



FORUM CONSTITUTIONIS EUROPÆ

**FCE 6/01**

**„ THE CONVENTION AS A MODEL FOR EUROPEAN  
CONSTITUTIONALISATION“**

ANTÓNIO VITORINO  
MITGLIED DER EUROPÄISCHEN KOMMISSION

**Vortrag am Walter Hallstein-Institut für Europäisches Verfassungsrecht der Humboldt-Universität zu Berlin  
am 14. Juni 2001**

- 1 To be invited by the Humboldt University to talk about the future of Europe is almost like taking part in the Davos Forum among the economic leaders, so I must first thank the organisers for giving me the opportunity to speak in this place, which is a metaphor in itself for the Europe we have created.
- 2 Only three months after the signing of the Nice Treaty - the culmination of a legal and political process that started with the Treaty of Maastricht, when European integration took a fundamental qualitative leap from an essentially economic approach to integration to a political one - Europe is living, with the launch of a *urbi et orbi* debate on its future, not in a false 'Adam-like' Utopia, but in a curious paradox.
- 3 On the one hand, a time-traveller visiting from the immediate past could not fail to marvel at the progress that has been achieved all over Europe by the European project, imperfect and unfinished though it is, though real enough in the daily lives of European citizens. **Peace and socio-economic wellbeing are now an integral part of our daily lives and environment.**
- 4 An economic area without borders, with its consequent internal cohesion, has been a reality since the completion of the internal market and the consolidation of the principle of multiannual financing adjusted in line with the growth of Community GNP, in the mid-nineties.
- 5 Monetary union, to derive full benefit from our commercial and economic potential, both internally and externally, will be a reality in a few months, when we have the euro in our pockets. It requires further substantial steps to be taken on the co-ordination of economic and budgetary national policies in the euro area. This sort of progress is now commonplace.
- 6 The Union's external identity is a political reality which goes further than the well-known constraints of a constitutional or sovereign nature. Particularly in the field of security and defence, the Union can be likened to Molière's "bourgeois gentilhomme", who writes prose without realising it. Just look at the level of coordination between the Union and the WEU and our growing joint role within the NATO framework, with all its implications for the day-to-day involvement of our soldiers and security forces - of which Germany is an excellent illustration - in international "peace keeping", "peace making" or "peace building" operations.

- 7** In the area which most concerns me in my current professional capacity, the steps set out in the Treaties towards an area of freedom, security and justice to be achieved by 2004, as a direct consequence of the removal of internal frontiers and the translation of our shared citizenship, are essential milestones in European integration, as they combine a series of common measures on asylum and immigration and free movement of people within the Union with the emergence of a European judicial area and the consolidation of a series of instruments on police cooperation aimed at combating transnational crime in an integrated manner. All of this must be achieved while maintaining and extending our high standards on fundamental rights and freedoms. The best example of this is the Charter of Fundamental Rights of the European Union, proclaimed at Nice in December 2000.
- 8** Finally, what better illustration is there of the peace and progress which the Union's image projects than the irresistible attraction we represent for all the fledgling democracies of Central and Eastern Europe, for whom entry into the Union is synonymous with political stability and democracy, as it was for the Portuguese, the Greeks and the Spanish before them, quite apart from the cost-benefit question of being a member of the "club". Forgive me for mentioning my personal recollections, but it is on these I base my deep conviction that the enlargement process is not only irreversible, but is also more immediate than the current significant difficulties in the various areas of negotiation might initially suggest.
- 9** However, that is where the paradox lies. The same time-traveller would be surprised at the doubts and indecision, and even the "Euro-scepticism" which seems to have grown up among Europeans, or at least in certain sectors and among certain political and economic players.
- 10** Where does this ambivalence come from? There are various factors:
- 11** • The feeling that the leap forward represented by the various reforms laid down in the Treaties of Maastricht, Amsterdam and Nice requires a certain period of assimilation and mature reflection.
- 12** • Legitimate suspicion at the sudden appearance of a UPO (unidentified political object), to which the Nation-State must yield not just certain sovereign powers, as the classic definition of the Court of Justice in Luxembourg has it, but all sovereign powers.

- 13** • Dissatisfaction with a “despotic” approach to integration, apparently without democratic sanctions or any real involvement on the part of citizens; this leads the Union to look primarily at the legitimacy of the exercise, rather than its origins, with all the dissatisfaction that entails as regards specific incidents or frustrated hopes.
- 14** • The unstated conviction that an enlarged Union will lead us towards a political and operational model which is completely unlike anything we now know, but without daring to recognise it, pretending that everything can continue in the same way in the future, like a zero sum game.
- 15** • The implicit but palpable conviction that the purely intergovernmental approach to the reform of the Treaties has worn thin and leads to “lowest common denominator” results, and consequently, to “continual revision” syndrome, with dates being set in the Treaty itself for each successive round of negotiations.
- 16** I cannot but analyse the results of last's week's Referendum in Ireland in light of these considerations. Indeed, over and beyond the follow-up, about which the government and the people of Ireland must give a precise indication to the rest of the Union, it is my view that the Irish people have spoken clearly - and the silence shown by the high rate of abstention seems to me to be deafening. We all have to face the consequences. Is it possible to continue to ask our citizens to follow their elites without any clear explanation of the well defined contours of the common project to which we are committed, with all the rights and obligations having to be met democratically?
- 17** It almost seems as if the maxim coined by Stanislaw Lec, one of the best aphorists of the twentieth century: “Be a realist, don't tell the truth” has become an appropriate adage in certain circles at this point in European integration. I am convinced that this is a suicidal tactic and I think that we need to open this great constitutional debate, whether we like it or not, pondering the truth openly, even if the truth, as my compatriot Fernando Pessoa would say, brings disquiet.
- 18** I am convinced that most of the European political classes are currently closer to Pessoa than to Lec, as shown by their willingness to join the debate. This University can testify to that, having played host in recent times to various top politicians. Despite their different points of view and different approaches, they are openly contributing to the “cross-fertilisation” of the debate, thereby demonstrating the

appropriateness of the incorporation of the Declaration on the Future of the European Union into the Treaty of Nice.

- 19** It is my opinion that the Heads of State or Government were aware last December that - with a view to the reform in 2004 and over and above the tactical reasons prompting them, which were mainly to ensure a “peaceful” ratification of the Treaty, thereby guaranteeing the “ethical minimum” to make enlargement possible within the allotted timespan, at the same time calming the dissatisfaction of those disappointed with the results of the 2000 Intergovernmental Conference, including the European Parliament itself - we are now engaged in a constitutional debate, since an enlarged Union will be qualitatively different from the current one.
- 20** If we consider, like François Mitterrand in his “political testament”<sup>h</sup> to the European Parliament in January 1995, that our obligation is to guarantee that at the point of the last accession to the Union, it should remain recognisable as the Union we know today, we must launch and vigorously feed this debate on what we want to achieve together and with what resources at European level. This is what should be understood by the emphasis laid by the European institutions, and the Commission in particular, on organising a major debate throughout this year between political players and civil society.
- 21** In my view, although I may be hasty in my conclusions, an enlarged Europe can only be achieved following federal mechanics , requiring a “constitutional” political methodology. Otherwise, we will be condemned to having an enlarged Europe in merely rhetorical terms, where the “à la carte” model will be in general use. I consider that the advantage of the first model is that, as the Federal German President, Mr Rau, said in his address to the European Parliament in April this year, it creates the conditions and parameters for a grammar of freedom and solidarity, allowing the sovereign people to define the rules which bind them, the areas in which powers are delegated and to whom they are delegated and how such powers are to be organised and limited.
- 22** Within the general issue of European constitutionalisation, the organisers have asked me to touch on the question of the “Convention” model used when the Charter of Fundamental Rights of the European Union was drawn up, in parallel with the 2000 Intergovernmental Conference.

- 23** It is clear that the “Convention” model itself is only valid if it is part of a constitutional framework and debate which incorporates the various European sources of legitimacy, both at national and European level. In my opinion, this was the secret of the Convention which drew up the Charter of Fundamental Rights. Its members agreed to have a “constituent” political discussion on a project of shared values and did not consider themselves as the all-powerful representatives of legitimate individual interest as is usual in an Intergovernmental Conference, whose primary task is to negotiate amendments to the areas of individual power within the Union.
- 24** I would thus begin by asserting that the "Declaration on the future of the Union" forms an important part of a consideration of the path that the European integration process has taken towards the establishment of a full constitution. Let us look more closely at the basis for this assertion.
- 25** First of all, as the Court of Justice of the European Communities has so often stated, substantive constitutional law exists within the Community legal system: it derives from the Treaties and from the interpretation of them by either the legislature or the judiciary, whether constituted, in the latter case, by national courts in their capacity as Community courts, or by the European judicial system itself.
- 26** That is why speaking of the establishment of a constitution does not strictly mean inventing the wheel. However, we must recognise that it does imply at the same time addressing the symbolic and politico-legal significance of such a process culminating in the adoption of a formal text that clarifies and codifies this substantive constitutional law.
- 27** Let us accept, prior to discussion, openly and with a sense of rigour, that the purpose of a process of constitutionalisation is ultimately to produce a constitution, constitutional Treaty or founding Treaty with a constitutional role. Let us also accept that the very term chosen to describe such a legal instrument is, in itself, not innocent.
- 28** The "process of Union" launched with Maastricht generated a momentum towards the progressive establishment of a constitution, reflected in the recognition of the (internal and external) political dimension of the European integration process, along the broad lines set out in the preamble to the Treaty on European Union. This

momentum is vaguely discernible behind the frequently cited and diversely interpreted phrase: "the process of creating an ever closer Union among the peoples of Europe".

- 29** Adopting a text giving constitutional form to this gradual process would bring this momentum into clear focus and reflect, with political support and legal rigour, the ultimate meaning of "an ever closer Union among the peoples of Europe", of an enlarged Union with a continental vocation.
- 30** I am well aware that this intention, right from the outset, meets with opposition from those who interpret constituent power and constitutional texts in the most usual way, an interpretation inescapably tied to the Nation-State.
- 31** Let me explain. I do not contest the fact that the Constitution is the formal legal instrument that crystallises the supreme power of a people to institute sovereign political power in a given territory. Even less do I contest the inability of a European process of constitutionalisation to create what does not exist, namely, a European people or delimited territory where this hypothetical people would institute a sovereign and all-embracing power.
- 32** Simply, beyond the specific limits to national sovereignty that result from a globalisation-driven interdependence and from the very pooling of sovereignty which the European project already represents (even without a European constitution), beyond these limits that would always make it advisable to move away from traditional concepts of constituent and sovereign power in so far as they remain inherently bound up with the Nation-State, itself undergoing profound change, it is important to identify the potential benefits of clarifying the constitutional basis for the European Union.
- 33** The first such benefit, in my view, would be confirmation of the essential legitimate basis for the European integration process, that is, the joining into one Union of diverse and autonomous States and Peoples, without whose meeting of wills the Union would neither exist nor have meaning. In this context, the exercise of European constituent power still emanates, and will continue to emanate, from the will of the States legitimised by the consent of their citizens according to the specific forms of government within their respective constitutional systems.
- 34** Second, acceptance of this constitutional basis for the Union would shed light on the

nature of the "ultimate goal" of the European project, that is, the ultimate meaning of that "ever closer Union among the peoples of Europe". Many of the reservations about, and hostility towards, the process of deepening integration stem from the fact that the gradual and functional process presents the progressive transfer of national sovereignty to the European level as the only development scenario, hence the spectre of the centralist European "superstate" that some identify with so-called federalism and others contest precisely on the basis of a different interpretation of how the federal model could be applied to Europe.

- 35** Clarification of the European Union's constitutional legitimacy should move beyond the obvious disagreement about the significance of a true European federal model, resulting largely from the inappropriateness of merely transferring to the European level institutional frames of reference from federations that have developed within a nation or that tend to create national references (whether inspired by the Germany of Bonn or the United States of America). It should thus highlight the originality of Europe's politico-institutional integration and dispel once and for all the idea that our ultimate goal is a single State based on the dilution of our national identities or even of the leading roles of the Nation-States. I agree with President Rau, who stated before the European Parliament last April, "Europe will continue to need the Nation-States and their differences for a long time to come, since they are the guarantors of diversity in Europe, ... but this does not mean that the peoples of Europe cannot set rules and methods for common action".
- 36** This being the case, we must recognise that this process of constitutional clarification requires all the inferences of such a choice to be drawn, and thus also assume some of the risks inherent in that challenge, including, of course, the acceptance that a review of Community powers may as much entail (new) transfers of power for pooling at European level as it may devolution to national (or even regional or local) level, in accordance with a critical application of the principle of subsidiarity. That is to say that the "*acquis communautaire*" of the Union of the future, instead of being defined by the inertia of successive juxtapositions of powers defined over the years in different historical situations, should be sifted in the light of the commonly accepted constitutional principles and criteria.
- 37** Such a process of re-ordering the Union's powers must not be interpreted as seeking to reduce European integration to its simplest form, or even as the (much hoped-for



by some) "window of opportunity" to empty European integration of its political (and even social) dimension and return it to no more than a free trade zone (within a framework embellished by a few liberalisation rules taken from the single market "*acquis*"). It is clear that those who cherish such a plan would not fail to profit from a move towards a constitution in order to express their goal (always present in European debate). However, such a minimalist and minimising project should be rejected by positively asserting the values that amply justify European integration, its democratic foundation and the accountability of its institutions, that is, by virtue of and in the name of effective popular support for the continuation of the European project.

- 38** Moreover, the pooling of certain powers or parts of powers, justified historically at a particular moment in the process of European integration in accordance with the achievements or the degree of consolidation reached, can profitably (in compliance with the principle of subsidiarity and in proportion to the results achieved) be devolved to lower levels (national, regional or even local), with the European level continuing to handle the mechanisms that are strictly necessary for the protection of the common rules and the monitoring of their effective application.
- 39** At this point it is useful to identify the vectors on which the process of constitutionalisation should be based. Curiously, the "Declaration on the future of the Union" itself gives three valuable clues as to the scope of the exercise to be undertaken, without identifying it as a "constitutionalising process": I am referring to the delimitation of powers between the European Union and the Member States, the simplification of the Treaties, and the status to be attributed to the Charter of Fundamental Rights of the European Union. One might add to these the fourth element of the Declaration relating to the role of national parliaments in the European architecture.
- 40** In sum, we must first ask ourselves what we wish to do together and then define how to achieve it, with which instruments and through which institutions.
- 41** This invitation to reflect on what we wish to do together must form the basis of the debates on the future of the Union that are intended to culminate in a new Intergovernmental Conference in 2004. We will then be able to identify the substantive elements of a text giving constitutional form to European integration, which will thus be structured around the shared values on which the Union is based,

identification of the basic principles of the various policies behind the project of Union and a definition of the institutions that embody these values and shared interests and their interaction with the national authorities (at their various levels within each nation state).

**42** Debating the future of the Union along these lines will enable us to reaffirm the basic consensus of the main political families in Europe around the values that are central to the European project. It is not about asserting an ideological concept of Europe; rather it is above all about (re-)creating the deep sense of agreement between the various ideological currents that, over the last fifty years, have been at the basis of the very idea of European integration and have given it decisive impetus. This political renewal of the legitimacy of the European project will clarify, in a way that is more appropriate to the challenges of a globalised world, where the dividing line is between Euroscepticism and anti-European populism of various ideological hues (on the left and right of the political spectrum), and what the body of values, principles and policies is that constitutes the meeting point between the European currents of thought and political parties that consider the deepening of the integration process to be of central importance.

**43** First of all, the central, most complex and difficult question, which is full of implications at a conceptual and practical level, is that of defining with rigour how distinct States and different Peoples are to exist together in the same Union, not renouncing their own identities but proposing to develop together a project directed by values that represent their shared identity. This relates not only to substantive policies, but also to the institutions that support and promote them.

In other words, in a world that is both globalised and deregulated internationally, where regions play a decisive role in striking the major global balances, it is essential to define and identify the values and interests common to Europeans, so as to help establish forms of global regulation. This specific European identity within an international context must not only be based on the rules, goals and practices of economic regulation, but also requires a social and political contract legitimised by the citizens of the Union's Member States.

**44** This means reasserting, externally and internally, the political nature of the European Union and providing it, particularly on the international stage, with the necessary means and instruments to intervene as a fully-fledged partner in the tasks of global

regulation, thus empowering the national sovereign powers, none of which, without exception (whatever their size), could otherwise aspire to such a role. This is expressed in the recognition of the central importance of the foreign, security and defence, and trade policies in the European Union of the future.

**45** The basis for such assertion must be found in the values underpinning our shared project at an internal level. Here a founding and legitimising role is played by Fundamental Human Rights, the affirmation of a political, economic and social model based on the protection of human dignity and the guarantee of democracy, together with the protection of the Rights and Freedoms of Citizens.

**46** A constitutional text for the Union must thus incorporate a Charter of Fundamental Rights which forms the basis for a social and political contract legitimising the European project.

**47** From the constitutional status of Fundamental Rights derives the central role of European citizenship, this civic status covering all who accede to it by way of their nationality or citizenship of each of the Member States, and those nationals of non-member States who legally, subject to certain requirements, acquire this status within the context of the European Union.

**48** The political consensus at the basis of the European project, or, if you prefer, the shared constitutional basis of the project of Union, conferring guarantees of equal treatment for the various Member States (as regards their diverse identities and their specific autonomy within the common project), will go hand in hand with the affirmation of the central role of the citizens in the definition of the powers that will be shared at continental level.

**49** In the name of these values, the Union of the future will increasingly be called upon to make its presence felt in those areas where its added value enhances not only the capacity of States to intervene at international level, but also their ability to uphold the rights and freedoms of their own citizens. It seems to me an inevitable outcome of this complex process that the Union will have to take on greater responsibilities in areas that have traditionally been associated with the prerogatives of national governments (foreign policy and diplomacy, security and justice), while in other areas, the modern approach to governance in contemporary societies will militate in favour of a re-allocation of responsibilities, possibly leading to the devolution of

powers from the European level to levels that are closer to Union citizens (to national level or even down to regional and local level, or through decentralised forms of partnership between the public and private sector, with machinery for coordination at European level).

- 50** This new distribution of powers, redrawn both horizontally and vertically, will make it necessary to readjust the common policies, be they the common agricultural policy or competition policy, structural policy or the policy on protection of the environment. In this readjustment, with inevitable financial repercussions, it will be essential, rather than trying to define watertight compartments, to seek flexible solutions that exploit the advantages that can be derived from tackling the issues concerned in the broader forum of the Union; it will at the same time be necessary to ensure that the solutions are applied (and explained to those concerned) in accordance with the criteria of closeness to the citizen, openness and accountability. Such an approach will therefore be less dependent on a hierarchical allocation of responsibilities and will above all involve operational arrangements based on networking, with far-reaching consequences in terms of organisation of the Community institutions and the working methods of the national administrations.
- 51** If a genuine political and citizenship contract is to be concluded, the Union of the future will also have to focus more closely on the social dimension, not only in the context of the coordination of economic policies required by the single currency, but also – and increasingly – as an integral part of the citizenship contract itself, which acknowledges the central value of the individual and forms the foundation for the common European venture.
- 52** This concern takes us straight back to the debate on the controversial issue of the “European social model”, the very existence of which has been called into question and which has been the source of heated arguments whenever an attempt has been made to define it.
- 53** But it seems to me that, instead of trying to hammer out a dogmatic definition of this “social model” as if it were a closed system, it would be better for us to identify those essential components which, since they raise issues that are common to all societies (albeit in different ways according to their level of development), could benefit from responses which are coordinated and could in the long term even be convergent at European level. I am thinking here of issues such as structural

unemployment, population ageing and the attendant pressures on social security systems, unfamiliarity with new technology, and the challenge of safeguarding values like solidarity and cohesion in a global context of keener competition and faster technological change.

**54** To some extent these issues were at the heart of the “Lisbon agenda”, the aim of which was to launch a process that, in the long run, would enable solutions to be found for strengthening the competitiveness of the European economy and boosting its productivity while safeguarding the principles of social cohesion and solidarity and the fight against poverty and exclusion.

**55** The natural development of these objectives appears to me to be essential in order to give substance to the political and citizenship contract that lends legitimacy to the new efforts to deepen European integration.

**56** But, having arrived at this point, reconfiguring the European project inevitably places us in a position where we have to solve the central political paradox which the Union has been facing so far: the increasing empowerment of the Community decision-making bodies has not been accompanied by a gradual increase in the political accountability that is essential to any democratic project. The result is that citizens do not feel involved in European integration, or rather that public opinion in the Member States, little informed about what is happening, has come to believe that, in the name of efficiency and technocratic rationality, the machinery for participation and policymaking is becoming weakened at national level, without this loss being offset by corresponding gains at the level of the Union.

**57** And in the face of this paradox, the most radical (but probably also the most logical) of the federalists argue in favour of a move to a completely federalised model, if not the creation of a fully fledged European superstate while, at the other end of the spectrum, the most hardened advocates of national sovereignty call for a radical downsizing of the Union’s powers and ambitions and adoption of the purely intergovernmental model of minimum coordination, focused nearly always on the mere liberalisation of markets.

**58** It is also in the face of this paradox that we have to take up the challenge of redesigning the institutional framework of the Union of the future with an open mind, that is to say not with a view to transposing to the European level solutions

devised for the national context, but with the aim of making good the lack of political and democratic accountability of the European institutions while maintaining different levels of identification of citizens with representative institutions (on a European, national, regional and local plane), since all the latter belong to the same European political dimension.

- 59** The challenge I have sketched out very briefly calls, above all, for clarity in the discourse of political leaders.
- 60** Citizens of the EU Member States currently labour under the belief (at times an as yet vague and ill-defined notion) that major decisions for their daily lives, their individual and collective well-being and their status as citizens are increasingly being taken by Community institutions all of which, without exception, they perceive as remote, functioning in ways that are difficult to understand and insensitive to their wishes and real needs.
- 61** But, on the other hand, the national governments continue on the whole to deny the role of the EU when, under their political contract with their electorate, they take full credit for having achieved something which is often no longer entirely within their hands as a result of the European integration process.
- 62** The upshot of this misrepresentation is that in the national political debate, and particularly in the debate leading up to the most important political contract concluded between political leaders and the people – I am referring here to general elections – European issues have little impact or certainly do not loom large in the choices made by the electorate. This is partly because information on the details of European policies is not easy to obtain (and sometimes not made very accessible ...) and partly because the debate is dominated by complex institutional questions that are boiled down to a few ready-made ideas (federalism, preservation of sovereignty, Euroscepticism, Eurorealism, etc.) or, in the best of cases, is presented as a debate on “foreign policy” or something which the Member States look after among themselves in the hushed corridors of Brussels and Strasbourg.
- 63** It is therefore in this area that a paradigm shift is most needed, that is to say a change in the attitude of political leaders that will make it clear to citizens what European politics has indeed now become: the domestic politics of each of the Member States pursued in an interactive forum stretching across the whole European continent.

- 64** The best method of remedying this lack of European political awareness among citizens is not, in my view, to imagine an institutional set-up that would supplement the European decision-making apparatus with a body made up of national parliamentarians (a second chamber composed of members of the national parliaments who would hold a dual – national and European – mandate). The solution will lie in the opposite direction, namely incorporating European politics as a permanent and natural dimension of national public life in the work of decision-making bodies that are close to the grass roots, be they at national, regional or even local level.
- 65** Seen from this standpoint, the Union's institutional framework should be shaped both by the nature of the policies in which the supranational dimension brings added value and by the demands of networking or jointly exercising the corresponding responsibilities at the different tiers of government.
- 66** In other words, let us first sort out what we want to do together, let us identify what can be done by all and the areas where those who are ready and willing can move ahead faster, and then let us redesign the institutions on the basis of those intentions and ambitions, agreed collectively and endorsed with democratic legitimacy!
- 67** **Between now and 2004, we have time to launch this urgent debate. Are we prepared to do so, and do we have sufficient ambition?**
- 68** If the answer is yes, then the relative merits of a constituent convention model for the 2004 reform versus the classic intergovernmental model will undoubtedly stand out much more clearly.
- 69** In any event, to wind up my presentation and try to escape the charge of having strayed from the topic proposed by the organisers of this event, I now wish to outline the conditions that will have to be met if the convention method used for drafting the Charter of Fundamental Rights is to be a success.
- 70** Allow me to spare you a detailed historical account of the Convention which between December 1999 and October 2000 drew up the EU Charter of Fundamental Rights. Suffice it to say that the Convention was a success story and that this approach is currently regarded by many as the best option or, at least, a possible instrument for preparing the constitutional reform sought for 2004. As you are well aware, the Commission is fully behind this solution.

- 71 But if the convention is to be a successful means of conducting the current debate on the future of Europe, two types of condition must be satisfied: one, which has to do with the substance of the discussions and on which I have already spoken at sufficient length, is that it must be a genuine “constitutional” debate, while the other, more “infrastructural”, category comprises what I would describe as the material and procedural conditions that have to be met in order to ensure that a future convention is able to work properly and achieve its aims.
- 72 I will focus on three conditions that are, in my view, essential: the independence of the convention, its decision-making arrangements and, lastly, its membership.
- 73 As far as **independence** is concerned, the condition *sine qua non* is that the Heads of State or Government must, as they did in Cologne in June 1999, give the convention a clear mandate in terms of the aim pursued and the topics to be discussed. But we must realise that this will not be sufficient in itself. We all know that the work of the Convention responsible for drawing up the EU Charter of Fundamental Rights took a good many of the national administrations to some extent by surprise, more engrossed as they were in developments at the Intergovernmental Conference. There is no doubt in my mind that the work of the next convention will be kept under closer scrutiny, through both the mandate issued to its members and the administrative “support” they are given.
- 74 Since that is in my view a fact of life, I am convinced that if the independence of the future convention is to be guaranteed – and it was basically that independence which to a large extent made it possible to create a climate of confidence and a spirit of “founding fathers” among the members of the Convention for drawing up the Charter, irrespective of their origin – a minimum number of conditions have to be met:
- 75
- The figure of a permanent president, chosen by the entire convention but from among representatives appointed by the governments, should be maintained, and the person chosen should enjoy indisputable political and intellectual prestige. It is universally acknowledged that the calibre of President Herzog contributed greatly to the success of the work of drawing up the EU Charter of Fundamental Rights.
- 76
- The number of members of the convention should be kept at a level that enables work to proceed efficiently but should be large enough to ensure the presence of a



sufficient number of representatives of all the sources of national and Community legitimacy, of all the different executive and legislative powers; it should also – and this is something which offers added value in comparison with the intergovernmental method – include representatives of the different political forces and in particular of the opposition parties in the national parliaments.

77 • Working methods similar to those of the previous Convention should be adopted; in particular, a Praesidium should be set up comprising representatives of the different “estates” with members in the convention; systems of open coordination should be established between them; and certain symbolic measures should be taken, such as having meetings hosted alternately by national parliaments and executives.

78 The second condition which has to be met, in my opinion, is that **clear-cut discussion and decision-making arrangements have to be established**. The method adopted in the Charter of Fundamental Rights Convention was to progress by means of consensus, which meant, on the one hand, that the Convention conducted its discussions and was able to put forward proposals as an assembly but, on the other hand, that, since there was no right of veto, the President was able to take the responsibility of judging when a majority consensus was to be deemed to have been reached between the different component parts of the Convention.

79 I would stress that an ideal majority voting system would lead to a series of difficult ideological discussions and balancing acts to achieve the right weighting and representativeness of each of the components of the convention and even within each of those components. Furthermore, a decision by consensus is not a unanimous decision, since, as I have said, there is no right of veto. I know by experience that, if the conditions I have just mentioned regarding the convention’s independence are met (in particular, the legitimacy and representativeness of the President and the Praesidium are guaranteed), the consensus method offers plenty of room for political negotiation between the different forces represented at the convention: European and national, majority and opposition.

80 It is, however, evident that in the post-Nice exercise, the conventional model will not work autonomously, but will be inserted into a procedure and into the wider machinery. In particular, the results of this 'convention' should be formalised following the methods of revising the Treaties. That is why the next convention

should be able to meet two challenges:

- 81** • the first will be to guarantee that its conclusions go at the same speed as the workings of the intergovernmental conference which follow them. One idea to explore would seem to me to guarantee from now on that the members of the Presidium participate in the work of the intergovernmental conference following the modalities which have to be specified.
- 82** • The second will be to avoid that the convention falls into the risk of arriving at a solution based on the lowest common denominator. I believe that, given the constitutional nature of the debate and to avoid this risk, the convention should get down to presenting different models of options since the different estates in the convention opt for diverging solutions.
- 83** Lastly, as regards the **composition of the convention and the bodies to which its members belong**, I believe that the quadripartite structure tried out at the Charter of Fundamental Rights Convention, together with an adequate involvement of the other Community institutions and bodies, is the best formula. The presence of representatives of the national governments, the European and national parliaments and the Commission ensures that all the sources of legitimacy are represented at the level of the European and national executive and legislative powers, along with representatives of the main political forces in existence both across the Union as a whole and individually in each of the Member States.
- 84** Furthermore, since the forthcoming convention is to focus on the constitutional debate concerning the future enlarged Europe, I am convinced that it will be essential to associate the candidate countries to the debates.
- 85** This brings my thoughts to an end. Speaking here a year ago, Joschka Fischer called for the Union to move from a confederation to a federation. I, for my part, despite my background as professor of constitutional law, will confine myself to saying that what is in my view essential in this constitutional debate is to delete the word "unidentified" in "UPO" and arrive at a clear IPO (identified political object) We would all stand to gain from such clarification, and the constituent power, the ultimate *raison d'être* of any conventional model, would thus be legitimately accountable to the original sovereign power, which is, let us not forget, the people.
- 86** Baruch Spinoza, in the 17<sup>th</sup> century, in the middle of all the political identity crises

from which the existing Europe of Nation-States emerged, left us a phrase which should appear on the title page of any manual of constitutional law: "*the Community method is the only rational one*".

**87** It is this rational approach which should unite us to look together for the response to the challenges of European political society in the 21<sup>st</sup> Century, while of course maintaining the pluralism, diversity and individualities that will continue, as in the past, to fashion our identity.