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THE FEDERAL APPROACH TO THE EUROPEAN UNION
OR
THE QUEST FOR AN UNPRECEDENTED EUROPEAN
FEDERALISM

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FORWARD

Federalism has always been a point of reference and a source of inspiration for European construction. Many European politicians, from Robert Schuman to Joschka Fischer, have called for the development of a federal form of organisation for Europe. However, rarely has a concept been so little known: in old nation states like Great Britain or France, federalism often evokes the threat of extreme centralisation even though this form of political organisation is based on a desire to preserve the autonomy and the diversity of the federated entities.

In order to fuel the debate on the future of Europe, following the provisions of the Treaty of Nice, it was deemed appropriate to clarify the contribution of federalist thinking on European construction.

Dusan Sidjanski's work has the great merit of bringing up to date the multiple facets of this concept. It justifiably highlights how numerous aspects of the European institutional edifice belong to federalist systems, whether through the adherence to community rules or via the quest for a balance between large and small states.

It also highlights the range of these systems, which try to respond to relatively diverse functional necessities. At the risk of exaggeration, one is almost tempted to say that there are as many federalisms, as there are federal systems.

It appears to me, that from this arises an important lesson for everyone who thinks or ponders about the future of Europe. A political undertaking without precedent, European construction calls for innovation: it cannot fit into any pre-existing mould, nor can it reproduce former ones. On the other hand, reflection can only benefit from a close analysis of the structures that have sought a synthesis between unity and diversity. At the time when the long awaited reunification of the European continent is on the horizon, the necessity of this reflection seems incontestable. May the pages that follow help to enrich the forthcoming debates.

Jacques Delors

CONTENTS

INTRODUCTION	1
THE FEDERAL APPROACH TO THE EUROPEAN UNION	1
OR	1
THE QUEST FOR AN UNPRECEDENTED EUROPEAN FEDERALISM	1
PROFESSOR DUSAN SIDJANSKI	1
NOTRE EUROPE	3
The Commission, motor of European integration	33
The reinforcement of the Commission and of its President	34
The collective resignation of the Santer Commission.....	36
The Council: intergovernmental or Community institution?	37
Democratisation and federalization of the European Community	40
The Growing Role of the European Council.....	42
The federating role of the Court of Justice.....	43
A federating core: the ECB and the euro	44
The lessons of conflicts	48
The process of becoming a Community.....	52
The Union at the crossroads	53
Informal participation.....	71
A fundamental charter or a constitution for the EU	72
Towards an unprecedented variant of the federal model	73
Proximity by participation.....	74

INTRODUCTION

Federalism is again on the European agenda

The European Union is divided between the two opposing tendencies that are developing at its heart: the community dynamic, which builds a union with a federal vocation, and intergovernmental cooperation in foreign and internal policies. This leads to the question of whether a durable cohabitation between the community system and intergovernmental dimensions is possible in the long run. Does the European Union not have an urgent need – on the eve of enlargement and faced with demanding challenges – to consolidate *a structure* which can provide common orientations and similar impulses in the integration sector and to cooperate with a multiplicity of public and private interests, and to affirm its European identity on the international front? Has the moment not come to think together on the consequences of the pragmatic step, which consists of juxtaposing disparate parts instead of integrating them into a harmonious unit? Have we tried to evaluate the effects of the intergovernmental method, which short of being transitory risk causing a loss of efficiency and capacity and a return to traditional means of organization? As a result, how do we avoid breaking up the institutional equilibrium and halting the democratization of the European Union? These concerns are reflected in the European debate, which centres on the immediate necessity for a core federator and, in the long run, a constitution.

European federalism is on the agenda. Following the avant-garde idea of a federation of nation-states proposed by Jacques Delors, based on the thoughts of Johannes Rau, president of the FRG; Valéry Giscard d'Estaing and Helmut Schmidt proposed the federal Euro-Europe approach at the heart of the European Union. In turn, Joschka Fischer outlined in his speech of May 12, 2000, the purpose of the Union under the shape of a true European Federation, whereas Romano Prodi proposed his reflections on the future of the Union, by insisting on the necessity to anticipate the possibility for a group of countries to surge ahead whilst affirming that he liked the word federal and the federal model. The call in favour of a strong heart for Europe is also the desire of Giuliano Amato.

These convergent initiatives of French, German, and Italian leaders and of the President of the European Commission have the merit of proposing to the members of the

European Union and also to the candidates who adhere to a European Project aiming to pave the way towards a European federation. The return of federalism, long considered a taboo, even though practised in the European Union, coincided with the arrival of a European currency, as a consequence of proposals made by high-school students from the member countries of the Union: “unity in diversity” which is nothing other than the symbol of federalism.

The emergence into the European public sphere of questions on the long-term survival of the Union has resurrected ideas from The Hague Congress (1948) as well as the proposals of Jean Monnet and Robert Schuman. The European Coal and Steel Community (ECSC) is “the first step of European federation” (9 May 1950 Declaration). According to Jean Monnet, it “indicates the direction in which the future Europe should look for its way towards a federal Community...”¹ Today, this quest for an original European federation is more urgent than ever.

Federalism appears to be an appropriate counterweight to globalization and the most appropriate form of social organization, to assemble Europeans into a union that guarantees national, regional and local identities with the necessary interdependence and the affirmation of a European identity. Under a new heading of “governance on multiple levels” which takes into account the participation of many actors, the formation of horizontal networks and the effects of communication, we find the essential traits of the federal method and a new federalism. As much as by its founding principles, as by its guiding principles and its flexible methods, federalism offers the possibility of creating synergies between two opposing poles of attraction: the trend towards globalization under pressure from the new technologies and the fascination of cultural, national, regional even local singularity; interdependence by solidarity according to the division of labour, which leads to continental regroupings as opposed to solidarity based on ethnic, national and cultural identities. Their development, according to the federal method, allies the major economic spheres with the diversity and richness of the countries and people in the Union which are underpinned by a web of solidarities, multiple loyalties and a sense of belonging.

¹ *Les Etats-Unis d'Europe ont commencé*, Paris, Robert Laffont, 1955, p.17 and 110.

The control of this complex world is rendered possible by the contributions of advanced communication technology and management. In light of past experiences, developments in the post-industrial world and the necessity to develop multinational areas, as a spirit, method and organisation of society, federalism seems to be promised a new role, as is witnessed by the European Union. It is not a prefabricated, rigid, prêt-à-porter model but a continuous quest for reasonable solutions, dynamic equilibrium, and functions and institutions, which rely on a common foundation and basic principles. This new developing federalism is founded on European culture, on its profound unity and its rich diversity, as well as its common values, democratic principles and human rights. In many different ways it lends itself to particular forms of organization and the means of functioning of democratic societies.

Examples of federal principles

To me, the most important federal principles are those, which are both essential to successful operations and characteristic of the federal approach.

Throughout the sinuous course of history, one clearly perceives a tendency towards a greater respect for human rights, towards an acknowledgement of people and communities including the constitution of new larger unions. In light of the Swiss, American and German experiences, the European Union is headed towards an integration process, which is based on federal principles. The integration process which is developing, whilst respecting national identities and offering an institutional framework for the federalization or the regionalization of the member states that were previously unitary, like Belgium or Spain and at a more moderate rhythm Italy and France. From this point of view, the federal approach can be seen as an attitude towards others and society, a method and an approach to reality, an outlook and a style of social organization and behaviour. It is not a rigid model to categorize different societies, but a system of structures and adequate processes that rely on basic principles. It is also a dynamic method, which often works by progressive adjustments, whilst respecting existing functions and organizations. The principle of acknowledging people and communities of people spread by Christianity, is the foundation for liberty, democracy and federalism. If federalism shares the same values of free association, pluralism, centres of socio-economic decision-making and political polyarchy, it also epitomizes added value, to the degree that, as a result of its diversity, it reflects the nature of European culture in all its richness. In fact, the

federal union intends to preserve, even to affirm, the quality of member units, nations, and federated states including regions, towns, local powers and minorities.

The final aim of federalism is to guarantee diversity and differing identities whilst at the same time demanding the compatibility of political regimes (structures and practices), and the same basic standards, a condition which was defined by Kant in *Perpetual Peace*. Fundamental human rights and democratic principles are part of this common foundation. Other principles were enumerated by Denis de Rougement such as giving up hegemony and the notion of systems or geometric logic: to federate means to reunite heterogeneous elements. Safeguarding the individuality of each minority, preserving the individuality of each nation, federated states or regions, are the aims of a federation. Developing and managing complexity and diversity, will ensure that uniformity and rigidity will be rejected (see the “Communist Federal States”). In practice, a federation is based on interconnected people or groups, which anticipate the emergence of communication networks and the complex structures of today’s societies. A federation is born and grows in an atmosphere of liberty, of democracy and of pluralism, in a multiplicity of ideas, of cultures, of parties and of regions and in a complex and diversified social matrix. Federalism evokes the electricity, which rises from the bottom up, under the impulse of a common structure.

The *principle of autonomy* of the units which make up the Union and the *complementary principle of their participation* in the exercise of common powers is reflected in the dual representation of citizens or of peoples, and of states or of member units at the heart of a chamber of representatives and a chamber of states. The common powers are clearly stated according to the division of responsibilities vis-a-vis the dimensions of the tasks to be accomplished. At various levels of a commune, a region or a land, of a state or of a federation on the European scale, there are corresponding autonomous and interdependent powers defined by the dimension of the task and according to capabilities. As the dimensions of the tasks increase and surpass the capacity of individual European states, new responsibilities will be entrusted to the higher decision makers in the European Union. This method, which makes use of *the principle of subsidiarity*, allows a state to unburden overload towards a European federation but also towards the regions, the local powers or the private sector. This implies studying at which level collectively, privately or publicly a task can be most efficiently accomplished, taking into account the available resources and capacities. The search for relevant levels of decision-making consists of putting into practice under a different

name, the principle of subsidiarity. What the states can do the federation must not do. The same rule applies to regions and to local authorities. Consequently, for as long as existing levels do not offer adequate means, there is reason to fall back on a *decision centre* and a *pooling* of resources and capabilities at the European Union level. The importance of these building blocks of European federalism was highlighted by the resurgence of nationalisms, the disintegration of the Soviet Union and by the violent explosion of Yugoslavia, as much as by the creation of homogenous micro-nation-states. The national identity of these new states is often portrayed by intolerance, discrimination or hostility to outsiders.

In view of these reminders of the fundamental principles of federalism, four observations are paramount: firstly, there is no one ideal form of federalism; secondly, structures founded on these principles do not form the hierarchical order exemplified in a centralized state; thirdly, the formation of a federation depends on the existing political cultures and institutions and proceeds to redistribute responsibilities and powers, according to the capabilities of the constituent units; fourthly, the federalist method is open to the future: it responds to the conditions of the integration process and is an advantage in the climate of the new technological and social upheavals.

Its guiding principles have anticipated the present changes due to a multiplicity of diverse players who weave networks of communication, cooperation and influence thanks to personal computers and electronics. According to Denis de Rougemont, the future lies with federalism and computers². These favour the development of horizontal relations at the expense of pyramidal structures, a development, which according to Jan Carlzon, transforms the working conditions of companies: henceforth leaders will not try to control personnel but to train them, by proposing, after consultation, a coherent vision and a collective project. This new method presupposes a wide diffusion of information on the objectives that require, in return, a commitment on the part of the personnel. New means of sharing responsibilities appear to be founded on the participation of the actors, whose link with the federal method is evident. According to Jerome Vignon, the European identity will emerge from the “networking” of multiple initiatives and decentralized actions, in the sense that these actions are founded on principles and converge on common objectives. This presupposes the existence of common institutions capable of defining, after consultation with the principle

²Federalism is the autonomy of regions and computers “l’information n’est pas savoir” in Diogène, 116, Gallimard, 1981, p.5.

players, general European orientations as proposed by an autonomous institution and implemented by member states, regions and citizens.

PART ONE: CAN WE LEARN FROM THE EXPERIENCES OF OTHER FEDERAL STATES?

If a “federal model” does not exist, we can at least ascertain that certain principal functions are exercised in all federal states but within different structures and modalities. This common foundation and the basic principles form the individual characteristics of federal communities that distinguish them from other political communities, and notably the centralized or unitary system.

1. The centralized model

On the other hand, the centralized model, as it has developed in France, cannot, in spite of its success, serve as an example or as a reference for the European Union. The projection of this model would lead to the formation of a European nation-state under which the states and nations of Europe would meld into each other. If the centralized structure cannot serve as a European model, even though it is becoming regionalized, France, however, has contributed in a determining manner, to the definition of the democratic substance of the Union: human and citizens’ rights, notions of liberty and equality, popular sovereignty, principles which are the basis of a democratic state. So many underpinnings, which are essential to the founding of a European Union. Yet these essential notions have developed into a unified political system, under the protection of sovereignty and in the framework of a pyramidal order and uniform standards. The democratic and unitary nation-state was reinforced after the Second World War by a greater concentration of power in the executive body and in its administrative body which in other respects corresponded to the growth of state intervention particularly in the economic domain (nationalizations, political, economic and social planning). These characteristics, which have left their mark on French political culture, led to the bold and exceptional visions of successive French governments, who, in turn, proposed the revolutionary idea of a European federation which runs counter to French tradition. Still today this tradition damages the perception of the European Union at the expense of the evolution of the French political system towards fewer interventions and more regionalization. The accrued role of the local authorities, towns and the processes of regionalization combined with the effects of European integration transform this political

system. Henceforth political rhetoric is the vehicle for ideas of a shared sovereignty, of differentiation, or of the common exercising of regal powers, the respect of national identities at the heart of the Union, so many notions that are part of the fundamental notions of federalism.

2. What can we learn from the experience of German federalism?

The German federal model appears better adapted to certain conditions of the European Union. Power is distributed between the Bund (federation) and the Länder (member states), each one rejoices in *partial* and sometimes *shared* sovereignty. In this division of tasks a certain number of sectors are reserved for the federal state: foreign affairs, defence, currency, transport and immigration problems. For their part the Länder have designated competencies notably in the domains of education and culture but they are also competent in numerous other fields where the Bund does not exert its legislative powers. Amongst other things, the Bund has the power to adopt “a framework” according to which the Länder are required to legislate. Apart from its own responsibilities, the federal state relies on the governing bodies of the Länder to enforce federal laws; consequently they can be flexible about how they enforce these laws on behalf of their citizens. This aspect of German, and also Swiss, federalism is designated as “executive federalism”. However, the autonomy of the Länder equally manifests itself by its ability to raise new taxes.

Another aspect of the German model, which interests analysts and others in the European Union is the dual participation of the people (Bundestag) and of the member states (Bundesrat) at the federal level, a trait that constitutes one of the distinctive characteristics of federal systems. Nevertheless, 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). This example is often cited when referring to the balance of voices in the European Union Council. Each Land takes a unique position, as is the case at the heart of the European Council. As a jurisdictional function, the jurisprudence of the Supreme Court assures, after the manner of the Court of Justice, a general harmony between the decisions of the Courts and the Länder.

The system has never ceased to evolve, as is the case of Switzerland, ties between the Bund and the Länder and also between the Länder themselves have emerged. These networks of agreements form the outline for “cooperative federalism”, in which we find the elements, though in a different context, which are at the heart of the European Union.

By analogy with the Swiss and German practices, the European Union system has sometimes been described as “cooperative federalism”. The use of this term begs many questions. Are we justified in using the same concept in substantially different systems? On the other hand, can we legitimately attribute a general scope to an aspect of a system, however important, for example one which qualifies the integration process and the entire system of cooperative federalism, even of “intergovernmental federalism”? This last concept removes the reality of cooperative federalism in which the networks are made up of the governments of the Länder, or of the Cantons, as well as numerous socio-economic, cultural and academic players.

Germany is a nation before it is a state. It is a nation that, in spite of the relative diversity of the Länder, does not lack basic social, cultural and linguistic homogeneity, in spite of a certain dissonance provoked by reunification. However, in Switzerland disparities are often accentuated, as they are at the heart of the Union: the diversity of languages and cultures, social, economic and political structures as well as those of lifestyle and behaviour, means that the model of German federalism, despite its rich experience and its contributions, cannot serve as a model for the Union.

3. What can we learn from the American experience?

Without falling into the trap of transpositions and generalizations, it is enriching to learn from the American situation as well. All the more so, since at the beginning at least, the United States have served as a point of reference if not as a model. They have an indisputable advantage due to certain aspects such as size, the big market, - despite interstate commerce and some old barriers - mass production, the Federal Reserve System and the role of science and technology. However, marked differences are just as significant: the absence of both a long history of conflicts between the nation states and the diversity of languages and cultures, of structures and traditions from one state to another; after having practiced the *melting pot* method by means of assimilation for a long time, today the United States are confronted with

problems of a multi cultural society marked by cultural-economic disparities. The impact of the experience of presidential federalism and of its bicameral nature (differentiated rhythm and unequal weight between the senate and the chamber of representatives), with strong personalization of power and the accentuated separation of executive and legislative powers, takes on a new significance because of the key role that the United States play in globalization. The United States are proof, in spite of their inherited 18th century constitution, of a *great capacity to adapt* to the technological revolution and to the communication society including the development of big political power bases in phase with the “new economy”. The tendency toward a centralization of federal power was reversed under the influence of the new liberal economy and deregulation, by provoking a certain disengagement from the federal government: consequently the federal states had to assume accumulated responsibilities in the domains of economic development, social security and health, environment and education. In the same way, initiatives and creativity notably in technology, through association with public communities, universities, and companies, create a new dynamic for the economy whilst, at the same time, increasing the socio-economic disparities which often hide linguistic and ethnic divisions. The question is, how to reconcile the technological and economic explosion with the balance of political and social demands? The American model would be hard to apply in the European social context.

American political life appears to be dominated by the search for a balance between the federal authorities and those of the states, and between the executive, legislative and judiciary powers. It bears the imprint of a desire to preserve the system of checks and balances by trying to separate the functions and by guaranteeing the autonomy of the responsible institutions. The president is invested with important powers but is not in charge of the budget, which is the responsibility of Congress. The latter is graced with legislative power, which is counterbalanced by the presidential right to veto. This means that continual negotiation is essential and this is also practised in various forms in the federal states of Germany and Switzerland.

Alexis de Toqueville did not hesitate to highlight the primordial role played by the associations of citizens, promotional or ideological groups, and interest groups, which form the basic framework of American society. From which, incidentally, stems their influence on the political authorities, equally the propensity with which those said bodies consult them. Alongside the political parties whose principle activities occur within the federated states -

with the exception of their action at the time of presidential elections - the lobbies and the massive companies occupy an important place in American political life.

Two other aspects merit our attention: the role of the Supreme Court and the network of commissions and federal agencies. The Supreme Court exerts constitutional control over the activities of legislative powers and as a result has a decisive influence on institutions and the balance of power. In this context, the European Court of Justice tends to exercise a similar influence on the community system. By its jurisprudence, the Supreme Court contributes to the harmonization of the law and influences the evolution of American society by asserting its point of view on such problems as the rights of coloured populations or abortion. By comparison, the European Court of Justice created a community judicial order and contributed to the development of competences in the case of treaties, leaving problems of society to the high courts of the member states. However, the incorporation of fundamental rights and other issues into the Treaty of Amsterdam ensured that the member states widened the scope of the Court of Justice.

The experience of independent commissions provided with statutory rights and federal administrative agencies' needs to be taken into consideration with a view to devolution of the functions of the European Commission or the European Parliament. Approximately ten independent commissions, cover the following: commerce between member states, the currency system, competition, transport, energy, the stock exchange, communications and work relations³. Aimed to regulate and control sectors of economic life in an independent manner, these commissions have become "autonomous branches" of the Congress, and also the privileged target of pressure groups of their corresponding sectors. This raises two questions: in what capacity is control really exerted by Congress or by the executive body; is this form of decentralization efficient and in what way is it more susceptible to the influences of lobbies than Congress or the executive body? There are around 30 federal administrative agencies, which are differentiated organs of execution in very varied domains⁴. This is a road to functional decentralization in which the Union engages itself progressively and for which

³ J.P.Lassale, *La démocratie américaine*, Paris, Armand Colin, 1991, pp.140 and 141.

⁴ Examples: loans, insurance, banks, building societies, aid for small companies, import/export banks, food and pharmaceutical products, discrimination and civil rights, hygiene and security at work, transport security, quality of products for mass consumption, new energy, environment, national research funds as well as FBI and CIA etc.

the American experience could be helpful. So many themes for the European Commission to reflect on⁵.

4. A pilot experience: Swiss federalism

The experience of Swiss federalism appears closer to the process of European integration whilst remaining a “European microcosm” in comparison with the size of the European Union⁶. Like the European Union, Switzerland is multinational, multilingual and multiconfessional. This structural diversity combined with political cleavages explains the existence of a collegiate government whose stability is anchored in the separation of powers but at the same time balanced by the use of referenda and popular initiatives. The system is founded on confidence and the assiduous search for consensus. This search is highlighted by extensive consultation of experts and interest groups, it is during these meetings that the draft laws are prepared. It is one of the striking parallels between the Swiss practice and the Community practice. For these good reasons, but wrongly, Switzerland has sometimes been proposed as a model for the European Union. In my opinion, Switzerland presents, as much by its qualities as by its defects, its lacunae and its efforts to adapt, a pilot experience and a miniature laboratory for the European Union.

A federated state since 1848, Switzerland has faced the same two challenges now confronting the European Union: the number of cantons and their system of government, i.e. the question of enlarging the Union; the difficulty in arriving at a common foreign policy given the divergent foreign policies of the cantons, a difficulty that is aggravated in the Union because of the member states’ desire for ownership of this aspect of their sovereignty.

Switzerland is made up of 23 cantons or federated states, about the same number of member states as in the Union after enlargement. The bicameral parliament consists of a national council made up of 200 elected representatives of the people, of which the number of deputies per canton is in proportion to its population, and of a Council of States made up of 46 members (two elected representatives per canton). The composition of the federal government (Conseil Federal) highlights a problem, reflected by the problem of the number of member

⁵ H.Abromeit, *Democracy in Europe*, New York, Oxford, Berghahn Books, 1998.

⁶Dir.D.Sidjanski in collaboration with M.Aligisakis, and M. de Bellet, *L’Union européenne à la lumière du fédéralisme suisse*, European Institute of the University of Geneva, Georg, Collection Euryopa, 1996, pp.9-11, 183-209

states of the European Commission after enlargement. The fundamental difference lies in the slow process of integration in Switzerland, which allowed it to consolidate the mutual confidence upon which the Federal Council of seven members is based, that is to say government in the form of an executive body. The seven members represent the diverse regions and linguistic communities and the principal political parties (two socialists, two radicals, two Christian democrats and one central democrat). Elected by parliament, the Federal Council is made up of two Romands, one Fribourgeois (bilingual canton) and four Germans. These proportions are not fixed and, if the presence of large cantons is desired (Bern, Zurich, Geneva or Vaud) it is variable and does not exclude the election of a political figure from a small canton (Tessin for example). This sharing of political power between seven is proof of a high level of confidence and cohesion, which has not yet happened at a comparable level in the Union⁷. Hence the difficulty in accepting a Commission with fewer members than there are member states.

As far as foreign policy goes, the different histories and identities of the cantons, including their traditional ties as well as their surroundings, have produced divergent, if not opposing, foreign policies. In these circumstances, surrounded by powerful states, with the desire to live in peace, Switzerland opted for neutrality. On a much larger scale, the European Union, situated between the United States and Russia, and whose member states have traditional ties with African, South American and Asian countries, without forgetting the weight of recent history, could in theory be tempted by the Swiss solution. But the international responsibilities of its members, its political influence in the world and its political potential make the choice of neutrality a non-starter and oblige it to assume its global responsibilities.

In addition to these three examples of federation, there are other intermediary experiences of federation at the heart of the European Union: states in the process of federalization and regionalization are proof of a general trend. Nevertheless the concept of state, of a federal state even, taken as a point of reference for European integration, runs the risk of limiting itself to the traditional mould. Additionally the state is mutating, exposed as it is to the pressures of globalization and the integration of its own regions, towns and local communities, including the pressures of civil society, interest groups, and associations. Under

⁷ For some time the collegiate body has experienced some fissures, leaks were the result and the Federal Council no longer has the support of all of the parties represented in the government.

the pressure of these multiple tasks, the member states tend to operate in a number of growing domains, a shared sovereignty at the heart of the Union and a shedding of overload by assigning responsibility to public and private sectors. Furthermore, their action is highly dependent on the behavior of other socio-economic, associative or cultural players. On its normative powers of command and constraint, are grafted the functions of promotion and encouragement, as well as those of assembling, coordinating and orientating. Much more so than in the member states, this tendency is very pronounced in the European Union, which while it has a certain level of authority is denied public power.

5. Differences and similarities in federal systems

In order to come to terms with these complex and new changes, a concept of governance has been proposed: “A vast range of institutions, networks, guiding principles, regulations, political standards and uses, social and administrative, public or private, written or not, which contribute as much to stability, as they do to orientation, and the ability to run a political regime as much as its aptitude to provide services and assure its legitimacy”⁸. This is a definition, which is applicable to a wide range of public authorities covering the commune, town, and region, via the state, to the European Union and, after further developments, as far as international organizations. If these comparisons allow a better understanding of the nature of the European Union, is it wise to imply the idea of a European state? Clearly there are several roles played by the European Union, which can be compared with those of a sectoral or functional federal state. But in doing this, there is the risk of imposing an existing mould onto a new reality, which is looking for an unprecedented shape for a federal community.

The federal institutions present a variety of common characteristics and working methods based on common principles and according to heterogeneous realities. Thus the autonomy of members is complemented by their participation at the heart of the senate or Council of States or of a Bundesrat, which boasts a difference in its egalitarian representation of two senators or advisors to the states, is not made up of elected representatives but members of the Länder governments or of their plenipotentiaries, according to a balance of votes which is not unlike the balance of votes in the Council of Ministers. In both cases, each state or Land can only use its votes en bloc. This rule underlines the indivisible character of

⁸ Cassese S and Wright V. (dir.), “Introduction: La restructuration des Etats en Europe occidentale” *La recomposition de l’Etat en Europe*, Paris, La Découverte, 1996 p 8.

voice by country or by Land that forms a unity. As for the representation of the entire electorate at the heart of the House of Representatives, of the national Council, or of the Bundestag, this representative institution including the electoral system reflects national cohesion, the partisan rift and the importance of the Länder. In Switzerland, as in the European Union – with the exception of the United Kingdom – the proportional electoral system encourages diversity through small-party representation and minority political parties.

Participation is not restricted but offers other access at the time of preparation or enforcement of federal laws, equally at the time of negotiations or decision taking at the Community level. Whilst claiming a common basis for federalism, the executive powers take distinct forms, which have been adapted to their environments. In this context, which must be kept in mind, they can enrich the reflections on institutional structures, which will be necessary as the European Union evolves.

Among their common functions, we can mention the role of the executive bodies in shaping legislative rules as far as they initiate legislative procedures and elaborate draft laws; by leading whilst listening to citizens and public opinion, to associations and to political parties. The aforementioned executives ensure cohesion in a partisan perspective (in Germany), or multiparty perspective (in Switzerland) and a kind of coherence of diversified and decentralized groups and entities, which constitute federations. Thus cohesion is affirmed by the representation of federations, which is a pronounced dimension of identity and independence in foreign relations. Among the exclusive domains of competence of the federation, most are governmental tasks exerted in an autonomous fashion with the assistance and control of the representative institutions (control, either by appropriation, censure or via the budget). In the American, Swiss or German examples, federalism combines identity in external relations, and unity through diversity in internal relations, which is reinforced by the affirmation of regional identities, the expanded role of towns and in particular, regional capitals, and the preservation and promotion of regional cultures (e.g. minority languages in Switzerland).

The different forms of central government correspond to the differences in societies, traditions and political cultures. The American *presidential system* answers the need to ensure a general orientation and unity in a big, geographically diverse area. From this stems the value of competition which the two political parties fulfill at the time of the presidential election,

this gives popular legitimacy to the president, personalizes his authority and reinforces his visibility both internally and externally. The fusion of his functions as head of state and head of government strengthens his decision-making abilities and his pre-eminence, he is assisted in his tasks by the secretaries of state. If, in the European Union the idea of direct election by universal suffrage were to be retained, it would be preferable for it to be carried out by dividing the presidential and the governmental functions, given the parliamentary tradition of the governments of the member states. The establishment of a parliamentary regime, even in the French “quasi presidential” system, is not in question. The consequence of universal suffrage is that the president coexists with the governmental parliamentary majority which is invested by the national assembly, and accountable to it. When the presidential mandate was changed from seven to five years, guarantees were given that this reform would lead neither to a presidential system nor to a system of government assembly. The experience of the French executive would be valuable for the Union if the choice were to favour a president elected by European citizens.

The role of a chancellor as leader is engrained in the *German governmental model*. He is the only member of government elected by Parliament and he is solely accountable to it⁹, the chancellor forms the cabinet, chooses the ministers, and assigns them their tasks. This system rests on an “imperfect bipartism” which whilst guaranteeing the post of chancellor to one of the two big political parties most often results in governments made up of one big party with the support of the two smaller parties, liberal or green. On the whole, the governments display considerable stability. From the point of view of the European Union, much though the legislative experience is enriching, the shape of the German government at the heart of a strongly cohesive nation (in spite of the difficulties engendered by reunification), is less appropriate and more difficult to transpose into a future “Union government”, taking into account the traditions of the member states.

To a certain extent, the Swiss *collegiate government* shows the highest degree of compatibility within the parameters of the European Union. With two differences: the Federal Council made up of seven members which forms a “directorate” is no longer capable of fulfilling all the functions of modern government. However in the future, this group of seven could come closer to a formula which would allow it to limit itself to governance and setting

⁹This responsibility is exerted by a “vote of constructive defiance” which must coincide with the election of a successor.

strategy whilst relying on an efficient civil service. In spite of traditional conservatism, reforms are needed for Switzerland to join the Union. The second more profound difference is the fact that the Federal Council can not be removed during its term of office: it is not answerable to parliament which does not possess the power to censure it, but on the other hand it stays in situ even if any referendum results in an opposing position. This stability has a counterbalance, which is to resort to semi-direct democracy, which allows for a change in direction, if not a radical change in the policies of the government. This is far from the case of the European Union. On the other hand, the experience of the collegiate structure of the Federal Council, including the lack of leadership and the advantages and inconveniences of an annual presidency, were noted by the European Union whose successive treaties have reinforced the presidency of the Commission. The experience of this efficient multinational federal administration can serve as a pilot on the European level. There are so many elements to be included in the dossier on the European debate.

In all three cases, the executive body often consults organizations and social pressure groups, though in different ways. The consultation of the interested parties completes the consultations with the governments of the states, Länder or cantons. Moreover, the different weightings vary considerably from one federal model to another, from one domain to another and according to their means of influence. A classic example is the number of lobbies and lobbyists in the United States whose intense activity in Washington are often at the roots of federal laws. The federal government, including the two houses, engages in group and expert consultations and as a consequence is exposed to their influence. In Switzerland, the consultation of socio-economic associations decreed by the constitution has undergone considerable development. Lobbyists are of growing concern to the Union and the Commission - their growth in power and that of the European Parliament - have made them the privileged targets for socio-economic groups in particular.

As for cooperative federalism, it is present in different institutional contexts, and to different degrees, in the community system as in the federated states of Germany and Switzerland. In both examples, the cooperative process is only one element of a federal system, but this does not impact negatively on the successful running of the whole. On the other hand in the communal framework the term “cooperative” has another connotation: the process of cooperation as opposed to integration. In this sense, cooperation between member states can be “enhanced” but it can also - as in the second and third pillars - lead to impasse

and paralysis. Thus, in different circumstances, “cooperative” takes on different meanings. If the generalized use of such a term vis-à-vis the European Union is subject to caution, the resort to a similar concept, such as “intergovernmental”, seems to me to be a methodological error in general, with regard to the evolution of the European Union. “Intergovernmental” relations between the member states in a federal state have nothing to do with the relationships and intergovernmental processes of a European Community. In the framework of the European Union, intergovernmental, indicates unanimous decision taking by the governments, which in addition, control how these decisions are transposed and applied, at the expense of any direct or automatic effect. It is the return to classic intergovernmental organization. Even if elements of intergovernmental structure exist in the common institutions, such as the European Council and the Council and even if, in certain sectors, they resort to unanimity procedures, it is important to recognize that they belong to a community system, which thanks to the role of the Commission, the European Parliament and the Court of Justice, cannot be subsumed to international organizations. However, to term federalism in the Union as “intergovernmental federalism,¹⁰” contaminates the entire system and prejudices its evolution in numerous ways. The qualitative takes over from the substantive and what was only an element becomes the dominant dimension. It is not because a federal union contains intergovernmental elements that the entire system must be trapped in an ambiguous concept such as “intergovernmental federalism”.

6. Authorities and institutions common to federal states

An analysis of federal states leads to different types of federation: presidential federalism in the United States, parliamentary federalism in Germany, the collegiate structure of federalism in Switzerland and a variation of this in Belgium. These numerous examples do not exhaust all the variations of federalism. However, these distinct institutional structures exert *a group of functions* and apply *a collectivity of federal principles*.

Among the *exclusive competencies* attributed to the federal authority, *foreign affairs*¹¹ dominate, followed by *security and defence*, *international treaties* and *commercial policy*,

¹⁰ Maurice Croizat and Jean-Louis Quermonne, *L'europe et le fédéralisme. Contributions à l'émergence d'un fédéralisme intergouvernemental*, Paris, Montchrestien, 1996 and 1999. In spite of the amalgamation of federalism and the intergovernmental method, this work presents a very good analysis of the European Union. The concept of cooperative federalism used in Germany and in Switzerland was applied to the European Union by W.Wessels.

currency and *macro-economic policy* (in common with the federated states). These competences, as well as the sharing of them, are defined by the constitution. In general, the federal state only exerts powers that are explicitly attributed to it. Other competences are either reserved for the federated states or are concurrent and exerted in common by the federal state and the federated states.

In European federalism, and in Switzerland in particular, the category of *joint competencies* is the biggest. It includes, notably, economic policy, fiscal policy and taxes, regional development policy, scientific policy; as well as civil rights, contract law, criminal law and commercial law, intellectual property and the public right to employment; to this judicial chapter has been added a series of competences in the domain of environmental protection, health, including food security, commerce and foreigners. In all, there are about 30 joint competences, including the regulation of the qualifications for the liberal arts and the regulation of the film industry.

The sovereignty of cantons is guaranteed by article 3 of the Swiss Constitution and is exerted in the domains that have not been attributed to the federal authority. In the federal system competences are distributed between the central state, the cantons, or the member states, sovereignty being shared and often exerted in common. In the Swiss example the *cantons retain* some exclusive sovereignty or *exclusive competences* concerning cantonal or communal organization, civil, penal and administrative procedures, “industrial” public services (water, gas, electricity), public works, public assistance, public hygiene, hospitals and also public schooling and religious worship.

As in the Swiss case, and unlike the American model, the *fundamental law* in Germany gives significant importance to concurrent legislation. The Bund has the exclusive competences in sovereign matters, such as *foreign affairs, defence, nationality, currency*, and the *free movement of citizens*. It is on this essential point that a major difference exists with the European Union, where with the exception of free movement of peoples and customs barriers, the main exclusive subjects, such as foreign affairs and defence, though evolving, stem from the process of “confederate” cooperation. The Union is exposed to the political

¹¹ In foreign affairs, the member states or the cantons tend to affirm their presence by “micro-diplomacy” (Duchacek).

hazards of the member states in these “federal matters” and suffers from the existing imbalance between economic integration and political cooperation.

In the vast sector of *joint legislation* the Länder are competent in so far as the Bund does not make use of its right to legislate. The domain of joint competences covers essential traditional legislation (civil and penal law, judicial organization and procedure) and in the sectors of state intervention (economic law, nuclear law, waste disposal, right to employment, land rights, foreigners’ rights, housing policy, road traffic and navigation, combating pollution and noise). In these subjects “federal law overrides the law of the Land”. To the degree that the Bund uses its right to legislate widely, the Länder enforces the legislation. From this arises the concept of “executive federalism” which in Germany, as in Switzerland, designates the functions of the Länder and the cantons and is embodied in the functioning of the European Community.

Two original methods ensure that the Bund and the Länder are complementary and carry out common tasks together. On the one hand, the Bund can adopt a *framework* for the legislation of the Länder in sectors such as higher education, the film industry, the press, protection of nature and the countryside, urban and rural planning, urbanization and water treatment. In these domains the Bund formulates the legislative framework in which the laws of the Länder are included. This method is similar to Community guidelines, which, nevertheless tend to leave member states little margin of choice in so far as they include detailed clarifications, which, incidentally are often adopted at the instigation of the member states themselves. The common tasks deal with research, improving regional and agricultural structures, and protection of the coasts. The common tasks are carried out according to a mixed code of decision and finance, also used in European affairs.

Unlike the Swiss system, the *exclusive competences* of the Länder are not listed in the fundamental law. They are limited to culture (radio and television), to education, the police and to communal affairs, which in their turn are fairly autonomous. It is particularly in these domains that the Länder practice cooperative federalism amongst themselves.

The dualism of the rigid competences in American federalism has been attenuated over the last century. In Europe its role has been diminished by the importance of joint competences, common tasks and executive federalism. This difference is reflected in the

distribution of administrative competences. In the United States, the fundamental rule is confirmed by dualism: the Union enforces the laws of Congress, the states their own laws. By referring to a similar rule, Switzerland has developed the practice of separating the functional aspects of cantonal administration. This practice, which aims to remove from federal law those aspects that could be excessively uniform, is also widely used in the European Union. Rules and community decisions including the decisions of the Court of Justice are obligatory and are directly enforceable, the application of which is the responsibility of member states. The Community practice is the result of numerous factors: its over rigid administration with regard to the dimension of the tasks and the European space, its insufficient ability to apply Community orientated laws in the member states, and the lack of enthusiasm to assign responsibilities for these executive tasks to the Unions. The same principle of decentralized application (*of laws*) is used in Germany where the Länder carry out the laws of the Bund; the Bund only ensures their execution in certain cases stated in the fundamental law. If in some of the cases referred to, the Länder carry out the federal laws in pursuance of a mandate and according to instructions of the Bund, in all other cases, the Länder freely enforce the federal laws subject to jurisdictional control.

7. The Constitutional autonomy of the member states

The constitutional autonomy of federated states is only limited in the United States by the requirement to respect the republican form of government, including the rights of individuals and other rights guaranteed to American citizens by the federal constitution. Despite the states' substantial constitutional autonomy, they are, without exception, endowed with identical institutions: all of them, with the exception of Nebraska¹², adopted the presidential system with an elected government with flexible powers, depending on the states, and a bicameral legislation.

In Germany, where the Länder had their constitutions before the law of 1949, they keep their constitutional autonomy as long as they respect the principles of state-laws, whether it they be republican, democratic or social, contained within the fundamental law. As in the preceding example, only a few variations exist, the Länder practice a single chamber parliamentary system with a government run by a minister president. Only Bavaria adheres to

¹² Croisat Maurice, *Le fédéralisme dans les démocraties contemporaines*, Paris, Montchrestien, 1992, pp.38-40.

a form of legislative government, which precludes the possibility of revoking the executive body.

The stability of government is a unique characteristic of Swiss federalism. In Switzerland, the cantons remain diverse in spite of a long cohabitation at the heart of the confederation. The different forms and traditions passed down through generations, and the identities affirmed by the cantons, are distinct elements that the federal system has preserved. As a consequence, the cantonal constitutions must conform to federal law and their own democratic political systems. All the cantons practise semi-direct (referendum and popular initiative) or direct democracy, as do the three cantons in Central Switzerland, which have not renounced their *Landsgemeinde*.

The Council of States or the governments of the cantons are elected by universal suffrage, unlike the Federal Council, whose members are elected by parliament which groups the two chambers, the National Council and the Council of States. The number of members in cantonal governments varies between five and nine in contrast to the seven members of the Federal Council. On the other hand, they are stable governments, which are not responsible to their single chamber parliaments. In the same way, in the majority of cases, the collegiate government is made up of representatives from the major parties. Diversity is accentuated by proportional elections as much on the federal front as, without exception, on the cantonal level. Nevertheless, the cohesion and identity of cantons, which form constituencies at the time of federal elections, grows stronger as a result, whereas proportional representation favours small parties and a more subtle representation of the political spectrum. A comparable worry about the upholding and affirmation of national unity does not preclude the choice of a single constituency by some member states of the European Union such as France, Germany, Luxembourg, the Netherlands and Denmark. In other respects, the stability of federal and cantonal governments, including their collegiate character, share traits with the European Commission.

In Switzerland, as in Germany, the composition of governments reflects the current political powers, with one small difference, political life of the parties in Switzerland mostly happens in the cantons, their federations being somewhat loose structures, contrary to political life in Germany where the federal parties play a more leading role. The German electoral system accords two voices to each elector, one to elect a deputy in his constituency and the

other to choose from the lists of the Länder. On the one hand, these reflect the partisan dimension of the Länder and, on the other, the electors' choice is personalised by the vote within the constituency, which allows them to opt for a political figure. Finally, the result of this double vote leads to a proportional distribution of the votes collected by the different parties. In the face of a certain kind of bipolarisation in Germany, Switzerland demonstrates a multiparty cooperation, a modest electoral participation and a tranquil political life, notable for its search for consensus rather than confrontation. Some aspects of concordant democracy are present in the European Commission, as they are at the heart of the European Parliament.

The respect of fundamental rights and democratic principles is guaranteed by the federal Constitution. It is thus that the confederation could be invited to intervene, by resorting to military intervention if necessary, but in accordance with the principle of proportionality, in the case where a cantonal government would adopt an attitude which was resolutely contrary to constitutional liberty, equality or to democracy, or in the case where these were to be threatened by insurrection¹³. For its part, whilst envisaging sanctions under the form of suspension of the member state which was not respecting the fundamental rights of man and democratic principles, the Amsterdam Treaty guarantees the rights and principles which constitute the founding of the European Union and its member states.

8. Constitutional revisions

Other than the possibilities of adjustment and adaptation by means of interpretation, the federal constitutions outline different modes of revision. Unlike the revision of the European Union treaties, the procedures of the federal states do not impose unanimity on their members. On the other hand, the federal constitutions of Germany, like those of Switzerland, contain certain basic principles, which cannot be annulled. For example: the federal structure, the democratic principles, the law state, and fundamental rights. Most of these principles already figure in European Union treaties or are covered by the draft for a European Charter of Fundamental Rights. In the United States Constitution an amendment can be put forward by Congress, when two thirds of the two chambers deem it necessary, or at the demand of the

¹³ In 1932, Geneva experienced a tragic military intervention, which aimed to maintain the peace, that was being threatened by a violent confrontation between partisans of the far-right and the far-left. Peace was installed at the cost of 13 lives. Jean-Francois Aubert, *Traite de droit constitutionnel suisse*, Neuchâtel, Editions Ides et Calendes, 1967, vol. I, pp.305-6 and 309. According to the federal Constitution of 1999, The Confederation “intervenes when public order is threatened in a canton, which does not have the capacity to control order either alone or with the help of other cantons”. (art.52, al.2).

legislatures of two thirds of the federated states, followed by the summons of a convention. The amendments are adopted after they have been ratified by the legislators of three quarters of the states or by conventions in three quarters of them.

In Germany, the fundamental law can only be modified at the demand of two thirds of both the members of the Bundestag and the Bundesrat. As a result wide consensus is needed to reach this vote. The Maastricht Treaty includes a new article 23 on fundamental law, which stipulates that the Federal Republic of Germany must aspire to a united, democratic, federal Europe, a state of law, by implementing the principle of subsidiarity. The same article reinforces the role of the Länder and the Bundestag in their pursuit of European integration.

Constitutional revision in Switzerland can occur either at the initiative of parliament or by popular initiative. This requires gathering 100,000 signatures whether it be for a proposal of total revision or partial revision. The absence of legislative initiative on the federal plane resulted in the frequent recourse to constitutional initiatives and numerous partial modifications of the Federal Constitution, which rendered interpretation difficult. All partial or total revision must be approved by the majority vote of the people and by the majority of the cantons. This double majority is also required for the adoption of treaties, which involve the membership of Switzerland to supranational organisations such as the European Union or to a collective security organisation such as the United Nations. This double majority renders Switzerland's integration into international and European systems difficult, the rejection of the European economic sphere in 1992 being an example. After many long years of study and consultation, a proposal for the total revision of the Constitution was accepted by popular vote on April 18, 1999.

In the three examples, the constitutional revisions and amendments follow different procedures which correspond to the characteristics of their political systems: the qualified majorities of the legislative power in the American or German federal systems or the majority of the Swiss Parliament, followed by the double majority of the people and the cantons. However, in contrast to the procedure for the revision of European treaties, not one of the procedures in these federal states, even though they include supplementary guarantees, demands unanimity from its member states. On the eve of its enlargement, should not the European Union envisage a procedure of negotiation and ratification, which would facilitate reforms in the future?

9. Conditions and common principles

The experiences of federal states dictate the evolution of numerous federal systems and suggest an ensemble of general principles and certain constants, which guarantee both the upholding and the evolution of the federation. The existence of a *dynamic core federator* implies a balance between the members of the federation. The relative equilibrium between the large federated states and the small and medium subsets, protects the whole from the hegemony of a member or a group of members.

An unavoidable condition: it consists of democratic federations. In fact, these federated states are founded on democratic principles, human rights and common values. In this sense, if the concept of European or western federalism as it is seen renders federalism and democracy inseparable, it can, on the other hand, take on the form of a unitary, centralised, decentralised, even regionalized, state.

Whilst the unitary state has a pyramidal structure governed from the top, the structure of a federation is more star shaped, gravitating around a federal core, which provides advice and which in turn receives feedback. The interaction between the centre of gravity and the units of the system is continuous. It is thus that a federation experiences highs and lows, actions and retroactions, which the federal structure transmits to the member units and particularly to the citizen base. Actually, one of the traits that distinguishes a federation from a confederation is the immediate impact of its standards, its policies and its decisions, which apply to the citizens and inhabitants and are imposed directly. According to the equilibrium based on reciprocal proportionality, citizens are expected to respect and execute the common decisions, in turn they have the right to appeal through the judicial institutions.

The distribution of powers between federal institutions takes place according to the principle of separation of powers. Furthermore, in every federal system, a distribution of vertical powers takes place on different levels, the central level, that of the federated states, and the regions or local powers. The existence of a federating structure and numerous power centres on various levels engenders a polycentric system made up of multiple networks. Functions that correspond to core or networked structures follow the principle of subsidiarity, which aims for an optimal distribution of tasks. A complex ensemble results, in which those functions exerted by the organizations or the public and private sectors overlap. On the other

hand, the centralized system privileges vertical and hierarchical relations where rigidity opposes malleability, which demands the use of advanced technology. In more ways than one, the federal system responds better to the new environments of post-industrial communication¹⁴.

The federal structure defines the general orientations intended for all players and exerts the common powers. Whilst respecting the sphere of autonomy of the member units (cantons and Länder are not under political control), the federal authority associates them with the sharing of sovereignty, the definition of common policies, and the taking of decisions that are obligatory for the entire federation. Although the constituencies define the exclusive or concurrent matters, these frontiers can evolve to the advantage of the central state or member states and are constantly exposed to tensions between the principal decision centres. Thus, for example, after a period of reinforcement of power under the cover of European integration, the revision of the fundamental law at the time of the ratification of the Maastricht Treaty opened an inroad into the process of community decision-taking for the Länder. In turn, in Switzerland the cantons aimed to increase their ability to reach agreements notably in their cross-frontier relations. The 1999 Federal Constitution stipulates that the cantons can conclude overseas treaties in those domains arising from their competences (art 56). Finally, the sphere of autonomy of American states in their external commercial relations resulted in the establishment of permanent representatives in numerous countries. In this sense the federal states are proof of greater adaptability than the unitary states. Consequently, the French and British find it harder to defend directly their interests in Brussels.

In the exercise of its competences (foreign and security policy, defence and military affairs, economic and monetary policy, commercial policy and external economic relations; the organisation of political life within the federation, the law and the keeping of order), the federal authority enjoys a wide autonomy in the definition and defence of common interests. Its legitimacy, which relies on the double foundation of the people and of the member states, is reflected in *bicameralism*, which is one of the constants of federations. Initiative, decision taking and management on the federal plane are the responsibility of the executive, which takes on distinct forms in the three federations: the federal presidential system in the United

¹⁴ This opposition between the rigidity of political structures and the technological revolution was underlined with vigour in 1986 by Mikhail Gorbachev for whom the pyramidal soviet system should have been adapted to meet the new requirements.

States, like the collegiate government in Switzerland, practises strict separation between the executive and the legislative. The presidential or collegiate government is not answerable to Congress or Parliament and, in its turn, does not have the power to dissolve the elected assembly. The two chambers and the executive run for the duration of the legislature. This stability is only partially challenged by the changes which can occur as a result of elections in the federated states or cantons. In the stable equilibrium of the Swiss system the resort to direct democracy fulfils the double function of safety valve and accelerator, or as a brake when faced with proposals for change.

Only the Federal Republic of Germany has experienced a form of *parliamentary federalism* and the control of the government by parliament (a notion of constructive censorship), a general trait that brings it nearer to the formula adopted by the European Union. At first sight, the organisation of the federal method guarantees autonomous powers and preserves the diversity of the member states, whilst ensuring the harmonisation of standards, policies and actions in areas of common interest. Unity in diversity enhances the component parts, incites regional and local development including the appearance of initiatives and synergies within a multi-faceted environment. In addition, by allowing the member states to solve certain problems in an autonomous fashion and to self manage in other domains, these federal structures help resolve or reduce the problems of minorities. The minority communities, like the small or medium sized member states are privileged on two levels: weighting favours them in the federation, whilst being surrounded by their own people allows them to live and to assert their differences as they affirm their solidarity at the heart of the federation¹⁵. To conclude: the diversity in forms and practises of federalism including the diversity of cultural and political environments are serious warnings against the reproduction of any model. Particularly, as a more detailed analysis of these examples would tend to highlight their lacunae or their failures as well as their positive aspects.

¹⁵ In opposition to the exemplary cases in Switzerland where even the small community that speaks romanche retains its identity with the help of the Confederation, the Serbian Constitution of 1989 cancelled the autonomy of the provinces of Kosovo and Vojvodina by making them minorities in the United Serb State. By using the artifice of the majority system, the Serb government reinforced its hold over these two regions.

PART TWO: THE EUROPEAN UNION ON THE ROAD TO AN UNPRECEDENTED FEDERALISM

1. Economic integration and political objectives

The successive steps of European construction bear the imprint of an original experience in more than one way where federal aspects coexist alongside confederate forms, or even international organisations. Consequently, the question arises as to which direction the European Union will take, according to what method and with what number of members. Will it be capable of following its dynamic process by consolidating its democratic legitimacy, reinforcing its efficiency, whilst preserving both its rich diversity and its cohesion? The fundamental questions which have been shelved as a result of the immediate preoccupations of economic integration, are reemerging thanks to the shockwaves caused by the collapse of communism, the challenges of enlargement and consolidation and by the unilateral policy of a lonely superpower but also by the convergence of numerous destabilising factors: conflicts in South East Europe, the Caucasus, the resurgence of independent movements in the European Union and its periphery, and the upsurge of nationalist movements in opposition to global pressures. So many challenges that the European Union is supposed to address.

For the first time in history a new political community is being built on the basis of *free association* of independent states and not by force and conquest¹⁶. In contrast to the *Confederation* and the *Federation* which, in spite of the difference in their structures and methods, are both characterised by their global political approach, the European Communities and the European Union practise *inverted federalism* and proceed by *sectoral approaches*. For pragmatic reasons, preference was given to a sector by sector approach which should lead to a European federation rather than the establishment of a political community mandated with both internal and external competences. If the protagonists of the Union seem, for the most part, to share similar ideas on the *finality* of the political aim, but did not have the same evaluation of the means and possibilities with which to realize it. The process was started by a pilot project in two basic sectors, at the time, charcoal and steel. However, this first step – the creation of the ECSC was followed by the proposal to create a political community: the EDC

¹⁶ With a few exceptions and in different contexts, the formation of Switzerland can be seen as a precedent.

and its natural arm the *European political community*. “The Europe of will” made up by the core six founding states was being formed, when, after the failure of the EDC, a break was applied to the process of political integration. The consequences of this *first fracture* are still being felt today. The re-opened debate on European federalism only serves to prove this point.

These two original traits, an independent institution and an institutional system with a political and global vocation, constitute the originality and the force of European integration. It is thus, that since the beginning, the community system situates itself in an intermediary zone between political community and international organisation. This political innovation is the hallmark of the European community, whose driving force - the European Commission - is to define common interest and to give a boost to the integration process. Consequently, it is essential to be aware of the role that the Union treaties attribute to it, as the second, third and fourth pillars.

Anticipating the present debate, the *draft for a political European community* of 1953 foresees a European executive Council or the government of the Community, a European Parliament composed of two chambers, the chamber of people and the senate and a court of justice¹⁷. In addition to these institutions with a federal vocation, the draft proposes to re-elect the national Council of Ministers, but it is the European Parliament, which votes laws and community guidelines. Taking the Bundesrat as an example, the Senate includes representatives according to the populations of the member states, elects the president of the Executive Council who is in charge of naming the members of the Council. They are approved by the European Parliament, which in addition exerts parliamentary control on the executive body. The central role of the president of the Executive Council is reinforced by the fact that he is also community representative in international relations.

The proposal contains a sketch of a federal union and attributes a crucial role to the Executive Council which it submits to a double verification from the European Parliament and the Council of Ministers whose assent (unanimously and then by majority after five years) is required for the proposals of the executive. In addition, this Council of Ministers has an important role in foreign policy co-ordination, community taxes and the admission of new

¹⁷ Ad hoc assembly, *Projet de Traité portant statut de la communauté européenne*, Paris, March - April 1953 (Constitutional Commission whose reporter was F.Dehousse).

members. In spite of this ambiguous liaison the essential aspect of the political proposal is rooted in the establishment of a European government and a bicameral legislative body, including the domain of competences of the common market and basic sectors but also defence and foreign relations. These are the principal domains for which the central authority in a federation is responsible.

The progress that this draft represents can be measured by the present situation in the European Union or by the presence of the Commission in the three new pillars, internal affairs, CFSP and CFDP (European policy on defence and security), which is totally eclipsed by the fight against international crime and European defence. At the time when internal and foreign security are taking on an increased economic and social humanitarian significance, after 45 years of European integration the divisions caused by the failure of the EDC have not been bridged. The gap between, on the one hand, the essentially economic, social and technical European Community where the federal traits are increasing and, on the other hand, the three new predominantly intergovernmental pillars, despite the communitization of certain sub-sectors, remains profound, in spite of the efforts and lessons of recent experience. Even the draft of political union of General De Gaulle (known as the Fouchet Plan) barely seems to have been taken up by the European Union, whilst the draft for the European Union Treaty (Spinelli draft) of the European Parliament of 1984 was only partially taken into consideration in the European Union treaties. Following the Single European Act, the treaties of Maastricht and Amsterdam contributed to the rapprochement of diverse dimensions of the Union. However, a lot remains to be done, and the present debate on European federalism exposes the persistent imbalance, which makes the European Union fragile.

Since the crisis of 1954, the defence of Western Europe has been entrusted to NATO and relies on the central American pillar, the European pillar that was proposed by President Kennedy having taken a long time to concretise. Foreign affairs and security, although heavily influenced by American leadership, have remained the principle competence of European states. Today, the European Union still bears the imprint of this dichotomy despite a change in the way that the European and international cards are dealt.

If fragmentation principally affects the *political sectors* and *foreign security* in particular, it is not absent from the community pillar. Certainly, all of the 15 participate in the single market, common agricultural policy, regional policy or that of concurrent policy, just as

they do in structural bases, and the processes of reform and enlargement. However, a shift came about on the subject of the euro and the ECB: three member states (the United Kingdom¹⁸, Denmark and Sweden) are not part of the euro zone: the 12 (11 + Greece), by adopting the euro and common monetary policy, in principle agree to practise a coordinated economic policy. It is the pre-figuration of a two-speed community, which includes a more integrated and advanced group at its centre. In the domain of *external relations*, disparities are even more accentuated. Thus, for example, in commercial policy where the Commission is both negotiator and community spokesperson is in contrast to the CFSP, which is dominated by the intergovernmental and the leadership of the big member states.

The vital question is to know whether, in the long-term, a Union riven by disparity can maintain the cohesion, which is indispensable to accomplish its political responsibilities domestically and on European and world levels? It is the principal stake in the debate on the finality and future constitution of the European Union.

The distribution of common powers between the institutions of the European Union varies according to their weight, and the methods used (community orientated or intergovernmental). On the other hand, in federations those domains which are part of their competences, are organised by the federal authority according to the political process adapted to each sector. However, in the European Union, there is a marked difference between the domain of the European Community and the domains of the CFSP, defence, internal affairs and justice. In these three new domains the roles of the Commission and the European Parliament are considerably reduced, to the benefit of the cooperation process, which valorises the influence of the European Council, the Council and the governments. However, the present situation arises from these sovereign powers, whose practise in every federation is ensured by the federal authorities. At least, that is the current situation, which results from sovereign powers vested with federal authority in any federation. This general assertion highlights the variable distance, which, at present, separates a “completed” federation from a European Union with a federal vocation.

To come to terms with this, I propose to analyse, domain by domain, the distribution of powers and the role of institutions in these new pillars which evolve at differentiated

¹⁸ Cf. Commissioner Patten, claims that in the future if the United Kingdom does not adopt the euro, it will be obliged to follow an economic policy in whose definition it did not participate in.

rhythms as is suggested by the partial communitization of the third pillar or the affirmation of intergovernmental procedures in the domain of defence. This layered evolution reflects the marginality of the Commission, the Parliament and the Court of Justice. Without prejudging future reforms, which aim to promote constitutional initiatives, it is important to admit that these new co-operations are significantly distant from federal practises, and the functioning of the community pillar, where recourse to the qualified majority of the Council frequently accompanies the central role of the Commission. On this subject, some observers underline the close existing relationship between the role of the Commission and the extension of majority rule.

Evaluation becomes more difficult with the formation of subsets like the euro-space or the Schengen agreement. In any case, a general evaluation of the nature of the Union must take into account not only the disparities it contains, but also its potential to evolve into a federal Union. From whence arises, the importance of questions on the finality, the core federator and the future constitution of the Union. The evolution of the Union has to keep pace with changes in the environment, and with the impact of new technologies on the governance of mutating societies. The diverse solutions, encompassing so much resistance based on history and emotion, have created an unprecedented task, awaiting both the leaders and the citizens of the European Union.

2. The basic pillar: The European Community

Since its creation, the European Community has evolved along the following principle axes: growth in the domains of its activities and application of common policies; putting in place of an area without frontiers such as the realisation of the single market; the consolidation of economic integration (EMU, ECB, and the euro); reinforcement enhancement of solidarity and cohesion (ex: structural bases, cohesion bases, and regional policies relying on the Feder), successive enlargement, tendency to replace unanimity at the Council by qualified majority; modification of the distribution of powers with the election of the European Parliament and its increased participation in legislative co-decisions; affirmation of the central role of the Commission as the driving force of the integration process. This evolution has reinforced enhanced many of the federalist traits written into the Treaty of Rome since the beginning.

In the first phase, the community dynamic depends on the tandem of the Commission-Council. The key mechanism, the Commission - a collegiate and independent institution - exerts its exclusive right to propose in matters legislative, which the Council is entitled to transform into community laws in the form of unanimously approved rules and directives- and later by qualified majority according to the deadlines programmed by the Treaty of Rome. Slowed down by the acceptance of the “Luxembourg compromise” (1966) the extension of the qualified majority, nevertheless, tends to become progressively more general in response to functional needs, thus enhancing the community orientated character of the Council. In this phase of the community system, Parliament is charged with exerting democratic control over the Commission and formulating consultative opinions, whilst the Court of Justice is responsible for jurisdictional control. The rules of the community acts, which are widely applicable and are both obligatory and mandatory, their implementation being assured by the member states, which check the formal procedures. European citizens and residents can appeal to the Court of Justice against the effects of this legislation. Clearly, the use of this political process lends itself to the federal technique.

The Commission, motor of European integration

The originality of the European Community breaks with the traditions of international organisations, due to the structure, composition and undertakings of the Commission and its role in the forefront of the community system. Whilst remaining available to the principle actors, the aim of the Commission is to secure the general European interest, protect the small countries, and ensure balance between the big member states. It has succeeded, in spite of certain vicissitudes, in being a driving force and federator at the heart of the European Community. The efficiency and the coherence of common policies including the cohesion of the whole, which is more and more differentiated as it enlarges and evolves with successive reforms, renders the action of the Commission both complex and essential.

Another original trait of the European Community that it shares with federal systems, which distinguishes confederate systems from international organisations, is the *immediacy* of common acts. The rules and to a great degree, the guidelines of the European Union have *direct effects* on moral and physical persons and not only on the member states. In their turn, these direct effects provoke retroactions, on behalf of the concerned actors as well as new demands, which engender the dynamic of the integration process. The result is a positive but

also a negative spillover. This basic characteristic combined with the role of promotion and proposal of the Commission including the evolution towards procedures of qualified majority, which often take the form of joint decision-making, balances the intergovernmental structural equilibrium, at the heart of the Community.

Although, in accomplishing these tasks, the Commission sometimes acts alone, for the most part it acts in tandem with the Council. The active powers are exerted in common by the two institutions, but while the Commission is supranational, the Council is both intergovernmental and community orientated, is supported by the European Council and constitutes a characteristic trait of the European Community, which differentiates it from other existing federations. This situation is the result of a compromise between the necessity for an independent central authority and the need to associate national governments in the exercise of common powers. A certain ambiguity results, which will only be lifted the day when, as various voices have already requested, a European government will be established.

Generally, the composition of the Commission reflects the distribution of the major political parties. However, there does not exist - like in Switzerland - a direct link between European elections and the composition of the Commission; on the other hand, the top qualifications of the members of the Commission and their experience as political leaders are an indicator of the perception that the governments and the principle political parties have vis-à-vis the political responsibilities which are attributed to the European Commission in the first pillar. Furthermore, for the moment it contradicts the marginal place that the governments accorded the Commission in new domains such as foreign policy and common security, European defence and even the third pillar. These are elements of institutional and functional imbalance, which federations have strived to avoid.

The reinforcement of the Commission and of its President

Due to earlier experiences, the member states have given the president of the Commission an increased political dimension, as many successive reforms witness:

Jacques Delors's *participation in the European Council* of which he was made a member by the Single European Act as well as his participation as an official member at

various international summits contributed to the position now held by the Commission. In this important political role, Jacques Delors secured it an influential place, as testified on some occasions when he succeeded in prevailing the Commission's proposal vis-à-vis the sometimes over cautious position of the Council of Ministers.

The nomination of the Commission by the European Parliament reinforces both the legitimacy and the democratic responsibility of the European Commission. This process was formalised by the Union treaties. The latest version contained in the Treaty of Nice¹⁹ is innovative by foreseeing that the Council gathers heads of state or government to designate the political figure it intends to nominate, by *qualified majority*, as president of the Commission, a designation, which must be approved by the European Parliament. In a second phase, the Council adopts by *qualified majority and in agreement with the designated president*, the list of the other political figures it envisages nominating as members of the Commission. This list is based on the proposals made by each Member State. The final phase consists of the approval by the European Parliament of the President and the members of the Commission as a collective body. Their nomination by the Council takes place by *qualified majority*.

This new version contains both clarifications and innovations: it is not the governments but the Council meeting at the level of heads of state or government which participate from the beginning of the process and in addition, takes decisions by qualified majority. This new aspect highlights the evolution of the Council towards a Community orientated institution, even in its composition at the highest level, whilst allowing it to limit the threat of paralysis or to reduce the practise of minimalist compromises (the lesson of Corfu). In its turn, the European Parliament is called on, at the start of the procedure, to approve the designated president and to ratify the college in its final phase. Another aspect, which demonstrates progress, is the procedure by which the other members of the Commission are chosen by the Council and the designated president. The designation of the Prodi Commission taught us a lesson, it has now been established that the Council deliberates by qualified majority²⁰.

¹⁹ Article 214 and 217.

²⁰ Nevertheless, one can ask if this nomination procedure which foresees the resort to qualified majority at various stages is not sullied by a certain ambiguity. In fact, the new version specifies that the list of future members is established in accordance with the proposals made by each member state. If the choice has to be limited to the names proposed, the question is to establish whether a member state is supposed to propose many

Unlike the former situation where the *leadership of the president* of the Commission depended principally on his personality these new provisions consolidate his position as leader and specify that the Commission fulfil its mission with respect to the political orientations defined by its president. The latter decides on the internal organisation of the Commission, in order to ensure coherence, efficiency, and the collegiality of its action. Responsibilities are distributed by the president and the undertakings are carried out under his authority. This growth in the formal powers of the President of the Commission takes on its full significance in light of its participation at the heart of the institution, which is the European Council. It also corresponds to the extension of the field of action of the Commission and its right of proposal and initiative including the communitization of certain domains of intergovernmental cooperation. Henceforth, the Commission can take the initiative, alongside member states, in areas of police or penal cooperation, a domain, which until now, escaped its right of initiative. Consequently, there is a paradox, as this tendency to reinforce the Commission and its president is counteracted by the efforts of certain member states that try to keep it in the dark in certain sensitive domains.

The collective resignation of the Santer Commission

The most severe crisis in the history of the Commission put a harsh spot-light on certain institutional and administrative aspects of the European Union. In the first place, this crisis demonstrated the efficiency of parliamentary control and the weapon that the censor motion represents, which provoked the resignation of the Santer Commission on March 17th 1999. The resignation highlighted the sense of responsibility of the members of the executive, and the respect for basic rules that govern public life at the heart of the European Union. With reference to this, the committee of independent experts recalled that the principles of publicity, transparency, and responsibility constitute the basis for democracy and the instruments that enable it to function normally. “Publicity and transparency imply that the decision process, on every level, is as accessible as possible to public opinion and is also answerable to it. This means that the reasons why decisions are taken or not, must be made public, and those who take the decisions assume the responsibility and are ready to accept the consequences for themselves, if it later appears that these decisions were not appropriate”. This episode is marked by the will of the European Parliament to affirm its authority by

names. What happens if it proposes a name for a seat and the council and/or the designated president do not accept?

spreading its control over the Commission. Still, this excess of zeal must not paralyse the momentum which the Commission is supposed to imprint on the European Union.

The Council: intergovernmental or Community institution?

The Council along with the Commission plays a key role in the decision-making process of the European Union. In fact, it constitutes the final stretch in the legislative process of the EC acting on a proposal by the Commission and in ever closer accord with the European Parliament. The role of the Council in adopting common policies, as proposed by the Commission and the governmental powers that it often shares with the Commission, accentuates its key position in the community system. As Janus has two faces, so one has legislative power, and the other governmental power. With the extension of the legal domains of the European Union, the Council has become, alongside the European Council, the principle holder of new competences 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. Its initial ambiguity is linked to the fact that it is not under the control of the European Parliament not only as community legislator, which is normal, but also when it takes governmental decisions. The lack of separation 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. These are some examples, which render all evaluation of the precise weight of the Council rather delicate and ignore the real influence of the intergovernmental factor. In which way does the grip of the intergovernmental become reinforced or on the contrary, is ceding territory to the federal approach?

The evolution is relatively clear in the area of the first pillar, where the procedure begun by a proposal from the normative Commission veers towards simultaneous generalisation of the qualified majority and towards the co-decision of the European council-Parliament. It is the confirmation of a bicameral legislative power acting on the initiative of the executive body, which guarantees the coherence of the common interest and efficiency, as a result of the majority rule at the Council.

If the participation of ministers and secretaries of State at the Council testifies to the importance that the member states attach to this institution, the tendency to generalise the rule

of qualified majority is proof of the growing degree of confidence and collegiality between members. In practise, the Council generally tries to take decisions by consensus even though it could use qualified majority. In these cases, the differences between unanimity and qualified majority are somewhat blurred. However, in light of the Community experience, this difference, which increases with the number of members, appears to be fundamental; the first slows down, if it does not paralyse, the decision process, the second speeds it up and facilitates the search for consensus, above the lowest level, to which unanimous compromises often fall. The successful functioning of this majority procedure owes a lot to the role of the Commission in which the proposal containing guarantees for minority interests cannot be modified without its consent or without the unanimous agreement of the Council²¹. In addition, the Commission, which is present throughout this procedure, intervenes as honest broker and watches over the respect of the interests of all the members. Clearly, this evolution of procedure at the heart of the Council and the recourse to balanced votes means that the Council is slowly, but definitively, losing an essential trait of its intergovernmental character.

The search for consensus by means of negotiation and compromise is a practise widely used in the Swiss system of “consensual democracy”. In reality this type of methodology is not absent from unitary states, like the Netherlands, which are riddled with multiple cleavages. A characteristic of many political communities, notably Switzerland and the European Union, is the economic and social, partisan and ideological, linguistic, cultural and religious cleavages found to differing degrees. Participation in decisions, the adherence to common solutions, and the attention given to minority opinions take on more importance than in relatively homogenous communities. However, even in centralised states, the complexity of the social make-up and the multiplicity of actors and decision centres (a classic example: employers, trade union relations) means that the balance is swung in numerous domains, where implementation depends on independent actors, in favour of negotiation, arbitration and partnerships and agreed solutions rather than authoritarian decisions imposed by government decrees. From where arises long consultations of the principal interested parties who precede the decision taking and who prepare and facilitate their application. Consequently, this method lends itself to the federal approach and generally is applied in fragmented or heavily diversified communities such as the European Union.

²¹ It is an exceptional case where unanimity protects and reinforces the authority of the Commission.

The strength of the Council is certainly its position as the last rung in the decision-making process. In spite of the frequent monthly ministerial meetings, ministers only consecrate a part of their activities to the Council. They are part-time European leaders, who have access to a resident body, which prepares their deliberations: the Coreper, which is made up of ambassadors and their permanent aides, constitutes a eurosphere of full-time players, who are the intermediaries between their administrations, the Council and the Commission. Their job is to defend national interests at the heart of the Coreper and the Community, they are both the messengers of their governments' and the interpreters of the interests of the Union. Split between their European solidarity and their national allegiances, they form one of the key mechanisms of the Community process, which, by its influence on the undertakings of the Council, projects a technocratic shadow on decision making. Constellations of work groups gravitate around Coreper, they are made up of governmental experts most of whom have previously participated, and in a personal capacity, in the consultations organised by the Commission. Their experience of undertakings carried out in common and their inter-administrative communication networks develop processes of European apprenticeship and socialisation.

In contrast, the Council has certain weaknesses capable of diminishing its capacity to assume political responsibilities and to assure the coordination and coherence of Community action. In addition, the duration of the presidency - without considering the changes and reshuffling in government - does not favour the continuity of its action, in spite of the support of the Secretary General. Alongside the "General affairs" Council and the Ecofin Council there are a number of specialised councils which communicate rarely and which accentuate the fragmentation of the political power of the Council. This is only partially compensated by the coordination that its "General affairs" Council is supposed to assure. Particularly, as the ministers of foreign affairs are seeing the multiplication of their tasks such as the CFSP and peacekeeping missions, at the same time as the responsibilities of Ecofin and the Euro Council are increasing. This acknowledgement encouraged Jacques Delors to suggest that the "Council of vice-Prime Ministers be endowed with real authority to ensure the coherence of activities within the Union". In its turn, the proposal to create a "Council of European Ministers" permanently based in Brussels aims to respond to the same preoccupation: to coordinate more efficiently the undertakings of various Councils and follow a coherent action plan. Moreover, in all probability, incoherence tends to increase in so far as the deliberations of the Council do not have the proposals of the Commission as their basis. It is important to

admit that the Commission is the only permanent institution, which is exclusively dedicated to European affairs, and because it has a general vision of sectoral affairs, it is capable of imprinting an effective coherence on its proposals²².

Democratisation and federalization of the European Community

This double process develops within the European Community space; however, in the new domains, the Council occupies a key role, but evades democratic control on the European level. Par excellence, the two community institutions are reduced to a secondary role. From where arises the marked difference between the first community pillar and the other pillars which, at present, are predominantly intergovernmental.

Throughout the legislative procedures of the European Community, the Commission fulfils its role as federator, through which it tries to preserve both the coherence and the balance of community standards. A difficult role considering the number and diversity of players, who to differing degrees admit and articulate their interests and intervene in the decision-making process. At the time of the elaboration of the proposals, the Commission assumes the role of initiator. A certain coherence of Community standards in their own right was guaranteed by the contribution of the Commission in later phases of dialogue with the Council and the European Parliament.

The extension of qualified majority ensures the progressive spread of *legislative co-decision*, and the reinforcement of the authority of the European parliament and the capacity of the Council. In spite of the modest progress obtained at Nice, the general tendency is orientated towards more democracy and more efficiency and towards a *bicameral legislative authority*. By assuring the double representation of the member states and peoples of the Union, the afore-mentioned testifies to the evolution of the European Community towards a federal system²³. However, the ambivalence of the Council remains, in the sense that alongside its legislative functions, it has carried out more governmental functions since the

²² The daily bulletin of the European Commission of May 4th 2000 reproduced an article by Ferdinando Riccardi published by Agence Europe which does not present a particularly complimentary analysis of the Council, Pierre Boissier, former permanent French representative to the European Commission and joint Secretary – General of the Council.

²³ Bicameralism is clearly reflected in the role of the conciliation committee, where the representatives of the European Parliament and Council are present; the Commission is excluded and relegated to the role of mediator, as is appropriate for an executive body.

Union has begun to spread its authority in foreign policy, security and defence. The confusion of powers is the immature sickness of the Council.

In other respects, 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 Community, since the European Parliament is the *only transparent institution* whose communicative role increases the European public's understanding of the Union.

These diverse instruments reinforce the political dimension of the Community and encourage the political groups to transform themselves into the parliamentary cores of European political parties in the making²⁴. Without being assimilated to the political parties in the Swiss or American federations, they are similar, in the sense that, the latter principally exist in Cantons or in the federated states. On the federal plane, the parties have a feeble level of cohesion in Switzerland, whereas in the United States they are reborn at the time of presidential and legislative elections. The participation of the electorate is relatively comparable with the Swiss and American method, moreover as, at present in Switzerland, no direct link exists between the results of the European elections and the composition of the Commission. The Nice and Amsterdam treaties formally recognize the importance of political parties. They are important on the European level as a way of expressing the political will of citizens and as an integration factor. The Council is called on to make the existence of political parties in Europe official, by fixing their statutes and their rules according to their financing²⁵. This encouraging sign addressed to the political parties, should incite them to structure themselves more efficiently, starting with parliamentary political groups, in order to assume progressively their function of articulation and aggregation on the European level. The development and consolidation of party federations contribute, in their turn, to rebalance the influence of the interest groups and progressively, to form a European political conscience.

If, in the European Community, co-decision and qualified majority have gained ground by successive steps, important pockets of unanimity continue. Only their elimination

²⁴ A form of emergence of political parties proposed by Maurice Duverger (*Les parties politiques*, Paris, 1951).

²⁵ Article 191 TEC.

prior to the enlargement of the Union, will avoid delays, paralysis and compromises at the lowest level of accord. Since the beginning of the integration process it is the European Parliament and the European Council, which have experienced the most remarkable development. From a consultative institution the European Parliament transformed itself into a second chamber that represents European people. The successive treaties of the Single European Act, including those of Maastricht and Amsterdam, have gradually reinforced the powers of the European Parliament and attributed orientation and impulsion tasks to the European Council.

The Growing Role of the European Council

In so far as European integration becomes more and more political, whether this concerns economic policy or monetary policy, foreign affairs and security or defence, in other words: the heart of sovereignty, the European Council is called on to exert its responsibilities at the highest level. The European Council has only widened its interventions in the definition of major orientations or fundamental options. Made up of the supreme holders of national executive powers and with the full participation of the president of the Commission, the European Council assumes a role at the forefront of the orientation of the Union, in the promotion of its development and in the adoption of global solutions. As such, it constitutes the highest authority of the European Union. It is not surprising that in these conditions which often require political arbitration at the highest level, the Council of Ministers often looks for the backing of the European Council, especially as the evolution of the Union leads it to the threshold of politics and demands fundamental decisions concerning the future of the Union. In these particularly sensitive domains, only the European Council has the authority to impose orientations on the Council and notably on the Ecofin Council as was foreseen by the Treaty of Maastricht. Is that to say that it is capable of fully assuming the responsibilities of an “economic government” as well as assuming both the coordination of sectoral politics and the coherence of the all of the actions of the Union? One must face the evidence: the European Council has the necessary authority, but does not have the availability, the structure or the infrastructure to carry out these tasks and guarantee their follow-up. In fact, the European Council meets on average three to four times a year, lacks its own infrastructure, and its six month rotating presidency favours neither the continuity nor the coherence of Union policies (even the presidency of the Swiss Federal Council of one year undertaken alternately by a

member of the collegiate government which meets once a week is judged insufficient²⁶). In its present state, only the Commission has the capacity to prepare, in collaboration with the Council, the big options intended for the European Council, to articulate and to structure general programmes, to provide a solid base to these initiatives and to supervise them, to prepare the basic documents and to verify that orientations are respected.

The federating role of the Court of Justice

By exerting jurisdictional control over the Acts of the Commission and the Council, the Court of Justice contributes to the coherence of the autonomous jurisdictional order of the European Union. Progressively, it develops Community law, both by a wide interpretation of fundamental standards of the treaty and by the creation of a new jurisdictional order²⁷. In certain cases, so as to cover up the jurisdictional void, the Court was obliged to resort to the teleological method. In numerous ways, the Court acts as “a finely tuned legislator and it is the authors of the Treaties who wanted it thus”²⁸.

In some ways, the decisions of the Court of justice have “constitutionalized the Treaty of Rome” according to the suggestions of Judge Mancini, making the law - as in federations - the *motor of a community or federal integration*²⁹. In fact, by its jurisprudence, the Court of Justice contributed to the formation of an autonomous community orientated jurisdictional order (Costa decree 1964), which is derived from primary law or secondary legislation and is founded on three principles: the immediacy of directly enforceable decisions in the member states (their execution being the responsibility of the federated states); priority for national law (federal law takes precedence over the law of the federated states); a harmonized interpretation based on the opinions of the European court at the request of national (Canton or Länder) judges. These are the principle characteristics of federal law, which distinguish law and community systems from intergovernmental or confederate organisations.

²⁶ The Nice Declaration, which foresaw meetings of the European Council in Brussels, does not seem to be able to increase its capacity.

²⁷ Mario Bettati, “The “law-making power” of the Court, *Pouvoirs*, 1989, pp.59 and following.

²⁸ R.-M. Chevallier, “Le juge et la liberté de circulation des personnes et des services” *Droit-Economie*, 1979,p.19, quoted by Bettati.

²⁹ M. Croisat and J.-L. Quermonne, *op.cit.*, Paris, Montchrestien, 1996, p.96. It is I who underlines/italicises.

In so far as the field of action and public policies of the Union widen, the Court extends its jurisdictional control. The same can be said for certain domains included in the third pillar. It is thus that the federating role of the Court of Justice is affirmed and the fundamental importance of the remarkable jurisprudential edifice to the formation of a community orientated or federal jurisdictional order is established³⁰.

A federating core: the ECB and the euro

The Maastricht Treaty started the process, in principle irreversible, of the pooling of one of the essential attributes of national sovereignty, the single currency, which is the exclusive symbol of the sovereign. The introduction, by Louis IX of the single currency on the scale of the whole kingdom rendered a great service to French unity³¹. The same happened in the formation of federated states and nation states. Unlike most previous experiences in which political unity preceded the creation of a single currency, European monetary union is in place in the absence of a political union. It is the federal process upside down (H. Brugmans). On the other hand, economic and monetary union is written into the logical progression of the single market. All of the objectives and criterion and institutional rules and inventions attest to the solid federal vocation of the European Union. However, this type of federal sub-system only accentuates the disparity between the CFSP and the CFDP in particular. It is a form of “enhanced cooperation”, in reality nearer to the concept of “dynamic core federator” elaborated by Karl W. Deutsch in 1957.

The creation of the European System of Central Banks (ESCB), the European Central Bank (ECB) and the single currency is a significant step in European integration, by pooling the monetary sovereignties of the twelve member states which thereby form a sort of “avant-garde” aiming to sweep along in their wake the three other member states.

The lessons from the euro and its implementation when faced with numerous obstacles, herald the revival of the community dynamic, with, in the background, a shared political will, to follow a common objective. The federating role of the European Council, supported by the Commission and its political leadership, gives a boost to the coordination of

³⁰ The Court of Justice emerged from the Nice conference much stronger, notably thanks to comprehensive preparation, which allowed for the adoption of a coherent reform, by the European Council.

³¹ Emmanuel Le Roy Ladurie quoting Jacques Le Goff in “D’une République, l’autre” *Geopolitique* winter edition 1997 focusing on “La République”, p.21.

economic policies and employment, and consequently, the necessity for a European government becomes more evident. The single currency and the monetary policy of the Union announce a new dimension in the foreign relations of the Union. Progressively, its impact on the world market will measure up to the commercial economic and political weight of the Union, including its external activities in banking and financial services. It is too early to measure the impact of the euro on the economic players and on the entirety of citizens. What is certain is that as a consequence, Europe will invade the daily life and the conscience of all of the inhabitants of the Union, thereby contributing to the affirmation of the European identity.

Nevertheless, whilst the main objective is to maintain price stability, the ECBS supports the general economic policies of the Union and the realisation of its objectives. Consequently, unlike the central banks, the ECBS and the ECB are part of a partial unfinished political system, characterised by the persistent imbalance between economic and political integration.

Although it is not included in an elaborate political system, the ECB, whilst benefiting from independence and a jurisdictional personality, overlaps with the Community institutional network. Contributing to the realisation of objectives in the Union, there is a corresponding responsibility to publish quarterly reports and to address to the European Parliament, the Council and the Commission including the European Council an annual report on the activities of the ECBS and on monetary policy. The European Parliament can call for a general debate on this report and ask that the president and other members of the executive body be heard by the competent commissions. This concern for balance and participation is one of the essential characteristics of this federal sub-system.

According to Community logic, the mission of the ECB is written into the major orientations of the economic policies of the member states and the Community, in conformity with the conclusion of the European Council and the recommendation of the Council, which fixed these major orientations by qualitative majority. In its turn, putting in place the monetary policy renders the need for a tight cooperation of economic policy more pressing, a task that is incumbent on the Council which is composed of participants in the single currency, of whom for the moment three members are absent, the United Kingdom included. The question of the coordination of economic policies according to the general objectives

raises the problem of the role of the euro. Will economic policy be defined by the twelve, whilst the member states who stay away from the euro-zone are being influenced? For the moment, the gap is not serious on account of the fact that the Ecofin Council of twelve is experiencing difficulties in efficiently coordinating economic policies. From whence comes the suggestion of allocating this role to the European Council whose conclusions are supposed to serve as a base to the general orientations of the Council. Whilst admitting that the appropriation by the European Council and the European Parliament of general orientations and objectives for the coordination of economic policies can only contribute towards giving them a wide base of legitimacy, there are demands for an “economic government”, or even a “European government”. In the same way, putting in place foreign, security and defence policy will, in the near future, reinforce the need for a European government³².

In the present distribution of tasks, the Council participates in monetary policy, in the sense that, on proposal from the Commission and after consultation with the ECB, it decides, by qualified majority, on the position that the Community occupies on an international level. The ECB is represented by its president, or a member that the Council designates. Subject to the agreement of the ECB, the central banks remain entitled to participate in international monetary institutions. In addition, the Council has an important role concerning the agreements which bear on an exchange rate system, it establishes the base for obligatory reserves and the maximum exchanges authorized between these reserves and their base, including appropriate sanctions in case of non-respect; it fixes the limits and the conditions for increase of capital by the council of governors and supplementary credit reserves that the ECB can call on. In exercising these tasks, the Council can decide by qualified majority, either on a proposal from the Commission and after consultation with the European Parliament and the ECB, or on recommendation from the ECB and after consultation with the European Parliament and the Commission. Besides, the modification of numerous articles of the statutes of the ECBS can be carried out by the Council, deciding either by qualified majority as recommended by the ECB, principal manager of the monetary policy, and after consultation with the Commission, or by unanimity on a proposal from the Commission and after consultation with the ECB. Does unanimity aim to protect the independence of the ECB in the same way that it protects the proposal of the Commission? In any case and in both

³² In the absence of a political system, the major Swiss banks, see the risk of the loss of credibility of the euro "For the euro to override the scepticism of investors, the decision mechanism of the community must function without a hitch". Also the known objectives of economic and monetary policy must be clearly defined and economic reforms be followed.

cases, *the assent* of the European Parliament is required. It is an excellent example of a federal structure and method, which assures the common exercise of a portion of sovereignty. In order for this portion of shared sovereignty to be efficiently put in place, it has to be completed by a coherent economic policy internally, and by a common monetary policy externally. The necessity often evoked for an “economic government” responds as much to a functional demand as to examples offered by the experiences of federal systems.

3. Foreign relations, the CFSP and the outline of a European intervention force

In spite of progress achieved, the external dimensions of the European Union demonstrate, unlike the experiences of federations, a high degree of incoherence and a lack of coordination. On the world scene and even within Europe, the Union presents many faces: whilst it affirms its identity in domains such as international commerce, and economic and monetary relations, it is trying, with some difficulty, to gather all the disparate and dispersed pieces of common action in foreign and security policy. The difficulty is even greater, as some of the powers are considered undeniably sovereign, and, on the other hand, some defence responsibilities have been allocated to NATO and the United States. For the moment, the diverse domains of foreign relations are not only fragmented but in addition they are managed according to distinct methods. On the subject of economic relations, the Community principally resorts to the community method, whereas the new domains of foreign and security policy in the Union follow the intergovernmental method. The question is to know whether in the long term we can maintain a separation between two complementary dimensions. Evidence suggests that, as the experience of other federations shows, this division can only be transitory, leading either to the formation of a coherent foreign policy in a European federation, or to the maintaining of differentiated policies which are likely to encourage paralysis and conflicts that could lead to the splintering of an evolving federal community.

Until recently, the external dimension of the Community was the prolongation of its economic integration. A logical extension of the customs union, the common commercial policy had its first important experiences at GATT at the time of the Kennedy Round. Speaking as a single voice through the intermediary of the Commission, the Community began to become aware of its commercial power and consequently affirmed itself as the

principal interlocutor of the United States and Japan at GATT and the WTO. Other fragments of foreign policy such as aid to development (ACP and EDF) added to this dimension of commercial policy, as did the European accords of pre-adhesion and diverse accords of association, commerce and assistance. Moreover, the Community and its member states have acquired the habit of coordinating their interventions in the diverse economic institutions of the UN including the World Bank and the IMF. Present in numerous international and regional organisations, it takes part in the G8 meetings where its four big member countries and the president of the Commission are present. There are so many elements, which constitute the economic identity of the European Union. Raised to the level of a major economic power, the European Union could no longer elude its global political responsibility.

The premonitory Single Act aimed to incorporate into one treaty, both the Community pillar and political cooperation, in spite of the gap that separates these two realms. The progress accomplished by the Amsterdam and Maastricht treaties did not occur in anticipation of the conflicts and tensions which followed the collapse of communism, but as often, as tardy responses to these new challenges. In fact, step-by-step advances achieved, are regularly post-crisis: Maastricht only came into being long after the violent outbreaks in Yugoslavia, equally the Amsterdam Treaty only became effective in the middle of the crisis in Kosovo.

Under the pressure of external crises, the European Union is called on to restore the balance between economic integration and political integration, as the imbalance threatens the pursuit of the integration process. In fact, the lack of coherence in foreign policy, the tensions and insecurities it can engender, lead to repercussions in the economic and monetary Union and, in Community cohesion and solidarity. From this arises the need for a global political cohesion in the Union in these vital domains, exposed as it is to sectoral policies, splintered visions and powers and to the disparity of decision making.

The lessons of conflicts

The lacunae and insufficiencies of the system became apparent during the Gulf War and the Yugoslav conflicts. What are the principal lessons to be learnt and to what degree did the Amsterdam Treaty succeed in palliating the deficiencies of the Community system? The Gulf War showed the limits of the action that the European Community could take, faced with a grave crisis in the Middle East. Certainly it is exaggerated to talk of a failure of Europe, as

the Community does not have the means with which to affront such a crisis for as long as international security and military commitment remain the exclusive provinces of the member states. Moreover, in the Security Council it became quite clear that political cooperation was unable to avoid uncoordinated actions and divergences between the United Kingdom and France. On the other hand, it must be noted that the decision of the Council banning commerce with Iraq and Kuwait required the Commission to oversee its implementation by supervising national policies and to coordinate energy, financial and economic affairs. It is probable that this first experience urged the governments to question the efficiency of their cooperation policy, including the measures taken to protect European citizens, which must have inspired the clauses of the Maastricht Treaty on this subject.

Since the beginning of the war in Yugoslavia, divergences, notably between France and Germany, on the recognition of Slovenia and Croatia have manifested themselves vigorously, thus reproducing the geopolitical archetypes, which we had thought forgotten forever. In contrast to France, the United Kingdom, the United States and the secretary-general of the UN, Germany pronounced itself in favour of recognition at the end of November 1991. This profound divergence at the heart of the Franco-German coupling was more serious than the differences in opinion which became apparent at Nice. Nevertheless the present cleavage could have long-term effects on the cohesion of the Franco-German coupling and the future of the Union.

The Community was rocked by this regional conflict, divided by the oppositions of the principal member states, and incapable of taking coherent action, thus it decided to unload itself partially of this responsibility, by organising, in September, a peace conference for Yugoslavia and by creating a conciliation commission. Faced with the escalation of violence (Vukovar), the Council of Ministers of Foreign Affairs adopted sanctions against Serbia in particular, and planned the dispatch of an intervention force. The WEU meeting ended in failure, because of the United Kingdom's opposition to committing European peace - keeping forces. As for the plan drawn up by the peace conference, it post - dated the events. The divergences, the lack of foresight and the delays are the constants, which in this period, are witness to the lacunae of the European Community.

The question of recognition resulted in an altercation at the Council of Ministers for Foreign Affairs but did not stop Germany from imposing recognition, in opposition to the

majority of the ministers for foreign affairs. On January 15th 1992, all of the ministers aligned themselves with Germany. This episode underlines the lack of external cohesion of the Community at the precise moment when the Maastricht Treaty was being signed. It exposes the fragility of European construction caused by the inefficiency of political cooperation, whilst marking a turning point by the affirmation of the role of Germany.

In other respects, the crisis threw a harsh light on the lacunae of the Union. The rotating presidency proved inefficient in the face of a major crisis. Moreover, the coincidence of the presidencies of the small and medium member states did not facilitate the management of the crisis. Without efficient support, the presidency was exposed to serious overload as a result of heavy responsibilities: after-effects of the Gulf War, negotiation of the Maastricht Treaty, negotiations with GATT, enlargement, and above all else, the Yugoslav crisis. This deficiency questions the exercise of foreign policy of the Union according to the *intergovernmental method*. The search for unanimity is engaged on the basis of individual positions which are relatively distanced from one another if not in opposition, under the menace of vetoes, under national constraints (interests and visions, public opinion, media), in the absence of a common preparation and a proposal of common policy. In spite of this handicap, it can be noted that if the Community followed by the Union did not efficiently deal with the Yugoslav crisis, it did at least succeed, in spite of sometimes radical differences, in preserving the basic essentials and maintaining some solidarity. The member states accorded priority to upholding and developing the Community, to its union with GATT, and to its development, at the expense of a common policy for conflicts in South East Europe.

The case in Bosnia shows that in the phases where peace is re-established by the use of armed forces, the states and particularly the big states have a high profile role. Decisions are negotiated at the heart of the contact group (the United States, Germany, France, the United Kingdom and Russia and later Italy) and are decided on by an *extra-community procedure* before being endorsed by the European Union and upheld by NATO. However, after peace has attributed, the role of the Union is once again primordial in reconstruction and development³³. The Union is the principal contributor, and entrusts its mandates to the Commission, which was only marginally associated with restoring and maintaining peace.

³³ Amongst the weaknesses engendered by the separation of the military-politico action and economic action, we can cite the case of the airport at Sarajevo, the reconstruction of which was financed by the EU, but it was inaugurated by Madeleine Albright.

The war against Yugoslavia shed a light on the importance of NATO and revealed the dependence of Europe on the United States on the military front, and their tardiness in technological and logistical matters including their lack of autonomous decision. In addition, it appeared that, at the time of the European Council in Berlin, the unanimous appropriation of military intervention was authorized, in spite of the reticence of certain medium sized states. Is that to say that in the domain of security the big member states have the capacity to impose their will, because of their weight, their responsibilities and their engagements?

It is evident that the Treaty of Amsterdam contributed to the consolidation of the CFSP, it reinforced the responsibility of the European Council, and clarified the role of the Council and the Commission, which then became more closely associated. Furthermore, it allowed for constructive abstention and consolidated the application of the qualified majority on common actions and positions, it also created a forecasting unit. By fixing foreign policy objectives, the new treaty aimed to give more coherence to the global action of the Union in matters of foreign affairs, security, economy and development. Henceforth, the Council and the Commission also have the responsibility of assuring this coherence in the framework of common orientations and strategies defined by the European Council.

In other respects, the experience of the war against Yugoslavia led the European Union to develop a new intergovernmental military subdivision. The aim is to endow the Union with increased autonomy in decisions at the heart of NATO, and to allow it to undertake humanitarian missions, and the keeping or reestablishment of peace, referred to as the Petersburg missions. With this end in view, three units were put in place: a political and security committee³⁴, a military committee and the embryo of a military high command. A rapid reaction force is planned, capable of deploying 60,000 troops. Equally, a European police force of 5,000 is envisaged, of which at least 1,000 can be deployed in the briefest of delays. The mission of the police is written into the civil aspects of crisis management. These include a panoply of interventions, to pre-empt conflicts, to consolidate peace and stability in transition periods and to complement the military management of crises, in such a way as to cover all possible Petersburg missions³⁵.

³⁴ Security and defence, article 25 TEU

³⁵ The civil aspects refer notably to the reinforcement of the law State (judicial and penitentiary system) civil administration and civil protection.

This development of the fields of action of the Union situates itself at the crossroads of the intergovernmental and the communal, and increases the difficulty of delimiting the competences and coordination between the general Secretariat of the Council and the Commission. This ambiguity is shown by institutional dichotomy, which characterises the external relations of the Union. A dichotomy symbolised by the existence of a bicephal structure: the Secretary General of the Council, who is also the High Representative and Secretary General of the WEU, has become, on the one hand, part of the Union system, and on the other, the European Commissioner responsible for external relations. One relies on the Council and its President, and the other on the potential of the Commission. The question that remains is to know how to ensure an effective coherence in the complex activities of the Union in these inseparable but opposing domains as far as the method is concerned and distanced vis-à-vis the structures and capacities. However, the totality of these activities is part of the foreign policy and the concept of security in general. Can we follow the development of the CFSP (in association with the Commission) and military cooperation according to the intergovernmental method, when a substantial part of external relations and the policy of enlargement, which are essential for the security of Europe, are the responsibility of the Commission?

Evidently, this progress seems insufficient and only brings partial responses, as is apparent in the evolution following the experiences of the war against Yugoslavia and the management of peace in Bosnia and Kosovo. In addition, the processes of integration and cooperation are near the threshold of tolerance and the contradictory tendencies that are developing at the heart of the Union. Sub - systems are also developing in opposition to the federal approach, which is growing at the heart of the community pillar, whereas to be efficient, foreign policy requires a *strong structure* capable of orientating the different fragments and ensuring coherence. However, for the moment this does not seem to be the case in the European Union. The limits and inadequacies of the intergovernmental method became evident, and resulted in diverse proposals which aimed to institute a dynamic or federating core, or a European government for the future federation.

The process of becoming a Community

To what degree does intergovernmental cooperation of the 2nd and 3rd pillars and their complements in military matters, constitute a transition towards an original federation? Or

does the influence of some of its current and future members lead towards a dilution of European integration? This is the choice that will soon be facing the Union and its members. The changes in the Amsterdam Treaty favour the evolution of cooperation towards the community guidelines for the 3rd pillar. Here the process of becoming a community covers internal and external frontiers, as well as visa, asylum and immigration³⁶ policies and judicial cooperation in civil matters. In these diverse domains, intergovernmental cooperation proved powerless, thus the Community method surfaced in spite of some resistance. The conclusion is clear: the method of intergovernmental cooperation at the heart of the specialised Councils and the Committees of High Representatives, led to a dead end, while accentuating the fragmentation and incoherence which were the result of a lack of basic proposals from the Commission³⁷. The threshold has been crossed: the recourse to using directives or rules instead of conventions, the setting up of judicial control by the Court of Justice and the introduction of the right of proposal by the Commission, which will be implemented after five years will replace initiatives by member states or the Commission.

The Union at the crossroads

Clearly, the European Union is nearing the moment, when, after a period of cohabitation, it will have to choose between the intergovernmental way and the federal way. The new intergovernmental sub-systems will either continue to spread ever more thinly or, in turn, they will adopt a coherent federal approach. A third option could be a group of member states which have decided to follow the federal path, in the hope that one day they will succeed in sweeping the others along in their wake. This latter hypothesis is quite promising.

For the moment, in sensitive matters, the intergovernmental approach has the advantage of starting a process which, in the end, could lead to integrated structures. By creating space for reflection, the intergovernmental approach may forge greater confidence and could create working habits in common. However, eventually the inconveniences outweigh these initial advantages: the marginal role attributed to the Commission deprives the CFSP of a global vision in the European interest and adds to the incoherence and lack of coordination at the heart of the system. In the absence of a common proposal, small and

³⁶ For example, 76% of people interviewed consider the problem a priority and that the European Union should deal with it more vigorously (Eurobarometer, quoted p.54 and t. 3.11). Also, 59% would prefer to allocate this policy to the Union against 34% to national governments (p.59).

³⁷ Romano Prodi's speech to the European Parliament on October 3rd 2000.

medium-sized states are even more exposed to the predominant influence of the big member states. Negotiation is made more difficult given the different positions, the result is often a compromise based on the lowest common denominator. The new institutional structure tends to assert itself on the periphery or in opposition to the Community structure; it reinforces the powers of governments, seemingly at least, as it diminishes the efficiency and the potential of the whole; in any case, the increase in intergovernmental importance in foreign politics, security and defence weakens the chances of making the Union more democratic by creating new areas, protected from democratic control, on both national and European bases³⁸.

Thus when the Commission is kept out of decision-making processes, as it is in military affairs, the decision - taking is removed from European parliamentary control and to a large degree from the control of national Parliaments. It follows that the discretionary power of national executive bodies increases accordingly³⁹. In the domain of the CFSP, conditions vary according to the role attributed to the Commission and the European Parliament. In most cases, the Commission, being only associated with the decision and execution process, cannot as a consequence be held responsible to the European Parliament, which in its turn is more often merely consulted rather than anything else. On the other hand, democratic control is more likely to occur if, from the earliest stages, the Commission puts forward its recommendations.

The evolution of foreign affairs and security is in keeping with a dialectical and cyclical process, whether it be the start of the violence in Yugoslavia (its demands and challenges) or the tardy reactions which lead to peacekeeping and humanitarian aid. At the same time, the reforms of the Union tend to reinforce common foreign and security policy and adapt it to changing conditions. In the case that the embryonic defence policy required by

³⁸ This tendency seems to be confirmed by the adoption, at the instigation of the High Representative, of a code of confidentiality of documents, going against the 1993 code, and article 255 TEC, which opened access to citizens, and vis-à-vis the principle of transparency contained within the Treaty of Amsterdam. Consequently, even at a national level, documents concerned with security and defence are not in the public domain, despite the fact that they may have been leaked or altered at a later date.

³⁹ The case of intervention in Yugoslavia merits reflection: to what degree were democratic procedures respected? Did the parliaments have any say in this intervention which had been planned for months in advance? Keeping parliaments excluded can only be justified by a surprise attack on a NATO member.

Petersburg missions could, in the future, form the core of a European army, the structures of decision and command will have to be altered and duly subordinated to *civil power*. In any case, the armed forces seem to be called on more to fulfill a supporting or policing role. They do not consist of a privileged means of action for the Union, but more an auxiliary instrument to be used as a last resort. Meanwhile, the sale and manufacture of arms is already on the agenda, as evinced by the joint production of fighter aircraft and other armaments.

When evaluating the capacities and activities of the European Union, one can only remark that the force of the Union resides in its economic potential and in its political and social model rather than in its future armed forces. It is by its economic and democratic strengths that the Union is attractive to European countries, an influence on the world economy and on the development of its partners and associates. Its example and the results obtained, as much from the point of view of peace and sustainable security, as from the point of view of solidarity and integration, are its principle attributes. In actual fact, the influence of the Union is not due to its capacity to dominate or to contain, but due to its *force of attraction*, its *capacity to incorporate* third party countries into its work, and in the long term to integrate European countries. It is thus that it contributes most efficiently to the creation of a sphere of security and sustainable development. This strategy, of which enlargement is one of the principal pillars, corresponds to the transformation of political power, which depends less on the use of legitimate force than on its encouragement and leadership and general and normative orientation in an environment, which leads to creativity, initiatives and the fulfillment of people. With respect to diversities, the Union is called upon to attract, to inspire and to develop actions, via free association and participation of states, regions and associations and private citizens. It is the best guarantee for sustainable peace.

PART THREE: THE FUTURE CONSTITUTION OF THE EUROPEAN UNION CHARTER

In studying thirty or so cases of integration and disintegration, Karl W. Deutsch concludes that each time that the process of assembling states resulted in a durable union, for example: the United States of America and Switzerland, this union had been built around a dynamic federating core⁴⁰. The post-war⁴¹ situation is a good illustration of the distinction between a geographical Europe, a Europe of liberties, which is symbolized by the European Council, and a Europe that desires to move forward, which is incarnated by the European Community. Today, still, the European Union forms the dynamic core, a Europe of political will. In its turn, the European Union is animated and swept along by a federating core formed around the Franco-German coupling, which relies on the founding states; the euro zone and on an embryonic foreign and security policy.

The necessity to reinforce the dynamic core at the heart of the European Union was made quite clear in “Reflections on European policy” by the CDU/CSU parliamentary group in 1994⁴². Faced with diminishing cohesion at the heart of the European Union, and with the growth of diversity following enlargement, including the resurgence of nationalisms and the re-emergence of regional identities, the authors of this document recommend, in order of priority: the institutional development of the Union, the putting in place of the principle of subsidiarity (with no transfer of competences to infranational levels) and the establishment of a European government; the reinforcement of the Union’s “hard core” (my preference is for a less restrictive term: dynamic core or federating core) and the qualitative intensification of Franco-German relations; the reinforcement of the Union’s capacity in foreign and security policy and the enlargement of the Union to central and Eastern Europe. In their eyes, consolidation is a condition of enlargement, since, without internal consolidation, the Union could not rise to the enormity of its tasks. The authors draw attention to the risk of instability, which could result in the transformation of the Union into a loose grouping of states or into an “improved” free-trade zone. Inspired by the model of a federal state and the principle of subsidiarity (applicable to different levels of public authority but also between private and

⁴⁰ K.W.Deutsch and al., *Political Community and North Atlantic Area*, Princeton University Press, 1957.

⁴¹ This outlook was first put forward by Georges Bideau.

⁴² CDU/CSU – Fraktion des Deutschen Bundestages, Bonn, September 1st 1994. The authors of this proposal are Karl Lamers and Wolfgang Schäuble.

public actors), the aim is to increase the capacity of the Union to act, and to improve its democratic and federal foundations. To this end, whilst defining the values and fundamental principles on which the European Union rest, a quasi-constitutional instrument would clearly demarcate the competences of the Union, its member states and those of its regions.

James M. Buchanan, Nobel Prizewinner for economics, advocated the thesis on a “constitutional opportunity” for Europe⁴³, which could help it fulfill its promise. He claims that the experience of the United States of America, taught us that the idea of federalism, of diversity between cooperating communities, of shared sovereignty including the effective distribution of political authorities and the delimitation of their powers, could be transposed into credible constitutional guarantees on which could be based a fabulous century for Europe.

A Constitution according to some, a Charter according to others, this is not the issue. Particularly as the positions move closer together on the subject of the necessity for an instrument which, according to Tony Blair, “would be a sort of charter of competences which specifies what is done on the European scale and what happens at state level”⁴⁴. According to the British Prime Minister an united and strong European charter would be “a superpower but not a super state”, this vision takes on different aspects within the European Constitution, and is equally endorsed by presidents Johannes Rau and Jacques Chirac, and by Giuliano Amato and Joschka Fischer.

The steps which I plan to follow are: analyze the projects proposed by those who envisage the formation of a federating core and the adoption of a European Constitution as exemplified by Joschka Fischer and Jacques Chirac, then try to highlight the principal differences that distinguish these projects from the more subtle or less courageous concepts highlighted in the British Prime Minister’s speech. Equally this section will contain some indications concerning the process which would lead to a European Charter or a European Constitution. The second and last section will propose guidelines for reflection and initial conclusions.

⁴³ James M. Buchanan, Victoria Curzon Price et al, *Europe’s Constitutional Future*, London, 1990.

⁴⁴ *Le Monde*, Sunday 8th and Monday 9th of October 2000: Tony Blair pleads in Varsovie for a Europe of Nations “free, independent and sovereign”. This charter would be a political not a judicial document.

1. Federating core of the European Union: a federal constitution for Europe

Joschka Fischer developed the debate on the European federation in his speech at the University of Humboldt, Bonn on May 12th 2000. His speech echoes the views expressed by Karl Lamers and Wolfgang Schauble by proposing the formation of a “hard core” and a European government. It reflects the views of Johannes Rau in his article on “A federal constitution for Europe?” published in *Le Monde* on November 4th 1999, which deals with the political objectives and institutional structures of Europe. If there is a wide convergence on general political objectives, it is because the Union does not yet have institutions, which would allow it to speak with a single voice and which would guarantee its capacity for action. Consequently, the question of a European federation resurfaces. President Rau also feels “that European citizens would be thankful to their countries, were a succinct and comprehensible Constitution adopted which explained the objectives and structure of this federation”. Nobody wants a federal European state which imitates the American, German or Swiss constitution. The objective of the federal European system is to allow member states to find, together, the capacity to act which, alone, they are no longer capable of doing. To this end, the federal system aims to distribute and not concentrate power. To the horizontal separation of powers, federalism adds vertical separation, which guarantees the respect of national and regional diversities. It is important, in addition to a European Charter of Fundamental Rights, that the constitution of the European federation must clearly define the distribution of competences between the federation and the member states. “In other respects, a catalogue of the competences of the European federation would allow the citizens, the local powers and the regions, who feel distanced from Brussels, to understand exactly for what Brussels is not responsible”. The clear distribution of responsibilities at various levels would help to ensure that the European Commission became less of a battering post.

The opinion of President Rau is that “ we already possess the building blocks with which to build a European federation of nation-states. All that is needed is to complete them, to assemble them and to make them into an structure”. This structure has its legitimacy in the double representation of citizens at the heart of the European Parliament and the member states, within a Chamber of States which stems from the Council of Ministers where each state would have “a voice, independent of its size or number of inhabitants” (as in the American Senate or the Swiss Council of States). In future both Chambers would have the power to legislate. It is important to note that the reflections of President Rau are limited to a

few principles and to the legislative authority of the European federation, ignoring the problems of a European government.

In the first instance, Joschka Fischer affirmed that “enlargement will render a fundamental reform of European institutions indispensable . . . and that means nothing less than a European parliament and a European government; which would also effectively exert legislative and executive power at the heart of the federation. This federation should base itself on a constitutional treaty”⁴⁵. The new structure he proposes implies three reforms: resolving the problem of democracy, the need for the total redistribution of competences - as much horizontally that is to say between European institutions, as vertically, that is to say between Europe, the nation-states and the regions - reforms which can only be taken to fruition by a constitutional reshaping of Europe; or in other terms by the setting up of a draft for an European constitution which essentially should anchor the fundamental, human and citizen rights and put in place a balanced separation of powers between European institutions and a precise delimitation of those domains that are run by Europe or by the nation-states. According to Joschka Fischer the relationship between the federation and nation-states will make up the main thrust of the European Constitution. His speech highlights the role of the nation-state in numerous instances, notably by its presentation of cultural and democratic traditions which predestine it to “remain irreplaceable and to legitimize a union of citizens and of states which is fully accepted by the people”. In this sense, he moves nearer to the concept of a “federation of nation-states” of which Jacques Delors is so fond, whilst being more moderate when he refers to a “Federation of states and citizens”. In reality, as Enrique Baron recalls, inspired by Braudel, European history is not only made up of nation-states⁴⁶. Above all, it is important to admit that all of the Union’s member states are not nation-states⁴⁷.

⁴⁵ “L’Europe unie selon Joschka Fisher”, *Le Monde*, 14-15 May 2000. The official title of the speech is “De la confédération à la fédération, réflexion sur la finalité de l’intégration européenne”

⁴⁶ “Europe, vers l’étroite finale”, *Le Monde*, September 12th 2000.

⁴⁷ We can legitimately question ourselves on the nature of the Belgian state, or the Spanish state or the Swiss state. In order to avoid the dispute over the timelessness and nature of the nation - state, it would be best to keep to the idea of a European Federation of European States or peoples or citizens.

After all, according to Joschka Fischer, “the precise distribution of competences between the federation and the nation-states in the framework of a constitutional treaty should leave to the federation the *domains of essential sovereignty* and only those questions that require immediate attention on the European level, whilst the rest would remain under the competences of nation-states. A trimmed European federation capable of taking action would ensue, *fully sovereign* although made up of established nation-states”. Whilst trying to answer the question of what the concept of “shared sovereignty” means, Joschka Fischer outlines the structures of a European federation. The European Parliament must 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 belonging at the same time to national parliaments, 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”. This second chamber, or senate, echoes Tony Blair’s idea that the second chamber for the European Parliament should be made up of national elected representatives from member countries. A third mixed formula could also be envisaged which would include national parliamentarians and government delegates. On the other hand, the composition of the chamber of citizens as proposed by Joschka Fischer represents a return to the double-elected mandate of European deputy and national deputy. This well intentioned idea, intended to attribute directly the role of European legislators to national members of parliament in order to avoid all antagonism between national parliaments and the European Parliament, runs the risk of provoking a quasi paralysis of this chamber by overburdening and rendering less efficient its national European deputies. However, the experience of the European Parliament shows that European deputies experience difficulty in mastering the areas on which they are required to legislate or exert democratic control. Thus, the double mandate is in the process of disappearing from the European Parliament.

The European constitution of the UDF also foresees, according to the federal principle of double representation and participation, a Council of States that would legislate within the Union, in conjunction with the European Parliament. The Council of States is made up of a member from each national government and by member country parliamentarians. In spite of its legislative and budgetary vocation, the Council of States is still ambiguous to the extent that it would keep some residuary executive powers of the Council of Ministers, which should be returned to the European government.

As for the European government, two options were presented by Joschka Fischer: one was “developing a European Council to make a European government, that is to say that the European government would be made up from national governments”; the second, is a more innovative option which “by basing itself on the present structure of the Commission, aims for the direct election of a president, graced with extensive executive powers”. It is the latter that has struck a chord with commentators and the media⁴⁸. The idea of a president of a European federation elected by direct universal suffrage, based on the American presidential model, seems, however, foreign to the political parliamentary culture of the European Union member states. The countries, which are nearest to this, such as France, have a mixed system which combines presidential traits, because of the direct election of the President of the Republic, with all the characteristics of a parliamentary system of a government which is answerable to the national assembly.

With some nuances and more details, the president of the UDF François Bayrou, foresees, for the European constitution the election of a European President of the Commission by direct universal suffrage of the citizens of the Union. In this perspective the proposal of the UDF, clearly opts for the transformation of the European Commission into a real European government. Until direct election takes place, the president of this European government would be elected by a congress made up of European deputies and an equal number of national parliamentary delegates, elected by proportional representation. In so far as the European system will one day be a copy of the presidential model, a contradiction will become apparent between the direct election of the president, his own responsibility to the European parliament and his responsibility to the government over which he presides. In addition, this contradiction will create an imbalance between his power to dissolve Parliament and the parliamentary irresponsibility of the government he runs. To conclude, the direct election of a president of the government of the European Union would not only result in a

⁴⁸ The idea of a European president elected by universal suffrage by the citizens of the Union is quite popular amongst the people questioned between the fifth and twentieth of December 2000 in eight Union countries (6,637 citizens aged 18 and above during the telephone census run by the Lonis-Harris institute: 53 % for and 39 % against; the idea of a European federation only received 41 % of favourable opinion compared with 40% who were against. These averages include the very negative opinions of British citizens (22% for and 58% against). The surprise came from the favourable opinions in Spain (56%), in France (55%), in Greece (51%), and in Luxembourg (51%), but also from the hesitations in Germany (41% for and 44% against), in Italy (37% against 39%) and in the Netherlands (35% against 30%), *Le Monde*.

rupture with the parliamentary tradition dominant in Europe but also with the foundation of European⁴⁹ parliamentary federalism.

Whilst avoiding broaching the details of the future structure of the European Union, President Jacques Chirac gave his support to the European draft in his speech to the Bundestag in Berlin, on June 27th 2000. Without referring directly to a European federation, the French president adopted the principles and described the preparatory process of reflection and the work in progress, “the governments and then the people will be called on to approve a text which we would then call the first *European Constitution*”.

The French President highlighted the rise in the feeling of belonging amongst Europeans and the growth of a European identity and the “desire to live together” in an interdependent community, a feeling which is gaining momentum especially amongst young people. By claiming that the Union is a tremendous multiplier of power, he called for a greater spirit of community development to include reforming institutions, furthering major undertakings such as European defence and bringing European citizens closer together. Consequently, President Chirac reiterated: “ Our nations are the source of our identity and our roots. The diversity of their political, cultural and linguistic traditions is one of the strengths of our Union. For the generations of tomorrow, nations will remain their first point of reference. As it is in their best interests, it would be as absurd to deny that they have already chosen to share some of their sovereignty and to deny that they will continue so to do as to envisage their extinction. Yes to the Central European Bank, and yes to the Court of Justice of Luxemburg, where the vote of qualified majority are elements of a common sovereignty. It is thus by accepting these common sovereignties that we will acquire a new power and a wider impact. So, please, can we renounce anathema and simplifications and finally agree that the institutions of the Union are and will remain original and specific”!

President Chirac then expressed the wish that the agreement should be based on a few principles: the necessity for democracy in Europe has grown in importance, notably in the European Parliament and the national parliaments; the need to clarify, without ossifying, the distribution of competences between the different levels of the European system: “Say who does what in Europe so that the answers be given at the right level, as close to the problems as

⁴⁹ According to the quasi-presidential model, the elected president would share certain powers with the president of the Commission or the European government, the latter being answerable to the European Parliament.

possible. Finally, to implement the principle of subsidiarity". To ensure that in an enlarged Europe the capacity to stimulate and innovate remains. "Relentlessly, new doors must be opened. For that, and as we did in the past, those countries which desire to go further towards integration, on a voluntary basis and with specific projects, must be allowed so to do without being held up by those who, as it is their right, do not wish to move forward so fast. Finally, the Euro-power that we have christened in our minds eye, this powerful Europe on the international scene, must have strong institutions and an efficient and legitimate decision-making mechanism, that is to say giving the necessary place to the majority vote by reflecting the relative weight of member states".

Whilst conceding that the face of Europe remains to be drawn, the French President outlined the reforms needed. With regard to the first stages of the intergovernmental conference, he affirmed that we cannot be satisfied with a reduced agreement, which would lead the Union into future paralysis. A "major transition" period followed the conference and concentrates on *three major undertakings*, during this time enlargement would coincide with the consolidation of policies initiated by those who wish to go further and faster. Along with Germany and France, they could make up a *pioneer group*. This group would pave the way by relying on the new procedure for enhanced cooperation as defined by the IGC and by concluding, if necessary, out-of-treaty cooperation, but without ever questioning the coherence and the achievements of the Union. The desire of President Chirac is that the *pioneer group*, made up of countries which aim to participate fully in enhanced cooperation, could, as of next year, implement improved coordination of economic policies, the strengthening of defence and security policies and increased efficiency in the fight against crime. At first sight, the *pioneer group* concept evokes an idea similar to that of the avant-garde, federating core or centre of gravity suggested by Joschka Fischer.

For his part, the German Minister sees development in two or three stages, the first, based on enhanced cooperation should allow for improvement in numerous domains: the euro zone moves towards a politico-economic union, the development of areas such as environment, immigration and asylum seekers, the fight against crime, foreign and security policy. Nevertheless, he is careful to warn that it is very important not to equate enhanced cooperation with abandoning integration. Obviously, he evaluates the limits and dangers that can result from using intergovernmental procedures at the expense of community processes. He also evaluates the risks of an "à la carte Europe", which could be the consequence that the

French President was trying to avoid, by accentuating the participation of the members of the pioneer group *in all enhanced cooperation*. Unlike Joschka Fischer, President Chirac does not think it necessary that the states which are part of the pioneer group, need conclude a new treaty or create supplementary institutions. On the other hand, it would be better, according to him, to “envisage a mechanism of supple coordination, a secretariat⁵⁰ responsible for the coherence of positions and policies of members of this pioneering group, which must obviously remain open to all those who may wish to join”. Nothing more to say, as long as only the Commission is in charge of this secretariat in the attempt to guarantee coherence, both by its initiatives and by its control over the implementation of common policies. This is one of the principal conclusions, which is the result of an evaluation of the coordination capacities of the Council and the Commission.

This remark is also applicable to the idea of a centre of gravity, which would be an avant-garde group. In the same vein as Jacques Delors who suggests the conclusion of a “treaty within the treaty” by the avant-garde members, the German Minister of Foreign Affairs puts forward the idea of a “new fundamental European treaty” between states, which make up the centre of gravity, a treaty that would be the core of the constitution of a federation. On the basis of this fundamental treaty, the federation would be endowed with its own institutions, a government which at the heart of the European Union should express itself with one voice representing group members on the widest number of questions, a strong parliament and a directly elected president. Such a centre of gravity should be the avant-garde, the locomotive for political integration, and should cover all the elements of the future federation”. The author of this audacious project is conscious of the problems it will cause at the heart of the European Union, such as coordination between members of this forward group and the other members of the European Union, to which I would add the role of the Commission and its administration. For him, it is essential to preserve l’acquis communautaire and to keep access open to all members of the European Union, and to facilitate the rapprochement with those at the centre of gravity. As for the participants in this project, a number of options are to be considered: the founding members of the European Union, the 12 of the euro zone or another group. And for Joschka Fischer to conclude, that the

⁵⁰ This idea of a secretariat is in line with General de Gaulle’s European policy and only confirms the old distrust of French leaders in relation to the Commission. The behaviour of the French presidency at Nice and the abusive use of the distinction between the European Council of which the President of the Commission is automatically a member and the Council of heads of states or government, from which it can be excluded, reinforces and confirms this distrust.

step that goes from enhanced cooperation to a constitutional treaty presupposes a well considered step towards the political re-founding of Europe. It is the third domain which President Chirac evokes: “This preparatory reflection should be conducted openly, by associating governments and citizens, through their representatives in the European Parliament and in the national parliaments. Naturally, the candidate countries should participate. Numerous methods are conceivable, from the committee of wise men to a model inspired by the Convention that draws up our Charter for Fundamental Rights. And stemming from these tasks which, doubtless, will take some time, governments and then the people will be asked to decide on a text which we would then be able to designate as the first *European Constitution*”.

2. A vision of the federal Union.

A set of common objectives emerges from the treaties and community law, from the Charter on Fundamental Rights and from the reflection on the finality of the Union. Consequently the divergence between the extension of government domains and the consolidation of integration is accentuated. Although they appear undeniably distinct, the new political domains form links between economic integration and common policies. It remains to be seen whether it is possible for a “fragmented” Union to function in a durable manner. A variable speed Union has emerged as evinced by the monetary Union, Schengen, the CFSP and defence. Disparity does exist, both in the number of participants, methods used and the extent of engagement. The analysis of the intersection of diverse subsets certainly suggests the existence of a core federator whose members participate in the entirety of community activities, a core from which one important member is missing, a member without which it would seem difficult to build a strong harmonious Union in the long term. Especially as the United Kingdom, though at present absent from the euro zone and Schengen, is an essential component of foreign and security policy but is also a protagonist of the intergovernmental process. This point could be supported by more than one candidate who remains attached to the classic concept of sovereignty and state. In this way, the “intergovernmental party” could be reinforced. The process of adhesion and adaptation would occur at different speeds in such a way that the existence of a Europe of variable speeds, albeit temporary, would have to be accepted. In addition, complexity will be compounded, not only because of the number and diversity of members, but also because some of them will not have the capacity to join in all activities, (eg the euro zone) and others will desire not to join certain domains, of which the

Danish refusal of the euro is a good example. Thus, in a surreptitious way, parallel to multi-speed Europe, is the apparition of “Europe à la carte”. Faced with this kind of risk, the response can only be to encourage those who are recalcitrant or are latecomers to join the lead group. On the other hand, the efficiency and the dynamic of the core federator must be reinforced so that it can prove its capacity to fulfill common objectives and to respond to current needs and demands.

In the society of regional or global communication, interdependence is increasing, horizontal networks (public and private, collective or individual) are developing and at the same time transmission is accelerating until it is nearly instantaneous. Two consequences can be retained as classic examples: sectors are intimately linked and reflect back their actions or inactions, putting to the test the water tightness and sectoral rigidity (in society as in administrations, companies etc.); the result is either rupture or on the contrary, rational solidarities. A second consequence is the growth in the role of civil society with its faster and more effective capacities to mobilize and act. The new movements can function in a national framework with external support, the “revolution in Serbia” being an example; and on a regional or global basis, Seattle marked a turning point. The growing influence of the media and the shocking images provided by television, complement the situation. These are examples of changes which affect the mode of organization and the functioning of political communities more and more. The European projects do not take this sufficiently into account even though they all claim the need for democracy, transparency and participation to achieve economy and efficiency.

The debate on the future of the European Union, which has just got under way, presents two vistas. One is a general sketch, including an explanatory memorandum, and principles and general guidelines for a European constitution; the other vista is the project for a written Constitution modeled on the plans of de Gaulle, Spinelli, the European Parliament, and most recently “A constitution for the European Union” proposed by an article in *The Economist* of October 28, 2000. Paradoxically it is some Britons, who do not have a written Constitution, who have written a complete, and with rare exceptions, highly conservative one, whilst the continentals proceeded in a more pragmatic and courageous manner, at the same time proposing options and themes to be discussed.

The approach here proposed consists in recalling the aim of European construction, the fundamental principles and the objectives which a group of members envisage for the future of the Union, in order to be able to respond better to the *necessities* and *challenges* on both the internal and international plane. This approach is not creating *ex nihilo* but develops, by relying on existing elements and past experience. It is the essential substance of the federal method. The aim of the Union is to guarantee its members peace, prosperity and independence and to bring its own contribution to peace, development, and security on a regional or world plane. To meet these objectives, the founding fathers proposed a pooling of resources in those domains in which individual countries do not have the capacity fully and efficiently to assume their responsibility. The accomplishments of the European Community and today those of the Union have proved both the efficiency and the limits of the method used.

Firstly, the consensus seems to be freeing itself of the need to contribute to the growth of common capacity, by rendering the functioning of the Union more efficient whilst preserving the identities of member states, regions or local communities. A fundamental principle of federalism. In the same spirit, it is indispensable to outline clearly the democratic principles and the basic values as much as the federal principles briefly mentioned in the introduction. The Charter of Fundamental Rights, which will be an integral part of the Union, will be accompanied as much by the definition of federal principles as by the diverse fundamental laws, which are written into European treaties and enforced in legislation, in jurisprudence and in practice, breathing life into the European model. Following the logic of Kant on the respect of democratic principles and fundamental rights, criteria and procedures will be improved, aiming to sanction or suspend member states which do not apply the fundamental standards and notably, do not respect the rights of minority communities. As in latent conflicts within and without the Union, a preventive mechanism would allow for the recognition of those signs or facts which would constitute a threat and to take a series of preventive and supporting measures, in order to avoid sanctions⁵¹. The European Constitution must clarify the situation in this domain, which concerns members but also future members of the Union. This is the price of open membership of euro citizens to the common cause.

⁵¹ Prior to ascertaining a four-fifths majority vote of its members and after the European Parliament's assent that there is a clear risk of serious violation by a member state of the principles outlined in article 6, par. 1, the Council hears the member state concerned and can, by legislating according to the same procedure, ask individual actors to present a report on the situation of the member state in question (article F, TEU)
The Austrian case gave rise to this procedure.

Bringing the citizens of the Union closer together, involving them more actively in the perusal of this big adventure by encouraging them to participate more fully in the European adventure, calls for a series of conditions, which are far from fulfilled at present. And in the first place more transparency. As is written into the Treaty of Amsterdam and clarified in a protocol, the principle of transparency concerns means of access by the citizens of the Union to the information and documents of the European Parliament, the Council and the European Commission. However on August 14th 2000 the Council took a unilateral decision without previous consultation with the Parliament and the Commission, a decision which aims to ban public access to a series of classified documents concerning operational activities in the domain of defence, notably dealing with NATO. The President of the Parliament and the Dutch government took possession of the Court of Justice. This case demonstrates the growing encroachment of the Council - of the intergovernmental - on the powers of the Parliament and the Commission and does not bode well for the evolution of the Union. The hold the Council has over the CFSP and defence in the name of necessary confidentiality combined with its legislative role runs the risk of undermining democratic principles and effectively political control in the member states. In fact, in practice, the foreign affairs and defence commissions of the national parliaments are entitled to peruse confidential documents and to exert their parliamentary control over the executives. It would be inadmissible if, on the pretext of confidential relations with NATO, the Council were to break away from this traditional practice. This distortion of the institutional system of the Union could lead to the growth, under various pretexts, of the powers of the High Representative and could in the long run, create dysfunctions whilst removing a significant number of foreign policy decisions such as security or defence from parliamentary control. This slippage of decision-making powers, to the benefit of intergovernmental institutions, could cause the failure of the efforts of the European Union at democratization. In the same way it would imply an increase in the distance, even in the barriers, between the citizens and the European institutions.

Internationally, the role of the Union has given rise to numerous questions, notably on the link between cost and influence. Two recent examples illustrate the imbalance between the individual resources of member states and the influential capacity of the Union. In contrast to common commercial policy notably at GATT then at the WTO, interventions in foreign policy are carried out on an ad hoc basis, not only by member states but also by European institutions. Even if this no longer threatens the survival of the Union, as was the case at the

beginning of the Yugoslav crisis, it does highlight its weaknesses and undermines its image and international credibility.

The European Union is the United Nations' most important financial contributor. With 30% of the world's GNP, the Union provides 36% of the ordinary budget, 39% of peacekeeping operations, 50% of the UN funds and programmes and 54% of the world's total public aid to development⁵². The contribution of the Union contrasts with its political influence. The lack of cohesion is particularly notable in the Security Council (sanctions, Iraq) or at the Disarmament Conference. Even at the General Assembly where cohesion is the rule, divergences spring up, like for example the conflict between Israel and Palestine. The incapacity of the Union to speak with one voice accentuates the difference between its financial and economic contribution and its political influence. It confirms the lack of coordination in subjects such as foreign policy and security. At the ASEM conference (Seoul, October 2000), member states demonstrated their unity in their efforts to collaborate with their Asiatic partners. On the other hand they gave an impression of disunity vis-à-vis the recognition of North Korea⁵³ even though the promotion and the defence of human rights were among the objectives of the CFSP.

The cost of division and lack of influence are highlighted by the comparison between the diplomatic missions of the United States and the member states of the European Union, as presented by Javier Solana: there are 40,000 European diplomats spread across 1,500 missions contrasted with 15,000 American diplomats in 300 missions. The European Union, in spite of its superior numbers and available resources, does not have the same level of influence as the United States. The economic and political cost of disunion should be made public and should be written into the agenda of the European debate. Even more so as Jean Monnet's sector-by-sector approach to integration has reached the end of its potential and the process of juxtaposing communal and intergovernmental sectors weakens the capacity of the Union.

These recent examples confirm that the High Representative, alone, is not in a position to ensure indispensable cohesion and coordination and to ensure that the divisions do not

⁵² A. Bussir Pour, "A L'ONU, le poids politique de l'Union européenne reste en deçà de son poids financier" *Le Monde*, 17-18 September 2000.

⁵³ After Italy, Germany and the United Kingdom followed by Spain and the Netherlands announced their intention to establish diplomatic relations with a regime that has little respect for human rights.

explode to the detriment of the image of the European Union⁵⁴. These issues corroborate the conclusion which emerged from the institutions analyzed: that the Council does not have the capacity to fulfill single handedly the role of coordination centre in economic policy and even less in foreign and security policy. The tacit acknowledgement of this lack of coordination led the High Representative to call for a common effort, increased coordination and better use of European Union missions. However, efficient coordination involves preparation, based on reflection and a common strategy, which implies a long-term vision and in the future, convergent politics. Naturally the European Commission, in close collaboration with the High Representative and the Council, would undertake this task. In his speech of October 3rd 2000, the President of the Commission proposed a more integrated approach, which would incorporate the High Representative into the European Commission. The lightweight influence of the Union, whose member states support three times as many missions and diplomats as the United States, shows that if the necessity arose, there would be strength in unity. The more limited resources are used in such a way as to generate higher returns. It is a way of applying the principle of subsidiarity by pooling scattered forces where possible. This method of evaluation should be widely used once the European Constitution has been elaborated.

In a highly complex society, where a multiplicity of actors communicate and interact, the importance of a *gravity and orientation* centre is of greater significance. Advanced technology is spreading through the post-industrial world by breaking vertical chains under the pressure of horizontal networks. Government, which is founded on the legitimate use of force, moves towards a new form of governance, which relies principally on consultation, participation and association, more than on resorting to the use of force. Denied its own public power, the Community was obliged to use, normative means, promotion, incitement and coordination rather than coercion and sanctions which they did not have. A similar evolution is apparent in the economic sectors and in the management of companies. Once the pyramid is overturned, the authority that the boss used to exert in a vertical hierarchy tends to need different leadership skills to encourage participation of the personnel in the definition of objectives and their application. At the same time, in political societies we can see a reduction in the central role of the state, which tends to shed numerous economic tasks by allocating them to the Union or regions and to seek partnership with associations in social, educational

⁵⁴ Some are of the impression that the spectacle of a divided Union affects the behaviour and perception of financial agents and consequently the stability of the euro.

or notably research sectors. The role of the state, whilst being irreplaceable, is in full mutation.

3. Guidelines for the forthcoming debate

The European Union is looking for a new model on which to base the distribution of powers and responsibilities between its institutions on the one hand and on the other, between the European, national, regional and local levels. A model, which could strengthen the legitimacy of the European Union and make citizen participation more accessible, whilst simultaneously improving its transparency. What are the means of access available and to what degree can they be used? In this context, what is the role of associated networks and public opinion? Do the European elections and other electoral consultations allow for citizen participation and democratic control?

The answer to these questions lies in the analysis of a number of parameters, the principal one being the degree of public participation in European integration, which brings us to another question: How to render the institutions of the Union both more efficient and more democratic?

Informal participation

A little known and often neglected facet of European institutions are the multiple networks, which have grown up around decision centres. The impact of Community power, which has a tendency to grow and diversify, resulted in the emergence of socio-economic groups, diverse lobbies and an impressive number of experts and advisors, estimated at tens of thousands. Since the earliest years of the European Community, the Commission has been in the habit, when developing its proposals and its decisions, of consulting specialized and organized lobbies at the European level. This resort to a wide consultation results in diverse information and knowledge whilst providing a better appraisal of the distribution of powers and vested interests. Dialogue also enables the Commission to rely on the support of socio-economic groups. For its part, it opens doors, which will allow European institutions to exert their influence and to bring their contribution.

Vectors of information and ideas, porte-parole and sectoral and citizen lobbyists, they nevertheless assume a specialized form or representation and participation. The impact of the Union does not spare sectors such as the media or scientific, educational, and cultural circles. Although these different networks communicate continuously notably by electronic means, this does not lessen the value of meetings and personal contacts with enable mutual confidence. It is thus that a vast network of associations is woven which, according to de Tocqueville, forms the social infrastructure of democracy.

A fundamental charter or a constitution for the EU

An effort at clarification is required, demanding better information and more transparency. An increase in the European public support for, and increased confidence in, European institutions is concrete proof of their representation, democracy and efficiency. To this end, the European Union must adopt a fundamental charter or a constitution, which defines its objectives and fundamental principles, and establishes the distribution of powers and responsibilities notably between national authorities and European institutions including the distribution of competences between the two. This charter should also determine the range of standards and common decisions. What is imperative is that only the most essential be included in this fundamental, succinct, and clear document.

This European Constitution should include the basic principles of democracy and liberty, and should ban all discrimination associated with sex, ethnic origin, religion, beliefs, handicap, age or sexual orientation. These principles are written into the Treaty of Amsterdam and the Charter of Fundamental Rights which was adopted at Nice, they figure alongside asylum rules, immigration and exclusion, questions of high priority for European opinion. Together, they form the layout of a *European model for society*, which brings together a wide consensus and gives meaning to the *European identity*. Consequently, the resort to *principles of subsidiarity* is promising. However, the range still needs to be clarified: this consists of not attributing to the state or the Union, what could be done better by the Regions or local collectivities themselves; on the other hand it is necessary to give the state, region, or Union those tasks for which they are the only ones, or the most suited, to carry them out. This principle, on which federal communities are based, can be used either to augment or to decrease the powers of the central institutions, but in either instance, the conditions of choice must be defined.

Other principles inherent in the majority of political cultures in Europe, such as the *separation of powers*, *responsibility* and *democratic control* must shape the organization of the Union and dispel confusion: the Council of Ministers holds both the executive power and the legislative power at its heart. For its part, the Commission too has an ambiguous image: is it a political institution or an administrative and technical organ? Is it independent of governments or are its members state “representatives”?

Towards an unprecedented variant of the federal model

The sharing of powers should rely more on federal principles of autonomy and double participation, thus providing a more solid basis to the legitimate founding of the Union. Consequently, an initial ambiguity will be removed, the Council will only keep *some governmental functions*, which it will exert as recommended by the Commission and under the supervision of the European Council. It will be both the infrastructure and the executive arm of the European Council and will take its decisions by qualified majority. It will not transform itself into a senate, as is often proposed, but will split itself into a Council of Ministers and a Council of States, the latter would assume the *legislative functions* in common with the European Parliament. With the result that the legislative power would be attributed to a bicameral institution made up of a Council of States and the European Parliament, the former would ensure the participation of state representatives - whose autonomy is not questioned- and the latter would guarantee the direct representation of the citizens of the federal Union.

If the election of the *European Parliament* only raises the question of harmonized, if not uniform polling methods, the designation or election of the members of the *Council of States* offers numerous options: nomination by national governments (for example, the Bundesrat in Germany), election by national Parliaments or directly by the voters of member states (for example, the Council of States in Switzerland). Additionally, variable combinations are not to be excluded, such as representation, where half consists of ministers and half consists of national parliamentarians. Whatever formula is chosen, the two chambers will be responsible for adopting Community laws as proposed by the Commission. Their authority and their visibility will be clearly established.

The *European Council*, representing the supreme executive powers of member states, will assume the role of collegiate presidency of the Union. Its previously established commitment, as a provider of substantial guidance in political economy or in external politics, will be reinforced and its action will become more continuous by relying on the Council and the Commission. The continuity and visibility of its interventions require the election of its president from the members of the European Council or by the proposals of the two chambers or directly by its citizens for the duration of its legislature. In this new structure, the role of the European Commission would be confirmed as the true executive or government of the federal European Union, drawing its authority from a double source: the European Council and the European Parliament.

Proximity by participation

The former president of the Commission, Jacques Delors, proposed that the major European parties, such as the socialist party or the popular European party, designate their candidates to the presidency of the Commission at the time of the European elections in 1999. The proximity and the legitimacy of the European Union would become more powerful. The mobilization of parties and their voters, and the rivalry over European themes could only stimulate the participation, or even the commitment, of citizens. The effect of the vote will become more perceptible. The same can be said if the elected Parliament had to exert fully its legislative and budgetary powers and democratic control. This direct link will contribute to an increase in participation and confidence. Two other ways could be envisaged that would create more direct access to the decision centre: the creation of a third chamber, a *Chamber of regions*, and the establishment of *referenda* and *initiatives* on the European scale.

When the Maastricht Treaty was drafted, the German *Länder* had proposed the creation of a *Senate of regions*. The Committee of Regions was created, but its powers of co-decision were replaced by consultation. The political vocation of the Committee of Regions was apparent from the beginning by the presence of the elected members of the regions, towns and public communities which were ratified by the Nice Treaty⁵⁵. However, at the moment, the disparity of its members renders its metamorphosis into a Senate of Regions more difficult. Nevertheless its evolution towards an intermediary mechanism, which would

⁵⁵ This proposal which was made a long time ago by general de Gaulle is comparable to the observations made by Olivier Duhamel in his report on the European Parliament's project for a constitution.

be the porte-parole of regional, urban, and local diversities that are being asserted at the heart of the Union, is foreseeable⁵⁶.

The question of resorting to *referenda* was raised at the time of the ratification of the Maastricht Treaty. Vox pop projects European problems into the heart of the public debate, and is thought provoking by presenting voters with an important choice. Vox pop exposes the divisions and resistance and measures popular will for or against the European Union. In the same way, the resort to referendum by the new adhering states reinforces the legitimacy of their fundamental decisions. However, the Danish and French referenda on the Maastricht Treaty raise a general question: is it justifiable that the Danish no-vote of 50.7%, which represents less than 2% of European citizens, should have the effect of a veto? In order to avoid blockage by a small minority, a more equitable and less paralyzing procedure is needed, for example, a level of ratification of two thirds of member states. In other respects, national referenda in a domain as important as the euro may end up creating a “Europe à la Carte”. On the other hand a European referendum that ratifies a constitutional-treaty would provide the European Union with a basis of popular legitimacy.

At the heart of the Union, contacts are being made and means of participation are being developed in many different ways and on many different levels. This mesh of interconnections and participation is being strengthened and dispersed thanks to the arrival of advanced communication technology, which has created instant exchanges and horizontal communication networks. As the scope of the work widens, territorial frontiers are becoming much less important. It is in this dynamic context that the European Union is evolving and creating cross-frontier relationships.

⁵⁶ Article 263 TCE ... “a committee of regions made up of representatives who are either mandated by regional or local or who are politically answerable to an elected assembly”

CONCLUSIONS OPEN TO THE FUTURE

The overview of the experiences of federal states and the analysis of the European Union expose both the common traits, and the distance that must be covered before the Union can consolidate its democratic legitimacy, and increase its ability to act and to influence. The size and diversity of the Union make these steps difficult, especially as its core federator cannot yet ensure a dynamic equilibrium between the centre and the peripheries, between foreign and security policy and economic integration, and between converging and centrifugal forces.

Two main reflections result: which group of avant-garde countries and which institutional core federator would lead to political integration and the formation of an original European federation? Referring to the first point, a certain convergence is emerging between the ideas of the avant-garde and the dynamic core, the centre of gravity and the heart of Europe, they are the pioneer group. Whatever the term, on the eve of enlargement there is a concern: which countries could form the dynamic core at the heart of the Union to ensure that it does not get dispersed into too wide a market? The experiences of the formation of other federations are witness to the primordial role of the lead group to integrate the members of a developing federation. As of now, the question is to know which member countries of the Union would like to, and would be capable of, becoming part of the pioneer group. It is essential that they progress, whilst adhering to standards and common policies in the institutional framework of the Union. If the founding countries, together with those at the heart of the euro zone, all seem destined to take on the role of core federator, they must leave the door open to other members of the Union, and encourage their participation in this federal adventure.

The following two steps have been proposed:

a) In the first phase the countries making up the avant-garde core may resort to enhanced cooperation, as the French president stated, in order to avoid an increase in disparity between sectoral cooperation and to maintain cohesion as opposed to sliding towards a “Europe à la carte”. During this process, in the face of multiple challenges, it is essential to stay on course for democracy and participation, more openness and transparency, and more efficiency and

external capacity. It is in light of these principles and objectives that reforms and adaptations to the Union must be undertaken.

Firstly, the revision procedures need to be reconsidered, they should no longer be the responsibility of intergovernmental conferences, which demand unanimity at the time of both negotiation and ratification. The intergovernmental conferences have shown their limits and give the impression that they were beyond the influence of European citizens. By its very nature, the intergovernmental conference creates a gap between itself and the citizens without being able to offer the advantage of solid preparation, as did the Spaak report, which was the basic document underlying the negotiations of the Rome treaties.

b) Secondly, avant-garde countries will adopt a constitutional treaty, which will form the dynamic core or centre of gravity of the European Union. An assessment of these procedures and the proposals of the French President should lead to good drafting of a European constitution, which will be both clear and succinct and which will require substantial support from its citizens. Consequently, there is a need for thorough consultation and a genuine European debate.

As of now, the European Union is called upon to fulfill a minimum of political functions, which have always been assumed by the political communities. Functions that have been carried out by different institutions and in different ways throughout history, as has been demonstrated by primitive communities, Greek cities or the Roman Empire, federal institutions of the Middle Ages and states, and international organizations and regional communities such as the European Union. Together, the member states of the Union exert sovereign powers, which largely coincide with the powers attributed to a federation. The difference is that a federal state or a federal community guarantees a balance between institutions and functions; the Union rests on disparate pillars, and is aware of these dysfunctions and a lack of democracy and external influence. The CFSP is an example of the high cost and inefficiency of the intergovernmental method which, moreover, is not under democratic control.

In every durable federation capable of undertaking essential tasks, a *common structure of authority* exists whatever the degree of autonomy of the member states and the distribution of powers. A set of institutions shares legislative, executive and judiciary functions and

guarantees the external representation and the security of the federation. In the European Union these tasks are unequally distributed between supranational institutions and common intergovernmental institutions. The *active power* is distributed between the European Council, the Councils and the Commission.

The Commission, being an original and autonomous institution, has the right of initiative and proposal, alongside powers of surveillance and management. It is the only institution bestowed with active powers and with the responsibility to define the *general European interest*, founded on a global and objective vision and on the promotion of political standards, and guidelines for action in a community perspective. However, the Commission, which fills a *pivotal role* as the first pillar of the Community, is reduced to a *marginal role* in the CFSP and in the sub-system, which is endowed with a rapid reaction force, and to a lesser degree, in external affairs and justice. The juxtaposition of diverse sub-systems creates dysfunctions, imbalances, and waste whilst beginning the early stages of cooperation. This transitory form is based on the European Council and the Council. While the European Council gathers the most important political leaders from the member states, it bears the imprint of national visions and interests and suffers from the predominance of the big member states, the absence of infrastructure and the lack of continuity. In spite of its deficiencies, it has played a positive role, in the sense that it endorsed general proposals and orientations. Its intergovernmental nature and its essential traits, even if improved upon, do not seem to predestine it to become the government of the Union, but on the other hand, prepares it to sanction the major trends and to assume a form of collective presidency of the Union.

For their part, the General Council and the Specialized Councils take on both legislative and governmental functions in the domain of economic integration as proposed by the Commission; on the other hand, they are supposed to take on, with help from the Commission, responsibilities in the domains of cooperation. In spite of communication networks and ties of collaboration, which have been woven between the “part time” members of the Councils, they are not equipped to prepare, adopt and follow decisions in diverse domains and even less to ensure efficient coordination between diverse activity sectors in the European Union. From which arose the suggestion of enforcing the principle of the separation of powers, by distinguishing a Council of States with a legislative function, from the Council or the Council of Ministers, acting as a support to the European Council or in the framework of its major orientations.

As for the European Commission, its vocation is to assume governance either at the heart of the Union or the European Constitution. Seemingly, it is the only institution made up of full-time members, in charge of active functions, enjoying sufficient autonomy to act as counterweight to national interests as represented by the Councils and to guarantee global cohesion at the heart of the Union. In order to maintain its role after enlargement, it should ensure that it reinforces its collegiality and its efficiency (limit the number of members and render its small administration more efficient)⁵⁷. Throughout the long experience of the European Community, the Commission has accomplished - admittedly with highs and lows - its role as an institution in charge of promoting initiatives and formulating proposals. All in all, it consists of a political task and not only a legal and administrative one. In doing this job, it plays a balancing act that guarantees equilibrium, and develops modalities of shared sovereignty whilst avoiding permanent coalitions.

The Commission's approach is often based on consultations with experts, principle actors and interested parties and looks for balanced objective solutions which safeguard the interests of small and medium-sized member states. This explains their attachment to the independence of the Commission. It has often been defended by small and medium-sized member states during intergovernmental conferences. These states claim difficulty in asserting their interests in the intergovernmental structures that are primarily dominated by the big member states. On the other hand, in a community orientated or federal system, the Commission tries, by suggestion and by negotiation, to keep to the common European interest whilst maintaining a balance between all the members. From this springs the need to preserve and even to reinforce the authority of the Commission and its political capacity. The active presence of the Commission in domains subject to intergovernmental cooperation will be even more necessary in the future, as in these domains the preponderant weight of the big member states could encourage the "informal" formation of an shadow government, capable of imposing its choices on the European Council or the Council of Ministers for Foreign Affairs and Defence. The recent experiences in ex-Yugoslavia and the war against Yugoslavia have highlighted as much the lack of coordination between the big member states, in the

⁵⁷ To reduce the number of members of the Commission, various solutions are foreseeable: rotation, as practised by the lawyers at the Court of Justice; commissioners and associate commissioners from certain countries and groups of countries. All these approaches and their combinations call for a strong president of the Commission capable of guaranteeing and maintaining its collegiate character. Although sometimes accused of excessive bureaucracy, the administration of the Commission is miniscule in comparison to national, Länder or big town administrations, taking into account the extent of their tasks, and the size and diversity which are characteristic of the Union.

absence of an analysis and a community proposal, as much as the determining weight of their complicity. That does not mean to say that all the big states favour the intergovernmental system. It is thus that in a more long-term European perspective, the Minister of Foreign Affairs, and later the government of the Chancellor pronounced themselves in favour of a Federal Union. It is becoming ever more apparent that a few years from now a choice must be made between, on the one hand, the big European market and its counterpart, political cooperation and, on the other hand, a European Federal Union. Unless the Federal Union becomes the core federator at the heart of the European Union.

Another dimension of the role of the Commission manifests itself in the relationship between qualified majority and the authority of the Commission: the proposal of the Commission takes into account the general interest and the balance between the national interests and activity sectors and facilitates the extension of the rule of qualified majority. However, in order to exert its responsibilities efficiently and to answer the demands of the states, regions and peoples, the Commission must have more direct legitimacy and must develop its governance capacity. The increased democratic legitimacy could result in a more substantial role for the European Parliament and political parties, come the time of electing a new President of the Commission, and nominating a new College.

As for governance capacity, one must first *distinguish between governance and management*. For some time, the complexity of our societies has been increasing, with the development of networks of communication and collaboration. As a result, official and private representatives and small groups, and even individuals, can voice their opinions, and can validate their claims and interests. A myriad of associations, corresponding to the varying levels of activity both inside and outside the European Union have been added to governments, regional, urban and local authorities, and interest groups. Consequently, the circle widens to include more and more participants, thus adding to the complexity of our societies and the difficulties in their governance. Enlargement and relations with developing countries and particularly the wave of globalization have only multiplied the number of actors and increased the complexity of relations and interactions. The more complexity increases, the more the need for *institutionalized leadership* at the heart of the Union becomes apparent. On the basis of common principles and objectives, having listened to many voices and collected expert advice it will be necessary to map out common orientations. This complex task can be given to various common institutions of which the Commission heads the list.

Still, it must be able to focus these activities, which demand reflection, the capacity to evaluate, and the spirit of innovation and leadership. Promoting, stimulating and leading, according to clearly defined medium - to long-term objectives, and ensure, if necessary, follow-up and coordination, these are the essential elements for governance on the European scale, or, indeed, on any national, regional or local level. On the other hand, the multiplicity and rapidity of communications demand both reflection and vision.

In order to be able to carry out this *task of governance* with the approval of the European Parliament and the Council of States and under the control of the European Court, the Commission must examine the possibility of handing over control of numerous sectors to *European agencies and authorities*, and to decentralize some of its activities⁵⁸. This is the only way to concentrate on the essential functions of governance. The reform of the Commission and the review of its tasks are even more necessary as the College will have to increase its role in foreign policy and common security. A cost-benefit analysis of non-European countries including their common commercial policies and their role as a counterweight to the WTO, should encourage European politicians to fulfill their responsibilities to their citizens. The Commission will fulfill a central role as an active community institution, principally devoting itself to governance and European public assets.

The Commission and its administration's long experience, lessons from the recession and the challenges with which the Union is confronted, are serious reasons for a re-evaluation of the indispensable and irreplaceable role of the Commission. On more than one occasion, observers and representatives of member states, particularly Germany in the recent past, and the small and medium-sized states, have highlighted its role. By fulfilling its European function, the Commission not only guarantees global equilibrium and protects the interests of its members but, by its impartiality and its autonomy, it also facilitates the extension of the rule of qualified majority. The Portuguese Secretary of State for Foreign Affairs, who opposes the efforts of certain member states to weaken the Commission, corroborates this assertion. In his opinion, a shift in power to the advantage of the Council of Ministers would be dangerous and could constitute a threat to the cohesion of an enlarged Union⁵⁹. Chancellor Schröder, in his turn, defended the role of the Commission.

⁵⁸ This trend develops with the creation of European agencies, authorities and centres, distributed throughout the Union.

⁵⁹ Francisco Seixas da Costa in "Portugal defends rights of smaller states" *Financial Times*, November 20, 2000.

The Nice Conference proved the difficulties of cohabitation between the intergovernmental, community and federal methods. In spite of intergovernmental cacophony, Nice took a step forward, on the subject of enlargement but discussion on consolidation was more cautious. Qualified majority has certainly been extended, cooperation enhanced and the Court of Justice has gained more respect. As for the Commission, its independence and its high level of competence are once again guaranteed. Its president has been granted powers which, in the future, will allow him to exert true political leadership. On the other hand, the Commission will continue to grow despite the French desire to restrict the numbers to 12, each member state will have a representative on the Commission until the time that the enlarged Union reaches 27 members.

Weighted voting at the Council and the attitude towards the President of the Commission have caused a family quarrel between France and Germany. This quarrel, along with the continuing cleavage between big and small member states, reinforces the inadequacy of current intergovernmental conferences, as voiced by President Chirac. For his part, Chancellor Schroeder suggested that intergovernmental cooperation by taking a stance against the Community approach to integration was not able to build the future of Europe. This led to his rejection of the intergovernmental European model. In the same vein, he asked member states to reaffirm their support of Community institutions immediately and, particularly, the Commission. In his turn, President Prodi claimed that 'intergovernmentalism' leads to conflicting results, encourages indecision and, even worse, incites distrust between member states in the absence of an 'honest broker'.

The diagnosis of a divided European Union presented at the beginning of this study was largely confirmed by events at Nice. As a consequence, contradictory interpretations have developed. For some, the emergence of an intergovernmental union was the death knell of a federal union; for others, of which I am one, Nice proved that for Europe to progress it needs to consolidate the Community and complement the European political system by creating a

core federator, capable of carrying out the principal functions of a political community. At Nice, Germany stood out as leader of the future core federator of the Union due to its economic and democratic weight, to its central position in an enlarged Union and, above all, thanks to its experience of federalism and of its desire to build, with France, an integrated Union, of an *unprecedented federal type*. The constitution, or the fundamental charter, or the constitution-treaty will allow Europe fully to assume its responsibilities. In this perspective, the French President and Prime- Minister, endorsed a federation of nation states along the lines of Jacques Delors'⁶⁰ earlier suggestion.

The moment is approaching when the members of the federating core will be faced with a choice: to follow and reinforce the common effort by sharing sovereignty in regal matters and in social and economic affairs; or to get enmeshed in intergovernmental wrangling, in confrontations of national interest from which will emerge a new power, Germany. For whom both the United States and Russia will be the privileged partners. However, only the first option will allow for the development of a balanced trans-Atlantic dialogue on the US-EU axis and an efficient Russian-EU partnership. They are faced with a choice between a German Europe and a European Germany at the heart of the European Union. The Nice Declaration left the situation open: “by having opened the road to enlargement, the Conference wishes that a wider and more profound debate should be started on the future of the EU. In 2001, the Swedish and Belgian presidencies, in cooperation with the Commission and with the participation of the European Parliament, should encourage a debate between all interested parties: national parliamentarians, politicians, economic and university leaders, and representatives of the general public, etc’’. The conference, planned for 2004, should decide the outcome of a federal union.

The increasing influence of the European Union on everyday life brings it closer to the time when it will have to face up to its structure and impact. The time has come to stop doing federalism, as Mister Jourdain writes prose. The Union and its member states, which are in the process of federalization or regionalization and companies, practice the federal method, wittingly or not. Devoid of its public authority and of a strong power, the European Union is condemned to innovate, its power residing more on promotion, coordination, stimulation and adhesion than on constraint. With respect to diversities, indispensable participation and the

⁶⁰ Cahors, February 9, 2001. ‘Jacques Chirac and Lionel Jospin reaffirmed the concept of a federation of nation states developed by Jacques Delors for the European Union.’ Le Monde, February 11 and 12, 2001.

free right to join are the two essential traits of this politically enterprising innovation, which is the European Union.

This quest for an unprecedented European Federalism is founded on federal principles and is inspired by federal and community-orientated experiences. It is built on a common European culture, rich in its diversity in which the political reflections are incarnated in the various forms of a federal Union. The federal principle appears to be the most apt to take on the new technology whilst guaranteeing the blossoming of cultural riches including national and regional identities into a unit susceptible of creating a community of destiny and to unite Europeans in the great adventure for the benefit of mankind.

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