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THE CONVENTION ON THE FUTURE
OF EUROPE

WITH EVIDENCE

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THIRTIETH REPORT

23 JULY 2002

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

THE CONVENTION ON THE FUTURE OF EUROPE

PART 1: BACKGROUND

WHY DOES THE CONVENTION MATTER?

1. Why has the Convention on the Future of Europe been set up, and what is it aiming to achieve? Perhaps more importantly, why does it matter? This Report aims to answer these questions. We hope that this Report will contribute to public debate and that we will stimulate a wider debate in the House, a debate which can examine substantive issues more fully than we can here.

2. “The Convention on the Future of the European Union” (to use the formal title) opened in Brussels on 28 February 2002. The Convention has as its objective to ‘pave the way for the next Intergovernmental Conference as broadly and openly as possible’¹. The launching of a Convention to pave the way for the Berlin Intergovernmental Conference (IGC) in 2004 is a radical break with the tradition of EU treaty making. While final decisions will still be taken by Member State governments at the IGC, the preparation stage for the first time involves a wide and open consultation process. To reject outright any proposals put forward by the Convention would be politically costly for governments.

3. The decision to establish a Convention to consider the future of Europe reflects the failure of past IGCs to deal with some of the more fundamental problems affecting the Union. Two successive IGCs at Amsterdam and Nice attempted to reform the EU institutions to make them more compatible with the needs of a much more complex Union than that envisaged when the institutions were formed². The enlargement process also provided impetus for reforming the institutional framework.

4. While the Treaties agreed at Amsterdam³ and Nice⁴ would provide the basic conditions to make enlargement possible, they have not addressed the more fundamental questions of how to make the EU more effective, and, more importantly, more legitimate in the eyes of European citizens. Public disenchantment with an ever more powerful, yet opaque, EU became evident during the 1990s. Technical negotiations behind closed doors at Amsterdam and Nice did little to raise public interest or engagement in the treaty revision discussions. The establishment of the Convention is a deliberate move to win back public confidence, and reflects the realisation that the European public must be brought onboard for further widening and deepening of the Union to be successful. The aim is to think radically about the direction and institutional form of an enlarged EU.

Purpose of this Report

5. This Report is designed to inform the House about the work of the Convention. It is a factual Report, with few recommendations at this stage. We have based our work on a very helpful session of evidence with the UK representatives on the Convention held on 30 April; on a subsequent session with the UK Minister for Europe, who the Government representative on the Convention; on the Convention’s own documents; and on published Reports. References in the form (Q) are to the evidence printed with this Report. The members of our Committee are listed in Appendix 1.

¹ Laeken Declaration, 15 December 2001, Section III.

² Presidency Conclusions Amsterdam European Council 16 June 1997; Nice European Council 7–9 December 2000.

³ Treaty of Amsterdam: Amending the Treaty on European Union, The Treaties establishing the European Communities and certain Related Acts (OJC 340, 10, 11, 1997).

⁴ Treaty of Nice: Amending the Treaty on European Union, The Treaties establishing the European Communities and certain Related Acts (2001/C80/01).

HISTORY OF THE CONVENTION

6. The history of the Convention can be traced directly to three main issues: the need to reform the institutions; the challenges of enlargement; and growing public disenchantment with the EU.

The need for the institutional framework to keep pace with the EU's ever widening and deepening competencies

7. One commentator charts the continuous timetable for the European reform process over the past 20 years:

“The process initiated at Fontainebleau in 1984 led to the Single European Act that came into force in July 1987. In June 1988 the Hanover European Council asked Jacques Delors to chair a group on Economic and Monetary Union, which led to the Maastricht Treaty, which came into force in November 1993. In June 1994 the European Council at Corfu appointed a reflection group chaired by Carlos Westendorp to prepare a new conference, which led to the Treaty of Amsterdam, which came into force in May 1999. In June 1999 the Cologne European Council called a new intergovernmental conference. This leaves only nineteen months in sixteen years free from treaty-linked activities”⁵.

8. By the time of the Maastricht treaty, it was generally recognised that the EU's institutional framework, which was originally designed to maintain a common market through a set of legal rules, was no longer effective or efficient for a Union with a more political dimension. Article 2 of the Maastricht Treaty accordingly stipulated that a new IGC was to be convened in 1996 to deal with procedural and institutional arrangements⁶.

9. Ideas for institutional reform in the 1990s were relatively modest. They tended to evolve around two issues: reform of Council decision-making, and the size and composition of the Commission. In the Council, the extension of qualified majority voting (QMV) and a move away from unanimity were seen as vital for facilitating and speeding up decision-making but procedural and political complexity remain, notwithstanding attempted simplification.

10. As for the composition of the Commission, it was recognised that it needed to be scaled down to deal with a greater number of Member States. The Commission could not function efficiently if the principle of one Commissioner per small country and two for the big countries was to be maintained in an enlarged Union.

EU Enlargement

11. By the time of the Amsterdam IGC, the implications of EU enlargement had become apparent. In our Report leading up to that IGC we stressed the significance of enlargement, and the difficulties of combining it with greater efficiency⁷. Not only had the EU's greater competencies put considerable stress on the institutional framework, but the prospect of a Union of 27 Member States increased concerns that the system would become unworkable. The opportunity to reform the system when Sweden, Finland and Austria acceded in 1995 had been missed as the EU was then still reeling from the Danish rejection of the Maastricht Treaty.

12. Although basic institutional adjustments to adapt the EU to enlargement were made at Amsterdam in 1996-7 (and Nice in 2000) and although the Amsterdam Treaty dealt with many significant policy changes in the areas of Justice and Home Affairs and the Common Foreign and Security Policy (CFSP), the Treaty was disappointing on the key institutional questions.

13. In the end, all the Amsterdam negotiators could agree on was a ‘Protocol on the Institutions with the Prospect of Enlargement of the European Union’⁸, which raised the issues of the size and composition of the Commission and of the reweighting of votes in Council. A declaration by Belgium, France and Italy on the need to extend QMV given the prospect of enlargement was also appended to the Treaty⁹. In sum, even before ratification of the Amsterdam Treaty, it was clear that another IGC

⁵ *Common Market Law Review*, Vol. 37, No.4, August 200, Footnote to guest editorial, Phillippe De Schoutheete, ‘The Intergovernmental Conference’, p.845.

⁶ Treaty on European Union (OJC 191, 29 July 1992).

⁷ *1996 Inter-Governmental Conference*, 21st Report, Session 1994–1995, para. 232.

⁸ Treaty of Amsterdam, Protocol on the institutions with the prospect of enlargement of the European Union (OJC 340, 10 November 1997).

⁹ Treaty of Amsterdam, Declaration by Belgium, France and Italy on the protocol on the institutions with the prospect of enlargement of the European Union (OJC 340, 10 November 1997).

was going to be required to prepare the EU for enlargement by introducing the necessary institutional reforms where Amsterdam had failed.

14. In recognition of the urgency of the problem, the decision was taken at the Feira European Council in June 2000 to restrict the Nice IGC to institutional reform¹⁰. In addition to the Amsterdam ‘leftovers’, the IGC was to consider the allocation of seats in the European Parliament (EP) as well as its legislative role.

15. The key agreements on institutional reform reached at Nice¹¹ were:

- Council votes were reweighted to include the candidate countries on accession. Votes under QMV were to be subjected to a new triple majority (of votes, of member states and of population).
- From 2005 there would be one Commissioner per Member State until the EU reached 27.
- The Commission President was assigned new powers and was in future to be voted in by QMV in the Council.
- QMV was extended to a further 39 provisions.
- Seats were reallocated in the EP up to a total of 732 seats, exceeding the previous cap of 700.
- Co-decision was extended.
- Amendments were made to ‘flexibility’ provisions.

16. The Nice Treaty thus dealt with the very minimum requirements to enable enlargement to go ahead but skimmed over the vital question of efficiency. At the heart of the problem remained the distribution of power between Member States, in particular the balance between large and small states. This question is fundamental to the debate on enlargement, in view of the large number of small states likely to accede. In recognition of its limitations, the Nice Treaty stipulated that another IGC should be held in 2004¹². The Treaty listed as items for the IGC treaty simplification; the role of national parliaments; the status of the Charter of Fundamental Rights; and the division of competencies within the EU between European, national and regional authorities.

Public Hostility and Indifference to the EU

17. The commitment made at Nice to a new IGC in 2004 was accompanied by a further commitment to a far-reaching public debate on the future of Europe from 2001 onwards to take place in Member States and candidate countries, as well as in the EU institutions¹³. This commitment showed a recognition of the final problem that lies behind the establishment of the Convention: the ‘disconnection’ between the Union and its citizens. That problem is not new, however, and we accordingly set out some of the background.

18. In 1992, Denmark rejected the Maastricht Treaty in a first referendum¹⁴, and in France the vote was only narrowly won¹⁵. The Maastricht ratification crisis shook the EU. It was clear that the Treaty, and by extension the EU, did not enjoy the level of support that governments had expected.

19. The Amsterdam Treaty was not rejected in a referendum but there was criticism of the way in which the negotiations were conducted. During the preparatory stages of the IGC, reports by the Council, Commission and EP had all emphasised the need for greater legitimacy, transparency and effectiveness in EU procedures. Nonetheless, despite the rhetoric during the IGC, few specific proposals were made as to how to achieve these aims. Indeed, debate evolved around obscure language and complicated articles. The highly technical negotiations failed to capture the imaginations of the European citizens. The EP had been represented alongside the Commission in a preparatory Reflection Group, but negotiations at the IGC remained a matter for governments in the usual way without national or European parliamentarians to provide a direct link with the electors.

20. Despite the wide-spread criticism of Amsterdam, the decision was taken at the Helsinki European Council in December 1999 once again to restrict political responsibility for the Nice IGC to Member-State representatives, with no provision for the involvement of national parliamentarians, although the EP was to be ‘closely associated and involved’¹⁶ through observers to the Preparatory Group and regular exchanges of views during the IGC. The candidate countries were to be briefed

¹⁰ Presidency Conclusions of the Feira European Council, 19-20 June 2000, Paragraph 3.

¹¹ Presidency Conclusions, Nice European Council (7-9 December 2000).

¹² Treaty of Nice (2001/C80/01).

¹³ Presidency Conclusions, Nice European Council (7-9 December 2000).

¹⁴ ‘EC vows to ratify Maastricht: Shocked leaders search for solution to crisis after Danes reject Treaty’: Financial Times, 4 June 1992.

¹⁵ ‘Weak sterling overshadows market hopes’: Independent, 21 September 1992.

¹⁶ Presidency Conclusions of the Helsinki European Council, 10-11 December 1999, Paragraph 18.

regularly and ‘have the opportunity to put their points of view on matters under discussion’¹⁷. ‘The EP urged the Member States to use the opportunity to make the institutions more efficient, transparent and democratic, thereby strengthening the legitimacy of the European Union in the eyes of the citizens and enabling it to cope with enlargement, play an active role in the world, better serve citizens and enhance fundamental rights and internal security’¹⁸.

21. In the event, the Nice IGC stuck to the narrowly defined Feira agenda, and acrimonious negotiations over institutional adjustment did little to improve the EU’s image in the eyes of the public. There was widespread recognition of the limitations of the type of negotiations that had dominated Nice and previous IGCs. Given the ever closer imminence of enlargement there could not be much further delay on discussions over outstanding matters such as reform of the General Affairs Council, the rotating Presidency system, the possibility of a second chamber in the EP intended to associate national parliamentarians more closely with European affairs, the IGC method itself and the future of the CFSP.

THE FUTURE OF EUROPE DEBATE

22. The commitment of Member States’ governments to a far-reaching public debate on the future of Europe was endorsed by a Declaration in Annex IV in the Treaty of Nice. It was formally launched by the Swedish Presidency on 7 March 2001¹⁹. However, the opening move had already been made. In February 2000, the Commission President, Romano Prodi, presented to the European Parliament a White Paper on European Governance²⁰. The White Paper was a response to concerns about public hostility to the EU; the challenges posed to the EU by globalisation; and the implications of enlargement.

23. A second crucial moment came on 12 May 2000 when Joschka Fischer, the German Foreign Minister, made his speech ‘From Confederacy to Federation: Thoughts on the Finality of European Integration’²¹ at the Humboldt University in Berlin. After the speech, momentum began to gather behind a wide debate on the Future of Europe. One after another national leaders, politicians, academics and ordinary citizens made contributions to the debate, making speeches, writing articles, or posting their opinions on specially created web-sites.

24. Candidate countries were also eager to get involved. A statement on the future of Europe came from the Estonian Minister of Foreign Affairs on 5 February 2001²². Symbolically it too was delivered at Humboldt University. Since then almost every accession state prime minister or foreign minister has given a statement on the future of the Union they aspire to join.

25. This phase of growing public reflection continued throughout 2001 with heated exchanges on topics that previously had not been the subject of such open and extensive debate. Questions under consideration included whether the EU should have a constitution; whether it should follow the federal model; whether its policies should be renationalised or its competencies extended into new areas; whether there could or should be a European government; and how the EU could be more accountable to its people. After the tragic events of the 11 September 2001, many called for a better-defined role for the EU as a global actor.

26. This open debate during 2000-2001 went far beyond the Nice ‘leftovers’ and had certainly gone beyond the IGC agendas of the 1990s when reform was conceived in terms of Council voting procedures and the composition of the Commission. As a concept, wide-ranging open debate over Europe’s future is unprecedented in the history of decision-making in the EU. The Union has, by contrast, been thought to function as a top-down project, where decisions, particularly those leading to treaty amendment, are taken behind closed doors.

THE PRECEDENT FOR THE CONVENTION METHOD

27. Certain key questions had emerged as a result of the increasing public debate. How would the European Union respond to the challenge of reconnecting with its citizens? How could there be wider involvement in the preparation for the 2004 IGC? An unresolved issue was how to formalise the debate. The attempt in the late 1980s to involve national parliamentarians with the EP through the

¹⁷ *ibid.* Paragraph 19.

¹⁸ EP resolution on the Preparation of the Reform of the Treaties and the next Intergovernmental Conference (C5-0143/1999-1999/2135(COS)), Paragraph 1.

¹⁹ www.eu2001.se: ‘Opening the debate on the future of the EU’.

²⁰ COM (2001) 428 final.

²¹ ‘From confederacy to federation’: Thoughts on the finality of ‘European Integration’: Joschka Fischer, 12 May 2000.

²² ‘Europe: The Future’: The World Today, April 2002.

Assizes had been a resounding failure. They only met once in 1990 in Rome after which the initiative was abandoned²³.

28. A more successful precedent was provided by the Convention responsible for drafting the Charter of Fundamental Rights in early 2000, chaired by former German President Roman Herzog. The Convention on the Charter of Fundamental Rights began its work amid some scepticism. Many questioned the need for a charter in an area where European citizens already enjoyed reasonably clearly defined rights. In the end, the document drawn up by the Convention and, perhaps more importantly, the actual process of the Convention itself won respect from many quarters. The Charter²⁴ was drafted within the short nine-month timetable that had been set. Meeting within a single body, representatives of national governments and parliaments, the European Parliament and the Commission demonstrated that they could work together. Better still, representatives of civil society were able to monitor and shape the Convention's debates, thus seemingly meeting the oft mentioned need to strengthen citizen involvement in European decision-making procedures²⁵.

THE LAEKEN DECLARATION

29. It was at the European Council in Laeken in December 2001 that the issue of a Convention to prepare for the IGC was finally decided. The Laeken Declaration²⁶ asserts that 'the EU is a success story' but admits that it is perceived as remote and interfering. To tackle this problem, Laeken established the Convention. The objective of the Convention, as defined in the Laeken Declaration is 'to pave the way for the next Intergovernmental Conference as broadly and openly as possible' and 'to consider the key issues arising for the Union's future development and try to identify the various possible responses'.

30. The Laeken Declaration posed a total of 54 questions for the Convention to answer, under the following four headings:

- a better division and definition of competencies in the European Union
- simplification of the treaties
- more democracy, transparency and efficiency in the European Union
- examining the case for a Constitution for Europe.

31. The Laeken Declaration reflects the scope of the open debate that followed the Commission White Paper in February 2000²⁷. It became clear from that debate that neither the scope nor the working methods of the previous IGCs were considered adequate by the European public; something new, and different, was required. The deliberations of the Convention are intended to be broad in scope and to cover as wide a range of topics as possible. In this, they are far removed from the narrow, often very technical discussions that have preceded previous IGCs.

²³ The Assizes was the subject of our 5th Report, Session 1990–1991, (HL Paper 20).

²⁴ Charter of Fundamental Rights of the European Union: December 2000. <http://ue.eu.int/df/default.asp?lang=en>.

²⁵ For more detail, see our 8th Report, Session 1999–2000 "EU Charter of Fundamental Rights" (HL Paper 57), especially para 152 where we praised the composition and transparency of the Convention. See also *The Convention on a Charter of Fundamental Rights: A Method for the Future?* Research and Policy Paper No.15, Notre Europe, November 2001, Florence Deloche-Gaudez.

²⁶ Laeken European Council, 14–15 December 2001. Presidency Conclusions, Annex I.

²⁷ Com (2001) 428 final.

PART 2: THE CONVENTION—ORGANISATION

PRACTICALITIES

32. The Convention meets in the premises of the European Parliament in Brussels. The plenary sessions can be viewed live on <http://europarl.telemak.com/>. Convention documents are available at <http://european-convention.eu.int>

COMPOSITION OF THE CONVENTION

33. The Convention is headed by the triumvirate of the President, Valéry Giscard d'Estaing, former President of France, and two Vice-Presidents, Jean-Luc Dehaene, former Prime Minister of Belgium, and Giuliano Amato, former Prime Minister of Italy.

34. Each Member State has one government and two parliamentary representatives. 13 candidate countries (including Turkey) have the same representation as the Member States. However, candidate country representatives cannot block any consensus in the Convention's proceedings that may emerge among the Member States.

35. The EP has a delegation of 16 MEPs and the Commission has 2 Commissioners as members of the Convention. For each member of the Convention²⁸ there is an alternate. There are therefore 105 full members of the Convention, and 207 altogether including alternates. The national parliamentarians form an absolute majority on the Convention and contribute 58 members to the European Parliament's 16. In addition there are 13 observers: 3 from the Economic and Social Committee, 3 representatives of the European social partners (representatives from Employer and Employee Associations), 6 from the Committee of the Regions, and the European Ombudsman.

36. The two UK parliamentary representatives are Gisela Stuart MP (Labour) and David Heathcoat-Amory MP (Conservative). The two alternates are Lord Tomlinson (Labour) and Lord Maclennan of Rogart (Liberal Democrat). The Government representative is Peter Hain, Minister for Europe. His alternate is Baroness Scotland of Asthal, Parliamentary Secretary, Lord Chancellor's Department. A complete list of Convention members and their contact details is available at <http://www.theepc.be/pdf/conventionmembers.pdf>.

37. The Convention is guided by its Praesidium: the President, Vice-Presidents, 2 MEPs Mr Klaus Hänsch (Germany) and Mr Iñigo Méndez de Vigo (Spain), 2 Commissioners (Michel Barnier (France) and Mr Antonio Vitorino (Portugal), 2 national parliamentarians (Mr John Bruton (Ireland) and Ms Gisela Stuart (United Kingdom) and one government representative each from Spain, Denmark and Greece (the countries that will hold the EU Presidency during the working life of the Convention) (Ms Ana Palacio (Spain), Mr Henning Christopherson (Denmark) and Mr Georges Katiferis (Greece). Following representations from candidate countries, the Praesidium invited national parliamentarians to nominate a Praesidium member from a candidate country national parliament. On 15 April Mr. Alojz Peterle (Slovenia) was nominated. According to the Laeken Declaration, the function of the Praesidium is to 'lend impetus' to the Convention and to provide it 'with an initial working basis'. The Praesidium may also set up 'ad hoc working parties'. The Praesidium is supported by a Secretariat staffed by national, Commission and EP experts. The secretariat is headed by Sir John Kerr, former Head of the Diplomatic Service and Permanent Secretary at the Foreign Office.

38. On its own initiative the Convention has set up a parallel 'Youth Convention' (for those aged 18 to 25). As required by the Laeken Declaration, the Convention has also set up a forum for involving civil society (Q10). We have not considered in detail how the representatives of civil society were appointed or whether they genuinely represent the interests of the citizens, or are just effective Brussels lobbyists²⁹. The success of the Forum as a means for a reconnection will be assessed on the output of its work.

TIMELINE AND ORGANISATION OF THE CONVENTION'S WORK

39. The Convention began its deliberations on 28 February 2002. In principle the Praesidium meets every 2 weeks behind closed doors; the plenary session meets in public once a month, more often towards the end of the Convention. According to the Laeken Declaration 'proceedings will be completed after a year, that is to say in time for the Chairman of the Convention to present its outcome to the European Council' in March 2003.

²⁸ No single English term is in universal use to describe Convention members. In French they are *les conventionnels*.

²⁹ A Press Release from Euro Citizen Action Service (www.ecas.org) has criticised early sessions for muffling debate, an absence of real dialogue and no sense of excitement.

40. There has, however, been some ambiguity over this timeframe. At the end of June Convention President Giscard d'Estaing insisted that the task 'of reflecting on and preparing for a Europe with 500 million people should not be sacrificed to respect a fixed deadline'³⁰. In his view the Convention has a further three-month room for manoeuvre, and could present the final document at the European Council in Athens in June 2003.

41. The Convention is operating in accordance with its President's proposition that its work should be divided into three phases: a period of listening; a period of an analysis; and, finally, a phase drawing together different proposals and draft recommendations. The first phase, the listening phase, concluded at the 11-12 July plenary meeting. The 'analysis' phase centering on the results of the working groups (described in para 48 below) is expected to last until the end of the year.

42. Overall the Convention is just starting to heat up. However, the bulk of the work is set to be undertaken over the next two to three months, with draft conclusions from the Convention expected in the autumn. At its September session, the Convention will discuss the simplification of legislative procedures. At its first session in October the Convention will discuss the issue of subsidiarity.

43. Convention members have expressed views for and against the Convention producing a single document, which will carry authority with the IGC, or a series of options, which might genuinely reflect a plurality of opinion and avoid a "manufactured consensus" achieved "by generous helpings of Euro fudge" (Q28). One possible output from the Convention is the drafting of a constitution or a Constitutional Treaty. Work on this was originally not expected to start until the beginning of January 2003. However, in an open letter to the Praesidium in June, a number of members of the Convention called for a first sketch of a constitution to be drawn up by October.³¹ The letter maintained that an early draft would give a concrete basis of discussion and cut short general debate. At the 11-12 July Plenary Giscard d'Estaing pledged to table the draft proposal for a Constitutional Treaty between October and November 2002. It has been suggested³² that a Constitutional Treaty would appeal both to those who want to proceed by way of a new constitutional document; and those who want to build on the text of the current Treaties.

44. During the 'listening phase' the plenary has met seven times, between the inaugural meeting on 28 February and the plenary in association with the Youth Convention on 11-12 of July. The Praesidium planned the 'listening phase' for the first quarter of the Convention to dissipate fears of a top-down approach. The first four meetings of the plenary were thus dedicated to general debate between the Convention members. The February and March meetings were reserved for opening statements while the April and May plenaries were entitled 'The Missions of the European Union and 'the Exercise of Competencies' respectively. In practice, all four meetings saw every possible topic mentioned.

45. The limitations of listening to dozens of members in a row expressing their views in three or four minutes were quickly revealed. Some adjustments suggested by the Praesidium and adopted during the plenary in April, granting members the right to respond to interventions by raising a 'blue card' and establishing a 'reaction time' every five speakers, still fell short of actual debate. As recognised by Vice-President Amato at the end of the April plenary, working groups had to be formed to achieve real debate and to address issues in detail.

46. In June and July the plenary debate was limited to sectoral issues. In early June the plenary met to discuss Justice and Home Affairs³³, while the final plenary of the 'listening phase' in the second week of July was dedicated to EU foreign policy and defence. The plenary met a second time in June to listen to representatives of Civil Society, and received the conclusions of the Youth Convention organised in early July. The session heard representatives from civil society groups across the spectrum, from business, environment, human rights and academics. Vice-President Dehaene introduced the session, and stated that this was a preliminary step in the involvement of civil society, which would continue throughout the Convention. Groups had submitted written comments, held debates at national level and contact groups had been established.

47. An overwhelming majority of members of the Convention, national politicians and the press have heavily criticised the Convention for dragging its feet on general discussions and for failing to tackle essential questions. President Giscard d'Estaing has resisted criticism maintaining that the

³⁰ <http://www.euobserver.com/index.phtml?sid=18&aid=6796>. 'Giscard admits rift with EU leaders over timetable'.

³¹ <http://www.euobserver.com/index.phtml?sid=9&aid=6928>. European Report, 15 June 2002, page 1.4 describes a 'leak' of a non-paper from the Praesidium secretariat describing the "possible outline of a basic Treaty".

³² David Heathcoat-Amory MP at the Standing Committee on the Convention, House of Commons Official Report, 16 July 2002 col. 11.

³³ Area of freedom, security and justice: the role of the Union and of Member States (docs CONV 69/02 and CONV 70/02).

listening phase, whereby civil society, youth groups and Convention members brainstorm on broad subjects, was necessary for setting the basis for drafting any future constitutional treaty.

WORKING GROUPS

48. In recognition of the limitations of general debate, 6 working groups were established at the plenary on 6 June, with the following mandates. A list of the Working Group presidents and their contact details is included in Appendix 2³⁴.

Working Groups

Group 1: *Subsidiarity*

How can verification of compliance with the principle of subsidiarity be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character?

Group 2: *Charter/ECHR*

If it is decided to include the Charter of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights?

Group 3: *Legal Personality*

What would the consequences be of explicit recognition of the legal personality of the EU, and of fusion of the legal personalities of the EU and the European Community?

Group 4: *National Parliaments*

How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level?

Group 5: *Complementary Competencies*³⁵

How should 'complementary' competence be treated in the future? Should Member States be accorded full competence, or should the limits of the Union's complementary competence be spelled out?

Group 6: *Economic Governance*

The introduction of the single currency implies closer economic and financial co-operation. What forms might such co-operation take?

49. At the session on 11–12 July, the Convention set up four further working groups, to deal with:

- internal security and justice
- simplification of legislative procedure
- external relations and representation of the EU abroad
- defence and security policy.

50. The six initial working groups are expected to present their reports to the Convention in September and October, containing elements that could be the final documents that will be drafted by the Convention. This leaves a great deal of work to be done over the next two months.

51. We note that the Convention's conclusions, whatever form they take, are not binding and that real decisions will be taken by governments at the IGC. We also note the Government's assurance that "The status of the Convention conclusions is that they will be submitted to parliaments for discussion before governments then move forward – on the basis of having heard those parliamentary discussions – to consider what should go to the IGC"³⁶. In considering how to influence the issues debated at the Convention we will bear in mind this undertaking for proper parliamentary debate after the Convention process is concluded.

³⁴ Full membership is given in Convention document 77.

³⁵ In a Note from the Praesidium to the Convention (CONV 47/02) "Complementary Competence", to be distinguished from "exclusive competence", "concurrent competence" and "Member States' competence", is used to cover areas (e.g. economic policy, employment, education, development co-operation) where Union/Community competence is limited to supplementary or supporting the action of Member States, adopting measures of encouragement or co-ordinating the action of Member States. However, the work of the Working Group on complementary competencies appears to be concerned with the use of Article 308 TEC and examining whether the Union can act when it does not have a specific Treaty mandate: Ms Gisela Stuart MP, in evidence to the Standing Committee on the Convention, 16 July 2002 (col 5).

³⁶ Baroness Symons of Vernham Dean, HL Deb 27 May 2002 col 1048.

DEVELOPING DYNAMICS

52. The politics of the Convention is still in a state of flux after four and a half months: the major groupings have not yet reached common positions. Attempts to caucus are going on at every level: there are regular meetings of each political group, social democrats, conservatives, and the liberals; each set of institutional representatives is trying to co-ordinate its line; and each country has meetings of its own nationals. The accession countries, including Turkey, are the only ones that seem to be trying not to look like a caucus³⁷.

53. Speaking after the second plenary meeting of the Convention, Giscard d'Estaing said he did not support the move by the European socialists and conservatives to group together all left and right forces within the Convention. "They can meet, discuss, of course, but I do not think it desirable to structure the Convention on political parties," he said³⁸.

54. In April members of the Democracy Forum similarly condemned the move by the European Socialists and the Conservatives to form political poles within the Convention. According to David Heathcoat-Amory MP, "The two largest political families try to split Europe in Socialists and Conservatives and then negotiate the final result between them: this is not democracy". He was happy that many national parliamentarians did not support the idea of forming strong political groupings within the Convention, as proposed by German conservative member of the European Parliament Elmar Brok. "However, I am afraid that the idea is not particularly shut down," he added³⁹.

55. Meanwhile, Giscard d'Estaing warned in early July that the biggest danger for the Convention was to become 'the scene of confrontation between two powers', the Member States and the Commission. He told leading conservative politicians from across Europe, gathered in Roquebrune to discuss the future of Europe, that if confrontation opens within the Convention, the Convention will fail⁴⁰.

56. It is clear from the evidence we have heard that the different groups represented at the Convention operate in different ways. In plenary, members are seated alphabetically. In practice those on the Convention can be divided up as follows: by institution; by country; and by political group. There may well be other alliances or forms of cohesion among the members of the Convention.

57. Lord Tomlinson told us that the MEPs were the most coherent group, followed by the political groupings and that the national parliamentarians were the least coherent group. He stressed that his party, that of European Socialists, did co-ordinate as a group but even there the initiative was taken by the MEPs "who are already used to the process of working in trans-national political groups". David Heathcoat-Amory stressed that the MEPs not only had the advantage of home territory but also "the research, European money, offices, electronic equipment and press officers" which were available on demand for them in Brussels, compared with his single Research Assistant⁴¹ (Q8). Gisela Stuart in stressing the outlook of the MEPs even said, using Union language in a novel way, that "many members of the European Parliament feel that their common position is almost part of the *acquis* of the Convention"⁴².

58. The importance of country-based meetings should not be overlooked. As far as the UK members of the Convention were concerned, we were told that there would be value in a meeting involving the four parliamentary representatives; the MEPs; and, in particular, Peter Hain who could give the Government perspective. Any such grouping would be strengthened by Gisela Stuart's position as a Praesidium member (Q25). Such meetings have begun and are proving effective⁴³, although some have called for there to be a clearer exposition of the 'British line' by the Foreign Office⁴⁴.

59. Peter Hain told us that there were also opportunities for the various government representatives on the Convention to come together. Such a meeting took place on the eve of each plenary. The

³⁷ Quentin Peel, 'A merry dance around Europe: The Government of the EU is at stake but, as Giscard d'Estaing tries to conduct the debate, everyone is avoiding the real issues', *Financial Times*, June 10, 2002, p.23.

³⁸ EU Observer, 'Giscard against political grouping in Convention', 25 March 2002.

³⁹ <http://www.euobserver.com/index.phtml?aid=5935>.

⁴⁰ <http://www.euobserver.com/index.phtml?aid=6922>.

⁴¹ This House has made a similar arrangement whereby the two members who are alternates on the Convention can claim an extra allowance for research support.

⁴² Standing Committee on the Convention, House of Commons Official Report, 16 July 2002, col.13.

⁴³ *ibid*, col.17.

⁴⁴ David Heathcoat-Amory MP, speaking to the Commons European Scrutiny Committee on 21 May 2002 (HC 871; 15 July 2002).

government representatives were not, however, a uniform group, including full ministers; an academic; and a representative claiming no mandate from his Government (Q38). We note that recent elections have complicated this situation, and similar complications may arise during the life of the Convention.

60. What is clear, however, is that the members of the European Parliament on the Convention have a head start in operating as a cohesive group. The Convention meets in their Brussels building. They are the largest single group of representatives from a particular institution (if one assumes that the national parliaments are individual institutions). National Parliaments, however, are an important part of the process. The Nice Treaty imposes an obligation for their role to be considered (Q8). Evidence from our own Government has stressed the need for national parliaments to buy into the Convention's work in an effective way⁴⁵. **We urge the national parliamentarians on the Convention to do all they can to come together to present a cohesive view on behalf of national parliaments on those issues on which national parliaments share a common interest.** These would include in particular the future role of national parliaments in the European architecture, a matter on which the Convention has a working group.

⁴⁵ Mr Nick Baird of the Foreign and Commonwealth Office (published in our 25th Report, Session 2001–2002, HL Paper 141, 2 July 2002, Q46).

PART 3: THE CONVENTION: KEY ISSUES FOR DEBATE

61. Underlying all the arguments are two fundamentally different approaches; the Community method, and the inter-governmental approach.

- The Community method seeks to create a European interest independent from national interests. The Commission is fundamental to this approach. As it is deemed to be independent it has been given the exclusive capacity to initiate legislation, which should therefore be free of partisan interests.
- The Inter-governmental approach is that used for second and third pillar activities where decision-making is between the governments through the Council deciding on collective activity.

62. Any change in process by the Convention is likely to affect the balance of power between the institutions. Unsurprisingly, this has led to the institutions becoming actively involved in influencing their futures.

THE COMMISSION AND COUNCIL

63. Although the Convention has been set up explicitly to debate the future of the EU, the most comprehensive inputs to the debate so far have come from the Commission and the Member States. Following the setting up of the Convention, both the Commission and the Member States have set out their views separately on what their respective roles should be in an enlarged Europe. It is likely that the existing basic structure will continue, but in what form is undecided and neither party is waiting until the Convention comes up with the answers.

COMMISSION PROPOSALS

64. The Commission released a Communication at the end of May entitled ‘A project for the European Union’⁴⁶. Within the document the Commission President, Romano Prodi, sets out a wish list of objectives for the Commission.

New Composition

65. Alongside proposals for the future of the EU the Commission has been thinking about reform of its own structure. Following enlargement, the continuation of the current Commission structure would be extremely difficult to maintain, with a total of 27 Commissioners, one from each Member State⁴⁷. The Commission President announced his plans for reform at the Seville Summit in June. He proposed an inner cabinet of up to nine senior colleagues (vice-presidents), who would meet around once a week and prepare the ground for decision-making, in effect creating a two-tier Commission. Also suggested is the idea that the College could make greater use of ‘*habilitations*’, empowering vice-presidents to take decisions without necessarily going through the whole Commission. Mr Prodi is insistent that his reforms should happen as soon as possible to allow them to settle down before enlargement. There has, however, been criticism from other Commissioners who believe that the collegiate principle should be retained and that if changes are to be made they should occur after enlargement. In fact some are suggesting that the Commission should resign at the time of enlargement even if this occurs before the end of its official term (2004).

66. Peter Hain set out in some detail the Government’s view on the Commission’s proposals. He supported “a strong Commission to implement the European interest and take an independent EU view”. There was a problem in that each Member State needed to have its own Commissioner, yet there were arguments for reducing the overall number. He floated the idea of there being a dozen Commissioners, with deputies who would have an equal vote for their own dossier in the college. The deputies would have an ambassadorial role linking with Member States while the full Commissioners focussed on the Brussels operation (Q53). We note, however, that the French are, for example, said to be pushing instead for a smaller Commission with a greater role for national permanent representatives.

The Treaty

67. To achieve a coherent EU voice internationally the Commission believes that there should be a single legal personality for the EU. It envisaged that there will be a ‘constitutional treaty’ to address the balance between states and the Union, not creating a superstate but redesigning EU citizenship

⁴⁶ COM (2002) 247 final.

⁴⁷ See our 21st Report Session 1994–1995, HL Paper 105: ‘1996 Inter-Governmental Conference’. Paras 253–255.

making the EU more legitimate. In a recent speech⁴⁸ Commission President Prodi elaborated on the design of this new treaty which should be made up of two parts:

- A constitutional section setting out the constitutional principles and the Charter of Fundamental Rights.
- A second section setting out the practical procedures, governed by more flexible voting rules covering amendments.

Economic and Social Development

68. The Commission proposes a focus on the Single Market as it is the bedrock of the community project. The Communication calls for a stronger economic co-ordination instruments, with the major economic policy guidelines and opinions on the stability and convergence programmes to be drafted on the basis of proposals by the Commission. A Community framework needs to strengthen co-ordination of the European economy, and the Commission should be responsible for developing this. There should be unified external representation of the euro zone. QMV should be the only procedural rule for decision making in the Council for the fiscal and social dimensions of the Internal Market. Implementation should be as decentralised as possible.

Freedom, Security and Justice

69. The Commission proposes that there should be a legal expression of European Citizenship, with obligations as set out in the Charter of Fundamental Rights. There should be collective action to address control and surveillance of external borders, common policies, open immigration and asylum, co-operation against organised crime and terrorism, and civil and criminal judicial co-operation.

A Global Player

70. The Commission sees a role for a stronger focus on foreign policy, and the Union should become as a serious player on the global scene. To achieve this there needs to be a single locus of foreign policy achieved by merging the functions of the High Representative (currently Javier Solana) and the Commissioner for external relations (Chris Patten), and locating it in the Commission. QMV must apply, and unanimity be abolished for CFSP. A majority of those present at the July plenary favoured the Commission proposal for a bigger role in this area, whilst other states including the UK were reiterating their support for maintaining intergovernmental mechanisms. Both groups seem to think combining the roles of High representative and Commissioner for external affairs a good idea, but disagreed over where the post should be sited.

Relationship with the Council

71. Romano Prodi has also suggested that the Presidents of Commission and Council should in fact be one role, chosen by the Member States' governments and elected by the European Parliament (or another method) and in place for a term of 5 years.

The Government's view on the Commission's proposals

72. Peter Hain's view is that the Commission's proposals were "very disappointing and the product of old thinking". He suggested they were a bargaining position, as some of the proposals were "non-starters and would not be acceptable". More welcome was the emphasis on subsidiarity and on "practical delivery" (Q48).

COUNCIL INITIATIVES

Seville Changes

73. At the European Council in Seville⁴⁹, the Council agreed a number of changes to the way in which it operates. These have not required Treaty changes, but seek to streamline the Council's operation and make it appear more transparent.

- The EU heads of state are committed to improving transparency in Council meetings, by opening up initial and final co-decision debates to the public (Annex II: Section E).

⁴⁸ Romano Prodi President of the European Commission « A constitution for the future of Europe » Fondazione Cariplo Milan, 15 July 2002.

⁴⁹ Seville European Council, 21–22 June 2002.

- Reducing the Council formations from 16 to 9, creating a new Competitiveness Council, and dividing in practice the work of the General Affairs Council (Annex II: Section B).
- Improving the co-ordination between presidencies, to give the Council's work more coherence. If it is clear that a legislative dossier will continue under the next presidency, the next Member State should have access to the dossier and chair relevant working groups during the incumbent presidency (Annex II: Section D).

74. **We have been urging greater transparency in the Council since 1995. We welcome moves to greater openness in the Council, while recognising that there will always be some deals behind closed doors. Only limited changes were agreed at Seville. We would urge that legislative proceedings at all stages be in public, with a *Hansard* type report available⁵⁰.**

75. As well as the changes agreed at Seville there have been a number of proposals from Member States, outlining their views on how the Council should work in the future. As the Council is not such a coherent body as the Commission there is not one position, but several broad themes are discernible. The issues are also not new: we reported in 1995 on the structure of the Presidency etc and other issues regarding the Council⁵¹.

A strong Council of Ministers, maintaining a Europe of Member States, plus an elected President

76. The UK, Spain and France have put forward proposals to have a President of the Council, elected by the Council, who would serve for a longer term than the current presidency, probably around 5 years, and who would be a figurehead for the EU. At the same time the UK has proposed that team presidencies, made up of a group of Member States, should assume the EU presidency for around two and a half years, each country hosting the presidency for 6 months. The elected President would then act as chair. The reasoning behind these proposals, according to Peter Hain,⁵² is that a single EU representative is needed for the EU to become a serious player on the global scene, and the current 6 monthly rotating presidency is not consistent enough in terms of representation and decision-making.

77. This package of proposals is seen in some quarters as favouring the 'big countries', smaller States believing that the President would inevitably come from a big country. This has been denied by Peter Hain, who has said that this model would in fact favour smaller states as it would move away from the current situation where international affairs are generally conducted by Britain, France or Germany⁵³.

Federal Europe with a strong Commission

78. A number of small countries including Denmark, Austria, Finland, Belgium and Luxembourg have opposed the proposals to strengthen the Council by electing a Council President as EU representative. David Heathcoat-Amory's view is that this would raise the status of the Commission and "make it into at least an embryonic government" (Q21). However, the Danish Prime Minister, Anders Fogh Rasmussen stated that he was not necessarily also opposed to the group presidency idea if it contained representatives of large and small countries. His views are significant, because Denmark has been charged with developing plans to reform the Council before December's Copenhagen summit⁵⁴.

79. Small countries traditionally favour the Commission over the Council, where larger States tend to dominate, because of the key role it plays in developing policies for the Community as a whole. As a result the Netherlands has proposed that it should be the Commission President who is democratically elected to represent the EU, reinforcing the Commission's role⁵⁵.

Germany

80. Peter Glotz, the German Government Representative on the Convention, has not backed either camp on these issues, but has come up with a further contribution to the debate, proposing instead that the Commission President should be elected by a vote in the European Parliament, increasing the democratic legitimacy of the Parliament. However although Germany is also opposed to the Council

⁵⁰ Op cit n.7 para 247. See also paragraphs 62–63 of our Report on a *Second Chamber*, 7th Report, Session 2001–2002, HL Paper 48.

⁵¹ See n.7 above.

⁵² EU Observer, 28/06/2002 'President Needed to Make a Global Player'.

⁵³ EU Observer, 8 July 2002, 'Rift Deepens over Election of EU President'.

⁵⁴ Financial Times, 2 July 2002, 'Copenhagen attacks Chirac and Blair EU Leadership Plan'.

⁵⁵ EU Observer, 4 July 2002, 'Germany adds to EU President Proposal'.

President being the sole EU representative, it does believe in giving States a final say over decisions through the Council⁵⁶.

THE BALANCE OF POWER

81. Convention Vice-President Giuliano Amato has backed the UK, Spain and France on having an elected Council President, but has also suggested a stronger Commission, recommending that when government ministers are not legislating, but only discussing policy, their meetings should be chaired by a commissioner.⁵⁷

82. On the other hand Giscard d'Estaing is unhappy about the prominence of the debate between the supporters of an intergovernmental view and those of the Commission, as it could impact the effectiveness of the Convention: "If we reduce the EU system to one or another of the two visions, the Convention will be blocked, but also Europe will be blocked"⁵⁸.

83. A recent paper, signed by representatives of Germany, Belgium, Luxembourg, the Czech Republic and the European Parliament, demands that the Convention tackle the issue of an elected President. In a difference of opinion with Giscard d'Estaing, who believes that the Convention should stick to its original schedule, the signatories fear that this debate will be settled outside the Convention process⁵⁹.

84. It is clear therefore that both institutions, the Council and the Commission, and their individual members, have differing ideas of how to reach the ideal institutional balance. By setting out their objectives so early, they have perhaps set the pace for the Convention, which is still having a general debate. Regardless of other issues, the shifting weight between the Commission and Council will impact on the Convention's debate, although the Convention has a wider remit than acting as mediator between the institutions. To be effective the Convention must not become sidetracked into this role, and must take forward substantive discussion on the wide range of issues covered within its own Working Groups.

85. Given the strength of the European Parliament's representation on the Convention it is no surprise that the powers of the Parliament are a further issue the Convention is discussing. David Heathcoat-Amory pointed out to us that recent Treaties had all involved the Parliament's powers—but turnout in elections nevertheless remained low (Q15). The Parliament has recently modified its internal rules of procedure⁶⁰ and the next few months should see greater activity from within the European Parliament, as different groups prepare their own visions of the EU for submission to the Convention. So far the European Socialists have entered a formal submission, calling for greater use of QMV, a strong role in foreign policy, based in the Commission, further development of the social model and a constitutionalised Europe. Concerning the question of a president the group does not support a council based president, but a commission President elected by the European Parliament⁶¹. Unlike the national parliamentary 'grouping' the European Parliament can act as a body in its own right, enabling structured debate on convention issues, and coherent presentation of its opinions. Already, it has adopted a number of reports on Convention questions, such as the division of competencies between the EU and national parliaments, and legal personality⁶².

OTHER ISSUES: CONVENTION WORKING GROUPS

86. The representation on the Convention is high level from all Member States, giving the Convention a strong basis for serious debate and decision. The Convention is drawing to the end of its 'listening phase'. This process should very soon move to substantive debate. Even though the majority of the time so far has been taken up with process, initial inroads into the issues have been made, giving an insight into positions to come. Paragraphs 44–46 above outline some of the topics discussed in plenary, including JHA matters and CFSP. The role of national parliaments has been

⁵⁶ EU Observer, 4 July 2002, 'Germany adds to EU President Proposal'.

⁵⁷ Financial Times, 8/07/02 'Amato calls for strong president to lead EU'.

⁵⁸ EU Observer, 12 July 2002, 'Giscard: Power Fight Risks Blocking Europe'.

⁵⁹ EU Observer, 11 July 2002, 'Convention summoned to Debate EU President'.

⁶⁰ European Parliament Report on the General Revision of the Rules of Procedure, 28 January 2002, A5-0008/2002.

⁶¹ "A successful Convention on the Future of Europe: Our essentials", paper by the Parliamentary Group of the Party of European Socialists - Strasbourg, 02/07/2002

⁶² Report on the division of competencies between the European Union and Member States A5-0133/2002 final; Report on the legal personality of the European Union A5-0409/2001.

discussed with documents setting out current competencies, ideas for their future role, and questions to be addressed⁶³.

Subsidiarity

87. Underlying much of the Convention's work is a debate on the principle of subsidiarity, how to apply it and how to monitor it. The European Parliament's Lamassoure Report⁶⁴ calls for *ex post* judicial control of subsidiarity. Others have pressed for *ex ante* political control involving delegates from national parliaments⁶⁵. Our own Government is reported to support this view. Peter Hain told us that his preferred option was "an ex-ante approach of monitoring the way particularly major pieces of legislation affect subsidiarity". This was not a job for a second chamber but "an ad-hoc body, a Committee of national parliamentarians", perhaps one from each country, with a small secretariat, and meeting perhaps six times a year. This approach would be a light touch but keep a "beady eye" on subsidiarity through national parliaments (Q50).

88. The Subsidiarity Working Group is focusing on the application of the principle of subsidiarity and monitoring of compliance.

- Application - whether the Amsterdam Protocol is adequate in describing the principles of subsidiarity.
- Monitoring - the balance between political and legal mechanisms, their relative value, and mechanisms for application.

89. So far the discussions within the Group have dealt with the application of the principle and have begun to consider legal mechanisms for monitoring the principle. There are no indications of future conclusions of the group. However, Mr Méndez de Vigo, President of the Working Group, noted that the question of monitoring the principle of subsidiarity was primarily a political question⁶⁶.

Charter of Fundamental Rights

90. The Charter Working Group has held an orientation debate, and set out its timetable, aiming to finish in October. It noted that most Governments are hesitant about the fundamental question of addressing the political question of incorporating the Charter in the Treaties. The Working Group would be focusing on the technical process of integrating the Charter into some form of constitutional treaty, rather than embroiling itself in the political debate. Our own Sub-Committee E will be examining the Charter again after the summer recess as a follow up to earlier work⁶⁷.

Legal Personality of the EU

91. Currently being debated are the merits of having a single legal personality for the EU and whether this would have consequences regarding the three pillar structure; external relations; and simplification of the Treaties. It was agreed in the 26 June meeting that the current situation was ambiguous, and that there should be a period of assessing the likely impacts of any change. The Group is not expected to report until mid-October

The Role of National Parliaments

92. This Working Group will clearly be of great interest to national parliamentarians, as it represents an opportunity to strengthen their role in the European decision-making process. There will be joint working with the Subsidiarity Group. The National Parliaments Group is likely to report in late October. The conclusions of this Group in particular will be central to the 'democratic accountability' debate of the Convention.

Complementary Competencies

93. Complementary competence refers to those areas in which action by the Community is limited to supplementing, supporting, or co-ordinating the action of the Member States. The group will be addressing issues including what exactly is complementary competence, what the EU is already doing

⁶³ CONV 67/02 and CONV 68/02

⁶⁴ European Parliament Report on the division of powers between the European Union and the Member States, 24 April 2002 A5 0133/2002 final.

⁶⁵ House of Commons European Scrutiny Committee, 'Democracy and Accountability in the EU and the Role of National Parliaments': Thirty-third Report, Session 2001–2002, Vol.I, HC 152-xxxiii-I paragraphs 103–115.

⁶⁶ CONV 156/02.

⁶⁷ EU Charter of Fundamental Rights, 8th Report, Session 1999–2000, HL Paper 67.

in this area, and potential points of conflict between Member States and the EU. The Group is expected to report in mid-autumn.

Economic Governance

94. Issues arising in the Economic Governance Group focus around increasing democratic control over the economy, changes to the European Central Bank and possible improvements to the stability pact. So far the members of the Group have expressed diverse opinions on these issues, setting the framework for debate, but no real consensus has yet emerged.

Further Working Groups

95. Suggestions have been put forward to add further working groups (see paragraph 49 above) and other topics have been discussed including ‘the regions’ to debate the role of devolved governance in EU decision-making, and ‘good governance’.

PART 4: ISSUES AT WESTMINSTER

UK PARLIAMENTARY REPRESENTATION

96. As set out in paragraph 34 above, the membership of the Convention includes two members from each national parliament, with the provision in each case for an alternate member. On the previous Convention, that on the Charter of Fundamental Rights, the two UK members were drawn one from each House. In the case of the Convention on the Future of Europe, the two UK parliamentary representatives are both members of the House of Commons. The two alternates are both members of the House of Lords.

97. We do not wish to reopen here questions asked at the time about the method of appointment of these four parliamentarians⁶⁸. In practice, the difference between the full and alternate members of the Convention is limited. Alternates are not permitted to speak in the plenary when the representative member is present but otherwise have all the same rights as members of the Convention. As Lord Maclennan of Rogart put it (Q3) “none of us feel particularly disadvantaged by second class status because the opportunity to contribute a three minute speech is scarcely one which you would put down as crucial to the outcome”. Lord Tomlinson made clear that as an alternate he played a full part in meetings of British members of the delegation; of his political group; and in preparatory meetings of national parliamentarians. Alternates are fully able to participate in working groups and submit papers (Q1).

98. Of more significance is the question how far an individual member of this House can in any way represent the House in a forum such as the Convention. The Minister has told the House that “Parliament can influence discussions at the Convention through the parliamentary representatives”⁶⁹. It is nevertheless clear to this Committee that individuals cannot easily represent the views of the House. Unless the House were to pass a Resolution, mandating the two individual members who are members of the Convention to take certain views or argue certain cases, all that parliamentary representatives at the Convention can do is feed in their own political judgement; feed in any conclusions reached by Parliament, and in particular any conclusions reached by a relevant Committee; and report back both to such a Committee and to Parliament.

99. Lord Maclennan of Rogart put it succinctly: “it is quite possible that we shall be required to address issues on which we have not received any kind of steer from either House of Parliament in which we have to act as representatives, drawing such help and advice as we can from our own dialogue as well as any other procedures that may be established by the two Houses.....”(Q3). Lord Tomlinson suggested this Committee should formulate views on behalf of the House as a whole and express them to the Convention. Gisela Stuart MP hoped that the way the parliamentary representatives operated together would actually allow a role as a parliament to be discovered, a parliament speaking with one voice on some issues (Q13). Underlying this issue was the sense that in the United Kingdom parliament was distinct from government. Gisela Stuart told us that this view was not universally shared: “there is a huge school of thought which essentially draws no distinction between governments and parliaments and says that because national parliaments ratify what government does, as long as government is there, national democracy is represented. That is a huge faultline” (Q9).

100. We note these concerns. The fact that the UK national parliamentary representatives cannot directly represent Parliament makes it all the more important that there are adequate opportunities for a full exchange of views between the representatives and other parliamentarians.

DEBATES AT WESTMINSTER

101. As well as the debate on the formal motion to appoint the Convention representatives⁷⁰, the work of the Convention on the Future of Europe has been raised in the House on a number of occasions during question time⁷¹. The Minister has already assured the House that “this Government will inform Parliament whenever there are significant developments to report on the Convention”⁷². The significant issues being addressed by the Convention, however, when combined with the need

⁶⁸ See for example First Special Report from the Commons European Scrutiny Committee, HC457, Session 2001–2002; First Special Report from the Commons Foreign Affairs Committee, HC509, Session 2001–2002; and the debate in the House of Lords on 28 January 2002.

⁶⁹ HL Deb 27 May 2002 col 1047.

⁷⁰ See Footnote 68 above.

⁷¹ E.g. 7 May, 27 May and 19 June 2002.

⁷² HL Deb 19 June 2002 col 731.

fully to inform the parliamentary representatives, have led us to conclude most strongly that there is a need for a full debate on the floor of the House led by the Government on a Government motion. A further argument for such a debate was put to us by David Heathcoat-Amory who said that there was a need for Parliament to hear “Peter Hain’s view about these matters, which so far remains a little bit delphic”. Another argument was that a parliamentary debate might raise public interest (Q32).

102. While we hope that the House will value our scrutiny work, such as that contained in this Report, the issues being considered by the Convention are of such significance that nothing less than a full debate on the floor of the House will allow the House to get to grips with the issues. While it would be possible for the House to debate this Report, and if no other arrangements are made we will seek to do this, it is our conclusion that the House has a right to expect that the Government will lay out its own views on the issues being considered by the Convention. **To this end we recommend that the Government reports regularly to the House on the issues being discussed at the Convention and sets out its views on the issues before the Convention; and that a debate, on a Government motion, be held no later than the end of the year. It will be particularly important to hold a further debate once the output of the Convention is available, not least so that Parliament can debate and express a view on any matters on which the Convention itself was not able to reach a conclusion.**

103. Gisela Stuart told us that she would welcome a mechanism to report back to the two Houses jointly, allowing any member who wished to be present. She stressed the need for any such Committee to be “as informed as possible but also..... on the public record”. She stressed the need for a proper mechanism to report back to both Houses (Q22). She hoped there would be “feedback on the public record of the joint Houses..... I think the mechanisms will be there in due course” (Q17).

104. In addition to scrutiny of the parliamentary representatives and the Minister for Europe by this Committee, both the Foreign Affairs Committee and the European Scrutiny Committee in the House of Commons have held sessions with the parliamentary representatives, or some of them. It is our understanding, however, that no substantive Reports from either of these Committees are imminent, although transcripts of evidence are available⁷³.

105. In addition to the regular scrutiny by existing parliamentary Committees, the House of Commons has appointed a Standing Committee to hear reports from the Convention representatives; for questions to be put to them; and for a debate to be held. Although the core membership of this Standing Committee is the membership of the Commons European Scrutiny and Foreign Affairs Committees (who provide the quorum of 10), the Standing Order approved by the House of Commons to appoint the Committee specifically permits other members of that House and all members of this House to attend and participate. On a recommendation from the Procedure Committee, this House gave its blessing to the new procedure, albeit with some considerable reservations about the way in which it had been brought forward⁷⁴. The Government clearly pins its hopes on this new Committee acting as a significant mechanism for UK parliamentary involvement⁷⁵.

106. At the first such meeting held on Tuesday 16 July, a full debate was held at which three of the four UK parliamentary representatives were able to hear views from a number of members of both Houses⁷⁶. **We welcome the creation of this new forum as a means for Parliament as a whole to engage with its representatives on the Convention. We can see some force in the argument that, as the representatives from Parliament are drawn from the House of Commons, the Committee appointed to scrutinise them must be a House of Commons Committee. We are, however, convinced of the case for involving Members of this House in this body. We hope all Members of the House will avail themselves of this opportunity.**

107. We note that the two Members of the House who are the alternate representatives on the Convention will have the right to make statements at this new Committee, as will their counterparts from the House of Commons. We will ensure that any Member of this House who notifies us of an interest to participate will receive the details of the Standing Committee’s work.

AVAILABILITY OF DOCUMENTS

108. The Convention on the Future of Europe operates in an extremely open fashion, with all its documents available on a website at <http://european-convention.eu.int>. **We welcome the openness of**

⁷³ HC 871i 15 July 2002 (European Scrutiny Committee).

⁷⁴ HL Debs 24 June 2002 col. 1061.

⁷⁵ HL Debs 29 May 2002 col. 732 and 19 June 2002 col. 1047.

⁷⁶ “Standing Committee on the Convention” House of Commons Official Report 16 July 2002.

the Convention in making its documents available in this way but we note the absence of a search engine; of any consolidated list of documents; and of any index of documents or topics being considered by the Convention. We hope that those responsible for the Convention's website will improve it accordingly.

109. As far as documents available to this House are concerned, the UK parliamentary representatives are making reports on about a monthly basis, which are available from the Printed Paper Office⁷⁷. The production of these progress Reports fulfils a suggestion made to us by Lord Tomlinson (Q23). We welcome the production of these factual documents which give far more detail on the Convention's work than we can do here. We hope that Members of the House will take every opportunity to study these documents. The House authorities have also made arrangements for any Member who requests it to receive a regular list of Convention documents; and for Convention documents to be produced by the Printed Paper Office when requested⁷⁸.

110. We note that the Convention website has a section for submissions. We have submitted a number of our recent Reports to the Convention and hope to see these available as related documents on their website in the near future.

111. We have produced a number of reports with relevance to the issues now being dealt with by the Convention. Problems of accountability to civil society, decision-making and the role of national Parliaments are not new, and the Committee has made extensive recommendations over the past few years. The Reports we have submitted include:

- 24 May 2000: Eighth Report: EU Charter of Fundamental Rights
- 25 April 2001: Twelfth Report: The European Court of Auditors: The case for Reform
- 13 December 2001: Seventh Report: A Second Parliamentary Chamber for Europe: an unreal solution to some real problems
- 7 February 2002: Eleventh Report: The European Policy on Security and Defence
- 18 June 2002: Twenty-third Report: The Scrutiny of European Union Business: Provisional Agreements
- 21 June 2002: Twenty-fifth Report: The Scrutiny of European Union Business: The Commission's Annual Work Programme

112. This Report does not attempt to summarise all the recommendations in these Reports. Some key themes emerging from these Reports, and in particular from the Second Chamber Report (which has been described as 'decisive' (Q19) are:

- The need for co-operation between the national parliaments
- COSAC reform
- Enhanced scrutiny of the Commission's Annual Work Programme
- Effective scrutiny by national parliaments holding national ministers to account
- Examination of the forms of CFSP scrutiny
- Continuing vigilance to ensure that scrutiny is not eroded by developments such as the growth of provisional agreements
- Monitoring of subsidiarity by national parliaments
- Clear definition of the status of national parliaments scrutiny reserves, and sufficient time and adequate information to perform effective scrutiny.

113. We urge all members of the Convention to make these issues central to their work.

RECOMMENDATION

114. This Report is made to provide the House with factual information on the work of the Convention on the Future of Europe. As we indicate in paragraph 102 above we hope that this House will have an early debate on the Convention on a Government motion but in case this does not arise in the near future we make this Report for debate.

⁷⁷ First, Second and Third Progress Reports from the UK National Parliamentary Representatives, 30 April, 20 June and 24 July respectively.

⁷⁸ As these documents need to be downloaded from a website, members of the House will not always be able to receive documents on demand.

APPENDIX 1

European Union Select Committee

The members of the Committee that conducted this inquiry were:

Baroness Billingham

Viscount Bledisloe

Lord Brabazon of Tara (Chairman)

Lord Brennan

Lord Brooke of Alverthorpe

Viscount Brookeborough

Lord Cavendish of Furness

Lord Grenfell

Baroness Harris of Richmond

Lord Jopling

Lord Lamont of Lerwick

Baroness Maddock

Baroness Park of Monmouth

Lord Scott of Foscote

Earl of Selborne

Baroness Stern

Lord Tomlinson

Lord Williams of Elvel

Lord Williamson of Horton

APPENDIX 2

Who is Who: Convention Working Groups

Working Groups	President	Contact
Group 1: Subsidiarity	Iñigo Méndez de Vigo	Kristin de Peyron Phone: (+32) 2 285 98 16/ 71 05 Fax: (+32) 2 285 50 60
Group 2: Charter of Fundamental Rights	Antonio Vitorino	Nikolaus Meyer-Landrut Phone: (+32) 2 285 50 44/ 71 05 Fax: (+32) 2 285 50 60
Group 3: Legal personality	Guiliano Amato	Kristin de Peyron Phone: (+32) 2 285 98 16/ 71 05 Fax: (+32) 2 285 50 60
Group 4: National parliaments	Gisela Stuart	Kristin de Peyron Phone: (+32) 2 285 98 16/ 71 05 Fax: (+32) 2 285 50 60
Group 5: Complementary Competencies	Henning Christophersen	Nikolaus Meyer-Landrut Phone: (+32) 2 285 50 44/ 71 05 Fax: (+32) 2 285 50 60
Group 6: Economic Governance	Klaus Hänsch	Nikolaus Meyer-Landrut Phone: (+32) 2 285 50 44/ 71 05 Fax: (+32) 2 285 50 60