

THE EUROPEAN CONVENTION

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr Neil MacCormick, alternate member of the Convention " Democracy at many levels: European Constitutional Reform "

The Secretary-General of the Convention has received the contribution annexed hereto from
Mr Neil MacCormick, alternate member of the Convention.

Democracy at many levels: European Constitutional Reform

by Neil MacCormick, MEP for Scotland (Substitute Member of the Convention, Greens/European Free Alliance)

It is regrettable that the Praesidium has decided not to establish a Working Group that will consider the regional and local aspects of European Governance as a specific topic, but will subsume parts of this theme within the remit of other Groups. In drawing up a Constitution, or Constitution-Treaty for the European Union, the Convention ought to direct attention to the manifest truth that European Democracy must operate at many levels, and that a concern for subsidiarity cannot be exhausted by reflection merely on relations between member states and union institutions.

The political family to which I belong, the 'European Free Alliance' wholeheartedly supports the constitutional development of the European Union in a way that is favourable for democracy and thus for the flourishing of all the peoples of Europe in a context of peace, security and sustainable all-round prosperity. I make the present submission to the Convention in my own name and right, but only after careful discussion with colleagues in Parliament and at the EFA/DPPE annual assembly, attended by sister parties from all over Europe, including candidate countries.

As with all parties to the present Convention, we work towards achieving a constitutional framework of that kind. The governing principle to which we subscribe is that of self-determination for the peoples of Europe, including the possibility of internal enlargement, which must be acknowledged. This principle can operate at more than one level in the construction of a new and better European Union. In practice, it results in a call for full recognition of the right to self-government of all those territorial entities in the Union whose citizens have a strong and shared sense of national, linguistic, or regional identity, whether such entities are already recognised as states or as self-governing entities of one kind or another, or remain for the present unrecognised in the constitutional structure of state. There are strong movements in more than a few such countries seeking by exclusively democratic and constitutional means to establish independent statehood within the European Union, becoming member states from within, rather than from the outside. Certainly, this is true in Scotland, in whose Parliament, re-established in 1999 after nearly three centuries of absorption in the Westminster Parliament, the Scottish National Party (of which I am a Vice-President) is the principal opposition party.

Especially in view of the absence of a Convention Working Group on this theme, a warm welcome should be given to the decision by the European Parliament to call for a Report by its Constitutional Affairs Committee about the position of ‘regions ’ in the governance of Europe. It is also to be welcomed that the Committee of the Regions has already made recommendations to the Convention, and that it will report again in due course.

It is perhaps not too late to make a general statement of position about the task of the Convention.

This is the task of producing a constitution for the European Union. Already, the Union has a constitution in the same functional or informal sense as is found in states like, for example, the United Kingdom. The task is to transform this into a formal constitution with adequate guarantees for democracy, subsidiarity, cultural and linguistic pluralism, human rights and the protection of minorities in the Union. The Charter of Rights will be a corner-stone in this, and the establishment for the future of an acceptable process of constitutional reform replacing the present ad hoc approach is another.

That Europe should have a constitution does not imply that Europe is or ought to become a state, far less a ‘super-state’. It is a supranational union of a unique kind that acknowledges shared and divided sovereignty rather than its concentration, and that accommodates at least four significant levels of government (Union level, member state level, internal territorial level, and local authorities, themselves very varied in kind and scope of action). It needs an adequate constitution suited to its special character, so that its structure is readily intelligible to its citizens and empowers them to have their full and proper say at all levels.

The powers of the Union, (exclusive, shared, or complementary powers) need to be expressly stated, and perhaps put in somewhat clearer terms than at present. The powers of the member states and of the self-governing territorial entities within them cover everything not expressly transferred to the institutions of the Union.

A critical question is whether the Council or the Commission should be the principal bearer of the executive power of the Union. For the Union to have a democratic character with fair participation by states and entities varied in size, it is vital that the Commission bear this role, under the strategic guidance of the European Council and answerable to the European Parliament.

The Council of Ministers is, and ought to be redesigned somewhat to reveal its role as, one of the two chambers of the legislature of Europe, that which represents the states and territories of the Union, and which reaches its decisions typically by qualified majority voting. The European Parliament, which is the other legislative Chamber, ought to have power of co-decision with the Council on all matters within the legislative competence of the Union. This is an essential step in building a fully democratic scheme of European self-government, and the present restricted character of co-decision is greatly to be deplored.

Subsidiarity is a major issue for the Convention. The constitution must give it a better and stronger definition, one that the Courts can elaborate as a constitutional principle in the light also of the decisions of political decision-makers. For countries or territorial entities like those represented by EFA in the European Parliament (Andalucia, Catalunya, Euskadi, Flanders, Galicia, Scotland, and Wales) in their present constitutional situation, a satisfactory understanding of subsidiarity, and appropriate recognition of their role as partners in the governance of the Union, are essential.

The following nine points cover immediate possibilities for practical reform.

1. There should be consideration of improved terminology to avoid the inappropriate use of the term 'region' to refer to territorial entities within the Union, which their citizens regard as 'nations'. The ideological use of concepts like 'nation state', especially in contrast to 'region', should be avoided.
2. There must be genuine reform of parliamentary representation in the European Parliament by securing that in all save quite small states there are electoral constituencies that recognise areas with a distinctive sense of national or regional identity, and that take particular account of existing territorial entities that have achieved constitutional recognition.
3. The Committee of the Regions should either be reformed or be abolished. Its membership must be based upon regions not states, and should include recognition of significant cross-border regions, especially where state boundaries do not coincide with linguistic ones. The states' shares of Parliamentary seats is not a relevant model for representation on the CoR, where the basis should be the regions themselves, with some reasonable proportionality of representation to population, though retaining minima for very small states and nations. The different roles of the CoR in facilitating input from local authorities and in creating a forum for constitutional

entities with legislative powers should be adequately reflected.

4. The Treaties should make clear that the Commission has an obligation to consult in relation to forthcoming legislation with all legislative authorities at whatever level within the Union that have responsibility for transposing and implementing European law.
5. The Treaties should be clarified concerning rights of participation in the legislative deliberations of the Council. There must be clear provision whereby the states can in appropriate cases be represented by ministers from that level of government which has, within any particular state, legislative responsibility for the subject of proposed Union legislation. A state's votes in qualified majority voting need not always be cast as a single block vote, but could be split if internal territories decide to pursue different lines on a particular topic.
6. There should be appropriate rights of access to the Court of Justice for all territorial entities exercising legislative and governmental powers within a state and under its constitution; they must be enabled to seek judicial review of Union legislation that invades their constitutional competences, with a view to ensuring due respect for the principle of subsidiarity in their case.
7. Subsidiarity should be better defined (see my separate submission on this point) and supported by better institutional mechanisms. In particular, there should be criteria for preventing diminution of constitutional powers of internal territorial entities without full prior consultation and agreement, and there should be better ways of protecting the discretion of local agencies to enable them to bring about sensible implementation of European law having regard to local circumstances.
8. The Parliaments of self-governing entities in member-states should be better involved in the European institutional system. Those exercising legislative powers should be able to participate in the parliamentary trans-European network known as COSAC - *Conférence des Organes Spécialisés dans les Affaires Communautaires* (Conference of Community and European Affairs Committees).

9. The linguistic diversity of the European Union must be protected. All languages must be recognised as essential elements of the rich heritage of the EU, and all languages and cultures should have equal rights, as stated in the Universal Declaration of Linguistic Rights (Barcelona, 1996) All official languages in the territory of the European Union must be given proper status at the European level. The EBLUL (European Bureau for Lesser-Used Languages) proposals to the Convention ought therefore to be adopted.

Brussels, 18 September 2002
