

# The *Accoucheurs* of the Constitutional Treaty

## The Praesidium of the European Convention and Conditions for Political Leadership

Mareike Kleine

Paper presented at the ECPR Joint Session of Workshops  
Workshop n. 26 on “The Role of Political Agency in the Constitutional Politics of the EU”

Granada, 14-19 April 2005

Very first DRAFT!

Comments most welcome

*Author's Address:*

Center for Transatlantic Foreign and Security Policy  
Otto Suhr Institut for Political Science  
Freie Universität Berlin  
Innestr. 22  
D – 14195 Berlin

Tel: +49 (0) 30 838 55527  
Fax: +49 (0) 30 838 54160

makleine@zedat.fu-berlin.de  
<http://www.fu-berlin.de/atasp>

## **Abstract**

The tasks of the Praesidium were described in the Laeken declaration: “The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis”. In retrospect, however, it did much more than that. Centred around the objective of achieving a “broad consensus on a single proposal [that] would carry considerable weight and authority” (Giscard D’Estaing) vis-à-vis the following IGC, the Praesidium played a crucial role in building and reaching a consensus on such a text. It therefore exerted leadership by influencing process and outcome of the negotiations. Drawing on several theories of leadership in multilateral negotiations, this paper explores why and how the Praesidium played such a decisive role.

## **Introduction**

At the Laeken summit in December 2001, the Heads of State and Government of the European Union agreed on convening the “Convention on the Future of Europe” as a forum preparing the 2004 Intergovernmental Conference (IGC). The adopted Laeken declaration (European Council 2001b) set out the institutional provisions of the Convention. It was composed of four heterogeneous components: representatives of the national parliaments, representatives of the Member States, the European Parliament (EP), and the European Commission.<sup>1</sup> The result of the Convention should be either a catalogue of different options, among which the IGC would choose, or some consensual recommendations. A Praesidium, supported by the Convention Secretariat, was meant to serve as a steering group. It was chaired by Giscard d’Estaing and his two vice presidents, Amato and Dehaene, and represented, albeit very unbalanced, each of the four components. Its tasks were described as follows: “The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis”.

In retrospect, however, it did much more than that. Because the Convention’s result was expected to be more significant the more the ensuing IGC would have to consider an already agreed-upon “status quo”, the Praesidium aimed at achieving a broad consensus on an ambitious single text. Surprisingly, this aim could be achieved. The Convention drafted the Proposal for a Constitutional Treaty, which revised the whole EU’s primary law and went well beyond the Nice Treaty. If one examines the Convention more closely, the crucial role of the Praesidium in fostering and attaining this goal is striking. Moreover, since the term consensus had never been further defined, the Praesidium assumed the task of determining its meaning and thereby heavily stretched its ascribed formal tasks. In sum, centred around the objective of achieving a

---

<sup>1</sup> Although they were not able to block an emerging consensus, the (then) accession candidate countries were fully involved in the discussions and represented in the same way as the Member States (one government representative, two of the national parliaments). Together with the observers of different EU institutions the Convention comprised 118 Conventioneers. But since the alternates were extensively involved in the whole deliberation process, the Convention actually comprised more than two hundred actors. For a more detailed description of the Convention and its work see Norman 2003.

“broad consensus on a single proposal [that] would carry considerable weight and authority” vis-à-vis the following IGC (European Convention 02-03-05), that the Praesidium exerted leadership, i.e. it guided the behaviour of the Conventioneers towards a single proposal for a Constitutional Treaty. The aim of this paper is to explore, how the Praesidium was able to play such a crucial role in building and agreeing on the Proposal for a Constitutional Treaty.

The paper proceeds as follows: Firstly, I will discuss approaches to political leadership with a view on multilateral negotiations and IGCs. In a second step, I seek to address the research question by heuristically tracing the suggested hypotheses in the European Convention. What the paper will not do is testing the discussed proposition against each other. This would require a more elaborated research design and the possibility for comparison. However, the paper concludes by discussing the findings with regard to the influence of other actors in the European Convention.

### **Political Leadership and Leadership Resources**

Approaches to leadership form a part of the literature on international cooperation, whose essence are problems of international collective action (Young 1989 and 1991, Underdal 1994, Sjöstedt 1999, Moravcsik 1999a, Young 1999, Moravcsik 1999b). Despite an assumed common interest in cooperation and a perceived zone of possible agreement (Sebenius 2002: 237), the negotiating actors might face difficulties to establish the realm of cooperation and to unanimously agree on a single decision. This holds especially true for multilateral encounters, which in contrast to bilateral talks are likely to be characterized by a high complexity. Due to involvement of multiple issues, actors and roles (cf. Winham 1977, Zartman 1994a and b), the uncertainty of the negotiating actors about the location of their zone of agreement is intensified (Young 1991: 283). A dominant hypothesis in negotiation studies thus states that a high level of complexity in multilateral negotiations decreases the efficiency of negotiations and generates a demand for leadership, i.e. the demand for a mediating party to raise the efficiency of the talks (Underdal 1994: 183).<sup>2</sup> It can be supplied if these parties, in comparison to the other actors, have or attain asymmetrical control over negotiation resources. The question of leadership is therefore necessarily mingled with that of influence, for one thing because it is assumed that leadership results in agreements that would otherwise not have been attained. On the other hand, because asymmetrical control over negotiation resources opens a window of opportunity that allows for wielding influence by imposing the own preferences on an outcome (Moravcsik

---

<sup>2</sup> Or even upgrade the common interest (Cf. Haas 1961: 168).

1999: 271).<sup>3</sup> In the first instance, leadership can therefore be defined as an “asymmetrical relationship of influence in which one actor guides or directs behaviour of others toward a certain goal over a certain period of time“ (Underdal 1994: 178).

However, the literature heavily disagrees about the obstacles to cooperation and hence the important independent variables for the supply of leadership. Moreover, they rest on different assumptions about the allocation of negotiation resources among the parties. Accordingly, the assessments of leadership in multilateral negotiations range from “a necessary condition”, when considering complexity as a general feature of multilateral negotiations (Young 1989: 258, Young 1991: 302, Young 1999: 808, Sandholtz and Zysman 1989, Zartman 2002: 79), to “generally late, redundant, futile, and sometimes even counterproductive”, because decentralized bargaining is deemed “naturally efficient” (Moravcsik 1999: 270, 298). The approaches either stress material, informational, procedural and/or ideational resources.<sup>4</sup> This will be elaborated below in more detail.

#### *Material resources*

The theory of hegemonic stability (cf. Kindleberger 1973) defines hegemony as the preponderance of material resources (like military capacity, raw materials and capital) that are relevant to the issue-area in question. Material advantages permit a hegemonic leader<sup>5</sup> bearing the initial expenses of creating a market of distress goods. This kind of leadership improves the attractiveness of an agreement and persuades other states “to follow a given course of action which might not be in the follower’s short-run interest if it were truly independent” (Kindleberger 1981: 243). Hence, asymmetries in material resources can result in the formation of stable cooperative relationships in order to produce public goods. The significance of hegemonic leadership for the formation and maintenance of regimes has been intensely criticized (for a critique see Keohane 1984: chap.3), although the former central proposition has not been fully rejected.<sup>6</sup> However, the importance of material, and especially financial,

---

<sup>3</sup> Since leaders generally seek both – mediation and influence –, distinguishing between a mediator and a negotiation party is a difficult enterprise (Jönsson 2002: 223, Christiansen 2002: 39-40) and the term leadership remains most often underspecified. For a critique see Malnes 1995.

<sup>4</sup> Another explanatory variable might be the employed leadership strategy (Metcalf 1998: 426, Underdal 1994: 183, Pruitt 2002, Beach 2004a, Beach 2004b). The success of exploiting leadership resources is contingent on the pursued goals, i.e. impartial mediation or influence. However, this claim is very problematic as it is highly endogenous. The choice of strategy will be ultimately dependent on the anticipated influence and the perceived value of the own resources. Thus, the strategy should rather be regarded as an indicator for leadership than as an explanatory factor.

<sup>5</sup> The Grecian word *hegemon* can be translated as leader. However, in the political science literature “hegemony” has a connotation of preponderance, which is not necessarily associated with “leadership” (Cf. Kindleberger 1986 and Malnes 1995).

<sup>6</sup> Given an interest in relative gains, it is indeed not convincing why either hegemonic leaders supply public goods for free, or why small states sometimes agree in being taxed by the preponderant power. Thus, Kindleberger ignores the distributional aspect of cooperation (for a critique see Snidal 1985: 585-590).

resources for reaching agreements that would otherwise not have occurred is commonly stressed in studies of interstate bargains in the EU. As a form of issue-linkage, side-payments are a general feature of IGCs that can improve the efficiency of the negotiations. Governments make concessions in one issue-area in order to reach an agreement in another issue-area (Moravcsik 1993: 504-507). Since this possibility is especially available to large and wealthy Member States (Moravcsik 1998: 65-66), we should expect leadership to be exerted by materially powerful actors, and outcomes to reflect patterns of material resources.

### *Informational resources*

But according to liberal intergovernmentalism, outcomes primarily reflect patterns of preference intensities that can be attributed to stable domestic coalitions (Moravcsik 1997). This hypothesis rests upon the assumption of the abundance of information and ideas in the EU. In comparison to ordinary multilateral negotiations, the number and heterogeneity of actors is relatively small, the shadow of the future very long, and informal norms constructed on the basis of preceding encounters are very dense (Moravcsik 1999: 299-300). Ex-ante transaction costs of generating information and ideas are thus relatively low compared to the benefits of cooperation (Moravcsik 1998: 61). Hence, the domestic demand for cooperation creates its own supply without the help of other actors.<sup>7</sup>

Neofunctionalists and rational institutionalists, however, strongly reject this claim and put much more emphasis on the complexity of negotiations and on uncertainty due to imperfect information. Informational asymmetries can occur regarding the substantive *content of an issue* and the *preferences* of the participating actors (Metcalf 1998: 422). The former point, *content of an issue*, is stressed in many studies of supranational actorness in the EU, which underline the legal and technical expertise possessed by the European Commission and other institutions. Informational advantages of supranational actors concerning policy formulation and policy implications of negotiated issues lead governments to agree on solutions they would otherwise not have chosen (Lindberg 1963, Christiansen and Jørgensen 1998: 444, Christiansen 2002: 40, Tallberg 2000: 848-49, Beach 2004: 411, cf. Barnett and Finnemore 1999: 708).<sup>8</sup> The latter point, information on the *preferences* of other actors, rests upon the assumption of bounded rationality. During complex negotiations, some actors might face constraints on their information-processing capacities. Against the background of a large quantity of dossiers, small

---

<sup>7</sup> There is only one possibility for supranational actors to gain influence in interstate bargains: When governmental actors face difficulties to ascertain the domestic preferences, supranational actors have the opportunity to act as a "two-level network manager". (Cf. Moravcsik 1999: 282-285).

<sup>8</sup> This is also a line of reasoning in research on epistemic communities and political entrepreneurship (c.f. Adler and Haas 1992: 381, Finnemore and Sikkink 1998: 899).

factions, *tête-à-tête* lunches, gossip, and sometimes complex decision-making procedures, it is possible to lose sight of the state of the play. In that case, it is argued, the presidency with support of the Council secretariat is in a unique position to keep the overview (Metcalf 1998, Beach 2004, Tallberg 2004).

It is also commonly argued that an uneven distribution of information follows from an unwillingness to reveal the true preferences to other actors. In fact, as Luce and Raiffa (1957: 134) claim, withholding and falsifying information about one's true utility functions, i.e. imperfect information, is inherent to real bargaining.<sup>9</sup> It is argued that the presidency is in the unique position to deal with this problem both by inviting to *confession-talks*, and by travelling through Europe in the *tour des capitales* (Tallberg 2004: 1003-04). Moreover, the presidency and the Secretariat are often used as sounding boards for true preferences (Beach 2004: fn. 8). Thereby, informational resources are reallocated and mediating actors gain an informational advantage. Nonetheless, and as Moravcsik (1999: 278) has pointed out, why should governments with an incentive to suppress information reveal it to a mediator? And why should they rely on information of experts? The above-mentioned example directs our attention on two other possible independent variables for leadership: procedural and ideational resources.

### *Procedural Resources*

Procedural Resources stem from the unique position to alter the formal and informal working methods of the negotiations. The power to change the rules of the game might result in a reallocation of negotiation resources, which increases the efficiency of the talks and leads to agreements that would otherwise not have occurred. Almost always this resource is only possessed by the chair or the presidency, and it can be used in many varieties.<sup>10</sup> These approaches also rest upon the assumption of bounded rationality and emphasize complexity and the uncertainty of actors. I will focus on three commonly mentioned aspects that can alter the allocation of information by reducing or enhancing uncertainty: the use of a single negotiation text, framing, and timing. When actors are unsure about the state of play, this uncertainty can be alleviated by equalling the information asymmetries through the introduction of a *single negotiation text* (SNT) (Fisher and Ury 1981: 118-122). This SNT reduces the number of required decisions by structuring the state of affairs and bundling positions. Furthermore, "the parties know what they will get when they do decide" (Ibid: 119), i.e. the SNT constructs and

---

<sup>9</sup> Actors face the dilemma (Lax and Sebenius 1986: ch. 2 and 7) that a successful search for the overall best solution requires trust and communication. But they also have to solve distributive problems, in which success depends on strategic action. Cf. Iklé (1964: 2) "Without common interest there is nothing to negotiate for, without conflict nothing to negotiate about."

<sup>10</sup> For an overview see Wall and Lynn 1993.

ascertains the zone of possible agreement. The drafted text is then circulated for criticism, modification and refinement.

This point is related to the second aspect *framing*. When a situation is ill-defined due to competing interpretations of the substantive content of an issue, the authoritative supply of a “perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted upon” (Rein and Schön 1991: 263) can increase the efficiency of the talks by reducing the number of possible options and specifying the zone of agreement. This comes close to what Zartman and Berman (1982: 95) call a formula, a “shared perception or definition of a conflict”. By offering an issue-specific construction of a situation, thereby ignoring or discriminating other possible perceptions, a frame defines the kind of information and expertise needed and “colours the nature of the options” (Kohler-Koch 2000: 516). Since negotiation parties are probably confronted with diverse and contesting claims, the “conditions under which specific ideas are selected and influence policies while others fall by the wayside” (Risse-Kappen 1994: 187) have to be specified. I will get back to this beneath.

*Timing* is also commonly stressed as an efficient tactical device. Negotiation studies point to different sequences which negotiations undergo. Zartman and Berman talk of a diagnostic, a formula, and a detail phase, which are all characterized by different working methods (Zartman and Berman 1982). Of course, it is possible that the transition between these stages emerges without an external influence. But a turning point can be precipitated by artificially separating the talks and prolonging or shortening some stages until “the time is ripe” for the next.<sup>11</sup> The presentation of a SNT for example can herald the beginning of the detail phase. Furthermore, generous deadlines for the formulation of positions can reduce the uncertainty of bounded rational actors to ascertain the state-of-play. The opposite, of course, results in the increase of uncertainty and can enhance asymmetries of informational resources (cf. Metcalfe 1998: 417-418).

### *Ideational Resources*

Under the condition of unanimity and consensus, which are the ordinary decision-making modes in multilateral negotiations, and given the absence of military coercion among European democracies, a deliberate reallocation of negotiation resources is in need of an explanation. So why do negotiation parties reveal their preferences to certain actors while concealing them from

---

<sup>11</sup> IGCs, like most multilateral negotiations, have always witnessed preparation stages such as the Dooge committee for the Single European Act, the Reflection group for the 1996-7 IGC, or the group of wisemen for the Nice IGC. Hence, it is argued that studying solely IGC negotiations tells only half of the story as important preceding stages are ignored (Sverdrup 2002). Nevertheless, this objection concerns approaches to integration, and not studies of negotiation dynamics.

others? And why can procedural resources that probably bias the negotiations be used? Moreover, why do advantages in material resources only occasionally result in the exertion of leadership? As Oran Young has pointed out, an essential feature of leadership “lies in the ability to translate structural power into bargaining leverage” (Young 1991: 289).<sup>12</sup> In that regard, many students of leadership introduce ad-hoc variables like negotiation skill or creativity, which unfortunately most often remain ill-defined and therefore tend towards tautology.<sup>13</sup> But the above mentioned examples direct our attention to other variables that may account for variance in influence and, more importantly, to the differences between ordinary bargaining and leadership (Malnes 1995): When negotiation parties are unwilling to divulge their true preferences, the credibility of pursuing a yet unattained collective goal is an indispensable ideational resource to learn the preferences of the negotiating parties. It is hence the uneven distribution of ideational resources like credibility that accounts for the exertion of leadership. In short, the supply of leadership will be rejected when the potential leader does not have the legitimacy to intervene and to mediate among the negotiation parties (Metcalf 1998: 420). Ideational resources are therefore an indispensable precondition for guiding or directing “behaviour of others toward a certain goal over a certain period of time“.

The credibility of a leader is first of all reflected in its reputation as an honest broker. Neofunctionalists argue that supranational institutions like the Commission possess such a reputation vis-à-vis the Member States that enable them to effectively mediate among them (cf. Lindberg 1963). The political legitimacy also adds to this aspect: It has been argued that the European Court of Justice (Burley and Mattli 1993: 73) or the EP as the only directly and democratically elected institution can be regarded as representing the common good (Haas 1964: 119). As mentioned above, credibility also stems from the technical and legal expertise of an actor. New information is accepted due to trust in the impartiality and the problem-solving nature of the information. This directs our attention on a further aspect of credibility: The cognitive consistency theory in psychology regards uncertainty as a precondition for the consideration of new arguments, but add that the acceptance of new claims is dependent on the type of the argument used (Chaiken, Wood, and Eagly 1996). As case studies confirm, the credibility of a speaker reduces the uncertainty and, thus, plays a crucial role for the acceptance of arguments (Risse and Ulbert forthcoming: 8) and certain frames.<sup>14</sup> Since this acceptance

---

<sup>12</sup> So does Kindleberger (1986: 841-42) when he discusses the terms “hegemony” and “leadership”.

<sup>13</sup> For a critique see Moravcsik 1999: 275-278.

<sup>14</sup> Arguing and persuasion can be defined as non-manipulative reason-giving in order to alter actors’ choices and preferences irrespective of their consideration of other actors’ strategies (see Keohane 2001: 10). This aspect is related to a debate in International Relations about the role of material and ideational factors and the emergence of norms in international politics. Especially it ties up to studies that try to trace the causal mechanisms of arguing and bargaining in multilateral negotiations (see Müller 1994, Risse 2000, Ulbert et al. 2004). The question, under which

might also influence the preferences, interests and even identities of the negotiation parties, leadership based on ideational resources might not only result in settling an accord within a perceived zone of agreement. It might also change the scope of the zone itself (Sebenius 1992: 354).

In sum, asymmetries in material, informational, and procedural resources are important resources for exerting leadership. However, ideational resources have turned out as indispensable for translating these asymmetries into influence. But not only do they increase the efficiency of the negotiations, they might even change the scope of this zone itself. Now, as I have introduced these leadership resources in detail, I will now turn to our research question and try to trace, whether the Praesidium of the Convention possessed these resources and how it was able to make use of them.

### **Leadership in the European Convention**

The Laeken Declaration set out the institutional provisions for the Convention. These were by and by modified during the Convention's work. In the following I will show how the Praesidium reallocated the initial negotiation resources and thereby created a demand for and a supply of leadership.

#### *The Laeken Declaration*

The Laeken Declaration is divided in three main parts. The *first part* begins with asserting that the European Union is at a crossroads, a defining moment in its existence. It faces a twin challenge in that it has to become more efficient, both internally and externally, and at the same time be brought closer to its citizens. In a *second* step, the Declaration outlines the challenges and possible reforms of the European Union by raising a bulk of questions concerning firstly the division and definition of competence in the EU, secondly the simplification of the instruments and thirdly democracy, transparency and efficiency in the EU. The final fourth set of question is captioned "Towards a Constitution for European Citizens" and addresses the reorganization and simplification of the treaties, and the status of the Charter of Fundamental Rights. It is finally asked, "whether this simplification and reorganization might not lead in the long run to the adoption of a constitutional text in the Union" (European Council 2001b). In the last *third* part, the Declaration sets out the tasks, the composition and the working methods of the Convention.

---

circumstances arguing and persuasion indeed become effective, is the focus of a research project conducted at the Center for Transatlantic Foreign and Security Policy, Freie Universität Berlin (Cf. Kleine and Risse 2005).

The Convention's tasks are described as follows:

“The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.

Together with the outcome of national debates on the future of the Union, the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.” (Ibid)

Hence, the Laeken Declaration envisaged two possible results: a list of different opinions or recommendations if consensus is achieved. The former option takes into account that some of the raised questions might not be settled in the Convention. In that case the degree of support, which one could conceive as the number of consenting and rejecting Conventioneers, would be recorded. It is noticeable that the latter proposition – recommendations – is written in plural. This means that a consensus on all discussed matters was beyond the imagination of what could possibly be achieved. It is also made clear that the final document will be just one result among others, which will provide a “starting point” for the IGC. Hence, the Laeken Declaration was formulated in a very open manner so that despite some safeguards like the heterogeneous composition and the short deadline (Magnette and Nicolaïdis 2004: 386-388) the result was mainly left to the Convention's internal dynamics.

As said, the Convention was composed of four basic components that represented the national parliaments, the Member States' governments, the EP and the European Commission. These components were also represented in the Praesidium, which consisted of the Convention Chairman (Giscard d'Estaing), two Vice-Chairmen (Giuliano Amato and Jean-Luc Dehaene) and nine other members drawn from the Convention's body (the representatives of all the governments holding the Council Presidency during the Convention, two national parliament representatives, two EP representatives and two Commission representatives). The proceedings should be completed within one year, and all official documents and discussions were supposed to be accessible to the public.<sup>15</sup> The declaration goes on with briefly describing the working methods:

“The Chairman will pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate. The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis.

The Praesidium may consult Commission officials and experts of its choice on any technical aspect which it sees fit to look into. It may set up ad hoc working parties.

(...)

The Praesidium will be assisted by a Convention Secretariat, to be provided by the General Secretariat of the Council, which may incorporate Commission and European Parliament experts.” (Ibid)

---

<sup>15</sup> The short deadline was thought as a safeguard to create a buffer of at least nine months between the Convention and the start of the 2004 IGC (cf. Magnette and Nicolaïdis 2004: 386).

The Praesidium's negotiation resources as described in this section are at best moderate. It does not have any material resources that could be used for side-payments. Also informational advantages seem to be modest compared to the information available to the components. Albeit it is assisted by the Convention Secretariat and might therefore be better prepared to survey the debates, it does not possess any exclusive information since all documents, discussions and expert meetings are made public. Moreover, the Praesidium itself and the Secretariat are composed very heterogeneously and comprise every component, which are themselves supported by their sending institutions' secretariats. As to the procedural resources, the Laeken Declaration is rather vague. On the first sight, "paving the way" is a very decided term, which gives the impression that the Praesidium determines the content of the debate. Also the possibility to establish working groups (WG) gives the Praesidium a say in structuring the debate. Nevertheless, the expressions "serve to lend impetus" and "initial working basis" put across that the discussion should mainly be left to internal dynamics. With respect to ideational resources one could argue that the heterogeneous composition of the Praesidium was conducive to its reputation as an honest broker.

In sum, the tasks of the Convention and the working methods were formulated rather vaguely. Nevertheless, we can assert that the initial negotiation resources were distributed almost evenly. In comparison to the components, the Praesidium possesses an advantage in procedural resources, because it is able to structure the beginning of the negotiations. However, it does neither possess any material resources that could be used for side-payments, nor informational advantages. What about ideational resources?

#### *The Praesidium and the Secretariat*<sup>16</sup>

The appointment of the Convention chairman caused a heated debate at the Laeken summit. After Berlusconi had withdrawn the candidature of Giuliano Amato just at the beginning of the summit, the focus was on Giscard d'Estaing, who was strongly backed by France, Germany, Spain and Austria. His candidature provoked much resentment: it was argued that he was too old, arrogant and inexperienced in the latest history of the EU; he was suspected of favouring large member states; there were also claims for a socialist candidate, in particular Jaques Delors. After confession talks with his fellow colleagues, the Belgian Council president Verhofstadt proposed to accompany the chairman by two vice-presidents (European Report 01-12-19). This *triumvirate* was therefore composed of the Frenchman Valéry Giscard D'Estaing, the Italian Giuliano Amato and the Belgian Jean-Luc Dehaene (European Council 2001a). Although the

---

<sup>16</sup> Cf. <http://european-convention.eu.int/praesidium.asp?lang=EN>

vice-presidents were chosen to outweigh a too intergovernmental approach, the composition raised fears whether “there are not too many representatives of the Council” (Klaus Hänsch, quoted in European Report 01-12-19). Also the two *Commission* representatives in the Praesidium had already been confirmed in the informal talks of the Laeken Council: Antonio Vitorino, the Portuguese commissioner of Justice and Home Affairs, and Michel Barnier, the then French commissioner for institutional affairs. The *European Parliament* sent two notably experienced politicians: Klaus Hänsch, a German Social Democrat, and Íñigo Méndez de Vigo, a Spanish member of the European People’s Party. Ana Palacio, Henning Christophersen, and George Katiforis were appointed as the *representatives of the governments* holding the presidency during the Convention’s work. The Spaniard Ana Palacio, who was later going to be replaced by her alternate Alfonso Dastis, was furthermore MEP, just as the Greek George Katiforis, who was also going to be replaced by George Papandreou. Also the Henning Christophersen (DK) could come up with ten years of European-level experiences as the Vice-President of the European Commission from 1985-1995. The last two representatives of the *national parliaments* came from Great Britain and Ireland: Gisela Stuart and John Bruton. Sir John Kerr, the former British permanent representative, was appointed to head the *Convention’s Secretariat*. This was further composed of fifteen experienced lawyers, diplomats, academics, and administrators of all three supranational secretariats.<sup>17</sup> The composition of the Praesidium prompted critique from various sides. The loudest of all was the complaint of the Nordic and less integrationist states, which felt especially underrepresented (Economist 02-02-21). In fact, of twelve full members of the Praesidium, the founding and southern member states with a reputation as being integrationist make up three fourths. Concerns were also caused by the male domination in Praesidium and Convention (only 16 of the initially appointed 107 full members were women; European Report 02-01-19) as well as by the exclusion of the *accession candidate countries* from the Praesidium. Although they did not form a component of their own, the accession candidate countries were finally allowed to send an observer. They chose the Slovenian Alojz Peterle to follow the discussions in the Praesidium.

In sum, the final composition of the Praesidium gives no insight for an initial reputation as being credible. On the contrary, the heterogeneity attracted much criticism of different camps and resulted in great mistrust. Due to his reputation as being arrogant,<sup>18</sup> Giscard was highly suspicious of trying to dominate the Convention’s work (The Independent 02-02-28). As he had already voted against the Nice Treaty in the Assemblée Nationale, it seemed clear that he had high ambitions with the Convention. But it was not possible to assess his blueprint for European

---

<sup>17</sup> The members of the Secretariat came from the UK, Germany, France, Spain, Portugal, Sweden, Belgium, The Netherlands and Poland.

<sup>18</sup> Giscard had already attracted criticism because of his salary demands (European Report 02-02-27).

integration in advance, so much importance was assigned to his first days and the inaugural speech, which was awaited impatiently (The Independent 02-02-25).

### *The Rules of Procedure: Reconfiguring the Convention*

This suspicion grew stronger with the drafting of the rules of procedure (European Convention 02-02-27b), whose already sixth version was released after the first informal meeting of the Praesidium on 27 February. Three issues caused great dismay (Norman 2003: 43): the questions of voting on options, the inclusion of alternates, and the timing. Some MEPs argued for indicative votes and straw polls to assess the levels of support (European Report 02-03-16, Norman 2003: 44). But Giscard and the Praesidium insisted that any effort had to be made to avoid voting, because any like provision would result in systematic calls for votes (European Report 02-03-16). In addition, the Convention's composition and, thus, votes would in no way be representative for the European demography (SZ 02-02-28). However, the question of how to assess an emerging consensus was left open (FAZ 02-02-02). In his inaugural speech on February 28, Giscard pointed out that this question was related to the overall Convention's task and importance.

“The Laeken Declaration leaves the Convention free to choose between submitting options or making a single recommendation. It would be contrary to the logic of our approach to choose now. However, there is no doubt that, in the eyes of the public, our recommendation would carry considerable weight and authority if we could manage to achieve broad consensus on a single proposal which we could all present. If we were to reach consensus on this point, we would thus open the way towards a Constitution for Europe” (European Convention 02-03-05).

The IGC was expected to have more difficulties to change the single text when starting from a consensual status quo and not from scratch. Therefore, Giscard also argued against the one-year time frame for the discussions and set out his view of the Convention's purpose and proceedings:

“We are a Convention. What does that mean? A Convention is a group of men and women meeting for the sole purpose of preparing a joint proposal. The principle underlying our existence is our unity. (...) Let us be clear about it. This Convention cannot succeed if it is only a place for expressing divergent opinions. It needs to become the melting-pot in which, month by month, a common approach is worked out. (...) [In] order to think about what proposals we can make, the members of the Convention will have to turn towards each other and gradually foster a "Convention spirit" (Ibid).

In order to create such a spirit, Giscard was reluctant to let the alternates fully participate in the Convention's work. Only in the absence of the full member and only with prior note, the alternate could be present during the meetings (European Convention 02-02-27b). In order to prevent any compartmentation, the Praesidium also rejected some demands of MEPs to create a parliament-like body with permanent sub-structures, e.g. committees, *rapporteurs* and elected chairmen (Hänsch 2003: 332). The Conventionals were hence placed in alphabetical order and

not divided in factions. Moreover, the Convention's work should be sequenced in three consecutive stages: the listening stage (*Phase d'Écoute*), which was supposed to contribute to a thorough examination of all visions on the purpose of the European Union; the study stage (*Phase d'Étude*) that was intended for considering the Laeken questions and the various prescriptions of European integration; and finally the proposal stage (*Phase de Réflexion*) for working on the single proposal. Giscard made clear that he was prepared for a lengthy period of attentive listening before starting with working on texts (Financial Times 02-02-25). But several MEPs argued against a long listening phase. They wanted to immediately start with working (The Independent 02-02-28).

Several other issues troubled the first days: Criticism was attracted by the central role given to the Praesidium and the chairman in determining the agenda of the meetings, the length of the discussion, and who is to speak and how long (European Report 02-02-27).<sup>19</sup> Following the chairman's proposal, the Praesidium would also set up WGs, whose mandate, composition and working procedure it was to determine. This was immediately challenged by several MEPs who wanted the Convention's body to have a greater say in structuring the WGs (The Independent 02-02-28). Also the translation of documents and speeches in the languages of the accession candidate countries and the number of plenary meetings caused the unease of the body (European Report 02-03-06). Giscard showed to be responsive for the concerns against the Praesidium, but placed the responsibility for a dominant Praesidium on the body itself.

“Some of you have expressed concerns about the role of the Presidium and the Plenary, fearing that the bulk of the work will in practice be carried out by the Presidium. (...) It is normal for the proceedings of a Convention to be prepared and organised by a Presidium, as is the case for any assembly or organisation. However, discussions will take place here and will be public. Everything else will depend to a large extent on you and on the content of your contributions. If your contributions genuinely seek to prepare a consensus, and if you take account of the proposals and comments made by the other members of the Convention, then the content of the final consensus can be worked out step by step here within the Convention” (European Convention 02-03-05).

The row over the rules of procedure could not be solved until the second plenary session, when the revised version (European Convention 02-03-14) was presented. It was still controversial, but the Convention agreed to handle the rules very flexibly. The WGs were still to be set up on the proposal of the chairman, which meant that he was not only able to determine the agenda of the WGs, but also their timing (Article 15). In addition, the Praesidium was still able to decide on the agenda, the length of discussion, the right to speak, and on procedural questions relating to the conduct of the meetings. Nevertheless, the original rules were attenuated in that the chairman was obliged to “taking into account the views expressed by members of the

---

<sup>19</sup> Andrew Duff MEP got het up about the rules of procedure: „We are not going to be trampled over by any president, no matter how grand, or by a praesidium. We will be responsible for our work” (quoted in The Independent 02-02-25).

Convention” and “arranging as far as possible that the diversity of the Convention’s views is reflected in the debates” (Article 6). The agenda could now be changed “when the request is made by writing one week before the scheduled session of the Convention by a significant number of members” (Article 2). Furthermore, Giscard gave in with regard to the question of the inclusion of alternates. This was regarded as positive and as lifting some mistrust against the Praesidium, because it demonstrated that Giscard was able to change his mind due to constructive critique and well argued counter proposals (Norman 2003: 45). However, he was successful in putting through the abstention from vote. After agreeing on the rules of procedure, the Convention could finally begin with its work.

In sum, the Praesidium has gained significant informational resources. Albeit it does not possess any informational advantage concerning the content of an issue or the preferences of the actors, the Praesidium is the only to know the actual meaning of consensus. The power to determine the meaning of this vague concept results in a disproportionate informational advantage about the relative weight of other actor’s preferences. In turn, the consensus enhances the complexity of the negotiations and increases the Conventioneers’ uncertainty about the relative importance of all preferences. This uncertainty is expected to be further enhanced by avoiding any possibility of prior institutional compartmentation. Hence, the Conventioneers do not any longer possess the same informational resources as the Praesidium. This creates a demand for leadership to ascertain the zone of agreement. With regard to procedural resources, the Praesidium has a remarkable freedom to determine the agenda of the meetings and of the WGs. It can still decide on the length of the discussion and on the right to speak. And due to its right to set up WGs, it does also decide the length and the timing of the phases. But the revised rules of procedure make clear that these rights are only accepted under reverse. In addition, the solidity of a consensus is dependent on the tolerance and legitimacy of the Praesidium’s role. With regard to the ideational resources we can observe that the row over the rules of procedure has somewhat improved the reputation of the Praesidium. What is more, in his inaugural speech the chairman Giscard d’Estaing has showed his determination to achieve nothing less than a Constitutional Treaty agreed on by broad consensus.

#### *Listening, studying, and fostering the goal of a Constitutional Treaty*

The listening phase lasted about six months until the summer 2002. Its primary purpose was the articulation of and the listening to different views of European integration in seven two-daily plenary sessions (European Convention 02-02-27a). There were soon calls from MEPs to shorten the listening phase and to immediately begin with establishing WGs and drafting texts.

But since the Conventioneers reflected different levels of expertise, others saw the long duration of the listening phase as particularly important for getting to know each other, building confidence, and familiarize with EU matters (Gisela Stuart 02-09-27). Giscard did not concede the Conventioneers to start with the next phase until June 2002, when the first wave of WGs (I to VI) was established. Their mandates primarily addressed the Post-Nice issues and questions concerning legal and technical issues. The policies were left to be discussed in the second wave.<sup>20</sup> Although the discussions were not made public, the proceedings in the WG were similar to that of the Convention. The chairman, who was appointed by the Praesidium and supported by the Secretariat, structured the proceedings and declared the consensus.

One WG turned out to be of special importance for the further work and the result of the European Convention. The WG on legal personality, which was chaired by the professor of constitutional law, Giuliano Amato, was given the mandate to discuss different kinds of legal personality for the European Union. This had been an issue at each IGC since Maastricht, but the Member States had yet not been able to achieve an agreement – mainly because of the possible political implications. Since a single legal personality (cf. Schroeder 2002) that comprised that of the EU and the EC would at the same time call into question the separate treaties, this issue was mingled with the questions of the merger of the treaties, the dissolution of the pillar structure, and therefore the issue of reorganizing and simplifying the primary law (cf. De Witte 2002).<sup>21</sup> Hence, a decision on the legal personality of the EU would have implications on the goal and scope of the Convention – whether it would be able to draw up a Constitution that revised the whole primary law. One should bear in mind that in such a case the whole primary law would legally succeed the existing treaties and thus be subject to ratification – a matter that led the precedent IGCs opting for simply amending the treaties.

The Secretariat formulated the mandate and asked

“What would be the consequences of explicit recognition of the EU’s legal personality? And of a merger of the Union’s legal personality with that of the European Community? Could these contribute to the simplification of the Treaties?” (European Convention 02-05-31).

The WG was therefore to discuss the consequences of either the explicit recognition of a legal personality of the EU, or the consequences of a single legal personality that comprised that of

---

<sup>20</sup> [http://european-convention.eu.int/doc\\_wg.asp?lang=EN](http://european-convention.eu.int/doc_wg.asp?lang=EN). In particular, they focused on Subsidiarity (WG I, chaired by Méndez de Vigo), Charter/ECHR (WG II, chaired by Vitorino), Legal personality (WG III, chaired by Amato), National parliaments (WG IV, chaired by Stuart), Complementary Competencies (WG V, chaired by Christophersen), and Economic Governance (WG VI, chaired by Hänsch). This last WG was established against the judgement of the secretariat and in response to calls from the Convention (European Report 02-05-29, Norman 2003: 61).

<sup>21</sup> The primary law comprises much more than the Treaties establishing the European Communities (TEC) and the Treaty of European Union (TEU). It has always been amended, so that there is no legally authentic consolidated version, but dozens of treaties, acts, and protocols.

the European Community. These central questions were explicitly tied up to four Laeken questions, which addressed both internal and external effects of legal personality:

“Should the distinction between the Union and the Communities be reviewed? What of the division into pillars? How should the coherence of European foreign policy be enhanced? Should the external representation of the Union in international fora be extended further?” (European Convention 02-05-31).

While the latter two questions are formulated in a very suggestive manner, the former questions take up possible consequences of a single legal personality, namely the merger of EU and EC, and the dissolution of the pillar structure. Finally, the mandate invited the WG inter alia “(to) explore the extent to which the merger would assist simplification, facilitating either a reduction in the number of instruments and procedures and/or fusion of the Treaties” (Ibid.).

In the first meeting, it was pointed out that the question of legal personality implied changes of constitutional nature (European Convention 02-06-19). It was decided to hear a group of experts on the consequences of either a single or a fourth legal personality. The meetings of June and July foresaw an exchange of views with the participation of experts of various EU’s legal services, and with academics from different law faculties.<sup>22</sup> These experts were in almost complete agreement. They all emphasized that the question of explicit recognition of the legal personality as well as the attribution of a single legal personality to the EU were, from a legal point of view, distinct from the question of the allocation of competences and the institutional balance. The merger of the personalities did not *ipso facto* result in a merger of the Treaties or in the dissolution of the pillar structure. But a single legal personality would increasingly simplify the Union’s relation with third countries and facilitate the simplification of the treaties (European Convention 02-07-02), whereas an additional fourth personality for the EU would rather increase problems of external visibility and transparency (Cf. European Convention 02-07-03).

Meanwhile, a group of Conventioneers had signed a motion that demanded a draft Constitutional Treaty as a reference for the Convention’s discussions. The undersigned Conventioneers called for the preparation of a Constitutional Treaty by the European Commission by October, which should consist of two parts with fundamental and non-fundamental provision, merge the existing treaties and dissolve the pillar concept (European

---

<sup>22</sup> Namely Jean-Claude Piris, Jurisconsult of the Council, Pieter-Jan Kuijper, Director at the Commission’s Legal Service, and Gregorio Garzon-Clariana, Jurisconsult of the EP in the meeting of 26 June. Four experts were invited to the meeting on 10 July: Jean-Victor Louis, Professor at the Free University of Brussels; Antonio Tizzano, Advocate-General at the Court of Justice of the European Communities, Alan Dashwood, Professor at Cambridge University, Carlos Westendorp y Cabeza, the then Chairman of the European Parliament Committee on Industry, External Trade, Research and Energy and former chairman of the preparation group for the 1996 IGC. In the meeting on 11 September 2002 the WG heard Professor Peter-Christian Müller-Graff from the University of Heidelberg, and Professor Bruno De Witte, from the European University Institute Florence, who was member of a study group on the feasibility of reorganizing the treaties in 2000.

Convention 02-07-10). The Praesidium, however, decided not to forestall the result of the WG and unanimously agreed “that the proposal was unacceptable since it would imply that the Convention would shirk its own responsibilities” (European Convention 02-07-12). To that point and short before the summer recess, the focus of the WG’s discussions moved away from the question of whether or not and what kind of legal personality for the EU. The focus turned towards the question whether the attribution of any kind of legal personality would have further legal implications on the Union’s external relations, and whether it should be combined with the merger of the treaties. A paper issued on 15 July 2002 by the member of the Secretariat, Hervé Bribosia, emphasized the need to consider the link between any merger of those Treaties and the form of the Convention’s final outcome (European Convention 02-07-15). It discussed two options: Firstly, “a merger the TEU and the TEC would mean that a new, consolidated instrument replaced the two founding Treaties and the successive Treaties revising them, which would drastically simplify the Treaties”. As a matter of course, this option entailed the decision for a single legal personality. The second option was to not merging the Treaties and simply making a number of amendments respectively drawing up a new basic Treaty. The latter would either replace the TEU, or the TEU and the TEC would have to have to be adjusted to it. This option did not anticipate a decision for either a single or a fourth legal personality and was initially preferred by John Kerr (Norman 2003:63). In August, Bribosia worked on an internal Praesidium paper that took up these two possibilities and discussed legal as well as political implications of both options. This paper was accidentally sent to all Convention members and published on the Convention’s website (Ibid: 64). In addition to the points already mentioned in the first paper, Bribosia placed emphasis on the legal hierarchic aspect of the options. The first option, a whole new treaty as part of a reorganization and simplification, would legally succeed the original treaties and their revision. Thus, it would again be subject to ratification. Nevertheless, the paper stated that this option would, on the one hand, make the treaty readable, and, on the other hand, require the canvassing of support of the Member States and their citizens. In contrast, it was argued that the second approach, a *chapeau treaty*, would complicate rather than simplify the architecture of the treaties (European Convention 02-09-10).

In September, the WG discussed its draft final report. A broad consensus emerged on recommending a single legal personality. However, different views were expressed firstly on the implications on the EU’s external relations, and secondly on how detailed the report should be with regard to the merger, the internal effects and the recommendations for the Convention’s goal (cf. the Contributions to the preliminary draft by Kenneth Kvist and Gunter Pleuger, European Convention 02-09-05a and b). Alongside with these discussions, the Praesidium agreed on putting forward a draft treaty framework in the end of October, but it still left open

the question if it was going to be a chapeau or a single constitutional framework. Giscard decided to retard this decision until the WG would have presented its opinion on the question of legal personality (European Parliament 02-09-12). On 1 October the WG presented its final report, with only William Aitol, a French eurosceptic MEP, objecting. It was based upon the positions expressed by the Legal Services of the EP, Council and Commission,

“which all emphasised forcefully that explicit conferral of a single legal personality on the Union was fully justified for reasons of effectiveness and legal certainty, as well as for reasons of transparency and a higher profile for the Union not only in relation to third states, but also vis-à-vis European citizens. (...) The merger of the legal personalities of the Union and the Community will pave the way for merging the Treaties into a single text, which would contribute to simplifying the Treaties” (European Convention 02-10-01).

So WG opted for a single legal personality and the merger of the treaties. Furthermore, it recommended the abolition of the pillar structure and the elaboration of a single treaty falling into two parts. Shortly after the adoption of the WG’s report, Giscard held a speech before the College of Europe in which he appreciated this result and again argued for a constitutional treaty. Moreover, he stated that the recommendations gave reason for reconsidering the EU’s institutional arrangement. Hence, in the final stage the Convention should find “the best linkage between the three sides of the institutional triangle” (Giscard D’Estaing 02-10-02). On the next day, the Plenary overwhelmingly supported the recommendations, which were described as very “convincing” (Hain) (European Parliament 02-10-03).

In sum, the WG on Legal Personality turned out to be very decisive for elaborating a single proposal and aiming at revising the EU’s primary law. Because of the scope of this paper, I have not ascertained the initial preferences of the members of the WG. However, since the question of legal personality could not be resolved in the IGCs for Amsterdam and Nice, the quick achievement on a consensus on this issue is in need for an explanation. The WG had to consider various options with diverse legal and political implications. In addition, the WG was to decide by consensus. I therefore assume an uncertainty about the content of the issue and the importance of preferences, which caused a demand for leadership. The rules of procedure allowed for setting up a WG and determining its agenda. As has been shown, the issue was primarily framed as a legal problem, and the invited experts, mostly jurists, agreed on almost every point of the raised questions. Whereas the political implications of the different kinds of legal personality as well as the goal of the European Convention were initially contested, this brisance was calmed down by referring to the legal point of view and to the objective of simplification. So the chairman of the WG with the support of the Secretariat supplied leadership and reduced the uncertainty of the members by pointing to the legal point of view and to simplification.

For the Convention as a whole, the timing was of crucial importance. The Conventioneers were uncertain about the objectives of the Convention. But the prealable decision (the WG on Legal personality was the second one to report) of attributing a single legal personality and on merging the treaties opened the way for decisions in other WG and brought about certainty about the respective zone of agreement. Moreover, by awaiting the result of the WG, the Praesidium prolonged the listening stage and helped. This long listening stage helped equalling the informational resources among the Conventioneers with regard to the content of the issue and the preferences of other actors. Nevertheless, the Praesidium still possessed the informational advantage on the meaning of consensus and the relative importance of those preferences. As to ideational resources in the WG, Giuliano Amato, had an impressive reputation as being credible and even “ingenious”. His handling of the WG was highly esteemed (Interview 04-11-16, Norman 2003: 30 and 84, cf. European Parliament 02-10-03). Giscard, in contrast, was still suspicious of trying to dominate the Convention’s work. However, the decision to await the result of the WG added somewhat to his reputation as the question of the Convention’s *finalité* was primarily left to the Convention itself.

#### *Fleshing out the Skeleton: The Reorganisation of the European Union’s Primary Law*

The preliminary draft Constitutional Treaty, also referred to as the “Skeleton”, was issued on 28 October. In the presentation to the Plenary, Giscard pointed out that

“[le] point de départ de ce texte est le large consensus dégagé lors de notre débat de la dernière session en faveur du principe d’une personnalité juridique unique. En effet, ceci ouvre la voie, jusqu’ici fermée, à la fusion des Traités de la Communauté et de l’Union européenne.” (European Parliament 02-10-28).

The skeleton comprised three parts: After a preamble, the first part, called “constitutional structure, laid down the constitutional and institutional architecture and was described in detail. The second would deal with the policies, whereas the third should comprise general clauses European Convention 02-10-28). The constitutional part consisted of ten titles<sup>23</sup> and already foresaw the incorporation of the Charter of Fundamental Rights. The presentation of the Skeleton brought a new impetus into the Convention. The WG and the Conventioneers used it as a point of reference, so that the following work was said to be supposed to “flesh out the Skeleton”. It was used as a SNT that showed the supposed state of the negotiations.

The intensity of work clearly increased with the last WG report and the presentation of the first sixteen articles on 6 February 2003, which loudly heralded the beginning of the last stage, the

---

<sup>23</sup> Definition and objectives; citizenship and fundamental rights; competences and actions; institutions; implementation; democratic life; finances; Union action in the world; the Union and its immediate environment; membership.

phase de réflexion. The Plenary sessions were still important and well attended, but the emphasis was clearly put on drafting articles and proposing amendments. Despite a very short deadline of less than a week for amending the proposals, the Conventioneers published nearly 3000 amendments in the time from February and mid-May. These ranged between federalist inspired and strongly eurosceptic ideas, so that the Secretariat was given the possibility to simply outweigh these amendments and primarily focus on majority positions and especially those amendments with many signatures (Deloche-Gaudez 2004). All these articles were not solely published on the website of the Convention, but also edited, summarized and analysed by the Secretariat and then discussed in the Praesidium. The Praesidium thus became the crucial lieu for discussing the state of the negotiations and determining the consensus.

Meanwhile, the Members States had understood the importance of the Convention. They began to influence it from inside and outside by replacing their representative with foreign ministers and by producing their own proposals. Especially the Franco-German Proposal on institutions, published on 15 January 2003, turned the attention towards the decisive questions of the overall institutional balance (European Convention 03-01-16). However, Giscard was reluctant to address these questions in the beginning of 2003. Firstly, because the Iraq crisis had soured the relations between the European capitals and he did not want these issues to be affected by it. Secondly, because he wanted to exert some time pressure on the components (Interview 04-11-16). Thirdly, because he wanted to await the informal summit in Athens before drawing up the Constitutional Treaty (Norman 2003: 219). There, the Heads of State and Government already signalled their accordance with some issues concerning the institutional architecture. Nevertheless, the Convention had fallen behind with its work, but the European Council did not accept any further delay. The Draft Treaty was expected for the summer summit in Thessaloniki (Council 03-04-16), actually more time pressure than Giscard had wanted. Only a few days after the Athens summit on 22 April, Giscard annoyed the Praesidium with his own proposals on institutional questions. Although the Praesidium had agreed on discussing these issues among themselves before presenting them to the Plenary, Giscard unveiled his proposals simultaneously to the Praesidium and the press. This *fait accompli* not only upset the Praesidium, it also shocked many Conventioneers because it clearly went beyond the Nice provisions and showed an intergovernmental blueprint (Bulletin Quotidien Europe 03-04-24, Norman 2003: 228). They also contained some of Giscard's favourite pet issues like a Congress of People, and some surprises such as the reformulation of the qualified majority. But these ideas did not survive the Praesidium's discussions for long. One day later it presented a revised version that was then presented to the Plenary on 24 April. Although Giscard had given up a lot,

the revised paper nonetheless still contained some very controversial issues (European Convention 03-04-23).

But the focus on institutions clearly signalled the entering of a pivotal phase. The discussions primarily dealt with the decisive Nice questions and mainly took place within the Praesidium and the various components. The disputes over the institutions also affected the Praesidium's work and working methods. In order to gain a more precise insight in their discussions, the triumvirate decided to go directly into the components and talk to the Conventioneers. In addition, the Praesidium gave up abstaining from voting. Instead, they decided by majority on proposal packages that were compiled by the triumvirate, and most often only by Giscard and the Secretariat. In addition, the assistants of the Praesidium members were excluded from the discussions. Only Giscard was allowed to be accompanied by one or two members of the Secretariat (Interview 04-11-16). Several times, the Convention was about to fail. Nonetheless, it finally succeeded in settling the institutional questions, albeit under reverse. At the Thessaloniki summit on 20 June, Giscard was able to present Part I and II to the Heads of State and Government, and, after further discussions, the final result was presented at the Rome summit on 18 July 2003. The first time in the history of European integration, the main components of the EU had agreed on a single constitutional treaty that comprised the whole primary law and did not produce any left-overs.

In sum, the final stage witnessed a crucial role of the Praesidium and the Secretariat. The procedural resources timing and the use of a SNT in addition to the informational advantages about the meaning of consensus turned out to be especially important. The Conventioneers fleshed out the Skeleton by proposing amendments to the draft articles. But they were not certain about the relative weight of their position and that of the other actors. In order to have the own preferences taken into account, they had to abandon outsider positions and construct and align to the mainstream. So the informational advantage of the Praesidium on the importance of preferences resulted in the uncertainty of the Conventioneers and the demand for leadership. This uncertainty on the importance of preferences was further enhanced by creating uncertainty about the content of preferences. Taking into account the very short deadlines as well as the large amount of amendments, the Secretariat was presumably the only institution to have a complete overview of the Convention's work and the content of the Conventioneers' preferences (cf. Deloche-Gaudez 2004: 60). The circulated SNT in turn reduced the uncertainty by presenting the "mainstream" zone of agreement and assuring the Conventioneers' overview over the state of the negotiations. As to ideational resources, the reputation of the chairman was not improved by his intergovernmental proposals on the institutions. However, he gave up many

of his pet issues like the Congress of People, which was regarded as furthering his reputation and helping accepting the Praesidium's proposals (Norman 2003: 273).

But this time, the reallocation of negotiation resources took also place within this body. The chairman and the triumvirate attained important informational advantages vis-à-vis the Praesidium members by directly accessing the components. Moreover, the Praesidium had to decide on proposal packages (and not on single issues) by majority voting. The procedural resource of compiling these packages was a crucial advantage of the chairman, because he could enlarge the zone of agreement and thereby decrease the likelihood of stalemate. But the ideational resources of the chairman were heavily affected by his *fait accompli* in the end of May. This caused great suspicion and tension within the Praesidium.

## **Conclusion**

The achievement of a single text on a constitutional treaty, that revised the Nice Treaty and reorganized the EU's whole primary law, has clearly to be considered as a surprise. Looking closer to the Convention's work, one can see that the Praesidium played a crucial role in fostering and attaining this goal. It therefore exerted leadership by influencing the process and the outcome of the negotiations. Firstly, it influenced the outcome by leaving its imprint on the very goal of the Convention: a far-reaching constitutional treaty. Secondly, it influenced the process by making use of various negotiation resources. In this paper I have drawn on approaches to political leadership and discussed how the Praesidium was able to play such a crucial role. The literature on leadership provides various hypotheses on important independent variables like material, informational, and procedural resources. It was argued that ideational resources are of special importance, because they can on the one hand explain variance in influence and how some of these resources are actually translated into influence. On the other hand they particularly distinguish leadership from ordinary bargaining. These different resources were used as heuristic devices to thoroughly address the research question. The paper did not aim at testing these propositions, since a single case study does not provide the appropriate research design.

The Praesidium did not have any material resources. But it possessed informational, procedural and ideational resources. Because of the publicity of the debates, information on the content of issues and the preferences of other actors were distributed evenly. Nonetheless, the vague concept of consensus reallocated information on the importance of preferences. Since the

Praesidium was the only body to know the actual meaning of this term, it enhanced the uncertainty of other actors and created a demand for leadership. This uncertainty was further enhanced by the use of procedural resources, e.g. by establishing short deadlines for the amendments. The framing of an issue proved to be a significant resource when the WG on Legal personality had to decide on the merger of the treaties and the goal of the Convention. Because of its possible constitutional implications, this question had in the past brought about high controversies. Nevertheless, the WG quickly decided on attributing a single legal personality to the EU, as well as to merge the treaties and dissolve the pillar structure. It was argued that this surprising agreement was achieved by framing it as a legal issue, which immediately lowered the brisance of this question, and by pointing to the objective of simplification. Furthermore, the Praesidium made intensive use of procedural resources that structured the debate. Firstly, the SNT showed the state of affairs and reduced and equalled the uncertainty of the Conventioneers. Secondly, the chairman himself compiled proposal packages, on which the Praesidium had to decide by majority. This procedural device allowed for ascertain and even changing the scope of the zone of agreement. As to ideational resources, we could see that the Conventioneers suspected Giscard of trying to dominate the Convention. Although his give in on certain pet issues added somewhat to his reputation, it seems doubtful that his proposals would have been accepted, had he not been accompanied by his two vice-chairmen (Interview 04-11-16). The Praesidium in all could enhance its credibility by and by. Its heterogeneity initially gave rise to many complaints, whereas this fact was later on appreciated by the body (Hänsch 2003).

As mentioned above, the approach of this paper does not allow for testing propositions on leadership resources. However, the question of leadership is mingled with that of influence, and in fact, negotiation resources might also be used to impose the own preferences on an outcome. A further interesting puzzle is therefore that of different degrees of influence despite initially equal negotiation resources. For example, the European Commission and the EP do not have a say in the preceding ratification procedure, they did not possess or could not make use of procedural and material resources. Moreover, informational resources were distributed evenly. Nevertheless, the EP is said to have gained a lot in the negotiations, whereas the Commission is most often described as the loser. A comparison of the different components in the Convention could shed some light on the relative significance of the negotiation resources.

## References

- Adler, Emanuel and Peter M. Haas. 1992. Conclusion: epistemic communities, world order, and the creation of a reflective research program. In *International Organization* 46:1, pp. 367-390.
- Barnett, Michael N. and Martha Finnemore. 1999. The Politics, Power, and Pathologies of International Organizations. In *International Organization* 53:4, pp. 699-732.
- Beach, Derek. 2004a. The unseen hand in treaty reform negotiations: the role and influence of the Council Secretariat. In *Journal of European Public Policy* 11:3, pp. 408-439.
- . 2004b. Towards a new method of constitutional bargaining? Federal Trust Online Paper 13/03.
- Bulletin Quotidien Europe. 03-04-24. EU/Convention. No. 8448, pp.4-7.
- Chaiken, Shelly, Wendy Wood and Alice H. Eagly. 1996. Principles of Persuasion. In *Social Psychology. Handbook of Basic Principles*. Edited by E. Tory Higgins and Arie W. Kuglanski. New York: Guilford. Pp. 702-742.
- Christiansen, Thomas and Knud Erik Jørgensen. 1998. Negotiation Treaty Reform in the European Union: The Role of the European Commission. In *International Negotiation* 3, pp. 435-452.
- Christiansen, Thomas. The role of supranational actors in EU treaty reform. In *Journal of European Public Policy* 9:1, pp. 33-53.
- Council of the European Union. 03-04-16. Informal European Council discusses the Convention. Brussels, 16 April 2003. 8279/03 (Press 112).
- Deloche-Gaudez, Florence. 2004. Le Secretariat de la Convention Européenne: Un Acteur Influent. In *politique européenne* 13 :1, pp. 43-67.
- De Witte, Bruno. 2002. Simplification and Reorganization of the European Union Treaties. In *Common Market Law Review* 39:6, pp. 1255-1287.
- Economist. 02-02-21. The founding fathers, maybe.
- European Convention. 02-02-27a. Timetable of meetings relating to the Convention. Brussels, 27 February 2002. CONV 2/02.
- . 02-02-27b. Draft Rules of Procedure. Brussels, 27 February 2002. CONV 3/02.
- . 02-03-05. Speeches delivered at the inaugural meeting of the Convention on 28 February 2002. Brussels, 05 March 2002. CONV 4/02. Annex 4.
- . 02-03-14. Note on Working Methods. Brussels, 14 March 2002. CONV 9/02.
- . 02-05-31. Mandate of the working group on Legal Personality. Brussels, 31 May 2002. CONV 73/02.
- . 02-06-19. Summary of the meeting held on 18 June 2002. Brussels, 19 June 2002. CONV 132/02.
- . 02-07-02. Note summarising the meeting on 26 June 2002. Brussels, 2 July 2002. CONV 170/02.
- . 02-07-03. Meeting of 26 June 2002. Brussels, 3 July 2002. Working Group III, Working Document 3.
- . 02-07-10. Motion for a decision on the preparation of a Constitutional Treaty. Brussels, 20 July 2002. CONV 181/02.
- . 02-07-12. Summary of Conclusion. Meeting of the Praesidium. Brussels 10 July 2002. Brussels, 12 July 2002.
- . 02-07-15. A single legal personality and simplification of the Treaties. Brussels, 15 July 2002. Working Group III, Working Document 6.
- . 02-09-05a. Observations made by Mr. Kenneth Kvist to the Preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02). Brussels, 5 September 2002. Working Group III, Working Document 7.

- . 02-09-05b. The comments of Dr. Gunter Pleuger to the Preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02). Brussels, 5 September 2002. Working Group III, Working Document 11.
- . 02-09-10. Simplification of the Treaties and drawing up of a constitutional treaty. Brussels, 10 September 2002. CONV 250/02.
- . 02-10-28. Preliminary draft Constitutional Treaty. Brussels, 28 October 2002. CONV 369/02.
- . 03-01-16. Contribution submitted by Mr. Dominique de Villepin and Mr. Joschka Fischer, member of the Convention. Brussels, 16 January 2003. CONV 489/03 CONTRIB 192.
- . 03-04-23. Institutions. Draft articles for Titel IV of part I of the Constitution. Brussels, 23 April 2003. CONV 691/03.
- European Council (Laeken). 2001a. Presidency Conclusions. European Council Meeting in Laeken. 14 and 15 December 2001. SN 300/1/01 REV 1.
- . 2001b. Laeken Declaration on the Future of the European Union. Annex I to the Presidency Conclusions.
- European Report. 01-12-19. European Council. EU Leaders Open the Door to a European Constitution.
- . 02-01-19. Future of Europe. Women Lobby Against Male-Dominated Convention.
- . 02-02-27. IGC Convention. MEPs Attack Giscard D'Estaing's Plans.
- . 02-03-06. Convention on the Future of Europe. Valéry Giscard D'Estaing Aims For Consensus on Draft Constitution.
- . 02-03-16. European Convention: Bid to Involve Civil Society In the Forum's Work.
- . 02-05-29. European Convention: Delegates Discuss Division of Powers.
- European Parliament. 02-09-12. European Convention. Thursday, 12 September 2002. [http://www.europarl.eu.int/europe2004/textes/verbatim\\_020912.htm](http://www.europarl.eu.int/europe2004/textes/verbatim_020912.htm).
- . 02-10-03. European Convention. Thursday, 3 October 2002. [http://www.europarl.eu.int/europe2004/textes/verbatim\\_021003.htm](http://www.europarl.eu.int/europe2004/textes/verbatim_021003.htm).
- . 02-10-28. European Convention. Monday, 28 October 2002. [http://www.europarl.eu.int/europe2004/textes/verbatim\\_021028.htm](http://www.europarl.eu.int/europe2004/textes/verbatim_021028.htm)
- FAZ. 02-02-02. Was wollen die Bürger Europas?
- Financial Times. 02-02-25. The elder statesman's brief: Valéry Giscard D'Estaing will need all his energy and experience to help the unruly European Union achieve the constitutional reform needed for enlargement. By Peter Norman.
- Finnemore, Martha, and Kathryn Sikkink. 1999. International Norm Dynamics and Political Change. In *International Organization* 52:4, pp. 887-917.
- Giscard D'Estaing, Valéry. 02-10-02. Speech by Valéry Giscard D'Estaing, Chairman of the European Convention. Opening of the academic year at the College of Europe. Bruges, 2 October 2002.
- Göler, Daniel. 2003. Die Europäische Union vor ihrer Konstitutionalisierung: Eine Bilanz der ersten Verfassungsentwürfe. In *integration* 26:1, pp. 17-30.
- Haas, Ernst B. 1961. International Integration. The European and the Universal Process. In *International Organization* 15:2, pp. 366-392.
- . 1964. *Beyond the Nation-State: Functionalism and International Organization*. Stanford, CA.
- Hänsch, Klaus. 2003. Der Konvent – unkonventionell. In *integration* 26:4, pp. 331-337.
- Iklé, Fred Charles. 1964. *How Nations Negotiate*. New York: Praeger.
- Interview. 04-11-16. Interview with a member of the Convention Secretariat.

- Jönsson, Christer. 2002. Diplomacy, Bargaining and Negotiation. In *Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse and Beth A. Simmons, pp. 212-234. London et al.: SAGE Publications.
- Keohane, Robert O. 1984. *After Hegemony. Cooperation and Discord in the World Political Economy*. Princeton, N.J.: Princeton University Press.
- . 2001. Governance in a Partially Globalized World. Presidential Address, American Political Science Association, 2000. In *American Political Science Review* 95:1, pp. 1-13.
- Kindleberger, Charles P. 1973. *The World in Depression 1929-1939*. London: Penguin Press.
- . 1981. Dominance and Leadership in the International Economy. Exploitation, Public Goods, and Free Rides. In *International Studies Quarterly* 25:2, pp. 242-54.
- . 1986. Hierarchy versus inertial cooperation. In *International Organization* 40:4, pp. 841-847.
- Kleine, Mareike and Thomas Risse. 2005. *Arguing and Persuasion in the European Convention*. Contribution to the State of the Art Report, FP 6, Cluster 1, Project 3. Download: <http://www.fu-berlin.de/atasp/paperstodownload.htm>.
- Kohler-Koch, Beate. 2000. Framing: the bottleneck of constructing legitimate institutions. In *Journal of European Public Policy* 7:4, pp. 513-31.
- Lax, David A. and James K. Sebenius. 1986. *The Manager as Negotiator. Bargaining for Cooperation and Competitive Gain*. New York: Free Press.
- Lindberg, Leon N. 1963. *The Political Dynamics of European Economic Integration*. Stanford, CA.: Stanford University Press.
- Luce, R. Duncan and Howard Raiffa. 1957. *Games and Decisions. Introduction and Critical Survey*. New York: Dover Publications.
- Magnette, Paul and Kalypso Nicolaidis. 2004. The European Convention: Bargaining in the Shadow of Rhetoric. In *West European Politics* 27:3, pp. 381-404.
- Malnes, Raino. 1995. 'Leader' and 'Entrepreneur' in International Negotiations: A Conceptual Analysis. In *European Journal of International Relations* 1:1, pp. 87-112.
- Maurer, Andreas and Daniel Göler. 2004. Die Konventsmethode in der Europäischen Union. Ausnahme oder Modell. SWP-Studie. November 2004.
- Metcalf, David. 1998. Leadership in European Union Negotiations: the Presidency of the Council. In *International Negotiation* 3, pp. 413-434.
- Moravcsik, Andrew. 1993. Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. In *Journal of Common Market Studies* 31:4, pp. 473-524.
- . 1997. Taking Preferences Seriously: A Liberal Theory of International Politics. In *International Organization* 51:4, pp. 513-553.
- . 1998. *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*. Ithaca, N.Y.: Cornell University Press.
- . 1999a. A New Statecraft? Supranational Entrepreneurs and International Cooperation. In *International Organization* 53:2, pp. 267-306.
- . 1999b. Theory and Method in the study of International Negotiation: A Rejoinder to Oran Young. In *International Organization* 53:4, pp. 811-814.
- Müller, Harald. 1994. Internationale Beziehungen als kommunikatives Handeln. Zur Kritik der utilitaristischen Handlungstheorien. In *Zeitschrift für Internationale Beziehungen* 1:1, pp. 15-44.
- Norman, Peter. 2003. *The Accidental Constitution. The Story of the European Convention*. Brussels: EuroComment.

- Pruitt, Dean G. 2002. Strategy in Negotiation. In *International Negotiation. Analysis, Approaches, Issues. Second Edition*, edited by Victor A. Kremenjuk, pp. 85-96. San Francisco, CA: Jossey-Bass.
- Rein, Martin and Donald Schön. 1991. Frame-reflective policy discourse. In *Social Sciences and Modern States. National Experiences and Theoretical Crossroads*, edited by P. Wagner, pp. 262-89. Cambridge: Cambridge University Press.
- Risse-Kappen, Thomas. 1994. Ideas do not Float Freely: Transnational Coalitions, Domestic structures, and the End of the Cold War. In *International Organization* 48:2, pp. 185-214.
- Risse, Thomas. 2000. "Let's Argue!" Communicative Action in World Politics. In *International Organization* 54:1, pp. 1-39.
- Risse, Thomas and Cornelia Ulbert. (forthcoming). Deliberately Changing the Discourse: What Does Make Arguing Effective? In *Acta Politica*.
- Sandholtz, Wayne and John Zysman. 1989. 1992: Recasting the European Bargain. In *World Politics* 42:1, pp. 95-128.
- Schroeder, Werner. 2002. Verfassungsrechtliche Beziehungen zwischen Europäischer Union und Europäischen Gemeinschaften. In *Europäisches Verfassungsrecht. Theoretische und dogmatische Grundzüge*, edited by Armin von Bogdandy, pp. 373-414. Berlin: Springer.
- Sebenius, James K. 1992. Challenging conventional explanations of international cooperation: negotiation analysis and the case of epistemic communities. In *International Organization* 46:1, pp. 323-365.
- . 2002. International Negotiation Analysis. In *International Negotiation. Analysis, Approaches, Issues. Second Edition*, edited by Victor A. Kremenjuk, pp. 229-255. San Francisco, CA: Jossey-Bass.
- Sjöstedt, Gunnar. 1999. Leadership in Multilateral Negotiations: Crisis or Transition? In *International Negotiation: Actors, Structure/Process, Values*, edited by Peter Berton, Hiroshi Kimura and I. William Zartman. New York: St. Martin's Press.
- Snidal, Duncan. 1985. The limits of hegemonic stability theory. In *International Organization* 39:4, pp. 579-614.
- Stuart, Gisela. 02-09-27. Der Europäische Konvent und die Zukunft der Europäischen Union aus britischer Sicht. <http://www.iep-berlin.de/mittagsgespraech/mig-2002/mig-02-10-stuart.htm>.
- Sverdrup, Ulf. 2002. An institutional perspective on treaty reform: contextualizing the Amsterdam and Nice Treaties. In *Journal of European Public Policy* 9:1, pp. 120-140.
- SZ. 02-02-28. "Der Konvent ist autonom." Jean-Luc Dehaene warnt Staatschefs vor Intervention.
- Tallberg, Jonas. 2000. The Anatomy of Autonomy: An Institutionalist Account of Variation in Supranational Influence. In *Journal of Common Market Studies* 38:5, pp. 843-864.
- . 2004. The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations. In *Journal of Common Market Studies* 42:5, pp. 999-1022.
- The Independent. 02-02-25. Grandees Gather for Battle over Future of Europe.
- The Independent. 02-02-28. Skirmishes as Leaders Meet to Plot Future of Europe. By Stephen Castle.
- Ulbert, Cornelia, Thomas Risse and Harald Müller. 2004. Arguing and Bargaining in Multilateral Negotiations. Final Report to the Volkswagen Foundation. March 2004.
- Underdal, Arild. 1994. Leadership Theory. Rediscovering the Arts of Management. In *International Multilateral Negotiation. Approaches to the Management of Complexity*, edited by I. William Zartman, pp. 178-197. San Francisco: Jossey-Bass Publishers.
- Wall, James A. Jr. and Ann Lynn. Mediation. A Current Review. In *Journal of Conflict Resolution* 37:1, pp. 160-194.
- Winham, Gilbert R. 1977. Complexity in International Negotiation. In *Negotiations. Social-Psychological Perspectives*, edited by Daniel Druckman, pp. 347-366. Beverly Hills and London: Sage Publications.

- Young, Oran R. 1989. The politics of international regime formation: Managing natural resources and the environment. In *International Organization* 43:3, pp. 349-375.
- . 1991. Political leadership and regime formation: on the development of institutions in international society. In *International Organization* 45:3, pp. 281-308.
- . 1999. Comment on Andrew Moravcsik, "A New Statecraft? Supranational Entrepreneurs and International Cooperation". In *International Organization* 53:4, pp. 805-809.
- Zartman, I. William. 1994a. Two's Company and More's a Crowd. The Complexities of Multilateral Negotiation. In *International Multilateral Negotiation. Approaches to the Management of Complexity*, edited by I. William Zartman, pp. 1-10. San Francisco: Jossey-Bass Publishers.
- . 1994b. The Elephant and the Holograph. Toward a Theoretical Synthesis and a Paradigm. In *International Multilateral Negotiation. Approaches to the Management of Complexity*, edited by I. William Zartman, pp. 1-10. San Francisco: Jossey-Bass Publishers.
- . 2002. The Structure of Negotiation. In *International Negotiation. Analysis, Approaches, Issues. Second Edition*, edited by Victor A. Kremenyuk, pp. 71-84. San Francisco, CA: Jossey-Bass.
- Zartman, I. William and Maureen R. Berman. 1982. *The Practical Negotiator*. New Haven/London: Yale University Press.