



Robert Schuman

*The First Outcome of the  
Debate on the Future of Europe:  
Between Deepening and Revision (2000-2002)*

-Francisco Aldecoa Luzarraga



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## The Jean Monnet/Robert Schuman Paper Series

The Jean Monnet/Robert Schuman Paper Series is produced by the Jean Monnet Chair of the University of Miami, in cooperation with the Miami European Union Center.

These monographic papers address issues relevant to the ongoing European Convention which will conclude in the Spring of 2003. The purpose of this Convention is to submit proposals for a new framework and process of restructuring the European Union. While the European Union has been successful in many areas of integration for over fifty years, the European Union must take more modern challenges and concerns into consideration in an effort to continue to meet its objectives at home and abroad. The main issues of this Convention are Europe's role in the international community, the concerns of the European citizens, and the impending enlargement process. In order for efficiency and progress to prevail, the institutions and decision-making processes must be revamped without jeopardizing the founding principles of this organization. During the Convention proceedings, the Jean Monnet/Robert Schuman Papers will attempt to provide not only concrete information on current Convention issues but also analyze various aspects of and actors involved in this unprecedented event.

The following is a list of tentative topics for this series:

1. The challenges of the Convention: the ability to govern a supranational Europe or the return to intergovernmental cooperation?
2. How will the member states figure in the framework of the Convention?
3. The necessity to maintain a community method in a wider Europe.
4. Is it possible for the member states to jeopardize the results of the Convention?
5. The member states against Europe: the pressures on and warnings to the Convention by the European capitals.
6. Is it possible that the Convention will be a failure? The effects on European integration.
7. Similarities and differences between the European Convention and the Philadelphia Convention of 1787.
8. The role of a politically and economically integrated Europe in the governance of the world.
9. How important is European integration to the United States today?
10. The failure of a necessary partnership? Do the United States and the European Union necessarily have to understand each other? Under what conditions?
11. Is it possible to conceive a strategic partnership between the United States, the European Union and Russia?
12. Russia: a member of the European Union? Who would be interested in this association?

Miami European Union Center  
University of Miami  
1531 Brescia Avenue  
Coral Gables, FL 33146-3010  
Phone: 305-284-3266; Fax: 305-284-4875

E-Mail: [jroy@miami.edu](mailto:jroy@miami.edu)

Webs: [www.miami.edu/international-studies/euc](http://www.miami.edu/international-studies/euc)  
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**The First Outcome of the Debate on the Future of Europe:  
Between Deepening and Revision (2000-2002)**

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Francisco Aldecoa Luzarraga\*

The Jean Monnet Chair  
University of Miami  
Miami, Florida  
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\* Francisco Aldecoa is a Professor of International Relations and Jean Monnet Chair. Currently he is Dean of the School of Political Science and Sociology, at the Universidad Complutense de Madrid.

## **THE FIRST OUTCOME OF THE DEBATE ON THE FUTURE OF EUROPE: BETWEEN DEEPENING AND REVISION (2000-2002)**

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The debate on Europe's future was sparked in the spring of 2000 in the middle of the Intergovernmental Conference when the German Foreign Minister Joschka Fischer in a much-talked-about speech expressed the need for an in-depth political reflection on the purpose and future of Europe's construction process. It wasn't long before the main political leaders of Member States and other European institutions responded, each of them putting forward their vision and possible solutions for the challenges that lay ahead. The debate had just begun.

In December, the Nice European Summit approved the Treaty that bears its name and included a Declaration, Number 23, on the future of Europe. This declaration stressed the need for profound reform of the European Union subject to a wide-ranging and open debate to be promoted by European states and institutions. The Laeken Declaration, announced a year later in December 2001, is the first bold concerted step of this new debate. Its novel language examines the Union's challenges and the reforms required to meet these challenges, expressed in sixty-five questions. The Declaration entrusts the Intergovernmental Conference related tasks to a Convention similar to the one that drafted the European Union's Bill of Fundamental Rights.

The European Convention, comprising representatives of all European legitimacies, is at a pivotal point where the first agreements have been reached and the differences between the federalists and the intergovernmentalists are coming to the surface. The Convention's chances of success will depend on its ability to agree on a constitutional treaty. The draft outline for this Treaty has been made public. As the work on the Convention progresses, it will be necessary to start filling in the blanks. The Constitutional Treaty Draft Project, with a strong federalist bias, seems to be a good start. It demonstrates that the Convention method works, that it enables a democratic and open debate in touch with civil society and that it is capable of achieving results.

### **The Transformation of the European Community into a Union as a Subject for Debate (1980-2000)**

The European Union is currently immersed in one of the most intense phases of its short history, as it prepares to accept ten more member states in 2004 while simultaneously debating its future. This debate is largely new and of far-reaching consequences. The discussion on the future of Europe has been in the making in the European Community since the eighties after the first direct European Parliamentary elections in 1979. This debate will put forth new transformation proposals, as envisaged in the Spinelli Draft

Treaty, and will bear fruit in the form of several reforms to the existing treaties.<sup>1</sup> After reflecting on the European Convention, the debate will culminate in the ratification of a constitutional treaty aimed at ensuring the working order and efficiency of a twenty-eight member state European Union.

Why is the current debate so relevant? What part is a rehash of the traditional debate and what part is new? Will it be productive or just another inconsequential debate? The debate on the European project has made enormous strides in the past two years, re-shifting its approach and taking a significant qualitative leap. Nevertheless, a large part of public opinion does not perceive it as such. The debate on the scope of the model, the method for reforming it and even its spectrum has changed, abandoning small revisions in favour of a global and core reform.<sup>2</sup> In this sense, one of the first consequences is the acceptance of a European Constitution, which, although referred to as a Constitutional Treaty, is perceived by some to have a different scope and meaning.

Another new factor in this debate is that it is no longer exclusively limited to politicians, intellectuals, and political agents, but is open to all European citizens thanks to a new method, the European Convention. The European project has its precedent in classical post-Renaissance philosophy, crystallising in a specific debate after the World War I among the elite and intellectuals who articulated theoretical proposals.<sup>3</sup> After the Second World War, the project for European unity evolved into a democratic debate embracing not just intellectuals, but also political parties and social classes. It has evolved into a political debate, incorporated in the electoral programs that gave rise to treaties that served as the basis for the European Communities. The current debate may be the culmination of this evolution, another step taken to incorporate civil society and possibly become constitutional just when the unification of Europe is taking place.

The debate between the federalists and the intergovernmentalists is undoubtedly an ongoing issue. The federalists' goal is a true European federation, while the intergovernmentalists defend the co-operation among sovereign states based on confederation formulas. The European construction, as we know it, is a syncretism of both extremes as demonstrated by the pillar-based structure of the Treaty on European Union. From a theoretical perspective, formulas combining both extremes have been put forward such as Croisat's and Quermonne's "intergovernmental federalism" strategy or Jacques Delors'<sup>4</sup> Federation of Nation-States. The constitutional Draft Treaty presented by the Praesidium in the Convention held on October 28, 2002, could also be considered

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<sup>1</sup> I have analysed the transformation process from a European Community of an economic nature towards a political European Union, a still incomplete transformation in: Francisco Aldecoa Luzarraga, European Integration. Análisis histórico-institucional con textos y documentos. Vol. II. The European Union's Genesis and Development (1979-2002), Madrid: Tecnos, 2002.

<sup>2</sup> In weekly collaborations throughout 2001 and 2002 with the magazine *La Clave*, I have dealt with many of the aspects of the debate on the future of Europe, particularly in issues number: 36, 39, 40, 46, 47, 61, 72, 74, 80 and 82.

<sup>3</sup> For some background on the European project, see: Antonio Truyol y Serra, European Integration. Análisis histórico-institucional con textos y documentos. Vol. I. Génesis y desarrollo de la Comunidad Europea (1951-1979), Madrid: Tecnos, 1999.

<sup>4</sup> See Maurice Croisat and Jean-Louis Quermonne, L'Europe et le fédéralisme, Paris: Montchrestien, 1999.

an all-embracing syncretism between federalism and intergovernmentalism, although it will be necessary to opt for one formula or another with respect to certain issues.

At the current stage of the Convention, the issues mainly involve the scope of the results, and are beginning to bear fruit. The question now is whether the Constitutional Treaty will take the shape of a treaty (more intergovernmental) or a constitution (more federalist), whether it will develop the existing model or establish a new one, that is, stress the current model or a revision based on different assumptions. In any case, we can expect some emphasis on the current model, the scope of which is being debated. This implies great progress since what has been achieved to date is not being questioned.

### **From Confederacy to Federation: Fischer's Proposal**

The start of the new debate on Europe's future can be said to have begun in the spring of 2000 following Joschka Fischer's speech, "From Confederacy to Federation: Thoughts on the Finality of European Integration" at the University of Humboldt in Berlin.<sup>5</sup> The 2000 Intergovernmental Conference culminating in the Nice Treaty was fully underway. The agenda had been strictly limited to a few issues, only those necessary to proceed with the enlargement, generally perceived as exceedingly restrictive. Above all, the need for an overall reform was left very much up in the air since it was not desired to tackle this at the time because of the need for a quick Intergovernmental Conference ending in December 2000 to prevent any further delay in the enlargement process.

The Convention responsible for drafting the European Union's Charter of Fundamental Rights was actively engaged at the same time. Politicians and analysts already sensed that the draft of this charter would include the kernel for a constitutional European construction, a perception that, in time, proved to have been accurate.<sup>6</sup> Therefore, when Fischer proposed a broad reflection on the finality and scope of the European Union, the Union was immersed in two parallel constitutional political processes.

In this context, on May 12, 2000, on the eve of the French-German Summit, Joschka Fischer, speaking at the University of Humboldt in Berlin put forward a federalist vision for the future of Europe. Although Fischer insisted that this was a purely personal reflection, no one at that time overlooked the significance of an initiative presented by a member of the German government, its "green" foreign minister and the representative of the new political coalition. The speech received widespread media

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<sup>5</sup> Joschka Fischer, "From Confederacy to Federation: Thoughts on the Finality of European Integration," Humboldt University, Berlin, 12 May 2000, in: Francisco Aldecoa Luzarraga, *European Integration... Vol. II. The European Union's Genesis and Development (1979-2002)*, op. cit., pp. 774-778.

<sup>6</sup> European Parliament Resolution on drafting a Bill of Fundamental Rights for the European Union, 16 March 2000, (A5-0064/2000) in: <http://www.europarl.eu.int>; Juan Antonio Carrillo Salcedo, "Notes on the political and legal significance of the European Union's Bill of Fundamental Rights," *Revista de Derecho Comunitario de la Unión Europea*, N° 9, January/June 2001, pp. 7-26; Koen Lenaerts and Eddy De Smijter, "A 'Bill of Rights' for the European Union," *Common Market Law Review*, N° 38, 2001, pp. 273-300; Joseph H. Weiler, *The Constitution of Europe*, Cambridge: Cambridge University Press, 1999, p. 102.

coverage. Fischer's proposal reflects the basic tenets of Germany's political tradition on Europe with its triple Christian Democrat, Social Democrat and Liberal roots, although with a renewed boldness.

Above all, Fischer's speech expressed the need for reflecting on the definitive project for the construction of Europe before tackling the great enlargement, that is, before 2010. It champions an in-depth reform leading to a more transparent, democratic, and less bureaucratic system with strong federal institutions coalescing in a constitutional treaty. Fischer believes it is essential to create a strong federal Europe, made up of strong Nation-States, where the Union's and the states' competencies should be clearly defined. He believes that only then would a true Union of states and citizens be achieved.

In line with the traditional theses defended by Germany, Fischer proposes a renewed institutional architecture for the new federal Union. He endorses the creation of a two-chamber European Parliament representing the Nation-State Europe and its citizens in an equal fashion. The constitution of the Union's government could be based on two options: either by developing the current European Council into a European government comprising members of the national governments or by empowering the European Commission headed by a directly elected president with broad executive powers.

He believes that Monnet's method is no longer efficacious for proceeding with integration and mentions the three institutional challenges confronting Europe: addressing the lack of democracy and the establishment of a division of transparent competencies among the Union, the Nation-States and its regional entities, as well as among institutions. There is a need for a constituent treaty that sets clear boundaries between what should be regulated at the European and at the national level, a lean European Federation, but capable of acting, in a fully sovereign manner, based on Nation-States, and only engaging in core competencies.

Lastly, Fischer asks what course should be taken to address the twin challenge of enlargement and deepening. States that do not wish or cannot proceed with the federation could paralyse an enlarged and more heterogeneous Union. An intermediate step along the road to political integration would be a centre of gravity comprising a group of states that would complete a new European framework treaty, the core of a constituent federation. Pursuant to this treaty, the federation would develop its own institutions: a government within the European Union that would speak with one voice, on as many issues as possible, on behalf of all the core members and a strong parliament with a directly elected president. This centre of gravity would be at the forefront of political integration and include, from its inception, all the elements of the future federation. The last step would be the completion of integration into a European federation.

The following month, President Jacques Chirac made a speech, significantly entitled "Our Europe"<sup>7</sup> at the German Bundestag explaining his project for the twenty-first century Europe. The French President took up the gauntlet thrown by Fischer and presented a model for the future of Europe, stressing the role of the states and proposing a

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<sup>7</sup> Jacques Chirac, "Our Europe", Speech before the Bundestag, 27 June 2000, in: Francisco Aldecoa Luzarraga, European Integration Análisis histórico-institucional con textos y documentos. Vol. II. The European Union's Genesis and Development (1979-2002), op. cit., pp. 782-784.

federation of states versus Germany's European Federation. He also suggested that an in-depth reflection period should ensue following the 2000 Intergovernmental Conference being held during those months, to consider the future of the Union and pave the way for a revision of the European project. Chirac believed that it was necessary to ponder issues such as the simplification of treaties to make them more comprehensible for the people, the division of competencies, the Union's borders, the incorporation of the Bill of Rights, etc. In his opinion, the debate should include governments, citizens, national parliaments, European institutions, and candidate countries. The product of this debate would be a Constitution that the people would be called on for acceptance.

A few days later, Gerhard Schröder and Giuliano Amato elaborated on Fischer's proposals, with Carlo Azeglio Ciampi, Tony Blair, José María Aznar and other European politicians and intellectuals<sup>8</sup> expressing their views a few months later. In short, a different and bolder political debate was underway; a debate that implied a confrontation of European construction doctrines. The French presidency formally presented its partners with Chirac's proposal calling for a wide and open debate on Europe's future as reflected in Declaration 23 annexed to the Treaty of Nice. The political discussions had given way to a true political debate and an agenda for constitutional reform.

The European politicians' speeches in 2000 no longer remained disjointed but focused on a true political debate and the need to consider the future of the European construction after the methods of the founding fathers had been overtaken by events. It is a truly fruitful discussion not just because a new model emerged, but because it identified the true magnitude of this need and coalesced into a political agenda: Declaration 23 annexed to the Treaty of Nice.

### **The Paradox of Declaration 23 on the Future of Europe: Political but not Legal Validity**

The Treaty of Nice, even before its birth, even if stillborn, has set the constituent process in motion. The paradox of Declaration 23 stems from what many regretted at that time as the 2000 Intergovernmental Conference's of the debate and overall reform proposed by Fischer. In the rush to conclude the Conference in December, it was decided to opt for a political programming of Declaration 23. Although this was a disappointment for many, it has proven to be efficient. The lack of legal efficacy was precisely what made the Declaration much bolder since, unlike the Treaty to which it was annexed, it was not subject to ratification and hence could be applied even if the Treaty of Nice was not enforced.

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<sup>8</sup> Gerhard Schröder and Giuliano Amato, "We are serious about the future of Europe," *Zeitgeschehen*, N° 220, 21 September 2000, p. 16; Carlo Azeglio Ciampi, Honoris Causa Doctorate Acceptance Speech, Leipzig University, 6 July 2000; Tony Blair, Speech in the Polish Stock Market, 6 October 2000, in: <http://www.number-10.gov.uk>; José María Aznar, Conference at the French Institute for International Relations, 26 September 2000 in: <http://www.la-moncloa.es>.



The Treaty of Nice consolidates the Union, enabling its enlargement and launching the constituent process with Declaration 23 on the future of the Union.<sup>9</sup> The European Parliament considers Declaration 23 as the implicit acknowledgement by the Heads of State and Government that the diplomatic revision methods envisaged by the treaties were obsolete for implementing the reforms required by the Union.<sup>10</sup>

Declaration 23 calls for the start of a wide and open debate on the future of Europe that would crystallise in a new Intergovernmental Conference on reform in 2004. In our opinion, it launches the process for a constitutional transformation since it expresses the need for a debate on questions involving the very foundations of the Union's political system and reflects a political process embracing a continent-wide political union.<sup>11</sup>

This reform calls for a debate in 2001 open to all political, economic, academic and social sectors, civil society in general and member candidates. The European Council in December of that year would have to adopt a decision for continuing the reform process. The issues that the Declaration proposes as the subject of analysis are: the delimitation of powers between the Union and the member states reflecting the principle of subsidiarity; the statute of the European Union's Bill of Fundamental Rights proclaimed in Nice in December 2000; the simplification of the treaties; and the role of national parliaments in the European institutional architecture. This list is not a *numerus clausus* at all since it leaves the door open for other questions that could be considered of interest.

The first of these questions concerns the distribution of competencies with regard to the principle of subsidiarity and explicitly suggests a federal Union model that, up to then, had been simply implicit. It addresses the German *länder's* demands for a catalogue of competencies that would enable them to clarify the internal powers between the German state and themselves relative to the conception and application of community policies. The preparation of a catalogue reflecting the delimitation of powers paves the way for the region's direct political involvement in the workings of the Union based on their own competencies.

The incorporation of the Bill of Rights in the treaties was seen from its inception as the seed for the system's constitutionality. Although the European Council in Nice had rejected its incorporation in the treaties, few doubted that this would just be a matter of time. Such inclusion was of primary political significance since the current idea of

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<sup>9</sup> Declaration on the Future of the European Union, Declaration 23 Annexed to the Treaty of Nice, 26 February 2001, in: DOCE C 80, of 10.01.2001, pp. 85-86.

<sup>10</sup> The European Parliament's resolution on the Treaty of Nice and the future of the European Union, 31 May 2001 (A5-0168/2001) in: <http://www.europarl.eu.int>

<sup>11</sup> I am aware of the reservations some may have in applying the terms "constituent" or "constitutional" to the European reform, since up to now, in terms of doctrine, the Constitution and constitutionalism were usually analysed from the perspective of the state theory. Nevertheless, in the last decade the term "transnational constitutionalism" has started to be applied to the construction of a political and supranational policy in Europe in the last decade. See Renaud Dehousse, "The Birth of Transnational Constitutionalism," *International Forum*, No. 2, April-June 2002, pp. 281-292.

democracy implies a delimitation of the rulers' powers based on recognition of the rights of citizens. In short, it provides legitimacy to the entire European political system.

The inclusion of national parliaments in the Union's institutional architecture was proposed by France and reflects the qualms of some national parliaments, such as the French General Assembly, of being gradually stripped of their competencies if sidelined from the institutional workings of the European Union. Lastly, the simplification of the treaties will undoubtedly increase the people's awareness and grasp of the way in which the Union functions, a primary concern, particularly imperative after the Irish voted "no" on the ratification of the Treaty of Nice in 2001.

The reflection on the future of Europe goes beyond these specific questions and the focus should be from a double perspective. Firstly, the finality of the European construction, that is, what is to be accomplished in common, and principles, objectives and ideals that should serve as a basis. Secondly, the political relations, and institutional systems and the resources deemed necessary to carry out the task defined from the outset. This is what is meant by the open debate on Europe's future, known as Declaration 23, and that is nothing less than a reflection on the "constitution" in the material sense of this unidentified political reality.

This Declaration's highly political agenda launches the constituent process, providing a unique and unprecedented method at this stage of European construction, a debate open to civil society with democracy, legitimacy, and transparency as its objectives. The open discussion on the distribution of power between the Union and the states, the system's legitimisation by including fundamental rights in its nucleus is, in this sense, a novel element in the European construction process.

### **The First Bold Step in the New Debate: The Laeken Declaration**

The first tangible result of this new debate, the Laeken Declaration, is extremely relevant since firstly, it uses a new language, the expression of a new philosophy, and secondly, it makes a "maximalist" interpretation of Declaration 23 in a federalist tone, although, not explicitly mentioned, in the form of common questions. Although it is still too early to discern the momentousness of this Declaration in the European integration process, doctrine is beginning to value it quite positively since the results beginning to emerge from this debate are being translated into questions, which are common to all.

The Laeken Declaration, adopted by the European Council in its meeting on the 14th and 15th of December 2001, launches the second phase for preparing the reform envisaged in Declaration 23 annexed to the Treaty of Nice for 2004 and follows the first stage that involves the debate open to all society.<sup>12</sup> Programmed at that time by Declaration 23, the Laeken Declaration sets the second stage of the constituent process, a

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<sup>12</sup> Laeken Declaration, the Presidency's conclusions, Laeken European Council, 14 and 15 December, 2001, in: <http://ue.eu.int>

structured debate that will serve as the basis for preparing the 2004 Intergovernmental Conference.

The Laeken Declaration is divided into three very distinct parts: the first part defines the context, that is, it sets out the current reality of the European Union, the challenges it faces and how the reform must address these challenges. Secondly, it reflects on the tangible content that should serve as the basis for the reform, expressed in sixty-five questions emerging from the first phase of the common debate. Lastly, the Declaration sets out the procedure to be followed in the second phase of the reform, a Convention.

The point of departure is the confirmation that there has been a transformation in the nature of the original sectoral European Communities. Now it is predominantly political, and hence, the Community method, which served as a guideline in the early days, should be replaced by another one more in line with the new undertaking: “The European Union has thus gradually come into being. In the beginning, it was more of an economic and technical collaboration. Twenty years ago, with the first elections to the European Parliament, the Community’s legitimacy, which until then had lain with the Council alone, was considerably strengthened. Over the last ten years, construction of a political union has begun. (...) The European Union is a success story”.

The Union stands at a crossroads, facing three challenges, which are also opportunities. First, the Union is about to expand and welcome ten more member states in 2004 thereby bringing about the peaceful unification of Europe. Second, the key factor for the success of the European project implies bringing the Union closer to its citizens by changing the workings of the institutions, making them more transparent, efficient and subject to better democratic scrutiny. Citizens’ expectations concerning the Union’s involvement in those areas that they consider necessary must also be addressed. Third and lastly, the Union is confronted with the challenge of playing a leading role in the international global society. This offers the European Union a platform to develop its role as a civil player in international relationships, offering its values and social model as an alternative. Europe must have the means to shoulder its responsibilities in this new context and fight the risks brought to the limelight by the September 11<sup>th</sup> events.

The contents of the Declaration give us a glimpse of the progress made in the Union’s implicit federal vocation, although there are still certain intergovernmental limits stemming from the incomplete transformation of an economic European Community into a more political entity. The Declaration, however, makes no mention of federalism, apparently because of the veto of some of its members: Great Britain, Spain, and some Scandinavian countries. Nevertheless, the federal model is implicit in the Declaration, promoted by the Belgian government, which drafted this declaration during its half-year presidency.

With respect to the constituent process agenda, the Declaration establishes wide-ranging contents to serve as the basis for a structured debate. Indeed, it expressly includes an analysis of the “conclusions of the public debate,” specifically considering the points in Declaration 23 and an analysis of an in-depth institutional reform which would go as far as altering the traditional inter-institutional balance. A clearer definition of the

institutions' powers and functions is its main objective. This question and the catalogue on competencies exemplify the explicit federal linkage implicit today in the European Union.

In referring to the necessary simplification of the treaties and the Communities' legal instruments, the Convention specifically mentions the possibility of reorganizing them, dividing them into set and flexible parts, and incorporating the Bill of Rights. It also refers to the possibility of this reorganisation representing the first step towards adopting a Constitution, the nature and basic contents of which would be subject to further analysis.

The European Parliament, the Commission, several politicians, academia and civil society organizations have applauded the idea of a Constitution for the European Union ever since Fischer raised this subject for the first time in the spring of 2000. It is rather striking that, although the word federalism or federation is still shunned in the European construction process and flatly rejected by many governments, the idea of a Constitution is gradually taking root even though it implies much more, since there is nothing more federal than a Constitution. A federation without a Constitution is possible, but we cannot imagine a Constitution in the European construction process without, at least, some form of federation.<sup>13</sup>

The European Council meeting in Laeken finally opted for the Convention method for preparing the Intergovernmental Conference. This method is a federal one in some respects since the different legitimacies in the European construction are given equal footing. The European Parliament and pro-European sectors generally insisted on applying the Convention method again because of the excellent results achieved in drafting the European Union's Bill of Rights.<sup>14</sup> This Convention system is reminiscent of the methods rejected at the start of the process in the 1948 Hague Congress, the so-called constitutional method vs. the method proposed by the functionalists.<sup>15</sup> Its application at that time would have been premature but, nowadays, the change in the objective conditions makes its application possible.

The Convention method supersedes the diplomatic reform methods since, for the first time in European history, a democratic entity, which embodies the European Union's double legitimacy —national and European— is entrusted with the preparation of an Intergovernmental Conference, probably inaugurating the federal method and superseding the community method, even sidelining the intergovernmental method in the reform process.

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<sup>13</sup> This is the case, at least from our point of view, given that the different member states' political and legal cultures attach different meanings to concepts such as constitution and federation.

<sup>14</sup> See the European Parliament's Resolution on the Treaty of Nice, 31 May 2001, *op. cit.*

<sup>15</sup> In The Hague, the convinced federalist, Paul Reynaud's proposal for the election, of a European Constituent Assembly through universal suffrage with one representative per one million inhabitants caused quite a stir. The final support for this initiative was minimal since it was considered premature and unfeasible. See: Dusan Sidjanski, Europe's Federalist Future: From the European Community to the European Union, Barcelona: Ariel, 1998, p. 24.

One of the Declaration of Laeken's major contributions is the formalisation of an open civil society forum, which, through its informal involvement, contributed to the excellent results achieved in drafting the Bill. This will certainly result in a more open and democratic Europe. The overall assessment is that Laeken represents a significant milestone in the construction of Europe, reflecting novel constitutional issues in this respect and the willingness to deepen, making decisive progress towards the Constitution and the European Federation.

### **The Reasons behind the Qualitative Change in the Debate**

The Treaty of Nice represents the end of the Union model as it emerged from the Maastricht European Council and the start of a new phase, the constituent process towards a constitutional treaty based on the Laeken Declaration. This political context links the end of a phase with the beginning of a new one and establishes the necessary linkage between both phases. The deepening phase of the European model through minimal reforms is the start of another phase involving the constituent process, the reform of the political and legal foundations through a global and core debate, the relationship among the supporting powers and a phase that will have an impact on the core of European construction.<sup>16</sup>

Considering the aforementioned, how have such profound changes been possible in such a short period? A few months ago, I synthesised the structural aspects that warranted a constitutional debate, and the reason for adopting Declarations, such as Number 23 and Laeken. I would like to add one more.<sup>17</sup>

*1. The exhaustion of the Community's method of small steps and the insufficiency of the institutional system:* The European Union model of small steps exhibits dysfunctions and limitations because it is a tired model that needs to be reformed. We refer both to the institutional system as a whole as well as the specific functioning of some institutions, which were originally designed for a sectoral Community of six member states and which are no longer appropriate for a political twenty-eight member state Union.<sup>18</sup> Thanks to the growing success of European integration, the Community method envisaged by the treaties has become obsolete. The Union comprises now a group of horizontal and vertical political relationships, with more in common, with a multi-level federal system than with a sectoral international organization, such as what the European Community used to be. The recognition of this new reality is the framework for the

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<sup>16</sup> See Francisco Aldecoa Luzarraga, "The Treaty of Nice," *Cuadernos Europeos de Deusto*, No. 25, 2001, pp. 11-54.

<sup>17</sup> See Francisco Aldecoa Luzarraga, *European Integration. Análisis histórico-institucional con textos y documentos. Vol. II. The European Union's Genesis and Development (1979-2002)*, op. cit., pp. 431-437.

<sup>18</sup> With respect to the institutional system's inadequacies and the need for an in-depth reform, see: J-V. Louis, "La réforme des institutions de l'Union européenne. Schéma pour une réflexion," *Revue du Marché commun et de l'Union Européenne*, N° 443, December 2000, pp. 681-685; J-L. Quermonne, "Observations sur la réforme des institutions," *Revue du Marché commun et de l'Union européenne*, n° 443, December, pp. 686-689.

initiatives running parallel to the constitutional debate, such as the debate launched by the European Commission in its White Book on European Governance aimed at strengthening democracy in this new reality.<sup>19</sup>

*2. The inadequacy of the diplomatic reform method:* More precisely, the reform method based on an Intergovernmental Conference requiring the consensus of all member states, is no longer adequate for the new situation. According to the European Parliament, this system only allows agreements based on the minimum common denominator. We have seen five treaty reforms in the last sixteen years, each with a narrower scope and difficulty in the ratification process. At the same time, with reforms being stepped up, the validity of these treaties is increasingly shorter and becoming obsolete soon after enforcement.

The Treaty of Amsterdam, which was ratified in one of the most non-controversial processes in recent years, was enforced on May 1, 1999, and one and a half months later, the Cologne European Council called for an Intergovernmental Conference for reforming the Treaty. If, as expected, the Treaty of Nice becomes effective on January 1, 2003, the Amsterdam Treaty would have been in effect for three and a half years. If, as expected, the current reform is approved in December 2003 and enforced in 2005, the Treaty of Nice would have been in effect for only two years.

*3. The imminent enlargement:* The enlargement process expedites the new transformation since the future Union will have twice the number of members and will be constantly immersed in an enlargement project. A challenge as significant as the 2004 enlargement cannot be carried out without a parallel deepening process, one as significant as the design of a new European political order. The 25-member Europe of 2004 requires a qualitative overhaul of the institutional system and policies since, the number of candidates, as well as their heterogeneity and the differences among member states place the European construction in the dilemma of having to choose between greater deepening and dilution.

At this stage of the European integration, we find a different type of undertaking. The European Union's prior goal was sectoral integration. The task at hand is the peaceful unification of Europe through shared sovereignty at the lower as well as higher political levels. The means or resources cannot be the same. The imminent enlargement calls for immediate political decisions for laying the foundations for the new system as soon as possible without any further delays, since this would be more difficult to carry out at a later stage when new and more heterogeneous members have been accepted.

*4. Today's international globalised society with its opportunities and risks:* The international scenario that the European Union faces is radically different from the scenario of the last decade, with September 11<sup>th</sup> as a manifestation of the challenges and risks inherent in international globalised society. The Union must have a mode of government that enables it not only to enjoy a significant presence in the world, but also

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<sup>19</sup> The European Commission's White Book of European Governance presented on 25 July 2001 (COM (2001) 0428 final).

to shoulder its responsibilities in the international arena and strengthen its model as an alternative to the globalisation of international society.

The escalation of international terrorism on the wake of September 11<sup>th</sup> had a considerable impact on hastening the deepening process for the federal model as recognised by the Heads of State and Government in the Laeken Declaration. The fifteen members concurrently expressed their willingness to enhance the Common Foreign and Security Policy's foundation, resources, and instruments, especially in their joint fight against terrorism. In a certain way, this manifestation of the new twenty-first century threats is a catalyst in the European Constitution ratification process.

*5. The attainment of the Economic and Monetary Union and its impact towards federation:* The euro represents the end of another stage in the European construction process and, as its predecessor, the internal market, creates the material conditions that enable and demand a political deepening of great importance. The Monetary Union calls for greater coordination of policies and political deepening and, hence, for the creation of a European economic government that would optimise its results.

The success of the euro currently in circulation and civil society's resounding backing of its implementation is, to a large extent, the result of its support not only for the economic but also for the political European construction process since the currency is the first expression of a federal model that is beginning to demand a federalist method. This is why it has been said that the euro has an inherent federalist effect. Because of the mechanisms involved in the successive phases in the European construction process, the attainment of an Economic and Monetary Union demands new objectives and calls for "more Europe".

*6. The problem of "political legitimacy" as perceived by the citizens:* There is no lack of democracy in the current state of European construction. It suffers, rather, from a "shortfall of information", the difficulty in raising citizens' awareness with respect to the contents of the European venture and of providing a clear explanation on institutional workings. European institutions and governments today are fully aware that for European construction to survive, it must be brought closer to the citizens, encouraging them to support and identify with the project.

It is imperative to overcome the traditional approach in which Community matters were the exclusive domain of governments and experts. In the current state, besides activities of a general political nature, the Union is decisively moving towards a federal model. The method selected by Declaration 23 responds to the demand to reach out to citizens' through a debate open to all European citizens, and to the specific objective of simplifying the Treaties to make them more comprehensible to citizens. In this sense, the basic demand of civil society associations is to achieve "more" Europe based on more political legitimacy, that is, a federal method, since it begins at the bottom and moves towards the top: civil society, cities, regions, states and the European Parliament.

Nevertheless, besides these construction factors, inherent in European construction today, I would add some contingent aspects or factors that have come up in recent months that also seem to be having an impact on the outcome of this debate:

1.- The rift with the United States in the aftermath of September 11<sup>th</sup> because of the militarisation of its foreign policy, an approach not shared by most Europeans. Furthermore, the dissimilarities are also attributable to the differences in the values, interests, and world vision of both blocks increasingly more evident. The rift with the United States requires “more Europe” and offers an opportunity for developing an autonomous foreign policy.

2.- The renewal of the Franco-German alliance in the recent Summit in Brussels on October 25-26, 2002, decisive for adopting financial decisions for the acceptance of ten new member states in January 2004. President Chirac announced a bilateral agreement whereby this alliance agreed to play a leading role in the deepening process to help ensure the success of the constitutional treaty.

3.- This sparked a confrontation between Chirac and Blair that has led to a cooling of bilateral relationships between France and the United Kingdom. This encounter may also have an unexpected impact on the ratification of the future constitutional treaty: the adoption of a constitutional two-speed approach that would not change the course of the project or its postponement.

All these factors are behind the ratification of Declaration 23<sup>20</sup> and imply, not only adapting the European Union to the new circumstances, but also —similarly to the European Community in the mid-eighties— redefining the European integration system’s constitutional or base model while respecting the *acquis* of what has been achieved to date. The present challenge is to reach a consensus on a European political integration model that, while reflecting and preserving previous experiences and breakthroughs, lays the new foundations to enable the European Union —which is increasingly “more Europe”— to respond to the needs it must face.

### **The Novelties of the Convention’s Method**

In response to political and social pressures, the Laeken Declaration entrusted the task of preparing the Intergovernmental Conference planned for 2004 to a Convention. There have been two previous Conventions in the history of European construction: the most well-known, similar to the above, drafted the European Union’s Bill of Rights in 2000. Nevertheless, a body of national parliamentarians and members of the European Parliament meeting in Rome in 1991 to collaborate in the work of the Intergovernmental Conferences that were negotiating the Treaty of Maastricht, is somewhat reminiscent of this Convention since it was the first time that nationally elected and European representatives participated in preparing a reform.<sup>21</sup>

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<sup>20</sup> Declaration 23 annexed to the Treaty of Nice programs the reform of the treaties by means of an Intergovernmental Conference in 2004. Nevertheless, it has been decided to hold this Intergovernmental Conference in the second quarter of 2003 and that the new treaty should be completed in Rome in December 2003.

<sup>21</sup> EUROPEUM, “Method of the Convention on the Future of Europe,” European Policy Forum, 2002, in: <http://www.euractiv.com>



The Declaration of Laeken governs the Convention's composition, which includes 105 nominal members plus alternate members. It reflects the two legitimacies present in the European construction: national and common institutions. With respect to the common institutions, the European Convention includes seventeen European Parliament representatives and two Commission members. Each of the member and candidate states has sent two representatives from their national parliaments and one representative from the Head of State or Government. The Convention is working on the logical post-enlargement phase with candidate states expected to participate in the deliberations with the same number of representatives as the member states, without however, being able to prevent any consensus.

The European Council appointed the former French President, Giscard d'Estaing as Chairman, and two Vice-Chairmen, ex-Foreign Ministers Dehaene and Amato.<sup>22</sup> These appointments have been quite controversial, not just because of the persons who were chosen, but also because it is common practice for all Assemblies to designate its leaders from among its members —similarly to the Convention that drafted the Bill of Fundamental Rights— without accepting any interference from powers that have not been party to the Assemblies. Although those who espoused the most federalist stances were not initially pleased with Giscard's appointment, the opposite holds true today and there are well-founded reasons to believe that he will do his best to ensure the success of the Convention. He seems committed, wishing to “go down in history”,<sup>23</sup> to attaining the goal of drafting a constitution.

In addition to the Chairman and Vice-Chairmen, the Convention contemplates a 9-member Praesidium —made up of representatives of the European Union holding the Council Presidencies, the national parliaments, the European Parliament, and the Commission<sup>24</sup> — to supervise the work of the Convention. Moreover, the Declaration designates the role of observers to representatives of the Economic and Social Committee, the Regional Committee and the European Ombudsman. The participation of the Civil Society Forum in the work of the Convention through regular information on its work and the Forum's contribution to debates is another constitutional construction innovation. This is a recognition of the important role played by civil society in political

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<sup>22</sup> Giscard was appointed at the suggestion of the French President and approved by consensus, which leads to the question of whether there might not be some sort of tacit agreement between France and Germany, the two major countries, to preside over all the Convention, although Herzog, the Chairman of the Convention was appointed by this body.

<sup>23</sup> In this sense, it seems striking that Giscard, in an interview in *Le Monde* on 10 January 2002, compared himself explicitly to General George Washington, who presided over the Philadelphia Convention that drafted the Constitution of the United States of America. In fact, in opinion and scientific analysis articles, parallelisms with the Philadelphia constituent convention are quite common, situations that, in our opinion, are not comparable in any way.

<sup>24</sup> The Laeken Declaration calls for the constitution of a Convention Secretariat to assist the Praesidium in technical tasks and in legal drafts. Although the appointment of its secretary is not reflected in the Declaration, we believe it is of great political relevance and can have been agreed upon only at the highest level. Sir John Kerr, a former Permanent Representative from the United Kingdom and an eminent member of the Foreign Office was appointed to this post. His appointment could be interpreted as an important political advantage in the United Kingdom's favour for exerting its influence on the final document.

life and, together with citizens' online contribution through the internet, has proven to be a very productive formula for democratic involvement in the debate.

The Convention's mandate in the Declaration of Laeken is to consider the issues and draw up "a final document that may comprise either of the different options, indicating the degree of support they received, or recommendations if consensus is achieved". The Intergovernmental Conference, however, has the final voice and will adopt the final decision. The Convention's mandate, therefore, would only involve acting as a reflection group in preparing the Intergovernmental Conference. As inferred from the previously mentioned text, the simplification of the treaties does not necessarily have to lead to the drafting of a constitution. The question is: "What might the basic features of such a Constitution be? What are the values cherished by the Union?" In any event, for greater clarity and to dispel any doubts, the epigraph is entitled "The Constitutional road for European Citizens".

It seems crystal clear that a consensus on a single legal text is the Convention's only chance of being considered in the subsequent Intergovernmental Conference. Given its legitimacy, it would seem that, just as in the case of the Bill of Rights, the Heads of State and Government will not have any other choice but to accept or reject it without the possibility of debating its contents.

The Convention's methods offer three innovations: its composition vis-à-vis the traditional Intergovernmental Conference of member state diplomats, its nature, and its work method. The Convention relies on broader and more pluralistic participation: it includes representatives from European institutions and current and future members as well as representatives from civil society, regions, and local groups.

This composition undoubtedly reflects a change in the nature –the transformation– that European construction has undergone: it has evolved from an economic-type international organization to a multi-level political organization that has a direct impact in the citizens' day-to-day lives, and therefore, its reform cannot be negotiated except by its direct representatives.

The reform's work method has evolved, from the diplomatic negotiations requiring the unanimity of all the member states, into a Convention that will adopt the constitutional treaty proposal by consensus, without in principle, requiring a vote. The difference between unanimity and consensus is very relevant, particularly when a new political framework for coexistence is at stake. The Convention has the unquestionable virtue of taking a new road for overcoming these classical confrontations and exploring the points in common to see if it is able to agree on a common global project.

### **The European Convention: A Hybrid between an Intergovernmental Conference and a Constituent Parliament**

After eight months of functioning, what would be the best description for the European Convention: an Intergovernmental Conference in disguise, or a camouflaged constituent

Parliament? At present, it seems to be a hybrid between a parliament, since it represents two legitimacies that reflect the shared European sovereignty, and an Intergovernmental Conference in as much as government members, the players in an Intergovernmental Conference, are directly involved.

In his introductory speech to the European Convention on February 28, 2002, the Chairman, Mr. Giscard d'Estaing, defined the Convention as "a group of women and men meeting for the sole purpose of preparing a joint proposal", stressing that it was neither an Intergovernmental Conference nor a parliament. He believes that the goal is to foster a "Convention spirit" the mission of which he summarised as being, "Outwards to listen - inwards to make proposal". A consensus, the "door towards a European Constitution" would only be possible insofar as it is able to foster such a spirit.<sup>25</sup>

The adoption by the Convention of rules on its work methods has resulted in significant changes to the original Laeken Declaration design of said Convention, the fruit of the requests and contributions by the Convention representatives, particularly by members of the European Parliament.<sup>26</sup> An "invited member" can represent the candidate countries in the Praesidium and the question of alternates was clarified. This has, in fact, modified the Convention's composition that effectively has 230 members.<sup>27</sup> Following the example of the Convention for the Bill of Rights, the European Convention has gone further than the Laeken restriction ("the members of the Convention may only be replaced by alternate members if they are not present") enabling the participation of alternates, even their right to address the Convention and be included in the working groups, practically with the same conditions as the members.

It is important to highlight that the Convention representatives are generally leading politicians in their respective countries or in the European political scene, giving us an idea of the expectations that the Convention has awakened from the start. Among these, several acting ministers such as the British Minister Peter Hain, the French Minister Pierre Moscovici, the Belgian Minister Louis Michel or the Italian Minister Gianfranco Fini who were appointed by their respective Heads of Government.

The Convention includes several European politicians with long experience and a broad understanding of the workings of Europe, such as the Chairman, Giscard d'Estaing and the Vice-Chairmen, Dehaene and Amato, the representatives from Luxembourg, Jacques Santer, (former Chairman of the Commission), the ex-Chairman of the European Parliament, Klaus Hänsch, the Irish MacSharry, (former commissioner involved in the agricultural reform which bears his name), Henning Christophersen from Denmark, who besides serving several times as Minister in his country, was also Vice-Chairman of the European Commission, and the Commissioners Michel Barnier and António Vitorino.

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<sup>25</sup> Introductory speech by Valéry Giscard d'Estaing, Chairman of the European Convention, 28 February 2002, SN 1565/02, in: <http://www.european-convention.eu.int>.

<sup>26</sup> Jaume Duch I Guillot, "The Workings of the European Convention," Seminar organized by the Spanish Association of Parliamentary Lawyers, Tenerife, 19 September 2002, pending publication.

<sup>27</sup> Some of the Convention members have pointed out the Euro-sceptics' limited representation in the Convention, mainly because in most member states, this current is not reflected by the party in government or by the majority opposition parties, the ones involved in the Convention.

The strong personalities of other European parliamentarians are also worth mentioning, such as Elmar Brok, the Chairman of the Commission for Foreign Affairs, Alain Lamassoure, former French minister for European Affairs, the Spaniard, Inigo Méndez de Vigo, a speaker on the most recent European Parliament resolutions on constitutional matters, and Andrew Duff, the Chairman of the Group of Democrats and Reformists.

Because of the manner in which they were appointed, as well as the work methods,<sup>28</sup> Chairman Giscard d'Estaing grouped the Convention representatives according to three different currents of opinion or three different perceptions. First, the “Brussels” current, comprising representatives of the common institutions, Parliament and the Commission, based in Brussels, who have an in-depth knowledge of the system and are generally involved in questions concerning institutional reform.

Second, is the group comprising national parliament representatives, a very heterogeneous majority. Some lack European experience and, because of their diverse backgrounds, it has been difficult to integrate them into the Convention’s working methods. And, finally, the group of government representatives in which there may be some ambiguity since it may be difficult to know if they speak their own views—which they should, as Convention representatives—or act as spokesmen for the governments they represent. This group, by providing the important interconnection between the Convention and member states, ensures that the proposals can be assumed and accepted by the Intergovernmental Conference, which must approve the text adopted by the Convention.

As the work of the Convention advances, governments seem to be realising that the stakes are very high. This explains the trend of appointing strong government personalities, such as Ana de Palacio, Spain’s Foreign Minister, and member of the Praesidium, and the incorporation of the German Foreign Minister, Joschka Fischer, as a representative of his government.<sup>29</sup> It may be worth asking if this trend will intensify and if an anticipated Intergovernmental Conference will be sitting at the Convention.<sup>30</sup>

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<sup>28</sup> Valéry Giscard D’Estaing, “The latest news on the European Convention,” *El País*, 22 July 2002.

<sup>29</sup> Including these, there are close to a dozen current members of their governments who have a seat in the Convention.

<sup>30</sup> Furthermore, some accuse Chairman Giscard of presiding over “two Conventions” at the same time, that is, of being permanently in touch with the Heads of State and Government, exploring their concerns with respect to each aspect of the Convention’s debate and acting as an intermediary between both groups.

From another perspective, the formation of political groups in the Convention representing the major trans-European political parties —the Popular, Socialists, Democrats, and Reformists— is becoming evident, with these groups showing some organization and coherence and, in certain cases, making agreed upon political contributions.<sup>31</sup> The Convention will not be similar to a parliament because these groups are not divided into majority or minority and the goal is to reach consensus, with no voting involved. Nevertheless, the role of political groups will be crucial in trying to reach and negotiate a consensus on the final text.

The tasks of the Convention have been divided into three well-differentiated phases. The first hearings phase took place between March and June 2002, and aimed at defining the issues to be addressed by the Convention through debates between the Convention members, civil society and the Youth Convention.<sup>32</sup> The first agreements have emerged from the results of these plenary sessions and an initial approximation was made on the issues that should be analysed with the working groups being set up for this purpose carrying out their work in the second phase.<sup>33</sup> It was also decided to create eight contact groups that would meet periodically with the Convention for structured consultations with the Civil Society Forum.<sup>34</sup>

We are currently in the analysis phase, which began last September, in which the Working Groups will be playing the leading role. These groups are chaired by a Praesidium member and comprise a maximum number of 30 representatives with no distinction made between full or alternate members. The groups meet periodically to study the various issues included in their mandate and, on certain occasions, listen to experts on the subject. The plenary continues to meet in full sessions, with the progress made by the different groups put forward and debated. This will all culminate with the draft phase.

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<sup>31</sup> In this sense, the following contributions by European Socialists to the Convention are worth mentioning: “The Socialists’ European Project: the new federalism” (CONV 63/02) and “The European Socialists’ Essential Proposals” (CONV 182/02). The European Socialist Party’s members in the Convention held a seminar on August 30-31, 2002, that led to a draft of their first political document “Europe’s Priorities” presented on October 3, 2002, and available at: <http://www.europa.eu.int/futurum>. The European Socialist Party, following a round of discussions, also presented their proposal for the Construction of Europe in October (CONV 325/02). Andrew Duff, the Chairman of the European Parliament for the Democrats and Reformists Group, also presented his group’s proposal for a Constitution: “A Constitutional Model for a Federal European Union” (CONV 234/02).

<sup>32</sup> Six plenary sessions were held during this phase on the Convention representatives’ expectations on the Union (21-22 March); the EU missions (15-16 April); the EU carrying out its missions; efficiency and legitimacy (23-24 May); an Area of Freedom, Security and Justice and the role of national parliaments (6-7 June); civil society hearing (24-25 June) and foreign action and the Youth Convention’s hearing (11-12 July).

<sup>33</sup> Ten working groups have been set up: six on May 17, 2002, the so-called first batch groups, on the principle of subsidiarity, the Bill of Fundamental Rights, the Union’s legal personality, the role of national parliaments, complementary competencies and economic governance. Subsequently, the establishment of four additional groups, the second batch, was approved on September 12-13, 2002, entrusted with the study on foreign action, defence, simplification of legal procedures and instruments, and Security and Justice.

<sup>34</sup> The eight contact groups with civil society are divided according to their spheres of action: social sector, environment, academia and reflection circles, citizens and institutions, regions and local entities, human rights, development and culture.

The Convention is a hybrid between an Intergovernmental Conference and a constituent parliament, and it is precisely in this hybrid nature where its chances of success ultimately lie. Insofar as the Intergovernmental Conference is within the Convention's bosom, it will not be able to diverge from what has been agreed. The constituent representative assembly method ensures its democratic legitimacy and the possibility of breaking deadlocks in the debates. It is logical to expect that thanks to its hybrid character, the results will reflect the model's dual character, and include federalist as well as intergovernmental elements.

### **A Skeleton Treaty with a Federalist Slant: Initial Agreements and Unresolved Differences**

The press was surprised by the news that the so-called "skeleton" Treaty for a European Constitution was presented before the plenary session on October 28, 2002. The Draft Treaty, based on Group agreements with regard to legal personality, assumes the same format as the Constitutional Treaty. That is, it contains an empty framework that will have to be filled in with the agreements that may be reached on the projects of various Groups and the final debate on the institutional framework. The main novelty is that a federal format gains ground. The Chairman believes that the first complete version, expected to be ready by the first quarter of 2003, may be negotiated and restructured until deciding on an agreed text by the following summer.

Thus far, five of the Groups have completed their projects on: the principle of subsidiarity, the simplification of the treaties, the Charter of Fundamental Rights, economic governance, and national parliaments. Some of them have presented their conclusions before the plenary session, after the debate on which both initial agreements and lines of division at the convention were delineated. The first plenary session at which the results of the work of some of the Groups, namely those on legal personality and subsidiarity, were debated was held on October 3-4, 2002. The Chairman stated that "the recommendations made by the Groups would serve as the basic elements on which the final product would subsequently be built."<sup>35</sup>

To start, the Group's recommendations with regard to the legal personality were presented and adopted by a consensus. This was followed by a general debate in which it became clear that there was wide agreement at the Convention that a legal personality should be specifically approved in the new treaty -a single personality to replace those of currently existing organisations-. Merging personalities should be a step toward putting the treaties together in a single text, which could contain two parts, where the main section would contain the provisions of a constitutional nature. Lastly, the overwhelming majority of the Convention participants spoke out in favour of joining the pillars that currently exist, which would not necessary preclude the continued use of special procedures for some matters.

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<sup>35</sup> Abridged report on October 3-4, 2002, plenary session (CONV 331/02).

Later on in the same session, a debate was held on the Final Report prepared by the Group on the principle of subsidiarity, presented by its Chairman, Mr. Méndez de Vigo, of Spain. In this case, the debate at the Convention was significantly more heated than in the previous case, and brought to light not only wide areas of agreement, but deep-seeded differences in areas they suggested require further reflection. It was agreed that the principle of subsidiarity would be taken into greater account. There is a general agreement on introducing improvements on its application by European institutions and its control; improvements that should in no way hinder the legislative process. This is also a general agreement with respect to the need for the Commission to strengthen its legislative proposal by providing detailed information on the principle of subsidiarity, including the financial and legal implications for member states.

With respect to the procedures for controlling the application of the principle of subsidiarity, it is widely agreed that it should be of a political nature, with an opportunity for jurisdictional control at the end of the procedure. Many of the Convention participants approve of the Group's proposal to involve the national parliaments in the prior political control using an early alert system, developed during the beginning stages of the Commission. However, there is significant disagreement with respect to the technical aspects of said system.

The conclusions of the Working Groups on the Charter, national parliaments, and economic governance, which were presented to the Convention over the duration of the plenary session of October 28-29, 2002, were made public the final week of October. The final report on the session has not yet been received.

The Draft of the "Treaty establishing a Constitution for Europe" is divided into three sections, to which, as has been seen, one more is added in response to the Group's recommendation. The first one, of a constitutional nature, would provide the definition and objectives of the European Union, the citizens of the European Union and their fundamental rights, a separation of competencies and the principles under which they are exercised, the institutional framework, the budget, the means of taking action abroad and the conditions for belonging to the European Union. The second section, of lesser importance and with greater flexibility, would contain the regulations for specific policies such as matters regarding institutional operations and procedures. Lastly, it would include a third section with technical regulations of a legal nature relating to the scope of application of the treaty, the process for making revisions, ratification, etc.

Little can be gathered from such a bare framework, although it appears to serve as a federal Constitution since it states that common policies are managed according to a federal formula, and one could even believe that it contains the model for a Federation of nation-states. That is, a principle which receives support in some of the proposals put forth by Giscard himself, which would have to be debated by the Convention, such as the large amount of attention given to the issue of European Union citizenship, the proposal to rename the Union depending on the emergence of a new political reality, or the creation of a Parliament of the Peoples of Europe. In any event, what is clear is that it is more of a Constitution than a treaty.

The Draft Treaty has spurred two types of conflicting reactions. It seems to have been well-received by some of the groups of "Euro-sceptics" such as the British Tories and some Scandinavians, such as the Deputy Minister of Sweden, Lena Hjelm-Wallen, and the Danish Member of Parliament, Jens-Peter Bonde. On the other hand, the federalists believe that it contains a basis for hope, whereby good "filling" on which to build a federal organization for Europe could be introduced.

At this stage in the work of the Convention, we might ask ourselves to what extent have the terms of the debate on the future of Europe changed due to the dynamics of the Convention. It might be considered the typical tension between those who support a stronger federalist line and intergovernmentalists, pro-Europeans, and Euro-sceptics, which has not changed. This tension was exemplified during some of the debates at the Convention by the extreme opposing position of Peter Hain, former representative of the British government, and Peter Glotz, Germany's representative until recently.<sup>36</sup>

At present, the debates that invoke the strongest disagreements are those that arise between federalists and intergovernmentalists in reference to the institutional framework and reforming a common foreign policy. The extreme position of the federalists can be observed in the contributions to the Convention of the Parliament and the European Commission, which partly overlap, that basically demand, on one hand, that the European Commission be made stronger and that its Chairman, in particular, must attain greater democratic legitimacy by being elected by the European Parliament.

On the other hand, Blair and Chirac submitted a proposal to have the European Council appoint a President of the European Union from among former Heads of State and Government, to set the course of the Union over a four-year term. This initiative received the support of four of the major member states: the United Kingdom, Italy, France, and Spain. However, it has resulted in mistrust on the part of all of the small and medium sized nations who fear they will be marginalized. These nations, as well as Germany, support the proposal to strengthen the position of Chairman of the Commission, who would also have direct democratic legitimacy. It is very difficult to reconcile these two proposals.

Nevertheless, there is no question that positions have become more flexible in the course of the Convention. The clearest example of this is the statement by the British Minister of Foreign Affairs, Jack Straw, on the desirability of providing the European Union with a Constitution, which was unthinkable just a few months ago. However, the tension that existed when the European construction commenced is still present, albeit the positions are not as extreme. The final agreement may represent a combination of federalism and intergovernmentalism, which at the same time reflects yet another characteristic of the Europe under construction -finding middle ground on which to continue. A different perspective is that of Lamassoure who requests that the two Constitutional Treaties and the Charter be written in such a way that each state is able to

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<sup>36</sup> Peter Hain and Peter Glotz are not currently members of the Convention. After the British Government's restructuring, the former was replaced by MacShane, defined by the press as a Europhile. Peter Glotz was replaced by Joschka Fischer, Germany's Minister for Foreign Affairs. An example of the opposition of both extremes can be seen in the minutes of the July 11, 2002, plenary session on action abroad, which can be obtained from: <http://www.europarl.eu.int/europe2004>



choose whether to sign one or the other according to whether it is generally prepared to take steps toward a federation. This would basically involve establishing cooperation with support at a constitutional level.<sup>37</sup>

At this time, another tension, not unfamiliar in the formation of Europe, seems to have emerged at the Convention: the division between those who support a liberal Europe and others who advocate a social Europe. In this respect, a motion was presented on the need for a study examining the social objectives in the Constitutional Treaty, through debates in plenary sessions and the creation of a special Working Group.<sup>38</sup> The plenary session held on October 3-4, 2002, decided that, given the fact that the Groups on the Charter and economic governance already deal with this matter, the November 7, 2002, debate on economic governance would be extended to include a Socialist Europe and take action in light of this debate.<sup>39</sup>

### **Foreign Policy in the Debate on the Future of Europe**

The question of Europe's role in the world has been an issue since the onset of the debate on the future and the purpose of Europe. On this issue, Chirac asserts that "...Europe, the power to which we appeal, this strong Europe in the international scene must have strong institutions and an effective and legitimate means for making decisions, that is, by taking all of its work up for a majority vote and reflecting the relative weight of each of its Member States."<sup>40</sup>

Although Declaration 23 does not include reforms on the Common Foreign and Security Policy objectives, means and instruments in its list of matters to consider, "the new role of Europe in a global environment" occupies an important place in the Laeken Declaration. It raises the issue of strengthening the presence of the European Union in the international realm of globalisation with the challenge to change the world: "Europe has been living in peace for over half a century. Together with North America and Japan, it is one of the three most prosperous regions in the world. (...) What is Europe's role in this changed world? Shouldn't Europe, finally unified, perform the function of leader in a new world order, one that is at the same time a power with the ability to serve as a stabilizer on a global level and to guide numerous countries and peoples?"

Europe's responsibility in the face of globalisation stems from the need for reforms in its Common Foreign Policy, in the areas where it has not been sufficiently revealed.<sup>41</sup> While bearing in mind the questions posed by Laeken, the European

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<sup>37</sup> Alain Lamassoure, "Une Constitution pour l'Europe," The European Policy Centre, 6 June 2002, in: <http://www.theepc.be>

<sup>38</sup> Motion presented by Ms. Anne Van Lancker, Mr. Johannes Voggenhuber and Ms. Sylvia-Yvonne Kaufman and other Convention members, 26 September 2002 (CONV 300/02).

<sup>39</sup> Abridged report on the 3 and 4 October 2002 plenary session, (CONV 331/02).

<sup>40</sup> Jacques CHIRAC, "Our Europe", Speech before the Bundestag, 27 July 2000, op. cit.

<sup>41</sup> Toulemon believes that the required unanimity in decision-making and the lack of a body responsible for defining, promoting and representing the common European interests is at the root of the CFSP's weaknesses. See: R. Toulemon, "De l'Europe Economique à l'Europe Politique par la Méthode

Parliament recently passed in May 2002 its contribution to the European Convention in the area of the distribution of competencies.<sup>42</sup> In addition to a request for assigning the second and third pillars to the Community for reinforcing democratic legitimacy and ensuring parliamentary and jurisdictional control, this Resolution contains a request to assign competence over Foreign Policy and the common defence to the Union.

Similarly, the Euro-Congress requires the Union to have a legal personality and calls for the creation of diplomatic posts to represent the European Union in non-member countries in which at least four member states have diplomatic missions, with a view toward the gradual creation of full diplomacy of the European Union.<sup>43</sup> It believes that the responsibilities of the High Representative for the CFSP (Common Foreign and Security Policy) and the Commissioner of Foreign Relations should be assumed by a sole Vice-Chairman of the Commission responsible for Foreign Relations. A diplomatic corps should be created for the European Union in the area of the European Commission that would fall under the responsibility of the Vice-Chairman of Foreign Relations.

The European Commission approved the first of its contributions to the work of the Convention on May 22, 2002. In it, they stated their opinion that “the Union must exercise its responsibilities as a world power; assert itself according to its own values as a participant in globalisation, with a model for development that is solidarity and sustainable; pave the way for a foreign policy that is open to dialogue among civilisations, cultures and religions based on cooperation with the countries which border it and the will to bring together the North and the South.”<sup>44</sup>

The Commission, like the Parliament, has proposed that the positions of High Representative of the CFSP and Commissioner of Foreign Relations be merged into one. This position would receive policy initiatives, control over crisis management and sole responsibility for representation in foreign affairs. Foreign policy needs to be equipped with the necessary means -budget allocations, specially designed procedures, a network of foreign delegations. The Commission advocates requiring a qualified majority in order to adopt foreign policy decisions, with the exception of those involving defence policies. In short, integrating the High Representative into the Commission is a way of requesting that foreign policy is considered a matter for the Community.

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Communautaire,” *Revue du Marché Commun et de l’Union Européenne*, no. 457, April 2002, p. 217. For Friedrich Ebert Stiftung, the CFSP’s insufficiencies would be solved by qualified majority decisions, the establishment of a Council specialising in foreign policies, the improvement of the European machinery for preparing and executing decisions, political continuity and the merger of the High Representative for the CFSP and the Commissioner for Foreign Relations functions. See: Friedrich Ebert Stiftung, “Making Foreign Policy More Effective,” International Policy Analysis Unit, Working Group on European Integration, Working Paper no. 12, May 2002, in: <http://www.fes.de/indexipa.html>.

<sup>42</sup> European Parliament Resolution of 16 May 2002 on the delimitation of competencies between the European Union and the member states (A5-0133/2002) based on the Lamassoure Report, in: <http://europarl.eu.int>

<sup>43</sup> See Francisco Aldecoa Luzarraga, “La coordinación de la formación en materia comunitaria de los cuerpos diplomáticos de los estados miembros”, ICEI, 2002, pending publication, which analyses the issue of a common European diplomacy.

<sup>44</sup> Commission des Communautés Européennes, Communication de la Commission “Un projet pour l’Union Européenne”, 22.05.2002, COM (2002) 247 final.

In spite of the federalist demands of the Parliament and the European Commission, the work that has been performed at the Convention until now offers no grounds for alleging that either one of the institutions' demands will be answered. In this area, it is only natural that the unwillingness of the member states to give up competencies is much greater than in other cases, as symbolised paradigmatically in the participation of the British government representative, Peter Hain.<sup>45</sup> Given the importance of the matter, a Working Group has been created and entrusted with studying the reforms applicable to actions abroad. Said Group, which is presided over by Vice-Chairman Dehaene, has not yet finished its work.

Notwithstanding, conclusions reached by other groups that achieved consensus of the convention participants, such as the need to assign a single legal personality to the Union that replaces those already existing, creating a single legal text, and the elimination of the pillar-based structure, have an effect on actions abroad. They may have important implications for representing the Union abroad, the Union's ability to enter into international Treaties, or the coordination among different components of actions abroad, in the Community or that are intergovernmental. However, the disappearance of the pillars need not mean that all aspects of foreign policy are subject to identical decision-making procedures.

The second section of the draft of the Constitutional Treaty, which deals with the policies and actions of the Union, contains a Chapter B on "Actions Abroad" that includes all of the aspects that make up the Union's present-day foreign policy: trade policy, collaborative efforts for development, the foreign dimension of Community policies, foreign policy and the common security, crisis management and the closing of international agreements. Defence would be regulated under a separate chapter. Such a structure, in our opinion, is an over-riding factor in strengthening the Union's actions abroad, and above all, in its facet as a civil power of globalisation. In the foreign policy area there is some degree of agreement as to the area in which advancements must be made -providing solutions to its inadequacies. However, how this is to be accomplished is not yet known.

### **Conclusions: A Timetable and Outlook on the Results of the Debate on the Future of Europe**

The final version of the Constitutional Treaty will have to be approved at Convention headquarters in June 2003, since it has been decided that a short Intergovernmental Conference will be held throughout the second quarter of 2003 and that a new Treaty of Rome will be passed in December of that year so that it can be ratified in 2004. It is foreseeable that said Treaty might go into effect sometime in 2005, which would limit the period that the Treaty of Nice would be in effect to a very short term lasting just under two years.

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<sup>45</sup> See the previously mentioned minutes of the 11 July 2002 Plenary Session on actions abroad.

A question that arises at this time is whether it would be proper to hold a referendum for acceptance in all of the member states, which would serve to reinforce its constitutional nature. A referendum has been requested by the federalists; however such an idea has been met with opposition from the main foreign ministries that consider it an international treaty.

In theory, if a referendum were held to ratify the Constitutional Treaty on a European Union level, it would be valid as a pact of a truly federal nature. However, this would present serious problems: first of all, such a consultation would have to be carried out in accordance with an election law of uniform application throughout the entire Union, a law which does not exist at this time. Secondly, one might ask whether or not all of the member states are prepared for it, might it be premature and what is to be done if the referendum is not approved in any one of the states.

The last few days have revealed new developments that may prove to be key in the near future. The Franco-German alliance, which has re-emerged for the occasion of the European Council in Brussels last week, appears to be determined to reach agreements in order to present a strong position that guides the in-depth examination. It is known that the British did not like this alliance, which even resulted in a bitter confrontation between Blair and Chirac that ended with the suspension of the bilateral summit scheduled for the end of the year. The extent to which this conflict may have hindered the progress of the Convention projects or may have provided an opportunity to achieve two-speed advances in the constitutional model is not known.

The debate on the future of the Union is gaining importance and growing in scope because the Convention is a method that works and, as time goes, the Convention itself is turning into a true Constitutional Convention. Evidence of this is that most of the states are beginning to send their Foreign or European Affairs Ministers to the Convention; the last Minister to arrive was Fischer, the "Father" of the debate on federalism. This fact may lead one to ask whether the Convention is becoming more diplomatic. Speaking in such extreme terms would seem to be an exaggeration, but the direct involvement of governments in the Convention does seem positive, which seems to suggest that the future holds a final product that will be a success since it would prevent unreconciled differences between the Convention and the Intergovernmental Conference. If the Convention leads to agreements on a significant number of the matters under consideration, we will be talking not so much about a deep examination of the model for the Union as a new version of the European venture.