

## **Building Blocks or Window-Dressing?**

### **The First Half Year of the Convention on the Future of the EU**

Ben Crum, CEPS (11 July 2002).

Having started on the last day of February, the Convention on the future of the EU has now finished its first half-year of work. Basically success of the Convention will be measured by two criteria. First of all, it will have to come up with *innovative proposals* that overcome the current deadlock on EU reform. Secondly, the Convention has to harness broad *social support* for its work, granting such political legitimacy to its work that the Intergovernmental Conference, that is to prepare the actual reforms of the treaties, will not be able to go around it. One may note that the two criteria innovativeness and support may complement each other: supposedly, good proposals should be able to harness wide social support. At the same time they may also compete with each other. In particular there is the risk that the commitment to consensus will stifle innovative thinking. As this first half year has been designated as ‘a listening period’, one should be cautious with any statements about the Convention’s prospects for success. Nevertheless an overall agenda of its work is emerging and some working practices have appeared that indicate where the Convention is heading, and where not.

### **The Strategy: From missions, via policies, to institutions**

Both the Convention president Valéry Giscard d’Estaing and the head of his secretariat John Kerr have noted that the Convention has so far fallen short of really groundbreaking ideas. However, when pressed by Convention members to speed up the work, Giscard insists time and again that the work of the Convention requires a cautious and diligent approach. During the last plenary session he underlined this point by exhibiting a statue of turtle with dragon’s head on his table: while the Convention might proceed slowly, it should have bite in the end.

Indeed both pace and substance of the work so far have been dictated by the presidency (Giscard d’Estaing and his vice-presidents Dehaene and Amato) and the presidium gathered around it. Though conventioners have expressed discontents at various instances, at no point has any of them been able to mobilise enough support to change the course set out by the presidency. This can be explained by the sheer size and diversity of the Convention, by the skill of Giscard d’Estaing to avoid outright confrontations and by the general unwillingness to press for a vote. Voting would go against the grain for seeking for maximum support. Moreover, it would run into the sensitive problem that voting rights have been formally withheld from the 39 conventioners representing the candidate countries.

Over time the presidency has also determined the order in which issues are tackled, insisting that the logical way to proceed is to start from the Union’s *missions*, then to move on to the various *policy areas*, only to determine the appropriate *institutions* at the end. Thus it has effectively secured that the politically most salient questions – the institutional debate – will only be addressed by the end

of the year. After three rather general plenary debates on missions, purpose, and conditions of EU action, the specific issues of subsidiarity, legal personality and the status of the charter of fundamental rights are now being explored in working groups. Similarly a 'second wave' of working groups has been set up to address the various policy fields: economic policies, internal security & justice, external affairs and defence & security policy. Further working groups are looking into the issues of the role of national parliaments, 'complementary competences', and the simplification of legislative procedures. A 'third wave' of working groups is expected at the end of the year to address various institutional issues.

Another trend is the emerging habit to portray the Convention's end product as a constitutional treaty. The Convention's mandate as phrased by the European Council of Laeken asked it to "to consider the key issues arising for the Union's future development and try to identify the various possible responses" and only raised in passing the question what might be the basic features of a constitution of the Union. Notably Giscard d'Estaing noted at the last plenary before the summer that the Convention stands before the fundamental choice between proposing amendments to the current treaties or designing a new constitutional text that will encapsulate them. He indicated that this choice will be struck on the basis of the conclusions of the working group on legal personality chaired by Convention vice-president Amato.

The president also outlined the way the Convention might proceed from there. On the basis of the conclusions regarding the Union's missions, a framework of the constitutional treaty should emerge by the end of October. The various building blocks are then to be filled in in due course on the basis of the conclusions on the various policy fields and, later, on the remaining institutional issues. By the turn of the year a first overall draft should be available. The Convention would then use the first months of 2003 to settle the remaining issues and to fine-tune the text.

### **The debate in the background**

Thus one might say that under the firm direction of the presidency the Convention has used its 'listening period' to define a concrete work programme that will lead to the ambitious goal of a new constitutional treaty of the EU. However, whether the Convention will indeed succeed in presenting such a text, will eventually hinge on its ability to tackle the most contentious institutional issues.

Outside of its sessions the knives are already being sharpened. Most notably in the run-up to the European Council in Seville, governments of the bigger member states (with the British Labour government at the forefront) have floated far-reaching reforms to secure the ability of the Council of Ministers and the European Council to administer the exclusive powers they currently enjoy, most particularly in the field of foreign policy. These reforms would mainly serve to preserve the primacy of intergovernmental decision-making within the Union.

The alternative position has been most consistently represented by the Commission in its contribution "A Project for the European Union" (echoing in many respects last year's "White Paper

on European Governance”). It basically argues that both efficacy and democratic legitimacy, require that all EU affairs should ultimately be subject to the ‘community method’: delegating the right of initiative to the Commission, adopting qualified majority voting in the Council and fully involving the European Parliament through the co-decision method. This plea for the community method as the natural ‘finalité’ of all EU policies is likely to be supported by (the majority of) the members of the European Parliament and by governments of the smaller (Europhile) member states.

Giscard d’Estaing has repeatedly warned that the Convention should not get bogged down in the political confrontation of these two grand designs. One may, however, well wonder whether the framework the Convention is now aiming for will be solid enough to accommodate the salient, institutional questions now deliberately postponed. Indeed as issues have been allocated to various working-groups there are little guarantees that the conclusions of for instance the working groups on subsidiarity and ‘complementary competences’ will be compatible. Even if such potential tensions can be ironed out, the question remains whether earlier conclusions will not be upset by the point that the concluding text eventually requires a preference to be expressed between the intergovernmental and the communitarian vision.

### **The emergence of a Conventional dynamic**

The Convention presidency has thus taken a genuine risk by ruling the key institutional choices as off-limits in the starting debates of the Convention. However, this strategy has succeeded in keeping all players on board so far. And, although much of the plenary sessions have had a rather obligatory character, one should note some promising moves that suggest that the presidency’s strategy might pay off. In this a key role is played by Peter Hain, UK Minister of Europe representing his government on the Convention. While Germany and France are by now strongly committed to the need for a fundamental constitutional overhaul of the European Union and other governments may be bought off by offering them certain concessions, the United Kingdom may still consign the Convention’s results to the bin as a fancy federalist daydream.

Rather than quietly observing the Convention proceedings from the side, Hain has chosen to openly advertise his sceptical leanings in the debate and to infuse it with proposals that above all serve to strengthen the co-ordinating power of the Council. At the same time though he also openly engages with more federalist counterproposals. Interestingly German government representative Peter Glotz has been among the first to recognise the importance that proposals should pass the ‘Hain-test’ and while he openly pursues a more federalist agenda he ensures that his interventions leave openings to Hain. All the time the MEP’s Andrew Duff (UK) and Elmar Brok (D) serve as astute interlocutors, and at times even as souffleurs, to these Anglo-German exchanges.

This role-playing was typically illustrated by the exchange on the relation between the Council’s High Representative for CFSP and the Commissioner for external affairs. The Convention was in broad agreement that co-ordination between the two positions needed to be improved.

Proposals to have the two of them jointly table proposals to the Council and to grant the High Representative the right to attend Commission meetings were widely approved. Glotz sought to move a step further as he suggested the merger of the positions of the High Representative and the Commissioner for external affairs. The person in this position would then come to wear a “twin hat”, being accountable to the Council as well as being a full member (vice-president) of the Commission. Hain, together with others like Hjelm-Wallén (Swedish Government), expressed his doubts whether a High Representative thus revamped to function could effectively operate under two institutional jurisdictions, insisting that in case of conflicts the jurisdiction of the Council should take primacy. Thus, though the differences between the perspectives were apparent, the contestants delineated the space of contention and framed the issues in a way that allows for practical solutions.

### **Ensuring innovative proposals and social support**

As indicated, in the end more is expected from the Convention than an artful political compromise. Still if the Convention is to succeed in securing a breakthrough beyond the stand-off between intergovernmental and communitarian visions, it will probably originate in the middle ground between Hain and Glotz (and may well be shaken up if Glotz were to be replaced by a newly elected German government this autumn).

Substantive breakthroughs are required all the more given the fact that the Convention has so far achieved little on the score of harnessing broad social support. So far initiatives to reach out to the wider society have taken a rather obligatory character and have failed to reach much beyond the established European political in-crowd. National debates are slow to get off the ground and if they do they are restricted to the well-known audiences. In the civil society forum set up the well-known vested Brussels interests prevail. Even the Youth Convention was accused of being dominated by the Commission sponsored European Youth Forum. After its inauguration media attention for the Convention has been scant. According to the Eurobarometer only 28% of the European citizens had heard of the Convention in April 2002. There is little reason to assume that this figure has risen considerably ever since. It has been suggested that popular involvement is bound to pick up once the Convention moves to the politically salient institutional issues. However, by the presidency’s own reckoning those Convention debates should be firmly conditioned by the framework set up by then.

Thus we may conclude that the Convention has still a long way to go on both its success criteria: innovativeness and support. For the time being primacy has been given to the internal debate, a clear calendar is emerging and there is a promise of fruitful exchanges. However, simply pursuing the calendar and dressing up the building blocks identified will not do. The Convention will only succeed in drawing up an attractive new house for Europe by thinking through its integral structure from the foundations upwards.