

## The Convention on the Future of Europe, and the EU legitimacy.



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I am very honoured to give a presentation in Aberystwyth, the oldest department of international relations. I have learnt a lot during the last 9 months. I hope this will be seen in my presentation (slightly).

European studies and particularly European Union studies are still located somewhere in between IR and intra-state politics. Depending on one's perspective researchers tend to emphasize different elements. Some compare the EU to an international organisation, while others approach it through the yardstick of consensus-based federation. This dichotomy sometimes blur the reality. That is why I decided to use a political concept as a tool to understand what is going there.

My preoccupation is to analyse what role the broad issue of legitimacy plays in the politics of the EU. My primary focus is a particular institution, the Convention on the Future of Europe.

My Ph.D. project considers the relation between the debate about the legitimacy deficit of the EU and the convening, operation and results of the Convention, established by the European Council in December 2001 in Laeken.

## Structure of my thesis

- 1. Theoretical perspective on the EU legitimacy.**
- 2. The road to Laeken - subverting legitimacy of the intergovernmental bargaining.**
- 3. The experiment of the second Convention (structure, operation, outcome).**
- 4. The legacy of the Convention.**

On this slide you can see a draft structure of my thesis.

My 1<sup>st</sup> chapter will explore the theoretical perspectives on the Legitimacy in the EU. Different legitimacy claims have different implications. I want to show major directions of thinking and analyse, if it is possible to combine them or not.

2<sup>nd</sup> chapter focuses on the history of the establishment of the Convention. I show how different speeches and events prepared the ground for a new institution to prepare the Intergovernmental Conference. One of such events was the speech of Joschka Fischer in May 2000. It was one of the impulses to a debate about what the EU should look like. So I will try to reconstruct the path towards the Laeken declaration, which set up the Convention.

3<sup>rd</sup> chapter concentrates on this new institution. I evaluate the strengths and limits of the Convention approach. I present the internal logic of its operation, nature of deliberation, main issues and types of arguments

Finally I want to look at the different legacies of this body and how its existence and end-product contribute to our understanding of the legitimacy question.

## Beetham&Lord's criteria of legitimacy \*

- **Legality** (international, constitutional or common law, tradition)
- **Normative justifiability**
  - a). Rightful source of authority (states, demos, identity)
  - b). Proper standards and ends (electoral authorisation, representation + accountability, transparency)
- **Legitimation** (consent through elections, recognition from other authorities)

\*Beetham D. Lord Ch. *Legitimacy and the EU*, 1998 p. 9

There is no single definition of what legitimacy is. For me the most convincing is the one proposed by Philippe Schmitter:

...legitimacy is a shared expectation among actors in an arrangement of asymmetric power, such as the actions of those who rule are accepted voluntarily by those, who are ruled, because the latter are convinced that the actions of the former conform to pre-established norms..... (What is there to legitimise in the European Union... and how might this be accomplished? European University Institute, 2001)

We can also put it simply as : '**Legitimacy converts power into authority**'.

Political authority is legitimate to the extent that:

- 1) It is acquired and exercised according to established rules (LEGALITY)
- 2) The rules are justifiable according to socially accepted beliefs about
  - (a) rightful source of authority (such as nation-states, single demos, other forms of collective identity, global citizenship)
  - (b) proper standards and ends of government (NORMATIVE JUSTIFIABILITY)
- 3) Positions of authority are confirmed by the express consent or affirmation of appropriate subordinates, ..... and by recognition from other authorities  
LEGITIMATION

## Strategies for EU legitimacy\*

- Economic-utilitarian  
(democracy is decision-making and preference aggregation)
- Republican-communitarian  
(collective self-understanding and value-based community)
- Cosmopolitan – universalist  
(justice and norms of fairness, rights based system)



\*Eriksen, Fossum *Europe in Search of its Legitimacy*, ARENA WP 02/38

On the slide you can see a major **framework** proposed by Eriksen and Fossum. In their article they distinguish 3 major **approaches**:

First 'economic utilitarian' is based on the EU as a problem-solving regime based on an economic co-operation. Legitimacy is derivative of the nation-states (which means indirect) and based on performance (which means unstable).

Next approach understands EU as a value-based community. EU is a geographically delimited entity. A common identity is needed for securing trust. This process is close to a nation-building. One of the legitimacy basis can be to revitalise Christian and humanist values. The problem is however that demos tends to be exclusive.

Third one is based on a rights-based procedural-democratic notion of legitimation. EU should entail 'legally institutionalised relations of universal respect for the autonomy and dignity of persons'. (rights and ethics).

**These 3 strategies present different challenges to the problem of EU legitimacy.**

## Previous legitimacy building attempts in the European Communities (Union):

- Direct European elections '79
- Spinelli's Draft Treaty establishing the EU '84
- EU citizenship (Maastricht Treaty) '92
- Charter of the Fundamental Rights (Cologne) '99
- National parliaments inclusion (Amsterdam) '97
- White paper on Governance (Commission) '01
- High Representative on CFSP (Solana) '99

Let's come back to the European integration process. It would be unjust to say that prior to the Convention there were no attempts to build the legitimacy. Most of the time the EU was viewed by most important politicians as rather a tool than an aim in itself (*for de Gaulle – vehicle of French interests, Thatcher- trade liberalisation*). But if you look at the slide you can see some initiatives.

I want to emphasise their role as building blocks of the whole 'Convention project'.

Without direct elections to the European parliament, there would be no claim about direct citizens representation on the European level. The Spinelli project was a first serious attempt to make the treaties simple and readable. Without the EU citizenship the issues of rights would probably remain a purely national pre-occupation. Instead we had a German initiative to codify it, and the Charter of Fundamental Rights was drafted in co-operation with national and European parliamentarians (the first convention).

At the centre of many projects was not only the structure itself, but the day-to-day management as well. In reply to these claims we could see the whole concept of 'governance' emerging in the year 2000.

Another issue was how to involve national parliaments (i.e. Westminster) into the expanding legislation of the EU. The idea of the so called COSAC (The Conference of European Affairs Committees) was to build a bridge between national and European spheres.

Finally, with the end of Cold War the international position of the EU is becoming a new reason for public allegiance, reflected in the public surveys. This aspect is especially visible after September the 11<sup>th</sup> and the crisis over Iraq.

We can see the different directions of political action. Is it therefore possible to solve the apparently constant deficit? Should we be bothered?



# The composition of the Convention

The European Council appointed:

Valéry Giscard d'Estaing - Chairman

Giuliano Amato + Jean-Luc Dehaene as Vice-Chairmen.

- 28 government representatives
- 56 national parliamentarians
- 16 members of the European Parliament
- 2 representatives of the European Commission.

Together: 105 members, 28 countries

In addition 102 substitutes and 13 observers

On the slide you can see the composition of the Convention. It was to be chaired by Valéry Giscard d'Estaing – former president of France. Two vice-chairmen were also named: a professor of law and former prime minister of Italy- Giuliano Amato and Jean- Luc Dehaene – former prime minister of Belgium. Each state was to be represented by one rep. of the government and 2 reps of the parliaments. Additionally there were 16 MEPs and 2 reps of the Commission. There were altogether 102 members and the same number of substitutes.

As you can see the balance of the whole body was in favour of national parliamentarians who accounted for more than half of the Convention. However the structure of its 13 member Presidium (which was to steer its work) was biased towards the governments' representatives (chairman, 2 vice-chairmen, 3 reps of the countries holding presidency of the EU and 2 from each components: NP, MEP, COMM).

The Convention was opened on the 28<sup>th</sup> February 2002 and terminated after agreement on the last part of the Draft Treaty on the 10<sup>th</sup> July 2003.

Its operation was divided into three stages: listening, analysing (when WG were created to reflect on particular elements) and drafting.

The most publicised part of its operation was drafting of the articles, that started inside the Presidium in January (first articles released in Feb.2003) and finalised in July.

## A Convention accountable to whom?

- 1). The European Council
- 2). *Demoi* of Europe (15, 25 or 28 nations)
- 3). European and national parliaments
- 4). History or future generations?



I want to concentrate for a while on the legitimacy of the Convention itself. First question arises about whom was it accountable to?

A reasonable answer would be the European Council. However the surrounding climate (bringing the civil society, involvement of youth and parallel national debates) gave the Body a broader appeal.

We can say that at its opening session nobody was sure what this exercise will become. Was it to be just a 'talking-shop' with lots of visionary speeches and intellectual discussions? Would it be able to agree on a clear set of proposals?

The mandate of the Convention remained quite open. Therefore the power of the Chairman or President (French version) and the Preasidium proved to be crucial. A secretariat under John Kerr, former British diplomat was also a very influential instrument in the hands of VGE.

From the very beginning it was certain that the Convention is not a 'constituante'- with a mandate to proclaim a constitutional text. However its results, which were to be submitted to the European Council, could have various influence on the following IGC. The pertinence of its proposals would be strengthened, if a single text was agreed. Thus the co-operation between the Chairman, Preasidium and the plenary proved crucial, especially when the most divisive issues of power came to the fore.

# Main stages of the Convention

1. **Listening phase** (Feb.- July. 2002)

2. **Studying phase** (11 working groups)

*Giscard's 'skeleton' of the treaty (28 October 2002)*

3. **Drafting phase** - 2003

- *First draft articles (9 February)*
- *VGE's institutional proposals - 22 April*
- *Complete revised draft Treaty - 26 May*
- *Final agreement 13 June (part I,II and IV)*
- *Handling of the document 18 July*



Here you can see the main issues discussed by the working groups in the second part of the year 2002. These 11 working groups brought various results.

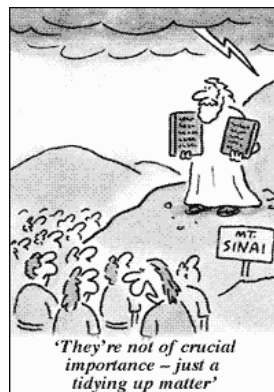
From the 28 October on, when a 'skeleton of the draft Constitutional Treaty' was presented, events started to speed up. The individual articles of the treaty were to be inserted into the skeleton treaty in the first half of 2003. These articles were based on the conclusions elaborated by the working groups and the discussions in the Convention plenum.

The most problematic however were the institutional issues. In order not to create divisions VGE decided to leave them open and they were first discussed during the session in January 2003. There was no working group to debate them before. So when VGE presented his own first draft on the 22<sup>nd</sup> April (without prior consulting the Preasidium) it caused a deep frustration among the whole body. Main challenges to the final compromise on these issues are the lack of clear mandate, lack of proper discussion and a atmosphere of imposing a 'fait accompli'

## A Basic Treaty or a Constitution?

-different meanings, different legitimacy claims

- Is a new treaty the best way to address the question of legitimacy?
- Its symbolic meaning
- Axiology of the EU (a value-based community?)
- Implications of ratification procedure



Even before we start to analyse the final text, we should ask the following questions:

Is the unresolved dispute about the nature of the EU an asset or an insurmountable obstacle? Is a simplified Treaty indispensable for the enlarged Europe? Was the Convention the right place to draft it? Did its draft fulfil the basic conditions of a consensus? Are the proposals acceptable for the majority of citizens in each of the 25 member states?

An alternative question is whether the Convention was able to address these issues in a form different than a new treaty?

Despite the assurance of Peter Hain and other politicians, the Treaty is not only a tidying exercise. Many members of the Convention, for different reasons, wanted to draft a Constitution. And this symbolic name gives it a larger appeal. Lawyers generally agree that any document is a subject to interpretation. This treaty has such a potential, especially if it is accepted in referenda. Names carry symbolic load and revoke different legitimacy basis. It also concerns the axiology and symbols introduced in the draft.

A constitution can be interpreted as a set of rules that even a Golf club has, but it can also indicate the path towards a state-like entity.

## Legitimacy of the process

*The method is at least as important as the results of this process itself.*

- Involvement of not only executives but also directly elected legislatures (parliamentarization)
- Full membership for candidate states (albeit without the right to block consensus)
- Involvement of the civil society (NGO's, think-tanks)
- Break down of the EU/national division of debate
- Transparency (plenary sessions open to public, internet site)

Let me summarise the issues in relation to the problem of legitimacy. The creation, operation and outcome of the Convention provide a micro-world of international deliberation.

The features of the Convention indicate a transformation in the thinking about the EU itself.

For the first time parliamentarians from National and European parliament were fully involved. The same can be said about states finalising negotiations.

The Convention only partially achieved in closing the gap between European and national debates. The results of the civil forum were also limited.

Transparency and broader representativeness seem to be the most important legitimising features.

## Observations about the nature of deliberation inside the Convention

- New norms (intelligibility, simplification)
- Citizens become one of the addressees of the treaty (tendency growing since Maastricht)
- The limits of deliberation potential (*some issues cannot be argued, resolution through bargaining and voting*)
- The continuing pertinence of diplomatic approach (ambiguity, postponement)
- Inescapable legal jargon as a 'common language'
- The role of chairman's image
- The role of time pressure

The Convention reaffirmed that new norms become part of the Euro-speak. The leit motif of the whole endeavour was 'the simplification' with a clear hope that this will enhance credibility and loyalty.

We can also observe growing direct appeal to citizens. Yet it is for me still not clear whether this appeal shall be rather communitarian or cosmopolitan. My preliminary evaluation is that Convention moved the whole process into the first one.

The participation in the Convention was also a valuable experience for its members. It induced them to bring common proposals rather than individual ones. The larger the number of supporters, the more influence the proposal had.

Norms change the discourse. Speakers have to justify their proposals by the public interest. This might modify the interests disguised in the proposals. By the way certain arguments evolved, I can say that institutional setting alters the results.

The Convention partly failed in an attempt to use a non-legal language. As it was quickly accepted the main message of the convention was in the form of treaty articles (by their nature, legal jargon prevailed).

Last but not least, the image of the chairman might be crucial in the judgement of the proceedings and the outcome. VGE's record is ambiguous.

## What is the Convention's impact on the understanding of legitimacy

- Contribution to our understanding of how to design legitimate institutions
- The impact of norms on the discourse
- The role of narratives in understanding the process
- How to define a constitutional moment
- Creation of the European Public space problematic due to limited media coverage
- Constitutional Treaty as a source of attachment?
- The ratification dilemma (consistency of commitments)
- Divisive potential (ain't it broke, ... don't fix it).

The Convention terminated less than a year ago. It is still difficult to predict what its authority shall be. The intergovernmental conference negotiating the treaty has overshadowed the legacy of the 205-strong body. There are still too few narratives to predict how it shall be judged. Despite its shortcomings it established a new yardstick against which future developments shall be evaluated.

The convention decided to draft a new treaty. This is problematic taken into account that during its operation 9 new members and Ireland have just held referenda over ratification of the Accession and Nice Treaties. Therefore one of the elements of legitimate system – its stability- has been put into question.

It is still unclear what would happen if one state failed to ratify the treaty. According to International law it would not come into force. But on the other hand is one state, let's say Malta, a legitimate subject to hijack all the other 24 members and 450 million from improving the overall structure? The first taste of this we had last December when the IGC failed to reach a compromise.

Clarification means sometimes the necessity to make difficult choices. Until now the EU managed to balance between different expectations and ideas. So at the same time when EU can be more transparent and simple, it might also open up old divisions and create new ones.

Thank you, very much for listening!