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**Subject :       Contribution by Sir Neil MacCormick, alternate member of the Convention:**  
**"Stateless Nations and the Convention's debate on Regions"**

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The Secretary-General of the Convention has received the attached contribution from Sir Neil MacCormick, alternate member of the Convention.

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## **Contribution by Sir Neil MacCormick, alternate Member of the Convention**

### **"Stateless Nations and the Convention's Debate on Regions"**

The present Contribution has been prepared after intensive debate and discussion at the Stateless Nations Intergroup of the European Parliament. The author takes full responsibility for its content, but hopes it will be recognised as a contribution that expresses the position of a significant body of opinion inside and outside the European Parliament.

The European Union has more nations in it than the number of its member states, despite the tendency to characterise all the latter as 'nation-states'. At least Spain, Belgium, the United Kingdom, Germany, and arguably France and Finland are composite states that historically brought together several nations or nationalities into a single state. Sometimes this happened by treaty (compare England-Scotland Treaty of Union, 1707), sometimes as a result of a war (Spain and France against Catalonia 1714) sometimes through emergence of a composite state from a larger union (Belgium, Finland). Dynastic succession often played a part, too.

In contemporary Europe, there are thus quite a few nations within states, nations that lack a full sovereign state of their own. They may nevertheless possess many important institutions of state, and some (for example, the Law Courts in Scotland) display considerable historical continuity from earlier periods of national independence.

'Regions' is the predominant terminology in use to categorise these historical nations. European politicians and constitutionalists use this term for countries like Catalonia, Euskadi, Galicia, Andalucia, Flanders, Wales or Scotland. Because their construction as legal entities directly or

indirectly flows from the constitutional order of the Member State of which they are part, they are frequently denominated 'constitutional regions'. In this they have a parallel with Laender in Germany or Austria, and with Regional governments in other states where these are endowed with legislative power.

All such regions differ from regions which are merely administrative in character, without any self-identification as nations. There, the democratic element is typically found mainly at the level of local authorities, sometimes supplemented by an elected regional assembly with a policy co-ordinating rather than a strictly legislative function. The State's central parliament in this case is then the principal locus of national democracy, with no countervailing national democratic sensibility in the region in question.

In the 'stateless nations' of the Union, the citizens generally consider that their nations are entitled to parity of esteem with others of similar size. The latest enlargement of the Union enhances their potential or actual sense of constitutional disparity. The Slovak Republic for example is comparable in population with Scotland and a little smaller than Flanders, the Czech Republic is comparable with Catalonia, Estonia and Latvia with Wales or Galicia, and so on.

These new member states have recently themselves emerged from larger unions, but as member states of the Union they will quite properly have representation on all the Institutions. This includes participation not only in Council, Commission, Parliament and Court, but also in the Committee of the Regions. There, they will be entitled to delegations of members disproportionately larger than the number of seats that can possibly be allocated by large member states to their own internal nationalities or nations. To take the most extreme contrast, Malta will have more members than Catalonia - yet surely Catalonia has an internal regional diversity far greater than that of Malta.

On this ground, the distinguished French MEP Alain Lamassoure last year put forward a widely-noted suggestion to create a special status of 'partner regions' within the Union. He proposed this as a way to take account of political entities that are not currently member states, but whose character makes them in some degree comparable with similar sized nations now enjoying full statehood. In terms of size, existing Member States such as Finland or Denmark or Ireland come into a similar bracket with such as Scotland, Catalonia or Flanders.

In the internal politics of all the stateless nations, there is open and continuing controversy between parties with different constitutional ambitions. Some, indeed many, of the Parties in the European Free Alliance, propose to seek national independence within the European Union, thereby triggering a process of enlargement from within, or 'internal enlargement'. Others, including parties in government at the moment in most of the stateless nations, prefer the continuing situation of a 'constitutional region', which they think can satisfy the national aspirations of the citizens. This supposes that strong institutions of internal self-government can co-exist fruitfully with the common institutions of the larger state to which are entrusted macroeconomic governance, external relations and representation in the European Union.

At least for as long as the Union's constitution makes it rigorously clear that its essential participating partners are the member states to the absolute exclusion of any other even partly comparable partners in the enterprise, the case for the proponents of independence and internal enlargement has powerful force. They have not yet won the majority in most cases. Only in Euskadi have the parties putting this forward been able to win elections and form the national government, albeit without an overall majority. Others are likely to follow, perhaps sooner rather than later. The Basque government's current nationwide consultation about a possible referendum to revise relations with the Spanish State may yet prove an instructive example.

By adopting the "Napolitano Report" in January 2003, the European Parliament took certain steps towards acknowledging more fully the role of regional government in Europe's architecture. But Parliament's majority exhibited stiff resistance to making any special acknowledgement that regions in Europe can be very different in kind, and that special constitutional provision could reasonably be considered in the particular case of stateless nations, or those other regions that have constitutional authority to make law and supervise the execution of governmental functions.

Even so, the Parliament recognised that the exercise of certain powers of government has to be matched with certain rights and responsibilities. Whoever exercises legislative powers in the Union may have responsibility for transposing Union Directives into local law. Whatever degree of discretion is allowed to the states to adapt general rules to local circumstances, the same flexibility needs to be available to regions doing the same job. Where there is no specifically regional lawmaker, the question simply does not arise.

Likewise, the regional legislature or government may find European legislation stripping it of competence to make local decisions, yet this very legislation may be condemned for infringing the principle of subsidiarity. In this case, the regional authorities ought surely to have power to challenge the legislation in question at the Court of Justice. Parliament accepted this. It added, not unreasonably, that this possibility should exist only where there is authority for it in a state's constitution or its relevant laws. But the principle of access to the Court has been affirmed, under this qualification.

Another welcome advance concerns recognition of regional (or regional-national) and minority languages. To include a power of encouraging linguistic diversity in the Union will make it possible for the Union to provide funds within the budget for help where it is needed, and where the legislator determines to make provision for it.

In this context, and with a view to the Convention Debate on 7 February 2003, I reaffirm the theses stated in my Contribution 'Democracy at Many Levels: European Constitutional Reform' (Conv 298/02). Europe must give recognition to its 'regional dimension', and must recognise the internal diversity of the concept 'region', or find a better word for it.

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