THE FUTURE OF THE EUROPEAN UNION
& PROGRESS OF THE EUROPEAN CONVENTION

SATURDAY 19TH OCTOBER 2002 SESSIONS
(tape transcription with slight editing)

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At the invitation of Antonio Garrigues Walker, European Deputy Chairman, the Minister of Foreign Affairs of Spain, ANA PALACIO, addressed the Commission on Europe’s Future.

The Minister of Foreign Affairs highlighted the following points:

• **ON EUROPE**

Europe is not just about having “faith in it”: it is also a possibility and a project. Belonging to a country that came “late into Europe”, being “European” means more than a challenge: it is a vital compromise. Spain therefore feels closer to the new entrant members. This historic background contributed to Spain’s greater involvement in the European debate where, for example, originated the concept of “European citizenship” considered then as a Trojan Horse in the Treaty but since filled in. Spain also made clear to its European partners that terrorism was not just a domestic but also a EU-wide issue. Hence, coming late into the Union does not in itself represent a handicap when drawing up our future common path.
Europe is at a turning point challenged by both enhancement and enlargement. Europe cannot therefore be “inward looking”: European identity will conform in the future to its geographic span. This will allow Europe to be seen by the outside world as truly “European”. Hence, in order to tackle the above challenges, the Convention must be anchored to reality.

The big debate will be on how to create a common European voice, whether for the outside world or in justice and security affairs, including on immigration issues. The questions raised by the globalisation process carry too an economist approach and response: it is no longer sufficient enough, especially after September 11th. We witness today a return of the Law, values and politics which are where the real challenges lie: we are groping for a legal system crucial enough to organise international relations. Here, combating poverty and terrorism will be high on the international agenda. The 1990’s showed progressive awareness of these issues especially with regards to the definition of the new “adversaries”.

Turning to European-American relations, the Minister noted growing anti-American feelings in Europe’s public opinions fuelled by demagogic arguments such as on Iraq and the International Criminal Court (ICC). Europe strongly wants to continue to have good relations with the United States and to influence the U.S.: even if it may not yet have all the tools of power handy, it still carries some authority over U.S. opinion-makers. Internal contradictions within and over the Atlantic harm both partners: in effect, Europe cannot ask the U.S. to be the “policeman of the world” and then not let it become so! Europe must now decide what type of defence it wishes to build. It must also dispel the idea that the U.S. is a “bloc”: the important debate on how the 21st Century will be governed is also an internal American debate characterized by strong contradictions between unilateralists and multilateralists: on the one hand, the “isolationists” wanted to be “alone” in the world before September 11th; now they want to “go it alone” in the world! On the other hand, a portion of the U.S. public opinion (to be encouraged by Europe) has always been multilateralist and open to the world.

On Iraq, European public opinion should have given greater attention to President Bush’s multilateralist speech at the UN General Assembly where he underlined the importance of the United Nations and announced his country’s return to UNESCO. But Europe continues with its self-fulfilling prophecy that the U.S. is “unilateralist”! The ICC is another important European collective project. Here again, Europe had no clear position and was divided on America’s concerns but it finally reached for common guidelines which are now used by other countries worldwide. U.S. concerns are realistic (i.e. the fear of politically motivated trials against its military personnel and diplomats because of their American citizenship). As America inside the ICC is important, Europe’s sensible guidelines should be accepted by all. To sum up, more unites than separates the United States from Europe: both stand for the same values, the rule of law, democracy, human rights this without loosing critical attitudes such as on the death penalty.

When defining Europe in the world, our Latin American ally has to be highlighted. Creating a critical mass within the UN system where the new challenges of the 21st century should and must be solved is important. Most Latin American countries are now categorised as “middle income countries” -- no longer as “developing countries”, but development assistance from Europe is still required.
“Wider Europe” reaches out -- beyond enlargement to Central and Eastern Europe -- to its Mediterranean frontiers. To keep the European project alive, well and sound, it must search for equilibrium. The European unification process including to its Eastern enlargement should not be carried out at the expense of Europe’s South.

Where is Europe? 27 countries plus eventually 1 is the new definition of Europe. This new enlargement will be performed in two phases: now the ten candidate countries to be followed later by two additional countries, Bulgaria and Romania. Who are we? “Human Rights” are carried on Europe’s distinctive banner when addressing world issues. What are we? A success story when looking at the achievements of the past 50 years, exemplified by the Euro, with a force of creativity bringing lots of new ideas to the table: Europe is an “innovative old continent” whatever its aging population.

• ON THE CONVENTION

In many ways, the Convention is a “Revolution”: there will be a “before” and an “after” on how international law is created. For the first time in diplomatic history, Treaties are longer prepared and discussed “behind closed doors by men in dark suits!” The Conventional method will be surely followed in the future for the elaboration of other international Treaties.

The Convention has already produced results at the symbolic level: the word “Constitution” -- a “dirty word” only a year ago, is now widely accepted even by the United Kingdom! The Convention is a Constituent process but not a Constituent assembly -- which it should not become, a point also well defended by its President Valéry Giscard d’Estaing who remains prudent, realistic and pragmatic with regards to the outcome of the Convention.

The Constitutional Treaty to be proposed by the Convention to the Inter-governmental Conference (IGC) should be unified, clarified and simplified but should remain realistic. The current Treaties, as drafted, simply highlight the complications that need to be taken into account when addressing Europe’s complex unification process: great care should be given when “simplifying” the new Treaty. The Treaty will consist of a Preamble, a first part to be a classical Constitutional chapter with issues on rights and liberties, institutions and competences, and a second part taking the current Treaties as they stand today however clarified. An “exit clause” needs to be added allowing for further EU integration without being vetoed by any Member State. This Treaty will give a single juridical personality to the European Union and must also preserve the internal market, permit advancement on home and justice affairs, and tackle the area of a Common Foreign and Security Policy (CFSP) where the Community method is not well adapted.

Concluding on the institutions, the Minister underlined the need of preserving a strong Commission but by avoiding phantasmagoric federalist models. The Commission must uphold its quasi-jurisdictional competences (such as in the Competition field). A politicised Commission must also be avoided: The Spanish Government does not favour the election of the President of the Commission by the European Parliament as it would lead to a different inter-institutional equilibrium.
Finally, turning to the Council, Ana Palacio stressed that the Council’s *modus operandi* must be reformed especially within a future Europe of 25 Members: the six-months rotation period of the *Presidency* should be changed. Here, the Spanish Government is open to any solution as long as it is linked to real political will and desire of the Union to act together in reaching for a *truly common* foreign and security policy. Under such circumstances, ideas proposed on a 2_ or 5 years’ Presidency would be worth exploring.

The Chairman invited **GEORGE VASSILIOUT** to present the findings of his *European Questionnaire on Europe’s institutional future* forwarded to the Members before the summer recess, a summary of which is attached.

**Opening Remarks by SIR JOHN KERR**

“Does anybody know the name of the man who was Secretary General of the Convention of Philadelphia in 1787? The Secretary General was Charles Jackson who came from Caroline and achieved, in the views of Madison and Hamilton, a very good job with total anonymity. His own views are not recorded anywhere and he went back to Caroline after a success in 1787 and he is my right model: *anonymity*. Do not expect any interest from me: I am « Charles Jackson ». I am not Madison or Hamilton or Franklin. Secondly, I am a Kerr. The Kerr’s are historically quite the most unpleasant of the border clans in Scotland who lived by stealing each other’s cattle! Their motto was “sero set serio” which they got from their habit of remaining out of sight behind the hills until it was clear who was going to win the battle and then they joined the winning team! “Sero set serio” means “late but in earnest”. So do not expect anything much from me about until the Convention is just over, when I will reveal to you all the things they did well: something to do with the Kerr clan! And I should be in “earnest” about any praise going out of sight if there is not any!

**WHY A CONVENTION?**

There is a *mechanistic* answer because the process that led to the Amsterdam and to the Nice Treaties clearly is not working very well; Because there was an example of a Convention that did work well — the Convention which created the Charter of the Fundamental Rights; and because the European Council felt it have to give this task to somebody else.

There is a *conceptual* answer which is to do with enlargement, to do with a feeling that even for the present membership the institutions are not working very well, that they seem remote, that there is an alienation which needs to be overcome, that there is a complexity in the way they work which should be addressed. This probably will not be addressed, as referred to by Minister Ana Palacio, by traditional diplomatic methods. So one ought to have a conventional method which is open. This is a *prescriptive* answer on “Why a Convention?”

The European Council in Laeken set about 50 specific questions which the Convention should look at and basically the eight pages questionnaire can be summed up as an instruction to try to simplify and to rationalise the process, to try to make it more self-explanatory and less threatening, to try to classify, to categorise, to simplify the products, the laws and to try to
encapsulate them in a clearer Treaty. President Havel spoke of the needs for a Treaty which could be taught in secondary schools, of which I am fully in favour. What struck me when I worked and lived in the United States as an Ambassador is that my children, who were going to American schools, were being taught the American Constitution when they were age 10 and they consequently understood the American Constitution. Anybody who tries to teach a 10 years old the 145 pages of the operating Treaties which are the Constitution of the European Union would fail!

HOW IS THE CONVENTION PROCEEDING?

As rapidly as you would expect from a body that consists of 211 politicians – 175 of them from national capitals, 32 from the European Parliament, 4 from the Commission. 75% of those coming from our capitals have never been inside nor served in the Council, the Commission or the European Parliament. So there was a learning process in the first six months called the “phase d’écoute”, a phase of listening to each other and listening to the outside world. The rubrics studied during these first 6 months focused all on “what should we be doing?” On “what is the demand of Europe?” On “what is it for?”

The second phase was implemented six months later, in which -- in addition to regular plenary meetings -- we were organised in ten Working Groups looking each at a particular subject matter and considering how best can we do these tasks.

Only in the third phase, so called the negotiation phase, which will be starting early in the New Year, shall we be looking at actual potential legal texts. Presently we are working on reports from the Working Groups.

We have elaborated, through the conventional plenary sessions, a response to a first clear public demand about the principle of subsidiarity. We have achieved a consensus in the Convention that there shall be a new mechanism to make sense of the application of the principle of subsidiarity, which creeps into the Treaty of Maastricht but without any enforcement rule for trying to ensure that it is respected. What we have concluded is that there shall be such a mechanism, but no new institutions designed to look after subsidiarity. This mechanism shall be embedded in the national Parliaments. It consists of a quick reaction, a system whereby Parliaments would be entitled when they first see a proposal -- without delaying the legislation process -- to respond within six week and say whether they think that this issue is potentially a breach of subsidiarity: the Commission will then take note of their views. Although lots of more work needs to be undertaken on this mechanism, it is very important that it should have two triggering moments: it is correct that it should be triggered when a proposal arises from the Commission, but history shows that more breaches of subsidiarity arise within the Council. So, it seems to me right that there should be a second check before the end of the process, perhaps just before the conciliation stage. What would this achieve? Probably not a great deal but in very few cases, should the trigger be activated, it imposes psychologically on the Member States’ Parliaments the duty to be aware of what is going on. Much too often one finds national Parliaments claiming ‘they knew
nothing about all of this’ because implementing legislation turns up usually a couple of years after the original legislation passed through the Council.

A second conclusion that we very clearly have reached is that the EU can have a single legal personality: this may not seem a very big deal but at present we have our ‘European Community’ that has a legal personality, and we have a ‘European Union’ that is not sure if it has a legal personality. But if the Union does have one, it is a separate legal personality from that of the Community. If we are clear that we have a single legal personality, then we could have a Single Treaty: there are no reasons anymore to have a Union Treaty and a Community Treaty. We could put our Treaties together and that is what we would do. We could then, if we choose, separate them again and put the constitutional content at the top of the Treaty or in a separate Treaty. It seems clear that it has to be separated even if it is in the same Treaty: it has to be dominant up at the front thus both parts would have the force of law. It has to be set up at the front because it has to be written in a way that satisfies President Havel’s request: it has to be written in very clear language which can be taught to children in schools.

The Praesidium will shortly produce for the Convention a draft skeleton (see attached) of what we think the Treaty might look like: if it is attacked from all sides, then I should be delighted! If it is attacked by those who wish to go farther and faster as well as by those who wish to go slowly or backwards, then we probably got it about right in putting out a first draft!

One aspect that has been very good in the Convention has been the effect of the “phase d’écoute” in reducing the amount of polarised debate and in getting rid of false dichotomises.

The first efficiency is based on transparency. It used to be argued ten years ago that it was very important to keep the doors ‘closed’ because otherwise you would not get a deal. I would now clearly predict that the Convention will recommend that the Council should have completely different roles for legislating and for decision-taking. And when the Council is legislating, there its works should at all stages be undertaken in public. There is something offensive about legislating behind closed doors. Of course, you have to draw the distinction very clearly when the Council is acting like a national cabinet: there and then, it needs to operate in secret. But legislation will be done public. That false dichotomy in the Convention debate will thus disappear.

Second, picking-up on George Vassiliou: the dichotomy between the Community method and the intergovernmental method is a false dichotomy: I do not believe that there is a ‘single community method’ or a ‘single intergovernmental method’ in the way the show operates at the moment. I do not think Jean Monnet thought there would be either as he stated in 1976: “the purpose of the community was confined to the area of solidarity in surrounding the treaties”. While I always believe that these areas of solidarity will call for others, we always knew that their progress would hold at the boundaries where political power begins. At that point it would be necessary to re-invent, and this is what the Convention is going to try to do.

IS THERE IS ‘SINGLE COMMUNITY METHOD’?

What would its characteristics be? Sole power of proposals to the Commission, in which I strongly believe; oversight by the Court of Justice; a role for the European Parliament plus
qualified majority voting. If you look at Economic and Monetary Union, these are areas of economic policy where none of these principles will apply. So it is clear that there are at least two methods, in fact there are many more forms of ‘Community methods’.

Take the other end of the spectrum such as the PESC (CFSP): there are in the Treaties provisions for four of these elements to apply to aspects of common foreign and security policy. Taking this spectrum, at one end there is Mario Monti’s territory, therefore freedom, competition’s rules, economic policy, where one clearly needs the very hardest, purest, form of ‘community method’. At the other end, I would argue, you have defence when I find it very hard to see how one can move very far from what would be a pretty pure ‘intergovernmental method’ given their decisions of sending men in harms ways: decisions on deployment of military forces will tend to be national decisions for a considerable time to come.

There will be moves as a result of the Convention across that spectrum. Quite a lot that was at Maastricht put into the Third Pillar has since moved already into a more community form of decision-taking. More will move in the Convention. We should not try to think in terms of a sharp choice, in black and white. What we will need to decide is ‘what is the most efficient and legitimate way of decision-taking on the increasing range of subjects that are the subjects of Union decisions?’ It is important that Union decisions are taken in a single institutional framework, which seems to me to be the key. Even if the rules of the game are slightly different for different issues, for real reasons, all the players are involved. There is a role for all three institutions. I would argue too that it is dangerous to think in zero-sum games about the roles of the institutions. I cannot actually speak for the Convention and on what the Convention thinks about the institutions because it has not yet spoken about the institutions.

The first question is ‘What should Europe be doing? What is the demand?’ This Spring question has been followed by the Autumn question: ‘How should it be done?’ It is only in the New Year that we come to: ‘Who should do it?’

Of course I cannot get into this territory at all because I am “Charles Jackson”, therefore I have no views of my own. But if I were to say something in this area, probably what I would say would be a like this. Peter Sutherland is absolutely right in his Trilateral Memorandum (attached) when he says that institutional balance really matters. However, I disagree with him because I see traces of the zero-sum heresy. I believe that all three institutions are under threat and all three institutions need to be strengthened: none of them loose if the whole institutional structure is strengthened and works better -- and that what we should try to do.

Why do I say ‘under threat?’ The Commission is under serious attacks in a way I would not have expected. I am surprised to see serious attacks on the Commission from major founding Member States, States of the original Six attacking the central roles of the Commission. The European Parliament has demonstrated that -- when given more responsibility -- it acts more responsibly: I think it reasonable for it to be given more responsibility. On the other hand, I think the Council is becoming less and less effective, and strikingly so. I followed the General Affairs Council, the EcoFin Council for twenty years now. Certainly in the case of the GAC, it almost stopped working at all! I was astonished by the decision of our European Trilateral Membership (as recorded in the survey document and in the summary document) that “as to the General Affairs Council, it is currently dealing with too many issues and should likewise focus its agenda on
foreign and security matters”. I think that is the complete reverse of the truth: it has abandoned its role as General Affairs Council in order to do only foreign affairs. There is no General Affairs Council these days. The old functions of the GAC in discussing financial perspectives, preparing budgetary packages (such as “Delors I or II”), implementing agricultural reforms (there was a serious agricultural reform in the first 1988 Delors Package), reviewing the Structural Funds or dealing with Spain over these funds are no longer assumed. Then, the Uruguay Round was also tended by Foreign Ministers: now, Trade Ministers meet. As for other functions -- looking across the board and keeping an eye on the Environment or the Energy Councils -- they try to ensure what the European Council wanted to get done: the General Affairs Council simply abdicated.

One of the reasons why Amsterdam and Nice were unsatisfactory was because the GAC in the IGCs never attempted to do what it did do for the Single European Act and for Maastricht. EcoFin did, in many ways, do rather better than Maastricht. There was a lack of negotiations at ministerial level. Why? Because the General Affairs Council no longer exists. I would say one crucial thing you need to do is to look at the formations of the Council, and tell the Foreign Ministers that if they are interested in foreign affairs to do foreign affairs. But, we need something separate that is a truly working General Affairs Council.

**Predictions**

I would say that there are risks at all that the Commission becomes simply the ‘executive bureaucracy’ carrying out the will of the Parliament and of the Council. That would be dreadful if it were to happen. The Convention is sensible and will have to see that we need a strong independent Commission, the guardian of the common interest -- not the guardian of the interest of any particular group or member state, whether large or small. It should also have a strengthened Presidency and I am not 100% certain that the best way to strengthen its President is to give the European Parliament more of a say over the choice of its President. (I do not know about that and, as I said, I cannot express any views because I am only Charles Jackson and the Convention has not discussed it). For the European Parliament, my prediction would be a considerable extension of co-decisions. Co-decision was originally thought of in the Council as extraordinary complex and likely to delay work rather well. I think there will be more co-decisions on legislation. If I was allowed a personal aspiration (more than a prediction), I would say that I very much hope that the European Parliament would be allowed to have a say on the whole of the Community budget. I find it absurd that 50% of the Community budget is still spent on agricultural subsidies. I find it equally absurd that the European Parliament is not entitled to a view on the agricultural part of the budget. I also would hope (though this will not come from the Convention) that the stress in the Convention on democratic legitimacy might lead things in this proper direction, that people would think about whether the list system for elections to the European Parliament is really right. It is a fundamental principle of direct participatory representative democracy that you know to whom you speak to, but an awful lot of citizens in Europe do not know who their MEPs are! The constituency system or regional system where the member is identified and locally known would make a major improvement in the health and strength of the European Parliament.

As for the Council, my firm predictions are a split between its legislation and decision-taking functions: different rules for two quite different games. And an aspiration that a Presidency system for the Council that really works. Here, I am pleased to see that Trilateral Commission
members believe that the rotation system has had its day. I am sorry that they have not produced
any particularly clear recipe for replacement. I have one because I am “Charles Jackson” and a
Kerr “sero set serio”. But I think the elements that might find a place in a solution would be an
effective and reconstructed chair of the General Affairs Council where Javier Solana or his
successor is Chairman of the Foreign Affairs Council: that is a prediction by the way which I
think is bound to happen. Some elements from the Swedish team during its EU Presidency ideas
seem to me to be likely to happen such as maybe picking up something from NATO where the
President of the North Atlantic Council rotates. The NATO meeting is of course presided over by
the Secretary General but the meeting takes place in capitals on an annual rotation where there is
somebody there whose job is to say ‘hello and give the dinner’. An element of that could perhaps
find a place. This would be an area where nobody wins but I hope there will be a change and I
see some sorts of packages but I do not think anybody’s proposals is likely to win all supports, so
we need some sort of compromise packages at the end of the day.

TIMING OF THE CONVENTION

I should say a quick word about timing: our work will be finished by next Summer. We will, I
hope, hit Peter Sutherland’s warning that the greater the ambiguity of the Convention’s
conclusions, the greater the scope for delays in the IGC. We will try to be reasonably clear.

Two points: First, given that the candidate countries have played a full role in the Convention
and given that, I hope, ten of them will have signed accession treaties before the IGC starts, this
IGC door and at least window will have to be opened for them, even although they presumably
will not yet be full members of the European Union. Second, if the Convention has produced
something reasonably respectable which the Member States think is a good basis and which they
can use, will the Convention method be here to stay and will it be used for all Treaty changes in
the future? Ana Palacio, judging by what she said this morning, believes so. She may well be
right. On the other hand, it is possible that the Convention method might transmute into
something slightly different.

There is a proposal on the table in the Convention for a Congress (of the Peoples of Europe)
which would meet annually, composed of members of National Parliaments and members of the
European Parliament, which might have a role in looking at Treaty amendments, in considering
appointments, in looking at the State of the Union, but it would have clearly no legislative role. It
must not be a rival to the European Parliament. But a role for such a Congress could perhaps be
in relation to accession questions. Would we be in the extraordinary situation we are in Western
Europe now -- on the current enlargement -- where deep basic questions about enlargement are
being asked in certain Member States in the very last stages of the negotiation, where the Irish
are having to re-run today a referendum, where French public opinion is extremely alarmed about
enlargement!? Would we be in that state if there had been some serious public democratic
debates about enlargement at the start when the first five applications were received, when the
second five applications were received, and at various stages in the process? Are we not doing
too much behind closed doors? If so, is there a case for a Congress? I do not know the answer to
that and if I did know it, I would not tell you because I am only Charles Jackson, I am not
Madison, I am John Kerr”.

9
GILES MERRITT

The Philadelphia Convention has been often perceived as a role model for the European Convention. We tend to forget that the Philadelphia Convention and the resulting Constitution were very unpopular, producing a lot of political tensions and rioting: the Founding Fathers knew that that was going to be the case. So the debates were conducted in secret. Armed guards were posted around the Philadelphia Convention to keep the public out. The problem in Europe is that nobody knows about its Convention. Two questions: How important is it to fire public imagination in Europe, and, secondly, whose job is it to do so? How can we actually stimulate interest if we are entering a new chapter in the EU? How can we create a new culture of communication between Brussels and the rest of Europe?

DANIEL JANSSEN

Why do some industrialists like me and within the European Round Table (ERT) have a strong view on EU Governance, on the future of Europe, and why did the ERT decide to enter this debate a year ago (see attached)? When one is an industrialist, one fights since twenty years for higher competitiveness around the world with American and Asian firms. Despite progress, the competitiveness of Europe has been diminishing regularly compared to America in the last ten years. GNP growth per capita is declining compared to America. We industrialists are therefore in a situation where we continue to struggle but with a feeling that, in this battle, we are not being supported. Unemployment is much higher in Europe than in the U.S.: it is not only an economic issue but it also carries social aspects. When we look around us over the last years, we see the fantastic un-ability of decision-making at European level such as on the take-over Directives, a discussion which has been going on for over thirteen years; on community patents after six years of promises without any solution in view! In addition, very poor flexibility in national labour markets is likewise another example (such as in Germany), or the fabulous delays of the Lisbon Process decided only two and a half years ago! Despite the fact that we industrialists have supported strongly and work for the restructuring in/of Europe -- and we continue to admire the work done at the Commission level for the Internal Market, on competition, which are fields of great success -- we still have difficulties.

The question as an industrialist is that the processes work well with the Commission and from which – due to close cooperation – we very often receive answers, deliverance and efficiency. This close working relationship has now to go one step further up i.e. with the Council of Ministers or even at the European Summit levels. But, at these levels, it usually takes three years to receive an answer (if ever), or we receive a wonderful “incantation” (quoting Jacques Delors), wonderful speeches at the Summits, but no factual deliverance within clear decision-making processes. Indeed, we consider that there should be a tremendous change. That is why the ERT contributions’ strongly support not only the present role of the Commission but also a stronger role for the Commission. My question is: Is it possible to have a stronger Commission if we do not even have an agreement at political level on whether the President of the Commission is to be
reinforced? We know that when we work with the different Commissioners, a “conductor” of the Commission’s work remains a necessity.

OTTO LAMBSDORFF

Daniel Janssen asks for a stronger Commission and Sir John Kerr stressed that a stronger Commission should represent the general interest and not special interests of specific member countries. But, what is the reality? Let’s look for example at the take-over guidelines: the two German Commissioners ‘commanded’ by the German Government in Berlin work against the take-over guidelines! Another example among so many: coal subsidies where the German Government is pushing the Commission, with horse trading. The bargain at the end of the day is that the German Government accepts that tax relief is given to entrepreneurs in a totally different branch such as in the transport sector! So what do we understand by a “strengthened Commission”? I am afraid that a stronger President of the Commission will not solve the problem, with one exception: how can one set up the appropriate mechanism in finding the proper people. The most beautiful constitutions, the most beautiful rules, the most beautiful directives, if you have the wrong people in place, if these people are not independent from their National Governments, then, you can have the Commission as “strong” as you want: it does not work. That is what we experienced in the last few years.

CHRISTOPHER PATTEN

Nobody has phoned me up and told me what to do! I agree with those who think that the Convention has been a remarkable success and I hope it is so successful as to prevent the IGC diluting its ideas at the end of the day in a sort of disagreeable and demeaning haggle that we saw at Nice. I agree with ‘Charles Jackson’ that looking at the relationship between the various institutions is not necessarily a zero-sum game. You can put forward proposals for Treaty changes without weakening one but strengthening all institutions.

But I want to focus on one particular idea relating to the Council. I agree that the Council should legislate in the open, leaving in the process the North Korean “Parliament” as the last one that legislates in secret! I agree that six months presidencies are ridiculous. I think that there is a good case for Councils being able to elect their own President (there is a slightly less good case for Bureau presidencies). John Kerr is entirely right about the General Affairs Council: Foreign Ministers insist that they are their governments’ representatives on the GAC providing that they do not have to turn up to discuss anything which is not foreign policy. It is sensible to separate External Relations from the GAC. And it is wholly sensible to make the High Representative the President of the External Relations Council.

What I am a bit suspicious about is the proposal to have a full-time President of the Council. I cannot see how John Kerr’s argument works that the ideas that the Convention is considering will not actually result in one or the other institution being weakened if you have a full-time President of the Council. I cannot see how you have a full-time President of the Council without, in effect, converting the Commission into an Agency role, or a Secretariat or a Cabinet Office for this full-time President. But there is another point which suggests a degree of political self-delusion which the last few weeks should have made manifest. As I understand it, the argument is that you need a full-time President of the Council so that, whereas Javier Solana talks to Colin Powell, the full-
time President of the European Council would not talk to President Bush? Is it conceivable that in the last few weeks, President Chirac, Mr. Blair, Chancellor Schroeder, Mr. Aznar would have been happy for the HighRep to go to Washington to tell President Bush what the European view was on Iraq! So I hope we can look at other ways of strengthening the Presidency and leave that idea where it is started.

The other point which I wanted to make is to agree very strongly to what John Kerr has said about the Community method and inter-governmentalism. I strongly suspect that this will be demonstrated by the Dehaene Working Group on External Relations in the Convention. I think that it is clear that what we call soft power in external relations can -- and by and large should -- be determined by the Community methods. Just as it seems clear to me that defence and security policies inevitably are going to be determined much more by the intergovernmental methods, and quite probably so because security policy goes right to the heart of what it means to be a member of Nation-State. It would be a long time before Commissioners are required to take decisions on whether or not people should risk their lives. But it does seem to me that this is an area where the real issues are not institutional at all. The real thing that answers back in external relations policies, the real thing which prevents us from punching our weight in the world is not what I think is called the “sub-optimal architecture” but political will, and not just political will in terms of security and spending more on defence, but political will for example in taking the leadership role on international trade, and development issues. How can we take a lead on these issues without reforming the Common Agricultural Policy? Political will is much more important in that sector than mere institutional changes.

Response from Sir John Kerr

Giles Merritt’s point about secrecy: I envy ‘Charles Jackson’ a lot when they were locked-up in Philadelphia until they reached agreement! We in Europe have to do it transparently, which is the way it should be done. Whose job is it to interest the public more? It is not as bad as shown in the earlier Eurobarometer polls with 28% Europeans not knowing about the Convention, and 22% not trusting it: these polls were taken within a month’s launch of the Convention. I hope that after eight months we are slightly more well known. It is the duty of the Convention members to make sure what they are saying and proposing are based on views that are generally held within their constituencies. It is also a job to which President Giscard d’Estaing attaches considerable personal importance: if we were to reach a consensus on a document, there is no doubt that he will go out selling it which would make it more difficult for the IGC to tear it up or ignore it.

On Daniel Janssen’s question which raises a question in my mind within the Convention: should the Lisbon Declaration be put into the Treaty? In my view “yes”, because there should be a degree of discipline attached to what is a deliberately undisciplined process or peer pressure. But there is no Convention answer to that question. In the Economic Governance Working Group, I think that probably Daniel Janssen will be unimpressed by the product: very few changes will be recommended. In the monetary area likewise: absolutely no changes will be recommended which is probably correct. In the economic policy area, there will be very little: there will be a “left/right” debate in the Convention about whether we should be saying something serious about social policy.
On Count Lambsdorff’s question, it is crucially and really important that the Commission should re-establish its credibility as distinct and separate from national instructions. It is partly the Commission’s fault. If the Commission says that it is the “guardian of the interest of the small member states”, the more so will the applicant countries find it important to have their own Commissioners. Whatever the oath says, they will feel that having got their Commissioner, he must be useful for something: so let’s ring him up! This is a very dangerous tendency. I think it is a great pity that the Commission has got as big as it is now. I hope very much that it can be reduced below the number of Member States but to get there, another process is needed. You cannot simply say “we are going to have a rotation”: that will not work.

I agree with those who say: “Let the position of the President of the Commission be enhanced and give the President of the Commission a bigger say in the adoption of his team”. The only quality which should count is not nationality but competence to do a particular job. There should be only as many Commissioners as they are real jobs to be filled. You would still need to have some democratic check once you have chosen the person and the President had chosen his team. If they did not amount to one for each nationality, we would need some EU-level democratic check. It would have to be a confirmation process. I would therefore enhance the power of the President, and reduce the number of Commissioners.

On Chris Patten’s question about the Presidency of the European Council: I would not make the case for a strengthened Presidency in the European Council on the Kissinger telephone question call: “who speaks to the President?” (I agree with Chris Patten on that argument).

Daniel Janssen mentioned the inefficiency and delays within the European Council. The European Council has become important partly because there is no working General Affairs Council. There needs to be an efficient organisation of a GAC within the European Council. It is quite difficult to say that we know for a fact that that is a part-time job; that cannot be done by somebody who is also running a large country. Small Member States are probably better at this than larger Member States when their turn of the EU Presidency comes. It is difficult to put running a country ‘on hold’, you cannot guarantee to be able to do it. There is a case for treating the job of making the European Council work more coherently which is more or less a full-time job. I do not believe that the requirement for that would be diminished if one had established a greater status and authority for the President of the Commission. It is quite true that a very powerful President of the Commission can help the European Council ‘get it right’, but I do not think that the European Council will accept as its Chairman the President of the Commission, but you do have to find an extra person.

PETER SUTHERLAND

On this issue of Commissioners and their independence, all take an oath that they will put Europe before their countries. As Otto Lambsdorff correctly pointed out, this is honoured in the breach rather than in anything else! But it must also be said that in my experience, where Commissioners nakedly advance national interests on instructions from their capitals, they are invariably beaten in the Commission. They also end up loosing credibility rather then gaining. If you did not have Commissioners appointed by each member country, that would reinforce the moral obligation to put the Community method first.
A footnote on the question of the Presidency: one forgets that if present plans were carried out, one should not forget that the European Parliament could vote censure and our colleague Jacques Santer in this room saw the bullet fly near him. So you do have a centre of legitimacy and political power not to be underestimated. The way the question of the Presidency is tackled today is a non-starter. Two quotations relevant to what we are discussing: Jean Monnet (who had to die before being brought to the Panthéon thus shedding his anonymity!) in the very last sentence of his Mémoires written in 1975 wrote that “the European Community we created is not an end in itself. The Nations of the past are no longer providing the framework within which the present problems can be solved, and the Community itself is only one step towards the type of organisation of tomorrow’s world”. I would like to add to the Monnet quotation President Bush’s speech addressing the 45th Session of the U.N. General Assembly in New York on October 1st, 1990: “I see a world building on the new emerging model of European unity, not just Europe but the whole world, whole and free”. In other words what the Convention is doing today is relevant not only for Europe which is at the most crucial crossroads, but could be an outstanding contribution to the way we are going to tackle the relationship between the United States and the United Nations and how we are going to transform this UN into a true “international community” deserving the world.

Last remark: everybody is quoting the community method. I had the privilege of being associated with that body since 1950 and something seems to be forgotten: the philosophical approach to the very difficult task which is yours (John Kerr) was never to build a ‘federal super-state’; we had many conflicts with Federalist movements. Jean Monnet who was criticized tried to find a compromise between the existing National sovereignties and the emerging European sovereignty. These were two elements in different evolutionary phases which led to the institutional balance which characterizes today’s EU. In other words, the Community method is already a compromise. Going beyond this compromise might endanger the remarkable achievements we made half-a-century ago. There are two sets of legitimacy and the institutional framework organises a constant dialogue between both. In other words, one represents the common interest - this is the Commission where you need only to appoint its President (as in many organisations with one ‘boss’) who decides on the type of team he wants to work with. But in order to balance this team and in order in particular to give to smaller countries a say and to reassure them that their national sovereignties are not going to be ignored by the larger ones, a system of veto within the Council of Ministers must be introduced -- not be the veto as it is used today, but a veto which has to be justified in front of the European Parliament in a public debate. This as a suggestion (for details, please refer to annexe). The Community method is thus the pragmatic recognition that there is a respect for national sovereignties and that we have common interests which require to be tackled together.

Three short remarks: First, concerning the European Parliament on whether or not there should be a different electoral system. I was rapporteur for the EP in the 1970s on European elections and remember what type of uniform system should be set up with these elections remaining free, democratic and general. Is this not the area where the Convention should start with the subsidiarity principle and leave this item to the member states? I cannot imagine any national
parliament will let its national election system be changed through the back door of a Pan-European election system.

My second remark is on the GAC. Has the Convention thought through a pattern whereby the Presidents of the Councils (e.g. the agricultural council) could be President for two years coming from a different country than the one in the EU Chair? This pattern of rotation for each member country in the different sector Councils could also be applied to the higher civil service such as the COREPER having different a Chairman de-linked from the current EU Presidency.

My third question is: Will the Convention conclude its work before the accession of the new members without their taking part in all the final work? And, will the final draft be decided in public or will it be done in secrecy until the final result is known on a “take it or leave it” basis? I would advise that long before a public debate be held on the draft of the Convention’s constitutional treaty.

VLADIMIR DLOUHY

Rigidities are one of the most serious and important European problems of the day. We must ensure the increase of competitiveness of the European economy in the long run vis-à-vis the United States and Asia. As a citizen of one of the EU candidate countries, we face a referendum next year on EU accession. Listening into today’s institutional debate on GAC, IGC, etc., how can a good citizen respond “yes” to the question posed by the pending accession referendum? The real question that citizens would like to be asked is whether these European structural rigidities will be lifted.

MARIO MONTI

A factual observation -- not a judgement -- on the issue of the independence of Commissioners: not only is it true, but when Commissioners bring national interest to the table, they tend to be defeated but at any rate it is a very rare behaviour. Most of my proposals to the College tend to harm the immediate interests of national Governments. I am normally supported by my colleagues. Two recent examples are helpful involving also German Commissioners: the elimination of the guarantees for the German banks and the liberalisation of the distribution of automobiles in Europe against which the Chancellor of the Federal Republic and Heads of Governments of three or four other members states spoke out loudly. If the Commission is under attack, this is due in part to the fact that the Commission, after all, does behave independently.

CARL BILDT

Two points: the single most important task of the Convention is to produce a text that is comprehensible, readable, understandable not only for children and also for adults. 95% of the Parliamentarians of the Member states of the EU do not understand the Treaty even if they devote a week to it! That is the essence of the problem.

More needs to be done also on the state of Europe in the world. When looking at the new U.S. national security strategy, this document is worth reading under the particular European angle. There are some mentions to the EU at the beginning of the document, a passing reference to
terrorists in Europe, and the great deal on Russia, China, India, Indonesia, Colombia, Israel and Pakistan… There is a first mention for an active and helpful role given to Europe in Africa. At the end of the document, you find the mention that the EU is developing a European security and defence “identity” -- not even a policy -- has been noted on the other side of the Atlantic. This is primarily the fault of the Europeans: we do not develop policies that are seen by Americans and others as relevant. One aspect is the hardware element (institutions, transport planes, logistics…), the other being the software (policy implementations). Will the Convention give us an institutional structure that can produce a similar U.S. document for the EU? Until we get such a similar document, Europe will not really have a “policy”.

JACQUES SANTER

As a Member of the Convention, our discussions are sometimes too focused on the institutions. We have to define, firstly, what are the missions that the Union must face, and the challenges of the 21st Century that it must overcome. What are the competencies of the EU, the exclusive competences (monetary affairs, single market…), the shared competences (economic policy coordination…) and the complementary competences (cultural affairs…) which remain at member states level. On this basis, we can see where the divisions are between the Community method and intergovernmental method. Then only have we to solve the problems of the institutions. What type of institutions do we need to implement these competences of the Union? Institutions must come at the end of the reasoning.

Secondly, the role of the President of the Commission must be strengthened with a double legitimacy from both the European Parliament and from the European Council. By giving the President his double legitimacy we also solve the problem of the EU’s representation in the outside world. One example: we have a single currency within the biggest monetary zone in the world, but we have no single representation of this currency at the international level. Such problems must be solved in the future to enhance our credibility.

On another point, the monopoly of the right of initiative of the Commission in Community matters must be safeguarded. Lastly, with regards to the candidate countries in the composition of the Commission: as applicant countries enter the EU, it is difficult for the current members not to permit their presence at the Commission. It is not enough to say that the Commission is the “guardian of the interest of the Community as a whole”, including the smaller countries. This psychological problem must be faced.

LOUKAS TSOUKALIS

One important reason why we are having this Convention is that we discovered a few years ago that there was a growing gap between our European institutions and the European publics, translating itself in a declining public support for European institutions and integration. Although going in the right direction, our publics are unfortunately not particularly excited about the Convention. One simple explanation: Like any other constitutional debate, the focus is mostly put on institutions. Such a debate will not excite any citizens of the member countries. They are much more excited about the goods we deliver rather than on how they are delivered. We must convince increasingly and rapidly our citizens not only about the relevance that EU policies have for the each of them (growth, employment, solidarity) but also that political choices have to be
made about those European policies. In sum, the EU must be politicised lest the consensus on which European integration has been built on for decades be no longer taken for granted.

SERGIO ROMANO

On EU foreign representation, is it not absurd that each member state goes to Washington to say different things! This is what happens nowadays; this is also Europe’s paradox. There is uniformity on how Europeans feel about the war in Iraq (about 65% are against or diffident). Where does the ‘national interest’ come in when 65% are against such a war?

SILVIO SCAGLIA

A question: Can we really conceive progress on greater political integration without having an integrated opinion in Europe? Can we build a European public opinion without having a European media?

PETER SUTHERLAND

In regards to the Constitution, the clarity issue is obviously very important, but those who have a written Constitution and activist judiciaries entitled to interpret this Constitution (including the Americans in particular) have long recognised that the interpretation of general provisions can lead to very dramatic dangers and developments in law which go way beyond the issues. Whilst the simplicity of the argument is very appealing, I wonder if any question has been given about primary legislation, that this Constitution will be superior to national laws and will be open to interpretation at the European Court of Justice level?

The second point is a snide comment about Foreign Offices. Foreign Ministries seem quite happy to give away the powers of Treasuries and Central Banks thanks to the creation of a European authority and of a Euro zone, but when it came to creating a single foreign policy, that was absolutely impossible!

Response from SIR JOHN KERR

It is important that I stress that I am “Charles Jackson” with no known views!

Mr. Patijn’s point: it will be totally wrong for the Convention or any institutions in Brussels to try to tell what should be a national electoral system. We have in the Treaty a clause which encourages us to a single system. The current list system is unsatisfactory when compared to the constituency system. The public must see the drafts, all Convention documents are on the web site and debates are held in public.

On Carl Bildt’s point: the risks in simplicity are that it is easy to sneer at the diplomatic method, but every qualifying clause, every comma in the existing treaties, had huge political importance in past IGCs. Hopefully, many can be swept away today. But one cannot just assume. The onus of proof must be put on the one who wishes to take away a comma which will not then lead to political problems. The Treaties have been subject of cases in the Court: you cannot just change the rule of the game in such massive ways. You can however write a fronton which is not the
legal basis for action or decision, which is the constitutional principle of the Union (values, objectives…). The policy part of the Treaty then needs to be amended in order to make clear what -- if you simplify the instrument -- procedures are applying to particular pieces of the Treaty. Do not ask the Convention to solve the problem of the CAP or of the European economy, or to make up for the lack of the political will. What we can hopefully produce is a sensible streamlining of the structure which makes it more explicable to the outside world without becoming dangerously oversimplified by loosening anything.

On these institutional changes affecting the standard citizen, would they deal with the root problem of economic stagnation? The answer has to be that the inflexibilities that have to be dealt with are national problems, not a Union problem. In the Euro-zone there are today flexible and inflexible economies with widely different growth rates.

To conclude, citizens will never be really interested in institutional questions. But it is important that the members of the Convention and of the Trilateral Commission and similar groups should make known what is going on in the Convention. We will finish next June and, I hope, what we will produce will have been worth doing.

**George Vassiliou**

One last remark: We will have a stronger Commission but I am afraid that it will be a large Commission. I agree with the idea that Commissioners should be selected on merit but can we imagine that the most capable people in Europe such as five Germans, five French and five others will be appointed? So, for the foreseeable future -- being realistic, we will see that the Commission will welcome all member countries.

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*Attachments*