

THE BATTLE FOR POWER IN EUROPE – WILL THE CONVENTION GET IT RIGHT?

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Executive Summary: *As it enters the final phase of its work, the jury is still out as to how well – or whether – the Convention will answer the three big Laeken challenges: to bring the EU closer to the European public; to create an effective political structure and operation for the enlarged EU; and to give the EU a genuine global role. The Convention has made considerable achievements in its work already and has developed a strong, if complex, political dynamic. But it is the big institutional decisions which will impact most strongly on both efficiency and democracy in the enlarged EU. In foreign policy, the results so far have been weak and further progress will depend partly on institutional change but also, as ever, on the presence or absence of real political will. So far the Convention has also not been either successful or very active in engaging the wider public who remain in general unaware of the work of the Convention.*

1. Introduction

At the start of 2003, after 11 months of discussion, debate and proposals, the Convention on the Future of Europe finally reached the crucial issues of institutional structures, balance and functioning. At the heart of this debate is the question of the location, nature and accountability of executive power in an enlarged EU. But in its first focused institutional discussion, the Convention showed major splits and disagreements - essentially between the larger countries on the one hand and almost all the smaller countries, together with the European Parliament and Commission, on the other hand. This institutional debate will dominate the remainder of the Convention's work and will in large measure determine the success or otherwise of the final outcome.

This is not to deny that the Convention has made considerable achievements in its work already and has developed a strong, if complex, political dynamic. The Convention has already made a number of proposals to simplify and streamline the EU's functioning, which would impact positively on both aspects of democracy and efficiency. But it is the big institutional decisions which will impact most strongly on both efficiency and democracy in the enlarged EU. Moreover, in foreign policy, the results of the Convention so far have been weak and further progress will depend in part on the current institutional debate but also, as ever, on the presence or absence of real political will. So on the three big challenges set by Laeken - to tackle the democratic deficit, to establish effective political structures for an enlarged EU, and to give the EU a genuine role in the world - the jury is still out.

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Engaging the Public

So far the Convention has also not been either successful or very active in engaging the wider public who remain in general unaware of the work of the Convention. There is a wide discussion around the Convention in more organised and structured groups such as NGOs, think tanks, universities, and to some extent business organisations. But even this is very much a discussion outside the Convention rather than in close or formal interaction with it.

At one level, the Convention is the victim of its own success – a first opening up brings demands for more steps. Certainly, the extraordinary opening up of the process of political and institutional reform that the Convention has brought, stands in strong contrast to the entirely closed nature of previous intergovernmental conferences (IGCs). Indeed, if the IGC after the Convention makes substantive changes to the work of the Convention, in closed sessions, the democratic legitimacy of the IGC process may start to be questioned. But at the same time, having taken the first big steps to opening up, the Convention - or future Conventions - should now do more. So far, there has only been one formal consultation session with organised civil society in June 2002. Meanwhile, the important working groups of the Convention have held very few hearings, and mostly with politicians and officials. Moreover, many of the working groups have not been open to the public, while some have been open in theory, but inaccessible in practice (for example held in the Council building in Brussels, accessible only to those who already hold passes).

It is also of great importance as the Convention enters its final stages, that it does not lose sight of the need both to bring the EU closer to its citizens and to produce an output that is persuasive and acceptable to its citizens and not just to its governments. This means, in its battle over the balance of power in the European institutions, the Convention must remember that power has to go with democracy and accountability. This is not only about formal structures and representation but also concerns the process of democracy including communication and debate.

Furthermore, the outputs of both the Convention and the subsequent IGC will eventually require public support and approval, with many countries expected to have referenda on the final Treaty. There have been some suggestions in the debates around the Convention, including by Convention members, that countries who do not ratify the new Treaty should be expected or made to leave the EU. Such ideas suggest both a considerable lack of confidence in the Convention's ability to succeed in its task of engaging the public and reducing the democratic deficit and a rather cavalier attitude to the question of democratic approval and support for the EU's development. It certainly would not help any country's referendum campaign to secure a 'yes' vote to be told in advance that if they reject the Treaty they must leave the Union, rather the opposite. Moreover, on the current legal procedures, unanimity is needed for ratification. It is perfectly valid to argue for different ratification procedures for future amendments of the constitutional treaty but not to ignore existing legal obligations.

The rest of this paper looks briefly at progress so far in the convention. It then turns to the institutional power battle, arguing that if the Convention comes to the wrong compromise over institutions, this risks weakening and dividing the EU at the very moment of enlargement.

2. Important Steps Forward

Political Dynamics

After a rather lengthy 'listening' phase during its first four months, when Convention members discussed in rather broad terms the role and future of the EU, the Convention picked up pace from July 2002 on. It was at this point, that the first 10 working groups were established, which reported during the autumn, with the eleventh social working group reporting at the start of February 2003¹. The listening phase was nonetheless of considerable importance in allowing the Convention to find its feet and understand the complex political dynamic and groupings it contained.

Over time, Convention debates have become more focused and interactive, and Convention members have learnt to operate politically in multiple different groupings – whether in one-off coalitions to present documents to the Convention, and writing open letters to the chairman, or caucusing before or around the meetings of the convention in longer run groups, including by party affiliation, nationality, and 'type' of representative (national MP, MEP, government)². Party groupings have also been important with the MEPs in their political groups inviting all members of the convention to their meetings by group, seen as one route especially to try to involve the national MPs who in many ways are the most diverse and least easily organised grouping. Candidate countries decided not to set up a formal group but some ad hoc meetings have been held³. Such caucusing has been increasingly visible in the debates of the Convention, as coordination of different interventions and arguments becomes apparent. Particularly striking as the Convention reached the start of the institutional debate has been the split between larger and smaller countries over institutional reform – potentially the most difficult to manage division in coming to a final consensus.

Beyond the Convention, there has been almost a parallel debate within and across European governments - a debate which has then interacted with and impacted on the Convention debates. As governments have taken the Convention increasingly seriously, including sending foreign ministers in many cases to replace previous more junior representatives, some now argue that the IGC is in effect taking place within the Convention. In fact, the Convention 'team spirit' that has developed, together with the strongly negative reaction of the majority to the Franco-German institutional proposals suggest this is not a correct characterisation. Strong lobbying by other groups has been less evident, though the social NGOs provide one example of an outside group adding to pressures developing within the Convention which resulted in the establishment of the social working group - something Giscard d'Estaing had resisted.

¹ For final reports of all the Convention working groups, see the convention website <http://european-convention.eu.int>.

² For further discussion of these internal groupings see K.Hughes (2002) « The Future of Europe Convention : travelling hopefully ? » EPIN Working Paper no. 1.

³ For a comprehensive discussion of debates in and around the Convention see P. Norman (2003) "The European Convention: into the crucial months" Eurocomment Briefing Note no.11.

The workings of the praesidium, the steering group of the Convention, have been opaque, as no minutes of its closed meetings are published. But it is clear, nonetheless, that there is a wide range of views within the praesidium, which includes a number of political heavyweights. Consequently, despite Giscard's powerful position as chairman, he is not fully in control of the political dynamics of either the praesidium or the Convention as a whole. From an early assertion that it was highly unlikely that the three pillars could be merged, to his attempts to avoid a social working group, rename the EU, or establish a new Congress of national MPs and MEPs, Giscard has met with opposition and disagreement within the Convention - although on the Congress at least he has not yet given up.

Convention members, and not only Giscard, recognise the need to reach both a consensus and one that will be accepted with few changes by the governments in the subsequent IGC. But what is important is that the Convention, so far, has in many ways managed to push the agenda and ambitions of the Convention, perhaps beyond some governments' 'comfort zones' but not so far that its ideas are being dismissed as unacceptable. This political impact and weight of the Convention is particularly important in ensuring that both Giscard and the praesidium do not give too much weight to views of governments and government representatives alone. However, this balancing act will become more problematic in the final institutional debates and treaty drafting stage, as the debate over institutions has shown.

The praesidium is now in effect operating as a drafting group. After the first discussion of a 'skeleton' outline treaty structure in October, it had been expected that the first full draft would be available in January. In the event, despite objections from many Convention members, Giscard announced that a series of draft treaty articles would be put before the Convention's meetings from February to April. The possibility has been left open that further working groups or committees of the Convention may need to be set up if more in-depth debate and discussion is necessary to come to agreement on these articles than can be provided in full sessions of the Convention. All these timing and presentation issues are, and will continue to be, one aspect of the wider political manoeuvring that will continue to the end of the process.

Progress So Far

The Convention has managed to focus and take forward the future of Europe debate in many areas, including tackling some issues that previous IGCs, including those leading to Nice and Amsterdam, could not resolve. Even in the period since the Laeken declaration, the terms of the debate have shifted, with broad acceptance now that the EU should have a clear and accessible constitution (albeit in legal terms a constitutional treaty). This will be a single Treaty with an end to the pillar structure.

First Articles

In an important step, the Praesidium presented the first 16 articles of the draft Constitutional Treaty to the February 6/7 meeting of the Convention – the first public draft of the first part of the European Union constitution. However, as these were presented for the first time at the meeting, a substantial debate was scheduled for the end of February with

written comments and amendments in the intervening time. Immediate comments (through the 'blue card' procedure of one minute, unscheduled interventions) on the floor of the convention emphasised the difficulty of responding with written comments in the time limit of one week, not least if national parliaments were to be consulted. The UK government representative, Peter Hain, responded particularly sharply claiming the draft ignored results of the working groups and contained unacceptable language. However, it seems in part the UK's concern here – and of some others – is to ensure the language of the draft emphasises the bottom-up procedure by which the member states give powers to the Union, rather than the other way round.

Simplification, efficiency and democracy

A number of steps have been taken in the direction of simplifying EU structures and procedures. This may impact positively both on efficiency and on democracy, though as has been pointed out in Convention debates, simplification per se is not always positive in democratic terms. It may aid comprehensibility but in at least some cases can impact negatively on scrutiny, debate and on taking due account of diversity. Moreover, important though this progress has been, it has not yet been either broad or deep enough to provide a strong basis for an effectively functioning and democratic enlarged EU – this is where the institutional debate will be vital.

The Convention has reached a broad consensus on the major and previously controversial steps of giving the EU a single legal personality, having a single treaty and merging or abolishing the three pillars, even while retaining different decision-making and institutional powers in the area of foreign policy and defence. The Convention also proposes reducing the number of decision-making instruments from 15 to 6, with the two main legal instruments to be known as laws and framework laws – an important simplifying step both in operational terms and for comprehensibility. There is broad agreement on abolishing the co-operation procedure for decision-making, and making co-decision between Council and Parliament the normal procedure, though with exceptions yet to be decided. Extension of co-decision will strengthen the European Parliament as a full co-legislator.

Other important steps in terms of democracy and rights include: a broad consensus on incorporating the charter of fundamental rights into the treaty (though with the UK still having some difficulties here); enabling accession to the European Convention on Human Rights; and proposals to give national parliaments a new role in monitoring subsidiarity, through an early warning 'yellow card' system. How effective the latter will be is open to debate. It is anticipated that the threshold will be set at about one-third of national parliaments. If this number questions a Commission proposal, the Commission will reconsider but not necessarily change its proposal. If some parliaments issue a yellow card but they are fewer than one-third, or if the Commission subsequently does not change its proposal, this system may impact negatively rather than positively on national European debates in countries which challenged the proposal. However, it will underline the responsibility of national parliaments to monitor what is going on in Europe and will make it more difficult

for national politicians to deny knowledge or any responsibility for European laws that eventually come through⁴.

The Convention also appears to agree broadly that to meet basic democratic standards, and to allow parliaments to do an effective job in monitoring national governments, the Council when in legislative mode should meet fully in public. Although the Seville Summit made some steps in this direction, it only proposed opening the Council at the start and end of the legislative process. The Convention looks likely to insist, as it should, on a completely open legislative Council. This is an important and necessary step forward in terms of democracy and transparency. Details have yet to be agreed on how this will operate, but discussion is focused on the establishment of a separate legislative Council, with ministers on the Council having the authority to agree to legislation across the full range of areas, accompanied probably by different sectoral ministers as necessary.

All these proposals, and the consensus around them, demonstrate the effectiveness of the working groups in taking forward the work of the Convention. The least successful working group in this regard has been the complementary competences working group, whose report was received rather badly by the Convention. The Convention members did not like the proposal to redefine complementary competences as 'supporting measures' nor the tendency in the working group report towards a catalogue of competences, something the Convention had already rejected.

Consequently, new proposals on competences have come from the praesidium in its first draft 16 articles of the Treaty. The draft articles on competences broadly adopt three main categories of exclusive competences, shared competences and supporting actions. They also, however, designate separately the Union's role in economic policy coordination and foreign policy. To avoid a rigid category of competences, the list of shared competences are not exhaustive and detailed descriptions are to be included in part 2 of the Treaty. There does appear, from earlier discussions, to be broad agreement on the need for a continuing 'flexibility' clause on competences, and a draft is proposed as Article 16. In the three broad areas of the economy, freedom security and justice, and foreign policy and defence, the results of the working groups and Convention discussions have been mixed.

Economic governance

The economic governance working group reflected too diverse and opposing a range of opinions to come to a consensus beyond maintaining the status quo. This is not too surprising since the reported debates of the working group mirror the ongoing economic debates and approaches across the member states, and the current status quo represents the best compromise achievable. Further adding to the diversity of views in the working group were the views of the candidate countries who, among other points, were reluctant to see

⁴ It has been reported that the chair of the national parliaments working group, Gisela Stuart, intends to make a further proposal to the Convention of a 'red card' system whereby if two-thirds of national parliaments raise objections, a proposal will be dropped. This is unlikely to be agreed since this would actually make national parliaments a new institution in terms of European lawmaking, while the Convention has been very reluctant to create any new institutions (and an early British idea of a third chamber of national parliaments received no support).

formalisation of the euro group while they remain outside the euro. Nonetheless, one issue that Giscard d'Estaing is expected to bring back to the Convention is whether there can be some move to QMV for areas of taxation concerned with open competition – corporate tax and VAT principally. This will be strongly resisted by a small group including Ireland, Sweden, the UK and Estonia.

The social working group was more successful in reaching a consensus although principally through a relatively narrow focus on key values and objectives to be entered into the treaty, reaching no agreement to change or further limit the use of the veto on social issues, a highly contentious area, but agreeing that the open method of coordination (a soft, non-legislative approach questionable in its effectiveness) should be given a treaty basis. Nonetheless, the draft Treaty articles on values and objectives presented to the Convention on 6th February did not include all the key aims set out in the working group report – notably excluding equality from the values in Article 2. Further debate over this can be expected at the end of February meeting.

Freedom, security and justice

Convention discussions on freedom, security and justice have been welcomed as important steps to strengthen the EU's effectiveness in this area, essentially through communitising this policy area (although commitment in this direction was already given in Nice), and also allowing for mutual recognition of judicial decisions (both civil and criminal), through agreeing to apply QMV in the area of asylum and immigration and through strengthening the powers of Europol despite its weak performance to date. However, questions and criticism have been raised. As the fight against terrorism demonstrates, security issues are European and international, not least with the EU's open internal borders, yet national differences in law and policing remain large making coordination difficult. There are also questions as to whether there has been adequate balancing progress on civil liberties and democratic controls – rights issues were essentially left to the separate working group on the Charter of Fundamental Rights. Much remains to be done if different views and approaches including on privacy, criminal procedures and police powers are not to undermine both cooperation and public trust in that cooperation.

External action and defence

In the areas of external action and defence, progress has been relatively limited. The important issue of better coordination across the full range of external policy areas, from foreign policy to environment, trade, development and so on, was raised but with few substantive proposals as to how to make any serious improvement. The principal focus in the external action working group remained on foreign policy, with most attention given to the proposal to 'double hat' the Solana-Patten position. However, this is contingent on and interconnected with the wider institutional debate (and is discussed further below). Moreover, as repeatedly illustrated in the current Iraq crisis, institutional measures alone cannot resolve the lack of political will to come to a common position and overcome diversity of view. Agreement was also reached on the need to include in the constitutional treaty a

statement of values and principles guiding international action. This is welcome but again its value in practice depends on real progress in a common foreign policy.

In the area of security and defence, there was broad consensus in the Convention on updating the Petersberg tasks, and also on establishing a solidarity clause for mobilising EU action in the case of terrorist attack. But the Convention is now divided over how or whether to allow for flexibility in crisis management and collective defence, enabling smaller groups of countries to go ahead. However, if agreement cannot be reached on this, such enhanced cooperation will be likely to take place outside of the treaty and EU structures, so incentives for a compromise are strong here.

Substantial Progress

The Convention has covered a lot of ground in the first 11 months of its work and many of the conclusions and areas of consensus are to be welcomed. But the overall results will inevitably depend critically on decisions taken over power and accountability, which will impact on whether the Convention's final proposals promote the major changes in efficiency and democracy that the enlarged EU requires.

3. The Institutional Struggle for Power

At the heart of the institutional debate, is the issue of location, exercise and control of executive power. In terms of legislative power, it is already apparent that the European Parliament will see some increase in its powers, in particular with an extension of co-decision to almost all areas. It is also apparent that there is considerable consensus that in its legislative mode the Council should meet in public.

The Convention has also to look further at the question of qualified majority voting. Some Convention members have raised the issue of moving to a simple double majority voting system - a dual majority of populations and states. Such a system has the advantage of simplicity, transparency, and of taking full account of the twin sources of legitimacy in the EU, people and states. However, this will be strongly resisted by some, especially the larger member states. Countries like the UK and Spain are already warning against revisiting the deal agreed at Nice. The Nice deal was certainly hard to reach but also resulted in a system that is more complex, more difficult to explain to the outside world, and that may make decision-making yet more difficult in an enlarged EU. The Convention should insist on reopening the issue. But it is the location of executive power in both the Commission and the Council that both gives the EU its unique institutional structure and that underpins the current battle over the institutions in the Convention.

While the Convention has only just begun to tackle the key institutional issues, a wider debate around the Convention, in part driven by British, French and Spanish proposals for a permanent President of the European Council, has been taking place over the last year. In January, a joint Franco-German paper⁵ on institutions took this and other ideas forward. Faced with a cautious and descriptive document from the Convention secretariat, the Con-

⁵ Contribution franco-allemande a la Convention européenne sur l'architecture institutionnelle de l'Union, CONV 489/03 (The European Convention 2003).

vention's first major session on institutions (at end January 2003) focused its debate on the Franco-German institutional proposals⁶. These most notably proposed a European Council President, appointed by the European Council members, a Commission President elected by the European Parliament, and a European Foreign Minister, answerable to the Council but also with a position within the Commission (a merging or double-hatting of the Solana/Patten roles).

This institutional debate provoked the sharpest and clearest split and difference of opinion within the Convention in its work so far. It is a split that not only pits the federalists against the intergovernmentalists, but most notably divides the larger countries from the smaller countries, together with the European Commission and Parliament representatives. Until now the EU has managed successfully, despite occasional tensions, to reach an institutional and organisational balance that took account of both sovereignty and size. But the creation of an enlarged EU of 25 states, where 6 states will account for around three-quarters of the population, raises serious challenges as to how to re-engineer that balance.

It is the agreement of Germany to a compromise with France and to accept the idea of a European Council President (and with an absence of consultation with smaller countries), that has ensured this large-small division has come to the fore. The five larger EU member states, together with Poland, and so far with the support of only two smaller member states, Denmark and Sweden, are putting their weight behind the Franco-German proposal for a European Council President. This is fiercely contested by a considerable majority of the Convention members, with most so far arguing to retain the rotating presidency, but with some supporting the idea of 'double hatting' the Commission and European Council President. These are the three options which the Convention will have to continue to debate.

This divide is also aggravated by the fact that many in the Convention felt that France and Germany were trying to present a *fait accompli*, a compromise agreed outside the Convention that the Convention should accept. A contribution from the British government representative, Peter Hain, further exacerbated this by hailing the Franco-German proposal as a 'breakthrough', and treating it as an already accepted and acceptable compromise. Clarity of discussion of the issues is also obscured by the fact that almost all members of the Convention now assert that they do not want to change the institutional balance but only to strengthen all institutions. This 'political correctness' should not obscure the reality of different positions and views. In fact, it is clear that some would like to see a relatively strong Commission, and others would like to strengthen the Council at the expense of the Commission. Executive power is distributed between the two - it is a zero-sum distribution: greater executive power to the Council inevitably implies a weaker Commission and vice versa.

A President of the European Council?

The arguments for and against a new President of the European Council rest both on the perceived weaknesses of the current rotating presidency and on the actual functions of the

⁶ For a description of the debate see P. Norman (2003) "The Franco-German paper on the future of Europe: a Convention Postscript" Eurocomment Briefing Note.

new President⁷. It is the functions, or the precise job description, of this new position that is in many ways the most important issue in assessing its impact - and may be where any compromise lies on this question.

The Franco-German proposal is brief in its description of the new President. It describes two main roles: preparing, chairing, and following up the decisions of the European Council; and representing the EU on the international scene (without, it says, prejudice to the competences of the Commission and its President, or to the daily conduct of foreign policy by the EU Foreign Minister). In a recent speech (held at CEPS, January 22), Peter Hain suggested a more detailed job description. According to Hain, the President would develop and deliver a strategic agenda for the EU, lead a team of chairs of sectoral councils, prepare the agenda for European Council summits, shape the conclusions and do the pre-summit tour of capitals. He/she would propose a multiannual strategic agenda to the European Council jointly with the Commission President and chair the General Affairs Council. The President would also be the external face of the EU at heads of state level (and according to Hain recommend the appointment of the Foreign Minister, though the Franco-German proposal gives this role to the European Council in consultation with the Commission President).

Supporters of the new President idea argue that there is no reason why it should cause any more or different conflict between Commission and Council than the current rotating presidency - Giscard in his conclusions to the January Convention session asked why a stable rather than a rotating presidency should cause more conflict. This is to rather deliberately understate the differences - relative to the rotating presidency, the new President would be a full-time and semi permanent position (whether 2 1/2 or five years). Moreover, the job descriptions above suggest a number of potential problems of conflict between Commission and Council roles.

Overall, it appears that the President of the European Council as proposed is intended to provide strategic direction, coordination, continuity, a presence on the world stage at heads of state level, and, at least implicitly, increased democratic legitimacy by giving the European public a clear political figure in charge of the EU's strategic direction. Questions arise over all these potential roles and proposals⁸.

Strategic Direction

Overall strategic direction is certainly the role of the European Council. But in terms of any more detailed annual or multiannual strategic agenda, this would normally be drafted by the Commission for presentation to the European Council and European Parliament (although the Seville conclusions already point at a possible weakening of the Commission role here). If, as Hain suggests, this detailed agenda is done jointly between the Commission and Council Presidents, this is a recipe for rivalry, turf fighting and confusion. How would the two secretariats, Council and Commission, produce drafts of this agenda, and if the full

⁷ For a detailed assessment of different presidential models see W. Coussens and B. Crum (2003) "Towards effective and accountable leadership of the Union" EPIN Working Paper no. 3.

⁸ The following arguments draw on and extend my earlier note K.Hughes (2003) "Franco-German Plans for a Dual Presidency EU – a short comment" CEPS, Brussels.

college of Commissioners approved a draft, how would the Commission President then negotiate or discuss or agree a final version with the Council President? In general, there is a risk of considerable conflict over policy and strategy development, with the Commission emphasising its right of initiative while the Council President emphasises his control of strategy. How will the powers and authority of the two Presidents be delimited? Are the two Presidents equal, or will the new European Council President have the final say - if there is a hierarchy with the European Council President at the top, this would clearly be a major shift in the balance of power between the Commission and Council in the latter's favour.

Coordination and Continuity

This potential for conflict and overlap also arises in the question of coordination and follow up. It is already the role of the rotating presidency to coordinate across the different agendas and meetings of the various different Council of Ministers, and prepare European summits. In practice, much of this coordination is done not only by the civil service of the country holding the presidency, but also by the Council secretariat together with the Commission secretariat, not least since summit conclusions usually make many requests to the Commission. Replacing the rotating presidency would mean that the contribution from the host country's civil service is no longer made. This would put more work into the hands of the two Brussels' secretariats, possibly leading to demands for expansion of the Council secretariat, which in turn could add to institutional rivalry. Much of the coordination and follow up is, anyway, the task for officials and not one that obviously demands a full-time President.

Informal but long-standing organisational practices will also be likely to change under a permanent President. While the rotating presidency is responsible for drafting summit conclusions, the Commission usually makes a substantial contribution working with the presidency. With a permanent President of the European Council, this may no longer be the case - not least if the new President is trying to assert his/her authority and define a full role. If the job of the rotating presidency is considered to be too onerous to be done on a part-time basis, the Convention should also look in more detail at how to change and, as necessary, limit the content of the job⁹. The pre-summit tour of capitals is one important example. With 25 or more member states, the pre-summit tour will certainly become more demanding and time-consuming - as, in general, will all consultations and discussions carried out bilaterally across the member states. But enlargement will frequently demand new solutions. It should be possible for the pre-summit tour to be shared across more than one person. For example, some of those in favour of a permanent President suggest there might be some form of rotating vice presidents. Such vice presidents, or indeed the Secretary-General of the Council, could play a role in the pre-summit tour of capitals.

Lack of continuity in the EU's agenda is one criticism made of the rotating presidency. This criticism is rather exaggerated. Each new presidency can at best hope to add or em-

⁹ A number of ideas for restricting the job content are set out in H. Wallace and P. de Schoutheete 2002 "The European Council" *Notre Europe*, Research and European Issues no. 19.

phasise one or two items on the EU's agenda in its six months, possibly at best adding five percent to the overall rolling agenda. The rotating presidency has not impeded major political developments, such as the internal market, or the euro, or enlargement itself, although in foreign affairs and the General Affairs Council there may be a stronger case for continuity. The role of the new President will certainly depend in part on how the different formations of the Council of Ministers are organised. In fact, supporters of the new President of the European Council have made a range of suggestions as to what happens to chairs of the various Council of Ministers.

In the Franco-German proposal, it is suggested that the Secretary-General of the council would chair the General Affairs Council, whereas Hain suggests this would be the task of the President – the Commission suggests this post would continue to rotate (as in their view would the President of the European Council)¹⁰. The Franco-German proposal also supports the idea of the new EU Foreign Secretary chairing the external affairs Council, and argues that Ecofin, the Eurogroup, and the Justice and Home Affairs Council should all appoint/elect chairs for a period of two years. The remaining sectoral councils would keep a rotating presidency. This sort of organisation of the Council in itself would result in the delegation and dispersion of workloads, including summit preparations. However, it is unlikely to be a sufficient compromise, for those who support keeping the rotating presidency overall, that the least important and least visible councils are where rotation is kept. Moreover, such a variety of approaches to running different Council formations does not lend itself to simplicity or comprehensibility. British ideas of having a four country team presidency for two years, below the permanent President or Chair, are also circulating although again these do not promote simplicity – and also suggest that rotation below the level of the chair or President is not in fact problematic.

A further contribution to institutional rivalry may also arise, depending on the reforms to the Council of ministers. If Council chairs are appointed for longer periods of time, and, as Hain suggests in his job description, the European Council President then leads this team of Council chairs, this may start looking rather like the idea of a so-called 'executive Council', originally floated informally by the British in early 2002. Such an 'executive Council' could potentially parallel and start to rival the College of Commissioners.

Presence on the World Stage

Where there is a clear lack of continuity due to the rotating presidency is in its external representation duties (with the added concept of the troika, redefined at Amsterdam, causing further confusion). The supporters of a permanent President of the European Council argue that this will finally give the EU a clear and visible presence internationally. The new President will, it is argued, have the authority to operate at heads of state level on the global stage, and will reinforce the development of the Common Foreign and Security Policy.

There are a number of difficulties here, not least among which is the fact that the EU will have two Presidents, both of whom will have international roles and be visible on the

¹⁰ "For the European Union – Peace, Freedom, Solidarity" Communication of the Commission on the Institutional Architecture, COM (2002) 728 final.

world stage, since the Commission deals with many areas of international policy. Again there is the possibility for confusion, overlap and rivalry. Just as the EU is finally to have one single legal personality, it seems perverse to go in the direction of two high-profile Presidents. Moreover, while some on the British side have argued that the President of the European Council could in fact be referred to as a chairperson, somehow to indicate the absence of competition with the Commission President, this is not consistent with the desire to have a dominant international figure (nor in fact is it an adequate solution linguistically - since in a number of European languages the two words are the same).

Relating to the EU Foreign Minister

There are also a number of questions as to how the new President would relate to the proposed new European foreign minister – which also depends on the role and location of such a foreign minister. Many have argued for ‘double-hatting’ the Council and Commission (Solana/Patten) foreign policy roles so the new High Representative has a position in both Council and Commission. The Franco-German proposal for an EU foreign minister goes down this route but tilts the balance towards the position being located in the Council – with some participation in the Commission but not necessarily as a full member (the UK too emphasises the need for this post to be essentially in the Council).

The convention has yet to look in detail at the options here, but unless there is a genuine double-hatting with a location in both institutions, there is a risk that the new foreign minister in fact really replaces the High Representative position without a full role in the Commission. In this case the Commission would still need once again a separate Commissioner to deal in particular with the large aid programmes, leading to the same coordination problems as before. However, if it is a genuine double-hatting, then the single foreign minister will be answerable to both Presidents in the dual President model and it will be necessary to clarify and explain the different international roles of the three of them, in ways that have not yet been done.

Absence of Political Will

But the biggest difficulty on the external side lies with the ongoing weakness of the EU's attempts to create a genuine common foreign policy. It is widely agreed that the real issue here is the absence of political will, rather than the details of the institutional structures, which cannot in themselves create the necessary political will. While Presidents and prime ministers from the member states, particularly the larger ones, continue to insist on their own independent roles and voices on the world stage, then a new President of the European Council will not be able to fulfil the role of representing the EU internationally. Nor is it clear why the existence of such a new President should make it easier to forge consensus among the member states, or to go further than Solana has been able to go so far in his role as High Representative. As the debacle of European splits over Iraq demonstrates, on the most important, urgent and controversial issues, the EU has neither a common policy nor even the political will to consult and coordinate to at least minimise the display of difference.

The recent public letter from eight European prime ministers and presidents (five EU and three candidate countries) to the Wall Street Journal (January 30 2003) – two days after an EU common position had been agreed at the General Affairs and External Relations Council - followed by the statement of the ‘Vilnius 10’, not only publicly demonstrated deep European divisions, but more seriously perhaps demonstrated a complete lack of political interest in either working towards and sustaining at least a minimum common European position or of even undertaking a basic minimum of communication and coordination with European partners (neither the EU Presidency nor the High Representative being informed in advance). In such a situation, a European President, just as Solana at the moment, would have little choice but to keep a low profile.

Majority Voting in Foreign Policy?

The Franco-German paper does move sharply ahead of the proposals of the Convention's external action working group on one issue - the use of qualified majority voting in CFSP. France and Germany propose that QMV could be used for all issues, with the exception of security and defence. There would not be a simple national interest veto, rather a country wishing to assert such an interest would have to take their position through the EU foreign minister and European Council President to the European Council (who would still decide on a qualified majority vote). This is a radical proposal – though one that may go too far for some, including the UK which puts the emphasis on sharpening constructive abstention. But even such a QMV proposal would not be able to overcome the damaging divides and confusion over Iraq that exist among the EU member states and candidate countries at the present time.

Authority and Legitimacy

It has been argued that the new President would have an authority and legitimacy which would enable him or her not only to deal on a par with figures such as Presidents Bush and Putin, but also to dialogue effectively with Europe's leaders in order to produce a consensus. The issue of the authority and legitimacy of the new European Council President also raises a number of questions, relevant not only to presence in the world but also to the impact on EU democratisation and legitimacy with the European public. Making the exercise of its executive power more democratic is one of the biggest challenges for the EU.

Although the Franco-German and British proposals talk of 'electing' the President by the European Council, the procedure proposed is in fact akin to that of an appointment. The current Commission President, Romano Prodi, was himself appointed through such a procedure. Yet in the case of the Commission, there is a widespread though not yet consensus view within the Convention, that this current appointment procedure gives inadequate democratic legitimacy to the Commission President. Whether the EU is to have one President or two, the appointment of a President instead of his or her genuine election conflicts with the need to increase democracy in the EU. Such an appointment follows the procedures of an intergovernmental organisation like the UN, but is inadequate in an organisation with such supranational and state-like features as the EU. Moreover, there is then a further question of who the President is accountable to. Is he/she only accountable

to the European Council meeting in closed session, or will the European or national parliaments be able to question and monitor the President's activities?

The authority of an appointed President will also be relatively weak, not least if the Commission President is in fact elected. The European Council President will in that case be an unelected, former politician (assuming he or she is chosen from the ranks of former senior politicians or prime ministers), while the new Commission President will be a high-level, current politician. Such a situation will not only affect the power balance between the two Presidents, it will also affect the authority of the European Council President both relative to his or her peers in the European Council and relative to other heads of states internationally. Under the rotating presidency, an acting Prime Minister chairs the European Council. An appointed President will not have the same authority and weight.

This relative lack of legitimacy could have a positive outcome if it contributes to underlining the fact that the new post is clearly seen as that of a European Council Chairperson not President, and if it contributes to a narrow and limited job description. But without the legitimacy of some form of election (beyond appointment by heads of state), it is difficult to see how the new President or Chair could have credibility in his/her international role. Moreover, if the President is to have a public profile within Europe as leading the strategic efforts of the European Council, then public credibility is likely to depend on a genuinely legitimate election procedure.

On current proposals, the new President of the European Council could in fact be a rather weak position, without the real elements of a full-time job – in competition with the Commission, the EU foreign minister and the member states over tasks and activities, with weak legitimacy with the European public, and weak authority in the European Council. Such weakness would not only be problematic in itself but also would encourage any holder of the position to engage in serious inter-institutional turf-fighting with the Commission in particular, in an attempt to strengthen the role. One route to stop or limit this competition and rivalry may be to try to limit and restrict the title and nature of the job – but this would then undermine the arguments for its creation in the first place. Nonetheless, it may be where a compromise will be attempted.

Who would fill the post?

The two Presidents approach also raises some difficult political questions as to who might be appointed to these posts. Some have suggested that, to calm smaller countries fears that the European Council President is a route to dominance by the larger countries, the first such President should be appointed from a smaller country. Whether this happens or not, it is unlikely to be politically acceptable that at any point both Presidents come from larger member states. A large country President in the Council position and a smaller country President heading the Commission could also exacerbate tensions and reinforce the current tendency for the smaller countries to emphasise the role of the Commission and for the larger countries to push for strengthening the European Council. A different question is whether the new European Council President could come from a member state not in the euro, when the euro is such a key EU policy and important to the EU's international pres-

ence. This may depend in part on when the new member states join the euro, but they may do so in 2006, the same year as the new treaty is likely to be in force.

Alternatives

There are two other choices for tackling the issue of the presidency of the EU. The first is to maintain the rotating presidency, in particular at the level of the European Council, as argued by many at the Convention, and, among others by the Commission in its institutional reform communication, and by the Benelux countries in a joint memorandum¹¹. Many of the weaknesses that critics point out in the rotating presidency could be dealt with by carefully delimiting the role and nature of the presidency. This would be in line with the initial proposals at the Seville Council to focus the European Council more on its core tasks and role. This could be reinforced by looking further at additional changes necessary in organisational methods consequent on enlargement, for instance by allocating more than one person the role of carrying out the pre-summit tour of capitals.

However, maintaining the rotating presidency does not tackle the issue of giving the EU a clearer presence on the international stage nor does it lead to a 'European strategy champion' pushing the strategic agenda forward. But both the international and the strategy roles could be fulfilled through the alternative proposal of 'double hatting' the Commission and Council Presidents, in the same way as is proposed for the European Foreign Minister. This proposal has the advantage both of giving a single clear presence on the international stage and of limiting and inhibiting institutional rivalry while promoting coordination. Under the current institutional system, it would be difficult for the Commission President to be the EU's international presence, even if the rotating presidency gave up that role, since CFSP remains predominantly intergovernmental. The 'double-hat' solves this problem without creating a problematic two-President EU.

At the same time, the proposals to 'double hat' both the President role and the Foreign Minister role do begin to break down institutional walls which could change the functioning of both institutions: this might result in the start of a move towards a single executive and secretariat. But the blurring of the more supranational and intergovernmental parts of the institutional structure could be politically problematic at the current time. The problems of institutional blurring through double-hatting lead convention members Andrew Duff and Lamberto Dini to propose a single integrated EU President, responsible for all executive activities, although since some executive powers remain within the Council this does overlap with the straight double-hatting proposal¹². Under their proposal, the President and Commissioners would be responsible for chairing a reduced number of executive councils while a separate legislative council could keep the rotating presidency. They propose the President could either be proposed by the European Council and then elected by the European Parliament or elected by an electoral college of national and European parliaments. However, either a 'double hatting' of the Commission President or an integrated EU President presupposes an effective reform of the Commission itself, in efficiency as

¹¹ Memorandum of the Benelux: A balanced institutional framework for an enlarged, more effective and more transparent Union. Brussels 4/12/02.

¹² A. Duff and L. Dini "A Proposal for a Unified Presidency" CONV 524/03.

well as in democratic terms. This must be a minimum requirement for moving to a ‘double-hatted’ President.

Reform of the Commission

The Commission fulfils many of the roles and functions of an executive, not least in its right of initiative, monitoring and implementation of EU rules and decisions, and in its remit to take into account the pan-European interest. Yet this quasi-governmental role is fulfilled on the basis of an indirect legitimacy, with key decisions on appointing the Commission President taken by the European Council, and subsequently endorsed by the European Parliament. This current system results in a relatively weak legitimacy to the European public, together with rather weak accountability before the European Parliament. It also acts to weaken the political control and authority of the Commissioners themselves over the Commission bureaucracy. This combination of weak legitimacy and weak political control contribute to ongoing difficulties in providing effective strategic leadership. Moreover, enlargement will further aggravate difficulties in providing effective leadership, if the reform of the Commission does not also include tackling the size of the college of Commissioners.

Democratisation

A first step in democratising the Commission in its executive role would be to elect the Commission President. While there is substantial support for such a move at the Convention, there is also opposition from some countries notably Spain who argue that such a move would politicise the Commission and make it unable to carry out its task of defending the common European interest. Countries such as France and the UK appear ready to compromise on this issue but only as part of an overall compromise including introducing the new European Council President.

Most attention is being given to the proposal of letting the European Parliament elect the Commission President, possibly subsequently endorsed by the European Council. A bolder step would be to move to direct elections by the European public - this could be done through the European Parliament elections, with each party grouping nominating its leader and so presidential candidate in advance. However, the weakness of trans-European political parties, and the absence of a real European political and public space, leads many to argue for a more cautious approach. An election by the European Parliament of the Commission President would still be an important step forward in terms of legitimacy. But different options need to be investigated further as to how, and from where, candidates would come forward and whether, how and over what time period they would campaign for the post, not least if the election is to be held immediately after the European Parliament elections, which would seem desirable. Choices here will impact strongly on how legitimate the new post is. If, for example, the European Council proposes 2 or 3 candidates for the European Parliament to choose between this would be a rather small step forward from the current situation.

A further democratic move - but one which goes beyond any political consensus in the Convention - would be for the Parliament to elect all the commissioners and not just the President. If the time is not yet right for such a bold step, an interim move would be to

allow the Parliament to endorse or reject commissioners individually. This would strongly increase the accountability of the Commission to the Parliament and ensure that not too much political power was concentrated solely in the hands of the Commission President. Such a move would also increase the political authority of the individual commissioners and of the college as a whole.

Politicisation?

Critics of the proposals to democratise the Commission argue that it would lose its neutrality and independence and become politicised and under the control of the majority party in the Parliament. Some argue that this could be avoided by ensuring that the Parliament must vote by a two-thirds or three-quarters majority to elect the President. But the reality is that the Commission is already politicised: the current Commission could be characterised as a grand coalition between Social and Christian Democrats. Electing the President would start to bring this politicisation into the light of day. Furthermore, one of the aims of electing the President would be to begin to open up a genuine political space at European level. Proposals to try to impede politicisation risk undermining this aim and limiting the democratic impact of the change. It needs to be recognised that democratisation and politicisation are two elements of the same thing.

What is necessary is to look at the implications of politicisation in terms of other necessary institutional changes. A crucial issue is how and on what basis, or following what guidelines, the college of commissioners is then appointed or elected – this will determine the extent and nature of politicisation. It may also certainly be necessary to look at competences such as the role of competition policy, for example, and whether this should be put in a separate agency. It may also be necessary to give serious consideration to the Commission's monopoly of the right of initiative in such a situation, even if it would remain the principal source of initiative.

A smaller Commission?

But these democratic reforms will be inadequate for enlargement if not matched by a reduction in the size of the college of commissioners. Collective leadership, effective policy coordination, and effective and democratic use of the Commission's right of initiative, will be increasingly difficult if the Commission keeps to the current system of having one commissioner per member state. A Commission of 10 to 12 commissioners would be both adequate and effective in terms of the portfolios the Commission covers and would provide for genuine collective political control of the bureaucracy, and genuine political accountability to the Parliament and to the European Council.

Such a small Commission would also contribute strongly to ensuring that the Commission retains its pan-European outlook and that commissioners represent only the European interest. It would be for the college of commissioners, as well as for the Parliament and European Council, to ensure that any action of a European commissioner driven by national interest would be unacceptable and a cause for immediate resignation. In such a system, this could be further reinforced by ensuring that each commissioner's cabinet (or group of political advisers) were chosen from all nationalities except that of the commis-

sioner. A move to a small Commission could then strongly reinforce its role as a pan-European body and remove many of the ongoing national influences and lobbying that continue today under the present system. A smaller Commission could still retain the principle of equal rotation across the member states.

While many of the larger countries appear to have doubts about electing the Commission President, many of the smaller countries, not least the candidate countries, are concerned at the prospect of not having a 'national' commissioner. Yet in the absence of both steps, the Commission will remain weak and it will be almost inevitable, especially if there is a new European Council President, that there is a further shift in the balance of power towards the Council. A larger Commission will not only be weak, but as it expands with enlargement, could threaten to begin to show some of the intergovernmentalism of the Council with national interests coming more to the fore. Larger member states cannot be expected to accept a strong Commission driven by national not pan-European interests where each commissioner (from each country) has an equal vote. The logic of the defining role of the Commission argues for a small Commission.

4. Conclusion

It became clear early on in the work of the Convention, that the crucial institutional debates were going to be left until the last. Finally, the Convention is now focusing on the fundamental issues of institutions, power and accountability, although some of the divisions and divides within the Convention may be exacerbated by the fact that a surrogate debate on institutions has been raging outside the Convention over the last year. This external debate resulted in the French and Germans presenting their proposals at an untimely moment for such a 'compromise' - at a point when the Convention members were first staking out in detail their positions and saw the Franco-German proposal as an attempt to impose a governmental, large member state compromise from the outside.

Nonetheless, the debate is now underway. The Convention must show that it can move beyond the Franco-German proposal to present its own solutions. If not, the enlarged EU will begin its work on the basis of an inadequate compromise - what Convention member Andrew Duff has called 'more a barter than a compromise'. It would also be a compromise that would suggest the Convention was in the end no better able than previous IGCs to deal with the major battles over institutional and executive power.

The Convention debates so far show clearly that the enlarged EU will rest upon the institutional 'triangle' of Commission, Council and Parliament. A fully federal solution, which would be simplest in terms of both democracy and efficiency, is not politically realistic or feasible. The fundamental question is, therefore, the balance of power across the institutions, and the efficiency and democracy with which power is exercised. Some important steps look likely to be agreed whatever the overall final outcome. These include full openness of the Council in legislative mode, extension of co-decision, simplifying the number of legal instruments, moving to a single legal personality and single treaty structure, and incorporating the Charter of fundamental rights.

A Weak Outcome

But despite such progress, a weak and inadequate outcome is possible, looking at the current institutional debates. If the EU ends up with two Presidents of the Council and Commission, and with conflict and rivalry institutionalised between the two posts, this will be damaging. If this is further combined with the retention of a large Commission with no substantial move away from the principle of one commissioner per member state, and with the retention of the complex Nice deal on qualified majority voting, then serious opportunities will have been missed to ensure effective and accountable strategic leadership and organisation of the EU.

A Strong Outcome

A strong and effective outcome, representing a real step forward, would be a situation where: the EU had one President, 'double hatted', presiding over both a reformed Commission and a reformed Council; QMV was replaced by a simple double majority vote; and a small, accountable Commission was in place. Such a scenario would also include the election of the President by an electoral college of national and European parliaments and stronger control by the European Parliament of the Commission as a whole and of individual commissioners.

In terms of external affairs, some form of 'double hatted' European Foreign Minister is conceivable in either scenario. Increased use of qualified majority voting would also represent an important step in CFSP. But achieving the Laeken ambitions of giving the EU a real role and presence on the global stage requires a step change in political commitment and will that is not apparent across Europe today.

There are some hard debates and bargaining ahead in the Convention. Some supporters of the Franco-German compromise argue that it is the only route to a deal. Some others consider pessimistically that the Franco-German compromise although a bad one will represent the basis of the final deal – yet the debates so far do not suggest this is acceptable. Others are both more optimistic and more confident in the political powers of the Convention to work through to a better final deal. The political battles ahead will show which group is right and whether the Convention succeeds in its task.