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## **NORMS, STRATEGIES AND POLITICAL CHANGE:**

### **Explaining the establishment of the Convention on the Future of Europe**

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**Abstract.** Norms are a pervasive feature of national political systems but their influence goes well beyond the boundaries of the state. They affect political outcomes by shaping the strategies that political actors use to advance their interests. Norms do so by shaping the terms of the debates that underpin political decision making. Unlike existing literature that focuses on the importance of persuasion, this article demonstrates that through the mechanism of rhetorical action, norms induce self-interested political actors to adapt their strategy and accept political change (here, institutional reform) that they would normally oppose. The case of the advent of the Convention on the Future of Europe examined here shows that by considering the impact of norms on the behaviour of the opponents of change, ideational analyses can incorporate agency in the explanation of political change.

#### ***Introduction***

The debate regarding the explanatory capacity of norms and other ideational factors has become a central feature of the study of international relations (see, e.g., Checkel, 1997; Finnemore, 1996; Goldstein and Keohane, 1993b; Klotz, 1995; Kratochwil, 1989). Nonetheless, the autonomous impact of such factors has been contested. Sceptics argue that this impact is epiphenomenal and that interests are the real causes of political change. Implicit in this sceptical argument is the notion that one can (indeed *must*) separate ideational factors from interests, the latter being exogenously defined. This view has been challenged on the basis of the counter-argument that ideational factors mould the way in which political actors perceive – or even define – the interests that they seek to advance (Finnemore, 1996; Sikkink, 1991).

The motivation for this article stems from two sources. First, it comes in response to calls for more careful specification of causal claims and *mechanisms* and empirical evidence of the ways in which ideational factors shape political outcomes (Checkel, 1998: 325; Finnemore and Sikkink, 1998: 890; Berman, 2001: 233). Second, existing constructivist accounts of international politics (Kratochwil, 1989; Risse, 2000) highlight the importance of persuasion as a key mechanism but norms, it is argued here, affect political outcomes even in the *absence* of evidence of persuasion.

The importance of the problem solving and legitimating properties of norms has been demonstrated (see Dimitrakopoulos, 2005), but more work is required in an effort to identify the *mechanism* that links them to political change. Indeed, how is everyday political action linked to norms (Dimitrakopoulos, 2005: 691)? This article seeks to illustrate that *rhetorical action* (Schimmelfennig, 1997; 2001) performs this role and it

goes beyond the international arena since it has an important domestic dimension that has hitherto not been explored. Norms are important in that respect because – as this article will demonstrate – they link the domestic with the international arena and provide a yardstick against which political action in one arena is assessed by constituencies that operate in the other.

Specifically, this article demonstrates that norms affect institutional change by moulding the strategies that political actors use in an effort to promote their interests. Norms do so by combining problem solving capacity and the legitimacy that they lend to some forms of political action (Dimitrakopoulos, 2005) but these characteristics affect – by means of rhetorical action, the key mechanism discussed here - the *opponents* of reform who have the motives, power, and opportunity to veto change but did not do so, despite the absence of side payments. Thus, this article is an attempt to contribute to a better understanding of (i) how the opponents of reform align their activity and (ii) agency in ideational accounts of political change.

The first section of the article presents the theoretical framework and identifies the mechanisms through which norms affect political outcomes. The next two sections provide the empirical evidence and a systematic discussion of alternative explanations of the case examined here. The final section of the article concludes and advances two broader claims on norms-based arguments.

## ***Norms and Political Change***

### *Theoretical Considerations*

Norms are construed here as principled beliefs that turn broad fundamental doctrines into guidance for human action and thus generate collective expectations about appropriate behaviour (Goldstein and Keohane, 1993a: 9; Jepperson, Wendt and Katzenstein, 1996: 54). Constitutive norms establish actors' identities, regulative norms shape behaviour by defining standards of appropriate action but together they constitute a historically defined 'normative order', a structure of meaning and scheme of interpretation that moulds political action (March and Olsen, 1989: 107).

Although much of the debate on the impact of norms on politics focuses on their influence on the definition of identities and interests, less is known about their impact on the *strategies of action* chosen by self-interested actors. The empirical section of this article will demonstrate that norms organise action by linking an actor's perceived interests with an appropriate strategy for the pursuit of these interests. They influence political processes by solving problems and by providing standards that legitimise some forms of action, but not others (Kratochwil, 1989: 34; Dimitrakopoulos, 2005). This is not achieved in a vacuum. Rather, it is the result of the public function of norms, i.e. their strategic deployment in the domain where the political process unfolds. When norms are deployed in a sustained manner – especially in the context of the public debate that often underpins political processes – they structure the debate between self-interested political actors and, by consequence, shape its outcomes. Thus, instead of being eliminated, agency is channelled. Political actors choose strategies with reference

to both their perceptions of their own interests *and* the norms that underpin the political context (domestic and international) in which they operate.

Rhetorical action – i.e. ‘the strategic use of norm-based arguments’ (Schimmelfennig 2001: 48) - is of central importance in this process. It is the mechanism that links norms with *some* solutions to political problems and actors’ perceived interests. Existing work stresses that rhetorical action affects political outcomes by promoting persuasion. For example, Risse notes that ‘actors use arguments to persuade or convince others that they should change their views’ (2000: 8; see also Kratochwil, 1989: 36). Arguably, this is not the only way in which rhetorical action affects political outcomes. The opponents of norm-based change are not necessarily persuaded by it. Rather, the normative power of the argument that they oppose induces them to seek *different strategies* for the promotion of their interests. The deployment of norms in the context of democratic politics may not determine substantive preferences – i.e. what actors want when they are faced with a given political problem – but, as the empirical material of this article will demonstrate, it explains what answer is given to this problem by inducing them to reject some strategies and opt for others.

Successful rhetorical action entails the use of norms that force actors to adapt their strategies not because they are convinced about the merit of other actors’ substantive views but because they cannot afford to be seen to go against the norms that provide the basis of these views. Rhetorical action is successful not only when it leads to initially sceptical actors being convinced about the validity of their opponents’ views, but also when it sets boundaries to political action. In the latter case, as this article will seek to

demonstrate, it defines a position as being beyond the boundary of what is politically acceptable (Burns, 1999: 171).

The impact of norms of the choice of strategy is evident in the public nature of a significant part of democratic politics. In a public deliberative setting – e.g. a constitutional convention – recourse to naked self-interest or prejudice is inadmissible. ‘Even self-interested actors are forced or induced to argue in terms of public interest’ (Elster, 1998b: 12). Once public-spirited rationales have been offered in the discussion, voting in public for narrow self-interest ‘would be an embarrassing contradiction for most’ (Fearon, 1998: 54) i.e. a politically untenable option. In fact, this constraint – ‘the civilising force of hypocrisy’ in Elster’s terms – may even prevent self-interested proposals from appearing on the voting agenda.

Norms exert influence both during prolonged periods of political stability and in periods of crisis and overt contestation. In the latter case, they are the ‘yardstick’ used for the assessment of alternative solutions to political problems. The instrumental use of a norm creates a normative lock-in effect in that it raises expectations about its use in the future, especially in comparable circumstances. Given that inconsistency affects credibility (Schimmelfennig, 2001), political actors who have relied on a norm in the past are induced to either do so again, or at least refrain from violating it in the future. The other facet of the function of norms as a benchmark entails the classification of responses to political problems on the basis of their compatibility with the frequently-invoked norm. The responses that are compatible with the norm remain relevant while others are quickly rejected.

### *The Puzzle*

Between 1986 and 2000 the EU Treaties have been reformed four times through traditionally opaque intergovernmental conferences (IGCs) in which government representatives and diplomats negotiated and unanimously adopted treaty reforms. This is due to the fact that the EU began its life as an international organisation based on treaties concluded by nation states. However, in 2000 the governments of the member states unanimously decided to move from this traditional diplomatic model - that relied fundamentally on secret bargaining between government representatives - to a new institutional arrangement. A year later they decided to establish a new deliberative forum – the Convention on the Future of Europe. The design of this new mechanism differed remarkably from an IGC in terms of membership, operational arrangements (especially transparency) as well as its potential for unintended consequences because national governments had not secured control over the outcome of its deliberations (House of Lords, 2002).<sup>1</sup>

This highlights the paradox examined here. National governments were aware of the well-documented capacity of EU-level political organisations to produce unintended (indeed, *unwelcome*) consequences. For example, discussing the constitutional issue of the enhancement of the EP's powers after the adoption of the Treaty of Maastricht, Hix (2002: 279) has demonstrated that

‘The real transformation in the powers of the European Parliament came in the practical operation of the rules of the Treaty of Maastricht. At Maastricht, the governments had not been able to predict how exactly the EP would behave



under the new legislative and executive appointment rules, as the contracts seemed relatively complete. Nevertheless, the EP was able to exercise discretion in interpreting these rules, and to force the governments through new institutional rules and strategic behaviour to accept this interpretation. The result was considerably more practical power for the EP under the Treaty of Maastricht than either the governments or many political scientists had predicted.’

Moreover, discussing policy development in the EU Paul Pierson (1996: 123) has demonstrated that

‘losses of control result not only from the autonomous actions of supranational organizations, but from member-state preoccupation with short-term concerns, the ubiquity of unintended consequences, and the instability of member-state policy preferences’.

Although national governments retained the right to make the final decisions in the context of the IGC that was planned to follow the end of the Convention’s proceedings, they took the unanimous decision to create an institution which was capable - because of its membership and *modus operandi* - of presenting them with a politically legitimate *fait accompli* from which it would ultimately be very hard to distance themselves. In addition, despite the wishes of sceptical<sup>2</sup> national governments, the Convention was vested with the power not only to consider the key issues regarding the Union’s future development but also to identify possible responses. As regards its agenda, there were to be no taboos (*Financial Times*, 17 December 2001: 20). Clearly, this was a risky (Wessels, 2001) course of action for risk-averse governments and this is further highlighted by the fact that the ‘politicisation’ of the treaty reform process was an

explicit objective of the promoters of change who wanted to bypass diplomats whose action is constrained by the mandate that they have (interview, Brussels, 30 April 2004).

In more general terms, the advent of the Convention marks a significant shift in the balance between the EU's two sources of legitimacy namely, the nation state and European citizens. While the IGC method privileges the former, the establishment of the Convention clearly enhanced the latter because it brought together representatives of (*inter alia*) national parliaments, the Commission and the (directly elected) European Parliament (EP) and gave to representatives of civil society a point of entry into EU 'constitutional politics'. Crucially, unlike the IGC model - which relies explicitly on diplomatic bargaining - the Convention model resonates directly with the norm of transparent deliberation and democratically accountable governance that is part of the normative order that permeates both the EU and the member states.

Arguably, the puzzle concerns primarily the *opponents*, rather than the initial promoters of change. Governments had the motives, power and opportunity to veto this reform but they did not do so despite their initial strong opposition to this change, the fact that 'nobody knew initially what the Convention was going to do and be like' (interview, Brussels, 7 July 2003a) and the absence of a broader package deal (Ludlow, 2002: 59; Magnette, 2002: 8). Why did they align their views with the supporters of establishment of the Convention? The importance of this question is further highlighted by the fact that the new process of treaty reform affected both the domestic process of preference formation (Dimitrakopoulos and Kassim, 2004) as well as a part of the subsequently agreed Treaty (Closa, 2004; Magnette and Nicolaïdis, 2004) and the EU

Constitutional Treaty signed in Rome in October 2004 formalized the Convention method and turned it into a central feature of the treaty reform mechanism (Art. IV-443).

The argument is advanced that the establishment of the Convention on the Future of Europe and the move away from the pure IGC model reflects the growing importance (at the level of the EU) of the norm of transparent and democratically accountable governance. Its deployment in the context of the debate that followed the failed Nice summit of December 2000, channelled this debate in a manner that constrained the strategic autonomy of key governments, i.e. those who would normally be expected to veto this change. Despite their objections, the reform was adopted because of its normative underpinnings that combined problem solving with legitimacy in a credible manner – one that resonates with the prevailing conception of good governance. This resonance forced the opponents of this reform to accept it for three reasons. First, the relevant norm had been used in the past by both the supporters and the opponents of reform.<sup>3</sup> Thus, the decision to go against it would have serious implications for their credibility. Second, the proposed reform was undoubtedly legitimate, i.e. compatible with the norm. Third, assessed on the basis of recent experience, its problem solving capacity was credible.

Are there better explanations of this outcome? Arguably, neither interest-based, nor institutionalist accounts are more effective than the norm-based explanation offered here. The important distinction between the initial decision to reform the institutional arrangement and the precise content of the reform undermines the usefulness of an

*interest-based* explanation of the case at hand. Given the widespread dissatisfaction with the IGC method, the decision taken in December 2000 to embark upon the quest for a new institutional arrangement was in the interests of the national governments. However, even if one assumes that these interests were defined exogenously – i.e. without reference to the EU context, they cannot explain by themselves (i.e. without recourse to the norm of transparent and democratically accountable governance) the *specific* form of the new arrangement that was adopted a year later. After all, other alternatives<sup>4</sup> that were better placed to serve the interests of the sceptics were available but were rejected.

An *institutionalist* account would not generate better results for four reasons. First, national governments could not control the Convention - they were in a minority. Second, they were aware of the history of unintended consequences produced by EU-level organisations in general and the Convention method in particular. Third, the growing power of the directly elected EP – itself an indication of the increasing importance of the norm discussed here - was not popular amongst government elites many of whom believe that EU politics must remain in the hands of governments. Finally, given the unanimity requirement, this reform could have been vetoed.

The next section highlights the presence and the increasing (since the late 1980s) importance of the norms of transparent and democratic governance at the level of the EU, the failure of the IGC method to provide satisfactory solutions to the crucial issue of institutional reform and, finally, the creation of the new mechanism, i.e. the Convention on the Future of Europe.

## ***The Establishment of the Convention on the Future of Europe***

### *Democratic Governance and Transparency in the EU*

Although the concept of representation has enabled the transfer of the democratic principle from the city state to the nation state, the second transformation of democracy was marked by the advent of transnational systems of governance that increased the perceived distance between citizens and the *loci* where power is exercised (Dahl, 1994: 26). Assessed in terms of the exercise of democracy and transparent decision making, international organisations are not prime examples of democratic politics. Marked by an emphasis on diplomatic negotiations in the context of the dominant Council of Ministers, the European Communities were (initially) not a radical exception to this trend but between the late 1970s and the mid-1990s the issue of transparent and democratic decision making became part of their agenda and various institutional arrangements have been developed in an effort to deal with it.

Although since their inception, the Communities had relied on two sources of legitimacy - states and citizens - emphasis had remained on the former. The first direct elections of the members of the EP in 1979 and the first formal amendment of the founding treaties through the Single European Act (SEA) in the mid-1980s changed this pattern and initiated a process of 'democratisation' of the EU. In particular, the SEA was the first stage of a lengthy process that turned the EP into a powerful actor. Treaty reforms agreed between 1986 and 2000 combined the gradual delegation of increased

powers to the EU and its forerunners with the search for institutions aiming to improve the practice of democracy at the level of the EU. The political response to the perceived ‘democratic deficit’ of the EU reflected the importance of representative democracy in the normative order that underpins the EU and the member states and led to the remarkable enhancement mainly of the legislative powers of the EP.<sup>5</sup> In addition to these ‘internal’ changes, the ‘Copenhagen criteria’ defined in 1993 by the European Council, included the presence of ‘institutions guaranteeing democracy’ as a condition for the accession of new members to the EU.

At the same time, the issue of transparency was attracting increasing importance at the level of the EU in part as a result of the accession of Sweden and Finland in 1995. Although until then the Council, unlike the Commission, had remained a largely secretive forum for intergovernmental bargaining, measures were adopted to make public the results and explanations of votes as well as the minutes of the Council’s legislative meetings.<sup>6</sup> Nevertheless, the process of EU Treaty reform had remained subject to not only the control of the member states, but also the opaque IGC method. Crucially, this method was beginning to show clear signs of need for reform.

#### *The IGC: A Method that Failed*

Despite the efforts of the national governments, the Treaties of Amsterdam and Nice failed to resolve the crucial issue of institutional reform. The IGC method had retained its pivotal position despite explicit calls (European Parliament, 1997) for a public debate to identify the idea that would mobilize European citizens and a more active role of the directly elected EP in treaty reform. Although IGCs had retained the characteristics of a

forum for inter-state diplomatic negotiations in which individual governments sought to increase their gains without necessarily taking into account the broader picture (Giscard d'Estaing, 2002: 14), perceptions were gradually changing as a result of the experience of the late 1990s. The 'shambles' that emerged from the Nice summit convinced even the most enthusiastic supporter of the IGC method about its limits (Norman, 2003: 24).

Doubtless, some of the problems in Nice emanated from the French presidency's very poor preparation of the summit and handling of the negotiations, but another part resulted from the IGC method *per se* (*Süddeutsche Zeitung*, 16 December 2000: 6; *Frankfurter Allgemeine Zeitung*, 11 December 2000: 2; Gray and Stubb, 2001: 13-14; Palmer, 2000: 5). European leaders were overwhelmingly negative about the process irrespective of their views on integration or the outcome of the 2000 IGC. These assessments reflect, in part, the acrimonious end of the negotiations, but they also show growing unease about the fact that, having failed - by design - the transparency test, the IGC model could no longer be defended on grounds of efficiency. Indeed, the Treaty of Nice was 'widely reviled as a highly unsatisfactory agreement' (Dinan, 2004: 27).

This is unsurprising<sup>7</sup> given the conflicts between various provisions and the embarrassing errors – such as errors regarding the calculation of blocking minorities in the Council – that were identified soon after the end of the summit (*Libération*, 20 December 2000: 10; *Süddeutsche Zeitung*, 16 December 2000: 6; Gray and Stubb, 2001: 20). As a result of this débâcle, national governments could no longer defend the IGC model. Instead, they were forced to seek a new institutional arrangement. The unanimous agreement reached in Nice in December 2000 to hold another IGC four

years later showed dissatisfaction with the outcomes of the Nice summit but the (also unanimous) decision to reform the treaty reform process showed – beyond any doubt - that the IGC method had reached its limits. As a result, a new institutional arrangement had to be devised.

*From Nice (December 2000) to Laeken (December 2001)*

The norms of transparency and democratic governance and the need to re-balance the relationship between the two sources of legitimacy of the EU (states and citizens) informed the declaration attached to the Treaty of Nice that called ‘for a deeper and wider debate about the future of the European Union’. National governments recognised that it was necessary to render the Union and its institutions more democratic and more transparent. After the Nice summit of December 2000 and until the Laeken summit of December 2001 two debates were taking place with regard to the post-Nice agenda. In the *public domain*, an open and broad debate on the future development of the EU was launched in March 2001. Unlike the previous national debates and referenda that focused either on a country’s membership of the EU or the ratification of a Treaty, this debate was unprecedented in that it concerned the future of the EU and was meant to be almost pan-European in scale. A transparent and democratic debate involving all important political and social actors – i.e. the antithesis of the opaque IGCs - was gradually emerging as the means by which the answers could be given to the compelling questions facing the EU. In the *diplomatic realm*, the promoters of reform – with Belgium, Germany and Finland at the forefront – were pushing for an ambitious post-Nice agenda that entailed the reform of (i) the Nice



Treaty through the adoption of an EU Constitution or Constitutional Treaty and (ii) the treaty reform process.

Both ideas were politically contentious. This is why the Belgian Presidency used a shrewd two-track strategy that maintained the link between the problem-solving and legitimating aspects of the aforementioned norms. On the *diplomatic front*, Belgian PM Guy Verhofstadt kept close to his chest the declaration he was preparing for the summit that would conclude the Belgian Presidency in December 2001. In drafting the declaration, he knew that he had to avoid alienating pivotal national governments – such as the British and the French, two states that had opposed the full participation of the directly elected European Parliament in the negotiations that led to the Treaty of Amsterdam (Hix, 2002: 268) – whilst promoting a new way of reforming the treaty – one that would have the ‘*autorité morale de la Convention*’ (interviews, Brussels, 30 April 2004). In the run-up to the Laeken summit of December 2001 he made extensive use<sup>8</sup> of bilateral contacts<sup>9</sup>. Expecting the British government to react negatively to both the declaration that he was preparing and the idea of a Convention, Verhofstadt paid particular attention to its views.

In the *public realm*, throughout 2001, both he and his Minister of Foreign Affairs made references to the need for an open debate and an inclusive ‘forum’ (Harou, 2003: 325). These references were simultaneously (a) vague enough to enable the promoters of reform to avoid the mobilisation and consolidation of opposition and (b) specific enough to highlight the relevance of the norm of transparent deliberation and democratically accountable governance in treaty reform. Verhofstadt and his

collaborators were keen to downplay the importance of the precise shape of the new institutional arrangement (concretely, the choice between a Convention and a 'forum') but also insisted on pointing out the fundamental significance of the involvement of all relevant parties in the debate and the need for options (as opposed to a single document) because mandating the new body to establish a single consensual text was likely to lead to a document based on the lowest common denominator and lacking the necessary ambition (Verhofstadt, 2001).

This strategy was intended to allay British fears and to highlight the continuing relevance of the normative facet of the issue at hand. At the same time, Verhofstadt's consistent references to the aforementioned norms kept at bay existing alternatives - including a group of wise men which was favoured by the British government (interview, London, 15 March 2004) - precisely because they did not comply with the aforementioned norms. Despite the presence of three thorny issues - namely the membership, operational arrangements and the potential for unintended consequences of the new mechanism for treaty reform - the European Council unanimously agreed on the establishment of the Convention on the Future of Europe through the Laeken Declaration of 15 December 2001 (European Council, 2001).

Unlike the traditional IGC method, membership of the Convention on the Future of Europe was not limited to the fifteen representatives of the Heads of State or Government of the member states. Rather, in addition to them<sup>10</sup>, it included thirteen representatives of the Heads of State or Government of the candidate states, thirty representatives of the national parliaments of the member states, twenty-six

representatives of the national parliaments of the candidate states, sixteen members of the European Parliament and two representatives of the European Commission. It was chaired by Valéry Giscard d'Estaing, former President of the French Republic while Giuliano Amato and Jean-Luc Dehaene (former Prime Ministers of Italy and Belgium respectively) were chosen to act as Vice Chairmen.<sup>11</sup> The Laeken summit and Declaration mandated the Convention to hold open discussions and to make all official documents available in the public domain. Its composition and its modus operandi rendered it (at the outset) much more inclusive and transparent than the opaque IGCs. However, these were not the only differences vis-à-vis the IGC model. The new institutional setting clearly entailed higher risks for the autonomy of risk-averse national governments in EU 'constitutional politics'. Four stand out.

First, given the number of non-government members of the Convention, the representatives of Heads of State or Government could be put in a minority<sup>12</sup>. This risk was increased by the fact that unlike the representatives of Heads of State or Government, other groups of Convention members – such as the members of the EP - could be expected to operate in a homogenous manner. Second, although national governments retained the right to make the final decisions in the IGC scheduled to follow the end of the Convention's proceedings, they did not have the power to prevent the creation of a broad consensus *within* the Convention. Indeed, the Chairman was quick to note that consensus does not mean unanimity<sup>13</sup>. This sheds light on the risk they took when they created the Convention and, by extension, the impact of the norm of transparent and democratic government. The new institutional arrangement differed from the opaque IGCs in that it had placed great emphasis on public deliberation. It

was designed to operate largely on the basis of each member's capacity to utilise arguments that focus on the public interest – in line with the logic of deliberative democracy (Elster, 1998a: 104). In addition, the choice between drafting a set of options and a single document was left to the Convention. This constrained the autonomy of national governments in the subsequent IGC. Individual governments could not criticise the Convention for going beyond its remit. Given the Convention's public and deliberative characteristics, national governments would find it particularly difficult to diverge radically from its outcome.<sup>14</sup> The participation of representatives of Heads of State or Government meant that the Convention could not be dismissed easily (at least at the point of its creation) as a 'talking shop' since the politically relevant actors were there. Third, the Convention was likely to be a more challenging institutional environment than an IGC for states with coalition<sup>15</sup> governments in that it was less likely than an IGC to be permissive for the co-ordination problems that they typically face. Finally, the agenda of the Convention was broad<sup>16</sup> and - despite British opposition - it had a clear constitutional dimension (Magnette and Nicolaïdis, 2004: 387-8). This agenda placed a particular burden on the actors who had many 'red lines' to defend. Prominent among them were the British and the Danish governments that would normally be expected to veto this reform precisely because it could not be reasonably certain to avoid unintended consequences. So, why did they consent to it?

### ***Rhetorical Entrapment and the Impact of Norms***

The impact of the norms of transparent deliberation and democratically accountable governance accounts for this result. Norms affect political outcomes by providing a menu of legitimate forms of action from which actors choose those that are considered likely to solve a given political problem. Two factors indicated the problem solving capacity of the new institutional arrangement. First, the Convention that had been established in 1999 by the European Council to draft the EU's Charter of Fundamental Rights<sup>17</sup> achieved its objective swiftly and earned widespread praise<sup>18</sup> both for the outcome and the process that led to it (interviews, Brussels, 8 July 2003 and Paris, 29 March 2004; see also Jospin, 2001). In other words, the first convention offered a concrete example of how this novel method could operate in practice. Second, the Convention on the Future of Europe had been mandated to choose between drafting different options or a single document so as to provide a clear basis for the subsequent IGC. Unlike the new method, the IGC had been unable<sup>19</sup> to provide this basis as demonstrated in Nice where the work done during eighteen months of preparations was 'thrown out of the window' as soon as the summit started (Gray and Stubb, 2001: 13).

The legitimacy of the new institutional arrangement was reflected in the composition and the modus operandi of the Convention. The second Convention – like the first – included all relevant institutional actors – such as representatives of Heads of State or Governments (i.e. the key actors who take the formal decisions on the reform of the treaty), national parliamentarians (including members of opposition parties) who in the past had complained about being asked (and expected) to ratify the deals reached by Heads of State or Government at the end of IGCs, and organisations of the EU (such as the directly elected EP) that had hitherto played no formal role in defining the content of

the treaty<sup>20</sup>. In other words, the inclusion of additional actors was not achieved at the expense of the presence but, more likely, the *autonomy* of the hitherto dominant actors.

Nevertheless, these features of the aforementioned norms did not determine the outcome of this process. Norms are contingent and contested and this case is no exception. One important indication of the intensity of this contestation came from the supporters of the primacy of the nation state. British officials disliked the design of the first Convention both on normative and functional grounds. The first Convention, they argued, ‘placed an MEP on the same footing as a country of 60 million’ - in addition, the fact that member states did not have control was ‘frustrating’ for British officials.<sup>21</sup> They criticised the first Convention for being ‘exclusive, bureaucratic and impervious to public opinion’ (EUObserver, 23 January 2001) but in doing so they had helped maintain the relevance of transparency and democratic accountability as criteria for the assessment of alternative reform proposals. The British government did not share the views of many who hailed the outcome of the first Convention as a successful exercise, in part because it was (along with other national governments) surprised<sup>22</sup> by it. This is why the British and other national governments were very sceptical about the idea of another convention – especially one that had the potential to draft a new treaty (interviews, London, 9 March 2004; Brussels, 30 April 2004; Magnette and Nicolaïdis, 2004: 385). Why did they consent to it when they knew that in the very recent past they had underestimated the capacity of this mechanism to operate autonomously?

Opposing the new institutional arrangement in public was not just ‘politically difficult’ (Menon, 2003: 964) for the sceptical governments - it was politically untenable because

of the emphasis of the Convention on transparency and democratic accountability in treaty reform. British officials pointed out how awkward it would be to reject the notion of an open debate precisely because the new mechanism resonated with the aforementioned norms (interview, London, 15 March 2004). The French government shared this view (interview, Paris, 29 March 2004). Given the importance of consistency, the resonance of the new mechanism with these norms meant that vetoing the establishment of the second Convention was a politically untenable position (interviews, London, 15 March 2004 and Paris, 29 March 2004). Moreover, their unhappy experience in the first Convention was not sufficient in and of itself to discredit the new mechanism for two reasons. First, the experience of the first Convention showed that it was both legitimate *and* capable of providing an efficient solution to a concrete political problem. Second, the opponents of change could not reject it solely on the selfish grounds that they did not get what they wanted from the first Convention. This was in large part due to the effect of rhetorical entrapment which links the European with the national level.

Sustained references to the need to make the EU more accountable – which meant that the aforementioned norm provided the standard against which alternative institutional arrangements had to be assessed - and Tony Blair's consistent and confident statements regarding the direction of European integration<sup>23</sup> meant that the creation of the second Convention could be seen as a credibility test both in the domestic and the European arenas. Claiming, as he did in Ghent, that 'as the EU has matured and has taken on more powers (...) the people of Europe have rightly come to expect more of a say in how it is run' (Blair, 2000a) and raising directly the issue of 'what people want from

Europe' in conjunction with the need to ensure that 'the citizens of Europe must feel that they own Europe' (Blair, 2000b) was incompatible with the rejection of a mechanism that was meant to improve transparency and democratic governance in EU Treaty reform. At the *domestic* level, rhetorical entrapment was equally significant. If the British Prime Minister and his government were 'winning the argument in Europe', as he had repeatedly pointed out in support of his declared policy of active engagement in European integration, and if his support for 'greater transparency and accountability' (Blair, 2001a) was credible, what did they have to fear from the establishment of the new Convention? It is this link between the domestic and the European arenas that highlights the significance of norms in political decision making. Because the two arenas are linked to each other, invoking the norm in one arena affects an actor's autonomy in the other. Even if the British government were prepared to be inconsistent, its preferred alternative (a group of wise men) could be defended on grounds of efficiency as well as its almost completely absent potential for unintended consequences (which is why it appealed to the British government) but it was not compatible – or not as compatible as the Convention - with the norm of transparency and democratic accountability.

As a result, a change of strategy (and the active involvement in the second Convention)<sup>24</sup> was the only route that remained available to the British government. This route was consistent with the policy of active engagement in the process of integration introduced by the Labour government in 1997. At the same time, the second Convention could be defended (at the point of its creation) in the domestic context precisely because of its emphasis on transparency and democratic accountability. This



is why Tony Blair ended up welcoming its creation in a statement in the House of Commons as an opportunity to maximise the input of public opinion into the proceedings (Blair, 2001b). Though he was quick to reassure the House of Commons that the second Convention would simply ‘present options’<sup>25</sup> (although this was not certain at that point in time) and that the final decisions would be made by the national governments, it is certain that active engagement remained his real strategy because having to veto the single document prepared by a legitimate Convention would be damaging, both domestically and in the European context. Indeed, not only would it return Britain to its position of isolation bequeathed to the Labour government by its Conservative predecessor but it would also undermine the credibility of Tony Blair’s statements that he and his government were ‘winning the argument in Europe’.

### ***The Limits of Alternative Explanations***

Neither interest-based, nor institutionalist accounts can resolve the puzzle discussed here. An *interest-based* account would highlight four points. First, a legitimate and effective Convention can be seen as an opportunity to promote the interests of a government that is ‘winning the argument’ but only if the Convention were to remain under control. However, as the example of the first Convention clearly demonstrates, this could not be guaranteed<sup>26</sup>. Second, it is important to distinguish between the decision taken in Nice to reform the process and the specific content of the reform agreed upon a year later. The former was, clearly, in the interests of national governments who knew that the IGC method had reached its limits. Nonetheless, this

cannot explain the precise form of the new arrangement created a year after the Nice summit, without recourse to the norm of transparent and democratically accountable governance and its problem solving and legitimating features. Third, the Laeken Declaration was adopted despite the presence of alternatives (including a group of ‘wise men’ preferred by the British government) and without any links to side payments or package deals. Finally, although national parliamentarians, the EP and the Commission welcomed the second Convention – since it gave them the opportunity to participate in this process, they did not have the power to affect the decision taken in Laeken.

*Institutionalist* analyses would focus on path dependence, decision rules and control on the basis of six arguments. First, the precedent set by the first Convention can be seen as an important factor both in terms of legitimacy and problem solving. However, it was not a major determinant *per se* because some national governments had had an unhappy experience and were, by consequence, aware of the capacity of the new institutional arrangement to produce unintended consequences. Arguably, the first Convention showed that the new mechanism was a *credible* option and this is consistent with the normative account presented in this article<sup>27</sup>. Second, the Convention on the Future of Europe had a much more difficult and politically salient task and opportunity namely, the preparation of options or a single treaty document. This task differed remarkably from the consolidation work for which the first Convention had been established. Furthermore, the broader trend towards ‘democratisation’ at the level of the EU did not determine the outcome of the process examined here. After all, other areas in which there was sustained demand for a more active role for the EP have remained under the almost total control of the national governments and the EP’s calls for a more

transparent method of treaty reform had been ignored during the 1990s (Dimitrakopoulos, 2005). In addition, the growing legislative powers of the EP clashed with the views of governing elites who claim that EU politics must remain under the control of governments because ‘democratic accountability is fundamentally and ultimately rooted in the Member State’ (Blair, 2001b). Third, given the unanimity requirement, the decision examined here could have been vetoed since opposition to the substance of the proposed new arrangement was neither limited to a small state nor deprived of alternatives. Fourth, although the participation in the second Convention of representatives of the less integration-prone candidate states can be said to have diminished the risk of unintended consequences, this argument is ultimately unconvincing because the Laeken Declaration explicitly stated that they did not have the right to prevent the establishment of consensus. Fifth, claiming that three quarters of the members of the Convention were ‘national representatives’ (Magnette and Nicolaïdis, 2004: 387) fails to take into account the often subtle but very important differences that exist between political parties’ views on integration in many member states, including Britain. Finally, the importance of selecting Valéry Giscard d’Estaing as Chairman must not be over-estimated since he lacked recent experience from EU ‘constitutional politics’, he had voted against the Treaty of Nice in the French National Assembly (Kleine, 2005: 12) and he was flanked<sup>28</sup> by two equally (if not more) experienced Vice-Chairmen who were likely to provide a counter-balance<sup>29</sup> along with a large majority (*within* the Praesidium) composed of ‘natural allies’ of supranational organisations like the Commission (Norman, 2003: 161).

## ***Conclusion***

The Laeken Declaration of 2001 went as far as it could go in terms of reforming the treaty reform process. Turning the Convention into a formal decision making body was impossible – at that point in time - because the Treaty required an IGC but the puzzle discussed here concerns the basis of this important reform that was subsequently enshrined in the Constitutional Treaty of 2004. At the point of its creation the Convention on the Future of Europe was legitimate in terms of membership and transparent in terms of its prospective *modus operandi*. In that sense it marked a significant turning point in the institutional and wider political<sup>30</sup> development of the EU. Despite opposition from sceptical national governments that had the motives, power and opportunity to veto this reform, the important reform went ahead because its opponents knew that opposing a mechanism that was capable of resolving a political problem in a legitimate way was simply a politically untenable position because of the deployment of the norm of transparent and democratic governance. Trapped in their own rhetoric and their opponents' successful rhetorical action, sceptical governments were induced to adapt their strategy.

In that sense, this article has sought to go beyond the existing work that identifies the consequential features of norms and has highlighted the importance of an important mechanism, namely rhetorical action. The case examined here relates to two more general points. First, norms-based accounts can accommodate agency. Such accounts are often seen as the antithesis of 'rationalist' analyses. This case demonstrates that political actors behave rationally but their action is channelled by the normative basis of

the political opportunity structure in which they operate. Actors choose from a socially constructed 'menu' of options. They also choose the pace and the scope of change<sup>31</sup>. Second, the impact of norms is inherently political, i.e. not the smooth and orderly progression often associated with ideational accounts of political change. Unlike other normative accounts that place emphasis on the importance of persuasion and consensus, this article shows that the impact of norms is the result of political contestation (Parsons, 2003: 237-8) and rhetorical action. Change is neither smooth, nor pre-determined. Rather, it is contingent (Katzenstein, 1993: 286-9) and the result of a process triggered by failure of existing institutions. It is precisely because compliance with norms is not guaranteed and norms compete with other norms that we need to identify the specific mechanisms through which they affect political outcomes.

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## NOTES

<sup>1</sup> Its members were drawn from a whole array of political organisations including the European Parliament, the European Commission and national parliaments. Its sessions were open to the public and the use of modern technology (primarily the internet), allowed interested parties and individuals closely to monitor developments.

<sup>2</sup> Sceptical governments knew they had many 'red lines' to defend and therefore wanted to limit risks by restricting the agenda.

<sup>3</sup> For example, it is one of the formal criteria against which candidate states are assessed.

<sup>4</sup> They included a lengthier and better-prepared IGC, separate national debates and fora, as well as an EU-level group of 'wise men'.

<sup>5</sup> This was achieved through the Single European Act and the Treaties of Maastricht, Amsterdam and Nice.

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- <sup>6</sup> This agreement became part of the Treaty of Amsterdam (Héritier, 2003: 822-3).
- <sup>7</sup> It was a ‘minimum minimorum’ as a member of the Praesidium of the Convention on the Future of Europe put it (interview, Belgium, 31 March 2004). In addition, Tony Blair’s acknowledged in the House of Commons a year later that the Treaty of Nice had not prepared the EU for enlargement (Blair, 2001b).
- <sup>8</sup> For example, the content of the declaration had not been discussed by the Committee of Permanent Representatives or the General Affairs Council (interview, Brussels, 30 April 2004a).
- <sup>9</sup> He also created the so-called ‘Laeken Group’ which he used as a ‘sounding board’ for his ideas. It brought together Giuliano Amato, Jean-Luc Dehaene, Jacques Delors, Bronislaw Geremek who were chosen by the Belgian government and David Miliband (British MP and former head of the Policy Unit in 10 Downing Street) who was chosen by Tony Blair (*La Libre Belgique*, 22 June 2001). Louis Michel, then Foreign Minister of Belgium, was closely involved in its proceedings.
- <sup>10</sup> Representatives of the Economic and Social Committee, the Committee of the Regions, the social partners and the European Ombudsman had observer status.
- <sup>11</sup> The Praesidium of the Convention was composed of the Chairman, the Vice-Chairmen and nine members drawn from the Convention (the representatives of all the governments holding the Council Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives).
- <sup>12</sup> It is important to note here that the reference to the notion of minority is not intended to indicate the possibility (or likelihood) of a formal vote. Rather, it denotes the mismatch (demonstrated in the empirical discussion) between the opponents’ (such as the British government) *domestic* rhetoric which was focused on control and, more generally, their capacity to win the argument, and the significant risks that emanated from the aforementioned reform.
- <sup>13</sup> My translation from Magnette (2002: 11).
- <sup>14</sup> If a set of options enjoyed large support within the Convention, it was likely to have a similar constraining effect on national governments.
- <sup>15</sup> This is why at least two of these states insisted that representatives of the *Heads* of State or Government, not *governments*, be one of the Convention’s ‘composantes’ (interviews, Brussels, 7 July 2003).

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<sup>16</sup> It included four broad sets of important issues namely, the division and definition of competence in the EU, the simplification of the EU's legal instruments, how to improve democracy, transparency and efficiency in the EU and, finally, a Constitution for European citizens.

<sup>17</sup> It was composed of representatives of the Heads of State and Government, of the President of the Commission, the European Parliament and national parliaments while representatives of the European Court of Justice had observer status and representatives of the Economic and Social Committee, the Committee of the Regions and social groups as well as experts were invited to give their views. It was chaired by Professor Roman Herzog, former President of the Federal Republic of Germany, its Federal Constitutional Court and leading academic lawyer who was instrumental in ensuring the smooth and effective operation of this body. The final draft – which was the outcome of a transparent debate involving representatives of civil society as well - was ‘proclaimed’ in Nice by the Heads of State or Government of the member states and was subsequently integrated into the Constitutional Treaty signed in Rome in 2004.

<sup>18</sup> A House of Lords report praised the first convention both for its composition and its operation, arguing forcefully that the preparation of the Charter had been ‘undertaken in an open, fair and efficient manner’ and that the work of the first Convention was ‘extremely transparent’ (House of Lords, 2000: para. 152; see also *Süddeutsche Zeitung*, 15 November 2000: 7).

<sup>19</sup> The second Convention was ‘an attempt to avoid another Nice’ as a British official put it (interview, London, 15 March 2004).

<sup>20</sup> The new institutional arrangement placed the onus on them too to move away from a largely reactive and protest-based attitude towards a more constructive one. The fact that both institutional actors and civil society had multiple access points further enhanced the legitimacy of the new institutional arrangement.

<sup>21</sup> This is why they were not particularly happy with the process (interviews, London, 9 and 15 March 2004).

<sup>22</sup> The first Convention produced a complete Charter of Rights that went beyond the mere codification of the *acquis* (Magnette and Nicolaïdis, 2004: 384).

<sup>23</sup> ‘I believe that argument is moving increasingly in our favour’ (*The Observer*, 16 December 2001: 19).

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<sup>24</sup> This accounts, at least in part, for what a senior member of the Praesidium called Peter Hain's 'travail phénomènal' (interview, 31 March 2004; see also Menon, 2003).

<sup>25</sup> Pierre Moscovici, the French Minister for European Affairs, made a similar statement in the French National Assembly before the Laeken summit (Assemblée Nationale, 2001).

<sup>26</sup> Indeed, even the distinction between drafting options and preparing a single document can be challenged on these grounds.

<sup>27</sup> Thus, explaining the creation of the second Convention purely on the basis of 'rhetorical action' (i.e. the strategic use of norms-based arguments) would ignore the key second component highlighted here namely, the problem solving capacity of the proposed reform.

<sup>28</sup> After the beginning of the Convention proceedings he stated in public that the involvement of civil society (itself the result of the openness promoted by the new institutional arrangement) would reinforce the outcome of the Convention vis-à-vis the European Council in the subsequent IGC (Magnetite, 2002: 10).

<sup>29</sup> This is why President Chirac was not happy with their appointment that was a compromise he had to accept in order to ensure Giscard's appointment (interview, Brussels, 30 April 2004). In fact, the discussion regarding (a) Giscard's appointment and (b) the agenda of the Convention facilitated the Belgian Presidency's task of diverting attention from the creation of the second Convention.

<sup>30</sup> For example, Closa argued that '[t]he composition and kind of issues dealt with at the Convention [...] induced a change in the internal processes of exchange among actors. [...] Large membership meant that in order to construct broad supporting coalitions (that could change from issue to issue), actors had to avoid arguments based on vested interests and seek persuasion based on strong arguments appealing to superior moral reason.'

<sup>31</sup> Although important powers have been granted to the EP since 1986 and the pace of change has accelerated since 1991, important exceptions remain in place (see Dimitrakopoulos, 2005).



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