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INTERIM REPORT

drawn up on behalf of the Committee on Institutional Affairs
on the Intergovernmental Conference in the context of
Parliament's strategy for European Union

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A Series: Reports - B series: Motions for Resolutions, Oral Questions.

★ = Consultation procedure requiring a single reading

★★I = Cooperation procedure (first reading)

★★II

= Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament

★★★

= Parliamentary assent which requires the votes of the majority of the current Members of Parliament

- C Series: Documents received from other Institutions (e.g. Consultations)

By letter of 29 September 1989, the Committee on Institutional Affairs requested authorization to draw up a report on the Intergovernmental Conference in the context of Parliament's strategy for European Union.

On 24 October 1989, it received authorization to draw up a report.

At its meeting of 31 October 1989, the Committee on Institutional Affairs appointed Mr Martin rapporteur.

On 15 December 1989 the Committee on External Economic Relations was authorized to give an opinion.

At its meeting of 29/30 January 1990, the committee considered the draft interim report; it adopted the motion for a resolution at its meeting of 21/22 February 1990 by 24 votes in favour and 1 against.

The following took part in the vote: Oreja Aguirre (Chairman); Prag (1st Vice-Chairman); Bru Puron (3rd Vice-Chairman); Martin (rapporteur), Alber, Avgerinos, Balfe, Beiroco, Blot, Colombo, De Giovanni, De Gucht, Duverger, Fernex, Ferrer I Casals, Gangoiti Llaguno, Hänsch, Herman, Pimenta, Puerta, Roumeliotis, Speroni, Tindemans, Tongue and von Wechmar.

The opinion of the Committee on external Economic Relations will be published separately.

The report was tabled on 23 February 1990.

The deadline for tabling amendments to this report will appear on the draft agenda for the part-session at which it is to be considered.

MOTION FOR RESOLUTION

on the Intergovernmental Conference in the context of Parliament's strategy for European Union

The European Parliament,

- having regard to the Treaties establishing the European Communities and the Single Act amending them,
- having regard to the Solemn Declaration of the Stuttgart European Council of 19 June 1983¹,
- having regard to its draft Treaty establishing the European Union, adopted on 14 February 1984²,
- having regard to its resolution of 16 January 1986 on the Single European Act, in particular paragraph 4 thereof³, and its resolution of 11 December 1986 on the Single European Act⁴,
- having regard to its reports demonstrating the insufficiencies of the treaties as amended by the Single European Act and notably its resolutions of :
 - . 17 June 1988 on the cost of 'non-Europe'⁵
 - . 17 June 1988 on the democratic deficit⁶
 - . 17 July 1988 on the procedures for consulting European citizens on European political unification⁷
 - . 27 October 1988 on the first year of application of the Single European Act⁸
 - . 12 April 1989 on Fundamental Rights and Freedoms⁹
 - . 10 October 1988 and 15 December 1989 on the annual reports of the Council on progress towards European Union

¹ EP Bulletin No 26 of 28 June 1983

² OJ No C 77, of 19.3.1984, p. 33

³ OJ No C 36 of 17.2.1986, p. 144

⁴ OJ No C 7, 12.1.1987, p. 83

⁵ OJ No C 187 of 18.7.88 p. 244

⁶ OJ No C 187 of 18.7.88, p. 229

⁷ OJ No C 187 of 18.7.88, p. 231

⁸ OJ No C 309 of 5.12.88, p. 93

⁹ OJ No C 120 of 16.5.89, p. 51

- F. whereas greater effectiveness of the institutions can be achieved notably by providing for systematic majority voting in the Council and the strengthening of the Commission's right to exercise executive powers independently from committees of national civil servants (Comitology),
- G. whereas fundamental democratic principles require that Community legislation should only enter into force with the explicit approval, not only of the Council representing national governments, but also of the European Parliament, representing the electorate as a whole,
- H. whereas the appointments made to Community bodies exercising important responsibilities and above all, the appointment of the European Commission and in particular its President, should be subject to the scrutiny and consent of the European Parliament,
- I. whereas such changes should themselves be negotiated and agreed jointly by the representatives of the Member States and the European Parliament,
- J. having regard to the statement by President Delors to the EP on 17 January 1990 on a single Intergovernmental Conference with two parallel themes, economic and monetary union as well as the institutional reforms of the European Community,
- K. whereas Parliament has accepted the proposals made by the Presidents-in-Office of the European Council to organize an interinstitutional pre-Conference, which should take place early in 1990, and 'assizes' with Members of national parliaments,
- L. whereas the rapid changes on the international and European political scene require the Community to speed up its institutional development and the construction of the European Union.
1. Reaffirms that the agenda of the Intergovernmental Conference should be enlarged beyond economic and monetary union; notes that a number of national parliaments as well as the President of the Commission have lent their support to this view; considers that economic and monetary union constitutes only one of many areas of further development in the Community and that the Intergovernmental Conference should therefore consider a range of related issues and take the necessary decisions to avoid jeopardizing the balanced and uniform development of the Community in accordance with Parliament's proposals;
2. (a) Confirms its decision to convene a pre-Conference involving the European Parliament, the Commission and the Council, for the purpose of:
- preparing the mandate of the Intergovernmental Conference;
 - establishing the nature of Parliament's participation in the Intergovernmental Conference;
- (b) Decides, in accordance with the resolutions of 23 November 1989 and 14 December 1989 and given the need for all Council members to participate in the pre-Conference, that the Parliament delegation shall consist of twelve members;

Finally, it should also consider the institutional future of Europe with a view to instructing the EP to finalize the draft constitution of the European Union in close collaboration with the national parliaments meeting in a common European Assembly ('assizes');

4. Reiterates the demand contained in its resolution of 23 November 1989 that the Intergovernmental Conference proposals be submitted to the European Parliament and the governments acknowledge its right to amend and adopt them; if the European Parliament's position differs from that of the Intergovernmental Conference, a suitable procedure should be initiated with a view to reaching agreement to be submitted to the Member States for ratification; requests that the President of the Parliament, on the same basis as the President of the Commission, should be invited to the ministerial level meetings of the IGC;
5. Undertakes to adopt its opinion on the convening of the Intergovernmental Conference as soon as possible following agreement in the interinstitutional pre-Conference;
6. Requests the Commission to contribute to the success of the interinstitutional pre-Conference; accordingly expects the Commission, throughout the Intergovernmental Conference, to defend Community interest and, in particular, the demands of Community citizens as expressed through their representatives in the European Parliament;
7. Reaffirms its commitment to draw up a draft European constitution¹³ and to discuss its proposals with the national parliaments¹⁴;
8. Reiterates its commitment to have its proposals adopted by all democratic means, in particular by mobilizing European public opinion and its democratically elected representatives;
9. Recalls its position that, while participation in European Union cannot be imposed upon any State against its will, on the other hand, no single State can block the will of the majority to achieve European Union and, if necessary, such a Union should be set up without the initial participation of all the Member States of the Community;
10. Instructs its President to forward this resolution to the Commission, the Council, the governments and parliaments of the Member States and the Economic and Social Committee.

¹³ Colombo report being drawn up in committee

¹⁴ Duverger report being drawn up in committee

The Single European Act was an insufficient response by the governments to Parliament's draft treaty. The SEA nonetheless gave a new impetus to the Community. This new impetus, however, itself makes the need for further reform more acute.

2. Over the last two years, this committee prepared a series of reports, adopted by Parliament, which showed why the Single Act is not enough :
 - . The report by Mr Toussaint on the democratic deficit, showing the lack of democracy in Community procedures and pointing out that the powers transferred by the national Parliaments to the Community are not, for the most part, exercised by the European Parliament.
 - . The report by Sir Fred Catherwood on the cost of non-Europe showing the enormous cost to individuals, industry, governments and the Community of the divisions remaining in Europe. Before drawing up this report, the committee organised a hearing of experts.
 - . The report by Mr De Gucht on the protection of fundamental rights in the Community which, inter-alia, drew attention to the significant gaps in the treaties in this regard.
 - . The report by Mr Bru Puron on the holding of a referendum at European level, dealing with the scope for consulting the people of Europe on the establishment of the European Union. It is very important to note that such a referendum was held in Italy at the same time as the European elections and produced a result showing overwhelming support in favour of European Union.
 - . the report by Mr Graziani on the first year of application of the Single European Act.
 - . the report by Mr Valverde on the Council's annual report on progress towards European Union.
 - . The committee also held a public hearing on the inadequacies of Council practice.
3. Having demonstrated, through these six reports and the hearing, the weaknesses of the Single Act and the need for further progress to European Union, the committee produced a concluding report, outlining Parliament's strategy for achieving European Union. This was the Herman report.

This report stated that it was Parliaments intention to prepare, after the 1987 elections and with a view to the 1992 deadline, comprehensive proposals based for the most part of the 1984 draft treaty to give the European Union the necessary institutional basis. It called on the governments of the Member States, meeting in the European Council in Madrid to recognise the need for this project and undertake to support it by all appropriate means. It announced Parliament's intention extensively to consult the national Parliaments, political parties and so on. It stressed above all, the inevitability of a new stage being completed in the process of European integration, given that the year 1992 is the deadline for :

area, a common external policy and European citizenship. But the question is, should Parliament, faced with this decision of the governments, abandon its global approach and concentrate, for the time being, on economic and monetary union? The answer has already been given in Parliament's resolution of 23 November. Parliament cannot abandon its wider aspirations.

On the other hand, Parliament cannot ignore the Conference. It will in all probability take place. It is part of the procedure laid down for revising the treaties and it will deal with at least one major aspect of European Union.

We should therefore address ourselves and our proposals to the Conference. If we make some progress through it, all well and good, if we don't - it will demonstrate clearly the limits of such a method.

Our strategy towards it, however, will depend crucially on our success with the resolution on 23 November winding up Parliament's debate on the oral questions to Council and to the Commission.

If, as we called for, the agenda of the Intergovernmental Conference is enlarged to cover a wider number of subjects, and especially institutional matters, then our whole approach to European Union will have to concentrate on trying to make a success of the Conference. If on the other hand, the agenda remains limited to monetary matters, then we may have to approach European Union in another way. This decision cannot be taken now : we must first see whether we are successful in enlarging the agenda of the conference.

7. In the meantime, we must prepare ourselves under the assumption that we shall be successful. We must approach the Conference in accordance with the Herman strategy, preparing global proposals based on the draft treaty, the experiences of the Single Act and the reactions of national parliaments. The rest of this document examines possible proposals under three headings which coincide with the three guiding principles of the 1984 draft treaty : subsidiarity, efficiency, and democracy.

These proposals, initially in the form of an interim report, should be discussed with the other institutions in the interinstitutional pre-conference that Parliament proposes to organise in the first half of 1990. They should then, after possible review, be discussed in the 'assises' with representatives of national parliaments, though the exact nature of these discussions will only become clear once a decision is taken on the agenda of the Intergovernmental Conference.

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II. SUBSIDIARITY : THE COMPETENCES OF THE EUROPEAN UNION

8. Parliament's draft treaty of 1984 proclaimed the principle of subsidiarity to be the basis for deciding what competences or responsibilities should be allocated to the European Union. The European Union should exercise only

- competition policy to prevent the market being dominated by monopolies or cartels;
- harmonisation of taxation, notably indirect taxation, insofar as is necessary to prevent distortion of competition;
- common rules for consumer protection;
- common rules for the protection of the environment;
- harmonisation of some aspects of company law and banking legislation;
- common principles for direct public intervention in particular sectors, such as agriculture, energy, transport, research, etc.

12. Of course, the existing treaties include some provisions relating to all of these areas. The difficulty lies in the fact that the means granted by the treaty to the Community vary considerably from one sector to another. Thus, in the area of competition policy, the treaty gives the Commission certain powers to act directly. For consumer protection, the Community can frequently act by harmonising national provisions under article 100A, requiring majority voting in Council and cooperation with the Parliament. As regards the environment, or the harmonisation of indirect taxation, unanimity is required in Council after simple consultation of the European Parliament.

These divergences are not simply a matter of concern to the institutions themselves : they directly affect the nature of the policy that can be carried out. Matters subject to unanimity are in fact subject to the dictatorship of the minority. The Community can go so far as its most reticent Member State will allow it. In some cases, such as indirect taxation, individual states have been able effectively to prevent the adoption of any Community policy.

13. Much of this could be rectified by appropriate institutional changes (see following section). However, the treaty is sometimes also restrictive in its enumeration of what the Community may do in certain fields. This will need careful examination by the committee. The 1984 draft treaty (parts IV and V) proposed new treaty articles for all of these areas.

3. External relations

14. The Single Act gave a treaty base to European Political Cooperation (EPC). Nevertheless, EPC remains largely an intergovernmental matter, coordinating national foreign policies rather than fulfilling the stated intention of implementing 'a European foreign policy'. Europe may be an economic giant, but it is a political pygmy.

15. Article 30, paragraph 12, requires Member States to examine whether any revision of the EPC provisions are required in 1992. The answer can only be positive. Would it not therefore make sense to deal with this matter in the same treaty revision as that dealing with monetary union, rather than in a separate revision a year or so later?

require unanimity in Council, including areas of vital importance to the Community such as some of those mentioned above.

22. Unanimity may well be justified in taking decisions that enlarge the sphere of competence of the Community - and as this is done by treaty amendment, unanimity is guaranteed. It cannot be justified in the management of the Community's own policies. Unanimity allows such policies to be taken hostage by individual Member States. No matter how well intentioned Member States may be, it is dangerous to give them that temptation. The possible enlargement of the Community gives further urgency to this argument.

2. Powers of the Commission

23. Although the Single Act opened the door to strengthening the Commission's executive powers, the implementing decision adopted by Council on 13 July 1987 in fact maintained largely intact the notorious 'commitology' system whereby the Commission's implementation decisions are scrutinised by committees of national civil servants and, in some cases, may be referred by them to Council. The last two years have shown that, in practice, Council tends to incorporate the most restrictive forms of commitology in the implementing provisions that are included in Community legislation. Council is not even living up to the unanimous declaration of the Member States annexed to the Single European Act calling for priority to be given to purely advisory committees, at least for the implementation of legislation falling under Article 100A.

24. If, in practice, Council systematically makes the most restrictive interpretation of the treaties, then it must be necessary to amend the treaties themselves in order to provide for adequate procedures in this matter. Article 40 of Parliament's draft treaty of 1984 was unambiguous: it gave full regulatory power to the Commission to implement Community legislation. In the Hänsch report of 1987, Parliament indicated that it would be willing to accept advisory committees and management committees of national civil servants (the latter being able to block Commission decisions only by a qualified majority), provided that parliamentary scrutiny was provided for. A solution along these lines could be envisaged.

IV. DEMOCRATIC ACCOUNTABILITY - THE POWERS OF THE EUROPEAN PARLIAMENT

25. It is not necessary to spell out again here the growing field of responsibilities that have been transferred by national parliaments (in ratifying the treaties) to the European Community without sufficient democratic scrutiny at European level (known as the 'democratic deficit'). As the Community is a complex grouping of diverse Member States, and as its legislation, once adopted, is somewhat entrenched (overriding national law and only changeable by going again through lengthy Community procedures), it is essential to provide for adequate scrutiny before it comes into force. In this, there is a role both for the Council representing national governments and for the Parliament representing the electorate as a whole. Parliament's resolution of 23 November 1989 listed six areas in which changes to Parliament's powers bringing it to an equal footing with Council, should be introduced. Happily, they are largely in conformity with what was envisaged in the 1984 draft treaty.

3. Right to give its assent to the appointment of the Commission, the Court of Justice and the Court of Auditors

30. As regards the Commission, Parliament is at present consulted, through its enlarged Bureau on the designation of the President of the Commission, pursuant to the Stuttgart Solemn Declaration on European Union of 1983. In addition, Parliament, since 1982, holds a debate and a vote of confidence on an incoming Commission when it presents itself to Parliament for the first time with its programme. This has become an established practice and was recognised by national governments in the Stuttgart Declaration. It is significant that the two Delors Commissions both waited until they had received the vote of confidence from Parliament before taking the oath at the Court of Justice. This practice should be formalised in any treaty revision or new treaty.

31. A more delicate question is whether one should go further and take up President Mitterand's suggestion that the President of the Commission should be elected by the European Parliament. In its 1984 draft treaty (Art. 25) Parliament drew short of making such a proposal (though it did propose that the President of the Commission, appointed by the European Council, should be free to choose the members of his team in consultation with the European Council). Fears were expressed that, if Parliament were to determine the composition of the executive then, as has happened in most national parliaments, it would become a prisoner of that executive. The majority that came together to elect a particular President would feel bound to accept his proposals, especially faced with threats to resign. Party disciplines would soon ensure that the European Parliament, like some other parliaments, would become a mere rubber-stamp.

Your rapporteur does not fully share these fears. The Commission's relationship to Parliament would, unless other major changes were made as well, still be some way from resembling that pertaining between the government and the Parliament in certain Member States. The absence of single party majorities at European level, and the more heterogeneous nature of the party groupings that exist, mean that party discipline would be somewhat looser for many years to come. Furthermore, if the provision is maintained whereby Parliament can dismiss the Commission only by a qualified majority vote, the other potential danger - that of instability - will be removed and this will also affect the nature of the relationship between parliamentary majorities and the Commission.

The election of the President of the Commission by Parliament following each parliamentary election (i.e. with a term of office of five years for the Commission to coincide with Parliament's term of office) was proposed by the previous President of the European Parliament, Lord Plumb¹³. As he pointed out, this would enable European elections also to have immediate repercussions on the composition of the executive branch, just as national elections do in our Member States. At present, European elections are genuinely about electing a Parliament, but the affect of casting one's vote is less immediately perceptible to the voter. To allow the President of the Parliament to elect the President of the Commission would go some way to rectifying that situation.

¹³ Lothian lecture, Royal Institute for International Affairs, Chatham House, London, May 1989