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**CONSTITUTIONAL PROCESS AND REFORM IN THE EU:
NICE, LAEKEN, THE CONVENTION AND THE IGC**

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- *ES GILT DAS GESPROCHENE WORT* -

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It is well known that constitutional reform in the EU was stalled by failure to secure agreement in the IGC at Brussels in December 2003, but that the IGC was revived by the Irish Presidency with agreement on the Constitutional Treaty in June 2004. There is little doubt that the Convention deliberations, and the drafting of a Constitutional Treaty, warrant the appellation 'constitutional moment' and that this is so irrespective of the final outcome of the ratification process. This article seeks to explore the process of constitutional reform beginning with the aftermath of the Nice Treaty in 2001 through to the Brussels European Council in June 2004. The analysis is divided into four parts.

The initial section is devoted to the calendar year 2001, the period between the Nice Treaty and the Laeken Declaration. This has received relatively little attention, but it is crucial for an understanding of what came thereafter. This period saw the expansion of the reform agenda from the four issues left open for future deliberation by the Declaration attached to the Nice Treaty into the much broader agenda embodied in the Laeken Declaration, and it saw also an emerging consensus about the Convention model as the desirable process for constitutional reform. The focus in the second part shifts to the Convention itself. There has been much discussion about various aspects of the Convention deliberations. The analysis within this section seeks however to identify in temporal perspective five key factors that shaped the Convention process, which were crucial in enabling Giscard d'Estaing to present a Constitutional Treaty to the IGC. This will be followed in part three by analysis of the IGC in Autumn 2003, culminating in the Brussels European Council in June 2004. The final part of the article contains some reflections on the process of constitutional reform.

1. From Nice to Laeken: The Shaping of the Reform Agenda

We should never forget that the 'beginning started at the end'. The road to Laeken began with the Declaration on the Future of the Union appended to the Nice Treaty.¹ It is important to remember at the outset what the Declaration 'declared'.

It began with an air of congratulation at what had been achieved in the Nice Treaty, noting that the institutional changes necessary for enlargement had been made.² The Declaration then called for a "deeper and wider debate" about the future development of the EU, which would "encourage wide-ranging discussion with all interested parties".³ It set a timetable whereby this process would be continued through initiatives that were to be contained in a Declaration made at the Laeken European Council in December 2001. The Laeken Declaration should address, '*inter alia*', the delimitation of competences, the status of the Charter of Fundamental Rights, simplification of the Treaties, and the role of national Parliaments in the European architecture.⁴ The Nice IGC also recognised that it was necessary to "improve and monitor the democratic legitimacy and transparency of the Union and its institutions, so as to bring them closer to the citizens of the Member States".⁵ It would then be for the IGC in 2004 to make the necessary Treaty changes 'after these preparatory steps'.⁶

It would nonetheless be mistaken to believe that the content of the Laeken Declaration, and the establishment of the Convention on the Future of Europe, were somehow pre-ordained or inevitable after Nice. The calendar year 2001 between Nice and Laeken was fascinating in terms of institutional dynamics and process. This was a year in which a consensus began to develop

¹ Treaty of Nice, Declaration 23 [2001] OJ C80/1.

² *Ibid.* paras. 1-2.

³ *Ibid.* para. 3.

⁴ *Ibid.* para. 5.

⁵ *Ibid.* para. 6.

⁶ *Ibid.* para. 7.

among the major institutional players about two crucial issues. The issues were separate, albeit related.

There was, on the one hand, *the content of the reform agenda*. It came to be accepted that the four issues left over from the Nice Treaty were not discrete. It came to be recognised that competences, and the status of the Charter, resonated with other issues concerning the institutional balance of power within the EU, and also with the vertical distribution of authority as between the EU and the Member States. It became clear that the ideal of simplification of the Treaties could not realistically be accomplished without considering substantive modification in the existing Treaty provisions. The very fact that the Nice Declaration stated that future reform should address *'inter alia'* the four issues adumbrated above lent further weight to the expansion of the topics for discussion that resulted in the Laeken Declaration. The Treaty reform process had hitherto been frequent, but not surprisingly driven by the needs of the moment, whether these were the reform of the single market, EMU, or the institutional consequences of enlargement. The realisation that the issues left over from Nice raised broader concerns going to the very heart of the future of Europe coincided with a growing feeling that there should be a more fundamental re-thinking of the institutional and substantive fundamentals of the EU.

There was, on the other hand, *the reform process*, the institutional format for discussion of the broadened range of topics concerning the future of Europe. It will be seen that considerations of legitimacy and democracy came into play in the decision to establish the Convention on the Future of Europe. If a broad range of issues was to be discussed, if this round of Treaty reform was not simply to be a further episode in tinkering with the Treaties, then the idea that the result, whatsoever it might be, should be legitimated by a process of input from a broader 'constituency' than hitherto assumed greater force. This momentum was fuelled by dissatisfaction with the traditional process of Treaty reform, dominated by the paradigm of the intergovernmental IGC. There was an element of 'traditional reform fatigue', leading to the desire for new institutional mechanisms that could consider matters central to the future of the EU.

The growing consensus on the broadened range of topics that should be placed on the reform agenda, and the novel institutional mechanism through which these deliberations should be conducted, is apparent in relation to each of the major institutional actors.

(a) The Council and the European Council

We can begin by considering the Council and the European Council. The debate on the 'Future of Europe' was formally opened on March 7 2001, by the Prime Ministers of Sweden and Belgium, who held the Council Presidency for the first and second half of 2001, in conjunction with the President of the Commission and the President of the European Parliament. The 'futurum' web-site was inaugurated.⁷

The Goteborg European Council held in June 2001 was an important step on the road to Laeken, and its approach to the content of the reform agenda was influenced by a paper prepared by the Secretary-General.⁸ While the title of the paper indicated that it was specifically concerned with the impact of enlargement on the functioning of the Council, the paper itself actually addressed more far-reaching issues concerning the internal formations of the Council, and its relationship with the European Council. The detail of the paper is not of immediate relevance. Suffice it to note for the present that the Secretary-General was prescient in anticipating many important matters of institutional design and relationship that would be discussed within the Convention on the Future of Europe. The significance of the paper for present purposes was that it contributed to the growing realisation that the four issues identified in the Nice Declaration could not be considered in isolation and that debate about the future of Europe would perforce address fundamental issues of institutional competence. This was implicitly

⁷ <http://europa.eu.int/futurum>

⁸ *Preparing the Council for Enlargement*, POLGEN 12, 9518/01, Brussels 7 June 2001.

acknowledged by the Goteborg European Council, which made reference to the Secretary-General's Report, and recognised that the modernisation of Community institutions would have to be a central facet of future reforms.⁹

The deliberations of the Goteborg European Council concerning the reform process were shaped by a paper prepared by the Swedish Presidency of the Council.¹⁰ Much of the paper was concerned with initiatives taken in individual Member States and Community institutions to stimulate debate about the future of Europe. The most interesting part of the paper was however concerned with the process through which the debate should be continued. The Presidency paper canvassed a number of options, including discussion through governmental representatives in the classic IGC mode, and the establishment of a small group of 'wise men'. It also raised the possibility of "creating a broad and open preparatory forum",¹¹ drawing on the analogy of the process used for the Charter of Fundamental Rights. The Goteborg European Council was relatively brief and non-committal about the specifics of the reform process. The Presidency paper had however put the Convention model firmly on the agenda and the European Council itself did note the debate about the future of Europe "involving all parts of society" should be actively pursued.¹²

The themes that were apparent in the first half of 2001 concerning both the content of the reform agenda and the reform process were developed by Belgium, which occupied the Presidency in the second half of 2001. This is readily apparent from the important Press Release issued by the Belgian Presidency on September 9 2001 at the conclusion of an informal meeting of foreign ministers. The reform agenda was conceptualised in terms of a broad analysis of the "strengths and weaknesses of the European model", and "developing around" the themes of the Nice Declaration, so as to be able to define them in a way that was politically useful as well as being technically feasible. There was also a more specific attachment to the Convention model for the reform process. The Press Release stated that there was "considerable agreement" among the members of the Council on a Convention containing MEPs, national MPs, representatives of the Member States and the Commission. This was to be the democratic, transparent and credible mechanism for future reform.

The growing consensus about the approach to content and process evident in the September meeting was affirmed by later meetings of the General Affairs Council.¹³ In relation to the topics to be dealt with, the GAC "favoured an approach consisting of enlarging on the themes and objectives listed in the Nice Declaration, in the form of questions, with the dual aim of making the Union meet its citizens expectations more successfully while functioning more effectively".¹⁴ In relation to process, the GAC confirmed the broad convergence of views in favour of the Convention model, detailing matters such as the number and type of participants, the establishment of a Praesidium and support from a Secretariat.¹⁵

The GAC meetings paved the way for the Laeken European Council.¹⁶ In terms of the reform agenda, the Laeken Declaration gave the formal imprimatur of the European Council for the broadening of the issues left open post-Nice. These issues may, as stated above, have always been the tip of the iceberg. The Laeken Declaration was nonetheless fundamental in making this

⁹ *Goteborg European Council*, SN 200/1/01, 15-16 June 2001, paras. 16-18.

¹⁰ *Report on the Debate on the Future of the European Union*, POLGEN 14, 9520/01, Brussels 8 June 2001.

¹¹ *Ibid.* para. 56.

¹² *Goteborg European Council*, n. 9, para. 15.

¹³ *2372nd Council Meeting, General Affairs*, 12330/01, Brussels 8-9 October 2001.

¹⁴ *Ibid.* p. 18.

¹⁵ *Ibid.* p. 18. See also, *2386th Council Meeting, General Affairs*, Brussels 19-20 November 2001, p. 11

¹⁶ *Laeken European Council*, SN 300/1/01, 14-15 December 2001.

explicit. The initial four issues post-Nice became the 'headings' within which a plethora of other questions were posed, which raised virtually every issue of importance for the future of Europe. In terms of the reform process, the Laeken Declaration formally embraced the Convention model with a composition designed to enhance the legitimacy of the results that it produced, whatsoever these might be.

(b) The Commission

The willingness of the European Council and the Council to expand the reform agenda and to adopt the Convention model for the reform process was clearly crucial. It should however also be recognised that the other main institutional actors were pressing in the same direction.

This is apparent from one of the Commission's early contributions, coming six weeks after the inauguration of the future of Europe debate. The Commission made clear its belief that the four questions identified in the Nice Declaration were not the only ones to be considered when reflecting on the future of the Union. The debate should address "the transparency and democratic legitimacy of the Union and its institutions and cover ... all the questions that arise concerning the process of European integration, whether they relate to its final objectives, its institutional structures or its policies".¹⁷ While the Commission was more circumspect about the precise format for the reform process, it indicated its interest "in a formula based on the agreement which led to the drafting of the Charter of Fundamental Rights".¹⁸

The same themes are evident in speeches emanating from the Commission in the eight-month period between April and December 2001. Romano Prodi called for the Laeken Declaration to establish "an ambitious and comprehensive agenda".¹⁹ This would be discussed in the only way acceptable to citizens, in a Convention,²⁰ more especially so given that the Nice European Council had shown that the common European interest could not emerge from the regular IGC process.²¹ Traditional state diplomacy could not, said Prodi, "launch a full European constitutional process in a way which will seem credible in the eyes of the people".²² Individual Commissioners pressed in the same direction. Antonio Vitorino argued that the subject-matter of the reform debate must be wide ranging and that the Convention model should be employed.²³ These sentiments were echoed by Michel Barnier. He argued that the four issues identified in the Nice Declaration could not be considered in isolation since they necessarily resonated with broader issues concerning the purpose and legitimacy of the EU as a whole, which should be addressed via the Convention model.²⁴

The Commission reiterated these views in an official document on the eve of the Laeken Summit. The Laeken Declaration should broaden the scope of the questions posed in the Nice Declaration since it was, for example, not possible to discuss competences without considering what the Member States of the Union wished to do together,²⁵ albeit without thereby calling into

¹⁷ *On Certain Arrangements for the Debate about the Future of the European Union*, Commission Communication, 25 April 2001, p. 4.

¹⁸ *Ibid.* p. 3.

¹⁹ *On the Road to Laeken*, Speech by Romano Prodi to the European Parliament, Speech/01/326, 4 July 2001, p. 4.

²⁰ *Ibid.* p. 3.

²¹ *Speech to the European Parliament's Committee on Constitutional Affairs*, Romano Prodi, Speech/01/343, 10 July 2001, p. 3.

²² *Building the Community and the New Challenges Facing the Union*, Romano Prodi, University of Pisa, Speech/01/458, 12 October 2001, p. 4.

²³ *The Convention as a Model for European Constitutionalisation*, Humboldt University, Berlin, 14 June 2001.

²⁴ *Why Europe Matters*, 17 October 2001; *Speech to the European Parliament's Committee on Constitutional Affairs*, 19 November 2001.

question fifty years of European integration.²⁶ The broadened agenda should be legitimated through the broadest possible consensus, which meant that the reforms should be deliberated using the Convention model.²⁷

(c) The European Parliament

The European Parliament pressed strenuously in the same direction as the other major institutional actors. Resolutions emanating from the EP exhibited the same duality evident in the deliberations of the other principal players: the reform agenda should be expanded beyond the four issues identified in the Nice Declaration and the forum for deliberation of this broadened agenda should be the Convention-type model.

These themes are apparent in the EP's Resolution concerning the Future of the European Union in May 2001.²⁸ It expressed regret at the narrow compass of the Nice Treaty, and noted that a Union of 27 Member States required more thoroughgoing reform in order to guarantee democracy, effectiveness, transparency, and governability.²⁹ The medium through which such reform should be pursued should be radically different from the IGC model, which the EP argued had outlived its usefulness as a method for Treaty reform. The Convention model should be employed, thereby enabling a wider participation of affected interests.³⁰ Consensus between the EP and national Parliaments in favour of the Convention model was secured by July 2001.³¹

The EP's aspirations were reiterated forcefully in its Committee on Constitutional Affairs' Report for the Laeken European Council.³² The Report reaffirmed the need to proceed beyond the strict confines of the issues identified in the Nice Declaration, and elaborated in considerable detail the more particular topics that should be discussed in the reform process,³³ most of which found their way into the Laeken Declaration. The Report also pressed for adoption of the Convention model and once again went into the real specifics as to how such a Convention might operate, addressing matters such as the composition of the Convention, its working methods and timetable.³⁴

2. The Convention on the Future of Europe: From Talking Shop to Draft Constitutional Treaty

The Convention's three-stage methodology is well known. There was the listening stage from March till June 2002, when the main emphasis was on general statements concerning the missions of the Union. This was followed by the examination stage, in which Working Groups considered particular topics. This exercise occupied the latter half of 2002. There was then the proposal stage, in which the Convention discussed draft articles of the Constitution, normally on the basis of proposals emanating from the Working Groups. This was the formal architecture of the Convention deliberations. It tells us little about the real issues that shaped the framing of a

²⁵ *Renewing the Community Method*, Communication from the Commission on the Future of European Union, COM(2001) 727 final, Brussels 5 December 2001, p. 4.

²⁶ *Ibid.* p. 5.

²⁷ *Ibid.* pp. 3-4, 8.

²⁸ *The Treaty of Nice and the Future of the European Union*, A5-0168/2001.

²⁹ *Ibid.* paras. 1-2.

³⁰ *Ibid.* paras. 5-7.

³¹ *Second Meeting with National Parliaments on Future of Europe Secures Consensus in favour of a Convention to Prepare for Treaty Reform*, 16 July 2001.

³² *Report on the Laeken European Council and the Future of the European Union*, A5-0368/2001.

³³ *Ibid.* paras. 2-4.

³⁴ *Ibid.* paras. 6-21.

Draft Constitutional Treaty. The analysis that follows seeks to identify in temporal sequence the key factors that enabled the Convention to produce the document submitted to the IGC.

(a) Spring 2002: A Viable Modus Operandi through the Establishment of Working Groups

The organisation of working groups was clearly a central early step to the attainment of the Convention goals. The time limit within which the Convention had to consider the plethora of issues assigned to it by the Laeken Declaration was very tight. This was even more so once it became clear that the key players at the Convention wished to produce a 'complete Treaty'. Working groups were therefore a necessary step if the tasks were to be completed within the designated time. The possibility of establishing such groups was expressly envisaged in Article 15 of the Convention's Working Methods, and the decision to establish such groups was made relatively early, in May 2002.³⁵

This decision was informed by substantive and process considerations. In substantive terms, such groups were necessary to consider in real detail matters that could not be discussed in plenary, and in process terms they offered the opportunity to engage more members of the Convention than would otherwise have been possible. These considerations are apparent in the relevant Convention document from the Praesidium, which stated that working groups were necessary to meet the "twin aims of investigating a number of specific questions in greater depth and involving the members of the Convention in fundamental work which cannot be done in plenary session".³⁶

The subject matter to be dealt with by the working groups constituted a political choice. Six groups were initially established. To be sure some of the groups naturally 'chose themselves'. It was clear that there would have to be groups concerned with rights and competences, and these were duly established as groups two and five respectively. The establishment of separate groups dealing with subsidiarity and the role of national Parliaments was somewhat less obvious, but these became groups one and four. The remaining two groups dealt with classic legal and economic issues respectively, the legal personality of the Union being assigned to group three, and the implications of a single currency for closer economic co-operation being assigned to group six. Each of the working groups was set a deadline to fit in with the schedule of plenary meetings in Autumn 2002. Four further working groups on external action, defence, simplification of instruments and the area of freedom, justice and security were established in early Autumn 2002. A working group on social Europe was created towards the end of 2002, making eleven in all.

Political choice was equally important in deciding not to create working groups on certain issues. This was exemplified most importantly by the decision not to establish a working group on the vexed issue of the inter-institutional distribution of power. This was left for discussion in plenary sessions, in large part because of its very centrality and the controversial nature of the options on the table. This will be considered in more detail below.

(b) Autumn 2002: The Defining 'Convention Moment' -- the Decision to Press for a Constitutional Treaty

The decision to press for a Constitutional Treaty was perhaps *the* defining Convention moment. Many observers have come to believe that the Convention on the Future of Europe was created in order to produce a draft Constitutional Treaty. This is to read a sense of historical inevitability into events with the benefit of hindsight. The reality was far less pre-ordained. We should recall the wording of the Laeken Declaration. Talk of a constitutional text featured only at the very end of that document as part of a series of questions concerned with the simplification of the Treaties. The language of the Declaration was cautious to say the least: "the question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the

³⁵ CONV 52/02, *Working Groups*, Brussels 17 May 2002.

³⁶ *Ibid.* para. 1.

adoption of a constitutional text in the Union".³⁷ It can be accepted that some Convention members might always have hoped that this would be attained. Many of the Member States felt however that the Convention might be nothing more than a high-level talking shop, which produced recommendations.³⁸ There was therefore nothing inevitable about the Convention producing a coherent constitutional document. This was not a foregone conclusion. The Convention might have contented itself with producing interesting working papers on the issues spelled out in the Laeken Declaration, which would then have been taken up or not as the case might be by the forthcoming IGC. The Convention might have opted for a completely separate Basic Treaty, the equivalent of Part I of the draft Constitutional Treaty, leaving the wealth of other Treaty provisions to be dealt with by the IGC reform process. The fact that the Convention opted for the more 'adventurous' route was its choice.

The unfolding story was fascinating. The Convention, once established, developed its own institutional momentum and vision, which shaped the way it operated. The idea took hold that the Convention should if possible produce a coherent document, and that this should take the form of a Constitutional Treaty, which would address the major issues set out in the Laeken Declaration.

A Convention document from July 2002 is telling in this respect.³⁹ It took the form of a motion from nineteen members of the Convention submitted to the Praesidium whereby the Convention would ask the Commission to prepare a draft Constitutional Treaty. It would deal with matters such as objectives of the Union, competences, reform of the CFSP, reform of Justice and Home Affairs, decision-making and simplification of the Treaty and its policy instruments. The document is significant in raising, at a relatively early stage, the possibility of moving towards a Constitutional Treaty. It is however equally significant as revealing that the Convention members did not take it for granted at this stage that such a Treaty would be prepared by the Convention itself; the task was to be undertaken by the Commission.

The defining 'Convention moment' when the idea that a Constitutional Treaty should be drafted by the Convention really took hold was September 2002. A paper from the Secretariat, entitled *Simplification of the Treaty and Drawing up of a Constitutional Treaty*, was central to this process.⁴⁰ The paper fulfilled the expectations generated by its title. The Secretariat went systematically through the options for making the Treaties more accessible. It discussed simplification of the Treaties, signifying the removal of obsolete provisions, improvements to language and rationalisation of decision-making procedures. The Secretariat then considered Treaty codification, signifying the repeal of existing texts and their replacement by a new document incorporating new amendments. This was followed by discussion of merger of the Treaties. The Secretariat, having pointed to difficulties or limitations of the existing options, raised the possibility of drawing up a Basic Treaty. It addressed the structure and content of such a Treaty, which were to include matters such as the values of the Union, citizenship, institutions, decision-making procedures, competences and the like. It thus laid the initial foundations for what was to become Part I of the Constitutional Treaty.⁴¹ These foundations were reinforced by detailed consideration of the possible linkages between the Basic Treaty and the remaining existing Treaties. Here we find the beginnings of the idea that there could be a single Treaty, in which the first part constituted the Basic Treaty, with the remainder of the modified Treaty provisions within a second part.⁴²

³⁷ *Laeken European Council*, SN 300/1/01, 14-15 December 2001.

³⁸ P. Norman, 'From the Convention to the IGC (Institutions)' (Federal Trust, September 2003), p. 2.

³⁹ CONV 181/02, *Motion for a Decision on the Preparation of a Constitutional Treaty*, Brussels 10 July 2002.

⁴⁰ CONV 250/02, *Simplification of the Treaties and Drawing up of a Constitutional Treaty*, Brussels 10 September 2002.

⁴¹ *Ibid.* pp. 11-15.

⁴² *Ibid.* pp. 16-20.

Matters then moved rapidly. There was a plenary session on 12-13 September, two days after the Report from the Secretariat.⁴³ The Chairman of the Convention, Giscard d'Estaing, drew together the imminent reports from the working groups, which would furnish the substantive content of the reform, with the Secretariat paper, which was to provide the foundation for the new Treaty architecture. This made it possible for the Convention to "reflect on the form of the end product, ie the draft Constitutional Treaty for Europe".⁴⁴ The Praesidium announced its intention to present the Convention with the draft structure of the new Treaty by the second session of October 2002. This would then be made more concrete early in 2003. The plenary session at the beginning of October 2002 carried forward these initiatives.⁴⁵ The debate revealed broad consensus for the idea that there should be a single legal personality, which would supplant the legal personalities of existing bodies. This would then "pave the way for merger of the treaties into a single text", which would consist of two parts, "the first, fundamental part, containing provisions of a constitutional nature, and the second mainly policies".⁴⁶

It was not fortuitous that change in the membership of the Convention altered in the late autumn of 2002, shortly after the Convention's aspirations to produce a concrete document became apparent. The foreign ministers of Germany and France joined the Convention. The Member States began to realise that this Convention might well produce some form of general constitution for the EU. It was better then to be on the inside, shaping whatever might emerge, rather than merely making comments from the sidelines.

(c) Autumn 2002: Sketching the Constitutional Architecture through the Preliminary Draft Constitutional Treaty

Giscard d'Estaing was true to his word, and the Preliminary Draft Constitutional Treaty was presented to the second plenary session in October 2002.⁴⁷ The publication of the Preliminary Draft Constitutional Treaty⁴⁸ was an astute political move by the key players in the Convention, and this was so notwithstanding the fact that there was much that was unclear or ambiguous.

The Draft represented an exercise in outline constitutional architecture. It was premised on the idea of a single Treaty with three parts, the first containing the constitutional principles, the second dealing with Union policies and the third with general provisions concerning ratification and the like. It identified the different 'rooms' within each part. The extent to which these 'rooms' had content varied considerably. The 'room' dealing with the institutional balance of power in the EU was largely empty, simply listing Articles that would deal with the powers of the principal EU institutions, while saying nothing as to what those powers actually were. The 'rooms' that dealt with topics such as competence and rights had some 'furniture'.

The publication of the Preliminary Draft Constitutional Treaty was astute nonetheless, irrespective of the problems over particular articles. It was important 'internally', sending a message to the Convention members that progress was being made towards something concrete and providing a framework for the placement of the more detailed conclusions of the Working Groups as and when they were received and approved in plenary sessions. It was equally important 'externally' for the relationship between the Convention and key state players. The document lent force to the idea that a Constitutional Treaty would emerge from the Convention,

⁴³ CONV 284/02, *Summary Report on the Plenary Session – Brussels 12 and 13 September 2002*, Brussels 17 September 2002.

⁴⁴ *Ibid.* p. 2.

⁴⁵ CONV 331/02, *Summary Report on the Plenary Session – Brussels 3 and 4 October 2002*, Brussels 11 October 2002.

⁴⁶ *Ibid.* pp. 2, 4.

⁴⁷ CONV 378/02, *Summary Report of the Plenary Session – Brussels 28 and 29 October 2002*, Brussels 31 October 2002.

⁴⁸ CONV 369/02, *Preliminary Draft Constitutional Treaty*, Brussels 28 October 2002.

a matter which was, as stated above, not pre-ordained ahead of time. The Convention could validly claim that it was only a draft and invite comments. Its publication served nonetheless to acclimatise such state players to the fact that something real might indeed emerge from the Convention, while allowing time for their comments, positive or negative, to be considered and where necessary defused.

(d) Winter and Spring 2003: Internal and External Discourse about Institutions

2002 ended relatively smoothly, even though there were of course differences of view about the matters assigned to the working groups. The working groups continued their deliberations with varying degrees of consensus, presenting their conclusions for discussion within plenary sessions from Autumn 2002 onwards. When sufficient consensus emerged from plenary sessions the Secretariat began work in earnest on drafting articles concerning the topic, such as competence or rights, thereby fleshing out the relevant Article identified in the Draft Constitutional Treaty. The Convention then discussed these draft articles and amendments were tabled.

The beginning of 2003 arrived and there had as yet been no formal discussions about institutions. The contentious nature of the issues surrounding the inter-institutional division of power was evident in the process employed at the Convention. The Convention's general three-stage methodology, the listening phase, the examination stage through working groups, followed by the proposal stage, did not apply. The process was very different in relation to institutions. There was no working group. It was felt that the issues were too contentious to be dealt with other than in plenary session. This is reflected in the fact that the title on Institutions was empty in the Preliminary Draft Constitution. It was a 'room' without content.

The key to understanding the deliberations about institutions is to recognise that they were shaped by discourse within and outside the Convention, and to recognise also that the Praesidium exercised greater power over the shaping of these proposals than any of the other matters on the reform agenda. The internal and external discourse interacted in the manner described below.

The *formal, internal Convention discussions* began in earnest in January 2003.⁴⁹ The Praesidium presented a reflection paper on the Functioning of the Institutions,⁵⁰ which served as the basis for subsequent discussion in the plenary session at the end of January 2003. It is important to appreciate the range of difficult institutional issues that were on the table. These included, *inter alia*, the method of choosing the Commission President, the composition of the Commission, the Council formations, the functions of the European Council, whether there should be a longer term President of the European Council as opposed to the current rotation system, and the composition of the European Parliament and its role within the legislative process. The diversity of views on these matters was readily apparent from the discussions within the plenary session at the end of January 2003.⁵¹ There was a reasonable degree of consensus on some matters, such as the co-equal status of the EP within the legislative process. It was equally clear that there were serious divisions of opinion concerning a plethora of matters that affected the locus of executive power within the EU, more especially the respective roles of the Commission and the European Council in relation to the exercise of executive power.⁵² The division of opinion was between the larger and the smaller states, with the Commission lining up with the latter group.

⁴⁹ CONV 473/02, *Summary Report on the Plenary Session – Brussels 20 December 2002*, Brussels 23 December 2002.

⁵⁰ CONV 477/03, *The Functioning of the Institutions*, Brussels 10 January 2003.

⁵¹ CONV 508/03, *Summary Report on the Plenary Session – Brussels 20 and 21 January 2003*, Brussels 27 January 2003.

⁵² P. Craig, 'The Constitutional Treaty: Legislative and Executive Power in the Emerging Constitutional Order' *EUI Working Paper No 7* (2004).

The *external discourse on these issues* had a marked impact on the internal Convention deliberations. As Grevi notes, the key phrase in shaping the formal Convention agenda for 2002 may have been "everything but institutions", but the key phrase for the debate in other circles was "nothing but power".⁵³ The institutional division of power was like Banquo's ghost, ever present, lurking in the background. The very fact that the institutional issues so clearly concerned the locus of power within the EU meant that heads of state, national parliaments, and interest groups all contributed to this debate. This was especially so in relation to the location of executive power within the EU, as exemplified by the debate about the future shape of the European Council. The larger Member States, in the form of Spain, the UK and France, made it clear that they supported the idea of a longer-term, strengthened Presidency of the European Council. This became known as the 'ABC' view, expressed by Aznar, Blair and Chirac. In January of 2003, just when the Convention was beginning to deliberate about institutions, Germany was brought on board. This was made clear in a Franco-German paper, in which Germany accepted the idea of a long-term Presidency of the European Council, with the *quid pro quo* being that France accepted that the Commission President should be elected. The importance attached to the future shape of executive power was also apparent in what Grevi has termed a non-paper leaked by the UK government in January 2003 concerning the powers of the European Council.⁵⁴ The UK paper favoured very extensive powers for the President of the European Council, with fundamental implications for the way in which the EU would operate.⁵⁵

We can now *return to the internal Convention deliberations and the power wielded by the Praesidium*. The views of the larger Member States were bound to have an impact on the internal Convention discourse. This was all the more so given the change in the membership of the Convention in the late autumn of 2002. The most significant change in this respect was what Norman has termed the invasion of the foreign ministers:⁵⁶ Joschka Fischer and Dominique de Villepin both joined the Convention. They were powerful figures and made numerous contributions to the institutional deliberations. The Franco-German paper, set against the background of the 'ABC' view, shaped developments inside the Convention concerning the disposition of executive power. It set the tone of subsequent debate about the Presidency of the Union. It had a marked impact on Giscard d'Estaing's thinking. He may well have inclined to this view in any event. The Franco-German paper, when combined with the opinions of the UK and Spain, nonetheless had a marked impact on his thinking. He was not about to produce a Draft Constitution for the IGC that contained key provisions about the institutional disposition of power that were opposed by the larger Member States, and therefore doomed to failure. The manner of announcement of the constitutional provisions on the Presidency of the European Council was nonetheless dramatic. The proposals were leaked to the press on April 22 2003, just as he was unveiling them to the Praesidium. The proposals "provoked shock and awe in about equal measure, particularly among the integrationist Convention members from the European Parliament and some of the smaller Member States".⁵⁷ It is safe to say that they were not welcomed by the Commission either. The 'shock and awe' provoked by the Giscard proposals was explicable because they not only

⁵³ G. Grevi, 'The Europe We Need: An Integrated Presidency for a United Europe' (European Policy Centre, December 2002), p. 5.

⁵⁴ G. Grevi, 'Options for Government of the Union' (Federal Trust, March 2003), p. 6.

⁵⁵ This paper envisioned the President of the European Council preparing and controlling its agenda; developing jointly with the Commission President the multi-annual strategic agenda; being head of the Council Secretariat that would become 'his administration'; chairing the General Affairs and External Relations Council; chairing teams of chairs of sectoral Council formations; approving agendas for sectoral Councils; chairing dialogue meetings with the Commission and the EP; and attendance at Commission meetings as an observer when the President of the European Council so decides; 'ownership' of major summits with great powers; co-ordination and supervision on aspects of crisis management and defence.

⁵⁶ Norman, n. 38, p. 2.

⁵⁷ *Ibid.* p. 3.

provided for an extended Presidency of the European Council, which was to be the highest authority of the Union, but also accorded the European Council a range of other powers, and its own bureaucratic support mechanism. It is true that the most developed form of these proposals did not survive long within the Convention. Substantial parts hit the 'cutting room floor', but the result as expressed in the Draft Constitution nonetheless embodied the central idea of an extended Presidency for the European Council and enhancement of its power. The Praesidium submitted its proposals to the Convention in April 2003.⁵⁸ Full discussion of the draft articles concerned with institutions only occurred in the plenary session on May 15-16 2003,⁵⁹ and this revealed the serious differences of view on central issues. The Praesidium, in the light of this, realised that it needed more time for reflection and therefore did not make any amendments to these articles in its initial global draft of May 28 2003.⁶⁰ There was no second reading in plenary about these articles. The Praesidium opted instead for consultations with the four constituent groups, governments, MEPs, National MPs, and the Commission, which took place on June 4 2003.⁶¹ Formal text of the revised articles on the institutions only became available on June 10,⁶² a mere three days before the concluding session on June 13.⁶³ It is clear moreover, as will be seen below, that the Praesidium, and the Secretariat, exercised considerable power in deciding on the ultimate content of these provisions of the Constitution and in deciding which amendments should be adopted.

The Convention process in relation to institutions can obviously be criticised. It should however be placed in perspective. This may not serve to justify the process in this respect, but it does help us to understand what occurred. It was not at all self-evident that the Convention would seek to draft a Constitution. Many of the Member States felt that it might be nothing more than a high-level talking shop, which produced recommendations.⁶⁴ It nonetheless quickly became evident that the Convention had more far-reaching aspirations to produce a formal constitutional document. The decision to postpone discussion of institutions is readily explicable. It was clear to all that this topic would be divisive. If it had been placed on the agenda in the latter part of 2002, then it would have over-shadowed the work undertaken on other issues. It might well have undermined the entire constitution-making process. The contrast with what occurred is instructive. The Convention, via working groups, concentrated on important issues, such as the Charter of Rights, competences, legal personality and the like. There were differences of opinion on these matters, but they were less marked than those on institutions. Progress on these matters allowed the Praesidium to publish the Preliminary Draft Constitution in the autumn of 2002. This may well have been a skeletal document. It did however reinforce the sense that the Convention really was going to produce a constitutional document, and allowed the key national players to absorb the idea.

⁵⁸ CONV 691/03, *Institutions*, Brussels 23 April 2003; CONV, *Summary Report of the Plenary Session – Brussels 24 and 25 April 2003*, Brussels 30 April 2003.

⁵⁹ CONV 748/03, *Summary Report of the Plenary Session – Brussels 15 and 16 May 2003*, Brussels 27 May 2003. See also, CONV 709/03, *Summary Sheet of Proposals for Amendments relating to the Union's Institutions*, Brussels 9 May 2003.

⁶⁰ CONV 783/03, *Summary Report on the Plenary Session – Brussels 30 and 31 May 2003*, Brussels 16 June 2003.

⁶¹ CONV 770/03, *Part I, Title IV (Institutions) – Revised Text*, Brussels 2 June 2003; CONV 771/03, *Consultations with the Component Groups*, Brussels 2 June 2003.

⁶² CONV 797/03, *Revised Text of Part One*, Brussels 10 June 2003.

⁶³ CONV 814/03, *Summary Report of the Plenary Session – Brussels 11 and 13 June 2003*, Brussels 19 June 2003.

⁶⁴ Norman, n. 38, p. 2.

(e) Spring and Summer 2003: Centralization of Initiative to the Praesidium and the Secretariat in the Closing Stages

The closing stages of the Convention saw the increasing centralization of initiative to the Praesidium and the Secretariat.

The European Council refused to extend the time for the Convention deliberations. The President of the Convention informed the members in April that the European Council required the Convention to present its conclusions to the European Council meeting in Greece on June 20. Giscard d'Estaing acknowledged that this was a firm deadline to which the Convention had to work.⁶⁵ He acknowledged also that the tight time frame required flexibility in the Convention's working methods.⁶⁶

The very tightness of the time scale served to increase the centralization of initiative to the Praesidium and the Secretariat. They already had the principal responsibility for drafting the detailed articles of the Constitutional Treaty. Their power in this respect was enhanced because the working groups were largely disbanded once they had presented their final reports, although it was possible to reconvene such groups if this was required. The centralisation of initiative was enhanced by the very limited time scale within which amendments to the draft Articles could be made. This was normally a week, a short time by any standards given the complexity and controversial nature of some of the Articles. It fell moreover to the Praesidium to decide which amendments should be taken seriously. A plethora of amendments were tabled to all draft Articles, and it was not uncommon for there to be forty or more. It was the Praesidium, and in some instances a small number within the Praesidium, that 'grouped' the amendments, decided which 'groups' had most support and which should be taken up.

The tightness of the timetable, with the correlative centralization of power and scant time for deliberation about amendments, was of course less than satisfactory. It certainly did not conform to some 'ideal-type' vision of the final stages of drafting a Constitution or Constitutional Treaty. The Convention did not however exist within an ideal-type world. It conducted its task against the real world conditions laid down by the European Council. Once the deadline was set the Praesidium had little choice but to take a more pro-active role. If it had not done so the Constitutional Treaty would not have been presented to the European Council in June 2003, and might not even have been ready by Autumn 2003. We should be similarly realistic about the Praesidium's role in relation to the prioritisation of amendments. The absence of the strict deadline would, to be sure, have allowed greater time for deliberation about the amendments. It would still have been necessary for someone to be pro-active in deciding which of the amendments should be pursued. This could not have been readily accomplished by any simple voting method. The number and range of amendments precluded this solution. Whether a member might vote for or against amendment X concerning topic A would depend on the alternatives, and there would often be many placed on the table. Moreover, preferences for or against amendment X on topic A might commonly be affected by the outcome in relation to amendment Y on topic B, which was related to, but distinct from topic A.

⁶⁵ CONV 696/03, *Summary Report of the Plenary Session 24 and 25 April*, Brussels 30 April 2003.

⁶⁶ CONV 721/03, *Letter from the Chairman to Members of the Convention Concerning the Convention's Working Methods During its Final Stages*, Brussels 8 May 2003.

3. The Inter-Governmental Conference: Deliberation, Discord and Decision

(a) *The IGC Deliberations: An Italian Autumn*

Giscard d'Estaing duly delivered the Draft Constitutional Treaty to the European Council in June 2003. The IGC deliberations did not however begin in earnest until the autumn under the Italian Presidency. The outcome is well known. The Member States failed to agree on the Constitution in the December meeting of the European Council, and the reasons for this will be considered below.

The early view, embodied in the Laeken Declaration, was that the Convention deliberations would be no more than the "starting point for the discussions in the Intergovernmental Conference, which will take the ultimate decisions".⁶⁷ This was in line with the view that the Member States hold the reins of power in grand constitutional moments. It was nonetheless unclear when the IGC initially convened whether it would seek to re-open the Convention's text. There were some Member States who favoured acceptance of the text as it stood, mindful of the dangers of opening Pandora's box. However, they made it clear that if the text were re-opened then there were issues that they would place on the table for reconsideration. Other Member States were less reticent, and pressed for reconsideration of certain provisions. The latter view won the day, and the IGC proceeded to 'pick its way' through the Constitution, albeit not in any very systematic manner.

The IGC discussed a plethora of particular issues during this period, including detailed aspects of areas such as economic policy, criminal law, defence, and the CFSP.⁶⁸ It was not however surprising that the IGC deliberations were dominated by institutional issues. No attempt will be made to evaluate the complex issues surrounding the desirability or otherwise of the changes proposed by the IGC to the institutional provisions. That requires a paper in its own right.⁶⁹ The present objective is rather to give a flavour of the institutional issues that occupied the IGC in this autumnal period.

The IGC considered the *internal organization of the Commission*. The Draft Constitution in effect embodied a two-tier system for Commissioners, fifteen of whom could vote, while the remainder could not.⁷⁰ This was a compromise between those who favoured a smaller, tighter Commission, and those who advocated the continued presence of one Commissioner from each Member State. This compromise was however deeply problematic. The Commission expressed opposition in the strongest possible terms, describing the relevant provisions of the Draft Constitution as "complicated, muddled and inoperable".⁷¹ The Italian Presidency addressed the issue,⁷² although it seemed that the IGC would persist with the divide between voting and non-voting Commissioners, while attempting to clarify the roles responsibilities of the latter group.⁷³

The *organization of the Council* received considerable attention. The Draft Constitution proposed a combined Legislative and General Affairs Council (LGAC). When the LGAC acted in its

⁶⁷ *Laeken European Council*, SN 300/1/01, 14-15 December 2001, p. 5.

⁶⁸ CIG 52/1/03, PRESID 10, *IGC 2003-Naples Ministerial Conclave: Presidency Proposal*, Brussels 25 November 2003.

⁶⁹ See, Craig, n. 52.

⁷⁰ Art. I-25(3).

⁷¹ *Communication from the Commission, A Constitution for the Union, Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties* COM(2003) 548 final, para. 2.

⁷² CIG 6/03, *Preparation of the IGC Ministerial Meeting on 14 October 2003: Questionnaires*, Brussels 7 October 2003.

⁷³ *IGC 2003-Naples Ministerial Conclave*, n. 68, pp. 4-5.

legislative capacity each Member State's representation was to be composed of one or two representatives at ministerial level with relevant expertise, which would reflect the business on the Council's agenda.⁷⁴ This did not prove acceptable to the IGC.⁷⁵ The majority of the Member States favoured according legislative power to each of the Council formations, rather than having one dedicated Legislative Council, and this view was incorporated in a revised version of Article I-23 placed before the IGC by the Italian Presidency.⁷⁶

The IGC also proposed more general changes to the regime of *Council formations*.⁷⁷ The combined LGAC was discarded. There was to be a General Affairs Council, GAC, with the task of ensuring consistency in the work of the different Council formations. The GAC would, as in the Draft Constitution, prepare and ensure the follow-up to meetings of the European Council in liaison with both the President of the European Council as well as the Commission.⁷⁸ The provisions concerning the Foreign Affairs Council, FAC, remained the same.⁷⁹ The European Council would still make the decision concerning the list of other Council formations.⁸⁰ A consequence of discarding the LGAC was that each of the Council formations would deliberate and vote on legislation within their respective areas. The method of choosing the Presidency of the Council formations was altered.⁸¹ They were to be held by Member State representatives in the Council on the basis of equal rotation, in accord with a Protocol devised by the IGC. The Protocol embodied in essence a 'team system' for the Presidency of Council formations, other than the GAC and FAC. This meant that the Presidency of those other Council formations would be held collectively by pre-established groups of three or four states, for a period that was still being negotiated, but which would be somewhere between one and two years.

There was also discussion about *voting within the Council*, the definition of qualified majority and the areas to which QMV, as opposed to unanimity, should apply.⁸² Some states were happy with the Convention draft, others wished to be more adventurous, yet others wished to be more cautious at least with respect to the retention of unanimity for voting in certain areas. The Italian Presidency was reluctant to re-open the Convention definition of QMV, which can be readily understood given the Byzantine nature of previous discussions on the matter. It did however accept that further reflection on the matter was necessary and that it might have to be placed on the table of the European Council meeting.⁸³

(b) The Brussels European Council December 2003: The 'Winter of our Discontent'

As autumn turned to winter the Italian Presidency sought to prepare the ground for the Brussels European Council meeting in December 2003. It pursued a double-edged strategy, as is clear from documentation submitted to the European Council. It submitted one document in the form of revised texts on issues that the Presidency felt were sufficiently resolved by the IGC deliberations to be able to be put forward as concrete proposals.⁸⁴ It also submitted a much shorter document concerning sensitive issues that were intended to be the focus of the discussion

⁷⁴ Art. I-23(1).

⁷⁵ CIG 9/03, PRESID 1, *Questionnaire on the Legislative Function, the Formations of the Council and the Presidency of the Council of Ministers*, Brussels 15 October 2003.

⁷⁶ CIG 39/03, PRESID 5, *Council Presidency and Council Formations*, Brussels 24 October 2003.

⁷⁷ CIG 39/03, PRESID 5, *Council Presidency and Council Formations*, *supra* note 76.

⁷⁸ IGC revised Art. I-23(2).

⁷⁹ IGC revised Art. I-23(3).

⁸⁰ IGC revised Art. I-23(4).

⁸¹ IGC revised Art. I-23(6).

⁸² CIG 38/03, PRESID 4, *IGC – Qualified Majority Voting*, Brussels 24 October 2003.

⁸³ CIG 52/1/03, PRESID 10, *IGC 2003-Naples Ministerial Conclave*, n. 68, p. 4.

⁸⁴ CIG 60/03, ADD 1, PRESID 14, *IGC 2003 – Intergovernmental Conference (12-13 December): Addendum 1 to the Presidency Proposal*, Brussels 9 December 2003.

at the December meeting.⁸⁵ These were the existence or not of some reference to Europe's Christian roots in the Preamble; the composition of the Commission; the rules on qualified majority voting; and the minimum threshold of seats in the EP.

Commentators and participants initially expected the Brussels European Council to be a 'three shirter'. There is an amusing article waiting to be written about 'sartorial metaphors within European discourse', more especially so given the talk of 'hats' within the Convention in the context of the Presidency of the EU. This is not however that article. Suffice it to say that the 'three shirter' signified an expectation that the European Council would extend beyond the normal two day period, thereby necessitating the extra supply of fresh clothing. It was thought that there would be lengthy discussions, quite possibly extending throughout the nights, as the dramatis personae hammered out some form of consensus on the issues that still divided them. That had been the case in the past, most recently with the IGC that produced the Nice Treaty.

Matters turned out very differently. As the date for the meeting approached concerns were expressed that a deal might not be brokered. MEPs who were former Convention members drew up a list of ten critical points that they expected to see in the final Constitution. The EP was especially concerned about its role in the budgetary process and felt that this was under threat from some Member States. It was however the issue of vote weighting in the Council, with its implications for QMV, that was most difficult. This saw France and Germany pitted against Spain and Poland, with the former pair insisting that the number of votes wielded by the latter two states should be reduced. Agreement could not be reached on this topic, the European Council broke up early, and the participants went home with some clean clothes.

The 'assignment of blame' for failure to agree on the Constitution began quickly. Fingers were pointed at Spain and Poland for being intransigent, similar accusations were levelled at France and Germany, and Berlusconi was criticised for not doing enough to resolve the problem.

The 'payback' for failure to agree on the voting issue was equally rapid. On December 16 the leaders of France, Germany, UK, Sweden, Austria and the Netherlands signed an open letter calling for EU spending to be capped from 2007 onwards. This would have significant consequences for Spain and Poland who would be principal beneficiaries of EU funding and hence suffer from any cap on spending. It is difficult to regard the timing of this letter as unrelated to the failure at Brussels. Liberation, the French daily, spoke openly about the letter in terms of it being the bill for the veto of the Constitution by Spain and Poland.

(c) The Brussels European Council June 2004: The Irish Secure Agreement

The Presidency passed to Ireland for the first six months of 2004, with the Dutch set to follow for the second half of 2004. The Irish aimed to conduct bilateral negotiations with the relevant players and report back on progress to the European Council meeting in March. A meeting with the German foreign minister took place in January 2004, followed by similar meetings with representatives from Spain, Poland and France. It was however the tragedy of the bombing in Madrid which proved to be the turning point. This led to a change of government in Spain and the incoming government quickly made it clear that it wished to see the IGC process revived and that it was willing to re-enter discussion about voting rights within the Council, the issue that had led to the failure in December 2003. It should not however be thought that agreement on the Constitutional Treaty was inevitable thereafter. It remained unclear until the last moment whether the voting rights issue could be resolved and whether other matters, such as Blair's red lines, could be accommodated. The Brussels European Council did however manage to secure

⁸⁵ CIG 60/03, ADD 1, PRESID 14, IGC 2003 – *Intergovernmental Conference (12-13 December): Addendum 2*, Brussels 11 December 2003.

agreement on the Constitutional Treaty,⁸⁶ and it now remains to be seen whether it will be ratified.

4. Reflections on Constitutional Reform

It is important to maintain a sense of balance when reflecting on the current cycle of EU reform. It may be helpful to revert to the distinction used earlier between content of the reform agenda and the deliberative process by which this was undertaken.

In terms of content, some might argue that reform should have concentrated on the four 'discrete' issues set out in the Nice Declaration, and conclude that the reform agenda was too ambitious. We should be careful in this respect. The issues left open after Nice were not discrete, and if reform had concentrated solely on them there would have been a raft of criticism that it had failed to address deeper problems about the functioning of the EU. We should also remember that the reason for failure to agree on the Draft Constitution in December 2003 concerned one particular issue, voting rights within the Council. This was one matter within a Draft Constitution that addressed a whole range of institutional and substantive topics central to the functioning of the EU. There is room for disagreement as to whether changes made by the IGC to the Convention Draft Constitution were desirable. This is to be expected with a Constitution that covered so much ground. Nor should it be immediately assumed that the Convention draft was 'right' and that any amendments made by the IGC were 'wrong'. This would be far too simplistic. The Convention Draft was not a perfect document by any means. Some of the provisions, such as those dealing with the organization of the Commission, were particularly problematic. On other issues, such as internal Council formations, the 'best' solution was clearly a matter on which opinion could differ.

In terms of process, it may be tempting to think that the Convention process was defective, or that it had been oversold by way of comparison with traditional IGC techniques. We should be careful before subscribing to these conclusions. The sentiments expressed by the key players between Nice and Laeken were genuine. There was disenchantment with the traditional IGC approach to EU reform, more especially after the experience with the discussions leading to the Nice Treaty. If this traditional process had been adhered to in relation to the broadened reform agenda there would have been a raft of criticism about the 'legitimacy and representativeness deficit' inherent in the classic IGC model. It is true that the realisation that the Convention might well produce a formal Constitutional Treaty led to some intergovernmentalisation of the Convention process. This is exemplified by the way that certain Member States changed their representatives to the Convention, installing high profile players such as foreign ministers in place of their original members. It is apparent also in the way in which state actors intervened in a deliberate manner from outside the Convention in order to influence the proceedings therein. These developments did not however make the Convention just another IGC in disguise. State actors were always part of the Convention. The fact that state players recognised that the Convention deliberations were more important than they initially believed, and therefore wished to have greater input, did not mean that they had a monopoly in the discursive process. It is true also that the Convention process was overlaid by the traditional IGC model. This was however to be expected. It would have been possible in theory for the outcome of the Convention deliberations to be dispositive with no amending role for the IGC. The present reality is that the Member States would not accept this, nor are they likely to do so in the immediately foreseeable future. The process of EU reform is therefore likely to be a blend of the Convention model and the IGC.

⁸⁶ Council of the European Union, Brussels European Council, Presidency Conclusions 10679/04, ADD 1, CONCL 2, Brussels 18 June 2004.