

Democracy goes abroad

Professor Olof Petersson

The Center for Business and Policy Studies, Stockholm, Sweden
www.sns.se/olof

National Europe Centre Paper No. 49

December 9, 2002,
The Australian National University, Canberra

Globalisation and Europeanisation need not lead to a weakening of democratic government. Major, though as yet unexploited, opportunities exist for strengthening the democratic aspects of international politics. The European Convention is an experiment in constitutional engineering across borders. The Convention combines the world of diplomacy with features from domestic democratic reform. There are mutual linkages. Events at the national level trigger changes in the European Union. The Convention might propose institutional reforms which would, in turn, have significant effects within the member states, particularly in the Scandinavian countries

Twenty-seven European nations are, at this very moment, engaged in a joint experiment in constitutional engineering. The aim is to propose a new framework and new structures for the European Union. Created by the Laeken European Council in December 2001, the European Convention brings together fifteen representatives of governments and national parliaments as well as the European Parliament and the European Commission. Representatives from the twelve candidate States participate in the proceedings, although they do not have full voting rights.

The Convention started its work in late February this year and has by now finished its first phase, which its president Valéry Giscard d'Estaing has called a listening period. The Convention is expected to finish by mid-2003. It is still an open – and also controversial – issue whether the Convention will present one single reform package or several different options. In any case the Convention is not the final decision-making body. The power to change the treaties forming the European Union still rests with an Intergovernmental Conference, which is planned to convene in 2004.

It is fair to say that the Convention is an innovation. It combines the world of diplomacy and international organizations with features from domestic constitutional debates and democratic reform. There are mutual linkages. Events at the national level trigger changes in the European Union. The Convention might propose institutional reforms which would, in turn, have significant effects within the member states.

The causal chain of events which eventually lead to the creation of the Convention is long but nevertheless quite clear. The crucial role was played by Václav Havel, Lech Walesa and other

human right activists who actively contributed to the process which removed the wall. Democratic and economic reform in Eastern and Central Europe made these countries ready to enter organizations so far restricted to Western Europeans. They first entered the European Council and now the European Union. At the Copenhagen summit in December this year ten new countries are expected to become full members of the EU. Obviously the internal mechanisms of the EU will have to change. The unanimity rule will be replaced by majority decisions in most areas. This will lead to countries finding themselves in a minority position and having to accept EU decisions against their will. When their veto power vanishes it is not surprising that member states ask for a clearer definition of what the EU can and cannot do.

Problems in the old established democracies of Western Europe are another factor behind the creation of a European Convention. The democratic deficit of the European Union has become a major preoccupation of European politicians, as is expressed in the Laeken declaration: "Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny".

The Laeken declaration instructs the Convention to present proposals within some broad areas of reform:

- * A better division and definition of competence in the European Union
- * Simplification of the Union's instruments
- * More democracy, transparency and efficiency in the European Union

Even though the Convention still has another year of work and will be succeeded by a European summit, some possible reforms are already outlined in the preparatory phase.

A constitutional treaty for Europe was proposed by Giscard d'Estaing already in his introductory speech to the Convention. A blueprint for a rearranged and slightly amended text has already been drawn up by the Convention secretariat and a detailed proposal is expected in October.

The delimitation of competence between the European Union and the member states is

deficient in several ways. The system lacks clarity; legislators fail to comply with existing rules, and checks are insufficient. It is still not clear if the principles of subsidiarity and proportionality will be strengthened and whether legal or political controls should be introduced.

All the major EU institutions are now under debate. The agenda set in Laeken is impressive indeed:

”How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?

A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six-monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How

should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?”

The Convention is also expected to discuss whether the new EU Charter of Fundamental Rights should be given an explicitly legal status and be included in the basic treaty and whether the European Community should accede to the European Convention on Human Rights.

One might already start to formulate hypotheses of what would happen if the Convention leads to changes in all or some of these areas. It is doubtful whether European democracy will be enhanced significantly. Even if many of these proposed changes are accepted, the agenda nevertheless omits some important factors for a vital democracy, such as civil society, citizen participation, and the creation of a public sphere extending across the national, cultural and linguistic barriers in Europe.

Institutional changes at the European Union level would also most likely have different impact in different member countries, depending on their own traditions and institutional setup. In the case of the Northern European systems consequences would probably be significant in several areas.

A process of constitutionalization means that the pragmatic and flexible system of negotiation in the European Union would have to yield in favor of more judicial and formal procedures. Such a change would be particularly important for the political systems of Scandinavia, which lack constitutional courts and other elements of constitutional democracy now in general use across Europe.

In Scandinavia, the United Kingdom and elsewhere the European Convention of Human Rights is already part of the legal system. A European Charter with strong legal status would further strengthen rights for individual citizens as well as enhance the courts of law as a battleground for special-interest groups.

National parliaments are conceived to be given a more central part both in the preparatory stages of the European law-making process as well as ex post controls. Members of national

parliaments would then be expected to perform new tasks in supranational institutions. National election campaigns can be expected to become even more open to transnational influence.

The debate on the vertical separation of powers between the EU and the member states is heavily influenced by federalist ideas, so far primarily based upon the German case. But there are also references to the federalist models of Switzerland, Canada, and the United States. The unitary states of Europe, Sweden is but one example, have already begun to adapt to the vocabulary and institutional techniques of federalism, such as a constitutionally defined division of competences and methods of conflict resolution.

The Convention is primarily devoted to relationships between the European and national level. But the general problem of multi-level government has been raised and the regional level might also be included in the debate. The European regions with legislative powers are particularly anxious to have their status acknowledged in a new constitutional treaty. In this case the future of the regional tier in the European states might, in part, be determined by the European Convention.

Lastly, the Convention also marks another step in the ongoing redefinition of the state. One by one the traditional night-watchman functions of the state are transferred to the European level. EU has taken over such tasks as customs, trade policy, currency, monetary policy, and certain parts of crime prevention, and security policy. The Convention is now discussing whether the EU should not move ahead in areas such as internal justice, defense policy, and foreign policy. Today it is easier to describe what the national state does not do than to define its future role.

The constitution-making process at the European level does not only change the institutions of the European states. It also has consequences for the academic study of constitutional politics. There is a need for contributions from several subdisciplines, such as international relations, European integration studies, comparative government, and constitutional law, not to mention theories of linkage, nested games, and multilevel governance.