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The Belgian Presidency and the post-Nice process after Laeken

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The Belgian Presidency and the post-Nice process after Laeken

Introduction

When the Belgian Presidency of the European Union set off on 1 July 2001, expectations ran high. The Belgian Presidency was expected to put the European train back on the rails, since the European integration process was clearly in a slump.

Various factors have contributed to this general malaise about the way Europe was run. To begin with, the Nice summit had aroused mixed feelings. Although the Treaty of Nice prepared the Union for enlargement *mathematically* – agreements on vote weighting in the Council, the number of members of the European Parliament etc. – many people seriously doubted whether a Europe consisting of 27 or 28 member states would be able to operate effectively. More in general, some people wonder whether a larger Europe will not automatically become a ‘watered down’ Europe.

Several other factors have contributed to this scepticism. The European elections of 1999 were far from a success in terms of turnout, whilst public opinion expressed its negative attitude towards the European project in two referendums during the first half of 2001: the Danes said ‘nej’ to the euro and the Irish said ‘no’ to the Treaty of Nice.

In addition, the Swedish Presidency ended in a minor key in June 2001: in spite of the ambitions of the Göteborg summit, where sustainable development was to be placed high on the European agenda, only the violent street protest actions will be remembered.

Once it had become clear that the negotiations in Nice were not going to cause a dramatic change in attitude, Belgium's prime minister Guy Verhofstadt suggested that the Belgian Presidency should be concluded with a 'Declaration of Laeken' that was to give the debate on the future of Europe a new impetus.

The Belgian Presidency therefore came at a crucial moment for the Union: on the one hand, Europe was generally held in low esteem, but on the other hand, a debate on Europe's future might change this negative attitude and rekindle enthusiasm through an ambitious project. And the Belgian Presidency *was* ambitious. This appeared during the presentation of the Belgian 'priority programme': on 2 May, when the Swedish Presidency was still in full swing, the Belgian prime minister presented a programme containing sixteen priorities¹.

The present paper examines the outcome of the Belgian presidency and how it (possibly) helped to shape the future of Europe. The first part briefly describes the general context of the presidency, covering the tasks of the presiding member state and the potential influence of the presidency on the European agenda. The second part assesses the performance of the Belgian Presidency and evaluates the extent to which the Belgian priorities were achieved in various areas. An evaluation of the achievements of the Union in a wide range of areas can identify future needs and challenges. Some of these issues were integrated into the Declaration of Laeken in one form or another. We will next examine the Declaration of Laeken and the debate on the future of Europe in greater detail. The final part of this paper describes the agenda after Laeken.

¹ "The Belgian Presidency of the European Union, 1 July – 31 December 2001: Priorities note", presented in May 2001.

The EU presidency: the context

It is important to place any European presidency in its proper context. The EU presidency is assumed by alternating member states for a six-month period. This means that the ministers, diplomats and officials of the member state concerned are to preside over the sessions of the European Council, the Council of Ministers, Coreper and the hundreds of working parties constituting the backbone of the Council. In order to assess the significance of a presidency, two issues should be examined: what is expected of a presidency, and where does its power reside?

The tasks of a European president

Firstly, the European president is in charge of organisational and administrative-technical affairs: presiding over debates, signing reports and conclusions. It is also the president who decides how much time will be devoted to an item on the agenda and when to proceed to the vote.

Secondly, the president lays down the agenda of the meetings. Jointly with the Commission, a programme of priorities is developed which serves as a basis for the provisional agendas of the Councils. At first sight, it would seem that this ‘agenda-setting’ grants the president extensive powers. However, this prerogative should be put in its proper perspective – we will come back to this when discussing the president’s power and influence.

Thirdly, and probably most importantly, the president is expected to play a mediatory role as well. A president should be able to forge compromises, and his mediatory proposals should convince as many member states as possible and seek the common denominator. In addition, he should act as the go-between between the member states and the other institutions. If a president succeeds in forcing a breakthrough in difficult issues, this is greatly appreciated. A president is expected to be neutral at all times.

Fourthly, a president also has a representative function. He is the face and the mouthpiece of the Union in the media, vis-à-vis the other European institutions and on the international scene – during missions, in international bodies and at multilateral events.

In all these tasks, the president is assisted by the Commission and especially by the General Secretariat of the Council, not only technically but also substantively. As a matter of fact, the General Secretariat constitutes the Council's 'memory': presidents may come and go, but the General Secretariat remains. The Secretary-General's staff help to work out compromises and the Secretary-General, who combines this office with that of High Representative of the Common Foreign and Security Policy, assumes part of the representative task, just like the Commission.

The powers of a president

As we said above, the president sets the agenda for the meetings. In theory, a president can therefore decide autonomously what will and will not be discussed. In practice, however, this is hardly ever the case. The daily running of Europe cannot be split up in six-month parts. It has its own dynamics, and these are to a large extent determined by the rolling programme. Especially in the so-called first pillar (where the bulk of European activities is still taking place), a legislative proposal can be 'pending' for months, even years. The right of initiative for such issues lies with the Commission. A member state itself cannot issue a proposal for a directive and place it on the agenda during its presidency. Most files that a presidency has to tackle were already launched during earlier presidencies. In most cases, a president will simply continue working on proposals that are in the pipeline already, at most urging the Commission to put a proposal higher on the agenda.

In addition, the European Council usually gives the president various other tasks. When laying down the major policy guidelines for the years to come, a timing is often imposed. For instance, in Stockholm (autumn 2000) the heads of state and government provided that indicators on labour quality and social exclusion were to be submitted before the end of 2001. In some cases, these tasks involve an evaluation mission. In Tampere (1999), it was decided that Europe was to take initiatives relating to the asylum and migration debate, the creation of a European legal area and the fight against crime. At the end of 2001 these efforts were to be evaluated. A president

has no more impact on these ‘tasks’ than on the rolling programme, and the margin for adding a personal touch is quite narrow. In other words, the European agenda is governed mainly by its own dynamics, which are dissociated from the president’s wishes, demands or priorities.

However, the situation is somewhat different when the tasks imposed are relatively vague. When the Nice European Council provided in December 2000 that a debate on the future of Europe was to be launched in 2001 and that the Declaration of Laeken was to become the first milestone in this debate, no one knew what the exact content of this mission was or could become. True, four themes were suggested (see below), but they were so vague that they were open to divergent interpretations. In such cases, the presiding member state can set a personal stamp on the debate and steer it in a given direction. However, room for manoeuvre is limited here as well: the president is no dictator and has to take the other member states’ susceptibilities and willingness to compromise into consideration. Still, it was precisely with regard to the Declaration of Laeken that the Belgian Presidency was expected (or feared, or requested) to display some voluntarism. In the past few decades, Belgian politicians have always adopted a pro-European stance and urged for a powerful Europe, including stronger institutions, broader competencies etc.² This paper will examine whether the Belgian Presidency succeeded in steering the debate in a specific direction.

For completeness’ sake we should add that ‘sudden events’ may also affect the European agenda. Indeed, the agendas of the Councils may be turned upside down all of a sudden, very much against the president’s will. An example is the shipwreck of oil tanker Erica, which forced the European maritime safety machinery to shift into a higher gear. The nightmare of diplomats and of everyone who had meticulously prepared the Presidency came true on 11 September. The attacks in New York and Washington, the war in Afghanistan and (indirectly) the Middle East crisis had a tremendous impact on the European Presidency. This was probably the first time in the

² See Coolsaet, Rik, “België en zijn buitenlandse politiek 1830-2000”. Leuven, Van Halewyck, 2001. All important parties agree that ‘more Europe’ is desirable, although opinions differ on a few issues.

history of the European integration that the agendas of several Councils (General Affairs, Transport, Internal Market, Justice and Domestic Affairs...) were affected so dramatically and unexpectedly: the fight against terrorism became the sole focus of attention overnight, airline companies went bankrupt, humanitarian aid had to be organised urgently, joint declarations succeeded one another rapidly... An extra European Council was organised in Brussels on 21 September and the planned informal European Council in Ghent was largely devoted to these tragic events. These experiences have set a stamp on some parts of the Laeken Declaration as well.

The agenda of the Belgian presidency

The Belgian presidency's priorities note covered four themes: internal policy, enlargement, external policy and the Laeken Declaration. The Laeken Declaration will be covered in the next chapter. The present chapter discusses the other priorities.

Internal policy domains

In the first series of priorities set by the Belgian presidency, continuity is the keyword. For instance, the introduction of the euro is presented as one of the most important aims, although the Belgian presidency had hardly any role to play in this field and the major decisions had been taken earlier. In addition, the presidency had set itself the task of elaborating a number of social themes. Almost all the goals which were formulated at the beginning of the presidency were achieved, partly as a result of the fact that the way was already paved to some extent. Above all, the priorities note had made a realistic assessment of what was feasible. The extensive European experience of several Belgian ministers and officials played an important part in this respect. The same applies to the themes relating to the environment, public health and sustainable development: the goals were achieved without major problems.

Still, some priorities turn out to have been too ambitious. For example, a political agreement regarding the Community patent was not reached, whilst in the fiscal-policy area progress was smaller than expected. Those decisions had to be taken unanimously in the Council, and the threat of vetoes made it very hard to work out a compromise, even though the President boasts an excellent reputation when it comes to forging compromises. The same problems arose with regard to asylum and migration policy. The action programme, which was adopted at Tampere (1999), is far from being achieved. The Tampere agreement stipulated that progress was to be assessed at the end of 2001, but hardly any successes were attained. The Union is still a long way from having a common asylum

and migration policy. Conversely, the fight against terrorism has been dominating the European agenda ever since 11 September. Some issues gained substantial momentum because of external circumstances: it took only a few months to virtually achieve the proposal for a decision on the European arrest warrant, a list of terrorist organisations was drawn up, an agreement was reached on the definition and the punishment of terrorism, progress was made in the fight against the financing of terrorism. Besides – and this *had* been planned by the Belgian presidency – an agreement was reached regarding the setting up of a definite Eurojust, a permanent unit of magistrates with power of enquiry. The purpose of Eurojust is to strengthen cooperation between the Member States in criminal matters, as well as to combat international crime. Before the Belgian presidency started, many arrangements had been made and the presidency was able to close this issue successfully, except for the allocation of seats.

Enlargement

During the Belgian presidency, some wide orientation discussions were organised about enlargement, notably during the European Councils of Ghent and Laeken. Accession negotiations are essentially conducted by the Commission, which submits regular progress reports. The Belgian presidency found that the roadmap laid down in Nice had been more or less respected. During the six-month Belgian presidency, about 40 chapters were closed and over 10 chapters opened. In Laeken, the heads of state and government joined the Commission in saying that if the present rate of progress of the negotiations and reforms in the candidate states is maintained, negotiations with ten countries will be concluded successfully by the end of 2002. The merit of the presidency lies mainly in its efforts to involve the accession candidate countries (often including Turkey) in many activities. This gives candidates the ideal opportunity to contribute to the workings of the Union. Other presidencies have applied this strategy as well.

The external dimensions of the European Union

The Belgian Presidency and the post-Nice process after Laeken

The Belgian priorities note singled out four regions (Russia, the Balkans, Central Africa, the Middle East) where intensive activity was envisaged. As planned, the presidency presented an action plan for the implementation of the EU-Russia common strategy, and there was a European-Russian Summit. In the Balkans, a stabilisation and association Treaty was concluded with Croatia. The Union agreed to give financial assistance to the Central African peace process and undertook efforts to encourage the peace talks. However, it was especially the attacks of 11 September that determined the Union's external actions. Overnight, Afghanistan became a priority region, whilst the peace process in the Middle East was put in a new perspective. An obvious result was the intensification of ties with the United States.

The Union displayed an unprecedented activity, and there was so to speak no region in the world that was not visited by the Belgian presidency. At the same time it became clear that, politically speaking, the EU is and remains a dwarf. During an extraordinary European Council in Brussels immediately following the attacks, and also later during the conflict, the Union was unanimous in expressing its indignation, but failed to lay original accents. The Union simply echoed what Washington said. After the attacks and at the outset of operations in Afghanistan, the United States engaged in bilateral talks with several Member States, but the EU as a whole was rarely consulted, if at all. The large Member States made direct arrangements with the United States and barely made an effort to involve the Union in their plans. The French-German-British meeting prior to the Ghent summit illustrated this perfectly: the presidency was not even invited.

Consequently, it is obvious that the Belgian presidency (and by extension the EU as a whole) failed to convey a sense of leadership during the conflict. But then, this was not the case during previous major conflicts either. The most substantial decisions taken by the Union are probably those related to the provision of humanitarian aid to the conflict areas. The participation in UN activities in the Afghan region was based on decisions taken by individual Member States and cannot be viewed as a joint action by the Union.

In the Middle East as well, the Union demonstrated its powerlessness. It would seem that but for the help of the United States, the Union can achieve very little in the region, and Israel finds it very hard to look upon the Union as a fully-fledged negotiating partner. The Mideast peace process went through many lows during the second half of 2001, and the discussions in the framework of the Euro-Mediterranean partnership failed to remedy this.

The plans for the European Security and Defence Policy crystallised during the Belgian presidency. The events of 11 September probably contributed to this development, although the discussions remain laborious. Granted, the Union was declared operational in terms of crisis management in Laeken (this was yet another of the presidency's priorities), but given the Union's poor own capacity in many fields, truly joint action will remain impossible unless the Union is given access to NATO resources. However, first Turkey and then Greece objected, and as a result no agreement with NATO was reached.

Finally, it should be noted that the Union's external action during the Belgian presidency was successful in a number of concrete issues: at the racism conference in Durban, the world trade conference in Doha, the climate negotiations in Marrakech etc., the EU succeeded in speaking with one voice and (sometimes) weighed on the conclusions.

Conclusion

It is today's experiences that will shape the debate on the future of Europe. It is therefore useful to formulate some conclusions about the events and activities marking the Belgian presidency. It was once again demonstrated that progress is very slow in issues requiring unanimous voting. Even for apparently banal issues (the allocation of seats to agencies), the unanimity rule has a paralysing effect, and this is *a fortiori* true for more important decisions. As for its common foreign and security policy, as well as its asylum and migration policy, joint actions by the Union were limited. True, over a period of several years some progress has been made, but it remains doubtful whether these developments will continue after enlargement (see

below). As a matter of fact, the current Member States are even now at odds about the areas in which the Union must or must not intervene actively. We also saw that new instruments replacing strict regulations met with general approval. The progress made on a number of social issues, the establishment of indicators for sustainable development etc. are examples of this development. These are, at least at first sight, relatively noncommitting exercises ('open coordination', see below), not concrete directives or regulations. Finally, a remarkable finding was that the Union's agenda was largely dictated, or at least affected, by external developments, as illustrated by the attacks of 11 September and the resulting fight against terrorism.

Recent successes, but especially recent failures, will directly or indirectly influence the course Europe has to steer and the consequences this will entail. The next part will discuss the debate on the future of the Union in greater detail.

The debate on the future of Europe

The fourth chapter of the Belgian priorities note was entitled “The future of the European Union: towards an ambitious Declaration of Brussels-Laeken”. During the six-month Belgian presidency, this debate occupied a less prominent place than had been initially projected. This was mainly due to the terrorist attacks of 11 September. Before describing the plans of the presidency, the proposals that were materialised and the way the debate may affect the future of Europe, we should examine the origin of this debate.

The consequences of enlargement

Besides the introduction of the euro, the enlargement is probably the most serious challenge facing Europe since the fall of the Berlin Wall. The consequences (financial, institutional) of an enlargement by ten or more countries are dramatic – some even refer to the ‘re-establishment’ of Europe. The aim of the 1997 Amsterdam Summit was to launch the preparation of the Union in view of this enlargement. However, the amendments made to the Treaty in Amsterdam were less far-reaching than originally expected. True, the decision-making process was made more flexible through a simplification of the co-decision procedure. And in addition, the number of areas eligible for qualified majority voting was increased. Perhaps the most important decision was to enshrine the principle of enhanced cooperation in the Treaty. The aim of enhanced cooperation is to enable a limited number of Member States that are willing and able to advance further, to deepen European integration within the single institutional framework, at least within the first, mainly economic pillar, and the third pillar (justice and domestic affairs).³ Still, the consensus was that the Union had *not* been prepared for enlargement in Amsterdam. In a number of fundamental bottlenecks, no breakthrough

³ *De facto*, the idea of enhanced cooperation is not new. In the past a limited number of countries moved forward more rapidly than others in some areas, but in principle this happened outside the EU (e.g. Schengen), or at least outside the traditional institutional framework (e.g. via Euro 11, now Euro 12).

appeared to be possible in 1997. The term ‘Amsterdam leftovers’ was soon used in the three following areas: the size and composition of the Commission, the possible extension of qualified majority voting in the Council, and the weighting of votes in the Council. Indeed, it was feared that the Commission was going to become oversized and that the unanimity rule, which still applied in various policy areas, was going to paralyse decision-making. The large countries in particular urged for a review of votes weighting in the Council.

As a consequence, a new Intergovernmental Conference (IGC) was launched as soon as February 2000 to find a solution to at least these three leftovers. This IGC resulted in a new Treaty amendment in Nice in December 2000. However, in the run-up to Nice some Member States had insisted that the Treaty change should not be confined to the leftovers. For instance, several delegations proposed to make the conditions for enhanced cooperation more flexible. The talks in Nice were laborious, and it became the longest Summit in European history. Afterwards, several Member States felt that the EU had only been prepared ‘mathematically’ for enlargement. Nice had decided on a review of votes weighting in the Council, on the distribution of seats in the European Parliament (for applicant countries as well) and so on. These are important issues, to be sure, but they do not constitute the core of the matter. The question remained whether the EU would still be manageable after enlargement. The major challenges facing today’s Europe are related to the external action, its asylum and migration policy, its funding, taxation issues, etc. These are policy areas where unanimous voting is as yet the rule, and a breakthrough in these issues is therefore highly unlikely if 27 or 28 parties can exercise a veto. Although Nice decided to abolish the unanimity rule for a number of decisions, Member States have retained the right to veto for several important (politically sensitive) issues.

Still, it is only logical that the decision to make the European decision-making process much more flexible should not be taken lightly. It is no using offering Europe a racing bicycle if European politicians have not set out the track to be run. It would be unwise to drastically simplify decision-making in a given policy area if it is decided afterwards that Europe is not

to take action in this area. That is why a debate on the future of Europe had to be launched first: where do we want Europe to go, what are Europe's goals? In Nice, Belgian prime minister Verhofstadt was one of the most fervent advocates of such a debate. It was therefore decided not to close the discussion. The 'Declaration on the future of the Union' adopted by the heads of government calls for a wide and profound debate on the future of the EU. It urged the Swedish and Belgian presidencies to launch this debate.

The declaration on the future of the Union

The Nice Declaration steers the debate in a definite direction. It calls for broad discussions with all interested parties, representatives of national Parliaments and all those reflecting public opinion, political, economic and university circles, representatives of civil society, etc. The applicant states were also to be involved in the debate in one way or another. In 2004 a new IGC was to be convened in order to settle issues on the basis of the results of the debate, and to propose new Treaty changes. The Declaration lists four themes for the debate:

- 1) "How to establish and monitor a more precise delimitation of competencies between the EU and the Member States, reflecting the principle of subsidiarity". This theme was suggested by Member States feeling that the EU is increasingly interfering in the lives of the citizens and is encroaching upon the competence of the Member States and their respective regions. The German *Länder* in particular experience this as a problem: they feel that Europe is interfering increasingly in their traditional competences, whilst they are incapable of halting the process because of the relatively limited impact of the regions on the European decision-making process. It is no accident that German terms like *Kompetenzabgrenzung* crop up in discussions regularly.
- 2) "The status of the Charter of Fundamental Rights". In 1999 the European Council decided to establish a Charter of Fundamental Rights in order to make the overriding importance and relevance of

these rights more visible to the Union's citizens. A Convention drafted a consensus text that was proclaimed by the heads of state and government in Nice. However, the Charter was not enshrined in the Treaties, which even failed to refer to it, since this would have granted the Charter a legal enforceability that deterred some delegations.

- 3) "A simplification of the Treaties". The Treaties currently consist of countless sections, titles and chapters; besides, there are the different pillars, each having its own decision-making procedure. This structure can undoubtedly be simplified. However, and more importantly, some titles give a detailed description of the extent to which the Union can and cannot intervene in specific policy areas. Even a minor change would require a Treaty revision. In practice, this would mean convening an IGC, during which all the heads of government should reach an agreement subsequently to be ratified by the national parliaments of all the Member States (for Belgium even the regional parliaments). In addition, in some countries a referendum is compulsory. In other words, effecting even minor changes in the Treaties launches a highly complex and laborious procedure. In the long run (and especially after the enlargement), this can make it very difficult for the Union to address new challenges rapidly and efficiently. Richard von Weizsäcker, Jean-Luc Dehaene and David Simon argue that a possible solution could be to separate the Treaties into two distinct parts⁴. The first part, the basic Treaty, would only include the aims, principles and general policy orientations, citizen's rights and the institutional framework. This basic Treaty could only be amended unanimously and after a ratification procedure. The second part would contain the other provisions of the present Treaties, including those relating to specific policies. The amendment procedure for these provisions would be much simpler and would not require the unwieldy ratification procedure.
- 4) "The role of national Parliaments". In essence, legislative power resides with parliament in all Member States. However, Europe is

increasingly playing a legislative role in a wide range of policy areas. The national parliaments sometimes feel that they are becoming the mere executors of European directives or regulations: Europe sets the guidelines, whilst the margins within which parliaments can take autonomous legislative action are narrowing. Although the parliaments can monitor European activities indirectly in various ways, many national parliaments insist on a more prominent role in the European architecture.

So Nice laid down the themes that were to be discussed in view of the new IGC scheduled for 2004. On 7 March 2001, during the Swedish presidency, the official discussion was launched, but it was hard to predict the turn the debate would take under the Belgian presidency. A Declaration was to be adopted in Laeken containing appropriate initiatives for the continuation of this process. It was obvious that prime minister Verhofstadt intended to lay several new accents in the debate.

The Laeken Declaration

In its priorities note, the Belgian presidency set itself three tasks with regard to the discussion on the future of Europe: “The declaration of Laeken must state the *agenda* on the debate [...], the *methods* to be employed and the *timetable*.” [italics by hv, eb] It was not the intention to formulate definitive answers as yet, but to give a strong impetus to the debate and steer it in a specific direction by raising concrete questions. For the preparation of the Declaration, prime minister Verhofstadt was assisted by five personal advisers: former Commission president Jacques Delors, former prime ministers from Belgium (Jean-Luc Dehaene), Poland (Bronislav Geremek) and Italy (Giuliano Amato), and the former adviser to British prime minister Blair, David Miliband.

⁴ Dehaene, Von Weizsäcker, Simon, “The institutional implications of enlargement – report to the European Commission”, 18 October 1999.

The Laeken Declaration consists of three parts. The first part (“Europe at a crossroads”) makes a political analysis of the problems facing the EU, the second part describes the agenda and the content of the debate and the final part suggests that this discussion should be held in the framework of a Convention.

a) The method: a Convention

The traditional method for preparing Treaty amendments is the Intergovernmental Conference (IGC), where representatives of the governments meet in private, after which the heads of state or government take the ultimate decisions. In the past decade, IGCs succeeded one another at a rapid pace, although they generally failed to achieve the desired results. The formula has been under attack for some time by many national parliaments, public opinion and the representatives of civil society. The democratic content, the transparency and sometimes the very legitimacy of the IGCs are questioned. After Nice, the avowed aim was to conduct a wider debate first.

Already during the address to the European Parliament marking the beginning of the Belgian presidency, prime minister Verhofstadt proposed that a Convention should be set up for this purpose, a body elaborating the different options or scenarios for the future of Europe. During the informal European Council in Ghent (19 October) the heads of state and government agreed on this proposal.

The Convention will consist of a representative of every government, two representatives of every national parliament and sixteen representatives of the European Parliament, complemented by two representatives of the Commission. It was also decided that accession candidate countries will be fully involved in the proceedings, without, however, being able to prevent any consensus which may emerge among the Member States. It is of great symbolic importance that Turkey is accorded the same status as the other candidate countries, in spite of the fact that no accession negotiations have been opened with Turkey as yet. In addition, observers will be appointed to attend the debates: the European Ombudsman, representatives of the

Economic and Social Committee, the European social partners and the Committee of the Regions. In addition, a Forum will be opened for organisations representing civil society. It will take the form of a structured network of organisations, and their contributions will serve as input into the debate. The Convention will hold its inaugural meeting on 1 March 2002 and proceedings will be completed after a year, after which the outcome is to be presented to the European Council.

The Convention is a new method for preparing Treaty changes and it may therefore seem surprising that such a fundamental innovation was adopted relatively smoothly, all things considered – the more so since a number of Member States, including Great Britain, were highly critical of this formula at the outset of the Belgian presidency. It is therefore worthwhile analysing the Convention in greater detail.

To begin with, the ‘Convention method’ in itself is not new: it was applied when the Charter of Fundamental Rights was drawn up. Actually, this experience revealed one of the major weaknesses of the Convention: open debates and a website failed to trigger off a wide debate in public opinion, whilst in most national parliaments (which were represented in the Convention) the Charter did not even come up for discussion. Still, the Convention preparing the Charter did succeed in presenting a consensus document to the heads of state and government. This made it virtually impossible for the latter to tamper with the text: the political pressure to adopt the text unmodified proved to be too great. It was this very experience that made a number of Member States highly sceptical of the Convention formula. However, several new mechanisms have now been introduced to make sure that the heads of state and government will not be presented with a *fait accompli*.

Firstly, it was agreed that the heads of state and government were to appoint the Chairman of the Convention and that this Chairman was by preference to be a former head of government, so that direct contacts could be maintained easily. Eventually – and at the insistence of the French president – former French president Valéry Giscard d’Estaing was appointed as Chairman of the Convention in Laeken. The Chairman,

together with the Praesidium, in which the government representatives are more strongly represented than in the Convention itself, is given substantial powers.

Secondly, it was decided to provide for a period of reflection between the end of the Convention (the exact date has not been set, but it is likely to be mid-2003) and the beginning of the IGC (probably in 2004). It was especially Great Britain, Ireland and the Scandinavian countries that insisted on this period of reflection. The official aim is to give governments ample time to consult their parliaments on the position to be taken during the IGC, but it is probably also hoped that by inserting this break, a number of Convention decisions will be ‘forgotten’, or at least toned down.

Thirdly, there is the ‘final document’ to be drawn up by the Convention. The experience of some Member States with the Convention preparing the Charter of Fundamental Rights was not positive because the Convention presented a ‘take-it-or-leave-it’ consensus document. The Belgian prime minister therefore made it clear from the outset that he expected the Convention to formulate only a limited number of ‘options’. Pragmatic considerations probably played a part in this proposal as well: in a wide debate on the future of Europe, a strong consensus is highly unlikely to be achieved. One should not harbour too many illusions in this respect: when it comes to the reinforcement of the institutions, the issue of foreign and security policy, the division of powers etc., the different national parliaments will remain divided. However, at the insistence of the European Parliament the possibility of formulating a consensus has been preserved. The European Parliament fears – probably with good cause – that a simple enumeration of options will give the heads of state and government free reign and allow them to engage in ‘scenario-shopping’. This would greatly reduce the eventual impact of the Convention. The Laeken Declaration now states that the Convention “will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.”

In summary, we can therefore say that the heads of state and government do not have their hands tied and are – in theory at least – in no way committed by the proceedings of the Convention. The Laeken Declaration is very clear about this: “The final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.” Another remarkable element is the limited involvement of the European Commission: although it has two representatives in the Convention, it is not mandated to initiate, let alone steer, the debate in a ‘European spirit’. The role of the Member States (their governments and parliaments) remains substantial.

Two nuances should however be noted. First, two vice-chairmen for the Convention were appointed in Laeken: Amato and Dehaene, who were members of the group that prepared the Laeken Declaration. This should guarantee an in-depth discussion on the themes presented by the Laeken Declaration (see below). Second, the dynamic set in motion by the Convention should not be underestimated, particularly if the Convention should succeed in putting forward consensus proposals. If this occurs, the heads of state and government’s room for manoeuvre might be quite limited in 2004. In other words, although on paper this is a noncommitting exercise, its impact should not be underestimated. Only in 2004 will it become clear whether the Convention has triggered off a comprehensive, transparent as well as effective process having a strong impact on the future of the Union.

b) The content: an open agenda

It was obvious that the four themes put forward in Nice (see above) had to be included in the debate, but the Belgian presidency felt it was not to be left at that: “The Belgian Presidency, however, does plan to widen the agenda into a comprehensive project for Europe”, the priorities note states.

Of the four themes agreed on in Nice, only the ‘delimitation of competence’ is referred to explicitly in the priorities note, which cites various policy areas where ‘more’ Europe would be welcome, particularly in the second and third pillars, where progress is hampered by the

intergovernmental approach. The priorities note also stated that other elements in the debate determine the future of Europe as well: “the financing of the EU, the decision-making procedures, the institutional architecture and the inter-institutional balance, the role of the regions, the Treaty structure, a modernised *méthode communautaire* and the role of social dialogue and of civil society.” The Belgian presidency believed that all these themes should be addressed by the Convention.

Although the Nice Declaration states explicitly that “the process should address, *inter alia*, the following [four] questions” [italics by hv, eb], some Member States, including Great Britain and Ireland, insisted that the debate should be *confined* to the four themes agreed on in Nice. Above all, they wanted to prevent institutional issues that had already been addressed in Nice (e.g. the extension of qualified majority voting) from coming up for discussion once again. As a result, the discussions were tough going. However, after the French-German summit in Nantes on 23 November, France and Germany also appeared to be in favour of a wider agenda possibly including fundamental as well as symbolic issues, such as the desirability of a European constitution and a new debate on the extension of qualified majority voting.⁵ The first draft of the Laeken Declaration distributed by prime minister Verhofstadt on 25 November, just before he started his tour of the capitals, therefore contained more questions than just the four issues agreed on in Nice.

Several delegations, including the French and the British, were critical of the draft. However, it had become clear in the meantime that the work of the Convention would have no binding effect, at least formally speaking (see above). The draft declaration was toned down, a number of questions were formulated less rhetorically and the general atmosphere of the text lost its federalist edge, but still the Belgian prime minister clung to the idea of a very comprehensive agenda.

The Declaration adopted in Laeken on 15 December contains four sections that do not coincide with the four themes agreed on in Nice. The four

⁵ “Déclaration conjointe sur les grandes priorités Européennes”, Sommet franco-allemand, 23 November 2001.

themes from the Nice Declaration were of course incorporated into the Laeken Declaration, but they were placed in a much broader context. The four sections are:

- 1) “A better division and definition of competence in the European Union”. This section does refer explicitly to an issue from the Nice Declaration. The questions it presents cover the way in which the division of competence can be made more transparent and how it relates to the principle of subsidiarity. This discussion is geared into a specific direction from the start, since the question is raised whether Europe shouldn’t be involved more actively in foreign and defence policy, and how cooperation with regard to police and criminal law, but also social inclusion, the environment, health and food safety can be improved. On the other hand, it is added that Europe must not ‘regulate’ everything and should respect the competences of Member States and regions. In other words, how can a balance be achieved in which the European dynamic does not come to a halt, whilst avoiding an encroachment upon the areas of competence of the Member States and their regions?
- 2) “Simplification of the Union’s instruments”. The key question in this section is whether the Union’s instruments should not be better defined and whether their number should not be reduced. Should the Member States be given more room for manoeuvre in achieving policy objectives? And for which areas of competence is ‘open coordination’, in which no compulsory regulations are issued but political and moral pressure is exerted on the Member States, the most appropriate instrument?
- 3) “More democracy, transparency and efficiency”. This section raises the question as to how the institutions can be made more democratic. A remarkably direct question relates to the appointment of the President of the Commission: by the European Council, the European Parliament or through direct elections by the citizens? Questions are also raised about the election of the European Parliament and transparency within the Council. The place of the national parliaments

in the European architecture (A Second Chamber monitoring subsidiarity?), the structure and the future role of the various Council formations and the use of the rotating Presidency are the themes of other questions. Other noteworthy issues, which were undoubtedly affected by the events of 11 September, relate to the Union's external policy: "How should the coherence of European foreign policy be enhanced? [...] Should the external representation of the Union in international forums be extended further?" However, probably the most striking element in this section is the fact that questions to which the Treaty of Nice formulated an (apparently unsatisfactory) answer are put on the table again, for instance whether or not the extension of qualified majority voting is desirable.

- 4) "Towards a constitution for European citizens". Two issues from the Nice Declaration (the simplification of the Treaties and the statute of the Charter of Fundamental Rights) are included in this section. The question whether a distinction between a basic Treaty and the other Treaty provisions (see above) is desirable is raised explicitly. However, the most innovating question is whether a simplification and reorganisation of the Treaties should in the long run result in a European constitution.

In summary, we can say that the Laeken Declaration covers a very wide array of themes. In addition, it raises questions that were never before raised as explicitly by the heads of state or government (e.g. the desirability of a constitution). Although not all questions indicate the same course, the formulation of many of the questions is quite suggestive. In short, the Belgian presidency has achieved its intention of widening the agenda set in Nice and launching a broad debate about the future of the EU. However, we should again emphasise that – at least on paper – this process is noncommitting.

After Laeken

What the future of Europe will look like remains uncertain, even after Laeken. Not before the next Treaty revision – which will probably coincide with the first wave of new accessions – will we have an indication of where Europe is heading. As we said above, a comprehensive debate has been launched in which diverse questions are tackled. This final part highlights a number of developments that will determine the future of the Union and need to be followed closely.

- Firstly, the activities of the *Convention* should be monitored: it remains to be seen whether this body will succeed in answering all the questions raised. There is no telling to what extent a consensus will be reached. Although the odds for a broad consensus are small – the Convention is probably too heterogeneous – it is by no means certain that the result will be confined to a diffuse (and hence gratuitous) enumeration of divergent scenarios. An interesting element to monitor will certainly be the role played by the Commission. Owing to its expertise, it may succeed in transcending its – theoretically limited – role and weigh on the final result. However, it is hardly likely that the major bones of contention with the Member States will be settled in the Commission's favour. Particular attention should be paid to the treatment of the institutional questions, to the issue of the Treaties, and to the shape that the delimitation of competence will take. As far as the institutional issues are concerned, it is generally assumed that an enlarged Union risks foundering in areas where unanimity rule prevails and where every Member State has a right to veto. The introduction of the Community method (with the right of initiative resting with the Commission, the Council voting by majority) on a large scale would guarantee stronger European action. However, this also implies that the Member States should relinquish more sovereignty to Europe. This is a highly sensitive issue, politically speaking, especially in areas that have been controversial for years (foreign and defence policy, fiscal policy, social security etc.). With regard to the statute of the Treaties, the Laeken Declaration launches a process that may result in a European constitution, but it is open to doubt whether the Convention will continue

the course that has been steered so far. If the Treaties are not split up and retain their current form, effecting Treaty changes in an enlarged Union will become virtually impossible. This may seriously undermine the dynamic of the integration process. Finally, as far as the delimitation of competence is concerned, it is uncertain what the exact surplus value is of a clear-cut division of activities among the EU, the Member States and, where applicable, the regions. Is it feasible at all to draw up a catalogue in a political arena characterised by ‘multi-level governance’? A fixed catalogue would also make it virtually impossible to address new challenges quickly and efficiently. Conversely, greater clarity on the division of competence may contribute to increased transparency and remove distrust. The drafting of a *flexible* catalogue is an option that will certainly be considered. As we noted earlier, there are those who fear that if no limits are agreed upon, the Union will surreptitiously extend its power and pose a threat to states and regions alike. Others fear that *Kompetenzabgrenzung* is a weapon that will curtail the influence of Europe drastically. The confrontation of these divergent views makes for a highly interesting and unpredictable debate.

- Besides, it will be crucial to accurately assess the *role of the accession candidate countries* in this debate. It is becoming increasingly likely that about ten countries will join the Union in 2004. Consequently, they will have their say during the next IGC and may have to ratify a new Treaty. However, already in the Convention these countries will have to show their colours: what exactly do they expect of Europe? Will a large internal market – with structural funds thrown in with the bargain – be sufficient or do they wish to become part of a political Europe that has a voice in the world and pursues a common policy in several areas? The answer to this question is hard to predict. The candidate countries will probably reject a Europe coming with a high price tag (e.g. because of a far-reaching social or environmental policy) if this is not compensated by corrective action. And after decades of policymaking directed from Moscow, many countries remain wary of a Brussels busybody.
- Thirdly, attention should be paid to *the attitude of the actors* that have been participating in the debate on the future of Europe for some time

now. National parliaments, constitutional regions, social partners and the anti-globalist movement will inevitably exert an influence because they will take part in the activities of the Convention in one way or another; but even outside the Convention they will help to shape the debate and create a specific atmosphere. It remains to be seen whether (part of) civil society will turn away from Europe and defect to the eurosceptics, or engage a large-scale movement in the opposite direction, with a plea for *more* Europe (social, environmental, fiscal etc.).

- In close connection with the previous point, it will be important to establish whether and how *the citizens* feel involved in the European project. For years on end, opinion polls have shown that many Europeans are indifferent, sceptical or even hostile to the Union. Even the grandest schemes will flounder if they are not rooted in the people and if they lack legitimacy. Whether the presence of two representatives from all the national parliaments in the Convention will give the average European citizen a feeling of greater involvement in Europe is by no means certain. They might become more interested if it were decided to have the Commission president elected directly, or to work (partly) with European lists for the Parliamentary elections. In this context, the effect of the euro as a day-to-day symbol of European identity is expected to be even more dramatic.
- *Internal developments* within the Member States will also affect the discussions in the Convention or in the IGC, thus directly determining the future of the Union. With general elections ahead (for example in France and Germany), politicians tend to focus on national issues and shift away from Europe. Specific sensibilities (e.g. relating to the role of the regions in Europe) may also steer the debate in a certain direction. Not to forget Great Britain, where prime minister Blair is trying hard to make citizens enthusiastic about the euro. It is far from certain, however, that his campaign will succeed; it might even backfire and boost British scepticism vis-à-vis Brussels. There is equal uncertainty about the position of Ireland, where the population rejected the Nice Treaty in a first referendum. In other Member States as well, national themes or

interests will undoubtedly play a decisive role in determining the country's view of the future of the Union.

- The impact of *external events* should not be underestimated either. The terrorist attacks in the United States turned the fight against terrorism into a European top priority overnight. It has repeatedly been shown that external events affect and sometimes even dictate the European agenda (so the agenda of the Convention as well).
- Another question is what will be done with the *results* of the Convention: to what extent will the IGC, which is likely to be convened in 2004, act upon the Convention's decisions? The heads of government will not start from scratch when elaborating the next Treaty revision, but will they feel bound by the results of the Convention?
- Finally, it will be interesting to follow how Europe will manage with its *current instruments* in the months and years to come. The second pillar provides the Union with several instruments for pursuing a common foreign policy, including joint actions. The question is whether these specific instruments will enable the Union to act as a credible partner worldwide. In the past few years, the Union has been applying new methods focusing on concepts such as benchmarking, the exchange of best practices etc.: goals are set and guidelines proposed (e.g. for employment, social inclusion etc.), but it is up to the Member States themselves to determine how they will achieve these goals. A Member State that does not reach a goal will not be punished, but scoreboards will be maintained. This 'name, blame and shame' strategy is expected to put pressure on Member States that are lagging behind. The next few years will tell whether or not this 'open coordination method' is effective and gives an adequate incentive to all Member States in view of achieving the ultimate goals. They will also indicate how this method relates to the traditional legal instruments: does open coordination pave the way for 'tight regulations' or will this method systematically replace directives and regulations in some policy areas? Or is enhanced cooperation to become the method of the future? It was an option provided for in the Amsterdam Treaty, but it has never been

implemented. It is sometimes argued that enhanced cooperation will play an important role in an enlarged Europe, so this mechanism might shortly be used in cases where a large majority of Member States want to go further than the remaining minority (e.g. with regard to fiscal issues). The coming months and years will tell whether Member States are indeed prepared to take this step, which will create a multi-speed Europe. It will be of capital importance to analyse the consequences of enhanced cooperation: does it create a vanguard, a group of countries systematically moving forward *jointly* (thus creating a core Europe) or a *Europe à la carte*, in which different countries in turn commit themselves to enhanced cooperation? The latter scenario would not benefit transparency and would create great uncertainty.

We have so far examined the elements and developments that (will) impact upon the debate about the future of Europe and affect its outcome. It is obvious that other factors will play a role as well. In its study on what Europe could look like in twenty years' time, the British Federal Trust attempted to detect the 'driving forces' behind European politics⁶. This study suggests four crucial factors: demographic developments, technological progress, globalisation and the importance of ideology. It goes without saying that these and probably many other factors as well will determine the climate in which the debate will be conducted.

Summarising, we can say that there are numerous question marks left. And we have not even covered many other questions (what are the borders of Europe?; how many members can the EU handle? etc.). In short, uncertainty about the future of Europe reigns. Today, economic unification (the internal market, agriculture, external trade) has been largely achieved, with the euro as the crowning glory. In the past half century, it was often hard to predict when a certain step would be taken, but the overall course was generally clear. But what about *after* today? In the past few months and years different tracks were explored and summit meetings were held

⁶ Duff, A., Williams, S., "European futures. Alternative scenarios for 2020", London, Federal Trust, 2001.

about employment, the new economy, social cohesion, asylum and police cooperation. Various commitments were made in the field of defence and security policy, and we recently even witnessed the beginnings of a 'fiscal Europe'. In other words: many new roads are possible in Europe and cautious commitments have been made already. But integration is slow in these areas, not in the least because of unwieldy decision-making procedures. It is therefore impossible to predict what courses will be pursued in the coming years. This is not the occasion to dwell on the countless scenarios for the future that have been written, defended, feared or rejected in the past few years by the governments and by the numerous interest groups and think tanks – from a disintegrating Europe to a United States of Europe.

The key question is whether the debate that is launched now will lead to the definition of clear-cut goals: what course should be pursued in the 21st century? Is the ambition to create a political Europe lacking? Will the enlarged Union be no more than a sizeable free-trade area with open coordination as the central policy instrument, with some Member States committing themselves to enhanced cooperation on an *à la carte* basis? Or is the desire to go further so great with some Member States that a vanguard will be created, with a Union shaped according to the Saturn model: concentric circles around a core consisting of a small number of countries that keep integrating systematically in various areas, possibly taking along the rest of the Union in their stride?

Europe has truly reached a defining moment in its history. During the next years, crucial choices will have to be made. Together with the Union's enlargement, decisions will be taken that will profoundly change the face of the Union. It will not be an easy discussion: in the past few years, Europe has often resembled a crackleware vase, with cracks between large and small, between advocates of a federal structure and proponents of national sovereignty, between those in favour of rapid enlargement and those who prefer to wait, between those who want to pursue a social course and others who want a European army first, and so on. Europe has become a tangle of fault lines.

With its relatively ambitious Laeken Declaration and the rhetorical questions it raised, the Belgian presidency intended to steer the discussion in a specific direction. However, this has not resolved differences of opinion. In 2004 at the earliest will it become clear whether the Laeken Declaration will be a mere footnote in European history books, or a separate chapter.

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