his/her thanks to and consideration for *President Giscard d’Estaing,* many extended these thanks to the Presidium, the Secretariat or the other Convention members.

*President Giscard d’Estaing* presented the revised texts of Part I and II of the Constitution (CONV 797/1/03 REV 1), preceded by the preamble and including the amendments of the day before. Everybody would find elements that he/she did not like in this text, but also many elements that he/she had been fighting for over the past months. He stressed the importance of having reached this stage considering the richness of cultures, languages and backgrounds present in the Convention, each with their peculiarities and interests. The time had now come to adopt this text with a strong consensus. The President acknowledged that the text might still contain some inaccuracies, especially in the translations. During the coming week, the text should be reworked with special attention to coherence and to gender neutral language. The discussion on Part III (CONV 805/03) was not yet finished.

*The President* then left the floor to the spokespersons of the different components of the Convention:

*Mr Méndez de Vigo* (EP), on behalf of the European Parliament, referred to Lykurgos’ visit to the Delphi oracle when he asked about Sparta’s new constitution. Although Lykurgos never came back, the Spartans continued to respect the constitution. On behalf of the EP, *Mr Méndez de Vigo* asked the President of the Convention to present the draft Constitution to the Thessaloniki European Council, but to please come back as there was still some work to do.

*Mr Van der Linden* (Dutch Parl.), on behalf of the national parliaments, said that National Parliamentarians had shown a constructive spirit all along the works of the Convention. This had contributed to the creation of a special synergy between national parliaments and European Parliament which he hoped would continue in the future. He welcomed the “passerelle” system in the move towards more qualified majority

voting (QMV).

*Ms Palacio (Spanish Gov.)*, on behalf of the Government representatives, underlined that the text reflected a Union of States and citizens. Even if the Spanish Government had a basic reservation on this text, today was a great day for Europe's citizens. The Constitution was a legal revolution with no precedent. It was the endpoint of 19<sup>th</sup> Century's diplomacy of closed doors. The text was rational but remained flexible for future evolution.

*Mr Barnier*, on behalf of the European Commission, was satisfied that much had been achieved which had not been resolved at earlier occasions, something which would not be possible without the Convention as a method. Convention members would now have to carefully explain to the citizens what they had done. *Mr Barnier* hoped that the Thessaloniki summit would take the Constitution "*telle quelle*" forward to the IGC, in which the Commission was going to play an important role.

In the absence of *Mr Papandreou* from Greece, *Mr Christophersen* from Denmark represented the previous presidency. According to him, the Convention was an unconditional success and a very good basis for the upcoming IGC. It had been the most open, transparent and inclusive process ever to prepare an IGC, and his own e-mail-box was testimony to that openness. It was clear that the Governments were responsible for the IGC, but he was sure that the final product in most areas would be close or equal to what was there today.

*Mr Peterle (Sloven. Parl.)* expressed that it was a honour to be able to rejoice of this success. "For a year and a half, Europe has been breathing with its two lungs". The Convention members from the new states always felt equal to the others. This was a sign that a united EU is possible and that an expanded EU can be very successful.

*President Giscard* then left the floor to the political families.

*Ms Puvak (PES, Romanian Gov.)* endorsed the draft Constitution and declared the Socialist family's appreciation of many of the institutional and procedural elements. She underlined the new perspectives for European citizens in terms of social justice, a social market economy and a better balance between economic and social policy and welcomed the inclusion of *equality* among the Union's values in Art. 2.

*Mr Brok (EPP, EP)* declared the fair and democratic political fight over

Parts I and II for finished. It was a great achievement to have reached a single draft without options, something that would be difficult to be reopened in diplomatic struggles.

*Mr Duff (ELDR, MEP)* said that the Constitution made the decision-making process simpler, shorter, more rational and transparent. No one would leave triumphant and further improvements were needed in parts III and IV, but the Convention had reached a very good result. *Mr Voggenhuber (Greens, EP)* showed himself reconciled with the President by saying that instead of Jupiter, he had acted as the Convention's midwife. Other members who stated their support with different accentuation were *Ms Kaufmann (GUE-NGL, EP)*, *Mr Fini (Ital. Gov.)*, on behalf of the forthcoming Presidency, *Mr Teufel (German Parl.)*, *Mr Duhamel (EP)*, *Mr De Villepin (French Gov.)*, who stressed the solemnity of the moment, *Mr De Vries (Dutch Gov.)*, *Mr Fischer (German Gov.)*, who said that this draft constitution is worthy the word "historic" and welcomed the great balance between big and small countries.

*President Giscard*, in his final speech, told the Convention members that he was honoured to have been their President. It would not be up to the Convention to tell if it had succeeded, but several aspects would have to be taken into account. The members of the Convention had reflected thoroughly on the problems of Europe. They had been the first to have experienced the problems of an enlarged Europe. In a particular address to the new countries, he announced that translations in their languages would be provided for until the Thessaloniki Summit. The Convention had managed to plant a seed that would grow and foster a real European Demos. Even if the Convention's results were not perfect, one of the biggest successes must be seen in the fact that they had achieved something no one could have hoped for. He invited the Convention members to add their personal signature to the final draft. The only recommendation he would give to the Heads of States and Government at Thessalonica was: "The closer you stay to this text, the less difficult will be the task of your conference".

To the sounds of Beethoven's Ode of Joy, the Convention gave a toast to the consensus.

## 24<sup>th</sup> and 25<sup>th</sup> Sessions 4 and 9-10 July 2003

The 24<sup>th</sup> and the 25<sup>th</sup> sessions of the Convention were scheduled after the Thessalonica European Council on 20-21 June. In Thessalonica, the Convention's *President Giscard d'Estaing* had presented the results of the Convention's work on the first two parts of the draft of the constitutional treaty. The Heads of State and Government gave a further mandate to the Convention for the "technical work on drafting part III" entitled *The Policies and Functioning of the Union*. The Convention concluded its mandate by adopting a final draft constitutional treaty which was signed by nearly all members of the convention. On 18 July 2003 *President Giscard d'Estaing* will submit the final draft to the Italian President, *Mr Ciampi*, and Prime Minister, *Mr Berlusconi*, who will organise the IGC (Italian Presidency).

### 24<sup>th</sup> Plenary Session on Friday, 4 July 2003

*President Giscard d'Estaing* reported that the Thessalonica summit went beyond his expectations. But even though he described the responses of the Heads of State and Government as particularly warm and positive, he was concerned about the temptation to re-open certain issues in the forthcoming Intergovernmental Conference (IGC). Therefore he called upon all members of the Convention to ensure that the results of the Convention's work were not spoiled. Several members of the Convention also called for the Convention to convene again during the IGC to assess the IGC's work (*Mrs Berès, EP and Mr Dini, Ital. Parl.*).

1.687 amendments on part III had been tabled before the 24<sup>th</sup> session. The Presidium waited for the debate on Friday before deciding which amendments were likely to achieve the consensus necessary for the incorporation in the text. However, it had already made a small number of changes, e.g. concerning a common diplomatic corps, services of general economic interest (legal basis for action on the European level) and economic governance within the Eurogroup.

A large majority of speakers argued once more for a **further extension**

**of qualified majority voting (QMV)** in certain social issues, common foreign and security policy, taxation and non-discrimination policy. On behalf of the representatives of national parliaments, *Mr Dini (Ital. Parl.)* called for QMV in foreign policy decisions in case of a joint initiative of the future European Minister of foreign affairs and the Commission (supported by *Mr Peterle, Sloven. Parl., Mr Lequiller French Parl., Mr Einem, Aust. Parl., Mr Severin Rom. Parl., Mr Duff, EP, Mr Duhamel EP* and opposed in particular by *Baroness Scotland of Asthal, UK Gov.*). Furthermore, he demanded QMV in cases where indirect taxation affected the internal market and in the fight against tax fraud (supported by *Mr Duff, EP, Mrs Andreani, French Gov.*). The representative of the Commission (*Mr Ponzano, COM*) asked the Presidium to take into account this great support of the extension of QMV. On the other hand, some government representatives expressed their concerns with regard to QMV within this particular field of taxation (e.g. *Mr Petersson, Swed. Gov., Mr Hololei, Est. Gov., Mr Mc Donagh, Irl. Gov., Speroni, Ital. Gov.*). *Mr Duff* stressed the special charm of QMV and welcomed the broad convergence of views between the Members of the National and the European Parliament. On behalf of the EPP-Group *Mr Brok* urged the Convention to further extend the use of QMV, not least to the area of taxation and foreign policy.

In spite of the general promotion of QMV, a group of Convention members proposed to maintain unanimity in the field of international trade agreements covering cultural items (**cultural exception**). If the treaty did not contain such a cultural exception, they argued, the ratification within some Member States might turn out to be very difficult (*Mrs Andreani, French Gov., Mr Haenel, EP, Mr Lequiller, French Parl., Mr Chevalier, Belg. Gov. and Mr Tusek, Austr. Gov.*).

In field of **social policy**, some members of the Convention (*Mr Chevalier, Belg. Gov., Mrs Nagy, Belg. Parl. and Mr Gabaglio, Observer ESC*) called for the implementation of a horizontal clause in part III in order to ensure that the social objectives set out in part I will be equally promoted in part III. Another point of debate was the envisaged introduction of QMV to secure the payment of social security benefits to migrant workers in the EU (opposed by *Baroness Scotland of Asthal, UK Gov.* and defended by *Mrs Van Lancker, EP*).

The Presidency had introduced QMV for all provisions of the draft

treaty concerning **immigration**. Hence *Mr Fischer (Germ. Gov.)* and *Mr Teufel (Germ. Parl.)* believed that due to particular German sensitivities unanimity should be retained in the area of access to the employment market. *Mr Fischer* assured the Convention that even without QMV at this stage, one could foresee a move to QMV once a common framework for immigration policy is established.

Several members of the Convention argued for strengthening the capacities for independent **economic governance within the Euro area** (*Mr Dini, Ital. Parl.*, on behalf of the representatives of the national Parliaments, *Mr Dubamel, EP, Mr De Vries, Dutch Gov., Mr Chevalier, Belg. Gov., Mrs Andreani, French Gov., Mr Lamassure, EP, and Mr Haenel, French Parl.*). In response the President promised to review the provisions in question.

The new draft established a new base for European legislation on **services of general economic interest** (cf. Art. III-3) taking up a French proposal. Some members of the Convention welcomed the provisions on these services (e.g. *Mr Fayot, Lux. Parl.*) or even called for more competences on the European level (*Mr Floch, French Parl. and Mrs Berès, EP*). On the other hand, some members of the Convention were surprised to hear about the amendment concerning the services of general economic interest (*Mr Fischer, Germ. Gov.*) or opposed to giving the Union any responsibility within this area (*Mr Teufel, Germ. Parl. and Mr Petersson, Swed. Gov.*).

Finally, many Convention members were surprised that the President's draft did not contain any provision concerning the **Union's Symbols**. *Mr Peterle (Sloven. Parl.)*, *Mr Broke (EP)*, *Mr Dubamel (EP)*, *Mr Lamassoure (EP)*, *Mr Lequiller (French Parl.)* and *Mr Severin (Rom. Parl.)* suggested to add provisions concerning the European flag, anthem, motto ("united in diversity"), currency and Europe day.

*President Giscard d'Estaing* concluded the session with the promise to present a revised draft of the constitutional treaty.

## 25<sup>th</sup> Plenary Session, 9 to 10 July

*Session on Wednesday, 9 July 2003*

*President Giscard d'Estaing* opened the session by presenting the latest changes to part III of the draft constitutional treaty: The latest version of the text introduced provisions for better economic governance in the Euro zone

(Art III-85a). It introduced the consultation of the European Parliament in the area of non-discrimination in transport matters (Art. III-133) and the financing of urgent foreign policy actions (Art. III-210) as well as the information of the EP in the context of the Commission's task to co-ordinate Member States' action in social policy (Art. III-101) and the implementation of a solidarity clause in the event of natural or man-made disasters (Art. III-226). Concerning immigration policy, the draft text provides that Member States could determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work (Art. III-163). With regard to foreign policy the text introduced a consultation procedure when a Member State is opposed - for vital reasons of national policy - to a decision adopted by QMV within the Council (Art. III-196). In military matters, it clarified the mechanism of structured co-operation between specific Member States (Art. III-208). Art. III-324a provided for the possibility for the Council to move unanimously to QMV for certain measures. The draft established a clause which enables European researchers to co-operate freely across the borders (Art. III-141). Finally, Art. III-278 gives natural and legal persons affected by restrictive measures in the area of the Union's foreign policy (Art. III-193) the right to initiate proceedings before the Court of Justice (ECJ – Luxembourg).

Many members of the Convention expressed their disappointment that the draft text did not foresee an extension of **qualified majority voting** (QMV) on certain issues. Many stressed that proposals supported by a large majority of members were not yet included in the final draft. Certain members lamented in particular that QMV should have been included for issues related to Common Foreign and Security Policy as well as indirect taxation (*Mr Dini, Ital. Parl., Mr Duff, EP, Mr De Vries, Dutch Parl., Mr Broke, EP, Mrs Giannakou, Greek Parl., Mr Kacin, Slov. Parl., Mendez de Vigo, EP, Vitorino, COM, Mrs van Lancker, EP, Mr Dastis, Span. Parl., Mr Voggenhuber, EP, Mr Lennmarker, Swed. Parl., Mr Barnier, COM, Mrs Muscardini, EP, Mr Costa, Port. Parl., Mrs Majj-Weggen, EP, Mr Demitriou, Cypr. Parl., Mr Borell, Span. Parl.*). Some members underlined that QMV should have been included also in other issues such as anti-discrimination policies, migration and social policies (*Mr Duff, EP, Mrs Tiilikainen, Fin. Parl., Mrs van Lancker, EP, Mr Kacin, Slov. Parl., Mrs Majj-Weggen, EP*).

Several Convention members stressed the role of the **European Court of Justice**. Accordingly, the court should also exert jurisdiction on acts of the European Council and the Commission (*Mr De Vries, Dutch Parl., Mrs Giannakou, Greek Parl., and Mr Peterle, Slov. Parl.*).

Many members of the Convention acknowledged the need to include **European symbols** within the constitutional treaty in order to promote a European identity. Therefore they underlined that the European anthem, flag and Europe Day should be mentioned in an article (*Mr Lequiller, French Parl., Mr Marinbo, EP, Mr Brok, EP, Mr Timmermans, Nl. Parl., Mr Duhamel, EP, Mr Lekberg, Swed. Parl., Mr Peterle, Slov. Parl., Mr Lamassoure, EP, Mr de Rossa, Irish Parl., Mr Andriukaitis, Lith. Parl., Mr Demitriou, Cyp. Parl., Mr Speroni, Ital. Parl.*). President Giscard d'Estaing announced that the members' proposals would be taken into account within the final draft of the constitutional treaty.

Several members of the Convention repeated that the constitutional treaty should make use of a **gender neutral language** and that this neutrality should be ensured in all linguistic versions (*Mr Mendez de Vigo, EP, Mrs McAvan, EP, Mrs van Lancker, EP, Mrs Giannakou, Greek Parl.*). *President Giscard d'Estaing* informed the plenary that he had submitted the French version of the draft text to the Académie française for a linguistic check and encouraged the other Member States to submit the treaty to linguistic institutions of the same kind.

#### *Final Session on Thursday, 10 July 2003*

Opening the final session, the *President of the Convention* presented the last changes introduced by the Presidium on the night of Wednesday 9th: The final draft of the constitutional Treaty included an Article concerning the European symbols such as the flag, the anthem, the motto "United in diversity", the currency and Europe Day on 9 May. In order to encourage the Member States to co-ordinate their actions voluntarily, the open method of co-ordination, whilst not explicitly mentioned, was suggested for the areas of social policy, research, health policy and industrial competitiveness (Art. III-102, III-143, III-174, III-175). Art. III-5 of the final version established the proceeding for actions to combat discrimination. According to annex III to part III concerning the European External Action Service the Council and the Commission are to reach an agreement on its creation.

With regard to future revisions of the constitutional treaty a new article was included in part IV (Art. IV-6). In principle any revisions of the constitutional treaty call for a new convention. Only minor changes may be adopted unanimously by the council with the approval of the European Parliament.

During the ensuing discussion several Convention members took the floor on behalf of the particular groups and political families forming part of the Convention. They said that it was an honour to be part of the Convention and that they felt a great satisfaction with regard to the work accomplished during the previous 16 month. They recognised the difficulties such a process could have presented and were very positive on the results attained. The constitutional treaty highlights the fact that Europe is not only an economic community but also a community of values. It was appreciated that the working method was very inclusive. The Convention members representing accession countries also reported that they felt equal to the other members during the work of the Convention. Their particular contribution to the work of the Convention was highlighted in several statements. Some members of the Convention, particularly those coming from accession countries, were grateful for the enormous steps that were taken to create a united Europe, a step that could not have been imagined a few years ago. The members of the Convention also stressed the importance of continuing to monitor the work of the IGC in order to ensure that the Governments adopt the text as it is without any substantial changes.

*President Giscard d'Estaing* gave the floor to the Convention's *Vice-Presidents Amato and Debaene*. *Mr Amato* expressed in particular how this experience was of great human value and stressed that Europe is a system of people encountering and communicating with each other even in different languages. He also said that the reunification of Europe has been inaugurated through the work of the Convention. *Mr Debaene* said that the outcome of the Convention is more far reaching than any of the intergovernmental conferences. He also paid tribute to the members of civil society whose role he considered vital within the process.

*President Giscard d'Estaing* officially closed the Convention. He said: *I am proud to have been your president and to have piloted our vessel through the mists, through the cold, through the waves. Our ship has reached port.*

The President stressed that the result attained is far from the lowest common denominator. It represents the best possible result that could be reached without putting the whole EU in danger. He underlined that the Convention has marked history with this final act and informed the members that he will transmit the final draft of the constitutional treaty to the President of the European Council in Rome on 18 July 2003. With regard to the temptation to re-open the constitutional treaty, he stated that any attempt to change this draft text and the balance which it reflects could mean distorting, if not dislocating, all of the Convention's work. Therefore he called upon all the members of the Convention - and in particular upon those who will participate in the IGC - to ensure that the text will be changed as little as possible.

*President Giscard d'Estaing* invited all the members of the Convention to put their signature in the official document. Nearly all members accepted this invitation.

















