
DECISION-MAKING IN THE EUROPEAN UNION: THE CONVENTION ON THE FUTURE OF EUROPE

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The Amsterdam and Nice negotiations provoked a growing dissatisfaction with the intergovernmental conference as a method of treaty reform. The IGC model has come to a dead-end as far as 'big politics' are concerned, not being able to produce valid solutions to the constitutional challenges (Hoffman, 2002). The ratification process, especially in the case of the Nice Treaty, proved that there was a big gap between the political elites' integrationist project and the actual expectations of the EU citizens. Therefore, the Convention on the future of Europe needed to offer a way out of the decision-making crisis, bring the Union closer to its citizens and avoid undesired situations such as the Irish 'No' to Nice.

This paper aims at analysing the Convention on the future of Europe from the perspective of the decision-making process through treaty reform and integrating it in the broader context of this dissertation. It will present factual evidence of the evolution of the Convention and will try to apply the two main theories already introduced, liberal intergovernmentalism and institutionalism. It will evaluate whether the Convention offered a more democratic forum for institutional reform, or it was just a new preparatory method.

Section 1 of this paper will look at the context of the Convention and the reasons for establishing it. Section 2 will examine the Convention process looking at: its composition and the role of the presidium, the Laeken mandate and agenda setting, the role of public opinion, and the temporal context. It will evaluate the innovative aspects brought by the Convention method to the decision-making process at the super-systemic level. Section 3 will assess the outcomes of the Convention and the positions adopted by the current and future member states before the *grande finale* of the 2004 IGC.

WHY DOES THE EU NEED THE CONVENTION ON THE FUTURE OF EUROPE?

'We have to give ourselves a Constitution, which marks the birth of Europe as a political entity' in 'a combination of realism and vision', said Romano Prodi, President of the European Commission, expressing a widespread view that the EU finds itself in the middle of a new phase of constitutional development (Prodi, 2002).

In the wake of the largest enlargement, the reform of the actual institutional arrangements, addressing the well-known democratic deficit and giving the Union a *finalité politique* became inevitable.

In this context, the Convention on the future of Europe marked a turning point in the history of European integration. However, this could hardly be defined as the 'founding moment' because the EC/EU was established more than forty years ago and has already undergone several re-founding phases (Schmitter, 2003).

Even though the Nice Treaty did not produce any leftovers, by adopting the Declaration on the future of Europe the heads of state and government implicitly acknowledged the importance of furthering the constitutional process.

Since its foundation, constitution building in the EU has taken place within the framework of the Intergovernmental Conference. Nice and Amsterdam led to a severe crisis of the classic diplomatic method of the IGC for several reasons: the questions of power distribution and representation addressed were more likely to lead to a deadlock in negotiations; there was a growing inflexibility in the positions that member states adopted; the division between member states increased and even traditional alliances, especially the Franco-German axis, were no longer convincing, and finally, the influence of European institutions was insignificant (Hoffman, 2002).

In order to increase the IGC efficiency, the member states opted for a new preparatory method: establishing a Convention, which would bring together representatives of the member states and the candidate countries as well as the European institutions to debate the future of the European Union. It should be stressed that the member states did not intend to abandon the IGC model. The Convention method does not replace the IGC. Without underestimating its importance we consider it only as a preparatory stage. This method was preferred to other alternatives because of the success achieved by the previous Convention, which drafted the Charter of Fundamental Rights.

THE CONVENTION: A NEW METHOD OF TREATY DRAFTING?

The Convention raised many expectations. It should have solved all the Union's sensitive issues regarding institutional arrangements, legitimacy and democracy issues, as well as the distribution of powers. It should have addressed the topics on the post-Nice agenda, set by the Declaration on the future of Europe (competences, status of the Charter of Fundamental Rights, simplification of the treaties and the role of national parliaments) and enriched by the Laeken Declaration. In this context, its mandate was very broad but not very clear. The Laeken mandate did not provide the Convention with a direct focus on the constitutional question, but offered instead a general analysis of the state of the European integration process and the current challenges. For the first time in the history of the EU, the Laeken Declaration affirmed the possibility of a 'Constitution for European citizens' in the context of the need to simplify and reorganise the treaties. The Laeken Council gave the Convention certain indications in terms of deliberation and decision-making and the freedom to choose between submitting options and making a single recommendation. In his first speech, given at the opening session of the Convention on 28 February 2002, President Giscard d'Estaing set an ambitious objective: the Convention was to draw up a 'constitutional treaty' (d'Estaing, 2002).

The 'sketchy' mandate provided by the Laeken Declaration could be interpreted as an 'opportunity structure' for the Convention, on the one hand, authorising and enabling it, and, on the other, constraining it (Reh and Wessel, 2002).

The analysis of the Amsterdam and Nice agendas showed that decision-making in the EU at the super-systemic level is not at all a deliberate process, but rather determined by past rules or political declarations. The way in which the current Convention's agenda was structured by the complex and substantive heritage of the *acquis* as well as the post-Nice debate comes to confirm the path-dependency development of decision-making. Although the Convention had the unique task to draw up the Union's blueprint, it did not operate 'against the background of a constitutional *tabula rasa* in relation to either the process of constitution building or the substantive constitutional choices, which it is making' (Show, 2003). The previous treaties and the Charter of Fundamental Rights represent sources of constitutional *acquis*, which the Convention had to take into consideration. Constitution-building in the EU has always integrated a set of complex interactions and tensions between the treaty texts and other formal institutional documents, on

the one hand, and their interpretation by key actors, notably the Court of Justice, but also the national courts, and the other non-judicial EU institutions, on the other (Show, 2003).

The Laeken European Council laid down the structure of the Convention: 15 representatives of the governments of the member states, plus 13 of the candidate countries' governments; 30 national parliamentarians plus 26 MPs form the candidate countries; 16 members of the European Parliament; and 2 members of the European Commission. The Convention comprised a total of 105 members and the same number of alternates.

One of the innovations brought by this Convention was the presence of the representatives of the candidate countries as well as the observer status granted to the representatives of the Economic and Social Committee, the Committee of the Regions and the social partners. Given its diversity, the Convention was expected to represent the interests of all those affected by the EU reform.

Not everybody welcomed the presence of the candidate countries though. 'What could be the impact of the presence and the input of these 39 members (please note that this is more than a third!) without any European experience?' (van den Burg, 2002). There was a fear that they would strongly focus on preserving national independence and the competences that most of their countries have only recently acquired, and that they could act as a block (even though they cannot obstruct the consensus).

The Presidium, at the top of this structure, was composed of twelve outstanding political figures: the former French president Giscard d'Estaing as the chairman, and former prime ministers of Italy, Giuliano Amato and Belgium, Jean-Luc Dehaene as vice-chairmen; two Commissioners (Michel Barnier and Vitorino); two representatives of the EP and two of the national parliaments; three government representatives of the member states that hold the presidency during the Convention (Spain, Denmark and Greece). At the beginning, the candidate countries were not represented in the Presidium. Later, in response to the applicants' insistence, Alojz Paterle, a member of the Slovene parliament, was elected to represent the candidate countries in the Presidium but only as an invited guest. The Presidium played a dominant role in the proceedings of the Convention. Based on the working groups' results and the plenary debates, the Presidium drew up the constitutional treaty, acting on its own initiative.

Given its heterogeneous composition, the 'one person-one vote' principle could not be applied in the Convention. Therefore, the President of the Convention should make efforts to reach consensus. The Laeken European Council did not establish the working methods of the Convention. Consequently, the Presidium submitted a draft of the procedures, which provoked dissatisfaction among the members of the Convention because they conferred too powerful a role to the Presidium and especially to its chairman.

The Convention's works proceeded in three phases (Barbier, 2003). The first phase presupposed 'listening' and drawing up a 'questionnaire' on European integration and Europe's future over the next fifty years. The second phase was devoted to seeking answers to the questions raised in the Laeken declaration. Valéry Giscard d'Estaing grouped these into six categories: fundamental questions on Europe's role; the division of competence in the European Union; the simplification of the Union's instruments; how the institutions work and their democratic legitimacy; a single voice for Europe in international affairs and the approach to a Constitution for European citizens. Other questions regarded the election of the President of the European Council; voluntary withdrawal from the Union; the definition of Europe's borders, a spin-off from the question of the EU's relations with its neighbours. Solutions to the issues of how the future treaty should come into force and how to prevent the impasse likely to occur when the time comes to conclude or ratify the future treaty were also envisaged.

In order to answer these questions, eleven thematic working groups were established dealing with: subsidiarity, integration of the Charter of Fundamental Rights, legal personality of the Union, role of national parliaments, complementary competences, economic governance; external action, defence, simplification of legislative procedures and instruments, area of freedom, security and justice and social Europe. The third phase was to formulate proposals for the IGC, either in the form of options or a single recommendation, as the President of the Convention proposed.

Although the Convention was expected to be more open and democratic, in practice the process of deliberation was not entirely transparent and public. The Presidium always deliberated behind closed doors and did not produce minutes of its meetings. The working groups' meetings were not open to the public either. The only public and even broadcasted deliberations were those of the plenary of the Convention.

An important aspect of the current convention is the role played by history making personalities, such as Valéry Giscard d'Estaing. The heads of state and government nominated him as the President of the Convention 'bearing in mind that he was a man known to have a capacity for strong leadership, a reputation for independence, but perhaps most crucially a proven background of support for a view of European integration which preserved a strong role for the states' (Shaw, 2002). Some praised him for being able to simultaneously control and show flexibility in relation to the process of compiling the treaty (Shaw, 2002), while others accused him of imposing his will rather than brokering deals (Watson, 2003). Nevertheless, he was a 'towering influence to the Convention. His arrogance and patronising style infuriated the 104 other members, but they respected his stamina and vision' (Watson, 2003).

While the Convention met in public and was monitored by the civil society, the academia and the media, the question remains whether there was a real public debate on the future of Europe.

Jean-Luc Dehaene, one of the vice-chairmen, was responsible for setting up a Forum in order to ensure that the civil society was heard. Four European networks representing NGOs in the social sector, environmental protection, development co-operation and human rights, as well as the European Trade Union Confederation (ETUC) established a civil society contact group. The topics covered by the civil society were expanded to include democracy, institutions and culture. Academics and 'think tanks' were also invited to take part in the debate. These hearings of the civil society were attended by significant numbers of the members of the Convention, but it is difficult to determine their impact on the Convention's proceedings (Barbier, 2003).

The national parliaments and the governments of the member states organised public debates on the future of Europe at the national level.

There is also a Convention's website hosting an overwhelming quantity of written material. On the one hand, the website provides a lot of information to a visitor familiar with the various aspects of European integration, but, on the other hand, it does not explain to the general user how and why the Convention was in fact working towards a new Constitutional treaty (Shaw, 2002).

The media coverage of this event was very fragmented. In the UK, the press tended to focus on the meaning of the terms 'intergovernmental' and 'federal'.

The German media covered the Convention's work very well, but offered little profound commentary. In France, Finland, Greece, Ireland and Sweden, media interest increased after the publication of the preliminary draft of the constitution in October 2002 (Euobserver, 2003).

In spite of all the official efforts, a survey conducted by 'Eurobarometer Flash' immediately after the Thessaloniki European Council and focusing on the results of the Convention showed that although people's awareness of the Convention had increased, it still remained very blurry: 45% of people in the enlarged EU had at least heard of the Convention, compared with only around 30% in March. However, 55% of people said they had never heard of the Convention, and 52% were unaware of the kind of text the Convention had produced. When questioned on the substance of the proposals, 68% of the respondents said they were in favour of a Constitution as a way of reforming the EU. 43% said they would prefer the Convention text to be at least partially amended by the heads of state and government.

As in the case of the previous treaty revisions, international events had an important impact on the works of the Convention. The Iraq crisis caused a delay in the drafting of the constitutional treaty and also influenced the discussions on the common foreign policy. Some even affirmed that international events, such as the Iraq crisis, could undermine the Convention, which would 'end up like Frankfurt 1848, a gathering of high-minded people intent on writing a constitution for a new nation (Germany), whose efforts were swept aside by history.' (The Economist, 2003) But, in the end, their prophecies were not fulfilled.

After this short review of some of the Convention's processes, we should analyse it in the light of two theories: liberal intergovernmentalism and neo-institutionalism. While there are no new theories to explain the Convention as a method of treaty drafting, the existing ones offer—to a certain extent—interesting 'mental maps' of the process of the Convention (Reh and Wessel, 2002).

There is a minimalist reading of the Convention, which corresponds to the conceptualisation of European integration in the spirit of liberal intergovernmentalism' (Reh and Wessel, 2002). Accordingly, the decision to create the Convention would be seen as an act of rational state behaviour with the member states interested in increasing the efficiency of interstate bargaining. The Convention is merely a preparatory stage of the IGC, meant to draft a set of non-binding options from which the member states will choose during the IGC. This scenario attributes

the main role in the EU's constitutional evolution to the European Council. The Convention would be expected to present the member states with acceptable options for improving the status quo. There is a clear principal-agent dynamic in this scenario, with the governments willing to delegate certain responsibilities to the supra-national institutions while retaining a strict surveillance. The supra-national institutions would have a passive role. In the Convention's internal negotiations, the *modus operandi* would continue to be bargaining rather than problem-solving. The role of the civil society would be kept at a minimum within a Convention, which is seen to be project driven by Euro-conscious elites.

Textual evidence could be found in the Laeken Declaration to support this minimalist perspective. The European Council established the Convention 'in order to pave the way as broadly and openly as possible' and 'the final document will provide a starting point for discussions in the IGC, which will take the ultimate decision'.

An intergovernmental reading of the Convention would interpret its composition, mandate and leadership as 'safety features' attached by the Laeken European Council in order to make sure that the Convention would not deviate from its original purpose, which is to prepare the future IGC (Hoffman, 2002).

First, the Laeken Declaration ensured that the Convention consisted of representatives of a wide range of institutions and that the possible number of alliances was larger than in an IGC. The decision taken in the framework of the Convention would depend on how the alliances would be formed, which force would be the strongest and how much of a compromise the different players were willing to make.

Second, the heads of state and government were very cautious not to lose control over the Convention. Even if the Convention's mandate was relatively broad and open: 'it will be the task of that Convention to consider the key issues arising about the Union's future development and try to identify the various possible responses.' As soon as its work had started, member states came up with ideas and suggestions, like the Franco-British initiative regarding the Presidency of the Council.

Third, Valéry Giscard d'Estaing, the man chosen to lead the Convention, is a former statesman with an intergovernmental approach to the Union.

Another safety feature is the time limit imposed on the Convention: twelve months to draft a document that should answer the questions posed by the Laeken

Declaration. This put a lot of pressure on the conventioners because they had other assignments as well. The only ones with a real advantage were the delegates of the EP: based in Brussels, they had their internal and external networks and resources and were used to working as a group usually together with the Commission and against the Council. They were also able to allocate more time to the Convention than the national parliamentarians and the governments' representatives.

This model of the Convention as a think tank of the IGC is challenged by a perfectionist reading, which would regard the Convention as a full-fledged constitutional assembly (Reh and Wessel, 2002). The actors would use the Laeken mandate as an opportunity to develop a wide vision of Europe's institutional and political future in a draft Constitution, which would be used as a catalyst for European constitution building. This would recall the neo-institutionalist understanding of institutions as developing 'lives and deaths of their own'. The Convention would be seen as a representative of the 'European people' rather than a think-tank of the heads of state and government.

The Convention could be understood as a truly trans-national assembly with a constitutional mission. Its composition would facilitate a dynamic search of consensus. The governments' representatives would be perceived as less important and less dangerous. The heads of state and government would be challenged in their conceptual monopoly of agenda setting by a broad, democratic assembly. Although it recognises the role of the European Council, neo-institutionalism would propose a more normative understanding of the EU's future constitutional evolution (Reh and Wessel, 2002).

The neo-institutionalist interpretation would not regard the institutions as 'passive structures' or 'mere facilitators' controlled in a principal-agent chain. Institutions will develop into independent agencies and have an impact on the values of actors associated with the institutions (Reh and Wessel, 2002).

The perfectionist interpretation would see the Convention as working with an implied mandate from the peoples of the Europe. This would be reflected by a broad public debate on the *finalité politique* of the Union and the ratification referenda.

The final document would contain clear recommendations for the heads of state and government. Its aim would be regarded not only in terms of optimising the efficiency of the Union but it would represent the nucleus of the future blueprint, replacing the current treaties (Reh and Wessel, 2002).

¹ Olsen quoted in Reh and Wessels.

THE DRAFT CONSTITUTIONAL TREATY: AN UNFINISHED AFFAIR

Everybody expected the Convention's outcome to be a panacea to most of the Union's well-known problems: the lack of efficiency, transparency, accountability and public support or the democratic deficit. Has the constitutional draft actually met all these expectations?

On June 13 2003, Valéry Giscard d'Estaing proclaimed a consensus in favour of the draft constitutional treaty without any voting or even using the word. He urged the members of the Convention to ensure that 'our Constitution remains as intact as possible and it would not be deviated from its path by the IGC' (d'Estaing, 2003). According to the draft constitutional treaty, the EU will have a single legal personality, allowing it to sign international treaties. The Charter of Fundamental Rights will be integrated into the Treaty text.

The institutional arrangements envisage that the size of the European Parliament shall not exceed 732 members. Representation of European citizens shall be digressively proportional, with a minimum threshold of four members per member state. The European Council shall elect its president for up to five years (two possible terms of 2.5 years) to chair summits and move forward its work. This will replace the present six-month rotating presidency. Member states shall hold the presidency of Council formations, other than that of Foreign Affairs, on the basis of equal rotation for at least one year. The current composition of the Commission will be maintained until 2014. After that, the Commission shall comprise a number of commissioners corresponding to 2/3 of the number of the Member States. The Commission's president shall appoint non-voting commissioners coming from all other member states. A new minister for foreign affairs shall conduct the Union's common foreign and defence policy, sitting in the Commission with access to its resources but answerable to the member states. The European Council will appoint him/her with approval from the Commission. Member states may create, by unanimous decision, a European public prosecutor to combat cross-border crime and terrorism.

Most decisions will be taken by majority vote. The European Parliament's role in decision-making will be nearly doubled. The national veto will be preserved in a few politically sensitive areas, such as taxation and foreign policy. The QMV—the double majority (55% of the member states and 65% of the Union's total population)—will become the principle in decision-making. Until 2009, the Nice Treaty rules will continue to apply.

Under a new solidarity clause, member states will provide mutual assistance in case of terrorist attack. Member states will be able to subscribe to a mutual defence clause.

The members of the Economic and Monetary Union will be able to set their own economic policy guidelines and enforce Euro-zone rules, without involving non-euro countries. A new exit clause will allow Member States to leave the Union.

In the area of justice and home affairs, EU policy on asylum and refugees and certain aspects of immigration policy will be decided by majority vote. Although the Convention did manage to reach consensus, the battle has not been won yet.

The Treaty establishing a Constitution for Europe was signed by the Heads of State or Government of the 25 Member States and the 3 candidate countries on 29 October 2004 as the result of an IGC. The Treaty can only come into force when it has been ratified by each of the signatory parties in accordance with its own constitutional procedures. So far 15 Member States and the two accession countries have ratified it. France and the Netherlands rejected the text of the Constitution on 29 May and 1 June 2005. A solution is still needed for this ambitious project.

The June 2006 European Council extended the *reflection period*, which should now focus on the delivery of concrete results and implementation of the projects. On the other hand, the Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussions with regard to the Constitutional Treaty and explore possible future developments. Furthermore, the European Council called for the adoption, on 25 March 2007 in Berlin, of a political declaration by EU leaders, setting out Europe's values and ambitions and confirming their shared commitment to deliver them, commemorating 50 years of the Treaty of Rome.

Some say that the Constitutional Treaty is dead. Others, especially Germany, which will hold the EU Presidency in the first semester of 2007, strongly supports its revival.

CONCLUSION

The aim of this paper was to analyse the Convention on the future of Europe in the context of the decision-making process at the super-systemic level. Based on factual evidence, it tried to give an account of the Convention as a method of treaty reform and as a process of deliberation. Although it aimed to underline the innovations

brought by the Convention, it did not intend to provide a comparison with the IGC method. The IGC is still in place as a model of decision making at the super-systemic level. The Convention is a preparatory stage, more open and democratic indeed, but it does not replace the IGC. At this time in the history of the EU and given the stakes of the European integration, the member states are still not willing to give up inter-governmental bargains.

Table 1 offers a summary of the two theoretical perspectives: liberal inter-governmentalism and neo-institutionalism used to analyse the Convention.

Table 1: Theoretical approaches to the Convention on the Future of Europe²

| Indicators | Liberal-intergovernmentalism | Neo-institutionalism |
|---------------------------------|--|--|
| Overall role | Facilitator of the intergovernmental bargaining; 'think tank'; a Reflection Group | Constitutive; resembling the Philadelphia Convention |
| Working procedures | | |
| • Presidium | 'Executive agent'; 'mini IGC' | Limited to formal functions |
| • National representatives | De facto, veto players with stable preferences | 'Parliamentarisation', gradual convergence of opinions |
| • Heads of state and government | Principals with control strategies | Subordinate role compared with parliamentarians as citizens' representatives |
| • Civil society Forum | 'Distraction', alibi function | Participation and input as prerequisite to mobilise support |
| Output | | |
| • Drafting powers | Presidium/Secretariat | Working committees, trans-national party groups |
| • Final Document | 'Pick and choose', catalogue of options | Constitution (maximum), coherent, legal text (minimum) |
| • Relation with the IGC | Preparation | IGC 'locked in' through consensus and public support |
| Legitimacy | | |
| • Legitimacy basis | Indirect, based on a mandate from heads of state and government | Direct, representation of the European citizens |
| • Democratic dimension | No broad mobilisation of public support, democracy guaranteed through national governments | 'Demos-building' via trans-national democratic practice |

Initially, both liberal inter-governmentalism and neo-institutionalism were used to study the IGC and, consequently, it is rather difficult to extrapolate them to the Convention, which, in the end, represents only a part of the complex IGC model. Certain aspects of the Convention would satisfy an intergovernmental approach: the 'safety features' imposed by the member states or the attempts to impose certain institutional arrangements such as proposal on the Presidency of the Council. But

² Adapted after Christine Reh and Wolfgang Wessels – 'Towards an Innovative Mode of Treaty Reform? Three Sets of Expectations for the Convention' – *Collegium*, No. 24, Summer 2002, p. 39-40.

a perfectionist neo-institutionalist interpretation is supported by the fact that the Convention offered a more democratic and open forum for discussions and it did produce a single draft constitutional treaty that could become the nucleolus for the future EU constitution replacing the existing treaties.

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