

WRR

SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY

**THE EU CONSTITUTIONAL TREATY IN THE
NETHERLANDS**

COULD A BETTER EMBEDDING HAVE MADE A DIFFERENCE?

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1 INTRODUCTION

The devastating 'Nee' against ratification of the European Constitutional Treaty that was expressed by the Dutch electorate on 1 June 2005 is unlikely to have satisfied many. Naturally, it left the minority of those who would have liked to see the Constitutional Treaty entering into force disillusioned. However, also those who disliked the Constitutional Treaty were unlikely to be fully satisfied. For one thing, few among those opposing the Constitutional Treaty seemed to be motivated by their liking of the status quo as defined by the Treaty of Nice. Still, voting the proposed Constitutional Treaty down did not automatically lead to a (third) alternative. Indeed, much goes to suggest that the opposition towards the Constitutional Treaty was considerably divided on what an alternative should look like.

What is more, the fundamental disagreement that the referendum revealed between the will of the Dutch electorate and the Constitutional Treaty to which its government (and, indeed, the great majority of political parties) had willingly subscribed, is unlikely to sit easily with most people's expectations of the democratic process. In a proper democratic process one would have expected the politicians to be able to justify their position to the people and to convince them of the merits of the Constitutional Treaty. Or, alternatively, one would have expected the politicians to anticipate earlier in the political process that this Constitutional Treaty did not meet the wishes of the people. In any case, having spent so much political time and effort on a Constitutional Treaty only to find it being voted down in a referendum appears as a political waste and suggests that something must have gone wrong along the way.

The question to be considered in this paper is:

Might the rejection of the EU Constitutional Treaty by the Dutch electorate have been averted?

Three lines of response can be distinguished: a substantial, a procedural, and a contextual one.¹ In the first, substantive, line of argument, the crucial reason for the rejection of the Constitutional Treaty was its substance. From this perspective, the Dutch government signed up to a document that it should never have subscribed to, given that, on the whole or for certain key provisions, it was unacceptable to the Dutch citizens. In contrast, the procedural line of argument highlights how the making of the Constitutional Treaty has taken place out of the sight of most citizens and how they have had little to no opportunities to be informed about the Constitutional Treaty and even less so to influence it. In its most meager form, this argument emphasizes on the communication errors of the pro-Constitution-side in the

referendum campaign but, as the following analysis will reflect, I suggest that this line of argument is best explored by looking at the whole of the Constitution-making process. Finally, the contextual line of argument maintains that the rejection of the Constitutional Treaty had very little to do with the Constitutional Treaty itself, or even with European integration. Instead it submits that the referendum outcome reflected above all the political climate in the Netherlands, a particular discontent with the governing CDA-VVD-D66 content, or a more general political cynicism which is also evidenced by the electoral support for anti-establishment parties like the List Pim Fortuyn, the Socialist Party and Geert Wilders' Partij voor de Vrijheid.

The following analysis reviews the process of the making of the Constitutional Treaty through its various steps: the run-up to the Laeken Declaration (2000/2001), the European Convention and the Intergovernmental Conference (2002 - 2004), and the ratification process (2004/2005). For each of these episodes, it closely examines the role played and the positions adopted by Dutch politicians, as well as the involvement of the Dutch public. This chronological analysis is followed by a discussion that returns to each of the explanations and adds some observations on the Dutch experience with the Constitutional Treaty in comparison with that in other EU member states. The focus on of the Constitution-making process presupposes that (at least some) important explanations for the Dutch 'No' can be traced back to the contents or the making of the Constitutional Treaty itself. If the substantive argument is right, we should be able to identify issues on which Dutch politicians could have adopted a different line and indications of public demands on certain issues. If the procedural line is right, we should be able to identify moments at which greater interaction between the public and the politicians had been possible. A full examination of the contextual argument lies beyond the focus of this analysis on the making of the Constitution-making process, as it would require a full review of the Dutch political situation in 2005 (but see Mair 2006). Still, the analysis will touch upon several contextual aspects and on that basis in the conclusion also some observations on the contextual argument will be made.

The conclusion looks at the process as a whole and the dynamics it has undergone. Here the main question recurs again whether the deep disagreement between the political mainstream and public opinion on the Constitutional Treaty could have been averted. More particularly, it will be considered which were the crucial episodes in the elaboration of this dossier in Dutch politics and whether opportunities for a better social and political embedding have been missed.

2 DEFINING THE CHALLENGE: TOWARDS THE LAEKEN DECLARATION

The moment that the prospect of a European Constitution was put on the European political agenda can be located on 12 May 2000 when German Foreign Minister Joschka Fischer held his by now famous speech on the finality of European integration at the Humboldt Universität in Berlin. In his speech Fischer advocated the completion of the process of European integration through a number of radical, federalizing reforms that would only be able to succeed “if Europe is established anew with a constitution” (Fischer, 2000). At the same time, Fischer made a direct link between the reinforcement of the EU political structure as a “European Federation” and a fundamental clarification of the delineation of the EU competences from national competences. Fischer was not the first to speak about the future of Europe. What was distinctive however about his contribution was that he chose to present a constitutional outline based on the federal model, whereas at the time much of the contributions focused on much looser conceptions – governance, networks, variable geometry - that sought to meet the unique *sui generis* character of the EU (European Commission, 2001).

Fischer’s speech was widely covered in Europe and met with strong reactions. Dutch politicians were however less eager to respond to Fischer’s challenge (cf. Heldring in NRC 23/6/2000; De Volkskrant 1/2/2001). From the side of the government, there was little enthusiasm for Fischer’s call. It preferred a more pragmatic, policy-oriented approach to EU policies over a more comprehensive, constitutionalist approach. Of all government members, Dick Benschop, the State Secretary for European Affairs, seemed most tempted to engage in the debate, but also he preferred to reiterate his earlier views on a (non-constitutional) network-approach to Europe (NRC 25/5/2000; cf. VN 12/5/2001). Benschop and other Dutch commentators were moreover reluctant to support Fischer in any all too rigid delineation of EU competences like the idea of a EU Kompetenz-Katalog that had been floated by certain German Länder.

However, after the Treaty of Nice announced a new round of Treaty negotiations, the Dutch government started outlining its positions on the institutional issues involved in spring 2001. It published a memo on the future of Europe (Minister for Foreign Affairs, 2001), which was followed by a Benelux memorandum together with the Belgian and Luxembourg government (Benelux, 2001). The two documents very much endorsed a similar line:

- a) Endorsement of a comprehensive Treaty reform to result in a much simplified and better integrated constitutional treaty and a more detailed policy treaty.
- b) Insistence on a pragmatic and transparent distribution of responsibilities and powers between the Union and the member states;

- c) Demand for the strengthening of the Community Method and the powers of the institutions most closely associated with it, the Commission and the European Parliament.
- d) Endorsement of a Convention-like approach for the new Treaty negotiations with a clear mandate aiming at producing “options for revising the Treaties” rather than “ready-made solutions to the institutional issues it addresses” which would be the responsibility of the “brief IGC” following it.

Thus, in broad terms the Dutch government, and its Benelux partners, very much followed the line set out by Joschka Fischer (cf. Crum, 2003). Only some reservations to an outright federalist position might be discerned, like the Dutch government’s emphasis on the principle of subsidiarity and its insistence (contrary to Fischer’s call for a *finalité* of the integration process) that what the EU needed was “not a definitive blueprint, but a clear direction”, with sufficient flexibility towards its further development.

The two memos were generally favorably received in the media, even though it was observed that the vision could have been more outspoken (*Trouw* 9/6/2001; *NRC* 11/6/2001; *De Volkskrant* 11/6/2001; *De Telegraaf* 12/6/2001). The Dutch Parliament discussed the future of the Union in its yearly debate on ‘The State of the European Union’ on 17 October (TK 28005, nr. 14). The main positions of the government on the future of the Union debate were little contested. However, some specific concerns were raised about the proposed format of the future of the EU debate and, particularly, about the accountability of a Convention as a mixed-bag of politicians (Melkert, Balkenende, Middelkoop; cf. government’s response TK 21501-20, nr. 174). Outside of parliament, Jan-Peter Balkenende, then leader of the opposition, took the government to task for giving in too much to the skepticism of the Liberal/Conservative VVD. Instead, he argued, that the Netherlands ought to commit itself to a wholeheartedly federalist line as advocated by the German government (Balkenende in *NRC* 14/12/2001; cf. Verhagen in *FD* 13/6/2001).

On the other hand, in a commentary in *De Telegraaf* (16/6/2001) two editors expressed their skepticism about the ability of paper reforms to bring the EU closer to the citizens and to address their concerns, arguing

Citizens are afraid that the EU will cost them ever more money while it costs them political influence. Brussels appears to them mostly as an endless meeting carrousel which generally causes more burdens than benefits in their daily lives. The mistake of many of their leaders is that they make too little effort to remove that impression. Instead of taking the criticism seriously, it is often laughed away or disqualified as right-wing extremist.

Still, in the Eurobarometer public opinion polls of 2000 and 2001, Dutch public opinion is found among the most integrationist. In fact, in spring 2000 the Dutch top all other member states with 88% answering affirmatively to the question “Should the EU have a Constitution?” against 4% answering that it should not (Eurobarometer, 2000: 37). One year later this percentage has decreased to 70% (versus 15% that it should not), placing the Dutch still at a third rank behind Greece and Ireland (Eurobarometer, 2001: 40). Similarly, the Dutch top the list when it comes to endorsing majority decision-making in an enlarged Union (Eurobarometer, 2001: 62). More generally, by spring 2001, almost two-thirds of the Dutch were found to consider Dutch EU membership a good thing (third only to Luxembourg and Ireland) and trust in EU institutions was above average with large majorities tending to trust the EU institutions.

On the other side, however, the Dutch end up below the EU-average when asked about what role they would like the EU to play in their daily life in five years time. Here the 38% that would like the EU to play a more important role is as good as outweighed by the 36% that hope it will play a similar role and then there is 13% that would like the EU to play a less important role (Eurobarometer, 2000: 39). Also when it comes to interest in EU news, the Dutch rank among the last four member states with more than half paying little attention to EU news and up to a third paying no attention at all to EU news (Eurobarometer, 2001: 67).

In any case, Dutch public opinion was little aroused when it came to the European Council in Laeken where format and scope of the Treaty-revision process would be defined. Dutch media mostly focused on Prime Minister Kok’s chances of becoming the Convention’s Chair, despite him having indicated that he was not available for the job. Many commentators suggested that too late a change of heart left Kok eventually disappointed, but it was also suggested that his reluctance to put his candidacy openly was inspired by a deep skepticism towards the prospects of the Convention. In that sense Kok’s attitude aptly reflected the government’s attitude throughout the pre-Laeken period: slow and half-hearted.

Summing up, the pre-Laeken future of Europe-debate in the Netherlands can be characterized by the following features:

- Little appetite among the government parties for the constitutional debate and a preference for a more pragmatic, policy-oriented approach.
- However, when it came to a formal positioning, a communitarian (or even federalist) line was endorsed.
- A rather consensual climate without much contestation politically or among public opinion, even if with hindsight some stirrings of latent discontent might be discerned.

3 NEGOTIATING THE CONSTITUTION TREATY: CONVENTION AND IGC

The Dutch government showed itself quite pleased with the Laeken Declaration (TK 21501-20, nr. 179). It welcomed the establishment of the Convention under the conditions indicated. It also felt that its substantial concerns were well reflected in the mandate that the Convention was given. Prime Minister Kok appointed former Foreign Minister van Mierlo as the representative of the Dutch government in the Convention. The Lower House of Parliament delegated Labour Party MP Frans Timmermans (with alternate Hans van Baalen, later Jan-Jacob van Dijk) and the Senate delegated Christian-Democrat senator René van der Linden (alternate Wim van Eekelen). Furthermore, Dutch MEP Hanja Maij-Weggen became one of the members of the EPP-ED delegation.

3.1 Early Convention Debates

Van Mierlo followed the general government line but was given considerable leeway to develop his own strategy and emphases. His position became however more problematic when, after the turbulent elections of May 2002, a new government was formed of a coalition of Christian-Democrats, Liberal-Conservatives and the List Pim Fortuyn. In September 2002 the new government published a policy paper on its position in the Convention (Minister for Foreign Affairs, 2002). In many respects, the position of the Balkenende government remained close to that of its predecessor with emphases on the practical functionality of European cooperation. Above all, the government insisted on the importance of the Community Method with a key role for a strong Commission. It wanted to see the Community Method (Commission initiative, qmv and codecision) extended to issues of social policy, asylum and migration and it wanted the role of the Commission strengthened in the surveillance of the Stability and Growth Pact. It advocated a greater democratic interaction between EP and Commission but in turn also proposed to give the Commission the right to dissolve the European Parliament. On the other hand, it strongly opposed the idea of a permanent European Council President that it considered as a threat to the Community Method proposing instead a rotating six-monthly 'dual'-presidency.

At the same time, the policy paper noted some reservations on some issues. Thus it was reluctant to extend the Community Method to the domain of Criminal policy and also argued that within the CFSP intergovernmentalism was to prevail. While opposing the idea of a strict *Kompetenz-Katalog*, much emphasis was put on the reinforcement of the principles of subsidiarity and proportionality. The government also sought a reinforcement of the involvement of national parliaments, most notably through an early warning system on potential violations of the principle of subsidiarity and by raising the possibility of the reintroduction of the double MP-MEP mandate. Finally, the government was very reluctant

to see the EU Charter of Fundamental Rights being given more than a political (i.e. legal) status.

As the new government signaled its intention to increase its grip on the Convention debate, van Mierlo resigned as government representative as he saw no way to reconcile his own position with the government's stance. He was succeeded by Liberal-Conservative Gijs de Vries, a former MEP and junior minister. In the Convention, De Vries translated the government's attachment to the Community Method in the key objective of maintaining the balance among the Union's main institutions – the Council, the Commission, the European Parliament, and the Court of Justice. This call for 'a balanced institutional framework' was central to a paper that De Vries submitted to the Convention together with his colleagues from Belgium and Luxembourg on the Union's institutional structure (Benelux, 2002). The Benelux paper followed the communitarian line that had already informed their pre-Laeken paper. However, on many issues this paper was far more concrete. According to the Benelux representatives 'a balanced institutional framework' would require:

- A strengthening and politicization of the Commission whose President would be elected by the European Parliament.
- A drastic extension (especially in (former) third pillar issues) of the Community Method in EU legislation with the exclusive right of initiative of the Commission, Qualified Majority Voting in the Council and full codecision by the EP.
- A reinforcement of the strategic role of the European Council with some form of rotating Presidency instead of a permanent president.
- A systematic disentangling of the legislative and executive tasks in the Council with the legislative activities being presided over by the Commission and taking place in public.
- Increasing involvement of national parliaments in EU affairs but with safeguards that claims to national sovereignty unduly distort European decision-making.
- Fusion of external relations representative functions in a 'double-hatted' EU foreign minister.

The Benelux paper was to exert a lasting influence in the Convention. In particular representatives from smaller member states would endorse the plea for 'a balanced institutional framework' and, more particularly, a rotating EU Presidency in opposition to a permanent President to chair the European Council as proposed by the bigger member states. Notably, however, there remained an important difference between the Benelux including the Dutch and the majority of the other small and medium-sized countries. While the Benelux was above all committed to defining a well-calibrated balance between the EU institutions that would combine equal access with greater effectiveness, for other smaller states the desire to retain national controls over the decision-making process prevailed over the need to ensure its effectiveness. This difference of views became most concrete on the

issue of the composition of the Commission where the Benelux paper advocated a reduction of the Commission in order to reinforce its effectiveness, in contrast to the other small and medium-sized member states that would insist on having one Commissioner for each member states.

The two chambers of the Dutch Parliament had their own representatives in the Convention: the Lower House of Parliament delegated Labour Party MP Frans Timmermans (with alternate Hans van Baalen, later Jan-Jacob van Dijk) and the Senate delegated Christian-Democrat senator René van der Linden (alternate Wim van Eekelen). While these representatives in many respects endorsed the governments' line, they were if anything more integrationist, defying any reservations the government would raise. Thus the parliamentary representatives full-heartedly endorsed the election of the Commission President by the European Parliament and the legal incorporation of the EU Charter of Fundamental Rights (CONV 607/03).

The parliamentary representatives in the Convention actively solicited engagement with the Convention debate from their fellow parliamentarians through various means: newsletters, meetings etc. Response was however limited (cf. TK 28 473, nr. 158a/3). The majority of parliamentarians did not engage with the Convention's proceedings. This limited engagement can to some extent be explained by the communitarian consensus among the main parties. Thus rather than revealing deep, principled disagreements, the parliamentary debates that took place rather tended to concentrate on specific issues. For example, when early spring 2003 Parliament discussed the (caretaker) government's intermediate assessment of the Convention (TK 28 473, nr.4), the debate focused on issues like the desired status of the EU Rights Charter, the various visions of the values of the Union, the contested proposal of a permanent European Council President and the CFSP (TK Handelingen 2002-2003, nr. 49: pp. 3237-3265). The most outspoken dissenting voice was of Harry van Bommel of the Socialist Party who criticized the Convention for a heavy-handed centralizing strategy taking away important national prerogatives on judicial, foreign and defense policy, disassociating Union policy from the citizens and endorsing a neo-liberal economic ideology. Rather than extending qualified majority voting, van Bommel proposed the adoption of a strict catalogue of EU competences.

3.2 From the Convention to the IGC

As the Convention moved closer to its conclusion by spring 2003, de Vries as the Dutch government's representative embarked on what may be regarded as a two-track strategy. On the one hand he continued the Benelux cooperation that presented a set of concrete Treaty texts on the EU institutions that opposed the proposals of the Convention Praesidium (CONV

732/03). Basically, the Benelux proposals took issue with what they regarded as the Praesidium tendency to intergovernmentalise the EU through the reinforcement of the powers of the European Council and the establishment of a permanent President for that institution. Instead they proposed a more communautarian approach focussing on a strengthening of, above all, the Commission and the EP.

On the other hand, de Vries engaged in a number of *ad hoc* coalitions with other governments – be they big or small, euro-enthusiast or more sceptical – on selected issues.² While parliamentarians welcomed that the Dutch government thus did not play into a big versus small EU states antagonism, many of them were rather critical of the content of some of these bilateral initiatives – most notably the initiative with Sweden on the Union's budget but also some other ones on a.o. maintaining Council unanimity in the judicial field (cf. TK 28473, nr. 158c/8; TK 28 473: nrs. 158e/33).

In The Netherlands, the single big parliamentary debate on the Convention's work took place in a joint meeting of the parliamentary committees involved on 10 June (TK 28 473: nrs. 158e/33), just one day before the Convention entered its last round of protracted negotiations on the basic parts of its draft Constitutional Treaty. This debate was marked by a number of shifting coalitions. For one thing, the governing factions tended to adopt a more nuanced stance towards the government, where speakers from opposition factions, not least Labour speaker Timmermans, would make a more critical assessment of the strategy followed by the government. In fact, a lot of the debate focussed on the process with the general observations that the Convention debate had involved little more than the usual EU-suspects and that any intention to engage Dutch society had failed.

In substantive terms, the main divide emerged between more Eurosupportive factions insisting on the strengthening of the European Parliament and the Commission and more Eurosceptic parties that rather sought to secure national controls. At the Eurosceptic extreme, the left-wing Socialist Party and the right-wing List Pim Fortuyn formed a minority coalition advocating a moratorium on the transfer of policy competences from the national level to the EU. They were joined by the VVD and the protestant parties CU and SGP in advocating the preservation of national vetoes on key policies. At the other extreme, the (centre-)left parties GroenLinks, D66 and, to a slightly lesser extent, the Labour Party adopted a far more supranational perspective. In the middle the CDA played a pivotal role. This became particularly apparent when the CDA first brought the Eurosupportive coalition to a majority in endorsing the generalisation of qualified majority voting in the Council and full involvement of the EP in Union legislation, and then deserted to the more Eurosceptic coalition in opposing a motion advocating qualified majority voting on the specific issue of

the Multiannual financial perspectives. Also on the composition of the Commission, the CDA joined the more Eurosceptic camp that insisted on one Commissioner for each member state against PvdA, D66 and GroenLinks endorsing the government's preference for a reduction of the Commission. Notably, both in this latter case concerning the composition of the Commission as well as in its endorsement of qualified majority voting and EP involvement, the CDA faction helped a parliamentary majority to undermine the government's position.

However, the pro-anti integration cleavage was far from comprehensive as also other division lines came to the fore. Thus the Socialist Party would join fellow-progressives D66 and GroenLinks in seeking to increase EP-control (most notably over external EU policies) and ECJ oversight, but these fell as they failed to convince other parties. Another notable cleavage within parliament concerned the desirability to insert a reference to the Judeo-Christian tradition in the Constitutional Treaty. On this issue, the Christian parties (plus the LPF) saw themselves defeated by the majority of secular factions in parliament. In any case, coming as late in the negotiations as it did, the debate of the Dutch Parliament had little to no impact on the Convention outcome, which was to include a reduced Commission and a European Council President.

Already during the Convention, the Dutch government had indicated that in general it expected the Convention context to be more congenial to its interests than the IGC (TK 28473, nr. 30: 7). With the work of the Convention being concluded, the government thus departed from the position that the Convention result needed to be preserved as much as possible (Minister for Foreign Affairs, 2003: 5). In particular it was keen to prevent the institutional balance from being shifted more to the European Council at the cost of the Commission. At the same time, it identified a limited number of issues that it would like to see amended, including the addition of guarantees for equal access of all nationalities to the position of European Council President and the preservation of unanimity on the Multi-annual financial perspectives. The government indicated moreover that it would like to see the possibility of a reference to the Judeo-Christian tradition in the Constitutional Treaty's preamble considered and that it would like to see some recalibration of the use of unanimity and qmv (more qmv in social and environmental policy, less in criminal law). Furthermore, following Ecofin's refusal in November 2003 to impose sanctions on France and Germany for excessive deficits under the Stability and Growth Pact (SGP), the government pursued a reinforcement of these provisions in the Constitutional Treaty.

When agreement on the Constitutional Treaty was established in June 2004, the Dutch government showed itself pleased with the successful conclusion of the IGC (TK 21 501-20 en 29 213, nr. 252). It was happy to see much of the Convention proposals being preserved. At

the same time it considered much of its remaining desiderata sufficiently met: the Legislative Council was scrapped; unanimity on the multi-annual perspectives was restored; an acceptable compromise formulation of the surveillance of the excessive deficit provisions in the SGP was inserted; and declarations were added to secure equal access of all member states to the main EU positions and to ensure greater involvement of the EP in the European Council nomination of the Commission President.

3.3 Societal Engagement, the Media and Civil Society

Throughout the Convention politicians were keen to highlight the transparency of the process. Via the Internet it was possible to follow the debates that unfolded in the Convention through the extensive and timely publication of its agendas and notes, working documents and the contributions from its participants. Similarly, the Dutch government actively used its own EU-portal (www.europaportaal.nl) to provide information on the Convention debates specifically geared to the Dutch audience. All Dutch participants to the Convention also showed themselves readily available to contribute to public events (cf. TK 28 473, nr. 4: 26/7). Still, as was also asserted by the parliamentarians, never did in the Netherlands a genuine public debate emerge on the EU Constitution during the Convention and the IGC. In that light, parliamentary Convention representative Timmermans even came to recommend the consultative referendum on ratification as “a sanitary shock therapy”.

Dutch media duly followed the European Convention through its course, but it never became a real headline story. The opening of the Convention was widely covered, with the quality press dedicating several articles to the event and providing background analyses. The next half year, coverage was limited, to pick up again in Autumn when the Dutch government unveiled its strategy in cooperation with the Benelux partners. While the more popular press would limit itself to reporting the major moments, the quality press extended its coverage by focusing on issues where the Dutch position was at odds with that defended by others countries, most notably the Dutch opposition against the proposal of a permanent European Council President. When the Convention reached its final round of negotiations in spring 2004, media attention rose to unprecedented levels. Quality newspaper *NRC Handelsblad* covered the final debates in the Convention with more than 50 articles in June 2003. In contrast, Holland's most popular newspaper *De Telegraaf*, limited itself to eight articles on the Convention that month.

Many civil society organisations did monitor the Convention debate on those issues that might touch on their concerns. Generally, these concerns would involve rather specific, policy-related parts of the Constitutional Treaty. Few organisations really took a wider stake in the Constitutional Treaty. One notable exception to this rule was the Dutch business

association VNO-NCW who insisted on the importance of an effective institutional framework to ensure the well functioning of the internal market and for that reason strongly endorsed the government's emphasis on the role of the Commission. On the other hand, the unions, in the Netherlands most prominently represented by the FNV, closely monitored the work in the Convention working groups on economic policy and social policy. As the Convention steered clear of all too much ideological polarisation, the unions while recognising the generic changes proposed in the objectives of the Union, would express their dissatisfaction over the very modest changes adopted in social and economic policy (cf. Roozmond in *NRC*, 11/6/2003).

Together, business and unions (and social-economic experts appointed by the Crown) countersigned two advisory opinions of the Dutch Social Economic Council (SER) on the Constitutional Treaty to the government. The first report (SER, 2003/01) endorsed the federalist line pursued by the government, and underlined the importance of reinforcing the use of the subsidiarity principle. In the second report, the SER (2003/09) reiterated its call for additional safeguards to secure that EU legislation would observe the principles of subsidiarity and proportionality. Furthermore, part of the SER favoured the introduction of qualified majority voting on the multi-annual perspectives, which was vehemently rejected by the government.

Beyond the Dutch domestic debate, most of the more prominent Dutch NGOs would be associated with an EU-wide umbrella organisation (cf. van den Berg, 2006: 84ff.). Such European NGO federations would generally have their own experts who would engage directly with the Convention. Representatives of the European social partners (UNICE, ETUC and CEEP) and the European regions (through the Committee of the Regions) were actually given observer status within the Convention. Besides that a Civil Society Forum was set up parallel to the Convention to involve NGOs through eight thematic contact groups. Beyond these formal channels, and with the Forum falling short of the initial expectations of most involved, many NGO-federations relied on personal lobbying activities. Obviously, the extent to which Dutch NGOs actually could bear upon the influence exerted by the European NGO-federations varied from one to another. In general, though, the NGO representatives would take the lead given their distinctive experience with and insight in the minutiae of the negotiations. Still some distinctively Dutch influence may have been felt as among these NGO experts some Dutchmen figured prominently like Dick Oosting for Amnesty International and Ralph Hallo for European Environment Bureau, thus easing access for their Dutch subsidiaries. At the same time, also within NGO-networks substantial involvement tended to remain limited to well-established elites without reaching out to the grassroots.

3.4 Public Opinion

Public opinion across all EU member states was surveyed in September 2003, just after the conclusion of the Convention (Eurobarometer, 2003). As in many other EU Member States, by then of the Convention less than half of the Dutch population had heard of it (Eurobarometer 2003: 4). Also in other respects the Dutch position deviated little from the EU average. Although in the first poll the Dutch showed distinctively little interest in reading the draft Constitutional Treaty, in the second they fell again in line with the EU average (Eurobarometer 2003: 14). Around 70% of the Dutch endorsed the basic idea of a EU Constitution. Remarkably, a majority of the Dutch was inclined to welcome the idea of a European Council President; this in contrast to the idea of an EU Foreign Minister that received a more sceptical reception.

Notably, in the poll of Autumn 2004, the Dutch came out as most widely aware of the European Constitution. Also in terms of support for the draft Constitutional Treaty they still ranked among the top of all member states (Eurobarometer 2005a: 15). The Dutch endorsing the Constitutional Treaty tended to do so for reasons of an efficient functioning of the institutions, rather than that they believe that such a Constitutional Treaty is indispensable (Eurobarometer 2005a: 22). On the other hand, those opposing the Constitutional Treaty would not do so as an expression of general dislike of integration but rather for fearing a loss of national sovereignty (Eurobarometer 2005a: 28).

4 RATIFICATION

To have a consultative popular referendum as part of the ratification procedure of an EU treaty was an unprecedented initiative. Indeed the modern Dutch state had never seen any referendum before.³ However, the Dutch Constitution does not prohibit the use of a referendum and over the 1990's and early 2000's there had been increasing talk about having national referendums in the Netherlands. Notably, however, the initiative to submit the ratification of the EU Constitutional Treaty to a referendum in The Netherlands did not come from the government but from a parliamentary coalition of D66 parliamentarian van der Ham and his opposition colleagues Karimi and Dubbelboer of the Greens and the Labour party. In fact the main government partner CDA (together with the smaller Christian parties CU and SGP) opposed the referendum initiative and it was only due to the hesitantly given support of the VVD that the initiative law became adopted. The initiators of the referendum submitted that the referendum could serve to (Staten-Generaal, 2003: p.7/8):

1. increase societal support for the parliamentary ratification of the EU Constitutional Treaty;
2. boost political participation, on European issues in particular;
3. stimulate much needed public debate in The Netherlands on European integration.

Opponents of the referendum initiative argued to the contrary that the referendum was alien to the Dutch representative system and that the complexity of a European Constitutional Treaty did not lend itself to a simple dichotomous choice by the public.

After the signing of the EU Constitutional Treaty in October 2004, the First Chamber adopted the Referendum Law for the Constitutional Treaty by late January 2005. The law provided for a special independent Referendum Commission that determined that the Referendum would take place on Wednesday 1 June 2005 and that the question would be put as: "Are you for or against acceptance by the Netherlands of the Treaty establishing a Constitution for Europe?"⁴

4.1 The Campaign

The referendum forced all political parties to choose sides. Naturally, the three government parties that had been formally involved in the negotiation and the signing of the Treaty would support the yes-side. They were joined by the Labour party and the Greens. As these factions added up to 127 of the 150 seats in Parliament, there was little doubt about what the outcome would have been if parliamentary ratification would have sufficed. On the other hand, on the No-side the Socialist Party, the CU, the SGP, the List Pim Fortuyn and Geert Wilders could be found. Notably, however, most parties (but for the ChristenUnie and the SGP) indicated that regardless of the consultative character of the referendum they would honour its outcome even if it would be contrary to their own position.⁵

Despite its size in terms of parties, the Yes-campaign showed little coherence. Most notably, the government was slow to take the lead in the campaign, also because at the start it had little reason to expect a negative outcome. Within the government the coordination of the Yes-campaign was allocated to a special project team within the Ministry of Foreign Affairs. The government itself decided only to become actively involved in the Yes-campaign in the final three weeks before the vote (Goeijenbier, 2005). Up until then, the State Secretary for European Affairs was basically the only member of the government campaigning. Moreover, the government had great difficulty in reconciling its coordinatory role, which presumably required neutrality, with its substantial commitment to a Yes. Especially in budgetary respects it was felt that the government could not skew expenditures to one side or the other – even if in a desperate attempt to turn the tide in the final weeks before the vote an additional 3.5 million Euro was made available for the Yes-campaign. Enthusiasm to go out campaigning was also low among ministers. They did not attach too much importance to the issue and moreover disowned the referendum as a concern for parliament since it had initiated it (Giebels, Kalse & Versteegh, 2005).

Where the government *qua* government may have faced certain constraints, political parties on the Yes-side were generally reluctant to invest their limited personal and campaign resources on the referendum campaign. For the CDA the general reluctance towards the referendum instrument probably explained the limited commitment to the campaign. Also for the VVD with a lukewarm stance towards both the Constitutional Treaty as well as the referendum instrument, there was little enthusiasm to go out campaigning. In turn, however, pro-ratification parties in the opposition were inclined to leave the initiative to the government, realizing they themselves had little to gain by taking the lead (Giebels, Kalse & Versteegh, 2005).

Many of the established civil society organisations tended to support ratification of the Constitutional Treaty. However, few, if any, of them considered this issue important enough to launch a substantial campaign (cf. van den Berg, 2006: Ch. 4; Lucardie, 2005: 115). Many would argue that it was up to the government to take the lead before they would start moving themselves (Evaluatie Goeijenbier, 2005: 6). Typically, the FNV, the main labour union, while acknowledging that the Constitutional Treaty constituted “a step forwards” with regard to the rights of workers, refrained from giving a vote instruction to its members (www.eenbetereuropa.nl).

On the No-side, the Socialist Party, the CU, the SGP, the List Pim Fortuyn and Geert Wilders could be found. These parties were not directly more successful in forming a single block (cf.

Lucardie, 2005). However, they did show much more unequivocal commitment in entering the campaign. They also started their rally for the no-vote much earlier, which gave them an advantage throughout. This applied in particular to the Socialist Party, which has a reputation for its extra-parliamentary actions and adapted quickly to this type of campaign. In its slipstream the Christian Union was able to distinguish itself as the reasonable, No-party, and the LPF and Geert Wilders called upon their core segments of disgruntled voters.

Thus a big but half-hearted and divided Yes-camp faced a smaller but committed No-camp. As the campaign unfolded, the Yes-side failed to regain the upper hand, in particular because it was unable to communicate a clear, coherent and convincing message about the presumed merits of the Constitution. As the No-camp gained the upper hand in the campaign and in the polls, the Yes-camp was unable to rally a coordinated response and resorted to panic actions. This failure was exacerbated by the media that showed little interest in the arguments of the Yes-side and rather focussed on the campaign problems, internal disagreements and admissions of EU problems (Kleinnijenhuis, Takens en van Atteveldt, 2005). Thus, as much coverage as the Yes-side received – and overall this was more than the politically less prominent No-side – this was predominately negative. Once the credibility and sincerity of the pro-Constitutional Treaty elites was put in doubt, many of their attempts to appeal to the public only fuelled further opposition, a tendency that was skilfully exploited by the smaller parties campaigning for a ‘Nee’. Thus the way was paved for a major ‘Nee’ against the Constitutional Treaty.

4.2 The Voters

As can already be gathered from the preceding sections on the Convention, few citizens held from early onwards strongly entrenched views on the Constitutional Treaty. Dutch public opinion towards European integration is probably quite well characterised as ‘a permissive consensus’ (Lindberg & Scheingold, 1970); limited interest combined with a basic confidence in the benefits of the process). Even if by the early 21st century support for the EU was falling somewhat and some specific points of Euroscepticism could be discerned (Thomassen, 2005), few expected the overwhelming majority of Dutch citizens to actually turn against the Constitutional Treaty.

When, however, the ratification of the Constitutional Treaty was put to a referendum in the Netherlands on 1 June 2005, it was rejected by a majority of 61.5% at a turn-out of 63%. The 4.7 million ‘No’-votes (of a total of around 8 million at an unexpectedly high turnout of 63%) were cast by people from all across society and were motivated by a broad variety of reasons. The social division that displays the most unequivocal correlation with the No-vote was the level of education: while around 75% of those who had enjoyed no more than lower education

turned against the Constitutional Treaty, the two camps more or less balanced each other among those who had enjoyed higher education (peil.nl, 1/6/2005; cf. Dekker & Ederveen, 2005: 33; Eurobarometer, 2005b). Also individuals from high-income households were more likely to vote in favour of the Constitutional Treaty. Still, the figures suggest that opposition against the Constitutional Treaty was not exclusively concentrated among low-income groups, but reached well into the middle classes (peil.nl, 1/6/2005; cf. Dekker & Ederveen, 2005: 33).

In the light of the Dutch ‘pillarised’ past, it is quite striking that almost no coherent social blocks could be identified, surely none in favour of the Constitutional Treaty. Contrary to the past, citizens did not loyally follow the elite, but carved out their own stance (cf. *De Volkskrant*, 3/6/05: 2). Whilst the main political parties were all campaigning in favour of ratification, their followers were deeply divided. The government parties turned out to be distinctively unsuccessful in persuading their voters of the party line and also the pro-Constitution opposition parties PvdA and GroenLinks saw their electorate deeply split. Most dramatic was the case of the PvdA that saw more than 60% of its voters defect to the ‘No’-camp. In contrast, among followers of the smaller parties that campaigned against the Constitutional Treaty - the right-populist LPF, the traditional Christian parties (ChristenUnie and SGP) and the extreme left Socialist Party – the ‘Nee’-vote polled well above 80%. Or to look at this in a slightly different way, these parties – arguably SP and CU in particular – managed to convince a number of voters that by far exceeded their own electorate.

Table 1 Distribution of votes by party in Dutch Referendum

Voters close to		JA %	NEE %
Government Parties	(PRO)		
Christian-Democratic Appeal (CDA)		53	47
People's Party for Freedom and Dem. (VVD)		49	51
Democrats 66		51	49
Opposition			
Labour Party (PvdA)	(PRO)	37	63
Socialist Party (SP)	(ANTI)	13	87
Green Left (GL)	(PRO)	54	46

Source: Eurobarometer 2005b⁶

Indeed, rather than adhering to their political elites, voters regarded them with suspicion. As a report commissioned by the Ministry of Foreign Affairs observes:

Many voters consider their preferred political party to be more in favour of European integration than they themselves are. This discrepancy has probably increased in the months leading up to the referendum. [...] With regard to the influence of the cabinet on the public opinion, there even emerges a negative effect (Dekker & Ederveen, 2005: 31/2, own translation).

Notably, the one consistent finding of early polls of Dutch public opinion on the Constitutional Treaty is that many did not yet have an opinion and felt that they were poorly informed on the issue (Aarts & van der Kolk, 2005: Ch. 8). A month before the referendum a majority of the electorate was still undecided about what to vote (Aarts and van der Kolk, 2005: 151). The Eurobarometer Post-referendum survey suggests that almost a third of the Dutch electorate only made its mind up in the final week or even on the final day itself (Eurobarometer, 2005b). While the other EU member states that held a referendum (Spain, France and Luxembourg) displayed a similar pattern of popular indecisiveness, the Dutch electorate was decidedly the latest in determining its stance (cf. Eurobarometer, 2005b). Of the four referendum countries, the Dutch also showed themselves least satisfied with the campaign with two-thirds of them finding that debates on the Constitutional Treaty had started too late and 56% feeling that they failed to have all the necessary information by the time they had to cast their vote (Eurobarometer, 2005b).

As for the motivation to vote 'No', opinion polls suggest that it was not a vote against EU membership. As is also consistently indicated by various Eurobarometers, there is widespread support in the Netherlands for cooperation in the EU. Second, the specific contents of the Constitutional Treaty do not emerge either as the main object of the 'No'. Voters generally have little interest in the institutional issues that featured prominently in the text (Dekker & Ederveen, 2005: 35; Aarts & van der Kolk, 2006). No-votes were connected to particular EU issues, like the widely disputed introduction of the Euro and, to a lesser extent, EU enlargement. Still, in the end, for many the No-vote appears to be motivated by a more diffuse sentiment. As Aarts and Van der Kolk (2006: 246) put it: "many Dutch continue to support European integration, but the form it has assumed is disliked. The perceived costs are too high and the benefits too low". This interpretation is also supported by one poll that found 60% of the No-voters indicating that their vote had been motivated by the "feelings about the developments within the EU" (peil.nl, 1/6/2005).

5 DISCUSSION AND CONCLUSION

The preceding analysis should help us to assess various explanations for the rejection of the EU Constitutional Treaty by the Dutch electorate. This section first looks at the substantive issue, and whether the Dutch government should have negotiated a different Constitutional Treaty. What is most striking here is that throughout the different governments, the Dutch position appears to be marked by an ambiguity between traditional pro-integration, communitarian inclinations and a set of various specific reservations towards further integration. As of yet, no party seems to be able to articulate a political vision on European integration that reconciles these two orientations in a coherent way. The absence of such visions leaves any citizen who is no longer inclined to take the integration project for granted with little alternative but a general skepticism.

As regards the procedural argument, we find that the Constitutional Treaty only reached the Dutch public when it came to the referendum, but failed to engage them at any stage before that. The referendum led to an unprecedented debate on European integration in the Netherlands. At the same time, it appears that for many citizens this was too little and, especially, too late. The main choices on the Constitutional Treaty had already been made, and they were left with a take-it-or-leave-it choice. Notably, engagement in the process of the making of the Constitutional Treaty was restricted to a rather limited circle of politicians, and few of them managed to reach out to the wider public.

Finally, we should note that the making of the Constitutional Treaty coincided with a rather tumultuous period in Dutch politics, as also demonstrated by the major electoral shifts in the elections since 2002. Prominent in these shifts are certain widespread anxieties the socio-economic prospects of the Dutch in a dynamic world. While the Constitutional Treaty did not necessarily embody these anxieties, it did become to symbolize them. Furthermore, few of these anxieties were properly addressed by the politicians advocating the Constitutional Treaty. This reinforced existing sentiments of estrangement between the electorate and the political establishment.

5.1 Substance: Continuity in Ambiguity

As said, notwithstanding two changes of government, the Dutch position in the future of the EU debate is marked by a high degree of continuity. This continuity concerns above all the basic preference for strong supranational institutions that are regarded as guaranteeing the proper representations of all interests (big and small) and effective policy-making. In this 'communitarian' orientation we can recognize the original Dutch economic interests as a small, open and internationally competitive economy.

At the same time, throughout there is also a continuity in this basic orientation being challenged. For a start, there are specific issues on which the distinctiveness of the Dutch interest has led to reservations towards a communitarian approach, the most notable example being the Union's finances. The commitment to a communitarian orientation has also come to be qualified in some of the fields where the Union moves beyond the internal market, for instance in the sphere of criminal policy and also in the sphere of foreign policy. Indeed, a more general shift can be discerned from the emphasis on 'the institutional balance' between the EU institutions to a desire to retain or re-insert national controls, e.g. by retaining a Commissioner for every member state and by increasing the involvement of national parliaments. Regardless of domestic factors, such a shift can also be seen as a reaction to EU enlargement and the way this has changed the role of the Netherlands.

This combination of a general communitarian outlook that is however coming under siege has come to the fore under different veils. It is reflected in the two-track strategy that Gijs de Vries came to adopt in the course of the Convention, playing the communitarian card within the Benelux cooperation while enlisting *ad hoc* coalitions to express certain reservations. It is also expressed in the parliamentary debate where outright communitarian orientations confront more reserved positions. Notably such reservations are frequently expressed by the VVD. Indeed, as the VVD is the only party consistently in government throughout the Convention, we find that their main coalition partners – first the PvdA and later the CDA – have to tune down their communitarian inclinations.

Thus the Dutch input into the making of the Constitutional Treaty suffered from a certain ambiguity as its traditional communitarian outlook that relies on strong and well-balanced supranational institutions has come to be challenged by demands for more national controls (even if they threaten the efficacy of supranational decision-making). Indeed, the fact that substantial reservations have indeed come to be incorporated in the government stance raises doubts about how deeply rooted the communitarian orientation ever was. Rather than being deeply committed to the good of integration, most political actors approach it mostly on pragmatic and utilitarian grounds; once those practical reasons and advantages are put in doubt, little of the commitment to the communitarian principles remains.

While the traditional communitarian position of The Netherlands towards European integration has thus come to be compromised, there are few if any alternative visions to guide the Dutch position on European integration. As the reservations that are put forward appear to be selected in a rather *ad hoc* way, taken by themselves they suggest little of an alternative to the communitarian vision. With the possible exception of LPF or Geert Wilders, no party seems to be willing to systematically prioritize the defense of Dutch interests over the

effectiveness of European decision-making. However, none of them has so far has been able to articulate a coherent vision that reconciles the communitarian orientation with a set of nationalist reservations.

The ambiguity of the Dutch position on the Constitutional Treaty may go some way towards explaining the inability of the Yes-side to clearly articulate the presumed merits of the Constitutional Treaty in the referendum campaign. While by signing the Constitutional Treaty the government was formally committed to seek ratification, few of its members seem to have felt compelled to do so and the enthusiasm became even less when they had to do so in the context of a referendum campaign. However, beyond the government, this observation applies much more widely, to most of the Yes-side. Essentially, in many respects the Yes-side seems to have lacked conviction, as if it was not even itself fully convinced of the merits of the Constitutional Treaty. Had such a conviction been there and had the Yes-side been able to articulate it in a clear and coherent way, it might well have had considerable leverage on the public (that, as we have seen, started out rather open-minded towards the Constitutional Treaty and is generally convinced about the benefits that accrue to the Netherlands due to EU membership). The obvious comparison here is the Luxembourg referendum campaign where Prime Minister Juncker did put his head on the line and succeeded in securing an, admittedly narrow (57%), Yes.

To invoke international comparisons, the Dutch position has departed from the communitarian vision, like it still seems (more) intact in Belgium and Luxembourg. Instead it is searching for a more qualified position in which its interests in integration can be maintained with an adequate defense of its distinctive national interests. In this respect, there may be lessons to learn from the positions of medium-sized countries like Austria and Finland and the way they have come out of their debates on their belated EU accession. Or, highlighting the impacts referendums may have, one might turn to the experiences of Ireland or Denmark. Having joined European integration only at a later stage, decades after WWII, these countries have much less of a communitarian legacy. Instead the very move of acceding to the EU has generally been the subject of extensive debate and has led to the identification of certain specific conditions and concerns that serve as lasting, critical standards in the engagement of these countries with the EU. As a consequence, political representatives' involvement with EU affairs has taken on a more measured character, even if it does not prevent them from being EU leaders in certain respects, witness for instance Denmark's role on enlargement and the Irish success in concluding the IGC.

In a way this comparison suggests that, the Netherlands has missed a proper accession debate. Being one of the founding fathers of the process, European integration has tended to

be considered a good in and of itself. Too little have Dutch politicians and the public asked themselves what objectives integration is to serve and, indeed, where integration may indeed need to be restrained in the sake of specific national interests.

5.2 Procedure: A Constrained Debate

The second defining feature of the future of the EU debate in the Netherlands was, what I will call, its 'constrained' nature. The Constitutional Treaty only became a topic for public debate by the time of the referendum. Indeed, however one assesses the quality of the debate, never before had European integration been the subject of such a widespread debate in the Netherlands. Yet, as the surveys suggest, for many this debate came simply too late. What is more, by the time of the referendum, the whole debate was reduced to the absolute and dichotomous a take-it-or-leave-it issue.

Notably, as much as the Convention promised to be an open and public affair, its work aroused very little debate in the Netherlands and whatever debate there was took place in rather small circles. Partly this may be a reflection of the Convention itself becoming rather self-absorbed and focusing too much on technical small print. However, it is very striking how, throughout, the debate on the Convention in the Netherlands became an exercise for specialists. This already applies to Parliament where, notably, the debate never made it to the plenary and remained dominated by specialists. It also applied to most interest groups that tended to 'delegate' their contributions to their Brussels experts. Thus a vicious circle emerges in which political leaders show little interest in the institutional issues central to the Convention debate and leave it to specialists who take a disproportionate interest in detail, which again scares away the wider audience.

Thus, most of the Convention debate proceeded without engaging the Dutch public. As noted, even by the end of the Convention, less than half of the population had heard of it. What is probably even more important was that the general coverage of the Convention in the Netherlands was marked by a rather detached and passive attitude. The Convention was observed from a distance without a sense of engagement. While there was a recognition that the Convention proposals would eventually affect the Dutch, there was little of a sense of co-involvement in the process. What is more, to the extent that Dutch actors were engaged, most of them found themselves reacting to the proposals as they were set by the Convention leadership or, in some cases, by the big member states (most notably the proposal of a permanent European Council President).

Another issue is that political actors rarely succeeded in clearly laying out the issues at stake in the Constitution-making process for the public. As the debate became dominated by

questions about the various possible formula for majority voting and the exact number of Commissioners, few could still identify the underlying disagreements, for instance between more communitarian positions and the demand for national controls. This was all the more the case as parties engaged in shifting coalitions and were often themselves internally divided. What is more, parties often tended to address these issues in a distinctively technical way rather than in more principled terms that might have divided their constituencies. To the extent that a principled critique emerged (as for instance expressed by the SP and the LPF), it was disqualified in the company of specialists – and arguably disqualified itself – as simply adopting an anti-EU stance without outlining any concrete alternative. With such a focus on technicalities and parties failing to provide any clear ideological or principled pointers, the media are unlikely to take any substantive interest in these debates and also, partly as a consequence, public interest is likely to remain low.

Actually, in most if not all EU member states, the debate surrounding the Convention has been a constrained debate among specialists and mostly couched in technical terms. Even in Germany where Joschka Fischer's speech attracted responses from all across the political spectrum, deciphering the differences between the contributions soon required specialists. Indeed, the inability and/or unwillingness of national political parties to thematise the principled difference on European integration is a general feature of EU politics, as established parties are afraid of seeing their electorate divide on the issue (cf. Mair, 2000; Franklin & van der Eijk, 2004). A non-technical debate would appear most likely in countries with prominent elites (rather than marginal anti-establishment parties) articulating an alternative, generally more Eurosceptical, position from the political mainstream. A case in point would have been Great Britain where a referendum on the Constitutional Treaty would have pitted the Tories against the governing Labour party. Under such circumstances the risk is however that the EU question becomes completely overtaken by the government-opposition antagonism (cf. Menon, 2004). A better example may be the French case where prominent politicians within the mainstream parties (most notably L. Fabius) came to articulate alternative positions. Again, however, as these critical voices only came to the fore with the referendum in sight, the suspicion is raised that also in these cases considerations of domestic politics were at least as important as the issue at stake (cf. Ricard-Nihoul and Larhant, 2005).

In any case, for the debate on the future of the EU it would have been helpful if such alternative visions had been more strongly articulated whilst the Constitutional Treaty was still in the making, rather than by the time when it was up for ratification. Here again the examples to look at may be Ireland and Denmark. The big difference in these cases was that contrary to the Netherlands, where the referendum was a *novum* and was only officially

announced after the conclusion of the negotiations, in Ireland and Denmark constitutional provisions made it clear from the start that the Constitutional Treaty would be subject to a referendum. As politicians and the public could thus anticipate the referendum, this can be expected to have thrown quite a different (and a more intense) light on the negotiations, including wider engagement from politicians (also including non EU-specialists), the media and the public at large.

5.3 Context: A Broader Crisis of Political Confidence?

One can maintain that to a large extent the referendum outcome did not concern the Constitutional Treaty; whatever the substance of the Constitutional Treaty and regardless of the campaign strategy, the referendum was bound to issue in a 'No'. Instead other factors reflecting the more general political climate may be adduced. Thus, Anker (2005) claims that "the Nee was part of a much broader crisis of confidence between the political elite and the Dutch people". However, this claim fails to acknowledge that whatever broader issues may be at play, the Constitutional Treaty fitted them particularly well.

Much of the findings on the referendum result point indeed to two more general factors and their interplay: socio-economic anxieties and the dissatisfaction with political elites to properly address these in the context of the EU debate. The first one points to a generally increasing sense of socio-economic anxiety that reaches well into the middle classes and that expresses a 'fear of the future' (Cuperus 2005, invoking Van Kersbergen & Krouwel, 2003; cf. Anker 2005). Even if people might have wanted to recognise (some of) the achievements of European integration, many of them most certainly also associated integration with some of their social-economic anxieties of which they were acutely aware in the contemporary social-political climate: a sense of instability in their working life and a pressure to accommodate to a variety of external socio-economic forces that are beyond their control.

The negative sentiments associated with this anxiety were reinforced by the second factor, the fact that the public saw little of its own doubts recognised in the ease and conviction with which the dominant political parties put themselves behind the Constitutional Treaty. Even if knowledge of the EU Constitutional Treaty was low, public suspicions of Brussels in general had been growing, slowly but steadily, over the last years (Euro, enlargement etc.). Indeed, in some respects, politicians had even, willingly or unwillingly, fuelled such suspicions (cf. Kleinnijenhuis, Takens and van Attenveldt, 2005). As they failed to explain how the Constitutional Treaty would correct for the EU's problems, the Treaty came to be perceived as yet another dictate from Brussels, while costs of letting it falter were regarded as low.

5.4 To Conclude

Overall one can assert that the general public in the Netherlands has been little engaged in the debate on the future of the EU. Indeed, the EU in general, and institutional issues in particular, seem to arouse little interest. Even when it came to the referendum, much of the attention of media and public was dedicated to side issues that only tangentially related to the substance of the Constitutional Treaty (the campaign itself, the Euro, enlargement). Most notably, from the transnational debate on the speech by Joschka Fischer until the referendum, most of the future of the EU debate was perceived from a passive outsider perspective: something that went on outside the Dutch borders and did not involve any substantial Dutch engagement. Thus in the referendum campaign, the Constitutional Treaty appeared for many as a Brussels' dictate rather than as a common European achievement in which the Dutch had been fully involved.

In many respects this lack of engagement has been reflected and reinforced by the role of Dutch political elites. As important as, by any standards and general admission, the debate on the EU Constitutional Treaty may have been, no Dutch government or political party ever turned it into a top priority. It has been left to specialists and little effort has been made to present and play out the major political fold lines of the debate. Also civil society engagement was limited and of low political visibility, and whatever there was mostly involved co-opted elites ('usual, Brussels-associated, suspects'). As much of the debate got sucked into technical details, parliamentary contestation was limited in scope and intensity. In fact, politicians are liable to the accusation of consciously avoiding the politicisation of the integration issue as it threatens to divide their parties. As became quite clear during the referendum campaign, even the VVD oscillates uneasily between a more nationalist line and its loyalty to the communautarian project. At the same time, also PvdA and CDA know their electorate to be anything but unswervingly pro-integration. The consequence of this situation is that principled disagreements do not become clearly spelled out and this in turn inhibits media attention and public awareness.

That is not to say that there are no political cleavage lines. In fact, much of the Dutch positioning on the future of the EU debate is marked by an ambiguity between a traditional communautarian stance emphasizing the importance of well-calibrated and effective supranational institutions and the demand for national controls. However, while the foundations of the communautarian vision have come to be widely disputed, the demand for national controls so far fails to add up to a coherent and constructive vision on the Dutch role in the EU. In that light it is not only the rest of Europe that may feel to have been a disservice by the Dutch handling of the Constitutional Treaty, the Dutch themselves have also missed an opportunity to clarify their stance.

It is a farfetched claim that with a more articulate positioning and earlier engagement of the public on the Constitutional Treaty, a majority of the Dutch electorate would have voted 'Yes' in the referendum. Indeed, the analysis given brings to light many of the reasons why the debate took the course that it did. Still, an earlier and wider public debate in the Netherlands on the future of the EU might have allowed for a greater sense of engagement on the side of the Dutch public. It might also have served to force some of the underlying political agreements into the open. And, finally, it might have brought some more clarity to the ambiguity that has marked the engagement of the Dutch government in the future of the EU debate. However weak or strong these effects might have been, they would suggest that public and politicians could have been much more in line on this dossier than they turned out to be on 1 June 2005.

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NOTES

¹ Basically, the substantial argument corresponds to problems of 'output legitimacy' (legitimacy through policy results), while the procedural argument rather highlights problems of 'input legitimacy' (legitimacy through representation and accountability) as conceptualised by Fritz Scharpf (1999).

² With Spain on the working methods of the European courts (CONV 620/03 of 13/03/2003), with Sweden on the Union's budget (CONV 651/03), with France on the Commission (CONV 664/03 of 2/04/2003), with more Eurosceptic countries (UK, SW, EST, IRL et al.) on the Rights Charter (CONV 659/03 of 14/04/2003), and with Sweden, Finland, Estonia and the UK on Services of general interest (CONV 826/03).

³ However, in 1797 the Constitution of the Bataafse Republiek was object of a referendum, and rejected.

⁴ In Dutch: "Bent u voor of tegen instemming door Nederland met het Verdrag tot vaststelling van een Grondwet voor Europa?".

⁵ CDA and PvdA made their acceptance of the outcome conditional on a turn-out of at least 30%. The CDA required the majority against to be at least 60% before it would yield to it (Lucardie, 2005: 109).

⁶ An exit-poll by Interview/NSS (1/6/2005, commissioned by the ANP) basically yields the same pattern with the differences that it registers a considerably stronger support for the 'Ja' among the governing CDA and VVD (78% and 61% respectively) and that the smaller parties of the ChristenUnie and the Group Wilders were distinctively successful in swaying their electorate to the 'Nee'-camp (with respectively 93% and 85% of their electorate voting 'Nee').

Another survey again (Aarts and Van der Kolk, 2005: 201), comes with similar figures for CDA, VVD, PvdA and SP, but finds D66 to have been much more in tune with its voters (only 37% for 'Nee') and GroenLinks much less (63% against).