



# *Istituto Affari Internazionali*

**1965 - 1990**

**IAI 25th ANNIVERSARY CONFERENCE**

**EUROPE IN THE NINETIES  
Toward a New International Order**

*Committee on*

**POLITY AND  
INSTITUTIONS**

*Paper presented by*

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PROBLEMS AND PROSPECTS FOR THE INSTITUTIONAL EVOLUTION  
OF THE EUROPEAN COMMUNITY  
IN VIEW OF NEW FEDERAL CONSTITUTIONS

by Sergio Ristuccia

1. In order for the future institutional and political evolutions of Europe to be considered, a direction must be perceived in the tumultuous events taking place since 1989. While the novelty and grandeur of the events in Eastern Europe initially inspired comforting thoughts of peace and strengthening of relations among peoples, banishing any concerns or fears as unfounded, the dramatic crisis in the Middle East has again generated profound feelings of Angst and disillusionment in social consciences and the hearts of individuals. The situation calls for realism.

Scenarios and problems must be approached with a strong sense of critique and caution.

An initial consideration can be made: the centrality of the question of new relations among states, both in Europe and in the Middle East offers opportunities for improvement and change in the Community and the international order. It may be said consolingly, even somewhat complacently, that solution of these questions will be decisive. Thus, it is rightfully felt that only through rapid and significant steps ahead in constructing the Community in Europe and in structuring the presence of the international community in the Middle East can a dramatic regression in the world situation be avoided. However, doubt about the existence of the prerequisites needed to take these steps grew daily during the summer and autumn of 1990.

Emmanuel Lévinas<sup>1</sup> says, clear thinking, that is, "the openness of the spirit to truth", consists of "seeing the permanent possibilities of war", then this clear thinking could destroy all predictions and projects today. It draws attention to some harsh facts: war suspends morality and deprives institutions of their power because it "annuls unconditional imperatives by making them temporary".

But predictions and projects must be made in spite of doubts and fears.

2. The rapid, in some cases unexpected, fall of the communist regimes in the East has not eliminated certain basic characteristics of European geopolitics (in some ways it is legitimate to continue to speak of East-West). Yet, an overall redefinition of political and international relations within and outside the European continent is required.

Above all, redefinition involves the constitutional order of Eastern European countries: the fundamental rules underlying the Eastern European political systems are

being rewritten and it is likely that this process will go on for some time. Changes and adjustments will also be made in constitutional practice and in the substantial constitution.

But it seems that this is a "period of new constitutions" at the planetary level. Besides those in itinere in Eastern Europe (a few chapters of the new constitution of the Soviet Union have already been written, although not all are clear and decipherable), some constitutions are being prepared in South America (for example, Brazil) and in Africa (the dramatic and difficult gestation of the new South African constitution), to mention only a few evident examples.

Although there does not seem to be any common denominator to these complex processes, they do point to a period of reassertion and adjustment of democratic institutions. Furthermore, in some way these phenomena are homologizing government institutions to what could until recently legitimately be called the "Western model", as opposed to other historical and theoretical models of democracy.

3. A recurrent theme in this urgent establishment of new or adjustment of old democratic mechanisms appears to be the difficult relationship between local and central governments (centre vs. periphery) and the underlying ethnic struggles.

In the absence of the coercive measures of the dictatorial regimes and without the ethnic groups having matured the idea of recomposition into a nation, ethnic conflict has exploded. To some degree, this is a natural consequence of the new freedom from the constraints of a police state and in this case forms the substance of the natural conflictuality in any democracy. Establishing the coexistence, even not harmonious, of different ethnic groups is one of the historical tasks of modern democracy, in particular, of the institutional variation known as the federal model.

The difficult transition to democracy in conditions of backwardness and economic underdevelopment has drawn attention to the federal model once again. At the same time, it is the subject of debate in the European Community as a means of furthering the positive evolution of the Community and safeguarding the results achieved to date.

The federal concept is, however, in need of profound rethinking and up-dating in both Western and Eastern Europe. This provides an excellent opportunity to look for points of intersection and common objectives in this new phase of theory and practice of federal democracy.

4. The reasons behind the federal choice determine the constitutional policies. On the one hand, the federal model is an expression of the requirements of the modern constitutional state: to the concept of separation of powers, it adds the concept of the distinction and coexistence of government unity and different levels of government with autonomous non-hierarchical competences. This puts barriers and constraints on the "unlimited sovereignty" which tends to be a characteristic of the modern "Leviathan".<sup>2</sup>

On the other hand, a federal structure offers a way to link the material,

environmental, ethnic and social differences of communities and populations that live together. It allows for the acknowledgement by the different communities of regional and local interests without presuming that there are "national" interests that must always and as a norm be given priority. It has been said that in order to learn good politics and good administration, one has to realize the "counter-intuitive" nature of political relations, which are always multi-faceted. Since the federal concept takes this into consideration, it is, in this sense, a good school for politics.<sup>3</sup>

However, the question of the size of the government system is important in the federal model. The overlapping of various powers is only logical and natural, but the problem is not always solved and not always solvable. The right amount of overlapping establishes the delicate balance of the federal system.

Review of the characteristics of the federal system is essential for some important verifications. The first has to do with the apparently federal system in the Soviet Union: in a state lacking the rule of law, a federal system cannot even provide functional relations; it is simply a way of disguising hegemony imposed by means of the parallel instruments of the state-party.

The second verification concerns the great federal experiment constituted by the United States of America. Someone has said that "American federalism is in disarray".<sup>4</sup> In fact, on the one hand, the strong centralizing trends underway in Washington are being criticized and opposed (even when, as during most of the Reagan administration, Big Government was decried and resisted), but on the other hand, there are complaints about anarchy of the states.<sup>5</sup> Actually, the great American experiment has not yet totally metabolized the effects of the country's transformation into a super-power, which inevitably strengthened the central government. Despite its distant origins and the fact that it is more an image to be projected in external relations, the "imperial presidency" does not conform particularly well with the federal concept. The problem of the federation's external relations in dealing with the disorders of the international community has been at the centre of American postwar developments and has had repercussions on federal mechanisms themselves.

5. The foregoing draws attention to the many problems associated with federalism that require careful assessment and suggests the rethinking of old and the invention of new institutional models.

What are the theoretical points of reference? Two come to mind: "integral" federalism, which was the focus of debate and political proposals at other times in history (although restricted to marginal areas of thought and political action; and "subsidiary" federalism, around which the discussion on the future evolution of the Community order has centered in the last seven or eight years. For integral federalism reference can be made to documents such as Tempi nuovi metodi nuovi, the 1953 political platform of the Community Movement, which is still one of the most clear- and far-sighted examples of militant political literature (even if élitist).

That document stated that "federalism does not mean governmentalism, on the contrary, it implies general autonomy and an increasingly autonomistic structure for states". Federation must be promoted because "only strategically strong states pose and solve the problem of internal autonomy" and strong states are constituted by "superior legal orders, continental or sub-continental federations".<sup>6</sup>

Today, convincing and urgent reasons for federation exist and are constantly being emphasized. But it takes time for constructive and innovative processes to gain momentum. The difficult process underway in South Africa comes to mind. The most likely outcome seems to be a sub-continental federation. More generally, one wonders, as does the Economist,<sup>7</sup> about the future of the nation-state. All one can do is list the reasons (and they are good reasons) why more countries today than ever before are joining together. World trade is almost equal to one-fifth of the global gross product and economies can grow and prosper only if they are linked to the world market, while frontiers and trade barriers merely stifle trade and limit the benefits. And yet, "the world seems sure to get more countries, more acronyms, and more happy flag makers" (if only for the probable reawakening of the nationalities in the Soviet Union). The truth is that a country can learn to live voluntarily with another on the basis of the democratic principle of self-determination only if the national identity is stronger than the sub-national identities. In other words, the nation-state is in crisis, but not the concept underlying it, that is, identity.<sup>8</sup>

For this reason, the federative process must be supported and urged along not only on the basis of a federative model of perfect limited sovereignty, that is, sovereignty divided between the state and federal governments with a bill of rights prevailing over state laws, complete freedom of trade and movement, a Supreme Court settling controversies (on the divided powers), but also on the basis of para-federal models which call for strong cooperative institutional mechanisms in some functional areas, even those traditionally linked to the prerogative of sovereignty (money and defence).

The evolution of the Community order seems to be following the para-federal model; or rather, the EEC experience seems to be developing it and demonstrating its feasibility. This model is not seen as an alternative to the integral federal model, but as a mechanism used to achieve it. This approach is needed in the absence of a "national" (continental) identity that is stronger than the sub-national (or sub-continental) identities.

6. This is the context in which the principle of subsidiarity has emerged. The stalemate in the European Community with regard to the direction development of its institutions was to take was overcome in the mid-eighties through recourse to the idea of subsidiarity. The idea gradually became the criteria for the evolution of Community institutions.

A closer examination of the concept is required in order to evaluate its

importance in the future. The recent reconstruction of the history of subsidiarity by Marc Wilk and Helen Wallace<sup>9</sup> points out that the concept was first brought up in the German Laender's controversy about safeguarding the exclusive competences attributed them by the Grundgesetz of the Federal Republic threatened by enlargement of the Community. A defensive use, so to speak, similar to the clauses usually present in federal constitutions safeguarding the competences of the lower levels of government. This immediately emphasized the many meanings of the principle.

According to the definition set down in the Draft Treaty establishing the European Union (Spinelli Project) approved by the European Parliament on February 1984, subsidiarity defines the tasks to be carried out by European institutions (see Art. 12.2): these are the "tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers".

Actually, the principle of subsidiarity is, above all, an argument with which to support and promote the development of European institutions and European Union in particular. It has no real legal foundation, except procedurally. As used in the Draft Treaty, any action aimed at the dynamic evolution of the Community or Union is only legitimate if the effectiveness of common action as superior to that of the individual Member States can be motivated and proven. In this sense, the principle of subsidiarity seems to be the driving force behind any evolution, in that each step ahead can create prerequisites for better action in new and different fields and in that it calls for behaviour that is aimed at concreteness and results.

The above holds true, of course, when the procedure needed to activate subsidiarity is well-defined. In the process of union, action can be taken by the majority of States, by the Commission or by the European Council. Which of these is the organ of subsidiarity? In what should it be activated?

Furthermore, in order for the principle of subsidiarity to be credible, the process of relinquishing competences must not always be bottom-up; sometimes it must be top-down. It is implicit that both directions are possible, depending on the concrete effectiveness of the policy.

The limits to the principle of subsidiarity are set by the institutional architecture: the principle cannot be used ad infinitum; it cannot overturn the power structure, nor the relations among powers and among European institutions and state institutions; nor can it be used in conflicts over competences between institutions and organs, in that it is based on factual (the concrete effectiveness) and not legal elements.

A demonstration or symptom of the new dynamism of the Community in the eighties, the principle of subsidiarity is a unique, in some ways brilliant, compromise between reformers intent on a priori federal plans and innovators that move cautiously on the basis of results obtained. Thus, given its acceptance as an operational principle, it is bound to promote the internal dynamism of the Community. It is not, however,

suited for use in the transition from a material to a formal constitution.

7. At what point is Europe with respect to intra-Community relations? The three most outstanding phenomena in this regard must be considered: the weight of the Brussels (the Commission and its administrative apparatus, the Council and its committees) in the ordinary administration of the member states; the slow but progressive transformation of the Court of Justice into a real "Supreme Court" of the European Community with direct influence on the balance of power in the Community order; the process of implementation of the Single European Act.

As for the administration, it has been pointed out that the relationship with Brussels has become almost routine, to the point that Community documents are sometimes inspired by the very parties they are aimed at. This also occurs as a result of a "progressive transfer of substantial powers", in particular in the Treasury and Financial Ministries, but also in others. Thus, "while the Community institutions were used in the beginning to support policies already decided upon nationally in order to strengthen them before respective national parliaments, the objective now is to reach agreement with homologous ministers". The author of the above observations<sup>10</sup> also pointed to the importance of a different attitude among national bureaucracies. "Accused of impeding the transfer of powers to Brussels by all means, they have actually discovered that it is easier to reach agreements in the three hundred consultative and regulatory committees of the Commission and the innumerable work groups of the Council than at home, where they would waste time in negotiations with rival ministers or inattentive and unreliable members of parliament."

On the institutional plane, the importance of the Court of Justice must be underlined. On the occasion of the 40th anniversary of the Robert Schuman Declaration (held on 6 May 1989), the President of the Court, Ole Due, recalled that the Court "has taken care not to interpret the Community treaties like classic treaties of international law. It has developed principles of interpretation aimed at safeguarding full exercise by the institutions of their competences and at ensuring the useful effect of Community rules. It has realized that each rule that imposes clear, precise and unconditional obligations on the Member States has a direct effect on the internal legal order of these States. And, for the rules not of that nature, it has emphasized the duty of each national authority, both judicial and administrative, to implement it as far as its competences permit and to the extent that it is compatible with national law".

But the most important thing is the close relationship between the Court and national jurisdictions. Preliminary judgements from the Court are becoming more frequent, as can be seen in Italy: it is enough to consider the case law of the regional administrative courts. The competences of the European Parliament have been safeguarded and in some way better defined - extended - by the judgements of the Court.

The Fifth Report of the Commission on the implementation of the White Paper

of March 1990 states that "after the judgement delivered in 1990 by the French Conseil d'état,<sup>11</sup> all the supreme judicial authorities ensure direct application of Community law".

The Commission report mentioned above also makes some observations on the process of implementation of the Single Act.<sup>12</sup> There is, of course, some preoccupation, but it must be seen in the light of the opening statement which asserts that "the work carried out during the last months has been distinguished by two characteristics: irreversibility and anticipation". With respect to irreversibility, the Commission adds some important data to the affirmations already made by the Council: almost 60 per cent of the programmatic proposals of 1985 have been adopted; there is no comparison between the number of decisions being taken today and in the past.

Anticipation basically means acceleration: the Commission feels that this is a consequence of the approach to the implementation of the Single Act, consisting of the combination wherever possible of provisions for reciprocal recognition and provisions for approximation. Anticipation also means a different behaviour on the part of the economic actors and the governments; both must grasp the opportunities offered by the single market.

The Report also expresses concerns and makes some warnings. For example, the urgency of the Commission's "solemn appeal" to the European Council to construct a "space without frontiers" can be felt. Moreover, while boasting about having respected all its commitments and having entered the stage of management of directives, the Commission points out that there can be no acceleration "if the problems examined call for unanimous voting", regardless of whether this is due to procedural rules or the refusal of the Council to apply the principles of the Single Act in delegating competences to the Commission. In other words, the Report once again comes back to the subject of institutional dynamics and mechanisms.

8. Among the positive results of the process of construction of the single market, in the report the Commission refers to the new dynamics of intra-Community trade: after a constant drop between 1973 and 1985, in 1985 it returned to the level of the early seventies (62 per cent of exports of member states). This important turnaround "is the best proof of the recovery of the economic integration of the Community".

This observation leads back to the question of the historical reasons behind the Single European Act and, in particular, its link with the so-called Strategic Trade Policy (STRAP). This subject has been studied and debated by many economic policy experts.

It was widely believed in the early eighties that the problems of inflation and unemployment plaguing Europe could not be solved with policies of expansion, given the rigidity of the labour market. Since restrictive monetary policies had to be introduced - also to uphold currencies - the EMS was conceived, in which national monetary authorities lost a part of their independence and accepted the substantial leadership of the Bundesbank. The result was a typical institutional arrangement, a



supra-national system that "over-represented the interests of financial capital and monetary authorities, institutionalized a deflationary bias in the conduct of policy and influenced the choice of specific policy instruments". This led to a transfer of decision-making powers from governments to a supra-national "monetary club", increasing the institutional inertia at the Community level.

In order to change the situation frequently defined as "Euro-sclerosis", the business leaders bypassed national governments and started to demand alternative solutions directly from the Commission. The prospect of an increasingly integrated market not only improved the medium-term perspective of European industry, but also provided "a new sense of direction for the European institutions and bureaucracy". This led to the alliance between the world of industry and Brussels.

The Single Act "has strengthened the role of the Commission as a regulatory agency and has given greater decision-making powers within the Council to government authorities in the more industrialized countries (W. Germany, United Kingdom, France, Italy) that have vested interests in the promotion of STRAP". Basically, this amounts to a new institutional arrangement that can be called "Euro-corporatism", aimed at closer relations among the Commission, the principal representatives of economic interests and the government authorities of the major countries. This is the reconstruction proposed by Louka T.Katseli.<sup>13</sup>

But this kind of reconstruction involves a simplification: it takes no account of the battle waged in the European Parliament by Altiero Spinelli, which led to the approval of the Draft Treaty establishing the European Union. The Single Act cannot be considered a by-product and the temporary answer of the "other" Europe (the governments) to the peremptory demands made by the now directly elected European Parliament on the Community. Although the reconstruction is not absolutely convincing from an historical point of view, it contributes to an understanding of the evolution of the interaction of the interests, social forces and institutions that have in these years established the "substantial constitution" of the Community order. In that sense, the reconstruction is reliable. The configuration of interests and the institutional arrangement embodying it is destined to prevail in the years to come.

Of course, no facts are available at the moment to demonstrate that labour organizations can be brought into this arrangement (perhaps through the expansion of the German corporatist model). As European corporatism would be crippled in this way, tensions and adjustments are to be expected. Not enough, however, to profoundly change the cornerstones of the institutional arrangement.

It seems that the markets of Eastern Europe may in the near future offer benefits rivalling those of the large integrated EEC market. This is another reason why the coalition of interests outlined has good chances of surviving.

9. A revised model, subsidiarity as the driving force behind Community development, persistence of the current institutional arrangement: these three factors

provide the framework for identification and study of the most important medium-term institutional problems. Again three seem most significant: the national subjects of budget policy in case of economic and monetary union; the configuration of the Executive at European level; the institutional representation of the regions.

The choice may require some explanation from a methodological point of view. First of all, it is impossible to review all the institutional problems that are to be tabled at the two inter-governmental conferences starting in December 1990. Such an overview would be interesting, if only to assess whether the "reforms" of the Treaty of Rome to be discussed were adequately prepared through institutional debate. Actually, it does not seem to have been particularly thorough, perhaps due to the assumption - generally shared by most governments - that all that has to be done this time is extend the field of competences of inter-governmental political cooperation without undertaking any significant institutional changes. In any case, at this point it seems more profitable to turn to more emblematic subjects and, as will soon be shown, those that have been chosen are.

10. In dealing with the first problem, reference must be made to the Delors Report. With its solid intellectual structure, underlined by many, the report dealt with the most important questions. First, the preamble: "economic and monetary union has implications that range far beyond the program of the single market". In the report, this affirmation is emphasized graphically by the use of italics. It goes on to state that since "the Community will continue to be composed of individual nations, with different economic, social, cultural and political characteristics"; and "the existence and the safeguarding of that plurality implies that the Member States must maintain a certain amount of autonomy in economic decision making, the decision-making powers of the Member States must be transferred to the Community as a whole". In particular, in the sectors of monetary policy and macroeconomic management.

As for balancing Community and national powers, the report strongly recommends subsidiarity "according to which the functions of government at the highest level must be limited as much as possible and subsidiary to those of lower levels". The competences of the Community are "specifically restricted to those sectors in which collective decision-making activity is required".

Skipping the part of the report that deals with specific problems of decision making, that is, monetary union, the subject of coordination of the macroeconomic policies of the member states is then dealt with. The role of the Community in economic policy should be one of coordination of national budget policy, although the member states would still be responsible for "decisions on the direction of public policies in sectors such as internal and external security, justice, social security, education and, therefore, the level and composition of public spending, as well as many provisions relative to State income". But the coordination carried out by the Community would not be dictated by good will; the report insists that "for budgets, binding rules

are needed that first of all set ceilings on the budget deficits of the individual Member States of the Community - taking into consideration the situation of each Member State in setting those limits - and secondly, exclude access to direct credit from the central bank and other forms of monetary financing, while consenting open market operations for government securities and, thirdly, limit recourse to foreign debt in non-Community currency".

The report states that for each binding rule in budget policy a procedure should be developed that respectively provides for a) an effective ceiling to the budget deficit of each individual member state (besides the other rules mentioned above); b) definition of the general direction of budget policy in the medium term, including the size and the financing of the aggregate budget balance consisting of both the national balance and the Community balance.

The report does not state clearly which Community organ should take these decisions and to what extent such regulations should be set down in the Treaty. A committee composed of the governors of the central banks does not seem to be the right solution. Yet, the introduction contains the general consideration that "it would not be possible to follow the example of existing federal States in a pure and simple manner". This does not exclude that the federal model cannot be followed with "a unique, innovative approach", implicitly attributing a decision-making role to the European Parliament.

Moving from the Delors Report to the last document prepared by the European Commission in August 1990 for the inter-governmental conference starting in December, the latter suggests that the rules relative to budget deficits be set down in the Treaty: above all, the principle that deficits must be avoided, and then more specific prohibitions concerning monetary financing of the deficit and "bailing out", that is, the guarantee of last minute help by the Community.

This strengthens the monetary and fiscal constitutionalism at the Community level made up not of positive guidelines, but precise rules establishing limits. The subject of sanctions to ensure respect of the rules it left open.

Two instruments of economic policy are envisaged: a long-term system of direction of economic policy formally approved by the European Council; a mechanism for specific financial support which would be activated in case of serious economic difficulties or when economic convergence calls for a particular effort from the Community in parallel with national strategies of adjustment.

These instruments for coordination of economic policy reflect and in some way give further substance to the economic cooperation experimented internationally and, in particular, in the International Monetary Fund. Even the same jargon is used, for example, in the phrase, "in a perspective of positive conditionality".

In the same context, the document repropose the idea of strengthening "multilateral surveillance". This closing mechanism should make the entire system more cogent and effective. A multilateral surveillance mechanism covering all significant

aspects of economic policy has already been adopted by EEC decision 90/141. It must, however, be focussed more precisely on the evolution of budget policy.

"The countries in which economic convergence is in danger should be urged to present medium-term strategies (relative also to their budgets) for the reduction of the imbalance to levels compatible with their participation in the next stages of the process of union".<sup>14</sup> Two observations can be made: 1) the difficulties in "constitutionalizing" budget rules; 2) the multilateral surveillance mechanism would call for a high degree of institutional homogeneity in member states in order to be effective.

Strict prohibitions may be the only way to constitutionalize fiscal matters. And these prohibitions should be based on the effectiveness of a stricter (para-federal type) Community order that goes hand in hand with stronger monetary union. The risk behind such constitutionalism lies in giving centrality and quasi "omnipotence" to monetary policy.

Does that mean that the surveillance mechanism could be a means for institutionalizing a "monetary club" set-up? This leads to the problem of institutional homogeneity mentioned earlier. The European Commission document states: "the effectiveness of this multilateral surveillance lies mainly in the exercise of informal pressure on organs at the same level and on the degree of transparency achieved". There is more to this than meets the eye: it poses the problem of homogeneity. The scope of the problem becomes clear when reference is made to the way in which government and parliament divide "control of the purse-strings".

Who is responsible for the budget? This question, never merely rhetorical, often comes up in analysis of the institutions and the budget policies of different countries.

Now, if a multilateral surveillance mechanism is not to be immediately reduced to an exercise of the research department, the budget must be the responsibility of the government in all countries. It loses meaning if both government and parliament are responsible for the budget. In that case, it is almost impossible to exert pressure and interactions among organs at the same level.

11. The implications of an effective transition to economic and monetary union are not to be underestimated. It is, in fact, strange that it is discussed so little. Guido Carli was right when, not yet Minister of the Treasury, he posed two rhetorical questions: What can one say to the Community's right to impose constraints on national budgets, when this power right is exercised by an organ of the Community, that is, the Council of Ministers? Is it not merely an expedient to surreptitiously transfer to the Executive a prerogative which in parliamentary democracies belongs to Parliament?"<sup>15</sup> Paradoxically, Mrs. Thatcher's opposition to Economic and Monetary Union seems to have provided an alibi for the lack of institutional debate on this matter.

Pointing out the institutional scope, especially at the level of the institutions of the member states, of some of the possible future developments of the Community order does not being against them. On the contrary, it means anticipating the

consequences that will inevitably call for institutional adjustment.

This is just another way to coming round to the crucial question of the "democratic deficit" of the EEC. Solution of the decisive question of external rules on budget policy through expropriation of national parliaments (who control the purse-strings to varying degrees; the most seriously expropriated would perhaps be the Italian Parliament) and anticipated expropriation of the European Parliament (where no power in budget policy was to be attributed to it) cannot be considered a logical outgrowth of the Delors Report or the elaborations of the Commission. Coordination of budget policies remains a fundamental matter for the functioning of democratic institutions. The traditional government-parliament dialectic at the national level becomes more extensive and more complicated. Its architecture must be designed in order to renew - not eliminate - the fundamental features of parliamentary democracy.

12. Dealing thoroughly with the subject of "democratic deficit" means opening the dossier of political union, perhaps even taking a look at the project approved by the European Parliament in 1984.

By the same method used until now, it may be useful to focus on only a few major questions: for example, the weaknesses in the way in which the problem of the Executive, on the one hand, and the problem of the Upper House in the transformation of the European Parliament into a legislating body, on the other, have been dealt with.

A digression on the two major politico-institutional scenarios may be useful in examining the problem of the Executive. The first is a European Community which, once the customs union of the single market has been achieved, limits itself to construction of monetary union and increases inter-governmental cooperation, but takes no significant or decisive steps toward political union. In the second, taking advantage of the binding effect of monetary union, Europe takes decisive steps towards mechanisms of strong and irreversible political integration, so as to constitute a political union, despite the differences in any future European institutional system from historical federal models.

In the first scenario, the Executive would be fragmented, given the present division of the executive function among the Commission, the Council of Ministers and the European Council. The support apparatus of the two councils would, of course, be rationalized and the European Parliament given greater participation in law making.

In the second scenario, the only one that can really solve the problem of "democratic deficit", the formation of an Executive with a distinct physiognomy and greater responsibility would be the primary institutional objective. Only a strong and well-defined Executive can be responsible to a strengthened Parliament.

13. A starting point for discussion of the Executive, is the often repeated statement that the Council of Ministers is a Senate in nuce (Senate of the states or Senate of the

governments). It seems reasonable that the organ which currently has deliberative power be transformed into an organ participating in the legislative function.

But can the Council be seen as a strictly or even prevalently legislative organ? Not really, irrespective of whether one considers the system today or a hypothetical and freer European institutional system of the future.

Considering the system today, the qualifying function of the Council of Ministers cannot be said to be its deliberating power. Actually, it seems to be responsible for the more essential aspects of the executive function, which has always included a regulatory power and, historically, a constituent power. Then again, Art.145 of the Treaty of Rome clearly seems to charge the Council with a strong although not exclusive executive function (political orientation and guiding power of the integration process), since the Commission holds the powers of initiative and proposal, as well as those of implementation and/or monitoring of implementation of regulations and Community policies.

The current division of the executive function would not lose meaning in the future either. The complexity of the European construction would prevent that, even if it were to become more federative. The deliberative powers of the Council could be cut back by attributing to it the power to authorize the Commission to introduce bills into Parliament and the veto power on laws deliberated by Parliament. Furthermore, the Council could preserve its emergency regulatory function with deliberations to be ratified by Parliament.

The Commission would have the exclusive power to propose legislation. Thus, the Council would be a kind of "joint presidency" of the Union with some of the typical attributes of a presidential system; it would in any case be a political body par excellence and not an Upper House. This naturally raises the question of the relations between the Council of Ministers and the European Council, as institutionalized by the Single Act. This problem has been felt since the Paris summit in 1974 (when the heads of state and government decided to meet twice a year). Since then, the role of the Council of Ministers as the decision-making center of the Community has been retrenched by the European Council.

The "joint presidency" referred to earlier could be a way to combine the two Councils. Appropriate internal articulation could distinguish a special role for a pro-tempore President and two or three committees of ministers with specific competences. That would avoid the division by political and administrative areas and competences envisaged today with a substantially extra-ordinem European Council that superintends the system of economic communities, on the one hand, and the system of inter-governmental security and foreign policy union on the other.

14. Therefore, if the Senate cannot be of the states (or more exactly, of the governments), is there any need at all for a Senate and, if so, what configuration should it have?

The current Community order is going to be set aside for a moment, in order to be able to examine more freely the institutional requirements arising from the political and social phenomena in Europe today.

As already recalled, the East is a question that is strongly felt throughout Europe. Another is that of regional and ethnic identities. The constant migratory flows from the Third World towards rich Europe will inevitably accentuate them. Both questions call for the urgent strengthening throughout Europe of regional governments and the adequate representation of this level of government in the European order. Could not the second house in the European Parliament be the Senate of the Regions?

In a Parliament with the full legislative functions set down in the Draft Treaty of 1984, a second house of this kind could be hypothesized. A constitutional example of a house of regions exists in Europe: the Bundesrat in Germany. Some of the features of the German structure could be adopted by the Community: second degree nomination (not by the regional governments, but by regional councils or parliaments); identification of laws requiring the approval of both houses; determination of other active and control powers, as well as mechanisms for settlement of conflicts.

It must be stated that the European Parliament addressed the need for greater representation of regions in its resolution on institutional reform approved last July. It states that "adequate importance must be reserved for the role of the regions both in the formulation of the laws of the Union and in their implementation, through attribution of consultative powers to a Committee of local and regional entities and with respect for the constitutional structures of each State". The call for attention to the different constitutional structures of the member states must not go unheeded. A transitory arrangement for a House of the Regions is required. But the transition from a consultative organ to a fully parliamentary organ must nevertheless be made, even if it calls for a separate two-house structure. The transition is important and dictated by caution and far-sightedness.

BIBLIOTECA  
11° Inv. 9983  
[18 MAR. 1951]  
UFFICIO AFFARI  
INTERNAZIONALI - ROMA