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CONTRIB 125

COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Contribution from Mr Joachim Wuermeling, alternate member of the Convention: “International Agreements of the EU - Proposals to reinforce parliamentary control”

The Secretary-General of the Convention has received the attached contribution from Mr Joachim Wuermeling, alternate member of the Convention.

International Agreements of the EU

Proposals to reinforce parliamentary control

1. Written contribution for the Convention on the future of Europe

Weak parliamentary control	<p>„Before taking his decision, President George W. Bush met with influential Senators to get the Senate's support for this important trade policy measure." This is how US-Newspapers report daily on decisions in foreign policy or trade policy matters. The Congress plays a dominant role in formulating the foreign policy of the United States. Senators such as Jesse Helms are known even in Europe.</p> <p>But whom are Prodi, Solana or Patten talking to? Who controls the international affairs of the European Union? The National Parliaments? The European Parliament? No: There is little parliamentary control for international actions of the EU foreseen in the Treaties. This written contribution intends draw my colleagues' attention in the Convention to this problem and to present some proposals for reform. They are meant as suggestions especially for the working groups on Foreign Policy and on the Simplification of Legislation.</p>
Structure of this contribution	<p>The first part analyses the European Parliament's current role. The second part presents the example of the United States. Various proposals are summarised in the third part. From the wide range of the Union's international relations, I would like to concentrate on the treaty-making-process.</p>

<p>Transfer of competencies from Parliaments to the EU</p>	<p>Colleagues from national Parliaments have already had this experience with the EU: Through the transfer of competencies to the European level, national Parliaments have lost their influence. However, the power has not been handed over to the European Parliament, but rather to the executive. With the transfer of decision making power to a world level comes the threat of less democracy.</p>
<p>The same mechanism on a global scale</p>	<p>Be it decisions by the UN, G8 or the International Monetary Fund - decisions of international organisations become increasingly important for every single citizen because of globalisation. The World Trade Organisation decides on the import of hormone meat into the EU. The World Climate Summit agrees on reductions of car pollution. A committee of the Bank for International Settlements fixes the conditions for loans granted to craftsmen.</p>
<p>Parliamentary control is lagging behind</p>	<p>The EU itself is member of seven international organisations. It also co-ordinates European policy in some others. In the case of shared competencies, both the EU as well as the Member States are parties to the agreements. According to the Court of Justice decisions, the EU has competencies in external relations as far as it has the corresponding internal competencies (for example the common market, environment, social affairs and competition). The rapidly growing influence of global organisations is not accompanied by a suitable parliamentary control of their decisions, particularly not in Europe.</p>
<p>Conclusion by the Council</p> <p>In a few cases approval by the Parliament</p>	<p>I. The current role of the European Parliament within the context of the EU's international treaties</p> <p>We have to distinguish between the competencies (1.) for the signature of treaties, (2.) during the negotiations and (3.) other means of participation.</p> <p>1. <u>Signature of international treaties</u></p> <p>International treaties are in all cases concluded by the Council. The European Parliament is in general only consulted. Its approval is required only in a limited number of cases, as for example for association agreements that create a special institutional framework, have considerable financial consequences on the Union or which bring the amendment of a legal act subject to the co-decision procedure. Trade policy is explicitly excluded from any participation of the Parliament. However, an informal practice to inform the Parliament has emerged. But the Parliament cannot submit any amendments.</p>

<p>No formal role of the EP</p>	<p>2. <u>Treaty negotiations</u></p> <p>The Treaties as they stand do not provide for any participation of the European Parliament in the granting of a negotiation mandate nor for the negotiations themselves. The Parliament is merely to be consulted in a very limited number of cases. It is the Council of Ministers who defines the negotiation mandate, who is continuously informed about the status of the negotiations and who gives the instructions. There even is a standing committee on the common trade policy for this purpose.</p> <p>Commission and Parliament are making efforts to improve the Parliament's integration into this phase. The Parliament has adopted respective rules of procedure and fixed procedures with the Commission through an interinstitutional agreement. But the Parliament cannot derive formal rights there from.</p> <p>3. <u>Budget</u></p> <p>Indirectly, the Parliament may influence the EU's external relations by means of the Budget procedure. The budget for the external relations forms part of the Community budget, namely of the compulsory expenditures which are subject to the approval of the Parliament. This is where the Parliament can establish priorities through the assignment of funds. Sometimes, the Parliament can influence the contents at the creation of a legal basis for certain expenditures. But by nature these powers remain limited, because the financial commitments towards the third countries have been entered into long before the Parliament begins to deal with the matter. There is nothing more to do for the Parliament than to grant the according funds in order not to disappoint our foreign partners' trust.</p> <p>II. The example of the United States</p> <p>The practice of the United States is set out here for the simple reason that the US-Senate disposes of very wide-ranging rights. Just like the European Parliament, the Congress can exercise its control function without being compromised by loyalty to the government.</p>
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<p>Senate has to approve each treaty by a 2/3 majority</p>	<p><u>1. The Conclusion of international treaties</u></p> <p>According to the American Constitution, the President can conclude international treaties „by and with the advice and consent of the Senate“. The treaty needs to be approved by a 2/3 majority. This right, together with the high threshold for majority, has given to the Senate a far reaching influence on external relations. The practice of participation has been varying according to the scope of external activities of the United States and the Congress's interest. But the Senate's influence was always far bigger than that of any comparable parliament.</p> <p>Only rarely has the Congress refused treaties entirely, like the Versailles Treaty of 1919. The need for approval has lead to such an intense consultation-process that the approval is rarely refused.</p> <p>Now and then the Senate has successfully linked its consent with the achievement of certain amendments in new negotiations as it did for instance in the Treaty concerning the Panama-Channel of 1978. The Senate's claims have been accepted by the partners to the treaties.</p>
<p>Amendments</p> <p>Intensive participation in all phases</p>	<p><u>2. Treaty negotiations</u></p> <p>The Congress is thoroughly involved in all phases of the elaboration of a treaty. Until the 19th century the Senate's explicit approval was even required for every order given to the negotiators. Nowadays, the starting mandate for negotiations and the negotiator's name are communicated to the Senate. This appointment has even been subject to the Senate's approval in earlier times. Sometimes, Senators form part of the negotiation delegation as was the case in the SALT II Treaty on disarmament.</p>
<p>Power of the purse</p> <p>Hearings</p>	<p><u>3. Other ways to influence</u></p> <p>The „Power of the purse“ is used entirely by the Congress to influence foreign policy. Every single Dollar spent in the context of foreign policy measures has to get the Congress's approval.</p> <p>Furthermore, the Congress uses „Hearings“ (investigation committees) to influence the government's position, such as during the Iran-Contra-Affair in 1987.</p> <p>Finally, the Senate approves in office ambassadors and high ranking officials in the Foreign Office.</p>

<p>obligations with financial impact</p>	
<p>Lack of the parliaments' role as mediator</p>	<p>IV. Conclusion</p> <p>Democracy should not be limited to national boundaries. Otherwise we risk having pre-revolutionary situations such as those witnessed during the WTO Conference in Seattle: Inside the powerful taking the decisions, outside the citizens protesting or even rioting. We might disagree on the grounds of the protest as well as on whether the protestors are representative. But these events underline in a dramatic way the lack of the elected parliaments' role as mediator.</p>
<p>Create legitimacy and authority</p>	<p>The reinforcement of the European Union's international role has to be accompanied by an improvement of its parliamentary responsibility. Without such responsibility, European actions would permanently lack democratic legitimisation and authority towards the Member States and the citizen.</p>
<p>Globalisation in a democratic way</p>	<p>This might provoke more complicated and longer procedures for external relations actions. But the American example proves that the ability to act does in no way suffer from a strong involvement of the Parliament.</p> <p>Globalisation increasingly demands a world wide regulatory framework. As Europeans, it must be our aim to make this process more efficient and democratic. We have to bring cornerstones of democracy into globalisation.</p>