

# A TURKISH VIEW ON THE EUROPEAN CONVENTION

## ON THE FUTURE OF THE EU

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### *Introduction*

European Integration, which is, so far, a success story both in its achievements and its uniqueness as a political entity, stands at a historical turning point on the verge of the 21<sup>st</sup> century. The prospects of enlargement and further integration provide challenges as well as opportunities for the European Union. How those challenges are met and opportunities are taken advantage of will determine the future prospects of the European Integration, which is currently under discussion within the framework of a Convention on the Future of European Union.

The main topics under discussion in the Convention, together with the structure and nature of this forum, have been stated in the Laeken Declaration on the Future of the European Union annexed to the Laeken Summit Presidency Conclusions.<sup>2</sup> Amongst those main topics are the following: a better definition and division of competence in the European Union; the simplification of the Union's instruments, including the founding treaties; the determination of legal status of the Charter of Fundamental Rights and the constitutionalisation of the treaties; and the role of the national parliaments in the European Integration<sup>3</sup>

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<sup>2</sup> See Laeken Declaration on the Future of the European Union annexed to the Laeken Summit Presidency Conclusions; [www.europa.eu.int/council/off/conclu/index.htm](http://www.europa.eu.int/council/off/conclu/index.htm).

<sup>3</sup> For the "Future of the Europe Debate" which has been going on since the Nice Summit of 2000 see, [www.europa.eu.int/futurum/index\\_e.htm](http://www.europa.eu.int/futurum/index_e.htm); [european-convention.eu.int](http://european-convention.eu.int). Moreover, for academic articles on the internet on the Convention and European Integration in general see, for example,

One of the most urgent and important of those challenges faced by the Union, which also constitutes one of the main topics of discussion as stated by the Declaration, is to bring the European Union closer to its citizens, while strengthening the efficiency and effectiveness of the institutional mechanism of the EU. It is argued here that underneath all the issues, which are to be dealt with by the Convention, lies the need to remedy the democratic deficit, without destroying the existing balance between the supranational and intergovernmental, democratic and technocratic features of the institutional mechanism. Thus, in this article I will first briefly analyze the institutional mechanism of the European Integration.

Secondly, the main problem that the European Integration faces today, that is the relative lack of support from the peoples of Europe, which constitutes the real democratic deficit and legitimacy problem, will be explored, together with its roots and its remedies, which are being discussed by the Convention. It will be argued here that all the reforms proposed by the Convention and presumably to be adopted by the Intergovernmental Conference in 2004 will be aimed at bringing the European Union closer to its citizens and building up a “demos”, a concrete and devoted peoples of Europe who will constitute the citizens of the new polity; a quasi-federal but mainly *sui generis* European Union.<sup>4</sup>

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[www.jeanmonnetprogram.org/papers](http://www.jeanmonnetprogram.org/papers); [www.iue.it/PUB/rsc\\_fm.html](http://www.iue.it/PUB/rsc_fm.html); [www.eiop.or.at](http://www.eiop.or.at); [www.arena.uio.no](http://www.arena.uio.no); [www.mzes.uni-mannheim.de/publications/wp/wp\\_start.html](http://www.mzes.uni-mannheim.de/publications/wp/wp_start.html) ve [www.mpp-rdg.mpg.de/public1.html](http://www.mpp-rdg.mpg.de/public1.html).

<sup>4</sup> On the methods and need for creating a European “demos” for the new polity called European Union and on the legitimacy issue see for example LAFFAN, “The Politics of Identity and Political Order in Europe”, *Journal of Common Market Studies*, Vol:34, 1996; OBRADOVIC, “Policy Legitimacy and the European Union”, *Journal of Common Market Studies*, Vol:34, 1996; WEILER, *The Constitution of Europe “Do the New Clothes Have an Emperor ?”*, Cambridge University Press, 1999; WEINER-DELLA SALA, “Constitution-making and Citizenship Practice-Bridging the Democracy Gap in the EU”, *Journal of Common Market Studies*, Vol:35, 1997.

In this context, emphasis will be given to the legal status of the Charter of Fundamental Rights in order to demonstrate that the preparation and adoption of this document is mainly aimed at bridging the gap between the EU and its citizens.

### *The Institutional Structure of the EU and the Democratic Deficit*

The institutional structure of the European Integration has been mainly based on a *sui generis* mixture of supranational and intergovernmental elements, which is called the Community method.<sup>5</sup>

In this context, a European Commission, a bureaucratic, independent and supranational body, has been created with the exclusive power to prepare and submit legislative proposals and act as the administration.<sup>6</sup> The commission is composed of technocrats from all member states who are appointed by common accord of the member state governments and the approval of the European Parliament. However, the commission can only be dismissed by a vote of censure by the Parliament, not by the member states. The commissioners take an oath on their impartiality and independence from all national interests, and the Commission as a whole has no political agenda apart from furthering the integration process, which in turn might be argued to undermine its democratic legitimacy. All these rules and principles ensure the impartiality and independence of the Commission vis-à-vis national interests, as well as distancing it equally from all economic and social interests.

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<sup>5</sup> For further information on the institutional structure of the Union and the “Community Method”, see for example, WALLACE-WALLACE, *Policy Making in the European Union*, 4<sup>th</sup> Edition, Oxford University Press, 2000, pp.3-37.

<sup>6</sup> However, it should be pointed out that in the pillars relating to political integration, that is the Common Foreign and Security Policy and the Justice and Home Affairs pillars of the EU, the Commission does not enjoy this exclusive power; see the Treaty on European Union.

The European Parliament, on the other hand, has constantly increased its powers and transformed its structure compared to what had been laid down in the original treaties and has become a co-legislature together with the Council of Ministers, especially as regards co-decision and assent procedures. The European Parliament is a supranational body which provides a means for the representation of the democratic interests of the European peoples in the integration process. It also provides democratic legitimacy, participation and control for the whole of the EU. The Parliament participates in decision-making procedures and has significant powers of democratic control over the Commission, whereas it only employs a limited amount of political and moral supervision over the Council of Ministers.<sup>7</sup>

The Council of Ministers is the body where the national interests of the member states are represented in the integration process. It is composed of government ministers and has the final say in the adoption of legally-binding legislation, and thus emerges as the most powerful of all EU institutions. Despite different voting procedures applied in the Council, the majority vote is nowadays becoming the norm rather than an exception in decision-making procedures. Although the Council has no power to dismiss the Commission, it has a role in its appointment and has powers to control the acts and actions of this institution to a certain extent.

The interaction and interrelations between those three main institutions of the European Union is the reflection of an integration method based on the representation of the national states and the democratic representation of their peoples and the compound of the supranational and intergovernmental features. In this context, the Council provides a forum for the representation of the nation states and their interests. The European Parliament

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<sup>7</sup> The Parliament does not participate in the decision making procedures in the 2<sup>nd</sup> and 3<sup>rd</sup> pillars, where it is only informed and consulted to a certain extent; see the Treaty on European Union.

provides the necessary democratic legitimacy, participation and control of the institutional mechanism. The Commission, although lacking in democratic legitimacy and political direction, ensures a balance between varying national, economic and social interests due to its impartiality and technocratic nature. Where decisions are taken by majority vote in the Council, the Commission also guarantees the representation of minority rights and interests by preparing proposals that are in the interests of the whole integration process.

All these features of the “Community Method” guarantee an institutional mechanism where national sovereignty, national interests, and supranationality, common interests, are all taken into consideration.

### *Democratic Deficit*

It must be pointed out that one of the main issues of the Convention on the Future of EU is the democratic deficit, which has not been eradicated completely since the beginning of the integration process, despite all efforts. This problem is mainly due to the relative lack of democratic participation and control in the functioning of the institutional mechanism, which jeopardises the overall democratic legitimacy of the European Integration.<sup>8</sup>

There are various facets of the democratic deficit: Firstly, the democratic powers enjoyed by national parliaments at the level of nation states, such as the exclusive right to submit legislative proposals, are exercised at the EU level by the Commission, a mainly bureaucratic body. Furthermore, the European peoples and the European Parliament, as their sole direct

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<sup>8</sup> For further information on the democratic deficit in the European Integration see, for example, FEATHERSTONE, “Jean Monnet and the “Democratic Deficit” in the European Union”, *Journal of Common Market Studies*, Vol:32, 1994; LODGE, “Transparency and Democratic Legitimacy”, *Journal of Common Market Studies*, Vol:32, 1994; MEYER, “Political Legitimacy and the Invisibility of Politics: Exploring the European Union’s Communication Deficit”, *Jornal of Common Market Studies*, Vol:37, 1999; NEUNREITHER, “The Democratic Deficit of the European Union”, *Government and Opposition*, Vol:29, 1994; NEWMAN, *Democracy, Sovereignty and the European Union*, Hurst&Company, 1996.

representative, does not appoint the Commission on its own or amongst its own members, and thus the Commission lacks a democratic basis.

Secondly, the Council of Ministers which shares the decision-making power together with the Parliament, and has the final say in all binding legislation, despite being elected by the national parliaments, is not subjected to direct democratic control or accountability. The effectiveness of parliamentary control is weakened especially when the Council of Ministers decides by majority vote, and almost always behind closed doors, in order to facilitate concessions and compromises.

Thirdly, the decision-making procedures are not transparent,. The general public's awareness of and participation in those procedures are relatively lacking, because of the above-mentioned fact that decisions are usually taken behind closed doors at the Council.<sup>9</sup> Moreover, those procedures are very complex and complicated in nature; there are several variations on voting procedures, and there are various types of legislation.<sup>10</sup> These factors in combination not only render the whole mechanism vague and inaccessible for EU citizens, but also weaken its efficiency. Whereas the enacted legislation affects various aspects of the lives of the EU citizens, they inevitably feel overwhelmed by this enormously grand and complex mechanism which is distant and impenetrable.

Thus, it is argued here that for European citizens to support the further expansion of such a mechanism in territory, size and subject matter is not very likely, as they have difficulty

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<sup>9</sup> Nowadays transparency is the key word as one of the means for remedying the democratic deficit and increasing the democratic legitimacy of the integration process. Therefore, the Council is making efforts to make a lot of its work accessible to the European citizens. Votes on legislative matters, as well as the explanations of these votes are now automatically made public. The public has also been given some rights of access to Council documents and some Council discussions are transmitted audio-visually. This also facilitates the job of the national parliaments and pressure groups while supervising the activities of the ministers. There has also been certain amendments in the founding treaties; see articles 207/3 and 255/3 of the EC Treaty.

seeing its merits or identifying with its grand design. The results of the Irish referendum on the ratification of the Nice Treaty, the unfavourable public opinion towards enlargement into the East, or the discontent at the launching of the EURO as a single currency can be given as examples of this problem.<sup>11</sup>

European Integration was designed as an elitist project, with the support and participation of the masses deemed to be ancillary.<sup>12</sup> It was presumed that such support would automatically follow once the benefits and achievements of the European Integration started to effect the everyday lives of the European peoples.<sup>13</sup> However, it is argued here that as long as the European Union fails to make known its *raison d'être* and its achievements to the masses; or fails to ensure their active participation and sense of belonging to the integration process, such support might never materialise.

Below, one of the main topics of discussion of the Convention, namely the legal status of the Charter of Fundamental Rights, will be analysed briefly in order to give an insight into its significance and relevance to the future structure and nature of the European Integration as regards remedying the democratic deficit, thus bringing the EU closer to its citizens .

#### *Legal Status of the Charter of Fundamental Rights*

One of the proposed courses of action in order to bridge the gap between the European Union and its citizens would be the incorporation of the Charter of Fundamental Rights adopted at the Nice Summit and proclaimed by the European Commission, Council of Ministers and the

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<sup>10</sup> Those problems have also been pointed out in the Laeken Declaration on the Future of the European Union

<sup>11</sup> See the Eurobarometer for the degree of support EU receives from the European Peoples, <http://europa.eu.int/comm/dg10/epo/eb.html>.

<sup>12</sup> On democratic deficit and elitism in the European Integration, see for example FEATHERSTONE, "Jean Monnet and the "Democratic Deficit" in the European Union", *Journal of Common Market Studies*, Vol:32, 1994.

European Parliament, into the founding treaties in order to render a binding legal effect to this document.<sup>14</sup> As stated above, this is one of the issues being discussed at the Convention.

Such incorporation would inarguably provide a clear and effective system of protection of the fundamental rights and freedoms of the individuals vis-à-vis the EU institutions and the member states.<sup>15</sup> The need for such a clear and effective system has been reinforced by the aspiration to create a zone that ensures freedom, security and justice throughout the Union as stated by the Amsterdam Treaty.<sup>16</sup> Moreover, it is argued here that such incorporation would not only provide EU citizens with the effective means and mechanisms to enforce their rights vis-à-vis the EU institutions and the member states, but would also assist the Union in bridging the gap created between the EU and its citizens, which has been created by the complex and complicated legal texts, decision-making procedures, and practices of the European institutional mechanism. The incorporation of the Charter would enable EU citizens to be aware of their rights and the mechanisms to enforce them by referral to a concrete and easily accessible document.

The protection of common values and principles plays a key role in the restructuring of the EU within the framework of a Constitution, which would contain the Charter as a Bill of Rights and would increase the democratic legitimacy and efficiency of the Union, which would in turn strengthen the concept of belonging to the European Union and to the European

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<sup>13</sup> For a brief analysis of neo-functionalism theory and other integration theories in context of their relevance to the European Integration process see, ROSAMOND, *Theories of European Integration*, MacMillan Press, 2000.

<sup>14</sup> See the Charter at ue.eu.int/df/default.asp?lang=en; For further information on the preparation and adoption of the Charter see DE BURCA, “The Drafting of the European Union Charter of Fundamental Rights”, *European Law Review*. Vol:26, 2001.

<sup>15</sup> However, it should be pointed out that to this end it is also necessary for the EU as a whole to accede to the ECHR.

<sup>16</sup> See Article 2 of the Treaty on European Union on the objectives of the Union which states that “to maintain and develop the Union as an area of freedom, security and justice...” is amongst those objectives.

identity.<sup>17</sup> Furthermore, such a constitution would strengthen the allegiances of the peoples of Europe both to the Union and among themselves, which would in turn increase the support of the public both for enlargement and for further integration, which is deemed to be indispensable for the success, even the existence, of European Integration in the foreseeable future.<sup>18</sup>

However, it should also be pointed out that, the incorporation of the Charter into the Founding Treaties would not be sufficient in itself to bridge the gap between the EU and its citizens without the necessary reforms that would improve democracy, efficiency and transparency in the context of institutional reforms.

In fact, it can be argued that the incorporation of the Charter into the Founding Treaties, even the creation of such a document, can not significantly enhance the protection of fundamental rights in the European Union as the Charter itself does not go far beyond the European Convention on Fundamental Rights and Freedoms in its content. All the member states are currently parties to that Convention and its protocols. Furthermore, both the Treaty on European Union Article 6 and the European Court of Justice refer to this international convention and its interpretation by the European Court of Human Rights as a source for the protection of the fundamental rights in the European Union.<sup>19</sup>

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<sup>17</sup> On the opposing views on issue the of whether the European Union needs a “constitution” or not, see for example, HABERMAS, “Why Europe Needs a Constitution”, *New Left Review*, Vol:11, 2001 and CRAIG, “Constitutions, Constitutionalism and the European Union”, *European Law Journal*, Vol:7, 2001.

<sup>18</sup> See the study prepared by the Europe’s Future-Turkey Group, established in the coordination of the Economic Development Foundation (IKV) entitled, Contributions to the Restucturing Process form the Turkish Civil Initiative Perspective.

<sup>19</sup> For further information on the protection of fundamental rights in Community law see for example BROWN-JACOBS, The Court of Justice of the European Communities, 4<sup>th</sup> Edition, Sweet & Maxwell, 1994; COPPEL-O’NEILL, “The European Court of Justice : Taking Rights Seriously ?”, *Common Market Law Review*, Vol : 29, 1992; DAUSES, “The Protection of Fundamental Rights in the Community Legal Order”, *European Law Review*, Vol:10, 1985; SCHERMERS, “The European Communities Bound by Fundamental Human Rights”, *Common Market Law Review*, Vol: 27, 1990; USHER, *General Principles of EC Law*, Longman, 1998; WEILER-LOCKHART, “Taking Rights Seriously” Seriously : The European Court and Its Fundamental Rights Jurisprudence”, *Common Market Law Review*, Vol : 32, 1995.

Therefore, the main purpose of the preparation and adoption of an EU Charter of Fundamental Rights is an effort on the part of the European Union to show its citizens that it provides a high standard of human rights protection for them. Thus, it is argued here that the incorporation of the Charter into the Founding Treaties as a legally-binding document amounts to a mere public relations exercise on the part of the European Union, aimed at strengthening the allegiances of the European peoples towards the integration process.

### *Conclusion*

The incorporation of the Charter of Fundamental Rights into the Founding Treaties as a legally-binding document would inarguably be a step in the right direction to overcome the democratic deficit and to strengthen the democratic legitimacy of the Union. Firstly, it would constitute a step in the constitutionalisation of the founding treaties, which would further the integration process. Secondly, it would provide the citizens with a concrete, visible and accessible document which would help them to see this emerging polity as a source of rights and obligations, thus would strengthen the ties between the Union and its citizens and contribute to the identification of European peoples with the European Integration process.

However, the main challenge would still remain: to make the Union and its institutional structure function more democratically, transparently and efficiently. The European integration needs well-defined aims and objectives as well as efficient, transparent, and easily accessible means and mechanisms to realise those objectives in order to gain the full support of the European peoples able to identify themselves with this new polity. In order to achieve this objective, the citizens must be better informed of the aims, means and competencies of

the Union and this in turn requires simplification of the treaties, the acquis in general and the decision-making procedures.

Moreover, it is also vital to strike the right balance between democracy and efficiency, as the allegiances of European peoples can only be secured by the Union if the Union is deemed to be useful and successful by its citizens. Thus, measures which would bring the Union closer to its citizens without destroying the essence and merits of the existing institutional structure, such as the Community method, should be given priority while designing the future of the European Union.

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