

## Andrew Duff, The Constitution takes shape

**Caption:** In November 2003, Andrew Duff, European Parliament representative at the European Convention, outlines what is at stake for Member States and for the European Union institutions at the 2003–2004 Intergovernmental Conference (IGC).

**Source:** The Federalist Debate. November 2003, n° 3. [s.l.]: Einstein Center for International Studies.

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**URL:** [http://www.cvce.eu/obj/andrew\\_duff\\_the\\_constitution\\_takes\\_shape-en-0b346933-9685-455e-af56-59cd9058ed24.html](http://www.cvce.eu/obj/andrew_duff_the_constitution_takes_shape-en-0b346933-9685-455e-af56-59cd9058ed24.html)

**Publication date:** 05/09/2012

## The Constitution takes shape

*Andrew Duff*

The European Convention closed its doors on 10 July, and its president, Valéry Giscard d'Estaing, delivered the final draft treaty establishing the Constitution for Europe to the chairman of the European Council, Silvio Berlusconi. There then followed, during the summer, a 'cooling off' period of sober reflection on the outcome of the Convention before the Intergovernmental Conference (IGC) opened on 4 October.

The Italian presidency declared itself in favour of a short, sharp and definitive IGC that would accept the work of the Convention as a package deal. Certain other governments, however, did not take long to strike their own alternative postures. An early trawl around national capitals by Italian foreign minister Franco Frattini suggested that the original six member states of the European Community will be able to stick fairly comfortably with the Convention's draft. The Spanish will grumble about the loss of the advantage they gained in the Treaty of Nice with respect to voting weight in the Council, but they are not expected to block agreement on the constitution if they continue to be well placed to push up the size of the EU budget when it is next renegotiated both in 2006 and 2012.

Some smaller member states — Austria, Finland, Portugal and Sweden — feel themselves to have been rather overwhelmed by the dynamics of the Convention and can be expected to try to assert themselves at the IGC, especially in continued opposition to the proposal for a full time president of the European Council. But their misgivings are more about esteem than substance, and they would do themselves a great disservice in the longer run if they were to block the constitutional package deal prepared by the Convention.

The ten acceding states, mostly small, find themselves in a similar position. For them, the Convention was a rude awakening to the facts of life of EU politics. It was natural that they should resent the way that the stable and prosperous Union they thought they were joining turned out to be in the middle of a constitutional foment, an economic depression and a savage dispute about transatlantic relations. They discovered in the Convention dimensions to EU membership that had been partially hidden from them in the accession negotiations, notably in the field of security and defence. If they had been in any doubt about the importance of the supranational institutions in the scheme of things European, their time in the Convention dispelled it. Poland will support Spain in the pitch for more EU money and for a return to their over privileged voting weight of Nice. And the Baltics will support Britain in clinging to the national veto on tax matters. Overall, however, the new member states will welcome the period of stabilisation that the new constitution offers.

### **The British difficulty**

The only real obstacle to the constitutional settlement that Europe needs is the United Kingdom government, whose White Paper on the Convention and the IGC was published in early September. The document suffers from being partial, narrow and complacent. It rejects the constitutional character of the draft treaty. It still finds it difficult to accept that the Charter of Fundamental Rights is to become binding. It insists that the Constitution does not involve any 'fundamental change' despite the many innovations, some of them very radical, agreed by the Convention.

Confusingly, the British government claims that the pooling of sovereignty strengthens the independence of the 'nation State'. It ignores the crucial role of the European Commission in identifying the common European interest. It is silent on the strengthening of the powers of the Commission, for example, with respect to the multi annual programming of the Union's work, and says nothing about the election of the Commission President by the European Parliament. The UK appears not to know that the new Foreign Minister will be a Vice President of the Commission, in charge of a joint administration using EU as well as national resources. Indeed, the wide extension of the legislative and budgetary powers of the European Parliament hardly gets a mention. Nor does the enhanced constitutional role for the European Court of Justice.

While the importance of more qualified majority voting in the Council is upheld as good for the UK — 'we

are rarely outvoted' — the government wishes to stick to unanimity for some poorly defined 'vital national interests'. It is not explained how common foreign, security and defence policy can be developed unanimously, or how fiscal policy obstacles to the smooth operation of the single market can be lessened without QMV. Despite the pretence of supporting the emerging defence dimension of the Union, it was clear from the White Paper that the British were happy to stick with NATO.

The UK government brings its own unique interpretation of the job of the full time President of the European Council. In direct contradiction to what the Convention agreed, the UK now claims that the new President will coordinate the work of the Council of Ministers and 'deliver' the agenda of member states. Widespread fears about a possible clash with the functions of Commission President and EU Foreign Minister were, in the White Paper, passed over.

Fortunately, Tony Blair now appears to have taken a direct grip on the IGC portfolio himself. Let us hope he decides to grasp the opportunity provided by the Constitution to find his way back into Europe and away from the marginalised position in which he was left in the aftermath of the Iraq crisis. Signals emerging from his tripartite meeting with Chirac and Schroeder in Berlin, on 20 September, were rather encouraging. Mr Blair appears to have dropped British opposition to the idea of structured cooperation in defence (Article 1 40.6). He now seems willing to join with a core group of capable and willing member states to push forward with military integration within the EU context whether or not NATO chooses to be involved operationally. This is good news for Britain in Europe — and also the essential first step towards developing a truly common European foreign, security and defence policy.

### **Institutions at odds**

Before the IGC commenced, there were the official opinions delivered by the European Parliament and the European Commission. These were notable for their variance with each other.

MEPs have given the Constitution a warm response. Confident that the European Parliament is the clear victor in the inter institutional struggle for power, it would indeed have been churlish for them to do otherwise. The Parliament gains over thirty new areas of legislative codecision with the Council. Its purview is extended over the whole EU budget, including the common agricultural policy. It will elect the President of the Commission, as well as have the right to block international trade agreements. The Charter of Fundamental Rights, which has become for many MEPs an article of faith, is installed in the Constitution with binding effect.

Those members of the Convention drawn from the European Parliament were more persuasive with their fellow MEPs than MM. Barnier and Vitorino seem to have been with their colleagues in the Commission. President Prodi himself has taken a contrary, even tetchy, position on the draft Constitution. His big criticism of the draft Constitution concerns the future size and shape of the Commission itself. Prodi does not believe that the concept of junior Commissioners, without a vote in the college, is feasible. He cannot imagine a Commission without a senior Commissioner from the large member states. His answer, adopted as the formal position of the college, is to propose an internal reorganisation designed to cater for the exigencies of a large Commission with one representative of each nationality.

The Commission's attempt to open up this question will receive support at the IGC from several, mostly smaller member states, whose own representatives in the Convention were previously complicit in the settlement proposed by the Convention. The Italian presidency, therefore, is faced with something of a dilemma. They had hoped that the government leaders of the European Union would feel obliged to respect the work of the Convention they had themselves set up. One understands the frustration of France and Germany who, with the Italians, are seeking to defend the legacy of the Convention. After all, what is far more important than the size and shape of the Commission is its relative institutional strength. The smaller countries would do well to ask themselves whether a larger college will not be a weaker one.

Nor is it good enough for the Commission or for individual member states to come up with their own perfect solutions to Europe's governance questions. For any new proposal to prevail over those of the Convention, it

will need to be able to attract more support and to forge a stronger consensus than that achieved by the Convention. That will be difficult, if not impossible. The Convention considered all the options, and the package deal done in the Convention is almost certainly the best compromise going.

In particular, Spain and Poland should drop their attempt to get back to the Treaty of Nice. Their tactics are dangerous and their arithmetic wrong. Unpick the deal on the QMV threshold and the widening scope of QMV as well as the powers of the Commission and Parliament will be jeopardised. The three big states of France, Germany and the UK (combined population 200 million) can already form by themselves a blocking minority in the Council. Under the Treaty of Nice this is 38 per cent of the population of the Union (172 million). In the draft Constitution the blocking minority is 40 per cent (181 million). Even with their current privileged voting weights, Poland and Spain (78 million) need several other partners if they are to stop a piece of legislation they don't like. The Polish and Spanish governments should recognise the predicament of the largest member states which is that a simple majority in the Council or the Commission can be formed by the thirteen small states representing only 11 per cent of the population of the Union. That is precisely why majorities in the Council have to be qualified and votes weighed in proportion to population.

Unpick one element of the draft Constitution and the whole scheme could fall apart. The verdict of public opinion on a failure by Europe's collective leadership to grasp such a historic opportunity to re found the Union on a more democratic and legitimate basis would be, quite rightly, harsh. Europe awaits its Constitution and the leaders must deliver it.