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**THE CONVENTION ON A CHARTER OF FUNDAMENTAL
RIGHTS: A METHOD FOR THE FUTURE?**

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Florence Deloche-Gaudez wishes to express her thanks to all who were kind enough to grant her an interview. This study would not have been possible without them. (See Annex 1 for the list of persons interviewed.)

FOREWORD

The Convention "method" – as developed during the drafting of the charter of fundamental rights, which was adopted by the three European institutions – is, without a doubt, one of the most important innovations in the functioning of the European Union since the Maastricht Treaty. By mingling representatives of the Member States, the Commission, the European Parliament and national parliaments, and through the innovative involvement of "civil society", it has undoubtedly created a new approach that is better suited to extending the political scope of the Union than the traditional diplomatic method of the intergovernmental conferences. The speed with which the Commission, the European Parliament and the European Council adopted the Convention's draft demonstrates the effectiveness of this working method, despite its apparent complexity.

It is therefore proper and natural that this method should again be envisaged for organising the debate on the Union's future in the wake of the Nice conclusions. It would, however, be unwise to undertake this "spontaneous" extension without an in-depth analysis of the experience of drafting the charter of fundamental rights, and the conditions which made it a success. This analysis is necessary if we are to develop a genuine "method" on the basis of what is currently only a successful experience, and ensure that it can be reproduced and extended to other areas.

Notre Europe's aim in commissioning this study – whose conclusions are, of course, solely those of its author – was to launch this indispensable analysis. The intention was to attempt to highlight the right questions while respecting the fundamentally political nature of the decisions that need to be taken. The issues are, after all, of "constitutional significance" for the Union, and we wanted to avoid the easy solution of prescribing a course of action.

Florence Deloche-Gaudez has conducted a rigorous study, based on many first-hand accounts collected from participants in the first Convention. In stressing the importance of the Convention's mandate, its relationship with the ensuing intergovernmental conference and the ways in which the various players were able to take part and organise their discussions, she has, as we invited her to do, identified and discussed the right issues and shed some light on the decisions needed. She has thus launched a debate which is set to continue within the next Convention itself. *Notre Europe* is eager to contribute to the debate, on the basis of reactions to this study.

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INTRODUCTION

In early 2000, the Convention responsible for drafting a Charter of Fundamental Rights began its debates amid some scepticism. It received scant media attention in France¹, and prompted a number of misgivings on the part of well-known academics². What was the use of a new charter of fundamental rights – which might even turn out to be non-binding – since the European citizen seemed to be quite well equipped in this respect, in particular after the adoption of the European Convention for the Protection of Human Rights? And would clarifying the fundamental rights observed by the Union really bolster the legitimacy of European integration (the prime objective of the charter's promoters³)? Was it not more urgent to take practical action against other forms of insecurity, such as health and the environment, which were of greater concern to the European general public in their everyday lives? And the insufficient clarity of the European integration process – another factor alienating the Union from its citizens – was primarily due to a complex decision-making system that Europeans had trouble understanding and that a charter would do nothing to improve.

By comparison, the intergovernmental conference (IGC) responsible for reforming the European Union's institutions, which was launched at the same time, seemed much more important. It had a genuine need to address: safeguarding the decision-making capacity of a Union whose number of membership was set to double.

Yet since the two bodies have completed their debates, attitudes seem to have changed. To many observers, the reforms set out in the Treaty of Nice fell short of what an enlarged Union would require⁴. The idea gradually took hold that this poor result was due to inadequate methods. After endless rounds of discussions among diplomats who knew they had a right of veto, the real negotiations finally took place in the space of a few days in Nice,

¹The British press was more openly critical. See, for example: "The EU and human rights – necessary?", *The Economist*, 5 February 2000. On the other hand, more supportive articles were published in the Italian press (*European Law Review*, vol. 26, No. 2, April 2001).

² See, for example: J.H.H. Weiler, "Does the European Union Truly Need a Charter of Rights?", *European Law Journal*, vol. 6, No. 2, June 2000, p. 95-97.

³ On 12 January 1999, before the European Parliament, the German foreign minister J. Fischer explained that the purpose was to consolidate "*the legitimacy and identity of the European Union*" (in European Parliament Debates, Official Journal of the European Communities, 1999, Annex, No. 4-531/30; Grainne de Burca, "The drafting of the EU Charter of Fundamental Rights", *European Law Review*, Vol. 26, No. 2, April 2001).

⁴ See, for example, the comments of Jean-Louis Bourlanges in *Le Monde*, 13 December 2000: "*Il ne faut pas ratifier le Traité de Nice*".

between heads of State and government whose first priority was to protect their national interests.

Conversely, the document drawn up by the Convention and the processes used have garnered increasing praise⁵. Its advocates have pointed out that the charter brings together, within a single act, political rights, social rights and even the "new rights" (environment, bioethics, etc.), thus usefully complementing the European Convention for the protection of human rights. Unlike most Community instruments, the charter is drafted in a clear style. It will admittedly not tell those citizens likely to read it how the European institutions work, but it does say "something" about the political dimension of the European Union and the values of Europe⁶. Lastly, the charter was drafted within the – short – nine-month timetable that had been set⁷. The method therefore drew some attention. From the outset, it appeared to be more innovative than the charter itself (which was to be restricted, under the conclusions of the Cologne European Council meeting, to an explicit presentation of existing rights). And the test was passed with flying colours. Meeting within a single body, representatives of national governments and parliaments, the European Parliament and the European 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 procedures⁸.

The comparison between the IGC and the Convention thus eventually turned to the latter's advantage. And it has been agreed that a new Convention will be held before the next IGC, which is scheduled for 2004⁹.

This study is therefore concerned with the Convention's method rather than the charter's content. Its purpose is twofold. It aims first of all to clarify the workings, advantages and limitations of what has suddenly become a very "popular" process. How did

⁵ See, for example, Laurent Cohen Tanugi, "Un succès pour l'Europe", *Le Monde*, 8/9 October 2000.

⁶ During his speech at a seminar organised by *Notre Europe* on 3 April 2001, the representative of the French head of State and head of government at the Convention, Guy Braibant, remarked that the United States would be unable to sign the charter, notably on account of its legislation on the death penalty, social rights and bioethics.

⁷ After a first inaugural session, on 17 December 1999, the Convention began working in earnest in early 2000 (the second plenary session was held on 1 February). It took a break during August and approved the finalised charter on 2 October 2000.

⁸ J.H.H. Weiler, *The Constitution of Europe*, 1999.

⁹ *Agence Europe*, 11 September 2001 and 9 October 2001.

the first Convention operate? How was the charter drafted in practice? Did all of the Convention's component parts have an equal weight? What were the powers of the "presidium", which comprised only a few persons? Was civil society genuinely able to influence the content of the charter?

The second purpose of this study is to review the issues involved in reusing the Convention method. What can we expect from a new Convention, given that the first one was expected only to codify texts that were already recognised? What mandate should it be given? What "end product" could the next Convention draw up? Should the initial composition of the Convention be different? Contrary to the option taken during the first Convention, should voting be envisaged?

To attempt to answer these questions, we will begin, in the first part of our study, by looking at the mandate given to the Convention and how it was fulfilled (1.1). We will then turn to the original composition of the Convention and its effects (1.2). Next, we will review the Convention's contacts with civil society (1.3). We will conclude the first part with an analysis of the Convention's working methods and decision-making arrangements (1.4). In the light of our findings, we will attempt in a second part to identify the factors likely to contribute to the success of the next Convention.

1. WHAT LESSONS CAN WE DRAW FROM THE FIRST CONVENTION?

1.1. The Convention's mandate provided a framework for its debates

At its meeting in Cologne in June 1999, the European Council defined the Convention's mandate as follows: to establish a charter of fundamental rights "*in order to make their overriding importance and relevance more visible to the Union's citizens*". The heads of State and government even listed the rights which they "*believed*" should be included in the charter: "*the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law*", "*the fundamental rights that pertain only to the Union's citizens*" and "*economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union*" (see the conclusions of the European Council meeting in Cologne in Annex 2).

As the primary source of legitimacy for the Convention, the mandate provided a point of reference which was used on regular occasions. At the very first meeting, on 17 December 1999, chairman Roman Herzog made an implicit reference to it when he outlined the work awaiting the body. He recalled that the Convention's task was to draw up a "*catalogue*" of fundamental rights and pointed out that he attached "*little importance to large-scale objectives*", such as the drafting of a European constitution¹⁰.

He was not the only one to adopt this approach. Commissioner Antonio Vitorino, who was personally in favour of an ambitious charter including social rights and benefiting as large a population group as possible, nevertheless kept strictly to the mandate as representative of the Commission within the Convention. One of the Commission's communications even indicated that the Convention's remit was "*a task of revelation rather than creation, of compilation rather than innovation*"¹¹. As regards the content of the charter,

¹⁰ Speech given by Roman Herzog at the first meeting of the body, CHARTE 4105/00, BODY 1.

¹¹ CHARTE 4477/00, CONTRIB 328. It also pointed out that the charter should "*avoid the temptation to innovate at all costs*" and should remain "*within the framework of the Cologne mandate*".

it was accepted that it would not be possible to include certain rights – such as the right to work and the right to an equitable wage, considered at the outset – in the charter for they merely set "*policy objectives*"¹². Throughout the Convention's debates, Antonio Vitorino regularly provided guidance on the Union's legal provisions. He seems to have sought to justify the Commission's presence by taking on a "legal watchdog" role which was clearly reminiscent of that institution's traditional duty as "guardian of the treaties". And this respect for the Cologne conclusions was not encouraged just by a few individuals. All members of the body frequently sought to justify their proposals by referring to the mandate they had been given. This attitude contributed to instilling a degree of discipline within the Convention.

This does not mean that the Cologne mandate was scrupulously followed at all times, however. First of all, its inherent ambiguities left certain options open. For instance, the practical scope of the statement that "*account should be taken of economic and social rights*" but not of those that merely established "*objectives*" was unclear, as was pointed out by Guy Braibant, the representative of France's head of State and head of government within the Convention¹³. It is also worth noting that the issue of the legal status of the charter was not a matter on which the Convention had to make a choice. In Cologne, the heads of State and government had decided to postpone the question of whether the charter should be incorporated into the treaties notably owing to the United Kingdom's opposition to a binding instrument. But it nonetheless prompted a number of position statements within the Convention.

On some occasions, the members of the Convention also deliberately took some liberties with the Cologne conclusions. The forum even started its debates with an act of independence: not satisfied with the unflattering label "body" it had been given by the heads of State and government, it adopted the more symbolic term "Convention". The initiative came from the European Parliament. A vote showed that a large majority was in favour¹⁴, though people's reasons differed. One of the instigators of this change, MEP Andrew Duff, confessed that he quite liked that "*little revolutionary touch*"¹⁵, while chairman Herzog and

¹² *Ibid.*

¹³ "Vers une Charte des droits fondamentaux de l'Union européenne", *Regards sur l'actualité*, No. 24, August 2000, p. 13.

¹⁴ CHARTE 4134/00, CONVENT 6.

¹⁵ Working paper of 7 December 1999, EP 232.397; *Agence Europe* No. 7617 of 17 December 1999.

the drafting committee merely considered that the name "Convention" was "*more in keeping with the importance and nature of the mandate entrusted to this body*"¹⁶.

More importantly, the charter's content sometimes goes beyond the principle of codification on the basis of established law set out in the Cologne conclusions¹⁷. Thus Article 3, on the right to the integrity of the person, includes certain provisions on human rights and bioethics set out in the Council of Europe Convention, despite the fact that the latter instrument has been ratified only by a limited number of Member States¹⁸. And the ban on trafficking in human beings stipulated in Article 5 is not based on any instrument of positive law currently in force within the European Union¹⁹. Lastly, Article 9, on the right to marry and found a family, is based on the European Convention for the protection of human rights but does not repeat the phrase "*men and women*", thus allowing persons of the same sex to found a family²⁰.

Nevertheless, generally speaking, and looking towards the creation of a second Convention, we may draw two lessons. The first is that the mandate undoubtedly played a role. It provided a framework for the Convention's debates and was, in the main, observed. More generally, whether in the case of the mandate or, as we shall see, of the composition of the Convention, the options taken during the preparation phase were decisive. The experience of the first Convention would therefore indicate that this preparation phase is an apt period for the representatives of the Member States – who have the last word on the tasks assigned to the body – to bring their influence to bear on its nature. Secondly, the ambiguities of the mandate had mixed effects. On the positive side, they left a degree of leeway to the Convention members, thus allowing a debate to take place. On the negative side, however, they slowed the discussions down.

¹⁶ CHARTE 4107/00, BODY 2.

¹⁷ According to one of the members of the task force assisting the Convention, the Cologne mandate was not always very clear on that point, in so far as it gave the Convention the task of revealing rights "*derived from the constitutional traditions common to the Member States*", which, in his view, leaves "*considerable scope for creativity*", in Gilles de Kerchove, *L'initiative de la charte et le processus de son élaboration*. Unpublished.

¹⁸ Jacqueline Dutheil de la Rochère, *La Charte des droits fondamentaux de l'Union européenne*, Editions du Juris-classeur (not yet published).

¹⁹ *Ibid.*

²⁰ *Ibid.* The European Convention on Human Rights stipulates that "*men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right*". Under the charter of fundamental rights, "*the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights*".

1.2. The Convention members were able to work together despite their diverse backgrounds

The most original feature of the Convention was its composition. It brought together within a single body representatives of the Member States, the Commission, the European Parliament and national parliaments. The fact that the Convention fulfilled its mandate could make us forget that this choice, which was more empirical than rational, carried the risk of making the body too heterogeneous.

The composition of the Convention, decided by the European Council at its meeting in Cologne in June 1999, was the product of a set of compromises rather than a rational decision. None of the many documents that had called for a charter of fundamental rights before the Convention was organised seem to be directly behind the decision to bring together representatives of the Member States, national parliaments, the European Parliament and the Commission within a single body²¹. At the beginning of the German presidency, during which the Convention project took shape, even that country's foreign minister, Joschka Fischer, did not envisage more than a parliamentary body²². Two options were then allegedly considered. The first was a body comprising only European and national members of parliament. This was the option preferred by the French government. The second was a body that also included representatives of the Member States, a solution supported by the United Kingdom, the General Secretariat of the Council and, eventually, Germany. That was the option chosen in the end.

At first, it seems that the Commission was to be included merely as an "observer". However, unlike the two other organisations – the Court of Justice and the Council of Europe – that were given observer status, the Commission was probably able to exploit an advantage

²¹ The report "*For a Europe of Social and Civil Rights*", drafted by the Committee of Wise Men presided by Maria Lourdes Pintasilgo, continually recommended since 1996 to engage a process of collective elaboration of a modern catalogue of Social and Civil rights and obligations. Some of our sources have drawn our attention to a speech by François Mitterrand before the European Parliament in October 1989. He mentioned the plan to convene a "*conference on the future of the Community*", bringing together, alongside the MEPs, "*delegations from the national parliaments and representatives of the Commission and the governments of the Member States*." (In European Parliament Debates, 25 October 1989, No. 3-382/163). This project led to the Rome conference, which did not, however, include government representatives. It is unlikely to have had an influence on the choices made for the Convention ten years later.

²² Before the European Parliament, on 12 January 1999, he indicated that in his view the European Parliament and national parliaments should "*take part in the drafting*" of such a charter, along with "*the greatest possible number of groups taking part in civil society*", in European Parliament Debates, *Official Journal of the European Communities*, 1999, Annex, No. 4-531.

to secure full membership of the Convention: the fact that it was represented within COREPER, where this issue was discussed²³. And in the run-up to the European Council meeting in Tampere in October 1999, the Commission again managed to increase its influence within the Convention. Contrary to the initial plans, it was decided in Tampere that the drafting committee for the Convention would include not only representatives of the Member States, the European Parliament and national parliaments but also a "*representative of the President of the European Commission*".

Negotiations also took place over the number of representatives within each component part, as decided by the European Council at its meeting in Tampere in October 1999 (see conclusions in Annex 3). In response to the initial papers of the Finnish presidency, which provided for fewer MEPs, the European Parliament called, in a resolution of 16 September 1999, for "*the number of the Members of the European Parliament to be equal to the number of the representatives of Member-State Heads of State and Government, in order to confer an equally high public profile on each side*"²⁴. It is for that very reason that within COREPER, the permanent representative of France, Pierre de Boissieu, opposed this equal representation, even preferring the number of MEPs to be higher. The Council Secretariat would then have proposed the figure of 16 MEPs, although it was aware that that would raise another issue of equal representation, which had not been discussed within COREPER: that of the representatives of the national executive authorities (15 representatives of the national governments plus one representative of the Commission) and national legislative authorities²⁵.

It was by no means certain at the outset that such a motley crew would be able to work as a team. In fact, from the beginning, the members of the Convention appeared to disagree on several essential points: their room for manoeuvre in relation to the European Convention for the protection of human rights, the nature and scope of the European Union's powers with respect to fundamental rights, the extent to which the charter would apply to the Member States and, lastly, the binding or non-binding character of the instrument²⁶.

²³ During an interview with the author, the Commission's deputy secretary-general, Bernhard Zepter, preferred to point out that there never was any real opposition to the Commission's participation.

²⁴ PE 279.943/37.

²⁵ The number of national MPs was set at 30, which does not seem to have presented any difficulty for two reasons. On the one hand, it seemed quite logical to choose the option of two MPs for each Member State, one from the lower chamber and the other from the higher chamber. On the other, it was quite a high figure, making the national MP component the most numerous group. Lastly, we should bear in mind that the national MPs, distributed among various parliaments, could not easily adopt a common position on this point.

²⁶ Grainne de Burca, *op. cit.*

It is fair to say that the Convention was split along more dividing lines than an IGC. Political and national cleavages were compounded by the opposition between executive and legislative powers on the one hand and European and national institutions on the other.

For instance, unlike the other participants in the Convention, each personal representative of a Member State government had the advantage of speaking on behalf of one of the members of the European Council – the body that was to decide, on a unanimous vote, on the future of the draft charter²⁷. The different weights of the Member States could nevertheless result in certain differences. Thus during the Convention's penultimate plenary session, on 26 September 2000, after having steadfastly opposed certain points of the final draft, the British representative, Lord Goldsmith, finally announced that he would be making "*an extremely positive report to the Prime Minister*" and that he "*strongly hoped*" that the United Kingdom would "*accept this document*"²⁸. Everyone then thought that the charter would be approved by the Convention and did not really pay much attention to the reservations expressed by Michael O'Kennedy, the representative of the Irish government, except to note that he had not been expecting this British change of tack.

For his part, the German representative, Roman Herzog, was in a peculiar position, since the Convention had elected him as its chairman²⁹. He therefore wielded considerable influence when the Convention began its work. As already mentioned, at the very first meeting, he referred to the mandate to exclude any idea of a constitution. But, most importantly, he was behind the "as if" doctrine which governed the Convention's discussions. Given the uncertainty surrounding the eventual legal status of the charter, he suggested that it should be drafted "*as if*" it were "*in the not too distant future, [to] become legally binding*" – an option which, he added, called for "*a little discipline*"³⁰. Roman Herzog was also the first

²⁷The conclusions of the European Council meeting in Cologne had provided that the Convention would submit its draft to the European Council, which would "*propose*" to the other European institutions that they "*should solemnly proclaim*" the charter.

²⁸ CHARTE 4958/00, CONVENT 53.

²⁹ It was not a foregone conclusion that the chair would be filled by one of the personal representatives of the Heads of State and Government. The initial plan had indeed been to establish a rotating chair, similar to that of the various Councils. However, at the request of chancellor Schröder himself, the heads of State and government finally agreed in Tampere that the chairperson of the body would be directly elected by its members. That decision left little doubt that Roman Herzog, who had already been appointed to represent the German government, would be elected to the post. His status as former President of the Federal Republic and of the Supreme Court in Karlsruhe made him a candidate with no real competitors.

³⁰ CHARTE 4105/00, BODY 1.

to suggest a division of the charter into six chapters, finally called Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Lastly, with respect to decision-making, he proposed following the rule of consensus³¹, which eventually prevailed.

However, personal reasons later prevented him from attending, and the Convention's chair became more collegial. The chairman continued to keep himself informed of the deliberations of the Convention. According to some participants, the fact that he was not actually present may even have strengthened his influence. He became a kind of "supervisory chairman", keeping an eye from afar on the efforts of his "*companions in destiny*"³². And he was the person to whom Lionel Jospin and Jacques Chirac expressed their rejection, in September 2000, of any reference to a "religious heritage"³³. Nevertheless, as of the month of June, Roman Herzog virtually ceased to attend the Convention's meetings. As no alternate had been appointed, no one could replace him, apart from his assistants³⁴. This undoubtedly strengthened the hand of the vice-chairpersons and the presidium as a whole.

The MEPs' advantages were less clear-cut at the beginning of the Convention's discussions, but they became more obvious towards the close of the negotiations. They knew each other and were used to working together and submitting to a degree of parliamentary "*discipline*". They also had plenty of opportunities to meet other than at a meeting of one or other component parts held before each session of the Convention. Lastly, they were on their "home ground". The conclusions of the European Council meeting in Tampere had specified that the body would meet "*in Brussels, alternately in the Council and the European Parliament buildings*". Given that the European Parliament had better facilities, the Convention ended up using its premises exclusively. This greatly facilitated the MEPs' work. Together, these factors explain how, at the beginning of September, after a

³¹ CHARTE 4147/00, CONVENT 11.

³² The expression is drawn from a speech given during the first meeting of the Convention, CHARTE 4105/00, Body 1.

³³ "Paris défend l'idée d'une Union européenne laïque", *Le Monde*, 27 September 2000.

³⁴ The conclusions of the European Council meeting in Tampere provided for the possibility of appointing alternates, but the full members did not all do so.

meeting of the European Parliament delegation, its chairman, Íñigo Méndez de Vigo, was able to turn up at the presidium meeting that same afternoon with a document clearly setting out, in French and English, the amendments requested by the MEPs.

For its part, the Commission had only one representative and this proved to be a mixed blessing. He naturally did not need to waste any time engaging in prior consultations³⁵. It did happen, however, that the Commission was not represented at certain meetings either by the commissioner or by his alternate. It would nonetheless appear that, despite a very heavy work schedule, the commissioner did manage to attend most meetings.

Initially, the national MPs seemed to be the worst off for several reasons. First of all, they might have been disadvantaged by the provision of the Cologne European Council conclusions which stipulated that only the European Parliament, the Commission and the Council would proclaim the charter³⁶. More importantly, although their component part had more members – since there were two MPs per national parliament – it was prone to defections. As they still had to fulfil their national duties, the MPs had to fit frequent trips to and from Brussels into their busy schedule. The more distant the parliaments and constituencies, the more time-consuming these trips were. In addition, unlike those of their European Parliament counterparts, the alternates for the national MPs were not usually present. Lastly, these elected representatives were not accustomed to working together, were not on their "home ground" and did not have a joint secretariat. According to one of the French representatives attending, the first meeting of the national MP delegation began without enough interpreters, amid some confusion.

In spite of these disparities and of their differences of opinion, the Convention members did manage to agree on a final text. One of the representatives of the European Parliament, Pervenche Berès, even spoke of "*collective alchemy*". Others preferred to think of it as yet

³⁵ During the Convention meeting, Mr Vitorino's alternate, Carlo Trojan, left his job as secretary-general of the Commission and was replaced by David O'Sullivan.

³⁶ The precise provisions of the Cologne conclusions are as follows: "*This body should present a draft document in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties.*" Only if the decision had been taken to incorporate the charter into the treaties would the national MPs have been able to give their final approval, during the treaty ratification process in the Member States.

another example of these European compromises which are somehow wrapped up despite serious divergences³⁷. Whatever the case, three explanations can be put forward.

First of all, the executive bodies of the Convention – the presidium and the task force – played a key role in preparing the draft. As we will see below, their influence may have been thought to be excessive, but they undeniably facilitated the work of the Convention.

The conclusions of the European Council meeting in Tampere provided for a drafting committee "*composed of the chairperson, the vice-chairpersons and the representative of the Commission*". There were three vice-chairpersons, appointed from MEPs, members of the national parliaments and representatives from the governments of Member States. At the beginning, the drafting committee thus comprised the chairman, Roman Herzog, the vice-chairman elected by the European Parliament (Íñigo Méndez de Vigo), the vice-chairman elected by the national MPs (Gunnar Jansson), and the representative of Finland. The latter was soon replaced by his Portuguese counterpart, Pedro Bacelar de Vasconcellos, when Portugal took over the presidency of the Union for the first half of 2000. The French representative, Guy Braibant, joined them from the very beginning, although he was supposed to attend only from July 2000, when France was to take over the presidency of the Union. Mr Braibant successfully argued that being present from the start would facilitate subsequent coordination with the French presidency³⁸. Commissioner Antonio Vitorino too was a member of the presidium. Lastly, we should mention the members of the task force³⁹. Again under the Tampere conclusions, the role of this drafting committee was to "*elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.*" **The drafting committee soon became the "presidium"**⁴⁰, **which took a broad view of its role.** Throughout the duration of the Convention, it produced a series of papers which reflected the ongoing discussions, while also steering them.

A task force assisted the presidium in fulfilling this role. It consisted of a small team from the Council's General Secretariat and was appointed to handle the "*secretariat*" of

³⁷ Grainne de Burca, *op. cit.*

³⁸ In exchange, the Portuguese representative remained a presidium member for the entire duration of the Convention.

³⁹ Naturally, the assistants of the various members also took part in the presidium meetings.

⁴⁰ At first, the term "bureau" was also used.

the Convention⁴¹ – a highly ambiguous role. It admittedly provided secretariat services (booking rooms and interpreters, obtaining document translations, keeping the website up to date, etc.). But it also penned the Convention's drafts – a role that carried all the more influence since the charter was adopted by consensus (see below). This task force collaborated with two other task forces: one set up by the European Parliament and the other by the Commission⁴². The Council task force was the final drafter, but genuine consultation was established from the outset. For instance, the Council and Parliament task forces shared the work of summarising amendments among themselves⁴³.

Secondly, the success of the Convention stems from the enthusiasm with which the participants fulfilled their duties. As authors of a founding European instrument that many considered to be of constitutional status⁴⁴, they were anxious, as a body, to demonstrate their efficiency and the importance they attached to their mission.

Thirdly, it seems that the discussions within the Convention eventually led to a form of mutual understanding which facilitated the final agreement⁴⁵. The room for manoeuvre available to the Convention participants contributed to the emergence of a process of deliberation. The national MPs did not receive many instructions from home. In France at least, the elected representatives kept their respective houses informed of proceedings, but these sessions did not result in specific guidelines being voted. As for the MEPs, the European Parliament did adopt a resolution during the Convention, which its delegation was invited to "*defend vigorously*". For instance, it called for the incorporation of "*such fundamental rights as the right of association in trade unions and the right to strike*"⁴⁶. But

⁴¹ The Tampere conclusions stipulated that the "*General Secretariat of the Council*" would "*provide the Body with secretariat services*". According to a document from the Council's General Secretariat, the "Draft Charter" task force included Jean-Paul Jacqué as director, his assistant Margit Huy, Gilles de Kerchove, Luis Manuel Teixeira Da Costa, Marta Arpio, Mauritz Enqvist and Nathalie Creste (listed here in the same order as in the Council document). Prof. Hilf also contributed to the research work for six months.

⁴² The Tampere conclusions specified that "*to ensure proper coordination, close contacts*" would be established with the General Secretariat of the European Parliament, the Commission and "*to the extent necessary*", the secretariats of the national parliaments. The task force for the European Parliament was headed by Jean-Guy Giraud, assisted by Danièle Réchard, and that for the Commission by Gustaaf Borchartt .

⁴³ CHARTE 4360/00, CONVENT 37 and CHARTE 4383/00, CONVENT 41.

⁴⁴ Justus Schönlaue, "Drafting Europe's Value Foundation: Deliberation and Arm-Twisting in Formulating the Preamble to the EU Charter of Fundamental Rights". Paper presented at a colloquium in Oslo on 8 and 9 June 2001. It can be downloaded from a website at <http://www.arena.uio.no>. ("*A large number of the Convention members seemed to be acutely aware of the 'constitutional significance' of their undertaking*").

⁴⁵ Justus Schönlaue, *op. cit.* We will examine this argument in more detail further on.

⁴⁶ The resolution is available from the European Parliament's website (www.europarl.eu.int, plenary session of 16 March 2000).

the MEPs did not feel bound by this document, which did not, in any case, contain specific provisions on each of the individual issues addressed during the Convention.

Even the personal representatives were not quite in the same situation as the representatives of a Member State within an IGC. The situation may admittedly have varied depending on the country and moment, however. For instance, it would appear that the links between each national government and its representative grew tighter during the final drafting stage. Some people even consider that the personal representatives component became very like a "*mini IGC*". In early September, Lionel Jospin travelled to London to discuss the Convention's drafts with Tony Blair. The United Kingdom allegedly demanded that the charter should remain a simple declaration – a position they had championed from the outset. In exchange, the French obtained agreement that it should include an explicit reference to the right to strike. However, the Convention still differed from an IGC on two fundamental points. Firstly, the representatives of the heads of State and government of the Member States formed a more diverse group, which included lawyers and politicians. Secondly, there were no mandatory obligations for them to follow. For instance, Guy Braibant was in touch with the French president and prime minister and thus knew the opinion of each, but he claims no instructions were given.

Lastly, in a somewhat paradoxical fashion, the very diversity of the body would appear to have been a factor which contributed to fruitful debate. Since it was impractical to seat the participants by political group, they were arranged in alphabetical order⁴⁷. This helped them to "mingle" and prevented the dialogue from taking place only between components.

In conclusion, something undoubtedly "clicked" within the Convention. The common will to achieve concrete results overcame differences between the participants. None of the persons we interviewed regretted their participation in an exercise often described as exceptional, which in some ways appears like a "breath of fresh air".

⁴⁷ It was difficult to allot places to personal representatives who had no particular political affiliation or those, such as Guy Braibant, who had been appointed by a right-wing president and a socialist government.

1.3. The Convention was a successful example of dialogue with civil society

As regards those who took part in the Convention, another aspect should be discussed, which also marks a difference from the way IGCs are organised: **the existence of various contacts between members of the Convention and NGOs supposed to represent civil society.** The first of their kind and less than perfect, their impact also differed according to the organisations involved. But they did go beyond what was expected of the Convention members⁴⁸, and their efforts sometimes resulted in real dialogue.

It was finally through comparatively informal means that civil society put most of its "views" to the Convention. An initial attempt at formal consultation of the NGO networks was made but remained a one-off event. On 2 March 2000, the presidium brought together the representatives of the Permanent Forum for Civil Society, the European Trade Union Confederation, the Platform of European Social NGOs and the NGOs – Fundamental Rights Coordination⁴⁹. There are several reasons why the experiment was not renewed: lack of time, the very ambitious expectations of network representatives, which went far beyond the Cologne mandate⁵⁰, and the fact that they preferred to make sectoral demands rather than jointly request further meetings of this kind.

A day of hearings was also held on 27 April 2000. All NGOs wishing to participate were welcome and almost 70 of them took part⁵¹. However, their assessment of the event was rather negative. The two most frequent criticisms related to, on the one hand, the limited

⁴⁸ The Tampere conclusions did not impose very strict guidelines. They merely indicated that "*other bodies, social groups and experts may be invited by the Body to give their views*". These provisions even seemed less ambitious than the conclusions adopted in Cologne, which stipulated that the social groups "*should be invited to give their views*".

⁴⁹ CHARTE 4148/00, CONVENT 12. For the NGO membership of the Permanent Forum of Civil Society, see <http://europa.eu.int/en/agenda/igc-home/instdoc/ngo/appel-or.htm>; the website of the Platform of Social NGOs is at <http://www.socialplatform.org> and the site of the European Trade Union Confederation (ETUC) is at <http://www.etuc.org>.

⁵⁰ For instance, the representatives at the meeting demanded that "*people illegally present*" should also be covered by the charter, pointed out that the Convention "*had room to do something new*" with respect to social rights and referred to the Council of Europe's revised social charter (which had not yet been signed by all Member States). As regards procedures, the NGOs suggested that the hearings should be an opportunity to put forward amendments to the drafting proposals under discussion. Roman Herzog concluded the meeting by highlighting the "*prime role*" of the members of the Convention in drawing up the charter, CHARTE 4148/00, CONVENT 12.

⁵¹ A memorandum issued by the task force, dated 8 November 2000, mentions 67 NGOs. The minutes of the event gives a figure of 70 NGOs (CHARTE 4306/00, CONVENT 32).

speaking time (five minutes) allotted to each speaker⁵² and, on the other, the low attendance of Convention members that day⁵³. Thus, while welcoming the "*convergence*" of the demands from most of the NGOs, Olivier Gerhard, speaking on behalf of the Platform of European Social NGOs, regretted that those who "*should have met him*" were not present. The Convention members responded to these criticisms essentially by saying that it was possible to express a point of view in the space of five minutes⁵⁴ and that the NGOs could also make their opinions known through written contributions. There is nevertheless no doubt that a one-day hearing open to all NGOs did not offer the right conditions for a genuine exchange of views. The representatives present were merely able to give a brief presentation of their position, one after the other.

In the end, the NGOs were able to influence the content of the charter mainly through two other means: by sending written contributions to an E-mail address set up for that purpose by the Convention, and by getting directly in touch with Convention members on their own initiative. Many organisations took advantage of the opportunity they were given to make their positions known through written contributions⁵⁵. They even exploited that option to submit proper amendments. If it is to be efficient, such involvement of civil society nevertheless implies that the members of the Convention must have the commitment and time to read the documents submitted. The interviews we conducted suggest that it was difficult for a single Convention member to read all contributions⁵⁶. However, their assistants were able to give them a hand. Furthermore, it seems that a form of "division of labour" spontaneously developed within the Convention according to the various interests represented, and that this ensured that most documents were read. Naturally, it was also in the best interests of the NGO representatives to get directly in touch with the Convention members most receptive to their cause.

⁵² Some also criticised the fact that all associations had been given the same speaking time, irrespective of their size, etc.

⁵³ It is difficult to be certain how many members attended the hearing. It would seem that the presidium members were present virtually throughout the day. Most of the MEPs "dropped in" and were able to send their assistants.

⁵⁴ The MEPs in particular pointed out that the average speaking time in the European Parliament is often shorter.

⁵⁵ According to a memorandum issued by the task force on 8 November 2000, there were 255 contributions from "*civil society and the accession countries*", compared with 100 from Convention members. Admittedly, unlike the former, Convention members could use the amendment procedure to influence the charter content and they did so extensively (1054 amendments).

⁵⁶ Guy Braibant stated that he had read all contributions except one (a 70-page document from a psychiatrist). *In Notre Europe* seminar, 3 April 2001.

There is no doubt that these contacts depended on each organisation's network of relations. For instance, some members of the Platform of European Social NGOs happened to "work" with certain socialist MEPs they already knew. During some joint meetings on social rights, the discussion even involved the drafting of articles, and some of the Platform's proposals were included in subsequent amendments. At the end of the negotiations, for example, Pervenche Berès, chairwoman of the delegation of socialist MEPs, requested the incorporation of a new article on the rights of elderly people⁵⁷. Thanks to support from other Convention components, this article was added at the last minute⁵⁸, and it reproduces one of the Platform's proposals practically word for word⁵⁹. In the case of the General Secretary of the European Trade Union Confederation (ETUC), Emilio Gabaglio, he was able to have direct talks with officials of the French presidency of the Union during the second half of 2000, including at the highest level. He told them that in the absence of explicit provisions on the right to strike, the Confederation would "*bluntly oppose the charter*"⁶⁰. The final version of the charter would appear to indicate that this threat had some impact⁶¹.

At all events, the contacts between civil society and the Convention were helped by the composition and openness of the body. Firstly, on account of its composition, it was closer to society than an IGC and reflected it more accurately. There were considerably more women among its members, for instance, even though they remained by far a minority⁶². The diversity made the body more accessible. NGOs which did not happen to have the ear of national government members could approach the elected representatives or even the academics participating in the Convention. In certain cases, however, the heterogeneous nature of the body may have meant that more people needed to be convinced. Secondly, the fact that the sessions were public also facilitated contacts between the Convention and civil society. In fact, when the meetings were held at the European Parliament, the rooms were

⁵⁷ Agence Europe No. 7804 of 22 September 2000.

⁵⁸ Agence Europe No.7807 of 27 September 2000.

⁵⁹ The Platform called for the incorporation of the "*right of elderly people to a decent and independent existence and full participation in public, social and cultural life*". Article 25 of the charter stipulates that "*the Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life*".

⁶⁰ *L'Humanité*, 6 December 2000.

⁶¹ Article 28 of the charter stipulates that "*workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right (...), in cases of conflicts of interest, to take collective action to defend their interests, including strike action*".

⁶² 15% of the full members of the Convention were women.

large enough for the public to be able to sit just behind the back row of Convention members⁶³.

Generally speaking, the transparency of the Convention's documents (available on the internet) and of its debates increased the influence of the NGOs. Some NGOs even adapted their demands in the light of the ongoing debates. For instance, the Platform of European Social NGOs had initially demanded "programmatic rights" (whereby the European Union would "commit itself" to taking a certain measure in order to implement a given principle). Given the many references made by the Convention to the Cologne mandate, which provided only for the codification of existing rights, the Platform representatives realised that their message would carry more weight if they concentrated on rights which could be directly invoked.

The NGOs also sought to strengthen their influence on the Convention by organising joint events. For instance, on the initiative of the Permanent Forum for Civil Society, an "Open Day", featuring some 20 NGO stands, was held at the European Parliament on 6 June 2000⁶⁴. ETUC and the Platform for European Social NGOs organised a series of joint events in all Member States, culminating in a conference held in Brussels on 31 August and 1 September 2000⁶⁵. However, these initiatives did suffer from the fact that each association tended to concentrate on its own claims. The end result was a combination of joint and individual measures.

Lastly, we should indicate that, **contrary to what some of the above examples seem to imply, the federations based in Brussels were not the only ones that were able to "give their views" to the Convention.** Admittedly, the presidium itself had opted to concentrate on "*federations operating (...) at European level*" and had recommended that "*hearings be organised at national level of all bodies, NGOs, associations or competent authorities*"⁶⁶. It was therefore up to the national representatives – and European federations – to "feed back"

⁶³ When the sessions were held at the Council, the NGO representatives had to follow the discussions from another room. Most of the meetings, however, were held in the European Parliament's buildings.

⁶⁴ *Agence Europe* No. 7730 of 3 June 2000. Again on the initiative of the Forum, a "joint declaration" was drafted and submitted for signature by the organisations present at the hearing of 27 April. See *Agence Europe* No. 7705 of 27 April 2000. At the end of the first half of 2000, a questionnaire was sent to all NGOs affiliated to the Forum, asking them to clarify their position on various draft articles. Almost half responded, thus making it possible to notify the Convention of demands on which there was agreement.

⁶⁵ *Agence Europe* No. 7786 of 29 August 2000.

⁶⁶ CHARTE 4107/00, BODY 2.

the expectations of the national NGOs. The situation in practice differed from one country to another. It would seem, for instance, that the French representatives listened to the views put to them but took no particular steps to approach the NGOs themselves. Those two representatives were more concerned with keeping their respective houses informed⁶⁷.

It is also true – and this was a second factor to the advantage of European federations – that the speedy pace of the Convention's debates might have disadvantaged some national NGOs. Those that took a little time to understand the actual significance of the Convention then had difficulty keeping up with a process involving constantly updated papers. For instance, in May and June 2000, the European Women's Lobby circulated two draft positions among its members but got no precise reactions. And the greater number of comments the person responsible received in response to a "*critical reading of the charter*" circulated a year later seems to confirm that some time was needed to stimulate awareness, in particular where the basic information was insufficient⁶⁸.

Nevertheless, some major Brussels-based federations did not put their message across, while other, smaller, organisations succeeded in shaping the content of the charter. For example, the European Environmental Bureau did not appear to exert much influence, in spite of the fact that NGOs in that sector are usually considered to be quite active. According to the rapporteur of the Permanent Forum on Civil Society, these organisations had begun to take action "*well before*" the beginning of the Convention and most of their expectations had already been met by the provisions of the Maastricht and Amsterdam treaties. They therefore found the concept of a codification of rights rather reassuring and had few demands to make⁶⁹. In addition, some Convention members "*challenged*" the concept of a right to the environment. The result was an article viewed as comparatively poor in some quarters, and a charter which was not very well received by environmental activists⁷⁰.

⁶⁷ See the documents produced by the two houses: "Vers une charte des droits fondamentaux de l'Union européenne", *Les Documents d'Information de l'Assemblée Nationale*, 16/2000; "Colloque : La charte des droits fondamentaux de l'Union européenne", *DIAN*, 37/2000; "La charte des droits fondamentaux de l'Union européenne", *DIAN*, 59/2000; "L'élaboration d'une charte des droits fondamentaux". *Les rapports du Sénat*, No. 395, 1999-2000.

⁶⁸ EWL document of 6 June 2000, called "*Lecture critique de la charte, projet de publication de la Plate-forme, contribution du LEF*".

⁶⁹ On the Council website, there is just one contribution relating to the environment; it is from the European Environmental Law Association and includes a resolution adopted on 22 September. It was submitted on 26 September, at the Convention's penultimate meeting.

⁷⁰ According to Guy Braibant, it is the "*weakest article of the charter*" for "*it does not say anything*" (comments during a seminar of *Notre Europe*, 3 April 2001).

Conversely, some smaller associations scored notable successes. The right to conscientious objection is one example. It had been mentioned neither in the task force's initial draft, nor in the July draft. The presidium allegedly feared that such a provision could be problematic, in particular in the United Kingdom, where military service does not exist. Following many E-mail messages, it was nevertheless included in the draft of 14 September and was not challenged. This does not mean that organisations necessarily got their way with a few E-mails. Animal rights campaigners also made use of E-mail, to no avail.

The example of the Association of Women of Southern Europe (AFEM) demonstrates how, by making clever use of all the means at its disposal, a comparatively small NGO could exert an influence. It is not a national organisation since it covers five countries (France, Greece, Italy, Portugal and Spain) but, unlike the European Women's Lobby, the AFEM is not a European federation either⁷¹. Yet despite having, in our opinion, far fewer resources, the AFEM often appeared to be more active. First of all, it responded very quickly. In 1998, at the 50-year celebration of the universal declaration of human rights, Micheline Galabert, one of the cofounders of the association, was struck by how little attention had been given to the violation of women's rights (with many European languages encouraging a confusion of "human rights" with "men's rights") throughout the world. As soon as she heard of the plan to draw up a charter, she saw an opportunity to act. In January 2000, the AFEM's board had already adopted a declaration on the charter of fundamental rights at a meeting in Paris and had forwarded it to the Convention⁷². A young Greek lawyer belonging to the association, Sophia Spiliotopoulos, then "followed it up". In March, the AFEM submitted a second, more comprehensive, contribution⁷³. Following the advice of Convention members, the women belonging to the association put forward proper proposals for articles based on existing legal documents. The same month, the association organised a colloquium in Strasbourg and invited members of the Convention. Micheline Galabert also had no hesitation in repeatedly calling Guy Braibant, who later described her attentions as verging on "harassment". His alternate, Jacqueline Dutheil de la Rochère, says she received a "lesson in lobbying".

⁷¹ The European Women's Lobby brings together national coordinating bodies and European organisations that operate in at least seven countries. As the AFEM covers only five, it is only an associate member (www.womenlobby.org).

⁷² CHARTE 4120/00, CONTRIB 16.

⁷³ CHARTE 4157/00 ADD 1, CONTRIB 42. The contribution aimed in particular to explain why gender discrimination was "*of a particular nature*" and affected women who were "*not a minority but more than half of the European population*". Hence the call for an article specifically on equal opportunities for men and women.

All these steps played no small role in ensuring that the final version of the charter contained not only an article on non-discrimination but also a specific article on "*equality between men and women*". Most importantly, this article calls for equality between men and women not only in the areas of employment and work, as in the July draft⁷⁴, but "*in all areas*". Lastly, most of the charter is drafted in gender-neutral language⁷⁵.

Of course, these provisions are not solely the result of the AFEM's efforts. The experience demonstrated the usefulness of "support coalitions", with the AFEM's efforts reinforcing those of the European Women's Lobby. The EWL's first contribution, which targeted a broader audience than that of the AFEM, stressed with good reason the impact of the limited number of women in the Convention – not to mention the presidium, which had no women at all among its full members. Reacting to the limitations of the July draft, the EWL issued a highly critical press release headed "*Women excluded from the EU charter of fundamental rights: gender gap and sexist language*"⁷⁶. While some (men) thought it aggressive, it certainly ensured that attention was paid to the EWL contribution which followed⁷⁷. Furthermore, the women in the Convention played a useful role in transmitting these demands. For instance, on 31 August, 16 women members of the body wrote to the chairman and vice-chairmen to put across the same claims: the language used in the charter had to be "non-discriminatory" and the specific article on equality between men and women had to apply to "*all areas*".

In conclusion, looking towards a new Convention, three lessons may be drawn from this first experience. Firstly, although it did not include representatives of NGOs, the Convention did manage to collaborate with some of these organisations. The largely informal involvement of civil society favoured the NGOs that were most active, rather than those with

⁷⁴ In the July draft, the article provided that "*equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured*". In CHARTE 4422/00, CONVENT 45.

⁷⁵ However, in Chapter IV (Solidarity), the presidium did opt for the masculine forms of the words "*worker*" and "*employer*" in French and in other languages where these differ from the feminine forms (see Articles 27, 28, 30 and 31).

⁷⁶ CHARTE 4439/00, CONTRIB 293.

⁷⁷ Agence Europe No. 7775 of 9 August 2000 and CHARTE 4461/00, CONTRIB 315.

the highest profile. Secondly, the persons who were able to bring most influence to bear were those which managed to muster support for their proposals from both the Convention and civil society. That is how many of the amendments of the first full draft produced in July were secured. The third and final lesson is that the term "civil society" should not mislead us. European citizens did not take part in this exercise in any great numbers. In this connection, Jean-Baptiste de Foucault aptly speaks of "an elite of associations".

1.4. The Convention's working methods proved more controversial

Within the Convention, decision-making came to be based on an "iterative consensus-seeking" method, assessments of which differed. **While it did prove possible to adopt the charter by consensus within the specified deadlines, the method had something of an adverse effect on the openness of the exercise and gave an advantage to certain players.**

Let us begin by reviewing the two reasons for adopting a consensus-based method: time constraints and voting difficulties. Discussing voting arrangements would have delayed the start of the Convention. The voting rules put forward by two MEPs, Andrew Duff and Johannes Voggenhuber, were therefore not really debated⁷⁸. More generally, the Convention did not adopt rules of procedure – a fact which sometimes rendered the decision-making process more opaque. Some rules were nonetheless adopted, in addition to the practical arrangements set by the European Council at its meeting in Tampere⁷⁹. Alternates were allowed to take part in all of the Convention's sessions but had the right to speak only at the informal meetings⁸⁰. Since these informal meetings were far more numerous and the draft charter was adopted without a vote, the alternates were able to exercise considerable influence on the proceedings. Another rule was that each speaker was restricted to three minutes (although compliance with this rule was not very strict in practice)⁸¹. Lastly, it was decided that only Convention members would be able to table amendments.

⁷⁸ Agence Europe No. 7644 of 29 January 2000.

⁷⁹ The Tampere conclusions provided for meetings in Brussels and the application of the "*complete language regime*" for the sessions of the body.

⁸⁰ CHARTE 4134/00, CONVENT 6.

⁸¹ CHARTE 4148/00, CONVENT 12 and CHARTE 4154/00, CONVENT 14.

Again partly owing to the time constraints, no working groups were established, even though they could have made voting easier. The Tampere conclusions had envisaged the establishment of "*ad hoc working groups*". A plan to set up three working groups (on civil rights, citizens' rights and economic and social rights) was even mooted at the very first meeting of the Convention. Discussion on this point came to nothing, however⁸². Given the difficulty of sharing out the fundamental rights among various working groups, and in order to allow everyone to take part as fully as possible in the Convention's discussions, it was decided, on a proposal from the presidium, that the plenary session would itself meet "*as a working party*", with each member being free to take part "*depending on centres of interest and/or own specific competence*"⁸³. That is why some sessions of the Convention were referred to as "working parties" or "informal sessions".

A second factor confirmed the opinion of those who believed that the consensus method was more appropriate for a heterogeneous body whose members did not all belong to parliaments: the inconclusive outcome of the few votes that were taken on the charter's content. The first votes, relating to the change of name of the body and participation rules for the alternates, admittedly posed no particular problems⁸⁴. But the same cannot be said of the votes on the charter's contents. It seems that there was an attempt to vote on the first articles of the charter. This apparently occurred in March, during the third plenary session of the Convention. As Roman Herzog was unable to attend, the session was chaired by Íñigo Méndez de Vigo, an MEP well used to voting. By his own avowal, the attempt proved "*disastrous*". In the first place, because of translation problems, it was only at a very late stage that the Convention members had access to the many amendments tabled. It was therefore difficult to vote on each amendment, but merely voting on the draft articles put forward by the presidium was not a satisfactory solution either. On a more general level, the Convention members did not always understand what was being voted on, and the votes were very widely split. As Guy Braibant later put it, "*we tried on one occasion to vote, but it was not a great success and we did not repeat the experience because there*

⁸² In particular, Roman Herzog pointed out that the mandate appeared to suggest five areas: liberty, equality, economic and social rights, procedure, and citizens' rights. CHARTE 4105/00, BODY 1.

⁸³ CHARTE 4107/00, BODY 2 and CHARTE 4134/00, CONVENT 6.

⁸⁴ The body's change of name was on the agenda of the second meeting, held on 1 and 2 February 2000. MEP Georges Berthu (France, Europe of Nations) opposed it on the grounds that the European Council's Cologne mandate spoke of a "body" and requested that a vote be taken. The name "Convention" was adopted by a large majority. CHARTE 4107/00, BODY 2, CHARTE 4134/00, CONVENT 6 and *Europe Daily Bulletin of Agence Europe*, No. 7647 of 3 February 2000.

was confusion about the meaning and subject of the vote"⁸⁵. Unsurprisingly, the formal minutes of the meeting subsequently indicated that *"there was no intention of examining or voting on"* the tabled amendments, but that they would *"serve the presidium, meeting as a drafting committee, as a basis when drawing up the definitive version of the draft Charter which would subsequently be submitted to the Convention"*⁸⁶.

This is how the iterative consensus-seeking approach, which was to be followed until the end of the Convention, was established. The presidium submitted its proposals to the Convention for debate. In the light of the discussions, the presidium then submitted new proposals, and the process was repeated until little or no opposition to the provisions remained. The concept of "little opposition" was never clearly defined. It was only understood that the level of consensus required lay between unanimity and a majority. In practice, at the end of September, it was considered to have been achieved when only three MEPs (Georges Berthu of France, Jens-Peter Bonde of Denmark and Hans-Peter Martin of Austria) declared their opposition to the final draft at a meeting of the European Parliament delegation. Since Mr Martin quickly revised his position, the final opponents to the document were of fairly "marginal" significance within the European Parliament⁸⁷. In a letter to president Jacques Chirac, Roman Herzog accordingly stated that the draft charter had received *"almost unanimous"* agreement⁸⁸.

Three factors can be put to the credit of this decision-making method. First of all, it was successful. Despite the divergences noted above, the method made it possible to produce, in a limited space of time, a draft charter that was acceptable to virtually all of the Convention's members, including those most keen to make progress. It is worth pointing out in this connection that the presidium's drafts did not necessarily keep to the lowest common denominator but could, on the contrary, be quite ambitious.

Secondly, decision-making by consensus strengthened the charter's legitimacy. Indeed, at the European Council meeting in Biarritz, the heads of State and government did

⁸⁵ CHARTE 4959/00, CONVENT 54.

⁸⁶ CHARTE 4212/00, CONVENT 24.

⁸⁷ Georges Berthu belonged to the Union for Europe of the Nations group led by Charles Pasqua, while Jens-Peter Bonde was a member of the Group for a Europe of Democracies and Diversities. On 2 October 2000, the Convention held a final meeting to proclaim the charter. Mr Berthu and Mr Bonde marked their persisting opposition by refusing to rise when the European hymn was played.

⁸⁸ CHARTE 4960/00, CONVENT 55.

not amend the draft charter forwarded to them, although it is fair to add that they were probably more concerned about how the IGC was progressing, and that it had very quickly been decided that the charter would be non-binding. Nevertheless, some believe that it would have been "*virtually unthinkable*" for the European Council to amend the charter without again consulting the Convention.

Thirdly, not resorting to voting left more time for debates and exchanges of views – thus facilitating the emergence of a dialogue between Convention members, and even a form of mutual understanding. For instance, during the first discussions relating to the preamble, a contribution submitted by Lord Goldsmith in July 2000 referred to "*certain principles, in particular in the field of social protection, which are common to all Member States*"⁸⁹. Some participants deemed that this document indicated a change in the British position⁹⁰. Up to then, where social rights were concerned, Lord Goldsmith had maintained that "policy objectives" were not "existing rights" and had no place in the charter. In his view, such policy objectives included rights such as the information and consultation of workers. This British change of tack was no doubt designed to counter more ambitious demands and avoid giving the impression that the United Kingdom was impervious to social rights. But it can also be seen as the result of a process of debating the positions held by others. Guy Braibant took care, for example, to discuss Lord Goldsmith's points of view on a regular basis⁹¹.

However, this consensus-seeking did have two drawbacks. The first was that it made "some more equal than others". At the beginning, the method considerably strengthened the influence of the presidium. A series of speeches in a large forum seldom gives a clear picture of the various positions. It was the presidium's role to summarise and merge them into precise articles for the charter. The debate on public services is a good example of its power of leverage. In plenary session, not everyone commented on this issue and those who did were fairly evenly split among supporters of and opponents to the concept. Those involved generally agree that without the pressure of Guy Braibant within the presidium, the charter would very probably not have included an article on "*services of*

⁸⁹ This example is drawn from the paper by Justus Schönlau, *op. cit.*

⁹⁰ *Ibid.*

⁹¹ During the session of 20 and 21 March, Guy Braibant started his first contribution by stating: "*I would like to respond to Lord Goldsmith by telling him that ...*"; his second speech immediately followed that of Lord Goldsmith and he indicated that he was "*bothered by the last speech by Lord Goldsmith*"; during his third speech, he acknowledged that he "*no doubt*" agreed with Lord Goldsmith on one point... CHARTE 4218/00, CONVENT 25.

general economic interest". In fact the actual wording of the article, which merely mentions "*access to services of general economic interest*" preceded by the cautious expression "*recognises and respects*", clearly indicates the opposition the French representative had to face⁹².

As for the first draft preambles, they show how the Convention members may sometimes have felt that the presidium's choices were arbitrary. The draft charter of 28 July included certain amendments suggested during a previous discussion⁹³ but left the expression "*peoples of Europe*" unchanged in spite of numerous calls for an amendment. It is true that not all amendments were of the same nature, but no fewer than 30 members had requested a change⁹⁴.

The method also strengthened the task force. The task force officials were those who actually penned the successive drafts of the charter, in the light of the Convention's discussions. They therefore controlled the Convention's "input" and "output". The main privilege of the presidium was to be the first informed of these drafts and to be in direct and regular contact with the drafters. The task force's influence can clearly be seen by comparing the first draft list of fundamental rights and the final version of the charter⁹⁵. Only five rights were not included, for various reasons, in the first draft (freedom to conduct a business, access to services of general economic interest, respect for cultural, religious and linguistic diversity, conscientious objection, and protection against unjustified dismissal). If we consider that articles on the rights of elderly people and on the right to good administration, and the clauses on the freedom of the media and the rights of children to have contacts with both parents, go beyond the articles on pension rights, contacts with the Union, freedom of

⁹² Jacqueline Dutheil de la Rochère, *op.cit.*

⁹³ Justus Schönlaui, *op. cit.*. The first draft preamble was discussed on 19 July 2000. It started as follows: "*The peoples of Europe have established an ever closer union between them and henceforth share the same destiny.*" CHARTE 4400/00, CONVENT 43. The first complete draft charter of 28 July started with the sentence "*The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values*", CHARTE 4422/00, CONVENT 45. The reference to "*common values*" apparently resulted from calls from Peter Mombaux, Jürgen Meyer, Catherine Lalumière and Peter Altmaier putting forward the idea of a "community of values".

⁹⁴ Jo Leinen, for instance, proposed "the people of Europe" while Gabriel Cisneros called for the role of the Member States to be taken into account ("the citizens of the Member States"). Andrew Duff, for his part, wanted the dual legitimacy on which the Union is based (the States and the peoples) to be more clearly reflected in the preamble ("the peoples of the European Union and the Member States").

⁹⁵ CHARTE 4112/2/00 REV 2, BODY 4.

expression and protection of children mentioned in the initial draft, we find that a total of nine new rights were added⁹⁶.

Lastly, compared with voting, consensus-seeking increased the power of the personal representatives of the Member States. The person most often mentioned in this respect is Lord Goldsmith, who regularly opposed the incorporation of social rights into the charter. It can be assumed that his views were not those of a majority within the Convention and that voting would have sidelined him. However, consensus-seeking enhanced his position as single representative of one of the "final approvers" of the charter and allowed him to secure a number of assurances. For instance, the draft charter submitted by the presidium in July included an article on freedom to conduct a business, which seemed to have come out of a clear blue – and British – sky. It was not in the initial draft list of fundamental rights drawn up in January 2000 and, according to one of the MEPs, it had never been previously discussed; in the summary of amendments submitted by the presidium in June, only an amendment from Peter Altmaier, an alternate, called for the incorporation of an article on the principle of private action⁹⁷. Likewise, when Guy Braibant informed his colleagues that the French leaders could not accept the reference to a "religious heritage" in the preamble to the charter, he was clearly in a minority but his voice was nonetheless heard.

Not only did the search for a consensus cause some "distortions of influence", it also undermined the openness that the exercise was designed to achieve. True, compared with an IGC, the Convention was a fairly transparent process. Most of the working papers were available on the internet⁹⁸ and the sessions were public. At the end of the negotiations, the fact that some of the discussions took place within the various components demonstrated, *a contrario*, the point of this openness. For instance, it is perhaps regrettable that the differences of opinion on the reference to a "religious heritage" in the preamble did not give rise to a public debate in a plenary session. Whatever the case, it became more difficult for

⁹⁶ G. de Burca also highlights eight or nine differences. In all, the charter has 53 articles.

⁹⁷ CHARTE 4360/00, CONVENT 37.

⁹⁸ The various drafts drawn up by the presidium and submitted to the Convention, the minutes of the presidium's meetings, and the contributions from Convention members and NGO representatives are still available on the Council's website. On the other hand, the amendments put forward by the Convention members were too numerous to be posted on the site. It was possible to obtain them from the task force, however.

observers, in particular those from civil society, to follow debates that were scattered among several groups and, moreover, were sometimes held behind closed doors⁹⁹.

And even when the discussions did take place in plenary, the publicity given to the meetings was inadequate to convey the full picture of the decision-making. By virtue of the consensus-seeking process, the presidium and the task force became two strategic centres where decisions to keep or discard the various draft articles were taken, away from the sparring in plenary sessions and the eye of civil society. The absence of voting was not the only factor that hindered the transparency of the exercise, however. Structurally, it proved impossible to avoid "behind the scenes" discussions. Throughout the Convention, negotiations thus took place outside the debating chamber, in the building's corridors and offices, etc.

Yet we can say in conclusion that the power of the presidium and task force should not be exaggerated. First of all, the latter's drafts naturally took account of the positions expressed within the Convention and presidium. The task force members attribute the influence of their first draft, mentioned above, mainly to the specific features of the exercise. Since the aim was to codify existing instruments, it was not very difficult to list them. The real purpose of the Convention was, through a public process, to "*make visible what had been invisible*"¹⁰⁰ so that a greater number of European citizens would identify with these rights. Nor did the presidium as a whole have the power to go against the wishes of the Convention, as the fate of the draft it submitted in July 2000 clearly demonstrates. The document prompted a number of objections among the other Convention members and substantial amendments were made, particularly with respect to social rights.

In this context, the European Parliament delegation was particularly efficient. Before the presidium's first meeting after the summer recess, thanks to a package deal between the two main political groupings, the MEPs agreed on a joint call for a number of amendments. The PSE was mainly concerned with social rights, and in particular a mention of

⁹⁹ Such was the choice of the delegations of the European Parliament and the personal representatives of the heads of State and government on 12 September 2000. See *Agence Europe* No. 7797 of 13 September 2000.

¹⁰⁰ In the words of Jean-Paul Jacqué.

the right to strike and the right to work¹⁰¹. In exchange, the PPE asked in particular that no restrictions should be attached to the article on the freedom to conduct a business and that the preamble should refer to the "*cultural, humanistic and religious heritage*" of the Union. As to who was the initiator of this last phrase, which caused so much furore in France, the name most often cited is that of Ingo Friedrich, an MEP belonging to the CSU¹⁰². He was able to draw on support from the alternate Peter Mombaur, also from Germany and a member of the PPE, who had submitted an amendment calling for a mention of "*the Judaeo-Christian tradition, the ideals of the French revolution and the responsibility of politicians before God*" (!)¹⁰³. The word "religious" chosen by the European Parliament delegation was therefore already a compromise with respect to the initial requests for references to the Christian tradition and God.

The preparation of a new, amended, draft charter, which vice-president Méndez de Vigo was able to submit to the presidium, gave the European Parliament delegation a "*substantial advantage*". The debate surrounding the "*religious heritage*" should not let us forget that most of the demands thus submitted were accepted¹⁰⁴. However, given the opposition expressed by the French leaders, the expression "*religious heritage*" was replaced by the term "*spiritual heritage*", borrowed from the statute of the Council of Europe¹⁰⁵.

On the other hand, as we have already pointed out, the national MPs did not have the same advantages. They should not be thought to have been mere observers, however. Although their component, which was much more heterogeneous, was not as

¹⁰¹ The amendments put forward by the socialist MEPs also included an indication that freedom of assembly and association and the right to negotiate and take collective action should be recognised "*at European level*". Pervenche Berès was behind the initiative to incorporate a new clause on the right of a child "*to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*".

¹⁰² He was also the person who insisted, at the end of the Convention, for the word eventually agreed upon ("*spiritual*") to be translated into German as "*geistlichreligiös*". See the verbatim minutes of the session of 26 September (CHARTÉ 4958/00, CONVENT 53); *Agence Europe* No. 7807 of 27 September 2000 and No. 7810 of 30 September 2000.

¹⁰³ *Agence Europe* No. 7796 of 12 September 2000. Judging by his speech during the session of 26 September, it would appear that the Dutchman Rijk van Dam may also have provided some support. He regretted that "*the preamble mentions only the cultural and spiritual heritage*", adding that "*the dignity of the human being stems from the fact that we are creatures of God*", CHARTÉ 4958/00, CONVENT 53.

¹⁰⁴ It seems that only three amendments were rejected: the reference to the "*cultural, humanistic and religious heritage*" (preamble), the "*prohibition of the reproductive cloning of human beings*" (right to the integrity of the person) and the mention of the "*principle of neutral public action*" (right to good administration). With respect to cloning, the delegation followed the position of the European Parliament, which had just voted against therapeutic cloning (see *Agence Europe*, No. 7794 of 8 September 2000 and No. 7795 of 9 September 2000).

¹⁰⁵ In the statute, the signatory governments reaffirm "*their devotion to the spiritual and moral values which are the common heritage of their peoples...*".

effective, they found other ways to put their views across. Some took advantage of the existing political cleavages. For instance, the socialist delegation of the European Parliament organised meetings open to all members of the Convention who broadly shared their political opinions¹⁰⁶. Other national MPs turned to their respective governments for support. For instance, the main demand of senator Hubert Haenel, a member of France's RPR party, was that the preamble should mention the concept of obligations. He took the opportunity of a question-time session in the French Senate to obtain the public support of the minister responsible for European affairs, Pierre Moscovici¹⁰⁷. That made it easier for him to convince Guy Braibant, who until then had been "*quite quiet on that issue*"¹⁰⁸. Also, the representatives of the British parliament and government seemed to be of like mind on many issues. According to some observers, their speeches to the body "*echoed*" one another.

In conclusion, it proved possible to adopt the charter without voting even once, thanks to the "iterative consensus-seeking" process. Several lessons can be drawn from the experience. **First of all, consensus does not mean unanimity. This constitutes a fundamental difference between the Convention and an IGC.** An IGC is subject to a negotiation process where availability of the veto enables anyone in an isolated position to threaten deadlock. In contrast, the Convention nurtured a process of deliberation. In most cases, those who managed to build "support coalitions" for their demands eventually got their way. For instance, the British representative vehemently opposed incorporation of the right to strike into the charter. At first, he seemed to be in a position to impose his views. The first complete draft of the charter contained no specific provisions on the right to strike. But once the July draft had been forwarded to the Convention members, many of them declared themselves in favour of an explicit reference to the right to strike, not only within the European Parliament delegation, as we have already pointed out, but also among the other delegations (MPs in favour included Mr Loncle of France and Mr Fayot of Luxembourg, for instance) and within civil society. Certain members of the presidium, such as Guy Braibant, were able to draw on that support to enforce their point of view¹⁰⁹.

¹⁰⁶ According to Pervenche Berès, even the representative of the Italian government, Stefano Rodotà, and, more occasionally, commissioner Antonio Vitorino took part in these meetings.

¹⁰⁷ *L'élaboration d'une charte des droits fondamentaux. Les rapports du Sénat*, No. 395, 1999-2000, p. 34 (question by Mr Haenel) and p. 77 (answer by Mr Moscovici).

¹⁰⁸ *Ibid.*, p. 34. Beforehand, Mr Haenel had drafted a contribution in which he based his demand on examples that were likely to gain support from other Convention members (rights with respect to future generations in relation to the environment), CHARTE 4200/00, CONTRIB 81.

¹⁰⁹ *Agence Europe*, No. 7797 of 13 September 2000.

The advantages of the consensus method are more controversial when compared with voting. Seeking a consensus does oblige the participants to agree on an instrument, which therefore acquires considerable legitimacy, but it has two drawbacks. **First of all, it leaves room for substantial differences in influence.** In this case, the presidium and the task force became two essential organs. The non-binding nature of the charter and absence of any reference to a "religious heritage" also show that, when they were determined to do so, certain Member States were able to exert decisive pressure even though they were in a minority. Lastly and most importantly, the consensus-seeking seems comparatively uncertain and requires time. These are factors that must be taken into account if the experiment of the Convention is to be repeated.

2. WHAT ARE THE ISSUES INVOLVED IN HOLDING A NEW CONVENTION?

The limitations of the treaty of Nice when set against the requirements of an enlarged Europe and the more gratifying results obtained by the Convention explain why European leaders are currently considering a new method for drafting founding instruments, which would involve both a Convention and an IGC. The European Council is to determine the mandate for a new Convention, due to be held before the next IGC in 2004. Some of the Convention's characteristics are already taking shape. The purpose of this second part is to contribute to the ongoing debate by clarifying, in the light of the previous experiment, the questions that arise in relation to its mandate (2.1), working basis (2.2), composition (2.3), decision-making arrangements (2.4), "end product" (2.5), links with civil society (2.6), internal organisation (2.7) and relationship with the IGC (2.8).

2.1. What mandate should be given to the new Convention?

The first issue to be dealt with is the Convention's mandate. What purpose is the new Convention to serve? This question touches upon the requirements of the European Union and the need to ensure its effectiveness and strengthen its legitimacy, in particular with a view to enlargement to the applicant countries of central and eastern Europe.

In this context, is there really much point in convening a Convention to address only the four topics mentioned in the "declaration on the future of the Union" attached to the treaty of Nice: the status of the charter of fundamental rights, simplification of the treaties, the role of national parliaments in the European architecture and a more precise delimitation of powers between the Union and the Member States? That agenda does not seem broad enough to provide adequate answers to the questions facing European integration, such as the future institutional framework of the Union, the future for the common policies, and closer involvement of citizens in decision-making.

If, as is likely¹¹⁰, the mandate should nevertheless mention these four topics, it seems vital to leave the Convention some explicit room for manoeuvre. The first Convention demonstrated just how important the wording of the mandate was. The mandate for the next one must therefore explicitly provide some degree of leeway. But is that not what is implied by the expression "*inter alia*" already included in the declaration on the future of the Union attached to the Nice treaty¹¹¹?

That approach would allow the Convention to contribute to drawing up its mandate – not a bad idea. It should nonetheless be remembered that its task in this case and in the future will be very different from the one expected of its predecessor. The first Convention did make choices and introduce new rights but, generally speaking, the aim of the exercise was to codify existing instruments. By contrast, the next Convention will have to deal with much more open and binding issues, and its reference instruments will not be as clear-cut.

2.2. On what basis will the Convention be able to work?

Again as regards the basis for its work, a second Convention will not be in the same situation as the first. Admittedly, the main European leaders have made declarations on the future of an enlarged Europe, to the press or at conferences. Studies are also available on specific aspects, such as simplification of the treaties¹¹². A new Convention could prompt new contributions, such as, in particular, drafts for a European constitution. But, compared with the documents available to the first Convention, three main differences remain. First, the new Convention would not be dealing with documents already in force. Secondly, since they often contradict one another, political positions cannot serve as a real working basis. Lastly, as this Convention's "end product" is not as clearly defined, it will be more difficult to identify the most potentially useful documents among those available.

¹¹⁰ *Agence Europe*, 9 October 2001.

¹¹¹ Declaration No. 23 of the treaty of Nice stipulates that "*the process should address, inter alia, the following questions*". The Benelux countries' memorandum on the future of Europe gives a possible agenda which may be derived from the Nice declaration. It argues that "*establishing a delimitation of powers requires further examination of our policy objectives and the means of achieving them*" and that "*simplifying the treaties will make the Union more understandable and will pave the way for an EU constitution*". In http://europa.eu.int/futurum/documents/other/oth200601_en.htm.

¹¹² European University Institute. Robert Schuman Centre for Advanced Studies. *La réorganisation des traités. Traité fondamental de l'Union européenne*, 2000. The Council secretariat has also been working on this issue.

One way of overcoming these difficulties would be to give the Convention the means to commission *ad hoc* studies. These could be requested from university institutions or experts, or even from the Commission, whose natural role is to put forward proposals.

2.3. Should the Convention's composition be changed?

As regards the composition of the Convention, the generally accepted view is "do not change a winning team". It can, in particular, be seen as useful for the body to include representatives of the Member States. The previous Convention's work would have lacked credibility without them, while their participation establishes a link with the IGC that will examine the Convention's work. In particular, as the first Convention demonstrated, this helps ensure that Member States' positions are presented and discussed – and possibly modified – before any draft is formally submitted to them.

One change nevertheless seems certain. Representatives of the accession countries will be taking part in the Convention. It would appear appropriate to involve the applicant countries in a debate on the workings and policies of a Union they are set to join. Yet they did not play a very significant role in the first Convention. They just took part in an "*exchange of views*" provided for by the Tampere conclusions¹¹³, which in practice boiled down to an invitation to read out their contributions¹¹⁴. Unlike the representatives of civil society, they do not really seem to have tried to shape the process by other means. Hence the importance of formally providing for their participation in the Convention's deliberations.

The representatives of these countries will probably be given an observer status that will allow them to take part in the discussions, but without the right to vote¹¹⁵. The two "observers" which took part in the first Convention – the Council of Europe and the Court of Justice – were genuinely able to influence the discussions. It is true that the absence of voting had somewhat blurred the distinction between members and observers within the Convention. This observation prompted some politicians to suggest that the applicant countries should take

¹¹³ The conclusions of the European Council meeting in Tampere indicated that "*an appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States*".

¹¹⁴ The day of hearings was on 19 June 2000 (see *Agence Europe* No. 7742 of 22 June 2000).

¹¹⁵ *Agence Europe*, 8-9 October 2001.

part in the discussions but not in the "*determination of the consensus*"¹¹⁶. It is no doubt understandable that a distinction should be made between applicant countries and Member States. But would such provisions not be difficult to enforce, while unnecessarily dampening the enthusiasm of the applicant State representatives? And it is also worth considering whether they could take part in indicative votes.

In so far as the applicant countries should be entitled to one representative per government and two representatives per national parliament, should the two other component parts be strengthened? Mr Méndez de Vigo, for instance, fears that the European Parliament delegation will be "*swamped*" in the next Convention¹¹⁷. That will not necessarily be the case. If the Convention decides by consensus, we have shown that the MEPs could exert an influence and muster supporting coalitions for their positions. If the Convention resorts to formal voting, since the observers will not vote, the configuration will be the same as that of the first Convention. Furthermore, the body's size cannot be increased indefinitely. It nevertheless seems important that there should be more than one Commission representative. The institution played a significant role during the previous exercise, the broader agenda of the next Convention will make its contribution even more valuable, and it seems unlikely, if there is only one representative, that he or she will be able to attend all meetings.

Lastly, it is worth stressing the usefulness of having autonomous participants. Some parties might be tempted to reduce the greater uncertainty that will probably surround the second Convention by limiting the participants' room for manoeuvre. For instance, the governments might appoint representatives such as diplomats and give them mandatory briefs, and parliaments might adopt precise resolutions binding their members. However, as we stressed on several occasions with respect to the first Convention, the comparative autonomy of the various participants was one of the keys to its success. It helped a process of deliberation to emerge and the various points of view to be brought together. In the knowledge that an IGC is to be held in the wake of the next Convention, the governments would stand to gain by introducing some division of tasks into their representation, by appointing a high-profile figure with a comparatively free rein for the first body, and a representative who would be closer to the governing authorities for the second.

¹¹⁶ *Agence Europe*, 31 October 2001.

¹¹⁷ *Agence Europe*, 12 October 2001.

2.4. Can voting be envisaged?

The consensus-seeking method used during the first Convention presented many advantages. It obliged the body as a whole to agree on a single document, which therefore took on great legitimacy. Accordingly, the heads of State and government refrained from amending it (although they did agree to make it non-binding). More generally, those in favour of consensus stress that such a heterogeneous body cannot resort to a voting procedure which would give equal power to each Convention member. In particular, this could put representatives of the Member State governments in a minority – in spite of the fact that the final draft would then have to be submitted to the IGC, where it would need to secure a unanimous vote.

It would therefore seem advisable to begin by seeking a consensus. As we have already pointed out, this does not mean unanimity. However, the success of the first Convention should not hide the fact that this method can take a lot of time. **Given the deadlines and agenda for the new Convention, it might be unwise to rely only on the consensus-seeking method. Voting could break deadlocks in some cases, particularly since several methods are available.** Initially, the voting could be indicative. To avoid discussions dragging on, or to help determine the prevailing opinion of the body as a whole, the chairperson could request that a given question be put to the vote. As the votes would merely be indicative, the chairperson could even request several votes at various times in cases where the Convention's opinion on the point in question appeared to be shifting.

Secondly, voting could take place in more restricted groups. For instance, voting by component could make it possible to determine the opinion of each component on a controversial question. And if the new Convention decided to establish working parties, voting could also be envisaged in these groups.

Lastly, voting on draft articles could take place during the plenary meetings. In the first place, as happens when the Council takes a decision on a qualified majority vote, the mere fact that differences can be settled by voting could encourage the emergence of a consensus. If it does not, voting could then serve as a means of distinguishing the majority options from the minority opinions. A substantive majority might even encourage the

minority participants to reconsider their position. In any case, they would be able to draft dissident opinions.

By way of conclusion, we might add that this voting would strengthen the intelligibility and openness of the exercise, without necessarily undermining the authority of the Convention's proposals (which stems, to a large extent, from the body's composition).

2.5. What should be the end product of the Convention?

The foreign affairs ministers of the Member States asked the Convention to propose options¹¹⁸. As we have just indicated, the Convention could have to make a distinction, on certain issues, between the options supported by a majority of its members and those which have only minority support.

However, several factors argue in favour of producing a consistent draft rather than a list of options as has been envisaged¹¹⁹. Firstly, merely producing speculative ideas does not seem particularly compatible with the representative nature of the Convention membership. Furthermore, the first Convention demonstrated that the "as if" rule had contributed to the effectiveness of the body's debates. More specifically, the commitment to draft an instrument "*as if*" it were "*in the not too distant future, [to] become legally binding*"¹²⁰ is a strong incentive to ensure on the one hand that the provisions are realistic and on the other that the whole is consistent. Lastly, a well-built and structured document, possibly indicating the majority options and minority opinions on specific points, would be more useful to the Member State leaders, as it would give a clearer indication of the Convention members' thinking on issues related to the future of the Union.

¹¹⁸ Agence Europe, 9 October 2001.

¹¹⁹ *Ibid.* In Agence Europe's report on the General Affairs Council meeting of October, it can be seen that "*according to the initial guidelines that are emerging, the Convention will not be required to draw up a draft document but instead put forward one or several options on each issue.*"

¹²⁰ In the words of chairman Roman Herzog during the speech he made at the first meeting of the previous Convention, on 17 December 1999. See CHARTE 4105/00, BODY 1.

2.6. How can dialogue with civil society be fostered?

The dialogue between the first Convention and a number of NGOs is one of the factors which encouraged adoption of the same method. Encouraging a diversity of contacts between the planned Convention and civil society seems to be the best means of repeating the experience.

First of all, the lessons from the first Convention point towards preserving the principle of informal involvement of civil society, i.e. allowing anyone to submit contributions to the Convention and contact its members. The main advantage of this approach is that it allows those who are most active and persuasive to influence the outcome. This implies, however, that the Convention members should be approachable, and they may well be less available this time around. We can expect that many NGOs which took little or no action during the first Convention, for lack of information and/or time, will try to take a more active part in the next exercise. The Convention members may find themselves unable to cope with the additional requests to read material or attend events.

It would therefore be appropriate to schedule concurrent and regular meetings with a "*network of representative NGOs*"¹²¹, along the lines of the meeting that the presidium held on 2 March 2000 with four groups of associations. These meetings would have the twofold advantage of allowing sustained, in-depth exchanges with certain NGO representatives, while strengthening a trend – already apparent during the first Convention – towards increased coordination of these associations.

Two issues nevertheless remain to be settled. The first involves the selection of the "representative NGOs". The keenest supporters of this form of "structured" dialogue are naturally those who would belong to the "chosen few". These would include the representatives of the Permanent Forum for Civil Society, the Platform of European Social NGOs and ETUC. The other groupings most often mentioned are those of the environment, development, human rights, consumers, education and culture. Although the General Affairs

¹²¹ *Agence Europe*, 8-9 October 2001.

Council first opted for the term "NGOs", it would appear that we are moving towards a dialogue with "NGO networks" – an appropriate option for this type of consultation, given a grouping's greater capacity for disseminating and feeding back information.

The second question relates to the coordination of these networks. The foreign affairs ministers mentioned the role of a "*coordinator who would liaise between the network and the Convention*"¹²². Some members of the Economic and Social Committee would like to see their institution play that part, particularly since it may be given the status of observer during the next Convention¹²³. This solution would avoid giving an unfair preference to any particular NGO network, as negotiations between NGOs would take place within the Economic and Social Committee, and this body would be the only contact with the Convention. The option does present two problems, however. On the one hand, not everyone is in favour of it, even within the Economic and Social Committee itself. It is true that, given the weight of employer and worker representatives in its membership, it is better suited to social dialogue than to representing the multiple facets of civil society. On the other hand, the NGOs do not seem very keen on the idea and are wary of the control the Economic and Social Committee might be tempted to exert. In short, they believe they are "big enough to handle the coordination themselves". It is unlikely, however, that the NGO networks would readily accept one among their number as a "coordinator". **The simplest solution would probably be to have contacts with a limited number of networks and let them deal with the coordination among themselves.**

As we have indicated, **the NGOs are not the "general public". There have therefore been calls to increase the involvement of ordinary Europeans.** Several means are available for this purpose. The first is to give citizens the possibility of expressing an opinion by fostering the "pooling of knowledge" – one of the conditions which, according to Habermas, is necessary to the emergence of a "public sphere". Such a method could be based on one of the projects of the CAF ECS, whose principle is that green papers "*taking stock of the issues under consideration*" should be drawn up by the Commission and subsequently discussed

¹²² *Agence Europe*, 8-9 October 2001.

¹²³ During the first Convention, the Economic and Social Committee, alongside the Committee of the Regions and the Ombudsman, was among the "*bodies of the European Union to be invited to give their views*". Accordingly, during the Convention meetings held in the Council premises, the representatives of these "*bodies*", together with those of the NGOs but unlike the observers, had to follow the discussions from another room. The Committee of the Regions too would like to have the status of observer at the next Convention.

within the Member States and the applicant countries¹²⁴. If the Convention could commission "ad hoc" studies, as we have suggested, these could be discussed within the framework of the "debate on the future of Europe", which would thus become more attractive because it would be more directly related to the Convention's work.

Another way to strengthen the power of European citizens would be by giving them the "final say" via a referendum at the end of the process. The problem posed by this option is that the Member States wish to keep control over the ratification processes. However, one may legitimately wonder whether, after having involved the general public in the document's drafting phase, it will be possible to allow only the national parliaments to take part in the approval phase, in particular since the latter will probably coincide with the 2004 European elections campaign. It is worth noting in conclusion that the drafting of a European constitution would be likely to increase the role of the European public. It would be meaningful to citizens, it would be an incentive to produce a readable instrument and it could be adopted by referendum.

2.7. How should the Convention be organised?

With respect to internal organisation, it would be wise to leave some leeway to the Convention itself, as was the case for the first experience.

The heads of State and government are, however, now better prepared and are naturally concerned to control some aspects of the internal workings of the Convention. The presidium, for instance, whose role was little-known before the first Convention, is now a particular focus of interest. It would nevertheless seem that the most desirable option is a **comparatively compact and balanced presidium**, comprising five members (a chairperson plus one vice-chairperson from each of the four component parts). During the first Convention, the representatives of the two countries that held the presidency of the Union that year (Portugal and France) sat on the presidium for the entire duration of the exercise. Hence the suggestion from some quarters of a seven-member presidium, including representatives of the three countries that will take over the rotating Union presidency during the next Convention. But this could tip the scales too far in the Member States' favour.

¹²⁴ *La Croix*, 22 March 2001. Stands for "Carrefour pour une Europe civique et sociale".

Without going into the internal organisation of the Convention in too much detail, there is another point worth mentioning: **the secretariat resources**. The day-to-day running of the first Convention (booking rooms and interpreters, having the various documents translated and forwarding them, updating the website, etc.) turned out to be a heavy task. Given the characteristics of its successor (broader mandate, longer term, greater number of members, etc.), the Convention cannot again be run by such a small secretariat. As for the other members of the task force, who provided the Convention with working papers (minutes of meetings, draft articles, etc.), they were more alert to the advantages of a small team. It would nonetheless be advisable to avoid burdening them with any other tasks, and this was obviously not the case within the Council secretariat. There is one characteristic of the first task force which several participants commended and which would be worth keeping, however: the cooperation established between the Council, the European Parliament and the Commission.

Lastly, the issue of **working parties** should be raised. The first Convention took a pragmatic decision not to establish working parties. This presented two advantages: it avoided the need to set broad categories of rights *a priori* and allowed all members of the body to take part in all discussions if they wished. But the decision also had some disadvantages which should not be ignored. The formation of small groups would allow in-depth discussion of a limited range of issues. This is all the more important given the extensive agenda and large number of members. Formation of such groups would also make it easier to establish sustained dialogue with the NGOs interested in the issues discussed.

2.8. What should be the relationship between the Convention and the IGC?

Some of those involved would prefer to avoid the issue of the relationship between the Convention and the IGC: either because they do not wish to be influenced by the debates carried out within the Convention, or, on the contrary, because they are hoping that the draft delivered by that body will assert itself in its own right. After all, the European Council did approve the draft charter without amending it. However, it did not forward it to the IGC that was then under way. That is not what is planned for the new Convention. The issue of its relationship with the IGC can therefore not be avoided.

One option might be a "to and fro" process between the two bodies. That would require the Convention to meet again during the IGC. The representatives of the Member States may see this as an attempt to control their debates. But the Convention would thus be able to react to certain choices or expand on a given option selected by the heads of State and government. This would have two advantages. First of all, it would make up for the limited time allotted to the Convention to draw up a draft. It is supposed to do so between spring 2002 and June 2003, in order to give the IGC time to conclude an agreement before the European Parliament elections in 2004. Secondly, it would avoid a sudden and apparently unjustifiable interruption of the dialogue established with civil society. In the same spirit, the greater the independence of the Convention members, the more the dialogue with the IGC will be able to fuel the debate, at both national and European level.

CONCLUSION

In conclusion, the Convention can be seen as a method that could strengthen the legitimacy of the European political system. More specifically, it makes it possible to achieve progress in three areas: citizen involvement, the clarity of the Union's founding documents and the relevance of their provisions.

Compared with an intergovernmental conference, the first Convention's main feature was to broaden the range of players involved in drafting a primary instrument of the European Union. In particular, the presence of many members of Parliament had two positive effects. Instead of being restricted to playing second fiddle, they were invited to play a decisive drafting role, thereby taking ownership of the "Community process". Furthermore, as they were more used than, for instance, diplomats, to being accountable before an electorate, they facilitated the involvement of civil society and, therefore, the influence of citizens on the body's debates. Instead of being confronted with a "take it or leave it" document at the end of the process, a number of Europeans were able to get to know, and shape, the charter's content at an earlier juncture. Given the experience acquired and the broader mandate for the next Convention, a greater number of citizens is expected to be involved.

Secondly, by involving new players in the drafting of this primary instrument, the first Convention made it possible to produce a clear document that is likely to be understood by most people.

Thirdly, the new Convention could lead to the adoption of provisions that are relevant to the requirements of an enlarged Union. It is becoming clear that reaching joint decisions between 25 or 30 Member States will be difficult if they are not provided with a more integrated system, and in particular if the Member States do not give up their right of veto. If the Convention includes persons who are not necessarily there to defend the interests of a Member State, and if it creates the conditions for effective debate, it might pave the way for necessary institutional reforms. That is, of course, if the intergovernmental conference,

to which the Convention will submit the fruits of its deliberations, takes its proposals on board.

Lastly, it is worth noting that the Convention method could be used in future for other purposes, such as analysing the objectives of a particular policy, or reviewing the Union's own resources system. Here again, the Convention could involve national MPs in the Community reform process in a way that would be simpler and more likely to achieve consensus than the French proposal for a second chamber. More generally, the new method would help meet a need of the European integration process: increasing the influence of Europeans in the Union's decision-making.

ANNEX I

LIST OF PERSONS INTERVIEWED

Pervenche BERÈS (representative of the European Parliament, vice-president of the component part)

Guy BRAIBANT (representative of the head of State and of the head of government of France, vice-president of the Convention)

Pier Virgilio DASTOLI (Permanent Forum for Civil Society)

Jean-Maurice DEHOUSSE (representative of the European Parliament, alternate)

Clarisse DELORME (European Women's Lobby)

Jean-Pierre DUBOIS (Ligue des droits de l'Homme, collectif sur la Charte)

Jacqueline DUTHEIL de la ROCHÈRE (representative of the head of State and of the head of government of France, alternate)

Jean-Baptiste de FOUCAULD (CAFECS, Club Convictions)

Denise FUCHS (European Women's Lobby)

Emilio GABAGLIO (European Trade Union Confederation)

Micheline GALABERT (Association of Women of Southern Europe)

Olivier GERHARD (Platform of European Social NGOs)

Jean-Guy GIRAUD (European Parliament task force)

Hubert HAENEL (representative of the French Senate)

Jean-Paul JACQUÉ (Director of the Council task force)

Olivier JEHIN (*Agence Europe*)

Gilles de KERCHOVE (Council task force)

Catherine LALUMIÈRE (representative of the European Parliament, alternate)

François LONCLE (representative of the French Parliament)

Iñigo MÉNDEZ de VIGO (representative of the European Parliament, vice-president of the Convention)

Frédéric PASCAL (CAFECS, Fonda)

Danièle RÉCHARD (European Parliament task force)

Ferdinando RICCARDI (*Agence Europe*)

Anne-Marie SIGMUND (Economic and Social Committee)

Antonio VITORINO (representative and member of the European Commission)

Bernhard ZEPTER (deputy secretary-general of the European Commission)

ANNEX II

CONCLUSIONS OF THE EUROPEAN COUNCIL MEETING IN COLOGNE

3 AND 4 JUNE 1999

(Extracts)

EUROPEAN COUNCIL DECISION ON THE DRAWING UP OF A CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens.

The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union.

In the view of the European Council, a draft of such a Charter of Fundamental Rights of the European Union should be elaborated by a body composed of representatives of the Heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments. Representatives of the European Court of Justice should participate as observers. Representatives of the Economic and Social Committee, the Committee of the Regions and social groups as well as experts should be invited to give their views. Secretariat services should be provided by the General Secretariat of the Council.

This body should present a draft document in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties. The European Council mandates the General Affairs Council to take the necessary steps prior to the Tampere European Council.

ANNEX III

CONCLUSIONS OF THE EUROPEAN COUNCIL MEETING IN TAMPERE

15 AND 16 OCTOBER 1999

(Extracts)

COMPOSITION, METHOD OF WORK AND PRACTICAL ARRANGEMENTS FOR THE BODY TO ELABORATE A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS, AS SET OUT IN THE COLOGNE CONCLUSIONS

A. COMPOSITION OF THE BODY

(i) Members

(a) Heads of State or Government of Member States

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Sixteen members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish *ad hoc* working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

ANNEX IV

COMPOSITION OF THE CONVENTION ON THE CHARTER OF FUNDAMENTAL RIGHTS

The Convention on the charter of fundamental rights, established to draft the charter by the European Council at its meeting in Cologne, was made up of:

15 representatives of the heads of State and government.

1 representative of the Commission.

16 representatives of the European Parliament.

30 representatives of the national parliaments.

The Convention was chaired by Roman Herzog, the former president of the Federal Republic of Germany and of the German constitutional court in Karlsruhe.

CONVENTION MEMBERS

1. Personal representatives of the heads of State and government of the Member States

Full members

HERZOG, Roman (D), chairman of the Convention

BACELAR DE VASCONCELLOS, Pedro (P)

BRAIBANT, Guy (F)

DEHAENE, Jean-Luc (B)

GOLDSMITH QC, Lord (UK)

KORTHALS ALTES, Frits (NL)

MEYERS, Paul-Henri (L)

NEISSER, Heinrich (A)

NIKULA, Paavo (FIN)

O'KENNEDY, Michael (IRL)

OLSEN, Erling (DK)

PAPADIMITRIOU, George (GR)

RODOTÀ, Stefano (I)

RODRIGUEZ-BEREIJO, Alvaro (E)

TARSCHYS, Daniel (S)

Alternates

BOT, Bernard (NL)

DERYCKE, Erik (B)

DE SERPA SOARES, Miguel (P)

DOSSI, Harald (A)

DUTHEIL de la ROCHÈRE, Jacqueline (F)

EATON, Martin (UK)

HAYES, Mahon (IRL)

LEHMANN, Tyge (DK)
MAGNUSON, Lars (S)
ROTKIRCH, Holger (FIN)
SANZ GANDASEGUI, Francisco (E)

2. Representatives of the Commission

Full member

VITORINO, Antonio (member of the Commission)

Alternate

O'SULLIVAN, David (secretary-general)

3. Representatives of the European Parliament

Full members

BERÈS, Pervenche (F) PSE
BERTHU, Georges (F) UEN
BONDE, Jens-Peter (DK) EDD
CEDERSCHIÖLD, Charlotte (S) PPE-DE
CORNILLET, Thierry (F) PPE-DE
DUFF, Andrew Nicholas (UK) ELDR
FRIEDRICH, Ingo (D) PPE-DE
KAUFMANN, Sylvia-Yvonne (D) GUE/NGL
KIRKHOPE, Timothy (UK) PPE-DE
LEINEN, Jo (D) PSE
MAIJ-WEGGEN, Hanja (NL) PPE-DE
MARTIN, David W. (GB) PSE
MARTIN Hans-Peter (A) PSE
MÉNDEZ DE VIGO, Iñigo (E) PPE-DE
PACIOTTI, Elena Ornella (I) PSE
VOGGENHUBER, Johannes (A) Verts/ALE

Alternates

ALMEIDA GARRETT, Teresa (P) PPE-DE
BURG van den, Ieke (NL) PSE
BOUMEDIENNE-THIERY, Alima (NL) Verts/ALE
BUTTIGLIONE, Rocco (I) PPE-DE
DAM van, Rijk (NL) EDD
DEHOUSSE, Jean-Maurice (B) PSE
FRAHM, Pernille (DK) GUE/NGL
HATZIDAKIS, Konstantinos (GR) PPE-DE
HERMANGE, Marie-Thérèse (F) PPE
IIVARI, Ulpu (FIN) PSE
LALUMIÈRE, Catherine (F) PSE
MOMBAUR, Peter Michael (D) PPE-DE

NOBILIA, Mauro (I) UEN
RACK, Reinhard (A) PPE-DE
WATSON, Graham R. (UK) ELDR
WHITEHEAD, Phillip (UK) PSE

4. Representatives of the national parliaments

Full members

APOSTOLIDIS, Loukas (GR)
AZEVEDO, Maria Eduarda (P)
BARROS MOURA, José (P)
BEISSEL, Simone (L)
BENAKI-PSAROUDA, Anna (GR)
BOWNESS, Lord (UK)
BRAX, Tuija (FIN)
CISNEROS, Gabriel (E)
DE GUCHT, Karel (B)
DURKAN, Bernard (IRL)
EINEM, Caspar (A)
FAYOT, Ben (L)
GNAUCK, Jürgen (D)
GRIFFITHS, Wyn (UK)
HAENEL, Hubert (F)
HIRSCH BALLIN, Ernst (NL)
JANSSON, Gunnar (FIN)
JENSEN, Claus Larsen (DK)
LALLEMAND, Roger (B)
LONCLE, François (F)
MAGNUSSON, Göran (S)
MANZELLA, Andrea (I)
MELOGRANI, Piero (I)
MEYER, Jürgen (D)
O'MALLEY, Desmond (IRL)
OFNER, Harald (A)
PATIJN, Michiel (NL)
SOLÉ TURA, Jordi (E)
TOBISSON, Lars F. (S)
TØRNAES, Ulla (DK)

Alternates

ALTMAIER, Peter (D)
AMELINE, Nicole (F)
BOSELLO, Furio (I)
BRAUNEDER, Willi (A)
CHIDGEY, David (UK)
CHRISTMAS-MØLLER, Pia (DK)
DE CASTRO MASAVEU, Alicia (E)
DIEULANGARD, Marie-Madeleine (F)

ERDMAN, Fred (B)
HANSEN, Knud Erik (DK)
HOLOUBEK, Michael (A)
HOWELLS OF ST. DAVIDS, Baroness (UK)
JURGENS, Erik (NL)
KVIST, Kenneth (S)
LEPPÄNEN, Johannes (FIN)
MOONEY, Paschal (IRL)
MORAEL, Jacky (B)
van OVEN, Gerritjan (NL)
PRUSTI, Riitaa (FIN)
SVENSSON, Ingvar (S)
TAYLOR QUINN, Madeleine (IRL)
VALETTO BITELLI, Maria Pia (I)
WEBER, Wolf (D)

OBSERVERS

1. Court of Justice of the European Communities

ALBER, Siegbert (avocate-general)
SKOURIS, Vassilios (judge)

2. Council of Europe

Full members

FISCHBACH, Marc (judge)
KRÜGER, Hans Christian (deputy secretary general)

Alternates

BARTLING, Alexander
CALLEWAERT, Johan

BODIES OF THE EUROPEAN UNION INVITED TO GIVE THEIR VIEWS

1. Economic and Social Committee

SIGMUND, Anne-Marie
BRIESCH, Roger
HORNUNG-DRAUS, Renate

2. Committee of the Regions

BORE, Albert
du GRANRUT, Claude

3. Ombudsman

SÖDERMANN, Jacob

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