

The new Council of Ministers – an assessment of the Convention proposals

Brendan Donnelly

Most of those who participated in the European Council at Nice in December 2000 believed at the time that they were laying the institutional and administrative foundations for the European Union's forthcoming enlargement. For fifteen years, politicians and observers alike had accepted that the Union's decision-making structures would need radical revision when the countries of the former Soviet imperium entered Europe's most prestigious club. The Treaty of Nice was intended to be precisely that necessary revision.

Even at the time, however, there were some who doubted whether the Nice Treaty was a document of sufficient scope, coherence and political solidity to meet the challenges of enlargement. In the Treaty, it was agreed that a further Intergovernmental Conference would be held in 2004 to consider such unresolved questions as the Charter of Fundamental rights, allocation of competences, simplification of the treaties and the role of national Parliaments. Within a very few months of the Nice summit, it came to be generally accepted that the unedifying circumstances in which the final text was agreed, with heads of government haggling until the last minute for marginal national advantage at the expense of their neighbours, had led the Heads of State and Government to sign an ill-prepared and limited Treaty. By the time of the Laeken European Council in December, 2001, there was a consensus that much remained to be done if the European Union was to make a success of its enlargement to Central and Eastern Europe.

Europe's leaders were conscious at Laeken that a substantial new Treaty would now be necessary for the Union, and were looking for a way of agreeing it that would be less rancorous and unsatisfactory than the closing stages of the Nice negotiations. The setting up of what came to be called the "European Constitutional convention" was the result. This new body was charged with the preparatory work for the eventual Intergovernmental Conference, which would adopt the successor treaty to Nice. Those who set it up hoped that its wide governmental and parliamentary membership, from existing and future Member States, would help prepare the ground for a new agreement which would be more substantial and more consensual than its discredited predecessor from the Côte d'Azur.

We now have the recommendations of the Constitutional Convention and we can judge how far the hopes of the heads of government at Laeken have been realized. An enormous amount of preparatory work has been done by the Convention, which will not need to be repeated by the Intergovernmental Conference. It is unlikely that the Intergovernmental Conference will produce arguments, options or political compromises that have not been thoroughly reviewed and discussed by the Convention. But some criticism has been directed against the Convention's recommendations on institutional questions, with a portion of which (those affecting the Council of Ministers) this article is principally concerned. As we consider the individual suggestions of the Convention for

the working of the Council of Ministers, we shall see that these suggestions are in some cases incomplete, ambiguous or contradictory. Partly this is a result of an unsatisfactory method of work adopted by the Convention's Praesidium for institutional questions, in particular the absence of a preparatory Working Group in this area. But this article will conclude that the problems faced by the Convention in grappling with questions of institutional reform have deeper roots than possible deficiencies in the Convention's working methods. These problems stem from deep-rooted philosophical and political differences between existing Member States, exacerbated by the particular difficulties posed for the European Union by its coming qualitative shift from fifteen to twenty five members. It is simplest to review these difficulties under a number of separate headings, before attempting an overall conclusion.

Voting in the Council

In common with every revision of the Treaties since the Single European Act, the draft Constitutional Treaty proposes some extension of majority voting in the Council. In its rhetoric, it goes a little further, calling for qualified majority voting to be the standard form of decision-making in the Council. Where, however, it deals in Part III of the draft Constitution with specific policy areas, it is much more cautious. It accepts, for instance, that unanimity will be retained for elements of social policy, for external and defence policy, for own resources and for most of tax policy. This final recommendation will no doubt be a matter of controversy in the Intergovernmental Conference. The British and Irish governments, for instance, are absolutely opposed to any extension of majority voting into tax questions.

The Convention was clearly aware of the reluctance by some Member States now to make radical inroads into the remaining policy areas of unanimous voting in the Council. This awareness persuaded the Convention's members to propose a special procedure, known as the "passerelle" which will allow the European Council in future to decide by unanimity, without Treaty revision, upon the transfer of new policy areas from unanimous decision-making to qualified majority voting. Experience with an enlarged European Union may encourage the European Council to make increasing use of this new option in coming years. Some commentators, however, have feared that the "passerelle" will remain a dead letter, since there will always be one or other member of the European Council unwilling to vote for its implementation.

Illuminatingly, the Convention's draft also accepts that Treaty revision is an area where each and every Member State will continue to have a right of veto. The European Constitutional Treaty will need to be ratified by all the twenty five present Member States and all future Member States will need to agree unanimously on its smallest change. This decision was certainly politically realistic, but illustrates the confines within which the Convention felt itself to be operating. It is usually characteristic of a constitutional settlement that its signatories feel themselves bound by enough of a common purpose or destiny to accept that their constitution will be adopted or at least later revised by some kind of majoritarian procedure. To say the least of it, any such procedure would be

controversial among the present Member States. It is not the last time where we shall find the Convention acting as a mirror for divided opinion within the Member States, or simply recognizing implicitly the limitations set by the political context upon its constitutionalizing aspirations.

The need for ratification of the Constitution by all twenty-five Member States is highlighted by the discussion already generated by a further, radical recommendation made by the Convention on voting methods within the Council. The Convention has proposed that after 2009, a qualified majority in the Council will simply require the support of a majority of states, representing 60% of the Union's population. This builds upon the system of the Nice Treaty, which envisaged effectively a triple majority system combining votes allocated to Member States in the Council, the number of Member States supporting a proposition and the relevant populations. The system proposed by the Convention is undoubtedly simpler than that of Nice. Certain countries, however, notably Spain and Poland, regard the new system as less favourable to them than was the Nice settlement. The Polish Parliament has said that it will not ratify a Treaty incorporating the Convention's proposed voting system.

The Spanish and Polish governments will undoubtedly come under considerable pressure in the Intergovernmental Conference to soften their defence of perceived national interests in this matter. The fact will be cited that formal voting in the Council is rare, and it can anyway be argued that the loss of voting power for Poland in particular is only marginal. There is widespread support within the Member States for the proposed simplification of voting methods, some even favouring a reduction to 50% of the proportion of the Union's population needed in support of a legislative proposal. Above all, Poland and Spain will be urged not to take upon themselves the responsibility for preventing the adoption of the European constitution. The constitution's advocates will mount a powerful argument, that the constitution is a delicately balanced compromise, which will rapidly begin to unravel if any individual Member State presses too far its individual preferences.

Only time will tell how far this argument carries the day in the Intergovernmental Conference. It is already clear that a number of the Convention's recommendations apart from the question of the "double majority" are unpalatable to significant coalitions of Member States. It is difficult to predict how far they will wish to press their discontent, and if they do so how easy it will be to satisfy their demands without destroying the whole intellectual and political coherence of the Convention's proposals. The Italian and (presumably) Irish Presidencies will need to tread a fine line between flexibility in accommodating national concerns and the desire not to lose all that has been achieved in the way of consensus-building by the Convention.

Poland is perhaps in the vehemence of its rejection of the voting system a special case. The desire to mark itself out among the new Eastern European Member States as a force to be reckoned with should not be discounted. But equally it would be wrong to overlook the fear in Eastern Europe, which Poland articulates loudest, that the European Union is moving towards a Directory system, in which the biggest countries, such as France,

Germany and possibly the United Kingdom, agree among themselves what is good for the Union and then present it as a supposed consensus to everybody else. Suspicion along those lines was reinforced by the late arrangement between France and Germany to change the Convention's final recommendations on cultural imports and immigration policy, both of which are seen as being central national interests for the respective countries. It may be objectively difficult to represent the draft Constitution as confirming the fears of the smaller countries, but the Constitution's advocates from the big countries should be aware that too brusque a tone in arguing for the wholesale adoption of the Convention's text can be interpreted as brow-beating by smaller countries, particular the new Member States.

Council Formations

Although in many cases the Convention was surprisingly successful in finding a consensus behind which all differing camps within the European Union could rally, it has failed to do so on the central question of the structuring of the work of the Council of Ministers. On the face of it, the Convention appears to be recommending a striking innovation in its proposal to introduce an overarching "legislative Council". This unitary Council, replacing existing sectoral Councils, is seen by its supporters as an embryonic "shadow government", responsible at the European level for the co-ordination and coherence of legislation, as national governments and national Cabinets are in their turn at the national level. Unfortunately, the Convention's proposals on this matter are confused and ambiguous. Nor is this confusion simply a matter of poor drafting. Two different visions of the work of the Council have been roughly hammered onto each other, in such a way as to produce no clear system. It will be for the Council to decide what kind of system it wants.

Article 22 of the draft Constitutional Treaty seems to envisage a continuation of something very like the present structure for the Council of Ministers, with a number of formations, each consisting of one ministerial representative from every Member State. Interestingly, the draft Treaty stipulates that only this representative may commit his Member State in a vote. This is at least arguably a significant improvement on the present arrangements, which allow civil servants to cast the final vote on behalf of their political masters. That the Minister should personally participate in a vote with legislative consequences is a definite contribution towards the Union's accountability and transparency, as indeed is the prescription of the draft Constitution that legislation should be adopted by the Council in public session.

Article 23, however, strikes out in a different direction to Article 22's, speaking of a "Legislative and General Affairs Council" with the responsibility to "ensure consistency in the work of the Council of Ministers." At first sight, and in the light of Article 22, it might be assumed that this co-ordinating responsibility will be discharged by the "Legislative and General Affairs Council's being entrusted with an oversight or review function of the work of the other Council formations. But the third paragraph of Article 23, 1 has something completely new in mind. We are told that when the Council of

Ministers acts in its legislative function, “each Member State’s representation shall include one or two representatives at ministerial level with relevant expertise”. The system here envisaged is apparently that the Legislative Council should perform its work of co-ordination by itself being responsible for adopting all legislation and having a membership which varies at least partly depending on the matter under discussion. The sectoral Councils, which have traditionally adopted laws on the environment, on agriculture, on transport and other Union policy areas, would, at least in their law-making function, simply disappear.

Two comments are worth making about the system of Council legislative work implied by Article 23,1. The first is that a body consisting of up to seventy-five members (presumably one permanent and two rotating specialists per country) would present an enormous logistical challenge to the Council Secretariat. Strict internal rules would need to be adopted to ensure that the Legislative Council’s large membership did not paralyse its decision-making. The second comment is that the extent to which the Legislative Council was able to perform its work of “ensuring consistency in the work of the Council of Ministers” would depend at least partly upon the political seniority or otherwise of its permanent members. If these permanent members are themselves middle-ranking ministers, it is easy to imagine their being regularly overruled by more powerful colleagues in charge of large sectoral ministries in the Member States. This would ensure that the present difficulties in ensuring coherence between sectoral Councils were simply reproduced at the level of the Legislative Council.

A further puzzling element arises in Article 23,3, which states that “the European Council shall adopt a European decision establishing further formations in which the Council of Ministers may meet”. For this injunction to be compatible with the preceding paragraphs, it is necessary to assume (although it is not stated in the text) that these further formations will be non-legislative Councils. The existence of even one legislative sectoral Council would destroy the co-ordinating role of the Legislative Council. It is difficult to imagine on what basis and with what membership, the Legislative Council might review or amend the legislation of, say, Agricultural or Environmental Councils established by the European Council’s European decision.

It may be that by the exercise of especial legal ingenuity, logical consistency can be established between Articles 22 and 23 of the draft Constitution. But that such ingenuity would be necessary to reconcile two such apparently disparate Articles is of itself a strong indication that unresolved political arguments underlie the inaccessible text. It is no secret that a number of governments, notably the British government, are suspicious of the very concept of a Legislative Council, the notion of which as a “shadow government” is as unattractive to them as it is congenial to its advocates. It is highly unlikely that Articles 22 and 23 will emerge from the Intergovernmental Conference in their present form. If the Legislative Council survives, it is likely to do so with a reduced role. Quite apart from those who have ideological objections to the proposed Legislative Council, there are national Ministers who will fight against the abolition of “their” sectoral Council. Sovereignty is not merely a matter of concern to national governments. It is a matter of concern to powerful national Ministries as well. There is much to be said

for the view that a unified Legislative Council, if its membership were drawn from senior national Ministers, could improve the quality of law-making in the European Union. But this may well be an area where the Convention has put forward an innovative proposal not yet capable of adoption by the governments of the Member States.

Rotation of Council Presidencies

Intimately linked with the question of the Legislative Council is that of rotating Presidencies in the Council. Article 23,4 of the draft Convention prescribes that the Presidency of Council formations, other than that of the Foreign Affairs Council, shall be allocated between the Member States on a rotating basis, each Presidency lasting for at least a year. It will be for the European Council to adopt the rules of such rotation, “taking into account European political and geographic balance and the diversity of the Member States”. In the same way as the composition of the European Commission will be a bone of contention at the Intergovernmental Conference, so also will this matter of rotating Presidencies of the Council. Smaller countries in particular fear that they will lose opportunities for prestige and policy formation to their larger neighbours within the Union. Until now, the ability to provide the Presidency of all sectoral Councils and host the meetings of the European Council during the six months of a national Presidency of the European Union has been vastly attractive to the Union’s national politicians. This opportunity to be at the centre of European affairs for six months will now disappear. National politicians are wondering how the gap can be filled.

It is obvious that the larger the number of Council formations that the European Council adopts, the more Presidencies there are to allocate to individual Member States. It is also obvious that the greater the power of these Councils, the more worthwhile is the Presidency of them. If all future European legislation is to be adopted by the Legislative Council, then that will automatically devalue the standing and influence of all other Council formations, apart from the European Council and the Foreign Affairs Council. An interesting and as yet unresolved point is that of the Presidency of the Legislative Council. If a substantial Legislative Council is established, then arguably its Presidency will be at least as important as that of the European Council. Yet no particular thought seems to have been given in the Convention to the choosing or length of office of this powerful individual.

It may well be that in a greatly enlarged European Union the traditional opportunities given to Member States and their individual leaders to play a publicly prominent role in directing or representing the Union will anyway be limited. But the abolition of the traditional and much coveted six-month Presidency of the Union is one of the more obvious and radical consequences of the Union’s enlargement. It would be surprising if Europe’s political leaders did not devote time and effort at the Intergovernmental Conference to saving what can be saved for the personal profile and influence of national politicians in the Union’s structure. The Presidencies of various Council formations will undoubtedly be a battlefield over which this struggle will rage.

Foreign policy

Particularly at the beginning of the Convention's work, some fears were expressed that its President, Valéry Giscard d'Estaing and the Secretary, Sir John Kerr, would show themselves in their direction of the Convention's work unduly favourable to the intergovernmentalist views of the French and British governments. This supposed sympathy was expected to show itself particularly in the area of foreign policy. It would be a surprise, so the critics argued, if a Convention steered by M. Giscard d'Estaing and Sir John came up with anything other than minimalist recommendations for enhancing the role of the European institutions in foreign policy. The outcome of the Convention has, on the face of it, proved the pessimists right. It is difficult to believe that the draft Constitution represents any kind of step, let alone a significant one, towards a coherent and integrated European foreign policy. But the question can fairly be posed whether any other leadership team of the Convention could have realistically worked towards different proposals in this delicate area. If the Convention's goal was to produce a package of proposals that in their essence would be accepted wholesale by the Intergovernmental Conference, it was clearly necessary to tread carefully in the controversial area of foreign policy.

It was in the Maastricht Treaty of 1991 that the European Union first set itself the goal of achieving a common foreign policy. The caution with which the Member States have always approached this issue was shown by their decision at that time to make foreign policy one of the "pillars" pursued outside the normal decision-making structure of the European Union. National governments wished to retain this crucial area of national and governmental decision-making for themselves, allowing only a minimal role for the European Parliament and Commission. It was furthermore a major building-block for the pillared structure of the European foreign policy that its intergovernmental decisions should be based on unanimity. All the history of European integration shows that when Europe's governments are serious about achieving common policy goals, they rapidly move towards majority voting. When they are not serious, they insist on remaining with decision-making based on unanimity. Foreign policy has proved no exception to this rule.

In truth, in the past twelve years a common European foreign policy has remained an illusion. At best, the European Union has sometimes been able to bring some co-ordination to the individual foreign policies of its different Member States. There were no doubt some who hoped that the Convention would be able to take the European Union a further step along the road of integration, by proposing an institutional structure, which would favour the formation of a coherent and co-ordinated European foreign policy. Instead, the Convention has only been able to reflect to the Intergovernmental Conference in this area the divisions within the Council as to the method of setting up and the goals to be achieved by a European foreign policy.

Apart from the difficulty of achieving anything like a consensus in the Council for limiting the application of unanimous voting on foreign affairs, the Convention faced another fundamental problem for its proposed institutional structure in this policy area. There exists within the Member States a radical division of opinion as to who should

represent the Union's foreign policy to the outside world. Most observers would agree that the lack of a single representative personality to project its diplomatic aims has reduced the European Union's ability to play a role on the world stage. But one school of thought believes that this representative personality should come from the European Commission. The other believes that it should come from the Council. The situation is further complicated by the fact that the latter group is probably a numerical minority among the Member States, but includes France and Great Britain, the European Union's two Security Council members and the two European countries most active in recent years in international diplomacy.

When confronted with a difficult choice, the European Union has a record of choosing either neither or both of the options on offer. In this case, the Convention has settled on the latter course. The President of the European Council will share responsibility for representing the European Union in foreign affairs with a "Foreign Minister of the Union". This Foreign Minister will be appointed by a qualified majority of the European Council, may make proposals for the development of European foreign policy and will carry out the instructions of the Council of Ministers. Simultaneously, the Foreign Minister will be a Vice President of the Commission, within which he will carry out the role of External Commissioner, currently held by Chris Patten. When acting in that capacity, he will be bound by Commission procedures.

This suggested structure has rightly been criticized for its obscure and confusing division of the power to represent the European Union between the President of the European Council and the Union's Minister for Foreign Affairs. Nor is it clear from the Convention's text what representative role, if any, the President of the European Commission should enjoy. Optimists have expressed the hope that those individuals who eventually fill the posts in question will be of sufficient good sense and flexibility to make the system work. It is, nevertheless, a worrying weakness of the new system that its functioning should apparently be so dependent upon the personalities who first participate in it. Solid administrative and political systems enjoy a greater measure of autonomy from the personal abilities (or lack of them) shown by those who occupy posts within them. In terms of the internal institutional and political dynamics of the European Union, it is not entirely surprising that the Union seems to be heading towards an arrangement along the lines sketched out by the Convention. But Europe's ability to present and project itself to the wider world can hardly be helped by this obtuse arrangement.

In fairness to the Convention, criticism of its institutional proposals on foreign policy should not be pushed too far. There is an almost subconscious belief in the culture of the European Union that appropriate institutional structures can generate, or even be a substitute for, continuing political will. It may well be that the history of the Union gives some support to this analysis. The whole political and economic implications of the Treaties they were signing were probably not clear to the signatories of the Treaty of Rome, the Single European Act, or even the Treaty of Maastricht. But as European integration has come to focus more and more directly on the central questions of national political debate and national political sovereignty (money, law and order, foreign policy)

so the European policies of national leaders have been subjected to more and more rigorous scrutiny. The problems are no longer technical, they are political. Unless there is a coherent political will among Europe's politicians and peoples for a common European foreign policy, it will not be possible for this or any other European Convention to invent an institutional system to create one. There are moreover factors specific to foreign policy which make it unlikely that this situation will change substantially in the near future. An enlarged European Union will find it more difficult rather than easier to overcome the relevant obstacles.

There is no area of its activities in which Europe's assets are so unequally distributed as in foreign policy. Great Britain, France and Germany enjoy between themselves a vast proportion of the diplomatic, military and international economic resources which are at the heart of foreign policy. The first two in particular of these countries are reluctant to pool their diplomatic sovereignty in a European system which may only dilute their capacity for independent action on the world stage, without bringing commensurate benefits in return. This underlying problem has undoubtedly been exacerbated by the bitter divisions within the European Union before and during the Iraq war. These divisions were particularly deep between Britain on the one side and France and Germany on the other.

To generalized philosophical doubts about the return on sovereignty-sharing for big countries has now been added a more specific concern, namely unease about the possible content of any future common European foreign policy. The United Kingdom, Spain, Italy and a number of the candidate countries from Eastern Europe are worried that this common European foreign policy might cut across what they regard as a centrally important element of their position in the world, namely their relationship with the United States of America. Nor is this a fear without some objective foundation. The United States is not unusual among powerful countries in favouring those in regards as its loyal allies, and penalizing those it regards as less reliable. The generally benign view of European integration that successive American administrations have traditionally taken has now been replaced by a sharper, more sceptical view of European developments. A number of Member States, both present and future, will want to tread carefully until a generally uncertain geopolitical picture has stabilized itself.

There is no likely chain of events which will change these circumstances in the near future. The optimistic hope is sometimes expressed that the Commission's contribution to European foreign policy over the coming years will be so clearly superior to that of the intergovernmentally functioning Council that the Union's Member States will inevitably recognize the superiority of the integrated Community method. The problem about this optimistic analysis is that within the present and future Member States widely varying assessments exist as to what might constitute "success" for the Community method. There is not even now, or likely to be in the future, an agreed yardstick whereby progress or failure measured. On the contrary, the enlarged Union seems likely to be tending towards a number of distinct camps within its ranks, in particular the Atlanticists, the neutrals and the "Europeanists". It is precisely the fear of such paralyzing fragmentation

which has led the Convention to suggest its most radical innovation, that of “structured co-operation”.

Structured co-operation

Few topics in the Intergovernmental Conference seem likely to be as controversial as this one. The Convention’s text bluntly states that an unspecified number of Member States which fulfil “higher military capability criteria (...) hereby establish structured co-operation between themselves”. This structured co-operation relates to the establishment of “more binding commitments between the parties” with a view to the “most demanding tasks” in the military arena. When it was adopted, the text seemed dramatically to encapsulate existing divisions within the European Union and suggest one possible way of bridging them. Subsequent events suggest that the relevant Article and/or its accompanying Protocol will be renegotiated and softened in the Intergovernmental Conference. But it is worth recapitulating the events and analysis which led up to the Convention’s radical proposal for “structured co-operation” in the defence field between a limited and self-selecting group of European Union countries.

It was in the Maastricht Treaty that the Member States of the European Union, then twelve in number, first found themselves embarrassingly confronted with an incapacity to achieve a unanimous decision on matters of high political, economic and symbolic importance to the great majority of Member States. This incapacity to arrive at consensus was then resolved by allowing to the one dissident Member State, the United Kingdom, two special arrangements, whereby it opted out of the Social Chapter and retained an option of joining the single European currency at a time of its own choosing. Britain has since signed the Social Chapter, but has not yet sought to join the euro. Properly understood, “structured co-operation” is the culmination of the process begun by the two special arrangements for Great Britain in 1991.

Throughout the 1990s, as the European Union expanded with three new members, and another dozen from Central and Eastern Europe seemed in prospect, Europe’s leaders gave further thought to the question of how it might be possible to preserve the dynamism of the Union when increased membership made the attainment of unanimity increasingly difficult. In the Amsterdam Treaty of 1997, the concept of “closer co-operation” was introduced into the Union’s institutional repertoire, whereby a vanguard group of Member States could, in some circumstances, make use of the European Union’s institutions and resources in policy areas which did not commend themselves to the whole membership of the Union. Partly because in the next four years no use was made of this new co-operative instrument, the criteria for “enhanced co-operation” were relaxed at the Nice Treaty. The Convention seeks further to relax these criteria, and, most importantly, introduce for certain advanced levels of defence co-operation, a wholly new and in many ways curious concept, that of “structured co-operation”.

This new form of co-operation is in important respects different to the “enhanced co-operation” which preceded it. No minimum number of participants is set, whether

absolute or relative. A necessary (but not of itself sufficient) qualification is prescribed for participation in this new enterprise, namely that of fulfilling “higher military capability”, although it is not specified in what this higher capability might consist, and who will judge whether the criterion has been achieved. Once the group co-operating in this structured fashion has been set up, it appears to enjoy an almost hermetically sealed autonomy from the rest of the European Union, deciding on its own account how it will proceed and what new members it may admit to its ranks from the remaining Member States of the Union.

Although the precise membership of this new grouping awaits the publication of an accompanying Protocol, first speculation reckoned its likely members to be France, German, Belgium, Luxembourg and possibly the Netherlands. Had this been so, then structured co-operation in military matters would essentially have involved the founding six members of the European Community, without Italy, the present government of which has broken with the traditional Italian position of wishing at almost any cost to participate in all new measures of European integration going forward under the aegis of the European Union. Serious doubts were expressed by many observers about the credibility of such a restricted group’s aspiring to act in the name of the European Union, particularly when it seemed that one of the most militarily active members of the Union, Great Britain was likely to remain outside.

Since the meeting of Mr. Blair with Chancellor Schroeder and President Chirac in late September, however, many of the elements in and presuppositions underlying the Convention’s original proposal seem open to revision. It had been assumed, and statements from the British government had strongly suggested, that the United Kingdom was fundamentally hostile to the whole notion of “structured co-operation,” not least for its potential rivalry with NATO. This no longer appears to be the case, and urgent technical discussions will be taking place this autumn that may allow for reworking of the original concept to make it less exclusive and more firmly integrated within the Union’s existing structures. If Britain can find itself not merely accepting the general idea of “structured co-operation” but even participating in it, it would represent a remarkable reversal, which might well encourage others to join. Without British participation, or, in the worst case, in the face of British hostility, a small group drawn from the founder members of the European Union would have found it enormously difficult (and would still find it enormously difficult) to mobilize the military resources and generate the political consensus necessary if “structured co-operation” were to represent a substantial new venture in European integration.

A new institutional balance?

Until a number of further decisions have been made about such questions as Council formations, the extension of majority voting and rotating Presidencies in the Council, it will be difficult to draw any firm conclusions about the anyway elusive topic of the balance of power between the institutions. There is good reason to believe that both the European Parliament and the European Commission, particularly its President, will be

strengthened by the Convention's proposals. The Parliament will benefit from the extension of the co-decision procedure and its right to block the election of an unacceptable President of the Commission. The Commission President will be strengthened by his endorsement through the Parliament in the light of the European Elections and his right to "hire and fire" his Commissioner colleagues. Whether any comparable accretion of power or legitimacy accrues to the Council through the Convention's proposals must remain open to doubt at present.

One observation that can certainly be made already is that attempts to rebalance the work of the Council, and therefore by implication that of the whole European Union, in a more intergovernmental direction by the institution of a semi-permanent Presidency of the European Council, have definitely failed. Last year, the British, French and Spanish governments were associated with proposals for the establishment of a long-term Presidency of the European Council, which would not merely represent the European Union externally, but would have considerable power of oversight and co-ordination for the general legislative programme of the Union. This suggestion provoked strong resistance from two quarters, those who wished to preserve the independent and leading role of the European Commission, and those smaller Member States who feared that the future President of the European Council would usually be chosen from one of the larger Member States. Whether this latter fear was justified must remain a moot point, but the upshot of this resistance to the Franco-British-Spanish proposal was the eventual proposal from the Convention for a President of the European Council whose mandate lasted for two and a half years, but who possessed powers no greater than those now exercised by the European Council's President. A President of the European Council with genuine supervisory or co-ordinating powers over the other European institutions would have represented a genuine restructuring of the Union's institutional makeup. What is proposed by the Convention might make the European Council work more efficiently, but can in no sense be understood as fundamental institutional rebalancing.

Conclusion

When the Intergovernmental Conference of 2004 was originally envisaged, it was conceived as a meeting which would conclude the unfinished business of the Nice Summit. This is still its goal, but with the passage of time the inadequacies of the Nice Treaty have become more apparent. More is at stake in the coming Conference than appeared likely two years ago. In its turn, the Convention has sharpened the tone of the debate by its decision to propose not merely amendments to the existing Treaties, but to propose a Constitution for the European Union. One at least of its reasons for doing so was the growing fear among those active in the European Union that the Union is becoming remote from and incomprehensible to its citizens. A European Constitution has been seen by many in the Convention as a response to this estrangement and incomprehension.

In so far as it was the Convention's intention to bring the European Union's internal workings closer to the European citizen, it cannot honestly be said to have succeeded. Its

proceedings have attracted little attention, and public comment has focussed on individual matters of controversy in individual Member States, such as proposals for a more powerful Presidency of the European Council, the proposed reduction in the size of the Commission, the double majority in the Council or extensions of Qualified Majority Voting. The Convention's work and conclusions have been followed in detail only by a very small group of politicians, officials, commentators and academics.

Even among this small group of Convention-watchers, judgement on the Convention's conclusions must necessarily be provisional. If the Intergovernmental Conference is unable to come to agreement, or if it comes to agreement on a different basis to that put forward by the Convention that will cast retrospective doubt on the very concept of the Convention and make it unlikely that the experiment will be repeated for future Treaty revisions. But this prospect seems unlikely. With only a very few exceptions, the proposed Constitution is a relatively cautious document, which in many instances only too accurately reflects the divisions between Member States. Equally, particularly in the institutional field, it leaves more work and final decisions for the Intergovernmental Conference than some of those who see it as an unalterable, unitary compromise would wish to accept. It is no doubt true that the Intergovernmental Conference will proceed more speedily and effectively than it would have done without the Convention's preliminary work. But there will be ample scope for controversy and further debate in the Conference nevertheless. The Convention has provided a possible blueprint for the way in which an enlarged European Union may work. It will be up to the twenty five Member State governments in the Intergovernmental Conference to show whether they possess the political will for compromise, without which no institutional blueprint, however sophisticated, has any chance of working.

Brendan Donnelly is Director of the Federal Trust for Education and Research in London.