

## Elmar Brok, The Convention for a European Constitution

**Caption:** In November 2003, Elmar Brok, European Parliament representative at the European Convention, welcomes the outcome of the Convention and calls for the Heads of State or Government to adopt the draft European Constitutional Treaty in its entirety.

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## The Convention for a European Constitution

*Elmar Brok*

After a year and a half of intensive discussion with phases of controversy and standstill, the Convention in the end achieved an impressive consensus. No one would have predicted with certainty in February 2002 that in the end a draft for a constitution would be completed so quickly. Particularly in the final phase of debate many members of the Convention criticised the Praesidium's mode of operation as opaque and biased in favour of the large Member States. The differences between large and small Member States might have been defused, if not resolved, by an earlier discussion of the institutional questions.

In the final phase, however — with the danger of possible failure vividly clear — the appreciation of the importance of the inclusion of the delegations and political groupings grew, strengthened by common positions of the members of the European Parliament and the national parliaments. The chairpersons of the political families of the PPE, Socialists and Liberals in the Convention contributed to the formulation of compromises in common position papers, particularly on the extension of the decisions to be taken with a qualified majority and on the balance of the institutions, as well as the limiting of the function of the new full time president of the European Council and the decision on the setting up of a diplomatic service of the Union within the framework of the Common Foreign and Security Policy (CFSP).

The result produced by the 105 Convention members from the European Parliament, the national governments and parliaments and the Commission is a considerable improvement over the current complex collection of treaties. An integrated draft constitution without alternatives was presented in consensus which strengthens the symbolic character of the European Union as a union of citizens and states. It is above all remarkable that representatives from 28 states were able to come to an agreement on common values for the Union.

Questions which had to be left unanswered in Amsterdam and particularly in Nice could, at least with effect up to 2009, be addressed and resolved. This was primarily true for the rules on majority decisions in the Council and the size of the Commission, and the distribution of seats in the European Parliament. The largest accession round since the existence of the Union had produced the necessary pressure to act. The threat of a non functioning Union with 25 or more Member States produced the required flexibility.

The result also showed the advantages of the Convention method over the usual, unanimity based conferences of civil servants at the government level. The Convention, the majority of whose members were MEPs, achieved politically far reaching compromises through public discussion compelling the exchange of arguments instead of premature national "nos". It is therefore to be welcomed that it was possible at the last minute to firmly embody the Convention method as the rule for dealing with proposed amendments to the Constitution. The European Council can only dispense with convening a Convention before the Intergovernmental Conference with the consent of the European Parliament. It would make sense in future to strengthen the independent role of the Convention by electing the president and the two vice presidents from among the Convention members.

The criteria for judging the results of the Convention are embodied in the assignment by the Laeken summit to make the extended Union more efficient, more transparent and more democratic. The integration of the Charter of Fundamental Rights in a prominent position in the Constitution, the clear division into exclusive, shared and supplementary competencies and the reduction of a multitude of legal instruments are qualitative improvements in this direction. For the European Parliament the general introduction of co decision as the rule for the process of legislation is to be particularly welcomed, as is the consolidation of its negotiating position in the now obligatory multi annual financial planning. The European Parliament is further strengthened by the newly introduced consultation by the European Council in the choice of candidate for Commission President, taking into account the result of the European elections, and by his subsequent election.

It would be false not to mention that some things which were desirable and necessary were not achieved.

However, it is the nature of a compromise that in order to achieve a satisfactory solution for all, everybody will have to concede ground on some points. For instance, for the majority of the Convention members the upgrading of the European Council to an institution and the establishment of the function of a full time President of the European Council was unnecessary. This could lead to paralysing competition with the Commission President and the new Minister for Foreign Affairs. This solution was arrived at due to pressure by several large Member States. Nevertheless, close co operation on the part of the European Parliament and the national parliaments in the final phase led to a limitation of the functions, more specifically, that the European Council may not exert legislative competence. The competencies of the president are essentially limited to the co ordination in the European Council and the external representation of the Union in the CFSP at the level of the heads of state and government, which means at summit meetings with third countries and in the framework of the G8, provided this does not restrict the rights of the Minister for Foreign Affairs.

The position of the Commission President will receive greater democratic legitimacy and be strengthened within the Commission. Taking into account the elections to the European Parliament and after appropriate consultations, the European Council, deciding by qualified majority, will put to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate will subsequently be elected by the European Parliament by a majority of its members. The Commission President can designate areas of responsibility to the European Commission and Commissioners, and also demand the resignation of individual Commissioners. It would also have been desirable to give the President the option of rejecting candidates proposed by Member States.

In the Council, decision making with a qualified majority on the basis of a double majority of states and of 3/5 of the population, and the possibility of reducing the number of MEPs, will lead to more efficiency. The fact that the innovations in the setting up of the Commission, majority decision making and the set up of the European Parliament will not take effect until 2009 is, regrettably, part of the compromise with which, above all, the consent of several hesitant national governments was wrung. From the perspective of integration policy it would of course have been preferable for these essential regulations to be in place when the constitution enters into force. A central argument for the setting up of the convention was to improve the functioning of an enlarged Union. This in turn requires room for a dynamic development of the Constitution itself. It would be unrealistic, and also undesirable, for the Constitution to be unalterable. Yet, the current rule of the alteration of the Constitution requiring unanimity and ratification by all Member States could lead to the prevention of necessary improvements. A solution is necessary which on the one hand makes essential changes dependent on the agreement of all 25 or more Members, but on the other hand prevents the permanent blockade of necessary developments by one Member State. In the Convention it was therefore suggested by all political parties that changes to the constitution, with the exception of the Charter of Fundamental Rights and the transfer of competencies, should be allowed to enter into force with a 5/6 majority of states and a 2/3 majority in the European Parliament.

The Convention has finished its work. The European Parliament will, as usual, critically accompany and influence the Intergovernmental Conference in Rome with two representatives. The PPE Convention group, as the largest political grouping, will continue to meet during the Italian Presidency in order to be able to effectively influence the negotiations within the framework of the political family.

In order to be successful, the compromise package of the Convention must remain untouched. If one stone is removed from the pyramid, it will collapse in its entirety. After all, a large number of governments, through the participation of their foreign ministers or members of government in the Convention, already have a share in the consensus which has been reached. The Intergovernmental Conference should be completed by December 2003 and the Constitutional Treaty signed after the accession of the new Member States on 1 May 2004. The proposal by President Giscard d'Estaing that the Constitutional Treaty should be signed on Europe Day, 9 May 2004, by the then 25 Member States in Rome, deserves full support.

The European election in June 2004 could be seen as a Europe wide "referendum" with a consultative character. The actual process of ratification should, however, be conducted in each country according to its own political traditions and constitutional rules.