The European Convention: Unresolved Questions and Choices for Italy

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Introduction

It is worthwhile recalling that many European governments initially greeted the idea of the Convention with little enthusiasm. They felt that, with respect to the subsequent Intergovernmental Conference (IGC), it would simply be a venue for reflection, taking on a role similar to that played by the Dooge Committee before passage of the Single European Act and by the Westendorp Group with respect to the Treaty of Amsterdam.

Actually, the Convention now functions as a "pre-constitutional assembly", closely associated with the idea – also greeted with dissent at the beginning – of the need to define a Constitution for Europe. This is probably its most substantial political result so far, with all that implies: the awareness that the IGC will not diverge too far from the indications (if reached by consensus) of the Convention.

This enhanced role, which could certainly not be taken for granted, depends on a number of factors. First: the question of the authoritativeness of the members of the Praesidium and the government and Parliamentary representatives – a demonstration of the importance attributed to the Convention by governments. Second: the difficulties involved in ratifying the Treaty of Nice. Third: the growing awareness that the Union's present structure would not bear up under the impact of extended enlargement, the timetable of which has already been decided (ten new members in 2004). Finally, in the generalized need for "More Europe" as a shield against external tensions, there is the direct reflection of the trauma of September 11, an effect that has apparently been swept away by the divisions over Iraq but is destined to be revived if the individual European countries want to maintain a capacity to influence the international scene.

In a certain sense, the Convention could, at this point, suffer from "growing pains", i.e. from the tendency of governments to use the Convention as a sort of advance IGC – thanks to the interaction among its Foreign Ministers or of high level exponents of their respective governments. While there is certainly a tendency in this direction, the overall composition of this forum (representatives of national Parliaments and European institutions) in itself generates a different kind of alchemy, different and potentially more favourable to consensus building.

The same is true for the various proposals – national, bilateral, from individual European institutions – offered up for the debate over the institutions. Looking at the French-German proposal from last January, there is little doubt that the end result of the issue of the EU presidencies cannot help but include some of the qualifying elements of the compromise drawn up by two of the community's largest – and

founding – countries. It is equally clear however, that this end result requires a consensus-building mechanism, so that it is not sensed – and opposed – as a sort of imposition, particular by the smaller countries.

These rapid considerations could trigger a certain amount of optimism vis-à-vis the Italian Presidency: if the Convention ends successfully, the IGC should be, almost by definition, brief and equally successful. This means that Italy has the maximum interest in hurrying things along, encouraging the Convention to conclude within the deadline (June), and with the least number of options still open. From this point of view, it is clear that, since Italy will have to mediate during the IGC, it will also have to initiate that role during the Convention. This does not mean relinquishing the possibility of a national position, but it does imply the need to structure that position, and defend it in a way that favours a final compromise as much as possible.

As we will see below, the crucial unresolved issue – that of the Union Presidencies, i.e. the forms of leadership of an enlarged Europe – first affects relations between the larger and smaller countries in Europe. Specific action by Italy in the realm of the "founding countries" might have a special meaning, as an effort to mediate between the French-German positions and those of the more categorically community-oriented of the smaller countries. If it wants to move in that direction, Italy first needs to approach France and Germany, despite the latent rift over Iraq. The point is whether Paris and Berlin will look favourably on an Italian initiative of this kind or whether the division on the management of transatlantic relations will reflect on – and upset – the institutional debate as a whole.

Our thesis is that this is not necessarily true: both because the EU's foreign policy will remain, by definition, an intergovernmental policy (and in the specific case of Iraq the present divergences will probably tend to converge) and because the French-German compromise on the institutions is already a mediation between the "sovereignist" approach (France) and traditionally integrationist leanings (Germany). In other words, if the debate over Iraq has caused divisions in Europe, it is not at all a foregone conclusion that the alignments that have emerged will be wholly replicated with regard to institutional problems.

Returning to the possibility of mediation by Italy, the preferential relations with Great Britain and Spain the country has cultivated over the last year could also allow Rome to open up to France and Germany without generating excessive apprehensions on Europe's Atlantic edge.

The crucial point, however, is whether the issues that remain open can be resolved in the Convention. There is no doubt that the forthcoming Italian Presidency's success depends on this condition being met.

This paper will briefly examine the points on which agreement has been reached so far, the problems still open and the possibility of resolving them.

A Year of Convention: Results So Far

1. On the whole, the Convention has managed in its year's work to preserve its role as a "pre-Constitutional Assembly". It is now a given fact that the IGC would have a great deal of difficulty in distancing itself from the Convention's conclusions (as long

as they are reached by consensus). The need to found the Union of the 21st century on a constitution-type text has advanced, although – and this is worth reiterating – that does not necessarily mean a further acceleration of the integration process in a supranational, federal direction. Even a rapid look at the constitutional project that Prof. Dashwood and other academics at Cambridge University prepared upon the request of the British Government offers a clear demonstration of how it is possible to conceive the exercise in limiting terms by eliminating the dynamics of evolution contained in the present Treaties (article 308, for example, on implicit powers). By definition, and even in the sphere of abolition of the pillars in favour of a single institutional framework, the Union's foundation will still be doubly legitimised (by the peoples and by the States) and based on a mixture of different procedures (community and intergovernmental). The hybrid nature of Europe's institutional model is confirmed by Article 1 of the Draft of the Constitutional Treaty, according to which "this Constitution establishes a Union … within which the policies of the Member States shall be co-ordinated, and which shall administer certain common competences on a federal basis."[1]

2. The working method of the Convention – which devoted its first efforts to a "listening phase" and then began elaborating and negotiating – has so far proven productive. The ten Working Groups (to which an eleventh on "Social Europe" was added) have made it possible to structure plenary session discussions on essential aspects of the Union: legal personality; monitoring of subsidiarity; the role of national Parliaments; value and incorporation of the EU Charter of Fundamental Rights; economic governance; complementary competences; simplification of instruments; justice and internal affairs; external action; and defence. The exchange of views on this group of issues permitted the Praesidium to present last October a Preliminary Draft Constitutional Treaty, which is now the reference point for the Convention's work as well as for the debate underway in the countries of Europe.

3. The Draft under examination at the Convention – where Working Groups are now discussing the articles of the new Treaty – envisages consistent solutions. But a different problem of timing is already apparent. In other terms, there remain serious question marks about the duration of the process of "constitutionalisation" of the Union. The decision to confer a constitutional character not only on Part One (the constitution's architecture) and on Part Three (the relationship between the present treaties and the future Constitution) but also on Part Two (policies and implementation of actions) implies the need for consolidation of the existing provisions. This is clearly not merely a technical-juridical exercise; it also has extremely delicate political implications (consider, for example, the parts on External Action and Defence). There are only three and a half months until the Salonica European Council, when the Convention will submit a complete Draft Constitutional Treaty, and there is still a great deal of work to be done.

4. The tie between the various aspects considered by the Convention holds us back from stating that any questions have been definitively resolved. Still, based on the Working Group reports, the plenary sessions have been able to form a consensus on some important points:

[1] CONV 528/03.

a) the principle of double legitimacy (a Union of peoples and of states);

b) definition of values and objectives aimed at shaping the Union as a large economic and monetary area, a community of rights and destinies, an area of internal security and justice, and an international power;

c) recognition of the legal personality of the Union;

d) abolition of the "pillar" structure (an inheritance of Maastricht), while retaining the existence of differentiated procedures;

e) granting of legal binding force to the "Charter of Fundamental Rights" (probably through reference to Article 6 and an annexed Protocol);

f) the need for a division (and not a detailed catalogue) of the categories of competences based on recognition of the basic principles of attribution, subsidiarity and proportionality;

g) creation of a mechanism to monitor the principle of subsidiarity with a strong involvement (*ex ante* political review and *ex post* judicial review) of the National Parliaments (and possibly of the regional aspirations of the Member States with legislative powers);

h) simplification of instruments and procedures for adoption of decisions through the introduction of "EU Framework Laws" and "EU Laws", the generalisation of codecisions as the typical procedure for adoption of acts (with a qualified majority vote in the EU Council). The concrete application of simplification is still a controversial point.

This is therefore the *acquis communautaire* (important though fragile from certain points of view), the Convention's starting point for its last, decisive three months of work.

The Issues Before Us

There remain a series of issues to be resolved, covering three main areas: 1) institutional balance; 2) review of mechanisms for adopting decisions; 3) the Union's external action; 4) transition towards the new system.

I. Institutional Balance

The term "institutional balance" is a fairly recent acquisition in the Convention lexicon. During the first months, the debate practically ignored it, preferring to concentrate on problems such as how to ensure greater influence for the National Parliaments, how to curtail the EU's hyper-regulatory tendencies and how to guarantee a "correct" (i.e. more widespread) application of the principle of subsidiarity.

The picture has changed over the last few months, since the problem of relations between the Council, Commission and Parliament returned to the centre of attention. Consensus has gathered around these basic propositions:

- the European Council must be responsible for wide-ranging political and strategic guidelines and the definition of the main priorities for foreign policy and common security, including defence;
- the Commission must continue to act as the engine for the integration process, the guardian of the treaties and the expression of general interest, retaining its exclusive right of initiative in legislative matters. Its legitimacy must be reinforced but in ways that are not prejudicial to its autonomy or independence;
- the role of the European Parliament must be reinforced with an extension of codecision, along an extension of the qualified majority vote.

Generally speaking, maintaining institutional balance means that the reforms the Convention has proposed must safeguard the checks and balance, the mixture of intergovernmental and supranational elements, that balance of power among the institutions on which the "community method" is based.

The problem of the Presidencies is one of the most delicate questions from this point of view.

The Problem of the Presidencies

A broad cross-section of opinions within the Convention holds that the function of "political leadership" within the Union needs to be reinforced. Ideas, however, differ considerably on the ways and instruments to achieve this result.

One school of thought, which includes Benelux as well as the Commission itself, is pushing for election of the Commission President by the European Parliament. Practically speaking, this would mean completion of the process of "parliamentisation of the Commission" initiated with the Treaty of Maastricht and followed by the Treaties of Amsterdam and, partly, Nice. Bolstered by direct democratic investiture, the Community executive could legitimately claim a role of "European Government".

This proposal is countered with another which hinges on the pre-eminent role of the European Council. First suggested by Tony Blair and José-Maria Aznar, the proposal to elect a President of the European Council for a certain number of years gained the support of the other two "large" countries – France and, with some subtle differences, Italy – but has also aroused strong protests from the smaller countries.

At least in their "pure" formation, the two models are clearly the expression of two antithetical visions: the first with federalist tendencies and the second of an intergovernmental nature.

The importance of the January 2003 French-German document is that – given the starting point of Paris (on the intergovernmental side) and Berlin (of a Community propensity) – it attempted a synthesis of the two formulae, theorizing the coexistence of a "long" Presidency of the European Council, and a President of the Commission elected by the European Parliament.

In essence, the proposal is to have the European Council elect, by qualified majority (and not from among its members) a full time President for a period of two and a half or five years. The President's duties would be to preside over the work of the

Council (thus abolishing the dysfunctional six-monthly rotation of the Presidency) and represent the Union at an international level, without compromising the role of the future EU Minister of Foreign Affairs who, as we will see below, will have the day-to-day responsibility of the CFSP. At the same time, the idea would be to reinforce the legitimacy of the Commission President of the Commission, through elections by the European Parliament (and confirmation by the Council with a qualified majority).[2]

The plenary session of the Convention gave this proposal – which marginalizes the previous idea supported by Fischer to join the two Presidencies in a single office of EU President[3] – a fairly lukewarm reception, particularly the smaller countries which fear that the Commission's role would be greatly weakened.

But it is predictable that, from now on, reflection will centre on the attempt to mediate between these positions, making the general system of a "two-headed" Union acceptable.

One suggestion was the election – by current members of the European Council – of a plurienial Presidency, which would then have "part time" duties. There would be less risk of conflict with the President of the Commission, a conflict seen on many sides as one of the questionable points of the French-German document. However, this theory is apparently unacceptable to more decidedly "presidentialist" countries, such as Great Britain and France, which seem instead to be more interested in a combination of a "long" European Council Presidency and preservation of the criterion of rotation for the presidency of the sectoral Councils. In the same direction, some proposals call for giving the new European Council President the support of a sort of bureau made up of a rotating group of ministers in office. It is possible that the end result will be a hypothesis of this type, particularly given the obvious difficulty for numerous medium-small States (with the exception of Denmark) to accept the straightforward suppression of the criterion of six-monthly rotation of the European Council Presidency.

Whatever the case may be, the debate on this essential point – in terms of institutional balance – is destined to continue, and may possibly be something the IGC will have to decide. The fact remains that the hypothesis of two Presidencies would be efficacious only with a clear division of the respective roles: The President of the European Council will be vital in helping the Heads of State and of governments define the Union's strategic priorities and will have a primary role in presenting the Union externally, leaving the Commission President to his present duties, with a strengthened legitimacy.

According to the "community" critics of the French-Germany proposal, a European Council President of this kind would inevitably move the institutional balance in favour of the intergovernmental method – and, in particular, in favour of the larger

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[2] For an account of the reasons in favour of the choice of an EU Council President, see Charles Grant "New Leadership for Europe", in Centre for European Reform, *New Designs for Europe*, London, October 2002.

[3] This solution would have many advantages, at the very least in terms of simplicity and rationalization of the EU institutional organization, but has no realistic possibility of being accepted. For a convincing explanation in favour of this hypothesis, see The European Policy Centre, *An Integrated Presidency for a United Europe* (4 December 2002).

Member States. It would also create permanent tensions – with paralysing effects – both with the President of the Commission and with the High Representative of the CFSP.

It is more likely that part of the "intergovernmental party" will find the French-German compromise acceptable, even though the proposal calls for election of the Commission President (a proposal which London initially opposed). The implied risk of this second choice – i.e. that politicising the role of the President, by electing him, also lessens its credibility – can be reduced with specific electoral criteria (calling for qualified and cross-party majorities in the European Parliament).

In conclusion, in order to find an acceptable compromise, the smaller countries must be engaged in additional proposals that make it possible (through rotating vice-presidents or bureaus, and through the presidencies of sectoral Councils) to moderate the impact of suppressing the rotation of the European Council Presidency.

Formation of the Council and the "Legislative Affairs Council"

The need for consistency, continuity and efficacy adopted in the proposal to introduce a plurienial Presidency of the European Council is also true for the other councils. The majority (but not consensual) opinion that has so far emerged in the Convention can be summarised as follows:

- further reduction of the number of Councils, along the lines of the process begun in Seville;
- clear-cut separation between legislative activity on one hand and executive and political guidelines on the other. A proposal was put forward for the creation of a Legislative Affairs Council which would function as a "Chamber of the States", in codecision with the European Parliament, with public debates and majority vote. It would have as fixed members, representing the Governments of the Member States (Ministers for Europe), assisted by the competent Ministers *ratione materiae* as the occasions demanded;
- utilization of a mixture of elective, fixed or rotational presidencies for the other councils. It was, for example, suggested that the ECOFIN and JHA Councils elect their presidents with a one or two year mandate; that the External Relations Council be presided over by the External Representative-European Minister of Foreign Affairs and that the Legislative Affairs Council remain within the system of six-monthly rotations. Alternative solutions have been proposed for the General Affairs Council (six-monthly rotation, fixed Presidency of the Commission or even of the Council's Secretary-General).

  The French-German document proposed that the General Affairs Council be presided over by the Secretary-General of the Council (an office that the High Representative would lose with a reform of his duties); that the new EU Minister of Foreign Affairs preside over the External Affairs Council; and that ECOFIN, the Euro-12 and the JHA Council be presided over by members elected on a rotation basis (for a period of two and a half years).

The Congress of the Peoples

Another proposal with important implications from the point of view of institutional balance is that of a "Congress of the Peoples", made up half of members of the European Parliament and half of representatives of the National Parliaments. By definition, the grafting of a new institution onto the community system may risk unsettling the traditional "triangle" made up of the Commission, the Council and Parliament. This idea, which originated with France and is supported by Giscard D'Estaing himself, has received heavy criticism during the plenary sessions. At present, the original proposal, which seems to envisage a direct role of the Congress in the procedures for adoption of decisions and in particular to monitor the principle of subsidiarity, seems to have been set aside. A "reduced" version has survived which attributes the "Congress" with a double role, that of an informal forum between the National Parliaments and the European Parliaments (along the lines of the "Conclave" organised in Rome in 1990), and that of an "electoral college" which would be charged with electing the President of the Commission or as an alternative, the President of the European Council. The probabilities for success seem fairly limited and depend on the more general guidelines that will prevail vis-à-vis institutional reform, in particular on the issue of the presidencies.

II. Revision of Mechanisms for the Adoption of Decisions

The second important issue with which the Convention must deal is that of mechanisms for adopting decisions.

Within the community system, every procedure is the "crystallisation", as it were, of a balance of power among institutions and Member States. It is no easy enterprise, as the troubles of the last Intergovernmental Conferences showed.

One of the significant elements of the programme of simplification and reorganisation proposed by Working Group IX is the institution of a "uniform electoral procedure", based on codecision (of the European Council and the European Parliament), and the qualified majority vote. The proposal was favourably received by the plenary session, but it is safe to predict that the real issue will be the extent of exceptions to the rule. The representatives of some governments have already affirmed their particular sensitivity for some matters, ranging from taxation to social policy, from international commerce to agriculture. The risk is that, with the shift to the IGC, crossed vetoes and requests for exceptions will reproduce the stalemate that occurred in Nice.

The debate around budgetary procedures will also be difficult. Given the want of real EU taxation autonomy, Working Group IX proposed a system by which the Council would keep control over revenues and the Parliament would keep control over expenditures. This would not be a revolutionary solution, but the plenary session's reaction to the proposal leads us to believe that discussion on this point will not be simple.

It is less clear whether the Convention will propose substantial modification of the EU's powers in terms of economic governance. The results of this Working Group

were disappointing – practically speaking, there was an impasse on all fronts. It is therefore quite unlikely that the Convention will end with any particularly innovative proposals in this area, aside, perhaps, from a better definition of the "open co-ordination method".

III. External Actions of the EU

The third great issue that the Convention must confront – the Union's external action – concerns the very concept of Europe. There is a clash between two extremely disparate visions: that of those who see the Union as a super power in the making, and those who, at the most, envisage an instrument to manage co-operation between Member States more effectively.

Working Groups VII (External Action) and VIII (Defence) put forward a series of proposals for reform. One of the prime proposals, which might actually pass, is to create a "personal union" of the figures of the High Representatives and the Commissioner for External Action, according to the so-called "Double Hat" theory.

Arguments in favour of the creation of a single figure are fairly clear-cut:

- It would be a stable, authoritative reference point for third countries, augmenting Europe's weight in international negotiations.
- It would bring together the powers of the Council and the Commission in the Union's External Action, thus allowing synergic use of the instruments of classic diplomacy and economy.

The operating methods and forms of accountability of this new institutional figure must still be worked out.

According to the French-German proposal, the new "Minister of Foreign Affairs" (created out of the fusion of the roles of High Representative and Commissioner of External Representation) would have right of initiative, be Vice-President of the Commission and preside over the External Action Council. However, action would be taken with diverse procedures according to the area and operating instruments.

Some Member States (particularly Great Britain) are finding it difficult to accept the proposal that the Minister of Foreign Affairs be accountable both to the Commissioners and to the Council, and would prefer to have him report directly to the European Council, thus preserving the essentially intergovernmental nature of the CFSP. This idea, however, is unacceptable not only to the community executive, but also to most of the smaller countries, which see it as an instrument to subtract from the Commission its present competence in external actions.

As mentioned in responding to the qualms of the "supranationals", the fusion of the two functions (High Representative and Commissioner for External Actions) in a single person, would not eliminate the distinction between intergovernmental method and community method (as regards procedures for the adoption of decisions, accountability, etc.). Instead, it means reinforcing both since, in the performance of his duties as High Representative, Mr. CFSP could make use of community instruments not now available, while as Vice-President of the

Commission, he could also have access to a political-diplomatic dimension that escapes him today.[4]

It is quite probable that London will be prepared to compromise on the Double Hat as a trade-off for having the Convention accept a strong European Council President with prerogatives for decision-making at an international level. In that case, we must wait to see what relations will be between the "Minister of Foreign Affairs" and a full time President of the European Council, expressing a European voice on the international scene.

In this debate, the divisions on Iraq could have an impact of two different types: First, they might solidify the different positions of the larger Countries (but we should keep in mind that, when speaking of the institutional organization of foreign policy, the positions of France and Great Britain are actually closer to each other than to the positions of Germany or of Italy, countries that traditionally favour the "Europeisation" of the second pillar). Second, given the disagreeable shock of Iraq, they could push for a realisation of the need for more substantial progress in keeping with the perceptions of most European public opinion.

From this point of view, the results of the debate on mechanisms for the adoption of decisions within the CFSP and the possibility of extending reinforced co-operation mechanisms to the area of defence policy will be decisive.

With regard to the first aspect, the report of Working Group VII (External Actions) proposed greater use of the qualified majority vote without, however, clarifying how this would work. The most important proposal submitted to the plenary session was to include an article in the new Constitutional Treaty that would allow the Council of Europe to decide unanimously to extend the QMV to the area of CFSP. Practically speaking, this would mean putting off decisions regarding passage to the majority, but allowing their "deconstitutionalisation" based on the model of what took place for visas, asylum and immigration. Britain's representative to the Convention, Peter Hain, has already expressed his assent to this proposal.

The French-German document proposes that unanimity continue to be used for security and defence decisions, while the QMV would become the norm for decisions considered part of the CFSP. According to Giuliano Amato, the Council will have to decide unanimously what new questions to consider as common European foreign policy material. Once this decision is made, the new common policy will be handled as such[5] – under the co-ordination of the European Council President, i.e. excluding national actions that might weaken common European action.

Regarding defence policy, Working Group VIII (Defence) made a number of proposals, including the creation of a "High Representative for Defence Policy" (which, given the terms of the more general debate, would end up being a deputy of the "External Representative") and extension of the mechanisms of closer co-operation to questions of security and defence.

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[4] See, in this regard, the note by Philippe de Schoutheete, "Comul des funtions de Mr. PESC et de Commissaire aux relations exterieures" (Janvier 2003).
[5] See the interview in *Corriere della Sera*, 6 February 2002.

IV. General and Final Provisions

Finally, the Convention will have to face a series of problems regarding "general and final provisions"; that is, the passage from the "old system to the new constitutional order", none of which are of a technical nature.

The issue is a very complex one and can only be skimmed on the surface here, recalling the three points that may generate controversy in the Convention and the IGC to follow.

The first concerns the mechanisms and procedures for Treaty revision. It has been suggested that future revisions should be simplified, particularly for Part Two of the Treaty. If that is so, the present system (IGC plus ratification by all the Member States) would only remain a valid solution for the first and third parts of the draft proposal presented by the Praesidium, in other words for about 50-60 articles. For the remaining 200-350 articles, amendments could be adopted with a less rigid procedure. The distinction is certainly reasonable, but is not at all universally accepted. It is probable that any attempt to restrict the power of the veto and loosen the members' control over the revision mechanism will be met with strong resistance.

The second point has to do with the provision for the "right of withdrawal" put forth in Article 46 of the draft proposal. The implications of this provision have not been thoroughly analysed. Will there be a generalised *opting out* clause? Or will there be conditions? How will relations between the Union and the withdrawing State be reformulated?

The third point is probably the most controversial, and concerns the transition from the old system to the new. If the Constitutional Treaty re-creates the European institutional set-up from its foundations, how can continuity between the old European legal system and its substitute be ensured? The legal instrument would be a clause for "continuity" of the Constitutional Treaty by virtue of which the "new" Union would inherit the entire acquis, with all the deriving obligations, rights and commitments.

According to some experts, this would allow some space to overcome the block that would occur in the case that one State did not ratify the Treaty. In essence, the reasoning is the following: if the Constitutional Treaty is something new (and not a simple revision of the previous Treaties), then it would come into force among the Countries that ratify it. Should one of the members not ratify, it will not become part of the new Union. This conclusion is however debatable on the basis of a linear reading of Article 48 of the Treaty, which established unequivocally that modification of the Treaties requires the approval of all the Member States.

Moreover, the "theory of continuity" does not clarify the nature of the relationship between the "non-ratifying State" and the Union. There do not seem to be many alternatives: either the State is, *sic et simpliciter*, out of the Union; or its relations with the Union will continue to be based on the old Treaties. The first option would be equivalent to a measure of expulsion not contemplated so far; the second would mean a highly complex institutional tangle.

The counter-objection is that, in the event of a political impasse, a fracture in the old European legal order would be inevitable to preserve the integration process from an enormous crisis. But it is clear that, aside from juridical considerations, the question is politically explosive.

V. The Issue of Procedure

What makes the issues listed here particularly complex is their fundamentally distributive nature. As we have seen, they are directly concerned with the balance of power among community institutions and the relative weight of the Member States in the procedure for adoption of decisions. For this reason, they are a much more difficult test bench than the other issues with which the Convention has dealt so far.

The measure of the Convention's success will be seen in its capacity to reinforce the Union's legitimacy, transparency and decisional efficacy while simultaneously ensuring a far-reaching consensus around the choices it makes. In order to do so, the vetoes and conditions that wore down the last IGC must be avoided, although participatory strategies for those States with the greatest objections must be adopted. If those States see their most intensely desired preferences trampled on, they might be tempted to distance themselves from the Convention, counting on their chances to recover a theoretically unconditional power of veto in the IGC.

In short, the Convention's strong points are its authoritativeness and moral suasion. If these levers work, its report to the Salonica European Council could also include advanced reforms with a parallel strengthening of the three sides of the institutional triangle. From a certain point of view, a comprehensive proposal could make it possible to raise the Member States' "threshold of tolerance" for solutions that they might have vetoed in an IGC-type situation. This is also thanks to the transparency of the process, which makes it possible to "single out" clear attempts to block the reform process.

This does not mean that specific solutions can be imposed through majority mechanisms or by forcing the terms of consensus. If the rope is too taut, it might snap.

The point is therefore to maximize the potential of the Convention instrument through a participatory mechanism of consensus building.

The Challenges for the Italian Presidency

It is not easy to envisage the extent of the problems that the Italian Presidency will have to face. Much will depend on the outcome of the Salonica European Council.

It is for reasons of national prestige as well as substance that Italy is pursuing the goal of reaching an agreement on the 'Treaty of Rome" within the second six months of 2003. The formula "from Rome to Rome" – that is, from the original 1957 Treaties to the consitutionalisation of the Union – will be the leitmotif of the forthcoming Italian Presidency.

If this approach has a chance of success, certain aspects of method and schedule with a direct impact on the substance of the negotiations need to be resolved.

1. First, the thesis of a "long pause for reflection" must be avoided. The idea of a several-month cooling off period after the Convention apparently enjoys only the support of Sweden at this point, but many countries are using the participation of the new States to put off summoning the Intergovernmental Conference (to be held towards the end of the Italian Presidency). The theory by which a debate within each Member State is a democratic imperative has no basis in fact. The Convention itself carried out a long listening phase for civil society and its composition ensures more than adequate participation of the National Parliaments in the definition of the Union's future organization.[6] A long pause would, practically speaking, have the effect of forcing participants to start all over again at the Intergovernmental Conference.
2. Second, the Salonica European Council must define the IGC's mandate "by default", explicitly indicating that certain points on which the Convention has already reached unanimous consensus may not be reopened, nor new topics of discussion introduced.
3. Third, participation at the IGC of countries that will become Members of the Union on 1 May 2004 is an acquired fact (the same was true for Spain and Portugal in 1985) and cannot be deferred. For political and juridical reasons, the future Constitutional Treaty cannot be signed prior to the entry of the ten new countries, but the in-depth discussion of the questions not resolved in the Convention must commence at the start of the Italian Presidency, aiming to resolve them with the Treaty by the end of the six months and thus before actual enlargement (making it thus a Treaty of Rome, although signed by the Irish Presidency). From this point of view, Italy's specific interest in a rapid conclusion coincides with the general interest in finding a possible conclusion: projected onto 2004 deadlines, the closure of negotiations on institutional organization would be much more difficult.

There is debate about whether, as it prepares to mediate, Italy should assume clear-cut national positions in the substance of negotiations – positions that it has not yet assumed. One argument has it that a clarification of position would favour the authoritativeness of the Presidency, while another maintains that, having to prepare that mediation, it is in Italy's interests to avoid "over-exposing" itself in the debate over the institutions. Both arguments are legitimate. However, the fact remains that, if it wants to effectually oversee a brief IGC, Italy will have to contribute to the Convention's success without delay. This will inevitably require clarity of conception and place in the institutional debate.

In this area of interest, an evaluation must be made as to whether joint action on the part of the Founding Countries is desirable. This could be important in reaching an agreement between the larger and smaller countries. The circumstances are problematic, particularly for the distance – mentioned earlier – between the positions of Benelux (near the Commission proposals) and those presented in the French-German document on the question of the Presidency of the European Council. Moreover, the divergent positions that have emerged during the Iraqi crisis have

[6] The conscientious critics of the Convention's legitimacy should recall that the delegates in Philadelphia were appointed by the governing bodies of the States and therefore not democratically elected. That composition did not prevent the assembly from acting as a Constitutional Convention.

certainly made resumption of a climate of trust among Italy, France and Germany difficult – unless there is a final compromise in the United Nations. But the stakes are worth it: a preliminary document of the Founding Countries would in fact formalise the possibility of an institutional agreement between the larger and smaller countries, thus resolving one of the major unknown qualities of the entire negotiation process. In this policy, Italy's task could be to:

- play down the "negative side" of the French-German document, not putting forward its scheme as the product of an axis of two, but instead as the starting point of a possible compromise between the larger and smaller countries;
- decide which of the additional proposals on the problem of the Presidencies could draw the support of the smaller countries.

Most of the objections to having the Founding Countries take a position are that this can in turn generate effects of division or exclusion. In attempting to come nearer to France and Germany, Italy will have to pay sufficient attention to the opinions of Spain and the United Kingdom. A dialogue with Madrid would certainly be based on a set-up of the Union that retains the institutional balance and a group of cohesive policies. With London, the final trade-off is more difficult to define, but will have to be based on an exchange between the Presidency of the European Council and a "Double Hat" in the area of the CFSP. Moreover, it is easily predictable that a compromise will include preserving the unanimous vote in "sensitive" areas (including taxation).

For historical reasons, and given the characteristics of its country system, Italy is identified with a group of countries that, whatever happens, wants to avoid dispelling the specific force of community institutions when enlargement takes place. It would be a good idea to reiterate this point, partly through a tie with the Founding Countries. The positive outcome might be to garner acceptance for an institutional compromise not very far from the scheme of the French-German document.

At the same, Italy has demonstrated readiness and flexibility towards the British positions regarding security and defence, towards the Spanish positions regarding North-South equilibriums in the enlarged Europe and in general towards the aspirations of the new entrants. This mixture of tendencies – if handled consistently and on the basis of clear positions vis-à-vis the chief goals to reach – could allow Italy to repair the rifts created in Europe with the Iraqi crisis and successfully guide the passage from the Convention to the IGC.

Conclusions

Between the final months of 2003 and the beginning of 2004, the decisive match for the process of European integration will be played. And the Union's role and capacity to influence for many years to come will depend on the outcome. If negotiations over the Constitution have not been concluded by December 2003, we will be faced with a scenario of unknowns. The Irish Presidency – in all honesty conditioned by the problematic ratification of the Treaty of Nice – would not have many cards to play. In June 2004 (over a year after the conclusion of the Convention),

the citizens of the 25 Member States will be called to elect the European Parliament on the basis of a constitutional draft not yet defined. This is obviously to be avoided.[7]

In conclusion, the Union as well as Italy (the latter for reasons of national prestige) needs a Constitution as soon as possible. Those problems that are still open, starting with the issue of the Presidencies, require a capacity of mediation not so much among the larger countries (all of which will tend to gravitate around the plan of the two Presidencies), but between the larger and smaller countries. From this point of view, the search for a consensus among the Founding Countries would have its own specific usefulness, on condition that a parallel effort is made to "anchor" Spain and Great Britain to the negotiations.

If this plan is successful, Italy will have raised its chances to maintain ties with what might well emerge as the leadership of an enlarged Europe. It is clear that the constitutional text is a precondition but not enough to regulate the workings of a 25-member Union (which will be further enlarged in the decades to come). In fact, there will be a political need (and indeed, this need already exists in part) for a group of "head" states that can act as the Union's *de facto* centre of gravity.

Italy's crucial objective is to continue as a part of that group, avoiding both informal Directoires that would exclude it and a fracture among the larger countries that would in reality mean a weakening of Europe as a whole.

[7] We should also keep in mind that, if continued through 2004, the process of institutional reform would overlap with negotiations for the CAP and the definition of the financial prospects for 2006-2013. There is a risk that the constitutional debate would be an obstacle to problems linked to the division of community resources, with potentially paralyzing results.

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