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Report

drawn up on behalf of the Political Affairs Committee

on the role of the European Parliament in the negotiation and ratification of treaties of accession and of other treaties and agreements between the European Community and third countries

Rapporteur: Mr E. BLUMENFELD

On 22 February 1980 the Political Affairs Committee requested the President of the European Parliament to authorize the drawing up of an own-initiative report on the role of the European Parliament in the negotiation and ratification of treaties of accession and of other treaties and agreements between the European Community and third countries.

Authorization was forwarded to the committee by the Secretary-General of the European Parliament with his letter of 24 March 1980.

The Political Affairs Committee appointed Mr BLUMENFELD rapporteur and assigned the work involved to the Subcommittee on Institutional Problems.

The Subcommittee on Institutional Problems considered the draft report by Mr BLUMENFELD at its meetings of 16 March, 23 April and 13 May 1981. On the last-mentioned date the draft report was forwarded to the Political Affairs Committee.

The Political Affairs Committee considered the draft report at its meetings of 23-25 June, 23-25 September and 27-28 October 1981. At the October meeting the Political Affairs Committee adopted the draft report by Mr BLUMENFELD with 10 votes in favour, none against and 7 abstentions.

Present: Mr Rumor, chairman; Mr Haagerup, vice-chairman, Mr Blumenfeld, rapporteur; Mr Bocklet (deputizing for Mr Klepsch), Mrs Cinciari Rodano (deputizing for Mr Berlinguer), Mr D'Angelosante (deputizing for Mr Segré), Lord Douro, Mr Fergusson, Mr Habsburg, Mrs van den Heuvel, Mr Jacquet, Mrs Lenz (deputizing for Mr von Hassel), Mr de la Malène, Mr Motchane, Mr Penders, Mr Schieler, Mr Seitlinger, Mr John Mark Taylor and Mr Vergeer (deputizing for Mr Tindemans).

The opinion of the Legal Affairs Committee will be published separately.

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The Political Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the role of the European Parliament in negotiation and ratification of treaties of accession and of other treaties and agreements between the European Community and third countries

The European Parliament

- recalling its resolution of 17 April 1980 concerning the institutional aspects of the accession of Greece to the European Community;
 - considering that the European Parliament must play its due institutional and parliamentary role in the negotiation and ratification of all major agreements between the European Community and other states and international organisations, including treaties of accession or of association, and trade or cooperation agreements;
 - having regard to the fundamental change in the European Parliament's institutional position following direct elections, which must lead to increased participation by the elected representatives of the peoples of Europe in the conclusion of international agreements by the European Community,
 - having regard to the declaration of the Heads of State or Government of the nine Member States of 9 December 1974 on strengthening the European Parliament's powers of control and legislation,
 - having regard to the need for closer cooperation between the institutions with a view to a more legitimate and transparent Community,
 - having regard to the report of the Political Affairs Committee and the opinion of the Legal Affairs Committee (Doc. 1-685/81),
1. Calls upon the Council and the Commission of the European Communities to conclude with the European Parliament:
- A. an inter-institutional agreement concerning the procedure to be followed when negotiating agreements with third countries and groups of states under which:
 - I. the Commission shall consult with Parliament, through its relevant committees, on the outcome of any exploratory conversations between the Commission and the third party concerned;
 - II. the Council shall submit the negotiating mandate which it proposes to give to the Commission to Parliament for its opinion. The proposed mandate would then be examined by Parliament's committees, which might in suitable cases recommend that Parliament should hold an orientation debate;

- III. the Council shall undertake to give full consideration to Parliament's opinion in issuing its negotiating directives to the Commission;
 - IV. Commission, Council and Parliament shall agree on a procedure for simplified arrangements for participation by Parliament in agreements of an administrative and technical nature. This procedure could, provided the Treaties do not call for an opinion, consist in a declaration by the European Parliament that it only requires subsequent notification. But in cases where prior notice has been given by Parliament to the Commission, the responsible Commissioner shall, during the course of negotiations between the Commission and the third party concerned, inform Parliament's relevant committees concerning the development of the negotiations. The European Parliament shall be entitled to request further negotiations before the agreement is initialled by the Commission and the negotiating partner;
 - V. when the European Parliament is consulted by the Council, under Article 238 of the EEC Treaty, Parliament shall give its opinion, before the conclusion of an agreement, at the end of a ratification debate. The Council shall not conclude such an agreement, under Articles 238, 228, 113 or 43(2) of the EEC Treaty, until Parliament has given its approval. The Council shall agree not to sign or conclude an agreement in the event of Parliament voting its rejection, and any draft agreement shall include a clause to this effect.
- B. An inter-institutional agreement concerning the negotiation and ratification of treaties of accession under which
- I. the Council shall, in applying Article 237, obtain the opinion of the European Parliament as well as that of the Commission before it acts concerning the application of a European state to become a member of the European Community;
 - II. Parliament shall hold an orientation debate before the Commission is granted a mandate to negotiate with the applicant state;
 - III. Parliament's opinion shall, inter alia, set out its views concerning the effects of the accession of the applicant state on the composition and operation of Parliament;
 - IV. the Council shall undertake to give full consideration to Parliament's opinion in issuing its negotiating directives to the Commission;
 - V. the responsible Commissioner shall, during the course of the negotiations with the applicant state, make confidential reports to Parliament's relevant committees, on the development of negotiations;
 - VI. following the signature of the treaty of accession Parliament shall hold a ratification debate. The Council shall agree that the treaty of accession shall not be implemented in the event of Parliament voting its rejection. Treaties of accession shall contain a clause to this effect.

- C. An inter-institutional agreement concerning the transfer of nuclear technology, under Article 29(1) of the EURATOM Treaty, and the transfer of fissile materials, under Chapter II of Title Two of the EURATOM Treaty under which Parliament shall be consulted by the Commission on all agreements or contracts concerning the transfer of nuclear technology and the transfer of fissile materials, before they are concluded. The Commission shall agree that in the event of Parliament voting the rejection of such agreements or contracts, it shall, as appropriate, either refrain from concluding such agreements or contracts or open new negotiations.
2. Calls on the Council and the Commission to report to the European Parliament not later than the end of Parliament's part session of June 1982 on the practical measures taken to implement these proposals;
3. Instructs its President to forward this resolution to the Council and the Commission of the European Communities and to the Governments and the Parliaments of the Member States.

B

EXPLANATORY STATEMENT

I Introduction

1. In April 1980 your rapporteur submitted a report to Parliament on behalf of the Political Affairs Committee concerning the institutional aspects of Greek accession to the European Community. The accompanying resolution was adopted by Parliament on 17 April 1980. In that resolution Parliament instructed the Political Affairs Committee to make proposals on:

- (a) the consultation of the European Parliament by the Commission and the Council concerning the application of European States to become full members of the European Community,
- (b) the participation of the European Parliament in the ratification of treaties of accession, and
- (c) the role of the European Parliament in the negotiation and ratification of other treaties and agreements.

2. Whereas the report of April 1980 dealt primarily with the institutional aspects of Greek accession of the Community, the present report deals with questions of principle concerning the role of Parliament in the negotiation and ratification of treaties and other agreements between the Community and third countries - including treaties of accession, treaties of association, and trade and cooperation agreements.

3. In drafting the present report your rapporteur is indebted to Mr S. Jonker who has prepared a substantial working paper¹ for a working party of the Committee on External Economic Relations in which he sets out his views concerning a number of aspects of Parliament's role in the negotiation of international agreements by the European Community and, in particular, concerning ways in which the Luns-Westerterp procedure might be improved. Your rapporteur has also taken into account the views expressed by the President-in-Office of the Council, the President of the Commission and members of the Parliament in the institutional debate held on 16 April 1980.

II Participation of the European Parliament in the negotiation and conclusion of association, trade and other agreements

4. Articles 238 and 206 of the EEC and Euratom Treaties, which are identical, govern the establishment of association agreements as follows:

¹ PE 65.846

'The Community may conclude with a third state, a union of states or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the Assembly'.

5. It is also important to note Article 113 of the EEC Treaty which defines the terms of reference for the common commercial policy. Although this article, unlike Article 238, does not provide for consultation of Parliament, it is significant because it specifically authorises the Commission - which is responsible to Parliament under the Treaties - to negotiate agreements in the context of the common commercial policy. Article 113 reads:

'1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority'.

6. Article 228 of the EEC Treaty is also of significance, since it governs the negotiations of agreements between the Community and third states or international organisations. Article 228 reads:

'1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organisation, such agreements shall be negotiated by the Commission. Subject to the powers vested in the Commission in this field, such agreements shall be concluded by the Council, after consulting the Assembly where required by this Treaty.

The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.

2. Agreements concluded under these conditions shall be binding on the institutions of the Community and on Member States'.

7. Article 228 is significant to the extent that it provides a general procedural framework for the negotiation and conclusion of both association and trade agreements, taken in conjunction with Article 238 for association and Article 113 for trade agreements. For association, Articles 238 and 228 read together provide clearly that the Commission negotiates, the Council

concludes and Parliament is consulted. On trade, Articles 113 and 228 together do not give Parliament a formal right to be consulted. For whilst Article 228 states that the Council concludes agreements 'after consulting the Assembly where required by this Treaty', Article 113 includes no reference to Parliament.

8. It should be noted that Article 238 can be modified, like any other article of the Treaty, under the provisions of Article 236 of the EEC Treaty.

9. On its side the Commission's attitude to the participation of Parliament in the procedure leading to the conclusion of trade agreements was expressed in a Commission memorandum of 30 May 1973 (Doc. 103/73) as follows:

'The Commission is ready moreover to involve Parliament to a greater extent in the process of making trade agreements. It will cooperate in any general debate in Parliament or parliamentary committees concerning the holding of proposed trade negotiations, though obviously the significance of any particular negotiation would determine Parliament's decision as to whether and where such a debate would be held. It will also keep the competent parliamentary committees informed of the progress of negotiations on trade agreements. In the case of important trade agreements, the Commission will propose to the Council that Parliament be consulted'.

10. Article 43(2) of the EEC Treaty (under Title II, Agriculture) is of considerable importance, also, concerning the negotiation of agreements between the Community and third states concerning agricultural trade.¹ The effect of this article is to permit consultation of the Parliament concerning the Community's external agreements in the agricultural field. In practice your rapporteur understands that the Council is punctilious in consulting Parliament on the agreements and that Parliament's relevant committees do not have serious complaints concerning the operation of consultation under Article 43(2).

11. The problems concerning the participation of Parliament in the negotiation of agreements between the European Atomic Energy Community and third countries are examined in Chapter V.

¹Although there is no specific reference to agricultural agreements with third countries in 43(2) this paragraph traditionally provides the basis for agreements of this type. It also provides the basis for the consultation of Parliament concerning these agreements. This interpretation of 43(2) was reinforced by the decision of the Court of Justice in the 'AETR' case (Case 22/70 ECR (1971) 263). The Court held that authority to negotiate and conclude international agreements 'arises not only from an express conferment by the Treaty - as is the case with Articles 113 and 114 for tariff and trade agreements and with Article 238 for association agreements - but may equally flow from other provisions of the Treaty and from measures adopted within the framework of those provisions by the Community institutions'.

12. As far as the European Coal and Steel Community is concerned, your rapporteur, after study of the ECSC Treaty, has arrived at the conclusion that all questions concerning the negotiation of agreements between ECSC and third countries have become subsumed, following the fusion of the institutions of the three Communities as a result of the Merger Treaty, into the appropriate sections of the EEC Treaty.

Parliament's role during the negotiations

13. Parliament's participation in the negotiation and conclusion of association agreements has been defined by an arrangement involving the Council, the Commission and Parliament known as the Luns procedure.¹ As far as trade agreements are concerned, Parliament's role is defined by the Luns-Westerterp procedure.² The operation of these procedures will be described and analysed by Mr Jonker in a forthcoming report of the Committee on External Economic Relations.

14. Under Articles 238, 228 and 113 of the EEC Treaty it is the Commission which has the right to negotiate association, trade and other agreements with third countries or, when appropriate, international organisations. At present Parliament has the right to be informed of the progress of association and trade agreements. As far as association agreements are concerned, under the Luns procedure, the Commission has the obligation to 'maintain close contacts' with the appropriate parliamentary committees concerning progress of negotiations. A member of the Council or his representative is obliged, under the Luns procedure, to inform the relevant committees of Parliament 'of the substance of the agreement ... after the negotiations but before the agreement is signed'.

15. As far as trade agreements are concerned, under the Luns-Westerterp procedure, the President of the Council or his representative is obliged, following completion of the negotiations, but before the signature of the agreement, to 'confidentially and unofficially acquaint the competent committees with the substance of the agreement'. Further, the Council is also obliged to "acquaint the European Parliament with the content of such agreements, after their signing and before their conclusion".

16. Your rapporteur wishes to lay particular stress on the significance of the budgetary aspects of association and trade agreements. Above and beyond the initial estimates concerning the financial implications of association and trade agreements made by the Commission before the Council grants it a

¹ Mr Luns, then Netherland's Foreign Minister, was President-in-Office of the Council at the time these arrangements were agreed.

² So called because the former Netherland's Minister, Mr Westerterp, was President-in-Office of the Council at the time the arrangement was concluded.

negotiating mandate, it is particularly important that Parliament, as part of the Community's budgetary authority, should be informed by the Commission concerning the full details of the estimated budgetary consequences of an association or trade agreement as these become clear during the course of negotiations. These will inevitably appear different from any initial estimates made before the opening of negotiations. Parliament should also be given a good indication of the budgetary aspects of association and other agreements under negotiation well before their signature.

17. Particularly in view of the budgetary aspects of such negotiations the interesting idea has been advanced¹ that the conciliation procedure instituted by the joint declaration of 4 March 1975 could be applied to international agreements negotiated by the Community. It might, for instance, be possible for Parliament to initiate the use of the conciliation procedure concerning the substance of the negotiations, before agreements, under Articles 228 and 238 are concluded by the Council, in cases where Parliament has expressed dissatisfaction, in its opinion, on the proposed agreement. However, your rapporteur considers that the operation of both the conciliation procedure and of the Luns and Luns-Westerterp procedures is so complex that little is to be gained in practice, from Parliament's point of view, by linking the complicated conciliation procedure with the present equally complicated negotiating procedures, even if the Council and the Commission were prepared to agree to this.

Parliament's role in the establishment of the negotiating mandate

18. Members of the Parliament and, in particular, members of those committees of Parliament directly involved in the Luns-Westerterp procedure have discovered that Parliament's participation in the negotiation of association agreements under Article 238 of the EEC Treaty and of trade agreements under Article 113 of the EEC Treaty is essentially passive, limited to receiving information concerning the progress of negotiations. Your rapporteur considers it essential that Parliament should be able to play a more active role in the negotiation of agreements under Articles 238 and 113 of the EEC Treaty and that it should be able to influence both the political content of these negotiations and the substance of the agreements signed. Your rapporteur does not, however, suggest that Parliament has any role to play in the conduct of the negotiations themselves. This is clearly a matter that lies within the exclusive competence of the Commission.

19. As the late Sir Peter Kirk pointed out in a report for the Political Affairs Committee (see Doc. 148/78) it is most important, if any improvement is to be obtained in the operation of the Luns-Westerterp procedure, that Parliament should bring its influence to bear on the conduct of the

¹ See the Jonker working document for the Committee on External Economic Relations (PE 65.846)

negotiations at the most critical stage. This stage is between the presentation by the Commission of its recommendation to the Council and the adoption by the Council of the directives which form the mandate for the Commission's negotiating position.

20. Although your rapporteur considers that the above suggestion identifies correctly the moment when Parliament should be able to express an informed opinion, he considers that it might be more suitable for the Commission to supply the information to Parliament and to its committees than for the Council to do so. After all, at this stage, it is the Commission which is in possession of the information which it has obtained during the course of its "exploratory conversations" with the third country in question, and which forms the basis for its recommendation to the Council. Although it is for the Council to take the political decisions which reflect the requirements of the Member States as well as those of the European Community as an entity, which will determine the Commission's negotiating mandate, Parliament could more appropriately hold a debate with the Commission, which might have two aims. First, the possible amendment of the terms of the Commission's recommendations to the Council. Second, to indicate to the Council the general sense of the directives which the Parliament would wish to see the Council give to the Commission. At this preliminary stage there would be no need for the Council to be represented at ministerial level. It would be for Parliament's competent committees to determine whether a particular agreement merited an orientation debate in plenary session, including the passing of a formal resolution.

21. The proposal made by your rapporteur can only work if there is adequate time between Parliament being informed of the Commission's recommendations and the Council issuing its directives. To solve this problem your rapporteur proposes the establishment of an inter-institutional agreement between Parliament, the Commission and the Council to the effect that the time interval in question should not be less than six weeks, in order that the Commission's recommendations could be adequately considered by the appropriate committees and, if necessary, a debate held in plenary.

Participation of Parliament in the conclusion of association and trade agreements

22. In Chapter III of the present report a number of arguments are listed concerning the need for Parliament to be directly involved in the ratification of treaties of accession. But your rapporteur believes that Parliament should and must ratify not only treaties of accession admitting new Member States to the Community but also other international agreements entered into by the Community under Articles 113, 228 and 238 of the EEC Treaty. Article 238 of the EEC Treaty already provides for the consultation of Parliament by

the Council before association and other agreements are concluded by the Council, but Parliament's opinions are not normally binding on the Council.

23. The opinions given by Parliament to the Council concerning association and trade agreements are no exceptions to this general rule. Thus, although the Council is obliged, under the Treaty, to consult Parliament before the conclusion of association and other agreements it is not obliged to modify the substance of such agreements in the light of Parliament's opinion. Nor does the suggestion made by the President-in-Office of the Council in October 1973 (by which the Council, after the signature of trade agreements and before their conclusion, informs Parliament of their substance) permit Parliament to change the terms that have been negotiated. At present therefore, Parliament has no opportunity, under Article 238 of the EEC Treaty, either to modify or to reject association or other agreements between the Community and third countries.

24. Your rapporteur recognises that in practice it is extremely difficult to change the terms of an agreement between the Community and a third country after negotiations have been completed. Indeed, the Commission's legal right to negotiate association and other agreements would be undermined if Parliament were to insist on altering the text of the agreements concerned. Your rapporteur therefore considers that Parliament should concentrate on insisting that it itself should have the right to judge, on the side of the Community, whether an agreement should or should not come into force.

25. To achieve this aim your rapporteur wishes to adopt a proposal made by the late Sir Peter Kirk in the report he wrote on inter-institutional relations. It is proposed that in the case of both association and trade agreements, a distinction should be made between the 'initialling' of agreements, which could be done by the Commission on the side of the Community, in its capacity as negotiator, and the 'signature' of agreements by the Council. Between the "initialling" and the 'signature' of agreements a ratification stage should be introduced¹ which would involve a full

¹The Vedel report called for Parliament's involvement in the ratification of international agreements as early as 1972: 'Intervention by the Parliament, via the process of ratification, in agreements concluded by the Community with persons in international law is in accordance with the constitutional laws of Member States which require international agreements concluded by governmental authorities to be approved by the elected Assemblies in one way or another. (Also in accordance with constitutional practice in most Member States, an exemption must clearly be made in the case of technical and administrative arguments which do not presuppose such intervention). It will be seen that the international agreements which would thus be submitted to the European Parliament for ratification would include the association agreements referred to in Articles 238 of the EEC Treaty and 206 of the EAEC Treaty'. 'Report of the Working Party examining the problems of the Enlargement of the Powers of the European Parliament'. Bulletin of the European Communities, supplement 4/72, page 41.

debate by Parliament of the terms negotiated by the Commission. The Council would only be able to proceed to the 'signature' of association and other agreements following Parliament's debate which would be concluded by a vote on the terms negotiated by the Commission. Thus, as opposed to normal parliamentary ratification of international treaties, which follows signatures, the European Parliament's ratification would precede signature. There is no reason in the Treaty why the Luns procedure should not be modified to provide for negotiation by the Commission followed by consultation of Parliament, followed by conclusion of an agreement by the Council since the relevant Treaty articles taken together, do not give a clear indication of the order or timing of the various stages.

III Parliament's role in the negotiation of treaties of accession

26. The procedures for the accession of a European state to the European Community are laid down in Article 237 of the EEC Treaty and 205 of the EURATOM Treaty. Article 237 of the EEC Treaty reads:

'Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission.

The conditions of admission and the adjustments to this Treaty necessitated thereby shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements.'

27. Your rapporteur considers that there are a number of features in Article 237 which are of concern to Parliament. First, there is no reference to the European Parliament in this article. There are at least three major consequences of this lacuna. First, although 'the opinion of the Commission' must be obtained by the Council concerning the application of a European state to become a member of the European Community, the European Parliament is not required to give its opinion concerning an application of this kind. Second, Article 237 states that 'the conditions of admission and the adjustments to this Treaty necessitated thereby' shall be agreed between the Member States on the one side and the applicant state on the other. No reference is made to consultation of the European Parliament by either the Member States or the Council acting on their behalf. Third, whereas Article 237 states that the 'agreement' between the Member States and the applicant state shall be submitted to all the contracting states for ratification, there is no reference to the participation of the European Parliament in the process of parliamentary ratification.

28. There are at least two other relevant points in Article 237. First, the dichotomy between the first and the second paragraphs. Whereas the first paragraph lays down that applicant states should address their

application for membership to the Council, the second paragraph lays down that it is the Member States which shall agree the 'conditions of admission' and 'the adjustments' that are necessary to the Treaty - with no reference being made to the Council. Further, it is the Member States which ratify, on the side of the Community, the treaty of accession. No provision is made to any role for the Council in ratification.

29. Second, although the Commission gives its opinion to the Council on the application of a European state to become a member of the Community, no other role is given to the Commission, by Article 237 itself, in the negotiation or conclusion of a treaty of accession. It is presumably therefore in the general context of Article 228 of the EEC Treaty that the Commission negotiates on behalf of the Member States, though this does not seem completely clear. Since none of the Community institutions are directly involved, under Article 237, in the negotiation and ratification of treaties of accession the resulting situation is one in which the Community itself is not one of the contracting parties of a treaty of accession.

30. But, in reality, whatever the juridical basis might be, it is no secret that the Council provides administrative support to the Member States throughout the negotiations concerning a treaty of accession and, also, that the Commission is actively involved in the conduct of negotiations with the applicant state on behalf of the Member States of the Community. Under these circumstances your rapporteur insists that the European Parliament should play an appropriate parliamentary role. This role could apply - all the more so since it already plays such a part, under Article 238 - first, to the negotiations, under Article 237; second, in the conduct of the negotiations themselves; and third, in the parliamentary ratification of a treaty of accession.

31. It is clear that there are both legal and political aspects of both Article 237 and of any consideration of Parliament's participation in the negotiation and ratification of treaties of accession. The strict legal framework for accession negotiations, consists, quite simply, of the terms of Article 237 which have been set out above. As we have seen there is no formalistic or Treaty basis for the involvement of Parliament in the negotiation and ratification of accession treaties under Article 237. The legal situation can only be changed by Treaty amendment. But your rapporteur considers that until such time as this can be achieved, agreements can be made between the Council, acting for the Member States, the Commission and Parliament enabling the present situation to be improved and the present gaps to be filled.

32. The political situation is, however, very different. In April 1980 Parliament adopted a resolution on the institutional aspects of Greek accession to the European Community in which it claimed 'the right to be consulted formally in future by the relevant institutions at appropriate stages during the preparations for, and the negotiations of, the accession of further European states to the European Community, and to participate in the ratification of acts of accession'. In the same resolution Parliament also claimed 'the right to be consulted concerning the consequences of the accession of European states to the European Community on the size of the membership and the working conditions of the European Parliament'. Going beyond these general claims concerning consultation and participation in future negotiations, Parliament quite simply declared, in paragraph 1 of its resolution, that it ratified the Treaty of May 1979 on Greek accession to the Community.

33. In the debate of 16 April 1980, Mr Colombo speaking as President-in-Office of the Council, referred to Parliament's resolution as constituting: 'in parallel with the legal process provided for in the Treaties ... a quintessentially political act. It is an act which gives Parliament's sanction to the accession of Greece to membership of the Community, the importance of which must be obvious to everyone and which is particularly significant to the people and government of Greece'. Mr Colombo continued as follows: 'Whether or not we shall in future be able to ensure that similar expressions of Parliament's will are to become a formal part of the legal process of ratification depends upon the future development - which in my opinion is desirable - of Community legislation by way of amendments of the Treaties'. Finally, speaking in a personal capacity, Mr Colombo recognised that 'certain aspects of the accession procedure more closely affecting the European Parliament - for instance, the number of members which the new Member States may send to the Parliament and the manner in which they should be elected - are without any doubt aspects which, though formally governed by agreements between the States that negotiated the accession, ought ... to have some form of quid pro quo in the shape of consultation of the European Parliament.

34. In the same debate Mr Jenkins, President of the Commission, speaking of accession negotiations under Article 237, stated: 'My own view - and I clearly cannot here commit the views of Member States - is that Parliament could ... play its role at the first stage of negotiations'. Mr Jenkins said that at the end of negotiations 'there is nothing to prevent Parliament from organising the equivalent of a 'ratification' debate in parallel with those taking place at national level in the parliaments of the Member States'.

35. Your rapporteur also wishes to quote from a speech made in the same debate by Mr Nothomb who said: 'At least eight of the nine national parliaments have ratified Greece's accession. It is inconceivable that our Parliament should not also express its opinion on this point more formally and more legally because this Treaty changes the composition of our Parliament'.

36. At this point it is relevant, also, to note that in 1972 the Vedel report¹ stated: 'Finally, the entry of new members into the Community affects both the constituent power and international agreements. This justifies the Parliament's intervention in the procedure referred to under Articles 237 of the EEC Treaty, 205 of the EAEC Treaty and 98 of the ECSC Treaty, not only as a consultative body, but also to give its approval to the Council's unanimous decision to admit new members'.

37. The problems concerning Parliament's participation in the negotiation and ratification of treaties of accession are not by any means academic or lacking in urgency. The lack of adequate consultation of Parliament concerning the accession of Greece resulted in a situation in which, as Parliament stressed in the resolution that was adopted in April 1980, it had no opportunity, before the conclusion of the accession negotiations, to set out its views concerning the timing and method of the election of Greek members to the Parliament, or concerning the consequences of Greek accession on the size of the membership and the working conditions of the Parliament.

38. Although it is too late to remedy this unsatisfactory aspect of the negotiations concerning Greek entry, it is essential that Parliament should play an appropriate role in the negotiation and ratification of treaties of accession concluded with applicant states in the future. In effect, the situation must be rectified before separate sets of accession negotiations open between the Community and Spain, Portugal and possibly Turkey or Norway.

39. The proposals set out below are designed to ensure that Parliament does play its appropriate parliamentary role in any forthcoming accession negotiations under Article 237. Your rapporteur considers that in the first instance Parliament's situation, in this context, should be improved as far as possible by means of inter-institutional agreements. This would enable Parliament to build up its 'political' participation in the negotiation and ratification procedures laid down by Article 237, whilst awaiting Treaty amendment to modify Parliament's 'legal' status in this matter.

¹ 'Report of the Working Party examining the problem of the Enlargement of the Powers of the European Parliament'. Bulletin of the European Communities. Supplement 4/72, page 41.

40. No ideal or complete solution to the problem of Parliament's participation in the negotiation and ratification procedures concerning the accession of new Member States to the Community can be found until an appropriate Treaty amendment is made. The proposals set out here should therefore be seen as interim steps which can be achieved by inter-institutional declarations or gentlemen's agreements.

41. It is clear that the first stage at which Parliament should play an active role is at the moment when a 'European State' applies 'to become a member of the Community'. When the Council receives this application it should not only obtain 'the opinion of the Commission' but, before it acts unanimously, under the terms of Article 237, should also obtain the opinion of the European Parliament. Mr Colombo's statement, in the debate of 16 April 1980, that 'it seems legitimate to me that it [the European Parliament] should express its opinion, if it so wishes, on any requests for membership' indicates positive support from the Council Presidency for this suggestion. Your rapporteur wishes to stress that as the joint budgetary authority (together with the Council) of the Community, Parliament must be involved from the earliest stage of accession negotiations, in view of the inevitable and major budgetary implications of the accession of a new Member State to the Community. The institutional and practical organisation of accession negotiations must take account of this budgetary and political factor. Thus one of the main elements of any opinion given by Parliament to the Council should be its own assessment of the budgetary consequences for the Community of the entry of the candidate state.

42. Another major element in Parliament's opinion should concern the effects on the composition and operation of Parliament itself of the accession of the applicant state - for instance, the number of members which the new state should send to the Parliament and the way in which they should be elected, together with linguistic and other practical consequences. Following direct elections it is inconceivable that matters of this kind directly affecting Parliament should be settled by governments above Parliament's head without its being consulted.

43. It is one thing for Parliament to give its opinion to the Council concerning the application of a candidate state. It is quite another matter to ensure that Parliament's recommendations are fully borne in mind by the Council before it acts, when it has obtained the opinions of the Commission and Parliament. Under Article 237 the opinion of the Commission is not binding on the Council in this case, and it would therefore seem unrealistic to expect Parliament's opinion to be binding either. But Parliament's opinion, like that of the Commission would concern not merely the question

of whether or not the Council should open negotiations with the candidate country, but also the substantive problems to be negotiated if a favourable decision were taken by the Council.

44. This leads us to the next stage, which is that of the entry negotiations themselves. Article 237 lays down that: 'The conditions of admission and the adjustments to this Treaty necessitated thereby shall be the subject of an agreement between the Member States and the applicant State'. Although the Treaty gives the responsibility of fixing the terms of entry and consequent Treaty amendments to the Member States and the applicant state, no mention is made in Article 237 of who shall actually negotiate the conditions of admission. We know that in practice the Member States depend largely, as far as their own role is concerned, on administrative support provided by the Council, whilst the task of negotiating is confided to the Commission.

45. Your rapporteur proposes that Parliament should, by analogy, play an appropriate parliamentary role in the negotiations. This would not involve a derogation from the Treaty. If the Member States can instruct the Council and the Commission to play significant parts in the negotiations there can be no legal reason why they should not equally be able to invite Parliament to play its part also. Mr Jenkins, President of the Commission, speaking on 16 April 1980, outlined his view of what Parliament's part might be: 'On the basis of material provided by the Commission, it could, for example, discuss the problems arising and suggest appropriate solutions ... In the course of negotiations it might also be possible to investigate procedures within an appropriate framework for keeping Parliament informed on progress'. Mr Colombo, in his speech of the same date said: 'It seems to me perfectly legitimate for the Parliament to wish to be kept informed of how the accession procedure is progressing'. There was therefore agreement between the President of the Commission and the President-in-Office of the Council that Parliament should be actively involved during entry negotiations.

46. Your rapporteur wishes to distinguish between two aspects of Parliament's involvement at this stage. First, he considers that Parliament should organise an orientation debate before the Commission is granted a mandate to negotiate. This would permit the views expressed by Parliament concerning the substantive problems in the negotiations to help to shape the negotiating mandate given to the Commission, particularly with respect to the two areas in which Parliament has an especially strong concern, i.e. the budgetary implications of enlargement and the effects of accession on the membership and working of Parliament itself. Second, the most appropriate way in which Parliament could be kept informed of the course of negotiations would be for its competent committees to receive confidential

reports on the state of negotiations from the responsible Commissioner.

Your rapporteur considers that Parliament should take advantage of these confidential briefings to put forward its own suggestions and comments as to ways in which outstanding problems should be resolved.

47. As far as the final stage of entry negotiations is concerned Article 237 states that the 'agreement' reached between the member states and the applicant state 'should be submitted for ratification by all the Contracting States in accordance with their respective constitutional requirements.' What should be the role of the European Parliament concerning the conclusion and ratification of the 'agreement'? It seems to your rapporteur that the important thing here is not so much the words of Article 237 but the way in which the spirit of Article 237 is applied. If the Commission can, in practice, be mandated to negotiate the terms of accession and can sum up its opinion at the end of negotiations no distortion of the Treaty can be involved if, by analogy, Parliament were to play its own appropriate role in this context. Your rapporteur suggests that this role should take the form of the organisation of a ratification debate.

48. In a ratification debate of this kind Parliament would be able to recall the proposals made during its earlier orientation debate, with particular reference to any guidelines established by it in a resolution. The terms of entry as negotiated could then be checked against its earlier suggestions and Parliament could also check whether suggestions made by members of its competent committees during the confidential briefing meetings with the appropriate Commissioner or Director-General had been acted upon by the negotiators.

49. If Parliament were satisfied, in general, with the terms of entry as negotiated it could - as it has already done in the case of Greece - vote its 'ratification' of the treaty of accession. It would seem logical for Parliament's ratification debate to take place, like the ratification debates organised by the national parliaments of the member states, following the signature of the treaty of accession.

50. Your rapporteur cannot emphasise too strongly that Parliament's ratification of a treaty of accession would not infringe the competences and powers of national parliaments at all. In ratifying a treaty of accession the European Parliament would not make it impossible, or more difficult than it is at present, for a national parliament to ratify that treaty. The participation of the European Parliament in the process of parliamentary ratification would essentially complement or add to ratification by national parliaments. It would not replace the national process or detract from its significance.

51. No problem would seem to arise in a situation in which Parliament expressed its approval of a treaty of accession and thus voted in favour of ratifying it. But the value of a right of ratification on the part of the European Parliament would be negligible if Parliament were, in its resolution, to demand that the treaty of accession should not be implemented if the national parliaments all ratified the treaty of accession and the member states were to ignore Parliament's negative vote. It is clear, therefore, that, to be effective, Parliament's right of ratification must rest on an understanding with the Council that a treaty of accession would not be implemented in the event of Parliament voting against it.

52. Your rapporteur considers that the proposals he has set out above concerning the accession of European states to the EEC, under Article 237 of the EEC Treaty, should also apply to the accession of European Atomic Energy Community, under Article 205 of the EURATOM Treaty. He considers that they should also apply to the accession of European states to the ECSC, under Article 98 and 99 of the ECSC Treaty, though in view of the considerable differences in the text of these Articles from the texts of Article 237 of the EEC Treaty and Article 205 of the EURATOM Treaty he refrains from any proposals in this document and would welcome the views of Parliament's Legal Affairs Committee on this point.¹

¹The procedure for the accession of a European state to ECSC is laid down by Articles 98 and 99 of the ECSC Treaty as follows: 'Any European State may apply to accede to this Treaty. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the High Authority; the Council shall also determine the terms of accession, likewise acting unanimously. Accession shall take effect on the day when the instrument of accession is received by the Government acting as depositary of this Treaty.' Article 99 states: 'This Treaty shall be ratified by all the Member States in accordance with their respective constitutional requirements; the instruments of ratification shall be deposited with the Government of the French Republic.'

This Treaty shall enter into force on the date of deposit of the instrument of ratification by the last signatory State to take this step.

If all the instruments of ratification have not been deposited within six months of the signature of this Treaty, the Governments of the States which have deposited their instruments shall consult each other on the measures to be taken.'

IV Conclusions concerning Parliament's role in the negotiation and ratification of treaties of accession and of other treaties and agreements between the Community and third countries.

53. First, your rapporteur is convinced that the European Parliament must be formally involved in a conclusion of all international agreements between the Community and third countries or between the Community and international organisations. A procedure should be agreed between the Commission, Council and Parliament, under which Parliament would be informed, by the Commission, of all requests for the opening of negotiations with the Community on the part of third states or of international organisations. Parliament's competent committees should then recommend to Parliament whether it was necessary or desirable for Parliament to be actively involved in negotiations, along the lines proposed earlier in this report. In the case of 'minor' agreements Parliament could simply request notification of the conclusion of an agreement.

54. Finally, your rapporteur considers that Parliament should insist on obtaining a rapid and favourable response to the type of proposal put forward in the present report so that it can play, as soon as possible, an effective political role in the conduct of negotiations between the Community and third parties commensurate with its directly elected status. It is particularly important that agreement be reached between Parliament and the other institutions concerning Parliament's role in accession negotiations under Article 237 to ensure that Parliament is fully involved in the negotiations concerning Spanish and Portuguese membership of the Community from the very beginning.

V Participation of Parliament in the negotiation of agreements between the European Atomic Energy Community and third countries.

55. Your rapporteur wishes to make some brief comments concerning the role that Parliament might appropriately play in the negotiation of agreements between EURATOM and third countries.

56. First, Article 206 of the EURATOM Treaty is parallel to Article 238 of the EEC Treaty and its wording is identical, except for the reference to Article 204, in the text of the EURATOM Treaty, which parallels the reference to Article 236 in Article 238 of the EEC Treaty. The second paragraph of Article 206 of the EURATOM Treaty states that consultation of the Parliament is required before the Council concludes an agreement with a third state or an international organisation. Your rapporteur considers that the arguments and conclusions he has set out concerning

Parliament's role in the negotiation of agreements with third countries under Article 238 of the EEC Treaty apply also to agreements between EURATOM and third countries.

57. Apart from this general consideration there seem to your rapporteur to be two points of major political significance which arise from the EURATOM Treaty, in the context of the present report. First, there is the question of the transfer of nuclear technology. Second, there is the question of the transfer of fissile materials.

58. Article 29 of the EURATOM Treaty lays down the provisions governing agreements under which 'scientific or industrial information in the nuclear field' are negotiated between 'a Member State, a person or an undertaking' on the one hand and non-Community bodies, whether these be states, international organisations, firms or individuals, on the other. The responsibility for concluding such an agreement is conferred upon the Commission by Article 29¹ with no provision being made for consultation of Parliament. Your rapporteur is convinced that in the long-term a Treaty amendment, by which provision is made for the consultation and agreement of Parliament, is necessary. In the short-term, however, your rapporteur considers that this gap in the Treaty should be filled by means of an agreement between the Commission and Parliament under which the Commission would agree to consult Parliament concerning all agreements or contracts concerning the transfer of nuclear technology under Article 29. The question of which countries should or should not have access to nuclear technology and under what conditions is one of the greatest political importance - particularly in view of the potential military application of nuclear technology - and it is therefore, a matter concerning which Parliament should insist that the Commission not only consults it but follows its opinion in concluding an agreement of this kind. Your rapporteur therefore proposes that every draft agreement negotiated by the Commission under Article 29 should contain a proviso to the effect that the agreement would only be implemented subject to the agreement of the European Parliament.

59. Chapter VI of Section II of the EURATOM Treaty sets out provisions concerning the transfer, import or export, of fissile materials. No consultation of Parliament is provided for in this Chapter of the EURATOM Treaty, despite the very great political importance of this question - once more, particularly in view of the military implications. Article 76 of the EURATOM Treaty, the last Article of this Chapter, does however lay down that: 'On the initiative of a Member State or of the Commission the Council

¹ Which also empowers the Commission to delegate the right to conclude agreements of this kind.

may, acting unanimously on a proposal from the Commission and after consulting the Assembly, amend the provisions of this Chapter.'

60. Your rapporteur understands that the French Government has taken the initiative in requesting the Council to amend the provisions of Chapter VI of the EURATOM Treaty. Indeed, the Commission is trying to formulate proposals to submit to the Council. The second paragraph of Article 76 also states that: 'Seven years after the entry into force of this Treaty, the Council may confirm these provisions in their entirety. Failing confirmation, new provisions relating to the subject matter of this Chapter shall be adopted in accordance with the procedure laid down in the preceding paragraph.' In effect the Council did not confirm the provisions of Chapter VI of the EURATOM Treaty at the time laid down. Although the Commission has in the past twice submitted proposals concerning new provisions to the Council, the Council did not find it possible to agree on such provisions. The Council has referred the French Government's memorandum to the Commission, which is, so your rapporteur understands, studying the possibility of making new proposals.

61. Your rapporteur considers that in view of the French Government's initiative and in view of the requirements set out in the second paragraph of Article 76, the Commission should, in all suggestions it may make concerning the provisions of Chapter VI of the EURATOM Treaty, propose that the European Parliament be consulted concerning all agreements or contracts dealing with the transfer of fissile material, and that Parliament's opinion should be binding. Until such time as new provisions of this kind are agreed, your rapporteur proposes that under an agreement between the Commission and Parliament, the Commission should consult Parliament concerning every agreement or contract relating to the transfer of fissile material before giving its prior comment under Article 73, and that it should, further, agree to be bound by Parliament's opinion.

62. Finally, your rapporteur wishes to point out that the first paragraph of Article 76 permits Parliament to give its opinion on any new provisions of Chapter VI before the Council decides on them. In expressing its opinion Parliament should insist on obtaining the right, under the new provisions of Chapter VI, to be consulted by the Commission concerning all agreements or contracts dealing with the transfer of fissile material.

PROCESS OF NEGOTIATING AN ASSOCIATION, COOPERATION OR TRADE
AGREEMENT

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The present process is set out below, normally. The underlined text, between brackets, indicates proposed new procedures.

COMMISSIONCOUNCILPARLIAMENT

- | | | |
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| 1. Exploratory conversations with third party | | <u>(Parliament informed of the outcome of exploratory conversations through its relevant committee or committees) (1)</u> |
| 2. Submission of proposal for negotiating mandate to Council | | <u>(Submission of the proposed negotiating mandate by Council to Parliament for its opinion. This would be discussed by Parliament's relevant committee or committees, which might recommend an orientation debate in plenary session)</u> |
| 3. | Council issues "Negotiating Directives" | |
| 4. Negotiations by Commission with third country | | <u>(Confidential reports on state of negotiations from the responsible Commissioner to Parliament's relevant committees. Parliament able to ask for further negotiations before initialling)</u> |
| 5. <u>(Initialling of agreement by Commission)</u> | | |
| 6. | Council consults Parliament <u>(under Article 238)</u> before concluding an agreement. <u>(Council does not sign or conclude an agreement if Parliament rejects it)</u> | Parliament gives its opinion <u>(at conclusion of ratification debate)</u> <u>Parliament's agreement necessary before conclusion of an agreement, whether under Articles 238, 228, 113 or 43(2)).</u> |