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**COPING WITH THE LILLIPUT SYNDROM  
LARGE VS. SMALL MEMBER STATES  
IN THE EUROPEAN CONVENTION<sup>1</sup>**

*Like all former treaty reforms, the Convention on the future of Europe ran into deep divisions between large and small states – read more or less populated states – when addressing institutional issues. This paper examines the causes of this cleavage and its impact on the process and outcome of the Convention.*

*We argue that, despite the consensus proclaimed at its closing, the Convention partly failed to find a stable solution to this fundamental conflict of interest. As a result, the "politics of size" are likely to play an increasingly determining role in the Union.*

The tension between large and small states is inherent in any federal polity. While the Union is not a classical form of federation, it is no exception. Should the paramount principle of a voluntary association between states be to retain their equality whatever their respective size? Or should such a federation be based on democratic and therefore proportional representation (equality between individual EU citizens)? But even this way of stating the tension – between state equality and democracy – can be misleading. In the end the most fundamental tension is also and perhaps more fundamentally between two levels or expressions of democracy: the state level or the Union level. Like any federation, the Union has sought from its inception to balance these two principles. Indeed, this goal is at the core of the so-called community method. But perhaps unlike most federation, the EU (first EC)'s original bargain proved especially unstable due to a large extent to the Union's successive and dramatic wave of enlargement. What we refer to as the "Lilliput syndrome" characterized the reaction of the most powerful member states to the threat to their relative power such enlargement entails.

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<sup>1</sup> An early version of this article was published as "XXX", May 2003, *Notre Europe, Paris*.

The Convention was but the last in a series of attempts to recast the original bargain. But its mandate was broader than prior intergovernmental exercises in EU reform, including the enhancement of democracy and efficiency in the Union. As a result its protagonists had to ask more explicitly than ever before: at what cost and in what ways should equality between states be preserved in the running of the Union? This question underlined reform of all EU institutions, from the composition of the Commission and the parliament to voting method in the Council and, for the first time, to the question of the presidency of the European Council. The Convention was therefore poised to dramatically question some of the fundamental features of the Union and in the process to antagonize many of the representatives from its smaller states. Was this shaking up long overdue, a natural result of power politics in the EU? Or did it, on the contrary, unexpectedly shatter a core assumption of the Union's *raison d'être* namely eradicating power politics on the European continent?

This article tells of the story of "the politics of size" in the EU and therefore of the evolving fate of the principle of equality between states which underpinned its foundation. We first recall how the tension between equality of states and citizens was managed under the founding model and show how successive EU enlargements, and the concurrent emergence of the « lilliput syndrome », made this tension ever more acute. We then analyse the various alternatives considered under the Convention to resolve this tension in a context where the classic compromises proved increasingly impossible. Finally, we ask why the Convention chose the compromise that it did and argue that the factors explaining this result also explain its inherently conflict-prone nature.

### **SMALL AND LARGE MEMBER STATES IN THE INSTITUTIONAL BALANCE OF THE EU**

The import of the size factor in EU politics is not new. As President Giscard noted in his introduction to the plenary session of 24 April 2003, the largest and the smallest member states in today's Union were already part of the six Founders. But over time, the dynamic of enlargement has exacerbated these tensions in the EU, and has called for a revision of the mechanisms initially designed to cope with such diversity.

The EC was founded on two contradictory impulses. On one hand, the six founding states came together to alleviate the temptations of hegemony on the part of any of the big states over the rest of the continent. In the new Europe, size should no longer equal might. On the other hand, one of the most fundamental ways in which the EC diverged from the outset from common standards of international law and institutions was in denying the full import of sovereignty and therefore of sovereign equality between states. The *de facto* reality was that small

states would benefit disproportionately from the pooling of sovereignty, both as a way of managing interdependence on a small and dense continent and as a means of recovering sovereignty on the international scene. As a quid pro quo they could not demand full equality as in standard international organisations (at least formally). Thus, a way had to be found to express both of these sets of beliefs and combine the precept of international law and constitutional law into a new kind of governance system.

### ***The founding compromise***

As far as this issue was concerned, the Treaty of Rome reproduced the main institutional features of the initial pact, the Paris treaty of 1951, whereby three complementary constitutional mechanisms had been designed to guarantee a fair balance between the three large and the three smaller states.

### ***A system of weighed votes in the Council of Ministers***

Although until the eighteenth century most federations and confederal Unions usually granted equal rights to the member states irrespective of their size, contemporary constitutionalism tends to accept asymmetries, thus balancing the principles of equality and democracy, as well as considerations of efficiency (Nicolaidis and Howse, 2001). Sophisticated systems of weighing votes, along with multiple levels of representation, try to offer a degree of guarantee for the interests of the smallest states while giving the largest states a greater say in decision-making.

The EC's initial system of qualified majority voting (though rarely used until the 1980s' informal abolition of the Luxembourg compromise) is a perfect illustration of this logic of "regressive proportionality" – a midway house between the principles of one-country-one-vote and one-citizen-one-vote reflecting the twin sources of legitimacy (states and citizens) of the Union. This logic, incidentally, meant creating a category of "medium" states in between big and small. The three large member states were given four votes, Belgium and the Netherlands two votes, and Luxembourg one vote. In this system, although still over-represented, the largest states were 25 times "less represented" than the smallest one.

The key consideration in the negotiations was of course to agree on who should be able to form a blocking minority. Negotiators ended up agreeing that a decision could not be adopted against the will of two large states, or of one large and one medium state (Belgium and the Netherlands) but that the association of one large state and the one small state, Luxembourg, should not be enough to block (Bobay 2001). The

qualified majority represented about 70% of the population. No state could, on his own, veto a decision under this rule.

### *The independence of supranational institutions*

Supranational law and institutions are supposed to disproportionately serve weaker actors. Yet, the creation of a supranational High Authority, nominated by the governments but which was granted autonomous powers and guarantees of independence, was initially supported by France and Germany, and feared by the Benelux countries (Milward 1992, Moravcsik 1998, Rittberger 2001). Because they thought such an organ might be a Trojan Horse for France's interests, or the umbrella for a Franco-German *directoire*, the small countries required and obtained the creation of a Council of Ministers where they would be more equally represented, and even, initially, have a veto.

History has reversed these original positions. Over time, the smaller member states have come to see the Commission as the best institutional protection of their interests, with its propensity to use the monopoly of initiative to fulfill its mission as guardian of the treaty and counterbalance the big states. As the Commission generally proved to be truly independent and driven by European interests, the Benelux countries became its most loyal supporters. So did the other small and medium countries who came to join the Union.

The composition of the Commission also explains in part its continued support by the small countries. Each member state sends at least one of its nationals to the college of Commissioners. While this person is not supposed to represent his or her government formally, "their" Commissioner often becomes the ears and voice of a country in the EU executive thus underpinning their trust and feeling of ownership towards the Commission. To be sure, there is a strongly degressive rule of proportionality in the Commission since the five largest states nominate two commissioners each instead of one for other members. But this asymmetry has not tipped the balance of support<sup>2</sup>.

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<sup>2</sup> In discussing supranational institutions, it is also worth recalling that the European Court of Justice by establishing early on the principles of supremacy and direct effect of Community law gave itself the power to deliver judgments countering the position of big member states. While there is a lively academic debate as to the extent to which the Court actually countered the interests of the most powerful players in the EU, there is little doubt that small countries have benefited from its case law. The impact of the European Parliament is much more ambiguous. On one hand, and as the most proportional EU institutions, its composition reflects the weight of the bigger states. On the other hand, and in practice,

### *Avoidance of a permanent presidency*

Finally, from this very beginning, small countries also feared that if they gave the EC a single figurehead at the top, this person would unavoidably be in the sway of the big and powerful. Thankfully, such a fear chimed with that of big country heads of state and government who wanted to avoid the emergence of a competing autonomous leader that could undermine their own prestige. There was also widely shared agreement that a permanent presidency would risk generating rivalry with the young Commission.

Thus the original model established a system of equal rotation among member states to chair the different formation of the Council of ministers – every three months initially, every six months since 1958 – thus symbolically reflecting the equality between the Six member states. With successive enlargements the gap between presidencies has increased from three to seven and a half years (twelve and a half as of 2004) but the basic philosophy of rotation has stayed the same.

These three elements formed a coherent institutional balance. The subtle system of weighing votes and seats – also applied to the Assembly (which became the European Parliament), the Court and the consultative bodies – created a balanced system of regressive proportionality combining elements of intergovernmentalism and supranationalism (Quermonne 1992). While the rotating presidency of the Council was the only institution where equality between states was applied in its pure form, the original bargain did not, as traditional federal systems, designate one institution for equality (e.g. Senate) and one for proportionality (e.g. Congress). Instead, each institutions combined the two principles: in the Council, equal rotation was counterbalanced by weighted votes. And the Commission's very mission was to navigate the difficult balance between the defense of the weaker parties and acquiescence of the bigger ones. On the whole, this bargain was accepted both by large and small states.

### *Incremental adaptation*

The original consensus did last for the best of two decades. But the “matter of size“ became increasingly contested in the 1980s, under the twin effects of the extension of QMV - giving more prominence to the system of weighted votes- and the successive enlargements, which complicated the logic of regressive proportionality (Dony 2003).

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it has often stood for a more integrative approach than other EU institutions and promoted positions championed by smaller states.

The first enlargement of 1973 called for a revision of the initial compromise, first of all by revisiting the original system of weighed votes. As Denmark and Ireland were somewhat smaller than Belgium and the Netherlands – and as it was implicitly admitted that the founding states ought to preserve a certain privilege – a fourth category of states was introduced: the UK was given the same number of votes as the three large founding states, but Denmark and Ireland were given a slightly smaller weight than Belgium and the Netherlands. The four big states now had 10 votes each, Belgium and the Netherlands 5 votes, Denmark and Ireland 3 votes and Luxembourg 2 votes. The threshold was now 42 votes out of a total of 58. In practice, this preserved the original logic of a “blocking minority” of two large or one large and two smaller states. The successive enlargements followed the same logic: in 1981, Greece was given the same weight as Belgium and the Netherlands, as well as Portugal in 1987; Spain was defined as a quasi-large state, with 8 votes (although also two commissioners like big states, a bargain it latter came to resent). In 1995, the system had to be adapted again: Finland was given the same weight as Denmark and Ireland, while a sixth category was created for Sweden and Austria, which received 4 votes. Since then, a qualified majority requires 62 out of 87 votes; the blocking minority has become more complex, as it now requires the coalition of at least two large and two small states (here we mean “non-big”), one large and four small, or at least six small states. But the relative scale of representation – with a factor of one to five between the smallest and biggest state – remained unchanged until 2000.

Hence, and in spite of enlargement from 6 to 15, this first phase of European integration only called for very marginal adaptation of the system. Neither the Commission nor rotation were touched. Even the introduction of a directly elected European Parliament with sharply degressive representation did not radically transform the original bargain. The “matter of size” plays little part in the substantive politics of the EU, where coalition politics become the name of the game with the extension of QMV. Deference to the “Franco-German” engine continues to prevail as the two countries’ special relationship continues to be perceived as the very heart of the European project and to encompass, together, most of the spectrum of intergovernmental vs supranational positions.

### ***“The great enlargement” and the Lilliput syndrome***

The end of the Cold War opened the door to the biggest enlargement in the history of the European Union, a development called for almost unanimously after 1993. But the prospect of enlargement to East and Central Europe which was to bring membership from 15 to 27 and eventually more was bound to bring the “matter of size” to the fore and exacerbate the tensions between the two principles of proportional

representation and equality between states. Clearly, weighted votes under-represent big countries relative to their weight in terms of population; thus past enlargement to mostly small and medium size countries had already led mechanically as it were to a progressive “representational deficit” of big countries as a group in the Union. This trend would dramatically worsen with this round, mechanically as it were. Unsurprisingly, the big countries increasingly fell prey to a kind of “Lilliput syndrome,” picturing themselves as the giants potentially held back by a crowd of mini-countries. France was of course the main candidate for such a syndrome. Europe had always been “its” Europe, a French Europe. Equality was a nice slogan but some of us had to be more equal than others. But perhaps more significantly, Germany during these years itself started to signal to its European partners that the pains of national unification ought not to go without any corresponding recognition of relative power. As for Britain, the advent of a new Labor government, and talk of playing a leadership role in the EU turned it as of 1997 into a full blown (big country) player in this institutional debate.

Interestingly, even these main protagonists could not simply couch the debate in terms of power. Thus, and also in the mid to late 1990s, the framing of the “matter of size” started to shift and incorporate concerns about “democracy”, representative that is. The “representational deficit” it was argued, would affect not only the political balance between big and small countries in the Union but also the democratic legitimacy of decisions taken in the Union. An implicit axiom of the original bargain was that decisions in the Council ought to be taken by a large majority of the EU population. But the minimal population for a QMV vote went from 68% with 6 members to 58% with 15 and a project 50% in a Union enlarged to 27. Any further enlargement would bring this figure below the 50% threshold if the current method of calculating QMV was retained.

Put even more simply, this trend clearly challenged the intuitive appeal of the initial bargain as approximately half-way between the one-state and one-person voting principles (Bobay 2001). Even small countries recognized that this situation could not be dealt with effectively through the incremental logic of adjustment followed until then. Nevertheless, they sought to preserve the “spirit of equality” embodied in the initial treaties. Could this be achieved by transcending the zero sum character of the re-weighting game through linkages across issues?

The 1996 Amsterdam Treaty negotiations tried but failed to square this circle. The deal prepared at Amsterdam sought to establish a tradeoff between the reform of the voting system in the Council (granting more weight to big states) and Commission reform which would favor small states (one Commissioner per state). But the (still) zero sum character of voting right reform combined with idiosyncratic demands of individual member states (like Spain who was asked to give up its second Commissioner without compensation in terms of voting) made reaching agreement impossible. Nevertheless, the basic outlines of a deal between

the two dimensions was spelled out in the closing hours of the Summit (Moravcsik and Nicolaïdis 1998, 1999). But in the absence of neither a sense of urgency nor political will, agreement would be postponed by three years.

### *Nice and the reassertion of big state power*

The December 2000 Nice Summit represented the most exacerbated stage of this ever complex adaptation of the initial model. Although the candidate countries were not present, their interests were “represented” by some of the member states. Leaders did in the end craft a package deal (to be applied as of January 2005) but the negotiations left a bitter taste.

On the question of voting, Nice changed three parameters: the revision of weights; the majority threshold (brought up from 71 to 74%); and the adoption of additional voting criteria. Above all, this was the first instance of revision of the relative weight of member states since the treaty of Rome. Most candidate countries could be associated with existing groups of states, and be given the same number of votes: the Czech Republic and Hungary were equated with Belgium, Portugal and Greece; Bulgaria with Sweden and Austria; the three Baltic states and Cyprus with Luxembourg. Moreover, never before had the raw symbolic character of voting weights been so apparent: France strongly refused the claims of a unified Germany, now much larger than the other big states, and preserved a unique category for the big ones, in the name of the solidarity between the Founding states. But Belgium did not manage to convince its Dutch partner to follow the same reasoning, and new categories were created for medium (Romania) or very small (Malta) states. There are now nine different categories of states in the weighing system of the qualified majority.

In a nutshell, the Nice bargain achieved two results: the emergence of Spain and Poland almost on a par with the other 4 big states; the maintenance of the relative weight of the 6 big states, with the biggest states commanding ten times rather than the prior five times more votes than the smallest ones. Overall, the Nice reforms (to be implemented in 2004) actually over-compensated for the effects of enlargement to small states by bringing the system closer to the principle of one-person-one-vote than in the original 1958 bargain. The pendulum has swung back to the power logic, dismissing for the time being the fears of a Lilliput EU.

In addition to a re-weighting for QMV, Nice introduced two additional voting criteria: a simple majority of member states and 62% of population. Contrary to widespread belief, the addition of these two criteria did not affect the relative weight of the different member states, coming in addition as they did to the QMV criterion (Bobay 2001). Calculations would of course be different if these two criteria were



adopted on their own, instead of QMV, as many states suggested in Amsterdam and as discussed again later in the Convention.

The “question of size” also affected the composition of the other institutions. The attribution of seats in the EP has from the start been even more proportional and therefore biased against small states, than in the Council. Nice only exacerbated this structural feature in part as part of a bargain between Germany and its “fellow big states.” Germany was given 12 more seats than the four other big states under the present system, thus breaking the taboo of institutional equality with France. Together, the small states are almost four times less represented in the EP than the big ones, while they have nearly half of the large states’ weight in the Council<sup>3</sup>.

In this context, how did the linkage envisaged in Amsterdam between Council and Commission reform fare out? There, the big countries went half way towards compensating their small fellow member states for their loss in terms of vote. They would be the one to “sacrifice” their second Commissioner in light of the fact that the application of the initial implicit rule (2 commissioners for a big state, 1 for a smaller one) had more than doubled the size of the college since 1973. This move was an acknowledgement that while publicly defending the impartiality of the Commission (where nobody could be considered as representing their country of origin) the smaller states considered keeping their single Commissioner an absolute red line.

To be sure, the concession by the big states was only temporary. The compromise reached at Nice was gradual and based on sequencing: “When the Union consists of 27 Member States (...) The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously”. What would happen after 27 member states? The compromise remained rather vague and open, since it required a new decision of the Council to be implemented.

In short, the Nice treaty was the apotheosis of a long lasting latent debate on the respective influence of more and less populated countries in the EU, which focused on the system of qualified majority in the Council and the composition of the Commission. While a deal was reached, all parties seem to walk out unsatisfied. A clause was added in the final provision of the Treaty calling for addressing other institutional issues. A year later, the Laeken Summit called for the convening of a Convention with an even broader mandate including the issue of competences and the role of national parliaments. Could the small vs big country divide finally

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<sup>3</sup> Moreover, in order to limit the growth of the assembly, due to the adaptation of the attribution of seats after the next enlargement, the treaty of Nice has fixed a maximum number of 700 MEPs.

be revisited in a more constructively? Were they not bound to do “better than Nice” given the deliberative spirit and considerable investment in time and debate promised by the format of the Convention?

### **THE CONVENTION’S NEW CONSTITUTIONAL BARGAIN**

While the main aim of the Nice Treaty negotiations was clearly to attend to the demands of big countries, the Convention on the Future of Europe had a grander mandate, namely to improve the democratic legitimacy and efficiency of the Union (Magnette and Nicolaidis, 2004). Nevertheless, and expectedly, the “matter of size” emerged as perhaps the most acute divide between Conventioneers during these 18 months of negotiations. In spite of this constant, the debate differed from previous treaty negotiations in three ways: first and foremost, the third component of the original bargain which had never been questioned, namely the issue of the Council presidency, finally came to the fore; second, the smaller member states formed a solid alliance throughout the negotiations often expressing their common position through a single voice; third, the specific preoccupations of the “almost big” countries, namely Spain and Poland, defined a new dividing front which came to play center stage and override the big vs small divide in the IGC that followed.

#### ***Positional bargaining : Permanent Presidency (ABC) vs. Improved status quo (Benelux and the smaller countries)***

Perhaps daunted by its highly divisive nature, the Convention long delayed discussing actual and concrete text on the Union’s institutional order. Outside the plenary sessions, however, most governments made their positions known. Thus what was to become the most controversial issue of the Convention emerged completely outside its ranks. Prime Minister Jose Maria Aznar and Tony Blair together with French President Jacques Chirac were the first to officially advocate the election of a full-time President of the European Council, chosen from among former heads of government for a period of up to 5 years (both Tony Blair and Jose Maria Aznar have been tipped as possible candidates for the job, although both of them have denied interest in the position). The proclaimed rationale for a permanent president was threefold: to enhance the effectiveness of the Council’s work by having a full time person in charge of managing it, to ensure greater continuity in terms of priority and long term planning, and to give a more permanent face to the EU in the rest of the world. In fact, the last two issues were addressed outside and inside the Convention through the setting up of pluri-annual EU programmes

and internal Commission-Council reform as well as the proposal for the creation of a foreign affairs minister early on in the Convention. The first rationale however remained paramount.

It is important to note that the issue of presidency of the European Council was framed as of that moment as that of “Presidency of the Union,” both by politicians and more generally by the media. The ambiguous semantics is not inconsequential. It conveys both the intent of the promoters and the fears of the opponents of the proposal. For the promoters, this new president of the European Council should indeed come to be seen as the president of the Union as a whole reflecting the role of the revamped European Council as the superior authority in the Union, directing and overseeing the work of other institutions. For opponents, this was exactly the outcome to be avoided: the concentration of power in a single individual leading the EU in the name of the most powerful heads of state in the EU – A European Kaiser or new Napoleon.

This basic reaction was championed by another coalition which had formed early on in the Convention: the self-styled “friends of the Community method” which first met in April 2002. This group comprised representatives of the countries later referred to as the group of small and medium countries and met regularly to flesh out a common position across issues. Overtime, the group comprised between 16 and 19 countries, with the Benelux in and out of the coalition<sup>4</sup>. This group broadly supported the Benelux countries when they presented their counterproposal in December 2002. In a brief memorandum, the three countries outlined their priorities:

- i) strengthening and expanding the scope of the Community method in the legislative fields (which meant generalizing the monopoly of initiative by the Commission, co-decision with the European parliament and QMV in the Council);
- ii) enhancing the legitimacy of the Commission through the election of its president by the EP by a three-fifth majority (to

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<sup>4</sup> In its fullest configuration, the group included all member states and candidate countries except the six big states, and intermittently Romania and Greece – the latter became an observer when it took on the EU presidency. The three Benelux countries however played an ambivalent role in this dynamic, sometimes posing as the leaders of this group when putting forth their early proposal, sometimes following a more autonomous line in order to position themselves as a mediating force in the Convention. This twofold strategy may reflect their dual identity, on one hand as the traditional promoters of small countries interests since the creation of the EC, on the other hand “the Benelux”, an almost-big-country, a founding member with a greater claim to leadership than all the small newcomers.

try to avoid simply majority endorsement), and the confirmation of this election by the Council by qualified majority;

iii) strengthening the executive role of the Commission, both in terms of adopting regulatory measures and of monitoring the coordination of economic policies ;

On the defensive, they also drew their lines in the sand:

i) the composition of the Commission had to follow the Nice decision, which meant that if its size were to be reduced, the new rules had to guarantee “the equality of all member states in both its operation as its composition, based on the principle of equal rotation”;

ii) the Council presidency could be reformed, if the new rules were to “safeguard the principle of equal treatment of all member states, just as the balance between the institutions of the Union”; in their view, “the proposal of a President of the European Council, appointed outside the circle of its members, does not come up to these conditions”; this implied that “The Benelux will in any case never accept a President elected outside the Council”.

Instead, the Benelux suggested another approach to enhancing the effectiveness of the Council through a clearer distinction between its executive and legislative functions. Executive functions (the coordination of national policies) should be chaired by the Commission while rotation would be maintained “on the level of the European Council and specialised councils” for legislative councils - where the Commission could not easily chair meetings discussing its own proposals. In this, the Benelux, and other small countries after them, in effect took stock of the evolution of the weighted majority system with Nice towards a balance more favorable to big states. They would thus defend their interest as reflected in the other two basic elements of the bargain laid out at the beginning of this paper. On the one hand, in the role and composition of the supranational bodies, specifically the EP-Commission pair; on the other hand, in the defense of the rotating presidency.

The latter’s import for small states had become enshrined in their understanding of EU history to date. The rotating presidency had managed to convey the fundamental character of the Union as a system of shared sovereignty eschewing concentration of power. It had provided access to the highest level of leadership to all member states, allowing smaller ones to demonstrate their capacity of entrepreneurship and mediation. It also allowed for the continuing holding of European Summits around city landscapes thus bringing the EU closer to its citizens and helping citizens to become more familiar with each other’s histories and cultural artifacts.

The other issue, however, was less evident: why should small countries continue to defend supranational institutions where representation is moving away from the equality principle? Since small states are better represented in the Council than in the EP, or even in the Commission below the level of the Commissioners themselves, a purely “realist” approach would suggest that they should defend the Council – as they actually did in the foundational period. However, two trends in EU decision-making patterns had come to upset this logic.

First, the rule of collegiality within the Commission prevents the commissioners from systematically defending their member state’s interest (Joana and Smith 2002); the Commission is therefore seen as a guarantee of the “general interest” against the weight of the large states. The fact that the Commission has always included one member for each state is not merely understood in terms of representation, but as a guarantee that the peculiar situation of the small states can be understood in the college. The Irish Minister for foreign affairs explained once that if “the Irish public has a strong sense of the importance of the Commission as a guarantor of fair play and of the common interest” it is not “that commissioners act as national representatives, but that there is around the table a fair appreciation of the concerns of individual member states” (Cowen, 2003). For smaller states, who always fear that their colleagues from the large states are unaware of their peculiarities, this is a particularly important aspect. In other words, small countries’ stance on this count is about presence and voice rather than traditional representation. Second, empirical studies show that it is difficult for the small states to use their formal power of veto within the Council (Mattila, 2003; Mattila and Lane, 2001). And under QMV, it is usually understood that big states retain an informal veto – but certainly not small states. Smaller state representatives tend to promote their interest better in a more fluid EP, where they can form ad-hoc coalitions within transnational political groups, than in a rigid intergovernmental Council. In sum, beside their “idealistic” defense of the Community model, a realist cost-benefit calculation explains their position.

### ***The hegemonic compromise: The Franco-German “dual presidency”***

The second phase of the Convention was dominated by the kind of hegemonic politics that have characterized Union politics since its inception: the “Franco-German compromise” put forward by the two countries on the occasion of the 40<sup>th</sup> anniversary of their bilateral treaty in January 2003 and discussed within and around the Convention, though not formally put on its agenda; the proposal generated widespread opposition within the Convention but at the same time immediately became a focal point for subsequent debates.

At its core, the contribution advocated the controversial creation of what became referred to as a “dual EU Presidency” with a permanent European Council President and an elected Commission President:

- i) a five-year chair for the European Council elected by qualified majority (initially for 2 \_ years, but with the possibility of reelection) by its members, tasked with the preparation and chairmanship of European Council meetings, safeguarding effective implementation of Council decisions and representing the EU on the international stage;
- ii) direct election (by qualified majority) of the Commission President by the MEPs who subsequently selects his team of Commissioners (confirmed by the European Council).

Other key institutional features included:

- i) the Council of Ministers would have several chairs depending on the area under consideration: 1) the General Secretary of the Council of Ministers would chair general affairs; 2) a European Foreign Minister would chair meetings on foreign relations; 3) Ecofin, the Euro group and the Council on Justice and Home Affairs appoint their chair for two years from amongst themselves; 4) a rotation principle would be guarded for all other Council formations;
- ii) a European Foreign Minister would be created and would be responsible for the common foreign and security policy (as well as defense matters) and have rights of initiative in this area. He/She would be elected by qualified majority by the European Council and be a member of the Commission. He/She would be supported by a European Diplomatic Service.

In a much awaited session, the French-German Plan was discussed at the Convention’s Plenary session on 20 and 21 January 2003 which was to be a preliminary exploration of institutional questions. Valéry Giscard d’Estaing reacted favorably calling it “a positive proposal [that is] going in the right direction [...] guaranteeing the stability of EU institutions”. Most Conventioneers did not share his enthusiasm, regretting a state of affairs where positions are adopted in advance and the transformation of the Convention into an intergovernmental conference. One delegate (Liberal Democrat British MEP Andrew Duff) talked about a “cut and paste” compromise putting divergent views side by side without reconciling them.

The intensity of the opposition to the plan was in full view at plenary, when one convention member announced for the record that 64 speakers had spoken against the dual-Presidency plans, 11 in favor and 15 had

remained neutral<sup>5</sup>. Representatives of smaller EU member states in particular (such as Belgium, Greece, Ireland, Finland, Austria, Netherlands, and Portugal) were strongly critical<sup>6</sup>. In addition, politicians from the ten Central and Eastern European countries, as well as national parliaments, the European Commission and the European Parliament expressed skepticism on several grounds:

i) Leadership rivalry: the lack of clear division of labor between the two presidents and mechanisms to mediate between them were perceived as fraught with risks. Concerns were also expressed that the scope for conflict between the Commission and Council would increase creating ineffective leadership structures and rival systems. The Commission's representative also emphasized the importance of avoiding the creation of two competing power centers. In addition, delegates said, the plan of a dual Presidency could unbalance the position of the High Representative/minister for foreign affairs and would not bring the EU closer to its citizens;

ii) Upset in institutional balance: most parliamentary and smaller country delegates to the convention expressed concern that a permanent European Council President would undermine the role of the Commission by turning it into the secretariat for such a President and confining it to managing the internal market. The

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<sup>5</sup> Hanja Maij-Wegen – Dutch Christian Democrat MEP. Giovanni Grevi counted 55 speakers against, 18 in favor, and 15 somewhat against (Grevi 2003). While the precise numbers do not matter, the proportion against the appointment of a President of the European Council at that point was roughly 3 to 1.

<sup>6</sup> At the pre-convention meeting of the smaller countries, the reactions to the double presidency were reported to vary between complete hostility to a definite lack of enthusiasm.

A Benelux position issued on the same day confirms and summarises these criticisms: “En ce qui concerne le Conseil européen, le Benelux demeure favorable au maintien de la rotation au niveau du Conseil européen et aussi pour les Conseils spécialisés. Il réitère son opposition au principe d'une présidence élue, à temps plein et en dehors du Conseil européen, qui risque de modifier l'équilibre institutionnel, surtout au détriment de la Commission et de provoquer par conséquent une confusion de compétences ainsi qu'une situation de rivalité entre institutions. Le Benelux estime qu'un acteur européen supplémentaire sur la scène internationale est susceptible d'apporter la confusion dans la représentation de l'UE dans les différentes enceintes internationales”. *Prise de position des Premiers Ministres et des Ministres des Affaires étrangères du Benelux suite à la Contribution franco-allemande à la Convention*, Brussels, 21 January 2003.

suggestion in the Franco-German proposal that the preparation and follow-up to the European Council would be the responsibility of the new President attracted most criticism (many analysts had long advocated the opposite, a greater role for the Commission in the management of the European Council);

iii) Inconsistency: the proposal was also criticized as inconsistent. On what grounds it was asked, did its promoters believe that EU heads of states and governments would recognize the authority of one among them, a former peer most likely at that. This was all the more true with regards to foreign policy in the context of the Iraq War. Would a former Prime Minister – the likely pedigree of a European Council President – have the political clout to represent the EU on the world stage? Would the French accept to be represented by a British citizen in Washington or vice versa?

iv) Marginalisation of small countries: the most radical argument against the proposal was the smaller countries greatest trumpcard: the rotating presidency, which had for almost fifty years been the symbol of equality between the member states in the Union. Not only would the Council President most likely be selected from among the bigger countries but he, whoever he might be, would be the big countries' voice.

Following the first round of reactions to the Franco-German compromise, several variants were proposed. Most prominently, the UK and Spain proposed another version of this Permanent presidency, which tried to preserve some form of rotation below the European Council, by combining a permanent chair with team presidencies for the Council of ministers. In their views, the rotating Presidencies needed to be replaced by “one possible model in which a team of Member states will hold a collective Presidency during a two-year period. (...) This system is compatible with recourse to certain “Institutional presidencies” : that of the Chair of the European Council in the General Affairs composition of the Council (...) and that of the High representative in External Relations”<sup>7</sup>.

It is important to note that the UK and Spain advocated an even stronger president of the European Council than Franco-German. The British in particular seemed to be motivated by substantive considerations (having someone in charge of the Lisbon process) as well as inter-institutional considerations (strength vis-à-vis the European Parliament in the context of co-decision). Thus, their version of a super-president of the

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<sup>7</sup> Contribution by Mrs Ana Palacio and Mr. Peter Hain, members of the Convention on “The Union institutions”, CONV 591/03, 28 February 2003.



European Council included the following tasks *inter alia*: preparation of Council agenda and control of its conclusion; multi-annual agenda; heading Council secretariat that become his administration; chairs General affairs council; chairs teams presidencies of the Council; attendance of sectorial council and at Commission meeting when needed; recommendation of appointment and dismissal of high representative, etc.

Beyond these variants and the divide over the question of the presidency per se, it is important to note that support was expressed early on regarding other aspects of the Franco-German proposal. First, the election of the Commission President by the EP had broad support in the Convention, including by President Giscard. Crucially, the British position has evolved in this regard. Apparently, its traditional opposition to replacing a Commission President chosen by the member states with an elected one, could be traded off against the “strategic prize” of a stronger leader representing EU governments on the world stage. As Peter Hain, the British government representative put it to his Parliament:

*‘in the end there will have to be an agreement and a necessary process of adjustment by all parties. We have, for example, been willing to look at, with certain very big safeguards, elect the Commission President through some method, provided that does not involve being hostage to a particular political faction and provided that the outcome is one that the Council can accept. So it is not something we sought and we remain deeply sceptical about it, but if, as part of the end game, getting an elected President of the Council, which is very much a priority for us, involves doing something with the Commission President with those very important safeguards that I mentioned, then that is something that we might have to adjust to’<sup>8</sup>.*

Second, a consensus emerged on the double hatted foreign affairs minister as included in the Franco-German proposal and earlier supported in the fall by a narrow majority in plenary. However, the precise division of tasks (in particular in terms of external representation) between a European Council President and the proposed European Foreign Minister in charge of the EU’s Common Foreign and Security Policy were unclear under the Franco-German plan and remains so in the Convention’s draft treaty. And there were still worries emanating from a substantial minority that this new function would risk eroding the Commission’s traditional external functions.

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<sup>8</sup> Peter Hain, Interview in the European Affairs Committee of the House of Commons, 25 March 2003.

### *Giscard's "compromise" and the rebellion of the smaller states*

Before turning to the next phase of the debate we must introduce another actor in this play, namely the Presidium of the Convention. In light of both the rules of the Convention and the personalities involved the Presidium was bound to play a decisive role in this epic battle between big and small states. Indeed, throughout the proceedings it leveraged its hybrid nature as a secretariat/mediator and as a college to the fullest (Magnette and Nicolaïdis 2004). On the one hand, like presidencies in IGCs, it acted as organiser and as mediator with the support of the Convention's Secretariat, seeking to forge a compromise on a step-by-step basis. But it chose to do so, not by leaving options open until a last minute package deal but by submitting a single negotiating text. This text in turn became the reference or the status quo, with the burden of proof being put on the dissenters. More often than not, after submission of the initial draft articles, the Secretariat in its explanatory comments was able to pit one set of amendments against another, and represent its own initial version with only cosmetic alterations. Since on the other hand, the Presidium was a collective organ, a college rather than a single presiding member state it had enough authority to impose its viewpoints, as "consensual" or at least "the best possible compromise". This made it harder for the rest of the Convention to question its proposals. In this context, potential vetoes were forestalled and actual ones ignored.

These tactics worked in reaching a "consensus" but they also left a definite 'bad taste' among many delegates, which in the end, might have deprived the Presidium proposal from the kind of legitimacy that a more negotiated text would have. By debating in absolute secrecy, without displaying the textual basis for its own sessions, the Presidium conveyed the idea that the grounds for its decisions were not purely normative. Moreover, within the Presidium itself, the Chair acted with an iron fist, controlling relations with the Secretariat and often submitting proposals to his twelve colleagues a few hours before discussion. By requiring that once a topic had been tabled in the Presidium, members were not allowed to present amendments for debate in the plenary, he sought to signal consensus even where it did not exist. It is little wonder then that these provisions never commanded the support of a majority of member states in Convention, with obvious implications for the IGC.

As President of the Convention and therefore of the Presidium, Valéry Giscard d'Estaing had always known that he needed to help forge a compromise between small and big member states. But he did not hide his agreement with the Franco-German compromise and sympathy for the British position. His defenders argued that this was only the case because he tried to ensure that "his" Constitution would not be radically

altered by the IGC, and therefore the most powerful member states. But his detractors recalled the fact that he himself “created” the European Council in 1974 and would therefore naturally want to make it the apex of the European system – without much concern for the weakening of the Commission. Moreover, he no doubt believed that Europe ought to be ruled by its most powerful states, never tiring to emphasize the fact that the countries who supported the idea of an EU presidency represented 3/4th of the European population.<sup>9</sup>

At the Athens European Council, in April 2003 Giscard went all the way and explicitly drew the consequences of this analysis: since those who rejected the idea of a permanent president for the Council only represented a quarter of the EU population, they should not be allowed to prevent the formation of a “consensus” (which, in Giscard’s mind, seemed to mean a very large majority). With such an argument, Giscard not only contradicted any version of the principle of equality between states but also contradicted the principle of equality among the conventioners themselves.

His argument could not but infuriate the smaller states. It introduced in the procedure of the Convention a majoritarian logic (as in majority of population rather than member states), though this was alien to the EU’s traditional *modus operandi*, had not been foreseen by the Laeken mandate and had not governed their work so far. If this became the Convention’s rule, every minority grouping in its mist were made to feel that the process did not respect their rights, and this could ruin the legitimacy of the whole enterprise.

The “friends of the Community method” reacted very passionately against Giscard’s majoritarian arguments. In the run-up to the formal debates on institutions, they issued a paper at the end of March to reiterate their common stance.<sup>10</sup> Most importantly, they spelled out a clear principled argument as to where the distinction between big and small states ought to be relevant and where not: yes demographic factors were relevant for representation in the European Parliament and to voting weights in the Council of Ministers; no they should not lead to “any hierarchy of Member States” or “differentiate between them in terms of their entitlement to involvement in the operations of the institutions”. On the Council, while they acknowledged less than full consensus this meant

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<sup>9</sup> In an interview just before the plenary for instance, he argued that the EU now comprised three categories of states: the four largest ones, with a population of more than forty million inhabitants, which, together, amount to 74% of the EU population; eight medium-sized countries, with a population between 8 and 16 million people, who represent 19% of the population; and eleven small states who, together, only include 7% of the population.

<sup>10</sup> “Reforming the Institutions: Principles and Premises” CONV 646/03, 28 March 2003.

that a rotating presidency ought to be the predominant aspect of a new system. At a meeting in Luxembourg in early April, the 19 countries restated their support for many aspects of the Franco-German proposal (Minister for foreign affairs; extension of QMV and codecision; election of the Commission's President by the EP, confirmed by the Council...) and confirmed their rejection of the permanent Presidency of the Council.

Until very close to the end game there was little sign that any side would move. At the Athens meeting of the European Council on 16 April 2003, each country laid out its argument once again with little or no visible attempt to bridge the existing divide between big and small countries. Giscard did not, however, change his strategy. Two days before the plenary session of 25-26 April 2003, he presented his personal views to the press. The reactions of some members of the Presidium forced him to revise his position on some points, but he nevertheless persuaded the Presidium to present to the Convention a "compromise" which overall did not take into account the critics of the smaller countries. This in turn forced for the first time some member of the praesidium to break rank with their colleagues and express disagreement publicly. While a number of points in the Presidium proposal deviate from Giscard's initial draft, the main reforms opposed by small and medium states were left in (Magnette and Nicolaidis, 2003) : a smaller Commission, a Commission president nominated by the Council rather than the Parliament, and the abolition of the rotating presidency. It is therefore no surprise that after Giscard had presented this proposal, the Benelux published a very hostile letter, regretting his method in presenting his own ideas, and the fact that he had not taken their position into consideration. Therefore, they promised to submit alternative proposals to the Convention<sup>11</sup>.

In addition to plain negative reactions, a number of new elements were then introduced in the Convention which rendered the end-game even more complex. First, and in view of the available alternative, the phoenix of Nice re-emerged from the ashes. Understandably, representatives of Spain and Poland, joined quietly by some new members started waging a "give Nice a chance" campaign: why throw away an arrangement we have not even tried they asked? Why in particular revisit the QMV formula and even the Commission composition? The strengthening of this position introduced a wedge in the big country camp but was simply not acknowledged by the Convention: vetos, remember could simply be bypassed. This oversight, in spite of the fact that the two countries had pretty much locked themselves in at home on a "pro-Nice" line would greatly contribute to the difficulties of the IGC and the failure of the Brussels Summit on 12 December 2003.

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<sup>11</sup> Lettre des trois représentants du Benelux à la Convention européenne, Jacques Santer, Louis Michel et Gijs de Vries, au président de la Convention, Valéry Giscard d'Estaing au sujet des propositions de réforme des institutions, Brussels, 25 April 2003.

Second, in view of the looming conflict, the Benelux countries produced their own updated proposal which, they claimed, contained some elements of a compromise with the big countries — a proposal supported orally by Joschka Fischer. Foremost among them was the creation of a two-tier Commission with equality of rotation, where only the full Commissioners would have the right to vote, but where all countries would nevertheless have their Commissioners. The other 16 small countries did not officially go along with this, although there was a sense that a more egalitarian version thereof could constitute their ultimate fallback position. Moreover, contrary to the Benelux compromise, the other small countries continued to support the maintenance of rotation for the General Affairs Council rather than its chairing by the President of the Commission. Some also opposed the chairing of the Foreign Affairs Council by the Foreign Affairs minister, arguing that the latter could not chair a body that was supposed to hold him accountable. The wedge in the small country camp would greatly diminish their remaining blocking power.

Third, Foreign Minister George Papandreou introduced a new option for consideration in the plenary, namely the election of the president of the European Council by universal suffrage or through an electoral college. The proposal had little chance to fly in the short run but was meant in part to reintroduce the central consideration of democratic legitimacy in the Convention debate. If the Convention was to get rid of democratically elected prime ministers and heads of states to head the European council, the least it should do was to give the new figurehead a democratic pedigree. Moreover, such an election would give the president a source of legitimacy separate from the Commission and therefore reduce the potential rivalry between the two bodies by making the Council president a more supranational figure. To be sure, such an election had been advocated in the long run for the president of the Commission with the same intent: to bring EU institutions closer to EU citizens. It was therefore not received without some degree of scepticism by the “friends of the Community method” Who feared any proposal which might strengthen the Council vis a vis the Commission. But the proposal could be adapted in their direction through an evolutionary clause that would eventually lead to a single Union presidency as advocated by some in the Convention. Papandreou’s proposal drew some support from Brutton, the Irish representative and a couple of other conventioners but was never considered as a serious contender having been introduced so late in the game. Most importantly, it served to signal in plenary that there was no full agreement in the Presidium and to remind the wider public that the European Council Chair as conceived was not a panacea.

Fourth, the candidate countries became more prominent and assertive in the wake of the Athens ceremony. In the press conference after the mid May plenary, Giscard acknowledged the legitimacy of their wish to have

their own commissioners as a bridge to their own citizens and pointed to the interim arrangements as an avenue for compromise. The Constitution would not apply to the formation of the next Commission in 2005 which would therefore conform to the one-Commissioner per state agreement at Nice. This was a small concession but there was nothing else on offer.

### *Endgame*

In the days leading to the final session of the Convention on 13 June 2003 (notwithstanding the left over business which carried on until July) most of the and debates negotiations occurred within the different component groups - EP, national parliaments, government. But the latter was certainly the most conflictual. The group of smaller member states (oscillating between 16 and 19 members) continued to take position against the European Council president and a reduced Commission. That a final compromise was actually reached in the very last hours of the Convention, in June 2003 testifies to the power of the Presidium which continued until the end to bypass the small states "no" in part because these states never manage to turn this no into a collective veto by persuading the Presidium that they was a high probability of dissent from the final outcome. Indeed on the 13<sup>th</sup> of June, most representatives from this group of states congratulated the Convention, the Presidium and the president for a job well done. Only the representative of Finland (along with Spain for its own idiosyncratic reasons) expressed some doubts publicly.

In fact, small states had only obtained very marginal concessions in the last minute race to find a compromise. They had given in on the President of the European Council, extracting a clause requiring him not to trespass on Commission or foreign minister term. They had obtained at the very last minute the explicit mention of "equal" rotation for Council formations, but had not obtained the deletion of a 1 year clause which meant in effect that rotation would be a collective affair (of team presidencies of 1 or 2 year length) rather than "block rotation" with one country holding the reigns and thus continuing to play a visible and significant individual role in EU leadership. On the Commission, the Presidium had left in the reduced Commission thus simply bypassing the absolute red line of smaller states on this count. And finally, the smaller countries were well aware that the double majority system including 60% of member states gave a greater power than ever to bigger states, especially Germany. They preferred a straightforward 50/50 system but did not make this a major battle ground. In spite of Spanish and Polish opposition the 60/50 formula went in uncontested.

In short, the Convention handed over to the IGC a draft text which constituted in many ways a major improvement over the existing Treaties. On most of these other non-institutional issues, and even though they had

not always gotten what they wanted, representatives of smaller states like their colleagues, felt proud of the end result. They could not and did not walk out – as did for instance the group of sovereigntist delegates. But it would be an overstatement that they appended their name to the draft Constitution with great enthusiasm. On the issue of power in the EU the result was clear: they had lost.

The failure of the Brussels Summit in December 2003 revealed the limits of the Presidium strategy of bypassing uncomfortable vetos. The vetos that should not have been ignored were not those of both the smaller states and the “almost big” states. While France and Germany strongly supported the Convention text which strengthened their own power, Spain and Poland continued to oppose the double majority (50 percents of states, 60 percents of population) that would replace the system of weighting votes agreed at Nice after 2009, while a majority of the small states refused to abandon their ‘representation’ in the Commission. Although a dozen of compromises were put on the table, the Italian presidency did not try to reach an agreement during this final Summit in December 2003. The solution adopted by the Convention by consensus – and despite the opposition of two large states on QMV – and without real deliberations, proved very fragile<sup>12</sup>.

## CONCLUSION

The tension between large and small countries has always been part of EU politics – a trait shared with all federal experiences. Three mechanisms established by the founding treaty have long helped reduce the intensity of these conflicts: the system of weighed votes in the Council, the role and “representativity” of the Commission and the rotating presidency have all preserved the basic principle of equality among member states, while giving to the larger ones a preponderant role.

Successive enlargements have made these mechanisms ever less adapted to the functioning of the Union. As the number of small states has grown much more rapidly than the number of large states, the institutions which guaranteed the equality among states have seemed less defensible to the larger ones. Until the mid-1990s, enlargements were dealt with by adapting the first two mechanisms and establishing a tradeoff between them overtime: voting would become more proportional while the Commission would hang on to the equality principle. But with 9 out of the 10 new member states small or medium-sized, even this basis tradeoff could not do the trick anymore. By the time the Convention was convened, a new bargain was needed to reconcile the principles of

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<sup>12</sup> At the time of writing (December 2003), the Irish presidency had still not announced its plan concerning the negotiation on the Convention’s draft treaty.

equality among states and proportional democratic representation in the EU.

The Convention tried to settle this problem through two complementary means. First, a new system of vote in the Council (double majority), which balances the two principles of one-citizen-one-vote and one-state-one-vote. As it weakens the position of those quasi-large states (Spain and Poland) which had won the same status as the large ones at Nice, this aspect of the final compromise was put under strong pressure during the first stage of the IGC, preventing the Italian presidency from reaching a rapid agreement. Second, a re-organisation of the Council-Commission pair : while the large states won the permanent presidency of the European Council most of them claimed, they had to accept the election of the Commission President by the EP requested by Germany, and the smaller states managed to preserve some form of rotation in the Council and in the composition of the Commission.

But there is little doubt that, at least in the eyes of smaller states, the results were asymmetric. The Convention did not narrow the divide between large and small states. On the contrary, it has made it wider and more visible than ever before in the Union's history. Whether the compromise embodied in the draft constitution as amended by the IGC will preserve the balances of the Union, despite all the criticisms it generated, remains to be seen.

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