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The Convention on the Future of Europe: New and shining?

Abstract

The Convention on the Future of Europe was widely hailed as an innovative, efficient, democratic and transparent instrument for preparing treaty reform in the European Union. The paper sets out to explore its novelty in two dimensions: (a) the style of deliberation in the Convention which is said to be one of its primary assets: reasoned deliberation instead of diplomatic negotiations and bargaining and (b) the composition of the Convention giving national and European parliamentarians an impressive majority. By remebering the "Spinelli process" it will be argued that the Convention method belongs to the instituional memory of the EU. Finally, based on the link between democracy and representation a comparision between intergovernmental conferencs and the Convention is made leading to the conclusion that the latter showed a better quality of responsiveness but was far from optimal.

Introduction[1]

Over the last months excited gaggle could be heard in the corridors of various academic departments: the Convention is meticulously described, analysed, interpreted, deconstructed, reconstructed and finally praised as the new method not only bringing more conferences on a 'new subject' but also catapulting us into a new era of European democracy. Devotees of deliberative democracy find their theories about the value of 'arguing' confirmed and defend the institutionalisation of the convention method (Art. IV. 443), adherents of representative democracy find comfort in the fact that the majority of conventionnels as Valéry Giscard d'Estaing preferred to call them were members of Parliaments and intergovernmentalists breath a sigh of relief because it could have come worse. This collective frenzy is related to the nearly ubiquitous talk about the democratic deficit of the European Union. Since the European Parliament does not resemble the 'classical' function and rights of national parliaments the Union suffers from a deficit which can only be reduced by granting more rights to the EP. In the Convention, the MEPs played a crucial role within the group of parliamentarians due to their experience and resources. One conclusion from this is that because they were allowed to play a certain role, the Union, the convention method and the results are automatically more democratic (Fossum/Menéndez 2003; Pollak/Slominski 2004). But is this the case? The following tries to shed light on a number of questions: (1) Is the convention method really new in terms of inclusiveness and a turning point in the history of integration (Shaw 2003)?

[1] I would like to thank the participants of the CIDEL Workshop Constitution Making and Democratic Legitimacy in the European Union", London 12-13 November 2004 for their invaluable comments on an earlier version.

Does it deviate in style from the traditional method of treaty reform hitherto taking place behind a veil of secrecy? Especially by thinking about the 'Spinelli-process' from June 1980 to February 1984 doubts arise if the inclusiveness of the Convention was something unseen before. This also relates to the question of a possible constitutional moment which should be replaced by constitutional moment*um* which better captures the non-singularity of the Convention and takes the run-up into account too. (2) Brute figures reveal what the dynamics in the Convention proved: women were dramatically under-represented, the majority of European citizens who regularly voice their scepticism about the integration process were hardly represented, the rights of the participating groups and institutions were unbalanced and the praesidium largely set the tone by reverting to secrecy and horse-trading. Does the widespread delight about the Convention mask its severe shortcomings in terms of representativity?

1. What's new about the Convention? About process and form

The meagre results of the IGC in Nice, the appalling style of negotiations in the nocturnal hours characterised by petty national jealousies attracted severe criticism (Hoffmann 2002). British Prime Minister Tony Blair admitted that the EU could not "continue to take decisions as important as this in this way" and continued: "Reform is essential so a more rational way of decision-making is achieved" (European Voice 6/46, 2000: 1). Even French President Chirac, whose handling of the negotiations came under fierce attack from virtually all sides, told the members of the EP that IGCs might no longer be a suitable method (European Voice 6/46, 2000: 1). Hans-Gert Pöttering, leader of the centre-right European People's Party said: "This IGC did not produce any kind of result. This should never be allowed to happen again. Let's try another model" (European Voice, 6/46, 2000: 1; Agence Europe, 13 December 2000; ibid., 10 January 2001). Another model was soon to be found since the Convention on Fundamental Rights proved to be a success (Deloche-Gaudez 2001; Pernice 2001). A Convention on the Future of Europe promised to break the deadlock between governments which characterised the last two IGCs and thus "fed the democratic deficit in the broadest sense of the term" (Dinan 2002, p. 31). From this angle the Convention on the Future of the European Union provided an apparently excellent opportunity for Europe's political class to show that they are willing to address the widely perceived democratic deficit, notably to tackle the 'distance issue', 'the executive dominance issue' as well as the 'transparency and complexity issue' (Craig 1999, p. 23 et seq.).

Thus, there is hardly an article about or comment on the Convention which does not emphasize its novelty. Although it is not for the first time in integration history that a group of people met to deliberate constitutional and institutional issues those meetings normally lacked a mandate as was granted in the Laeken declaration (2001). But apart from the fact that the respective declaration mentioned a vast number of questions and that it allowed a specified circle of people suspected to be representatives of national parliaments, the European Parliament, the Heads of State or Government,

the then accesssion states, and the Commission to meet frequently over a certain time in one place[2] the mandate remained rather dubious: "In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council has decided to convene a Convention composed of the main parties involved in the debate on the future of the Union. … it will be the task of the Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses." Irrespective from the pathos of constitutional rethoric which very early creeped into the Convention with the agreement to draft a consensual text instead of options it was clear that according to Art 48 TEU the "masters of the treaties" (BVerfGE 89, p. 155) would reserve the final power of decision-making –clearly stated in the Laeken declaration which rushed to coin the results of the Convention as a "starting point for discussions in the Intergovernmental Conference". To ensure that the constitutional moment was kept at bay those masters included some safeguards in the Convention set-up: a directly appointed President who frequently had to report to the Europan Council, a relatively large and heterogenous membership – national representatives ountnumbering those from EU institutions – thereby undermining the self-organizing capability and fixed time-limits (Ludlow 2002; Magnette 2002; Closa 2003).

The Convention's president Giscard d'Estaing pointed out at numerous occasions since his inaugural speech (Magnette 2002, p. 11) that the structure and the proceedings of this body were framed in a way as to impede intergovernmental forms of bargaining and alliance-building: publicity of the meetings, seating in alphabetical order, and the famous blue and green cards for immediate remarks in the plenary in order to spark a lively debate. In addition Giscard d'Estaing on various occasions called upon the conventionnels to speak up for their own leaving national and institutional affiliations behind. Though this sometimes seemed to work in some of the working groups the classical cleavages soon popped up again: small vs. large countries, federal minded vs. intergovernmentalist minded members, left vs. right and neo-liberal vs. social market economy. Thus, a central feature of deliberative theory, 'learning from each other via the exchange of rational arguments' (see Cohen 1997), was replaced by bargaining. The often heard argument, repeated by Giuliano Amato in his final contribution to the plenary, that one of the main differences to IGCs was the obligation to justify one's stand was only partly true. Rather, the conventionnels started to draw 'red lines' which they (or their governments) were not ready to cross.[3] Two reasons can be given for approximation to the IGC method: **(a)** The conventionnels were fully aware that they constituted a preparatory body. A fully-fledged federal constitution would not have met the approval from the following IGC.[4] Though from a (counter-factual) theoretical position it would have been interesting to see what would have happened had the Convention decided to draw up either two documents, one clearly federal and the other rather following the hitherto usual incremental path towards a mixture

[2] For more information on the *locus constitutionis* see e.g. Magnette (2002, 3-9).

[3] Especially Peter Hain, the representative of the British Prime Minister, dubbed the 'shadow president' of the Convention, excelled in drawing those lines when it came to the issue of common foreign policy. Schönlau (2003) correctly argues that we have to differentiate between the different phases of the Convention. In the listening phase there were traces of a free, reasoned discussion but with the publication of Giscard d'Estaings 'skeleton' at the latest one got the impression that the plenary indulges in a tedious read out of standpoints.

[4] And also probabely not of a majority of European citizens.

between confederal and federal characteristics, or to simply extend the time frame of the deliberations – but this was never an option. To speak of a constitutional moment, which includes an independent and self-confident Constituant[5], seems to be exaggerated. **(b)** The stubborn referral to the search for consensus instead of compromise or "incompletely theorized arguments" (Sunstein 1997). Consensus requires the abandonment or the overlapping of ideological positions, something which could not be expected given the heterogenous backgrounds of the conventionnels. During the seach for consensus a deliberation process uncovers solutions which are acceptable for participants. This solution might lie in the intersection of ideologies, and is thus based on the relative proximity of the standpoints. Solutions which were not already – at least in principle – existent in the political world view of a participating faction are excluded. On the other hand, compromise is the agreement on a solution which allows staying by one's ideological positions. A compromise is not the result of preference changes but the belief in the obligation to find solutions to save the polity from total breakdown. Ankersmit (2002, p. 143), who pointed out the importance of the difference between consensus and compromise, emphasized the paradoxical character of compromise: "on the one hand, as in the case of consensus, one stand's by one's ideological conviction, but, on the other hand, one is prepared to follow a line of political action more or less inimical to that conviction." Thus, the search for consensus ultimately required the conventionnels to revert to forms of bargaining.

At least the form of the Convention was new: it comprised 15 government representatives from the EU members, plus 13 government representatives of the accession states, 30 national parliamentarians and 26 from the accession countries, 16 MEPs and 2 members of the European Commission. Moreover the European Ombudsman, social partners, the Committee of the Regions and the Economic and Social Committee had official observer status and speaking rights. Since the deliberative process within the Convention was not that impressive we concentrate on its composition. Its inclusiveness was widely hailed as being new and unique in the history of integration. A brief excursion into this history might help to either confirm or reject this claim. The first "constitutional Convention" was the modestly called Ad-hoc Assembly[6] in the early 1950ies which was responsible for drawing up a blueprint for securing political primacy over the planned European Defence Community (EDC). It comprised members from the Common Assembly of the European Steal and Coal Community as well as nine additional members (three French, German and Italian MPs) to bring up the number to that set by the EDC Treaty. Delegates from the Council of Europe were invited to join as observers and even got the right to take the floor. A working group was called into being – the constitutional committee – and sub committees were formed (two groups dealt with institutional questions, one with competences and one with external relations). The governments of the member states did not advise the assembly to work out a constitution – a fact which was largely ignored by the assembly and later also contributed to the failure of the project (see Lipgens 1985, p. 28). The basis for the work of the assembly was built by the Luxembourg resolution and a catalogue of questions

[5] What Jon Elster calls the 'freedom' of a constitutional assembly (1998, p. 105).

[6] At the beginning François de Menthon asked the President of the Ad-hoc Assembly, Paul Henri Spaak, "Comment s'appelons-nous, Monsieur le Président?" In order to avoid too much controversy they agreed on the rather peculiar name Ad-hoc Assembly.

compiled by the Foreign Ministers of the member states.[7] In addition a report from legal experts, commissioned by the Council of Europe, as well as a report by the federalists around Altiero Spinelli, served as preparatory documents (Lipgens 1986, p. 319). While it were governments within the ECSC who iniated the process, it was the assembly which carried out the drafting of the articles. An assembly in which the parlamentarians (then delegated from the national parliaments) were the central actor. On 10 March 1953 Paul-Henri Spaak handed over the "Draft Treaty Embodying the Statute of the European Community" to Georges Bidault – the fate of the European Political Community is well known. It should take until the early nineties till the Parliament again got such a prominent role because the meeting of the ECSC Foreign Ministers in Messina in June 1955 established what is nowadays called the IGC method: they appointed a committee made up of government delegates and headed by the Belgian Foreign Minister Paul-Henri Spaak. The Spaak Committee, the Dooge Committee (for the preparation of the Single European Act), the Delors Committee (for the European Monetary Union), the Reflection group preparing Amsterdam and the Group of Three Wise Men in the lead up to the Nice IGC took over the role of the Ad-hoc assembly/EP.

Concentrating on those 'big bargain' (Moravcsik 1993; Hurrell/Menon 1996; Moravcsik/Nicolaidis 1999) events alone would mean leaving out some important parts of the constitutional momentum. Four years after the first direct election to the EP, three years after the first rejection of a Community budget the EP became frustrated about its role.[8] The voices who argued that with the direct election the extension of parliamentary rights would soon follow proved to be too optimistic. Proposal for deepening the integration were plenty: the Declaration of 1972 Paris Summit, the Tindemans report, the report of the Three Wise Men and the Genscher-Colombo Initiative. But they all failed. Altiero Spinelli proposed a more radical approach to overcome the gap between what he saw as eminent challenges for Europe and the Council's inactivity. In June 1980 Spinelli gathered a small group of like-minded MEPs in the so called Crocodile Club in order to draw up a plan for convincing as many MEPs as possible of a necessary new constitutional initiative. Already one year later the EP passed a resolution for a new institutional committee. The committee started to collect a number of texts published since the 1950ies which dealt with institutional reform. In addition hearings were organised to include the Commission, the Council, the Economic and social Committee and 'external' players like the social partners (European Employers' Organization, European Trade Union Confederation) and academics. Spinelli was of the opinion that only a very extensive and broad alliance could move the heads of states and governments. From 1982 to 1984 he tried to effect a compromise between the participating parties. In February 1984 his work was crowned with succes when the EP adopted the "Draft Treaty on the European Union".[9] From the very beginning Spinelli and the EP sought to involve the national publics in their project. National parliaments[10], political parties, NGOs and interest groups were invited to support the draft. The rationale behind this strategy

[7] Fondation Jean Monnet pour l'Europe, AMJ 3/3/3: Questions relatives à la création d'une Communauté politique européenne, 23 October 1952.

[8] The following is based on Richard Corbett's excellent book on the EP (1998).

[9] European Parliament (1984) Spinelli Draft treaty, OJ C 77/22, 19.02.84.

[10] See the EP's resolution reacting to the Dublin Summit: OJ C 12 (1984), p. 47.

was clear: the EP wanted to create enough public pressure on the Council to make it impossible for them to bypass the draft. Especially the axis with the national parliaments promised to be successful, because they had lost considerable legislative power to the Council in the process of integration. The EP sent delegations or 'scouts' (Corbett 1998, p. 194) to the national parliaments to explain and seek support for the Draft Treaty – a move which was highly unusual because national parliaments so far had not been involved in the preparation of treaties before their final ratification following conclusion by governments. In the end only the Danish Folketing rejected the Spinelli draft but the Dooge Committee later took over many of the suggestions made. Thus, the following IGC which led to the Single Euopean Act saw a pre-preparatory stage which involved a substantial number of societal actors. The European Parliament's fight for the 'formal' right to participate in treaty change negotiations took until 1995. The then reflection group chaired by Carlos Westendorp provided for the participation of two EP representatives but full participation in the IGC was vetoed by France and the United Kingdom. Though the two EP representatives were invited to address occasional meetings their impact remained limited. Today the EP can also submit a formal opinion before the start of an IGC but it only has observer status at the table of negotiations (Grey 2000, p. 266).

The short historical remarks show that the Convention on the Future of Europe was not the first assembly which allowed parliamentarians a central role. But the similiarities between the examples must not be exaggerated. The Ad-hoc assembly and the Spinelli initiative were based on (national and delegated European) parliamentarians, the process of drafting was entirely in their hands. Although 'external' opinions were sought in hearings, commissioned reports and contacts, the deliberation remained confined to the EP. The involvement of external actors was not based on the normative idea of inclusiveness or representativeness but was a political strategy to overcome the inertia of the Council. Nevertheless, we can see that the 'Convention-idea' belongs to the institutional memory of the EU.

Another aspect which is has merited attention by a lot of authors is the question of constitutional moment either asking if the moment was ripe for a Europan Constitution thereby mainly pointing at the deadlock which seemed to emerge in the last two IGCs or asking if such a moment has developed within the Convention through independent and enlightened discussion about the long overdue changes to the institutional arrangement of the Union. Beethoven intended to be his Ode to Joy a revolutionary hymn, or at least republican symbol – it resounded on 13 June in the Parliament building to celebrate the Convention's accomplishments, i.e. a constitutional moment at least for the Convention members. Today we don't know yet if this really was a constitutional moment, since its character is defined by the Constitution's success in the ratification process. It seems to me that it is more apt to locate the Convention in the decade-long constitutional history of the Union thereby denying a unitary character to the Convention. Already in 1951 there was talk about naming the subsequent ECSC founding treaty 'Traité portant Constitution de la Communauté Européenne pour le charbon at l'acier' (Mosler 1966, p. 382; see also Bieber 1991; Schneider 2003). Though this name

was not adopted the term has a vivid and dazzling history in the EU. E.g. Hans Peter Ipsen (1983, p. 50), like Walter Hallstein, described the process of integration as "constitutional realization", a "changing constitution". Eberhard Grabitz talked about a *constitutio emergens* and Joachim Hesse spoke about "constitution in the making" (comp. Bruha et al. 2001) – an interpretation which was taken over by many others. Thus, Rudolf Smend's idea of the state as a perpetual reconstruction in the experience and activity of the citizens through "constantly self-renewing constitutional life" (1928) better catches the constitutional momentum the Union has found itself in ever since. This constitutional momentum might even be the *differentia specifica* of the European Union.

The new method of preparing treaty reform has produced winners and losers, the EP clearly belonging to the first group, the Council Secretariat to the latter. But the Council's power was not overtaken by the parliamentarians, let alone by the plenary of the Convention, but moved into the hands of the Praesidium which, under its distinguished chairman, took advantage of its privileged position and largely shaped the agenda. Undeniably, the Convention set new standards in terms of transparency, making it easier to trace the development of certain ideas and tie them to specific actors. But whoever expected the Convention to live up to the normative standards of deliberative democracy must be slightly disappointed. The openness and dynamics of the discussions remained modest, the 'learning through' deliberation seems to have been limited to the representatives so far unaccustomed to the Brussels floor and alliance-building was blossoming as soon as the listening phase was over. But is there an alternative for a Union which consists of states and citizens? An interim conclusion would be that the "form" is partly new but the internal dynamics remained largely the same as in IGCs. Now, if the form is not that new and the dynamics are intergovernmental in style, maybe the result was reached by a more representative body at least?

2. A Representative Convention?[11]

The legitimacy of a polity is a function of its representativeness, its constitutional principles and the protection of fundamental rights. In the following I will concentrate on the first point asking if the Convention contributed to the legitimacy of the Union by being more representative than an IGC. One of the most common charges against the IGCs, apart from their secrecy, is that they are empowering national executives to an unprecedented extent. This charge is based on the idea that democratic politics has to involve the adressees – or at least their representatives – of policies (e.g. Coultrap 1999) since democracy is understood as a "necessary connection between public policy and popular preferences" (Saward 1998, p. 51). In addition to this normative claim the need for representation can also be justified by referring to its organizational (Schwartz 1988, p. 23; Heller 1986, p. 247) as well as its identity-building qualities (Rausch 1968, p. ix; Schneider 1995, p. 505). The structural necessity for representation must not be equated with a single model, i.e. representative parliamentary democracy. This is especially true within the context of the European Union where

[11] The chapter is based on Pollak/Slominski 2004.

political authority takes place to a large extent outside the traditional structure of parliamentary bodies and is shared by various levels of governance comprising (sub-, inter- and supra-) national networks and institutions as well as organised forms of civil society (Andersen/Burns 1996, p. 238). Consequently, policy making in the EU is conducted by a multiplicity of representatives – selected on different grounds and often scarcely or even not legitimised at all.

In order to conduct a comparison between the representative quality of the two different methods of treaty reform in the EU some brief theoretical remarks in advance are needed since the concept of representation is a highly ambiguous one. A look into the literature shows that this key concept is mostly equated with mere presence and/or the organisational principle of representative democracy. Presence is an important element of representation but it does by no means tell the whole story of the concept. Other dimensions of the concept have been usually less emphasized or considered as not being part of the concept at all. It is important to stress that the representative quality comes in many varieties and which are usually fulfilled in varying degrees and with different emphasises. In doing so, we deal not only with the relation between represented and representatives but also have to take the institutional arrangement/conditions into account.

In past years mainstream political science has paid little attention to developing a comprehensive theory of representation. Concentrating on solitary aspects of democracy one strand of research has dealt with electoral systems and how these influence the relationship between votes and seats in the legislature (Bingham Powell 2001). Other research programmes centre on social or symbolic representation analysing demographic correspondences, such as gender, race and class, between citizens and their representatives. While this literature has its merits, its major shortcomings lie in the fact that it overemphasizes certain aspects of representation and equates it either with the mere fact of being present or with parliamentary representation. Although the term representative democracy seems to suggest that democracy and representation are two sides of the same medal, we have to be aware that – historically speaking – representation is not only *not* an essential part of democracy but was, above all, "conceived in explicit opposition to democracy" (Manin 1997, p. 236). For most of the centuries the legitimacy of the ruler was by no means dependent on the consent of the ruled. It was not until the 20th century that large and complex societies employ both election and representation (Sartori 1987, p. 30). One reason for the concentration on the relationship between electoral results and the number of seats lies in the essentialism of older conceptual approaches. Authors like Ernst Fraenkel (1964, p. 153), Gerhard Leibholz (1966, p. 27) und Carl Schmitt (1957, p. 209) presented sophisticated definitions of representation. What they have in common is the concentration on the 'true' meaning of the concept. Even Hanna Pitkin in her seminal study on representation tries to catch "the something … in the middle of the dark which all of them [the researchers] are photographing; and the different photographs together can be used to reconstruct **it** in complete detail." (1967, p. 11). Such an essentialist focus tends to oversee the flexibility of the concept and the manipulative power of language. Political langauge has an objective, and this objective is always connected to the re-structuration or preservation of existing power structures. May

be the reference to "truth" delivers additional ammunition in the strugle for power – its scientific validity remains questionable though. Last but not least, political philosophy has undergone some significant changes. While in 1956 Peter Laslett (p. vii) wrote about the death of political philosophy (due to the advance of anglo-saxon analytical philosophy) and in 1986 he stated a revival (Laslett/Runciman, p. 1) we nowadays witness a turn towards "applied political philosophy" (e.g. Kymlicka 1992, 1995; Bauböck 1994; Chambers/Kymlicka 2002). The new kids on the block were now called associative or deliberative democracy, delegation and accountability.

In the following I will differentiate the concept of representation into five dimensions in order to operationalize it: presence, authorisation, independence, voting equality and responsiveness and apply them to the IGCs and the Convention. A comprehensive, both analytical and normative, understanding of representation has to deal with all of these dimensions. Political theorists dealing with representation as well as political actors selecting representatives have become focused nearly exclusively on the selection of persons on the ground of a given or perceived identity, reducing thereby representation to the question of who is present in a given assembly or committee. The reason for doing so may lie in the assumption that a selection of a certain person based on a given identity is *by itself* a guarantee for the proper pursuit of interest. True, presence is necessary for representation but by no means sufficient. As one can easily see, it makes a striking difference in the quality of representation if a representative is in fact present but is not authorised to act and/or is only endowed with a limited room of manoeuvre. Or, a representative is present, authorised to act but is not allowed to vote and/or the votes are weighted differently. Even if a representative is present, properly authorised, and enjoys independence and equal voting rights this may not be sufficient to satisfy normative requirements as the negotiations are not public, transparent or the representatives are not accountable for their acts. The five dimensions have to be understood as analytical instruments – overlapping *in praxi* – employed to array our blurred understanding of what representation consists of.

Presence

The choice of a representative can be made on different grounds such as identity, interest and expertise.[12] In case of identity being the justification for selection the linkage can be filled up with different forms of identity such as territorial (state, region), institutional (government, parliament), ethnic, gender, religious etc. Hence, 'true' representation requires that the legislature be so selected that its composition corresponds accurately to that of the whole nation – an argument which was formulated some hundred years ago by John Adams and Mirabeau. The selection of a representative on the ground of a shared identity may imply the expectation that this is the only way to ensure a given interest. The difference between 'presence based on identity' and 'presence based on interest' relies on different assumptions. As said above, advocates of presence based on identity expect that a person who shares certain characteristics is more likely to understand and act for persons with the same characteristics. Conversely, interest representation argues that a representative with characteristics of a given group is by no means a guarantee or even a proper requirement to act in the interest of that

[12] The dimensions are borrowed from O'Neill (2001). The dimension 'epistemic values' was replaced by 'expertise'.

group. A representative may not only be selected on the grounds of a perceived shared identity or interest but also on the grounds of knowledge or expertise. A lawyer, physician or civil engineer may be chosen to represent, say, a state in a committee to make decisions in their fields of expertise. Due to the lack of knowledge most of the represented usually do not have (or are not aware of their) interests in these policy fields. They acknowledge the fact that there are areas where inherent necessities have to be decided by professionals relying on their expertise irrespective whether they are from a given region, social democrats, liberals or conservatives. This does not say that technical decisions have by their very nature no political implications. On the contrary, there is a growing body of literature on EU affairs that deals with political implications of decisions taken by supposedly apolitical agencies or committees concluding that many of theses decisions are not part of a "natural process" but are the result of political determination.

According to David Galloway (2001) we can differntiate between three different levels in IGCs: (1) Meetings of the Heads of State or Government. (2) Meetings of the Foreign Ministers once a month. (3) Personal representatives of the Member States governments on a weekly basis. If we apply the criterion of presence to these three levels we can easily see that there are mainly representatives involved who are selected on the ground of a state identity assuming that this criterion alone will satisfy the state's interest. Without denying that some representatives have a deep knowledge on the working of the Union, we can hardly say that the selection is *primarily* based on expertise. Supranational institutions (European Parliament and Commission) representing different identities (e.g. peoples of the Union) and the general interest of the EU have always played a comparably minor role in IGCs (Hoffmann 2002, p. 5; Closa 2003, p. 1). That is not to say that supranational institutions do not play a role at all and that the show is totally run by the member states alone as Liberal Intergovernmentalists may suggest (Moravcsik 1998, p. 3). On the contrary, supranational institutions such as the European Commission are allowed to partic ipate in the meetings and are entitled to put forward proposals. Equally, the European Parliament has also increased its role during the last IGCs (Gray 2000, p. 266). Consequently, both supranational institutions have proven to be influential in IGCs – at least to a certain extent (Gray 2000, p. 266 et seq.; Gray/Stubb 2001, p. 7). However, without denying the impact supranational institutions or even social partners may have on certain issues of Treaty reform, the real political clout, especially with regard to the most sensitive decisions, remains still with representatives primarily selected on the ground of their state identity, be they Heads of State and Government, Foreign Ministers or personal representatives of the government concerned.

While an IGC can be conceived primarily as an assembly of government representatives of the Member States, the composition of the Convention is much broader and can be divided into three parts according to their ability to influence the deliberation process – measured in terms of presence and voting:

(a) Full members: These included 15 representatives of the Heads of State and Government, 30 representatives of the national parliaments, 16 members of the European Parliament and 2 representatives of the European Commission. Additionally, the 13 candidate states were also

allowed to send one representative of the Head of State and Government and two representatives of the national parliament per country which were entitled to participate fully in the debate but could not prevent a possible consensus among the representatives of the current Member States.

(b) Observers: Besides these full members, the Economic and Social Committee (3 representatives), the Committee of the Regions (6 representatives), the social partners (3 representatives) and the European Ombudsman were invited to attend as observers without voting rights.

(c) Forum: In order to widen the constitutional debate, the Laeken Declaration set up a so-called Forum which was expected to represent civil society (non-governmental organisations, academia, the business world, etc.). These representatives had no independent right of attendance and no voting rights.

If we enrich this classification with the different forms of the 'presence'-dimension (i.e. identity, interest and expertise) we can see on what grounds the selection of Convention members was based:

(a) Full members were primarily selected on the basis of specific identities which again can be separated in different territorial (Member States; EU) and institutional (government, parliaments, European Commission) dimensions as well as on the basis of interests.

(b) Observers were selected not on the grounds of specific identities but rather on their capacity to articulate certain general types of interests. Even the representatives of the Committee of the Regions were not selected due to their belonging to a specific region but in order to represent the interests of European regions in general.

(c) The purpose of most organizations in civil society is to pursue a specific group interest (e.g. economic or ecological interests) or certain identities (European Women's Lobby).

Compared with an IGC, the sheer number of different actors and institutions represented in the Convention has definitely enriched the representative quality in terms of presence. Given the alomost irresponsibly brief historical remarks above I do not think that the Convention has led to a "parliamentarization of the Union's constitution-making procedure" (Lenaerts/Desomer 2002, p. 1238) thus overcoming the widely deplored executive dominance but at least it reflected to a so far unprecedented extent the polycentric character of contemporary societies in terms of identities, interests, expertise and included the relevant institutions involved in the daily decision making process of the EU.[13] The composition also had important consequences for the Convention's unequal distribution of voting rights as well as its quality of responsiveness assuming that only a broadly balanced presence of a variety of representatives serves as a necessary – albeit not sufficient – precondition for a deliberative environment.

Nevertheless Jo Shaw (2003a, p. 12) has pointed out that women were dramatically under-represented in terms of presence. Only 10 women from the Member States and 6 from the candidate

[13] This holds true even after some governments replaced their representative by foreign ministers (France, Germany, Greece, Slovenia, Latvia; see also the promotion of the Spanish representative to foreign minister), by the minister of Europe (Ireland) or other prominent figures (Netherlands). It goes without saying that this development which started in July 2002 signalled the growing importance of the the Convention in the eyes of the member states. Nonetheless, it did not change the polycentric composition of the Convention as such. Moreover, considering that foreign ministers were extremely involved in handling the crises in Iraq which resulted in "absenteeism and perfunctory appearances", the impact of the changes of the Convention's composition as such remains rather unclear (Norman 2003, p.159).

countries were members of the Convention. Two of the thirteen observers were women. In the influential Praesidium we find only one out of 12 members to be female and none if we look to the Presidency. The same holds true for regional identities. Besides the 6 representatives from the Committee of the Regions who had mere observer status there was no full member who had an explicit mandate as a regional representative. This can be explained with the different role of regions within the Member States which were – due to the lack of a single nomination mechanism – free to nominate a person who was expected to pursue, say regional interests.[14]

In order to avoid misunderstanding, it has to be stressed that the (non- or under) *presence* of female, regional or legal representatives does not *necessarily* mean that these kinds of identities, interests or expertise were not *represented* in the Convention at all.[15] It goes without saying that formal presence alone neither guarantees nor excludes "proper" representation in the whole meaning of the concept. As said above, the importance of presence lies in the fact that it serves as a necessary – albeit not sufficient – precondition for a proper deliberative environment. Seen from that point of view, the imbalance of *presence* understood as a result of a criteria-based selection process reflects a *preference* of certain criteria at the expense of others. To put it concretely, the European Council in Laeken, as the authorising body in charge, deliberately favoured presence on the ground of territorial (EU; Member States) and institutional (governments; parliaments) identities. Only representatives endowed with these characteristics were entitled to participate as full members. Other identities, interests or expertise being not part of the agreed selection mechanism were obviously of minor importance in the eyes of the European Council and therefore structurally susceptible to potential misrepresentation not only in terms of presence, authorisation, voting rights but also, and more significantly, in terms of responsiveness.

Authorisation

Once a person is selected, s/he has to be authorised to do "something" on behalf of the represented. Authorisation is in itself agnostic on the question of who does the representing (O'Neill 2001). A representative can be authorised in at least two ways: (1) election by the people – be it direct (e.g. most national parliaments) or indirect (e.g. US President) or (2) nomination or appointment by elected or legitimised bodies (e.g. nomination of Judges by the parliament or by another institution based on a legal provision approved by parliament). If we link authorisation to the above mentioned dimension of presence, we may observe that representation on the ground of identity is in many cases authorised by elections whereas interest and expertise representatives are mostly not elected but nominated – usually by elected representatives. As we will see below, it is sometimes the case, that

[14] E.g. Erwin Teufel who was formally a representative of the German parliament but at the same time Prime Minister of the Land of Baden-Wuertemberg and thus member of the Bundesrat

[15] The same holds true for transnational party "families" whose big groups (EPP, PES, ELDR and the Greens) held regular meetings providing an opportunity to exchange various ideas and preferences. Despite the fact that the party groups succeeded in producing joint contributions (e.g. CONV 392/02; CONV 761/03) the impact of the political families remains still unclear. For a slightly optimistic interpretation see Brown (2003, p. 4); for a pessimistic one see Göler (2003, p. 8).

representatives may not always act on the basis of an explicit formal authorisation but on a more ambiguous concept such as mere practice or acquiescence. Representatives which are only present but operate on a voluntary and thus precarious basis are not only considered less important and legitimated to raise their voices but can also more easily be sidelined or ignored compared to their colleagues with an unequivocal authorisation to represent.

An IGC is not directly authorised by the electorate. Its (formal) legitimacy rests on Art. 48 TEU. According to this provision representatives of the Member States are by far the most important players. But contrary to public international law, Art. 48 also includes Community Institutions in the setting up of an IGC. Apart from the initiation of an IGC, Community Institutions are not formally authorised to play a role in the amendment procedure. Nonetheless, as some authors (Gray 2000, p. 266; Gray/Stubb 2001, p. 7) have shown, there is an established practice involving the Commission in all IGC meetings including a right to put forward proposals. The European Parliament increased its pressure to participate in the negotiation process as it was for the first time authorised to play a formal role in the preparation of the IGC 1996/97. The reflection group for the IGC 1996 consisted of two representatives from each member state, as well as two from the EP. It started its work on 2 June 1995 and based its report on the contributions of the European institutions and the member states which prepared their papers from June 1994-June 1995. The role of the Parliament increased and was more formalised in the context of the IGC 2000. Following the Helsinki European Council, the Parliament had been given the opportunity to exchange views with both the ministerial level as well as the Heads of State or Government.[16] Besides the Community Institutions, other actors also may play a role in the course of an IGC, notably preparatory groups like the Dooge, Delors and Westendorp committee or the Group of Wise Men. But the problem remains: While it is undisputed that only the representatives of the Member States are *authorised* to agree on the final outcome, Article 48 TEU also includes representatives of Community Institutions in the course of preparing an IGC. But primary law remains remarkably silent about the role of representatives of these institutions in the negotiation process of the IGC. Their authorisation is based on either informal political agreements or Presidency Conclusions leaving them subject to possible and widely unnoticed misrepresentation.

The Convention was neither directly elected nor was its establishment based on primary law. Instead, it was set up by the European Council (2001) in Laeken "in order to pave the way for the next Intergovernmental Conference". Due to the fact that the European Council is free to establish any preparatory body whenever it feels to do so, the criterion of proper authorisation is satisfied. But this assessment depends on the nature of the Convention: if it is a mere preparatory body the authorisation is sufficient – but if the Convention is a Constituant we might have wished for a direct authorisation by the European citizens.

Independence

[16] See the Helsinki European Council 10 and 11 December 1999 – Presidency Conclusions.

A person who is authorised to represent may have various options to act during the period of representation. How the representative uses his or her room of manoeuvre depends heavily on whether s/he has an imperative or free mandate.[17] The imperative mandate means that the representative must do what the represented would do, i.e. the representative must act as if the represented himself acted. Consequently, the representative is essentially bound by the instructions of the represented and has little discretion in determining the substance of representation other than those outlined in his explicit instructions. Conversely, a free mandate allows the representative to fulfil a task according to what s/he thinks is the best to do. By 'weakening' the link between representative and represented (Beyers and Trondal 2003, p. 4) the free mandate reflects that representatives are free, equal and rational individuals who may come to a decision based on arguments. Hence, from a normative point of view, the free mandate can be considered as a precondition to create an acceptable degree of responsiveness, i.e. deliberative qualities among the representatives concerned.

'Independence' can be discussed in at least two different ways, namely with regard to the IGC as such or the single representative. From a legal point of view, an IGC as such does not face any limits in its decisions. This does not hold true with regard to the main actors of the IGC, the representatives of the Member States' governments who usually act on the basis of a certain imperative mandate and this potential room of manoeuvre exists only within the limits of the granted mandate. As in any negotiations, individuals are more than mere delegates of their respective capitals. "More often than not these relationships are based on personal preference, rather than a Member State's integration policy" (Gray/Stubb 2001, p. 7). These personal contacts often transcending institutional boundaries may ease some of the difficulties and tensions arising in IGC negotiations. Nonetheless, we argue that the room of manoeuvre of the concrete representative is rather limited due to the fact that the negotiators have no free mandate but are subjected to the instructions by their respective Head of Government or State.

The principal mandate of the Convention was to prepare the next IGC in 2004. "In the light of the foregoing, it will be the task of that Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses" (European Council 2001). Thus the Convention considered the key issues arising for the Union's future development revolving around efficiency and legitimacy, notably subsidiarity, democracy, the legal status of the Charter of Fundamental Rights, foreign and security policy, institutional reform etc. But there was no strict mandate for the Convention as such in terms of content. Even the numerous questions articulated in the Laeken Declaration have to be considered as mere guidelines rather than as a strict mandate the Convention has to fulfil. Similarly, most members of the Convention enjoyed a free mandate which enabled them to work unimpeded by their sending institutions. Especially the representatives of the

[17] Carl Friedrich tries to overcome the dichotomy between imperative and free mandate by admitting that "it is quite impossible to draw a hard and fast line between agents with definite instructions or mandates and representatives empowered to attend to a general task. An elected body may and usually will be both a set of agents from different interests, and a representative group determining the common interest" (Friedrich 1953, p. 303). Departing from a similar point of view, Beyers and Trondal (2003) have dealt with various institutional settings under which (member-state) representatives operate and worked out how they are influenced by them.

national parliaments as well as the European Parliament possessed a considerable leeway in how they performed in the debates. Obviously, this cannot be said of the representatives of the governments, which advocated the interest of the member states concerned thereby seeking allies to strengthen their position.

Voting Equality

Selected representatives who are authorised to do something – be they bound by the will of the represented or enjoying a free mandate – will come to the point where they have to make up their mind on a given topic. In the context of political representation, making up one's mind generally means to make one's voice heard, i.e. to participate in voting. But that does not mean that every representative has an equal say in the decision-making process. Some representatives may only have a suspensive veto, information rights or even no voting rights at all. Drawing on a distinction between authoritative and consultative representation derived from John Kincaid (1999, p. 35), it can be argued that representatives who are entitled to make authoritative, i.e. binding, decisions are considered more important by the authorising body than representatives who just can make their voices heard but lack the power to take binding decisions. This does not mean that the latter have no influence at all. On the contrary, consultative representation can be very influential on the basis of, say, expertise, credibility etc. But the impact on final decisions solely depends on the preferences of authoritative representatives. Thus, authoritative representatives usually not only enjoy a far greater bargaining power but they are thus capable to represent their represented far more effectively than consultative representatives.

The decision-making procedure of an IGC is based on the principle 'one state one vote', i.e. the Head of State and Government of each Member State has equal voting rights and can veto any decision s/he disagrees with. From a practical but not legal point of view, Treaty amendments do not enter into force until they are ratified by the national parliaments of the Member States. If we apply the criteria of authoritative and consultative representation to this, we can easily see that only the national governments along with their parliaments enjoy authoritative representation. National governments as authoritative representatives also have the power to define who is entitled to be a consultative representative. For example, the European Commission and Parliament though they are present and – to a certain degree – authorised, may have their say or even influence the final results but they remain consultative representatives only. The combination of being present and authorised but enjoying no voting right shows that the authoritative representatives may have a limited interest in increasing the involvement of Community representative while simultaneously holding them at bay.

Instead of voting, the recommendations of the Convention were adopted by consensus. Nonetheless, we should stick to the term 'voting' understanding it as the capacity of a given representative not only to influence a debate and its outcome simply by argument but also to *prevent* a

consensus.[18] We can observe that the representatives of the new Member States generally enjoyed the same rights in terms of presence and authorisation as their colleagues from the then fifteen Member States, with one striking exception – they could not "prevent any consensus which may emerge among the Member States" (European Council 2001). The representatives of the then candidate countries were only allowed to be present and authorised to speak and act in the Convention thus being only consultative representatives.[19] The representative quality of the loosely organised Forum was even worse. Like the representatives of the candidate countries, the actors involved possessed no voting rights but were only allowed limited presence and rights to contribute to the Convention's debate.

Responsiveness

Democracy needs active citizens and not passive recipients of governmental performance. In order to act reasonably, it seems necessary that citizens enjoy the equal and effective opportunity to deliberate about various policy options enabling the government to respond to their preferences. In short: Representatives have to be responsive towards the represented. "[A] representative government requires that there be machinery for the expression of the wishes of the represented, and that the government responds to these wishes unless there are good reasons to the contrary. There need not be a constant activity of responding, but there must be a constant condition of responsive*ness*, of potential readiness to respond" (Pitkin 1967, p. 232 et seq.). Consequently, the best way to ensure responsiveness is to develop a *deliberative* environment which is primarily based on arguing and counter-arguing. In doing so, we have to create an institutional arrangement where those antagonistic "judgements and preferences are transformed through reasoned dialogue against the picture of democracy as a procedure for aggregating and effectively meeting the given preferences of individuals" (O'Neill 2001, p. 6). Only within a deliberative environment it seems reasonable to expect a fair encounter of different views which is the crucial precondition to reach solutions for political problems featuring a proper level of rationality and acceptance among the people leading to a higher degree of legitimacy of the political system. Despite the assumption that the legitimacy of deliberative democracy derives from the 'deliberation of all' (Manin 1987, p. 357) we also have to bear in mind that while citizens are only 'titular holders', representatives are the 'actual wielders' of power (Sartori 1987, p. 29). Thus, we have to create a deliberative environment *not only for citizens but also for the representatives* as well as an institutionalised communication between them. Thus, it seems that the major weakness of the deliberative approach is the gap between deliberating and the multiple decision-making bodies in contemporary societies where numerous representatives are not only present but are also authorised to take important decisions.

[18] See Art 6(4) Note on Working Methods (CONV 9/02). This does not mean that any representative was entitled to veto the final outcome, but that a 'significant' amount of Convention members may have been able to prevent such a consensus. Interpreting what constitutes a consensus was up to the Praesidium. See Crum (2004, p. 8).

[19] Interestingly the representatives of the then candidate countries had more or less the same status as the observers who were also allowed to be present in the plenary and the Working groups, put forward proposals etc. For the rights of the observers see Art 3, 4, 6, 12, 13 and 15 Note on Working Methods (CONV 9/02). In political praxis, however, the chairmen tended to give a slight priority to full members over observers when allowing representatives to intervene.

An IGC provides "an arena for diplomatic negotiations between Member States in which each party sought legitimately to maximise its gains without regard for the overall picture" (Giscard d'Estaing 2002, p. 14). As explained above, an IGC is dominated by the Member States governments with only a marginal role for supranational institutions and an almost total exclusion of other representatives, especially from civil society. Above all, citizens' involvement in the IGCs' deliberation and decision-making phase tends to zero. Consequently, it is a matter of fact that the "interest of the state" defined and articulated by the Heads of State will mostly prevail leading to the widely deplored horse trading. "'[B]argaining' trumps 'arguing'" (Reh/Wessels 2002, p. 26). The responsive quality is even worse if we take into account that nearly all negotiations are usually conducted behind closed doors, excluding observers from the outside and that relevant documents are not disclosed to the general public or the media.

Members of the Convention were free to make up their minds and able to put forward every idea which they deemed important. This has lead to a more participative and inclusive form of public deliberation including minority positions which usually do not have the opportunity to raise their voices in the course of Treaty reforms. Institutionally, members of national parliaments as well as the European Parliament had also been present in open deliberation at a very early stage. Moreover, representatives stemming from different backgrounds were also to a large degree authorised not only to bring forward their ideas and preferences but also to vote on the final outcome putting them – at least formally – on a level playing field with each other. Nonetheless, the unequal possibility for the different participants to contribute to the debate has to be critisized – ranging from full-fledged members including participation and voting rights via observers enjoying only participation rights to the loosely organized Forum which had only limited possibilities to influence the debate. Apart from these formal inequalities we must also be aware of the disproportionate allocation of resources among the Convention members. For instance, MEPs are not only by far better equipped than their colleagues from the various national parliaments in terms of financial and personal resources but are also used to operate within a transnational context. Furthermore, the rather short time frame of about 16 months given to the Convention may have curtailed the development of a proper deliberative environment and can be interpreted as a further attempt by the European Council to prevent the Convention from dealing with issues not formulated in the Laeken Declaration (Hoffmann 2002, pp. 7-9; Føllesdal 2002, p. 11).

The conventionnels as well as the observers and the Forum had numerous possibilities to communicate publicly with each other in order to get a better grasp of the different positions on the topics concerned. A survey of the motions submitted by the Convention members (e.g. Matl 2003) shows that they moved away – at least to a large extent – from extreme positions towards the centre. One reason may be that most of these contributions were considered by their authors not as mere proclamations but rather as a base for further more consensus-oriented deliberation in the Convention (Göler 2003, p. 27). In the final stages the deliberative quality of Convention deteriorated considerably turning the Convention more into an IGC-like bargaining arena. However, it is important to stress that

the increase of 'bargaining instead of arguing' did by no means imply that it was a purely intergovernmental game. True, the representatives of Member States were at pains to defend their interests but so did the other Convention Members. Especially the alliance between representatives of national parliaments and the European Parliament were surprisingly influential at the end of the process and an important signal that the show was not run by the government representatives alone. Another aspect which may compromise the deliberative quality of the Convention was the role of the Praesidium. This body and especially its chairman Válery Giscard d'Estaing were sometimes criticised for pushing things through without proper consultation of the general public as well as ordinary Convention members (and even the Praesidium itself) leading to "growing frustration among Convention members, feeling they have in fact no real influence over the result of the process" (EU Observer, 2 June 2003; 11 June 2003; Shaw 2003, p. 14). However, since the Convention members reached a consensus approving the final text (Norman 2003, p. 297 et seq.), it seems difficult to argue that the drafting Praesidium was not responsive towards the Convention members. Due to the fact that a greater variety of representatives were present, authorised to act and entitled to vote, the final Draft Treaty reflects a broad consensus of different ideas and preferences concerning the future of Europe.

Communication between the representatives, i.e. members of the Convention, and the citizens took place on three levels: First, through mass media as the usual way of communicating political events in contemporary societies. According to a survey scrutinising the discourses publicized in media, it can be argued that a certain degree of Europeanization in the media system and its coverage has already emerged (Maurer 2003b). Secondly, through communication with the Forum. Unfortunately – without downplaying the achievement of setting up this novel body and fully aware of the lack of empirical evidence – we have reason to believe that the impact of the Forum on the work of the Convention was rather modest. Thirdly, through direct communication with the citizens which can again occur in two ways: First, through the internet websites of the Forum and some individual Convention members and secondly through public events. It would go beyond the scope of this paper to give a comprehensive account of the full range of activities of every member, but it seems plausible to assume that every member has participated in a variety of public discussions which would not have taken place without the Convention.[20] Furthermore, all plenary sessions which took place twice a month were open to the general public. Acknowledging the fact that only a minority of people had the opportunity to attend plenary sessions in Brussels[21], the more important aspect with regard to transparency was the establishment of an internet site publishing the entire Convention's debate. This site includes not only the plenary sessions but also (nearly) every intervention by the (full and alternate) members as well as the ones brought forward by other actors or institutions involved. The largest cloud on the horizon was the Praesidium whose handling of the deliberation was sometimes been perceived as cumbersome, unclear and intransparent. Equally, the end game of the Convention where everyone tried to influence the wording of the Draft Treaty was not the most transparent period

[20] According to Maurer (2003a, p. 133 et seq.) each member of the Convention participated on average in four online-chats and thereby reached 270 citizens until March 2003. Additionally, every member of the Convention appeared in an average of 16 public events a month.

[21] And were lucky enough to snatch a seat after passing the cerberi watching over the galleries.

of the Convention. It would, however, also be unrealistic or naive to assume that final stages of negotiations are generally transparent fora of deliberation. In all, the kind of openness of and access to the Convention's debate enabled civil society and the media to monitor and scrutinize the constitutional debate. Thus, there existed a huge debate outside the institutional boundaries of the Convention, which was also covered by the Forum's website set up by the Secretariat of the Praesidium. However, we have to bear in mind that even this debate was still confined to EU experts and did hardly include the general public. This fact is dramatically underlined by a Eurobarometer survey (Flash Eurobarometer 142 Convention on the Future of Europe) that shows that the Convention is largely unknown to the public (45%) and only 30% of the interviewed are satisfied with the results whereas 50% simply do not know how they felt about the work of the Convention. In other words: the Convention has increased the representative quality of EU Treaty reform but it may have failed to connect its deliberation with popular awareness, preferences and legitimacy.

3. Conclusion

The IGC in 1985, leading to the Single European Act, comprised representatives from ten member states including the government holding the Presidency, along with the Commission. The 1991 IGCs had representatives from twelve governments, together with the Commission, whereas the 1996-97 and 2000 IGCs involved seventeen participants – fifteen national representatives, including the government holding the Presidency, a representative of the Commission and the Council Secretariat as assistant to the IGC and Presidency (Beach 2003). This relatively cosy situation changed sharply with the convention method where 105 members, not to count the alternates, populated the conference chambers of the EP. Treaty reform was so far the realm of diplomats. With the constitutional theme coming to the fore again – through the German Foreign Minister's speech in Berlin at the latest – and the rather modest results of the Amsterdam and Nice IGCs the composition of the deliberating body became important. Though in former times the success/legitimacy of a constitution was not necessarily tied to the representative quality of the Constituant, the nature of the EU inextricably binds the two aspects together. Legitimacy is a function of representation, i.e. a European constitution can only be legitimate if its Constituant is representative (see also Eriksen/Fossum 2002).

At first glance the Convention has led to a more balanced representation based not only on a broader presence of representatives but also on an extend room of manoeuvre, an improved degree of responsiveness, thus more appropriately reflecting the compounded pluricentric system of European governance (Schmidt 2002). Concerning the authorisation of the participants and the presence of "majority groups" the Convention showed some weaknesses. Neither women nor Euro-sceptics were allowed to take their rightful place. The Convention was by no means perfect but still a considerable improvement compared to an IGC in terms of inclusiveness.

What was expected from the Convention in terms of deliberative theory was that discussion,

persuasion and compromise should prevail over interest-driven bargaining as a zero-sum game; that a fair debate in which every voice counts the same delivers a fair exchange of arguments in which the better ones prevail (Benhabib 1996; Dryzek 2000; Elster 1998; Eriksen/Fossum 2002; for a critique see Saward 2000). At first glance the Convention seemed to fulfill those expectations (Magnette 2002, Maurer 2003a). The parliamentary conventionnels were to a large extent independent from their governments be it that the latter did not take the whole undertaking too serious or be it that a parliamentarian *corps d'esprit* twinkled, especially in the very last phase, for a short time reviving the two body image of executive versus legislature (see King 1976). A closer look[22] reveals that – rather unsurprinsingly – the dynamics of the Convention showed the same features we are used to find in IGCs (see Oberhuber 2003): institutional bargaining between parlamentarians, Council members, Commissioners and governments; intergovernmentalism could be seen in the French-German alliance (which interestingly enough took place on two levels not always being consistent: Chirac/Schröder[23] and de Villepin/Fischer[24]), the British-Spanish initiative in late February 2003[25] and the so-called revolt of the small member states. And as the House of Lords (2002, p. 13) has noticed regular meetings of the political groups and nationals took place from the very beginning. Small wonder that in the hot end game those meetings occurred more frequently for Giscard d'Estaings decision to shift institutional questions to the very end simply required a more efficient process of preference formation. But as Oberhuber (2003, p. 18) has pointed out this "caucus-ing" was not counter-balanced by the plenary where many expected to find the deliberative ideal to be substantiated: "as a general observation it can be stated that discussion in the sense of arguments exchanged by two or more speakers only rarely took place."[26] Instead attention was focussed on the Praesidium for which the plenary was a kind of pool of ideas without increased need to take it too serious.

The Convention method is a considerable step towards increasing the democratic and representative quality of treaty reform but we should not be blinded by its credentials. Neither is the method new – conjured by the Heads of State and Government at a critical juncture of the integration process nor did it allow to live up to the ideals of deliberative democracy. The method needs to be refined and clearly established as the sole way to amend primary law. Currently Art. IV.-443 only grants it the right "to adopt a recommendation" for a following IGC. If we want a Constituant not acting under the shadows of an IGC but being a representative body the selection process, the linkage with the represented and the efforts to inform and consult the citizens need to pick up. Our democratic ideals might never be reached but at least they guide us to constant improvements.

[22] For empirical data see e.g. Closa (2003), Maurer (2003), Schönlau (2003).

[23] CONV 489/03 on institutional matters, esp. on a more permanent presidency of the European Council and European Foreign Minister.

[24] CONV 422/02 on defence, CONV 435/02 on freedom, justice and security, CONV 470/02 on economic policy coordination.

[25] CONV 591/03 on institutional issues.

[26] Oberhuber (2003, p. 22) develops an alternative hypothesis to the assumptions of deliberative theory calling it "mainstreaming", i.e. "a stream of communications is inconspicuosly but steadily narrowed, extremes on both sides are discarded, divergent questions and issues are marginalized, deviant positions ignored or ostracized, the stock of taken-for-granted assumptions, which must not be called into question, thus, is accumulated, and a dominant discourse (a 'mainstrean') is established." In other words the lowest common denominator – well known from IGCs - is back on the stage.

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