

Coping with the Lilliput Syndrome: Large vs. Small Member States in the European Convention

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Like all former treaty reforms, the Convention ran into deep divisions between large and small states – read more or less populated states – when it discussed institutional issues. This paper examines the impact of this cleavage on the process and outcome of the Convention. First, we recall how the tension was managed under the founding model, and show how successive enlargements made it ever more acute. We then show that, under the Convention, the classic compromises proved impossible, so that new deals needed to be found. We conclude that, despite the consensus proclaimed at the end of the process, the Convention partly failed to settle this problem.

Introduction

The tension between large and small states is inherent in any federal polity. The European Union is no exception. When they tackled institutional issues, the members of the Convention soon divided along this line, reproducing a classic feature of former intergovernmental negotiations.

This opposition illustrates the tension between two key principles: equality between member states and democratic representation.¹ The Community method has

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¹ This dilemma is synthesised by Tocqueville in these terms: 'quand on avait voulu établir la constitution fédérale, deux intérêts opposés s'étaient trouvés en présence. Ces deux intérêts avaient donné naissance à deux opinions. (...) Ainsi s'agissait-il d'organiser une ligue et non un gouvernement national, c'était à la majorité des Etats à faire la loi, et non point à la majorité des habitants de l'Union. Car chaque Etat, grand ou petit, conservait alors son caractère de puissance

sought from the beginning to balance these two principles. But the Convention has 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 underlines reform of all the institutions, from the composition of the Commission and the Parliament to voting method in the Council and of course, to the question of the presidency of the European Council. As such, it implies a revision of the founding model which sacrifices some of its major features.

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 continent's big state 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. 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.

indépendante et entrain dans l'Union sur le pied d'une égalité parfaite. Du moment, au contraire, que l'on considérait les habitants des Etats-Unis comme formant un seul et même peuple, il était naturel que la majorité seule des citoyens de l'Union fit la loi. On comprend que les petits Etats ne pouvaient consentir à l'application de cette doctrine sans abdiquer complètement leur existence, dans ce qui regardait la souveraineté fédérale; car de puissance corégulatrice, ils devenaient fraction insignifiante d'un grand peuple. Le premier système leur eût accordé une puissance déraisonnable: le second les annulait' (Tocqueville 1985: 189).

The Founding Compromise

In the initial pact, the Paris treaty of 1951, three complementary constitutional mechanisms were 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 (Nicolaïdis and Howse, 2001). Sophisticated systems of weighing votes, along with multiple representation, try to offer a degree of guarantee for the interests of the smallest states while giving the largest states a greater say in the decision.

The EC's initial system of qualified majority voting (though rarely used until the end of the 1970s, given the importance of unanimity and 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 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 per cent of the population. No state could, by its 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 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 fulfil 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 that 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 or 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.²

Avoidance of a Permanent Presidency

At the creation, 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 an autonomous leader that could have undermined 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 the governments of the 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 time and enlargement the gap between presidency is now of seven and a half years, 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). At the same time, the rotating presidency

² 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.

of the Council was the only institution where equality between states was applied in its pure form. On the whole, it was accepted both by large and small states.

The Exacerbation of the Tensions

Such a consensus did not last. The ‘matter of size’ became more obvious in the 1970s and 1980s, under the twin effects of the extension of QMV on one hand, which made the weighing system more important, and of the successive enlargements on the other hand, which complicated the logic of regressive proportionality (Dony 2003).

The first enlargement of 1973 called for a revision of the initial compromise, first of all by revisiting the original system of weighing votes. As Denmark and Ireland were somewhat smaller than Belgium and the Netherlands – and as it was implicitly admitted that the founding states could 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 the 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 (a bargain it later 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, 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.

The Lilliput Syndrome: Dealing with ‘the Great Enlargement’

The end of the Cold War opened the door to the biggest enlargement in the history of the European Union, a prospect applauded and 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 exacerbate the tensions between the two principles of proportional representation and equality between states. Unsurprisingly, the big countries increasingly fell prey to what some referred to as the ‘Lilliput syndrome,’ picturing themselves as the giants potentially held back by a crowd of mini countries. Clearly, weighted votes under-represent

big countries relative to their weight in terms of population; thus past enlargement to 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 effect 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 per cent with 6 members to 58 per cent with 15 and a projected 50 per cent in a Union enlarged to 27. Any further enlargement would bring this figure below the 50 per cent threshold if the current method of calculating QMV was retained.

Put even more simply, this trend clearly challenged the relative transparency 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. But in assessing potential changes, they sought to preserve the 'spirit of equality' embodied in the initial treaties.

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 in favour of small states (one Commissioner per state). But the zero sum character of voting right reform combined with idiosyncratic demands of individual member states (like Spain) 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 Nicolaidis 1998, 1999).

The Nice Summit which followed in 2001 thus became 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 per cent); 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. And 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 current five times more votes than the smallest ones. Overall, the Nice reforms actually over-compensates 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.

In addition to a re-weighting for QMV, Nice introduced two additional voting criteria: a simple majority of member states and 62 per cent 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 latter in the Convention.

The 'question of size' has also affected the composition of the other institutions. The attribution of seats in the EP is even more proportional and therefore biased against small states, than in the Council. Germany has 12 more seats than the four other big states under the present system, thus breaking the taboo of institutional equality between France and Germany. The small states are three or four times less represented in the EP than the big ones, while they have nearly half of the large states' weight in the Council.³

The Nice treaty also tried to cope with the question of the Commission's composition. The application of the initial implicit rule (2 commissioners for a big state, 1 for a smaller one) has more than doubled the size of the college since 1973. While publicly defending the impartiality of the Commission, the smaller states have always refused to abandon their seat, and the largest one have been very reluctant to give up their second commissioner. At Nice, they reached a gradual compromise based on sequencing: they decided that, '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'. The compromise thus 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. The Laeken Summit in December 2001 called for the convening

³ 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.

of a Convention with an even broader mandate including the issue of competences and the role of national parliaments. But in spite of its deliberative spirit and its considerable investment in time and debate, the Convention has not narrowed 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.

The Debate within (and around) the Convention

Perhaps daunted by its highly divisive nature, the Convention has long delayed discussion of actual and concrete text on the Union's institutional order. Outside the plenary sessions, however, most governments have long made their positions known. We identify three phases in this story: positioning, hegemonic compromise and the search for a synthesis.

Positional Bargaining: Permanent Presidency (ABC) vs. Improved Status Quo (Benelux and the Smaller Countries)

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. Yet progress in and outside the Convention addressed the last two issues through the setting up of pluri-annual programmes and the creation of a foreign affairs minister. 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 are 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 is 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.

This basic reaction informed 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.⁴ The 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 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 Council’.

Instead, the Benelux suggested another approach to enhancing the effectiveness of the Council through a clearer distinction between the executive and legislative functions of the Council. 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.

⁴ In its fullest configuration, the group included all member states and candidate countries except the six big states, 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.

In this, the Benelux, and other small countries after them, defended the two basic principles laid out at the beginning of this paper. On the one hand, the role of the supranational bodies, specifically the EP-Commission pair; on the other hand, 'equality of the member states'.

While the latter's import is self-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 have 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 explains 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.

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. In a more fluid EP, where they can form ad hoc coalitions within transnational political groups, smaller state representatives tend to promote their interest better than in a rigid intergovernmental Council. 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 was dominated by the kind of hegemonic compromise that have characterized Union politics since its inception: the 'Franco-German compromise' put forward by the two countries on the occasion of the 40th anniversary of their bilateral treaty in January 2003 and discussed within and around the Convention, though it was 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.

The contribution included 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 2½ years, but with the possibility of re-election) 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 defence 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.

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.

At plenary, one convention member announced for the record that 64 speakers had spoken against the dual-Presidency plans, 11 in favour and 15 had remained neutral.⁵

⁵ 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.

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

- i) Leadership rivalry: the lack of clear division of labour 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 emphasised the importance of avoiding the creation of two competing power centres. 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 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 criticised as inconsistent. On what grounds it was asked, did its promoters believe that EU heads of states and governments would recognise 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

⁶ 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.

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 Franco-German proposal and the first round of reactions to it, variants were proposed. Most prominently, UK and Spain have 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 should 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'.⁷

It is important to note that the UK and Spain advocated an even stronger president than the Franco-German one. 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 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:

⁷ Contribution by Mrs. Ana Palacio and Mr. Peter Hain, members of the Convention on 'The Union Institutions', CONV 591/03, 28 February 2003.

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, election of 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.⁸

Second, a consensus emerged on the double hatted foreign affairs ministers as included in the Franco-German proposal and 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.

Giscard's 'Compromise' and the Rebellion of the Smaller States

As President of the Convention, Valéry Giscard d'Estaing has always known that he needed to help forge a compromise between small and big member states. But he was also personally much closer to the Franco-German compromise as well as sensitive to the British position. 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. They argue furthermore that his two foremost goals have been to support the claims of big countries and to weaken the Commission. His defenders retort that this only appeared to be 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. Whatever the motivation, at some point before the official tabling of the draft articles on institutions, he chose to take sides and support the idea of a permanent President of the Council

He first emphasized in various interviews the fact that the countries who support this idea represent the largest part of the European population. Before the plenary, he argued that the EU now comprises three categories of states: the four largest ones, with a population of more than forty million inhabitants, which, together, amount to 74 per cent of the EU population; eight medium-sized countries, with

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

a population between 8 and 16 million people, who represent 19 per cent of the population; and eleven small states who, together, only include 7 per cent of the population.

Some weeks later, at the Athens European Council, he explicitly drew the consequences of this analysis: since those who reject the idea of a permanent president for the Council only represent 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 contradicted the principle of equality among conventioners he had supported so far.

This argument could not, obviously, be accepted by 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, all the minorities could feel that the process does not respect their rights, and this could ruin the legitimacy of the whole enterprise.

The group of small and medium member states reacted very passionately against this argument. In the run-up to the formal debates on institutions, they issued a paper at the end of March to reiterate their common stance in favour of the community method.⁹ Most importantly they spelled out clearly where the distinction between big and small states ought to be relevant and where not: yes demographic factors are 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 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. 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. While a number of points in the Presidium proposal deviate

⁹ 'Reforming the Institutions: Principles and Premises' CONV 646/03, 28 March 2003.

from Giscard's initial draft, the main reforms opposed by small and medium states were left in (Magnette and Nicolaïdis, 2003).

It is fair to say that the debates in the Presidium led to some significant improvements in the direction of compromise relative to the original draft by the Secretariat and Giscard. Nevertheless, even in the version presented, the small countries were to loose on all sides, with 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 President Giscard had presented this proposal, the Benelux published a very hostile letter, regretting the method used by Giscard 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.¹⁰

In addition to plain negative reactions, a number of new elements were introduced in the plenary and its immediate aftermath 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 QMV and even the Commission composition? The strengthening of this position introduced a wedge in the big country camp, and later explained the difficulties of the IGC and the failure of the Brussels Summit on 12 December 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, argued that the latter could not chair a body that was supposed to hold him accountable.

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

¹⁰ 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.

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 could be expressed 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. Most importantly, it served to signal in plenary that there was no full agreement in the Presidium.

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.

The Final 'Compromise' and the Rebellion of the Medium States

The final compromise was reached in the very last hours of the Convention, in June 2003. The Presidium played an important role in shaping the final outcome (Magnette and Nicolaidis 2004), by applying the 'single negotiating text' approach and bypassing threats of veto. It leveraged its hybrid nature as a secretariat/mediator and as a college to the fullest. 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 the Convention, with obvious implications for the IGC.

The failure of the Brussels Summit in December 2003 revealed the limits of this strategy: 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 compromises were put on the table, the Italian presidency did not try to reach an agreement during this final Summit: 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.¹¹ In the end, the Irish Presidency had to put forward a hybrid solution: on the composition of the Commission, it simply suggested prolonging the compromise of the Nice treaty until 2014; on QMV, the double majority was preserved, but the thresholds were raised and two additional conditions were added so as to guarantee that a blocking minority would include a minimum number of states and a minimum share of the population. In addition, an emergency clause inspired by the Ioaninna compromise of 1995 was inserted in the final text, allowing a group of states close to a blocking minority to slow down the process by seizing the European Council. Despite the fact that the principle of double majority was supposed to simplify the process and make it more predictable, successive compromises made the final outcome ever more complex and unpredictable. The Convention's attempt to surpass the intricate logic of intergovernmental bargains proved short-lived.

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

¹¹ 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.

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 basic tradeoff could not do the trick anymore. By the time the Convention was convened, a new bargain was needed to reconcile the principles of 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 IGC, preventing the Italian presidency from reaching a rapid agreement, and forcing the Irish presidency to alter the Convention's proposal. 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. Whether this compromise will preserve the balances of the Union, despite all the criticisms it generated, remains to be seen.

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