

Notes of the Meeting of The European Convention, 6 and 7 February 2003

Ben Crum (CEPS), 11 February 2003.¹

Summary

With the Iraq crisis buzzing in the air, this Convention plenary saw the first drafts of sixteen articles for the Constitutional Treaty. Furthermore the Convention discussed the report of the final Working Group concerning Social Europe and it dedicated a debate to the regional and local dimension in the EU. The Convention also briefly discussed the lessons to be drawn from the split the Iraq crisis is currently causing in the Union.

In notable contradiction to the Georges Katiforis' (the Working Group chair) assertion that its work had been marked by the ability to reach agreements beyond traditional political divisions, the debate on Social Europe revealed some fundamental disagreement. On the one hand, many West-European representatives from the left wing of the political spectrum turned out to be committed to setting up an active European social policy in its own right. On the other hand, there emerged a group – including prominent British, Polish, Spanish, Latvians representatives as well as some Christian-Democrat MEPs - maintaining that the best social policy is a successful economic policy facilitating job growth. This conviction combined with an insistence on the value of retaining the diversity in national social models and the flexibility they provide. Representatives from the East European candidate countries took up a rather distinctive position in this debate, caught between the awareness that West-European levels of social services are not affordable to their economies and their aspiration for improvements in this field.

As long as the debate focussed on the social objectives disagreement remained limited. Some of the proposed objectives gave rise to some debate. Moreover, some critics argued that the list as a whole had become too long and that it included certain hollow phrases that were bound to lead to disappointment among the citizenry. As regards decision-making powers, pleas to ease decision-making (qmv and codecision) on issues like freedom of movement, non-discrimination, services of the general interest and social security failed to command a consensus as they met with a small but weighty opposition defending the status quo.

The debate on the regional and local dimension of the Union saw wide agreement on the desirability of a clear reference to regional authorities in the Constitutional Treaty and for enshrining and strengthening the duty of the Union institutions to consult the regions on issues that affect them. Also it was recognised that regions might have a role in the early warning mechanism proposed for subsidiarity infringements. There was considerable support, but clearly not a consensus, for granting the Committee of the Regions – acting at the request of regional or local authorities - the right to turn to the ECJ to enforce the principle of subsidiarity. In general conventioners supported the existence of the Committee of the Regions. They were also quite willing to explore ways to optimise its involvement in EU decision-making, still quite a number mentioned that such reforms would need to be premised on improvements in the representativity and internal organisation of the Committee.

¹ These notes are based on the observation of the Convention's session. They are not corroborated by the minutes. Their main aim is to complement the official notes of the Convention's secretary with a view of the political dynamics in the Convention. The notes are not meant for quotation. Though utmost care has been taken to give a correct rendering of the various contributions, the author cannot guarantee the absence of mistakes.

Initial draft set of articles of the Constitutional Treaty

The Chair of the Convention, Valéry Giscard d'Estaing, presented the initial draft set of sixteen articles, covering Titles I-III of Part I of the Constitutional Treaty. He underlined that the Convention as a whole will be responsible for the drafting of the Constitutional Treaty. The only aim envisaged by the Praesidium in drafting these articles was to provide the Convention with a working basis. The Praesidium had sought for appropriately simple, striking and solemn formulations, without being pompous.

The Chair commented briefly on each of the sixteen articles. In addition to their substance and the explanatory note provided (CONV528/03), Giscard made the following comments:

- Art. 1 defines the Union as a Union of peoples and of states.
- Art. 2 is kept concise so that it can be learnt by heart.
- The objectives in Art. 3 are meant to explain what the Union is for. They are not individualised by policy, as this will be a matter for Part II of the Treaty. They do contain some surprising, “exciting” elements, like the reference to the discovery of space.
- Art. 5 secures the Charter as an integral part of the Constitution. It does leave it an open question, however, whether or not the Charter can be made to fit as a whole in the Constitution or whether it is better annexed to it as a Protocol.
- The Praesidium considered two approaches to the definition of the Union’s competences (Title III, arts. 8-16: to list them as competences or to list the various policies (as suggested by the Commission/ its ‘Penelope’-draft). In the end the questions posed in the Laeken declaration, as well as the urgency attached to the demand for clarification of competences, led the Praesidium to favour the former approach. These articles have further benefited much from EP-contributions (Lamassoure-report), ECJ-jurisprudence and the report of the Working Group on Simplification.
- Commenting on art. 14 on the CFSP, Giscard noted that its formulation mixes “scepticism with sadness”

The presented articles were not to be discussed at this plenary. Instead the Chair asked the Convention to communicate its views in the form of written amendments or more general comments. The Praesidium will then sort out these comments and respond on them with a revised draft that will be the basis for debate in the next Convention meeting (27/8 February). If on certain articles no consensus is forthcoming, discussion circles can be set up to seek for a solution. At the next session the Convention can moreover expect a further set of articles on the Union’s instruments.

There was a limited blue card round. Lord Tomlinson (UK, ANMP) probably best expressed the dominant mood as he noted the marked difference between the time the Praesidium had allowed itself in drafting these first texts and the time it now allowed the plenary to draft its reactions, namely one week. It were especially representatives of national parliaments (Tomlinson, van der Linden, Kiljunen) who noted that a week was very short to properly consult their constituencies, though they were willing to go along with the Praesidium this time. Giscard noted in bemusement that while the Convention had been pushing the work of the Praesidium, now being faced with a deadline, it itself asked for more time. He was, however, willing to postpone the deadline for comments till Monday the 17th. The Praesidium will then discuss them the day after.

There were only a few provisional reactions voiced on the presented articles. MEPs like Maij-Weggen (NL) and Bonde (DK) complimented the Praesidium, especially on its intention to seek for clear formulations. The most striking reaction came, however, from British government representative

Peter Hain who observed that he failed to recognise some of the key conclusions reached in the Working Groups on Complementary competences (also Tomlinson), external action and economic governance. Giscard responded that the draft articles do to a greater or lesser extent reflect the work of the Working Groups. Of course, however, the Praesidium had sought to improve on some of the conclusions, also taking into account the plenary debates.

Social Europe

Georges Katiforis, chair of the Working Group, introduced the report on Social Europe (CONV 516/03). Katiforis emphasised the ability of the Working Group to reach agreements beyond traditional political divisions. As major sources of consensus he pointed to the shared conviction on Social Europe being a source of pride, and the fact that social and economic progress run along are parallel tracks.

There was considerable praise for the work of the Working Group and its chair. Several conventioners underlined the value of having had this Working Group, in particular the contribution it made to the clarification of the Union's social objectives and procedures (van Lancker). Still the debate revealed many of the conclusions of the Working Group to be tenacious compromises covering up some fundamental disagreements (Stockton).

On the one hand there emerged a clear group committed to setting up an active European social policy in its own right. The members of this group advocate the extension of European social competences and of the use of qmv and codecision that might serve to define minimum norms or even to facilitate upwards harmonisation of social policies. They tended to welcome the report but with regrets that certain concrete proposals had failed to carry a consensus (van Lancker). Some adopted, however, a harsher tone by focussing on the mismatch between the 'big words' of the values and the objectives proposed and the 'small actions' actually facilitated (Voggenhuber).

PES MEPs Van Lancker, Berés, Thorning-Schmidt and their Green and Communist colleagues Voggenhuber and Kaufmann formed the hard core of this group. They were joined by national representatives of similar political persuasions from Belgium (Chevalier, Nagy, Pieters), France (Andreani, Floch), Luxembourg (Fayot), Austria (Farnleitner, Einem), Sweden (Hjelm-Wallén, Lekberg), Denmark (Kristensen), Italy (Basile), Spain (Borrell Fontelles) Cyprus (Vassiliou), Slovenia (Kacin) and Lithuania (Andriukaitis); Commission representative O'Sullivan and trade union observer Gabaglio.

On the other hand, there emerged a group insisting that the best social policy is a successful economic policy facilitating job growth (Hain, Hübner, Dastis, Svensson). This conviction combined with an insistence on the value of retaining the diversity in national social models and the flexibility they provide, even while they it was conceded that all systems eventually rely on common values (Hübner). Liepina (LTV, NMP) submitted that the main social competences were to remain with the member states. Indeed in this view a piling up of European social regulations may well threaten member states' competitiveness (Heathcoat-Amory). As much as Katiforis pledged that the Working Group had worked to respect the diversity between the member states and that in no way it sought to impose a superstate, conventioners of this persuasion remained sceptical.

This sceptical line of thought was defended by UK representatives (Hain, Kirkhope, Heathcoat-Amory), the Spanish government representative Dastis, some Scandinavians (Svensson,

Dalgaard), Polish representatives (Hübner, Oleksy), Latvians (Zile, Liepina), Czech NMP Zahradil, and some Christian-Democrat MEPs (Würmeling, Käuppi).

There were also some notable examples of conventioners who fell between the two groups. Some (De Vries, Brok) took a cautious approach in bringing new social objectives and competences to the European level but would insist that qmv and codecision shall be applied on the social competences that the Union already has. On the other hand, Portuguese government representative Lopes underlined the importance of the social values, social cohesion and social inclusion in particular, but then adopted a rather reluctant stance towards extending the Union's powers to act.

Representatives from the East European candidate countries took up a rather distinctive position in this debate. Notably it was Commissioner Michel Barnier who first underlined the importance of effective policy instruments ensuring social and regional cohesion in the light of enlargement that will lead to a great increase of disparities in the Union (applauded by Valtchev, Hübner, Severin, Katiforis). For some East Europeans (Zile, Zahradil) their disadvantaged starting position was reason to join the sceptical camp, opposing any suggestion of minimum social standards that may well turn out to be too much of a burden for the candidate countries. Typically, Oleksy (Pol, NMP) submitted that, especially in the Eastern Europe, increasing the number of jobs should take primacy over the quality of work. However, Rumanian government representative Hildegard Puwak adopted a contrary line. Underlining the importance of social services (of the general interest), she argued that the fact that East European countries would find it difficult to provide these at a West-European level, necessitated additional social competences to support them in this challenge. In particular she advocated European provision that would allow social services to be financially supported and exempt them from the requirements of competition law.

Social values and objectives

As long as the debate focussed on the social objectives disagreement remained limited. Many conventioners re-affirmed the importance to complement Europe's economic objectives with appropriate social one's, the EU's economic constitution with a social one (Costa, Azevedo, Kaufmann, Andriukaitis, Einem, Puwak, Dastis, Gabaglio, Jacobs, – but Hübner opposes this principle).

Some of the proposed objectives gave rise to some debate. For instance, the adoption of the social market economy as an objective was celebrated by Meyer (D, NMP), Gabaglio (ETUC) and Basile (It, ANMP) as a useful shorthand of many of the relevant aims in the social field. However, Jacobs (Unice) and Käuppi (MEP, Fin) rejected this phrase as 'linguistically ambiguous'. Similarly, government representatives Hain (UK) and Lopes (Prl) signalled their preference for the phrase of the "(new) European Social Model". On the objective of full employment, Oleksy and Zahradil argued that it would be more appropriate to aim for 'a high, and increasing, level of employment'. However, others (Peterle, Dastis, Lekberg, Hjelm-Wallèn, Zile) insisted on the importance of retaining the objective of full employment.

Some conventioners noted that, however commendable each of the social objectives proposed would be on its own, the whole list of fourteen items tended to become too long (Roche, Hübner). Others were more outspoken as they objected against the use of hollow phrases that were bound to lead to disappointment among the citizenry (Kirkhope, Heathcoat-Amory, Würmeling, Zahradil). Finnish MEP Käuppi called upon conventioners to consider the legal implications of the

adoption of certain social values and objectives. In general she was of the opinion that too many objectives had been proposed and that some were better dispensed with, like social justice (is a value – a point conceded by Katiforis), social market economy (linguistically ambiguous, also Zahradil) and lifelong learning (is an instrument rather than an objective in itself). British MEP Kirkhope withheld his support for the report expressing his preference for ‘a sociable Europe’ rather than for a ‘social Europe’. He dismissed the objective of ‘solidarity with the developing world’ as no more than ‘warm words’. If the EU were serious about this aim it would have to push for free trade consistently and abolish the Common Agriculture Policy.

Competences and ability to act

Katiforis admitted that the Working Group had achieved very little agreement on the extension of qmv and codecision. He noted that such moves had met with strong opposition (small, but with weighty constituencies). Overall, Katiforis acknowledged the modest nature of the conclusions. He conceded, however, that this ‘modest social Magna Carta’ may well lay the basis for great achievements.

During the debate the small but weighty coalition defending the status quo of Union social competences and powers opposing any extension of competences and of qmv and codecision within the existing competences clearly manifested itself. (Hain, Lopes, Zile, Zahradil, Liepina, Käuppi). UK representative Peter Hain argued that EU already enjoys a vast array of social powers and that there is no reason to expect any additional advantages from extending qmv and codecision. Latvian NMP Liepina added that, given certain minimum standards, it would be feasible to maintain unanimity while moving to qmv was bound to create great practical problems.

This sceptical block faced a large group of conventioners who argued that, to deliver on its objectives, the Union’s remit and its ability to take action needed to be widened (Fayot, Farnleitner, Gabaglio, Andreani). In particular it was conceded that decision-making on social issues should as much as possible be subject to qmv and codecision (van Lancker, O’Sullivan, Berès, Borrell Fontelles, Nagy, Brok, Kaufmann, Andriukaitis, Basile, Einem, Lekberg, Hjelm-Wallèn, Andreani, Vassiliou).

A number of Conventioners (van Lancker, Fayot, Berès, Kaufmann, Kacin; cf. Voggenhuber) argued that the internal market and competition law risk undermining social values, and tolerating cross-border bads like harmful competition and social dumping. Indeed pressed by several conventioners (Berès, Thorning-Schmidt, Kristensen), Katiforis recognised that more had been said in the Working Group on the need to prevent downward harmonisation than was reflected in the report. To prevent downward harmonisation, MEP Berès advocated the adoption of a ‘no fall-back’ provision preventing policies from causing social provision to fall below the current levels, as well as the adoption of policies that would facilitate upwards harmonisation of social policies (cf. Einem). Danish NMP Kristensen suggested that certain public sectors should as a whole be exempted from the internal market regime. Further, the use of framework legislation on social policies (Einem, Voggenhuber) and, more specifically, the adoption of social minimum norms that would be protected against market intrusion was advocated (van Lancker, Berès, Muscardini). More generally, the constitutional adoption of a horizontal protection clause on social values as set out in the report (CONV 528/03: 11) was advocated (van Lancker, Berès, Nagy, Severin, Vassiliou).

Several conventioners (Bury, Andreani, Borrell Fontelles, Kaufmann, Einem, Fayot, Gabaglio) advocated rewriting the current article 16 TEC to turn it into a positive legal basis for Union action on services of general interest. In response to such pleas, Roche (IRL, gov) conceded some

reservations on a special policy on services of the general interest. Government representatives De Vries (NL) and Hain (UK) and social partners Jacobs (Unice) and Cardona Gravinho (CEEP) rejected any need for positive EU powers in this sphere. MEP Brok warned that we should not desire to return to the nationalised public services of the past.

As regards the unanimity requirements in article 137(1)(d.f.g), some conventioners (Hain, Lopes, Hübner, Oleksy, Zile) suggested to stick to the Nice compromise that empowers the Council to replace these by codecision and qmv in due course. Others insisted, however, that there is no need for the Convention to leave this decision to the Council. What is more, they (Berès, van Lancker, Chevalier, Pieters, de Vries, Kacin, O'Sullivan, Gabaglio) submitted that a move to qmv and codecision is necessary as the freedom of movement is actually inhibited by the Union's inability to act on these matters. Some of these conventioners (Berès, van Lancker, Chevalier, O'Sullivan, Gabaglio) adopted a similar line of reasoning with regard to the adoption of qmv on policies on non-discrimination (art. 13 TEC).

The divide in the convention became even clearer on the issue of social security. On the one hand, conventioners (van Lancker, Pieters, O'Sullivan) insisted that bringing social security (137(1)(c) TEC) under the remit of qmv and codecision is inevitable as already at present Europe is suffering from the lack of technical co-ordination between social security systems. No progress is made in this field and it risks coming to a halt. MEPs Kaufmann, Van Lancker and Berès complemented this call by arguing that art. 42 TEC on social security measures facilitating the freedom of movement of workers should be extended to apply to all citizens. However, conventioners like German Christian-Democrats Würmeling and Brok and Slovenian NMP Kacin insisted that social security was best left to national parliaments, though the EU might lay down certain minimum standards. Any majority decision-making on social security was ruled out by a strong front including Hain (UK), De Vries (NL), Lopes (Prl), Basile (It) and Jacobs (Unice) who were not prepared to tolerate any European interfering with national security policies.

Floch (F, ANMP) and Kaufmann (MEP, D) argued for abolishing the exclusion of EU competence in matters of pay and the right of strike (137(5) TEC). However, Hain strongly expressed himself against any such change.

One extension of Union powers that did receive wide support was the proposal to extend the Union's competence concerning specific cross-border health issues (communicable diseases, bioterrorism). Some conventioners strongly asserted the importance of this proposal (O'Sullivan, Bury, Giannakou, Vassiliou, Svensson). Most notably, John Bruton (Irl, NMP) held a strong speech warning for the likelihood that sooner or later Europe can await a major epidemic onslaught. O'Sullivan (ACommission) added that this proposal was not to prevent member states from defining their own health policies.

An aside on qualified majority voting

A number of conventioners (including Dastis) observed that the question whether or not to adopt qualified majority voting (qmv) in the Council on certain issues, depends very much on the way this qualified majority is defined. Various conventioners (Meyer, de Vries, Einem) re-iterated their preference to replace the current qmv rules by a simple double rule majority of states and populations. Several conventioners (Meyer, O'Sullivan, Floch, Pieters) argued that after enlargement unanimity simply could not be maintained, as it would lead to paralysis. Borrell Fontelles (SP, NMP) drew the

ultimate conclusion by asserting that EU competences in which unanimity would be maintained, would be better abolished because they would only serve to raise the wrong expectations among the people. Meyer (D, NMP) suggested the Convention would have to compromise on replacing unanimity with a double superqualified majority representing 75% of the member states and of the population (contra Lekberg (Sw, NMP)).

In responding to these comments, Giscard announced that the Convention secretariat would soon present a working paper on the issue of qualified majority voting.

Constitutionalising the Open Method of Co-ordination

Opinions were mixed on the open method of co-ordination. On the one hand, a great number of conventioners (Bury, Chevalier, Nagy, Costa, Azevedo, Andriukaitis, Valtchev, Vassiliou) agreed with the report's proposal to enshrine this method in the Constitutional Treaty. On the other hand, some prominent government representatives (Roche, Hain, Hübner, Dastis, Lopes) expressed doubts about the need to enshrine the OMC in the Constitutional Treaty, as they consider the flexibility of this method and its use as paramount. Similarly De Vries (NL, gov) expressed his preference for retaining the present art. 128 TEC. While Dick Roche (IRL, gov) (also Jacobs) found himself reassured by the proposals contained in the report, Dastis (Sp, Agov) rather regarded them as already too rigid.

The Role of the Social Partners

The Working Group's conclusions on the social partners (CONV 516/03: Section VII) were generally well received (van Lancker, Costa, Dastis, Lekberg, Vassiliou), though MEP Käuppi expressed herself against too much reforms of the current provisions. MEP Brok argued for enshrining the role social partners may play in the legislative process. Severin (Rom, ANMP) advocated the constitutionalisation of social dialogue and the establishment of a forum for triangular meetings (cf. Chevalier). Kirkhope (MEP, UK) objected, however, against any form of tripartite consultation that is bound to lead Europe back to the shackles of corporatism.

Brok (MEP, D) and Vassiliou (CYP, ANMP) welcomed the distinction made between the social partners and civil society (including all NGO's) at large. Chevalier (B, Agov) stressed the importance of applying the criterion of representativity to civil society groups.

The social partners themselves (Gabaglio, Briesch, Cardona Cravinho) also commented favourably on the report and its conclusions. They (Briesch) underlined their desire to have the role of the social partners and civil society in EU policy-making enshrined in the Constitutional Treaty. Briesch lamented that the report failed to mention the Economic and Social Committee (a mistake for which Katiforis offered his greatest apologies) which, in his view, should constitute the central platform for interaction between the EU institutions and civil society. Gabaglio (ETUC) noted that the report failed to note the desirability of transnational collective bargaining agreements (supported by Hjelm-Wallèn).

Conclusion

Van Lancker (MEP, B), Vassiliou (CYP, ANMP) and Dybkjaer (MEP, DK) noted that the Working Group's conclusions had failed to make their way (fully) to the draft article texts submitted by the Praesidium, most notably to those articles setting out the Union's values and objectives (which lacks for instance a reference to non-discrimination). Van Lancker observed that also the draft article on the

co-ordination of economic policies lacks all reference to social policy co-ordination. In reply, Katiforis pledged that he would do everything he could in the Praesidium to defend the Working Group's conclusions, including the drafting of amendments if needed.

In concluding the debate, Giscard d'Estaing noted that the Convention should focus on its task of preparing a Constitution and that no Constitution does define the content of policies (cf. Brok). On the basis of the debate and the report the Praesidium would now need to translate the relevant conclusions into appropriate constitutional texts. Regarding the place of the social values and objectives in the Constitutional Treaty, Giscard noted that this still was an issue for debate. As an example he told that the majority in the Praesidium preferred to include 'equality' as an objective in article 3 of the Constitution setting out the Union's objectives, while Giscard himself would prefer including equality, equality between women and men in particular, in Article 2 on the Union's values (this assertion provoked some laughter from Praesidium member John Bruton).

Giscard noted further some points that obviously would still require further thought. One clear extension of competences had been agreed, namely on competences in the field of public health. In general, however, the drafting of the Constitutional Treaty would depart from the situation prevailing under the Nice-Treaty. The implications of the Nice-provisions that allow the Council to move from unanimity to qmv on certain social policies (137(1)(d.f.g) TEC), need to be closely studied. Giscard was quite confident that the member states would be inclined to make this move at some point. Giscard underlined the importance to distinguish between the various mechanisms of macro-economic co-ordination (S&G pact, BEPGs) and the generic Open Method of Co-ordination. Obviously the more details of the Open Method of Co-ordination are spelled in the Constitutional Treaty, the more this method risks losing its flexibility. Vice-Chair Giuliano Amato is already on the job of looking for an appropriate formulation that can prevent too much rigidity. Further, the expressed need to ensure coherence between economic and social policy guidelines is something that will be added as a second part to the proposed article 13. Finally, Giscard said that the role of the social partners and of civil society is to get a place in the Constitutional provisions on the governance of the Union.

The Regional and Local Dimension

Giscard d'Estaing opened the debate on the regional and local dimension by raising a number of questions: do we have a comprehensive conception of governance in Europe? How is such a conception to be applied? How can the Union build upon the regional and local dimension? In any case he conceded that there is a need for 'conveyor belts' between the various levels.

There emerged a broad agreement within the Convention on certain principles. Many (Tiilikainen, Kiljunen, Tusek, Andreani, Hain) underlined Member States' prerogative in defining their internal regional and local organisation. No European measures should have the effect of imposing a specific format on the member states. Further, many (Roche, Barnier, Maij-Weggen) underlined the importance of respecting the heterogeneity of the regions in the various Member States. As Commissioner Barnier put it, the Convention should refrain from any 'Procrustean approach' that would seek to impose 'one size fits all' on the regions. He advocated the adoption of a safeguarding clause guaranteeing the autonomy of the regional and local authorities to organise their own affairs (cf. du Granrut).

Various conventioners (Costa, Marinho, Lopes, Andreani, Berès, Speroni, du Granrut) underlined the importance of enshrining the objective of territorial cohesion and to provide Union-

wide guarantees for the provision of services of general interest. Maria Berger (AMEP, ÖS) followed up on this point by insisting on providing a legal basis for such guarantees in art. 16 TEC that might also serve to overrule requirements of the internal market and competition law. She further advocated the broader use of de minimis provisions that exempt minor acts from meeting these requirements.

More in general conventioners (Tiilikainen) advocated that the Union should be able to recognise and fully respect the special status of certain regions, the outermost regions (Costa, Marinho, Lopes, Dastis, Berès), disadvantaged regions (Tajani, Vanhanen, Speroni), cities and major urban areas (Tajani, Berès), densely populated regions as well as vastly unpopulated regions (Vanhanen). Barnier, Andreani, Berès and Lopes argued that the new Constitutional Treaty should fully incorporate the current provisions on specific territories and regions currently contained in art. 299 TEC, including a full list of all relevant regions. Finnish representatives (Vanhanen, Kiljunen) submitted that the special provisions concerning the Åland Islands (art. 299(5) TEC) should be fully maintained in the future Treaty.

Hungarian NMP József Szájer raised the issue of nations and ethnic groups that do not have their own regional organisation, referring in particular to the Roma. While he noted the requirements inserted on this point in the accession agreements and also the general provisions in the Treaties and the Charter, he deemed these eventually unsatisfactory. Hence he advocated a separate advisory committee of ethnic and national minorities, to be set up according to the model provided by the CoR and EcoSoc.

Tusek (ÖS, Agov) and MacCormick (AMEP, UK) argued for guarantees that would allow member states to support distinctive regional, cultural and linguistic characteristics. Senff (D, ANMP) argued for adding the commitment to minority protection and the preservation of national, linguistic, cultural and ethnic diversity to article 1.2 of the Constitutional Treaty. Claude du Granrut (CoR, F) suggested that the respect for cultural diversity and respect for regional identity be inserted in article 2 on the Union's values.

Place of regional and local authorities in the Constitutional Treaty

Many conventioners (McAvan, Tusek, Tajani, Teufel, Kiljunen, MacCormick, Chevalier) spoke in favour of a clear reference to regional authorities in the Constitutional Treaty. Dastis (Sp, Agov) was of the opinion that the subsidiarity articles in the Constitutional Treaty were the most appropriate places to recognise the role of the regions. MacCormick (MEP, UK) maintained, however, that references to the regions would already be in place in all of the first three articles of the Constitutional Treaty (cf. Carnero, Siitonen). In turn Teufel (D, NMP) suggested that the partnership role of regions might be recognised in the provision listing the Union institutions (current art. 7 TEC). Berger (MEP, ÖS) suggested that the regions might be mentioned in the article following upon that one. Azevedo (Prl, NMP), Lekberg (Sw, NMP) and Chevalier (B, Agov) added that the Constitutional Treaty should recognise the existence of regional identities besides national ones. Vanhanen (Fi, NMP) suggested that the Constitutional Treaty would recognise the legislative powers and autonomy regional and local authorities can enjoy.

French MEP Alain Lamassoure proposed that each Member State would be responsible for identifying the relevant regions. These selected regions would then be recognised under the Constitutional Treaty as partners of the Union and would have direct rights in the Committee of the Regions and in the Union's consultation processes. Similarly, Chevalier (B, Agov) suggested that the

Member States should provide the Union with a comprehensive list of their regions and the powers they enjoy.

Lamassoure added that the regions enjoying rights within the Union would also be subject to a principle of loyal cooperation (cf. Bury). Taking up on this line, MEP Maij-Weggen argued that regions have not only rights vis-à-vis the EU but also responsibilities, for instance in communicating about European policies. In any case, Haenel (F, NMP) insisted that recognising the role of regions should not lead to a Balkanisation of Europe. Similarly, Berès (MEP, F) objected to any fostering of suspicion against the European institutions.

Lamassoure further proposed that the relationship between the Union and the regions can benefit from adopting a single law for EP-elections that organises these elections around electoral constituencies at the level of regions. The French trio Lamassoure (MEP), Andreani (Agov) and Haenel (NMP) also suggested enshrine the objective of fostering cross-border cooperation projects and to provide a clear legal basis for it in the Constitutional Treaty (cf. Lenmarker, Berger).

Andrew Duff (MEP, UK) suggested that the Constitutional Treaty may recognise the democratic importance of local and regional authorities under the Title on the democratic life of the Union (cf. McAvan, Du Granrut). Several conventioners (Berger, Chabert, Lekberg) advocated the accession of the Union to the Council of Europe Charter on the Regions.

Engagement of regional and local authorities in decision-making processes

There was wide support for enshrining and strengthening the duty of the Union institutions to consult the regions on issues that affect them (Wittbrodt, Bury, Vanhanen, Berger, Kiljunen, Duff, de Wael, Carnero, Lopes, Siitonen). Costa (NMP, PrI) and MacLennan (UK, ANMP) submitted that it was not enough to simply reinforce the existing practice of consultation and dialogue but that it was essential to bring appropriate formal arrangements in place. Berger (ÖS, AMEP) added that this should not be limited to the engagement of the Committee of the Regions. Similarly French MEP Berès noted that too often only certain regions were involved in the consultation processes and called for maintaining a strict policy of equal access in this regard. De Wael (CoR, B) advocated the adoption of a framework act that would guarantee full involvement in legislative processes to regions with legislative powers and a parliamentary assembly of their own.

Several conventioners (Tiilikainen, Hain, Nagy, Carnero, Chabert) underlined the importance of starting consultation at the earliest stages of the legislative process. Chabert (CoR, B) added the demand that the regions would again be called upon if relevant legislation ended up in the conciliation procedure. Others (McAvan, MacCormick, Carnero, Barnier, Nagy) added that consultation rights should not be limited to legislative decisions alone but also apply after decisions had been adopted and were translated in executive measures. MacCormick (MEP, UK), Chevalier (B, Agov) and Nagy (B, ANMP) underlined the importance of the right of member states to have themselves represented by regional authorities in the Council (art. 203 TEC). Several conventioners (McAvan) referred to the recommendations made in the EP-report on regions drafted by MEP Napolitano.

The need to maintain a regular dialogue with the regions was recognised. Roche (Irl, gov), Kiljunen (Fin, NMP) and Nagy (B, ANMP) saw in this a particular role for the Commission. MEP Duff added that the Commission had a prime responsibility in coordinating the decentralisation of the implementation of Union law. Commissioner Barnier insisted in particular on the full involvement of regions in the planning and administration of social, economic and regional cohesion policies, also

because eventually most of the money allocated has to go through their hands (cf. Maij-Weggen, Méndez de Vigo, MacCormick, MacLennan).

Several conventioners (Wittbrodt, Muscardini) spoke in favour of the further development of the partnership initiatives of the Commission. Du Granrut (CoR, F) noted the need to spell out the principles underlying the principle of partnership: subsidiarity, delineation of competences.

De Wael (CoR, B) argued for introducing more flexibility in EU legislation as to leave regions some freedom in determining the form of implementation. Berger (ÖS, AMEP) argued that the main concern of regions with Europe lies in fact with the way ever more European rules constrain their democratic exercise of political choice. Particularly good examples can be found in the field of public contracting.

Berès (MEP, F) suggested that ways might be explored to provide for better linkages between the regions and the EP. Maij-Weggen (MEP, NL) and Speroni (It, Agov) underlined the role of national governments in engaging regions in relevant legislative processes and policies. Maij-Weggen added the suggestion that this responsibility might even be enshrined in the Constitutional Treaty, thus providing regions with a base to bring their national governments to the ECJ in case of grave negligence. On the other hand Kiljunen (Fin, NMP) submitted that national parliaments cannot fully be relied upon to represent regional authorities, especially not those enjoying legislative powers of their own.

Subsidiarity

Commissioner Barnier called for a renewal of the provisions on subsidiarity. He conceded a need for extra checks to guard this principle. MEP MacCormick (Scotland) argued that the Constitutional article on subsidiarity (8.3) will recognise explicitly the role of regions in safeguarding the principle of subsidiarity.

Led by Gisela Stuart (NMP, UK and former chair of the WG on national parliaments), several conventioners re-affirmed the role regions can play in the proposed early warning mechanism on the principle of subsidiarity (Kiljunen, Chabert, Dammeyer). Méndez de Vigo (MEP, Sp) and Nagy (B, ANMP) noted that national parliaments might indeed rely on regional parliaments in choosing to activate the early warning mechanism (also Dastis). Bury (D, Agov), Brok (D, MEP) and Haenel (F, NMP) referred in particular to the role second legislative chambers with links to regional authorities might come to play in this regard. However, Brok opposed any proposals that would grant national parliaments and/or regions actual veto power in the legislative process (cf. CONV540/03 by Stuart), as this would in effect introduce a third chamber in the legislative process.

There was considerable support for granting the Committee of the Regions – acting at the request of regional or local authorities - the right to turn to the ECJ to enforce the principle of subsidiarity (Barnier, Lopes, Costa, Bury, Teufel, Meyer, Tusek, Dastis, Speroni, Haenel, Lenmarker, Wittbrodt, Carnero, Chabert, de Wael, Dammeyer, du Granrut). Several government representatives (Tiilikainen, Andreani, Hain) were less outspoken but thought this proposal worth considering. National parliamentarians Stuart (UK), Kiljunen (Fin) and Lekberg (Sw) were not convinced of the need to grant this right to the Committee (nor to the regions themselves). Lord MacLennan (UK, ANMP) proposed to establish a discussion group on this matter. Du Granrut (CoR, F) added that if this was decided the discussion group should also include an observer of the Committee of Regions.

Meyer (D, NMP) asserted that for the German *Länder* ECJ-access on subsidiarity for national parliaments and the Committee of Regions was an absolute minimum requirement. Some conventioners (Tusek, Bösch, Bury, Teufel, Nagy, Carnero, de Wael) suggested that (legislative) regions might even be granted the right to access the ECJ on infringements of the subsidiarity principle. However, this proposal was opposed by Hain (UK, gov) and Wittbrodt (Pol, NMP). Muscardini (IT, MEP) and Lopes (Prl, gov) argued that such rights might well cause competence problems with the national legal systems. Lopes added, moreover, that it might well be used to undermine EU powers and to sabotage EU legislation. Haenel (F, NMP) suggested that regions would best exercise such rights by (collectively) asking national parliaments or the Committee of Regions to start proceedings on their behalf.

National parliamentarians Wittbrodt (Pol) and Teufel (D) underlined the value of maintaining the rights regions currently enjoy as legal persons under Union law (art. 230 TEC). Opposing any privileged ECJ-access rights of the Committee of the Regions or the regions themselves on the principle of subsidiarity (this would undermine the prerogatives of the member states), Duff (MEP, UK) argued for an across the board extension of the access rights legal persons (including regions) currently enjoy as legal persons under Union law (art. 230 TEC) (seconded by MacCormick).

The Committee of the Regions

In general many conventioners (McAvan, Carnero, Roche, Andreani, Teufel, Speroni, de Wael, Dammeyer) called for an enhancement of the role of the Committee of the Regions and a strengthening of its capacities. It was suggested that in any case that the Commission (or Council) would choose to deviate from the opinion of the Committee of the Regions it would be required to justify this (Tiilikainen, Dastis, Teufel, Lennmarker, Dammeyer). However, this proposal was opposed by Lopes (Prl, gov). Chabert (CoR, B) suggested that the Committee should be given the right to put questions to the Commission.

Dammeyer (CoR, D) underlined the importance of recognising the fact that regions and the Committee of the Regions representing them fulfil an essentially different role within the Union than civil society organisations. Some government (alternate) representatives (Tusek, Andreani, Chevalier) joined the calls of the members of the Committee of Regions themselves (Chabert), to recognise the Committee as an EU institution in the Constitutional Treaty. While Lekberg (Sw, NMP) recognised the useful role the Committee plays in advising the Commission and assisting it with the drafting of legislation, he and Hubert Haenel (F, NMP) opposed recognising it as a separate EU institution (cf. Brok).

There were more critical voices. Maij-Weggen (NL, MEP) maintained that at present the Committee of the Regions is not very effective nor very influential. Gisela Stuart (UK, NMP) insisted that before new powers were given to the Committee, it first would need to clarify its own role and to increase its legitimacy. Meyer (NMP, D) argued for a fundamental overhaul of the Committee including the election, rather than the appointment of its membership and a reduction of its size to half that of the EP.. Indeed Dammeyer (CoR, D) indicated that he shared the concerns about the composition of the Committee. MacCormick (MEP, UK) argued that the proportionality of the composition of the Committee needs to be re-balanced in favour of the bigger regions (cf. MacLennan). Lopes (Prl, gov) insisted, however, on maintaining the composition agreed upon in the

Treaty of Nice. Chabert (CoR, b) advocated bringing the mandate of the members of the Committee in line with that of the EP by extending it from 4 to 5 years.

Several conventioners proposed to change the name of the Committee of Regions. Muscardini (It, MEP) advocated to change it into ‘the Committee of Local and Regional Authorities’. Bury (D, Agov) spoke in favour of the suggestion of Hain (UK, gov) and Teufel (D, NMP) to change it into something like ‘Assembly of regional and local authorities’. Hain added the suggestion that it may be called a ‘Congress’ rather than an ‘Assembly’.

Lessons for the CFSP from the Iraq crisis

Opening the session of Thursday, Giscard noted the international situation with regard to Iraq and the way it divides Europe. He considered that this should not affect the present session as these events did not affect the issues on the agenda. However, the Convention was well advised to follow the events closely as to draw lessons from them that may be of use in designing the future provisions on the CFSP. Later Ben Fayot (Lux, NMP) urged the Convention to hold an open debate on the implications of the current crisis for the CFSP. While Fayot’s plea was supported by some (Borrell Fontelles), others (Méndez de Vigo, Tomlinson) observed that the Convention should focus on the tasks assigned to it, or, as MacCormick (MEP, UK), insisted that an ad hoc debate should not come at the cost of the widely awaited debate on the regional and local dimension.

Giscard allowed Fayot to make a 3-minute statement on the constitutional lessons that can be drawn from the present crisis. After that the other conventioners could add their comments by way of blue cards. Fayot started his statement by recalling how views on the Iraq-crises were currently diverging in Europe. These events raise the question how under such conditions future Union officials can be expected to give substance to a common foreign policy. They moreover raise the question how seriously the words of article 11.2 TEU (most notably “The Member States (...) shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.”) can be taken. Ultimately the Convention faces the challenge to design Union instruments and procedures that stimulates the member states to cooperate rather than to divide.

In the short debate that followed, vice-chair Dehaene, Commissioner Barnier and MEP Brok (chair of the EP foreign affairs committee) intervened to concur that, lamentable as it may be, there is no genuine Common Foreign and Security Policy in Europe yet. Such political will can not be created by decree. However, they argued that the Convention should seize upon the current crisis to use it as a catalyst. The Convention should aim to design institutions facilitating the emergence of a common will, to work towards the approximation of policies.

William Abitbol (MEP, F) took a slightly different perspective in arguing that indeed the fault line among the member states between those supporting the US and those looking for an alternative European approach had been there all along. Hence it was no more than logical to see the European institutions would be circumvented by international manoeuvring through letters and declarations. Edwin Teufel (D, NMP) underlined the importance of EU-US relations, maintaining that CFSP will require a strong EU-US partnership.

Giscard d’Estaing concluded the debate by noting that a CFSP is highly desirable but that the present Europe obviously is not ready for it yet. Actually, he saw Europe was backsliding from the agreements contained in the TEU. As a consequence also the Union’s credibility in the world is also

undermined. Eventually, he considered that the Convention was faced with two fundamental questions: Is there a common will? What are the mechanisms that may put this common will in place and facilitate its development? In exploring these questions, European public opinion would need to be taken into account as well. For this reason Giscard suggested that he might ask the Commission President to use the Eurobarometer survey to query into European citizens' desires for a CFSP. The latter suggestion was warmly welcomed by Maij-Weggen (MEP, NL) who added the suggestion to also put the choice between one or two EU Presidents to the citizen.

Additional observations

- Before leaving the room early - leaving it to Amato to finish the session off - Giscard drew the Convention's attention to two things. First, he noted that the Praesidium had drafted a mandate for the legal experts that would be involved in drafting the second, policy part of the Constitutional Treaty, as well as a list distinguishing the Treaty articles that would be left to their examination from those that the Convention itself would need to consider (CONV 529/03).
- Secondly, Giscard announced the opening of a first discussion group on the ECJ. Commissioner Vitorino would chair this discussion group. Ideally this discussion round would involve around ten members of the Convention selected on the basis of their experience. Besides Vitorino, Giscard suggested that the group could be made up of 3 government representatives, 3 national parliamentarians and 3 MEPs. Rather than opening a list, he proposed that the leaders of the three components would by the following week inform the Convention secretariat of their nominees.