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The Convention's way ahead: towards the EU's Constitution

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In setting up the convention on the future of Europe, the EU's leaders recognised that even today with 15 member states there is a disturbing democratic deficit in Europe, between the Union's institutions and policies and the European public. They also saw that they themselves were already struggling with the complex decision-making procedures for reaching political conclusions. So at their Laeken summit at the end of 2001, they set the convention three main challenges: to bring the EU closer to its people, to establish effective political structures and processes for the enlarged EU, and to establish the EU as a political presence and model on the global stage. This third challenge, of the EU's global role, also becomes more urgent with enlargement: as the EU continues to expand as an economic bloc, with a major impact on the international economy, how can it match this economic power with an effective political voice? The Iraq crisis suggests the EU is a long way from finding an answer on this. As the convention nears its endgame, the question is whether and to what extent the three Laeken challenges will be met.

The Convention under way

The convention has developed increasing political weight and an increasing political dynamic as it has continued its work. From February 2003, the convention members started looking at the first draft articles of what should become the EU's constitutional treaty. At the end of May

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a full revised version of the Treaty will be presented for the first time. In legal terms, it will be a treaty - agreed among sovereign states - but the crucial first section of this constitutional treaty will look very like a Constitution, and will be taken in popular discourse to be the EU's Constitution. The convention's members also understand very well that unless they can come to a consensus around the proposed Constitution, the EU's governments may just ignore their proposals. So despite the very different views that exist across the convention, there is a strong political will to come to a consensus proposal through an inevitable process of compromise. But the big institutional debates over executive power are what make this process of compromise particularly difficult.

Political dynamics

The political dynamics of the convention are complex. While Giscard d'Estaing in the chair inevitably has considerable power, he does not have complete control over the outcome of the convention. He works with the praesidium of 12 members of the convention which is playing the lead role in putting forward the draft constitution articles for debate. But the members of the convention are not passive - many of them being high-level politicians, including a number of heavyweight foreign ministers.

As convention members include not only government representatives, but also national MPs from different political parties and European MEPs together with two representatives of the Commission, there is a wide set of political players. Different groups of members have been meeting in and around the convention - by broad political party affiliation, by nationality, or by type of representative (e.g. the government representatives), and as divisions between larger and smaller countries have grown, a group of small countries started meeting

On top of this complex internal political dynamic, governments around the convention are taking it increasingly seriously and to some extent are having a parallel debate both among themselves and on occasion in interaction with the convention. Taken together, this means the politics of the convention are both difficult to control and difficult to predict. Divisions exist over many issues, with the strongest predictably being between those of the federalist inclination and those stressing the importance of an intergovernmental approach protecting national sovereignty. But there are many others, with many of the big institutional issues leading to clashes between larger and smaller countries. But the more the convention comes in the end to a strong and clear consensus, the more difficult it will be for governments to ignore that in their subsequent IGC - not least when they have their own representatives at the convention.

Real Progress?

The convention will be judged by its results, not least by whether the EU becomes more transparent, accountable and accessible, allowing for genuine participative democracy.

Important progress has already been made. The agreement to have a constitutional treaty which sets out the values, goals, powers and accountability of the Union in simple and accessible language is a step forward in itself. The convention's discussions have also agreed that the EU's powers, laws and policies should be brought together into one single treaty not spread across a number of different treaties as at present. Other legal changes have important ramifications - the EU should in future have a single legal personality. What this means is that

the EU as an organisation can sign international treaties, rather than just its member governments - in particular, the way has also been cleared for accession of the EU itself (and not just its member states) to the European Convention on Human Rights.

Other steps towards simplification will impact positively on both efficiency and democracy. For example, the current EU has 15 different types of decision-making instruments - such as recommendations, directives and guidelines. The convention has proposed reducing this to six, of which only two will be laws - known, in a welcome move away from jargon, simply as laws and framework laws. The standard procedure for agreeing laws will become co-decision i.e. both the Council of Ministers and the European Parliament will vote on legislative proposals. The convention is also expected to propose that when it is legislating the Council of Ministers should meet in public - at present it is one of a handful of legislatures in the world that meets in private. Not only is the current situation highly undemocratic but it also makes it easier for politicians to hide from their publics their role in European decisions and laws.

In an attempt to ensure the EU does not involve itself in detailed matters best left to the member states, the convention is proposing a new early warning system for EU legislative proposals. This would allow national parliaments to scrutinise proposed legislation at the start of the process and hold up a so-called 'yellow card' if they think the proposal exceeds the EU powers - oversteps subsidiarity. If enough parliaments have doubts, probably a third, then the European Commission will look again at its proposal. However, it is not obliged to change it, so the proposed system is not very strong and it will have to be seen if it has an effect in practice. What it will do, certainly, is emphasise to national parliaments that they have no excuse for not scrutinising and monitoring EU legislation - and that they too will have to answer to their national publics if they do not.

In terms of substantive policy areas and policy competences, the convention has made fewer proposals. It aims in the constitution to define clearly the exclusive, shared and supporting powers of the EU relative to the member states - a difficult and controversial task - but it has not on the whole proposed new competences. One important exception here is the area of freedom, security and justice where the convention proposes 'communitising' this area, due to the weakness of intergovernmental action. In the area of asylum and immigration, there is consensus for moving towards qualified majority voting rather than unanimity. Even the UK, often defensive of the veto, supports this - although it should be noted its motivation is to try to get a tougher asylum regime agreed at European level.

Another important proposal is for mutual recognition of each member state's judicial decisions (both civil and criminal) - however, there is concern that more attention is being given here to security than to civil liberties and human rights issues. Separately, there is broad consensus in the convention (apart from doubts on the UK side) of incorporating the charter of Fundamental Rights into the constitutional treaty. This is an important democratic step, but it does not overcome the concerns about civil liberties in the area of security and justice.

In the areas of economic and social policy, the convention has struggled to come to any agreement on changing the status quo. This is not too surprising since the status quo reflects a balance between the very different views of the member states over economic policy and the European social model.

Meanwhile in foreign policy and defence, many different views exist as well - from those who would like to give foreign policy responsibilities to the European Commission to those who insist on an intergovernmental approach. One proposal with substantial support is to merge the two posts of Commissioner for external relations and the High Representative - currently held by Chris Patten and Javier Solana respectively - to create an EU foreign minister. Countries such as France and the UK have indicated they may support such a proposal but only if the post is essentially held by and responsible to the Council rather than the Commission.

On defence, the convention has yet to come to a compromise as to how to allow some member states to move forward on building a common European defence policy, without requiring the participation of all - an issue particularly sensitive among some of the neutral states such as Ireland.

The institutional battle

At the heart of the battle over Europe's new constitution is the struggle over executive power. The EU is not a state and does not have a government. But it does have some of the powers of a state - and those executive and governmental-like powers are shared between the European Commission and the Council. This is what gives the EU its unique political and institutional structure. And it is the key question of how to share out those powers, that the convention finally turned its attention to in January 2003. This first debate was followed, after a gap of 3 months, with draft treaty articles on institutional issues at the end of April followed by a further debate on these articles in mid-May. They will be some of the final issues to be agreed (or not - with options presented if there is no agreement) as the convention comes to its June 20 deadline.

While the convention spent most of 2002 deliberately ignoring these key institutional issues, leaving them to last, a debate sprang up around the convention, led by the British, French and Spanish, focused on the proposal to have a new President of the European Council, who would give the Union strategic leadership and represent it on the international stage, replacing the current six-month rotating presidency. This represents a rather deliberate attempt to shift the executive power balance in the Union towards the intergovernmental side (as represented by the European Council and Council of Ministers). Its proponents, of course, deny this claiming they want to strengthen all the EU institutions and maintain the institutional balance - a statement that has become almost a mantra for all the convention participants, something to be repeated before they present their real views.

At its January meeting, the convention exhibited its most dramatic and strongest split so far as it addressed the question of institutions. In the debate, most of the speakers focused on a proposal put forward by the French and German Foreign Ministers - Dominique de Villepin and Joschka Fischer. While Germany had been reluctant to accept the idea of a permanent, high-profile new President, it came to a compromise with the French on this, in return for the French supporting the more communautaire proposal of electing, in some form, the President of the European Commission. They also jointly proposed the creation of the post of EU Foreign Minister and, more radically, the introduction of qualified majority voting in all areas of foreign policy except security and defence.

Most of the convention members rejected the proposal of a permanent President of the European Council during the debate. Many argued to retain the current rotating presidency

but some others argued for a single President of the EU, who would be President of the Commission and also responsible for the Council in its executive role - still allowing for some form of permanent or rotating chair for the Council's legislative function. The convention split on this issue with all the larger member states - France, Germany, Italy, Poland, Spain and the UK - together with Denmark and Sweden supporting a new European Council President, while all the remaining 17 smaller countries together with the European Parliament representatives and the two Commission representatives spoke against the proposal. In mid-May very similar splits remained after the Praesidium issued its draft treaty articles which proposed a permanent President of the European Council. They also weakened the Franco-German compromise by proposing a very weak form of 'election' of the Commission President - the Parliament voting on one name put forward by the Council - which will not increase legitimacy at all.

An EU with two Presidents could be very problematic. There would be rivalry and confusion over the responsibilities of the two posts, with serious and potentially damaging in-fighting between the Commission and Council. The smaller countries are clearly also concerned that the larger countries will aim to dominate and run the EU through a *directoire* in the European Council. The legitimacy of the new European Council President could also be questioned. If the new President is to be appointed by the European Council and, probably, will be a former Prime Minister or head of state, then it is not clear whether such a former politician will really have the authority on the world stage to interact with Bush or Putin, or the authority across Europe to be seen as the EU's leading political figure.

The big challenge for the convention is how they will find a compromise here to overcome this deep split between the larger and smaller countries. Countries such as the UK, France and Spain are not strongly in favour of the democratic step forward of some form of election for the European Commission President. So they are only likely to compromise on this, if they are successful in having a permanent President or chair of the European Council. Meanwhile, a majority in the convention do appear to want to move to electing the European Commission President - although some express concerns over 'politicisation' of the role. It is not clear therefore whether the Convention will try to strengthen the very weak election proposals of the praesidium.

It may be that a compromise will be found through restricting and very carefully defining the role of the new President or chair, including institutional limitations. If not, the convention may in the end have to present different options here and the final choice will go to the intergovernmental conference for the governments to debate through to a final conclusion. There will be strong pressure to try to avoid this outcome and to find a compromise, or otherwise it will be seen that the convention on this central issue has failed to find consensus on the new design for the future Europe.

And this is not the only contentious institutional issue where the convention still has to find its way forward. The European Commission too needs further reform. If the Commission is to exert strong and effective collective leadership both over the Commission bureaucracy and in fulfilling its role of initiating and monitoring policy on behalf of the pan-European interest, then change is needed. In particular, to keep to the system of one commissioner per member state will result in a large and unwieldy Commission and one that will be increasingly prey to national interests and influences. But the smaller member states are very defensive of their current right to have an individual commissioner. If a smaller Commission is appointed - or in the future ideally elected - on the basis of equal rotation across the member states, this ought

to overcome some of the concerns. But many are not persuaded and may try to trade off keeping a Commissioner against letting the larger member states achieve their goal of a permanent European Council President. Moreover, the Giscard proposals do not envisage equal rotation but leaving the choice in the hands of the Commission President.

The convention also has to decide still what to do about the voting system across member states in the Council, currently a complex system of weighted votes - qualified majority voting. The Praesidium draft Treaty articles propose a much simpler and more transparent system based on a double majority requirement, where for any new law to be agreed in Council there must be a majority of both the EU population (a 3/5 majority) and EU member states. But votes are power - and the current complex system was agreed amidst acrimonious bargaining at the Nice Summit at the end of 2000. So the convention will face big challenges here too in coming to a new agreement, with a number defending the Nice compromise at the May meeting.

Towards the Constitution

So many key arguments remain for the final weeks of the convention. Different outcomes can be foreseen. A weak and potentially damaging outcome would be one where institutional complexity worsens and political leadership and accountability is not improved. This might happen if the enlarged EU ends up in a situation where it has two rivalrous Presidents, a large and unreformed Commission, and retains the complex qualified majority voting system of Nice. A much stronger outcome would be one where the EU moved to a single executive President, democratically elected, with a small and politically accountable Commission, and a simple double majority voting system.

Such a stronger outcome would be a good answer to two of the three big challenges set by the Laeken Summit to the convention. It would be an important move in the direction of greater efficiency and greater democracy. But neither the weak nor the stronger scenarios provides a real answer to the third big challenge of establishing the EU as a stabilising political force on the world scene. Even if the EU decides to develop the post of a new EU Foreign Minister, and whether the EU ends up with one President or two, such institutional changes cannot alone overcome the problem of political differences and absence of political will in moving to a common foreign policy – as has been so apparent in the Iraq crisis.

But if the EU is going to try to move forward step-by-step to face up to its international responsibilities, it will only be able to do this if the enlarged EU is functioning effectively in its political structures and aims. So the convention, in its final months, has work of fundamental importance to do. It will not be able to find all the answers. The EU is still a work in progress. But for that work in progress to move forward successfully to meet European goals and challenges, then the convention must produce the best and strongest model on which to build.