

The Participation of Civil Society in the Debate on the Future of Europe: Rhetorical or action frames in the discourse of the Convention?

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Introduction

The language of public political debate in the Convention on the future of Europe has included the voice ‘civil society’ among its favourites. References to the urge to listen to citizens’ views (CONV 14/02, 25 March 2002), the importance of establishing ‘a genuine dialogue (...) with civil society’ (CONV 7/02, 11 March 2002), and the intention of using civil society’s contributions ‘as input into the debate’ (Laeken Declaration) are frequent in the early texts of the Convention. The aim of this paper is to explore the extent to which these promising claims have been put into practice in the deliberative process of the Convention in order to assess whether there has been a substantive shift on the part of the Union towards the creation of a more democratic and pluralistic European public sphere.

The Convention’s discourse on civil society will be placed in relation with the attitude it maintained in relation to issues of great concern for participants in the Forum, i.e. the debate on social Europe. The extent to which dominant frames in the Convention’s discourse operate to include or to marginalise civil society’s perspectives, issues, and actors will enable us to observe the distance existing between words and deeds on the part of the Convention. An analysis of the proceedings of consultation of civil society (through the Forum and the Hearings), the main demands of civil society, and the outcome of Convention deliberations (draft and final Treaty) will serve the purpose to verify how successful has the Convention been in reaching civil society, engaging in a real dialogue with it, and giving proper representation to its demands.

The paper argues that, despite a number of positive aspects in the participation of civil society in the debate on the future of Europe, there exists a gap in the Convention's discourse on civil society between rhetorical and action frames. The argument is that the Convention's emphasis on civil society is a rhetorical device to gain legitimacy rather than a genuine move towards a more pluralistic EU democracy capable of including mechanisms of active participation of citizens and social actors in the policy-making process that would complement and enrich representative democracy. The paper is divided in three parts. The first part seeks to provide a definition of the concept of civil society and of its role for European democracy, while the Convention's discourse concerning civil society and the experience of the Forum will be explored in the second and third sections of the paper.

1. The concept of 'civil society'

1.1 Definition of civil society

The first distinction to draw within the concept of civil society is that between a civil society *sensu lato* and one *sensu strictu*, that is between a wide and a narrow definition of the term. A wide concept of civil society includes, according to Pérez Díaz (1993: 77), a state or government limited by the rule of law, institutions such as markets and voluntary associations, and a public sphere where actors articulate debates among each others and with the state concerning issues of public interest. A narrow concept of civil society refers to market, voluntary associations and public sphere, but with the exclusion of the state¹. This paper refers to the narrow definition of civil society.

The concept of civil society is extremely heterogeneous and has been the object of a variety of interpretations. Classical definitions of civil society by Hegel and Marx included the whole area of social relationship outside state institutions (Marx, 1859; Hegel 1821)². This included, particularly in Marx's interpretation, private enterprise and market transactions. In this definition, civil society is described through what it is not, i.e. not a state. The Marxian definition, that has been in use for the last century, was challenged by a number of political theorists who began to distinguish the activities of civil society from both state and market and named this rediscovered sphere as a 'third sector' (Cohen and Arato 1992; Walzer 1995; Habermas 1996). Young, among others, describes civil society as 'a third sector of private associations that are relatively autonomous from both state and economy. They are voluntary, in the sense that they are neither mandated nor run by state institutions, but spring from the everyday lives and activities of communities of interest. The associations of this third sector, moreover, operate not for profit.' (Young 2000: 158).

Some commentators believe that subjects of civil society are 'private actors with public aims' (Jerez 1997). Others, more carefully, point at the mix of private and public aims and interests that characterise actions of civil society (Pérez Díaz 1993). Moreover, while a number of authors describe civil society as a third sector composed of voluntary associations situated outside of the spheres of both the state and the market (Habermas

¹ Pérez Díaz (1993) reminds us that a greater autonomy of the more narrow concept of civil society depends on the limits imposed to the state by the law, while markets, associations and public sphere suffer from a reduced autonomy under authoritarian or totalitarian political regimes.

² A discussion of the ambiguities of the Hegelian interpretation of civil society can be found in Pérez Díaz, Víctor. 1993. *La primacía de la sociedad civil. El proceso de formación de la España democrática*. Madrid: Alianza Editorial, 96-100.

1992; Yong 2000; Jerez and Revilla 1997)³, others prefer to include both markets and voluntary associations (interest groups and social movements) within institutions of civil society and describe the latter as a combination of economic and social relations (Pérez Díaz 1993). A general definition of civil society may depict it as the site of economic, social, ideological, and religious struggles, whose subjects are groups, movements, associations, organisations which defend interests, rights, and ideals (Bobbio 1992: 25-26), and can have private and/or public aims. In this paper I will refer in particular to the voluntary associations of civil society.

In contemporary times, associations of civil society have been gaining an increasingly emerging role in the public sphere. Pérez Díaz argues that both neocorporativism and neoliberalism, in spite of their differences, shared an intention to widen the area of intervention of civil society in the organisation of economic activities. Through neocorporativism, governments sought to share responsibility for formulation and implementation of difficult socioeconomic policies (e.g. wage and social policies) with the socio-economic partners, i.e. representatives of employers and workers. This contributed to reinforce the role of the social partners. Neoliberalism promoted the emergence of civil society for the opposite reasons. Rather than sharing responsibility for the organisation of socio-economic activities with the main interest groups, as in the neocorporativist perspective, the state should reduce its responsibility in this area as much as possible, leaving markets and social actors free to self-regulate their activities. This would stimulate the development of civil society groups (Pérez Díaz 1993).

Two different explanations are usually provided for the development of the third sector in occidental societies: the first refers to productivity and the second to collective identity. According to the first interpretation, civil society is a provider of non-governmental collective goods that acts to compensate for the decrease in public social services due to cuts to the welfare state (Jerez 1997). Actors of the third sector supply collective goods as an alternative to both the poor level of public social services and the economically exclusive private services. A second explanation focuses on the third sector's capacity to motivate people, promote participation and social solidarity, and create a collective identity. Keywords in this interpretation are the search for identification and moral certainty, the importance of participation, and the attribution of meaning to individual and collective action within an alternative (to the institutional) social project (Revilla 1994). The outcome of participation in civil society, according to the second explanation, is what Donati calls 'relational good' (2002), an expression that highlights the interactive element inherent in the provision of goods or services. In other words, this means that the accumulation process that takes place in the third sector is based on factors of production, such as voluntary work and goods exchanged through solidarity networks that privilege the use value of the good or service provided over its exchange value. More important than any material gain of the exchange is the interaction process itself as well as the motivation, in terms of participation

³ Authors who interpret civil society as a third sector relatively autonomous from both state and market such as Jerez and Revilla (1997) attempt to classify actors that operate in the third sector in the following five groups: 1. traditional types of mutual aid (religious and charitable organisations, local community networks); 2. social movements (feminist, peace, environmental, anti-globalisation, etc.); 3. civic associationism (neighbour, cultural, sport, leisure organisations); 4. non governmental organisations (with their different social and institutional links); 5. foundations and research centres (linked to the corporative world, though philanthropic). Representatives of employers and labour are excluded from this classification, as well as private economic interest groups.

and social solidarity, that guides an action: a good or service's value consists in being collectively useful.

Although the explanation of the emergence of contemporary civil society in terms of collective identity depicts an excessively idealistic picture of the altruistic motivation that drives civil society's actions, it has the merit of taking into account the current delegitimation of traditional political processes and actors, i.e. state institutions and political parties, among the citizenry. This explanation highlights the fact that conventional mechanisms of political participation are increasingly less trusted in their capacity to generate feelings of identification. Civil society networks, instead, may offer both the political motivation and the collective identity that citizens need, which may explain the current emergence and development of civil society.

1.2 The role of civil society within democracy

This sector between state and market is a key site for the mobilisation of social energies and the development of practices of active citizenship (Wiener 1998). Voluntary associations of the third sector perform socially important tasks, such as taking care of the well-being of the more disadvantaged social groups, defending fundamental human rights, particularly of the most discriminated subjects, protecting the welfare state, and caring for the environment. Although civil society organisations sometimes voice issues of public concern (e.g. environment, social services), they are mainly defending specific interests of different social (e.g. women, homosexuals) groups.

The critical role of civil society is deemed to perform vital functions for democracy. It 'enables the emergence of a public sphere in which differentiated social sectors express their experience and formulate their opinions. (...) the public sphere enables citizens to expose injustice in state and economic power and make the exercise of power more accountable. Through public discussion and agitation, moreover, citizens can and sometimes do influence the politics of state or corporate institutions or catalyse practical changes within civil society itself.' (Young 2000: 155). Furthermore, citizens' effective exercise of their influence on state policy, through raising issues and addressing their political demands to decision-makers in the public sphere, is considered a measure of institutional democratic legitimacy and 'an important supplement to the electoral process' (Young 2000: 177). It has been argued that democracy is made not only of a set of procedures but also of substantive values (Hoskyns and Newman 2000). People's political participation in decision-making is one of those values. The rationale for it, as Bellamy claims, is that 'freedom from oppression and domination are best secured through participation in framing the collective arrangements and public goods which provide the context for autonomous choice and development' (Bellamy 2001: 14). People are empowered by practices of political participation that allow them the closest possible control over institutional decision-making.

Civil society does not only act by targeting state and economic institutions directly, but also by 'changing society through society' (Young 2000). This strategy aims at producing cultural change that may affect power relations. Examples are the feminist movement's impact on questioning power relationships within the family and in the wider society, seeking change in men and women's everyday attitudes and practices that is not just a consequence of equality law, and the environmental capacity to spread ideas about

recycling used items that has changed citizens' ethics and habits before state environmental provisions (Dryzeck 2000; Young 2000).

Although civil society can often be more attractive than the state as a site for democratisation because it is relatively unconstrained, it should not be idealised as the quintessence of democracy. It is important to distinguish between associations that contribute to democratisation and those that do not. While movements that progress toward the fulfilment of modernity's values and potential are considered relevant to democratisation, groups that seek the destruction of the state and/or of other people do not promote democratic principles (this excludes, for example, the religious right in the USA and neofascists in Europe) (Dryzeck 2000; Offe 1985).

Moreover, an assessment of the democratic character of civil society formations requires a previous inquiry into their practices of representation, internal democracy, narratives, and activities (Shaw 2000). Finally, the area where civil society communication takes place (i.e. the public sphere) is not as democratic as one would wish. Rather, it is often dominated by the most powerful interests and tends to reflect their perspectives and exclude the most disadvantaged social groups, limiting their capacity to contribute with their issues and concerns to the political agenda (Young 1990).

1.3 Representativeness and institutionalisation of civil society

A question that is frequently raised in debates about the role of the third sector is that concerning the representativeness of civil society. NGOs act as mediators between institutions and citizens, transmitting information and defending different social interests. In their activities they keep relationships with institutions, voice social issues in the public arena, catalyse citizens' demands, and make policy prescriptions. These functions call into question the representative character of associations of the third sector. In terms of traditional representation, as that conferred by democratic elections, non governmental organisations do not have the political representation enjoyed by more conventional actors such as parties. From this point of view, NGOs have no legitimacy to represent collective interests due to the fact that they have not been elected by the people. However, taking a different perspective from that of traditional representation, one must admit that the social representativeness that NGOs effectively enjoy goes well beyond the legal recognition of their public role.

The peculiar type of representation that civil society groups enjoy may be easier to understand by considering the explanation of the third sector's development in terms of collective identity (Revilla 1994). The main outcome of active political participation in a group or social movement is the attribution of meaning to individual and collective action through a symbolic inclusion of all individuals who share the project of a given group or movement. People can not only identify with the ethics and rationale of such a group or movement and in this way make individual and collective action meaningful, but also count on the support and solidarity of other members. The explanation of civil society's role in terms of collective identity helps us to understand that political parties and organisations of civil society occupy different areas and follow a different logic of representation: the first is based on the logic of electoral representation, while the second is based on the logic of identification and participation (Revilla 1994).

De Schutter provides another contribution to the debate on the representativeness of civil society by drawing a helpful distinction between 'representative democracy' and

‘participatory democracy’ in the European context (De Schutter 2001). He shows how the position of the Economic and Social Committee about the role of civil society is that ‘participatory democracy’ (as it is exercised by social groups and citizens mobilising in the European arena) does not compete with ‘representative democracy’ (that which is based on the classical modes of democratic representation through elections), but rather complements it (ECOSOC 1999: 6, point 5.2). By providing expertise and grassroots knowledge of the different social issues, civil society may provide policy-makers with further information on issues and perspectives of specific social groups and contribute to communication processes in the European public sphere. However, the type of representativeness that NGOs can have towards citizens is completely different from, and does not constitute a threat for, the political representation that characterises a democratic electoral process: citizens’ involvement is not ‘automatic’, but rather depends on individual decision, it is voluntary, and it privileges a particular perspective and interest over others (De Schutter 2001).

The claim about the existence of a division of competence between participatory and representative democracy that is not threatening to the latter opens the way to arguments in favour of establishing links between civil society and state institutions through formal processes of representation and participation in decision-making (Young 1990, 2000; De Schutter 2001). This direct influence of civil society over institutions would enable groups whose perspective is not sufficiently taken into account in mainstream politics to make their voices heard and would allow decision-makers to represent more effectively their citizens’ concerns and, in turn, to gain legitimacy among the people they ought to represent. In times of crisis of traditional forms of representation, the third sector seeks to fill the existing gap between parties and institutions on the one hand and citizens on the other by acting as mediator between the two. Considering that the third sector is a phenomenon that is progressively growing in European societies, it is particularly important to establish mechanisms for making NGOs more democratic and granting them some form of representation supplementary to the traditional one.

This is the approach that characterises De Schutter’s work on civil society’s participation in the Convention drafting the Charter of Fundamental Rights of the EU (De Schutter 2001). The author is in favour of recognising a formal dialogue between EU institutions and civil society organisations. However, he insists on the need that NGOs comply with a set of requirements able to guarantee a certain internal democracy of their organisational structure and narratives. Furthermore, to reassure us about any worry concerning the threats posed by civil society to traditional forms of representation, he examines both benefits and limits of civil society’s role in the decision-making process, arguing as follows: ‘Such “non parliamentary democratic structures” [i.e. institutional dialogue with civil society], (...) should not add new hurdles to the political decision-making process, but add to its value, by improving the quality of the democratic debate and widening its scope. It should not challenge the legitimacy of the elected representatives by imposing the presence of non elected representatives, but facilitate the adoption, by the elected representatives, of decisions which will be seen as more legitimate by those to whom they are addressed. And it should not lead to a dilution of the responsibilities in the decision-making process, but instead to more accountability of the elected representatives, whom in the last instance remain answerable to the collectivity.’ (De Schutter 2001: 161)

There already exist a variety of examples for linking institutional politics with civil society groups. In a number of US towns, civic organisations are formally consulted by

government officials regarding different local-interest issues, such as the siting of risky facilities, and citizen panels with authority are also created to review the actions and policies of state institutions such as police departments. In South Africa, a national body of representatives of business, labour, and civic organisations has been formally established with the tasks of setting the political agenda and organising public debate on policy issues. In Northern Ireland, the April 1998 peace agreement established a Civic Forum composed of representatives from different civic organisations with the role of influencing policy discussion together with the legislative assembly (Young 2000). In European states formal consultation of representatives of civil society takes place at the national level through socio-economic councils representing employers and labour, and, in some cases, also at the level of local policy with the creation of citizens' councils that keep periodic meetings with decision-makers in order to debate relevant issues and provide inputs for setting the agenda.

In spite of the benefits that it brings to the community, any process of institutionalisation of a dialogue with civil society carries a number of questions and risks for democracy. Two of the main problems concern the representativeness and accountability of actors consulted in the civil dialogue. With regard to the first question, equal participation of 'representatives' of civil society is rendered difficult by the open nature of civil society. As far as the second is concerned, there are no mechanisms at present to hold civil society groups accountable for their actions, as would be required in a democratic regime (Closa 2003b). Dependence and bureaucratisation are two of the main risks implied by the creation of a formal link between institutions and NGOs. The first risk is that, by reinforcing institutional ties with state authorities, civil society organisations may lose their independence and, as a result, also the critical power towards institutional actors that moves them to question the accountability of the latter (Young 2000). As far as the second risk is concerned, NGOs whose growth push them to invest 70% or 100% of their budget to personnel expenses are shifting from the structure of an association to that of a service company, therefore losing the voluntary (and perhaps more solidarity oriented) spirit that identifies organisations in this sector (Jerez 1997). Threats of this sort could be kept under control only by an aware citizenry able to monitor the behaviour of state, civil society, and market and to hold any of these actors accountable when needed.

1.4 Participatory democracy: governance and legitimacy

A further problem that participatory democracy poses for democratic regimes is that it may weaken or render ineffective formal mechanisms of political representation that are a guarantee of democratic accountability. In this sense, it is necessary to explain the link between participatory democracy and the concept of governance in the European Union, in order to explore some of the risks for democracy that are associated with governance and that emerge in the participation of civil society in the EU policy-making process.

According to systemic theories, civil society is the place where citizens' demands are articulated as inputs to the political system, whose task is then to provide appropriate outputs (Easton 1953, 1965; 1979). A sign of the difficulty to govern a given society is when to the increase of civil society's demands does not correspond an equal institutional capacity to answer them (Bobbio 1992). This is a common problem in contemporary occidental societies. EU institutions face a double difficulty in ruling European societies that consists in the fact that not only there exists an increasingly high number of citizens' demands addressed to political leaders, but at the same time people mistrust (or are

uninterested in) conventional political actors and institutions, particularly at the Union level (Closa 2003b).

The concept of governance has been 'invented' by (conservative) circles of academics and members of international financial bodies (International Monetary Fund, World Bank) and proposed precisely to solve problems generated by a situation characterised by excess of citizens' inputs, institutional incapacity to provide outputs, and delegitimation of traditional institutional actors and processes (Vallès 2000, Closa 2003b). The term 'governance' refers to the idea that governmental action is not carried out just at the level of the state but is coordinated among a wide number of political, social and economic actors, both public and private, who rule and manage society (Closa 2003b, Vallès 2000). Political power does not impose decisions and norms according to a unilateral and hierarchical model, but instead decisions are the result of a negotiation of interests among all participants in the network. There is no central locus directing the whole process. The system is made of autonomous, interdependent and self-coordinated networks that act without any (or with very little) control by the state. The market is considered as a social as well as an economic regulatory mechanism. The main task of this system is a regulation of social and political risk rather than a redistribution of resources⁴.

A crucial element of governance is the inclusion of civil society in governmental action as an attempt to solve problems which derive from the institutional incapacity to answer citizens' increased demands. Political theorists, however, are skeptical that governance may solve this problem and argue that, rather than stopping citizens' demands, this solution could merely redirect them from the political system to other areas, thus diluting responsibility and preventing citizens from holding decision-makers accountable for their actions (Closa 2003b, Vallès 2000). Policy-making through the self-coordinated network that characterises governance may render ineffective the formal mechanisms of democratic accountability that are typical of a representative government, as it promotes a diffusion and dilution of responsibilities among the actors (i.e. as responsibility is passed from one actor to another, nobody pays for the negative consequences of their actions).

Participatory democracy as it is conceived in the European Union, that is the participation of organised interest groups in the community process, is considered as part of a technocratic conception of politics in which the Commission (and partly the European Parliament) acts as catalyst of mobilisation for a civil society of experts (Closa 2003b, Cram 1997). The Commission's role of mediator and promoter of consultations with organised interest groups may justify the extension of its competences vis-à-vis the Council, as part of an attitude that Cram has named 'purposeful opportunism'⁵, but it has not made it more popular among European citizens. The proposal of the White Book on Governance of involving the organised civil society through wider consultations in the preliminary stage of the legislative process as a means to solve the causal chain represented by 'excess of citizens' demands/incapacity of institutional answer/delegitimation of

⁴ Political theorists argue that the model of governance in its most radical version coincides with neoliberal theories of the minimal state, that include privatisation of public sector, deregulation of private activities and the prevalence of market dynamics in the provision of services of public interest (Vallès 2000).

⁵ Laura Cram (1997) has defined 'purposeful opportunism' the attitude of the Commission of acting as catalyst of groups mobilisation at the EU level (also funding directly some of the organisations). The idea behind this action would be, in Cram's view, that of attracting legitimacy to the work of the Commission and justifying an extension of competence in areas, such as social policy, that face strong resistance on the part of the member states.

institutional actors' does not seem to work as expected: citizens' consensus towards the EU has not increased (Closa 2003b).

Moreover, the organised civil society that is participating in the EU system of governance could face a similar lack of legitimacy as that suffered by more traditional institutional actors. EU institutions seek to replace the legitimacy that comes from formal mechanisms of representation by partially including the organised civil society within the policy network. Organised civil society, however, risks to lose both its legitimacy among citizens and its power of negotiation vis-à-vis the EU institutions. With regard to the first, by becoming part of the EU technocratic policy-making process, European organised civil society may lose part of its democratic legitimacy among the citizens, especially because there are currently no mechanisms by which citizens can hold NGOs accountable for their actions. With regard to the second, access to the EU policy network does not guarantee that the voice of civil society will be listened to and taken into account in a system of diffused responsibility where institutional actors have no formal obligation to provide feedback to the inputs of civil society. In sum, in the EU system of governance, NGOs may be a good alibi for the democratisation of the Union institutions, but may run the risk of both creating a distance with the grass-roots civil society and of suffering powerlessness within the EU decision-making process.

The role of civil society for innovation, political change and institutional legitimacy must be mentioned before concluding this section, as it further clarifies the relationship between institutions and civil society. Times of institutional crisis tend to coincide with legitimacy crises. Civil society is the ideal place for the rise of new powers seeking legitimation to the disadvantage of existing legitimate institutional actors. Processes of delegitimation and re-legitimation are continuously taking place in the public sphere of civil society, particularly during institutional crises, when new actors receive legitimation while old actors are delegitimated. For this reason, it is often argued that the solution to a serious crisis of the political system must be sought in civil society 'where it is possible to find new sources of legitimacy and new areas of consensus' (Bobbio 1992: 26-27). This may explain why –as Bobbio explains: 'In times of [institutional] crisis a return to civil society is invoked, in the same way that the jusnaturalists invoked a return to the state of nature' (Bobbio et al. 1990: 1065).

Bobbio's last claim could easily apply to the case of the Convention on the Future of Europe. It may be the case that recourse to civil society by the Convention was merely an instrumental way of solving the legitimacy crisis of European institutions rather than a genuine political act to promote further democratisation of the decision-making process by favouring citizens' participation. While EU institutions face a distance from the citizens, a legacy of the Monnet method of integration, organisations of civil society, instead, are increasingly gaining legitimacy among the people both at the national and European levels. The renewed interest in 'civil society' at the European level is a sign of the EU's awareness of both the current crisis of traditional political representation and the rising role of civil society organisations mobilising through different forms of participatory democracy (De Schutter 2001; Caccia 2002). The Convention might therefore attempt to regain legitimacy for the EU institutions through recourse to civil society, in the same way that the jusnaturalists invoked a return to the state of nature.

This paper intends to explore whether the use of the concept of civil society by the Convention emerges from a genuine intention to distance the EU from the technocratic and elitist method of integration that has been at the origins of the European project

(Featherstone 1994; Coombes 1970) or is a mere rhetorical instrument with a window-dressing function. I will thus analyse the discourse of the Convention about civil society and then verify the extent to which frequent calls on the role of civil society included in the introductory documents of the Convention are reflected in the procedures and outcomes of the deliberative process. The next section of the paper will engage with the former analysis.

2. The discourse on civil society in the Convention on the Future of Europe

2.1 Framing the Convention's discourse

Following the steps of the previous Convention that drafted the Charter of Fundamental Rights of the European Union, the Convention on the Future of Europe is a new procedure in the EU 'constitutional' reform that consists of a deliberative stage preparing the ground for the decision-making phase of the forthcoming 2004 IGC. The Convention method has been welcomed as a more democratic alternative to traditional diplomatic negotiations due to the relative openness and transparency of its deliberations (documents of the plenary and working groups are public and accessible on the world wide web, although Presidium debates and work are not public).

Nevertheless, it has been argued that the democratic credentials of the Convention rest at least on two criteria: representation on the one hand, and deliberative quality of the outcome on the other (Closa 2003a). As regards the first criteria, Convention members have not been directly elected by the people, but have instead been selected by the European Council among representatives of the Heads of State and/or Government and appointed representatives of European peoples in different policy-making bodies. If the outcome of the Convention's deliberation is a Constitutional treaty, the legitimacy of members of the Convention as representatives is doubtful since a mandate from the people is required for drafting a constitutional text. The selection procedure would not be so criticised if the result of the Convention's deliberation were a mere reference for the IGC negotiations. As for the quality of deliberation, it is claimed that members enjoy a certain autonomy that helps deliberation without completely losing contact with their original institutions. However, doubts about the democratic character of deliberation are raised with regard to the power exercised by President Giscard d'Estaing and the Presidium in steering the debates and biasing final results (Closa 2003a).

Moreover, in spite of the more democratic elements included in the new deliberative procedure, the Convention has not been able to connect with citizens, as results of Eurobarometre show: only 28% of the citizens interviewed in Spring 2002 knew about the Convention (the same result appears in Autumn 2002, after the civil society consultation in June 2002), and only 25% of them trusted this institutional body (29% in Autumn 2002), which is the least trusted of all EU institutions. A communication deficit on the part of the Convention adds to the already poor coverage given by national media on the issue. In this context of doubtful legitimacy and scant connection with the citizenry, recourse to civil society is for the Convention a useful means to publicise its work and communicate with the people of Europe. But, if civil society is a recourse for the Convention, is the opposite also true, that is, is the Convention working in the interests of the citizens of Europe? And if it is, what does it mean to do so? One possible meaning could be that of listening to citizens' concerns and giving them proper representation by including in the text of the Convention's deliberations the contributions of civil society, seeking to grasp both the

general project of Europe that is invoked and, when possible, the content of specific citizens' demands. Another sign of a positive attitude of the Convention towards civil society would be the type of relationship that the deliberative body has been able to create with actors of civil society during the process, that is, whether there has been a real dialogue between governmental and non-governmental actors.

To explore the Convention's attitude towards civil society this paper will firstly analyse the Convention's discourse on civil society, and secondly compare this discourse with the proceedings for listening to civil society and the content of the text of the Convention's deliberations. In the study of the Convention's discourse on civil society, I will adopt insights from frame analysis, an approach that has mainly been used to study political communication, media discourse, and new social movements, and has recently been extended to the study of European policy-making (Snow & Benford 1988; 1992; Gamson & Lasch 1983; Snow et al 1986; McAdam et al 1996; Van Dijk 1988; Tarrow 1992; Benford 1993; Rein and Schön 1993; Triandafyllidou and Fotiou 1998).

The policy frame method seeks to discover dominant and/or competing frames in the discourse of socio-political actors that are constructed in order to make sense of different situations and events, attribute blame or causality, and suggest lines of action (Rein and Schön 1993; Triandafyllidou and Fotiou 1998; Snow et al. 1986). Frame analysis can help to identify how particular 'discursive strategies can modify the process itself by means of excluding some actors from the debate' (Triandafyllidou and Fotiou 1998: 6.4)⁶. One of the aspects to consider in frame analysis is the 'nested political and economic context' where the framing of a policy issue takes place (Rein and Schön 1993). Drawing on insights from frame analysis, I will seek to identify dominant frames operating both explicitly and implicitly in the discourse of the Convention that are driving it to select and focus attention on certain discourses and actors while at the same time ignoring or marginalising others. This framing process has consequences in terms both of the relevance given to civil society's actors and discourses, and of the extent to which civil society's contributions have effectively been taken into account in the work of the Convention.

With respect to the influence of 'nested contexts' and 'discursive strategies' on the framing of issues, the neoliberal mindset of the EU operated as a tacitly accepted broad setting for discourses taking place in the Convention, by supporting a general assumption about what is 'natural' and 'important' to be discussed in the Convention. This means that issues and perspectives that accepted the existing neoliberal trend were prioritised, while social issues that challenged this model were marginalised and actors defending them were constrained to adopt 'realistic' (i.e. within the dominant neoliberal paradigm) standpoints to participate in the debate.

Furthermore, the fact that Convention discourse was more institutionally driven has limited wider debates than the current ones about the nature of the EU project and has marginalised actors willing to discuss more substantive questions about the type of polity that we are aiming at. It is difficult to imagine that a focus on institutional questions like the

⁶ Triandafyllidou and Fotiou's paper applies frame analysis to the competing discourses of environmental organisations, business groups and EU officials with regard to environmental sustainability and the Fifth Action Programme. It argues that the discourse of environmental actors is marginalised and their position at the discussion table is delegitimised by the dominance of frames referring to 'rationalisation and scientification' (the 'appeal to the 'objective' validity of scientific knowledge on which modern society is based') and to the issue of sustainable development discussed in terms of 'economic interests, growth, employment and market expansion' (Triandafyllidou and Fotiou 1998: 3.9).

one adopted in the Convention will mobilise European public opinions and voters, excluding practitioners and scholars in the field. Citizens would rather like to know whether the future EU Treaty will protect their national public services, help to solve the precarious job situation of younger and older people, safeguard social protection, ensure peace and a decent standard of living and so on. 'Legal frameworks' -writes Cassen- 'must be functional to a project instead of replacing it, unless they aim at safeguarding the existing one' (Cassen 2002: 4).

Civil society and Social Europe. What is the link between social policy issues, substantive discussions on the nature of the EU project, and civil society? Why does an emphasis on civil society call into cause a discourse on social Europe? And why would a Convention not sensible to social issues be a disappointment for civil society and not be able to attract public interest towards the EU?

The European Social Forum of Florence in November 2002 and its preceding meeting in Porto Alegre, as well as the growing number of demonstrations of the so-called anti-globalisation movement in the member states, represent an emergent sector of civil society that is mobilising against the project of economic liberalisation in Europe as long as this is not counterbalanced by progress in the social area and democratisation of decision-making in the EU. The fact that the EU has become, together with other international financial and trade institutions such as the World Trade Organisation (WTO), the target of anti-globalisation movements, is extremely significant for the understanding of the reasons for people's discontent with the Union⁷. These movements interpret the feelings about and expectations from politics of a growing number of people. These include dissatisfaction with a neoliberal European trend that is prioritising private over public interests⁸, and demands for a fairer redistribution of resources, a more inclusive polity, and a more democratic decision-making process⁹.

For the citizens of Europe, a social and political Union would represent an important point of reference to make their voices heard on the issues that most directly affect them, such as work, social services and social protection, housing, health and so on (Caccia 2002). The *Eurobarometer* reveals that the fight against unemployment, poverty and social exclusion has the highest priority for European citizens. For the EU, the construction of a social Europe that takes into account people's concerns would ensure a better legitimacy of its institutions, making it 'a strong Europe', in the words of Jo Shaw (2003). As stated in the Report of the Working Group on Social Europe: 'The EU cannot be a credible force for good in the wider world if it is indifferent to questions of social justice and poverty in European society or to how its citizens are treated at work and in retirement.' (CONV 516/1/03: 4).

According to some scholars (Negri 2002), there already exists an emerging 'European political subject' that poses precise demands to decision-makers, such as a more universal citizenship that would allow mobility for everybody, a guaranteed basic income that would

⁷ See meetings of the anti-globalisation movement in Seattle (WTO meeting, 29 Nov-3 Dec 1999), Prague (World Bank and International Monetary Fund meeting, September 2000), Nice (EU summit, 7-8 Dec 2000), Gothenburg (EU summit, June 2001), Genoa (G8 meeting, 20-21 July 2001), and Evian (G8 meeting, 1 June 2003).

⁸ On the pervasive power of corporations and the rise of anti-globalisation movements see Klein 2000; 2002.

⁹ A critique of the influence of economic groups on political deliberation that concerns issues of public interest can be found in Benjamin Barber, *Strong Democracy*, Berkeley, University of California Press, 1984.

allow flexibility in the production of wealth and in the reproduction of life, and other social justice issues. (Negri 2002: 279). Whatever we want to call it, this European political subject or civil society has a project of EU that goes in the direction of a more citizenship- and less market-oriented Europe. The main demands of the organised civil society that took part in the Forum, with their emphasis on social issues, confirm this point (see section on ‘Radical issues from a domesticated civil society’). For this reason, the articulation of a discourse on social Europe in the Convention would reflect an interest in taking into account the perspective and demands of the civil society it claims to represent. This is why, in the analysis of the Convention’s discourse on civil society, I will also examine the Convention’s attitude towards social issues as a sign of the general approach of the Convention towards the content of civil society’s demands.

2.2 Dominant attitudes and frames in the Convention’s discourse on civil society

The first stage of Convention’s workings, i.e. the listening phase, placed from its beginnings a special emphasis on the need to *hear the voices* of civil society. The President, Giscard D’Estaing, opened the first substantive debate of the Convention claiming that ‘the citizens of Europe felt that their voice was not being heard on the future of Europe and that the first phase of the Convention should therefore be a listening phase’ (CONV 14/02: 1)¹⁰. Convention members stressed not only the aspect of listening but also the need ‘to take account of citizens’ expectations and give citizens a greater say in and fuller scrutiny of European decision-making’ (CONV 14/02: 4). In other introductory debates the members of the Convention welcomed it as a ‘unique opportunity to bring European construction closer to the citizen’ by establishing ‘a genuine dialogue’ with civil society and leaving the listening activities of the Forum open throughout the whole of the Convention’s proceedings (CONV 7/02: 3)¹¹.

Although it is often referred to as a ‘dialogue’, the relationship with civil society can better be described as a process of ‘hearing’ and ‘consultation’ (The Laeken Declaration; CONV 14/02; CONV 167/02). This is because in none of the Convention documents there is any mention of feedback activity from the Convention to civil society organisations and any reference to how far contributions have affected specific issues, general orientation of the Convention, not to mention the Constitutional Treaty.

Moreover, there is a risk that this consultation may be a one way process from civil society to the Convention and the EU at large and not *vice-versa*. Convention’s documents make clear that, in order to have people’s support, the Convention must benefit from civil society’s contributions. The opening of the Forum, described as ‘a structured network of organisations representing civil society’, is indeed justified by the claim that ‘it is essential that the work and outcome of the Convention has the full support of the people of Europe’ (CONV 8/02: 4). The Convention’s expectations to benefit from the consultation of civil society, was asserted during the plenary session devoted to civil society: ‘Mr Dehaene, Vice-Chairman closed the debate by stating that the proceedings had been a milestone in a long-term process. He indicated that the dialogue with civil society would be pursued, that the forum website would continue and remain open to the contribution that civil society might wish to make to the work of the Convention. He also mentioned the importance of

¹⁰ 25 March 2002. Note on the Plenary meeting 21 and 22 March 2002.

¹¹ 11 March 2002. Note on the inaugural meeting 28 February 2002.

the debates at national level. Lastly, speaking on behalf of the Presidium, he announced that the latter would take other initiatives aimed at pursuing the *dialogue with civil society*, which he regarded as *highly enriching, above all for the Convention*' (CONV 167/02: 14).

One can raise a question about the extent to which this 'dialogue' will be enriching for actors from civil society as well. Insofar as there is no mention of the type of impact that such contributions have had on the Convention and the feedback that organisations will receive from it, doubts may be expressed concerning the genuine character of Convention's interest for civil society. To a question concerning the type of interaction maintained with the Convention, a member of civil society who participated in the forum significantly answered the following: 'Interaction with the Convention is proof positive of the existence of black holes. You send something but nothing ever comes out. No answer to any letters. No acknowledgement of receipt. Nothing.' (Krzeczunowicz 2003)¹².

Attitudes of the Convention towards civil society

1. 'Listening without committing to an answer'. In view of what has been argued so far, a first general attitude of the Convention towards civil society that can be detected is that of 'listening without committing to an answer', that can also be described as an attempt to define as 'genuine dialogue' what is instead a rather 'banal exercise of freedom of expression', as De Schutter defined a similar experience in the process of the Charter (De Schutter 2001: 169). This means that there was no sign that the Convention would provide feedback to civil society's contributions and there has not been a clear commitment on the part of the Convention on stating to what extent and how contributions of civil society groups would be taken into account in the deliberations and Constitutional text.

2. Civil society as a rhetorical frame. A second general attitude of the Convention towards civil society is the importance given to the latter as a means of attracting people's support to the work and outcome of the Convention. This is better described as a 'rhetorical frame', as it serves the functions of persuasion, justification and symbolic display in policy debates (Schön and Rein 1994). In the eventual absence of proof that the Convention was making an effort to include civil society's contributions both in the design of the general project of Europe that was put forward and (when possible) in specific issues, the rhetoric of civil society could legitimately be interpreted as an exercise of lip-service. In this case, rhetorical frames that shape public utterances of policy makers would be incongruent with the 'action frames', namely the frames that inform policy practice through shaping of laws and decision-making (Rein and Schön, 1994).

One example of the rhetoric of a citizens' Europe is Giscard d'Estaing's speech for the opening of the academic year at the College of Europe, in Bruges (2 October 2002): 'We must together meet the challenge of making Europe more comprehensible and more transparent for our citizens. (...) *It is your Europe*, the Europe of the future, the new Europe. It is for you that we are working in the Convention' (Giscard d'Estaing 2002: 4). In the speech there is no mention as to what is the project of Europe that the Convention is working on, so that citizens can take a well-informed decision on whether to support it or not. Instead of discussing more substantial issues about the nature of the EU project (economic? Social? Political?), the emphasis is placed on the name that this 'x-Europe'

¹² Pawel Krzeczunowicz, Polish NGO Office in Brussels, *Internet questionnaire*, April 2003.

should be given: ‘What will this new and better Union be called? It seems to me that four possible names present themselves: European Community, European Union, United Europe, United States of Europe. This is *no trivial issue*, for the *name* has a symbolic force, *making clear to every citizen the nature and thrust of the European project*. So it seems to me that it would be interesting to find out what the people of Europe, in particular the young people, feel about this issue, before it is discussed by the Convention’ (Giscard d’Estaing 2002: 13). It certainly would not be a trivial issue, provided that it was made extremely clear to what exactly citizens should be giving a name.

Dominant frames in the Convention’s discourse of civil society

3. & 4. Institutional and neoliberal frames in the debate on social Europe. In the same speech Giscard says that institutional matters will be discussed at the end, ‘when the Convention has more clearly defined the Union’s role and procedures’, when it better understands arguments of efficiency and transparency, ‘when it has a clearer idea of the desirable overall shape of its recommendations’ (Giscard d’Estaing 2002: 15). He argues that ‘institutional arguments must not drive our debate on the basic questions: rather our answers to these basic questions about competences and means of action of the Union will dictate our eventual institutional prescriptions’ (Giscard d’Estaing 2002: 17). This claim has been contradicted in several occasions in which the President of the Convention steered the discussion towards more institutional questions. The debate on social policy is exemplary.

The discussion on social Europe has represented an opportunity to raise substantive issues concerning the nature of the European project that is planned for the future and the unquestioned neoliberal focus that has characterised the EU integration process in the past few decades (and partially from its beginnings). The opening of a debate on social Europe, proposed by a number of members of the Convention¹³ and the Social Platform of European NGOs, was justified as follows: ‘The numerous statements and contributions of *members of the Convention* within the plenary meetings of the Convention, the various statements of representatives of *civil society*, the conclusions of the *Youth convention*, and the results of the *Eurobarometer* reflecting the expectations of the European citizens (the fight against unemployment, poverty and social exclusion has highest priority) show *the need and the necessity to establish a social Europe*’ (CONV 300/02: 3)¹⁴.

The Plenary meeting on social Europe took place on 7-8 November 2002. In several occasions the President of the Convention acted to steer the debate towards more institutional and less contentious issues and away from substantive discussions on the nature of the EU project that aimed at revitalising the European social model and at questioning the existing neoliberal approach. The questions prepared by the Presidium for members of the Convention to structure the debate on social issues were entirely focused on possible institutional amendments to EU social and economic policy and left little space

¹³ Ms Anne Van Lancker, Mr Johannes Voggelhuber, Ms Sylvia-Yvonne Kaufmann and other members of the Convention demanded that a debate on the issue of a social Europe be put on the agenda of the Convention.

¹⁴ 26 Sept 2002. From Secretariat to Convention.

for a more general discussion on the need for a European social model, that, although highly controversial, had been the main reason for requiring a plenary¹⁵.

A merely institutional focus on social issues would marginalise or exclude discussions on issues such as the current challenges posed by economic globalisation to social policies, the dismantlement of European welfare states, the increasing (long and short-term) unemployment, the changing nature of work with fixed jobs disappearing together with social protection, flexibility, precarious and temporal jobs, ageing of population, inequality, poverty, social exclusion, and so on. These and similar issues were raised by representatives of civil society in the June 2002 hearing and in the European Social Forum in Florence in November 2002 that curiously enough coincided with the Convention debate on social Europe on 7-8 November.

Regardless of the fact that social policy is ‘an important issue to which Europe’s citizens attached considerable importance’, Giscard introduced the debate on social Europe by stating that ‘since the task of the Convention was to address questions of a structural nature, the debate should centre on possible changes to existing Treaty provisions.’ (CONV 400/02: 6)¹⁶. This opening appears to be a further attempt to constrain the discussion on social Europe to institutional matters, rather than engaging in more contentious but, as Giscard also recognised, important issues for the citizens of Europe like the social role of the Union. Moreover, considering that civil society’s contributions had a much broader focus than the institutional, one way of taking them into account would be to frame the debate on social Europe leaving space for a wider discussion on substantive issues concerning the European social model. The President, instead, intervened once more to steer the debate towards more institutional issues by claiming that during the social debate ‘many speakers had mixed the political with the purely constitutional’, that moved him to remind members of the Convention: ‘We are drawing up a constitution’ (*EUobserver*, 11.02.2003)¹⁷. This insistence on institutional questions is at odds with Giscard’s claim that institutional issues should come later in order not to steer questions of principle.

The other argument that the President used to steer the social debate away from a focus on the need of a social Europe was his call for the importance of economic competitiveness, through which he concluded a debate where most of the issues discussed were oriented towards the creation of ‘a European social market’ and underlined the fact that ‘the single market was not an end in itself’ (CONV 400/02: 6). Most interventions in the debate expressed the necessity to address social issues in a ‘sufficiently ambitious manner in the

¹⁵ ‘From Presidium to Convention: Questionnaire for the debate on Social issues. The working group on economic governance has agreed that the issue whether to introduce additional economic and social objectives and competences should be the subject of a plenary debate of the Convention. The following questions refers to this recommendation: they might be addressed in the debate on Social Europe on 7 November which has been arranged at the request of certain members of the Convention.

- 1) To what extent should social policy be considered to be part of the Union’s overall objectives? How should this be reflected in the constitutional treaty?
- 2) How, if at all, should the current Treaty provisions on social issues be amended? Should the existing areas of competence be extended? If so, to which new areas? Should other provisions, such as those on the internal market or competition be amended in order to enhance social policies?
- 3) Should the current provisions for the involvement of the social partners be amended?’ (CONV 374/02: 2. 29 October 2002.)

¹⁶ 13 November 2002. ‘Summary report of the plenary session 7-8 November’.

¹⁷ *EUobserver*, 11.02.2003, ‘Convention social debate mixes constitutional with political’, <http://www.EUobserver.com>

future Constitutional Treaty' as 'it would not be understood if the Treaty contained no references to social issues' (CONV 400/02: 6). They mentioned specific elements which should be included in the Treaty, such as 'basic social rights, social protection, full employment, gender equality and the need to protect services of general interest' (CONV 400/02: 6). Among the means necessary to implement the EU's social objectives, delegates proposed to extend the Union's existing competences in the social field¹⁸, to adopt QMV for all decisions in the social field, to introduce in the Treaty the Open Method of Coordination, and to include in the Treaty a provision to reinforce the role of the social partners, with some members demanding also 'wider consultations with civil society' (CONV 400/02: 6). There was a strong call for the setting up of a Working Group on social issues in the Convention.

In his conclusions, Giscard recognised the existence of 'a strong feeling that Europe should be more than just a single market, and that this should be reflected not just in the Union's overall objectives, but also in its policies'. However, immediately after that, he shifted the attention of the assembly towards the demands of a neoliberal market economy, as a self-evident norm that could not be violated, by claiming that: 'However, it was clear that the EU also needed to retain its competitiveness vis-à-vis the rest of the world'. In this way he partly silenced or even delegitimised arguments in favour of a European social model that had been put forward in the course of the debate on social issues (CONV 400/02: 7).

The establishment of a Working Group on social issues also encountered some resistance on the part of the Presidium, particularly from the President. Although Giscard noted at the end of the debate on social Europe that there was a considerable support for the creation of such a group, he 'was distinctly less enthusiastic about the idea'. As the *EUobserver* reports: 'In line with his previous utterances on the idea of a working group on social Europe, he said there are "advantages and drawbacks". While not dismissing the suggestion out of hand, he did say bringing the social dimension to the fore in a working group could be "damaging". There would be an opportunity to come back to this at the next session, he added' (*EUobserver*, 8.11.02)¹⁹. After accusations to the Presidium on the part of Mr Johannes Voggenhuber of the Greens of "attempting to abandon the European social model", campaigns by Ms Anne Van Lancker, Ms Sylvia-Yvonne Kaufmann, and the other members who had proposed the debate on social Europe, support in favour of a working group on social policy from a considerable number of delegates, and backing from the EPP, the largest political family, 'Presidium members Klaus Hänsch and Giuliano Amato acknowledged the calls for the setting up of a new group. "We've got the message," said Mr Hänsch while Mr Amato admitted that the "demand seems to be widely supported."' (*EUobserver*, 8.11.02).

The Working Group on Social Policy of the Convention was finally created, though the period of time to discuss and deliberate on many contentious social issues was by far more limited than for the rest of the working groups (only five meetings to discuss a seven point mandate). However, the dispute over the creation of a working group on social policy significantly highlighted the Presidium's and its President's attitude towards social issues as one of attempting to silence or marginalise contentious issues that would question the

¹⁸ Only one speaker considered that there should be no extension of competence in the area of social policy, that should remain a matter for individual member states.

¹⁹ *EUobserver*, 8.11.02, 'Convention demands more social Europe debate', <http://www.Euobserver.com>

tacitly assumed neoliberal mindset of the EU. This attempt revealed a certain lack of concern not only for the will of members of the Convention, but also for representatives of civil society and European citizens who attached a great significance to social issues. A member of Ilga (International Lesbian and Gay Association), one of the NGOs that participated in the Forum, claimed: 'Initially none of the Working Groups dealt with social issues explicitly. This was very disappointing from our perspective, but indicative of the position of social issues in the EU in general'²⁰.

Moreover, if the solution of the EU legitimacy deficit partly lies in the articulation of a constitutional discourse, based, as Weiler puts it, on 'an ethos and telos to justify, if they can, the constitutionalism it has already embraced' (Weiler 1995: 220), hindering a discussion on social Europe can be interpreted as an attempt to avoid arguments about controversial issues, a dialogic activity that is an essential part of democratic regimes. The Presidium's attitude towards the social question therefore cannot be taken as exemplary of the EU's will to elaborate a constitutional discourse capable of justifying and giving legitimacy to the norms and rules that the Union has already developed (Fossum 2000).

What is problematic about the Convention's frames? In terms of policy frame analysis, it is possible to draw some conclusions concerning the discourse of the President of the Convention that provide a number of hints into the Convention's manner of dealing with civil society. Two dominant frames can be traced in the discourse of the President of the Convention and, partly, in the Convention itself, that can be added to the two attitudes previously underlined (listening without committing to an answer and rhetorical recourse to the concept of civil society to attach legitimacy to the Convention's project). These are the institutional approach of the Convention and a neoliberal focus to integration tacitly adopted without any prior discussion.

The former is partially justified by the fact that the role of the Convention is to reflect and elaborate proposals concerning institutional reform of the EU. However, any deliberative process requires a reasonably wide discussion about substantive and possibly controversial issues, where political actors present different sets of arguments that depend on the different political frames they adopt. As Rein and Schön assert: 'policy controversies are substantive; they are about premises and axioms, (...) and not just about rules reaching agreement. Meaning precedes facts and makes sense only in relation to the purposes embedded in different frames.' (Rein and Schön 1993: 160). General discussions about substantive issues are important, then, both to uncover the different frames adopted in the debate and to push actors to address their efforts in clarifying what is the EU project that they are supporting.

The present situation of Europe as concerns the articulation of a constitutional discourse able to legitimate existing rules is described by Fossum as follows: 'There is now much discussion of rights and values, but this discussion is not well tied in with or even related to any clear attempt in the part of the interlocutors to specify what they want the EU to be' (Fossum 2000: 138). Limiting the Convention debate to less contentious issues about rules and procedures rather than to more general substantive questions, that are likely to be controversial, may be in line with the EU's attitude of avoiding difficult questions concerning the nature of the EU project. However, without any link to a prior discussion of this type, capable of engaging public opinion in the debate as broadly as possible, all

²⁰ Birgit Hardt, *Internet questionnaire*, April 2003.

rhetorical attempts of president Giscard d'Estaing to involve 'the people' in the project of a future Union ('*It is your Europe, the Europe of the future, the new Europe*') are bound to be a failure. Moreover, there is a risk of silencing voices within the Convention and of not paying proper attention to actors of civil society that are hoping to see in the Convention discussions about substantive issues they can understand and identify with.

The frame on the adoption of a neoliberal approach to integration challenging the notion of social rights as such has been a dominant EU trend at least for the last two decades (Castle-Kanerova and Jordan 2001; La Torre 1998; Hervey 1998; Budge et al. 1997; Room 1997; Scharpf 1996; Leibfried and Pierson 1995; Majone 1993; Leibfried 1991; Nielsen and Syzszczak 1991). The European Commission's attitude is ambivalent regarding the balance between 'the Anglo-American agenda of labour market flexibility, work incentives, and welfare retrenchment' on the one hand, and the defence of the 'European social model' with its protection of social rights, on the other (Castle-Kanerova and Jordan 2001: 189). At the level of member states, the defence of neoliberalism vs. social solidarity is influenced by the pressures of market competition, which push member states to cut social, environmental, and safety regulation of the processes of production that increase the costs and limit the member state's competitive position (Scharpf 1996). Due to the aforementioned market pressures and the political choices of European decision-makers, the neoliberal minimalist approach to social policy has currently prevailed in Europe, pushing EU policy to favour negative over positive integration²¹.

The Convention's discourse takes place within the context of this dominant neoliberal frame, that had not been explicitly put into question until the members of Hänsch's working group on economic governance 'were split between neoliberals and those calling for more social objectives in the EU' (*EUobserver* 8.11.02)²². This substantial divide was the main reason for calling the plenary on social Europe that subsequently led to the creation of a working group on social policy. Both the plenary debate and the discussions within the working group on social issues revealed that the supposedly broadly accepted neoliberal approach to EU integration was in fact a much more controversial frame. There exist dissonant voices within the Convention who call for more social Europe, due to the relevance it has for civil society and European citizens.

The problem is to present the neoliberal approach to European integration as 'the norm' by not questioning it and not even discussing alternative approaches that would challenge it. According to Lukes' 'radical view' (1975), one of the levels at which power operates is the situation in which an issue is unquestioned to the extent that it is not even formulated in the actors' minds nor it is openly discussed in political debates. By contrast, democratic debates should aim at uncovering the different ideological frames of political subjects in order to openly discuss possible options, even when a policy controversy is likely to arise due to strong disagreement among the actors.

Examples of this type of debate were the discussions on minimum wage and on the right to strike on solidarity, two of the most controversial issues that emerged in the meetings of the Working Group on Social Europe. While the French socialist party had

²¹ The distinction between 'negative' and 'positive' integration is that the former refers to the process advancing market integration by weakening the state's control over trade and distortions of competition, and the latter refers not only to market-making provisions but also to the Community measures for shaping and correcting the conditions in which markets take place (Majone 1993; Scharpf 1996).

²² *EUobserver* 8.11.02 'Convention demands more social Europe debate', <http://www.EUobserver.com>

called for fiscal harmonisation and social minimums for incomes, Spain and UK expressed their voice against minimum wage and in favour of maintaining member states' sovereignty on issues like unemployment, the role of trade unions and collective bargaining. The question of the right to strike in solidarity has been described as 'a bone of contention between the British and the Swedish Labour party representatives on the Convention' (Swedish paper *Dagens Nyheter* reported by *EUobserver* 14.1.2003)²³. While the Swedish government representative Lena Hjelm-Wallén wanted to have the right to cross-border solidarity strikes written into the EU Constitution, the British Labour party was radically opposed to it. According to *Dagens Nyheter*, Ms Hjelm-Wallén has declared that 'The Britons have a different view of union rights and workers' rights. That is just how it is. They have an old-fashioned view on labour legislation with arguments that I recognise from the Right and the employers in our countries in the seventies' (*EUobserver* 14.1.2003).

While none of the contentious issues were included in the final conclusions elaborated by the Working Group on Social Europe, their discussion gave the opportunity to discuss more radical alternative perspectives to the neoliberal norm, particularly on issues of special concern for the citizens, and forced actors to come out with their arguments in favour or against it, so that civil society could identify which actors were defending one position or the other and with what arguments. The discussion of what are usually considered as radical issues questioning the neoliberal model was an example of democratic debate over questions that are often marginalised within governmental frames, though they are increasingly supported by the new social movements' discourse of social justice and solidarity.

Synergy between civil society and the Working Group on Social Europe. In effect, it appears that although the Working Group on Social Europe did not have sufficient time to take direct advice from civil society, due to its late creation, individual members seemed to have listened to and taken into account civil society's contributions (Shaw 2003). This emerges clearly from the Final Report that the Working Group produced (CONV 516/1/03). The mandate received by the Convention included questions on the values and objectives that a Social Europe should promote (and that should be written into the Treaty), a definition of the Union competences in social policy, the role of the open method of coordination, the relationship between economic policy coordination and social policy coordination, the possible extension of codecision and QMV to areas currently under unanimity, and the role of social partners in the decision-making process.

The Working Group treated the question of social Europe as a fundamental piece in the EU constitutional framework, and not just a question of policy content (Shaw 2003) by reaffirming the role of 'social objectives as equivalent, not subordinate to, economic objectives', as 'forming an integral part of the spirit in which the European Union was conceived and of the direction in which it develops' (CONV 516/1/03: 8). This statement, and the whole Report, expresses a project of Social Europe that is understandable by, and in line with, most civil society and in general citizens' concerns, giving a direction and a name to the Union whose future is being discussed.

The main points of the Report are the following. The report shows a strong support in favour of social Europe as 'an essential part of European integration' (CONV 516/1/03: 4).

²³ *EUobserver* 14.1.2003 'Convention to reject minimum wage', <http://www.EUobserver.com>

It recommends the inclusion of social justice, solidarity and equality, in particular between women and men, within the values of the Union to be stated in Article 2 of the Constitutional Treaty. It suggests that Article 3 should include among its objectives the following issues: full employment, social justice, social peace, sustainable development, economic, social and territorial cohesion, a high degree of social protection, equality between men and women, children's rights, a high level of public health and efficient and high quality social services and services of general interest. On the question of competence, the Report is, as Shaw (2003) clarifies, rather contradictory, as it first states that existing competences are adequate, but then demands an extension of competences in the area of public health and a development of services of general interest. However, the most contradictory part consists in the statement that 'European action (...) should primarily concern areas of action closely linked to the functioning of the internal market, preventing distortions of competition, and/or areas with a considerable cross-border impact.' (CONV 516/1/03: 17). Such a return to the neoliberal frame of EU policy is inexplicable, as there is no reasoning to justify it in the whole Report (Shaw 2003). Finally, the working group on social Europe could not reach consensus on qualified majority voting, but it widely supported the open method of coordination and the need to give proper recognition to the social dialogue including the social partners and civil society (whose role was defined as particularly important in combating social exclusion) in the decision-making process.

In spite of the wide support that welcomed the Report in the plenary session of 7 February, the draft of the first sixteen articles of the Constitutional Treaty issued by the Presidium at the end of January explicitly admits that results of the discussions of the Working Group on Social Europe had not been taken into account in writing the preliminary document. The poor attention given to social policy issues in the draft articles speaks for itself. No relevance is given to social Europe as a constitutional project, equality is not considered a fundamental value of the Union, not to mention the absence of an anti-discrimination principle on grounds of sex, race, ethnic and social origin, language, religion, belief, political and any other opinion, national minority, disability, age, sexual orientation and other grounds, that would resemble the non-discrimination clause on grounds of nationality included in draft article 6.

The precedent set by the draft sixteen articles is not irrelevant, as Shaw points out, considering that 'even though these draft articles are only 'suggestions', as Giscard has reminded us, they still represent an unfortunate reference point' (Shaw 2003: 3). This is effectively confirmed by the amendments to the Draft which did not include a large number of points covered in the Social Report and ignored by the Presidium's preliminary Treaty. Beside the fact that the Convention is missing an opportunity to construct a 'strong Europe' by aiming for a 'social Europe' (Shaw 2003), it is also missing the opportunity to give representation to civil society's main concerns, concerns shared by the Working Group on Social Europe. As one participant to the Forum claimed: 'We were very disappointed to see that the Social Europe report was to a very limited extent taken into account'²⁴. The Convention's emphasis on the relevance of civil society appears once more to be a mere rhetorical device to gain legitimacy rather than a genuine attempt to abandon the EU elitist attitude towards the citizen.

²⁴ Sophia Spiliotopoulos, Vice president of AFEM (Association des Femmes de l'Europe Meridionale) president of EWLA (European Women lawyers Association). *Internet questionnaire*, June 2003.

In conclusion, two attitudes and two dominant frames concerning or indirectly affecting civil society are traced in the discourse of the Convention in general and in the discourse of its President in particular. The first two refer directly to the Convention's attitude towards civil society: one has been described as 'listening without committing to an answer' (lack of commitment to provide feedback to civil society's contributions); the other is the importance attached to civil society as a rhetorical means to attract people's support to the work and outcome of the Convention. The two frames detected have an indirect influence on civil society, as they refer to the discourse of the Convention and its President regarding issues and approach: they are the institutionally-driven discourse of the Convention and the unquestioned neoliberal perspective.

3. Civil society in action: the experience of the Forum

'In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Presidium'

The Laeken Declaration

The Laeken Declaration sets the basis for the establishment of a Forum consisting of a network of civil society organisations whose contributions are explicitly described as providing 'input' into the Convention's debate and whose character is consultative. Consultation through the Forum was characterised by a distinctive openness in the process of participation. A user-friendly website was created for the Forum, in which contributions were attached and updated, hearings with civil society organisations were organised in June 2002, culminating with a public debate on the plenary session of the Convention on 24-25 June, national debates with civil society were supposedly run in the member states, and regular contacts were kept between civil society and Mr Dehaene, the Presidium member in charge of relations between the Convention and civil society groups.

No further requirement was asked for participating in the Forum than to send a written contribution to the Convention that would then be posted on the Forum's website. This gave rise to a multiplication of inputs and meant that the number of participants to the Forum grew constantly from around 200 groups in September 2002 to over 500 organisations in March 2003. This certainly contributed to the publicity of the Convention process, at least among the organised civil society, and enabled a great number of actors to express their views on the future of Europe. However, it also implied a number of problems which had already emerged in the previous consultation that accompanied the drafting of the Charter. Moreover, the formal openness of the process did not necessarily mean that no substantive selection was actually made. In fact, a number of more or less invisible obstacles selected participants to the Forum and, in particular, to the hearings of the 24-25 of June 2002.

A structured dialogue? The Forum repeated some of the mistakes of the Charter consultation, revealing once more that a wide open consultation process does not

necessarily equal effective participation. It has been suggested in fact that other requirements are necessary to achieve the latter. As one commentator observed, ‘the more open the consultation process, the less the right to be “heard” may in fact impose on the institution addressed an obligation to answer’ (De Schutter 2001: 169). The Forum has been described by one participant as ‘a black hole’ from where no response ever came back (apparently, it was not even used as a data-base of the people concerned with the different issues, on the basis of which e-mailings could be organised).

Reflecting on the experience of consultation of civil society for the drafting of the Charter, De Schutter questioned whether the EU institutions should actively structure the existing organisations (at the same time encouraging the emergence of new groups) or whether they should not intervene in the process at all. With respect to the latter, he warned of the risk that leaving civil society as it exists, without any structuring of the network, may favour the better-organised, better-informed, and better-situated and resourceful groups and exclude organisations that do not enjoy the same benefits despite their representativeness or their competence on the matter.

De Schutter’s proposal is therefore to structure civil society’s network according to a number of criteria of representation defined by ECOSOC (ECOSOC 2001: point 3.4.1., p. 6) and to organise the consultation process by identifying the questions of general interest on which organisations of civil society could contribute (e.g. gender equality, environment..). For each area of concern, fora with the most representative organisations should be established and consulted both at an early stage of the legislative proposals and in the process of policy evaluation.

A structured organisation of civil society participating in the EU policy-making process would ensure what the Commission has defined as a right ‘to receive appropriate feedback on how their contributions and opinions have affected the eventual policy-decision, thereby making the relationship a real dialogue’ (Commission 2000: n.5, p. 10). It is argued that this dialogue would only be manageable with a selection of participant organisations. The merit of this procedure is that it would force the EU institutions to commit to a more genuine dialogue with civil society and would control the more informal lobbying that might benefit more powerful groups. After the experience of the two Conventions which saw a considerable participation but without any feedback on how civil society had affected the process, suggestions similar to the ones recommended by De Schutter have multiplied among civil society organisations.

Treaty Articles on participatory democracy. The preliminary draft Treaty included in Title VI: ‘The Democratic Life of the Union’ an explicit reference to participatory democracy, particularly in its Article 34 but also in Article 36 (CONV 369/02)²⁵. A more recent project of Treaty mentions the ‘Principle of participatory democracy’ in its Article I-46 (CONV 724/03), including former second and third paragraphs at the beginning of the final draft’s Article and adding a third paragraph on the Commission’s task to maintain ‘wide consultations with the interested parts’ (as proposed in the *White Book on*

²⁵ The focus of Article 36 is on the ‘Transparency of the proceedings of the Union’s institutions’. It affirms that ‘In order to promote good governance and ensure participation of civil society, the Union institutions shall conduct their work as openly as possible.’, that the Parliament shall meet in public and the Council too, but only when it is discussing a legislative proposal, and finally it guarantees access to EU documents for all Union citizens (CONV 650/03).

Governance), while what was previously the first paragraph of Article 34 is inserted in a section on representative democracy (Article I-45). The latest draft of the Treaty moreover adds a fourth paragraph which states that ‘A significant number of citizens, no less than one million, coming from significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens’ requests’ (CONV 820/03 and 797/03 Title VI, Article I-46). Although the feasibility of this Europe-wide collection of signatures is yet to be seen, this provision strengthens citizens’ right to propose legislation to the Commission. Moreover, it could have positive developments toward the promotion of a European civil society as it could favour the creation of broad alliances among civil society organisations, giving at the same time more relevance to national grass-root groups rather than European ones.

The first paragraph of Article I-46, ‘The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action’ (CONV 820/03 and 797/03), raises several doubts among civil society organisations. The first concern refers to the means that will be used: a forum only based on the internet may create social disparities due to the unequal distribution of internet access both within the EU members and between members and candidate countries²⁶. Doubts are also raised with regard to the criteria for defining a ‘representative’ organisation and the extent to which it will be possible to participate in the process of decision-making in the preliminary stages of initiatives when the term used is the Union ‘action’.

The second paragraph of Article I-46 is positive in that it recognises the role of civil dialogue in the Treaty. However, it was criticised by civil society organisations for not including any reference to a ‘structured’ civil dialogue nor to any feedback from the EU to civil society inputs. The text states that ‘the Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society’ (CONV 820/03 and 797/03). The issue of participatory democracy, and former Article 34 (now I-46) in particular, was discussed by the Convention during the plenary of 24-25 April 2003, but no consistent changes were made to the existing text, in spite of civil society criticisms. The Civil Society Contact Group²⁷ has declared its dissatisfaction with the treatment of participatory democracy in the draft Treaty for the restriction of appropriate means for consultation to the internet, the absence of a reference to a structured dialogue, and the emphasis on the social partners as representative associations, together with

²⁶ According to *Eurostat* May 2003, the level of internet access in the households of the 15 EU members was 40.4% in 2002 (36.1% in 2001), with the highest levels in the Netherlands (65.5%), Sweden (64.2%) and Denmark (64.5%) and the lowest levels in Greece (9.2%), Spain (29.5%), Portugal (30.8%), Italy (35.4%), France (35.5%). The remaining EU members are slightly over the EU average. Internet access in the candidate countries is rather low: Czech Republic 11% in 2001, Estonia 9.8% in 2001, Hungary 2.6% in 2000, Lithuania 3.2% in 2001, Latvia 2.3% in 2001, Poland 7.7% in 2001, Slovenia 24% in 2001, Cyprus 20% in 2001, Malta 11.2% in 2000, while no data exist on the other candidate countries.

²⁷ Members of the Civil Society Contact Group are the platforms/sector groups of the four large NGO families - environmental (Green 8), social (Social Platform), developmental (Concorde) and human rights - plus the ETUC.

regions, and local authorities, while civil society is added without specifying what is meant by this broad concept²⁸.

A recognition and promotion of the role of the social partners at the EU level is included in Article I-47 of the Treaty (CONV 820/03 and 797/03), specifying a respect for their autonomy and a consideration of the diversity of national systems. NGOs fear that their role does not enjoy an equal recognition to that of the social partners and feel that the Convention has made meagre efforts to promote their participation in the decision-making process. During the April plenary that discussed the articles on participatory democracy, NGOs' suggestions to Convention members have been unanimous in demanding that the Treaty should include a reference to structured civil dialogue. However, while some Convention members defended this point, the Presidium did not take on board these demands by including them in the text. Although the adoption of a structured dialogue is certainly not immune to problems, it was demanded by most NGOs participating in the Forum, which would have welcomed a more receptive attitude by the Convention particularly on the procedures which are directly affecting them.

At least two types of problems can be envisaged in a more structured consultation process, apart from the ones already discussed by De Schutter (i.e. domestication of civil society and dominance of private over public interests). The first has to do with possible criticisms to the EU institutions for selecting among civil society organisations those which are supposedly the most representative ones, but whose selection criteria have not been open to public deliberation, a decision that could be easily judged as undemocratic. The second problem points in the opposite direction from that indicated by De Schutter. Some commentators accuse the Convention of seeking to fit the 'fluid' and articulated nature of civil society into a structured network of organisations, the Forum, which has the privilege to be informed about Convention proceedings. They argue that this 'instrumental' character affects the relationship of the Convention with civil society in a way that is not respectful of the 'fluid nature of the latter' (Closa 2003a: 16). Both the filter of civil society's contributions through a Forum and the 'highly structured' public hearing in the plenary of June 2002 are described as 'inimical' to the 'chaotic premise' of an 'open-ended initiation' that would be most advisable during the listening phase of the Convention (Shaw 2002: 11). There seems to be a trade-off between the achievement of an extremely structured and well-organised public hearing and the generation of a genuine exchange of views between conventionals and civil society participants. As the words of a participant from the academic contact group make clear, there was 'no excitement and no real interplay between the Convention and the civil society representatives'²⁹.

That said, if a considerable number of NGOs and the ECOSOC (2001; 2000; 1999) support a more structured dialogue, the Convention should take their views on how to establish a more participatory democracy into more serious account, if it intends to turn into reality the rhetoric of listening to civil society. Besides, most NGOs are aware of the risks of institutionalisation and attach relevance to how the civil dialogue should be institutionalised. They deem important not to consider interest representation to be solely in

²⁸ Nicolas J. Beger, act4europe campaign coordinator, Secretariat of the Civil Society Contact Group (*Internet questionnaire*, May 2003, and 'Act4Europe Fax campaign on Participatory Democracy', May 2003 www.act4europe.org).

²⁹ Stanley Crossick. 2002. 'Involving civil society in the debate' Convention Intelligence, The Convention on the Future of Europe, www.theepc.be, 11 July 2002.

the hands of the Economic and Social Committee, but rather in ‘the broader realm of civil society as represented by NGOs, as well as trade unions and employers’ representation’³⁰. They have different views on whether the process should be open to all civil society groups or whether there should be a selection of organisations (representation via umbrella organisations as in the case of contact groups or the Social Platform), but they warn about the risk of including only Brussels-based groups³¹. They are in favour of a regular consultation of civil society and through clearly structured channels rather than occasional meetings with the EU institutions, and they propose several modes of selecting representative organisations³². Above all, they want to see the results of this dialogue with EU institutions, that should not just be an ‘alibi, as the current consultation is’³³.

Hidden obstacles in the selection of participants: how representative is the Forum?

Whatever will be the future development of the consultation process and its selection procedures, even the current openness of participation does not guarantee that any supposedly ‘undemocratic’ selection is not *de facto* occurring. A number of hidden obstacles have operated to select participants to the Forum and above all to the Hearings of the plenary session of the Convention in June 2002. The most evident obstacle is that the Forum is open only to those with internet access, thus excluding a rather high number of ‘web-illiterate’ European citizens³⁴.

Problems of representativeness emerge from the analysis of the organisations that contributed to the forum. The more than 500 organisations of civil society that participated in the debate on the future of Europe were divided in the forum website into 4 thematic categories: political or public authority (P); socio-economic (S); academic and think-tank (A); other, civil society, NGOs and schools of thought (O). The great majority of associations are of a European level. This is a second obstacle, as there is a ‘natural’ selection that favours organisations that are based in Brussels and are thus better-informed, better-situated and more acquainted with the EU institutional arena.

Some nationalities are better represented than others, with German and French in the lead, while other nationalities are practically non-existent, as in the case of Portuguese groups. There are very few associations from Greece, the Netherlands and the applicant countries. A possible explanation for the very limited number of associations from the candidate countries could be the fact that the forum is available to those who speak an official language of the EU, which may not encourage the participation of people from candidate countries (Krzeczunowicz 2003)³⁵. Moreover, although in the category described as ‘other’ there is a high number of social NGOs, some social concerns such as immigrants and asylum seekers are not explicitly represented. This raises the question of whether the weakest groups of European civil society have received a proper representation in the Convention that drafted the future European Constitution.

³⁰ Birgit Hardt, Ilga (International Lesbian and Gay Association) Europe, *Internet questionnaire*, April 2003.

³¹ Claire Godin, Chargée de mission Politique, ‘Equilibres & Populations’, 205, boulevard Saint Germain 75007 Paris, *Internet questionnaire*, April 2003.

³² See Forum website at http://europa.eu.int/futurum/forum_convention/organlist_en.htm#list

³³ Sophia Spiliotopoulos, Vice president of AFEM (Association des Femmes de l’Europe Meridionale) president of EWLA (European Women lawyers Association). *Internet questionnaire*, June 2003.

³⁴ See footnote 26.

³⁵ Pawel Krzeczunowicz, Polish NGO Office in Brussels, *Internet questionnaire*, April 2003.

As for organisations grouped under the academic and think-tank category, they appear to represent a rather conventional and institutional sector of the European cultural world. The more alternative and radical cultural, artistic, and political voices are missing from the forum. Thus, the dominant frame traced in the discourse of the Convention, described as a tendency to privilege a conventional and institutional perspective, is a fifth hidden obstacle that can exclude from the debate a great number of actors, discourses and issues which are more unconventional and not institutionally focused, operating a selection among existing organisations of civil society.

A sixth hidden obstacle can be identified in the selection of the contact groups. The Convention left this process to the organisational capability of the participants, thus biasing the process to the advantage of the better-organised groups and promoting informal networking that presupposes a prior knowledge of the EU institutional environment. On the 24 and 25 June 2002 a Plenary session of the Convention was ‘devoted to civil society’ (CONV 48/02). Previous meetings of the different groups took place between 10 and 18 June 2002 (CONV 120/2 of 19 June 2002; CONV 79/2 31 May 2002; CONV 85/02). These were aimed at discussing preliminary issues, establishing contact groups (umbrella organisations grouping similar associations) in charge of making contact with conventionals and which, according to the Convention, had to represent ‘major sectors of interest’, and selecting representatives of civil society who had to speak during the plenary. The Presidium left the success of contacts to the ability of civil society to organise itself into contact groups. This procedure has the effect of favouring the most active groups, rather than those with a higher profile, and of promoting informal consultation with members of the Convention (Closa 2003a: 16), that greatly depends on the previously existing network of a given organisation and on its familiarity with the Brussels’ institutional world (this inevitably favours European-based associations over national ones).

The system to decide who was to speak at the hearings consisted of a process of ‘self-selection among participants of the working group meetings’. Ms Claire Godin from *Equilibres et Populations*, and spokesperson for the Development sector, expressed some satisfaction about the consultation of civil society during the June Plenary, although she also added: ‘...mais j’aurais préféré qu’un membre de la convention dirige un peu plus le choix des représentants du groupe de contact. A l’inverse, les gens se sont plus ou moins *auto-désignés*’³⁶. Mr Krzeczunowicz, from the Polish NGO Office in Brussels, described the consultation process as ‘a farce from an organisational point of view. Just a few weeks to prepare position papers, consult these with members, and then a rather strange system to decide on who is to speak. I spoke at the session on 24 June, but that was not because the Polish NGO Office in Brussels is a specially important NGO, but rather because there was a sense that there had to be someone from the candidate countries and I happen to be based in Brussels. So *it was being at the right place at the right time, not the importance of the message or of the organisations*’³⁷.

Participants from civil society have complained about a number of issues concerning the way in which hearings occurred. Physical space was insufficient to house all the groups present in the debates. Presentation time was reduced to five minutes for speakers of the

³⁶ Claire Godin, Chargée de mission Politique, Equilibres & Populations, 205, boulevard Saint Germain 75007 Paris, *Internet questionnaire*, April 2003.

³⁷ Pawel Krzeczunowicz, Polish NGO Office in Brussels, *Internet questionnaire*, April 2003.

seven groups and three minutes for the Academia and Think tank sector, due to the higher number of speakers designated to take the floor on the days of the plenary. Each group of representatives of civil society had in fact been assigned a total of twenty-five to thirty minutes to be divided among the various speakers during the plenary session. Time for the contact-groups to discuss their topics were also highly limited (i.e. the contact-group 'Culture' had one day to discuss art, heritage, church and religions, education and minority languages), with the further restriction of having to limit their comments to the institutional aspects. These problems limited the potential exchange of ideas that could have taken place between civil society groups and members of the Convention, leading some commentators to argue that hearings of civil society served merely as an 'alibi' for the Convention, having a window-dressing rather than a substantive function (Cassen 2002).

'Radical' issues from a 'domesticated' civil society. In spite of criticisms about the limits of time, space, and representativeness of civil society that characterised the hearing procedures, during the Convention's plenary session of 24 and 25 June 2002 speakers of each sector designated during previous meetings could make their voices heard on different topics. Issues discussed in the course of this meeting reflect a selection of some of the concerns of European citizens. Most of them have little to do both with institutional questions and with the neoliberal focus adopted by the EU in the last decades. Though very few representatives may be considered as expressing radical approaches, as they are generally representing middle-class moderate views, their demands are closer to some kind of social-democratic project of European society. Their concerns focus on substantive issues such as participatory democracy, gender equality and non discrimination, social rights and services of general interest, respect for the environment and human rights, education and cultural values, 'true subsidiarity', dialogue with civil society, eradication of poverty. Their discursive frames are based on the language of human rights, citizenship and democracy.

As Jo Shaw points out, 'there appears to be considerable dissonance between the immediate concerns of the majority of civil society groups concerned especially with the interests of vulnerable or minority groups, or with environmental protection, and the rather institutionally-oriented and legal category focused manner in which the Convention's work has been structured' (Shaw 2002: 24-25). The institutional frame of the Convention's discourse derives, according to Shaw, more from the Convention's own internal interests than from a receptive listening of civil society's concerns. The only institutional references that occur more frequently in the words of civil society representatives have to do with provisions that could ensure a better empowerment for the citizen, such as extending QMV and the Parliament co-decision powers, incorporating the Charter and extending its scope, institutionalising the civil dialogue, recognising the role of local, regional authorities and social partners, electing the President of the Commission through the European Parliament, and giving more powers to the Commission rather than to the Council as the latter is considered as not democratically answerable to any elected European assembly.

It has been argued that the voices that were heard in the June plenary were those of a domesticated civil society whose speakers were selected among Commission-funded organisations that some commentators described as the usual suspects saying the usual things (Closa 2003a: 16; Scott 2002). It was a clean and refined civil society that the Convention was prepared to listen to for the few minutes that were accorded to them. Indeed it was an extremely different congregation of people from the one that met in

Florence at the European Social Forum on the first week of November 2002 to debate alternative solutions for the complex questions posed by our globalised world. Rather than sending a delegation to Florence to listen to the concerns and perspectives of the more 'fluid' and 'dirty' civil society, conventionals felt more comfortable interacting with a pre-packaged civil society that would pose less problems for the project of Europe, whatever that is, that the Convention was drawing. One participant to the Forum argued that the Convention should have been a little more daring and should have invited some speakers from important organisations who may have been more controversial. The result of the 'cowardly' attitude demonstrated by the Convention, was, instead, that the 24-25 June meeting was, according to one participant 'very polite, very proper, very boring.' To which he commented, 'There is nothing wrong with the first two (although journalists were unhappy about it, with their stilted view of NGOs), but the boring bit was a shame. In effect, as some Eurosceptic Convention members rightly pointed out, it was Brussels talking to Brussels.' (Krzeczunowicz 2003)³⁸.

Main issues of the June Hearings. Keeping these limitations in mind, it is still worth presenting an overview of the main issues debated in the 24-25 June hearings as it may give an idea of the type of demands of the civil society groups that contributed to the Forum. The plenary was introduced by Mr. Dehaene and included reports by the Economic and Social Committee, the Committee of the Regions and Social Partners; reports from representatives of civil society whose organisations were divided into contact groups; and reports on the national debates taking place in the different member states and to which one member of the Convention from each country represented was invited to refer (CONV 48/02). The eight contact groups created to represent the views of civil society organisations that participated in the forum included the following sectors: social, environment, academia and think tanks, citizens and institutions, regional and local authorities, human rights, development, and cultural. Two demands were common to all contact groups: the first refers to the introduction in the Treaty of a legal basis for a regular dialogue with civil society (including a right to be consulted at an early stage in the framing of EU legislation); the second concerns an extension of the scope of the Charter and the incorporation of the latter in the Treaty, as well as the EU accession to the European Convention on Human Rights. As for the remaining issues, each group covered a different range, according to the specific matters that most affected them.

Representatives of the **Social** sector³⁹ expressed their concern for the dismantlement of the European social model stressing that all EU internal policies should be at the service of social development and demanded a more explicit recognition of the role of services of general interest in the Treaty and a derogation for them from competition rules. They also called for a reinforced Union policy on gender equality, making it 'an explicit objective of the Union' (CONV 167/02: 3), including a new Title on gender equality in the Treaty, and ensuring participation and representation in the institutions on a gender parity basis. It was also proposed that the EU should ensure freedom from discrimination for all European

³⁸ Pawel Krzeczunowicz, Polish NGO Office in Brussels, *Internet questionnaire*, April 2003.

³⁹ The following five representatives spoke on behalf of the Social Sector: Mr Alhadeff Ms Wilkinson, and Ms Sutton on behalf of the social platform; Ms McPhail representing the European Women's Lobby; Ms David representing the European Standing Conference of Cooperatives, Mutual Societies, Associations and Foundations. The meeting was chaired by Mr Klaus Hänsch.

citizens, and should include in the Treaty a commitment to combating poverty. A number of members of the Convention who were present at the debate supported civil society's demands for giving more relevance to social dialogue, maintaining the European social model, and incorporating the Charter into the Treaty.

Speakers of the **Environment** contact group⁴⁰ emphasised the need for prioritising environmental protection in the Union while maintaining the *acquis* on environmental policy, adding environmental rights to the Charter and abolishing the Euratom Treaty. Demands in favour of a reform of the common agricultural and rural policy (CARP) were also put forward in the direction of better transparency and accountability. During previous meetings, representatives of the environment group also proposed to add to fundamental rights the right of access to healthy food, the right to information, the right to a clean environment and clean water, the right to environmental services and to food free from GMOs. They suggested the introduction of the concept of animal welfare into the Treaty. Their approach sought to reconcile agricultural policy with sustainable development, ensuring biodiversity and land and water management, moving away from the aim of production and towards the aim of rural development (CONV 120/02, 19 June 2002).

EU institutions and democracy were the main issues covered by the **Academia and Think Tank** sector⁴¹ as well as the Citizens and Institutions sector⁴², chaired by Mr Amato and Mr Dehaene respectively. All representatives spoke in favour of the development of a more political Union, also capable of acting in the areas of foreign and defence policy and of taking decisions on political issues that reflected European citizens' expectations. The following proposals were put forward for reforming the EU institutions: increasing the use of qualified majority voting and the co-decision procedure, giving the European Parliament the task to elect the President of the Commission, opening the Council legislative debates to the public, and reinforcing the Commission's executive role and authority to monitor the implementation of subsidiarity. An increased participation of European citizens in the EU decision-making process was at the core of requests concerning the Union democracy. The European Ombudsman, Mr Söderman, recommended that, in order to facilitate citizens' respect of their rights, the new Treaty should include a chapter on citizens' judicial and non-judicial means of redress in cases where their rights were not respected, including fundamental rights.

⁴⁰ Representatives of the Environment sector, whose session was chaired by Mr Katiforis, were the following: Mr Hallo, representing the European Environment Bureau, Mr Spooner, representing the European Agricultural Convention, and Ms de Jonckheere representing the European Landowners Organisation.

⁴¹ Speakers representing Academia and Think Tank were the following: Mr Jean-Victor Louis (AGORA and European University Institute); Ms Florence Deloche-Gaudez (Political Science, Paris); Ms Kirsty Hughes (Centre for European Policy Studies/European Policy Institutes Network- CEPS- EPC); Mr Stanley Crossick (European Policy Centre –EPC); Ms Pascale Joannin (Robert Schuman Foundation); Mr Antonio Rodota (European Intergovernmental Research Organisations EIROForum and European Research Advisory Board – EURAB); Ms Teresa Freixes (Women Citizens of Europe Network –RCE); and Mr Karoly Lorant (Institute for Economic Analysis and Informatics, Hungary ECOSTAT).

⁴² Representatives of the Citizens and Institutions sector were the following: Mr Fernand Herman (Federalist Voice); Ms Alison Weston (Young European Federalists); Ms Charlotte Roffiaen (Active Citizenship Network- Forum of Civil Society); Ms Maria Miguel Sierra (European Network Against Racism); and Mr Pawel Krzeczunowicz (Polish NGO Office in Brussels).

The **Regional and Local Authorities** sector⁴³ emphasised the need to give the Committee of the Regions the status of an EU institution, with a right to bring actions before the European Court of Justice. Representatives of this sector, who spoke in favour of strengthening the EU's institutions and generating policies with a strong territorial impact, demanded the inclusion of territorial entities in the EU decision-making process at an early stage of legislative drafting and suggested a strict control of the subsidiarity principle. They proposed the inclusion in the Treaty of the 'principle of connexity', which refers to the request that 'the legislator should assume the financial consequences of its decisions or give territorial entities, when they had to apply the decisions, the means to do so' (CONV 167/02: 10).

Representatives of the **Human Rights** sector⁴⁴ stated that 'it was not enough to protect human rights by sound texts (such as the Charter of Fundamental Rights or the ECHR), but that this also required the proper functioning of the institutions (more transparency, notably on internal matters and accountability), effective control by parliaments (national and European) and by the Ombudsman, respect for the principle of gender equality and greater involvement of civil society' (CONV 167/02: 11). Finally, they recommended the recognition of the Union's legal personality.

Speakers of the **Development** sector⁴⁵, chaired by Mr Christophersen, proposed the inclusion in the Treaty of the principles of sustainable development and an adequate social protection, and also recommended the eradication of poverty as an element of the EU's external policy. A clearer definition of the Member States' and Union's competences would, according to the speakers, improve the effectiveness of the EU's development policy. It was also stated that gender equality should be guaranteed in all development programmes and that a guide could be provided on how to apply gender mainstreaming to development policies. More investment in education in third-world countries was also proposed. Finally, it was required that business based in the EU should be prohibited from involving in child labour abuse in developing countries.

Representatives of the **Cultural** sector⁴⁶ suggested the inclusion in the Treaty of some of the fundamental values on which European societies are based such as 'human dignity, the promotion of peace and reconciliation, freedom and justice, solidarity and sustainable development, tolerance, democracy, human rights, the rule of law, respect for minorities

⁴³ Speakers of the Regional and Local Authorities sector, whose meeting was chaired by Ms Palacio, were the following: Mr Heinrich Hoffschulte (First Vice-President of the Council of European Municipalities and Regions); Mr Anders Gustav (Member of the Bureau of the Conference of Peripheralmaritime Regions of Europe); Mr Lambert Van Nistelrooij (Vice-Chairman of the Assembly of European Regions); Ms Eva-Riitta Siitonen (President of Eurocities); Mr Jens Gabbe (Secretary-General of the Association of European Border Regions); and Mr Manfred Dörler (President of the Voralberg Parliament, for the Conference of Legislative Assemblies of the Regions of Europe CALRE).

⁴⁴ The following people represented the Human Rights sector: Mr Dick Oosting (Amnesty International); Ms Laëtitia Sedou (OMTC World Organisation Against Torture-Europe); and Ms Sophie Spiliotopoulos (Association of Women of SOPuthern Europe AFEM and EWLA). The hearing was chaired by Mr Vitorino.

⁴⁵ The following speakers represented the Development sector: Mr Simon Stocker (Eurostep); Ms Claire Godin (Equilibres et Populations); Ms Meral Gezgin Eris (Economic Development Foundation).

⁴⁶ The Cultural sector, whose meeting was chaired by Mr Peterle, was represented by the following people: Mr von der Gablentz (Europa Nostra) and Ms Chabaud (European Forum for the Arts and Heritage) for cultural cooperation, art and heritage and education; Mr Jenkins (Conference of European Churches) for churches, religion and beliefs; Mr Brezigar (European Bureau for Lesser-Used Languages) for languages and minorities.

and cultural diversity' (CONV 167/02: 13). Speakers also insisted on the need to give the EU a greater role in education as a means to construct a people's Europe. It was pointed out that cultural and educational activities could not be seen only from a commercial or a competitive perspective, but instead national public policies on culture should be considered as part of services of general interest (the particular nature of culture policies should be taken into account in Article 87, State aids, and Article 133, common commercial policy). Finally, speakers demanded that the principle of cultural diversity should be included in the Treaty.

In spite of the moderate character of the 'domesticated' civil society that spoke at the plenary, the 'dissonance' of their voices from the Convention's agenda is noticeable. The civil society sends a clear message to the Convention by drawing a vision of Europe more citizenship- than market-oriented, more open to listening to people's concerns and willing to maintain the European social model. In this respect, civil society is more in agreement with the conclusions of the working group on Social Europe, the 'Cinderella' of all working groups of the Convention, as Shaw described it (2003), due to its later creation, the obstacles posed to it, the short time it had to meet and deliberate, and the fact that, as the Convention explicitly admitted, its deliberations were not taken into account in the preparation of the draft articles 1-16 of the constitutional text that was presented at the end of January (CONV 528/03). The story of the 'affinity' between civil society and the WG on Social Europe might end with two Cinderellas, if, as participants fear, results of the consultation will not be taken on board by the Convention⁴⁷.

Listening to the citizens? An eye-witness report of national debates. A final aspect of the process of listening to civil society that I want to stress concerns the extent to which 'national debates' can be considered reliable sources of consultation of the voices and demands of civil society in the member states. National debates were listed among the initiatives that governments had to undertake in order to collect citizens' demands among the population of the different member states. However, as these initiatives were left to the discretion of member states without any indication nor any monitoring of the manner in which they were implemented, there is a strong likelihood that many of the activities listed in the reports from national debates may be of a window-dressing nature. The Italian report of its national debates with civil society lists among the top initiatives undertaken to listen to the views of young people a conference that took place in Palermo on 14-15 June 2002 (CONV 110/02)⁴⁸. By chance, and only due to my personal contacts with one of the speakers invited, I found myself participating in this event, unaware of the fact that I was witnessing (as a participant observer) what I later discovered to be the Italian 'national debate (with young people) on the future of Europe'. After hours of listening to 'mature' politicians displaying all their rhetorical abilities to tell us how much they cared about listening to what young people had to say about Europe, the few young men and women who were invited to speak at that conference (myself included) were given less than 3 minutes each at the end of the session to communicate their 'vital and refreshing' opinions on the future of Europe to a predominantly adult (and male) public. If the remaining

⁴⁷ Nicolas J. Beger, act4europe campaign coordinator, Secretariat of the Civil Society Contact Group, *Internet questionnaire*, May 2003.

⁴⁸ The title of the Conference organised by the Provincial Institutions of Palermo was 'Giovani insieme per costruire l'Europa del futuro'.

activities listed in the Italian report are in any way similar to the window-dressing exercise that I observed in Palermo, my doubts about the genuine nature of national debates with civil society will be sadly confirmed.

Has the Convention been successful in reaching civil society? The process of consultation of civil society in the Convention's debate on the future of Europe has had its undeniable positive elements. The openness of the procedure has ensured a great participation of organisations that have sent their inputs via the Forum. Despite the numerous criticisms about the excessive or insufficient structuring of the Forum and hearings, the more or less domesticated character of the consulted civil society, and the various hidden obstacles that limited groups' representativeness and steered the debate towards more institutional issues, civil society has put forward its own project of Europe. This goes in the direction of revitalising the European social model, defending the interests of vulnerable or minority groups, protecting the environment and promoting a more participatory democracy. In this respect, civil society can teach a lesson to a Convention closed within its internal institutionally-oriented debates and unable to propose a clear and coherent project of a political Europe that goes beyond the tacit acceptance of the EU neoliberal frame, a project that European citizens could identify with.

The answer to the question of whether the Convention has been successful in reaching civil society must necessarily be 'yes and no', as one member of civil society expressed it: 'It is successful in that Convention meetings are held in public and that there are few limitations (even in these times of increased security) to attend. It is also positive that the plenary sessions are transmitted on the internet, although this is not sufficiently advertised' (Krzeczunowicz 2003). The convention web-page is very good in that it is updated rapidly and correctly in terms of tabled amendments to the draft constitutional text and Forum contributions (Hardt 2003). Moreover, there has been some good interaction and exchange of ideas with members of the Convention at a personal level (Sophia Spiliotopoulos 2003)⁴⁹, depending on whether there are active Convention members who are happy to meet citizens (Godin 2003), or where there is a culture of consultation at a national level (Krzeczunowicz 2003). However, there was no official feedback from the Convention as such. It seems that, unless there is action by individual members of the Convention, there is no contact between the Convention and NGOs outside the Brussels ring road (Krzeczunowicz; Hardt 2003). Most of the civil society organisations present at the meetings and hearings are Brussels-based associations that do not necessarily have relevance among other civil society organisations on the ground or impact on people at large. Participants to the Forum have complained that the Convention, after setting up the Forum website and ensuring some form of regular contact through the Economic and Social Committee, has done nothing to make itself better known or to advertise its existence (Krzeczunowicz 2003).

Civil society at large has not been successfully reached by the Convention, as shows the fact that the overwhelming majority of civil society at a national and regional level knows very little about the activities of the Convention and has been involved in a very limited way (Hardt 2003). Something has not worked in the involvement of the wider civil society, with the result that the most successful aspect of the 'participation' of civil society was the

⁴⁹ Sophia Spiliotopoulos, Vice president of AFEM (Association des Femmes de l'Europe Meridionale) president of EWLA (European Women lawyers Association). *Internet questionnaire*, June 2003.

fact that debates and meetings were held in public. Organised civil society acted as an audience to the discussions with a few representatives occasionally playing as extras on the stage of the Convention.

A positive aspect of the consultation was that NGOs were consulted in the early stages of the Convention. However, as some Forum participants pointed out (Hardt; Savedra)⁵⁰, the only formal consultation of civil society was the one organised in June 2002, while it would have been better to do so on a more regular basis in order to establish a more profitable dialogue. Since consultation of NGOs was 'sporadic and irregular', it is doubtful whether their voice is really taken into consideration (Hardt 2003). Individual contacts with specific members of the Convention seemed to work better for NGOs than formalised consultation with the whole Convention, as associations managed to receive feedback from a few members of the Convention who showed interest for their demands (Godin 2003).

The passive role of civil society. Analysing the proceedings of the consultations and listening to some of the people who took part in the process, it can be concluded that the role accorded to civil society in the Forum of the Convention is, as Closa puts it, of a 'passive' rather than an 'active' nature. The former frames civil society groups as 'receivers of information' and 'audience' for the Convention, securing publicity for the Convention's proceedings but no capability to influence process and outcomes (Closa 2003a: 15-16). The latter, i.e., the active role, would value civil society groups as real actors of a dialogue in which their inputs are seriously taken into account. However, in none of the Convention documents is it possible to find a single mention of how civil society's contributions will be used nor is there any reference to the eventual feedback that contributors will receive on the part of the Convention. The passive role for civil society is another consequence of the attitude that I identified in the discourse of the Convention as 'listening without committing to an answer'. This attitude reveals, as Jo Shaw stated, that 'there remains a gap between the types of moves that the Convention has made towards receptiveness, including the Forum, the Hearing of civil society, and the Youth Convention of July 2002, and the creation of a genuine public sphere' (Shaw 2002: 25).

Conclusions

Civil society organisations are acquiring an increasingly emergent role in the European public sphere. They promote participation and social solidarity, enable social actors to express and formulate their opinions on the issues that most concern them in order to then address their demands to decision-makers. They are important for democracy due to their mobilisation styles based on taking social relations seriously, their capacity to open public discursive spaces, and their intention to make political and economic institutions accountable. For these reasons, civil society's effective exercise of its influence on institutional policy, through raising issues and addressing its political demands to decision-makers in the public sphere, is considered a measure of institutional democratic legitimacy. The need to confer legitimacy to an 'indirectly legitimate' body as the Convention on the Future of Europe and to the outcome of its deliberations may explain the rhetorical emphasis placed on the consultation of civil society.

⁵⁰ Paloma Saavedra, Presidenta/ President, Red Ciudadanas de Europa/Women Citizens of Europe Network Potosi, 4 3º B, 28016 Madrid Spain, *Internet questionnaire*, April 2003.

This paper has analysed, on the one hand, the Convention's discourse on civil society, and, on the other hand, the proceedings and, partially, the outcome of civil society's consultation through the Forum. The aim was to explore whether, and to what extent, there is a gap between words and intentions in the Convention's attitude towards civil society. This involved firstly, looking at the dominant frames in the Convention's discourse to discover to what extent they are 'civil society-friendly', that is whether they operate to include or to marginalise civil society's perspectives, issues, and actors. The research focused, secondly, on the experience of the Forum, to examine its representativeness, the proceedings used for consultation, the main demands addressed to the Convention, and the latter's success in reaching civil society, creating a real dialogue, and taking contributions on board in the Treaty.

I traced two general attitudes and two dominant frames in the Convention's discourse on civil society. A first general attitude was described as 'listening without committing to an answer'. This means that there has not been a real dialogue between the Convention and civil society, due to the fact that the Convention did not provide feedback to civil society's contributions and did not state to what extent (and whether) contributions of civil society groups would be taken into account. The second attitude refers to the rhetorical importance attributed to the concept of civil society as a means to attract people's support to the work and outcome of the Convention. The unfair treatment reserved to social policy issues, which were the main concern of civil society groups, the limited reference to a structured dialogue with civil society in the early (Articles 34-37, CONV 650/03 and CONV 724/03) and latest drafts of the Constitutional Treaty (Article I-46, CONV 820/03 and 797/03), and the unsatisfactory consultation proceedings reflect an incongruity between the rhetorical frames of policy makers and their 'action frames' (Rein and Schön 1994).

The two dominant frames identified in the discourse of the Convention are its institutional approach and the tacit adoption of a neoliberal focus to integration as the norm. The institutionally-driven Convention discourse acted to exclude debates concerning the nature of the EU project and the relevance of social policy for the future of Europe, discrediting the claim made by President Giscard that institutional issues should not precede substantive discussions. Thus, the Convention's focus on institutional questions marginalised actors, such as the organised and the wider civil society, willing to discuss more substantive questions about the type of EU polity that we aim for and the extent to which it will protect national public services, help to solve the precarious job situation, defend disadvantaged subjects from discrimination, safeguard social protection, ensure peace and a decent standard of living and other 'citizen-friendly' issues.

The neoliberal mindset of the EU operated as an implicitly accepted broad setting for discourses taking place in the Convention, supporting a general assumption about what is 'natural' and 'important' to be discussed, i.e. issues and perspectives that accept the neoliberal trend. This had the effect of marginalising actors and standpoints, such as organisations of civil society and the Working Group on social Europe, that challenged the dominant neoliberal paradigm with their contentious social issues. The unfair treatment reserved to social issues and the Working Group that represented them is a good example of this marginalisation, together with a certain unreceptive attitude of the President of the Convention.

Rather than mainstreaming civil society's demands into the political agenda, the Convention maintained an institutional and neoliberal focus, relegating to the Forum difficult substantive questions about the nature of the EU project and social policy issues.

The result is that the Convention missed an opportunity to not only construct a 'strong social Europe', but also to give representation to civil society's main concerns. The analysis of the Convention's discourse on civil society confirmed the existence of a gap between rhetorical and action frames, indicating that the Convention's emphasis on civil society is more a rhetorical device to gain legitimacy rather than a genuine democratic move towards the creation of a more pluralistic EU democracy capable of including mechanisms of active participation of citizens and social actors in the policy-making process that would complement and enrich representative democracy.

Article I-46 on participatory democracy can be considered as relatively positive, in spite of the fact that it does not match the expectations of civil society organisations in terms of a more structured dialogue and a feedback from the Union institutions. The Article recognises the role of civil dialogue in the Treaty and opens up the opportunity for citizens to propose legislation to the Commission, thus strengthening the role of civil society in the policy-making process. Another positive outcome of the Treaty, in terms of civil society's demands, was the inclusion of the Charter of Fundamental Rights in the Treaty, although it cannot be proved that civil society was the main responsible for it as most conventionals supported this initiative.

The experience of the Forum can be judged in both a positive and a negative manner. The positive aspects include the public character of meetings and debates, the openness of the procedure to participate in the Forum, the efficiency in which contributions and amendments were attached to the website, and the existence of some kind of interaction between civil society groups and individual members of the Convention. This shows that the Convention has made some efforts to facilitate the expression of civil society's demands and to expose itself to public accountability (due to the public character of its workings, apart from the meetings of the Presidium). This, however, is still far from the establishment of a real dialogue with the organised civil society and from the creation of a European public sphere. The absence of feedback from the Convention to civil society's contributions has led the Forum to be compared to a 'black hole' with no comment on whether and to what extent contributions would be taken into account. The lack of a regular and face-to-face (as opposed to virtual and online) consultation with civil society, apart from the June hearings, exemplifies the poverty of this 'dialogue'. Doubts have also been expressed about the representativeness of a Forum that includes an excessively high number of European NGOs (and few national ones), silences some nationalities, and ignores some subjects. Moreover, a number of hidden obstacles have acted during the June hearings to 'select' participants in the consultation. The result was the presence of a domesticated, Brussels-based civil society, that collected the better-organised, but not necessarily the most representative, groups and chose its speakers through a process of self-selection. Limitations of space and time for discussing an incredibly high number of rather dense issues can be added to the description of a more window-dressing than substantively democratic exercise of civic participation.

On the whole, the involvement of civil society in the workings of the Convention encouraged the creation of 'bonds' between participant organisations (Narayan 1999) and ensured a certain accountability of the deliberative workings of the Convention. However, the role of passive audience played by the organised civil society cannot be compared to the creation of a discursive space of democracy in Europe. The 'bridges' constructed between the institutional body of the Convention and organised civil society appear excessively

weak to support the weight of the wider European society whose consent is necessary to legitimise the outcome of the EU constitutional process.

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