DEBATING EUROPE

This section of EIPASCOPE discusses a major issue of current concern, bringing together contributions from EIPA's own faculty with perspectives from persons involved in European public affairs with whom EIPA collaborates. In this issue, **Edward Best** is joined by two prominent actors in the political and academic debates over the Treaty establishing a Constitution for Europe:

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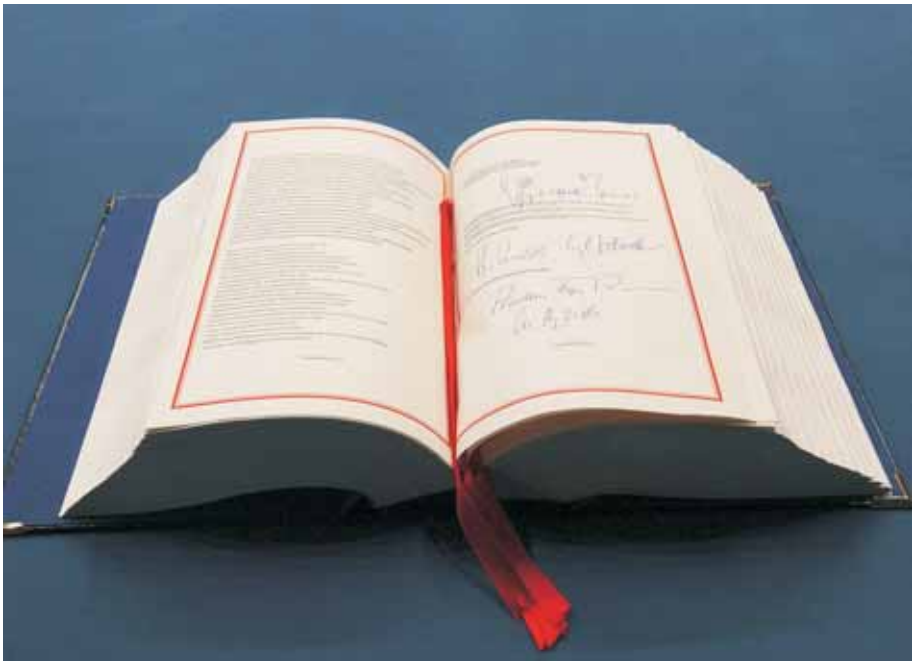
The European Union has to set off on a renewed round of treaty reform and "constitutional" debate. With 18 of the Member States having ratified the Treaty establishing a Constitution for Europe, pressure has been strong to pick up the pieces and move ahead, despite the negative results of the 2005 referendums in France and the Netherlands. There are clear differences across the Member States and other key actors, however, not only as to the desired outcome, but also with regard to the timing and nature of the process itself. With strong leadership from the German Presidency, the Berlin Declaration of March 2007 agreed to place the EU "on a renewed common basis" by 2009, and an agreement was expected to be defined at the European Council in June. The following contributions were written in advance of the summit with the aim of helping put in context what may come out, and consider the implications for the road ahead.



After the Constitutional Treaty: Reasoning Rather Than Rushing[1]

By *Dr* **Edward Best***

There is no need to rush ahead with treaty reform. It does not matter sufficiently that some institutional changes should be adopted now, at best to neglect simplification and consensus-building, and at worst to risk a second failure.

On 25 March 2007, the German Presidency presented a "Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome". If they looked at the end of this document, "the citizens of the European Union" – in whose name it was rather presumptuously written – could discover that they have agreed to place the EU "on a renewed common basis before the European Parliament elections in 2009." If they followed the press in the following weeks, they could learn that the Presidency, and others, were pressing to agree a basic roadmap for reaching this new deal at the European Council in June.

Assuming that there is no prospect of returning to the Constitutional Treaty as such, a historic question presents itself at this juncture. Is it better to push ahead quickly and salvage as much as possible of that treaty in another format, or to adopt a slower and more pragmatic approach aimed at strengthening effectiveness selectively while building political consensus and public consent?

There appear to be three main arguments for pushing ahead now. One stated reason is the hope to have a new treaty in place to coincide with the appointment of the next Commission and the election of the next Parliament in 2009. This would present a number of advantages, but failure to do so would not present insurmountable problems The second reason is credibility. After all, two-thirds of the Member States have ratified the Constitutional Treaty. Commission President Barroso thus told Parliament that the failure of the ratification process "leaves a permanent shadow of doubt hanging over the European Union" which has to be removed. The sooner any solution can be found, it would seem, the better. Third, and perhaps most important, is the hope to take advantage of the political weight of Germany as Presidency, in the changed political conditions following the French Presidential elections. There is a window of opportunity in May and June 2007 which, it would seem, the EU should not neglect.

Some Member States openly wish not to go ahead with the previous package, and would like even to go into reverse gear. The UK is predictably prominent in its concerns but is not alone. The new Dutch Government came out in favour of a minimalist approach; if anything, the treaties should be reformed in the sense of more clearly limiting the powers of the Union, while concentrating on particular areas of cooperation which could be seen as bringing practical benefits. The Polish demand to retain the Nice system of qualified majority voting has been supported by the Czech Government, which was also a leading proponent of allowing Member States not only to opt out of new policy measures but even to exercise a veto right. Public opinion is clearly very mixed across the Union.

This is hardly a promising situation in which to promote a new political settlement. One result could be to start negotiating but then fail to agree on anything. Another could be some kind of two-speed solution, which seems to be accepted as a positive option by some actors, but would not do much to deepen the solidarity of the recently enlarged Union. The worst case would be to force through a treaty which then failed to be ratified. If things were to go wrong for a second time, the consequences would obviously be very serious. Yet one does not have to contemplate such scenarios to have doubts.

Let us ask why we ever thought we wanted a new treaty of "constitutional" dimensions in the first place. Simplification was the starting point: everyone could agree that it would be a good thing to "tidy up" the institutional mess left by decades of incrementalism and compromise. The treaty involved specific problem-solving in response to deficiencies in existing arrangements. For example, a single representative and a common External Action Service would boost consistency and effectiveness in external relations; likewise, the agreement to use the same legal instruments and deepen cooperation in police and judicial cooperation in criminal matters would help respond to transnational crime. There has also been an objective of consensus-building: the very process of preparing the new treaty was hoped to strengthen political agreement and public support as to the basic rationale and rules of the Union. Above all this, however, there was a deliberate politicization of the debate with a view to fostering acceptance of a European polity on the basis of a "Constitution".

This last level has been dropped for the time being in response to negative public opinion, but seems to be taking with it the underlying simplification which had been proposed. The current structure of treaties within treaties which are changed by other treaties, and of different pillars, is both

dysfunctional and incomprehensible. The proposed suppression of the pillar system in favour of a single basic document (more or less, since the controversial treaty on atomic energy, Euratom, was not to be included) was not perfect but it would have made things significantly clearer. The statement of the basic principles which currently underlie the Union, and the different kinds of competences which are conferred upon it, would also be a move towards greater clarity. It is not clear how much of this would survive a rushed compromise process of treaty change, nor what the price of reaching a quick deal could be in terms of other elements which could be dropped.

The basic idea of the Presidency in March, supported by the Commission, the Parliament and many other actors, seemed to be that a new treaty should include at least the major institutional changes proposed in the Constitutional Treaty, as well as some innovations in areas such as climate change and energy. In April the German Chancellor circulated 12 questions (see annex). The underlying proposal seemed to be that "the institutional provisions of the Constitutional Treaty form a balanced package that should not be reopened". The "constitutional" approach could be dropped, together with all state-like symbols, but as much as possible of Part One should be retained in a slimmed-down text, making "the necessary presentational changes resulting from the return to the classical method of treaty changes". New substantive elements could be added on energy, climate change, or illegal immigration. Particular concerns from before could be addressed through some form of declaration on the social dimension, highlighting the Copenhagen criteria for membership in the article on enlargement, foreseeing new opt-in/out provisions, or dropping the explicit statement of the primacy of Union law.

If an overall "simplifying" settlement is dropped, then it becomes all the more appropriate to try to evaluate the individual elements involved in terms of their practical benefits and their political costs, not least in terms of the price paid in concessions to more skeptical Member States. On the one hand, one could classify the main institutional elements involved in terms of their need for treaty change and probable contribution to increased effectiveness of the Union in current circumstances. The following suggestion is obviously not exhaustive and may be contested, but may help raise questions.

1. Issues which promise to increase effectiveness and which need treaty change

- *legal personality of the Union and greater unity in external relations*
  Legal personality of the Union, the nomination of an individual as permanent chair of the Foreign Affairs Council and as Commission Vice-President (although not with the name of "Minister") and a common External Action Service would boost consistency and strengthen the Union's international presence.
- *the extension of codecision*
  This is less to do with the ability to act than the coherence of the institutional system, by giving the Parliament powers in policy areas subject to majority voting and with major budgetary and/or political importance in which it does not have colegislative rights. The main cases are agriculture and, if the shift to QMV were to happen, police and judicial cooperation in criminal matters.
- *the extension of QMV to certain key areas*
  One priority would be police and judicial cooperation in criminal matters, but the price may be more opt-outs. Moreover the increase in effectiveness depends also on the other important changes proposed concerning common definitions, the single legal instruments and the role of the Court. This could partly be achieved by using Article 42 of the existing Treaty on European Union by which the Council could "communitize" these areas by unanimity, subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Issues which need treaty change but are not certain to increase effectiveness

- *the system of qualified majority voting*
  The system of QMV is less important than the scope of its application. The Nice arrangements are not optimal but have not prevented decisions from being taken. While an improvement, moreover, it is not clear exactly how much difference the proposed double majority as fixed in the Constitutional Treaty would make with regard to the ability to adopt decisions in practice.
- *the elected Presidency of the European Council*
  To have an individual chairing the summits and representing the EU for up to five years would create a(nother) face of Europe and perhaps contribute to the EU's global presence. But this would depend very much on the individual. Moreover, the internal influence of that individual would probably be weaker than that of the rotating chair now, given that he/she would not be the organic apex of the chairs of Council meetings and preparatory bodies, and have more difficulty in exercising strategic leadership and brokering deals across sectors.
- *the single system of legal instruments*
  The proposed distinction between legislative and non-legislative acts, and the reduction in the number of different instruments would increase clarity to some extent. Beyond this there would have been two main practical impacts. The new distinction between delegated regulation and implementing acts would replace the current system of comitology, but this has recently been reformed more or less in that direction (the exception being agriculture without a shift to codecision). The other would be to replace the former third-pillar instruments with more effective ones, but thisalso requires broader changes in the structure of the legal bases.

3. Issues which would increase effectiveness but do not need treaty change

- reduction in the size of the College of Commissioners
  This could – indeed, should – be done anyway under the Nice agreements.
- involvement of the national parliaments
  The Commission has already started to send its proposals directly to national parliaments. Further steps could be taken to strengthen their role without treaty change.

Looked at in this way, one may argue that there is really a rather short list of issues which would make an essential substantive difference in themselves. On the other hand, the price to be paid for going ahead now may not only be an agreement not to go ahead with some things which are substantively new, but to drop elements of the Constitutional Treaty which were not in fact new. In this respect, the very process of being seen to go back from those provisions could

have a negative impact on credibility. Most of the Constitutional Treaty – most of what was seen to be rejected and could now be seen to be undone – is what already existed. In the name of pushing forward in new areas, the result could actually be to appear to go back in some old ones. A specific case is the proposal to remove the new article stating the primacy of Union law. Neither the introduction nor the removal of this article would change anything in the legal situation, but removal now could have political consequences by creating the impression that this is the case.

Unless there were to be a two-speed solution, the probable outcome of the dominant approach which now seems to be pursued is a treaty which a) achieves few of the practical benefits which the Constitutional Treaty would have brought; b) reduces the "simplificatory" impact of the whole process; and c) would almost certainly make it seem more necessary to reopen negotiations not long afterwards while simultaneously reducing political appetites for yet another round.

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Is it worth it? Despite talk of a "constitutional crisis", there is no overwhelming need to do anything. We are not facing political unrest or popular protest. The ability to respond to economic challenges cannot be seriously related to a new treaty. And the institutions show no signs of being unable to function at 27. Although there is obviously room for improvement, business continues to be done. The burden of proof is therefore very much on those who want to press ahead with treaty reform as quickly as possible, rather than on those who favour a more pragmatic approach.

It now seems to be recognized by almost all parties that any new treaty should not use the word "Constitution" and should avoid other terms and trappings of a state. However, the issue is not just one of imagery but of serious thinking about the nature of the exercise.

More than 50 years of the Community experience suggest that integration has depended not on public ratification of political visions but on concrete projects which commit the Member States and key actors, and which are perceived as appropriate by citizens. Moreover, institutional questions in themselves just do not positively engage most people. The bottom line should be to achieve a basic consensus between the Member States, and a basic consent on the part of the citizens, as to the reasons and parameters of the Union. It will not help if the EU elite is seen as trying to impose a new "institutional settlement" for no clear reason, without any time for sustained public debate, and with a visible avoidance of further popular consultations by way of referendum.

The Berlin Declaration did not give clear reasons to its putative authors as to why a new common basis is necessary. It simply said that, in order to protect European unification, "we must always renew the political shape of Europe in keeping with the times". The follow-up speeches and debates in the Parliament were permeated by assertions that institutional reform is essential a) because of enlargement and b) to deal with globalization. It would be more effective to try to engage in a sustained debate across Europe about the costs and benefits of particular areas of cooperation. There is a demonstrable gap between the collective will to act, for example in external relations or combating crime, and the possibilities afforded under current institutional arrangements. Climate change and energy could indeed also serve as focal issues. All this could serve as a basis for public and political debate as to the costs and benefits of common action which could in turn contribute to more fundamental discussion about the reasons for European integration.

By way of conclusion, one may return to the initial question. Does it matter sufficiently that some of the substantive institutional changes requiring treaty reform should be adopted now, at best to neglect simplification and consensus-building, and at worst to risk a second failure which would have really serious consequences for the EU's credibility? The Union and its citizens do deserve an approach which is "in keeping with the times". Among other things, this means taking the time to get it right.

NOTE

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ANNEX: The Twelve Questions of the German Presidency, April 2007

1. How do you assess the proposal made by some Member States not to repeal the existing treaties but to return to the classical method of treaty changes while preserving the single legal personality and overcoming the pillar structure of the EU?

2. How do you assess in that case the proposal made by some Member States that the consolidated approach of part 1 of the Constitutional Treaty is preserved, with the necessary presentational changes resulting from the return to the classical method of treaty changes?

3. How do you assess in that case the proposal made by some Member States to use different terminology without changing the legal substance for example with regard to the title of the treaty, the denomination of EU legal acts and the Union's Minister for Foreign Affairs?

4. How do you assess the proposal made by some Member States to drop the article that refers to the symbols of the EU?

5. How do you assess the proposal made by some Member States to drop the article which states the primacy of EU law?

6. How do you assess the proposal made by some Member States that Member States will replace the full text of the Charter of Fundamental Rights by a short cross reference having the same legal value?

7. Do you agree that the institutional provisions of the Constitutional Treaty form a balanced package that should not be reopened?

8. Are there other elements which in your view constitute indispensable parts of the overall compromise reached at the time?

9. How do you assess the proposal made by some Member States concerning possible improvements/clarifications on issues related to new challenges facing the EU, for instance in the fields of energy/climate change or illegal immigration?

10. How do you assess the proposal made by some Member States to highlight the Copenhagen criteria in the article on enlargement?

11. How do you assess the proposal made by some Member States to address the social dimension of the EU in some way or the other?

12. How do you assess the proposal made by some Member States applying opt-in/out provisions to some of the new policy provisions set out in the Constitutional Treaty?

The Reform of the Constitutional Treaty: Back to the Past – or the Contradictions of the European Narrative

By **H.E. Alfonso Dastis***

Anxious to overcome an elusive paralysis and obsessed about institutional power struggles, European leaders seem ready to forget promises and principles championed during the elaboration of the Constitutional Treaty. That bodes ill for the future credibility and popularity of the European Union.

The election of Nicolas Sarkozy as next French President must have been greeted with roaring applause by the German Presidency of the EU. It removes the uncertainty of a new referendum in one Member State and possibly two, since the fate of the new text in the Netherlands will most likely be linked to that in France, at least as far as procedure is concerned. The road for a slimmed-down treaty devoid of Constitutional trappings seems now obstacle-free. The question now is how slim the successor to the Constitutional Treaty will be and whether in the process it will lose so much weight that it will not be able to remain a self-standing treaty but become a new appendix of a bulky shapeless conglomerate of texts unable to be understood without repeatedly cross-referring to them.

In the quest for a way out of the deadlock over the stillborn Constitution, a new confrontation seems to pit those who want to take the Constitutional Treaty as the basis for the new Treaty against those that want to take the Nice Treaty as the starting point, with a view to adding a new title (possibly the Treaty of Ljubljana?) to the long list of texts amending the original treaties. The latter appear to be carrying the day and the list of those who support that position seems to include not only the usual suspects but also Institutions which are supposed to embody the orthodoxy of the European project. Anxious to safeguard the increase in their powers obtained in the Constitutional Treaty they look ready to abandon some of the lofty aspirations that underpinned the European narrative in the last few years, particularly since the Laeken Declaration or even its predecessor, Declaration 23 of the Final Act of the Treaty of Nice. Their thinking seems to contain some interesting paradoxes and could be considered a return to the past in more ways than one, in terms both of process and of substance.

In the first place, the new amending treaty approach could be said to involve nothing more than a return to Schuman's philosophy of a step-by-step construction of Europe. The citizens of Europe do not seem to be ready for an all-encompassing constitutional blueprint, goes the argument, so let us prepare something that does not alter the basic relationship between Europe and their Member States in the way the Constitution purported to do; let us simply reform now its Institutions and as a next step in due course will address the reform of its policies. Thereby we will not need a new referendum and yet we will solve the problems of Europe for now.

The first objection to that approach is that it relies on a false premise. The constitutional character of the Constitutional Treaty has undoubtedly been oversold. Far from altering the nature of the relationship between the Union and the Member States in a way detrimental to the latter, the Constitutional Treaty sought to reinforce the position of the States by, for example, reaffirming the principle of conferral as the foundation of the competences of the Union, or enshrining the respect for national identities of the States as a cornerstone of the whole edifice.

The second problem with that approach is that it brings us back to a process of treaty-making much criticised in the past which involves anticipating the reform of the new treaty by inserting in its text a rendez-vous clause calling for its modification even when the ink of its signature is still fresh, thereby acknowledging both that the text is not satisfactory and that Europe is a sort of perpetuum mobile, a never ending process, adding to the people's uncertainty about where the process may take.

But even more important is the objection regarding the actual drafting process of the new Treaty, which again involves a return to old ways so strongly criticised for their lack

of transparency. The Laeken Declaration announced a new departure in the process of treaty-making to meet the objections of democratic deficit so often raised towards the EU. Gone were the days, it appeared, when obscure diplomats plotted in the secrecy of smoke-filled rooms to find self-serving compromises with national and not European interests in mind. The new era required total transparency and the participation of elected politicians and civil society at large; the European Convention was born. Suddenly, now nobody wants to hear about a new convention; it is back to the cosy little intergovernmental conference, preceded by confessionals with focal points, sherpas and restricted meetings, only this time, one would presume, in smoke-free rooms.

The explanations offered for this return to the old procedures are the urgency of the matter and the substance of the negotiations. The much-maligned Nice Treaty is supposedly paralysing Brussels by a cumbersome decision making process; the EU is about to crumble under the influence of both the enlargement and the veto. That makes institutional reform the first priority, which in turn makes either a Convention or a referendum redundant, since this is an institutional matter to be solved by the Institutions.

Again, there are a number of problems with such an approach. First, it is debatable whether such a paralysis exists. Instead, there is evidence to the contrary, among other sources, an interesting research report recently published by CEPS seems to indicate that the enlargement has not brought about the dreaded deadlock and that the EU is working more or less as usual.

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Second, it is doubtful that the European citizens, whose concerns serve as the rationale for reform, are at all interested or concerned by institutional reform. One feels tempted to paraphrase Sarkozy when he said during the presidential campaign, referring to the French institutions, that he had never been stopped on the street by someone worried by institutional problems.

This brings us to the well-known debate between institutions and results. To be honest, all depends on what is meant by institutional reform. The citizen is indeed not interested in the composition of the Institutions or their internal rules – including the definition of qualified majority voting (QMV). That is of concern only to bureaucrats or politicians vying for posts or power. However, what could indeed be of interest to the citizens is the inclusion or extension of QMV among the institutional matters, since it enhances the ability of the EU to solve their problems. The institutional reform would thus be a tool for increasing the Union's efficiency. The problem that arises then is that the outlook for that aspect of institutional reform is not very promising: the Constitutional Treaty itself has been oversold in that respect and was likely to disappoint expectations since the fields where unanimity would be maintained are precisely those where QMV is more often demanded, such as social policy, tax or foreign policy. The prospects now are even more modest, with a roll back being considered also for Police and Judicial Cooperation in Criminal Matters.

It we turn indeed to the substance of the new treaty, it also appears likely to represent a step back in another important aspiration singled out in the Laeken Declaration: the effort to bring the EU closer to the citizen and make it more understandable and more democratic. That also seems going into the dustbin on the basis that it would make the EU look dangerously like a State. The first casualties seem likely to be the efforts undertaken in the Constitutional Treaty to simplify the Union's structure and legal order and to use a terminology understandable for the ordinary man on the street. The so-called pillars are there to stay and so is the mysterious trinity-like structure where the Communities have their own personality also but make up one entity, the Union, which is only a political reality without legal capacity, something that can hardly be explained to fellow diplomats from third countries, let alone the ordinary citizen. The same fate seems to await the European Foreign Minister, or at least his name, which may be replaced by the already tested alternative of High Representative, a step that is likely to be interpreted among international partners of the EU as a less than lukewarm support to the new figure. Let us simply hope it will not be accompanied by a downgrading of her/his powers.

As for the emphasis on subsidiarity and the respect of the powers of the Member States, there is of course a pretty sensible rationale behind those demands, allowing the decisions to be taken at the level that is closest to the citizen and preserving the diversity and identity of Member States and their component units (so much so that it is usually combined with the willingness to transfer to the Union some powers that are best exercised together and not individually). The problems here are two-fold. On the one hand, claims for the respect of the competence of Member States in some areas often conceal a desire to exempt them from the application of fundamental principles such as non-discrimination, freedom of movement or fair competition. Secondly, vindication of the Member State is perfectly acceptable but not necessarily at the expense of blaming the Union for all the shortcomings that the citizen experiences in the economic or social sphere. That does not seem to be a way to endear the EU to the citizen. Paradoxically, the situation is not improved when a responsibility is transferred to the EU in new areas such as terrorism, climate or immigration. Often that new responsibility does not carry with it the means to discharge the tasks effectively. The Lisbon process comes to mind where the EU is often restricted to a role of benchmarking through an unfathomable method of open coordination (that the Convention was unable to define after devoting several meetings to the task), only to be blamed by the delays and failures of member states to fulfil their commitments.

But where the plans beat all the expectations is when dealing with the fate of the Charter of Fundamental Rights, not

long ago hailed as the definitive breakthrough of values based on democracy and the rule of law in the evolution of the European Union. In what seems a remarkable flip-flop in terms of transparency vis-à-vis the European citizens, the articles of the Charter may be replaced by a simple cross-reference to the Declaration proclaimed at Nice (of all places) giving it legally binding nature. One would imagine that the articles of the Constitutional Treaty governing the interpretation and application of the Charter would still have to be retained to allay the fears of those worried about the potential extension of the reach of the Charter beyond the area of the Union's competence, the object of those articles would however be missing; to find it you will have to look elsewhere. Hopefully, the text of the Charter will be made available to the members of parliament at the time of ratification, but we do not know in what form (an annex, a declaration, a text to be incorporated in the internal procedure in every Member State?) the resulting mess may no doubt delight lawyers but can hardly be considered a model of transparency and openness so often promised towards the citizens.

In conclusion, it looks as if, in order to enable the EU to face the challenges of the future, we could be turning to the ways and means of the past. Participatory democracy seems bound to give way again to permissive consensus. The European Union has always been seized by contradictions in its efforts to reconcile the differing visions and degrees of ambitions of its members. So far it has survived. Such is the strength of the European project. But as it grows wider, both quantitatively and qualitatively, there may be more testing times ahead.

NOTE

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Reflections in Times of Uncertainty: A Menu of Strategies

By *Prof. Dr* **Wolfgang Wessels***

My expectation would be that the Heads of States or Government will once again, like in other moments of passing milestones, combine functionalist approaches of "l'Europe des Projets" with institutionalist steps of reforming the existing EU treaty by borrowing bits and pieces from the text of the constitutional treaty. Whatever the outcome, the debate will not be ended, but enter into a new stage with a lot of old considerations.

Since the negative referenda on the Constitutional Treaty in France and the Netherlands, there has been a high degree of confusion on the landscape when it comes to presenting and discussing strategies for deepening of the Union. The menu of what should and could be done is long and there has been little agreement as what to select. The uncertainty about the political relevance and validity of many proposals has also led to the renaissance of quite a lot of conventional concepts. The relevant passage of the Berlin declaration on the 50th anniversary of the Rome Treaties shows that, even after a period of reflection, the Heads of State of Government – representing the "masters of the treaty" – have not found a clear exit from the impasse.

In such circumstances, and without knowing whether the next summit in Brussels at the end of June will take some kind of decision to design (or not) the road map for the months to come, a political scientist cannot give a clear prognosis about future steps. However, one may contribute by sketching and systematizing a broad range of thinkable scenarios and strategies ahead.

I will thus present and discuss several possibilities for the development of the treaty process, taking into account options relating directly to (a perhaps modified version of) the Constitutional Treaty and to the Treaty on European Union (TEU) as modified at Nice, as well as options departing from the status quo which show fall-back positions in case the European Council does not adopt a common strategy. Some might look politically utopian but they may serve as thought experiments.

Strategies related to the Constitutional Treaty

One major point of departure for discussion of any strategy is the future fate of the Constitutional Treaty. One suggestion is not to "bury" the treaty by putting it on top of the shelf of the ivory towers' library, but to wait for a "better context" for a "good text". A "constitutional moment" needs to be awaited – or even to be created – in order to push the document back on the political agenda. In the case of such a re-launch, several models for dealing with the Constitutional Treaty can be discussed.

1. One proposal was to resubmit the same text, perhaps with some "solemn declarations" to take care of some of the opposition in the two negative referenda countries; the social dimension, in particular, might thus be evoked. Some had hoped that in this way, after the change of the President in France, the political climate would allow a second chance for what they saw as the best text available. The position of Sarkozy of not presenting a second referendum, however, together with clear resistance in the Netherlands, made this strategy obsolete.
2. A more realistic approach would be to slim the text down to its core, "just" proposing Parts I, II and IV of the document to be ratified by national parliaments without referenda. The problem is that such a "mini-treaty", or however one might call this option, looks even more like a "real" Constitution than before. In order to avoid such an unpopular "misreading" while maintaining the political substance needed to reform the institutional architecture, such a mini-treaty would likely be "purified" of all state-like symbols in order to appear to be no more than a simple, technical treaty.
3. For the sake of presenting the full range of options, an upgrading of the Constitutional Treaty also needs to be discussed, even if these strategies do not look too promising. To reconvene a body such as the Convention could be a way to take care of the policy deficits, as articulated in the referenda. Part III could thus be included, with social, energy and climate policies, as well as the EC budget, also on the agenda.
   A bolder proposal would be to make a "saut qualitatif"

towards a "full constitution" designed by a fully-fledged constituent body to be elected on the occasion of the next EP election in 2009, the results of which would then be put to an EU-wide referendum. Such a real constitutionalization strategy would entail the implementation of substantial reforms and new projects in most policy areas leading, for example, to a greater visibility of the EU as an actor in external relations and to the establishment of European economic governance. The democratic legitimacy of the EU would be strengthened, thus also contributing to a growing sense of a common European identity. In this build-up existing European policies would be further integrated and intensified. Majority voting would be introduced also on foreign policy matters, with Member States accepting to share sovereignty also in this policy area. Ideally, the EU would thus turn into a legitimised and well-balanced system of governance both on the national and on the European level and represent a unified and strengthened actor on the international level. This strategy – at the moment rather utopian – would lead to a constitution which goes beyond the aims and practices stipulated in the Constitutional Treaty and thus turn into a fully-fledged federal European state.

Strategies working from the status quo version of the TEU (Nice version)

An alternative set of strategies would downgrade the relevance of the Constitutional Treaty for the years to come. This approach stresses the risks of sticking to a text which could have represented an important advance but which, after its political failure, should not block other ways of making reasonable progress. Thus, the EU can be seen to exist and to work "without illusions": that is, without a consensus about the medium-term finalité and without propagating "visions" and "missions" as they were inserted into the Constitutional Treaty. Instead, the Union will "muddle through" at and around the existing integration level as defined by the TEU, perhaps with useful modifications. Several options for strategies starting from the TEU might be put forward.

1. One starting point aims at the intensive use of the status quo arrangements. In terms of the legal dimension, this approach stresses that the TEU in the version concluded at Nice remains valid. In terms of the general direction for the future development of European integration, it starts from the assumption that the EU has, at least for some undefined period, reached its legal limits, which might be based on some kind of a "stable political equilibrium". In other words, the EU system has found its fundamental political and institutional architecture for the foreseeable future. One major assumption is that the enlargement from 15 to 27 as such will not lead to a blockage of the system.
   Part of such an intensive use of the existing opportunities of the treaty would be the application of the articles of "enhanced cooperation". The legal provisions are clearly designed to remain within the limits of the existing treaty. However the fact that these institutional possibilities have not been used since their insertion in the Amsterdam Treaty makes it hard to see this option as an "easy exit" from political blockages.
   Such a strategy of using the existing framework might nonetheless be attractive for Member States who are satisfied with the ambiguity of the status quo.
2. The treaty might also be developed upwards by using opportunities presented by the existing legal texts and other institutional arrangements. This could partly come about as a result of "cherry-picking" of the Constitutional Treaty itself. Yet this strategy would also rest on:
   - expectations of dynamic rulings of the European Court of Justice, following the thesis that the Court will have to adopt rulings about the system if the political institutions are blocked;
   - extensive use of Article 308 TEC as a "small treaty revision article", such that Member States become agents of a "cultivated spillover";
   - the scope-enlarging role of the European Council: Heads of State or Government might adopt major programmes like Lisbon or lately the Energy Policy for Europe;
   - the adoption of further inter-institutional agreements to overcome blockages.
3. Beyond expecting an intensive use of existing possibilities and an intra-systemic dynamic, another strategy would draw fundamental lessons from the treaty revisions of the last decades. The constitutional strategy might have gone a step too far, neglecting some of the dynamics of past treaty revisions which were more inspired by the Monnet method. Thus it might start with a "grand projet" in some policy area such as monetary union which could stimulate a broad package deal and mobilise some public attention and support.

Strategies outside the common framework

As always in times of uncertainty, a list of conventional "unconventional" strategies are being put to debate. In case of a failure of the upcoming summit a more reflected discussion of some of the following key terms might become again necessary.

One of the most mentioned strategy is that of a constitutional "core Europe", or a "pioneer group", or an "avant-garde": willing and able member countries will go ahead with concluding an upgraded treaty. The rest will join later and or get opt-out clauses.

Another option is in the making. Larger countries are tempted to go ahead with first steps to create among themselves a group hegemony, a "directoire" of the "great powers" of the EU, to give directions for the small countries.

More functionalist approaches propose to go ahead forms of "variable geometry" or "Europe à la carte", in which Member States work together according to their specific sector interests. Opt-outs become the rule.

Conclusion

Even without ratification of the Constitutional Treaty, the future of the EU may not be as open and unpredictable as the current state of confusion about future strategies might suggest. After more than 50 years of successful co-operation and integration in Europe, it seems highly unreasonable and unlikely that the Member States will simply and completely turn away from the Europe they have themselves constructed. Furthermore, European integration is, like any process of institutionalisation, a path-dependent process. Basic institutional structures, rules and policies are, once established, "sticky", in other words, difficult to abolish or even to overhaul fundamentally.

With the yet unknown road-map which the European Council will adopt end of June, we have to take up again this list of possibilities. My expectation would be that the Heads of States or Government will once again, like in other moments of passing milestones, combine functionalist approaches of "l'Europe des Projets" with institutionalist steps of reforming the existing EU treaty by borrowing bits and pieces from the text of the constitutional treaty. Whatever the outcome, the debate will not be ended, but enter into a new stage with a lot of old considerations.

NOTE

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