

Denmark and the Intergovernmental Conference: a Two-Level Game

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The Convention was a new method of preparing an Intergovernmental Conference (IGC). First and foremost it meant wider participation and greater transparency. But the Member State governments had made sure that they would stay in relative control by specifying that final decisions about a new treaty would be made by an IGC. During the Italian presidency of the second half of 2003, the IGC failed to produce a final agreement, but may eventually succeed in 2004 (or later). The main issue causing the failure was the relative weight of small versus large Member States in the Union's institutional setup, the Convention having proposed to abolish the cumbersome system of weights under qualified majority voting (QMV) in the Council, as amended in Nice in December 2000, in favour of a system where a qualified majority vote would simply comprise a majority of Member States representing at least 60% of the EU's population. Spain and Poland opposed this change since they would lose relative influence compared to the Nice formula, where they had nearly as many votes as Germany, despite having half the population. The net contributors to the EU budget are now linking the Constitutional Treaty with the negotiations about the next financial framework, which will run from 2007. This will put pressure on Spain and Poland, a current and a future beneficiary of financial support from the structural funds, to accept a compromise.

The Danish Government went into the IGC with relatively minor wishes for changes, supporting the overall framework of the new so-called Constitutional Treaty. Denmark supported the proposal from the Convention concerning the new and simpler definition of a QMV. But, although the

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Government was relatively supportive of the entire Convention draft prior to the start of the IGC, domestic politics did force the Government to change position on the composition of the Commission in favour of maintaining one Commissioner per Member State. Otherwise, during the IGC the main Danish objective was to maintain the Danish exemptions on the Euro, defence policy and supranational Justice and Home Affairs (JHA) co-operation, in the form of protocols to the treaty. The fourth exemption on citizenship of the Union is without practical effect. The Government does want to get rid of the exemptions. This will require 'yes' votes in referendums. One of the questions is when such referendums will take place, and JHA has become a special problem because the Government wants to maintain a relatively strict national immigration policy. A solution to this problem would be an opt-in policy in line with the British and Irish arrangements, where Denmark can opt-in on most JHA co-operation, but stay out of immigration policy.

THE POLITICS OF DANISH EU POLICY: A TWO-LEVEL GAME

Danish EU policy is driven by domestic politics. Any government in the Danish parliamentary system has to be sure to have the support of the Parliament, the *Folketing*, or at least not to have a parliamentary majority against its policy. The Parliament has established a powerful European Affairs Committee that issues negotiating mandates to the Government prior to important negotiations in the EU, be it in connection with day-to-day legislative decisions in the Council or 'history-making decisions' like treaty reforms negotiated in IGCs.² For some very important decisions a referendum may be necessary. The latter applies to treaty reforms that involve further transfer of sovereignty to supranational EU institutions. The Danish decision to accede to the European Communities in 1972 was confirmed by a referendum. The ratification of the Single European Act (SEA) in 1986 was confirmed by a consultative referendum after it turned out that the Conservative-Liberal Government did not have a majority in favour of the SEA in the Folketing. The Maastricht Treaty was first rejected by the Danish people in June 1992. After the four exemptions had been negotiated, the treaty with the exemptions was accepted by a referendum in

² Laursen, 1995; 2001.

May 1993.³ The next new treaty, the Treaty of Amsterdam, was also confirmed by a referendum.⁴ But in connection with the latest treaty reform, the Treaty of Nice, it was decided that the treaty did not include a transfer of sovereignty. Thus it could be confirmed by a simple majority in the Parliament, and no referendum took place.⁵ This happened after the people had turned down the Government's proposal to join the euro – which would have ended one of the four opt-outs – in November 2000.⁶

EU policy is controversial in Denmark and the public is sceptical about further integration. A government negotiating at the EU level must always be concerned about getting the outcome ratified back home. The government is thus caught in a two-level game. In the current Folketing the two parties most to the left, the Red-Green Alliance and the Socialist People's Party, are EU sceptical, although the Socialist People's Party has been moving towards a less EU critical position. On the right of the Government, the Danish People's Party is also EU sceptical. The current Liberal-Conservative Government depends on the parliamentary support of this party to survive politically, but when it comes to EU policy it can normally count on the support of the Social Democrats and Social Liberals, the leading opposition parties to the left of the Government. These two parties supported the Government lines in the Convention and IGC, although the Social Liberals did not support the Government's decision to seek a change in the JHA exemption.

In the case of the Constitutional Treaty proposed by the European Convention, the Government has already indicated that it will be sent to a referendum if it is eventually confirmed by the IGC. As regards the opt-outs, there is a promise going back to 1993 that they can only be abolished through referendums. For a Government that would like to take part fully in the EU, this creates a difficult situation. Will the Danes say 'yes' to a Constitutional Treaty? Will they, at the same time or later, say 'yes' to abolishing the exemptions? Given the 'no' to the Maastricht Treaty in 1992 and the 'no' to the Euro in 2000, this cannot be taken for granted. The Government and the pro-integration opposition parties, the Social Democratic Party and the Social Liberal Party, have to think seriously about how

³ Laursen, 1994.

⁴ Laursen, 2002a.

⁵ Laursen, forthcoming b.

⁶ Laursen, 2003.

to convince the Danes that further integration is a 'good thing' for the country.

THE CONVENTION

The end game of the latest treaty reform, the meeting of heads of state and Government in Nice in December 2000, turned out to be very difficult and controversial. After the longest summit ever, the EU leaders concluded the negotiation of the Treaty of Nice. Few of them were happy about it. Many observers were very critical of the outcome. In particular the horse-trading that took place about the weights of votes in the Council and the definition of QMV created a cumbersome system where the largest states including Germany would get 29 votes, Spain and Poland with about half the population of Germany would get 27, and the rest would get a gradually declining number, down to three for Malta. In retrospect much of the outcome seemed rather arbitrary, even if it was the result of a tough bargaining process.⁷

As they left Nice the leaders called for "a deeper and wider debate about the future development of the European Union." They went on to mention the following points for the agenda of the post-Nice debate⁸:

1. How to establish and monitor a more precise delimitation of competencies between the European Union and the Member States, reflecting the principle of subsidiarity.
2. The status of the Charter of Fundamental Rights of the European Union, "proclaimed" in Nice after having been negotiated in parallel with the Nice Treaty through a so-called convention, where not only governments and the EU Commission were represented but also national parliaments and the European Parliament.
3. A simplification of the Treaties with a view to making them clearer and better understood without changing their meaning.
4. The role of the national Parliaments in the European architecture.

⁷ Laursen, forthcoming a.

⁸ Laursen, 2002b.

The Declaration also talked about “the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, to bring them closer to the citizens of the Member States.”

Nice therefore decided that a new IGC should be convened in 2004 to discuss the above issues. This IGC started on October 4, 2003, earlier than originally expected, but failed to conclude the negotiations in December 2003, as wanted by the Italian Presidency and some other Member States.

Nice was clearly not the end of the road. The nature of the EU is still very much on the agenda. What kind of Union is it? What kind of Union should it become? The next enlargement, which will create a Union of 25 Member States from 1 May 2004, was putting pressure on the leaders to reform the institutions to avoid gridlock after enlargement. Apart from this issue of efficiency, the EU also faced a serious problem of legitimacy as shown by the somewhat limited public support.

The meeting of the European Council at Laeken in December 2001 accepted the idea of preparing IGC-2004 through a Convention.⁹ The proposed Convention on the Future of Europe would have former French President Valéry Giscard d’Estaing as chairman and be composed of 15 representatives of the Heads of State or Government of the Member States (one from each Member State), 30 members of national parliaments (two from each Member State), 16 members of the European Parliament and two Commission representatives. Candidate countries would also be involved without votes. A Praesidium was composed of the chairman and two vice-chairmen (Giuliano Amato of Italy and Jean-Luc Dehaene of Belgium) and nine members drawn from the Convention. The latter group included representatives from the three countries which held the Presidency during the Convention – including Denmark, which held the Presidency through the second half of 2002. The Danish Government appointed former government minister and Commissioner Henning Christophersen to this position.

The Convention, which had a total of 105 members, held 26 plenary sessions of two days. It went through stages: listening (February-July 2002), study (September-December 2002), proposals and editing (January-July 2003). The study phase included the work of first 12, and later 13 Working Groups. During the final phase the Praesidium played a decisive role.¹⁰ In the end the Convention produced a consensus draft. Five members,

⁹ Belgian EU Presidency, 2001.

¹⁰ de Poncis, 2003; Duhamel, 2003; Beach 2003.

including two Danes, Jens-Peter Bonde (MEP, June Movement) and Peter Skaarup (MP, Danish People's Party), refused to accept this draft. Instead they produced a minority report, which was also presented to the European Council in Thessaloniki on 20 June 2003.¹¹

The proposed draft Constitutional Treaty would abolish the pillar structure of the Union, moving the remaining Justice and Home Affairs policy areas (police and criminal justice) from intergovernmental co-operation to the 'supranational' Community method and also strengthening Common Foreign and Security Policy (CFSP), including defence policy, in various ways without making it supranational. This put pressure on the respective Danish exemptions. QMV would become the normal procedure in the Council, thus increasing efficiency of decision-making. The European Parliament would normally get involved with legislation through the so-called co-decision procedure, thus strengthening the legitimacy of decisions. Concerning institutions, the most important proposals included an elected chairman (or president) of the European Council, appointment of an EU Foreign Minister and election of the President of the Commission by the European Parliament on a proposal from the European Council. The draft also incorporated the Charter of Fundamental Rights, making it legally binding.¹²

DANISH GOVERNMENTAL PREFERENCES

The Prime Minister, Anders Fogh Rasmussen, dealt briefly with EU matters in his New Year speech on 1 January 2003. The Danish Presidency during the second half of 2002 had solved the historical issue of enlargement. Denmark should now continue actively to develop the new Europe. Denmark must take part fully in the EU. It hurts Denmark's interests that the country is not taking part in some areas of EU co-operation. Denmark must therefore get rid of the exemptions. But this, of course, can only take place after one or more referendums. He said that the new EU treaty would probably require a referendum in Denmark. He found it most fair towards the Danish people to await the new treaty before deciding about the Danish exemptions.¹³

¹¹ European Convention, 2003c.

¹² European Convention, 2003.

¹³ Fogh Rasmussen, 2003a.

In a speech to the new Institute for International Studies in Copenhagen on 15 January 2003, Fogh Rasmussen dealt at length with Denmark's EU policy at a time where the European Convention was moving into the last months of its deliberations. He dealt with geopolitics. After the fall of the Berlin Wall and conclusion of the enlargement negotiations during the Danish Presidency, Denmark was in a new situation: "Denmark has exchanged its position as a front-line state in the conflict between East and West for a place at the centre of the new co-operating Europe"¹⁴. Inspired by the successful Presidency, he said that "the Government wishes to maintain [an] active line in Danish EU policy in the years to come".

The prime minister's vision was "a community of nation states", but, he added, "a strong community". The EU "must have the political and economic strength to act at the international level, thus influencing the world with the ideas on which [it] is based". Enlargement should "not lead to a dilution of the EU".

A priority for the EU should be cross-border problems, first of all the internal market, trade policy, competition policy and control of state aid. To this he added, "We must become better at creating jobs in Europe. We must ensure a strong and stable common currency, the Euro". Environmental policy should be developed and improved. The Common Agricultural Policy (CAP) should be reformed.

There was also a need to strengthen co-operation in new fields, including refugees and immigrants, and the fight against international crime and illegal immigration. On CFSP, however, we should be realistic: "The large countries will not give up their national sovereignty in foreign and security policy". Nor should we be hypocritical: "We know very well from our own debate that we also – as a small country – guard our national sovereignty". CFSP would remain intergovernmental co-operation, but "we should endeavour to make foreign, security and defence policies as common as possible". He saw it as being "in the interest of Denmark that in the coming years the EU develops a military capacity to carry out peace-making and humanitarian tasks on the European continent, for example in the Western Balkans". At the same time, "we have a vital interest in close and strong co-operation between Europe and the USA".

Coming to the Constitutional Treaty he referred to the work of the Convention so far as "positive and constructive". Why then a Constitutional Treaty? A treaty because "the EU must continue to be binding co-

¹⁴ Fogh Rasmussen, 2003b.

operation among states”, he said. A constitution, “because the time has come to make sure that we reflect a number of the traditional, fundamental, civil and democratic rights in the EU Treaty in the manner known from national constitutions”.

The prime minister emphasised four areas: the Charter of Fundamental Rights should be incorporated into the treaty; the treaty should include clear and precise rules for transparency and democratic control; it should describe the division of labour between the EU and the Member States more clearly; and it should strengthen the role of national parliaments.

Fogh Rasmussen also dealt with QMV. “The larger the number of Member States, the greater the need will be for taking as many decisions as possible by qualified majority”. QMV could also include “selected parts of the tax area”. “We should, for example, introduce qualified majority when fixing minimum rates for indirect taxes. Personal income tax, by contrast, is an area where the EU has no business. Member States’ distribution policy is a national matter”.

The European Parliament should be involved to a greater extent: “We should work to have the co-decision procedure extended to all areas where the Council takes decision on legislative issues by qualified majority. Specifically, this means first and foremost that the influence of the European Parliament on the agricultural policy will be enhanced”. The Parliament should also have “full influence on the entire expenditure area, including the agricultural expenses”. But “unanimity should continue to apply when the expenditure ceilings are to be changed”.

Fogh Rasmussen emphasised that the EU is not a state “and should not become a state.” He suggested three principles for institutional considerations: balance between large and small states; balance between the three key institutions, the European Parliament, the Commission and the Council; and effectiveness and transparency.

As regards the election of the President of the Commission, he had a specific Danish proposal:

My proposal is that the election should take place in an electoral college consisting of a limited number of members representing national parliaments and the European Parliament, respectively. An appropriate composition of this electoral college could be half national parliamentarians, half members of the European Parliament. The right to nominate must rest with Member States’ governments. A certain number of countries – for example five – must act as nominators for a

candidate. After the election in the electoral college, the appointment must be confirmed by qualified majority in the European Council. This procedure will insure that a new Commission President has the confidence of Member States.¹⁵

Concerning the Presidency of the Council, Fogh Rasmussen discussed three models; the existing rotation every six months, a solution based on group presidencies, and what he referred to as the 'grand solution', an elected President of the European Council.

One of the problems with the existing model was that the time required for co-ordination will increase as the EU moves from 15 to 25 members. Fogh Rasmussen admitted that he used to favour the group presidency. But after the Danish Presidency, where it had become clear that co-ordination across groupings in the Council is essential, he was now more sceptical: "The very question of co-ordination across Council formations is the Achilles' heel of the group presidency. I am afraid that a group presidency may be paralysed by internal quarrels over competence. And then it will not be able to function."

The advantages of an elected President included continuity, clarity and balance in relation to the Commission, and a solution to the problem of workload. Two risks were mentioned, however: it could disturb the balance between large and small countries, and it could lead to an unfortunate conflict with the Commission. If this model were to be adopted it had to include safeguards "ensuring that large and small countries are given real equal status." On this the Prime Minister also had a proposal:

A possible element in such a construction could be, for example, the establishment of three 'electoral groups' comprising large, medium and small countries. The Presidency of the European Council would then be taken in turn by these electoral groups. This procedure ensures equal representation between large and small countries.¹⁶

The Prime Minister said that he would now contact the political parties in order to discuss concrete Danish proposals to the Convention.

He again called for a more active Danish EU policy:

¹⁵ Fogh Rasmussen, 2003b.

¹⁶ Fogh Rasmussen, 2003b.

It is my ambition that Denmark should play a more pro-active role in the EU. Far too often, the standard Danish reaction has been characterised by a sceptical attitude towards changes in the EU. We have, as point of departure, wished to keep things as they were. And in this respect, we have always sought to reduce the proposals of others by 10-20 per cent. This is not the way to achieve influence.¹⁷

Concerning the opt-outs, he repeated that they are detrimental to Danish interests. It is in the areas of the opt-outs “that there is the greatest need to expand the EU in the coming years”. Denmark should participate fully in the Euro, defence co-operation and asylum and immigration policy – after a referendum, of course.

In an address to the College of Europe, Natolin, Poland, on 28 February 2003, Prime Minister Fogh Rasmussen repeated many of the proposals from his Copenhagen speech.¹⁸ He now referred to a recent Franco-German proposal which he found very interesting. However, it failed “to strike the right balance between large and small Member States.” In connection with the proposal for an elected President, he now added that the system “would be combined with a system of changing national Presidencies of the sector Councils”. “The Prime Minister of the country holding the rotating Presidency can then also act as deputy President of the European Council”. He further discussed the idea of having “one single foreign policy representative”, and said: “as foreign policy will remain a primarily intergovernmental matter, I think it only logical that the EU foreign policy representative should be anchored in the Council”.¹⁹

In May the Prime Minister received the prize as “The European of the Year” from the Danish European Movement. In his acceptance speech he again dealt with Danish EU policy in the context of the Convention.²⁰ The Praesidium had now put forward a proposal that included the election of a President for the European Council. Denmark was ready to consider this proposal without prejudgements. But the proposal was not sufficiently precise. Denmark had three demands: a solution should respect the balance between small and large Member States; there should be a reasonable division of labour between the President of the European Council, the President of the Commission and the proposed EU Foreign Minister; and

¹⁷ Fogh Rasmussen, 2003b.

¹⁸ Fogh Rasmussen, 2003c.

¹⁹ Fogh Rasmussen, 2003c.

²⁰ Fogh Rasmussen, 2003d.

finally no new bureaucracy should be created.²¹ He finished by saying that Denmark has too often chosen an exit strategy from the European debate. Such an 'ostrich policy' has not served Denmark well. He was happy that the Government had now reached an agreement with the Social Democratic Party and the Social Liberal Party on Danish proposals to the Convention.²²

The Foreign Minister Per Stig Møller also dealt with the Convention in various speeches, without adding substantively to what the prime minister had said.²³

DANISH PARLIAMENTARY CONTRIBUTIONS TO THE CONVENTION

Apart from the Government's representative, Henning Christophersen, the Folketing was represented by two members in the Convention. The leading opposition party, the Social Democratic Party, chose former minister Henrik Dam Kristensen. Given the fact that the leading government party, the Liberal Party, was already represented by Henning Christophersen, the Government offered its parliamentary seat to the EU sceptical parties. Since these did not succeed in jointly nominating a member, the Government offered the place to the Danish People's Party which chose its vice-chairman Peter Skaarup. Among the EP's 16 representatives there was one Dane, the EU sceptical Jens-Peter Bonde from the June Movement. All representatives had alternates which could take part in the meetings. The Government's alternate was former Prime Minister Poul Schlüter (Conservative). The Folketing's alternates were Per Dalggaard (Danish People's Party) and former Foreign Minister Niels Helveg Petersen (Social Liberal). Among the alternates from the European Parliament were two Danes, viz Lone Dybkjær (Social Liberal) and Helle Thorning-Schmidt (Social Democrat).

Tracing the contributions of these Danish representatives to the Convention shows that Henrik Dam Kristensen, Peter Skaarup and Jens-Peter Bonde were particularly active with speeches on some of the main issues dealt with by the Convention. Since the contributions of Henning

²¹ Fogh Rasmussen, 2003d.

²² Danish Government, the Social Democratic Party & the Social Liberal Party, 2003.

²³ Møller, 2003a; 2003b.

Christophersen mainly went through the Praesidium, which met behind closed doors, we know less about them.²⁴ Christophersen also chaired one of the Working Groups, that dealing with complementary competences. During the end game of the Convention, the two government parties, the Liberals and Conservatives, also produced a joint position paper together with the Social Democrats and Social Liberals, which was published on 20 March 2003.²⁵ For space reasons we shall limit the following to comparing the contributions of Dam Kristensen and Skaarup, giving the two dominant Danish visions of the future of Europe, one conditionally in favour of the current process and one against further integration.

A reading of Henrik Dam Kristensen's speeches to the Convention gives a good idea of the Social Democratic vision of the EU at the beginning of the 21st Century. The Party has come a long way since the mid 1980s when it opposed the SEA. Through the 1990s it has supported the treaty reforms of Maastricht, Amsterdam and Nice. It was actively involved in negotiating the Danish exemptions after the 'no' to Maastricht in 1992 and played a leading role in getting the Maastricht Treaty with the exemptions accepted by the Danish people in 1993. It led the Government that negotiated the Amsterdam Treaty, where it worked actively to give the treaty Danish imprints in areas like employment, environment and consumer protection. But the party still wants CFSP to remain intergovernmental. Like other Danish parties, it puts emphasis on the role of national parliaments, seeing the national avenue to legitimacy as the most important. Only with some hesitation has it accepted increasing involvement by the European Parliament.

Indeed, the role of national parliaments was the topic of Dam Kristensen's first speech to the Convention on 7 June 2002. National parliaments are the foundation of national democracy. National parliamentarians have close contacts with the citizens. It is therefore important to involve national parliaments more in EU decision making. In particular, they could be more involved in controlling the application of subsidiarity.²⁶ When the Working Group on Subsidiarity produced its report, Dam Kristensen was supportive of the idea that national parties should play a key role in the

²⁴ According to a study by a member of the Praesidium secretariat, the members of the Praesidium were not supposed to represent national interests. But the Danish and Spanish members were said to have broken that rule by often expressing national views. See De Poncis, 2003: 27.

²⁵ Danish Government, the Social Democratic Party and the Social Liberal Party, 2003.

²⁶ Dam Kristensen, 2002a.

control of subsidiarity. He agreed with the recently proposed mechanism – an early warning system – that would allow national parliaments to make statements concerning the application of subsidiarity.²⁷

Dam Kristensen also spoke in favour of developing CFSP. The EU has become a ‘progressive force’ in the battle for sustainable development at the global level. We face new challenges such as poverty, ethnic conflicts, violation of human rights, terrorism, etc. where the EU can give a decisive contribution. He emphasised the role of NATO and the UN and said that we have to find solutions so that the EU can speak with one voice. The appointment of the High Representative of CFSP in October 1999 had strengthened CFSP, but it was still unclear who is doing what, where and when. To representatives from the European Parliament who wanted more EP influence on CFSP, on the other hand, he said that foreign policy is about sovereignty. It was therefore important to involve national parliaments.²⁸

After the successful conclusion of enlargement negotiations at the Copenhagen summit in December 2002, Dam Kristensen again spoke about the development of CFSP. He now said that there was a need to use QMV as much as possible instead of unanimity. But this should not include areas where Member States’ vital interests are involved. He also gave guarded support for a ‘double-hatted’ foreign minister of the EU, who would be both a member of the Commission and of the Council. He would not exclude a model of this kind. But the issue was also linked with the question of a president for the European Council.²⁹

Dam Kristensen dealt with issues of employment and taxation in November 2002. He expressed support for the Lisbon process and the open method of co-ordination. This method should become part of the new constitutional treaty. He especially related the question of taxation to some multinational companies’ not paying taxes. This decreases the possibilities of financing welfare. So EU co-operation is necessary. Also, if we want a greener Europe we must introduce environmental taxes. He favoured the introduction of QMV for environmental and company taxes to avoid damaging competition between Member States.³⁰

²⁷ Dam Kristensen, 2002c.

²⁸ Dam Kristensen, 2002b.

²⁹ Dam Kristensen, 2002e.

³⁰ Dam Kristensen, 2002d.

Social and labour market policies are also important in the Danish political context. Social rights should be part of the constitutional treaty. The internal market should be supplemented with rules that counteract unfair competition and social dumping. Health, education and social services, however, should not become part of the internal market. The social dialogue at the European level should be developed further. Workers should be allowed to carry out cross-border actions of sympathy with trade union colleagues in other countries.³¹ Later in April 2003 Dam Kristensen spoke about the draft then being proposed, welcoming the section on the democratic life of the Union. But the text lacked a reference to the special role of the trade unions and employers' associations. A reference to these and to social dialogue should be included in the final draft.³²

When the skeleton of the new treaty started to take shape towards the end of 2002, Dam Kristensen had commented that it was important that the goal now was stated as 'a Union of European states that retain their national identity'. This meant that the EU was not becoming a state: the EU engaged in co-operation. It was also being confirmed that there would be a further application of QMV in the Council and co-decision for the European Parliament. The EU would be made more transparent, efficient and democratic.³³

In a speech in January 2003, Dam Kristensen said that it might be a good idea to have a chairman of the European Council. But he saw some problems: What possibilities would that leave for smaller Member States? Who will be president of the different Councils? If the High Representative becomes the foreign minister who will be his boss? Concerning the President of the Commission he sympathised with the idea of involving the European Parliament, but he also wanted to involve the national parliaments in the election of the Commission President. He opposed giving the EP sole responsibility for electing the Commission president.³⁴

On 15 May 2003, when the Praesidium had put forward its proposal on institutions, Dam Kristensen responded by rejecting the proposal for a Commission with only 15 voting members. The proposal did not deal with the question of balance between large and small Member States. It should therefore be dropped, and the Union should stick to the Nice Treaty. The

³¹ Dam Kristensen, 2003b.

³² Dam Kristensen, 2003c.

³³ Dam Kristensen, 2002e.

³⁴ Dam Kristensen, 2003a.

President of the Commission should be elected by an electoral council composed of members of national parliaments and the European Parliament. Concerning the proposal for weighting of votes in the Council, Dam Kristensen found that the proposal favoured the large Member States too much. It was a bad proposal which would upset the balance between small and large Member States.³⁵

The contributions by Peter Skaarup from the Danish People's Party represented a radically different vision of the EU, one based solidly on nation-states and against 'more Union'. In his first speech to the Convention in April 2002, Skaarup said that the EU should be a practical co-operation dictated by real needs. It should never become an objective in itself to transfer competences to the EU. The EU should only deal with cross-border problems. There should be no efforts to develop a common European identity. Democracy can only exist nationally in a common linguistic space.³⁶ In another speech Skaarup compared the EU with Switzerland, claiming that Switzerland is not a state! Sovereignty belongs to the cantons, he said. Similarly sovereignty belongs to the Member States in the EU. The European Parliament can never become a real parliament. Debate takes place via interpreters. The democratic deficit in the EU cannot be solved through new reforms. There is no such thing as a European people. 25 nationalities cannot be united in the same democracy. His job in the Convention therefore was to fight for the sovereignty of nations.³⁷

Skaarup was in favour of increasing the influence of national parliaments. National parliamentarians are in closer contact with the voters than European parliamentarians. The EP and the Commission do not know the concerns of the citizens. The powers of the EP should be limited; the EP possibly even abolished.³⁸

Concerning the EU's international role Skaarup said that no one would die for the EU. Most people are willing to die for their country. The EU is commercial co-operation and management. No one will die for that. The EU's miserable performance in ex-Yugoslavia had shown that the European big powers had different, historically-determined interests. NATO, which had been created to protect the independence of nation-states, is the most important source of security in Europe. Looking at threat scenarios,

³⁵ Dam Kristensen, 2003d.

³⁶ Skaarup, 2002a.

³⁷ Skaarup, 2002b.

³⁸ Skaarup, 2002c.

Skaarup claimed that the most serious threat to Europe today comes from immigration, especially from Muslim countries. The question was: Should Europe be the continent of cathedrals or mosques?.³⁹ At a later stage, commenting on the work of the working group on defence, he opposed the idea of an article in the treaty on collective defence. It would spoil positive transatlantic co-operation.⁴⁰

Skaarup called for simplification and a clear division of competences.⁴¹ He was against talking about a constitution, giving the EU status as a juridical person or introducing citizenship of the Union on a par with national citizenship. These developments implied a federal state, a United States of Europe. Only a minority of Danes would support such a development.⁴² Commenting on the work in the working group on decision-making he said that the main purpose of the group was to give the EP more power. He was also against the proposed new names of legislative instruments ('laws' and 'framework laws' instead of 'regulations' and 'directives'). Legislation is a national prerogative, he claimed.⁴³

In January 2003 Skaarup commented on the proposal from the Praesidium concerning the division of powers between EU institutions. The whole proposal was about creating a federal state, more federalism, and more centralism. Federalists like Andrew Duff and Joschka Fischer had had too much influence. There was nothing in the proposal on the role of national parliaments. Skaarup was strongly against electing a European president. He was also against moving more decisions to QMV.⁴⁴ Later, when the Praesidium proposed the first 16 articles of the Constitutional Treaty, Skaarup called for a mention of Christianity in the treaty. He used his speech to say that he was against Turkish membership of the EU. Turkey is not a part of Europe, neither culturally nor geographically. He also said that it was unwise of Giscard d'Estaing to maintain the words about a 'federal basis' in article 1.⁴⁵

Later Skaarup talked against the proposed stipulations concerning suspension of rights⁴⁶ and 'closer co-operation'⁴⁷. The latter would make it

³⁹ Skaarup, 2002d.

⁴⁰ Skaarup, 2002h.

⁴¹ Skaarup, 2002f.

⁴² Skaarup, 2002f.

⁴³ Skaarup, 2002g.

⁴⁴ Skaarup, 2003a.

⁴⁵ Skaarup, 2003b.

⁴⁶ Skaarup, 2003c.

possible for pro-integration countries to force integration-sceptical countries towards more integration, he claimed.

In a speech of 31 May 2003 to the Danish People's Party's Constitution Conference, Skaarup said that the party was not against the EU as such. European integration had been reasonable until 1992. But then it became an effort to establish a federal state, with common currency, flag, national anthem, parliament, etc. This was reducing the influence a small states. The Constitutional Treaty proposed would move 26 areas from unanimity to QMV. He therefore claimed that Danish ratification of the Constitutional Treaty would require a change of the Danish constitution, which can only take place by using the difficult procedure of Section 88 of the Constitution (adoption by two consecutive parliaments with an election in between and a referendum at the end, where a majority of those taking part, and at least 40 per cent of the electorate, must vote in favour).⁴⁸

DANISH RESPONSES TO THE DRAFT CONSTITUTIONAL CONVENTION

On 20 June 2003 on the day the first draft Constitutional Treaty was presented to the European Council in Thessaloniki, Greece, Foreign Minister Per Stig Møller evaluated the proposal in a newspaper article. He said that the Constitutional Treaty would not expand the functional scope of the EU by bringing in new policy areas, but it would strengthen CFSP and JHA co-operation. The new treaty was logically constructed. It succeeded in describing the fundamental principle in less than 60 articles. It was a clear treaty, containing a clear division of labour between the Union and the Member States. It would lead to more openness by opening the Council meetings dealing with legislation. National parliaments would get a bigger role. Citizens' rights would be better protected. Institutionally the Union would become more efficient. QMV would become the norm. The European Council would get an elected chairman. Voting rules would be simplified. The 15 voting members of the Commission would rotate with small and large Member States being treated equally. CFSP would be strengthened by becoming more binding and the Union would get a Foreign Minister.

⁴⁷ Skaarup, 2003d.

⁴⁸ Skaarup, 2003e.

Denmark had preferred another title, since Minister presupposes a state, but the job was more important than the title. Defence policy would be strengthened and the possibility of closer co-operation in the area was introduced. JHA would be considerably strengthened by using the Community method.⁴⁹

But the strengthening of JHA co-operation would make the Danish exemption in this area more significant. Abolishing the pillar structure of the Union and applying supranational co-operation for all of JHA would exclude Denmark from it all, including police and criminal justice co-operation, which had stayed intergovernmental when the Amsterdam Treaty had moved other JHA areas to the first pillar. This could also affect cross-policy endeavours, like penalties against infringements of environmental rules. Denmark would therefore have to find some solution for the Danish exemptions at the IGC.⁵⁰

When the Convention was over the Social Democrats also welcomed the result. It would create a better, open and more democratic EU. Emphasis was put on sustainable development, the social market economy, full employment, equality between men and women, eradication of poverty and protection of human rights. At the same time it was emphasised that the Union was not moving towards being a United States of Europe. It was co-operation between nation-states.⁵¹

The Social Liberal Party was also supportive of the draft Constitutional Treaty. As expected, the Danish People's Party was against the treaty. So was the Unity List, but the Socialist People's Party decided to wait and see the final treaty from the IGC. Seen from the Government's point of view, it would be important to get support also from the Socialist People's Party. Such support would make it easier to get a 'yes' vote in a referendum.

THE DANISH EXEMPTIONS

In August the Foreign Ministry issued a 40-page report on the draft Constitutional Treaty and the exemptions.⁵² It confirmed what the Foreign

⁴⁹ Møller, 2003c.

⁵⁰ Møller, 2003c.

⁵¹ Dam Kristensen, 2003e.

⁵² Ministry of Foreign Affairs, 2003.

Minister had already written in June: that the exemptions would become even more extensive and problematic.

The report dealt with all four exemptions, but quickly said that there were no changes in respect to citizenship of the Union. The draft retains the language from the Amsterdam Treaty: that Union citizenship is a supplement to national citizenship and does not replace it.⁵³

Concerning EMU, the Constitutional Treaty will reinforce the separate co-operation between the participants in the Euro. The Danish exemption will therefore be felt more in the future.⁵⁴

The most decisive changes will take place in the JHA area, where all co-operation will become supranational. This included the third pillar areas of police and criminal-justice co-operation, which had remained intergovernmental in the Amsterdam Treaty. The Danish exemption would therefore become extended to these areas. Through criminal justice measures in sector policies in the future, the Danish exemption may spread to other policy areas, making it all extremely complicated for Denmark and its partners. The report went into great detail over the existing legislation in the different JHA areas. Overall the conclusion was clear, the Constitutional Treaty would make Denmark's JHA exemption much more strongly felt in several ways. Denmark might for instance have to leave EUROPOL and EUROJUST, third pillar agencies that would become supranational.⁵⁵

As regards the defence policy exemption, the report noted the various stipulations of the draft Constitutional Treaty, including structural co-operation to increase the Union's military capabilities, the creation of a European Armaments, Research and Military Capabilities Agency, and closer co-operation as regards mutual defence co-operation. Again, the Danish exemption would be felt more in the future.⁵⁶

The new solidarity clause (art. I-42 and III-231) requiring the Member States to "act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster" could also affect the Danish defence exemption because it calls for the mobilisation of all instruments "including the military resources made available by the Member States".

⁵³ Ministry of Foreign Affairs, 2003: 2.

⁵⁴ Ministry of Foreign Affairs, 2003: 4.

⁵⁵ Ministry of Foreign Affairs, 2003: 5-19.

⁵⁶ Ministry of Foreign Affairs, 2003: 20-22.

So the combination of the JHA and defence policy exemptions could exclude Denmark from much of the EU's anti-terror activities in the future.⁵⁷

It was the special importance of the JHA exemption that pushed the Government to seek political support for a change there. On 10 October 2003 a parliamentary majority supported the Government's proposal to seek a change in this exemption during the IGC so that the Danish people in a later referendum could change it to an arrangement where Denmark can decide about participation on a case-by-case basis, like the model applied by the United Kingdom and Ireland – known as an 'opt-in' model. This would allow Denmark to decide to take part in supranational JHA co-operation in an ad hoc manner.⁵⁸

THE GOVERNMENT'S NEGOTIATING MANDATE FOR THE IGC

As the IGC started on 4 October 2003, domestic politics forced the Government to change policy and demand a Commissioner per member state, as other small Member States had long been demanding. Indeed, these states, including in particular Finland, criticised the Danes for not supporting the interests of the smaller states sufficiently. Furthermore, opinion polls indicated that a majority of Danes considered it important for the country to retain a voting Commissioner.

The Danish negotiating mandate was worked out between the Government and Folketing in September 2003 and largely confirmed on 10 October 2003 in connection with a debate in the Parliament. It was kept in rather general terms. It stated that the EU is the framework for future European co-operation. A simpler and better EU is needed. The Convention draft was a good basis. It contained a clearer description of division of labour, would create more openness, involve national parliaments further and incorporate the Charter of Fundamental Rights. The EU faces new challenges: refugees, cross-border criminality and international terrorism. The EU must become a global leader. For this reason not all CFSP decisions should be based on unanimity. The EU should also strengthen

⁵⁷ Ministry of Foreign Affairs, 2003: 22-25.

⁵⁸ EU Consultants, 2003.

defence co-operation and develop a military capacity. Denmark was also open to closer co-operation in the defence area.⁵⁹

As regards institutions, the Danish negotiating mandate saw the proposal from the Convention draft as a reasonable compromise between the larger and smaller states. Thus there was Danish support for an elected chairman of the European Council. Denmark was against a special legislative Council. On the new voting proposal, the Danish position was cryptic. The Nice rules were seen as unnecessarily complicated. There was support for increased influence for the European Parliament, including agricultural policy. Denmark wanted a strong, effective and well-functioning Commission and could still – in September 2003 – support a division into voting and non-voting members as long as there was equal rotation between small and large Member States. There was also support for a ‘double-hatted’ foreign minister.

In a speech on 3 November 2003 to a hearing arranged by the European Affairs Committee of the Folketing, the Foreign Minister dealt with the Danish efforts at the IGC.⁶⁰ He talked of some progress. The idea of a special legislative Council, opposed by Denmark, was opposed by so many Member States that it looked as if it would not survive the IGC. As regards the Presidency of the Council, agreement was emerging on a system of three countries sharing the presidency of the Council for 18 months, thus a group presidency.

Otherwise, Denmark was supporting the creation of two “new co-ordinating functions – the elected chairman of the European Council and EU Foreign Minister”. The chairman of the European Council should be a *chairman*, not a President! And the Foreign Minister should be based in the Council, with a link to the Commission. Denmark had now also put forward a proposal that all Member States should have a voting Commissioner. As Møller explained, having a Commissioner had great symbolic meaning in the Member States. Indeed, the referendum debate in Denmark was already being anticipated. Symbols could be expected to become an important part of the debate.

On the controversial redefinition of QMV proposed by the Convention, Denmark could support the proposal from the Convention, but preferred a QMV based on equal weighting of the number of states and size of population. It could be 60%, but it could also be 50%.

⁵⁹ Danish Government, 2003.

⁶⁰ Møller, 2003d.

On the extension of QMV, the Government was largely supportive of the proposal from the Convention. If EU-25 has to function efficiently there must be an extended use of QMV. But Denmark still supported unanimity for one area, namely social security for migrating workers, viz article III-21 in the draft Constitutional Treaty (current Article 42 TEC). This affects central aspects of the welfare systems of the Member States.

On non-institutional issues Denmark had followed the Italian Presidency's call for self discipline. Denmark was for instance supportive of the so-called 'passerelle' in article I-24(4), which stipulated that for areas requiring special legislative procedure or unanimity the "European Council can adopt, on its own initiative and by unanimity", a decision allowing for the application of the ordinary legislative procedure or qualified majority. In both cases the national parliaments will have to be informed. This 'passerelle' would make it possible to avoid IGCs for technical questions in the future and thus give the EU some flexibility, the Foreign Minister explained.⁶¹

Per Stig Møller finished by saying that should the IGC fail to produce an agreement, it would be the loss of a "window of opportunity" for a new treaty.

THE ISSUE OF REFERENDUM(S)

It is commonly assumed in Denmark that the Constitutional Treaty will require a referendum. This became common opinion in the spring of 2003 as the contours of the draft treaty started to become known. But how, and what about the exemptions that the Government also would like to abolish – or change in the case of JHA?

Some politicians, including some members of the Social Democratic Party spoke in favour of a 'big bang' vote. A 'yes' vote for the Constitutional Treaty without the exemptions could at the same time abolish the Danish exemptions. But most leading politicians in the pro-integration parties concluded that such a strategy would be too risky.⁶²

The alternative was to vote on the Constitutional Treaty, including the existing exemptions in protocols, and vote separately on the exemptions.

⁶¹ Møller 2003d

⁶² Berlingske Tidende, 2003

Getting protocols with the exemptions attached to the treaty therefore became the most important objective of the Government during the IGC, and the Government was optimistic about reaching this goal prior to the failed summit in Brussels in December 2003.

But should the vote about the treaty with the exemptions and the vote about abolishing or changing the exemptions then take place on the same day or should the latter votes follow later? A discussion about this took place through the second part of 2003, but in reality no decision had been announced when the Brussels summit in December 2003 broke up without agreement.

The failure of Brussels led to calls for referendums about the Danish exemptions during 2004, prior to a possible vote about a Constitutional Treaty, now pushed further into the future. But leaders of the Liberal Party maintained that it would be difficult to vote about the exemptions as long as the text of the Constitutional Treaty was not known.

CONCLUDING REMARKS

Through the 1990s the Danish political elite has moved from seeing the original EC as a common market to seeing the EU as a political project. This shift was clear in the referendum debate about the Amsterdam Treaty. What we have seen in connection with the draft Constitutional Treaty is a further move in the Danish discourse about the EU. The Government parties, the Social Democrats and the Social Liberals have accepted much of the 'constitutionalist' (some would say 'federalist') discourse that has been part of the European Convention. At the same time they have been busy adding that they are opposed to European federalism, usually associating federalism with a centralised system. The fact that 'constitution' in Danish is 'forfatning' has given the F-word a double meaning. The Constitutional Treaty, Danish politicians insist, is therefore first of all a treaty among independent nation-states.

By emphasising that the Constitutional Treaty does not create a federal state, the Government and pro-integration opposition parties are anticipating the referendum debate, where the euro-sceptical parties, principally the Danish People's Party, but also the People's Movement against the EU and the June Movement, can be expected to claim that the treaty is creating a federal state. Much of this debate will be about symbols: a president, a

foreign minister, a flag, an anthem. Scare scenarios of the Danish nation disappearing into a European super-state will be easy to sell to the Danish public wary of what comes from the South.

Selling the treaty will therefore require a determined effort not only by the Government but also by the Social Democrats, the Social Liberals and – the Government can afford to hope – the Socialist People's Party. But it could be unwise to say that this does not mean 'more Union'. Alternatively the pro-integration parties could go out and explain why 'more Union' is necessary, if a Union of 25 Member States or more is to be able to work in a satisfactory manner.

The pro-integration forces in Denmark should not forget former Prime Minister Schlüter's famous words from the mid 1980s. After the negotiation of the Single European Act he declared the Union 'stone-dead'. A few years later the Maastricht Treaty created the European Union.

It would take an informed and courageous politician to say that the Constitutional Treaty is really about combining two kinds of guarantees: the guarantee that EU-25 can function effectively in the areas where the constitution has given it powers, and the guarantee that the Member States' autonomy in national policy areas is maintained. Such double guarantee is the central aspect of a federal arrangement. In that sense there is already a fair dose of 'federalism' in the Union. And the draft Constitutional Treaty will take a further step in that direction without creating a fully-fledged federal state. Catalogues of competences and the principle of subsidiarity, which pro-integration politicians in Denmark like, form parts of federal arrangements. But as long as the Union does not have a single foreign and security policy, a European army and powers to raise taxes, it is not a fully-fledged federal state.

But then of course the reference to the Union administering "certain common competences on a federal basis", which was in the first 16 draft articles of 6 February 2003,⁶³ was taken out in May 2003. The new text talked about exercising 'in the Community way the competences' conferred on the Union.⁶⁴ Giscard d'Estaing explains in his account of the Convention that 'federal' was the right term to use and he had deliberately chosen it because it had a educative value in helping to bring about a reality that already exists. But the term found less support in the Convention than he

⁶³ European Convention, 2003a.

⁶⁴ European Convention, 2003b.

expected. In particular '*le blocage sémantique de la communauté anglo-saxonne*'⁶⁵ had remained categorical.⁶⁶ Thus 'federal basis' was replaced by the less explicit 'Community way' – leaving the Union's *finalité* (ultimate goal) very much open.

Getting a new EU treaty accepted in Denmark has to be major concern for any Danish Government. 2 June 1992 was a shocking surprise. It required a major national and international effort to get the Maastricht Treaty ratified with opt-outs in 1993. The strategy chosen in 1996 during the negotiations of the Amsterdam Treaty was a very active one, seeking Danish imprints in the treaty so that it could be sold to the Danish public. The strategy succeeded. In 2000 the Government was again very active in the Treaty of Nice negotiations. But this time the purpose was to limit changes to institutional ones that would not require a referendum. This strategy also succeeded.

The Constitutional Treaty is thus mainly about institutional changes. At one point the Danish foreign minister went so far as to say that it did not expand the functional scope of the Union. Given the legal interpretation that allowed the former Government to avoid a referendum about the Treaty of Nice a referendum could arguably have been avoided again. But all the constitutionalist discourse surrounding the draft Constitutional Treaty would have made it difficult to sell such an argument. The Government therefore chose to accept the draft and concentrate its energy internationally on retaining the Danish opt-outs in the new treaty. The flip side of that strategy was a rather low profile in the IGC on other issues. And given the political role of the Danish People's Party the Government had to find a special solution for immigration policy.

There can be no doubt that the Danish opt-outs are becoming a serious problem for the Government. The proactive role the Government wants to play in the EU will face tight limits as long as the Government cannot get the Danish people to accept the abolishment of these opt-outs.

⁶⁵ The semantic veto of the English-speaking community.

⁶⁶ Giscard d'Estaing, 2003: 33-34.

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