

Summary presentation of the French Senate's contribution in view of the work by the European Convention (Paris, 7 March 2002)

Caption: On 7 March 2002, the French Senate presents a summary of its contribution to the debate on the future of Europe and the future work of the European Convention. It mainly refers to three information reports that it has published on the themes of a European Constitution, a possible second chamber and the distribution of the European Union's powers and responsibilities.

Source: Sénat, Présentation résumée de la contribution du Sénat français en vue des travaux de la Convention, Paris, 07.03.02, http://www.senat.fr/europe/convention_2002/contribution_senat_convention.pdf.

Copyright: All rights of reproduction, public communication, adaptation, distribution or dissemination via Internet, internal network or any other means are strictly reserved in all countries.

The documents available on this Web site are the exclusive property of their authors or right holders.

Requests for authorisation are to be addressed to the authors or right holders concerned.

Further information may be obtained by referring to the legal notice and the terms and conditions of use regarding this site.

URL:

http://www.cvce.eu/obj/summary_presentation_of_the_french_senate_s_contribution_in_view_of_the_work_by_the_european_convention_paris_7_march_2002-en-52931c92-791e-4b37-aeac-ee6d330a7aa5.html

Publication date: 19/12/2013



Paris March 7th, 2002

SUMMARISED PRESENTATION OF THE CONTRIBUTION OF THE FRENCH SENATE TO THE WORK ON THE CONVENTION

The Senate Delegation for the European Union decided to divide its study of the four themes selected in the « Declaration on the Future of the Union » of the Treaty of Nice, into two topics .

The first was the **idea of a Constitution for the European Union**. This seemed to be the wider picture in which two of the issues in the declaration – simplified treaties and the status of the Human Rights Charter – could be viewed.

The second was the **possible creation of a second chamber**, representing the national parliaments and more particularly responsible for contributing to application of the principle of subsidiarity. The role of the national parliaments was one of the issues addressed by the Nice Declaration which, moreover, suggested that a means for effectively applying the principle of subsidiarity should be examined.

Finally, as of December 2001, the delegation continued its work by examining the remaining topic in the declaration of Nice, that is, the **division of power between the Union and the member States**. It did this in three particular fields: culture, education and the environment. That enabled it to draw some overall conclusions on this topic.

I. THE IDEA OF A CONSTITUTION FOR THE EUROPEAN UNION

a) Clarification is needed

The debate on the future of the European Union, sparked by the Treaty of Nice, once again brought up the issue of a « Constitution » for the European Union. But what does the word mean exactly ?

When we hear the word “Constitution”, we naturally think of the German or American constitutions. They are documents that organise the exercise of sovereignty. They are drafted by constituent bodies which express the wishes of a people. This constituent power is not grounded in the notion of unanimity. In the United States, for example, the agreement of three quarters of the member States is needed to amend the U.S. Constitution; in Germany, a two thirds majority of the Bundesrat is required.

Thus, when the term «Constitution of the European Union » is raised, it is legitimate to ask what it means. Does it mean that the Union should be given full sovereignty? Should it be considered that Europeans form a people? Should it be made possible to vote and amend the founding document of the Union against the wishes of some of its members? Should the Union become a Federation itself fixing its powers?

This, of course, is one possible view of a «Constitution of the European Union». But in reality, many of those who refer to such a constitution are not really thinking this at all. They wish the founding document of the Union to continue to be built up by agreement between all the member States. They do not consider that Europeans already form a people, in the sense of the German people, for example, or the French. Finally, they wish the Union to continue to be granted its powers, rather than fix the ambit of such powers itself.

So why should we refer to a «Constitution » all the same ? In fact, the term could be understood in a looser sense. It could be applied to a document containing some of the elements usually found in a Constitution, but not all.

In that sense, some lawyers would go so far as to say the Union already has a constitution. The treaties have created a European law which is above national laws and can be applied directly to the citizens. Moreover, the Union has its own institutions: the European Parliament, the European Commission, the Court of Justice etc. Thus, without using the term “Constitution”, the European Court of Justice nevertheless refers to the treaties as a “Constitutional Charter”.

In this narrower meaning, it might be suitable to have a constitution in the form of a treaty, or in the form of an agreement between the member States. It would be a treaty as to the form, but most of its content would resemble what is found in a constitution. It would no doubt be preferable to use the term “**constitutional treaty**” for this new concept of a “Constitution of the European Union”.

Finally, there is a less ambitious way of dealing with the issue of a constitution for the European Union. It would be to simplify the treaties referred to by the Treaty of Nice. The European treaties could be merged, and presented differently, so as to highlight the “constitutional” provisions already present in the treaties. This approach resembles the notion of a “**founding treaty**”.

Thus, even if things are simplified, it seems that there are several ways to understand the notion of a «Constitution for the European Union», thus causing misunderstandings. If the parties to the discussions are to have a clear idea of what they are discussing, then they should at least begin by clarifying what they understand by that «Constitution for the European Union».

b) the idea of a Constitution in the full sense should be viewed with caution.

Is this the right time for the European Union to envisage a «Constitution» in the full sense of the term? It is a tempting idea, but it must be admitted that it might be taking a risk.

Paradoxically, if a European Constitution were adopted, common policies might be weakened. Today, the treaties contain relatively detailed provisions on these projects. However, in a Constitution, there are no detailed provisions in respect of agricultural policy, for instance, or regional policies. Thus, with a European Constitution, the main common policies might in fact be less well protected, all the more so as the community method itself might be put into question.

This is because the method is based on balance between three institutions – the European Commission, the Council and the Parliament – following rules which diverge considerably from the canons of a democratic constitution. Thus, there is no strict separation of powers, since the Council, which is a governing body in terms of its composition, exercises both legislative and executive power, and the Commission, which is an independent collegial body, exercises both executive and judicial power, while at the same time being responsible before the European Parliament. Yet it would also be difficult for other rules essential to the balance of this particular “institutional triangle” to survive in a democratic Constitution: for example, the fact that only the Commission is vested with the power to introduce legislation, and the fact that a unanimous vote is required for the Council to adopt an amendment.

A full-fledged Constitution would therefore require a complete overhaul of the rules of the game as they stand and would, moreover, mean a step in the dark. Will the European construction emerge strengthened? We cannot tell for certain.

Therefore this «constitutional» debate must be approached, not with misgivings - for anything that could strengthen the Union is welcome - but with a degree of caution, not seeking to force the complex reality that is Europe into an ill-fitting solution.

II - A EUROPEAN SECOND CHAMBER

At a time when the European Union is to see the greatest change of its history with enlargement, a European second chamber, with membership drawn from the national parliaments, would enable essential concerns to be addressed in the fields of democratisation and harmonious operation.

First of all, it **would give Europe a better foothold in each country**. Even today, the European institutions appear to be distant, indeed inaccessible, for the citizens of the fifteen member States. This feeling will be exacerbated once Europe is enlarged to twenty-five or thirty States. The role played by the members of the national parliaments in each country, that of intercessor, mediator, or even sometimes vector for complaint, cannot be played by European members of parliament today. If a second chamber were created, it would enable the link between the national parliaments and the European institutions, severed when the European Parliament began to be elected by universal direct suffrage in 1979, to be re-established.

Secondly, it **would associate smaller and larger States together more harmoniously in building Europe**. The Nice Council of Europe revealed the growing gap between the views of small and large States on the issue of EU institutions. The fear that they would no longer be represented on the Commission, their diminishing relative significance in the European Parliament, and the effect of re-weighting each country's voting rights caused most of the less-populated States in the Union to dig in their heels against the threat of domination by the larger States. Here again, the creation of a second chamber, in which all member States would have equal representation, would foster consensus between the member States.

Finally, it **would ensure better balance, more especially within the EU institutions**. At the present time, the only institution counterbalancing the Commission is the single chamber of the European Parliament, the weight of which has increased considerably in the institutional trilogy. It would be appropriate if it could dialogue not only with the European Parliament, but also with an assembly comprising members of national parliaments who, by virtue of their proximity to electors, would be better placed to reflect the demands or fears of these citizens of the fifteen member States. There would also be better balance between the Union and the member States due to **improved application of the principle of subsidiarity**. Current EU institutions, naturally inclined towards centralised solutions, would be counterbalanced by a second chamber more in favour of decentralisation because of the way it is composed.

Europe must not be left to the specialists alone. When it was made up of the members of parliament from each State, the European Parliament could boast many eminent representatives of the various political forces in each member State. Since election by universal direct suffrage was introduced, that composition has not been so easy to achieve, and the European Parliament now tends to be composed of members who deal with Europe and only Europe, all year long, thus losing contact with their own national politics. A second European chamber would no doubt foster the participation of eminent members of national parliaments in the European debate.

Therefore the European second chamber should be composed of **members of the national parliaments, each member State being represented by the same number of members**.

It would not vote Directives and rulings, but would play an essential role in applying the principle of subsidiarity. Thus, it would be empowered to scrutinise all draft EC laws and rules in the light of subsidiarity, and decide whether their implementation should be subject to judicial review by the European Court of Justice to ensure they meet the requirements of subsidiarity and proportionality.

It would also be **empowered to scrutinise European defence policy and common foreign policy, as well as judicial and internal issues**, that is to say, matters where, because inter-governmental policy prevails, the European Parliament cannot fully play its scrutinising role.

It could also hold **general discussions** on the future of the EU and hold yearly debates on **the state of the Union**, or even hold hearings for the European Central Bank to present its monetary policy.

The creation of a second European chamber could lead to simplification of European institutional architecture, such as the abolition of the Western European Union assembly which it would replace, and of the COSAC, which is held each half year with six members of the national parliaments in each member State and six members of the European Parliament.

The members of the second European chamber must remain members of their national parliaments first and foremost, and they must continue to participate fully in the activities of those chambers. Therefore, the **European second chamber should hold some six sessions per year, each session lasting one and a half days, preferably Mondays and Tuesday mornings. One in every three of these sessions could be held by the Parliament of the country presiding over the EU at that time**, as is currently the case for COSAC.

III. THE DIVISION OF POWER BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES

The various attempts to address this issue by making a comprehensive list of all the exclusive and all the shared powers, have hitherto failed to produce a really workable solution. This is why, opting for a more modest and pragmatic approach, we have chosen to examine a few distinct fields of Community action, in order to draw conclusions and identify guidelines in each of these fields, and limit the powers more precisely.

There was no question, it is true, of scrutinising the fields in which the EC acts one by one, to ascertain whether a better division of power could be arrived at. That would have been an impossible task. It was more worthwhile and more realistic to stick to a few more especially controversial fields, as examples. We therefore chose three fields: culture, the environment, and education. The three studies enabled us to draw more general conclusions.

a) It seems difficult to define blocs of power enabling clear allocation of some to the European Union and others to the member States.

The idea of defining blocs of power has often been defended on the grounds that the grey area of shared power needed to be reduced, and that the power exclusively vested in the Union and the power exclusively vested in the member States needed to be

more accurately described. This has often led to the conclusion that culture and education should be the exclusive concern of the member States.

The clarity of this vision has great appeal, but our examination of educational and cultural issues showed us that the **EC truly has responsibilities in these fields :**

- it must intervene actively in culture to encourage exchanges between member States, translations, and circulation of artists and works. This action is the replication within Europe of our defence of the “cultural exception” vis-à-vis the outside world ;

- in education, it must act to encourage large scale development of student and teacher mobility, as well as multilingualism .

Thus, even in fields that some might envisage excluding completely from the Community’s scope of power, it appears that in fact EC intervention is most desirable, not to say indispensable, if certain goals are to be attained.

Therefore the first lesson to be drawn from our work is that **an approach which divides power into blocs is not suitable for building Europe.** We cannot hope to draw a line between the powers of the European Union and those of the member States, a construction which in legal terms would be called “*dual federalism*”. The European construction is more like “*co-operative federalism*”, in which powers are widely shared.

This leads us to the observation that we should have no illusions as to simplification of treaties. It is one of the goals of the Declaration of Nice, and of course, we all wish treaties to be as simple as possible. But insofar as we cannot hope to define blocs of power, we must acknowledge that it will not be possible to simplify the treaties all that much.

b) the drafting of the treaties is not satisfactory.

EC interventions are only useful for certain purposes. This is the case for education and culture, and it is also true for environmental issues. EC intervention is needed to lay down common general rules to combat atmospheric and water pollution, or waste management; on the other hand, in other fields, such as seaside resort pollution, the preservation of sand dunes or the rules governing zoos, EC intervention seems of far more dubious value.

Unfortunately, the treaties are drafted in such vague terms that no real priorities are pinpointed, and they can serve as a basis for virtually any type of action. The result is that **EC action tends to become diffuse and often, it results in a sparse scattering of resources with no real efficacy.** In the three large fields we have examined, there are EC programmes of undoubted usefulness but of limited means, because they share funding with other programmes of less demonstrable usefulness.

That led us to the conclusion that **certain priorities should be emphasised more in the actual wording of the treaties.** They are the only guidelines we have for defining the roles of each player. The treaties should set goals in order of importance instead of merely juxtaposing them.

c) The principle of subsidiarity will only be applied in the long term if a specific organisation is created to oversee that application.

Applied properly, this principle is not intended to hinder EC action. It is true that it prevents the EC from seeking to do itself what the member States can do as well themselves. But at the same time, it helps the EC to be more efficient by concentrating its efforts on its true business, for which it is the best placed.

However, not only does the EC not concentrate fully on its own business, but in some cases it implements actions that could perfectly well be done by the member States or local authorities. The EC subsidises orchestras, co-funds building renovation, intends to regulate the installing of water meters, is setting up programmes to improve urban districts, etc. Of course, these actions might be perfectly right in themselves, but there is no benefit to be gained from managing them from Brussels.

It would be better to concentrate European action on areas where it could reach objectives the member States or their local authorities cannot.

More careful drafting of the treaties could certainly help in this. However, it would not be enough to stem the growing lack of coherence in EC interventions, since this trend results from the **total lack of safeguards in the European institutions.**

That is why an **organisation comprising national members of parliament**, of whatever name, would be an excellent thing, since one of its duties could be to be a watchdog for subsidiarity issues.