

Conference Report

Federalism and the Future of Europe

*21-22 September 2001
Basel, Switzerland*



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ABOUT THIS REPORT

On 21/22 September 2001, the Club of Three hosted a conference looking at *Federalism and the Future of Europe*. The event included expert participants and practitioners drawn from academe, politics, public life, business, think-tanks, and technology companies, from the three main partners of the Club of Three, Germany, France and the UK, and the host country, Switzerland. The aim of the event was to identify and discuss underlying characteristics of Europe's federal landscape. The conference was divided into three sessions. A working dinner was hosted by the sponsors Baklin Ltd on the evening of the first day. Baklin Ltd. generously supported the conference and travel costs were subsidised by Crossair Ltd. We are grateful to these, as well as to other sponsors for their generous support. The event was organised by Peter Arengo-Jones, supported by his assistant, Ursula Minder.

This report summarizes the main presentations, comments and discussions at the event. While every effort has been made to portray accurately the opinions expressed, yet in the interests of space and brevity there has been some omission and paraphrasing. The report was edited by Paul Flather, Secretary-General of the Europaeum. Any omissions of fact and attribution should be attributed to the Editor. The report is also available at <http://www.europaeum.org/publications/reports>

The views expressed in this report do not necessarily represent those of the Club of Three, or any of the groups that have contributed to this event. Photocopies may be made. When using any part of this document, please cite the Club of Three.

Further copies may be obtained, priced €10, from the office of Peter Arengo-Jones, Brunngasse 36, CH-3011 Bern, Switzerland.

PREFACE

In September 2001 the Club of Three organized its usual 24-hour conference on Federalism and the Future of Europe, sponsored by several Swiss organisations (see above). It was held in Basel and organised with great efficiency by Peter Arengo-Jones, assisted by Ursula Minder. The aim was to investigate federalism in the European Union, but to do so by examining different tendencies at work in Europe by reference to the three members of the Club of Three and the intriguing and rather successful Swiss model. We divided the sessions as follows:

First we looked at the Swiss Model of Federalism and asked if it was unique and what lessons it had for the rest of Europe? Thus, with the great insight of Professor Arnold Koller, former Swiss Federal Councillor and twice President of the Swiss Confederation, and Charles Favre, one of the Cantonal Finance Ministers, we covered the basic principles of Swiss Federalism, the distribution of powers between the Confederation and the Cantons; and fiscal Federalism in Switzerland.

The second session looked at different tendencies in EU countries, in particular the German Model of Federalism, the French Model of Regionalism and Centralization, and finally the British Model of Devolution.

The third session examined Federalism and the EU, and in particular asked the following questions:

- *Is subsidiarity a workable concept for decentralization within the EU?*
- *Which powers should be reserved explicitly to the member states?*
- *Towards a federal constitution of the EU?*

ORGANISER'S NOTE

The idea of this meeting grew out of a conversation with Lord Weidenfeld and Lord Alexander about the need to rescue the term “federalism” from the morass of misconceptions into which it has fallen – as when “a federal Europe” is taken to mean “a centralised, super-state Europe”, when in fact that is exactly what it does not mean.

The juxtaposition of the various models of federalism was authoritatively brought out during the sessions and we make no apology for producing a rather detailed report, even if circumstances have delayed it.

Particular interest was aroused by one of the sub-topics, Swiss fiscal federalism - whereby people have a considerable measure of control over public expenditure at the local and federal levels, at the same time as having a unified currency. Another meeting could well be devoted to the question of whether - and if so how - some elements of the Swiss model of federalism could be applied in a wider European context. If this were possible, even in small measure, then it could conceivably go some way to counterweighing the fears of many EU citizens that control over their affairs is slipping out of their hands.

Many eminent personalities contributed to making this conference not only possible but also stimulating and successful, and the organisers are grateful to them as well as to everyone involved in any way.



FEDERALISM AND THE FUTURE OF EUROPE

BASEL: 21/22 SEPTEMBER 2001

PROGRAMME

Friday 21 September

- 14.30 Welcome and brief introduction by Lord Weidenfeld, Professor Arnold Koller, former Swiss President, and Peter Arengo-Jones,
- 15.00-16.30 Session 1: THE SWISS MODEL OF FEDERALISM:
- Is it unique or does it have lessons for the rest of Europe?
 - Basic principles of Swiss Federalism and Distribution of Powers between the Confederation and the Cantons
 - Fiscal Federalism in Switzerland
- Moderator: Lord Alexander
- Speaker: Professor Arnold Koller
- Respondent: Conseiller d'Etat Charles Favre
- 16.30 - 17.00 Break
- 17.00 - 18.45 Session II: DIFFERENT TENDENCIES IN EU COUNTRIES
- The German Model of Federalism
 - The French Model of Regionalism and Centralisation
 - The British Model of Devolution
- Moderator: Professor Vernon Bogdanor
- Speakers: Professor Ingolf Pernice
Prof. Jean-Claude Sergeant
Professor Vernon Bogdanor
- 18.45 – 19.00 Break

19.00 - 20.00	APERITIF	offered by the Cantonal Government of Basel Stadt
20.00	DINNER	
	Moderator:	Lord Weidenfeld
	Speaker:	Helmut Maucher, Honorary Chairman of Nestlé “Some thoughts concerning the future of the EU and its competitiveness”

Saturday 22 September

09.00 - 12.45 (with break at 10.45 - 11.15)	Session III: FEDERALISM AND THE EU	
		- Is subsidiarity a workable concept for decentralization within the EU? - Which powers should be reserved explicitly to the member states? - Towards a federal constitution of the EU?
	Moderator (before break):	Lord Alexander
	Moderator (after break):	Dr. Max Frenkel
	Speakers:	Professor Derrick Wyatt Ambassador Joachim Bitterlich HSH Prince Nicolas of Liechtenstein
12.45 – 13.00	Break	
13.00	LUNCH	
Afternoon:	Optional visit to Beyeler art collection, by courtesy of Crossair	



PARTICIPANTS

France

Edmond Alphandéry	Chairman, CNP Assurances
Professor Jean-Claude Sereant	Directeur, Maison Française, Oxford

Germany

Ambassador Joachim Bitterlich	German Ambassador to Spain
Professor Jo Gröbel	Director, European Institute for the Media
Dr. Josef Janning	Director of Research Group on European Affairs at Centre for Applied Policy Research, Ludwig-Maximilian University, Munich
Helmut Maucher	Honorary President of Nestlé S.A.
Ministerialdirektor Wolfgang Nowak	Ministerialdirektor, Bundeskanzleramt
Professor Dr. Ingolf Pernice	Director, Walter Hallstein Institute for European Constitutional Law at Humboldt University Berlin
Prof. Dr. Hans-Peter Schneider	Direktor, Institut für Föderalismusforschung, Universität Hannover
Professor Dr. Michael Stürmer	Erlangen-Nürnberg University; Die Welt
Dr. Otto von der Gablentz	Principal of the Europa Kolleg in Bruges
Dr. Hans Christoph von Rohr	Vorsitzender, Industrial Investment Council GmbH
Dr. Martin Wittig	Partner, Roland Berger AG (Zürich)

Liechtenstein

**SAS le Prince
Nicolas de Liechtenstein**

Liechtenstein Ambassador to Belgium and
European Union

Switzerland

Conseiller d'Etat Charles Favre

Finance Minister, Vaud Cantonal Government

Dr. Max Frenkel

Home Affairs Editor, Neue Zürcher Zeitung;
specialises in European issues

**a. Regierungsrat Prof.
Dr. Kurt Jenny**

Former Cantonal Government Minister, Basel
Stadt; official representative of the Canton at this
Club of 3 event

Dr. Pierre Keller

Senior Partner, Banque Lombard Odier; past
Vice-President of International Committee of the
Red Cross

**a. Bundesrat Professor
Dr. Arnold Koller**

Recent Federal Councillor (i.e. Swiss Cabinet
Minister) and Federal President 1990 and 1997

Professor Dr. Ulrich Zimmerli

Professor of federal and cantonal law, University
of Berne; recent President of Council of States

United Kingdom/Switzerland

Peter Arengo-Jones

Former Counsellor at British Embassy, Berne;
now Marketing Consultant

United Kingdom

Lord Alexander of Weedon	Chairman, Royal Shakespeare Company; Chancellor of Exeter University
David Anderson QC	Leading Barrister
Professor Vernon Bogdanor	Professor of Government, Oxford University
Dr. Paul Flather	Secretary General, Europaeum, Oxford University
Edward Garnier QC MP	Conservative MP for Harborough
Sir Ronald Grierson	Industrialist and Banker
Lord Hannay	Senior Diplomat: i.a. past Ambassador to European Communities
The Rt. Hon. The Baroness Jay	Recent Leader of the House of Lords and Minister for Women
Dr. Larry Siedentop	Chair of Sub-faculty Politics & International Relations, Keble College, Oxford
Lord Weidenfeld	Chairman, Weidenfeld & Nicolson
Professor Derrick Wyatt QC	Professor of Law, Oxford University

Session I: THE SWISS MODEL OF FEDERALISM

OPENING REMARKS:

Lord Alexander

I do not think, contrary to any impression, that we take the view that the word 'federalism' is a term of abuse. It was Gladstone who said that the British Constitution depends critically on the spirit and good nature of those who operate it. There is therefore intended to be a logical sequence in this programme so that we can reach into the meaning of federalism in the EU by tomorrow morning, via the consideration of different tendencies in individual European countries. We do know

that the Swiss not only have a remarkably successful record as a country, but also have a highly developed model of federalism. So, it is a privilege for us that we begin with the first address by Professor Koller, who has twice been the Federal President. Then we will hear from Conseiller d'Etat Charles Favre, who is finance minister of the French-speaking Canton of Vaud, about a lynchpin of Swiss federalism, namely the considerable measure of fiscal autonomy in the Swiss system. After that we will get the opportunity for questions and discussions.

Basic Principles of Swiss Federalism

Professor Arnold Koller

I would like to start my introduction by proposing two theses:

- (1) *Without federalism, the Swiss Confederation would not exist;*
- (2) *There is no general theory of federalism.*

Without federalism, the Swiss Confederation would not exist – this is, above all, an historical fact. The 25 cantons which joined together to form the Swiss Federal state in 1848 were already states in their own right (some of them for several centuries) and were already linked with one another in a loose alliance. The victors in the struggle for the creation of a Federal state were wise enough to leave the cantons considerable autonomy, equality and effective participation in the forming of the collective will of the new central state.

Philipp Anton von Segesser, originally an opponent of the Federal state, formulated it in 1848 in the following, striking words:

"For me, Switzerland is of interest only because the canton of Lucerne – my fatherland – is part of it. If the canton of Lucerne no longer existed as a free and sovereign member of the Confederation, then the Confederation would be as unimportant to me as Timbuktu."

One hundred and fifty-three years later, the idea that, without federalism, there would be no Switzerland, is so self-evident as not to

require any lengthy proof. Without federalism, whatever the detailed criticisms that can be made of it, it is quite simply impossible to conceive of the Confederation as a state. For how should speakers of four different languages and, above all, members of four different cultures live together in such a small space peacefully and successfully as citizens of a state, if that state did not offer them the opportunity, as the preamble to our Federal Constitution puts it, *"to live our diversity in unity, respecting one another"*. Actually, during my years in the Federal Council, I was constantly amazed to see how different not only mentalities could be, but even certain fundamental political standpoints, above all between language areas but also even between cantons.

Let me sketch, even if briefly, a few examples: people in western Switzerland are more open to things that are foreign and new, including European integration, than in German-speaking Switzerland. On the other hand, our west-Swiss fellow citizens apparently expect more from the state, even in this age of privatisation and liberalization, than the average German-speaker, but were more forbearing when, during the Cold War, our police sometimes tended to be over-zealous in his intrusions into citizens' private lives. Over and over again, political controversies, with the help of the media, convulse one part of the country, but provoke only relatively mild reactions in the other, and vice versa, not to mention the canton of Ticino's own, and again different attitudes and reactions. The linguistic and cultural differences are admittedly not the only reason why federalism is an existential

necessity for Switzerland, but they are the most important ones.

Turning to my second point: there is no general theory of federalism, not even of Swiss federalism. For example, while the constitutive elements of the liberal state under the rule of law are today generally recognized (freedom, equality, the principles of legality and proportionality, distribution of powers, legal protection), federalism is characterized by a degree of autonomy for member states – that is, the cantons – in their own areas in and their collaboration in the shaping of the will of the central state, but above all by flexibility and adaptability towards different historical, material and political relations. There are no generally agreed criteria as to how much autonomy in the areas of distribution of powers, finance and organization, sub-units of the state must have and what form of collaboration in the shaping of the will of the central state should take in order for one to be able to rightly speak of a federal state. The multiple ways of constructing it are the attraction of federalism, which is more an idea than a concept with a fixed meaning. Thus, federalism – also in Switzerland – was, and is, an ongoing process of constantly finding a new equilibrium between the central state and its member states.

BASIC CONDITIONS OF THE FEDERAL PROCESS

This federal process takes place in a predetermined, real frame controlled by constitutional law. In Switzerland, that means that the Confederation 'faces' 26 cantons, six of which are half-cantons, with half a cantonal vote and only one representative in the Council of States. The 26 cantons consist, in our three-tier state, of some 3000 municipalities. One of the cantons (Graubünden) is trilingual, three cantons are bilingual (Bern, Fribourg and the Valais), the other 22 are monolingual, 17 being German-speaking, 4 French-speaking and one Italian-speaking. The most populous canton, Zurich, has a population 83 times that of the smallest, Appenzell-Innerrhoden. The difference in prosperity, measured as *per capita* income, between the richest canton, Zug (Fr. 68'423) and the canton of Jura (Fr. 33'054) is considerable.

The constitutional law framework of the Swiss federalist process was brought up to date on 18 April 1999, when the cantons and the people accepted the new constitution. Besides the creation of a clear system of competences and a unifying of the language, this reform incorporated into the constitution several norms relating to the collaboration

between Confederation and cantons, to which we will return.

Accordingly, the central elements of the Swiss federal state are:

- (1) The autonomy and sovereignty of the cantons, which are not only decentralized administrative units of the Federal Government but also constituent states of the confederation;
- (2) The allocation of responsibilities between federal government and cantons according to the basic rule set out in Article 3 of the Federal Constitution, according to which the Confederation is competent only for matters which are attributed to it by the Constitution;
- (3) Federalism based on partnership, consisting of collaboration in solidarity with one another and mutual consideration between the Confederation and the cantons;
- (4) Participative federalism, whereby the cantons collaborate in shaping the will of the Confederation;
- (5) *Vollzugsföderalismus*, whereby the implementation of federal law is primarily in the competence of the cantons;
- (6) The three-tier structure of the state, with Confederation, cantons and municipalities, whereby the organization of the municipalities is a matter for the cantons, but the Confederation must take into consideration the effects of its actions on the municipalities.

I would like, now to go into detail on two of these elements, namely the distribution of powers and the collaboration of the cantons in shaping the will of the Confederation.

Two fundamental principles govern the distribution of powers between the Confederation and the cantons. One is the 'Kompetenz' of the Confederation, which is a basic principle of any federal state. In the context of this competence, the Confederation can, by means of changes to the Constitution (in Switzerland only with the agreement of a majority of the people and of the cantons), itself determine which tasks are allocated to it. The approximately 140 partial revisions of our old Constitution since 1874 have been concerned mostly with the creation of new federal competence in the areas of protection of the environment, regional planning, radio

and television, nuclear energy, etc. According to the new Federal Constitution, the Confederation in such cases must bear in mind the principle of subsidiarity:

"The Confederation shall assume the tasks which require uniform regulation and the Confederation shall leave the Cantons as large a space of action as possible, and shall take their particularities into account." (Article 42, 46)

The second fundamental principle is contained in the old and the new Article 3, which, on account of its importance is often referred to as the basic federal norm of Switzerland. It states:

"The Cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution; they shall exercise all rights which are not transferred to the Confederation."

Retention of this article was one of the main concerns of the cantons during the formulation of the new Constitution. The draft Constitution of 1977 – which proposed an ‘open’ Constitution, in which separation of competences between Confederation and cantons was to be derived primarily from norms aimed at ‘main responsibilities’ – ran up against the determined opposition of the cantons. Article 43 BV therefore stresses the sovereignty of the cantons as follows:

"The Cantons shall define the tasks which they shall accomplish within the framework of their powers."

And Article 47 explains:

"The Confederation shall respect the autonomy of the Cantons",

meaning their autonomy in the areas of tasks, finance and organization.

All in all, one can, in consequence, certainly say that our Constitution, through the distribution of powers that I have just sketched, gives the cantons a strong position. The weaknesses of Swiss federalism spring from the widely differing size and, above all, financial strength of the cantons. Apart from material reasons, it was mainly financial reasons, which over and over again led to the transfer of tasks from the cantons to the Confederation. So far, the repeated attempts to transfer federal tasks back to the cantons have, as a whole, been relatively fruitless, perhaps because our fellow citizens fear that the prevailing levels of performance might be compromised if a

task were to be transferred back to the cantons. The latter have, however, retained a dominant position in the areas of education, health and police. The important – from our viewpoint – financial autonomy enjoyed by the cantons is, in any international comparison, outstanding. On the other hand, the lack of a constitutional court is an institutional weakness of Swiss federalism. There is doubtless a need for

reform. At the moment, Confederation and cantons are together seeking, in a major project ‘New Financial Equalization’, to arrive at a new division of tasks in combination with a new system for financial equalization. The next speaker, Hr. Regierungsrat Favre, will inform you about this.

Alongside the division of tasks, the collaboration of member-states in shaping the will of the central state is considered to be an essential feature of a federal state. In Switzerland, the cantons collaborate in many ways in shaping the will of the Confederation. For all changes to the Constitution (total and partial revisions), referenda are required, and the proposed changes must receive the approval of the majority of the people and of the cantons. Happily, the majority of the cantons rarely votes differently from the majority of the people. Of the 337 referenda that involved changes to the Constitution carried out since 1874, only seven failed because a majority of the cantons did not give their approval. In each of these cases, it was a matter of transferring new competences to the Confederation, so that one can rightly say that, on these occasions, the requirement of approval by a majority of the cantons fulfilled its most fundamental function, namely the protection of cantonal sovereignty. In the politically important referendum on entry to the European Economic Area – which showed a record voter participation of 78 per cent – the two majorities very nearly went along different paths (49.7 per cent of ‘yes’ votes and 16 ‘no’ votes from the cantons), which, had it happened, would doubtless have imposed a heavy burden on our federal state. With the increasing move of population to the towns, in which some 70 per cent of the people now live, great tensions might build up between the large, urban cantons and small, rural ones.

The Council of States, as our second parliamentary chamber is called, to which every canton sends two representatives chosen by the people, is, unlike Germany's second chamber, not a body bound in its activities by directives of the Länder but, on the American model, an independent organ of the Confederation. Although, in the Council of States, cantonal and party-political influences

mix, on the whole the Council fulfils the role of guardian of federalism. While the members of the Council of States are chosen by the simple majority system, the members of the lower chamber are chosen by proportional representation.

When legislation is being framed, the cantons must be invited to express themselves in what could be called the discussion stage of the process.

"The Cantons and the political parties shall be heard in the course of the preparation of important legislation" (Article 147).

In view of the large numbers of people addressees in these procedures and of the divergences between the positions of the 26 cantons, the latter have in recent times successfully endeavoured to bundle their votes. In 1993, they founded the Conference of Cantonal Governments in order to ensure that the voice of the cantons was as united as possible in the discussion of important business, such as the preparation of the new Federal Constitution or questions relating to European integration. Moreover, since 1998, there have been regular meetings between a delegation of the Federal Council and the representatives of the Conference of the Cantons in 'federalistic dialogue' for exchanges of views on topics relating to federal collaboration. The rules of cooperative federalism – which were previously unwritten constitutional law – have now been incorporated into the new Constitution (especially Article 44 and 48).

"The Confederation and the Cantons shall collaborate, and shall support each other in the fulfilment of their tasks. They owe each other mutual consideration and support. They shall grant each other administrative and judicial assistance. Disputes between Cantons, or between Cantons and the Confederation shall, as far as possible, be resolved through negotiation or mediation."

Special emphasis should be placed on the new rights, enshrined in the Constitution, of the cantons to collaborate in matters of foreign policy. Foreign policy was and is a federal matter. The cantons could only operate in the area of so-called minor foreign policy, i.e. they had the right to sign, with foreign authorities, treaties pertaining to their area of competence provided they used the mediation of the Confederation, and to deal

directly with subordinate authorities in foreign countries. Above all in the context of the increasing internationalisation of law, the cantons found themselves more and more limited in their very own area of competence, so they rightly demanded more say in the preparation of foreign policy decisions. Reflecting a practice followed since the preparation of the EEA treaty, Article 55 states:

"The Cantons shall participate in the preparation of decisions of foreign policy which concern their powers or their essential interests" and "The position of the Cantons shall have particular weight when their powers are concerned. In these cases, the Cantons shall participate in international negotiations as appropriate."

I have been able to give you only a very incomplete picture of the central elements of Swiss federalism. Thus, I have had to omit a discussion of horizontal cooperative federalism among the cantons, of the important legislation on languages, of federal guarantees, etc. It is striking that the new Federal Constitution contains no specific norms for the protection of minorities. This may be connected with the fact that we like to see Switzerland – according to the division criterion (language, religion, parties) – as an aggregation of constantly changing minorities, which doubtless facilitates considerably the task of living together in peace.

But one could also say that Switzerland's whole political system, with its rights of referendum and initiative, its federalism, its extensive liberties and many other things, is designed to protect minorities. Thus, Latin Switzerland, without there being any corresponding clause in the Constitution, regularly occupies two, even three of the seats in the seven-person Federal Council.

To conclude, I should like to attempt an overall appraisal of the Swiss Model of Federalism. As Professor Ronald Watts, in his informative book *Comparing Federal Systems*, rightly says, measuring the comparative degree of federal autonomy of member states is extremely complex on account of the multiplicity of indices (legislative, administrative, financial decentralization, participation in federal decision making). But even he comes to the conclusion that, all in all, Switzerland is one of the most decentralized federal states in the world.

Is the Swiss Model of federalism unique or does it have relevance for the rest of Europe?

The organizers of this meeting are asking us this question.

Every federative state is, by virtue of its historical, institutional and political characteristics, unique. There is no general theory of federalism. And similar federal institutions can produce different results in different environments. (Procedures for changing the constitution in Australia and Switzerland). Nonetheless, federations can learn from one another. And perhaps the European Union, even if it is not a federal state and even if Switzerland is not a member of it, can learn from the experiences of this old federation and, to a certain extent,

profit from what it learns. The last word belongs, however, to Harvard Professor Karl Deutsch:

"In Switzerland, something has been achieved by the taking of decisions, by a history which has been shaped by people, which shows that it is possible over a long, shared time of great achievements, to hold together quite different regions and linguistic communities..."

And, I should like to add, Swiss federalism was an important prerequisite for this feat.

Federalism and the Future of Europe

Charles Favre State Councillor

I would like to thank you for your invitation and for your interest in federalism, in particular the kind that we are familiar with here in Switzerland. I have the great honour of speaking to you today about a singular but essential part of federalism – taxation.

CONSTITUTIONAL PROVISIONS

As Professor Koller reminded us, Swiss cantons are sovereign. Article 3 of the Federal Constitution states:

"The cantons are sovereign as their sovereignty is not limited by the Federal Constitution, and they exercise all rights which are not delegated to the Confederation."

The wording of this article highlights two things. Firstly, that the Swiss central state – the Swiss Confederation – has been built from the bottom upwards by the successive delegation of competence from the cantons to the Confederation. Secondly, that the Swiss cantons – the cantonal states as they are also known – are sovereign and therefore have original right over tax sovereignty. They were not given this right by a central state, but it is a right which precedes the creation of the modern Swiss Confederation resulting from the 1848 Constitution. This is a crucial point to remember in order to understand how such a tax regime exists and functions relatively effectively, although admittedly not without a number of problems.

A THREE-LEVEL TAX SYSTEM

In Switzerland, the three different levels of public authority impose taxes. As I mentioned, the Confederation and the 26 Swiss cantons have tax sovereignty, that is, the right to levy taxes and to freely use the resulting tax revenues. In addition to these two institutional levels, 3,000 *communes* enjoy delegated tax sovereignty, which generally focuses on the same areas as cantonal taxation.

The Federal Constitution holds that indirect taxation, essentially valued added tax (VAT), is the responsibility of the Confederation. This is logical, in that these consumer taxes can only be properly imposed by a central authority. On the other hand, direct taxation falls under the responsibility of the cantons. Direct taxes include personal income and wealth taxes, as well as corporate and capital taxes – on companies in the widest possible sense. Since 1941 the cantons are authorized by the Confederation to impose direct federal income and corporation tax. The revenues go to the central authority, which returns part of it to the cantons, based on a mechanism which I will describe later on.

Tax returns are therefore the jurisdiction of the cantons, and are obviously subject to federal provisions. Here also, the division of work is logical in that the tax is calculated according to the financial capacity of each individual. Since the cantons are closer to the general public, they are in a better position to levy this tax than the Confederation. Up until the First World War, Confederation revenues were confined to customs taxes. Later the armament process led to the introduction of a war tax. As in other countries this tax was not abolished at the end of the conflict, but was continued in other forms. During the Second World War the tax

for national defence appeared – the precursor of the direct federal tax that I have just mentioned. Also during this period the Confederation introduced the tax on company turnover (known as ICHA), which was replaced in 1995 by VAT.

I would now like to quote several figures. In 1998 the average tax burden for OCDE countries stood at 37 per cent of GDP. At the top of the list of countries with the highest tax burden was, unsurprisingly, Sweden, with 52 per cent. Switzerland, with 35.1 per cent, is below the OCDE average. As a reminder, the United States and France figures are calculated at 28.9 per cent and 45.2 per cent respectively. The United Kingdom and Germany are around the OCDE average.

To be completely accurate, I should say that the trend over the last 10 years brings us closer to the industrialized countries' average. As a result there has been an extremely lively debate in our country concerning the need to slow this trend, which makes Switzerland progressively less attractive compared to its European competitors.

In 1998 again, the Swiss public authorities – Confederation, cantons and *communes* – collected 85 billion Swiss francs in tax revenue (table on page 11). In general, 47 per cent of this amount went to the central state, 30 per cent to the cantons, and 23 per cent to the *communes*. Out of the 85 billion Swiss francs in revenue, 60 billion come from income and wealth taxes (direct taxation), and more than 20 billion from consumer taxes.

TAX COMPETITION

From our point of view, the main advantage of decentralized tax sovereignty is that it allows tax competition between cantons, and actually limits growth in public expenditure, and thus the state. The disadvantage of the system is closely connected with these benefits: within are the roots of the policy of taxation undercutting, used in particular to attract the top individual and company tax payers. This phenomenon has existed for a long time between countries and it is well known that it occurs between Swiss cantons. However, with the fast expansion of globalisation, and the mobility of companies and their capital, it too has grown.

THE IMPORTANCE OF DIRECT DEMOCRACY

It is well known that effective taxation is closely linked to its perception among tax

payers. It should be thought of as fair and tolerable – both eminently subjective ideas. Specialists also speak about a 'subjective pain threshold'. However, these elements are particularly important in Switzerland where the tax burden is connected to federal or cantonal legislation, and therefore subject to a popular referendum. Any law passed by a federal or cantonal Parliament may indeed be contested by a referendum and submitted to a vote. In Switzerland this means that a tax cannot be introduced or modified without popular consent.

At the federal level, the rate of VAT (currently 7.6 per cent) is written into law and any change may therefore be subject to a referendum. Most cantons have a tax law and annual laws, which fix the tax rate, and, where it is possible each time, launch a referendum and a popular vote. Believe me, this is a right that our citizens rarely forego.

Undoubtedly this gives the country a unique position, where the citizens freely decide on their taxes and the amount to be increased, or even decreased (reflecting more the current trend). Obviously this uniqueness is a powerful disincentive against any increase in the tax burden and growth in public expenditure.

THE DISTRIBUTION OF WEALTH IN A FEDERAL STATE

The main problem facing a decentralized state is wealth distribution between the different regions of the country. Clearly, since geographic, economic and demographic conditions are not uniform, tax returns and the amount allocated to public authorities will not be the same and thus a problem of equity exists. As I stated earlier, the danger lies in the emergence of inequalities between different cantons which could threaten national cohesion. I do not need to remind you that Switzerland is a multicultural nation, bringing together three, even four linguistic groups, and as many different cultures. Concern about balanced economic and social development is inevitably at the heart of political debate.

Nowadays these inequalities between cantons clearly exist. Cantonal revenue (a cantonal GDP) doubles when you compare a small agricultural canton with small and medium-sized enterprises, such as the Jura, with a major financial and services centre such as the Canton of Zug. There is a 229 per cent difference in tax burden between these two extremes and the ability to pay in the Canton of Jura stands at 30 while it is 206 in Zug (the national average is 100). There is no doubt that a crisis level has been reached in terms of fair distribution of wealth. Such inequalities

have increased even though over the last few years the Confederation and the cantons have introduced mechanisms to distribute available resources (horizontal financial realignment).

Cantons impose income and wealth taxes, as well as corporate and capital taxes, of which they keep the entire revenue. At the same time, they are authorized by the Confederation to impose a direct federal tax. In so doing, they directly receive 17 per cent of the tax receipts and 13 per cent is given back to them according to their financial capacity which we have just talked about. The richest cantons receive proportionally less than the poorest.

In addition, it should be remembered that the flow of money from the Confederation to the cantons is not simply a redistribution of the direct federal tax, but also includes the allocation of numerous subsidies which are also normally calculated based on financial capacity.

The result of this policy is very clearly seen by the percentage of cantonal revenues received from the Confederation (table on page 14). This figure rises from 10 per cent for the richest cantons to more than 50 per cent for the more modest. This indicates that the budgets of certain cantonal states depend for more than half of their revenue on monies from the Confederation.

TAX HARMONIZATION

Federal tax harmonization has been introduced since the beginning of the year. As is often the case in this country, where any legislative procedure takes a great deal of time, it has taken 23 years to adopt and introduce provisions which lay down minimum tax harmonization between cantons – also known as formal harmonization.

Harmonization has been necessary due to the increase in company, corporation and individual mobility. It focuses on tax liability and the subject of taxes, the procedure and legal rights in terms of taxation, and to a certain extent, taxation over time. On the other hand, harmonization does not deal with the setting of tax scales, tax rates or exemptions, which remain the responsibility of the cantons.

NEW EQUALIZATION

At the dawn of the 21st century Switzerland enjoys an extremely subtle tax and financial equalization system which is well suited to its political and institutional sensitivities.

Nevertheless, it is also a system characterized by its heaviness, a lack of transparency and, for several years, by its inability to prevent growing inequalities between cantons. Consensus has therefore emerged regarding the need to develop a system better defined by historical balances of power than by concern for coherence or efficiency.

From here we come to the other paradox: a Confederation policy of financial support becomes an incentive to spend. This is somewhat similar to personal social security payments which would be without any incentive for the person benefiting from it. The difficulty lies in the actual nature of Swiss state organizations: a relatively weak central authority compared with others abroad, cantons which jealously guard their prerogatives, and powerful tools for popular intervention such as the right to referendum and the right to initiate legislation.

Acting as a balance, there is the threat of the introduction of a single tax rate, known in our jargon as material standardization. Such a request is supported by political groups on the left, however the cantons are not at all in favour. This is because a single tax rate would sound the knell of their tax sovereignty and, thus, their political sovereignty.

REORGANIZATION OF FINANCIAL EQUALIZATION

Work has therefore started on the Reorganization of Financial Equalization (RPT). The aim is to:

- clarify the share of work and its financing between the Confederation and the cantons,
- institutionalise intercantonal collaboration and provide compensation for expenses,
- introduce new adjustments for resources and expenditure.

This clarification has been necessary after it was realized that the competence granted to the Confederation, cantons and even to the *communes* is more difficult to identify. There is a lack of effectiveness in carrying out state missions and an increase in costs for the authorities. The economic and financial crisis in the 1990s increased this awareness. Intercantonal collaboration is borne out by the growing discrepancy between those who pay and the users. These are the excesses which are well-known in the health, training and transport sectors.

Finally, it has been necessary to change the criteria defining the financial capacity of the

cantons and the share of resources. Indeed, cantons are classified according to their financial capacity. This is an index on which the financial realignment is based, allowing a redistribution of resources from the Confederation to the cantons. This financial capacity is currently calculated according to expenditure, namely the tax burden and expenditure connected to mountainous regions. It is also calculated according to resources such as cantonal income and the taxpaying ability (tax revenues).

The indexes chosen to calculate the financial capacity are eminently political since they favour certain cantons to the detriment of others. The choice is not a scientific one, but rather the result of a balancing of interests and power play.

While taking into account revenues and expenditure, the current system encourages public expenditure. The new mechanism will be based entirely on a resource index. It aims to reduce the differences between cantons, without their expenditure policy, which is freely agreed upon, influencing the aid which they have available.

However, any change to the system involves gains and losses for the partners concerned and generates strong opposition. The Confederation has therefore had to commit itself financially to a reform which it hoped would not affect its budget. It has created a compensation fund to cushion the change from the current system to the future one.

Having received the support of most cantons concerned, the Reorganization of Financial Equalization (RPT) should still be approved

by Parliament, followed by the general public. If it is accepted, the adventure will have taken 10 years – quite a short time compared with the country's legislative timetable.

CONCLUSION

Confronted with the complexity of the system which I have just described, a number of you will be wondering "So what?" In the light of the subject of our meeting – Federalism and the future of Europe – I would like to put forward the following conclusion.

There is no perfect institutional system. Moreover, there is no perfect taxation system. There are only systems that are justified by history, closely linked to a culture and depending on a particular economic and social environment. Since 1848 the history of the Swiss Confederation has taught us that in order to assemble people from different origins and cultures a common determination is needed – common willpower to build what is known in German as a *Willensnation* (a very determined nation). The condition *sine qua non* for the emergence of such willpower is the guarantee of respect for specific local characteristics and traditions. This is the reason why the system can only be built from the bottom upwards, from a commonly agreed progressive delegation of competence. In this context, the taxation issue, which is closely linked to the relation the citizen maintains with the state, together with ideas of equity and equality of treatment, should be tackled in the same way. This is the only means of preventing European citizens of the future from feeling a sense of depredation when faced with the European institutions and the financing which they will inevitably need.

DISCUSSION:

Professor Stürmer

I am not sure that the Swiss or the United States are the oldest systems of federalism surviving today, I suggest that we look at the German Commonwealth or the Germanic Commonwealth of which Switzerland was a part. It can teach us a lot because it was a balanced system until the French revolution swept everything aside, and made the Germans crazy. A balanced system which, in a way, was united only for defence, unless the Germanic countries, the princes or the cities fought each other, in taxation, and in some basic civil regulations. To refer to this structure as an

empire, is simply misleading, as an empire, Napoleonic or British, is strongly centralised. There were two attempts to centralise the old Germanic Commonwealth, one was in the religious war during the Reformation, the other was in the 30 Years War, which did not work. So, today, the European construction of course can learn a lot: first, it has to respect the sovereignty of the nation states. There are of course a lot of common needs to be organized, possibly defence, certainly the economy and environment, possibly taxation. As for the difference in taxation amongst the Swiss Cantons, obviously every finance minister in Europe believes that it is a wonderful idea to harmonize upwards. I think we should all take up our sword and fight it. There is a lot that we can learn, through great respect for the historical components. It also gives

reassurance to those Europeans following either the British or French model that federalism is the best offer they can have for the future. Surely the nation state alone can no longer exist, but it can exist in this kind of Commonwealth. Is it too late to have called it European Commonwealth and not European Union as it would be much better understood where we are going, and why we have to go that way?

Baroness Jay

Do the speakers accept that the way they describe the evolution of Swiss model has made it a very successful model? Is it the case that the particular examples on financial and taxational measures that are in place, could only have been built with a very basic historical understanding of the position of a country in the way that was just described, and the individual acceptance of the advantages of the cohesion by the citizens of that geographical region, whether one talks about it as a Commonwealth or Union or whatever. When I debate about this kind of issue in the UK, it is about the central government seizing authority in power *downwards*. Yet the speakers are saying this system could only be taught from the bottom *upwards*, from the commonly agreed progressive delegation of competence. Is this the only way to achieve federalism? If so, I think there are some difficulties when one looks at different nation states within the European Union, who do not have any historical precedents to build on.

Professor Koller

It was mentioned that the old Confederation of Switzerland was very successful for 500 years. But in 1798, of course, it was a very important weakness of decision-making power which put us under occupation. Every Canton had one vote, and Bern was left completely alone. Switzerland was invaded by French troops, and we had years of French occupation. After 1798 it was necessary to change from the confederation to a new federal state. I think a very big difference between the EU and Switzerland is that we make our foreign policy and an army and practically nothing else. It was after the foundation of the Federal State, that we had one common market, which was only realised in 1874. Of course then the formation of the Swiss Federal state and the formation of European Union, from this point of view, are very different. I think that normally you

forget that the sense of cohesion in Switzerland the nation is very fragile.

Professor Bogdanor

For anyone who has spent their academic life studying the British Constitution, two things strike one about the Swiss, which is really at the opposite pole from ours. Firstly, the tremendously large role that you give to the people in the Swiss constitution and legislative process. In Britain, until 1975, we thought that the use of the referendum was something unconstitutional: we now have come to adopt it. Secondly, you do not, as one might expect to, rely on the traditional idea of majority and minority. You see 'the general will' as something to be kept at bay, through your power-sharing systems of government. At every level of government a tremendous search for agreement to diffuse tension. This idea of sharing power between different institutions is very much present in European institutions. But there is no role for the people in the European constitution. If one looks at Europe today, I think one has to say that alienation and disenchantment with Europe are very powerful elements. I wonder to what extent you think that might be remedied by adopting the Swiss principle and giving the people a role in legislation at the European level of government? Can we use the principle of the Swiss constitution to create Europeans?

Lord Alexander

The people are, we can assume, educated in taxation, so educated that on certain occasions they would even vote for an increase in taxation. Has this led to a very sophisticated electorate, and, if so, following Professor Bogdanor, can this be translated to a wider geographical area?

Professor Koller

I think, of course, direct democracy is the most important feature for this feeling of cohesion. For people during the Second World War neutrality was a very important issue. Most young and old people would say that what they liked most about our country is our participation in the democratic process and our right to use initiatives and referenda, and no longer neutrality. Whether you can find new mechanisms to adapt some elements of our direct democracy to the European Union is difficult to say. Last year, I was in California and I was very impressed. They have as much direct democracy as we have, and the state contains 30 million people. So, you cannot argue that direct democracy only works in small countries like Switzerland. More EU member states are changing over to referenda.

Mr Blair is saying: 'I shall not introduce the Euro without a referendum'. Italy has a referendum. Germany has had difficulties, but I have heard that next year for the election they may make a move in this direction.

Charles Favre

I would add one thing: I am very proud of our direct democracy and the results are very good. But we have one big problem, our Foreign Policy. That is very new in our country. It has been assumed that Switzerland had no foreign policy, that we are neutral. But now our people must vote on issues for and against joining the European Union, or the European Economic Area. I am hopeful, over time, we shall overcome these sensitive things.

Larry Siedentop

I was stumped by the remarks about the territorial principles sometimes conflicting with the majority principles. I do think one of the problems facing Europe, especially for those political cultures shaped by the state, is that anything which looks like a constraint on the majority principle looks outrageous. Last November in Europe, there was a reaction to the election of Bush, and a discomfort felt by many Europeans when it looked as if a territorial principle was going to constrain the majority principle, a discomfort not felt by that larger part of the American people.

Ambassador Bitterlich

Professor Koller, what would be your advice to the Europeans when you look at direct democracy? Should we, in the direction of the US-experience, introduce more referenda at local level in Europe? The American experience in this area seems to be excellent – could this not be the best advice – in the sense of "best practice" – to raise the interest of European people in politics?

Second question, when I look at the federal concept of Switzerland, it seems to be less a concept of integration than a concept based on mutual respect. What could be the lesson for Europe, where is the best balance?

Professor Koller

For me, after the Swiss experience, it is quite clear that democracy should start from the bottom upwards, not top down. I think the idea that people could decide on the all-important issues is why we made some

proposition for formal powers of democracy. I have the feeling that something like this is going on in other countries in Europe. Of course, what we do not like is direct democracy as a form of defence. The Prime Minister or President of a State can decide if he has a problem with a government. Then he can go to a referendum, and get the backing of the people. That is completely different from our view of direct democracy.

I think that mutual respect is very important. After the Second World War, we had a big move for centralization in our country. In the 1990s, we had a renaissance for Federalism because the Cantons became aware there was an internationalisation of the law, they lost competences, and set out popular reasons which we could meet about new rights in foreign policies in the constitutions for the Cantons. Mutual respect is very basic: if we have a request from a government of the Cantons, a delegation of the Federal Council is always ready to meet them. In this new institution of federalistic dialogue, we meet regularly.

Lord Hannay

It is being assumed that there is a certain equivalence between the two-dimensional model, Switzerland's cantons and its Federal Government, and a two-dimensional Europe, being the member states and the Union. But, of course, a lot of European countries, in their different ways, are grappling with a three-dimensional model. It strikes me that it is slightly difficult: you are in an 'apples and oranges' situation.

Professor Koller

Of course, in our state in Switzerland we have a three-tier state too. We have 3,000 municipalities and they have quite an important autonomy. The large cities would like to come directly to the Federal Council and Government. The other issue is a very difficult one. I think the biggest problem for Switzerland in joining the EU is direct democracy. It is quite clear that if we were to join the European Union, we would have to limit direct democracy. It causes a huge dilemma. I think professionals will need to find new reforms of direct democracy, so that it becomes more compatible between the structure of the Union and Switzerland. Our Municipalities have different powers depending upon the Canton, because the community planning law is Cantonal not Federal law. But under the new Constitution the Federal Council has to take into account the effects of our policies.

Dr. Christoph von Rohr

I would like to briefly touch on the taxation point. From what M. Favre has said, I understand the Swiss tax model to include three elements: one is that each individual member Kanton has and maintains the right to levy taxes of all sorts, except VAT and so forth. Secondly, the system includes horizontal realignment of income and of wealth, to a certain degree. Thirdly, the Confederation has the right of taxation. On the European level, we have two of these three elements already in existence. First of all, each individual member state has the right to taxation. Secondly, we have a kind of horizontal realignment through various European funds. The third element is missing, though. In Switzerland the federal government has the right to taxation. The right to taxation is obviously necessary for any government to function properly. However, if we ever give that right to the European Union, it should not be done without popular control, at least parliamentary control. Without this, there would certainly not be a political line to follow. The institution that levies taxes should run the risk to be voted out of office.

There is another element which I found really charming in the Swiss system: even in this relatively small country, the majority of the Cantons have decided not to have a uniform income tax rate, and maintain tax competition within the country. We should make that an element of the future European Financial Constitution and strictly avoid a uniform income tax rate which, as we all know, always drives tax levels up.

Another speaker

I was impressed by both of you saying that Switzerland as a Federal State is kept together by 'will', and of course, with regard to democracy in the European Union, we

always ask ourselves: Is there something that keeps the member states and the people/citizens together? Of course, there is broadly culture, common interest, common traditions, and so on. But I find it difficult to understand what you really mean by a common will. Is it the will, for instance, to have this Constitution, and to like and practice it, relating to Habermas's Constitutional Patriotism, or something else?

Professor Koller

I think that it is a long time living together. Of course, history is very important, and also our model was successful. If it was not as successful, then the cohesion would not be as good. I always say each generation has to bring back this cohesion, for culture by its nature, is very fragile. For example, after our popular vote on the European Economic Area, we had a very important split in our country because all the French Cantons voted 'yes' and all, or part of, the German-speaking Cantons voted 'no'.

Lord Alexander

I understand that, exempt from all this democracy, or even intervention, is the setting of interest rates by the Central Bank of Switzerland, without referenda and political interference.

Professor Koller

I understand this is seen as just common sense in our country.

Lord Alexander

That is a very good illustration that the philosophy that you both brilliantly set out has roots in common sense, pragmatism and sensitivity, probably like all good constitutions. Our debate has also begun to get into what the issues are for Europe: an indication that you could not have set the scene better for us.

Session II: DIFFERENT TENDENCIES IN EU COUNTRIES

OPENING REMARKS:

Professor Vernon Bogdanor

Germany of course has been a Federal state since unification in 1871, except, of course, during the Hitler period. France and Britain are two traditionally highly centralized countries, which, in more recent

years, have become more decentralized systems, France under President Mitterrand in the 1980s, and Britain under the Blair government since 1997. Those are the matters we are going to talk about.

The German Model of Federalism

Professor Ingolf Pernice

German Federalism as a model is a very broad and complicated subject. I will be simplistic, but please ask more detailed questions if it is too simplistic. German Federalism has a long tradition. After the Second World War, Germany was re-established from a 'bottom upwards' approach. First, the Länder: the regions were created as states, and then the Federation was built, and finally voted for, by the Länder. Bavaria voted against, but a majority was enough to be accepted. Second, the Federation: Germany is a state built and constructed by states. We have real states at the basic level. But, unlike Switzerland's Cantons, the Länder are not considered sovereign states. Talking about federalism in Germany today is incomplete without taking into account that Germany is a member state of the EU, which changes considerably the original model of federalism in Germany. But we should not talk about the German Federal model as a model for Europe, because Europe is very specific. Maybe we can just pick up some ideas from the German construction, but certainly not take Germany as a model for Europe. Then, tendencies of Federalism in Germany today can be characterized by three or four items. The first is an increasing tendency towards *co-operative federalism* in areas where the Länder have full competence. It is clear, like Switzerland, that there is a need for co-ordination in the education systems, for instance. But there are many other areas, where there is a need for co-ordination and co-operation, also as regards the European policies.

Another feature is that it is also increasingly *competitive federalism*. The Länder have developed a conscience for themselves, a real factor in policies, and are more individual and independent, and with our financial politics, more in competition with each other than before.

The effect, not only of European integration, but of increasing competences at a European level, is that the Länder themselves are losing competence, liberty of action, and political discretion. That is why a call for a clear structure of the European level competences, came from the German Länder, particularly from Bavaria, and North Rhine, which have 16 million people, quite a lot more than some states. Why should the Länder not have a word to say at European level?

I would like to talk about four aspects of German Federalism. Firstly, a basic introduction, second, the distribution of competences, third, on the financial constitution, and last is external relations.

It is important to note that Germany is a Federal State, as mentioned in the Constitution. We have an eternity clause, Article 79 paragraph 3, which says for certain subjects even a change of constitution is excluded forever. One is human dignity, but much more important seems to be the Federal structure and the autonomy of the states in Germany. So, the Federal Structure cannot be changed in Germany, and that is important.

Second, in Germany, the State is divided into states. That means the statehood of the Länder is considered 'original'. It is not given by the Federal level like something historically grown. It comes from the citizens, and the Länder have delegated

power to the federal level. So, I see it as a little like Switzerland. The main feature of the activities of the Länder is their cultural identity. The Federal system combines cultural diversity with federal or political unity.

Another feature is that the division of powers between the Federal and Länder level is a guarantee of the limitation of powers, directed against centralized dictatorship at a federal level. So, we must consider the division of powers not only between the functions of legislative administration and judiciary power, but also divided between the two levels with a view to maintaining and guaranteeing the liberty of people and respect for human rights. But it is also seen as an advantage for democracy, when we have a coalition, like the Greens and the Social Democrats, at the Federal level. Federalism in Germany allows the Opposition on the Federal level to be in power in different Länder. That affects the division of power, but also stretches the control of policies at the Federal level.

An important feature of this model is that the Länder have constitutional autonomy but on the other hand there are limits to this. We have a general clause in Article 28, paragraph 1, which provides for homogeneity, the principles of fundamental rights, liberty, legality, and so on, in the Länder constitutions, and it is interesting to see the parallel with Article 6 of the EU Treaty, which also includes this kind of guarantee of homogeneity on the constitutional level.

Now I would like to explain how Länder at the Federal level are bound together. I said it was 'bound autonomy. It is not two levels of Government acting independently, otherwise it would not be a federal state. There is a lot of linkage, and the two levels are interwoven in many respects. First, each level can make law and has legislative power. For the people, of course, there can be conflicts where two rules of law are contradictory. We need a rule of conflict, where the Federal law overrides the Länder law in case of conflict. But, provided that the Federal law is made within the limits of Federal competences, only Constitutional and valid Federal law can break Länder law.

Second, we have an institutional and functional link between the Länder and the Federal levels. The Länder are represented in one important body on the Federal level, the Federal Council, which has to be

consulted in each case of legislation and it has a co-decision right, in particular where administrative rules which concern the organization of institutional matters in the Länder are ruled on by Federal Law. So, where specific aspects of Länder autonomy are touched, the Länder have a co-decision right and can veto and stop legislation. The Parliaments of the Länder participate in the election of the Federal President.

What may be the most important interlink is the implementation of Federal Law. The American Federal model has dualism in areas where the Federation has competence and the States have nothing to do, not even implementation. In Germany, the Länder administration is much better, and closer to the citizens than the federal institutions. Jurisdiction is largely given to the courts of the Länder for maintenance of the unified application of law. The Länder have to maintain and respect homogeneity in the Constitutions. If a Land does not implement its obligations under the Constitution, then the Federation may exercise cohesion and enforce respect of Federal Law at the level of the Länder. What is important, with a view to the EU, is the legal situation of the citizens in this federal model. The citizens are, of course, citizens of the Länder *and* citizens of the Federation.

We have one German statehood, but this was not always so. In the last century, statehood was grounded on the state of the Länder. The principle now is that we have citizenship of the Federation, but German people have double identity: they are Bavarian and German, Berliner and German, *and*, this is important for people having a third identity, European.

Under the Federal Constitution they have a common status. They have the right of equality, equal access to all the federal institutions, even a provision for a sort of quota, when, for example, appointments are made for civil servants to the federal institutions, so that they do not all come from Bavaria or Hamburg. Each Land must be proportionally represented. Unlike the European model, in Germany fundamental rights, which are guaranteed under the Constitution, are valid everywhere with regard to Federal Law, but also with regard to the law of the Länder. A citizen who feels violated in his liberty of expression by an act of law of the Länder can invoke a fundamental right in the Federal Constitution, and this right, of course, applies equally to all Germans. The role of the German Constitutional Federal Court is very important for the conflicts which may exist between Länder and the Federation and there are a number of procedures that are provided to do so.

Let me now come to the system of competences. We have the basic presumption that the Länder

have full competence for everything, except what is expressly attributed to the level of the Federation. There are distinctions made between legislative, executive, and judicial powers. Most important are the powers of legislation. There is the principle of the competence of the Länder, and we have a system of attributions of competences to the Federal level, such as foreign policy, concurrent powers in which only the Federation can legislate to preserve equivalent conditions of lives, in the whole are of Germany, or to preserve the unity of law and of the economy. In Germany this was changed when the Maastricht Treaty was ratified. The Länder pressed for modification of the Constitution, and now this clause, which is a kind of solidarity clause, can be used to challenge the validity of Federal Law by the Länder at the Constitutional Court. We now have for each of these categories of 'exclusive', 'concurrent' and 'framework' competence, a catalogue. The law of the economy is a concurrent competence. Now these catalogues, if they are violated, if the Federation exceeds the competences, can be challenged at the Constitutional Court.

As for implementation, the main areas are the responsibility of the Länder, and only in certain described areas does the Federation have some competence. However, culture, education and police powers cannot be taken away from the Länder.

The third feature is the financial constitution. Here there are two principles, financial autonomy of the Länder; they must have sources of finances that are sufficient to implement their policies, and the principle of solidarity, which provides for horizontal compensation in finances for the benefit of Länder which are weak, and need money, and the others have to give this money.

As to external relations, this is mainly a matter for the Federation. But, the Länder, although not sovereign, have the capacity of concluding treaties and agreements with other countries, providing they have the consent of the Federation. External relations include well-established relations with regard to the EU. After Maastricht, it was put in the Constitution that the Länder have compensation for the loss of competence, going with increasing integration. They have a very strong say in the Federal policy-making, towards the EU, decisive in the areas where the Länder have competence of legislation.

This change of competences with regard to the European policies seems to be one of the most important changes for the power of the Länder in the balance of powers in the German federal model.

The French Model of Regionalism and Centralisation

Professor Jean Claude Sergeant

The current territorial structure in France is very much the legacy of the past. Very recently France decided to move towards devolution, decentralization, which is anything but completed today, with the recent proposals by Mitterrand in the report submitted in October last year. This process of change in the relationship between the centre and the periphery may also be dramatically boosted by the proposed change in the status of Corsica, which has raised a number of contentious issues which will not be easy to solve.

The underlying structure of the French territorial system was laid by the Revolution which created the *communes*. The *commune* was the second face of the parish. The *department* was the basic unit of the new administration system, which was to be the antidote to the complex key of units which had

flourished under the previous regime. The *department* was however an abstract contraption, which did not necessarily reflect the social, historic cultural realities at local level. Thus the head city of a *department* was chosen so that everyone could ride to that town and back within 24 hours. The first Commissars of the First Republic, representing central government in each department, saw to it that a decision of central government of the Convention and the executive committees, were dually implemented.

The system was further strengthened by Napoleon, who initiated the prefect with extended powers. It was not until the mid 19th Century that popular representation at a local level, particularly at the *department* level, was introduced through the setting up of assemblies. But on the whole the *commune* and the *department* constituted the only two units of this two-fold tier of organization, until, of course, the changes and reform of the 1980s. Resistance to

change was exemplified in particular when General de Galle tried to force through a referendum in 1969, a reform of the election process of the Senate linked to an enlargement of the role of local authorities. That was the thin edge of the wedge, which was to be done more effectively by President Pompidou when he introduced the regions in the mid-1970s, not as territorial units endowed with any democratic legitimacy, but as means of the more effective implementation of policies at regional levels.

The turning point was 1982, when the Mitterrand Government introduced the bill which provided for genuine decentralization and deconcentration. The Deferre Law is often described as the most important achievements of the first Mitterrand Presidential term. The key concept was decentralization, a trend to give more power to lower territorial units, where 'deconcentration' was described as the transferring of decision-making process away from central government to these lower territorial units.

The Deferre Law has three main principles. The first was that decentralized government action was to be handled within the framework of a unified state. The second principle was that local authorities were allowed freedom to manage their own business without prior reporting to central government, subject only to *a posteriori* control, which was quite an important change. The last principle was that central government should retain its role as the main guarantor that the principle of solidarity was applied in France, and also as the provider of law, to show that everyone was equal in front of the law.

The 1982 Law enshrined these three forces, but did not affect the system in any way. It was based upon the *commune*, the *department* and the new unit called the *region*. Each *department* was responsible for a raft of functions, responsibilities and competences: provision of educational facilities, road system, social welfare etc. What was important was that each of these units were independent of each other, with no hierarchy between them. Enormous progress was achieved, by the Deferre Law. That progress was hampered somewhat by the fact that Mitterrand had left untouched the geographical organization of the territory. That was a missed opportunity. There are 36,000 *communes* in France, half have fewer than 500 inhabitants. We have 100 *departments* with highly different levels of population and affluence, and 22 metropolitan regions.

It became clear that the Deferre Law was not an effective law in defining clearly the

competences of each tier of units, and defects soon appeared, in terms of overlapping, between the provision of services and facilities of the units. It was difficult to know who was responsible for what. So, one urgent task was to clarify the provision of services and responsibilities. The second was the correction of the imbalance between increasingly impoverished rural areas and increasingly thriving urban conurbations, for example Toulouse and Lille. The other problem was to remedy the excessive fragmentation of the communal system, in particular by encouraging municipalities to bring themselves together. Two further developments, in 1995 and 1999, defined the very important concept of 'intercommunality' as an objective for local strengthening.

The Mitterrand Report is something which is likely to change the face of organization if it is implemented. It gathered together 24 people with various degrees of experience and expertise, not all politicians, and was a highly satisfactory kind of commission. The main idea was to suggest ways of streamlining the system for greater efficiency. The objective is to produce, in 10 years time, only 3,500 *communes*, or 130 communal gatherings of medium size towns and cities, and, on the upper level, 20 *communes* of larger conurbations. That would be a very important step towards clarifying the system. The three-tier system would be kept, each funded by its own system of specific tax rather than the current system of sharing taxes. Business taxes, rates, and property taxes would be the three main sources, if Mitterrand did not include the grant given by the Government.

Another objective was to promote subsidiarity, and this would be enhanced by transferring further competences to these units. For instance, at the regional level, they would be entrusted with building university facilities, vocational training, rail links, the housing support system, social and medical activities; these would come within the jurisdiction of the *regions*. The *departments* would have to handle upkeep of the roads.

There is also the very important problem of accountability. It is something that ranks very highly in the mind of the commission. The case was made for harmonizing the term of all electoral mandates at the municipal level, departmental level and regional level. The election system would have to be harmonized, with an end to multiple electoral mandates. In an opinion poll, a large majority of people in France thought that the Mayor ought to be a Mayor only, putting an end to multiple elective mandates. Local accountability is a new development.

Corsica has been offered a degree of flexibility in applying the laws adopted at national level. It is, of course, one way of reaching peace and addressing the problem of terrorism. Contentious issues include the provision of Corsican classes, where the Corsican language would be used, but parents would have the option to opt out - the Constitution of France states that French is the language of the *Republique*. The development of the coastline is something that lots of people are not too happy about. Also, the positive discrimination in favour of local government workers that the Corsicans claim for themselves will prove a contentious issue.

Professor Bogdanor

I do not know whether the majority of democracies are federal or not but the majority of people in democracies certainly live in federal systems, and ones that have been exported to them by Britain. Of course I have in mind Canada, Australia and, in particular, India. Some people say the German system also shows some influence from Britain from after the war, I do not know whether that is historically true. The essential element of the British constitution until 1997 was the entire absence of any spirit of federalism in it, any sense of the division of legislative power between one body and another. This is one reason why we find the European Union very difficult to understand. I believe that if you live in a federal country like Germany it is easier to understand a division of powers between Europe and a member state, but if you live in a unitary state it is very difficult to grasp.

We were a unitary state for different reasons from the French. The French believed in the sovereignty of people.

We never believed in anything so outrageous as that. Our central principle

was the supremacy of parliament. There have also been, until very recently, people highly resistant to any form of federalism or devolution. You may argue, looking at British history, that if Ireland had been granted a measure of self-government in the 19th century she might still be content to be part of the United Kingdom.

The unity of the country depended, so it was argued, on it being ruled from a single central point, from the centre at Westminster. This argument was reinforced by another argument from the left. When we set our National Health Service in the 1940s we set

However, the combined impact of the Mitterrand Report and the Corsican issue is likely to affect the way in which the territorial question is addressed in France. The scope of the devolution process currently under way at the national level, combined with the pressure of the EU towards enhanced regional co-operation, is likely to result in a large-scale restructuring of local government in France.

up a National one, not a Scottish or Irish one. The minister responsible for that, Aneurin Bevan, on the left wing of the Labour Party, said that was absolutely deliberate and he had no patience with those who spoke about Welsh particularism. On the first Welsh Day introduced in Parliament in 1944, Bevan made a very sarcastic speech and said "*Do sheep take on a different character when they cross the border from England into Wales?*" Of course they do not. "*There is no Welsh problem but that of the under-privileged and deprived in Britain and that problem would be resolved, Bevan thought, by a strong central government which is socialist at Westminster*". It would be a grave error to divide the labour movement by these national claims.

The right-social – democratic–wing of the Labour Party argued that the benefits and burdens that individuals should carry, should not depend on where they live, but on their specific needs. That is the basis of our welfare state as introduced first by Lloyd George in the 1911 National Insurance Act, and secondly by the Attlee Government in the late 1940s, the basis of the Health Service and National Insurance policy. Just as you have basic constitutional political rights of citizenship, so also you have social and economic rights of citizenship. It would be quite wrong that these rights should be different because Scotland has a Parliament and, shall we say, Birmingham does not. This raises an argument about Europe: if you talk about European citizenship – we certainly believe that people should have the same constitutional rights throughout, but should they also have the same social and economic rights? It becomes difficult, in some sense, to resist that argument.

Since 1997 we have had a constitutional revolution in Britain in an enormous number of areas, with devolution being the most important. There are a number of different motives for that. Northern Ireland has its own Assembly with

legislative power, which, it is fair to say, is working only fitfully at the moment. In Northern Ireland, as you know, the British party system does not work. The battle is, broadly-speaking, between Unionists – the majority community – and Nationalists – the minority community – and hardly any floating votes between them. The Westminster model of government will not work in Northern Ireland. Therefore, you have to have some special power-sharing type of model, bearing some resemblance to what we have heard about Switzerland today, where both the majority and minority are allowed to take part in government. That is essential to conciliate the Nationalist community which could never be the majority, or, at least, not for many years to come. That is a unique aspect, on which I do not propose to talk any more.

In Scotland from the late 1960's onwards, for reasons electoral analysts are not wholly clear about, nationalist demands emerged. In Scotland, the greatest support for the Scottish Nationalist Party was in October 1974 when they gained 30 per cent of the votes. Therefore 70 per cent of Scots voted for Unionist parties, who believed in holding the UK together. In my judgement, the demand for devolution in Scotland is very different to what we saw in Ireland in the 19th Century, when nearly every constituency was Nationalist. The growth of the Nationalist party in Scotland made many, particularly in the Labour Party, think that because Scotland tended to have a Labour majority, they were at threat from the Scottish Nationalists. They said, if we can devolve power to Scotland, we can consolidate the Scots who will not feel that they want to go further for independence. They would be happy with a moderate degree of self-government.

The argument was also adapted to Wales where the Nationalists are much weaker, as the primary source of division in Wales is language. The Welsh language is spoken by 20 % of people in Wales. The language issue is deeply divisive in Wales, and for this reason, Welsh Nationalism is unlikely to achieve the same strength as Scottish Nationalism. The Labour government decided to adopt devolution, adapted to the particular areas of the country which sought it. Northern Ireland had a special form of devolution. Scotland had legislative devolution, with a division of legislative power. Broadly speaking, domestic affairs are governed by a Scottish Parliament sitting in Edinburgh, whose powers, in theory, are very wide. The Scottish Parliament could, if it wished, abolish

the NHS. It is very unlikely to do so, but its powers are considerable.

Wales has a quite different form of devolution, and I think the people of Switzerland and Germany are more likely to understand it than we British do. What is devolved in Wales is solely the power to make what we call secondary legislation, roughly speaking the *implementing* power. Primary legislative power still remains at Westminster, but the power to implement is with a so-called National Assembly, which sits at Cardiff.

The Scottish Parliament can raise a three-pence-in-the-pound income tax, but no more. The Welsh National Assembly has no revenue-raising power whatsoever. It was thought that people would not support devolution if that revenue raising power were there, as they would fear that their own taxes would be higher. This does cast an interesting light on motives for devolution which may not be understood abroad. Broadly speaking, in my judgement, the motives are not constitutional, they are instrumental. I think it is fair to say that, outside Northern Ireland, the British are much less interested in constitutional issues than elsewhere in Western Europe. One of our leading pollsters, Robert Worcester, conducted a poll in 1997 in which he listed 14 issues and asked people how they rated them in order of priority. Constitutional issues came 14th, trade union reforms were 13th. This was true even in Scotland. The motive for devolution was not self-government, but to secure better public services, health service, education etc. The British electorate (outside Northern Ireland) are not interested in procedures, but in substance.

We call our policy one of devolution. That is very different in principle to federalism because Westminster retains, in theory, its sovereignty or supremacy. It could, if it wished, legislate domestically for Scotland even though they have their own parliament. It could abolish the Scottish Parliament by a single Act of Parliament tomorrow. In practice, however, there is not much difference between the working of the Scottish Parliament and the Länder Government of Germany or the Canton in Switzerland. The Speaker of the House of Commons now refuses to accept questions on the domestic affairs of Scotland, as he says they are matters for the Scottish Parliament and not Westminster. This, I think, is a revolution in British constitutional practice, because it means we have a federal element in the Parliament at Westminster. MPs in Scotland have different rights to those sitting for English constituencies. If, in England, you have a problem with housing or educational policy you go to your MP. In Scotland, if you go to your MP, he or she will direct you to a

member of Scottish Parliament. The MPs in Scotland are responsible for foreign affairs, but not domestic. This is wholly new in Britain and I think it will take a generation to see how it works out.

I have not said anything about England: 85 per cent of the population of the UK, which has no Parliament of its own. The United Kingdom has asymmetrical devolution. Different parts of the country have different needs. The Scots have abolished fox-hunting in Scotland, and a number of MPs could vote against fox hunting in England. Some people said the English would rebel against that, but the English are simply not interested in this constitutional question. It is a theoretical anomaly and does not worry people. An English Parliament would not work.

Another form for English devolution proposed is in terms of regional government, an intermediate layer between Westminster and local government. The further you get away from London, the stronger regional feeling is. It is fairly strong in the north-east and north-west of England, but if you ask people in Oxfordshire what region they come from, they would think it was a rather peculiar question. The Labour government has said that the people can have regional government if they want it, as expressed in a referendum. The Labour government introduced a directly-elected Mayor of London, a top tier of local government with considerable powers. He has a direct mandate from Londoners. In my opinion, this will affect the powers of MPs, because the Mayor will say, I speak for London, the House of Commons does not, and they do not have the mandate that I have got. Normally, the Labour party would have voted for a Labour candidate. The current Mayor has crossed over to being Independent, putting him in a powerful position.

The Local Government Act 2000 allows any local authority which wants to do so to have a directly-elected mayor instead of a traditional

council arrangement. Watford has done so. Birmingham has just decided that you cannot combine a directly appointed Mayor with regional government.

Some people implied Europe would be based on regions rather than member states. I think that is highly unlikely, as the last thing the European Community wants is to have not 25 members but 125! The more moderate version of that phrase implies symbiosis between regional government and development of the European Union, somehow connecting things which are undermining the authority of member states. That argument, too, I find very difficult to accept. I hold the opposite to be true, that the development of the European Union exerts a force of creeping centralization upon Member states and makes regional government more difficult. Member states are, after all, legally liable to fulfill community obligations. The process of acquisition of competences by the EU simply limits the scope of what can be devolved. In our devolution of legislation in the Scotland Act, agriculture is devolved to Scotland. What can that mean? Over 90 per cent of agriculture is with Brussels. So what is there to devolve if the power is not actually there in the first place?

The problem is creeping centralization. The Germans have solved it in an effective way, as Professor Pernice said, Article 23 gives the Länder in the Bundesrat some degree of authority over some future changes in competences. But in Britain the Scottish Parliament is bound by what the UK government decides. This seems to create a problem with regard to European matters.

I want to conclude by asking is this a serious problem, does it matter and what should be done about it?

DISCUSSION:

Professor Stürmer

Whether or not the British in their great generosity gave us good industrial relations of Federalism, Joseph Chamberlain, 100 years ago, was a great admirer of the German industrial relations system. Federalism in Germany is older than all that. The British created North Rhine-Westphalia, simply because Stalin had offered to take 200,000 Red Army soldiers to help controlling the Ruhr. The British and Americans wanted nothing of that and immediately created North Rhine- Westphalia, initiating Federalism. You do not understand the German system of today unless you understand historic federalism, because the Germans cannot bear to live together except through federalism. When you go to Bavaria, we are all Bavarian, 'the Germans' are always 'the other'. Federalism helps us bear unity. That is, I think, a recipe for Europe. Only by being European Federalists can we bear to be Europeans. Europe's strength and weakness is its diversity, so you have to create a balance.

First of all, I do not believe in the regions, although to have Bavaria as an independent region would be infinitely attractive to most Bavarians. There are maybe 16 million North Rhine inhabitants - but there are 12 million Bavarians, and we would be quite a respectable nation on the world stage. The nation states will prevail, everything else is a false view of reality. Welfare is entirely organized in nation states. The wealth of the man in the street is basically his entitlement. God help us if the European Union gets at taxes. Then of course, there is no such thing as European democracy. It simply does not work. Our governments act in a way, in Brussels, in the Council of Ministers, which is easily recognisable to any Counsellor of enlightened absolutism: they can push through whatever they can arrange with their peers. European Government does not work as a government: first, it has no creative powers; then it is not really a government as seen by the people as its representation. You ask people in Germany who their Member of Parliament is, they would not know. It is sad, but it is a fact.

Now to other problems of democracy: the idea of a plebiscite in Europe, I think, would be worse than on the national level. As a German, I am not a great believer, as it

served us abysmally between the wars. The Swiss model ought to be studied. But I am convinced that it can only work with a very mature population in a small area, and within a population in which basic questions are not at stake, where the rules of the game are basically always decided in terms of the *status quo*.

Europe, I think, ought to be developed and understood as a kind of 'modern commonwealth'. I think it was a big mistake that we said there cannot be a Europe *à la carte*. If we had a core Europe, with several layers, we could solve problems that will overwhelm us, such as these accession problems with countries which should not, and are by no means ready to accede except on paper. Imagine the Cyprus question: it is a nightmare, especially after 11th September. Take Turkey: can anyone imagine that we can run Europe with countries as diverse politically, socially, culturally? I cannot. Also, we demand too much from our populations. The German population very largely is alarmed after our experience with East Germany. Some people think that this has impoverished us – I do not believe that, but a large number of people do. If you add the problems of East and Central Europe, you have a very big problem, too much to be swallowed by the population at the same time. I think that is going to fly into our faces.

In Germany we have started a debate on European Constitution which is totally dissociated from reality. It has no relation whatsoever to the real problems. We can produce a very simple five page document to explain to the person in the street how the place is being run. The Maastricht Treaty is a nightmare, I would bet that neither Mitterrand nor Kohl, who were the great promoters, ever read through the whole thing. It is bizarre to put that to a referendum in Denmark. The Nice Treaty, the President of the Commission told us, was not that important when the good people of Ireland said 'no'. I think we are being led up the garden path. The British have said there is a problem. We have an intergovernmental principle which works well for six to eight reasonable governments. With unreasonable government, it does not work well - it works badly, and that is why we have the selective intergovernmental processes, especially in the military sphere. So we have intergovernmental and integration principles, and the two are sometimes at odds. Democracy is the weakest of all constituent elements, for reasons I pointed out. A kind of graduated federalism might help us and the various publics to understand what is going on.

It is a good idea to create a wide economic space and to create a wide legal space, from the

shores of the Atlantic to Novgorod, that existed almost a thousand years ago, so you could trade under the same law. We have to reach the civilization stages of the Middle Ages. But I think we have now reached a stage in where, basically, the politicians have lost direction. If you look at the documents we have been presented with, whether Amsterdam, Maastricht, or Nice, anybody in their right mind understands that politicians have lost their direction. This is not the way to build a Europe for citizens. It is a very cold affair.

I fear that this kind of Europe will not work too well. I cannot point it in the right direction, but the first thing is to give up the idea of a European Constitution, as the debate would either result in another document, as before, or it would bring out that we differ on almost everything of importance. To point out how Europe works, the NATO Treaty is a very reasonable, very flexible, model. We have seen NATO going through various stages with the same treaty, but it is the same treaty.

Professor Bogdanor

Presumably we would all value diversity and autonomy if it brings a better standard of living than our neighbour. But do we value it equally if diversity is used so that our social standards may be less than those of our neighbour?

Dr Janning

I find it difficult to deny the desirability or reason for a contractual constitution on one hand, and claim the need for more democracy on the other hand. Either dismiss one or the other, but it is hard to do both together. Many doubts about a European constitution seem to be substantiated, but do not lead us beyond the present situation. Professor Pernice said the German case is not a model for Europe. I would like to hear more about the balance sheet of our systems. What is the corporatist effect of our form of government? Look at decision-making on the European level now and imagine what scenarios would be in future if we fail to secure enough innovative potential in a federal system like Germany, what gives us the security to be more capable in deciding on the European level? What would be an effective political system on European level? I would argue that we need a much stricter division of powers or a laid-out system of competencies to control the

corporatist bias of interest aggregation on the European level.

Sir Ronnie Grierson

There is a multiplicity of federal systems, most seem to me to have sprung from the devolution of previously central powers to subsidiary bodies. Are we not, in the case of Europe, talking about the reverse? Existing national units having supranationalism imposed on them.

Lord Hannay

Listening to the three presentations, it struck me that all three are moving in different directions. The French direction is decentralization moving from a centre, to region and departments. The UK was rather messy, but moving in at least four directions. The Germans are moving in two directions simultaneously, negotiations between Europe and the centre to define EU competences and the division of these competences between the centre and the Länder.

As we look at the direction for Europe, we should look positively at best bits of practices, not, say, just look at the German model because that is the best one. We should be looking at America and India rather than Germany.

Professor Pernice

I believe that the federal system in Germany would have developed differently if a big area of Prussia had been part of it.

On the idea of a European constitution, I have a very strong feeling that what we have already is a European Constitution. I agree with you that it is extremely complex, but is it not worth working on what we have and making it more transparent, so more people can understand it? I believe that this is the way to go. Citizens, people, human beings, decide that certain tasks have to be implemented by certain institutions, then they have to control and give legitimacy to these institutions. I believe that the citizens of the EU as defined in the treaty, are the ones who can exercise this more traditionally. Our institutional system at the European level will not make this easy, therefore we need reform.

I think that both Right and Left wings would agree on the necessity for increased accountability for the devolved units except that there are certain elements of district council, which would not go down well. Emphasis on the greater power for regional council would be different if the majority was Left or Right wing.

After-Dinner Speech: Some thoughts on the future of the European Union and its competitiveness

Helmut Maucher
Honorary Chairman, Nestlé S.A.,
Vevey

Ladies and Gentlemen, It is a great privilege to address this very distinguished audience tonight. However, the tricky thing about my speech on the future of Europe and its competitiveness is that I am talking to such competent and acclaimed experts.

So, whatever I will elaborate, you will probably already know better and you will have more in-depth answers to the subject than I can provide. On the other hand, I must admit, that it is quite nice not to be forced to talk about 'everything' as in fact, you already know everything. My remarks will and can of course only reflect my personal opinion – and this probably in a much too simplified way.

ON THE FUTURE OF EUROPE

Let me outline my thoughts and perceptions with the following points:

- (1) One of the most important things Europe needs is a free flow of goods, services, money and people. A lot has already been achieved in this respect among the present member states – which is indeed very positive.
- (2) If Europe wants to play an important role in the globalized world, there are essentials on which it has to speak with one voice and represent a common opinion respected by all members – finally achieved by an improvement of the decision making process including majority ruling. I am speaking of areas such as a common foreign policy, defence and security policy, important decisions on international economic issues (like WTO) as well a common immigration policy. Only if this will be achieved, Europe will be able to play an important role in the world and be internationally respected. As to this process, we have perhaps gone halfway through so far. Further progress will not be easy and will still take some time – as it is limiting national sovereignty.
- (3) As for all other areas, I am in favour of more decentralisation, more subsidiarity and regional flexibility. Concerning the harmonisation of various laws and rules, I am more in favour of rather letting things being settled by competition than by bureaucratic and administrative procedures. I am of course aware that there are certain issues that do need clear agreements such as environmental and agricultural questions.
- (4) When it comes to defining the future role of the European parliament, we have seen a lot of misunderstanding and contradictions. On the one hand, a lot of nations and people are in favour of strengthening the role of the European parliament. On the other hand, the same people and nations do not want to give up too much of their sovereignty. As long as Europe's members want to keep their sovereignty and independence, certainly in a limited way, the role and power of the European Parliament must remain limited by definition.
- (5) The process of enlargement must no doubt be brought forward. Decisions concerning the entrance of new nations must be taken as soon as possible but we certainly do need longer transition periods. Otherwise, we will create a lot of problems and conflicts. Just think of the some hundred thousand pages of laws, the tremendous differences in mentality, management skills and labour costs. If it will finally come to 25 members, it might be feasible to find different degrees of integration, three different groups of members – at least for a certain period of time.
- (6) Let me now turn to a still rather controversial topic – the relations between the European Union and Turkey. Some people are against a full integration because of cultural differences and for foreign policy reasons in view of Turkey's borders with countries which – particularly in the east and south – are holding huge potential for conflicts

in which the European Union as a whole should not automatically be involved.

On the other hand, people within the European Union who emphasise the strategic importance of Turkey and who are either less concerned about multicultural societies or even in favour of it, see no problems in Turkey joining as a full member. This opinion, for example is represented by the German Chancellor Schröder.

In summary, I am for strong and close economic integration of Turkey as well as political co-operation to a certain extent; however, I am, at least in the present situation, not in favour of a full adhesion.

- (7) Speaking of an integrated Europe, we should not forget the rest of the world. We cannot build a fence of protection around Europe. We should also favour and concentrate on further efforts to achieve association agreements with Europe's neighbours like countries in the former Soviet Union and the Mediterranean and Middle-East region. And finally, we must not forget to enhance co-operation and good and reliable relations on a global scale.

For the first time in history, we are, in view of the competitiveness of Europe, facing a very unique situation. Which means that we are more and more organizing free trade within the whole world (see the efforts of WTO), we see a transfer of technology, which is more rapid and which reaches more people than ever before – and we as multinational companies are doing this everyday. At the same time we have huge differences between the different countries concerning cultures, costs and so on. All this still requires increased efforts of the European Community to further increase and strengthen its competitiveness.

Let me now mention five of the major issues and themes that are relevant for our competitiveness, issue where Europe must strive for constant improvement. I will list them briefly and will then return to each one of them in more detail:

- (1) Knowledge and education
- (2) Innovation and technology
- (3) Productivity, costs, particularly labour and social costs

- (4) Speed and the regularity environment in an efficient state
- (5) Further integration of Europe and enlargement

Only a few remarks to these five points:

My first issue: Knowledge and education. We know that knowledge is currently doubling every five to six years and the speed is even accelerating. Nowadays, we are speaking of the "knowledge society" and know that those nations and areas who are most advanced will have a huge competitive advantage. The information technology has greatly increased the flow of information, making knowledge an even more important productivity factor than labour or capital.

My second issue: Innovation and technology: First one remark: A lot of countries are here 'between Scylla and Charybdis'.

On the one hand, we still observe some hostility against new technologies in many areas in which we could be competitive – for instance atomic energy, biotechnology and genetic engineering. And on the other hand, in the field of more commodity-like products, much too often, we are not competitive due to our cost structure. Tonight, I cannot go into further details, however, let me stress one thing: We do need more co-operation on research between the public sector, the institutional and university sector and industry. Furthermore, we need a more target-oriented research but this should not be mixed up with only short-term projects. It is also of great importance that we all make an effort to reduce the hostility against new technologies.

I turn now to my third issue: Productivity, costs, particularly labour and social costs. Generally speaking, I would like to defend a very important advice: In order to strengthen the competitiveness, one should make sure that the increase of labour costs and other important cost items is lower than the productivity improvements. Furthermore, restructuring and rationalisation has to go on but social aspects and unemployment questions should be taken into account for the transition period. Otherwise we shall face problems with the acceptance of our market economy system.

One important aspect of cost competitiveness which is very often forgotten and not realised is our demand for 100 per cent security and safety in every respect.

Now my fourth point: Speed and the regulatory environment in an efficient state. We all know that speed is one of the most important competitive factors. There is also a great demand for further deregulation. State expenses amount usually to around 50 per cent of the GNP. Regarding social expenses, for instance, we should reduce expenditures towards a more basic protection system and fight against misuse of the social system. Another cost factor due to the demographic changes (as people are getting older and older) are pension schemes. We must adapt them to much higher life expectations, raise the retirement age and at the same time make an additional contribution by setting up private insurance schemes.

And finally my fifth point: Further integration of Europe and enlargement. There is no

doubt that Europe will be more competitive by increasing the scope of the European Union and also by further advancing the integration process.

Ladies and gentlemen, please let me conclude with one remark about Switzerland. At the end of the last millennium, I was once asked at a conference when Switzerland will be most likely joining the European Union. I answered: "In the next millennium, probably in the first half!" But seriously, it will still take some time in Switzerland, however, it is clear to me, that, one day, it will be part of the European Union. Europe moving further towards subsidiarity and regional autonomy and Switzerland realising more and more the need for a future integration, will enhance the possibility of Switzerland entering the European Union one day.

DAY 2

Session III:

FEDERALISM AND THE EU

OPENING REMARKS:

Lord Alexander

Europe has been more successful over the past 50 years than in the 50 years which preceded them, and I personally think that the existence of the Union will be of continuing importance going forward. The events that the world is having to deal with at present will be helped by the existence of the European Union. Measures of confidence have been built up over that period, rather than suddenly having to put the clocks back, and deal with 25 individual nation states.

What kind of Europe should we have and what should it do? There are certainly areas that it is conspicuously valuable for the EU to deal with. My list would include the Single Market, competitiveness, environmental measures, crime, drugs, terrorism, issues of immigration and asylum. Other areas may be more controversial. How should it be decided what is of central importance, what is just pragmatic and what 'horse-trading'? We saw yesterday that Switzerland and Germany have, for a long time, accepted the importance of regionalism, of passing certain powers down or upwards on a power-sharing basis. There are strong local contributions. We also saw two other countries, France and the UK, moving in that direction. That seems to be the developing trend.

One expression of the governing principle that could be applied in this area has been subsidiarity, in European terms coming forward at the time of the Maastricht agreement, followed by the Edinburgh guidelines, influencing documents such as Kohl-Chirac Cardiff declaration, and finding more expression in the treaty of Amsterdam. But how is it to be defined? Is a general definition too woolly? Would a specific definition create a straitjacket? Should it be legally enforceable? As I understand it, it is not in any sense a legally certain doctrine, and little or not used by the European courts so far, and not, as law should be, a rock on which you can set your feet. Does it help in finding a balance between federal and central government? To find such a balance does seem possible. The USA and Australia, both of which were mentioned yesterday, are good examples of what is done by central government and what is called states' right. Can we get to an acceptable balance in Europe, with a balance between so many diverse cultures and distinct nations who wish strongly to guard their nationhood? I feel we would all be better informed for that debate when we have our three initial contributions, the first from Professor Derrick Wyatt.

The meaning of subsidiarity in the European Union

Professor Wyatt

The principle of subsidiarity requires that the Community act only if its objectives can be better achieved by the Community than by the Member States.

This is an open-ended formulation and its application is impressionistic. But the reason for introducing the principle was clear. It was

to inhibit the exercise by the Community of its law-making powers.

Why was such inhibition thought necessary?

One reason was that the law-making powers of the European institutions had increased

substantially between 1975 and 1990.¹ By 1992 the law-making competence of the community institutions were virtually co-extensive with those of state.

Another reason for restraint in the exercise of the Community's law-making powers was that the Institutions and Member States wanted very different things from Community action. Some wanted Community action to increase the level of regulation of the internal market (in areas such as employment law and environmental law). Others were mainly interested in eliminating trade barriers and increasing regulatory competition. Some states wanted to see increased Community spending programmes to redistribute wealth; others wished to assert the primacy of the legislative process over the budgetary process in order to limit their budgetary contributions.

These differing expectations had always been there, but in 1987 a new factor entered the equation – an increase in the practice of qualified majority voting. What effect did this have?

This meant that even States wanting regulation in principle, might find that the legislative process produced the “wrong” kind of regulation. States which mainly wanted the removal of trade barriers and increased regulatory competition, were particularly uneasy at increased Community competence combined with qualified majority voting. Prior to 1987, no matter how extensive Community powers might be in theory, in practice, legislation was adopted by consensus. After 1987, the risk increased that the Community legislative process might produce an adverse result, from the national standpoint.

In 1992 the Maastricht Treaty offered a counterweight to majority voting and increased powers – the requirement that these powers only be exercised if the task in hand could be better achieved at Community level than at national level.

¹ This increase had taken place mainly because the law-making institutions, acting unanimously (until 1987) had interpreted their powers under the Treaty extremely widely. Social environmental and consumer protection legislation had all been adopted under powers to improve the functioning of the common market. Treaty amendments had also increased the law-making powers of the institutions in 1987, and further increases were made in the Maastricht Treaty.

The principle of subsidiarity is perhaps more significant as a recognition of a problem than as a durable solution to that problem. The principle as stated in the Treaty is phrased in an open-ended way, and its application in particular cases will invariably be impressionistic.

Where the institutions or Member States favour action on policy grounds, subsidiarity is unlikely to stand in the way. The Commission has always been somewhat equivocal about subsidiarity. While committing itself to doing less, but doing it better, the Commission has sought to give subsidiarity a narrow scope. And if the Commission tables a proposal which a potential qualified majority might approve on policy grounds, they are unlikely to be side-tracked by constitutional considerations.

In which case, is there a problem? Is the argument for subsidiarity an argument that Europe should be saved from itself? If we get the political process right do we need it?

I think we do. Europe will only be strong if its Member States and their citizens feel empowered by Europe, not inhibited by Europe, or even bullied by Europe. When governments are outvoted and States have laws imposed on them it chips away at the sense of their citizens of the legitimacy of Europe. It contributes to the sense of disempowerment which may yet derail the European project if it is not addressed. This problem may well increase with further enlargement.

If there is a problem, and subsidiarity alone is not the solution, what is to be done? Should a list of reserved powers be defined?

This could well be part of the solution. But there are few law-making powers which could or should be wholly reserved to Member States. We might for example reserve social security to the States, but not the right to discriminate in social security payments on grounds of sex or nationality; these latter matters do fall within Community competence. And EC rules have since 1971 co-ordinated national social security rules to ensure that individuals are not prejudiced in their social security entitlement by moving to and working in, other Member States. Nevertheless, carefully defined subject matter could be reserved to the States; for example the determination of the application rates of social security payments. Similarly, rates of direct tax could, and in my view should, be reserved to the Member States. I note that under the Swiss Constitution, Cantons have certain reserved powers over the rates of direct tax. It is therefore perhaps uncontroversial to offer the proposal that the reserved powers of the States

of the EU be no less than those of a Swiss Canton!

An alternative, or supplementary, approach closer to the status quo would be to define more precisely, in the Treaty itself, (a) the mission of Europe and (b) the legislative programme which the institutions are authorized to undertake to achieve that mission.

As regards the Mission of Europe, what can we do to make the aims of the European Project less obscure?

When its rationale was principally the achievement of the internal market, it was comprehensible. At some point in the 1980s and 1990s, its mission seemed to become the doing of anything arguably worthwhile which the Commission believed a qualified majority might support. Europe regulating something was equated with European integration. In my view Europe should confine itself to those tasks which the need Europe to achieve for us. We undoubtedly need Europe to maintain the internal market; we need Europe to take action in matters which cannot be adequately dealt with at national level because of the trans-boundary nature of the subject matter in question; and we need Europe to support its Member States in the protection of fundamental common values. That is a viable mission for Europe. But that mission requires more precise definition, if action is to be taken at the European level only when it is genuinely necessary to take action at that level, rather than at the level of the national state, or the at the level of the constituent elements of the latter.

As regards a definition of the scope of Community powers, surely a more precise indication than currently exists at the moment is possible and desirable?

The general power to legislate for the internal market would benefit from a statement that this power extends only to the removal of substantial barriers to freedom of movement and appreciable distortions of competition and that in each case a quantitative assessment of such distortions or barriers would be made before legislation was adopted. As regards social policy and the environment, more specific lists of the matters to be addressed by Community legislation should be adopted. These lists would be confined to social and environmental subject matter having trans-boundary characteristics, or falling within a limited category of "fundamental" elements

of social and environmental law, the latter being drawn principally from the *acquis* (e.g., drinking water quality and environmental assessment could be included on this basis). The fact that a particular subject matter fell within the *acquis* would be a ground for including that subject matter in the list or catalogue of Community powers, but the *acquis* should not be regarded as beyond review, and some environmental subject matter might well be omitted from a catalogue of Community competence. In this respect, the Swiss Constitution's "catalogue" approach shows how much can be achieved in the way of specific enumeration of powers if the political will is there. The generality of the German Constitution is perhaps less helpful as a role model here.²

Should all this be attempted within the framework of a European constitution?

In the first place, the European Union has a constitution – the constituent treaties establishing Communities and Union. Further amendments to those treaties might of course lead to either a written constitution or a revised constituent treaty or treaties. A constitution which obscured the international treaty base of the Union would in my view be a step in the wrong direction. Removal of the Treaty basis would de-couple the Union from the sovereignty of its component states, and call in question their statehood. But a simplified Treaty system, which defined more clearly the mission and competences of the Union, would in my view be a desirable development. In a further enlarged Community, the question inevitably arises of mechanisms for change.

Would it be feasible or desirable for the Treaty basis of the enlarged Union to be amended only if unanimous ratification by all Member States could be achieved?

The difficulty with accepting some form of special majority procedure is that it would obscure the difference between adoption of primary (i.e. Treaty) law and secondary legislation. This might be surmounted by having extra special majorities for 'constitutional' change. But the practical problems involved

² In this connection reference should be made to the suggestion that a Constitutional Court, separate and distinct from the Court of Justice, might be the final arbiter of questions of competence. I confine myself to the observations that (a) in the absence of a clearer definition of mission and competences, simply setting up yet another Court will not necessarily improve the situation., while (b) if there is a clearer definition of mission and competences, the need for a different judicial arbiter is not self-evident.

should not be underestimated. If the Member States were to adopt constituent treaties which reserved a list of powers to Member States, including e.g., rates of social security benefits, and rates of direct tax, it would be because it was their understanding that such matters were beyond the reach of European decision making. Yet this would not be the case if the reserve powers could be progressively removed from the list against the wishes of dissenting states. One solution would be to provide that some provisions of the constituent treaties (e.g., the reserved powers list) would remain subject to unanimity, while this would not necessarily be the case for all provisions of the Treaties.

Finally, what about the question of terminology?

'Federalism' has different associations in different Member States. If the Member States of the Union are to remain sovereign states in international law (and in my view that is not seriously in question), then descriptions of the Union as being one other than federal are more likely to command universal assent than formulations which refer to a federal union.³

Ambassador Bitterlich

I have severe doubts whether subsidiarity, at least in its actual form, is a suitable concept in the European Union.

We should remind ourselves of the origin of that debate. In the late 1980s preparing the Maastricht Treaty we were discussing the scope, the extent and, up to a certain degree, the distribution of EU-competences. In parallel, the debate about expanding voting with qualified majority was going on.

Finally, we failed to convince our partners to introduce a clearer order of EU-competences. The principle of subsidiarity became the substitute. The text in the Maastricht Treaty is one of the most unusual EU-compromises we have found between the Germans and the British – but looking at the experience of the last 10 years, I do not think it was a suitable concept.

Today we need a new approach. We should not even speak about the limitation of

competences, we should, in my view, re-assess and concentrate competences.

I wonder, therefore, whether we are on the right track of the debate.

We speak about fundamental rights in the EU as if 15 member states were not able to guarantee fundamental rights themselves, as if the European Court of Justice had never looked in a sensitive way in this matter and as if we had not created a European Commission and Court of Human Rights in Strasburg.

When I mention the new EU-Charter of fundamental rights, experts of European law explain to me that this project represents a marvellous invitation to the European Court of Justice to introduce new broader interpretation, beyond or even in contradiction to what we have been developing the last 50 years.

We speak about democracy in the EU as if the 15 member states were not democracies and democratically fully responsible nation states.

We speak about a European constitution as if we had not a sort of constitution or constitutional treaty in Europe. Why therefore the debate?

In this context we speak in a timid way about "federalism". The European Community and Union has always had per se – by nature – a federal character, a federal structure. Why therefore the debate? Because of perceptions – not because s. o. could try to abolish the nation state!

Therefore let us be honest. I think the European debate has to come back to politics. What is at stake?

The core of the European discussion should aim at, concentrate on two questions:

First, the question of competence. Where should be the competence to resolve problems in an efficient way, at the level of the nation state or at the European level?

Second, the question of democratic responsibility towards the citizen. He is not able to understand the EU. At a local or national level he is entitled to vote in favour or against a party. If a candidate or government is not fulfilling his expectations, he will vote him out of office next time. With regard to the Commission he is not able to do so. Therefore, for me the central issue is that of the attribution of responsibility.

The EU should in the future concentrate on four core areas:

³ A possibility discussed informally by one or two participants was along the lines of "Constituent Treaties of a Commonwealth of European States, to be known as the European Union."

First, Economic and Monetary Union (including internal market). In three months we are faced with a secular change in Europe, the introduction of the Euro. And I miss a real debate about the economic part of EMU. To what extent do we need in the fields of economic, financial, budgetary and fiscal policies harmonization, coordination or concertation or just competition at the EU-level? I am astonished that policy-makers have not yet discovered this item. It is true that this debate is not a new one, but it had been aborted by the Germans in the early 1990s (headword: "economic government"). In my opinion, it would be wrong not to discuss more thoroughly what are the exact needs in the economic field to accompany the monetary policy.

In this context, I would like to see a discussion about the future of cohesion and solidarity. What do these terms mean exactly? Should we continue with our existing model of assistance through structural, regional, agricultural funds or should we profit from the experiences for example in Germany or in Switzerland in order to reform the system?

The second theme is Foreign and Security Policy. Looking at the consequences of 11th September, I put to my Spanish friends while discussing about foreign policy one question: Have we so far developed a common and coherent policy towards our neighbours in the South – towards the Maghreb, Egypt? Did we ever have an open debate about the perspectives with respect to Turkey or to Saudi-Arabia? I could continue the list. All these countries are our neighbours and therefore of common vital interest for us.

Third core business is security and defence. What do we need at the European level besides NATO? The NATO treaty is not comparable to the European treaties, you can only understand its scope, its importance, if you add the declarations of the summits, the specific concepts. NATO is not at all an integrated machinery as EU, but we Europeans can learn from it.

The forth core area is home and justice. It has been introduced from the late 1980s onward. We had to go through years of reluctance, of semi-failures as the majority of member states' competences such as police, immigration had to remain exclusively at national level. Now we are on track. Developments in the last 10 years have shown that we need at least a common policy. The question is whether it should be integrated or "only" common. Here it is not the right field for dogmatics, we have to

aim at the most efficient policy at the European level.

Looking at the institutions in this European agenda, I think we should use the existing institutional framework as far as we can and develop it further in the sense of efficiency, transparency and clearer responsibility.

Only some examples: Why not use the European elections in 2004 to put on the top of the list of the different parties "our" candidate for the future President of the Commission? Why not allow the President of the Commission to choose his team as in a normal government? Perhaps he could get – in a transition – two or three names from each and then select. But at the same time he should be able, as in a normal government or company, to dismiss a member of the Commission. In order to be more efficient, why not speak about a specific personality or the appropriate Commissioner to chair the Council instead of the permanent change of Presidency. Or why not discuss about introducing in the EU a permanent Council as it exists in NATO?

These are only some ideas that could contribute to a more efficient and democratic EU. Furthermore, within the debate of generalizing qualified majority votes, we need a reflection of what to do in cases where a member state has fundamental, i.e. vital objections. On the one hand, instead of the so-called right of veto we could perhaps think about a procedural way to allow a member state to introduce, to enforce his objections. On the other hand, we have to continue an old classical debate. Can we admit a core group or an "open avantgarde" (Delors). Looking at a community of more than 15 member states, we have to organize this, baring in mind that "geometric variable" and "two speed" has always been existing in the EU.

This is, in brief outlines, our EU agenda.

Prince Nikolaus von Liechtenstein

Professor Wyatt has already drawn the line between a Constitution of the European Union and some sort of a constitutional treaty. A Constitution means sovereignty and it is the ultimate source of law. I do not think that the EU is ready for that yet. How would one resolve probable contradictions with national constitutions? Even where there are clear EU competencies, like monetary union, conflicts might exist. One can refer in this context to the decision of the German Constitutional Court that has said that the Euro is compatible with the German Constitution (only) as long as the Euro is as stable as the Deutschmark. But I think that the coming institutional reform will come up with something

that one might call a constitutional treaty. This also would entail a clearer delimitation of what the competencies of the EU are, as well as the simplification of existing provisions. Why do I think that a constitutional treaty is desirable and possible? Firstly, a lot of preparatory work in this sense has been done and there seems to develop a large support for such a new basic EU text, though many divergences still exist on its exact content. Secondly, enlargement makes it necessary to improve the decision making machinery, to more clearly define the tasks of the EU in view of a hugely added burden (not least financially) and to commit everybody to a set of values as inscribed in the EU Charter of Fundamental Rights. Thirdly, at Nice the decision for a Treaty reform in 2004 was taken. A more precise delimitation of powers between the European Union and the Member States, the status of the Charter of Fundamental Rights and a simplification of the Treaty were specifically mentioned as part of the reform mandate. So, the changes to the Treaty foreseen for 2004 should lead to a much more basic EU Treaty, one could then rightly call a Constitutional Treaty. Such a development will automatically bring the EU closer to a federal system. In a federal state, the delimitation of powers, to say what level has the right to do what, is of primordial importance. If the

German Länder ask for a clearer delimitation of competencies of the EU, they also fight for their autonomy. More than 70% of their law are based on decisions taken in Brussels. The principal of subsidiarity can only have a practical meaning, if a better delimitation of powers can be agreed upon. Such a reform would also greatly enhance transparency and facilitate the democratic legitimisation of the EU. The European public would better understand what the EU is doing and, equally important, what it has not the right to do. People want to have a better control of the European level, as I best understood after a conversation with a young taxi driver in Amsterdam. When talking about the Danish No to the Maastricht Treaty, he said to me that he and many of his friends would also have voted against for the following reason: "Already our national politicians take a lot of money from our pockets and at least we can control them a little bit. But at the European level we just don't know what happens and how to control." In summary, I think it unavoidable that after the next Treaty change the EU will have significantly more characteristics of a federal state than today. Most important of all, one should push in this process towards a clearer delimitation of competencies, so as to strengthen transparency, the rule of law and democratic legitimisation.

DISCUSSION:

Dr. Christoph von Rohr

I think from the contributions of Ambassador Bitterlich and Professor Wyatt we can draw a very clear conclusion. First, we already have a Constitution, be it a constituent system of treaties or a written constitution. No matter what we call it, it is definitely a federal Constitution. With this in mind we might leave the terminology discussion and focus on the key issue: the proper distribution of competences between the Union and its member states and, equally important, among the European institutions. I feel that we will have to devote a lot of time to define the competences very clearly so that every citizen understands which political stratum is responsible for what.

The good news is that we certainly do not have to start from zero in this respect. A very positive example can be seen in the area of competition, merger control, anti-trust etc., where competences are rather well defined and distributed. The same is true in the sphere of market de-regulation. I am absolutely sure that the German National

Government would never have been able to de-regulate the telecommunication and electricity markets, certainly not as quickly as they did, had the European Commission not intervened and taken control of the situation. As this example shows, the clear attribution of competences can be a powerful source of political progress.

Another Speaker

There is also a negative example. We in Germany love our tax system and are used to the tax rates. But what we will never get used to is a system of concurrent competences in legislating and executing tax systems, this cold financing here and there, where everybody has his hand in everybody's pocket and nobody is responsible for anything. We have to avoid this on the European level. If we go home today definitely convinced that we must have clear competences, I think we will have fulfilled our mission.

Dr. Christoph von Rohr

As we all know it will certainly be difficult for the member states to agree on the distribution of competences in every single field. But we could

make some headway in those field where we do agree and leave the rest – probably a relatively small number of issues – for a later stage of negotiations. If we are to accept a Europe of two speeds, this would significantly ease the process. However, what we want to avoid at all costs is the mingling of competences. Our German tax system provides a perfect example of the type of confusion which can result from such mingling.

Professor Schneider

I agree that the principle of subsidiarity is not working as it was supposed to before. The principle of subsidiarity is linked with a specific aim, to achieve the integration of the Treaty. Yet it is such an unbalanced measure, and normally the EC is better able to do so than Member states. If we also agree that we have to have a very precise definition and allocation of competences, then we can do it only by amending the Treaty. Then we have to think how to limit the harmonization competences. We have two major problems. Most of the tasks, health care, social security, protection of the environment, consumer protection, are for all levels. It is very difficult to allocate specific functions in these large areas of politics. The other problem is that even if we are successful in allocating functions properly, we have to have a strong watchdog so that the Commission only acts within its own limits. If you look, for example, at the decision concerning the ban of tobacco advertising, you will see that the court is shifting now in more of a watchdog direction. So the Commission has strong impetus to enlarge its own competences, and to acquire competences that are not given to the European Union. We have to face these problems, and take forward steps in both these areas.

Baroness Jay

Could I pick up on the most crucial point for me, that *'the European debate comes back to politics'*, which I would underline many times in red. Thus the tobacco advertising debate has much more to do with politics than with a reassessment of the powers of the European Council. I would absolutely agree with Ambassador Bitterlich that what one needs to do is to look at this issue of the level at which things might be achieved. I think when you came to assessing the four tiers, the problem for me was that these were not ones that citizens, who feel most alienated from the whole process, would most readily identify as being anything to do with either the resolution of problems in their lives, or the advancement

of their well-being, however they were phrased.

Perhaps, the EMU would be a natural example. From the domestic political perspective in the UK, the issues with most drive and political involvement by our electorate were the ones at the top of the agenda in our General Election - much more mundane, like the Health and Education services. This is why, wearing the hat I wore until the General Election as Minister for Women, I found it very useful, when trying to engage British women in discussions about Europe, to use the directives on parental leave, and part-time working –from Europe, as things they could identify with. I think that sometimes one has to hold on to concrete matters which affect people, and which they see as being relevant and important to their lives, and then look at the structure and level of competence which most easily and practically affects that.

Going back to the precise framework that Europe can adopt to take this forward, I thought that the conclusions of the EC Lisbon summit on European employment and training matters, and particularly IT, were applicable to people in their lives; and the European dimension, as opposed to the individual nation-state dimension, was a useful tool for improvement. So, from my political perspective, one first needs to look at what the population are most concerned about, then look at the ways at which national governments or European institutions are more effective in trying to stimulate a better dialogue and understanding of the European benefits - which still have a long way to go before they are ready to be accepted in the UK.

Another Speaker

It is said we have to get to a very precise delimitation of the competences. The experiences from federal systems and states all show there is a shift from the lower to the central level. The experience of the debate so far in Germany started with the Bavarians who did not like restrictions on liberty of actions at the Länder levels. This was a question exercising existing competences. Just to have a catalogue in the EU on social policy, on environment, but not in culture etc would not lead us further on.

The existing attribution and exercise of competences is a political matter. How do we get limits enforced? There must be 'procedures' solution, added to a more systematic allocation of the powers. To give to those interested in maintaining national or regional competences a say in the procedure of decision-making at the European level. We have seen Governments are not always the ones to respect the limits of competences because they have political interests to follow the European way. The court

is the last controller, a political brake. I propose a Parliamentary committee, composed of representatives of the national parliament and Opposition parties, to be consulted in any case of doubt. For example, is the competence to be respected or is subsidiarity respected? If this committee says we have agreed on the Council, then Parliament will be forced to open a discussion and give good arguments why they believe that it is necessary to act at European level. Then it might come to the Court of Justice, which might come with more arguments and more material.

Lord Hannay

First, it is the political decisions that really matter. What we do about Enlargement? This in my view, is more what people think about the European Union, than anything that is being said about the institutions and how we take decisions. We have to bear that in mind, or we lose touch with reality. Second, I feel that the EU has lost its way in terms of its constitutional development, by deserting the route that it took at the Single European Act. Having sharply focused the objectives for its institutional development, which were enormously successful in that case, it provided the legal base for a common foreign security policy. It provided the Single Market, which was delivered in the next five years, and the same with half of the Maastricht Treaty. The European Economic Monetary Union Treaty is growing before our eyes and producing results. It is the other half, which went under this scatter-gun effect, which has now to be continued at Amsterdam and Nice and into the 2004 Treaty. I am a strong believer that the EU should decide on one of these processes of institutional change and stick to it. The scatter-gun approach has done an enormous amount of damage.

With reference to Qualified Majority Voting, I have to say, as a practitioner, that unanimity on the Single Market was completely pernicious. It was a charter for the lowest level of civil servant to stop any decision being taken. We would not have a Single Market without qualified majority voting. We would simply not have what we have now, which has created millions of jobs.

On subsidiarity, I take it that because we have it in the Treaty, we cannot make it disappear. On the other hand, it is not respected, because it has not been very well applied. Europe needs a Constitutional Court of Arbitration, to deal with these constitutional issues. The EU ought to produce a legislative programme at the level of the

European Council for a period ahead, like a Government declaration after an election, with space for emergencies, to give a bit more stability to everyone. You calculate the net effect of European spending policies, and adjust them (both in plus and minus) to the degree of prosperity of the countries contributing and the degree of lack of prosperity of countries receiving. The Europe of 27 will have to transfer lots of money to the new Central and Eastern European countries, but should do so in a controlled way, as in a federal state, to reduce the budgetary rowing.

The debate on enhanced co-operation goes on and on! We do not need to re-adjust the legal base for this, just get on with it.

I think constitutional courts would be better, but its scopes are very closely limited but is very specific and its word is law.

The experience with our constitutional in Germany is that in the allocation distribution of function power methods, it always says political issues. That makes me a little bit hesitant in following your useful proposal.

David Anderson

My off the cuff answer to your question is that any Constitutional court would need jurisdiction to apply a catalogue of fundamental rights. I would have thought it more likely to be the Charter of Fundamental Rights than the European Convention itself, although of course the intention was that the two would be of similar effect. The point goes back to the debate about the difference between a constitutional treaty and a federal constitution. One difference comes at the judicial level. Although the Court of Justice claims exclusive power to determine whether the Community has exceeded its competence, its power it exercised last year in the tobacco case. The bottom line remains that the constitutional courts of the member states (those that have them) retain for themselves the power to reject interpretations of law by the Court of Justice which are incompatible with national constitutions. One could say that this power is a 'nuclear weapon'; it is so strong that it could never be used. But it has been threatened often enough, not only by the German Federal Constitutional Court, but also by Italy and Denmark, but ironically not in the United Kingdom. Having no written Constitution and no Constitutional court, we are in no position to make such threats. It seems to me under a true federal system (unless we go the Swiss route, which I understand does not provide for judicial reviews of federal laws), there could be no doubt that the power to decide on the competence or otherwise of a federal law would rest with the

Federal Court. The ultimate meaning of any catalogue of competences or any doctoring of subsidiarity would be for the unchallenged jurisdiction of the Federal Court without control by National Constitutional court.

It seems to me this is one area where, from a lawyer's perspective at least, it does come down to law rather than politics, as one sees in the United States Supreme Court. In the US and Germany, there is considerable political input into the composition of the top constitutional court, (Supreme Court in US and Federal Constitutional Court in Germany). In France, although things work rather differently, I understand the *Conseil Constitutionnel* which has some attributes of a constitutional court, has the power to vet legislation for constitutionality *before* it goes onto the statute court.

I have three questions:

first is the abandonment of the veto (which national constitutional courts in some states currently reserve the right to exercise) something that is going to be of concern to those national Constitutional Courts if we go over to a federal constitution?; second, In terms of appointment to the European Court of Justice, could we hear a little more about how the Germans do it and has Europe anything to learn from Germany in that respect?; and third, do any of the French delegates feel that this idea of the *Conseil Constitutionnel* could be exported to Europe as a whole?

Professor Bogdanor

I think there is an interesting polarization of views between Professor Wyatt and Ambassador Bitterlich, whether in the future of the EU we should be thinking broadly in legal constitutional or political terms. I am rather sceptical of the former, because I do not believe it really makes sense in the modern world to make lists of competences to say that this belongs here and that there. When you are dealing with complex public services I doubt if you can draw lines in this way. For example in the European context, most of us would say that Education should stay with member states. Yet one of the most successful programmes of the EU is the Erasmus Programme. How do you draw a division of competence on Education which makes that point? I think the German Constitution from that point of view is much more sophisticated, in that it does not attempt to do that in the division of powers between the Federal Government and the Länder governments.

Therefore I share the view that the essence of moving forward in Europe is some sort of political reform. The EU institutions as a whole, except the European Parliament, are in no way linked to the people of Europe and that is the great difference between the EU and the Swiss constitution. Why not make future treaty amendments conditional upon a referendum so people have to be persuaded to accept what their leaders think is good for them.

Mr Bitterlich mentioned that the EC might acquire some democratic legitimacy through some form of direct election, which would require a treaty amendment. I do not think that could be achieved at present, certainly not in Britain. However, you could also do that if the European Parliament used its powers to choose a Commission President and Commission in accordance with its own majority. The problem is that any proposal to make the Commission more of a legislative body would increase the power of the Commission and tilt Europe towards supranational institutions, and away from the quasi inter government approach which the British favour.

Dr Max Frenkel

Many of the things we have been discussing are not new. The same questions crop up. The basic problem is that there has to be some harmony between those who govern and those who are governed. One of the ways in which this is supposed to be tackled is the subsidiarity principle. I do not think we get much by finding a common definition of the subsidiarity principle. Like all good principles, one of its strengths is it can clearly accommodate one of different points of view.

A bottom-up approach is a good thing, but how to make it work? What is a power? What is a core theme? How do we get the fringe not to impinge on the core? We all agree how wonderful principles are. But politicians are not really interested in principles, they are interested in programmes.

Edward Garnier

Listening to the three speakers I was struck by the question of the democratic deficit. Certainly that is something I face day to day in the UK. The EMU, foreign policy, security and defence, home and justice policy, Enlargement, these are the issues which create the political pinch points and a sense of distance between the EU and its institutions. The onset of the EMU is going to increase the sense of disempowerment for fellow citizens. They will lose further control over a national economy even more than they feel at the moment. Also with foreign policy. If this is

moved up to the European level, this will mean increased distance. I fear Enlargement will take this increasing distance even further. So, that sense of distance between my constituency and the EU will continue to grow. We should give the EU parliament more power. The danger about that is that it creates fear amongst my constituency that you are conferring statehood upon the EU. European MPs for my area are elected on a list system and as a citizen of that area I feel I do not own or have any real constitutional connection with them. I am a reasonably informed member of the British public, but I do not really know what they do achieve for me. In practical terms a huge gap.

New Person

If you stand back and ask what are the characteristics of a successful democratic system, I think it should be intelligible, able to educate, and to entertain. I entirely agree with Professor Bogdanor using an instrument of referendum to create a wider sense of legitimacy. I do not agree with him on an upper house. The European parliament has not been a complete success.

A small number of leading national politicians with one remit above all to apply the presumption against further centralization. A presumption which could generate disagreement, an argument about what is going on. I think one of the disagreements should be discussed. An agency to immobilise opinion.

Professor Zimmerli

I agree with those who say that Europe already has a constitution. Discussing subsidiarity we should not forget that Switzerland is small enough to practise subsidiarity without major accidents. We tried to give back 14 subject tasks to the Cantons and 7 new tasks to the Federal level. That will be subject to a referendum. But I am not sure that a referendum would be the answer for the European Union.

Derrick Wyatt

The first step must be towards identifying the appropriate decision maker. – Ultimately in the EU system I do not think we are going to move from having the European Court as the main judicial authority. Any different court would still have the same open-ended powers to adjudicate upon. A

first step to reform would be to look very closely at whether we can identify reserve powers, specific attributed powers, because at the moment there is something of a blank

cheque in terms of legislative powers in Europe and that is causing problems. We do Europe no service by pretending the problem does not exist.

Edmond Alphandéry

From the French point of view, the EU is a « sui generis » construction and it is important in this context to take advantage of our past experience on the subject. We have to follow our own way. Raising the question of federalism then is not probably the most rewarding. I prefer the pragmatic approach of how to share the competences between the EU and the states. I wonder whether the subsidiarity principle is very useful for that purpose. It does not bring us nearer an answer to the main questions. To assume that issues should be addressed at the level where they are better implemented seems rational, but does not help to determine which the « best level » of implementation should be. I consider that we already have a « de facto » European constitution. I share the view that we have treaties and these treaties are « the constitution » of the Union. In the present context, what we need most is a European constitutional court which should draw the borders of competences between the EU and the states in a jurisprudential manner. For the time being trying to improve the efficiency of the European executive power and the European Parliament through a treaty will meet considerable obstacles and may fail. We have a very important rendezvous in 2004, and our first task should be to put proposals on the table for the creation of a European constitutional court.

Paul Flather

I think I have learnt four things from this discussion. First, there is no doubt that the European experiment towards integration must continue. It is important that we operate in a Continental co-operative way, and certainly in terms of defence and international relations. Let us agree that the process must continue. Second, the whole notion of subsidiarity needs clarification. Clearly the citizen needs to understand where we divide power. So, we must focus on and clarify what we mean by subsidiarity. Thirdly, we must have more clarity and openness in all the business of the EU commission. I do not understand for example, why I cannot have the breakdown of the budgetary arrangements on a single piece of paper. I do not know why we do not use the Internet more to have a monthly report of the main achievements, and what is to happen. We have the technology, but we do not utilize it. We need to know what the key discussion items are, but in a simple way. Fourthly, we must work to reconnect our citizens to Europe. Again, using the Internet, I cannot see why we cannot

strengthen the Parliament and develop a civil service which can really think beyond state boundaries and operate on a supra-national level.

Ambassador Bitterlich

Responding to different comments and questions, I would like to make four points:

1. The introduction of an "opt-out-clause" and of an "appeal clause" in return for generalizing the vote by qualified majority: I am basically in favour, but this has to be looked at as "last resort".
2. The concentration on core business is in my view at the same time one response to get the EU nearer to the citizen.
3. We need an IGC (Intergovernmental Conference) only for a few number of fields; many subjects can be settled by the Council itself.
4. Agreement to constitute a sort of European Constitutional Court to control violations of the principle of subsidiarity and of competences (either French or German model, i.e. ex-ante or ex-post-control).

CONCLUDING REMARKS:

Lord Weidenfeld

I am intrigued by the idea of the appeal by Americans a couple of years ago for a new constitutional court, for a 'Court of Competences of the Chief Justices of States' to deal only with competence matters.

On the question of common foreign policy, this is one area where we must go very slow. We have this variable geometry of three countries, Britain, France and Germany, having closer contact and this offers

possibilities to intercede in different crises and areas of the world.

I thank you all for making this a very successful conference and am pleased to say that we have generous sponsors who might wish us to continue to monitor the process of greater cohesion of Europe. Thank you once again for your engagement.

Club of 3

C.V.s of Participants

France

Alphandéry Edmond

Edmond Alphandéry was France's Minister of the Economy for the French Government from 1993 to 1995. Currently President of the Supervisory Board of CNP Assurances. Dr Alphandéry began his academic career in 1968 holding successive teaching posts at the universities of Paris Dauphine, Aix-en-Provence and Paris II. He embarked upon his political career in 1976, when he became Mayor of Longué-Jumelles and, in 1978, a member of the Maine-et-Loire Local Council. In the same year, he was elected to the Assemblée Nationale as Member for Maine-et-Loire and later was elected member of the Finance Committee. At the end of 1995, he was appointed President of Electricité de France. He was also made a member of the French Atomic Energy Committee and of the Consultative Committee of the Banque de France. Edmond Alphandéry has a doctorate in Economic and Political Sciences, an "agrégation" in Political Economy and a diploma from the "Institut d'Etudes Politiques" (Sciences Po) in Paris. He is a widely published author.

Sergeant Jean-Claude Professor

Professor J.C. Sergeant was appointed Director of the Maison Française in Oxford in September 2000. A Cultural Centre, the Maison Française also hosts a research unit associated with the CNRS and specialised, among other things, in comparative political behaviour. Prior to this appointment, J.C. Sergeant was Professor of British Civilisation at the Sorbonne Nouvelle University (Paris 3). He was Head of the American and British Studies Department from 1994 to 1998 before his appointment as Head of International Programmes until 2000. Specialised in British politics and media, J.C. Sergeant also lectured regularly on French politics and society at the British Institute in Paris. His recent publications include: *La Grande-Bretagne de M. Thatcher*, *Enfance et Société en Grande-Bretagne*, *Les médias britanniques*.

Germany

Bitterlich Joachim Ambassador

Ambassador of the Federal Republic of Germany to the Kingdom of Spain and the Principality of Andorra. ;Born 10 July 1948 at Saarbrücken-Dudweiler, West Germany married, three children (a daughter and two sons). Reserve Officer.

Studied Law, Economics and Politics, at the University of Saarbrücken; later research assistant at the same University

Studied at the French National School of Administration (ENA) in Paris (1974/75).

Entry into the Federal Foreign Office in 1976, posted to Algiers (1978-81) and Brussels (Permanent Representation to the European Communities - 1981-85)

1985-1987 Advisor in the Private Office of the Minister of Foreign Affairs, Hans-Dietrich Genscher.

1987-1993 Head of the European Policy Department at the Federal Chancellor's Office. June 1993 -

October 1998 Director of Foreign Policy, Economic Cooperation and External Security at the Federal Chancellor's Office - and Foreign and Security Policy Advisor to Federal Chancellor Helmut Kohl

1998-1999 Ambassador, Permanent Representative of the Federal Republic of Germany on the North Atlantic Council in Brussels. Since 18 October 1999 Ambassador of the Federal Republic of Germany to the Kingdom of Spain and the Principality of Andorra.

Gröbel Jo Professor

Prof. Dr. Jo Groebel, born 11-11-1950 in Jülich, Germany, is Director-General of the European Institute for the Media, Düsseldorf/Paris, holds the chair for media psychology at the University of Utrecht and is a visiting professor at the University of California in Los Angeles (UCLA) and the University St. Gallen. He was President of the Dutch Association for Communication Sciences (1994-1999). Jo Groebel was/ is advisor to the Dutch government, the President of Germany, the United Nations and UNESCO and several FORTUNE 500-companies. Was head of the media monitoring missions for the European Commission during the 1999 DUMA and the presidential elections 2000 in Russia and the general elections in Serbia, 2000. Has co-operated in his research with, i.a. Harvard Law School, Yale and Cambridge Universities. Is author/editor of 20 books and app. 200 articles, published in Europe and the United States. His paper presentations included keynote speeches at the National Academy of Sciences in Washington, D.C., the World Congress of Psychology in Sydney, the World Congress of Mental Health in Auckland, N.Z. and the French Senate. Jo Groebel was co-promoter of the honorary doctorate for British film director Peter Greenaway. He has worked on numerous TV- and radio productions internationally and is an author for press publications including Frankfurter Allgemeine Zeitung, Die Zeit and De Volkskrant. In 1990, he received the 'Outstanding Contributions Award' of the International Council of Psychologists in Tokyo. In June 2000, Jo Groebel presented his vision on the Future Digital Society during the Government conference in Berlin, with 14 Heads of State, where he met personally with, i.a., Clinton, Jospin, Schröder and Mbeki. He also presented his perspective on the future information society to the German chancellor, Gerhard Schröder and part of his cabinet.

Janning Josef Dr.

Born 1956. Vice President, Bertelsmann Foundation, Head of its Politics Division;

Director, Bertelsmann Forschungsgruppe Politik (Bertelsmann Group for Policy Research), Centrum für angewandte Politikforschung (Center for Applied Policy Research), Munich University, Federal Republic of Germany.

Teaching assignments in political science at the University of Bonn, the university's Akademisches Auslandsamt (1982-1985), Assistant Professor at the Johannes Gutenberg-Universität Mainz (1985-1988), (1989-1994) Lecturer in International Relations, Johannes Gutenberg-Universität Mainz; 1993 Guest Professor at the Hebrew University of Jerusalem, Israel; 2000 Guest Professor at Renmin University, Beijing, China.

1987-1995 Deputy Head of the Forschungsgruppe Europa, Johannes Gutenberg-Universität Mainz.

1987-92 Assistant Editor of the quarterly European Journal of International Affairs (Rome), 1995-2000 Book Review Editor of the monthly journal Internationale Politik (Bonn). B.A. in political science, Elmira College, N.Y. (U.S.A.); M.A. in political science, Rheinische Friedrich-Wilhelms-Universität Bonn.

Chairman and member of various international study groups, high level groups and commissions on European affairs, East-West and Mediterranean issues, security policies and transatlantic relations. Member of the Board of the German Federal Academy for Security Policy, member of the Editorial Board of the public policy journal "Challenge Europe", Brussels.

Advisor to the German government, state parliaments and EU member state governments, the European Commission and the Council of Europe on foreign and European affairs, security and defense.

Lectures and speeches in policy fora in most European countries, the United States, Israel and the Middle East and Asia. Contributor to the Jahrbuch der europäischen Integration (Yearbook on European Integration), the Jahrbücher der Deutschen Gesellschaft für Auswärtige Politik (Yearbooks of the German Society for Foreign Affairs), to other reference works on international affairs and European integration and to German and international newspapers. Numerous publications, articles, comments and reviews on European and International Affairs, Foreign Policy of Germany and other Western states, East-West and Transatlantic Relations.

Maucher Helmut

Date of birth: 9th December, 1927 Place of birth: Eisenharz (Allgäu), Germany After graduating from high school, completed a commercial apprenticeship at the Nestlé factory in Eisenharz (Germany), and was then transferred to Nestlé in Frankfurt. Parallel to holding different positions within the Company, studied at Frankfurt University, where he graduated with a degree in business administration ("Diplom-Kaufmann"). From 1964 until 1980, different management positions within the Nestlé Company in Germany and, from 1975 on, President and Chief Executive Officer of Nestlé-Gruppe Deutschland, Frankfurt. Finally, on 1st October, 1980, transfer to Nestlé in Switzerland as Executive Vice President of Nestlé S.A., Vevey, and Member of the Executive Committee. In November 1981, nomination as Chief Executive Officer of Nestlé S.A. and from 1st June, 1990 to 5th June, 1997 both Chairman of the Board and CEO. As of 6th June, 1997, having relinquished the position of Chief Executive Officer, continued as Chairman of the Board of Nestlé S.A., Vevey Switzerland. On 25th May, 2000, relinquished the position of Chairman of the Board; named Honorary Chairman by the Board.

Pernice Ingolf Professor Dr.

Born July 6, 1950 in Marburg/Lahn; 1969-76 Studies in Marburg, Geneva, Bruges and Freiburg; 1977 Research assistant at the University of Augsburg; 1978 Doctorate at Augsburg University; 1980-92 European Commission: Competition, DG IV (1980-83) and Member of the Legal Service (1983-1992); 1988 Habilitation (PhD) at Bayreuth University, following special leave for research 1985-87; 1990 Co-editor of Europäische Zeitschrift für Wirtschaftsrecht (EuZW), Verlag C.H. Beck, München; 1993 Professor at the Johann Wolfgang Goethe-Universität, Frankfurt; 1995 Editor of Schriftenreihe Europäisches Verfassungsrecht (NOMOS, Baden-Baden); 1995 Member of the Advisory Board of the Columbia Journal of European Law; 1996 Professor at the Humboldt-Universität of Berlin, Chair for public law, international and European law; 1997 Member of the „European Forum for Environment and Sustainable Development“; Founder and managing director of the Walter Hallstein-Institut for European Constitutional Law of the Humboldt-University Berlin (www.whi-berlin.de); Responsible for external relations of the Humboldt-University Law School; Guest professor at Paris II (Panthéon-Assas), Institut des Hautes Etudes Internationales; 1999 Member of the Europa-Kommission of the Bertelsmann-Foundation; 2000 Member of the Expert Committee for European policies of the Christian Democrat Party.

Schneider Hans-Peter Professor Dr.

November 26, 1937 Born in Jena/Thuringia (Germany)
SS 1958 - WS 1963/64 Studied Law and Political Science at the Universities of Freiburg i.Br., Paris and Munich; December 12, 1962 (First) Legal Exam in Freiburg i. Br.; December 14, 1965 Dr. jur.: Dissertation Theme: "Justitia universalis. Studies on the History of the `Christian Natural Law` in the Works of G.W. Leibniz", with - summa cum laude - (Ref.: Prof. D. Dr. Dr. h.c. Erik Wolf); January 1966-March 1969 Assistant Professor at the "Institute for Legal Philosophy and Protestant Ecclesiastical Law" of the University of Freiburg i.Br. (Director: Prof. Dr. Dr. Dr. h.c. Erik Wolf); November 27, 1969 (Second) Bar Exam in Stuttgart; March 1969 - May 1972 Associate Professor at the "Institute for Public Law" of the University of Freiburg i.Br. (Director: Prof. Dr. Martin Bullinger);

1969 – 1978 Judge at the Ecclesiastical Administrative Court of the Protestant Church in Baden; May 18, 1972 Habilitation at the University of Freiburg/Br. with the *venia legendi* for Public Law, Legal Philosophy and Ecclesiastical Law, Theses on "The Parliamentary Opposition in the Constitutional Law of the Federal Republic of Germany" (Ref.: Prof. Dr. Dr. h.c. mult. Konrad Hesse); 1972 – 1974 Junior Lecturer at the Universities of Hamburg and Tuebingen; since January 21, 1975 Full Professor for Constitutional and Administrative Law at the University of Hannover; 1976 – 1993 Many Study and Research Visits in Spain, Greece, South East Asia and South Africa; 1976 – 1978 Foreign Adviser of the Constitutional Committee of the Spanish Parliament; 1979 – 1991 Deputy Justice of the Constitutional Court of the Freie Hansestadt Bremen; WS 1980/81 Visiting Professor (Thyssen-Fellow) at the Law School of the University of Chicago; 1981 – 1983 Member of the Expert Commission on "Social Security Systems" of the Federal Government; 1982 – 1983 Member of the Federal Presidential Commission on "Party Financing"; 1986/87 Foreign Adviser of the Government of the Philippines on Constitutional Matters; 1990 Member of the Expert Commission of the Speaker of the Bundestag "The Remuneration of the Members of Parliament"; 1990 – 1993 Advisory Member of the Constitutional Committees of the Parliaments of Saxony, Anhaltina and Thuringia; 1992 – 1993 Member of the Federal Presidential "Commission of Independent Experts on Party Financing"; March 9, 1994 Honorary Doctor's Degree of Law (Dr. jur. h.c.) by the Panteios - University of Athens; 1994 - 1996 Member of the Executive Committee of the Association of German Constitutional Lawyers; 1995 – 1996 Visiting Professor at the University of the Western Cape (South Africa); Since 1986 Director of the "Research Centre for Contemporary History of Constitutional Law" at the University of Hannover; Since 1987 Justice at the Constitutional Court of the State of Lower Saxony; Since 1992 Executive Director of the "Institute for Federal Studies" at the University of Hannover; Since 1993 Justice at the Constitutional Court of the State of Saxony; Since 1996 Advisor to the Government of Georgia in the Reconstruction Programme of the legal order; Since 1998 Vice President of the "International Association of Centres for Federal Studies" (IACFS)
Publications: About 200 books and articles on constitutional and administrative matters

Stürmer Michael Professor Dr.

Born 1938 in Kassel, Germany. After school, military service, 6 months in industry. Read History and Social Sciences in Berlin, London (LSE) and Marburg. PhD Philipps-Universität Marburg. Habilitation 1971, Technische Hochschule Darmstadt. Lecturer in European History, Sussex University 1970/72. Since 1973 full professor of Medieval and Modern History. Friedrich-Alexander-Universität Erlangen-Nürnberg. 1988-98 Director of the Research Institute for International Affairs (Stiftung Wissenschaft and Politik) in Ebenhausen/Isartal.

Research Fellow Harvard University 1976/77; Member of the Institute for Advanced Studies, Princeton N.J. 1977/78; Visiting Professor of European Studies, University of Toronto 1983/84; Professeur Associé de la Sorbonne 1984/85; Visiting Professor for Advanced International Studies(SAIS), Bologna 1985/86 and 1998/99, Research Fellow Wissenschaftskolleg Berlin, 1999/2000.

1984-94 Columnist for Frankfurter Allgemeine Zeitung, 1994-98 for Neue Zürcher Zeitung and Financial Times, since 1998 Chief correspondent Die Welt am Sonntag.

1993-98 Advisor Common and Foreign and Security Policy (CFSP) EU-Commission, DGIA.

Since 1990 German Advisory Council, J.P. Morgan Bank.

Member of the Institute for Strategic Studies (IISS); Member of The Sandford Group, Ditchley Park, Ox., Non-Ex. Director, European Program, SAIS Washington; membre, Comité de Patronage, Commentaire, Paris.

Recent publications: *Das ruhelose Reich. Deutschland 18-66-1918*, Berlin 1983, 4th ed.1994; *Scherben des Glücks. Klassizismus und Revolution*, Berlin 1987; *Striking the Balance*. Sal. Oppenheim Jr & Cie. A Family and a Bank, London 1994; *Die Grenzen der Macht. Begegnung der Deutschen mit der Geschichte*, Berlin 1992; *Die Reichsgründung*, 4th.ed.1997. With Robert Blackwill (ed.) *Allies Divided. Transatlantic Policies for the Greater Middle East*, MIT Press 1997; *The German Century*, Weidenfeld & Nicolson 1999, also available in German, French, Danish.

Fields of interest: International Affairs; Material Culture of Europe 17th and 18th century; Economic and Political History 19th and 20th century.

Officier de la Légion d'honneur.

Von Rohr Hans Christoph Dr.

born on July 1, 1938 in Stettin (Germany);

Present Positions: Industrial Investment Council (IIC), Berlin, Chairman of the Executive Board; German Institute for Competition Law, Chairman; Economic Council of the CDU, Bonn, Member of the Executive Board; Wessing Lawyers, Partner; Various Supervisory Boards, Member.

Positions held: 1968 – 1971 Klöckner-Werke AG, Duisburg and Bremen Assistant to the Executive Board; 1971 – 1974 Establecimientos Klöckner S. A., Buenos Aires (Steel Trading Company) General Manager; 1974 – 1983 Fisser & v. Doornum, Hamburg (Trading and Shipping Company) Managing Partner.

During this period: 1978 – 1984 Christian Democratic Party (CDU), Member of the Hamburg state parliament and spokesman for economic policy; 1984 – 1991 Klöckner & Co AG, Duisburg (International Trading Company) Member of the Executive Board; 1991 – 1995 Klöckner-Werke AG, Duisburg (steel, machinery, automotive components), Chairman of the Executive Board.

Educational background: University studies in law and political science, Universities of Heidelberg, Vienna, Bonn. Fulbright Scholar at Woodrow Wilson School of Public and International Affairs, Princeton University, USA: First and Second State. Examinations in Law. Doctor of Law.

Von der Gablentz Otto Dr.

Born 1930 in Berlin, law studies in Berlin and Freiburg (1948-52). Research and studies in politics and sociology (1952-53) at the College of Europe Brugge/Belgium (where he also served as assistant in 1955-56); St. Antony College Oxford (B.phil 1955), Harvard University (1956-57) and Research Institute of the German Association for Foreign Policy. Joined German Diplomatic Service in 1959 serving in Australia and London. Foreign Office, Bonn (problems concerning Germany and Berlin (1964-67) and European Political Cooperation (1973-78). From 1978-82 seconded to Federal Chancellor's Office (1981-82 head of dept. for Foreign and Defence Policy under Chancellor H.Schmidt). German Ambass to Netherlands (1983-1990), Israel (1990-93) and Russia (1993-95). Rector of the College of Europe 1996-2001.

Is Honorary Fellow of the Hebrew University Jerusalem (1993) and Dr.h.c. of Amsterdam University (1997).

Alexis de Toqueville Prize of the European Institute for Public Administration (1989).

Wittig Martin Dr.

Born Germany 1964. Began as mine-worker in S.W. German hardcoal mine.

Later studied mining engineering and business administration at Technical Universities of Aachen and Berlin. Engineering degree at RWTH Aachen. PhD studies on option based investment planning at Technical University Berlin and Imperial College London. Lecturer at Technical University Berlin. Joined ABN Amro in 1994 working in the field of project finance. In 1995 joined Roland Berger, leading European management consultants. Became Principal in 1999 and full Partner 2000. Since January 2001 Managing Partner and Director of Berger's Zürich office. Main areas of consulting work: corporate finance, turnaround management and aviation and transport industries.

Liechtenstein**Von und zu Liechtenstein SD Prinz Nikolaus**

Date of birth 24 October 1947. Parents: H.S.H. Prince Franz Josef II von und zu Liechtenstein and H.S. H. Princess Gina, Countess Wilczek. Married to H.R.H. Princess Margaretha of Luxembourg. One son, two daughters. Law studies at the University of Vienna, doctorate of Law. Ambassador of the Principality of Liechtenstein to the Kingdom of Belgium and to the European Union, 1996-. Ambassador of the Principality of Liechtenstein to the Holy See, Rome (non-resident), 1986-. Ambassador of the Principality of Liechtenstein to Switzerland 1989-96. Liechtenstein's Chief Negotiator for the Agreement on the European Economic Area, 1990-95. Permanent Representative of the Principality of Liechtenstein to International Organizations in Geneva, 1995-96. Permanent Representative of the Principality of Liechtenstein to the Council of Europe, Strasbourg, 1979-89. Counsellor at the Office for International Relations of the Liechtenstein Government, 1977-78.

Member of the Council of the Fondation Jean Monnet pour l'Europe, Lausanne and of the Board of Directors of the Center for European Policy Studies (CEPS) Brussels.

Switzerland

Favre Charles Conseiller d'Etat

Elu au Conseil d'Etat le 20 mars 1994 et entré en fonctions le 12 avril 1984. Radical. Chef du Département des finances dès 1996 (au Département de la prévoyance sociale et des assurances de 1994 à 1996). Né le 18 août 1957 à Lausanne; originaire de St-Barthélemy. Gymnase au CESSNOV à Yverdon-les-Bains. Université de Lausanne (Faculté de médecine). Diplôme fédéral de médecin en 1983. Stages post-universitaires dans divers hôpitaux de Suisse romande de 1983 à 1987. Médecin généraliste de 1987 à 1994. Vice-président du Parti radical-démocratique vaudois, section Broye-Gros-de-Vaud de 1993 à 1994. Conseiller communal de 1985 à 1994. Député au Grand Conseil de 1990 à 1994. Président du Conseil d'Etat en 1997. Epouse: Karin Favre.

Frenkel Max Dr.

Born 14.4.1938 in Zürich. Education: State college for business administration, Zürich, and law studies at Zürich university (Doctorate 1967). 1967-87: Executive Director Swiss Foundation for Federal Collaboration in Solothurn (since 1974 liaison office of Swiss Inter-Cantonal conferences). 1977-88 Zuchwil local councillor (executive) and member of the land use planning commission (1977-85) as well as president or member of various other commissions.

Since 1987: editorialist with the Neue Zürcher Zeitung (national policy on foreign, political, linguistic and tourist affairs, philately etc.) President of the Zuchwil Radical Party (until 1988). Activities within the New Helvetic Society. Vice president of the Solothurn Law Society (1986-89). Bernese State Prize 1984, Walter and Verena Spühl Prize 2001.

1975-82 Director of the "Joint Center for Federal and Regional Studies" at Riehen;

1974-75 lecturer for comparative federalism University of Zürich; 1978: Visiting Fellow with the Australian National University in Canberra (Centre for Research on Federal Financial Relations);

1976-85: Member of the Expert committee of the Swiss National Trust for the national research programme «Regionalism and transfrontier relations»; 1984-87: Member of the Board of Directors of the «Institute for Federalism» (successor to the «Joint Center») at the University of Fribourg in Switzerland; 1984-86: Lecturer on Comparative Constitutional Law of the Cantons at the University of Fribourg

Jenny Kurt a. Regierungsrat Prof. Dr.

Geboren 13. Mai 1931 in Basel. Verheiratet mit Béatrice geb. Schrenk seit 1959, 3 Kinder. Matura am Humanistischen Gymnasium Basel. Studium der Jurisprudenz an den Universitäten Basel und Lausanne sowie an der Académie de Droit International, Den Haag. 1956 Doktor-, 1958

Advokaturexamen. 1972-1992 Regierungsrat des Kantons Basel-Stadt. 1980-1995 Vizepräsident, ab 1986 Präsident der Schweizer Mustermesse in Basel. Seit 1991 Präsident der Schweizerischen Vereinigung für Schifffahrt und Hafenwirtschaft. Seit 1992 praktizierender Anwalt in Basel. 1992-2001 Mitglied des Verwaltungsrates der Roche Holding AG. 1994-2000 Präsident des Verwaltungsrates des Zoologischen Gartens Basel. 1980 Ehrendozent für Öffentliches Recht an der Juristischen Fakultät der Universität Basel. 1994 Beförderung zum ausserordentlichen Professor (Extraordinarius) für Öffentliches Recht.

Keller Pierre Dr.

Studied law at the University of Geneva and international relations at Yale University where he obtained the degree of Master of Arts and Doctor of Philosophy. He started his banking career with the Swiss Bank Corporation in New York, and then spent a number of years in the Swiss Diplomatic Service where he was assigned to the Swiss Observer's Office to the United Nations, the Federal Political Department in Berne and the Swiss delegation to EFTA in Geneva. He joined Lombard & Cie in 1961, and has been the partner responsible for institutional clients since 1970. He was also chairman of Lombard, Odier International Portfolio Management Limited in London, and senior partner of the bank from 1990 to 1994. He retired from Lombard, Odier & Cie in 1995.

Was a member of the Board of the Swiss Bankers' Association of the International Centre for Monetary and Banking Studies and the "Institut International d'Etudes Bancaires". He was a member of the International Committee of the Red Cross and its Vice-President for a number of years.

Koller Arnold Professor Dr.

Federal Councillor 1987- 99 and President of the Swiss Confederation in 1990 and 1997.

Born in Appenzell 1933; m. 1972, 2 children. Econ. degree St.Gallen 1957; Dr.iur. Fribourg 1966, post.grad work Berkeley(USA). Worked in Secretariat of Swiss Cartel Commission; professor of Swiss and European Commercial and Economic Law at St.Gallen University 1972-86; President of Appenzell Innerrhoden Cantonal Court 1973-86; National Councillor 1971-86 and President of the National Council 1984/85. Was moving spirit in and saw through to completion the major review of the Swiss Federal Constitution (2000). Since leaving office as Federal Councillor has resumed academic career internationally.

Publ: Die unmittelbare Anwendbarkeit völkerrechtlicher Verträge und des EWG-Vertrages im innerstaatlichen Bereich (Habil.), Berne 1971 (Schweizerische Beiträge zum Europearecht, Bd.8). Das Kartellrecht der Schweiz, der EWG und USA im Vergleich (Schweiz. Zeitschrift für Kaufmännisches Bildungswesen 1980, Seite 153 ff.) Das politische System der Schweiz: direkte Demokratie, Föderalismus, Konkordanz (Schweizer Monatshefte 87. Seite 905 ff). Für eine starke und solidarische Schweiz. Ausgewählte Reden und Standpunkte (Stämpfli Verlag 1999)

Hobbies: skiing, tennis.

Zimmerli Ulrich Professor

Geboren 1942 in Thun. Bürger von Brittnau AG. Verheiratet

Prof. Dr. iur.; Fürsprecher. Seit 1987 ordentlicher Professor für Staats- und Verwaltungsrecht an der Universität Bern. Dekan der Rechts- und wirtschaftswissenschaftlichen Fakultät im akademischen Jahr 1992/1993. Vorsteher der juristischen Abteilung im akademischen Jahr 1993/1994; Studien an der Universität Bern. Nach Studienabschluss 1967-1969 Assistent für Steuerrecht. 1969-1973 Bundesgerichtssekretär/Bundesgerichtsschreiber. 1974-1987 Präsident des Verwaltungsgerichts des Kantons Bern.

Ab 1979 Lehrbeauftragter/Honorarprofessor an der Universität Bern. Von 1984-1987 nebenamtlicher Richter am Bundesgericht. - 1985-1988 Präsident des Schweizerischen Juristenvereins.

Parlamentarische Tätigkeit: Legislaturperiode 1987-1991: Präsident der ständerätlichen Kommissionen Raumplanungsbericht 1987, BG über den allgemeinen Teil des Sozialversicherungsrechts, Revision des Preisüberwachungsgesetzes. - Mitglied zahlreicher ständerätlicher Kommissionen (z.B. Finanzkommission, Petitions- und Gewährleistungskommission [ständige Kommissionen], Arbeitsvermittlungsgesetz, Strahlenschutzgesetz, BG über die Organisation der Bundesrechtspflege, BG über die direkte Bundessteuer und über die Steuerharmonisierung, Waldgesetz, bäuerliches Bodenrecht, Datenschutzgesetz, Lebensmittelgesetz, Verfassungsartikel zur Gen-Technologie u.a.m.)- Mitglied der PUK EJPD.

Legislaturperiode 1991-1995: Präsident der ständerätlichen Kommission für Rechtsfragen in den Jahren 1992 und 1993. - Mitglied der Finanzkommission des Ständerats. Mitglied der ständerätlichen Kommission für Umwelt, Raumplanung und Energie.- Mitglied der Finanzdelegation der eidgenössischen Räte (Vizepräsident für das Jahr 1995).- Mitglied des Büros des Ständerates.

Legislaturperiode 1995-1999: Mitglied der Finanzkommission des Ständerates. Mitglied der Finanzdelegation der eidgenössischen Räte (bis Ende 1997; 1996 Präsident).- Mitglied der ständerätlichen Kommission für Umwelt, Raumplanung und Energie.- Mitglied der ständerätlichen Kommission für Wissenschaft, Bildung und Kultur. Mitglied der Verfassungskommission des Ständerates (Präsident der Subkommission 1 [Grundrechte]) - 1998 Präsident des Ständerates

United Kingdom /Switzerland

Arengo-Jones Peter

OBE 1978. Born 1930. Studied Classics (Greek & Latin Language & Literature, Philosophy & Ancient History) at Oxford University. Degrees:BA (Hons) and MA (Literae Humaniores).

Until 1962 in broadcasting – training and early professional experience with the BBC, London, then 4 years responsible for the Swiss Broadcasting Corporation's English programmes. 1962 – 80 at the British Embassy, Berne, first as Press Attaché, then as Counsellor, Information and Cultural Affairs. Now resident in Switzerland as consultant to various British and Swiss organisations. Publ: "Queen Victoria in Switzerland" (1995), Occasional articles on music for "The Economist". Interests: skiing, swimming, music, history, literature, trying to save lost causes.

United Kingdom

Lord Alexander of Weedon

Baron cr 1988 (Life Peer), of Newcastle-under-Lyme in the County of Staffordshire; Robert Scott Alexander, QC 1973; QC (NSW) 1983; President MCC. Chairman, Royal Shakespeare Company, since 2000 (Governor, since 1995); b 5 Sept. 1936; s of late Samuel James and of Hannah May Alexander; m 1986, Marie Anderson; two s one d from a previous marriage. Educ: Brighton Coll.; King's Coll., Cambridge (BA 1959; MA 1963). Called to Bar, Middle Temple, 1961, Bencher, 1979, Master Treasurer, 2001; Vice Chm., 1984-85, Chm., 1985-86, of the Bar Council. Chm., Nat. Westminster Bank, 1989-99. Chm., Panel on Takeovers and Mergers, 1987-89; Dep. Chm., SIB, 1994-96; Mem., Govt Panel on Sustainable Development, 1994-. Chm., Delegated Powers and Deregulation Scrutiny Cttee, H of L, 1995-; Mem., Ind. Commn on Voting Reform, 1997-98. Non-executive Director: RTZ Corp., 1991-96; Internat. Stock Exchange of UK and Republic of Ireland, 1991-93. Chairman: Council, Justice, 1990-; Trustee, Crisis, 1990-96. Trustee: National Gall., 1987-93; The Economist, 1990-. Chancellor, Exeter Univ., 1998. President: King's Coll. Assoc., 1980-81; Brighton Coll., 1993-. Mem., Council of Governors, Wycombe Abbey Sch., 1986-92. Presentation Fellow, KCL, 1995. Publication: *The Voice of the People: a constitution for tomorrow*, 1997. Recreations: theatre, cricket, tennis, gardens, painting.

Anderson, David William Kinloch

QC 1999; b 5 July 1961; s of (William) Eric (Kinloch) Anderson, and Poppy (née Mason); m 1989, Margaret Beeton; two d. Educ: Eton Coll. (King's Schol.); New Coll., Oxford (MA Ancient and Modern Hist. 1982); Downing Coll., Cambridge (BA Law 1984); Inns of Court Sch. of Law. Called to the Bar, Middle Temple 1985; Lawyer from Abroad, Covington & Burling, Washington, 1985-86; Stagiaire, Cabinet of Lord Cockfield, European Commn, 1987-88; in practice as barrister, Brick Court Chambers, 1988-. Vis. Lectr in European Law, 1989-95, Vis. Res. Fellow, 1995-99, Vis. Prof., 1999 KCL. Publications: *References to the European Court*, 1995; various articles in legal journals. Recreations: sailing, hill-walking, history.

Bogdanor, Prof. Vernon Bernard

CBE 1998; FBA 1997; Professor of Government, since 1996, and Fellow of Brasenose College, since 1966, Oxford University; b 16 July 1943; s of Harry Bogdanor and Rosa (née Weinger); m 1972, Judith Evelyn Beckett (marr. diss. 2000); two s. Educ: Bishopshalt Sch.; The Queen's College, Oxford (BA 1st CI PPE 1964; MA 1968). Sen. Tutor, Brasenose Coll., Oxford, 1979-85, 1996-97; Reader in Government, Oxford Univ., 1990-96. Special Advr. H of L Select Cttee on European Communities, 1982-83; Advr on Constitutional and Electoral Matters to Czechoslovak, Hungarian, and Israeli Govts, 1988-; Special Advr, H of C Public Service Cttee, 1996; Mem., UK Delegn to CSCE Conf., Oslo, 1991. Mem. Council, Hansard Soc. for Parly Govt, 1981-97. Hon. Fellow, Soc. for Advanced Legal Studies, 1997. FRSA 1992. Publications: (ed) *Disraeli: Lothair*, 1975; *Devolution*, 1979; *The People and the Party System*, 1981; *Multi-Party Politics and the Constitution*, 1983; (ed) *Democracy and Proportional Representation?*, 1984; (ed) *Parties and Democracy in Britain and America*, 1984; (ed) *Constitutions in Democratic Politics*, 1988; (ed) *The Blackwell Encyclopaedia of Political Science*, 1992; (jtly) *Comparing Constitutions*, 1995; *The Monarchy and the Constitution*, 1995; *Politics and the Constitution: essays on British Government*, 1996; *Power and the People: a guide to constitutional reform*, 1997; *Devolution in the United Kingdom*, 1999; contribs to learned journals. Recreations: music, walking, talking.

Flather Paul Dr.

Dr Paul Flather is currently Secretary-General of the Europaeum and Fellow of Mansfield College, Oxford. He is an academic, human rights activist, and journalist specialising in education and politics. His research is on Indian political development since Independence, and particularly democratic structures in India. He worked with dissident movements in Central Europe in the 1980s, and with race equality groups in the UK. He is involved with many charities and civic bodies, and was an elected member of the London Council in the 1980s (chairing its committee on post-school education). He was founding Secretary-General of the Central European University set up in Budapest, Prague and Warsaw, by George Soros after the 1989 revolutions. After running

international and external programmes for Oxford University, for five years, he took over the Europaeum, an association of leading European universities.

Garnier, Edward Henry

Edward (Henry) Garnier was born in 1952. Educated at Wellington College, Berkshire, Jesus College Oxford (Modern History) and the College of Law, London. He is married to Anna and they have a daughter and two sons. Mr Garnier has been Member of Parliament for Harborough since April 1992. Appointed Queen's Counsel in April 1995, a Crown Court Recorder in 1998 and a Bencher of the Middle Temple in 2001. Hon Secretary of the Foreign Affairs Forum 1988-92, and a Vice-Chairman since 1992. Secretary of the Conservative House of Commons Foreign Affairs Committee from 1992-94 and a member of the Home Affairs Select Committee between 1992 and 1995. Parliamentary Private Secretary to the Rt Hon Alastair Goodlad MP and David Davis MP, Ministers of State at the Foreign and Commonwealth Office from 1994-95. In October 1995 appointed Parliamentary Private Secretary to the Rt Hon Sir Nicholas Lyell QC MP, Attorney General and Sir Derek Spencer QC MP, Solicitor General. In November 1996 he was made PPS to the Rt Hon Roger Freeman MP, Chancellor of the Duchy of Lancaster. He was a Visiting Parliamentary Fellow at St. Antony's College, Oxford, from 1996-97. He was the Opposition Front Bench Spokesman for the Lord Chancellor's Department from 1997 to June 1999. He was Shadow Attorney General from June 1999 to September 2001.

Grierson, Sir Ronald

Kt 1990; Vice-Chairman, General Electric Co., 1968-91; Chairman: Advisory Board, Blackstone Group, since 1989; Bain & Co. International, since 1988; Director, Daily Mail & General Trust, since 1993, and other cos; b Nürnberg, Bavaria 1921; s of Mr and Mrs E.J.Griessmann (name changed by Deed Poll in 1943); m 1966,(Elizabeth) Heather, Viscountess Bearsted (d 1993), er d of Mr and Mrs G. Firmston-Williams; one s and one step d. Educ: Realgymnasium, Nürnberg; Lycée Pasteur, Paris; Highgate Sch., London; Balliol Coll.,Oxford. Served HM Forces 1940-46 (despatches);TA, 1948-54. Staff Mem., The Economist, 1947-48; S.G.Warburg & Co.,1948-86 (Dir.1958-68 and 1980-86); Dep.Chm. and Man.Dir, IRC, 1966-67; Chm.,Orion Bank, 1971-73; Dir-Gen., Industrial and Technological Affairs, EEC, 1973-74; Sen.Partner, Panmure Gordon & Co., 1974-76. Board Member: BAC, 1970-71;Internat.Computers, 1974-76; Davy Internat., 1969-73; Nat.Bus Co., 1984-86; RJR Nabisco Inc.(formerly R.J.Reynolds), 1977-89; Chrysler Corp., 1983-91; W.R.Grace & Co., 1987-94. Chairman: European Orgn for Cancer Treatment Res.,1976-2000; South Bank Bd, 1984-90. Mem. Bd of Trustees, Phillips Collection, Washington, 1980-98. Member: Atlantic Coll. Council, 1960-70; Harvard Coll. Faculty, 1964-65; CNA, 1978-84; Arts Council of GB, 1984-88; Ernest von Siemens Foundation, 1977-98; Bd of Visitors, N Carolina Sch. of Arts, 1984-90; European Arts Foundation, 1987-88; Trustee: Prince of Liechtenstein Foundation, 1991-;European Studies Foundn, Oxford Univ.,1991-. Hon.Dr of Law, Grove City Coll., USA, 1986. Comdr, Order of Merit of the Republic of Italy, 1980; Comdr's Cross, Order of Merit (Germany), 1993; Commandeur, Légion d'honneur (France), 1994. Address: 5-7 Carlton Gardens, Stirling Square, SW1Y 5AD.

Lord Hannay of Chiswick

David (Hugh Alexander), GCMG 1995 (KCMG 1986; CMG 1981); British Government Special Representative for Cyprus, since 1996; b 28 Sept. 1935; s of late Julian Hannay; m 1961, Gillian Rex; four s. Educ: Winchester; New Coll., Oxford. Foreign Office, 1959-60; Tehran, 1960-61; 3rd Sec., Kabul, 1961-63; 2nd Sec., FO 1963-65; 2nd, later 1st Sec., UK Delegn to European Communities, Brussels, 1965-70; 1st Sec., UK Negotiating Team with European Communities, 1970-72; Chef de Cabinet to Sir Christopher Soames, Vice President of EEC, 1973-77; Head of Energy, Science and Space Dept, FCO, 1977-79; Head of Middle East Dept, FCO, 1979; Asst Under-Sec. of State (European Community), FCO, 1979-84; Minister, Washington, 1984-85; Ambassador and UK Permanent Rep. to Eur. Communities, Brussels, 1985-90; British Perm. Rep. to UN, 1990-95; retd from Diplomatic Service 1995. Prime Minister's Personal Envoy to Turkey, 1998; EU Presidency Special Rep. for Cyprus, 1998. Non-executive Director: Chime Communications, 1996-; Aegis, 2000-. Mem., Council of Britain in Europe, 1999-. Mem. Court and Council, Birmingham Univ., 1998-. Recreations: travel, gardening, photography.

Baroness Jay of Paddington

cr 1992 (Life Peer), of Paddington in the City of Westminster; Margaret Ann Jay; PC 1998; Leader of the House of Lords, 1998-2001; Minister for Women, 1998-2001; b 18 Nov. 1939; er d of Baron Callaghan of Cardiff, qv; m 1961, Hon. Peter Jay, qv (marr. diss. 1986); one s two d; m 1994, Prof. M. W. Adler, qv. Principal Opposition Spokesman on Health, H of L, 1995-97; minister of State; DoH, 1997-98. Dir, Nat. Aids Trust, 1988-92. Non-executive Director: Carlton Television, 1996-97; Scottish Power, 1996-97. Mem., Kensington, Chelsea & Westminster HA, 1992-97; Chm., Nat. Assoc. Of Leagues of Hosp. Friends, 1994.

Lord Weidenfeld of Chelsea

Baron cr 1976 (Life Peer), of Chelsea; Arthur George Weidenfeld. Kt 1969; Chairman, Weidenfeld & Nicolson Ltd since 1948, and associated companies; b 13 Sept. 1919; o s of late Max and Rosa Weidenfeld; m 1st, 1952, Jane Sieff; one d; 2nd, 1956, Barbara Connolly (née Skelton) (marr. diss. 1961; she d 1996); 3rd 1966, Sandra Payson Meyer (marr. diss. 1976; 4th, 1992, Annabelle Whitestone. Educ: Piaristen Gymnasium Vienna; University of Vienna (Law); Konsular Akademie (Diplomatic College). BBC Monitoring Service, 1939-42; BBC News Commentator on European Affairs on BBC Empire & North American service, 1942-46. Wrote weekly foreign affairs column, News Chronicle, 1943-44; Founder: Contact Magazine and Books, 1945; Weidenfeld & Nicolson Ltd, 1948. One year's leave as Political Adviser and Chief of Cabinet of President Weizmann of Israel. Columnist, Die Welt 1999-. Jt Vice-Pres., Campaign for Oxford, 1992-95; Vice-Chm., Oxford Development Prog., 1995-. Chm., Bd of Governors, Ben Gurion Univ. of the Negev, Beer-Sheva, 1996- (Vice-Chm., 1976-96); Governor: Univ. of Tel Aviv, 1980-; Weizmann Inst. of Science, 1964-; Bezalel Acad. of Arts, Jerusalem, 1985-; Hon. Senator, Univ. of Bonn, 1997. Member: South Bank Bd, 1986-; ENO Bd, 1988-; Trustee, Nat. Portrait Gall., 1988-95. Hon. Fellow: St Peter's Coll., Oxford, 1992; St Anne's Coll., Oxford, 1994. Hon. PhD Ben Gurion Univ. of the Negev, 1984; Hon. MA Oxon, 1992. Golden Kt's Cross with Star, Order of Merit (Austria), 1989; Chevalier, Légion d'Honneur (France), 1990; Kt Comdr, Cross, Badge and Star, Order of Merit (Germany), 1991. Publications: The Goebbels Experiment, 1943 (also publ. USA); Remembering My Good Friends (autobiog.), 1994. Recreations: travel, opera.

Wyatt, Prof. Derrick Arthur

QC 1993; Professor of Law, University of Oxford, since 1996; Fellow, St Edmund Hall, Oxford, since 1978; b 25 Feb. 1948; s of Iris Ross (formerly Wyatt, née Thompson) and step- s of Alexander Ross; m 1970, (Margaret) Joan Cunnington; one s one d. Educ: Alsop High Sch.; Emmanuel Coll., Cambridge (MA, LLB); Univ. of Chicago Law Sch. (JD). Lectr in law, Univ. of Liverpool, 1971-75; called to the Bar, Lincoln's Inn, 1972; Fellow, Emmanuel Coll., Cambridge, 1975-78; CUF Lectr in Law, Oxford Univ., 1978-96. Vis. Prof., Florida State Univ., 1987. Consultant, Oxford Inst. of Legal Practice, 1993-97. Gave evidence to German Bundestag und Bundesrat on subsidiarity in EU, 1996. Member: Vale of White Horse DC, 1983-87; Abingdon Town Council, 1983-87. Mem. Editl Cttee, British Yearbook of Internat. Law, 1992-. Publications: Wyatt and Dashwood's European Community Law, 1980, 3rd edn 1993; (with B. Rudden) Basic Community Laws, 1980, 7th edn 1998; (ed with A. Barav) Yearbook of European Law, 1988-97; articles and reviews in learned jls. Recreations: walking, reading.



Club of Three

Five years ago, when relations between Great Britain, France and Germany were less cordial than they are now, a group of British, French and German leaders in Government, business, the media and academe decided to establish an informal network, the Club of Three. This now meets regularly for private meetings, in London, Paris and Berlin in turn, at approximately twice-annual intervals. The average number of participants for each country is twenty and so far eight such meetings have taken place. To encourage flexibility, there is a loose 'membership', a database of about 100 to 120 distinguished personalities, representative of the opinion-forming and decision-making strata of leadership of the three countries. The list includes for instance serving and former Ministers, company chairmen and CEOs, and editors of national newspapers and periodicals. All meetings are held under the Chatham House rule, which keeps the discussions confidential.

There is no rigid bureaucracy: in each case a small group of conveners make themselves responsible for the organization and funding of the conference, usually on a Friday/Saturday. The meetings invariably start in the late afternoon, followed by a short break, and resume with a dinner which also includes special guests and is usually addressed by a very distinguished keynote speaker. On the following day the meeting resumes in the morning and the conference comes to an end at lunchtime. A small 'steering committee' stays behind for a post-mortem and the arrangement of a broad agenda, venue and date for the next meeting.

Prompted by the success of these general meetings, the Club of Three now organizes a limited number of 'special sessions', where specific issues of urgent interest are discussed by smaller groups, totalling some thirty to thirty-five people, permitting the participation of younger specialists. These usually take place in partnership with companies, institutes or government departments with a funding, organizational and/or advisory role.

London, 2002

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Crossair

At the time of the Conference, Crossair was still an autonomous subsidiary of Swissair. With the subsequent demise of the latter, a new airline, Swiss International Air Lines Ltd, was formed around Crossair and some of Swissair.

From Crossair via Phoenix to SWISS

The new strategy of serving as one of the world's leading intercontinental air carriers offers a unique opportunity for SWISS. But Switzerland's new airline will need to clearly position itself as a quality air carrier, in the best traditions of Swiss civil aviation, to secure this success.

This commitment to traditional Swiss values, to the national character of the project and to the global stage on which the new airline aims to perform is embodied in the SWISS brand name. The new airline is the product of a unique collaboration between Switzerland's political world, its business sector and the Swiss people as a whole. SWISS will incorporate the same quality values that have served Switzerland so well: service marked by reliability, friendliness, safety, elegance and innovation, all combined with a multicultural openness to the world.

SWISS will be offering its customers a seamless chain of services on the ground and in the air. In doing so, it intends to enhance its products and services for Economy Class passengers as well as Business and First Class guests. The focuses here will include smoother and more efficient reservations and check-in procedures, along with top-class inflight service.

With its combination of uncompromising quality, an aircraft fleet that is closely matched to market needs, a favourable cost structure and a strong balance-sheet equity ratio of 35 per cent, SWISS is excellently equipped to become a key member of an industry alliance. The company can thus have every confidence of successfully implementing its new intercontinental strategy in the fiercely-contested global airline market.