

Establishment of the Convention on the Future of Europe

– The implications of this experiment for the European integration process.

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The aim of this essay is twofold. First I would like to describe and analyse the process leading to the decision of the European Council in Laeken in December 2001 to establish the Convention on the Future of Europe. I will present the normative turn which occurred in Europe during the nineties. Then I will give account of main elements of three speeches which introduced new notions in the European political discourse. By this I mean the lectures of Joschka Fischer, Jacques Chirac and Tony Blair in the year 2000. I will try to present the convergence of these speeches around the issue of a kind of Basic Treaty or a Constitution for Europe, and a new agenda that was introduced in the Treaty of Nice in the form of Declaration 23. Afterwards several processes that lead to the Laeken declaration shall be defined.

In the second part I will try to depict the main features of the Convention and try to show the normative reasoning that underpinned this body. My claim is that the structure of the Convention to a large extent responded to the rhetoric used by the leaders in the previously analysed debate. By responding to these claims the Convention established its own legitimacy and thus the result of its operation could not be simply rejected. The Convention is a new setting in the integration process and empowers both new actors (national and European parliaments) and new notions such as deliberation and better representativeness. Therefore the claim of this paper is that there should be more focus on the Convention itself as it is, not as much an accidental institution, as a sign of changing dynamics in the European integration process.

1. The Debate on the Future of Europe

The European environment before the Fischer's speech¹.

Two processes led to the creation of the Convention. First was the growing debate about the legitimacy of the European Union. Second was that EU enlargement to the East compelled elites to rethink the nature and institutional structure of the Union.

¹ On 12th May 2000 the German Foreign Minister, leader of the Green Party, gave a landmark speech in the Humboldt University in Berlin in which he introduced new themes to the debate on the European integration. The content of his speech is referred in further chapters of this essay.

Since the problems with the Maastricht Treaty ratification, the issue of legitimacy of the Union has gradually become more pertinent. As it is emphasised by Bellamy and Castiglione:

... 'By raising fundamental questions about the methods and ultimate goals of European integration, Maastricht forced supporters and opponents alike to confront the legitimacy both of the Union and – as has become apparent with the crisis of the Santer Commission – of the institutional architecture put in place to steer it. The strategic-oriented action and normative argument avoided for so long by the main political actors are inescapable when tackling this issue. Thus national politicians and European authorities have self-consciously, though perhaps confusedly, been obliged to start discussing the future shape of what Jacques Delors once called 'un objet politique non-identifié'. Academics, for their part, have discovered that the integration process depends not simply on functional efficiency and certain given economic and national interests, but also on people's ideals and perception. Consequently, explanation and justification have proved less easily distinguishable than earlier positivistic and behaviouralist models assumed. Hence, the 'normative turn' in European studies.' ...²

Even though the move of Mitterand to present the treaty to a national referendum was mostly tactical, the result marked a new trend. The referendum on Maastricht lost by the Danish political elites emphasised that leaders do not possess a blank cheque for their European engagement. In their decisions heads of state began to feel growing pressure from different groups of the society. This meant that while pursuing 'nationally defined' interests they were forced to take into account the general image of the whole European endeavour. Thus the main daily European preoccupation of the governments: laws and regulations were partly sidelined by the search for public support. Another feature which was increasingly interpreted in the terms of the EU legitimacy was the diminishing participation in the elections to the European Parliament.

What became evident over time is that the public leaders had limited public mandate to engage their countries in new developments inside the EU. The general co-operation existing between the Commission and the ministers in the Council was a very obscure solution. The ministerial tactics to blame the Commission in their national forums for the enforcement of disadvantageous measures, thus trying to escape the responsibility for unpopular decision, had its side-effect – calls for parliamentarian control. New checks and balances were required, for both the national and European level. Soon the discussion about the proper control of European institutions and the public's hostile approach towards 'Brussels bureaucracy' transformed into a legitimacy deficit debate. The terms of this debate undermined the status-quo in the EU. The legitimacy debate over time gained major characteristics of democracy on the international level.

The argument presented by academics and politicians was that when competences began to be exercised in the Community way, they escaped the parliamentary scrutiny

² Bellamy, R. and Castiglione, D. (1999), *The Normative Turn in European Union Studies: Legitimacy, Identity and Democracy*, EURCIT Working Paper; www.reading.ac.uk, page 2

of the national parliaments, without being properly executed by the European Parliament. However, an increase in the powers of the European Parliament would in the end lead to a decline in national parliaments' competences. This also provoked a debate about the scope of the European regulation. And one of the features of this debate was the competition between the national and European, the latter excluding the former.

This debate induced far-reaching changes in the nature of the EU process. It empowered non-governmental actors on the European scene in their claims to have a better access to the policy process. On the other hand this raised the question of proper representativeness of the European stakeholders. The legitimacy debate did not have a clear focus. The predominant vision of legitimacy was that of a nation-state. However what Shaw and Wiener tried to explain, this challenged the unwritten rule that the EU nature was distinct from the state.³

Politicians and academics were faced with a difficult mission: to discover or build a new framework according to which the EU could be described. Or if they failed to, the other option was to make the current system more accepted. By questioning the very nature of the integration system, the speeches of national leaders, who tried to improve it, supplied 'energy' to an on-going debate. Over time this debate escaped the control of the member-states' governments and produced its own effects. The search for this new definition of the European Union resulted in numerous contributions. The Fischer's speech, even if it was not the first, than at least the one that provoked other high-political figures to admit the problem. Altogether the speech of Joschka Fischer was a reaction to the changing understanding of the European integration. It triggered at the same time the process of looking for the answer.

The second component of the change that occurred in the late nineties was the looming enlargement to the east. It took the European Union several years to decide how to deal with the new countries, which re-emerged from Soviet domination. However even if the decision was gradually taken in Copenhagen in 1993 and Luxembourg in 1997, it took some time to measure the possible impact of this enlargement on the Union itself. Enlargement and the legitimacy debate created a need to re-think the status quo and ways to accommodate it, for the sake of its preservation. During the late nineties an awareness grew, that that the EU needed some kind of re-establishment, re-foundation.

It is a matter of content which challenge was more important on the road to Laeken – enlargement or this redefinition surge. By its very nature enlargement was homage to the very idea of integration, which 'seduced' the newly established states. On the other hand the increase in membership could further limit the national control of the common institutions. In a structure where participation increases, if efficiency is to remain, there is less time for the voice of each member. The enlargement created a necessity to challenge the established balance on issues like qualified majority voting or to rethink the number of Commissioners. This was precisely the aim of the 2000 Intergovernmental Conference.

³ Shaw J. Wiener A. (99) The Paradox of the 'European Polity', Harvard Jean Monnet Working Paper 10/99

Already during the description of the mandate of this conference, there were voices to enlarge its agenda beyond the most necessary institutional issues.⁴ On the other hand even the limited changes to main institutions have repercussions in other fields: such as the role of sub-national units like the regions or the leadership in the Union. And one of the ways to deal with them was to put them together under a label of the ‘declaration on the Future of Europe’.

What is symptomatic in the process leading to Laeken is that in time language became more and more important and the debate itself started to produce new context, beyond the reservations of particular actors. Even countries like the United Kingdom, wary of grandiose forums and ambitious approaches, were taken over by the language of renewal.

The meaning of Joschka Fischer’s speech in the Humboldt University.

It is difficult to trace the exact causal chain that led German Foreign Minister, Joschka Fischer, to deliver a speech that stirred a high-level debate about the future of the Union. It has to be put into the perspective. On the 15th February 2000 the Commission launched an initiative ‘Dialogue on Europe’. The general idea behind this initiative was to secure public interest in the EU and the IGC preparing for the enlargement. On the 15th of May the lawyers gathered around the European Institute in Florence submitted their feasibility study of a reorganisation of the Treaties in order to improve their coherence and transparency. Hence, it must be said that the issue of simplification was already on the political agenda. However both the dialogue on Europe and the re-organisation of Treaties lacked the political visibility and failed to produce headlines in domestic press.

Partly by accident, and partly purposefully the starting impulse for a high-profile debate was the speech of Joschka Fischer at the Humboldt University⁵. What was so exceptional in his speech that secured the momentum in the public press and academia? Was it only a text or it was rather a general context, in which his contribution appeared, that secured a high publicity and replies?

First of all it is quite unusual for a foreign minister to express freely wide-ranging ideas about the future of Europe. Of course there were some other speeches with a momentous impact, like the Bruges speech of Margaret Thatcher or the response to it by Jacques Delors.⁶ However since the Schuman Declaration, foreign ministers tended to restrict the scope of their public speeches. Furthermore, Fischer deliberately broke many taboos existing in the European language. Until then, all the declarations and preambles were limited to the process, leaving the issue of finality for future entrepreneurs. The EU was always a project in the making, and part of its success was that it could not be clearly defined. Joschka broke with this unspoken rule and used

⁴ see the Wise Men’s report ‘*Institutional implications of enlargement*’ submitted by Jean-Luc Dehaene, Richard von Weizsäcker and Lord David Simon
http://europa.eu.int/igc2000/repoct99_en.htm

⁵ Fischer J. (2000) *From Confederacy to Federation - Thoughts on the finality of European integration*
<http://www.auswaertiges-amt.de>

⁶ Nelsen Brent F. Stubb Alexander C-G. *The European Union, Readings on the Theory and practice of European integration*, London 1998

the F-word. *'Federation was the answer to the question about the finality of the European integration'*.⁷

The timing of this speech was also very surprising. The main German partners in Europe, the French were preparing to take over the presidency of the EU and lead the current IGC to resolve the 'Amsterdam left-overs'. The mandate of the IGC was deliberately limited to the institutional questions in order not to stir new divisions and bringing back old phantoms. Engaging in a long-term discussion Fischer asked a very general question *'Quo vadis Europa?'* This question to a certain extent personified the 'Europe' as a distinct political subject, with its own agenda and timetable.

He linked directly the challenge of enlargement to the east and south with political integration. And to meet this challenge *'would depend decisively on France and Germany'*. He continued *'A divided system of states in Europe without an overarching order would in the long term make Europe a continent of uncertainty'*.⁸ In this way he questioned the place of the nation-states in the general architecture. This provoked negative reaction of for example Jean-Pierre Chevenement, for whom the nation state should retain the ultimate control.⁹ Without the provocation, the speech would not be noticed.

In his speech Fischer presented an alternative which was so unwelcome by the traditional French politics: *'The consequence of the irrefutable enlargement of the EU is therefore erosion or integration.(...) Question upon question, but there is a very simple answer: the transition from a union of states to full parliamentarization as a European Federation.(...) This Federation will have to be based on a constituent treaty.(...) The completion of European integration can only be successfully conceived if it is done on the basis of the division of sovereignty between Europe and the nation-state. There should be a clear definition of the competences of the Union and the nation-states respectively in a European constituent treaty (...). These three reforms - the solution of the democracy problem and the need for fundamental reordering of competences both horizontally, i.e., among the European institutions, and vertically, i.e., between Europe, the nation-state and the regions—will only be able to succeed if Europe is established anew with a constitution'*...¹⁰

The speech of Fischer contained also a direct threat of splitting the Union into groups of those willing for closer integration and those who don't.

... 'the EU will at some time within the next ten years be confronted with this alternative: will the majority of member states take the leap into full integration and agree on a European constitution? Or, if that doesn't happen will a smaller group of member states take this route as an avant-garde, i.e. will a centre of gravity emerge.(...) One possible interim step on the road to completing political integration could then later be the formation of a centre of gravity. Such a group of states would conclude a new European framework treaty, the nucleus of a constitution of the Federation. On the basis of this treaty, the Federation would develop its own institutions, establish a government which within the EU should speak with one voice on behalf of the members of the group on as many issues as possible, a strong

⁷ Fischer J. From Confederacy...

⁸ Ibid.

⁹ Le Monde 21.06.2000

¹⁰ op. cit. Fischer (2000)

*parliament and a directly elected president. Such a centre of gravity would have to be the avant-garde, the driving force for the completion of political integration and should, from the start, comprise all the elements of the future federation. (...) Initially, enhanced co-operation means nothing more than increased intergovernmentalisation under pressure from the facts and the shortcomings of the 'Monnet Method'. The steps towards a constituent treaty—and exactly that will be the precondition for full integration—require a deliberate political act to re-establish Europe.'*¹¹

The revolutionary meaning of the speech was challenging the order of the historical European process. So far, leaders tried to concentrate on concrete issues and tried to tackle them through the incremental institutional adjustment. They were rather afraid of trying to define the final structure, because of two reasons:

1. they wanted to avoid the comparison of the evolving EU to a state-like system
2. they did not want to reduce the adaptability of the system for future challenges. Union could not be curved in a single, simple document because it would harden the incremental change

And these two notions have been partly broken by Fischer. While re-reading his speech we should not overestimate the conclusions, as they were put into questions and postponed in time. However, as one would say Fischer stirred up a hornets' nest, and thus let out contentious issues to float in the debate. Perhaps the most important idea was that a high politician said that EU needs a change, a leap forward. He explicitly challenged the status quo and said that improvement is not a matter of tinkering and limited steps. ... '*Business as usual will not do. (...) The (Monnet) method is in crisis that cannot be solved according to the method's own logic*'¹²

Another factor of the success was to directly mention France. This required a response. So far the major European appeals were forgotten because they lacked an addressee. One can claim federation but as long as it does not urge any institution to provide a reply, it remains in a form of declaration. However Fischer constructed his speech in the way that French political class was compelled to react.

Thirdly, the simplicity of the speech managed to capture the media headlines, and became part of the '*deliberation acquis*'. The audience of the speech reached beyond the elites. One may support or object, but at least European integration received a default vision, which others would have to challenge.

Lastly the timing of the speech proved crucial. The IGC was slowly reaching its half-way and the question of enforced co-operation was at the centre of the discussion. Fischer's speech put a new meaning to the ongoing negotiations. The Nice Treaty was not to finish the discussion. It was rather an intermediate stage, defining the conditions for further fundamental changes.

Fischer had opened the debate but without other leaders referring to his speech, his voice would be another empty call on the desert. We need to remember that Fischer was not speaking in the name of the German government. He underlined several times that this was rather his personal view. But can a foreign minister really take off his

¹¹ Ibid.

¹² Ibid.

ministerial hat? The personal beliefs of a minister have direct influence on the way he is performing his duties.

The possible success of Fischer's speech is best analysed by Johan Olsen. The main task of the 'institutional gardeners' is to:

1. Stabilise attention, so that incremental steps can be tied together into a long-term consistent plan. Fischer managed to go beyond the technical aspect of the daily negotiations and showed that there is something at stake. He dared to ask the question, which so far was avoided 'Quo vadis Europa?'
2. Develop a shared vocabulary or at least a repertoire of such vocabularies so that actors can 'translate' between different interpretations of key concepts. He used simple words like federalism, constitution, democracy, sovereignty, enhanced co-operation.
3. Develop shared interpretations of experience. He said that without change the EU might erode, so that lack of action would threaten the achievements of integration.
4. Develop shared criteria for assessment. For Fischer efficient and democratic institutions were the criteria for assessment. For him the federation would meet both thus he established a yard-stick.
5. Clarify aspirations '*onwards to the completion of European integration*'.
6. Improve institutional adaptability through realistic assessment of what is possible and taking into account the internal dynamics of institutions. He clearly proposed that France and Germany should together engage in deepening.¹³

According to Beate Kohler-Koch: ...'*Fischer's Humboldt lecture is also a perfect example of framing; (...) Fischer acknowledges that EU is in a difficult time, dramatizes the challenges to be met and propagates a blueprint for the Europe of the future. The concept is given legitimacy by linking it to the demands of the founders and other important leaders of European integration, by outlining the functional necessities that 'render imperative a fundamental reform', by linking it to the highest normative aspirations, and by proposing a model that is easy to understand and stimulates positive memories. He defines the situation, asserts the goal that deserves highest priority, and lays out the only strategy that will be efficient and appropriate. It is a well-constructed representation of choices, contingencies and outcomes, and it is designed in a way that is highly likely to contribute to the framing of the discourse*'...¹⁴

The resonance of the Fischer's speech will remain a big question of history. Maybe it was both the timing and the courage of this open statement. However what was important was that his speech was followed by responses from other leaders who felt, they had to react to the bold picture presented by Joschka Fischer.

Chirac enters the scene

¹³ Johan P. Olsen (2000) *How then, does one get there? An Institutional Response to Herr Fischer's Vision of a European Federation*, Harvard Law School, Jean Monnet Working Papers 7/00

¹⁴ Kohler-Koch B. (2000) *Framing the bottleneck of constructing legitimate institutions*, *Journal of European Public Policy*, October p. 517

Luckily for Fischer, the French were not only occupied by the incoming Presidency, but also with the political positioning of the president and the prime minister in the approaching presidential elections. And one of the fields, on which Chirac tried to present his strong position, was the question of Europe. Jacques Chirac decided to refer directly to Fischer's speech and take up some of the notions mentioned by his predecessor. This time the politician did not speak only in his name but as a President of France and soon-to-become holder of the Presidency of the European Union. What if any, major shifts in the French position were signalled during this speech?

Chirac, speaking in Berlin on 27th June 2000, was the first foreign president to speak to the Bundestag in its old-new building, the Reichstag. He used the chance to underline the long-lasting character of the Franco-German partnership and its fundamental role for the European integration project. In his speech there appears a picture of European integration being in the background of Franco-German leadership or sometimes only a tool of their mutual political objectives. And enlargement to the east, being a 'legitimate and obligatory aim' was a threat to the overall operation of this common Franco-German enterprise¹⁵. He reiterated the major points of discussion mentioned by Fischer with emphasis on the democracy (through the European and national parliaments), clarification of competences and application of the subsidiarity principle. However what seems to be the major points of Chirac's speech are the other two points: closer co-operation and the Europe's international standing.

... 'We should care so that in the enlarged Europe the ability to give impulses is retained.(...) Like in the past, the states which want to further integration should be able to pursue certain project, which other states do not support (which is their right).'¹⁶

The other meaningful element of the speech was mentioning the introduction of majority voting in the foreign affairs domain, however only after proper reweighing. Chirac also stressed the need for deepening of certain politics and pointed out the possibility of creating an 'avante - guard'.

In the conclusion of his speech Chirac mentioned the need to reorganise the Treaties, so that they were more coherent and understandable for the citizens. He proposed to think about the ultimate borders of Europe and the status of the Charter to be agreed on before Nice. This reflection was to be performed in an open way, bringing together governments and citizens, through their representatives in European Parliament and national parliaments. He stressed that candidate countries should take part in this discussion. He said that different forms were acceptable: the committee of wise men or a model inspired by the Convention that was preparing the Charter of Fundamental Rights. After this debate governments and later citizens should have their say on a

¹⁵ author's translation based on the German original ... 'Wir warden nicht zulassen, dass das Europäische Aufbauwerk zunichte gemacht wird, an dem Sie und wir gemeinsam mit unseren Partnern seit fast einem halben Jahrhundert mit soviel Willen und Energie gearbeitet haben. (...) Morgen wird unsere Union nicht mehr ganz dieselbe sein. Sie wird aber weder aufgewiecht werden noch Rueckschritte erleiden. Hierfuer zu sorgen, ist unsere Aufgabe.'....

¹⁶ ... 'Sorgen muessen wir femer dafuer, dass im erwaiterten Europa die Faehigkeit, Impulse zu geben, bewahrt bleibt. ... Wie in der Vergangenheit muessen deshalb die Laender, die in der Integration weiter voranschreiten woollen, dies auf freiwilligen basis und bei bestimmten Projekten tun koennen, ohne dabei von denjenigen, die nicht zu rasch vorankommen moechten- und dies ist ihr gutes Recht- behindert zu werden'...

text, which could be proclaimed the first ‘European Constitution’.¹⁷ This way Chirac continued the practice of German minister and broke several taboos. He mentioned the Federation of Nation States, Convention and Constitution.

Was Chirac aware of the long-term meaning of the concepts he introduced? Or the lack of direct applicability insulated the French president from foreseeing the possible results of his proposal? Was the aim of his speech merely to emphasise the devotion of the French presidential office towards creating a clearer structure of the EU? And to what extent would the French accept a changed status, were the institutions simplified and democratised? These questions will be probably never exhaustively answered. In this case however the intention of the speaker is not always identical to the results. This speech bound Chirac for future decisions and limited his scope of manoeuvre. Chirac created also a precedent for other leaders who felt compelled to present their views on the subject. It may also be claimed that this speech has opened the way for the post-Nice agenda. The French were in charge of the Nice summit and thus they could object to any far-reaching declaration and a process which it announced.

Tony Blair’s speech

The third contribution which focused on a large picture of the European integration was the position of British Prime minister, Tony Blair, in Warsaw on the 6 November 2000.¹⁸ Why was Great Britain important to the understanding of discussion about Europe? Probably because it had and still carries a reputation of being the most euro-sceptic country interested rather in practical solutions than political visions. The inclination of the British to pragmatic adaptation made them particularly resistant to visions presented by leaders like Fischer.¹⁹

Taking into account the size and importance of United Kingdom, we can presume that without British support the process would be halted (or limited to a core group). In Blair’s speech we can see how a different logic of the British prime minister was interwoven with the dominating discourse of French and German.

... ‘We should not therefore begin with an abstract discussion of institutional change. We begin with the practical question, what should Europe do? What do the people of Europe want and expect it to do? Then we focus Europe and its institutions around the answer.’ ...

(This order of reasoning later re-emerged during the operation of the Convention. The first plenary session of the Convention in March 2003 was devoted to the question: ‘What do you expect from the European Union?’²⁰).

We should read Blair further:

...,Second, there is an important debate about a Constitution for Europe. In practice I suspect that, given the sheer diversity and complexity of the EU, its constitution, like the British constitution, will continue to be found in a number of different treaties,

¹⁷ *ibid.*

¹⁸ Blair T. *Europe’s political future* (see: <http://www.fedtrust.co.uk> Debate on Future of Europe in the UK, The UK government view)

¹⁹ Wallace H. (2000) *Possible Futures for the European Union: A British Reaction*, Symposium:

Responses to Joschka Fischer <http://www.jeanmonnetprogram.org/papers/00/00f0701.html>

²⁰ <http://european-convention.eu.int/>

laws and precedents. It is perhaps easier for the British than for others to recognise that a constitutional debate must not necessarily end with a single, legally binding document called a Constitution for an entity as dynamic as the EU. What I think is both desirable and realistic is to draw up a statement of the principles according to which we should decide what is best done at the European level and what should be done at the national level, a kind of charter of competences. This would allow countries too, to define clearly what is then done at a regional level. This Statement of Principles would be a political, not a legal document. It could therefore be much simpler and more accessible to Europe's citizens.' ...²¹

In his speech the Prime Minister referred to the question of parliamentary control of the decisions taken at the European level. He introduced the idea of creating a second Chamber, composed of the national parliamentarians. This chamber would control the application of the abovementioned 'Statement of principles':

... 'I also believe that the time has now come to involve representatives of national parliaments more on such matters, by creating a second chamber of the European Parliament. A second chamber's most important function would be to review the EU's work, in the light of this agreed Statement of Principles. It would not get involved in the day-to-day negotiation of legislation - that is properly the role of the existing European Parliament. Rather, its task would be to help implement the agreed statement of principles; so that we do what we need to do at a European level but also so that we devolve power downwards. Whereas a formal Constitution would logically require judicial review by a European constitutional court, this would be political review by a body of democratically elected politicians. It would be dynamic rather than static, allowing for change in the application of these principles without elaborate legal revisions every time.' ...²²

These abstracts of the speech show clearly the evolution of thinking at the European level. We can distinguish several new notions:

1. 'Statement of Principles' or 'Constitution' to simplify the understanding of the EU
2. The need to clarify the separation of competences of European institutions (vertical balance) or in other words the subsidiarity principle
3. Involvement of national parliaments in the monitoring exercise i.e. through the establishment of a second chamber
4. The unfinished discussion about the status of the Charter proclaimed in Nice
5. A reflection on the role of EU on the global stage

Declaration 23 attached to the Nice Treaty

The French held the post of the president of the EU and had direct access to the formulation of the documents attached to the Treaty. If we take into account that in their draft Treaty presented on the eve of the European Council meeting, there was no mention of any declaration on the Future of Europe, then we should presume that it was a result of the negotiations during the summit.²³ In his account from the Nice summit Peter Ludlow says of the declaration "Various governments had a hand in

²¹ op. cit. Blair (2000)

²² Ibid.

²³ see the documents of the IGC http://europa.eu.int/comm/archives/igc2000/geninfo/index_en.htm

drafting the document, including the UK, but paternity was claimed by the Germans and the Italians whose draft in the end was adopted".²⁴

The argument here is that it was part of the compromise 'package' mainly for Germany, so that the government of Gerhard Schroeder could declare a move forward on the contested issue of delimitation of competencies, which became essential for the Laender. Despite creation of the Committee of Regions the regions with legislative competences were not satisfied with their input towards the policy process. This is one of the reasons, why the issue of vertical division of competences, where one of the key points for Schroeder to reassure ratification by the higher Chamber of the Parliament – the Bundesrat.

Another point to be tackled in the declaration was the uncertain future of the Charter. The proclamation did not satisfy more integrationist leaders so a gate for its future incorporation was left open. And after the Chirac speech of June the possibility of a new Convention was opened. The first formal call for a Convention from a member of the European Council was pronounced by the Finnish Prime minister Paavo Lipponen in his speech at the College of Europe in Bruges²⁵.

How was the Debate about the Future of Europe 'planted' – if we use the Olsenian parallel? It was not directly the enlargement but rather speech-acts and declarations that were said during the preparation for this event which were seminal. A different aspect of the discussion might be that the aims of German and French leaders might have been quite divergent. The ambiguity of the post-Nice process was the solution to this problem.

When studying the Declaration on the Future of Europe closer, we have to put in the context of the whole Treaty. It was only the 23rd declaration out the 24 adopted by the summit. As all the declarations it was not binding and left a lot of room for the future interpretations. It also promised that in December 2001, the European Council, will agree on another declaration containing appropriate initiatives for the continuation of the debate. So in this way the EU would be engaged in the process of multiplying new declarations each year.

In point 5 of the Declaration, four main issues have been stipulated:

- how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights of the EU proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;

²⁴ Peter Ludlow "The European Council at Nice: neither triumph or disaster", page 21 Centre of European Policy Studies (CEPS) in January 2001 in his "View from Brussels" series.

²⁵ 10 November 2000 ... 'I suggest that any future European agenda should be prepared on a broad basis by a Convention that should include the governments and national parliaments of the member states and the candidate countries and the EU institutions and representatives. We need broad involvement because we are now dealing with things that are close to the core of national sovereignty. Let the convention participate in the process of drawing up a basic constitution. Finally, after the preparatory process for a constitution has been finished, we should convene an IGC to negotiate and finalise the document'...

- a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
- the role of national parliaments in the European architecture.²⁶

It is worth emphasizing that these issues were not exclusive. Others could be added in response to new challenges and problems. However, looking at these issues we could trace a kind of constitutional debate with the aim of creating checks on the current functioning of the European institutions. Each issue taken separately would limit the freedom of the institutional triangle and strengthen the mandate of the European Court of Justice.

Apart from naming the main issues, it also established a three-phase timetable:

1. open debate, wide-ranging discussions with all interested parties
2. during its December meeting in Laeken the European Council ‘will agree on a declaration containing appropriate initiatives for the continuation of this process’
3. after the preparatory steps, the IGC was to be convened in 2004.²⁷

How can we summarise the general picture of the Union at the end of the year 2000? The institutions were declared ready for the coming enlargement. Yet, there was a growing understanding of a need for further change. This time however, the changes were to be discussed more widely. Over time commentators and politicians began to explore the contrast between the Convention and the IGC model. While the first was perceived as consensus-building the other received a label of producing conflicts and diplomatic battles.

The notion of a single document establishing the fundamental issues of the EU received a historical momentum. We might critically judge the statement pronounced by Chirac in the European Parliament that ‘as we promised, there are no leftovers from Nice’.²⁸ In fact the leftovers materialised during the discussions that followed. A stark criticism was aimed not only at the way the final agreement was struck, but at the very nature of the IGC. So far this format could claim the highest legitimacy, through the direct involvement of the highest national figures from all member-states. However its nature was composed of national ‘muscle flexing’ in the preparatory phases which reduced the chances for a good deliberation on acceptable solution. Not only was the common lowest denominator to be the outcome of such framework. Late night compromises led to complex formulas and unclear results²⁹. Many politicians, especially MEPs were very disenchanted with the final compromise, maybe due to excessive expectations. The package was, however, deemed both sufficient and necessary for enlargement. Thanks to the Nice declaration several ideas were aired and became part of the issues for a European discussion.

From Nice to Laeken

²⁶ Treaty of Nice, signed on the 26th February 2001, Declaration 23 (*Official Journal C 80 of 10 March 2001*)

²⁷ Ibid.

²⁸ www.europarl.eu.int Debate of the EP 12 December 2000

²⁹ In Nice Treaty the formula of qualified majority voting was established on two different levels in different parts of the text.

During the year 2001 the number and scope of contributions to the debate, initiated by Fischer, put a pressure on the European Council. The issue of legitimacy and democracy in Europe become part of a shared language. In order to render account of what occurred during the year 2001 we need to acquire a picture of the international and internal situation of the EU. The following processes deserve analysis:

1. on-going critique of the Nice agreement, emphasized with the crisis marked by the Irish rejection in the referendum
2. a new momentum for enlargement negotiations (Gothenberg European Council agreed the tentative date of enlargement and reaffirmed the road map for provisional closure of negotiation chapters)
3. the input of the 'EU governance debate', which formed part of the debate about the 'Future of Europe'
4. a strong Belgian presidency determined to achieve concrete results on the issue of future agenda of the debate

The end of the IGC did not close the discussions on the issues agreed by the leaders. Actually it stirred a debate about a better way of reaching fundamental decisions inside the EU. The European Commission and the Parliament were particularly critical of the outcome. Many MEPs among whom the French: including Francois Bayrou, Alian Lamassoure and Jean-Louis Bourlanges pronounced themselves against the ratification of the new treaty³⁰. Among other politicians declaring disappointment with the style and results were Belgian Prime Minister Guy Verhofstadt and chairman of the EPP group in the Parliament Elmar Brok. They blamed not only the French presidency but rather the intergovernmental method as such. On the 17 January 2001 Michel Barnier – the French Commissioner had supported the idea that future revisions should be prepared by a 'convention'. This was an apparent confirmation of the shortcomings of a regular IGC.

The press tends to evaluate the IGC in a nationally centred way, usually through naming the winners and losers. Therefore each country leader tries to demonstrate himself as successful in defending, not pursuing a long-term agenda. British, Belgian and German press declared the prime ministers successful, mostly due to a fierce defence of national preferences. Aznar was said to have won in the number of votes in the Council. Chirac kept elusive parity with Germany and defended cultural exception. Blair kept the unanimity in taxation and so on. With everybody defending his corner the issue of general interest remained out of sight. And the final outcome was that of lowest common denominator. Different rules of the Convention were perceived as a better solution for the future.

The coverage by the press varied depending on the country. The headlines in European Voice showed the rather critical attitude: 'Nice shambles boosts support for convention', 'Nothing nice about new treaty', 'Worst treaty in EU history could sour relations for years'³¹. The Economist pictured EU leaders around a table trying to get the biggest share of a 'EU potato'. However the most critical was the French press using pejorative terms of '*marchandage*', fiasco or failure - '*echee*'. The IGC was

³⁰ Albane Siwiecki, Les conséquences institutionnelles de Nice. Une analyse de réactions recueillies dans la presse européenne. (autres documents in www.notre-europe.asso.fr). 19.02.01

³¹ Simon Taylor, 14 Dec. 2000.

usually described as a complex, behind-the-door system, where the final outcome is a result of chaotic horse-trading and sheer brinkmanship.³²

The debate on the Future of Europe was duly initiated on the 7 March 2001 during the Swedish presidency. Web-site and public speeches provided a vivid exchange of new views and ideas. More and more leaders were expected to pronounce themselves on the issue. The Swedish Presidency was quite reluctant towards a federal project associated with the promotion of a convention. It perceived its role rather in organizing a public debate than steering towards any institutional experiments. The pros and cons of different institutional settings were presented in the 'Report on the debate of the Future of the European Union'.³³ It has been admitted that after a period of open reflection a sort of 'structured reflection' should follow. Both the format of 'the Reflection group' and a group of 'Wise Men' were deemed inappropriate to the ambition of a broader based process. In point 57 the presidency wrote ... *'the majority of those who have made concrete statements on the matter seem to agree that a possible open preparatory forum should be based on the participation of representatives of the national governments, national parliaments, the European Parliament and the Commission. (...) That argument would point towards a forum whose work would begin early in 2002 and be completed within about a year'*.³⁴ It has to be added that in the resolution of 31 May the European Parliament suggested the 'convention model' for the preparation of the IGC.

There was of course the other side of the summit. Nice fulfilled the promise of paving the way for the Eastern enlargement. The Swedish presidency (first half of the year 2001) engaged in speeding up the enlargement negotiations and giving the candidates the date of their membership. The candidate countries understood the Nice Treaty as a conclusion of the institutional preparations for their membership. In Nice the European Council accepted the Commission's road map for provisional conclusion of negotiating chapters. The political machine of enlargement was working with the presumption that ratification will proceed without problems. To a large extent they were hostages of this process.

That is one of the reasons why Irish rejection of the Treaty caused a great deal of turmoil in European politics. It emphasized the complaisance of both the government and pro-Nice campaign. Almost 54% of the voters rejected the 'poisoned chalice of Nice' due to various reasons. Low turnout (34.8%) and a very active campaign of the opponents of the treaty provoked a defeat for the ruling elites. It also showed the problem of public communication and difficulty with presenting such a complex international agreement. Nice-opponents managed to dominate the campaign. The

³² Wolfgang Wessels wrote: ... 'we can identify 16 different decision-making modalities in the Council and 11 for the European Parliament. Overall there are 38 combinations of possible voting modalities in the Council and participation opportunities of the European Parliament, out of which 22 are 'legislative' (Maurer, 1999) in nature. Note that this survey of inter-institutional relations links only two of the decision-making bodies. Adding the powers and functions of the Commission and the Court of Justice, as well as of treaty-based committees, the picture becomes even more complex. A clarification of the legal provisions from the point of view of increasing transparency has again been postponed' ...

W. Wessels, Nice Results: The Millenium IGC in the EU's Evolution, Journal of Common Market Studies, Vol. 39, No.2 June 2001

³³ Presidency of the EU 9520/01, Brussels 8.06.2001

³⁴ Ibid.

treaty, according to them, was a direct threat to many core Irish values and would result in reduction of sovereignty. One of the popular themes was the lack of democratic accountability in the EU and the weakness of Irish parliamentary scrutiny. In addition, the development of Rapid Reaction Force was seen as undermining the traditional non-membership of military alliances and neutrality. For the campaigners it was much easier to create a negative picture of an obscure, distant system than a one emphasizing its benefits.

*... 'The 'no' campaign had simple, clear messages such as 'You will lose: power, money and influence (...)' The 'no' campaign won the battle of language. They repeatedly used words like 'super-state' and 'militarization' in an unchallenged manner. Their strategy was to exploit fear and uncertainty.'*³⁵ ...

The lost referendum was a blow to the European elite that negotiated the treaty and further exposed the perplexity of the opinions of its main figures.³⁶ It also showed that the government failed to present its arguments to the public thus raising some fundamental questions about not only the enlargement but the future of treaty revisions.

On the first plan there was a critique of the actual treaty as being unintelligible for the Irish or any European citizen. The No campaign managed to focus attention on a few aspects and emphasize the apparent loss of Irish influence and neutrality. On the other hand Irish rejection was treated as a 'faux-pas' towards the candidate countries. Ireland was victimized for disabling enlargement. Up till 2001 the Eastern enlargement was presented by the European leaders in categories of moral obligation and historical necessity. The issue of popular support was largely neglected.³⁷ Another dimension of the referendum is the question of the declared democracy inside the EU. Unanimity was a precondition in the first decades of the integration, however with growing complexity it started to threaten policy development.

Consecutive treaty revisions, which were required by the Irish Constitution also created a problem for the legal certainty concerning European basic law. If Irish voters were called every three years to accept a new revision, then what is the function of representative institutions (national and European parliaments)? Shouldn't there be a distinction in ratification procedures, especially for technical adjustments? And if a single country rejects a policy due to internal pressure, then, are the others compelled to give up? With imminent enlargement of 10 new countries, a blockade was simply more probable. And the claim for division of the Treaties into two parts, with a more flexible procedure for policy changes, would certainly be needed.

The 'governance debate' initiated by the Commission showed the limits of unstructured discussion. Although the Swedish presidency emphasized the role of open exchange by means of new forms of communication (like the internet), it remained clear that cacophony of voices has at a certain point to be structured and

³⁵ Brigid Laffan, (2001) The Nice treaty: the Irish vote, www.notre-europe.asso.fr

³⁶ "Legally, ratification of the Nice Treaty is not necessary for enlargement," Mr Prodi said in an interview with the Irish Times. Later, however, he said: "Without ratification we will put Europe on hold... We should have a paralysis. The Nice Treaty is a political condition for enlargement".

³⁷ Although a campaign for the support of the enlargement was initiated by the Commission in the year 2000.

steered. The demonstrations during the summit in Gothenberg illustrated the growing problem of transparency and accountability. The young protesters objected to the very way in which international decisions were taken. Secretive diplomacy failed to satisfy the anti-globalist activists. The traditional parliamentary democracy was no longer perceived as giving them a say in the matters of their concern. The distance between population and elite can only be bridged through communication. And this communication was neglected by the persisting practices of the last 50 years of intergovernmental deals.

On the other hand, the demonstrators were victims of a grand illusion. Irish rejection and riots in Gothenburg put into question the slogans about civil society getting involved in the Future of Europe debate. The discussion following the 'Nice declaration' remained confined to academic and political circles, failing to capture media and popular attention. Civil society remains an ideal very difficult to realise in practice. Civil support gives legitimacy to the system. But how this should be constructed on the European level? Making the citizens involved is the old dream short of fulfilling, especially when media coverage is constructed on national basis.

The crisis of democracy in Europe could not be resolved only at one level. It had to be linked with internal processes in the nation-states. Federal states proposed to resolve the problem on the European level using their own experience. Germany and Belgium are widely perceived as proponents of federal solutions based on shared values and demos established by the covenant. What is the role of demos in the federal, heterogeneous structures? Can demos be declared top-bottom? Can the citizens of the EU be described as demos that voices demands to the system? The issue of 'living up to citizens' expectations' was to become one of the leitmotifs of the Belgian presidency.

Another important process which influenced the preparation for the Laeken summit was the governance debate initiated by the Commission in February 2000. The issue was one of the four priorities of Romano Prodi's Commission presidency.³⁸ It was undertaken in response to claims about the bureaucratic nature of the Commission operation. In order to raise the legitimacy of its proposals, better representativeness and involvement were sought. The 'new governance' process foresaw a lengthy period of open and accessible public debate, leading to the publication of a White Paper and its presentation to the European Parliament in July 2001.

The debate concentrated on the EU policy making rules and the issue of public participation and consultation. However it was remarked that the major concepts behind the governance claim cannot be a one way street. It was assumed in the Work Program issued in October 2000 that rights should be linked with responsibilities. Participation in the process should be reflected in transparency, representativeness and accountability of those involved. Though originally separate, over time the governance debate had become part of the Future of Europe debate launched in March 2001. The governance paper failed to attract popular attention, but it was largely

³⁸ Justin Greenwood, The White Paper on Governance & EU Public Affairs – Democratic Deficit or Democratic Overload, School of Public Administration and Law, the Robert Gordon University Aberdeen www.lib.gla.ac.uk/sjmc/WhitePaperonGovernancearticle.doc

debated in academic circles³⁹. Using the words of one of the contributors ‘governance is about bridging the gap between the governed and the governing’ (Marlene Wind). And the very debate about governance did not succeed in this. The governance debate lacking an institutional structure, failed to produce substantive results, which would appeal to the citizens. And this provokes questions raised by Paul Magnette: Can the European Union be politicised? And, if yes - then in what way?⁴⁰

The incremental nature of policy improvements may enhance legitimacy in the longer term, however not only the Commission faced the legitimacy challenge. The whole institutional structure remained distant and incomprehensible. This stimulated debates about democracy at the European level. However such notion exceeded the mandate of the Commission’s paper.

Belgian presidency of the Council

The Belgian presidency in the second half of 2001 and the personality of Guy Verhofstadt played a major role in the shaping of the Laeken mandate. The key directions of the presidency were revealed in the Benelux memorandum on the future of Europe submitted to the Futurum web-site on 20th June 2001.⁴¹ It said:

... ‘The European institutions need to be adapted in such a way that the enlarged Union is better understood and functions better, allowing the citizens to identify more closely with it’ ...

The memorandum defined the concerns of three countries for the enlarged EU. Among them was ‘*a stronger identity in a more global context*’. And this identity should be built on shared values. ‘*The Union objectives need to be defined on the basis of these values which will determine the means of achieving them and help us rise to the challenges*’.⁴²

We may speculate about the order of thinking behind this contribution. New challenges create the need for identity. Identity is built on shared values which influence the overall objectives. And values and objectives should determine the institutions that are shared. These provisions should be written into a constitution. Therefore the Benelux governments proposed ‘*simplifying the European treaties and bringing them together in a basic constitutional treaty and a part devoted to policy areas with specific revision procedures*’.⁴³

Among the institutional proposals were:

- giving the Union a legal personality
- rationalizing the work of the Council, in particular by drawing a distinction between legislative, political and deliberative functions
- making more general use of qualified majority voting which, in legislative matters should go hand in hand with the co-decision procedure⁴⁴

³⁹ Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance - Brussels, 25.7.2001, COM (2001) 428 <http://www.jeanmonnetprogram.org/papers/01/010601.html>

⁴⁰ <http://www.jeanmonnetprogram.org/papers/01/010901.rtf> page 5

⁴¹ http://europa.eu.int/futurum/documents/other/oth200601_en.htm

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

In their proposal for the future debate they stated that '*responsibility for preparing the work of an IGC must lie in a Forum chaired by a leading European political figure*'. This Forum (with composition similar to the charter convention, however this is not explicitly revoked) '*will draw up recommendations and options with a view to the subsequent modification of the treaties at the forthcoming IGC.*'⁴⁵ We can see the main issues raised in this memorandum reflected in the Laeken declaration.

The Belgian presidency steered the preparation carefully. It introduced a special 'reflection body' which would prepare a mandate for deliberation. Guy Verhofstadt had gathered together a group of 'wise men' composed of political heavyweights. This included Jacques Delors, David Miliband, Giuliano Amato, Bronisław Geremek and Jean-Luc Dehaene under the chairmanship of Belgian foreign minister Luis Michel. Their work was based on a draft declaration prepared by Franklin Dehousse and Koen Leenerts - both professors of EU law.⁴⁶ The reflection group was supposed to stipulate objective problems linked with enlargement and global changes. This was put into a compact declaration, which was finally accepted by the heads of state and government. Despite various amendments the European Council agreed for a Convention to emerge.

It is difficult to measure the level of support for the Convention model among member states. Christian Lequesne presented the French position as follows:

... 'In Laeken, the French government was not among the most ardent supporters of a new deliberative body to reform the EU treaties. Before Laeken, the French Minister for European Affairs, Pierre Moscovici, expressed uncertainty that the Convention was the right structure to deal with "all the questions on the agenda of institutional reform." Nevertheless, the French government—much like the British one—did accept the new body in Laeken for three reasons:

(1) the Convention is only deliberative and is preparing the work of an intergovernmental conference, thus it was not considered a threatening institution;
(2) the French government believed that it could use the deliberative process to defend its own ideas on the EU, particularly because Valéry Giscard d'Estaing, the former President of the French Republic, was to be Chairman of the Convention;
*(3) the Convention was an effective way to wait for the elections in France and in Germany, while appearing to be making progress on the future of the EU.'*⁴⁷

Tony Blair in his statement on the Laeken Council said: *... 'The days of isolation are gone. Our role now is to be a leading partner in the shaping the Europe of the future, not following reluctantly the shape moulded by others. We are playing that role now. We will continue to do so.'*⁴⁸ ...

However, the climate which appeared after the Laeken declaration can best be described looking at the speech of Peter Hain under the title 'The Future of Europe:

⁴⁵ *ibid.*

⁴⁶ Magonette Paul, Coping with constitutional incompatibilities, Bargains and Rhetoric in the Convention on the Future of Europe, Jean Monnet Working Paper 14/03, p.6
www.jeanmonnetprogram.org/papers/03/031401.rtf

⁴⁷ Lequesne Ch. (2003) *French Views of the European Convention*, The Brookings Institution, U.S.-France Analysis January 2003 <http://www.brook.edu/fp/cusf/analysis/lequesne.htm>

⁴⁸ The Laeken declaration and the Convention on the Future of Europe, House of Commons, Research Paper 02/14, 8.03.02

Time for a new vision'. He said ...*'The mandate [Laeken] has given to the Convention should and must allow us to break new ground and find a new way of doing European business, for a new era'...*⁴⁹ Reform, re-foundation, reflection, change – these words were to become part of the new EU language.

The meaning of the declaration

The Laeken declaration on the future of the European Union established not only the mandate but also the structure of the Convention operation and proved to be a landmark decision. What is the main difference between Nice and Laeken documents?

First of all, the significance of the whole debate rose substantially over the year. Having been the point number 23 in the Nice declarations, it was now changed into the main issue for the European Council.

*... [The Nice declaration] was a series of highly technical points loosely linked to enlargement and with a limited sense of purpose. The Laeken declaration (...) is an unusually philosophical document and far removed from normal EU legislative style and thinking. It is also much more open than is usual, raising as many questions as it answers. And the questions raised are broader, and with a different priority, from those listed at Nice.'*⁵⁰

The declaration begins with a statement 'Europe at a crossroad'. What does it exactly say? Does it mean that the EU can go either way? What ways are offered? Both critics and enthusiasts could find in the declaration something to suit their preferences. Different reading of this text can be proposed. One critical view, stipulating the failures of the EU to both address and respond to the citizens of its member states.

*... 'What [citizens] expect is more results, better responses to practical issues and not a European superstate or political institutions inveigling their way into every nook and cranny of life'...*⁵¹

On the other hand some sentences present a federalist interpretation of the citizens' expectations: *... 'Citizens undoubtedly support the Union's broad aims, but they do not always see the connection between those goals and the Union's everyday action' (...)'The image of a democratic and globally engaged Europe admirably matches citizens' wishes'...*⁵²

Summarising the fifty years of the integration as a 'success story', the Laeken declaration put emphasis on a double challenge facing the enlarged EU. First, the changing global situation which needs common European solutions; second challenge: how a successful EU can address the citizens so that they feel in control and subject, not object of political processes?

It is restated in three points that structure the second chapter:

- How to bring citizens, and primarily the young, closer to the European design and the European institutions
- How to organize politics and the European political area in an enlarged Union

⁴⁹ Peter Hain, Brussels, 29 January 2002.

⁵⁰ Church C.H. *Home thoughts on Laeken and after*, UACES on-line Reflection Papers, No.2 February 2002

⁵¹ op. cit. Laeken declaration (2001)

⁵² Ibid.

- How to develop the Union into a stabilizing factor and a model in the new, multipolar world (this being also a reflection of the 9.11 attack on Twin Towers).⁵³

These general notions were expressed in around 61 detailed questions, that can be grouped as follows:

- problems linked with definition and separation of competences (20 questions)
- the issue of simplification (8)
- the challenge of creating a European public area (22)
- the plausibility of drafting a single, constitutional text (11).

The Laeken declaration slightly refocused the post-Nice debate. The issue of power delimitation was quite justly reflected in the statements on competence separation. However the question of Charter was put as part of the ‘constitutional dilemma’. The Laeken declaration can be interpreted both as a reflection/summary of the debate and as a stimulus/direction for its future. The question of simplification of treaties was developed into an issue of overall simplification of all aspects of EU: policies, procedures, instruments etc. The role of national parliaments was put in the context of creating a European public space (a post national democracy?).

Another contribution of Laeken is that the term of ‘constitution’ was cautiously introduced into the future official agenda. The use of certain, traditional concepts have a direct effect on the general understanding of what a polity is. The European project starting with Community has developed into a Union. But a Union with a written Constitution is normally described as a kind of federation. The debate about constitution and federation seems sometimes to be only about names. But it touches upon the rooted perception of identity, state functions and political loyalty. The term constitution has been downplayed by the British Foreign Minister revoking that even ‘Golf Clubs have constitutions and are not states’⁵⁴. However the term raises many judicial and political disputes touching the point of supreme competence and ratification method. This debate was this time instituted by the highest European political body.

Thirdly democracy, transparency and efficiency were to become the yardsticks for the future operation of the EU institutions. And through the back door of the abovementioned claims an old-new notion started to gather supporters. Simplification was to open up many contested areas. As it is emphasized in the article of Paul Mignette simplification has become over time the ‘leit-motive’ of the Convention⁵⁵.

Was the Laeken declaration revolutionary? By the reactions of the press and political leaders one should say the opposite. The open way the questions were presented was accepted with a relief. Main leaders came back home happy to water down the declaration. However the document introduced new dimensions for elite debate.

⁵³ Ibid.

⁵⁴ Jack Straw, *Strength in Europe begins at home*, Edinburgh 27.08.02, UK-wide tour to promote the benefits of European Union membership, www.fco.gov.uk

⁵⁵ Mignette Paul, *Coping with constitutional incompatibilities, Bargains and Rhetoric in the Convention on the Future of Europe*, Jean Monnet Working Paper 14/03, www.jeanmonnetprogram.org/papers/03/031401.rtf

There is a link between creation of public space and structuration of the emerging system via a constitutional act. The Laeken ‘gardeners’ prepared the ground and the bricks for the future construction. We should keep in mind the sentence summarizing the first chapter of the declaration: *‘There can be no doubt that this will require Europe to undergo renewal and reform’*. The Laeken declaration tried to summarize all the issues raised during the 2001 debate and the earlier claims. However this document could remain declaratory in its status, like the Solemn Declaration from 1983 and many other documents. It did not because the summit created the Convention.

2. Analysis of the Convention’s structure

The main decision taken in Laeken was not the wording but the agreement to create a new body to discuss the issues. As was indicated earlier, the issue to create such a body was frequently mentioned during the previous debate. However what became the most important result of this decision was creating the conditions for some internal dynamics, which could go beyond the options favoured by the governments. The Convention had the potential to outgrow its limited mandate. There were also many expectations that the open deliberation, which was expected to occur, might improve the legitimacy of the system.

The Convention was not the first one in the EU history, but its features clearly distinguished it from its predecessor. Convention I – to draft the Charter of fundamental rights had a much lower status. Their mere titles introduce different expectations: ‘The body to elaborate a draft EU charter of fundamental rights’⁵⁶ and ‘The Convention on the Future of Europe’. It has to be noted that the declaration instead of addressing the European Union uses the vague term of ‘Europe’. It thus expanded its scope, to the problems of the whole continent, without specifying its nature.

The mandate of the Charter Convention was more technical and legalistic also because of the nature of the issues of the human rights. It acquired a name of the Convention only on the insistence of its members, during its work. Although the principles of the membership remained almost the same, there was a visible upgrading of the candidate countries, whose representatives were not ‘observers’ but members with limited rights in the closing stage of shaping the ‘consensus’. This change almost doubled the number of its full members from 62 to 105. In the first Convention ‘little interest was shown or generated among the candidate countries’.⁵⁷ The next one was attended by high-profile politicians. The gravity of the second Convention was also underlined by the fact that the choice of the chairman was not left to the body itself, as it was in the Charter Convention. The European Council clearly wanted to keep control and primacy over the process.

In order to describe the Convention as it was we should discuss six primary questions posed by Jo Shaw in her paper:

⁵⁶ Conclusions of the European Council in Tampere 15-16.10.99

⁵⁷ Schoenlau J. (2003), *Conventional Wisdom? Comparing deliberative interaction in the European Conventions Mark I and II*. CIDEL project p. 3
<http://www.arena.uio.no/cidel/workshopZaragoza/JSchonlau.pdf>

1. Is the Convention autonomous?
2. Is it representative?
3. What are its key internal dynamics?
4. Can it deliberate and how?
5. How receptive is it to ideas?
6. Can it take decisions?⁵⁸

Autonomy

Several measures were introduced to limit the autonomy of the Convention. Not only was its chairman imposed, but he was to report to the European Council every six months on the development of its proceedings. It was also to give voice to the members of the European Council. However the biggest challenge the Convention faced was that its final outcome would remain at the decision of the European Council which could in various ways put the document into the dust bin.

Nevertheless, a large space for manoeuvre was created for its internal organisation and self-definition. The Convention was left to draft its own rules of procedure. The time-frame was originally limited to one year, but as the IGC was scheduled only for 2004 a certain margin could be envisaged. The autonomy of the Convention on this issue was asserted when in September 2002 a ‘timetable of meetings for 2003’ was published, foreseeing meetings until June 2003.⁵⁹

Another reassurance for the European Council was the positioning of the Convention in a context of a broad debate. A Forum was to be created, in the form of a structured network of organisations receiving regular information on the Convention’s proceedings. Their contributions were to be an additional input to the debate. The Forum could further complicate the already heterogeneous structure of Convention, making it even more difficult to steer. It could also be used to downplay the importance of conclusions reached by the Convention.

The crucial issue was also the separate Secretariat which prepared its meetings and working documents. This Secretariat was a team of officials drawn from the secretariats of the Council, Commission, Parliament and seconded national officials. Its working independence was emphasised by the appointment of John Kerr as its secretary general, who at the moment of appointment worked outside the institutions. The Convention had also its separate budget, which amounted to €10.5 million for the first 10 months of its operation.⁶⁰

Probably the most important decision about the structure of the Convention was the creation of the Praesidium. Both vice-chairmen had an established reputation and independent position.⁶¹ Guliano Amato was a professor of constitutional law who

⁵⁸ Shaw Jo, (2003) Process, responsibility and Inclusion in EU Constitutionalism: the challenge for the Convention on the Future of the Union, Federal Trust Papers

⁵⁹ CONV 262/02 12.09.02

⁶⁰ The Laeken declaration and the Convention on the Future of Europe, House of Commons, Research Paper 02/14, 8.03.02 <http://www.parliament.uk/commons/lib/research/rp2002/rp02-014.pdf>

⁶¹ Italian government objected Guliano Amato to be its representative. Thus Jean-Luc Dehaene also received a free mandate.

previously worked on the simplification of EU Treaties in the European University Institute in Florence. Jean-Luc Deheane was an experienced politician, former candidate for the position of the Commission's chairman and a co-author of the report 'Institutional implications of enlargement' requested by the Commission prior to the IGC 2000. The inclusion of two members from both the EP and the Commission meant a stronger position for both communitarian bodies in comparison to the Charter Convention. Thus the members of national parliaments, who accounted for more than half of the Convention members, were in the minority in the Praesidium, represented only by two members.

The extent of autonomy was nevertheless finally dependant on the personalities of the representatives chosen to the Convention. Despite being representatives, the chairman of the Convention emphasised many times that they should behave as members of the Convention (conventionneers) and not as transmission belt of their original institutions.⁶²

Representation

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.⁶³

In order to give an accurate account, we should also count the 102 alternates, who proved successful in representing their constituencies' particular claims. In spite of their original status of substitutes they played an important role on many occasions, especially in working groups and submission of amendments. We should also add the 13 observers: 6 from the Committee of Regions, 3 social partners, 3 from the Economic and Social Committee and the European Ombudsman. Altogether there were 218 politicians working directly inside the Convention.

The issue of representativeness has several dimensions. There was no specific electoral process and each body had a free hand in deciding about the right procedure of nomination with different levels of transparency. On the other hand their nomination could not be interpreted as having a direct mandate on many issues. This was evident for the national parliaments which could not be mirrored in a delegation usually limited to two persons for each chamber (four for countries with only one chamber). There was an ambiguity to what extent the Convention members could engage the institutions which had elected them.

⁶² Magnette Paul, Coping with constitutional incompatibilities, Bargains and Rhetoric in the Convention on the Future of Europe, Jean Monnet Working Paper 14/03, p. 8

www.jeanmonnetprogram.org/papers/03/031401_rtf

⁶³ <http://european-convention.eu.int/Static.asp?lang=EN&Content=Composition>

The representation according to nationality varied from 7 members (France) to 3 (the countries that had representatives neither from the European Parliament nor in the Praesidium). Despite proliferate discussion about different levels of governance, the regions were not attributed an explicit representation.

*... 'Regional presence is in fact indirect through the representatives of the Union institution (the Committee of Regions) only with the status of observers. Whilst federal states (Austria, Germany, Belgium) wanted regions with legislative powers to designate the 3 regional observers, France (and, implicitly, the Spanish government) objected. As a concession to federal and quasi federal states, regions and cities with legislative powers have nominated these observers.' ...*⁶⁴

Additionally German Bundesrat nominated Erwin Teufel (Prime minister of Baden-Wuerttemberg) and European Parliament chose a substitute member – Neil MacCormick from the Scottish National Party.

As far as gender is concerned, the decentralised way of election played against women. Despite claims of Valery Giscard d'Estaing, there were only eleven women among the full members, plus six from the candidate states. Two of the thirteen observers were women, and in the Praesidium only two. On the whole in the Convention (members + substitutes), there were 168 men and 39 women. Furthermore the Conventioneers failed to represent the multicultural nature of the member states.⁶⁵

We could expect that a larger number of members of the Convention would better correspond to the variety of party politics inside the EU. However, here too the three dominant party federations showed their power. From the 66 delegates from the member states 23 (35%) represented PES, 24 (36 %) – EPP, 8 (12%) –ELDR and 4 (6%) Union for Europe of Nations.⁶⁶ The presence of alternate members and often their active role helped to secure a better voice for other families. Each member of the Convention had a choice to form an alliance according to different characteristics:

*... 'Since each member of the Convention had a triple allegiance – institutional background, nationality and party affiliation – the Convention did not automatically split up along clear political lines; individual members could in principle choose how to align themselves depending on the issue. In practice Convention members joined in alliances to submit contributions and, in the final stage of the Convention, to draft amendments to the proposed articles of the Constitutional Treaty. An analysis of the coalitions reveals a number of interesting patterns. Notably the political behaviour of government representatives followed fundamentally different patterns from that of the (national and European) parliamentarians in the Convention.' ...*⁶⁷

The issue of the representativeness of the candidate countries in the Convention needs some further thoughts. According to the Laeken declaration their position was somehow in between the representatives from the member states and the alternates. Secondly they were not represented in the Praesidium and even though Alojz Peterle joined the steering body, he was there in a position of an *invitee*, which definitely

⁶⁴ Closa C. (2003) *Improving EU Constitutional Politics? A preliminary assessment of the Convention*, Constitutionalism Web-Papers, ConWEB No. 1/2003 page 6.

⁶⁵ A black person - Patricia Scotland was an exception. Being an alternate representative of the UK government

⁶⁶ Closa C. (2003) *Improving EU Constitutional Politics?...* p. 9.

⁶⁷ Crum B. (2004) *Politics and Power in the European Convention*, Politics 24 (1) p. 3

reduced his impact.⁶⁸ The other element reducing the freedom of speech of the candidate countries was that their countries were still in the negotiation process (apart from Turkey). Thus the general policy was to avoid clear, strong positions in order not to alienate any of the member state. The positions of the countries that accomplished negotiations in December 2002 was slightly better, however their attention was clearly distracted by the referenda on the accession.

In spite of having similar status, the candidate countries took on the strategy of not forming a single group. This might be explained by different factors. First, even if most of them shared the experience of communism, they were quite diverse in their broader history and particular economic and social problems. Second, they probably did not want to create an insider/outsider division which could make the negotiations even harder. Third, they tried to play convinced Europeans who do not put their interests first. Fourth, I would claim they lacked part of the experience and were slightly surprised by the speed the events unfold, especially in the closing months. Nevertheless their inclusion was an improvement of their positions and indicated that the European Union took enlargement seriously, and wanted to involve them in decision that would have impact on them.

The internal dynamics

This topic is of particular interest for those who share the view that internal structure greatly influences the outcomes of the procedures. Major questions arise whether and to what extent the socialisation had an impact on the articulation of preferences. It was very obvious from the beginning that in such a large body, a smaller group of persons will be necessary to guide it. It was however unclear what form of relations will link the chairman, its vice-chairmen and the 13-strong Preasidium. It was not evident either, what level of cohesion would emerge among the members of the plenary. The Convention was not insulated from the international events.

The Convention operated in the shadow of two processes on the international stage. First was surely the final phase of the accession negotiations which were successfully completed in Copenhagen in 2002. Many members were directly involved in this process and thus distracted from the middle stage of the Convention.⁶⁹ Another international affair which influenced the Convention was the crisis around Iraq. This not only took over the foreign ministries of France and Germany directly playing the issue in the Security Council and other fora, but also created an important split based on the issue of engagement or not on the American side.

In spite of these changes in the environment, the Convention acquired its own dynamic. The initial phase was dominated by the quarrels and misunderstanding about the chairman – Valéry Giscard d'Estaing (VGE) and his alleged competences to excessively steer the Convention. The tension over this issue remained till the very end. When VGE revealed his personal institutional proposals on the 22 April 2003

⁶⁸ Stuart G. (2003) *The making of Europe's Constitution*, Fabian Society p. 24

⁶⁹ this is particularly true for the representatives of the governments of the candidate countries like Danuta Huebner (PL), Sandra Kalniete (LT), Peter Balazs (HU)

there was a strong rebel against his imposition of those articles.⁷⁰ The problem of any chairmanship raises many controversies. It is altogether a question of personality, leadership, competences and style. From his very nomination Giscard was perceived as a strong supporter of the Intergovernmental method and stronger role of the big members. Over time however he showed a degree of flexibility and earned respect over his intelligence and grasp of the agenda.

The Convention broadly accepted the outline of its working dynamics presented by Giscard in his inaugural speech. The three phases were:

- listening
- studying
- drafting

The first stage was one of fundamental value as it enabled the Conventioneers to realise the level of overlap between different members and states. This phase also helped to establish personal relations in a somehow peaceful atmosphere without any divisive issue immediately on the table. This period was also the time of reflection in what way the Convention should present the outcomes of its proceedings. Over time a consensus grew that a mere report with suggestions for singular amendments would not suffice. The general task to better connect the EU structure with the citizens was quickly interpreted as demanding changes in the corpus of the treaties. Over time the issue of simplification became one of the major concerns and rhetoric arguments.⁷¹ On the 15 June 2002 the Secretariat leaked a document: 'Non-paper on Basic Treaty' in which a new structure of the Treaty was presented. Not so much the document but the secret way in which it appeared stirred a lot suspicion. However, after the summer recess several project of the Conventioneers showed that the issue of producing a single document was gathering not only support but concrete shape. The direction of a single, coherent treaty was also paved through the contributions of the Working groups.

Creation of the Working Groups (WG) was a very important element of the Convention method. Altogether, there were eleven working groups each, under the chairmanship of a member of the Preasidium. Some were rather technical (simplification, Charter), other predominantly political (defence, foreign policy). They also varied substantially according to their outcome and level of consensus. The emergence of the working groups is a very interesting process which marks a change in comparison to the IGC. Working groups were a sign of a parliamentarisation of the treaty negotiations.

Firstly working groups were limited to around 20-30 person. This enabled a direct discussion on details. ... *'Working groups were relatively autonomous. They had no unitary set of rules of procedure, and they were normally not open to the public.'* ...⁷² Extremely important was the way the groups were chaired. However the most important dynamics was that their creation created a certain specialisation of the

⁷⁰ Norman P. (2003), *The accidental constitution. The story of the European Convention* Brussels, Eurocomment p. 205

⁷¹ Magonette P. Coping with constitutional incompatibilities. Bargains and rhetoric in the Convention on the Future of Europe, Jean Monnet Working Paper 14/03 www.jeanmonnetprogram.org/papers/

⁷² Shaw J., *Process, responsibility and Inclusion...* page 23

conventioners. Giscard expressed his conviction that the WG are meant to facilitate the Convention's work and not to replace it.⁷³ However, due to a very large agenda, the reports prepared by the WG had a certain authority over the plenary, especially as far as technical details were concerned. Overall, despite being challenged during the plenary discussion they moved the Convention a step further in the preparation for the final drafting. The results of the working groups were treated as an indication where the final compromise would form. This required a level of trust and belief in the superiority of the process over specific details. The conclusions of working groups were not unanimous, but they represented an effort to build large basis of agreement. There was of course a trade-off. In WG where chairmen chose an ambitious report they could not provide such a level of consensus as in the WG, where a moderate approach prevailed. However still the WG were micro-conventions in themselves and they prepared the members for the flexibility needed in the final stage. They also created conditions for a true discussion which could not be achieved in the plenary.

The importance of the working groups was underlined by two contrasting examples. First was the demand of a considerable number of conventioners to create a WG on Social Europe. Their claim remained unanswered by the Presidium until November.⁷⁴ This can be seen as an understanding that only issues discussed and agreed by a working group would enjoy sufficient authority to be included in the final document. It was also a part of a direct challenge against the discretionary power of the Presidium. The plenary succeeded in showing that not all the decisions of the steering body will be accepted. Thus the claim that mutual learning emerged.

The second case was a decision not to create a Working Group on institutions. There are many aspects of this issue. First it was clear from the start that any changes in the institutional part were destined to create divisions. That is why the chairman and the Presidium decided not to bring this issue into the plenary discussion until January 2003. It would be difficult to create a Working Group with a limited technical mandate. A political mandate would on the other hand induce all the participants of the Convention to take part in this. It was generally believed that the institutions should suit the aims and competences of the Union, so they could not be resolved until the first were agreed on. So, there are some arguments in favour of leaving the institutional issues until the very end.

On the other hand the way the institutional issues were handled in the last eight weeks of the Convention (22 April – 13 June) was heavily criticised. The most important decision of the VGE was to present his own draft and treat it as a default, rather than the politically binding 'Nice provisions'. It was very revealing that these issues immediately brought back the national splits, known from the previous IGCs. However, we can argue that certain issues cannot be resolved only by soft deliberation and negotiation and bargaining are essential parts of any agreement on such complicated issues. Thus while showing the limits of Convention, the complex nature

⁷³ ... 'Le but est donc de faciliter le travail de la Convention et non de prendre sa place.' ... http://www.europarl.eu.int/europe2004/textes/verbatim_020523.htm paragraph 4-073

⁷⁴ Demand for the establishment of the WG - CONV 300/02 26.09.02. The creation was only announced following the plenary session on the 7th November – CONV 400/02 – 13.11.02 after a 'veritable rebellion' – see Brown T. Conventional Wisdom – what have we learned from the Convention experience? Paper presented at the Federal Trust Conference 'Towards a Constitution for Europe' London, 1-2 July 2004 page 12

and fragmented interests allowed also to create new coalitions. Despite the ambiguous reception of the final institutional package, it managed to introduce key developments:

1. limit the number of the members of the Commission
2. base the QMV on a more transparent formula

However, the crucial moment, which marked the changing dynamics inside the Convention, was the presentation on the 28 October 2002 of the ‘skeleton treaty’ adopted by the Praesidium.⁷⁵ The draft structure consisted of three main parts: the 46 constitutional articles grouped in ten titles; union policies and their implementation; general and final provisions. A number of protocols were to be added.

The main work of the Convention was to create the basic articles of the first part. The second part would set out – and reorganise – the existing provisions in the current Treaties governing the policies of the EU. According to the chairman, of the 414 articles making up the current Treaties, 205 could remain unchanged, 136 should be slightly altered and 73 ‘substantially rewritten or regrouped’.⁷⁶ It was a main achievement of the Convention method so far, that the very issue of creating a single treaty received a general support among the Conventioneers.

From this moment on, the dynamics of its proceeding changed slightly. The goal of the body was established and logic of filling in the particular articles with ‘flesh’ began to focus the attention. The Praesidium asserted its role as the drafter and the plenary accepted the competences and authority of the former. This evolution in the self-description of the Convention was also spotted by the national governments and resulted in replacements such as Joschka Fischer and Dominique de Villepin. From October 2002 onwards the Convention started to operate according to the IGC lines, with governments trying to pressure on their own agenda. However this time, the governments were not the only one at the negotiating table. The Convention, if it was to succeed, had to construct generally acceptable compromises. And the foreign ministries which came back to control the process had to take this into account.

The Praesidium slowly evolved from a general agenda-setting committee towards a drafting body which had to provide the Convention with the exact articles of the Constitutional Treaty. This represented a substantial upgrading of this small forum which was not completely anticipated when its members were elected. It concerned particularly the representatives of the majority of the Convention: the national parliamentarians. Gisela Stuart and John Bruton lacked the political authority to represent this large, heterogeneous group. That is probably the reason why party politics or rather European political federations’ politics proved central to the closing weeks of the Convention.

The Praesidium needed some kind of partner from the plenary to slim down the number of essential amendments which altogether accounted to more than six thousand. In the last phase of the Convention the three major political groupings: European Peoples Party (Elmar Brok), Party of the European Socialists (Guliano Amato and Klaus Haensch) and liberals - ELDR (Andrew Duff and Lamberto Dini)

⁷⁵ CONV 369/02 Preliminary draft Constitutional Treaty

⁷⁶ http://www.europarl.eu.int/europe2004/index_en.htm verbatim account of the proceedings of the Convention 29.10.2002

served as the ‘aggregation vehicles’ and secured the consensus with the Preasidium.⁷⁷ It is still difficult to evaluate when this exactly started, however it is evident that MPs and MEPs came closer during the 16 months of common experience:

...’In the early days of the Convention there was a perception that the two groupings of elected representatives – MPs and MEPs – were in competition if not confrontation. It was contended that the European Parliament delegation had a clear and agreed agenda of enhancing the power and influence of their institution. Their advantages in back-up and regular contact – were highlighted. Over time, the opportunities of co-operation in Working Groups and in the political families, lead to greater mutual trust and recognition of the potential for influence of a group adding up to 70% of the total membership. This was effective when the final discussions took place. Ideas began to circulate about future arrangements for two-way contacts between the two parliamentary systems.’...⁷⁸

Deliberation

The deliberation potential of the Convention raised many expectations among its observers and political theorists. It was seen as an opportunity for building a political culture in the EU – a kind of social capital. It concerns two elements. One is the style of the discussion and willingness to take the arguments of others. Second covers the question how to enlarge the debate in order to bring new inputs and citizens from beyond the ‘golden cage’ of the EU elites.

Concerning the issue of the debate features it must be said that the very structure and rules of procedure induced seeking compromises and cross-alliances. No member of the Convention had a right to veto, so in order to defend his/her preferences, he or she had to convince the others. In his speech to the Thessaloniki European Council Giscard said:

...’There are many who considered this result impossible to attain. If we have succeeded in doing so, it is because each of us had agreed to acknowledge that our preferred solution was not necessarily acceptable to others.’...⁷⁹

As it was emphasised by Paul Magonette: *...’the classic dichotomy opposing ‘bargaining’ based on a narrow defence of stable preferences, and ‘deliberation’ defined as a rational exchange of arguments seeking to reach the ‘common good’ seems to have structured the conventioners’ image of their own role.’...⁸⁰*

This approach was underlined by Giscard in his opening speech when he urged the members to come into the discussion without preconceived ideas and to listen closely to others. He also pressed the conventioners not to simply represent their institutions but speak in their personal name.

...’The rules of the Convention defined by the governments and interpreted by the members remained remote from the ideal-type of a deliberative constitutional forum.

⁷⁷ Norman P. (2003), *The accidental constitution. The story of the European Convention* Brussels, Eurocomment p.22

⁷⁸ Ibid. p. 10

⁷⁹ Ibid. p. 18

⁸⁰ Magonette P. Coping with institutional incompatibilities... p. 7

The Convention was not a decisional body, and the members knew they had to anticipate the reactions of the governments that would renegotiate the treaty during IGC. The members were not fully independent either, as they had not been elected and had to account to those who had nominated them; their capacity to adapt their behaviour according to the arguments made by their partners was therefore limited. Moreover most of them represented bodies and institutions whose behaviour would be regulated by the new 'constitution'; they could thus be tempted to defend corporate interests rather than an abstract 'common good'.

Some features of this process however favoured a deliberative approach. First, the Convention took place in a very relaxed context, not under the shadow of rebellion and war: it was thus protected from the pressure of force and passionate opinions which make rational argumentation difficult or impossible. Secondly, the mixed composition of the Convention could make the debates more open and fluid than those of an IGC: as a large array of interests and ideologies was represented, the members could examine a larger set of options; (...) Thirdly the process was supposed to be public; the members could thus be induced to disguise their interests into impartial views, and thereby promote rational styles of arguing. On the other hand, the existence of more discrete forums (Praesidium, working groups, components, ad hoc meetings...) offered opportunities for compromise. A priori, a deliberative approach was thus possible; if not certain.' ...⁸¹

This analysis gives a picture of a mixed setting. Surely the level of deliberation decreased towards the end when positions had crystallised and divisions emerged. However, in order to accommodate different interests several tools were used, for example an unclear language and postponement in time.⁸²

Another aspect of deliberation was to allow yet broader discussion with the so called 'civil society'. During the first months vice-chairman Jean-Luc Dehaene was preoccupied with preparation of the open session with the participation of NGOs and other interested parties. Similar efforts were directed towards the young generation in the form of the Youth Forum. However, the general evaluation of these initiatives is quite negative. Neither meeting created any substantial project or a new idea. Maybe expectations were raised too high. A single conference with broad participation rarely produces substantive results. On the other hand our perception is also skewed by negative press coverage and the accusation of a gathering of 'Brussels-based elite'. The session of 'Civil society' shows however that the Convention realised that it does not embody the mosaic of the European society and that some channels of bottom-up communication should emerge in the European polity. Maybe this was the reason for introducing the article of 'popular initiative'.⁸³

Receptiveness

This is a category difficult to evaluate as it entails taking ideas from outside of the Convention setting. I have mentioned above the issue of Civil Society. It has to be

⁸¹ Ibid. p. 9

⁸² The issue of the French cultural exception in international trade was resolved by a wording which leaves final interpretation to the ECJ. The new QMV formula was softened by a possibility to suspend its introduction by the European Council for a period of three years.

⁸³ Article 46.4 of the Draft Treaty establishing a Constitution for Europe

said that receptiveness depends on the claims coming from outside of the system concerning the system or its task directly. One of the main instruments in this process was the shuttle diplomacy of its chairman who travelled to the capitals in order to keep direct communication with the leaders.

The idea of creating the permanent chair of the European Council had a certain bias towards the big member states and was not generally welcomed by integrationists. Other ideas that had been voiced were for example keeping the Euroatom Treaty provisions outside the Constitutional Treaty itself – on the instigation of the ecologist groups.⁸⁴

Organised interests are already institutionalised in Brussels and focus their lobbying on particular elements of the system. Receptiveness might be as well interpreted as heeling to biased positions, which is not a positive feature. On the other hand the successes of particular ideas are never secured for ever, thus the winners tend not to publicise their successes.

As a short case study of receptiveness we might use the issue of the Common Fisheries Policy. Neil MacCormick presented in his publication an interesting argument about how the wording and structure of the treaty influences the sensitive Scottish fisheries industry.⁸⁵ He argues that the Convention failed to address this issue during its closing sessions. There are however counterarguments to this thesis. The energy of the Convention was used mostly to change the structure and part I, not to engage in detailed discussion about the details of particular policies (which by the way fell beyond its mandate).

One particular element might have occupied a more important place in the Convention's deliberation. I would name it as 'public relations' of the Union's institutions. This topic has its own history and many interpretations. The Convention was led into a clear avenue of treaty simplification and consolidation without, I claim, proper thought about other ways of improving the overall image. An interesting recent contribution on this issue was prepared by John Palmer 'Communicating Europe'.⁸⁶ On the other side, the key element of the Convention - to limit the usage of the 'Euro-speak' - was evidently a step in the right direction. Time should show how important creation of the constitutional treaty for the public image of the EU was.

Decision making

The most important decision taken during its proceedings was to embark on a lengthy and complicated treaty revision process. This was a sign of a certain convergence of mind-sets by the political heavy-weights. This meant a very clear reading of the Laeken mandate. Despite many claims that the EU needed a visible constitutional structure, without the Convention these claims would have probably remained unanswered. The members of the Convention expressed also a lot of support for enhancing the Justice and Home Affairs sphere.

⁸⁴ Norman P. (2003), *The accidental constitution. The story of the European Convention* Brussels, Eurocomment p. 280

⁸⁵ MacCormick N. *A Union of its Own Kind*, European Parliament publication 2004 p.32

⁸⁶ presentation to the informal meeting of the European Affairs minister in Ireland 7.04.04
www.theepc.net

The IGC that followed the Convention proved that the majority of decisions taken by the Conventioneers were accepted. Even the institutional questions such as qualified majority voting and the size of the Commission stuck to the logic endorsed by the Convention. The validity of the concepts worked through the Convention relied on a gradual introduction of ideas, and gathering support for them, which reduced the likelihood of important adversaries remaining alienated. Also the size of the drafting body and different sensitivities of its members guaranteed that no revolutionary ideas, without necessary consensus, would go through.

The decision power of the Convention also relied on the commitment of its members. They knew that for many of them the Convention was the first and last opportunity to leave their mark in history. Also for institutional reasons many MPs and MEPs were strongly interested in the success of the whole endeavour. It seems that the process and devotion to reach a result left a room for second-best scenarios. In reality the ‘consensus’ became the main interest of many Conventioneers who not only fought for their pet-ideas but also defended the imperfect result in the months following its closure. Can we presume that a new layer of community has emerged? In order to find out we need to wait some time and compare the behaviour of its participants.

Note on the Constitutional Treaty

The title of Peter Norman’s book describing the Convention is ‘The Accidental Constitution’. In his presentation to the Federal Trust Conference John Kerr said that not only the Constitution but much more inside the Convention happened by chance.⁸⁷ However, it must be said that the composition of the Convention itself was a result and encouragement to the debate about the re-establishment of the European Union. Professor Neil Walker pointed at a very interesting change in the attitude of the political classes during the recent years. He said that right now the whole project of creating a Constitution is taken for granted. Why has it happened this way? He named three reasons:

1. Structural: the open nature of the Convention and the new discourse attitude that was promoted within it led to a different attitude being taken by political elites.
2. Symbolic: the very notion of constitutionalism had an effect on the nature of European discourse. This led to a change in political imagination, though it still remains unclear of its exact significance in the constitutional process.
3. Pragmatic: once the ‘Convention ball’ started rolling, it developed a life of its own and as it rapidly became clear, the only way to influence the Convention process was from the inside. See, for example, the positioning of euro-sceptics vis-à-vis the question of fundamental rights and the division of competences.⁸⁸

According to Walker the Convention agreed on a common, hybrid model of political community. Hybrid as it is composed of different, competing models like the state-centred one, traditional, social democratic and finalité oriented.⁸⁹

⁸⁷ Federal Trust Conference *Towards the European Constitution. From the Convention to the IGC and beyond*. 1-2 July 2004 see conference report: <http://www.fedtrust.co.uk/default.asp?groupid=6>

⁸⁸ Neil Walker: keynote speaker in the Federal Trust Conference *Towards the European Constitution. From the Convention to the IGC and beyond*. London, 1-2 July 2004

⁸⁹ *Ibid.*

The Convention was a big investment and the following IGC despite quarrels continued this investment. Failure of the IGC would not mean the end of the debate on the Future of European Union. It would rather give strong arguments for pessimists and enemies of the trans-national project. In order not to start such a negative debate the IGC could rely on certain inertia of the whole process. Those who would derail it, would be blamed for wasting the capital gathered.

Conclusion

I would like to interpret the successive steps of the process that I described as a number of consecutive lock-ins. The process meant that while a certain notion was raised and silently accepted it was impossible to go back. The whole political machine starts to operate when new expectations are raised. The most important expectation was addressed in the speech of Joschka Fischer: an expectation that the EU could be exhaustively described, that a definition of finality was within reach.

My view is that the reply to this claim is not the Constitution but rather the Convention itself. In theoretical analysis Constitution should both reflect and re-create a community. I think that Convention is the best reflection of the nature of the European integration.

What are the features of this model?

1. The model entails lengthy parallel negotiations on various levels of the political structure of the European societies
2. It requires a large amount of steering, however still this leadership is executed by different levels. The leadership is also conditional upon the support of the led. Thus enforcement is rare and usually rejected
3. There is a strong sense of a need to both preserve tradition and shape a common future.

This strong sense of common destiny can be seen in the way the IGC had operated. No political leader could afford to become alienated, because it would result in too big variously defined cost. The same concerns the issue of referenda, which are currently envisaged in nine member states. A decision to reject the result of the Convention process would mean rejection of not this particular Constitution but rather challenging the very sense of participation.

The Convention does not represent a radical change in the processes that defined the Union before it. It was rather a continuation and aggregation of different claims expressed on many levels. The Convention succeeded because major European political ideologies: Christian-Democrats, Socialists and Liberals put their imprint on the final document. And the document would not be agreed had the process not been sufficiently inclusive and open.

Thus, both the process and result of the last years cannot be merely described as treaty revision process.

... 'The new institutionalized framework is characterised by an increase in the complexity of relationships between a broader set of players, and an increased complexity of supranational rules. The intricacies characterising the current process of treaty reform are likely to reduce both the previously larger leeway for voluntary

*and rational actions by governments and also full control of treaty reform process.*⁹⁰...

The agency links between representatives and their institutions were much weaker than in the case of the IGC.

*... 'The new institutionalized scenario of treaty reform has transformed into multidimensional and multilevel politics: with actors other than government representatives taking the centre stage of the reform process, with a multilevel and potentially uncontrollable net of interactions among players, with factors such as party lines increasingly present, with a loosening of principal-agent relationship, with a more 'social' process of preference formation, and a larger presence of norms in lawmaking processes.'*⁹¹

The final test to the Convention method will be whether any future treaty reforms will be conducted using this structure. This will show how much the process leading to the Convention changed the nature of the EU high politics. I would like to cite the opinion of one of the drafters working in the Convention's Secretariat – Herve Bribosia:

*... 'Will another Convention ever be convened to devise a true and rational political system at EU level or more specifically to revise the treaty amendment procedure itself? Although the Convention will allow for another Convention, I have my doubts that 25 or more governments would make such an 'unconscious' leap once again, unless the national parliaments, if acting collectively, wake up to their enormous potential in the constitution-making of the Union, probably more than in the legislative process as provided for in the Constitution'.*⁹²

Thus the Convention process is a sign of growing role of both the European and national parliaments. This role has been achieved thanks to a rising of claims concerning legitimacy and democracy. And the emergence of these two claims over the last decade marks the biggest change in the integration process and the challenge to the traditional perception of the role of the nation state.

⁹⁰ Hoffmann L. Verges-Bausili A. (2003) *The reform of treaty revision procedures: The European Convention on the Future of Europe*. in: *The state of the European Union* vol. 6 ed. Boerzel T.A. and Cichowski R.A. Oxford page 137

⁹¹ Ibidem p. 144

⁹² Bribosia H.(2003) A few impressions of a 'redacteur' in the European Convention Secretariat, EUI Review, Winter

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