

AT THE HEART OF THE EUROPEAN CONSTITUTION:

A two - headed presidency & bicameral legislative power

Dusan Sidjanski

*Emeritus Professor of the University of Geneva
President of the European Centre for culture*

A two-headed presidency is crucial if the European Union is to implement a common foreign security and defence policy, which cannot exist without the commitment of the European Council and its President. This is acceptable, on condition that henceforth the European Council takes its important decisions upon

proposal from the Commission. This institutional balance strengthened by the adoption of a second Chamber or a Council of States is the best guarantee for the general European interest and the democratic functioning of the European Union.

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The Iraqi crisis provoked a split among the members of the European Union. Obviously this is not the European Union's first crisis. The EU has survived both the crisis of a so-called "empty chair" and the confrontation between France and Germany on the recognition of Croatia and Slovenia. Consider the case of Iraq, it was the unilateral behaviour of one country, or a group of countries that were at the root of opposition and serious tension².

The Maastricht and Amsterdam Treaties took past experience into consideration consequently they institutionalised the decision-taking process for common foreign security policy³. But, in contrast to the procedure foreseen by the treaties of the European Union, the different phases which preceded the war against Iraq were punctuated by the adoption of unilateral positions, relegating

common procedures to the sidelines: the disengagement of the German government⁴, the French President's refusal to see the logic of war, the letter from the eight Heads of state, the consequences of this "negative spill-over effect" have resulted in a torn Europe. An analysis of recent events leads to a general acknowledgement of these discords: the incapacity of the divided European Union, the inadequacy of NATO and its co-operation with the European Union, the weakness of the UN system, particularly the Security Council, and a unilateral behaviour of the only superpower. So many factors, which contribute to the destabilisation of the international order whilst at the same time dividing Europe. In these conditions, the European Council had to content itself with a minimal declaration on the role of the Security Council as guarantor of international law and post war Iraq. We



Στη Συντακτική Συνέλευση ο Πρόεδρος της κ. Chirac πρότεινε την Διπλή Προεδρία για την ΕΕ, ενώ για τον Πρόεδρο της Επιτροπής να εκλέγεται από το Ευρ. Κοινοβούλιο.

are a far cry from the responsibility that the European Council was supposed to assume in common foreign policy and security according to the Maastricht and Amsterdam Treaties. However, on the essential question of war and peace, it is clear that only the European Council has the potential capacity to take decisions on behalf of the Union. It is in this perspective that the proposal for a double presidency of the European Union is envisaged.

A two-headed presidency⁴

The distribution of powers

President Chirac and Chancellor Schroeder are proposing a two-headed presidency for the Union, whereby the President of the European Commission is elected by the European Parliament, and the President of the European Council is elected by the heads of state and government, either by consensus or preferably, by qualified majority voting. At the same time, it strengthens the double legitimacy on which the Union relies. Their proposal was adopted by the praesidium of the Convention⁶. Nonetheless their proposal does not address the question of legislative power, the role of the European Parliament and the Council, and the relationship between the European Council and the Commission.

However, the key to European power resides in

sharing tasks between, on the one hand, the European Council and the Council which represents the interests of the Member States and on the other, the European Commission and the European Parliament which represent the general European interest. Since the beginning, the dynamic of the European Community has always been founded on a skilful balance between these two poles of power represented by the tandem of the Commission and the Council. This institutional invention conceived by Jean Monnet, is the source of dynamic European integration. On the eve of the major challenge of enlargement, the balance in the Union has been upset by the addition of intergovernmental cooperation in the domains of foreign policy, security and defence as well as in internal affairs and justice. Therefore, in spite of the introduction of the Euro and the creation of the ECB, a serious imbalance is threatening the European Union. In this interacting system, the inconsistencies of the CFSP may have a destabilizing and long lasting impact on monetary policy, the domestic market and common solidarity. The uncertainty of a prolonged cohabitation between the two discordant methods is the result, which threatens the efficient, coherent and democratic functioning of the European Union.

The Commission fulfils an important role as the

principal driving force, to the degree that it exerts its power of initiative. In turn, the Council decides upon proposal from the Commission. This original set up was modified by the creation of the European Council, which intervenes when the responsibility and engagement of major political leaders is needed to define orientations and general strategy; and to decide on highly political questions, particularly in the realms of foreign policy, security, and war and peace.

The distribution of power in external relations is more complex. In the case of commercial policy, as a consequence of customs union, and as a reflection of domestic economic integration, the Commission assumes a central role by its proposals and by its representation of the Union during commercial negotiations, in conformity with the Council's mandate. In the same vein, its role was just as essential in negotiations about enlargement, which it prepared on behalf of the European Council and mandated by the Council. On the other hand, in foreign affairs, CFSP or defence matters, governmental responsibility falls mainly to the European Council and to the Council of Foreign Affairs, the Commission being relegated to a marginal role. If this distribution of tasks can be explained for reasons of sovereignty, it is justified neither by its coherence and efficiency, nor by the results obtained. The differences in opinions on the Yugoslav crisis like those today on the subject of Iraq demonstrate this and reflect unfavourably on the cohesion of the Union⁷. From whence arises the question of how to reach a solution, which ensures that not only can the Union speak with a single voice but that it can also act together. Were this to be the case its economic and political weight would have a corresponding impact on world affairs. If we want an efficient and coherent foreign and security policy, the European Council must be strengthened and enabled to take decisions progressively by qualified majority voting upon proposals from the Commission.

A two-headed presidency at the heart of the community system

In the case of a double presidency, governmental power would rely on two institutional pillars, the European Council and the Councils of Ministers on the one hand, and on the other, the "European government", or the European Commission. In both

cases, other than its role of personalised presidency, the European Council will have full responsibility for orientations and finalised general strategies on *proposal* from the Commission, in both economic and monetary policy as in external relations, security and defence. In this way, even in matters of foreign policy, security and defence, decision-making falls to the European Council acting on proposals from the Commission; responsibility for implementing decisions is allocated jointly to the Councils for Foreign Affairs and Defence and to the Commission. In brief, it is the generalised application of the community method, which is favoured by a large number of members of the Convention.

The two-headed Executive relies on two main common institutions, one with the participation of member governments, the other independent, whose task is to articulate the general European interest. From then on, the taking of fundamental decisions concerned with CFSP and CSDP matters is the responsibility of *the European Council acting on proposals from the Commission*. In particular, the coherence and efficiency of foreign policy is largely the result of common proposals, which are drawn up by the Commission and the Minister for Foreign Affairs, working in close liaison with the Council of Ministers of Foreign Affairs. In this way, discussion would be based on proposals founded on a common vision and parliamentary control could be exerted by the European Parliament. The more problems are associated with high politics the more the commitment of the European Council is necessary, a commitment which must be based on proposals from the Commission which alone is answerable to the European Parliament. Without a European Council, there is no real foreign policy, without a president of the European Council and without proposals from the Commission there is no Union, which can speak, with one voice and acts as one. Consequently, the initiatives and the individual actions of a member, no matter what its political weight, or of a group of members, must be channelled through the Commission and through the European Council by its President.

The President, elected by the European Council using qualified majority voting, for a renewable mandate of two and a half years, carries out fulltime functions and prepares, presides over and guides the work of the European Council based on

proposals from the Commission, whose President is at the same time a full member of the European Council. The monitoring of decisions taken by the European Council is ensured by its President with the assistance of the Council and the Commission. Moreover, the coherence of foreign policy is entirely ensured by a European Minister for Foreign Affairs, vice-president of the Commission, who participates in the work of the European Council. Consequently, the functions of the High Representative and that of the Commissioner in charge of external relations are taken on by only one political figure who is elected by the European Council using qualified majority voting, and preferably, on the joint proposal of its President and the President of the Commission. According to the Franco-German proposal. The European Minister for Foreign Affairs relies on a European diplomatic service which allies head of External Relations of the Commission to a unit for foreign policy. This outline will allow for the emergence of a European diplomacy that will gradually put into practise the foreign and security policy of the Union.

Efficiency in this sensitive domain relies more than anything on resorting to *qualified majority voting* which progressively should replace consensus. However, a festering wound remains in the Franco-German proposal as those decisions with security and defence implications are supposed to be taken unanimously. A solution could be the possibility of constructive abstention, as exists in the Treaty of Amsterdam, and the definition of the steps needed to move from unanimity to qualified majority following the examples from the Treaty of Rome. The President of the European Council represents the Union on the international scene during meetings of heads of state or government. In practise, he always carries out this role with the President of the Commission so that coherence and efficiency are ensured.

More than one small or medium member state fears a full-time President of the Union, coming from a large state, forgetting that after enlargement the small and medium states will have increased influence. Moreover, in the past, it has frequently been the case that one of their statesmen was designated as President of the Commission. In addition, in a balanced system the increased independence and democratic legitimacy of a

strengthened Commission combined with its generalised power of proposal would be *the best guarantee against the domination of the large states*. Furthermore, it must be noted that divisions between the large member states and the others are not as they seem. In reality, coalitions are born and dissolved according to specific needs and according to the conflicting or converging interests of the moment. Finally, it is generally admitted that they appear in relation to the concrete question of the Presidency and the role of the Commission. The Commission is the only institution answerable to the European Parliament and consequently its participation in decision-making is a fundamental aspect of the democratic system of the Union. During their meeting in Luxembourg on April 1, the heads of state of seven countries, Benelux, Ireland, Portugal, Finland and Austria, pronounced themselves against a fulltime President of the European Council, fearing that the intergovernmental institution would be strengthened at the expense of the Commission. Our proposal requires a strengthened Commission with powers of proposal in CFSP matters and gradually in issues of common security and defence. Moreover, a group of member states represented mainly by Germany and the Benelux, and supported by the medium sized and smaller member states is arguing for a strong Commission. Amongst this group, some would like to see a Commission made up of 25 members, a logical consequence of which would be the weakening of an institution which they are proposing to strengthen: the difficulty of managing 25 Commissioners and the reaffirmation of the intergovernmental aspect of the Commission. On the other hand, the possibility of foreseeing associated or delegated Commissioners and the rotation of the Commissioners or some sort of "cabinet" should be possible. Nevertheless, the presence of key political figures of each of the 25 member states in the enlarged Commission is a necessary requisite for an expanded European Union. The necessity for profound knowledge of each country is the price for increased diversity in the European Union. Currently the democratic and institutional equilibrium in the Union is guaranteed by three main supports: the election of the President of the Commission by the European Parliament; the proposals of the

Commission as a basis for decision-making including institutions with governmental participation and legislative institutions; and the democratic responsibility of the Commission to the European Parliament, excluding its responsibility to the European Council as was cited by the Franco-German proposal. As a counter balance to a strengthened European Council, it is indispensable to have an autonomous, accountable and strong Commission, having increased legitimacy and due to its right of proposal, a guarantor of the European interest.

The election of the President of the Commission by the European Parliament will have numerous effects over and above the reinforcement of the legitimacy of the Commission and its visibility for European citizens. For example, as was proposed by Jacques Delors, the large European political parties, such as the European Socialist Party and the Popular European Party including coalitions of other European parties would have to name their candidates for the Presidency of the Commission at the time of European elections. In this way, the relation between the electoral results would be better perceived by the electorate and will have a bigger impact on the motivations of the political parties and citizens. In addition to the growth of legislative and budgetary powers, as well as democratic control, a more direct link between the result of the elections and the choice of President of the Commission would stimulate both the debate on these European options and themes, and European parties and their electorate. The converging effects between the election of the European Parliament and its increased powers, and the election of the President of the Commission, would strengthen both the legitimacy and the authority of the Commission. On the other hand, the Community procedure based on the proposal from the Commission, without excluding other governmental and parliamentary or even non governmental organisations initiatives, will allow for better cohesion and an increased coherence of community acts based on a balanced vision of the European interest. The importance of the Commission as dynamic core, central pole of attraction and catalysing centre takes on increased significance in the highly complex society of the Union within which a multitude communicate and interact. Consequently, advanced technology is

spreading through the post-industrial world by breaking vertical hierarchical chains and creating horizontal networks. From whence, a new form of governance emerges, which relies principally on consultation, participation, association, promotion and encouragement on all levels, with common objectives, more than on resorting to the use of force. In this context, the Commission is called on to assume the dynamic role of centre of orientation and stimulation.

It must be recalled, that the Commission is the only institution, under the democratic control of the European Parliament and European politicians. Its presence in the decision-making process is the effective guarantee of the democratic nature of the European Union. On the other hand, at the heart of the Union, the lack of democracy is growing, to the extent that the Commission is absent or marginalized. That is to say that the pivotal role, which alongside Community institutions – the European Parliament and the Court of Justice - and institutions with governmental participation - the European Council and the Councils of Ministers - falls to the European Commission. The subtle balance between the expression of European interest and national interests which leads to European alchemy is at the heart of the success of the European Community and is the guarantor of the dynamic of integration. The same method adapted to the particular conditions of foreign affairs, security and defence appears to be the backbone of the future European Constitution.

A bicameral legislative power

The Council : confusion or separation of powers?

The Council along with the Commission plays a key role in the decision-making process in the European Community. In fact, it constitutes the highest authority in the legislative process of the European Community acting on proposals from the Commission and in co-decision with the European Parliament. At the same time, it has governmental powers often in common with the Commission. The Council cumulates legislative power and, in addition, governmental power: as Janus has two faces. With the extension of the political competences of the European Union, the Council has become, alongside the European Council, the principal holder of new powers that have been attributed to the Union. Consequently, it finds itself in the centre of the

debate on the intergovernmental or federal character of the European Union. The lack of separation of, or the confusion of, powers leads to a paradoxical situation in which the proposing Commission is subject to the democratic control of the European Parliament, while the Council, which is the decision maker, escapes all parliamentary control in the exercise of its executive powers. Throughout the legislative procedures of the European Community, the Commission formulates proposals and tries to preserve both the coherence and the balance of Community standards. The progressive spread of *legislative co-decision* ensures the reinforcement of the European Parliament and the capacity of the Council, as a result of the extension of qualified majority voting. In spite of the modest progress obtained at Nice, the general tendency is towards more democracy and more efficiency, and towards a *bicameral legislative authority*. The latter by assuring the double participation of the member states and the citizens of the Union is a clear indicator of the evolution of the European Community towards a federative system. From whence arises the proposal to have a Legislative Council⁷. The tendency towards Bicameralism is clearly reflected by the role of the conciliation committee where representatives of the European Parliament and the Council are present, but where the Commission is given the task of mediator, which is appropriate for an executive body. However, the ambivalence of the Council remains, in the sense that alongside its legislative functions, it has carried out more governmental functions since the Union has begun to extend its authority in foreign policy, security and defence. The confusion of powers is the congenital sickness of the Council.

In the same way, the powers of the European Parliament are present under different forms, which bring it closer to its national counterparts: democratic control, budgetary powers, powers of approval and assent, powers of inquiry and hearing, including initiative and promotion. These procedures throw a clearer light on the activities of the European

Union, the European Parliament being the *only transparent institution* open to the European public.

A Council of States

The German government has made proposals, which reflect the visions of Karl Lamers and Wolfgang Stauble⁸: the Commission would become the European government whilst the Council would be transformed into a Chamber of States alongside the European Parliament. The European Youth Convention has also proposed this transformation of the Council (Brussels 12 July 2002). Clearly this outline has the advantage of being simple but it constitutes a rupture with the institutional experience of the Union.

The opinion of President Rau is that "we already possess the building blocks with which to build a European federation of nation-states, they only need to be embellished and assembled into a structure"⁹. This structure has its legitimacy in the double representation of citizens at the heart of the European Parliament and the Member States, where each state would have a voice independent of its size or number of inhabitants. This would be reflective of the American Senate or the Swiss Council of States.

According to Joschka Fischer the European Parliament should represent two elements, a Europe of Nation-States and a Europe of citizens and it must include "two Chambers of which one would be made up of elected deputies...as to the other Chamber, a choice must be made between a senate model which gathers senators from member states, who would be elected by direct suffrage, and a chamber of states comparable to our Bundesrat"¹⁰ Unlike the egalitarian representation of the member states of the American Senate or of the cantons in the Council of States in Switzerland, the distribution of 69 seats in the Bundesrat takes into account the variable dimension of the Länder: four Länder hold six seats each, one has five, seven Länder have four seats and four have three seats, totalling 69 seats. This example is often cited when referring to the balance of votes in the European Union Council,

“The spread of legislative co-decision ensures the reinforcement of the European Parliament and the capacity of the Council, as a result of the extension of qualified majority voting”



Η πρόταση της Συντακτικής Συνέλευσης για την εκλογή του Ευρ. Κοινοβουλίου θέτει το ερώτημα της εναρμόνισης ή μη στη διαδικασία ψηφοφορίας.

which would serve as model for the distribution of seats at the heart of the Council of States. This second Chamber of states or Senate is closely related to Tony Blair's proposal for a second Chamber of the European Parliament, made up of national representatives from member states. The different instruments intended to associate national parliaments and their members have produced only limited results: consider parliamentary hearings, or the COSAC which only deals with institutional questions, parliamentary commissions in liaison with the European Parliament and the commissions of the national parliaments in charge of European Affairs which are dispersed and show differing levels of efficiency, with the exception of the Danish Parliament. As for the proposal to have an annual Congress of European representatives of parliaments, it does not seem to answer the need for greater participation from the national parliaments in the construction of Europe.

In my opinion, the Council should not be transformed into a second Chamber but should split itself into Councils of Ministers and a Council of States, the latter would take on *legislative functions* in common with the European Parliament. As a result, legislative power would be assigned to a

bicameral institution made up of a Council of States and the European Parliament, the former would ensure the participation of state representatives, and the latter would guarantee the direct representation of the citizens of the Union. If the election of the *European Parliament* only raises the question of harmonised if not uniform voting procedures, the designation or the election of the members of the *Council of States* presents numerous options: nomination by national governments, (like the *Bundesrat* in Germany), election by national parliaments or directly by voters of Member States, (like the Council of States in Switzerland). Moreover, variable combinations are not to be overlooked, such as half the representation by ministers and half by the national parliamentary representatives. Whichever option is chosen, the two Chambers will have the responsibility of adopting Community laws on proposals from the Commission. Their authority, visibility and competences will be clearly established.

The Council of States presents more than one advantage: firstly a single institution replaces multiple legislative Councils, thus assuring *permanent and consistent participation* of government representatives and an *active*

participation of national parliamentary representatives. Their continual presence eliminates the difficult problem of coordinating the Councils whilst making possible a *global vision of the fragments of the normative system*; the Council of States substantially increases the democratic legitimacy and transparency of the Union, by its role in the *procedure of legislative co-decision*. The confusion of powers in the Council would come to an end as the result of a clear distribution of active powers and responsibilities between the institutions of the Union. The creation of a second Chamber with a slightly modified structure would render the Constitution more accessible for the citizens of the Union, thus bringing them closer to common institutions and enabling them to have a better understanding of legislative power in the Union. To conclude, what seems to be appearing is that both a European Council with a President who takes decisions based on proposals from the Commission, and a bicameral legislative body meet the proclaimed objectives for more efficiency and coherence, more democracy, responsibility and transparency and a closer relationship with citizens. The choices of the Convention will be decisive for the future of Europe and for its role in the world.

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NB: One version without a bibliography
Second version with a

bibliography, to be completed.
TexteDS/HofEuroConst-cs-04.06.03.doc

NOTES

1. During the Crisis in Yugoslavia, the public opinion in France and Germany was in accord with the position of their governments. Today, the public opinion in the Union countries is massively against the war, in contrast to the governments, which are in favour of preventive intervention. The incapacity of the Union has more to do with the absence of a common position and common action than the lack of a military force.
2. As proof consider the objectives of the CFSP, the definition of strategies, which is the European Council's responsibility, the role of high representative and the role of the Council in association with the Commission, constructive abstention.
3. It is a turn about in the German government's policy towards the United States, nevertheless, under the Amsterdam treaty it could be perceived as constructive abstention.
4. Jean Louis Quermonne, *la question du gouvernement européen*, Notre Europe, Groupement d'Etudes et de Recherches, No.20, Paris, November 2002.
5. Institutions – draft articles for title IV of the Constitution, CONV 691/03, Brussels, April 23 2003.
6. The letter of support addressed to President Bush signed by the Heads of state of five of the Union's member countries and three future members, had more dividing and damaging effect due to the bypass of community procedure, as provided in Amsterdam treaty of CFSP, than to its content. In reality, the message from the eight was written and published against the wishes of Greece, which holds the presidency of the Union at present.
7. Praesidium, op, cit, art. 17 bis.
8. CDU/CSU – Fraktion des Deutschen Bundestage, Bonn, September 01, 1994.
9. "Une Constitution fédérale pour l'Europe?" Le Monde, November 04, 1999.
10. "L'Europe unie selon Joschka Fischer", Le Monde May 14-15 2000, the official title of the speech is « De la confédération à la fédération, réflexion sur la finalité de l'intégration européenne ».

Περίληψη

Η διπλή Προεδρία είναι σημαντική αν η ΕΕ θα εφαρμόσει μια ΚΕΠΑΑ που δεν θα μπορεί να υπάρξει χωρίς τη δέσμευση του Ευρωπαϊκού Συμβουλίου και της Προεδρίας. Αυτό είναι αποδεκτό, υπό την προϋπόθεση ότι από εδώ και πέρα το Ευρωπαϊκό Συμβούλιο θα παίρνει τις σημαντικές αποφάσεις ύστερα από πρόταση της Επιτροπής. Αυτή η θεσμική ισορροπία ενδυναμώνεται από την υιοθέτηση της διπλής Βουλής ή του Συμβουλίου των Κρατών είναι η καλύτερη εγγύηση για το γενικό ευρωπαϊκό συμφέρον και τη δημοκρατική λειτουργία της ΕΕ.