

**A CONVENTION, OR CONVENTIONAL
PREPARATIONS?
THE EUROPEAN UNION AND THE IGC 2004**

No. 24, November 2001

P.O. Box 20061
2500 EB The Hague
The Netherlands

Telephone + 31 70 348 5108/6060
Fax + 31 70 348 6256
E-mail AIV@minbuza.nl
Internet www.AIV-Advice.nl

Table of contents

Foreword

I	The background to the revision of the Treaties	6
	<i>Two characteristics of revisions of the Treaties</i>	6
	<i>The run-up to revisions of the Treaties and the IGC</i>	6
	<i>The role of the European Commission and the European Parliament</i>	7
	<i>A broader basis for IGCs</i>	8
II	Advantages and disadvantages of conventions and IGCs when preparing a revision of the Treaties	9
	II.1 Other approaches	9
	<i>Group of wise men</i>	9
	<i>Groups of experts</i>	9
	<i>Reflection Group (Dooge, Westendorp)</i>	9
	II.2 The convention model and the classic IGC model: advantages and disadvantages	9
	<i>The classic IGC model</i>	9
	<i>The convention model</i>	10
	<i>Which model?</i>	11
III	A convention: how to go about it	12
	III.1 A review of the convention for the Charter of Fundamental Rights	12
	<i>How the convention worked</i>	12
	<i>Comments on the convention</i>	12
	III.2 Towards the IGC 2004	13
	III.3 Preconditions for a smoothly functioning convention	14
Annexe I	Request for advice	

Foreword

On 13 June 2001 the House of Representatives of the States General, acting on the recommendation of the General Committee on European Affairs, asked the Advisory Council on International Affairs (AIV) to produce an advisory report on how the IGC due to be held in 2004 should be prepared. In preparation for the report, the AIV forwarded this request to one of its four permanent committees, the European Integration Committee (CEI). The members of the CEI are: Prof. F.H.J.J. Andriessen (chair), Dr. B. Knapen (deputy chair), H.J. Brouwer, W.S.J.M. Buck, A.E.J.M. Cook-Schaapveld, P. Dankert, N. Kroes, H.C. Posthumus Meyjes, Prof. J.Q.T. Rood, P. Scheffer, W.K.N. Schmelzer, Prof. A. Szász, M.G. Wezenbeek-Geuke and Prof. J.W. de Zwaan. Prof. B.A.G.M. Tromp and E.P. Wellenstein of the AIV's Peace and Security Committee (CVV) took part in the work of the CEI for the purposes of drawing up this report. This enlarged CEI subsequently set up a working group comprising the following members: Prof. F.H.J.J. Andriessen (chair), H.C. Posthumus Meyjes, Prof. J.Q.T. Rood, Prof. B.A.G.M. Tromp, E.P. Wellenstein, M.G. Wezenbeek-Geuke and Prof. J.W. de Zwaan. In drawing up the report, the CEI was assisted by its official advisors R.C.J.M. van Schreven and J.A. Werner, as well as by A.R. Westerink (Ministry of Foreign Affairs). The secretary was M.M.J. Louwerens (secretary of the CEI). The staff drew on the additional assistance of J.W. van der Veer (trainee). This advisory report was adopted by the AIV on Monday 29 October 2001.

The structure of the report is as follows. Chapter I describes the current situation regarding the revision of the Treaties, Chapter II examines several alternative ways of revising the Treaties, and in Chapter III the AIV makes recommendations on how the 2004 Intergovernmental Conference (IGC)¹ should be prepared. The recommendations are printed in italics. The request for the advisory report is reproduced in an annex.

The AIV wishes to make clear that the term 'convention' is used in the same sense as in the preparations for the Charter of Fundamental Rights. Such a convention is composed of four groups of representatives: of national parliaments, the European Parliament, the European Commission and national governments.

1 In the remainder of the text the term "Intergovernmental Conference" will be replaced by its customary abbreviation 'IGC'.

I The background to the revision of the Treaties

At the IGC held in Nice in December 2000, the Member States of the European Union adopted a declaration on the future of the Union.² The Declaration indicates the need for a wider, deeper debate on the future of the European Union, and states that the topics addressed should, *inter alia*, include the following:

- how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights of the European Union that was proclaimed in Nice;
- a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
- the role of national parliaments in the European architecture.

The IGC 2000 also agreed that, once this preparatory work is completed, a new conference of representatives of the governments of the Member States will be convened in 2004 to discuss the agreed topics with a view to amending the Treaties on the basis of the discussions.

It is therefore clear that further amendments to the Treaties will be made by an IGC. This raises the question of how best to prepare the IGC. Before discussing this, the current situation with regard to revisions of the Treaties will be outlined.

Two characteristics of revisions of the Treaties

The Treaties that form the basis for European cooperation have been repeatedly amended. This process has had two notable characteristics. First, revisions have taken place step by step. Second, the revisions and the IGCs needed to achieve them have taken place at shorter and shorter intervals: as one IGC ends, the next one is announced. In fact, it could be said that the Treaties are being amended almost constantly.

A related topic is the possible emergence of a European constitution. This topic has come onto the agenda partly owing to the drafting of a European Charter of Fundamental Rights and the constitutional nature of the topics in the debate on the future of the Union.

The run-up to revisions of the Treaties and the IGC

What is the current procedure for amending the Treaties, and what is the role of the various players? Article 48 of the Treaty on European Union states that Treaties shall be amended by unanimous decision of an IGC of government representatives and that the amendments shall come into force once they have been ratified by all the Member States.³ The procedure is composed of a Community part and an intergovernmental

2 Annex IV to the Treaty of Nice, p. 85-86, Declaration on the future of the Union.

3 Article 48 of the Treaty reads: 'The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded. If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. ... The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.'

part. First of all, on the basis of proposals submitted by Member States or the European Commission, the Council must deliver an opinion on whether or not to convene an IGC. If its opinion (which is adopted by a simple majority after consulting the European Parliament and, where appropriate, the European Commission) is favourable, the presidency shall convene the IGC. Treaty amendments must be adopted by common accord, in other words by consensus.

Community institutions – particularly the European Parliament and the European Commission – therefore play a part in the run-up to the IGC. The European Commission's right to submit proposals has in practice also given it the right to be present throughout IGC negotiations.

Treaty amendments can only enter into force once they have been ratified by all the Member States in accordance with their constitutional requirements. In some Member States the ratification procedure sometimes includes a referendum.

The role of the European Commission and the European Parliament

The role of the European Commission has often been greater than the foregoing would suggest. For example, when the Single European Act (1986) was drawn up, the Commission's input was of crucial importance. The Commission also made an important contribution to the preparations for the 1991 and 1996-1997 IGCs by setting up a task force which formulated the Commission's views and expressed them at meetings in a consistent, structured manner. In addition, both the European Commission and the European Parliament were represented in the Westendorp Reflection Group, which prepared the 1996-1997 IGC. In fact, the European Commission holds a potential trump card when it comes to influencing IGCs, for it is the only Community institution present at the actual negotiations. The degree of influence it can acquire appears in part to depend on the initiatives that it takes itself and on the extent to which it manages to be involved in the preparatory work. A strong European Commission will have a greater say in things than one that is perceived to be weak.

The European Parliament is not entitled to make proposals or to have Treaty amendments submitted to it for subsequent approval. However, the Council can only convene an IGC after consulting the Parliament. The Parliament has attempted to expand this formally limited role in the preparation of IGCs, and to some extent it has succeeded. There are basically two ways in which the European Parliament has made itself heard:

- Firstly, on its own initiative. In 1980, for example, a prominent Member of the European Parliament, Altiero Spinelli, assembled a group of 70 like-minded MEPs to draw up proposals for the institutional development of European cooperation. In 1981 this group, under its new name of the Institutional Affairs Committee, proposed that there be a new Treaty establishing a European Union in place of the original European Community. The influence of the Spinelli group can be called considerable, if only in that it succeeded in getting institutional development onto the political agenda. Accordingly, in the revision of the Treaties that led to the Single European Act and the Treaty of Maastricht, the European Parliament already had some say in things, since the various resolutions embodying its view of the future Union influenced the negotiations and their outcome.⁴ In other words, by putting forward ideas on their own initiative,

4 Sophie Vanhoonacker, "The European Parliament and European Political Union", p. 215, in *The Intergovernmental Conference on Political Union*, ed. Finn Laursen and Sophie Vanhoonacker, European Institute of Public Administration (EIPA), 1992.

elected members of parliament were able to carve out a place for themselves in the European arena.

- Secondly, by being involved in the preparations for an IGC. The European Parliament has taken part in a number of groups set up to prepare revisions of the Treaties. On the first occasion, two MEPs were involved in the discussions of the Westendorp Reflection Group. The European Parliament was involved even more closely in drawing up the European Charter of Fundamental Rights. This work was done by a convention which included not only representatives of governments and the European Commission but also MEPs and members of national parliaments. It seems likely that, encouraged by their experience so far, the European Parliament and national parliaments will want to play at least as large a part in the preparations for subsequent IGCs.

A broader basis for IGCs

It will be apparent from the foregoing that the role of the Community institutions is formally confined to the phase that precedes the actual negotiations. This means that the Member States are the leading players both in initiating IGCs and in determining their outcome.⁵ However, they appear to be losing their exclusive control over IGCs, for one thing because the European Commission and the European Parliament have managed to carve out for themselves a greater role in preparing IGCs than they are entitled to under the terms of the Treaties. At the same time, an increasing number of other groups and institutions are attempting to influence IGCs. At the IGC in 1996-1997 there were numerous interest groups (both national and transnational) that wanted to be heard on the conference floor.⁶ At the IGC 2000 this trend continued, as representatives of civil society were involved in the convention for the Charter of Fundamental Rights.

This broader basis for IGCs – an increasing role for the European Commission, the European Parliament and civil society at increasingly frequent IGCs – may make governments apprehensive of losing control over where the European Union is heading. On the other hand, they are increasingly aware that it does not enhance the quality of decision-making or boost public support for the European Union if important decisions (such as those taken at IGCs) are reached too much behind closed doors and without a public debate. Hence the attempt to establish a broader basis for IGCs by involving the Community institutions, civil society, national parliaments and so forth.

5 “Reforming the Treaties’ Amendment Procedures”, Second report of the European University Institute, Florence, on the reorganisation of the European Union Treaties, p. 5.

6 Jo Shaw, “Process and Constitutional Discourse in the European Union”, *Journal of Law and Society*, March 2001, p. 28.

II Advantages and disadvantages of conventions and IGCs when preparing a revision of the Treaties

II.1 Other approaches

An IGC can be prepared in various ways apart from by a convention. In the past, IGCs have been prepared by groups of “wise men”, groups of experts and a reflection group.

Group of wise men

This method has proved its worth on several occasions. In 1999, a group of wise men led by Jean-Luc Dehaene produced valuable reports on issues affecting the future course of the European Union. Such groups will often be made up of political heavy-weights who are familiar with European practice and can put forward realistic, original ideas without feeling bound by national interests. The European Commission as such has no involvement in a group of wise men. In appropriate cases, however, a commissioner (or former commissioner) may join such a group in a personal capacity.

Groups of experts

Preparation by a group of experts is most likely to prove of value when the topics discussed are ones on which the group can make a sound (technical) judgement. Groups of experts and groups of wise men can be part of a classic approach to an IGC or part of a convention model, and can be asked, for example, to examine a specific topic.

Reflection group (Dooge, Westendorp)

The Dooge Committee, led by Ireland’s former Minister of Foreign Affairs, James Dooge, prepared the IGC that drew up the Single European Act. The Committee was made up of influential government representatives. The 1996 IGC was prepared by the so-called Reflection Group, whose members included not only government representatives but also representatives of the European Commission and the European Parliament. The group, led by Spain’s State Secretary for Foreign Affairs, Carlos Westendorp, drew up a realistic agenda for the IGC and identified areas in which agreement might be reached. The advantage of this method of preparation is that it produces a clear, realistic agenda, and that the problems which will arise during the negotiations are identified beforehand.

Nevertheless, such groups cannot – by definition – be a substitute for an IGC, which is where the decisions must ultimately be taken.⁷ The convention model will be briefly compared with the classic IGC model below.

II.2 The convention model and the classic IGC model: advantages and disadvantages

What are the advantages and disadvantages of the convention model and the IGC model (most recently used in 2000)?

The classic IGC model

One commonly mentioned disadvantage of the classic model is that it does not take sufficient account of the overall interests of the European Union and hence slows

⁷ See Article 48 of the Treaty on European Union.

down and hampers the integration process. The AIV does not altogether share this view. While acknowledging that the process of European integration may encounter greater resistance in the Member States, the AIV believes this is mainly because integration is increasingly impinging on the core of national sovereignty. Moreover, in the past the intergovernmental IGC model has quite definitely generated a substantial, pragmatic momentum for integration.⁸ Admittedly, the interests of the European Union itself, as defended by the European Commission, have tended to suffer, because in a purely intergovernmental setting there is less room for them than there is for the national interests involved. In practice, the European Commission has still managed on several occasions to play an influential role in the classic preparatory model. However, during the preparations for “Nice” it became clear that its influence is reduced when the agenda is dominated by purely national interests: the European Commission attempted to exert influence but was effectively brushed aside. For example, a clear and relatively simple proposal by the European Commission on weighting of votes was turned down by Member States because they did not feel it took sufficient account of their national interests. If this part of the agenda had also been prepared by a convention, the European Commission would have had more influence and could have presented the proposal more forcefully. However, the AIV believes that Member States will almost inevitably refuse to let a convention discuss topics of this kind, which are perceived to be matters of national interest.

The AIV considers it a disadvantage that the political considerations behind IGC decisions are not brought clearly enough into the open and that the decisions reached are not sufficiently accounted for afterwards. Furthermore, decisions are often obscure and incomprehensible, particularly to those who do not deal with such matters on a daily basis, and sometimes even to the experts. After “Nice”, for example, it took some time – at least in a number of cases – before it was clear what exactly had been decided.

The convention model

It is often assumed that the convention model automatically leads to greater public and parliamentary involvement and hence greater legitimacy and stronger support for Treaty amendments. However, the AIV does not believe that a more broadly-based preparatory group (such as a convention) necessarily results in stronger support. That would presuppose a large reservoir of tacit enthusiasm for and commitment to European integration – something which has not been shown to exist. Nor should it be forgotten that the convention for the Charter of Fundamental Rights only had to discuss one specific, clearly defined topic. A convention to discuss the four topics agreed at Nice, plus other topics subsequently added to the agenda, is another matter altogether: unless properly structured, it may easily degenerate into chaos and disqualify itself as an authoritative body.

On the other hand, the AIV believes that a convention does have certain advantages. As the convention for the Charter of Fundamental Rights showed, a convention can achieve more than a body composed entirely of government representatives could possibly do. In the AIV’s view, the convention model can help shed new light on matters previously only discussed by government representatives, whose arguments were primarily determined by national interests. If only because it provides a platform for new

⁸ J.Q.T. Rood, "Finaliteit en dynamiek van de Europese integratie: de Unie als sui generis verschijnsel", p. 62, in *Europa onvoltooid? Beschouwingen over de finaliteit van de Europese integratie*, J.Q.T. Rood et al., Clingendael Institute Memorandum No. 15, April 2001.

ideas, it is worth having the IGC 2004 prepared by a convention. Another advantage is that a convention, with its broader composition, can definitely help generate broader political and public support for the further development and enlargement of the European Union. In any case it will increase support among members of national parliaments (who will be more closely involved in EU affairs) and parts of civil society (which can be involved, for example, in hearings). Even more importantly, the political considerations that the IGC will face will be brought out into the open. The broader composition and openness of a convention may lead to debates in which political views on the further development of the European Union are clearly expressed and potentially newsworthy arguments are put forward, generating public interest in where the European Union is heading.

The broader composition of a convention, with delegates from national parliaments and the European Parliament, may have an additional advantage. There have often been calls for the various national parliaments to cooperate more among themselves and with the European Parliament, but the results have been disappointing. Specific cooperation (for example, when drawing up the Charter and potentially in a convention for 2004) could provide the impetus for greater coordination and cooperation, as well as giving the parliaments a greater say in things. Under certain conditions, the convention model would also enable the European Commission to play a more prominent role in steering the European Union in a more Community-oriented direction.

Which model?

Having weighed up the advantages and disadvantages of the two models, the AIV concludes that using a convention model to prepare the IGC 2004 may have tangible advantages. In any case, the AIV believes that an IGC requires proper preparation, in order to ensure that the ultimate decision-making process is efficient and preferably transparent. The AIV takes the view that the preparations for an IGC and the choice of an appropriate model will depend on what topics are on the agenda. In view of the (constitutional) topics on the agenda for 2004, it seems only logical that those who will be directly affected should be involved in the exchange of ideas.⁹ Another important point to be made is that the convention model should not be seen as a magic formula for increasing public support or reducing the democratic deficit.

9 A similar argument can be found in "A multi-tiered Europe: the relationship between the European Union and subnational authorities", AIV Advisory Report No. 19, April 2001. The report states that subnational authorities should have a greater say at the formative stage of national and other decision-making processes in policy areas where decisions affecting them are taken, since their knowledge and expertise may lead to more effective policy in terms of feasibility and implementation.

III A convention: how to go about it

III.1 A review of the convention for the Charter of Fundamental Rights

In the previous chapter, having weighed up the advantages and disadvantages of the classic and convention models, the AIV opted in favour of the convention model. However, it does feel that such a convention must satisfy certain conditions. Below is a summary of the experience gained with the convention for the Charter of Fundamental Rights and the opinions expressed on the subject. It is partly on this basis that the AIV has drawn up its recommendations on how such a convention should be organised.

*How the convention worked*¹⁰

The convention for the Charter of Fundamental Rights was instructed by the European Council to produce a draft Charter of Fundamental Rights of the European Union in time for the European Council held in Nice in 2000. The convention was made up of four groups or components, which all had an equal say in things: fifteen representatives of the governments of Member States, one representative of the European Commission, sixteen MEPs, and thirty members of national parliaments – a total of 62 delegates. The members chose one of their number, former German president Roman Herzog, to chair the convention. There were also three deputy chairs from the three component groups that had not provided the chairman. In addition, there was a secretariat made up of staff of the Council Secretariat, with support from the European Commission. The secretariat drafted proposals which the praesidium submitted to the plenary meeting. After a proposal had been discussed, the praesidium could amend it and resubmit it to the plenary meeting. The praesidium and the secretariat hence played key roles.

The convention operated on a consensual basis. There were four observers, two from the Court of Justice of the European Communities and two from the Council of Europe, including one from the European Court of Human Rights. The Economic and Social Committee, the Committee of the Regions and the Ombudsman of the European Union were also invited to give their views. In addition, the convention held hearings so that civil society groups and experts could voice their opinions. Finally, the countries that were candidates for membership of the European Union were invited to speak at the convention.

Comments on the convention

According to observers, Roman Herzog's chairmanship of the convention was crucial to its success. A former president of Germany's federal constitutional court, Herzog was an expert on the topic under discussion, he had considerable political standing and operated adroitly in the political context. Finding someone of great standing and political influence to chair the convention would appear to be a key factor in its success.

The European Commission was one of the four component groups, and also assisted the secretariat. Delegates noted a preponderance of European institutions – including the European Commission – at the convention. The reason for this was the constant presence of both the European Commission and MEPs, owing to the fact that the meetings were held in Brussels. Members of national parliaments did not attend as

¹⁰ For a substantive discussion of the issues raised in the convention for the Charter of Fundamental Rights, see "A European Charter of Fundamental Rights?", AIV Advisory Report No. 15, May 2000.

frequently. Another reason was the support the European Commission gave the secretariat through its officials. The praesidium relied heavily on the contributions made by the European Commission, particularly through the secretariat. So although on paper the European Commission had not been assigned a greater role than the other groups, in practice it made its influence felt. Finally, some delegates felt there was not enough cooperation between members of national parliaments and MEPs, but others commented that cooperation at the convention did actually lead to greater mutual awareness and understanding.

Delegates sometimes felt the convention was chaotic, owing to the lack of rules and procedures. There was no clear registration procedure for delegates, and it was difficult to determine whether there was a majority in favour of proposals. Nor was it clear how the praesidium had been elected and what its powers were. On the other hand, the openness of the convention was generally welcomed. It was noted that this openness had helped mobilise the relevant civil society organisations. Some representatives of these organisations were initially sceptical, but their involvement in discussions and hearings gradually convinced them of the convention's value.

Opinions in government circles were sometimes rather less positive, because the composition of the convention meant their influence on it was limited, and because the draft Charter turned out to be an all-or-nothing final product which they could not change afterwards.

III.2 Towards the IGC 2004

The debate on the preparations for the IGC 2004 has been going on for some time. What specific agreements have already been made? The agreements reached in Nice were mentioned at the beginning of Chapter I. At the "Gymnich" discussions in Genval on 8 and 9 September 2001, the members of the General Affairs Council proved to be in agreement on the following points. A convention of representatives of governments and the European Commission, as well as members of national parliaments and MEPs, would be convened to prepare the next IGC. The chair would be appointed by the Laeken European Council on 14 and 15 December 2001, and would be assisted by a praesidium comprising at least one member from each of the component groups. The convention would not adopt a final text, but would submit options. At the meeting of the General Affairs Council on 8 and 9 October, agreement was also reached on the involvement of civil society in the preparatory work, through a structured network. The Council also indicated that it would prefer a period of about one year to elapse between the end of the convention and the start of the IGC. A majority of Member States indicated they were in favour of countries that were candidates for membership of the European Union being fully involved in the proceedings from the outset. However, when it came to reaching agreement, candidate countries could not be granted the same status as existing Member States.¹¹ The General Affairs Council also felt that the task of convention secretariat should be performed by the Council Secretariat in consultation with the European Parliament and the European Commission.

At this point, however, objections to the line pursued by the Member States began to be voiced in some quarters. For example, the European Parliament was unhappy with

11 Jan Werts, "Kandidaatlanden EU gaan meepraten over hervormingen", in *Europa van morgen*, No. 14, 10 October 2001.

the General Affairs Council's position on the composition and the mandate of the convention. This became apparent at meetings of the Parliament's Constitutional Affairs Committee on 10 and 11 October 2001. What the Parliament objected to most of all was the idea that the convention should only submit options, rather than a coherent text. Among other things, the Parliament also wanted the convention to be able to discuss topics other than the four agreed in Nice.¹² According to the incumbent president of the European Council, the Belgian prime minister Guy Verhofstadt, the Member States took the view at the informal meeting of the European Council in Ghent on 19 October 2001 that the convention should last from March 2002 to June 2003, with a chair appointed by the Laeken European Council and assisted by a praesidium consisting of members of the component groups.¹³ The convention should endeavour to achieve a consensus on recommendations to be made to the IGC. Should this prove impossible, the convention should draw up options that enjoyed the backing of a majority of delegates. No decision had yet been reached on whether Turkey should take part, according to Verhofstadt. The Laeken European Council on 14 and 15 December 2001 will make a final formal decision on the convention and the arrangements for it, and will probably also draw up the agenda.

Guy Verhofstadt has asked a number of leading politicians to join an informal advisory group known as the Laeken Group, in order to advise the Belgian presidency and propose ideas in preparation for the Laeken European Council. Members of the group include Giuliano Amato, Jean-Luc Dehaene, Jacques Delors, Bronislaw Geremek and David Miliband.

III.3 Preconditions for a smoothly functioning convention

All this means that the decision-making process on the preparatory convention for the IGC 2004 has already advanced considerably. The AIV shares some of the Council's views, for instance as regards the composition of the convention (four groups, as at the convention for the Charter of Fundamental Rights). However, the AIV is unable to share other views expressed by the Council, for example concerning the period to elapse between the end of the convention and the start of the IGC, the chair and the deputy chairs, and consensus. The AIV has drawn up alternatives to these and has also laid down other conditions – for example, regarding the degree of “linkage” between decisions reached at the convention and the IGC.

The AIV emphasises its conviction that decisions at the IGC 2004 should ultimately be taken by the Member States. However, governments' wish to increase public support and legitimacy is at odds with their wish to keep control of the decision-making process. In any case, governments should not be able to use a convention as a mere token, reducing it to a pseudo-participatory structure whose effective value is nil, since the final decisions will be reached by a classic IGC which is free to disregard the convention's proposals. Far from increasing support for European cooperation, exploiting a convention in this way would actually reduce it.

¹² Bulletin Quotidien Europe 8068, “Avenir de l'Europe: le Parlement s'opposera à toute tentative de dénaturation de la Convention, avertit M. Mendez de Vigo”, p. 3, 12 October 2001.

¹³ The convention and the IGC 2004 are not mentioned in the declaration of the Ghent European Council. These comments are therefore based on statements made at a press conference by Guy Verhofstadt, prime minister of Belgium, current holder of the EU Presidency, and reproduced in Bulletin Quotidien Europe 8075, “Avenir de l'Europe”, p. 4.

Consequently, the AIV believes that the convention must have authority, since a convention that ultimately has no say in things will not attract the delegates it needs and will therefore not produce the desired results, with the concomitant risk that it will then be taken less seriously by governments. The AIV therefore feels there should be a clear “linkage” between the convention and the IGC. This will make decision-making more transparent, will bring political considerations out into the open, and will force decision-makers to account for the choices they make. This in turn will help generate greater legitimacy and support for the decisions ultimately taken by the IGC, and hence for the further development of the European Union.

The AIV also believes, given the composition and political authority of the convention, that it should be able to make its own decisions about its organisation and working procedures. The AIV is therefore in favour of letting the convention elect its own chair, as did the convention for the Charter of Fundamental Rights. If the chair is nonetheless appointed by the Laeken European Council, as the incumbent Council president Verhofstadt has indicated, the AIV points out that the chair will then have been elected by governments rather than by the four groups that make up the convention. In that case, the AIV believes governments must ensure that whoever they appoint is someone of sufficient standing to guarantee the independent emergence of opinions and ideas at the convention.

What is also clear is that any such “linkage” can only be based on *proposals* that enjoy the broad-based support of the convention. It is the praesidium’s task to establish the existence of such support. The consensus rule should not be applied. Pursuit of consensus in such a deliberately varied group of people could lead to endless negotiations whose outcome would probably be less than inspiring. Naturally, this will depend on the mandate the convention has been given. The AIV considers that broad-based support expressed at a meeting attended by representatives of all four groups is a sufficient basis for formulating authoritative proposals. The existence of such support must be established by the praesidium and substantiated when formulating the proposals. The AIV has deliberately referred to *proposals*, as it very much believes this is what the preparatory convention should submit. Only if there is no broad-based support for proposals should the convention submit *options* – something the AIV considers a last resort. There should be clear rules about attendance, so that it is possible to determine whether all four groups are represented and also if there is a quorum. A detailed package of procedural agreements and rules is not necessary, and moreover is not in keeping with the open exchange and emergence of ideas that are so characteristic of the convention model, and are indeed one of its most attractive features.

At the same time, the AIV believes that, if the convention is to have authority over the IGC, not too much time should be allowed to elapse between the end of the convention and the start of the IGC. Nor should Member States set up a separate preparatory group alongside or after the convention. If they nevertheless decide to do so, it should be done in a way that is compatible with the outcome of the convention. Such preparations should not take longer than four months. The AIV considers the one-year period favoured by many Member States too long. It also believes that any preparatory group set up after the convention should in any case include representatives of the European Parliament and above all the European Commission.

The AIV reiterates its view that ultimate responsibility for decisions must, of course, continue to be vested where it belongs, namely with the holders of political office in the Member States who are accountable for the decisions reached. The AIV is aware that any “linkage” between the convention and the IGC may blur the separation of

powers and that confusion may arise as to the respective roles of those responsible for preparing the IGC, taking decisions and monitoring the process. On the other hand, the convention model gives delegates – particularly members of parliament and the Commission – an opportunity to exert more influence than usual on the further development of the European Union. Given the importance of this to present and future Member States (and therefore also the Netherlands), the AIV is convinced that the benefits outweigh the risks. In any case, government representatives will continue to bear ultimate responsibility for the decisions reached, and members of national parliaments will still be able to monitor their decisions.

The AIV is in favour of the IGC 2004 being prepared by a convention. In the light of the foregoing, the AIV sets out below a number of conditions which it recommends should be satisfied by the convention in order to ensure that the IGC 2004 is properly prepared and runs smoothly.

1. *As envisaged by the General Affairs Council, the convention comprises the same four groups as the convention for the Charter of Fundamental Rights, i.e. representatives of governments, the European Commission, national parliaments, and the European Parliament.*
2. *The candidate Member States are granted observer status, since the topics to be discussed concern a shared future.*
3. *As in the convention for the Charter of Fundamental Rights, all four component groups are represented on the praesidium that presides over the convention. The permanent chair of the convention, who will direct the meetings, is someone of international standing and a political authority. The delegates elect the chair from among their number. The three deputy chairs on the praesidium come from the three groups that do not provide the chair.*
4. *The convention agenda includes the four topics indicated in the Declaration of Nice, as well as topics to be added by the ministers.¹⁴ However, the convention need not confine itself to these topics.*
5. *In cases where the praesidium establishes the existence of broad-based support, proposals are made. Otherwise, options can be submitted. The extent of the support established by the praesidium is substantiated in the final report to the IGC.*
6. *The convention reports to the IGC early enough to allow the latter a reasonable preparatory period. This period should not exceed four months. The final report by the convention is not submitted to a group or groups of experts for approval. The convention decides whether, and if so how often, it will submit interim reports to the Council.*
7. *Whenever the IGC does not adopt, or deviates from, proposals or options submitted by the convention, the chair of the IGC shall be required to give an account of this to the European Parliament.*

¹⁴ In an additional advisory report the AIV will recommend the topics it feels should be added to the four mentioned in the Declaration for the Final Act of the Treaty of Nice.

8. *The convention has its own secretariat, consisting of staff of the Council Secretariat and the European Commission.*
9. *The convention decides for itself how civil society organisations are to be heard. It takes every opportunity to hear the views of civil society and involve it in the debate.*
10. *Discussions and documents are public.*
11. *The convention is able to appoint groups of experts or “wise men” to prepare parts of the agenda. This may prove crucial to its success. The European Commission plays its designated role in groups of experts.*

The Hague, 13 June 2001

To the Acting Chairman of the Advisory Council
on International Affairs
Prof. F.H.J.J. Andriessen
P.O. Box 20061
2500 EB The Hague

Subject: Request for an advisory report on the working method for the IGC 2004

The House of Representatives of the States General, on the recommendation of the general commission on European affairs, requests you on the grounds of article 17 of the Law on Advisory Boards, to give advice on the following.

The House of Representatives has observed that the working method of the IGC-2000 has led to dissatisfaction with some member states. The European Commission plays an important role in the preparation of and the negotiations during an IGC. At the moment a discussion is going on with regard to the organization of the IGC-2004, with some voicing the opinion that this IGC should be organized differently than the IGC-2000. Both the method used in drawing up the Charter of Fundamental Rights (the Convention model) as well as the Intergovernmental Conference 2000 model (Treaty of Nice) are discussed as possible working methods for the upcoming IGC. The role in this of the European Commission is not clear.

The House of Representatives therefore requests the Advisory Council on International Affairs to advise it on the following questions:

- What are the advantages and disadvantages of the 'Convention model' and what is the role of the European Commission in this model?
- Is the Convention model applicable to an IGC? What could be the consequences of this choice?
- What are the advantages and disadvantages of the working method used for the IGC-2000? And what was the role of the European Commission in it?
- Are other models conceivable than the Convention model or the IGC-2000 method (is for example a Commission of Wise Men a realistic option) for the IGC-2004? What advantages and disadvantages would this entail? And what would then be the role of the European Commission?

The House of Representatives would appreciate it if the advisory report would be available within a period of six months.

The Chairman of the House of Representatives
of the States General,

F.W. Weisglas
(acting Chairman)

Previous reports published by the Advisory Council on International Affairs

- 1 AN INCLUSIVE EUROPE, *October 1997*
- 2 CONVENTIONAL ARMS CONTROL: urgent need, limited opportunities, *April 1998*
- 3 CAPITAL PUNISHMENT AND HUMAN RIGHTS: recent developments, *April 1998*
- 4 UNIVERSALITY OF HUMAN RIGHTS AND CULTURAL DIVERSITY, *June 1998*
- 5 AN INCLUSIVE EUROPE II, *November 1998*
- 6 HUMANITARIAN AID: redefining the limits, *November 1998*
- 7 COMMENTS ON THE CRITERIA FOR STRUCTURAL BILATERAL AID, *November 1998*
- 8 ASYLUM INFORMATION AND THE EUROPEAN UNION, *July 1999*
- 9 TOWARDS CALMER WATERS: a report on relations between Turkey and the European Union, *July 1999*
- 10 DEVELOPMENTS IN THE INTERNATIONAL SECURITY SITUATION IN THE 1990s: from unsafe security to unsecured safety, *September 1999*
- 11 THE FUNCTIONING OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, *September 1999*
- 12 THE IGC AND BEYOND: TOWARDS A EUROPEAN UNION OF THIRTY MEMBER STATES, *January 2000*
- 13 HUMANITARIAN INTERVENTION, *April 2000**
- 14 KEY LESSONS FROM THE FINANCIAL CRISES OF 1997 AND 1998, *April 2000*
- 15 A EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS?, *May 2000*
- 16 DEFENCE RESEARCH AND PARLIAMENTARY SCRUTINY, *December 2000*
- 17 AFRICA'S STRUGGLE: security, stability and development, *January 2001*
- 18 VIOLENCE AGAINST WOMEN: LEGAL DEVELOPMENTS, *February 2001*

* Issued jointly by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV)

- 19 A MULTI-TIERED EUROPE: the relationship between the European Union and subnational authorities, *May 2001*
- 20 EUROPEAN MILITARY-INDUSTRIAL COOPERATION, *May 2001*
- 21 REGISTRATION OF COMMUNITIES BASED ON RELIGION OR BELIEF, *June 2001*
- 22 THE WORLD CONFERENCE AGAINST RACISM AND THE RIGHT TO REPARATION, *June 2001*
- 23 COMMENTARY ON THE 2001 MEMORANDUM ON HUMAN RIGHTS POLICY, *September 2001*