

The European Convention

Mauro Taddeo

Doctorando, Universidad Nacional de Educación a Distancia, Madrid, España

Abstract: *The Convention was asked to draw up proposals on three subjects: how to bring citizens closer to the European design and European Institutions; how to organize politics and the European political area in an enlarged Union; and how to develop the Union into a stabilizing factor and a model in the new world order. Noting that the European Union was coming to a turning point in its existence, the European Council which met in Laeken, Belgium, on 14 and 15 December 2001 convened the European Convention on the Future of Europe. This paper attempts to assess some aspects.*

Keywords: European Convention, Treaty establishing a Constitution for Europe, Missions of the European Union, Principles which Europe must respect, Laeken declaration

1. Introduction

The meeting was opened under the chairmanship of Mr José María Aznar, President of the European Council. Mr José María Aznar, President of the European Council, Mr Pat Cox, President of the European Parliament, and Mr Romano Prodi, President of the European Commission each delivered a speech. Mr Aznar then declared the Convention open and called on its Chairman, Mr Giscard d'Estaing. Following a break, the Chairman Mr Giscard d'Estaing opened the proceedings of the Convention, presenting the Vice-Chairmen Mr G. Amato and Mr J.L. Dehaene, and the other members of the Praesidium. He then submitted the provisional timetable of meetings for the Convention and the Praesidium up to mid-July 2002 to the members of the Convention, explaining the reasoning behind it. The floor was then given to Mr Amato and Mr Dehaene, Vice-Chairmen of the Convention, and subsequently to members of the Convention who wished to speak. Mr Amato pointed out that a large number of studies could assist the Convention's proceedings. In particular, he invited members of the Convention to acquaint themselves with documents from the Committee on Constitutional Affairs of the European Parliament, particularly as regards the powers of the Union and the role of national Parliaments. He also referred to the usefulness of the reports by the European University Institute in Florence on the re-organization of the Treaties. Mr Dehaene gave a broad outline of the debate with civil society to be held via the Forum.

This is a multidimensional concept, with listening activities and dialogue on four levels:

- On the internet via the Convention website;
 - In each national Forum in the Member States and candidate countries;
 - With observers from the Economic and Social Committee, the Committee of the Regions, the social partners and non-governmental organizations, whom he urged to come together;
 - At the level of the Convention itself.
- During the debate which followed, the points made by members of the Convention who spoke included the following:
- The historical importance of the Convention for the future of the Union in the process of enlargement.

- The Convention provided a unique opportunity to bring European construction closer to the citizen. Many speakers stressed that a genuine dialogue should be established with civil society. The listening activities of the Forum must continue throughout the Convention's proceedings, and the debate must continue at national level.
- Speakers from the candidate countries stressed that they were prepared to make a substantial contribution to the proceedings of the Convention, and said that they did not want the candidate countries to constitute a separate group, but wanted at least one seat in the Praesidium to be reserved for them and the most important documents of the Convention to be translated into their languages.
- Regarding relations between the Praesidium and the Convention, the Chairman gave the assurance that the Praesidium would be at the service of the Convention, for example by introducing the various topics for debate. He also indicated that the Convention's working meetings would in future be held in another chamber, which was smaller and more convivial.

2. General debate: "What do you expect of the European Union?"

Mr Giscard d'Estaing opened the first substantive debate of the Convention by emphasising the size of the task at hand. He said that the citizens of Europe felt that their voice was not being heard on the future of Europe and that the first phase of the Convention should therefore be a listening phase (Magnetite, 2004).

He invited the members of the Convention to begin the debate. They were to speak freely and at a personal level, addressing first and foremost the other members of the Convention. The Chairman wanted the members of the Convention to identify what, in their view, should be Europe's priorities for the next twenty-five to fifty years. Over eighty members of the Convention took part in the debate. The nature and the content of the contributions varied widely.

Some members concentrated on a couple of priorities or even on just one. Others embraced the whole gamut of European affairs. Many contributions began with an analysis of the current situation within the Union. Notwithstanding the

wealth and diversity of contributions, the following general themes recurred:

2.1 Assessment of the current situation.

Very many members of the Convention commended the considerable progress made in the last fifty years, which had surpassed even the most optimistic forecasts conceivable at the outset. The results were taken for granted, especially the most important one, namely peace in Europe. Among the successes of European integration, particular mention was made of the single market, the four freedoms (free movement of persons, goods, services and capital), the introduction of the euro for twelve Member States and the removal of controls on persons at borders within the Schengen area (Lombardo, 2005).

Today, if Community nationals decided to leave one Member State to go and live in another, they did so by choice and because they had been afforded that opportunity, not because the move had been imposed upon them by fear or by force.

Many members of the Convention welcomed the enlargement process under way. Upon its completion, the scission of Europe in two, which had resulted from the Second World War, would disappear forever.

Nevertheless, many speakers also pointed to the weaknesses and shortcomings of present-day Europe. Europe did not listen to its citizens enough. Citizens did not feel they could hold to account those in positions of power who took decisions on Europe's behalf.

The fact that the European Parliament was elected by universal suffrage, that the ministers sitting around the Council table represented their governments and that the European Commissioners were appointed by the Member States' governments and accountable to the European Parliament did not dispel the view that Europe was not democratic enough. Europe's citizens had to be directly able to choose and remove those at the helm of its affairs. Public opinion often regarded the institutional mechanisms of the Union as laborious, complex and difficult to understand. Inside the Union, Europe was perceived as abstract and distant. Outside, it was perceived as not effective enough, failing, for instance, to respond rapidly and adequately to the challenges posed by globalization and cross-border developments. A number of speakers thought that Europe tended to be too prominent at the expense of the independence and freedom of nation states. Expectations of Europe. A large number of Convention members thought that their fellow citizens expected greater involvement by Europe.

Europe would have to be able to meet that expectation. Greater European presence was mentioned in the following areas in particular:

- An area of security and justice aimed, in particular, at enabling Europe to react to terrorist threats or migration pressure at its borders;

- European action on the international stage, enabling the Union to assume its full responsibilities and champion its values.
- Others pointed to the need to build a credible and efficient economic and social nucleus and to step up coordination of fiscal and budgetary policies, especially between the twelve states sharing the same currency
- The euro Defence policy, internal cohesion, food safety, the environment and solidarity with developing countries were also mentioned as areas in which Europe should play a greater role.

A number of members expressed a wish that the Union respect and protect the Member States' cultural identities. They wanted less European intervention and a willingness to scale down European action in certain fields. Reducing Europe's powers and limiting the *acquis communautaire* to areas where it could bring real added value would lend Europe greater legitimacy.

2.2 Principles which Europe must respect.

All the members of the Convention stressed the shared values which unite our continent, citing *inter alia* democracy, the rule of law and the protection and promotion of human rights.

Some mentioned the Charter of Fundamental Rights and asked that it be incorporated into the treaties. Others called on the Union to accede to the European Convention on Human Rights. The theme of equality between Member States was mentioned several times, especially by the Convention members from the candidate countries. Each state, whatever its population should feel at ease and respected in an enlarged Europe. Solidarity between Member States and the mechanisms underpinning it were also raised by a number of speakers. The majority of Convention members called for a simpler division of powers and responsibilities, under which it would be clear to all what was the domain of the Union and what was covered at national, regional or even local level.

The division of responsibilities should be one of the main topics to be addressed by the Convention. Europe's citizens were expecting clarity in this area above all. A very large number of Convention members signalled their attachment to the principle of subsidiarity. They wanted effective arrangements put in place to ensure compliance with that principle. A significant proportion of Convention members touched on the subject of democratic legitimacy and wanted the European Union to take account of citizens' expectations and give citizens a greater say in and fuller scrutiny of European decision-making. Transparency and accountability should improve the way Europe worked.

Institutional aspects. Some Convention members wanted the Union to have a treaty with constitutional status in some shape or form. A hierarchy of rules ought to be introduced. Several members reiterated their attachment to the Community method. Others emphasised the intergovernmental method. Tried and tested, it had shown that it worked. Extension of the qualified-majority rule and of the codecision procedure with the European Parliament was

raised as well. Several members also referred to the role of the Presidency and the rotating Presidency system.

2.3 Convention.

Several speakers addressed the work of the Convention itself.

The vast majority stressed their determination to succeed in the task they had been given and warned their colleagues of the consequences if the Convention were to fail.

Some advocated that the Convention aim for a consensual text which could guarantee the success of the next intergovernmental conference, IGC (Fossum, 2005).

Many Convention members stressed the importance of consulting civil society and, in particular, young people. Their proposals would have to be heard. A few members also wanted the churches to be given a hearing. One member proposed that a questionnaire be sent to every citizen, based on the model used in Switzerland for constitutional reforms.

3. General Debate: The Missions of the European Union

3.1 Introduction

Mr Giscard d'Estaing opened the debate by reminding the meeting that several documents dealing with this subject had been communicated to the Convention, on the one hand by members of the Convention, and on the other hand by the Praesidium, which had forwarded two documents: the first attempted to organise the debate by raising specific questions on the missions of the European Union and the second contained a description of how the competence of the European Union is made up (Krzyzanowski, 2005).

Members of the Convention made 86 interventions.

3.1.1 First question: Scope of the missions of the Union

The first question for the Convention was whether, taking into account the new dimension of the Union, the present international environment, its present remit, and the aspirations of its citizens, the Union should be given more tasks and if so, what should be added, or on the contrary, it should be given fewer tasks, and if so which tasks should be given back to Member States?

(a) General Questions

A broad trend had emerged within the Convention on the need to avoid calling into question the present remit of the Union, with only two members wishing certain competences to be given back to Member States. Certain speakers raised the difficulties of delimiting competence in terms of subjects and the need to establish instead a delimitation according to the intensity of the action according to areas by means of establishing policy instruments. In this respect, several members stressed the need to consider the question of the Union's missions together with the question of the division of competences and instruments. To that end, a desire was

expressed for the Treaty to indicate clearly who did what by indicating the degree of Union competence for each policy. Several members wanted the three-pillar structure to be replaced by a single institutional structure.

(b) The Union's missions which received the support of a large number of speakers.

The majority of speakers mentioned the need to strengthen the Union's missions in two areas while conferring on it the necessary competences to carry out those missions:

- The common foreign policy, in order to enhance the presence and action of the Union on the international scene, particularly in crisis management. The Union should be capable of reacting effectively to the new challenges of international politics (Everts, 2003).
- The liberty, security and justice policy to enable the Union to act more effectively, in particular against terrorism, organized crime, illegal immigration, drugs and trafficking in human beings. In this context, certain members called for the introduction of a common border protection service.
- Many members also wanted:
- An economic government as a corollary of Monetary Union,
- A reference to human rights by inserting the Fundamental Rights Charter into the Treaties. The question of the Union having a legal personality and its accession to the European Convention on Human Rights was raised,
- A link between external policy and development aid policy.

(c) Other missions of the Union mentioned

Certain members wanted the Union also to take more action in the following areas:

- The environment
- Research and innovation
- Food security
- Security of supply

(d) Missions on which differences emerged

Several members called for European action in the following areas:

- Economic and social cohesion and the development of a European social model, requiring a European social treaty taking into account the differences between Member States
- Combating poverty and social exclusion
- Combating unemployment

Certain members wanted the Union to have its own tax arrangements. Other speakers considered that unnecessary.

As regards education, vocational training and teaching, some members called for the implementation of a European education system, whereas others wanted those issues to fall within the competence of Member States.

(e) Member States' missions

As regards missions that should continue to be the responsibility of Member States, the majority of speakers who touched on the question referred to the following areas:

- The internal organization of Member States
- Public services
- Culture
- Social security

Some of those speakers pointed out that these were examples and not a complete list. However, it was observed that the fact that the Union did not intervene directly in those areas should not prevent it from encouraging cooperation between Member States in those areas and/or supporting the coordination of the action of Member States.

3.1.2 Second question: The criteria used for deciding which missions should be carried out at Union level

The second question for the Convention was to determine the criteria used to decide which missions should be carried out at Union level and the principles on which the Convention should base such decisions. The aspirations of citizens should, according to the members of the Convention, inform the division of competence between the Union and Member States.

A large majority of speakers reminded the meeting of the following criteria:

- The criterion of subsidiarity: the Union should only take action in the areas where it alone could do so given the cross-border elements of the action, or in areas where the Union could act more effectively than
- Member States individually. Certain speakers stressed the need to reinforce the application of the principle of subsidiarity
- The criterion of proportionality: any action by the Union should not go beyond what was necessary to achieve the objectives pursued.

Certain speakers also mentioned the solidarity principle.

3.1.3 Third question: Member States' competence

The third question for the Convention aimed in particular to ascertain whether the Treaties should explicitly decide that responsibilities not covered by the missions of the Union should remain with Member States or whether they should be spelt out in the Treaties and, if that is the case, on the basis of what criteria. It was also asked what the principles should be on which the Convention might base such a decision.

Most speakers stressed the need to clarify in the Treaties the principle whereby missions not allocated to the Union by the Treaties continue to be the responsibility of Member States, but without drawing up in the Treaty an enumerative list of Member States' competence. The majority of the members of the Convention considered that drawing up such a list would risk setting in stone Member States' competence and be

detrimental to the requisite flexibility to adapt to new realities. Certain speakers pointed out that given that competence remained under Member States except where allocated to the Union, it was difficult to draw up an enumerative list of Member States' competence.

3.1.4 Fourth question: Evolution of competence

The final question for the Convention was whether the missions of the Union should be settled now, for all time, or whether the possibility of further evolution should be foreseen.

(a) Flexibility of the system for the delimitation of competence

The large majority of speakers supported a flexible system for the delimitation of competence allowing for some adaptation of the Union's missions to the new challenges and for citizens' expectations to be met optimally. Several speakers indicated that in this respect, the flexibility and dynamism at the heart of the Union's past development, and which was one of its strong points, should be preserved. A system of lists, whether of the competence of the Union or of Member States, would run counter to that flexibility. In that respect, it was pointed out by way of example that it was the current flexibility that enabled the Community to deal with problems relating to asylum and to adopt the Directive on electronic commerce. Certain speakers emphasized the importance of having clear and democratic decision-making principles rather than a rigid system for the delimitation of competence.

4. Conclusion

The Chairman and two Vice-Chairmen took the floor to conclude the plenary session. Vice-Chairman Amato stated that he was moved by the very valuable experience constituted by the Convention, thanks to all its members. The Convention mirrored Europe in building upon relations between people who share the same roots and the same cultural heritage, enabling them to understand one another and to share unique political and human experiences. He stressed that the Convention had brought tomorrow's Europe, an enlarged Europe, into being through the participation of the Convention members from the candidate States. It had also strengthened Europe's democratic dimension – transparency. Vice-Chairman Dehaene expressed his conviction that the Convention was a decisive stage in building Europe; a stage which made it possible to turn the reunification of Europe into reality and whose success had enabled greater progress to be made than at any intergovernmental conference.

He paid homage to all the Convention members for their work which had yielded such a success. He also thanked the members of the Praesidium and especially Vice-Chairman Amato. Vice-Chairman Dehaene made a point of paying special homage to the Chairman of the Convention. He emphasized that the Chairman's personality had made the Convention what it was and he was confident that the Chairman would be the most ardent defender of its

achievements in future. In his closing speech, the Chairman, Mr Giscard d'Estaing, stated that a very broad consensus had been reached on the whole of the draft Treaty establishing a Constitution for Europe. He pointed to the process by which the Convention, through a period of reflection and debate lasting sixteen months, had succeeded in drawing up the draft Constitution. The Chairman insisted that this venture – the first draft Constitution for Europe – had been possible and owed its great success, *inter alia*, to the judicious use of time. Firstly, this had allowed the new Member States to familiarize themselves with the functioning of the European institutions. Secondly, it had made it possible to evaluate where the Union stood in time and the bridges it had crossed since 1950 (Habermas, 2004).

Lastly, this judicious use of time had enabled future generations to be provided with the instruments or pathways for taking integration yet further, should they wish to do so one day. The Chairman confirmed that he would convey to the European Council the Convention's message that the balanced consensus achieved within the Convention should as far as possible remain intact. He added that the IGC should make public the full range of proposals and amendments submitted so that public opinion and Convention members could be informed of the course of its proceedings and could comment on the proposals and amendments in question. The Chairman then paid tribute to all the members of the Convention, who had proved that the Convention method was a success and that it should be maintained as the method that guaranteed the greatest transparency, effectiveness and legitimacy. In addition, the Chairman warmly thanked the two Vice-Chairmen of the Convention, Mr Giuliano Amato and Mr Jean-Luc Dehaene, whose contribution to the Convention's proceedings had been decisive. He also expressed his appreciation for the effective support given to the Convention's proceedings by the Secretariat under the direction of Sir John Kerr and Ms Annalisa Giannella.

At the close of the plenary session, the Chairman invited the Convention members to sign the forwarding document accompanying the draft Convention, the text of which reads as follows:

"We, the members of the European Convention, having contributed to the elaboration of this draft Constitution; hereby submit it to the Presidency of the European Council, in the hope that it will form the basis of the future Treaty establishing a Constitution for Europe".

He also invited the Convention members to sign the board bearing the Convention logo which had been present in the plenary meeting room throughout the proceedings. This board would be presented to the European Parliament.

93 members of the Convention have already signed this document, some in the days following the plenary session by going or sending their signatures to the office of the Chairman.

The Convention has identified responses to the questions put in the Laeken declaration (Eriksen, 2004):

- It proposes a better division of Union and Member State competences;
- It recommends a merger of the Treaties and the attribution of legal personality to the Union;
- It establishes a simplification of the Union's instruments of action;
- It proposes measures to increase the democracy, transparency and efficiency of the European Union, by developing the contribution of national Parliaments to the legitimacy of the European design, by simplifying the decision-making processes, and by making the functioning of the European Institutions more transparent and comprehensible;
- It establishes the necessary measures to improve the structure and enhance the role of each of the Union's three institutions, taking account, in particular, of the consequences of enlargement (Kokott, 2003).

References

- [1] J.Habermas, *Developing a constitution for Europe*, Taylor & Francis, Abingdon, 2004
- [2] E.Lombardi, *Social Politics*, Oxford University Press, Oxford, 2005
- [3] P.Magnette, K.Nicolaidis, *The European Convention*, Taylor & Francis, Abingdon, 2004
- [4] S.Everts, D.Keohane, *The European Convention and EU Foreign policy*, Taylor & Francis, Abingdon, 2003
- [5] J.Kokott, A.Ruth, *The European Convention and its Draft Treaty establishing a Constitution for Europe*, Kluwer, Amsterdam, 2003
- [6] M.Krzyanowski, *On discursive and communicative dimensions of The European Convention*, John Benjamins, Amsterdam, 2005
- [7] J.E.Fossum, A.J.Menendez, *The Constitution's Gift ? - European Law Journal*, Wiley Online Library, Hoboken, 2005
- [8] E.O.Eriksen, J.E.Fossum, A.Menendez, *Developing a Constitution for Europe*, Taylor & Francis, Abingdon, 2004

Author Profile

Mauro Taddeo is Licenciado en Derecho.