

THE CONVENTION ON THE FUTURE OF THE EU

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In December 2000, the Heads of State or Government reckoned that once the institutional changes proposed in the Treaty of Nice were ratified, the Union would be ready for the accession of new member states. Acknowledging that the post-Nice design was certainly not optimal, they also agreed in a Declaration annexed to the Treaty to convene an Intergovernmental Conference (IGC) in 2004. It stipulated that Treaty changes would only be decided after two intermediary phases aimed at deepening and widening the debate on the future of the European Union: an 'open reflection' phase encouraging wide-ranging exchanges of views in multiple national and European fora, to be followed by a phase of 'structured reflection' scheduled for 2002-3. The format of the second phase was to be defined during the European Council bringing the Belgian Presidency to a close. On 15 December 2001, the Laeken Declaration on the Future of the European Union' was indeed adopted. No less than 56 substantive questions were proposed as a starting point for the debate to be conducted by an ad hoc structure made of a Convention flanked by a Forum. The Declaration not only defined the mandate and the institutional contours of the new structure, it also provided a number of indications on how it should proceed in terms of deliberation, drafting and decision-making.

The Laeken formula is unprecedented in the history of IGCs. It differs significantly from the 'special representatives' approach, whereby high-ranking officials or junior ministers appointed by their respective governments, together with a member of the European Commission and a couple of MEPs, debate in the privacy of quasi-diplomatic settings. It differs even more from the 'wise men' approach, whereby a limited number of technical experts and/or leading thinkers and/or statesmen acting in a personal capacity are invited to analyse problems and propose solutions. The formula used in 1952-53 for drafting plans for a Treaty for the European Political Community was also very different: the 'ad hoc Assembly' put in charge was more or less the predecessor of the European Parliament (the ECSC Assembly) plus a couple of members of the Council of Europe Assembly. The approach used to draft

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the EU Charter of Fundamental Rights was on many points similar to the current strategy, but the Convention chaired by R. Herzog was not mandated to prepare an IGC.

On the eve of the second preparatory phase of the 2004 IGC, it is urgent to reflect on the Laeken formula. If we know more or less what to expect from well established preparatory approaches, what could be the performance of this latest method? In other words, is it likely to deliver clear recommendations, shape the IGC agenda and output, or even lead to the adoption of a Constitution for EU citizens? Success or failure will largely be determined by opportunities and constraints ensuing from the type of mandate, institutions and processes chosen. Those three dimensions therefore need to be systematically reviewed.

The *mandate* assigned to the new body, i.e. to consider the key issues arising for the Union's future development and try to identify the various possible responses, is fairly standard. The Convention however was not given *carte blanche* insofar as it must do so 'in the light' of no less than 56 substantive questions clustered under four main themes: division and definition of competence in the European Union; simplification of the Union's instruments; more democracy, transparency and efficiency in the European Union; and simplification and reorganisation of the treaties. The Declaration innovated more in terms of the number of institutional issues under review than in terms of the topics listed. Most of them have indeed been envisaged, with limited success, during the two previous IGCs. Looking at the selection of issues and the formulation of some questions, it also appears that there are clear biases aimed at shaping the Convention's proposals. It is, for instance, particularly clear from the set of questions concerning the role of the national Parliaments. Postulating the existence of a problem, the Declaration only lists anti-supranational options, phrased in a rather maximalist way. This of course puts the proponents of other approaches in the uncomfortable position of having to pick the lesser of these evils' or appear as uncompromising ultras.

One big and novel opening is of course the reference to the long-run possibility of adopting a Constitution for European citizens. Since the 1950s, Europe has been built through a neo-functionalist approach based on gradual integration at sectoral level. For the first time ever, the word Constitution' is mentioned in a document of the European Council. For the first time, all member states were ready to recognise the legitimacy of such a question. So, all in all, the European Council has marked out in a detailed way the Convention's agenda. The mandate is encompassing, but formulated in an open way ('in the light' of what is only a set of questions). In addition to giving the Convention the possibility to ignore or add questions, it also invites it to think big (Constitution-building) and 'out of the box' (no taboos).

From an *institutional angle*, never before was the preparatory framework so large or involved so many components and statuses. The Convention has 105 members, as many alternates, plus 13 observers. It is flanked by a high-level Secretariat of 10 to 15 members and a Forum'consisting of a structured network of organisations representing civil society. Among participants to the Convention, no less than ten categories of different status –some speaking on behalf of their institution, others in a personal capacity –can be distinguished. The Convention is composed of the European Council's appointees (the Chair and the two Vice-Chairs); representatives of the Heads of State or Government of the member states as well as of the accession candidate countries; representatives of the European Commission; members of the European Parliament, members of the national Parliaments of the member states and of the candidate countries. It is the first time that national parliamentarians are fully associated with the IGC preparation and that candidate member states are directly involved. As for the observers, their group is made of representatives of the Economic and Social Committee, the Committee of the Regions, as well as the European Ombudsman, which is also unprecedented.

The core of the system, i.e. the bureau of the Assembly or Praesidium,' is dominated by EU constituents –a major novelty. While assuredly quite large, the Praesidium is less heterogeneous than the Convention insofar as the candidate countries have no guaranteed representation at that level. Even if the executive grip over this organ remains strong, no national government is directly represented at that level. The Praesidium is overwhelmingly European': 10 members out of 12 have indeed been designated by EU institutions or sit *ex officio* as the voice of the Council of Ministers (cf. the representatives of the three countries that will hold the Presidency during the Convention). That feature is reinforced by the fact that the Convention secretariat, instead of being entirely provided by the General Secretariat of the Council, will also include staff detached from the Commission and the European Parliament.

As for the *processes* defined by the Laeken Declaration, depending on how one values the virtues of centralisation, they are potentially very loose or inclusive. Restricted to drawing conclusions from the public debate for the opening of the Convention's proceedings and liaising with the European Council, the exclusive prerogatives of the Chairman are rather limited. The triumvirate (Chair and Vice-Chairs) as such has none. It is indeed for the Praesidium to lend impetus to the deliberation process while the Convention is supposed to draw up the final document and bring the exercise to a close. Such drafting and decision-making arrangements are adequate if the exercise is mainly about identifying, clarifying and ranking options. If clear recommendations are expected, then such processes are very loose considering that no mechanism is provided to focus the mind of the participants and instil consensus. By indicating that the final document may comprise either different options, indicating the degree of

support which they received, or recommendations if consensus is achieved; the Laeken Declaration has put the emphasis on the 'listing' approach. Ending up with a list of options cannot be considered as a failure. When expectations are set at such a low level (in line with traditional standards of international diplomacy), not much pressure can be put on feccalcitrant' delegates.

The processes are also *a priori* very open, transparent and relatively compact. A selection of representatives from the civil society (via the Forum) and the European Council (via regular reports enabling the Heads of State or Government to give their views collectively) are going to be closely involved in the deliberation process. All documents are bound to be in the public domain, without restriction. As for the duration and intensity of the process, the Convention should not last more than one year. Its plenary sessions should on average not exceed 2 days per month (approximately the frequency of the Council meetings). A bit more than 20 days does not seem much to draft a Constitution's proposal (considering for instance the legislation the Council manages to produce in the same timeframe). Finally, if the ambition to finish the IGC under the Italian Presidency -i.e. before the end of 2003 -is to be met, there is no possibility for stretching the Convention's timetable.

What could we expect from such a mix? Does all this bode well for the performance of the Convention? The new approach is nor maximalist nor minimalist. It certainly has potential, but much will depend on how actors will manage to take advantage of opportunities and overcome constraints embedded in the Laeken formula. Will they have the capacity to *take advantage* of a relatively open mandate and the long-term Constitutional ambition; the cumulated legitimacy of the Convention; the political weight and skills of the triumvirate; the dynamics of an 'unionised' core; and the close links with the European Council? Will they manage to *overcome* the heterogeneity of the Assembly, the looseness and openness of the processes with the ensuing risk of disruptive tactics, modest expectations and a tight timeframe?

In order to maximise the chances of success, the Assembly should indicate at its opening session that its main ambition is to produce precise recommendations, and not a catalogue of options with their respective backing. When laying down its working methods and rules of procedure, it should specify who will produce the drafts and draw the Convention to a close. As the Charter experience showed, following the lines of the Community method is an efficient way to structure the debate. One (individual or collective) player has a kind of monopoly of initiative; the others react to the proposal by trying to make good points; the initiator decides to integrate those points in the proposal or not; at one point, a player (who does not need to be the initiator) establishes that consensus has been reached. On the one hand, caution must be exerted against presidentialist drift (in particular, when it results in the development of parallel structures -a common disease of the Elys e). On the other hand, a body the size

of the Praesidium is quite big to play the role of the initiator and concluder. The triumvirate could have been a good option if it had not been unilaterally appointed by the European Council. The Convention, of course, could be invited to confirm the choice of the European Council, but it would mean taking the risk of further undermining the triumvirate's legitimacy. The solution could be to mandate the triumvirate flanked by a couple of delegates designated by the Assembly itself. The triumvirate should however be responsible, in close consultation with the Praesidium, for establishing that consensus exists. Even in the absence of any official role at these levels, provided that they work as a team and secure the collaboration of national executives and MEPs for managing national parliaments, these three men are in a good position to exert stewardship over the work of the Convention. Formal votes should in any case be avoided, *inter alia* because of the balance between the various contingents. With such a mix, the Laeken formula could well deliver a coherent, compelling and even ambitious final document.

In order to lock in the IGC, shape its agenda and allow for a swifter and better result than achieved in Amsterdam or Nice, it will not be sufficient to deliver a clear set of recommendations. The Convention, in addition, will need to secure maximum media coverage and convince as many governments as possible to endorse all or parts of the Convention Conclusions in the position paper they will each release on the eve of the IGC. The fact that the interval between the end of the Convention and the start of the IGC is minimal should help in that respect. As for the Constitutional step, the Philadelphia Convention of 1787 showed that some catalytic moments come unexpectedly. Not too much however should be expected from the work of a non-constituent Assembly, followed by a conference of governments that will negotiate treaty changes in accordance with Article 48 of the Treaty on European Union. In the absence of a major creative crisis, it is difficult to envisage the ratification of a Constitution worthy of the name and involving all member states in the short term.