

Working Group VII

Working document 26

Working group VII – "External Action"

Subject: **"The External Representation Of The European Union"**
 – Paper by Mr Elmar Brok, member of the Convention

Members of Working Group VII will find hereafter a paper by Mr Elmar Brok, member of the European Parliament, member of the Convention.

THE EXTERNAL REPRESENTATION OF THE EUROPEAN UNION

- 1. The EU external action needs to be more coherent and more efficient. The present double structure with two persons and two administrations responsible for EU external relations is inefficient and intransparent.** This represents a structural problem that goes beyond the currently good cooperation between the External Relations Commissioner and the High Representative for the CFSP. The establishment of a EU President with executive power would not solve this problem, but aggravate it. Apart from the lack of parliamentary control, it would result in yet an additional player on the side of the Union and increase the competition between rivalling bureaucracies.

A central element for reform is an improved external representation of the Union by one person, supported by one administration. The current responsibilities of the High Representative for the CFSP and those of the Commissioner for External Relations should therefore be merged. A Commissioner for Foreign Relations, who is Vice-president of the Commission, should be responsible. Like the President and the other Members of the Commission, he would be elected by the EP.

The fact however that Foreign Policy is seen by most member states as a domain closely linked with being a nation state, has to be reflected in the conditions of this position. **His legitimation should be therefore closely linked to the Council.** The President of the Commission could charge the Commissioner for Foreign Relations with external representation only by accord of the Council. During his term in office he would also be answerable to the Council.

Creative solutions have to be searched for a better functioning of the Council. The Foreign Affairs Council could be chaired by the President of the Commission or by the new Commissioner for Foreign Relations or by a Foreign Minister appointed for a longer period than the current six months.

This formula presents a number of advantages:

- it would permit to *"personify" in a single face the unique international legal personality for the Union* and would reflect the consensus on the single legal personality of the Union in the Convention
- the distinction between the respective spheres of competence of the EU and of its Member States in the field of the external action of the Union in general and of the CFSP in particular, would be clarified and *both the public and the Union's international counterparts would easily understand 'who does what' in both fields;*
- *the already existing structures of the EU for the external action could be easily put in common and become fully operational* without further bureaucratic constraints;
- *better use of current differentiated budgetary resources* would be possible;
- *parliamentary control of the external action as a whole would be easier and much more effective;*

2. One of the most striking consequences of the failure to endow the Union with a legal personality has been traditionally that the **international status of the Union as well as its visibility and negotiating power in its external actions have been very limited**. At a moment when the EU is asserting its global role and gaining in coherence and visibility in political (CFSP), economic (Euro) and even military terms (ESDP), time has arrived to put an end to its current insufficient presence in legal terms in the international sphere. That could be done in different ways:

– **In international organisations**

A. The capacity of the Union to **join and act in international organisations** should be recognised. Each of the Communities may actually accede to an international organisation, provided that the statute of the organisation permits non-states to join. In some instances, the Community has replaced the Member States, but usually it becomes a member of an international organisation alongside the Member States (as in the case of FAO, WTO, etc).

A similar approach could now be requested for the Union once endowed with international legal personality. On the one hand it would contribute to more coherence and visibility for the CFSP in the relevant fora. On the other hand it would strengthen the credibility of the Union's external action as a whole. This seems particularly necessary for those international organisations directly linked to matters covered by the CFSP and the ESDP (and in any case for the United Nation's organs and agencies, OSCE, NATO, etc).

To avoid any possible conflict with Member States wishing to preserve their prerogatives in some of those organisations (the UN's Security Council being the most delicate one and realistically to be dealt with at a later stage), the Union could become a member of those international organisations alongside the Member States. In that case, it would be up to that organisation to decide whether the Union should have voting rights of its own or whether it should exercise the Member's States rights on terms to be determined. In the latter case, before any meeting of the organisation, an "ad hoc" declaration would have to be made indicating who is to exercise the right to vote. Obviously, the Union and the Member States would co-ordinate their positions in advance.

B. The Commission shall represent the Union in its external relations informing the European Parliament and the Council regularly on the state of such relations. In particular, it shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies as mentioned above. The Commission shall also maintain such relations as appropriate with all international organisations (Council of Europe, Organisation for Economic Cooperation and Development, etc)

– **In bilateral relations**

The conclusion by the EU of international agreements in the field of the CFSP should be improved. Under the current system, each Community has the capacity to conclude agreements (though sometimes only together with the Member States), including multilateral agreements establishing an international organisation. However, the Union only enjoys the very limited treaty making power recognised in Articles 24 and 38 of the EU Treaty. This unsatisfactory situation has not significantly changed since Nice and must now clearly evolve.

A better synergy between diplomatic representations and delegations in third countries should be sought. Currently, in non-member countries and at international conferences, the Union acts through the Member State's diplomatic and consular missions and the Commission's delegations (see Articles 19 (1), 20 and 37 of the EU Treaty). However, endowing the Union with an international legal personality should allow further developments, such as:

- The setting-up of *EU diplomatic representations* in non-member countries with fewer than four Member States having diplomatic missions with a view to the gradual setting-up of a EU-diplomacy;
- The creation of an *EU diplomatic corps* within the structure of the European Commission under the responsibility of the above-mentioned Commission vice-president;
- The creation of a *College of European Diplomacy*;
- The development of a *bridging system* between the external services of the Community and of the Member States;

Those steps would not only provide the Union with some gains in terms of external coherence, unity, visibility and efficiency, but also impact positively on the rights and daily activities of European citizens when living, working and travelling abroad.