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| from : | Secretariat |
| to : | Working Group on Legal Personality |
| Subject : | Summary of the meeting on 11 September 2002 |

1. The meeting was divided into two parts: one concerning the consequences of conferring legal personality on the Union and the other on simplification of the Treaties.

1. The implications of explicit conferral of legal personality on the Union

2. The Chairman informed those present that following the Group's meeting on 18 July 2002, the members had been asked to forward comments in writing on the draft report (SN 3130/02) by 5 September 2002. The following members had forwarded contributions in writing:
Messrs Kvist, du Granrut, Tiilikainen and Pleuger, Lord McLennan of Rogart, Messrs Andreanni and Muscardini.
3. On the basis of these contributions in writing, the Chairman had forwarded a new text of the draft report (WD 10/02), which was examined by the Working Group. The Chairman stressed that the work should be concluded at the end of September, so that he could present the final report to the plenary session on 3 and 4 October 2002.
4. During the exchange of views, the members recorded their agreement in general on the text. However, some expressed doubts as to whether the report should take a position on the idea of just one person filling the two posts of High Representative and Commissioner responsible for external relations – which is a matter particularly for the forthcoming meeting of the

Working Group on External Relations. In this context, some members stressed the need to have just one team of negotiators. Other members mentioned the advantage of providing in certain cases for the examination of international agreements by national parliaments, and the importance of making provision for accession to the ECHR.

5. Following the exchange of views, the Working Group decided to give members a further period in which to make comments in writing on the text until 16 September 2002, so as to be able to adopt it at the next meeting on 19 September 2002. It was agreed that the Working Group would submit one report, to which a section concerning the simplification of the Treaties would be added.

II. The simplification of the Treaties

6. At the previous meeting on 18 July, the Working Group had concentrated on the effects of a single legal personality on the simplification of the Treaties (see WG III – WD 06). On that occasion, a consensus emerged within the Group in favour of merging the main Treaties (TEU and TEC) into a single instrument composed of two separate parts, the first of which would include the constitutional provisions (option 1(b)). In principle, this single instrument would replace the current TEU and TEC (and all successive revisions thereof).
7. Two experts were invited to give their views on the question – Professor Peter-Christian Müller-Graff (University of Heidelberg) and Bruno de Witte (European University Institute, Florence). Both experts endorsed the option selected by the Group ¹, and at any rate rejected the adoption of a constitutional text without any legal value. They also pointed out that it was quite possible to maintain, in a single Treaty and structure, separate decision-making procedures, instruments with specific legal effects, or even varying judicial control (which is in fact already often the case in the current TEC, for example).

¹ Professor de Witte stated that other sources of primary law could also be subject to the merging of the Treaties, for example the provisions of the Single Act or of the Treaty of Amsterdam, which are additions to the founding Treaties rather than amendments thereto.

8. Professor Müller-Graaf showed that this option combined all the advantages of the other options presented in WD 06 (a single Treaty for one legal personality, amendment, codification, merging and simplification of the current Treaties, "basic treaty" having legal value, etc.). On the other hand, this option presented certain "challenges", especially on the assumption that it would involve also submitting the second consolidated part for ratification by the Member States. The question arose, furthermore, as to whether all the current protocols should be maintained.
9. The Professor then presented his ideas on the structure and content of the basic treaty, which he thought should retain the current order of the Treaties (objectives, policies and institutions). In addition, certain major constitutional principles could be inserted into them, particularly that of the primacy and direct applicability of Community law. Some current articles of the TEU could serve as a basis for the basic treaty (for instance in Title I of the TEU).
10. One of the essential issues regarding content concerns the length of the basic text: too short a text would have little operational value.
11. Professor de Witte focused his contribution on three questions: the pillar structure, linkage of the basic treaty with the rest of the primary law, and the entry into force of the new treaty.
12. According to him, merger of the pillars into a single structure should be accompanied, as far as possible, by certain substantive amendments in order to make a number of principles or mechanisms a general rule and to lay down exemptions only where it was deemed necessary. The scope of certain provisions of the current TEC could in fact be extended to all the Union's activities, without this having to pose many problems. This was the case, for example, with the principles of subsidiarity and proportionality, the obligation of sincere cooperation, principle of non-discrimination on the basis of nationality, etc.¹. The issue was no doubt already more sensitive, for example, with regard to the scope of action of temporary committees of inquiry set up within the European Parliament, which, for the moment, cannot

¹ Articles 5, 10 and 12 of the TEC.

in principle deal with cases covered by the second and third pillars. Finally, the extension of the Court of Justice's powers or of Community methods in these areas is one of the fundamental issues to be dealt with by the Convention.

13. With regard to linkage of the basic treaty with the existing Treaties, Professor de Witte stressed the importance of the latter being merged, consolidated and linked coherently and expressly with the basic treaty. The other approach, which would amount to superimposing a basic treaty on the existing Treaties was viewed adversely, particularly on account of the legal uncertainty and additional complication it would involve. The consolidation of the existing Treaties could form the subject of a "Part Two" of a single treaty – the solution preferred by Mr de Witte, or of separate treaties or protocols – which would perhaps make reading the entire corpus more difficult. There would not necessarily be any relationship of hierarchical subordination between the basic treaty and its "Part Two", even if provision were made for a lighter amendment procedure for "Part Two". In this case however, the Court of Justice should be able to rule on the validity of the choice of procedure. A final option would be to transform part of the primary law into "organic laws", in other words into Community legislation of a higher rank than ordinary legislation, but lower than the Treaties. However, such a transformation could take place only in the future, on the basis of authorisation laid down for this purpose in the Treaties. Having said that, if the objective were confined to differentiating the amendment procedures, a differentiation within primary law would suffice.
14. Professor de Witte then touched on a sensitive subject, i.e. what would happen if a Member State did not ratify the outcome of the IGC which would follow the Convention. He stated in this connection that, in principle, only unanimous agreement by the Member States allowed the existing Treaties to be amended or, if appropriate, special arrangements to be concluded with those States which could not ratify the revision treaty in question. Likewise, only unanimous agreement would enable the current general procedure for revising the Treaties to be amended, including for a general resolution of the problem raised above (or even to formalise the terms of the Convention).
15. On the other hand, Article 48 of the TEU does not prevent the basic treaty from laying down additional conditions for its entry into force, such as approval by the Convention or by a pan-European referendum.

16. Finally, the general revision procedure could be differentiated in future, and this would not necessarily entail a strict correspondence with the possible two parts of a single Treaty. In this connection, consideration should be given, in the case of a number of provisions, to voting by super-qualified majority or even to avoiding recourse to national procedures linked to ratification. Criteria for identifying the provisions in question should be defined.
17. Following the exchange of views, the Working Group decided that members would have until 16 September 2002 to forward their contributions in writing on the draft report submitted to them in July 2002; they were asked in particular by the Chairman to give their opinions or to propose amendments with regard to option 1(b) set out in WD 6.

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