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Report

drawn up on behalf of the Political Affairs
Committee on the /role of the European Parliament
in its relations with the European Council

Rapporteur: Mr D. ANTONIOZZI

12.3

On 25 March 1980 the European Parliament authorized the Political Affairs Committee to draw up a report on relations between the European Parliament and the European Council.

Mr Antoniozzi was appointed rapporteur on 31 January 1980.

The draft report was initially considered by the Subcommittee on Institutional Problems which adopted it on 24 September 1981.

The Political Affairs Committee considered the draft report at its meetings of 27-28 October 1981 and 10-11 November 1981.

At the latter meeting it adopted the report by 17 votes in favour with three abstentions.

Present: Mr Motchane, first vice-chairman and acting chairman; Lord Bethell, second vice-chairman; Mr Haagerup, third vice-chairman; Mr Antoniozzi, rapporteur; Mr Berkhouwer, Mr Cariglia, Mrs Cassanmagnago Cerretti, Mrs Charzat (deputizing for Mr Brandt), Mr Fergusson, Mr B. Friedrich, Mrs Gredal, Mr Habsburg, Mr Hänsch, Mr von Hassel, ~~Mr~~ van den Heuvel, Mr Jaquet, Mrs Lenz (deputizing for Mr Diligent), Mr Penders, Mr Plaskovitis (deputizing for Mr Lomas), Mr Radoux (deputizing for Mr van Miert), Mr Schall (deputizing for Mr Klepsch) and Mr Konrad Schön (deputizing for Mr Blumenfeld).

The opinion of the Legal Affairs Committee is attached.

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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 its relations with the European Council

The European Parliament

- recalling that the Community's institutional development is one of the political objectives clearly and repeatedly stated in the preambles to the Community Treaties and in additions and amendments thereto,
- bearing in mind that, in the course of advancement towards the Community goal, 'Summit meetings' and, subsequently, 'European Councils' were introduced, at which an attempt was made to establish, in meetings of the Heads of State and Government, guidelines and momentum for the progress of European integration,
- having regard to the variety of experience accumulated in the long history of 'European Councils', and to the need to define the latter's legal, political and functional role on the European political scene,
- drawing attention to the advantages of the future Community developing in a harmonious context in which Parliament should increasingly assume the role of initiator and permanent and effective partner of the institutions and the European Council,
- noting with satisfaction that the European Council has recently demonstrated its awareness of the advisability and considerable political importance of maintaining regular and constructive relations with the European Parliament,
- having regard to the report by the Political Affairs Committee and the opinion of the Legal Affairs Committee (Doc. 1-739/81),

Stresses the need

1. To define the role, nature and functions of the European Council in relation to the European institutions and in particular Parliament as part of the process of institutional development (both at the present stage and when the Treaties are revised;
2. For the European Council to keep the European Parliament regularly informed of the proceedings and the subjects to be discussed at its meetings;

3. For the President of the European Council to take part in general debates on basic aspects of Community policy, particularly immediately after their trimenstrial sessions;
4. To ensure that the European Parliament's new useful relationship with the European Council - the main thrust of which is directed towards full implementation of the Treaties and institutional development - is not allowed to replace its relationship with the Council of Ministers and the progress they have made in procedural and other matters;
5. Instructs its President to forward this resolution and the report of its committee to the European Council, the Council and the Commission of the European Communities and to the parliaments and governments of the Member States.

EXPLANATORY STATEMENT

A. What the Treaty preambles say on the legal basis of initiatives for institutional development

A subject of great importance in the institutional development of the 'European Economic Community', which is increasingly becoming 'the European Community', is that of relations between the European Parliament and the European Council and their critical effect on its political and juridical development.

This institutional development, though it is sometimes contested, and frequently debated by amateur lawyers, has, in fact a firm legal basis in the Treaties.

If we read the preambles to the three fundamental Treaties and those that complement them, we shall find:

(ECSC, 1951)

'Considering that world peace can be safeguarded only by creative effort commensurate with the dangers that threaten it,

Convinced that the contribution which an organized and vital Europe can make to civilization is indispensable to the maintenance of peaceful relations,

Recognizing that Europe can be built only through practical achievements which will first of all create real solidarity

Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared,'

(EEC, 1957)

'Determined to lay the foundations of an ever closer union among the peoples of Europe,'

(EURATOM, 1957)

'Convinced that only a joint effort undertaken without delay can offer the prospect of achievements commensurate with the creative capacities of their countries,'

(Communities Merger Treaty, 1967)

'Resolved to continue along the road to European unity,
Resolved to effect the unification of the three Communities,
Mindful of the contribution which the creation of single Community
institutions represents for such unification,'

(Accession Treaty, enlargement from Six to Nine, 1972-3)

'United in their desire to pursue the attainment of the objectives
of the Treaty establishing the European Economic Community.....
Determined in the spirit of those Treaties to construct an ever closer
union among the peoples of Europe on the foundations already laid...'

(Accession of Greece)

As for the previous enlargement, 1979-80.

These preambles are an integral part of the original Treaties,
and of subsequent additions and amendments to these, and their texts
have been voted by the Parliaments: it follows that no-one today is
entitled to be surprised at, or disregard or oppose institutional
development. What is more, these preambles form a constant succession
over a period of 30 years, a fact which enhances their importance. It
is thus certain, also in legal terms, that the stages of Community
development which, incidentally, have not even been fully put into
effect, should be completed and that at the same time a start should
be made on the further advance of initiatives and procedures directed
towards European Union - the political objective, with an incontestable
legal basis, that the countries constituting Community Europe have set
themselves.

B. From 'Summit meeting' to 'the European Council'

In the course of the Community's progress there were held, with
the aim of conferring a broader and more authoritative political
dimension on the work of the Member States, meetings of the highest
representatives of the peoples and of the governments; these were the
'Summit meetings' which constituted fundamental milestones in political
synthesis and which provided occasions where attempts could be under-
taken to resolve difficult current problems or to put forward far-
reaching political proposals for Europe's future.

From 'Summit meetings', which were held sporadically or in
connection with specific developments, there subsequently evolved
similar meetings under the name of 'the European Council', which were
planned and regular.

It will be useful to present here a historical and political outline of the fascinating development of what has become de facto yet another European institution, by summarizing the meetings which took place over a span of many years and the comments and criticisms they aroused from time to time.

Summit meetings 1961-1974

February	1961	-	Paris
July	1961	-	Bonn
	1967	-	Rome
	1969	-	The Hague
	1972	-	Paris
	1973	-	Copenhagen
	1974	-	Paris

Origins

The history of the Summit meetings divides into two periods, marked by two different types of meeting: the first in 1961, held in Paris and Bonn; the second, held in Rome (1967), The Hague (1969), Paris (1972), Copenhagen (1973) and, finally, Paris in 1974.

It can be said that the Summit meetings were an expression of the national Governments' desire to move beyond a narrow interpretation of the Treaties towards an ill-defined objective of unification in the political, economic and monetary sphere.

But it should at the same time be noted that the main reason for their introduction was that some Member State Governments wanted to impose control over the Community through a body essentially inter-governmental in nature. Not all Member State Governments, however, were so motivated; some, for instance, on several occasions tried to put forward proposals for the direct election of the European Parliament.

The first meeting of Heads of State and Government of the six Member States was held on 11 February 1961 in Paris on the initiative of the President of the French Republic, Charles De Gaulle. The meeting was called to find ways and means to establish closer political cooperation among the Member States.

Characteristics

The fundamental feature of the Summit (meetings of Heads of State and Government) is undoubtedly the fact that they represent a type of institution for which the European Community Treaties do not provide, one that is clearly intergovernmental in nature.

This characteristic, quite evident in the 1961 Summits which were dominated by the political vision of French President De Gaulle, was also discernible in the subsequent Summits, although a gradual evolution was taking place (see the following paragraph).

'During the Pompidou presidency, the French doctrine on Community matters rested on the rigid distinction between political questions on which government agencies were deemed to have an exclusive competence, on the one hand, and economic and social questions pertaining to the Community institutions, on the other. Also, during that Presidency, one of the side-effects of European summit meetings, which alone functionally reunited the two sets of issues, was to downgrade the Community institutions by de facto usurping their initiatory and decision-making roles.'¹

Evolution

The factor which perhaps most clearly illustrates the evolution of the Summits from purely intergovernmental meetings towards a more open structure, is the position of the Commission, and its own perception of it, vis-à-vis such meetings.

Thus, in the Fourth General Report (16 May 1960 - 30 April 1961), the Commission merely noted the outcome of the Paris Summit, while in the Fifth General Report (1 May 1961 - 30 April 1962) there is not even a mention of the Bonn Summit.

By the Hague Summit (1969), things were beginning to change, the final communiqué stating that 'the Commission of the European Communities was invited to participate in the work of the Conference on the second day'. The Commission, for its part, stated :

'Since the conference was not a Treaty institution and since it was not called upon to deal with texts being discussed within the Council, care was taken not to trespass on the powers and responsibilities of the Community institutions' (Third General Report, 1969).

But by the Paris Summit of 1972, the Commission was already claiming to have fully contributed to the preparation and conduct of the Conference.

An important change occurred with the Copenhagen Summit: in a letter of 31 October 1973, the French President Pompidou proposed that in future Summit Conferences should be organized at which the Heads of State and Government could compare and harmonize their positions in the area of political cooperation. The proposal was adopted, but soon proved difficult

¹ Annette Morgan, From Summit to Council: Evolution in the EEC, London, Chatham House, 1976, p.6

to put into effect.

At the end of the Summit the Commission stated that its President had 'taken part' in the work of the Heads of State and Government on Community problems.

The position of the Summits and especially that of the Commission had thus become changed and the Commission now regarded itself as spokesman for the Community, although considerable ambiguities still remained.

Main results

The first meeting (Paris, 1961) was called to find ways and means of organizing closer political cooperation among the Community Member States.

At its close, a committee of representatives was instructed by the Heads of State and Government to draw up specific proposals for the preparation and conduct of meetings of Heads of State and Government and of Ministers of Foreign Affairs.

The committee drew up a report on political cooperation where it was suggested that the Heads of State and Government should meet three times a year in order to strengthen and harmonize as far as possible the States' external policies and to explore the possibilities of cooperation in areas not envisaged in the Treaties of Paris and Rome.

At the next Summit Conference (Bonn, July 1961), it was decided that meetings would be held periodically to compare views, harmonize external policies, and evolve common approaches with the aim of promoting European unification. At the same time the committee was given a mandate to examine ways in which political unification could be given a structured form.

The projects drawn up by the committee, however, did not succeed.

Meanwhile, the political climate among the Six was deteriorating, the strains reaching a climax in 1966, when the 'Luxembourg Compromise' was made.

The third Summit Conference held in Rome in 1967 was unable to smooth out the institutional conflicts, aggravated as they were by French opposition to the accession of the United Kingdom.

The Hague Summit Conference (1969) opened the way to: negotiations with the United Kingdom, Denmark, Ireland and Norway; the drafting of a plan for the achievement of Economic and Monetary Union (the Werner plan); the financing of the Community from own resources; and the strengthening of the budgetary powers of the European Parliament.

The first Summit Conference of the enlarged Community was held in August 1972 in Paris.

Important political decisions for the further development of the Community were taken, but they could not be implemented because of the deterioration in the world economic and political situation.

The Copenhagen Summit (December 1973) failed to achieve substantial agreement on a common energy policy. On the other hand, it was decided to speed up the achievement of European Union; methods of political cooperation for establishing joint positions in crisis situations were agreed; and a new impulse was given to Community policies, such as that concerning the Regional Development Fund.

C. The European Council in action

In December 1974 the last Summit Conference was held in Paris. It was at this conference that the 'European Council' was born. Points 2 and 3 of the Conference Communiqué stated:

- '2. Recognizing the need for an overall approach to the internal problems involved in achieving European unity and the external problems facing Europe, the Heads of Government consider it essential to ensure progress and overall consistency in the activities of the Communities and in the work on political cooperation.
3. The Heads of Government have therefore decided to meet, accompanied by the Ministers of Foreign Affairs, three times a year and, where-ever necessary, in the Council of the Communities, and in the context of political cooperation'.

The communiqué also went on to say:

'These arrangements do not in any way affect the rules and procedures laid down in the Treaties or the provisions on political cooperation in the Luxembourg and Copenhagen Reports. At the various meetings referred to in the preceding paragraphs the Commission will exercise the powers vested in it and play the part assigned to it by the above texts'.

This also made clear that there had been no change to the organization of the Community in legal terms, even if the political innovation introduced was of undoubted importance and drew its distant but clear legal basis from the preambles to the Treaties.

The first European Council was held on 10 and 11 March 1975 in Dublin, where it was chaired by the Irish Taoiseach (Prime Minister). The Commission was represented by its President, Mr Ortolí, and by Vice-president Haferkamp. The Secretary-General of the Council acted as Secretary of the meeting, assisted, for questions of political cooperation, by officials of the Irish Ministry for Foreign Affairs.

Heads of Government and Foreign Ministers took part in the meeting.

Preparatory work for decisions of the European Council was done in meetings of senior officials chaired, according to the issues dealt with, by representatives of the Commission or of the Irish Presidency.

The Council reached agreement on a 'correcting mechanism' proposed by the Commission and on imports from New Zealand. Both points were essential to the continued membership of the United Kingdom in the Community.

The Commission laid special emphasis on 'the importance of the discussions in Dublin concerning the United Kingdom's difficulties. On the strength of Commission proposals, agreement was reached on the budgetary correcting mechanism and imports from New Zealand, with minimal changes in each case'.¹

The Commission also stressed that its representatives were able to play their part in respect of policy momentum and the practical substantiation of Commission proposals.

Since the aim of these meetings was not to reach decisions, but to clarify the situation and define the context in which decisions were to be taken, the European Council needed to take place in complete freedom and privacy. It was therefore necessary to dispense with a large administrative apparatus, which would not be needed, and to indicate clearly that there was no question of adopting a final text, ad hoc or otherwise.

It was pointed out that in certain circumstances it was in the interest of the Nine to confer a more solemn character on their statement of a position on a subject of current importance. In such cases a declaration would be adopted, the terms of which should be carefully weighed and the text of which should not be improvised nor be subject to excessively detailed debate among the Heads of State and Government.

The third task of the European Council was concerned with problems which have already been studied by the Community institutions but which, it was felt, should be placed before the Council either because they raised a question of principle, or because it was impossible to resolve

¹ Bull. EC 3 - 1975, point 1504

them at a lower level. In such cases it would be for the European Council to take appropriate action or to offer to the ministers guidelines which would enable them to reach a solution.

The European Council of June 1977 agreed that there should be two types of discussion:

- informal exchanges of views with no public statements,
- discussions aimed at producing decisions, drawing up directives for future actions or resulting in the publication of public statements expressing the concerted opinion of the European Council.

The Council agreed that informal exchanges of views required only a limited period of preparation.

The Heads of Government should inform their colleagues or the Presidency, some days before the Council, of the subjects which they would like to examine.

It was agreed that meetings which were aimed at reaching decisions or at the end of which statements were to be published, should be adequately prepared.

The Foreign Affairs Ministers were to be entrusted with responsibility for the preparatory work, which could take place in the framework of the Council or, if necessary, of the political cooperation bodies. The Ministers could meet for this purpose at a special session prior to the European Council.

When declarations were to be published, they should not, unless in exceptional circumstances, be published without prior preparation.

The informal exchanges of views should not be formally noted.

When discussions were aimed at reaching decisions and/or issuing declarations, their conclusions should be drawn up and distributed on the responsibility of the Presidency.

The exchange of views should be as private as possible.

MAIN DECISIONS OF THE EUROPEAN COUNCIL

European Council in Rome, December 1975¹

Agreement on the date of elections to the European Parliament

The European Council held on 1 and 2 December 1975 in Rome under the Presidency of the Italian Prime Minister, Mr Moro, agreed that direct elections to the European Parliament should be held on a single date in May or June 1978. Any country which at that date was unable to hold direct elections would be allowed to appoint its representatives from

¹ Bull. EC 11 - 1975, point 1104

amongst the elected members of its national Parliament.

European Council in Brussels, July 1976

Agreement on direct elections to the European Parliament¹

The European Council held on 12 and 13 July 1976 in Brussels under the Presidency of the Prime Minister of the Netherlands, reached agreement on the important question of the distribution of seats in the directly elected European Parliament. Out of a total of 410, these were to be allocated as follows: 6 for Luxembourg, 15 for Ireland, 16 for Denmark, 24 for Belgium, 25 for the Netherlands, 81 each for France, Italy, the United Kingdom and Germany.

European Council in Brussels, December 1977²

Declaration in favour of the establishment of a new instrument for Community lending and borrowing ('the Ortolí facility')

The European Council held on 5 and 6 December 1977 in Brussels under the Presidency of the Belgian Prime Minister, Mr Tindemans, declared itself 'in favour of the development of the Community's financing facilities by approving the principle of the establishment, on an experimental basis, of a new instrument for Community lending and borrowing, the loans being managed by the European Investment Bank. It instructed the Council (Ministers of Economic and Financial Affairs) to examine the proposal which the Commission would make on this subject'.

European Council in Brussels, December 1978

The launching of the European Monetary System (EMS)³

The European Council held on 4 and 5 December 1978 in Brussels under the Presidency of the Chancellor of the Federal Republic of Germany, Mr Schmidt, reached agreement on the creation of the European Monetary System.

¹Bull. EC 7/8 - 1976, point 1101

²Bull. EC 12 - 1977, point 2.1.1

³Bull. EC 12 - 1978, points 1.1.3 - 1.1.10

The 'Conclusions of the Presidency' included the following on the EMS: 'The purpose of the European Monetary System is to establish a greater measure of monetary stability in the Community. It should be seen as a fundamental component of a more comprehensive strategy aimed at lasting growth with stability, a progressive return to full employment, the harmonization of living standards and the lessening of regional disparities in the Community. The Monetary System will facilitate the convergence of economic development and give fresh impetus to the process of European Union', exercising a stabilizing effect on international economic and monetary relations. It will be 'in the interests of the industrial and the developing countries alike'.

Three Member States, however, adopted an attitude of 'wait and see' ('time for reflection' in the case of Ireland and Italy), or reserved their position more strongly (the United Kingdom).

The European Council's resolution on the establishment of the EMS was extremely detailed (as had been the case in 1974 with the Regional Development Fund) in dealing with the problem of exchange rates, the intervention mechanism, the credit mechanisms, etc.

European Council in Venice, June 1980

European initiative on the Middle East¹

The European Council held on 12 and 13 June 1980 in Venice under the Presidency of the Italian Prime Minister, Mr Cossiga, reached an important agreement concerning a European initiative on the Middle East.

The declaration stated, in part: 'that the traditional ties and common interests which link Europe to the Middle East oblige them (the Nine) to play a special role and now require them to work in a more concrete way towards peace.'

In this regard, the nine countries of the Community base themselves on Security Council Resolutions 242 and 338 and the positions which they have expressed on several occasions, notably in their Declarations of 29 June 1977, 19 September 1978, 26 March and 18 June 1979, as well as in the speech made on their behalf on 25 September 1979 by the Irish Minister of Foreign Affairs at the thirty-fourth United Nations General Assembly.

¹ Bull. EC 6 - 1980, points 1.1.2 - 1.1.6

On the bases thus set out, the time has come to promote the recognition and implementation of the two principles universally accepted by the international community: the right to existence and to security of all the States in the region, including Israel, and justice for all the peoples, which implies the recognition of the legitimate rights of the Palestinian people'.

The Nine declare that they are prepared to participate within the framework of a comprehensive settlement in a system of concrete and binding international guarantees, including (guarantees) on the ground.

A just solution must finally be found to the Palestinian problem, which is not simply one of refugees. The Palestinian people, who are conscious of existing as such, must be placed in a position, by an appropriate process defined within the framework of the comprehensive peace settlement, to exercise fully their right to self-determination.

The achievement of these objectives requires the involvement and support of all the parties concerned in the peace settlement which the Nine are endeavouring to promote in keeping with the principles formulated in the Declarations referred to above. These principles apply to all the parties concerned, and thus the Palestinian people, and to the PLO, which will have to be associated with the negotiations.

The Nine went on to stress that they would not accept any unilateral solutions designed to change the status of Jerusalem; that Israel must put an end to the territorial occupation of 1967; and that they (the Nine) had decided to make the necessary contacts with all the parties concerned in order 'to determine the form which such an initiative on their part could take'.

- D. The status and operation of the European Council
1. What the main authorities say

Vedel Report¹

Some of the observations on the Summits contained in the Vedel Report seem of particular importance, in that they could equally apply to the European Council.

As regards the institutionalization of the Summit Conferences, the Report points out that 'even though this has not always been the case in the past, political will expressed at the highest level should give a decisive impetus to the mission of the Community institutions, particularly the Council. Regular meetings would bring European problems to the attention of governments, domestic parliaments and public opinion relatively frequently and renew their interest in them.

However, the summit system, which may be excellent in principle, comes up against a major criticism when it is seen as an institution meeting on a fixed date. In fact, given the exceptional character which a meeting of Heads of State or Government must retain in Community negotiations, it should rather be the political events necessitating their intervention which decide the timing of meetings. Summits held too frequently and at times when there is no real political issue which really makes them necessary, could well lessen the merits of the institution. In addition, there is a serious danger that Community procedures, which already move too slowly, would decelerate even more because the authorities responsible for making decisions would further delay taking up positions pending the next summit meeting.

Tindemans Report²

Leo Tindemans in his report put forward the following proposals:

1. The European Council is to give coherent general policy guidelines, based on a comprehensive vision of problems. This is an indispensable precondition for an attempt to produce a common policy.

¹ Report of the Working Party examining the problem of the enlargement of the powers of the European Parliament. 'Report Vedel', 1972, Bull. EC, Supplement 4/72

² Sent to the European Council on 29 December 1975 and made public on 7 January 1976.

2. Within this framework the Heads of Government will collectively use the authority which they have at the national level to give from within the European Council the impetus which is needed for the construction of Europe, and to search together for that political agreement which will allow dynamic progress to be maintained, in spite of difficulties.

3. To ensure that it functions as an efficient institution while maintaining a large measure of flexibility, the European Council:

- will, when it takes decisions on Community matters, act in accordance with the forms and procedures prescribed by Treaties. The presence of the Commission at European Council meetings is to be the guarantee of this;
- in other cases will formulate its decisions or general policy statements in such a way that they can serve as guidelines for those to whom their execution is entrusted.
- the European Council will always indicate the Institution or the organization entrusted with executing its decisions;
- will at the same time indicate, if necessary, the timescale for the execution of the decision;
- and the preparation of its meetings is to be the responsibility of the Council of Ministers (Foreign Affairs).

Committee of Three Wise Men¹

The report of the Three Wise Men identifies three characteristic functions of the European Council (EC):

- It can be the forum for 'free and informal exchanges of view between the heads of the Nine Member States.' These are not designed to lead to decisions or public statements.
- The EC 'can deliberate at the same time on matters of Treaty competence, questions of political cooperation, and common concerns which do not yet belong to any framework of obligation.'
- The EC can 'generate overall impetus, mobilizing the Community's resources for progress'.
- In addition, the EC can act 'as a court of appeal on dossiers referred up from below'. The Report offers the view that this last function is merely an extension of the Council of Ministers'

¹Report on European Institutions presented by the Committee of Three to the European Council in October 1979.

work, and thus less distinctive.

The discussions which are designed to produce decisions, settle guidelines for future action or lead to the issuing of statements, may produce three, procedurally distinct, types of results:

- 'guidelines and general directions'
- 'decisions on matters of political cooperation'
- 'specific decisions on a matter of Community concern and competence'.

The EC is regarded as a 'hybrid organ':

- In the first case, it is clearly acting within the Community framework and creating important political commitments in that context.
- In the second case, its deliberations and decisions have no relation to the Treaties.
- In the third case, when the European Council takes a specific decision purporting to be legally binding, it can be regarded under Article 2 of the Merger Treaty as a special formation of the Council of Ministers wielding the normal legislative authority of the latter.

As far as the improvements that could be made to the functioning of the European Council are concerned, the Report envisages:

- limited agendas, limited attendance, coherent preparation and follow-up, early circulation of documents, Presidency responsibility for conclusions, and so on.

All this is, however, regarded as being already in operation and the Report merely recommends reinforcing these usages.

As regards interinstitutional relations, on the other hand, the Three Wise Men suggest:

- strengthening the Commission's collaboration with the Heads of Government;
- establishing direct relations between the EC and the European Parliament¹.

The aim of both suggestions is 'to integrate the European Council so far as possible within the normal framework of inter-institutional relations, with all the safeguards that implies'.

¹ See below, section E

It was also proposed in the Report that the EC should adopt before 1981 a 'master plan' of priorities 'making provision both for advance consultation with, and for follow-up by, the institutions' with the aim of harnessing 'the European Council's full potential for political leadership, so that the whole Community machine may be impelled and guided in the most fruitful directions for progress'.

2. What the commentators say

Emile Noel¹

Emile Noel had this to say on the new organism:

- 'The new procedure demands a more personal involvement on the part of the participants and helps them to a better understanding of their deep motivations'.

- '... the new procedure seems suitable for only a limited number of problems. The likeness of the European Council to a cabinet meeting is very superficial, ... Integration has not progressed enough for European affairs to be compared with internal affairs...'

More recently² the same author noted that:

- 'It is commonplace nowadays to emphasize the role played by the European Council in European affairs. Yet we are in no way minimizing its role if we recall the important decisions which have flowed from the normal functioning of the institutions, without any intervention by the European Council'.

- '...there are some issues as crucial as they are politically and economically sensitive which only attain political credibility when the Council has given the green light. But the role of the institutions (especially the Commission's power of initiative) is not formally affected'.

- The EC provides a 'political impetus which will facilitate the progress of a subject being dealt with by the institutions, and which remains in their hands.'

¹Some reflections on the Preparation, Development and Repercussions of the Meetings between Heads of Government (1974-75), Government and Opposition, Vol. 11, No. 1, Winter 1976, pp. 27-28

²Emile Noel, 'Reflections on the State of the European Community at the end of the Seventies', Government and Opposition, Vol. 15, No. 2, Spring 1980, pp. 134-141

Noel also remarks that the EC has improved its work by becoming more selective:

- 'It organizes its work each time around a small number of priority themes and it supervises from session to session the implementation of the directives which it has given, supplementing or improving them'.
- '...the interplay between what the European Council and heads of government can contribute and what the institutions (Council and Commission) can decide is an increasingly effective one'.
- 'The EC has already contributed towards the revival of the Community's internal development'.

Sasse, Pouillet, Coombes, Deprez¹

Christoph Sasse considers that:

- 'Summit conferences have always been the expression of the ultimate leadership resources that the Member States are able to muster. The combined political prestige of the assembled politicians is aimed at producing the evidence of authority that has been increasingly lacking as a result of the absence of a sound basis under the treaties and the inability of Community decision-making procedures to bring about a consensus'.
- 'While it is true that the politically binding effect of a summit communiqué is considerable, it is often so general that national systems of checks and controls are able to block its implementation'.
- 'So far the summit conference has acted only as a spur, catalyst, and coordinator, and has thus remained far below the level of direct legislation. Conferences of heads of state must be seen in their limited context'.

3. What is the status of the European Council?

Hypothesis I: It is the Council of Ministers meeting at the level of Heads of Government

The communiqué issued at the conclusion of the Summit Conference held in Paris in December 1974 stated that the arrangements agreed for future meetings 'do not in any way affect the rules and procedures laid down in the Treaties or the provision on political cooperation in the Luxembourg and Copenhagen Reports'.

¹C. Sasse, E. Pouillet, D. Coombes, G. Deprez, Decision Making in the European Community, Praeger Publishers, New York - London, 1977, pp. 110-112

Thus, given that the European Council is, unlike the former Summits, governed by the same rules that apply to the Council of Ministers, it could be in effect regarded as the Council of Ministers meeting at a higher level. There is, moreover, another substantial difference between the Summits (1961-1974) and some of the European Councils. The communiqués of the Summits confined themselves to indicating general guidelines, without entering into the technical details, which were the prerogative of the Council and the Commission.

In contrast, both the communiqué of the June 1976 European Council, in which the 410 seats in the directly elected Parliament were allocated among the Member States, and the communiqué of the December 1978 European Council at which the EMS was launched (see Section C above), were extremely detailed.

It would thus be difficult to classify these two communiqués as the expression of 'general' statements at a meeting of Heads of State and Government, and it seems more appropriate to include them in the context of communiqués proper to the specialist Councils of Ministers.

If the European Council, therefore, is 'de facto' an ordinary Council held at the highest level, it would have to be regarded as a Community institution, with all the consequences that this definition implies in the area of interinstitutional relations (see also section E below).

In that case, the European Council should be assisted in its work by the Council Secretariat.

Hypothesis II: It is an intergovernmental coordinating organ

The contrary hypothesis leads to the definition of the European Council as the coordinating body of the Community member countries.

It could, for instance, be likened to the European Conference of the Ministers of Transport (ECMT), whose purpose is to coordinate and regulate, through intergovernmental agreements, certain areas of transport in Europe and some of whose decisions - as, for example in the case of the conclusion of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) - also affect the Community as such.

In this case (which gained notoriety as it became the occasion of the Commission's bringing the Council before the Court of Justice), the Community Member States initialled, within the framework of the ECMT, an agreement which undoubtedly affected one of the sectors (transport) of the EEC. On this interpretation, therefore, the European Council - a body

not envisaged in the Treaties and clearly having an intergovernmental connotation, would be an organ concerned with coordination among the Member States in a very wide variety of sectors.

Some of these sectors, since they are not covered by the Treaties, would not concern the EEC as such, while, in others, some of the decisions would have an immediate impact on the Community qua the Community.

4. The rapporteur's proposals

(a) The European Council is a hybrid body which in some respects acts as the Council of Ministers and in others as an intergovernmental organ¹.

(b) It is too soon to say whether it is desirable, for the Community or for the European Parliament alone, for the European Council to be given a place in the institutional structure of the EEC by means of Treaty provisions. It would certainly be advantageous to the European Parliament, since it would make the European Council more answerable before Parliament (see section E below).

(c) From the point of view of the Community in general, it would probably be more desirable for the European Council to retain its hybrid nature.

(d) Adoption of the proposals of Tindemans and the Committee of Three Wise Men on the activities of the European Council.

In his Report, Tindemans proposes:

1. The European Council is to give coherent general policy guidelines, based on a comprehensive vision of problems. This is an indispensable precondition for an attempt to produce a common policy.

2. Within this framework the Heads of Government will collectively use the authority which they have at the national level to give from within the European Council the impetus which is needed for the construction of Europe, and to search together for that political agreement which will allow dynamic progress to be maintained, in spite of difficulties.

¹One confirmation of this hybrid nature of the European Council can be found in the answer to the Written Question (No. 326/79 of 31 July 1979) by Lord O'Hagan to the Council of the European Communities. Quoting a passage from the Paris communiqué of 1974, the Council pointed out that the European Council meets as the Council of the Communities and in the context of political cooperation. The Council went on to state in its reply that: 'When deliberating matters falling within the scope of the Treaties, the European Council, whose composition is governed by the same rules as the Council of the Communities (Article 2(1) of the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities), ought to be considered as a Council meeting at the highest level. In such matters, it has hitherto provided political impetus or evolved guidelines but there is, in principle, no reason why, in its role as Council of the Communities and in compliance with the Treaties, it should not take decisions having legal effect...'

3. To ensure that it functions as an efficient institution while maintaining a large measure of flexibility, the European Council:
- will, when it takes decisions on Community matters, act in accordance with the forms and procedures prescribed by Treaties. The presence of the Commission at European Council meetings is to be the guarantee of this;
 - in other cases will formulate its decisions or general policy statements in such a way that they can serve as guidelines for those to whom their execution is entrusted;
 - the European Council will always indicate the Institution or the organization entrusted with executing its decisions;
 - will at the same time indicate, if necessary, the timescale for the execution of the decision;
 - and the preparation of its meetings is to be the responsibility of the Council of Ministers (Foreign Affairs).'

The Committee of Three Wise Men proposes for the improvement of the functioning of the European Council:

- restricted agendas, limited participation, coherent preparation and implementation, distribution of documents at the appropriate time, responsibility of the Presidency for establishing the conclusions, etc. All these things are regarded, however, as already happening, and the intention is merely to tighten up these procedures.

As regards interinstitutional relations, on the other hand, the Three suggest:

- strengthening cooperation by the Commission with the Heads of Government;
- establishing direct relations between the European Council and the European Parliament¹.

The aim of both suggestions is 'to integrate the European Council so far as possible within the normal framework of inter-institutional relations, with all the safeguards that implies'.

It was also proposed in the Report that the EC should adopt before 1981 a 'master plan' of priorities 'making provision both for advance consultation with, and for follow-up by, the institutions' with the aim of harnessing 'the European Council's full potential for political leadership, so that the whole Community machine may be impelled and guided in the most fruitful directions for progress'.

¹See also section E below

5. Summary

In the European Parliament's view, the main weaknesses in the functioning of the European Council are to be found in its relations with the Commission and Parliament.

The Commission does not normally submit proposals to the European Council, but only reports, memoranda and communications. Consequently, there can be no consultation of Parliament by the procedures which may be laid down in the Treaty in respect of a proposal made by the Commission pursuant to Article 189 of the EEC Treaty.

Thus, to the March 1975 European Council, the Commission submitted a communication on 'The unacceptable situation and the correcting mechanism'. Although later, at the European Council's request, the Commission submitted a proposal in the matter pursuant to Article 235 EEC, on which the Council did consult the European Parliament, the latter, in its resolution, confined itself to merely taking note of the proposal (see OJ 1976, C7/17).

Again, Parliament is unable to exercise its supervisory powers, as laid down in Article 137 of the EEC Treaty, even when the European Council has taken a decision falling within the scope of Community competences, because the Commission has not exercised - has not been able to exercise - fully its right of initiative, established in Article 189 EEC.

Moreover, the European Council has from time to time entrusted to the Council (either to the Foreign Affairs Ministers or to the specialist Councils), rather than to the Commission, the execution of its decisions: this has been notably the case in the area of economic and monetary problems. Pursuant to Article 155 EEC, the Commission 'shall ensure that the provisions of ~~the~~ Treaty are applied', and it exercises powers over their implementation. The European Council, however, tends to exclude it from such functions. What is more, the European Parliament is also very restricted in the exercise of its powers of control, under Article 137 of the EEC Treaty, over the Commission and also over many important problems in the area of economic and financial policy.

The European Council as a rule provides very scant information on its deliberations. On the one hand, prepared statements are issued embodying the opinion of the EC or of the Heads of Government on problems of international relevance (e.g. relations with Japan, subjects for discussion at Western economic Summits) and on problems relating to political cooperation

in Europe (e.g. the Middle East, Afghanistan, Southern Africa). These statements are published in the press and can be debated by the European Parliament's Political Affairs Committee at its quarterly meetings with the President-in-Office of the Council of Foreign Ministers.

But, on the other hand, no reports of the informal discussions of the European Council are published; on discussions about problems both strictly within Community competences and those going beyond them, the European Council merely issues a summing-up by the Presidency, which does not have the official status of the Declarations and usually confines itself to an analysis of the problems treated and the expression of pious hopes for their resolution.

The functioning of the European Council - in formulating guidelines and general directions, whether on Community questions or other issues - is further weakened by the need to reach consensus in the conclusions. It inevitably follows that such conclusions are mostly of the baguest.

Besides, the Community institutions are unable to impose any sanctions on a Member State that chooses to ignore such conclusions unless these sanctions can be based on a proposal from the Commission pursuant to Article 189 of the EEC Treaty, followed by a decision of the Council. Thus, on the subjects of convergence of economic policies, of actions to combat inflation and unemployment, or of the world energy crisis, the European Council has more than once indicated the measure to be taken without giving the Commission the slightest possibility either of compelling the Member States to adopt such measures, or of punishing them if they do not do so.

E. Relations between the European Parliament and the European Council

1. Views and comments

Tindemans Report

On the question of relations between the European Parliament and the European Council, the report proposes that invitations to take part in the 'general policy debates', which are needed to enable Parliament to influence the general direction of the Union's activities, to be held at least once a year, i.e. once under each Presidency, 'should be extended both to the President of the European Council and to a limited number of leading politicians who are not members of the European Parliament, chosen according to criteria to be decided.' These invited politicians would be able to address the Parliament'.

Reay Report (Doc. 148/78)

On relations between the European Parliament and the Council, this report:

1. Requests the President of the European Council to make a statement to Parliament concerning its work and conclusions once during each Presidency, and to reply to questions put to him by Members of Parliament;
2. Considers that the annual debate on the General Report of the Commission may be accompanied by an annual debate on the state of the Union and the functioning of the institutions, in which the President of the European Council would participate and in which the other members of the European Council and the Foreign Ministers of the Member States would be invited to take part;

Committee of Three Wise Men

On relations between the European Parliament and the European Council, this report points out that 'given the European Council's present role in the fortunes of the Community, it is not right that this obvious gap in its relations with the Treaty institutions should persist'.

It therefore proposes:

- that the President of the European Council should attend the Parliament in person¹ once in each Presidency. The Foreign Minister can continue to report on the third annual meeting as before.

The purpose of this is to give the European Parliament a clear idea of the conclusions of the European Council and the reasons behind them, and to discuss how the other institutions 'might contribute to the tasks in hand'. Parliament should, moreover, express its views in the ensuing debate and the European Council should take due note of them.

Indeed, in all its work on Community questions, 'the European Council should be more alive to Parliament's rights and interests'.

2. The rapporteur's proposals

- (a) We should go ahead with the proposals contained in the Reay report and the report by the Committee of Three Wise Men;

¹It is emphasized in the report that 'consideration must be given to the special position of the President of the French Republic'.

- (b) In addition, each current President of the European Council should hold a meeting with the Political Affairs Committee (on the model of those already established for the current President of the Council of Foreign Ministers) on the subject of the discussions concerning political cooperation which had taken place in the European Council;
- (c) When the Treaties come to be revised, the European Council should be established as the top-level policy-making body.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman : Mr FERRI

At its meeting of 2 October 1980 the Legal Affairs Committee appointed Mr FERRI draftsman for an opinion on relations between the European Parliament and the Council, with the understanding that the appointment would take effect once the Legal Affairs Committee was officially consulted on the matter.

By letter of 26 January 1981 the Secretary-General informed the committee that on 15 January the enlarged Bureau had authorized it to draw up an opinion for the Political Affairs Committee.

At its meeting of 26/27 October 1981 the committee considered the draft opinion and unanimously adopted it.

Present: Mr Ferri, chairman and draftsman; Mr Luster, Mr Turner and Mr Chambeiron, vice-chairmen; Mr Dalziel, Mr Goppel, Mr Janssen van Raay, Mrs Macciocchi, Mr Megahy, Mr Prout, Mr Sieglerschmidt, Mrs Théobald-Paoli, Mr Tyrrell, Mr Vardakas (deputizing for Mr Gondikas) and Mr Zacchino (deputizing for Mr Gonella)

1. By the end of 1974 the Community institutions' progressive inability to perform the tasks assigned to them by the Treaties had reached a peak: the Council's decisional incapacity, itself the result, on the one hand, of the 1966 Luxembourg agreements and of the accession of the new Member States on the other, produced in the Commission an attitude of makeshift expediency, whereby it continued to carry out its administrative duties, but was losing all dynamism in its primary function of political initiative in the face of consistent blocking by the Council of every proposal that in any way went beyond routine management.

2. It was at this point that the idea arose of restoring some lustre to the Community's image, and some vigour to its activities, by strengthening the content and regularizing the frequency (making them thrice-yearly) of the meetings of the Heads of State and of Government which hitherto had been held sporadically and called on each occasion to deal with one particular problem.

The idea came from the French President, Giscard d'Estaing: the very way in which, on 10 December 1974, at the close of the Paris Summit he announced its acceptance to journalists ('The summit is dead, long live the European Council!') demonstrated a determination to impress the general public and revive interest in the Community, its problems and its operation.

3. And indeed, the decisions reached at the Paris Summit of 9 and 10 December 1974 were extremely weighty; the Heads of State and Government:

- declared their intention to abandon the rule of unanimity in the Council;
- decided to delegate greater executive and administrative powers to the Commission;
- set up a working party to study the possibility of establishing a Passport Union; the working party was to submit a draft to the Governments of the Member States, if possible before 31 December 1976;
- set up another working party instructed to study the conditions and timing under which the citizens of the Member States might be granted special rights;
- declared their resolve to associate the European Parliament, elections to which were to be held as soon as possible, with the achievement of European unity; Parliament's powers were to be extended, in particular by granting it certain powers in the Communities' legislative process;

- with the aim of defining the objectives of the European Union, requested the European Parliament, the Commission and the Court of Justice to submit proposals by the end of June 1975, and invited the Belgian Prime Minister, Mr Tindemans, to submit by the end of 1975 a comprehensive report on the basis of the reports received from the institutions and of consultations with the Governments and with a wide range of public opinion in the Community;
- reached decisions on the creation of the European Regional Development Fund, with effect from 1 January 1975, its endowment for the first three years of operation, and the division of its resources.

The Summit Meeting also dealt with problems relating to economic and monetary union, convergence of economic policies, employment, energy, and Britain's continued membership of the Community¹.

4. There were those who thought that they had witnessed the conception of an embryonic 'European cabinet', a Community government to which the elected Parliament, as guarantor of the system's democratic nature, was to provide the counter-weight.

5. The results of the subsequent European Councils did not confirm the bright hopes born at that time. What is more, it became clear that what had been created was an organism which it would be difficult to control.

The European Council acquired decisional functions and a power of initiative in Community matters; but its working methods, indeed its very essence, were those of an intergovernmental body. Enough to say that, for the implementation of most of its decisions, the European Council sets up working parties consisting of national civil servants; the working parties report on the progress of their work, which is secret, directly to the Council or to the European Council. None of the safeguards built into the Community legislative process (public proposal from the Commission, consultation of Parliament, Council decision taken according to clearly prescribed rules) is present².

6. Consequently, the impact of the European Council on the Community institutions has been as follows:

¹Cf the Communiqué on the Meeting of the Heads of Government of the Community, Annex to Chapter I of the Eighth General Report on the Activities of the European Communities, Brussels-Luxembourg, February 1975.

²See on this the draft opinion by Mrs Maria Antonietta MACCIOCCHI on the right of migrant workers to vote and stand for election (PE 62.650 p.4 et seq.)

- The Council is no longer the organ of supreme decisional power: after 1966 the majority rule was replaced by the search for the unanimity of consensus; since the European Council came into being, it has come to be regarded by the Council as the appeal body for the more important decisions which are now set aside to be referred to the Heads of State and of Government (by whom they are quite likely to be treated not on their merits, but as bargaining counters in political deals);
- The Commission which, already at the end of the transitional period laid down by the Treaties, in the absence of binding guidelines had lost the incisiveness and vigour necessary for the exercise of its powers of political initiative, increasingly yielded to the temptation to play second string to the new body which initiates new policies with such panache and authority;
- But perhaps the institution which suffered most from the advent and activities of the European Council was the European Parliament which saw the importance of its power of control over the Commission and of its dialogue with the Council greatly diminished; the seat of decision-making was now elsewhere, in a political stratosphere which Parliament could not reach; the whole Treaty system governing relations between Parliament, Council and Commission had been jeopardized by the fact that the European Council existed and functioned outside the institutional framework set up by the Treaties.

7. Actually, the European Parliament (which has never so far expressly given its opinion on the European Council) did on one occasion try to fight a decision of the Heads of State and of Government. In the course of the adoption of the 1978 budget Parliament learnt of the endowment of the Regional Fund which the European Council had decided (580 million u.a.); Parliament had the alternative of either, as the committee responsible proposed, substantially increasing the allocation, or of submitting to the will of the European Council: Parliament chose a third way, symbolically increasing the Fund's endowment by 1 million u.a.

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8. What has thus been created in the European Council is an organ which combines the powers of the Council and those of the Commission, thus overturning the delicate institutional balance sanctioned by the Treaties, a balance whose fundamental importance was only recently

reaffirmed by the Court of Justice¹; the European Council operates along lines proper to inter-state relations and its functioning cannot be controlled at Community level.

9. There are essentially two proposals in Mr Antoniozzi's draft report (PE 73.388):

- (a) firstly, the European Council is invited to keep Parliament informed of the outcome of its meetings;
- (b) secondly, the need is stressed to include the European Council among the Community institutions when the Treaties come to be revised.

Comments:

on (a) Participation of the President of the European Council in Parliament's proceedings will not provide the key to controlling the activities of the Heads of State and of Government; Parliament's desires, as expressed in the annual general debate on Community policy, especially if so expressed retrospectively, will not influence the development of the European Community; it will also be remembered that Mrs Thatcher has already announced that she is prepared to report to the European Parliament on the European Council meeting to be held in London on 26 and 27 November 1981; there seems little point in demanding something that is already in hand and which undoubtedly will create a precedent;

on (b) The possible inclusion of the European Council among the Community institutions should be very carefully considered: for if, on the one hand, we might expect to restrict the powers of the European Council in this way, it is also clear, on the other, that those of the remaining institutions need to be reviewed and adjusted; on this point we fully concur with point 4(b) (p. 24) of the explanatory statement in Mr Antoniozzi's report: 'It is too soon to say whether it is desirable, for the Community or for the European Parliament alone, for the European Council to be given a place in the institutional structure of the EEC by means of Treaty provisions'.

10. To conclude, then, the Legal Affairs Committee is doubtful whether it would be advisable for Parliament to tackle the question of its relations with the European Council and find itself delivering a substantially favourable opinion.

¹Judgment of 29 October 1980 in Cases 138/79 and 139/79, ECR (1980-7), pp. 3333 and 3393

As regards revision of the Treaties, which is the most important proposal contained in Mr Antoniozzi's draft report, it will be remembered that on 9 July 1981 it was decided to set up an appropriate parliamentary committee.

Subsidiarily (i.e. in case the Political Affairs Committee should insist on submitting the report to Parliament), the Legal Affairs Committee should like the committee responsible to reflect on the following considerations:

- the functioning of the European Council has altered the institutional balance laid down in the Treaties, reducing the role of the three political institutions;

- it might be better to return to the system of ad hoc meetings, called as the need arises; their exceptional nature would reinforce their impact on the institutions and the public at large and it would incite each institution to play the part proper to it to the full;

- the Legal Affairs Committee is aware that Parliament has no means of imposing this view on the Heads of State and of Government; it feels, nevertheless, that Parliament should use its power of control over the Commission in such a way as to impel it to perform fully its function of political initiative, going beyond, if necessary, the decisions of the Heads of State and of Government;

- the Legal Affairs Committee feels in particular that whenever the European Council puts forward initiatives on matters within the sphere of Community competence, the Commission should take it upon itself to translate these initiatives into proposals to be put before Parliament and the Council; this would ensure that, at least at the implementational level, the powers invested by the Treaties in each institution are preserved¹.

¹Cf. the draft report by Mrs Macciocchi quoted above, points 18, 22 and 23.

