

Treaty change and the Convention on the Future of Europe. The politics of EU Reform

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EU has undergone profound changes since its rebirth in the 80-ies. The change comprised not only the new initiatives inside the existing structure but also very deep institutional changes introduced by the consecutive IGCs. Luxembourg (SEA), Maastricht, Amsterdam and Nice treaties were a series of amendments to the body of primary law established in Rome. The study of the continuity (path-dependency) of these reforms is a new interesting direction in the European studies. It is also an original contribution towards the study of institutional change.

Why were these reforms introduced? What processes demanded institutional adaptations? Why EMU, ESDP or a Constitution appeared on the political agenda? Were the treaty reforms distinct from each other or they can be seen as a process? Is Treaty reform a purely intergovernmental process or supranational institutions play an important role as well? These questions reemerge in the discussion about the nature of the EU and its vocation.

Let's name just the most important challenges:

1. The problem of co-ordination between different organizations with overlapping competences (i.e. European Political Co-operation and the external competences of the Commission)
2. Issue of citizens and democracy (understanding of the evolving system was more and more problematic and incremental reforms and various initiatives failed to produce substantial results)
3. The Eastern enlargement exacerbated the institutional shortcomings (question of numbers) and posed a challenge of defining the values (democratic criteria set in Copenhagen)
4. Instability of the neighborhood (Balkans, Middle East) and the changed perception of the role of USA forced the evolving polity to establish a coherent foreign policy and the means to its implementation
5. The functioning of the internal market (freedom of movement) forced the EU to develop a program of internal control subverting the traditional area of national politics

Until the summit in Nice in December 2000, badly handled by Jacques Chirac, the heads of states and governments kept control over the large part of the negotiations (through the COREPER and foreign ministries). However the public critics, following the four-day marathon, made the European Council rethink the IGC model. Intergovernmental negotiations made it a zero-sum game by its very structure. In order to raise the public profile and give a say to the national parliaments a Convention was established by the Laeken European summit.

Its mandate was 53 questions divided into four headings:

1. A better division and definition of competence in the European Union
2. Simplification of the Union's instruments
3. More democracy, transparency and efficiency in the European Union
4. Towards a Constitution for European citizens

The Convention on the Future of Europe

A. Composition

The European Council has appointed Mr Valéry Giscard d'Estaing as Chairman of the Convention and Mr Giuliano Amato and Mr Jean-Luc Dehaene as Vice-Chairmen. In addition to its Chairman and two Vice-Chairmen, the Convention was composed of 102 members and 102 of their alternates:

- 28 representatives of the Heads of State or Government (15 from the Member States + 13 representatives of the candidate States).
- 56 representatives of the national parliaments (30 from the Member States – two per each country + 26 representatives of the national parliaments of the candidate States (two from each candidate State),
- 16 members of the European Parliament,
- 2 representatives of the European Commission.

The Laeken Declaration provided for the candidate states to take a full part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States. This situation has slightly changed after the Copenhagen summit, when also the 10 acceding states were necessary to ratify the new Treaty.

B. The hierarchy inside the Convention

- The President (chairman) Valery Giscard d'Estaing supported by the Secretariat (lead by John Kerr).
- The Praesidium (13 members) – a drafting body?
- The plenary with various lines of divisions (political families: EPP, PES, ELDR; institutional: MEPs, members of national parliaments, government representatives).

C. The major phases of its operation:

- listening phase (Feb. 2002 – July 2002)
- studying phase (establishment of the 11 Working Groups and their reports – June 2002 – January 2003)
- drafting phase (February–July 2003)

D. Major questions raised by the Convention:

1. Should the EU have a Constitution or a Basic Treaty? If yes, how should it be ratified? In a general European referendum by the majority of population or by the majority of states? What if one country fails to ratify it?
2. How far can we go in simplification, the 'leit motive' of the Convention?
3. Axiology of the EU (Christian legacy?).
4. How to maintain the balance between the institutions (chairman of the Council of Ministers, structure of the Commission etc.).
5. Balance between the member-states (QMV as a bone of content). Double majority versus the weight based on square root of the population.
6. means to ensure democratic legitimacy of the whole system (upgrading the role of the European Parliament, national parliaments or establishing a new body).

EU Reform process

We can divide the current process of treaty change into four parts (though this division is certainly very problematic):

1. The road to Laeken – the events prior to the establishment of the Convention (from Fischer's speech in May 2000 till Laeken summit in December 2001)
2. The functioning of the Convention (Feb. 2002 – July 2003)
3. Intergovernmental Conference (October 2003 – June 2004?)
4. Ratification process, if ever achieved 2006 ?

Legitimacy of the Convention can be contested but without any doubts it had a strong impact on the current IGC. We should also discuss the forces that support or oppose previous and current revisions.

Supporters:

1. So called federalists (present particularly among the Liberals and the Greens)
2. European Parliament which was the major winner of treaty reforms
3. the Germans and Belgians who project on the EU the experience of their federal systems
4. Politicians critical of the United States (trying to establish a counter-balance)
5. Intellectuals, for whom the idea of Europe became an issue of political correctness (who dares to oppose a great idea?)

Among the opponents we can name:

1. conservatives (who are afraid of political experiments)
2. nationalists (for whom the nation state is the highest value, however this is not the case of small nations inside the current members, who see chances of autonomy in the federal structure i.e. Welsh, Scottish, Catalan)
3. proponents of free-market (however they are divided on issues of CAP and the anti-monopoly legislation)
4. those afraid of the domination of an uncontrollable super-state and its bureaucracy

Conclusion

The speed of changes in the EU (common currency, enlargement) brings to the fore questions which used to be 'taboo' for so many years. The question of finality raised by Joschka Fischer deserves a clear answer. Constitution can be seen not only as another step towards integration, but as a tool to limit EU's creeping competences. That is why the double check of subsidiarity principle is so important (though it is difficult to say how easy the procedure can be implemented). We should remember that the origins of constitutions were usually not to create a 'demos', but rather to limit the power of the rulers. However the case of centralization in the United States is a warning that 'paper is patient' and politicians can manipulate the checks and balances. Is the new Treaty a good response to the questions posed in Laeken? It is not perfect but still the best offer we received. Was the operation of the Convention proper and just, so that we shall attribute legitimacy to its outcome? Here I remain skeptical, particularly in the case of institutional articles and preamble imposed by the President. However the time devoted by the IGC towards finding an equitable compromise is a good sign for the future of the new, constitutional treaty. As always in the real world we can see the outcomes of our

decisions only in retrospect. The treaty establishing a Constitution of the European Union shall not solve all the problems faced by the enlarged Europe. However it can provide us with a stable platform for its functioning. Both the Convention and the IGC were important learning facilities for politicians, political groups and nations. If the spirit of compromise and mutual hearing prevails, the document will be praised by its future users.

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Useful websites:

<http://www.fedtrust.co.uk> (constitutional on-line papers)

www.euobserver.com