

The European Convention

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At the Laeken European Council (14 and 15 December 2001), Belgian Prime Minister Guy Verhofstadt presented a draft declaration defining the objectives and proposing a working method. The governments were divided. Only the founding countries were determined to move forward, although they disagreed on the federal destiny of the united Europe. The others were hesitant, fearing the creation of a political entity dominated by the big countries. Britain wanted to go only as far as strengthening the Council of Ministers, as did Spain and the Nordic countries. Finally, the lengthy Laeken Declaration on ‘the future of the European Union’ was adopted and annexed to the Presidency conclusions.

‘The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world. In order to address them a number of specific questions need to be put.’ The Declaration goes on to pose several sets of questions grouped under the headings ‘a better division and definition of competence in the European Union’, ‘simplification of the Union’s instruments’, ‘more democracy, transparency and efficiency in the European Union’ and ‘towards a Constitution for European citizens’.

In order to provide answers to these questions, the Council decided to convene a Convention. But there was no question of the Council’s according it the status of a constituent assembly. The Convention would have the task of preparing the future Intergovernmental Conference (IGC) by providing it with a final document which could include either various options or recommendations if a consensus was secured. This text, together with the outcome of national debates on the future of the Union, would ‘provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions’.

The Declaration set out the composition and working methods of the Convention. The Council appointed Valéry Giscard d’Estaing, former President of the French Republic, as Chairman of the Convention, assisted by two Vice-Chairmen: Giuliano Amato, former President of the Italian Council, and Jean-Luc Dehaene, former Belgian Prime Minister. In addition, the Convention would consist of 15 representatives of the Heads of State or Government (one from each Member State), 30 members of national parliaments (two from each Member State), 16 Members of the European Parliament and two representatives of the European Commission. The 10 countries applying for accession would be represented in the same way and would participate in the discussions but would not have any power to block a consensus. The Convention would elect a *Praesidium* (Bureau) consisting of the Chairman, the two Vice-Chairmen and nine members: three representatives of the governments holding the Council Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives. The *Praesidium*, together with the Chairman, would serve to lend impetus to the Convention. In order to widen the debate to involve all citizens, contributions would be made to the Convention by organisations representing ‘civil society’ (the social partners, the business world, non-governmental organisations, academia, etc.). The Convention would begin its work on 1 March 2002 and was expected to complete it in one year. During this time, the Chairman of the Convention would be expected to give an oral progress report at each European Council meeting and take the views of the Heads of State or Government at the same time.

The Convention’s work was directed with much authority and skill by the Chairman, Giscard d’Estaing, who, being in contact with the governments, was able to judge what would be acceptable to them and thus guide the discussions towards realistic solutions. He organised the work in three stages:

there was a listening period which lasted until September and enabled the members of the Convention to express their views and acquaint themselves with the expectations emerging from the forums organised in the various countries and from interested bodies. The Convention was accommodated on the premises of the European Parliament in Brussels. The debates were public and were relayed by the media. The time from September to December was a period of study. Eleven working parties were set up to cover the various fields: subsidiarity, Charter of Fundamental Rights, legal personality of the Union, role of the national parliaments, additional areas of competence, economic governance, external action, defence, simplification of procedures, liberty, security and justice, and social Europe. The reports of the working groups were debated in monthly, then bi-monthly, plenary sessions. Finally, the stage of proposing and finalising a draft text spanned the period from January to July 2003.

The most serious confrontations concerned institutional questions. Outside the Convention, several large countries staked out their positions. Jacques Chirac, Tony Blair and José María Aznar called for a permanent European Council President, a European foreign affairs chief and a slimmed-down Commission, whereas the Germans had a preference for strengthening the President of the Commission, as did the small countries who feared collective rule by the big countries. The three Benelux countries wanted a Commission President elected by the European Parliament who would chair the Council of Ministers. The European Parliament wanted its powers and those of the Commission to be strengthened. Commission President Romano Prodi argued for a supranational organisation and had a complete plan drawn up, a highly federalist concept known as ‘Penelope’ which was prepared on the margins of the Convention and appeared to compete with it, but it was not taken into consideration.

In the Convention, Giscard took the initiative on 28 October 2002 to present what he considered to be the bare bones of the future constitutional Treaty. Because of the need for greater effectiveness of the institutions and the impossibility of going as far as federalism, Giscard thought that the only acceptable solution was to maintain the ‘institutional triangle’ — an original feature of the Community system — and to strengthen its three sides: Parliament, the Council and the Commission. This outline plan was favourably received by the Convention, although the practical arrangements that it envisaged were the subject of lively discussions.

Over the same period, the climate of the Convention changed with the arrival of several foreign ministers who would henceforth represent their country: Joschka Fischer for Germany, Dominique de Villepin for France, followed by others. In particular, President Chirac and Chancellor Schröder drew closer together in their views and inspired joint proposals on security and defence, justice, economic governance and the institutions: a permanent President of the European Council (sought by France), a Commission President elected by Parliament taking account of the European elections (sought by Germany), a Foreign Affairs Minister who would also be a Member of the Commission, separation of the legislative and executive tasks of the Council. These proposals took the Convention by storm, but they also attracted some criticism. The representatives of the small and medium-sized countries among the Fifteen and all the candidate countries demanded equality between Member States, maintenance of the Commission in its present form but enlarged to include a representative of all the countries in the Union and retention of the rotating Presidency of the Council. To bring matters to a close, Giscard published his own institutional proposals on 22 April, which were subsequently adopted or amended by the *Praesidium*. In broad outline, the text provided for a full-time President of the Council elected for a period of several years, a Minister for Foreign Affairs who would at the same time be a Vice-President of the Commission, calculation of the qualified majority in the Council so that it would include a majority of Member States and a specific proportion of the population of the Union (66 %), and a Commission reduced in number, the President of which would be elected by the European Parliament.

This plan was aimed at establishing a balance between the big countries, which have the largest populations and are the biggest contributors to the budget of the Union, and the other countries, which are more numerous but have smaller populations and are generally net beneficiaries of Community aid. This arrangement suited Germany, France and Italy, but Spain and Poland stood to lose the excessive advantages they had secured from the Treaty of Nice. The other countries — medium-sized and small — were in a similar position, and they wanted to retain the present system of weighting of votes in the Council. The ‘Nice group’ also opposed the permanent Council Presidency, since they felt that it might weaken the Commission and its President. Finally, they were mistrustful of the ‘enhanced cooperation’ advocated by France and Germany, which would enable some countries to move faster than the others. Other criticisms were voiced. Romano Prodi felt that the draft text lacked ‘vision and ambition’. Members of the European and national parliaments were not entirely satisfied but supported the draft. Britain, which Giscard had to handle with kid gloves in order to secure its acceptance of the Treaty, played a double game, accepting the institutional reforms but also supporting the ‘Nice group’ so that they would not be alone in the defence of their ‘red lines’ (maintaining unanimity on foreign policy, defence, tax, budgetary resources, coordination of economic policies and criminal justice). France, Germany, Britain and the Netherlands wanted unanimity in the determination of budgetary resources. France, along with Britain, insisted on unanimity in foreign policy, whereas Germany favoured majority voting. The Germans were keen to retain the veto on immigration policy and the French on the ‘cultural exception’ in EU trade policy and on the agricultural policy.

The government representatives conducted themselves increasingly as though they were already at the Intergovernmental Conference (IGC) stage, something which was not acceptable to the European Parliament and national parliament delegates making up three-quarters of the Convention. It was on them that Giscard d’Estaing then relied. The discussions took on heightened intensity in early June. There was no longer any question of retaining the Treaty of Nice, since the Convention was there to put forward a replacement solution. In order to win over the last remnants of opposition, Giscard promised that, with regard to institutional reform, the draft Constitution would not become effective until after the European elections in 2009. Following numerous amendments and compromises, the spirit of the Convention finally won the day and the draft text was adopted almost unanimously (98 delegates out of 105) on 13 June. It was not a catalogue of options for the Intergovernmental Conference, but a complete, structured draft which had to be considered in its entirety.

Feeling that the result was not perfect yet went beyond all expectations, Giscard d’Estaing submitted the text to the European Council meeting in Thessaloniki on 20 June 2003. The Council thought it ‘a good basis for starting in the Intergovernmental Conference’. But there was a problem. The first and second parts of the draft had been finalised (the Union’s objectives, institutions, competences, democratic life of the Union, finances, Union membership and Charter of Fundamental Rights), but there had not been enough time for the third part (policies and functioning of the Union) and the fourth part (general and final provisions) to be finalised. For that reason Giscard asked for an extension of the mandate for the Convention but was granted only one additional month on condition that, for the part relating to the various policies of the Union based on the provisions of the preceding Treaties, it would involve ‘purely technical work on drafting’ so as to take account of the new institutional arrangements, although the members of the Convention would have liked to introduce substantive amendments, in particular with regard to the extension of voting by qualified majority.

The Convention met again in early July. The Members of Parliament secured the adoption of some adjustments. Then, in Rome on 18 July 2003, Giscard was able to submit the complete draft to Silvio Berlusconi, President-in-Office of the Council, who would open the Intergovernmental Conference (IGC).

In all, the Convention on the Future of Europe marked a crucial stage in the building of the European

Union. Over 200 eminent and representative figures (members and alternates) from 28 different countries spent over a year publicly debating subjects which were often delicate, overcame their differences and were finally able to adopt a joint text. It was a decisive step forward in the democratisation of the integration process in Europe and in the formation of a true European spirit, despite some manifestations of reluctance which might emerge during the Intergovernmental Conference.