From the first drafts of a European Constitution to the Constitution for Europe

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URL:
http://www.cvce.eu/obj/from_the_first_drafts_of_a_european_constitution_to_the_constitution_for_europe-en-993a912a-1a14-4629-87c9-e89d4caf124e.html

Last updated: 08/07/2016

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The first drafts of a European Constitution

The draft constitutions of the federalist movements

The first drafts of a European Constitution arose from the enthusiasm of the post-war federalist movements, which reached their apotheosis in the Hague Congress held in May 1948. Although, at that time, they still ranked only as ideas promoted by certain private associations, their value as a source of inspiration for subsequent — institutional or official — projects was not inconsiderable. Among the first projects, there was the **draft Federal Constitution of the United States of Europe** presented in June 1948 by François de Menthon, Chairman of the Legal Committee of the European Parliamentary Union (EPU), to the Secretary-General of that Union, Richard Coudenhove-Kalergi.

The draft proposed the creation of a Federation of the United States of Europe with powers in the field of security and defence and in commercial, economic, monetary and financial matters. According to the Preamble, *the peoples of the countries of Europe*, represented by *their respective Governments*, decided to integrate *their States* within the Federation. The legislative and budgetary powers of the Federation were assigned to a European Parliament, consisting of a Chamber of Members and a Council of States. The Executive Council, the members of which would be elected by the two parliamentary Chambers, would be accountable to the Parliament in respect of all its activities. The judicial body of the Federation would be a European Court of Justice, the Members of which would also be elected by the two parliamentary Chambers. For its entry into force, the Constitution had to be ratified by the parliaments or other constitutional bodies of at least 10 States.

The Community project as a first stage in progress towards a European Federation

When Robert Schuman, in his **Declaration of 9 May 1950**, took up the idea of Jean Monnet and proposed the creation of a common organisation for the production of coal and steel, he conceived it as a first step in the federation of Europe. The deliberate object of the founding fathers of Europe was to add the *leaven* for the growth of a wider and deeper community which, since *Europe will not be made all at once*, must be achieved gradually. However, despite its being stated in the initial proposal, the aim of a federation was not included as such in the text of the Treaty establishing the European Coal and Steel Community (ECSC), signed in Paris on 18 April 1951.

According to the Preamble of the ECSC Treaty, the signatory States were *resolved to create, by establishing an economic community, the basis for a broader and deeper community* and to *lay the foundations for institutions which will give direction to a destiny henceforward shared* by the peoples of Europe. For supporters of the indirect method of ‘constitutionalisation’, which consisted in preparing the ground for a political union by first establishing an economic union, the ultimate objective of a federation nevertheless remained implicit in these phrases.

The first ‘supranational’ organisation involving transfers of sovereignty by the Member States was thus created in 1952 with the establishment of the ECSC. The second and third followed in 1958 with the creation of the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or Euratom). The Communities were established on the basis of international Treaties with a programmatic structure — in the sense that they made provision for subsequent stages of integration — which opened the way for the political unification of the continent. The process had a momentum of its own, the development of the Communities advancing constantly through the successive stages towards *ever closer union*. Through the various compromises reached at each reform of the founding Treaties, new stages were introduced without any pointer ever appearing to indicate the final destination.

The European political community as a failed attempt at general political unification

The **Draft Treaty defining the Statute of the European Community** of 10 March 1953, drawn up by the

Ad Hoc Assembly at the instigation of the Governments of the ECSC Member States, was the first and last 'official' attempt at political unification conceived as a comprehensive project. Closely linked to the plan to set up a European Defence Community (EDC), the project for a political community was abandoned following the rejection by the French National Assembly on 30 August 1954 of the Draft Treaty establishing the EDC.

Although the text was presented in the form of an international treaty, requiring ratification by the participating States for it to enter into force, its substance was quite clearly constitutional in nature. It concerned the creation of an indissoluble supranational organisation founded on the unity of peoples and States, equipped with an institutional system characteristic of any parliamentary democracy and, from its inception, possessing resources of its own in addition to contributions from its Member States. Together with the ECSC and the EDC, the Community constituted a single legal entity. It had powers in the fields of protection of human rights, security and defence, external relations and the economy, including employment policy.

The legislative and budgetary powers, as well as the exercise of scrutiny over the executive body, would be assigned to a Parliament, which would consist of two Chambers: a Peoples' Chamber, consisting of Members elected by direct universal suffrage and representing the peoples united in the Community, and a Senate, consisting of Senators elected by the national parliaments and representing the people of each State. Laws would be adopted by the two Chambers by a simple majority.

The European Executive Council, the members of which would carry the title of Ministers of the European Community, would form the government of the organisation. It would adopt regulations to ensure implementation of the Community laws; it would have the right to propose legislation — which it would share with the Members of Parliament — and it would negotiate and conclude international treaties or agreements binding the Community. Alongside the European Executive Council and Parliament, an Economic and Social Council would act as a consultative body.

The role of the Council of National Ministers, each of whose Members would hold the Presidency in turn, would consist in harmonising the action of the European Executive Council with that of the Governments of the Member States. In addition, the Court of the Community would ensure compliance with the law in its interpretation and application of the Treaties establishing the three Communities (EC, ECSC and EDC).

The text of the draft Treaty provided for three different procedures for the amendment of treaty provisions depending on whether they were more or less 'constitutional' in nature. Hence, only the amendment of the powers of the Community with respect to the Member States and the definition of human rights and fundamental freedoms would require the approval of the Member State Parliaments as well as that of the Parliament of the Community. A unanimous decision in the Council of Ministers would not be required in cases to which the third, more streamlined, amendment procedure was applicable.

The gradual 'constitutionalisation' of the Communities and of the European Union

One of the key elements in the 'constitutionalisation' of the European Communities is their gradual 'parliamentarisation'. From 1958, as an Assembly common to the three Communities (ECSC, EEC and EAEC or Euratom) consisting of delegates from the national parliaments, the European Parliament played a purely consultative role. The institution's battle to increase its democratic legitimacy and its legislative and budgetary prerogatives and powers of scrutiny went hand in hand with the development of the Communities along the road towards the European Union. Elected from 1979 by direct universal suffrage, Parliament had the objective of becoming a legislator in its own right, acting jointly with the Council, and the second arm of the budgetary authority. It was in connection with the European Union, established in 1993 by the Maastricht Treaty and subsequently reformed in 1999 by the Treaty of Amsterdam and in 2003 by the Treaty of Nice, that Parliament gradually acquired powers comparable with those enjoyed by a national assembly in any parliamentary democracy. Concurrently, the powers of the European Union, which was increasingly subject to the rule of decision-making by qualified majority in the Council, were increasingly exercised by codecision with Parliament. This placed the two institutions on an equal footing within a

system which, in its functioning, could be described as bicameral. In addition, in relation to the Commission, Parliament acquired increased powers of scrutiny over the executive body, in particular, through the possibility of adopting a motion of censure against the Commission or of approving its President-designate and the whole Commission.

In addition, the Court of Justice of the European Communities, through its case law, strengthened the constitutional elements of the Treaties by elevating to the status of Community legal principles concepts such as direct effect and precedence of Community law or respect for the fundamental rights of the person. It should be noted that, as far back as 1986, the Court of Justice recognised that *the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty* (see judgment in *The Greens* case).

The draft Constitutions of the European Parliament

Whereas only intergovernmental conferences (IGC) succeeded little by little in securing 'constitutional' advances which were gradually incorporated into the founding treaties, the European Parliament, from its first direct election in 1979, adopted a strategy complementary to that of the 'small steps' approach consisting in presenting European Union projects as comprehensive packages. Although they did not have any immediate formal consequences, they proved to be an effective spur to European political self-awareness. Many proposals included in projects of the European Parliament eventually became shared objectives and formed part of the groundwork for tangible reforms to the Treaties.

The Draft Treaty establishing the European Union, or the 'Spinelli Report'

The **Draft Treaty establishing the European Union**, or the '**Spinelli Report**', of 14 February 1984, was the only 'constitutional draft' from the European Parliament to be adopted by a very large majority of its Members. The report, which proposed the creation by the *Member States of the European Communities* of a *European Union* having legal personality, was presented as a compromise text in which there was no reference to the concepts of 'constitution' or 'federation'. Nevertheless, it included a whole series of elements considered to be of a constitutional nature, including several of federalist inspiration:

— The draft, which provided for the creation of a *citizenship of the Union*, was subject for its entry into force to ratification by a majority of Member States of the Communities whose population accounted for two-thirds of the total population of the Communities. In this way, the text relied on a double endorsement, that of the Member States and that of their citizens.

— The Union, which was to take a decision on its accession to the European Convention for the Protection of Human Rights, would adopt its own declaration on fundamental rights. Penalties could be imposed in the event of serious and persistent violation by a Member State of democratic principles or fundamental rights.

— The Union, which, in order to achieve its aims, was to act either by *common action* or by *cooperation* between the Member States, could increase the fields of activity covered by common action without the Member States reforming the Treaty by way of an intergovernmental conference. The text provided for an internal procedure by which fields of action could be transferred from the second to the first method: the European Council — on a proposal from the Commission, the Council of the Union, Parliament or one or more Member States — could take a decision, after consulting the Commission and with the agreement of Parliament. This revision procedure corresponds more to that of a constitutional text than to that of an international treaty.

— In a manner comparable with the Constitutions of decentralised states, the draft provided for competences exclusive to the Union (with particular regard to the internal market and competition) and competences concurrent with those of the Member States (most fields). In fields in which the Union had concurrent competence, in conformity with the subsidiarity principle, *the Union shall act only to carry out tasks which*

may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action on the part of the Union because their dimension or effects extend beyond national frontiers.

— As provided by the Constitution of any decentralised state, the Union and its Member States were to cooperate in good faith in the implementation of the law of the Union.

— The 'Spinelli Report' proposed an institutional framework close to that of bicameral parliamentary systems: the European Parliament, elected by universal suffrage, would exercise legislative and budgetary power jointly with the Council and would exercise political supervision of the Commission. The Commission would have the right to propose legislation and would issue regulations to implement it.

— As in any state subject to the rule of law, the judicial system was paramount. The Court of Justice would have jurisdiction to protect fundamental rights vis-à-vis the Union, to annul an act of the Union, to impose sanctions on a Member State failing to fulfil its obligations under the law of the Union and to rule on any dispute between Member States arising in connection with the objectives of the Union. It would hear appeals from all the institutions, proceedings brought by individuals against acts of the Union adversely affecting them and appeals against decisions of national courts of last instance where reference to the Court for a preliminary ruling was refused or where a preliminary ruling of the Court had been disregarded.

— Acts of the Union were referred to by the terms commonly used for the acts of nation states: *laws* adopted jointly by the Council and Parliament, and *regulations* and *decisions* issued by the Commission in order to apply a law: organic laws would govern the organisation and functioning of the institutions. It was also by the strengthened procedure of the organic law that common action would be initiated in a field where action had not hitherto been taken by the Union.

— The draft provided for an increase in the competences of the Union compared with the competences of the Communities. Fields covered by common action were economic policy and policy for society. *Economic policy* included the internal market, competition, business policy, monetary and credit policy and the approximation of the laws relating to taxation in so far as necessary for economic integration within the Union. *Policy for society* included social and health policy, consumer protection and regional, environmental, education and research, cultural and information policies. The *international action* of the Union was to be exercised either by common action or by cooperation. Outside the fields subject to common action, the coordination of national laws with a view to constituting a *homogeneous judicial area* was to be carried out in accordance with the method of cooperation, among other things in order to combat international forms of crime, including terrorism.

— The Union was to have its own finances, administered by its institutions, on the basis of the budget adopted by the budgetary authority.

The report of the Committee on Institutional Affairs on the Constitution of the European Union or the 'Herman Report'

Although several of the proposals included in the 'Spinelli Report' had already been incorporated in the Treaties as part of the reforms brought about by the 1986 Single European Act and, especially, by the 1992 Treaty on European Union (in particular, the achievement of economic and monetary union, the codecision procedure, new policies 'for society', the subsidiarity principle and the concept of citizenship), a **Draft Constitution of the European Union** was presented to the European Parliament on 9 February 1994 by Fernand Herman on behalf of the Committee on Institutional Affairs for which he was rapporteur. However, this draft, which purported to continue the 'comprehensive' strategy of the European Parliament initiated by the 'Spinelli Report', did not secure the approval of Parliament which, in its Resolution of 10 February, did no more than 'note with satisfaction' the work of the Committee.

The '**Herman Report**' had the merit of setting out for the first time, in a clear and comprehensible text

unashamedly called a ‘Constitution’, the principles of a ‘Community based on the rule of law’ capable of generating legal rules ‘to which those States would subject themselves’ and which ‘can be applied directly to their citizens’. According to the explanatory statement in the report, among the provisions of various kinds dispersed among the Treaties, it was necessary finally to establish a hierarchy between ‘norms which are sufficiently general to be defined as constitutional’ and others ‘which cannot have the same permanence’ and which should be easier to update.

The explanatory statement set out the reasons for the choice of the title ‘Constitution’ instead of ‘Treaty’ and the reasons for launching the debate at that precise moment. The aim was to show to the public a reality which was often concealed from them. Ultimately, Parliament was doing no more than ‘adapting vocabulary to facts and texts to reality’, ‘by putting an end to the fiction of the abiding intact sovereignty of the Member States and to the ambiguity which allows national governments to take the credit for Community activities when they are popular or successful and to blame Brussels when they are a failure’. According to the explanatory statement, the debate on Maastricht had revealed a deep ignorance of European institutional realities, which the confusion and incomprehensibility of the text of the Treaty had only aggravated. In a context of disillusionment among the public and the frustration of national parliaments at seeing their powers gradually reduced, the time had come to reassure everybody by creating through the *Constitution for Europe* a ‘stable political and legal framework in which powers, competences and responsibilities were clearly defined and where adaptation to the requirements of the moment could be carried out without calling into question the whole edifice.’

With the same concern to bring Europe closer to its citizens, the European Parliament’s Committee on Institutional Affairs proposed a ‘democratic alternative’ for the revision of the Treaty as opposed to intergovernmental negotiation: prior to the Intergovernmental Conference, a *European Convention* should be held (bringing together Members of the European Parliament and Members of the national parliaments), a *group of eminent and independent persons* should be appointed on the lines of the Spaak/Dooge Committee, and an *interinstitutional conference* should be convened.

Annexed to the motion for a resolution of 9 February, the draft Constitution presented was inspired by the ‘cooperative and decentralised federal model’, based on the double democratic legitimacy of citizens and states. The text was divided into eight titles, devoted to principles (including the objectives and citizenship of the Union) (I), Union competences (in particular the principles of attribution, subsidiarity, proportionality and cooperation) (II), the institutional framework (III), functions of the Union (including legislative, executive and jurisdictional functions) (IV), external relations (V), accession to the Union (VI), final provisions (VII), and the human rights guaranteed by the Union (VIII). The text did not include the provisions of the ‘Community Treaties’ relating to the policies of the Union. According to the draft, the provisions which were not taken over and enshrined in the Constitution were to remain in force until they were replaced by an organic law.

The titles of Union acts were aligned with the titles used for the acts of nation-states: *laws* (constitutional, organic and ordinary laws and framework laws), *implementing regulations* and *individual decisions*.

Among the institutional innovations proposed, the concept of the *double majority* stood out in particular, i.e. the number of States and percentage of total population required for the adoption of decisions in the Council. The rotating presidency of the Council would be abolished: a Council President would be elected for a term of one year which, while renewable,could not exceed three years in all. Otherwise, in general terms, the draft opted for the bicameral parliamentary system, with specific features characteristic of the European model as regards the role of the Commission.

From the constitutional debate to the adoption of the Constitution for Europe

The debate on a Constitution for the Union

The debate on the need for a Constitution for the European Union was relaunched in 1999 after the entry into force of the Treaty of Amsterdam. It is interesting to note that it was also in 1999 that the European

Parliament established a ‘Committee on Constitutional Affairs’.

The Treaty of Amsterdam introduced some constitutional advances, such as the procedure for sanctions against a Member State having committed a serious and persistent violation of democratic principles and fundamental rights, and the introduction of provisions on social policy and employment into the EC Treaty. However, with a view to the enlargement of the European Union to include more than twenty Member States, an in-depth reform of the institutions remained essential.

A **Protocol annexed to the Treaty of Amsterdam on the institutions with the prospect of enlargement of the European Union** provided for the convening of a conference of governments of the Member States in order to carry out a *comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions*. The Cologne European Council held in June 1999 decided to convene this conference early in 2000, at the same time specifying the topics that it was to cover.

The same European Council also determined the need to introduce a charter of fundamental rights of the European Union, which would be drawn up by a ‘body composed of representatives of the Heads of State or Government and of the President of the Commission as well as of Members of the European Parliament and of national parliaments.’ The Court of Justice would participate as an observer, while other bodies would be invited to give their views. The decision, which was annexed to the Presidency Conclusions, also provided that the Charter would then be solemnly proclaimed by Parliament, the Commission and the Council prior to consideration of whether and how it should be integrated into the Treaties.

During 2000, two concurrent processes were to get the constitutional debate under way: the work of a ‘European Convention’, called to draft a charter of fundamental rights, and an Intergovernmental Conference (IGC) leading to the adoption of the Treaty of Nice.

Ahead of the IGC, several proposals of a constitutional nature appeared periodically in reports, declarations and opinions published by the Community’s own institutions — particularly the Commission and Parliament — and from academic bodies and political figures on such topics as the reorganisation and the hierarchisation of the Treaty texts, the end of the pillar structure of the Treaty on European Union, the merger of the Union and the three Communities into a single entity, clarification of Union competences in relation to those of the Member States, introduction of the principle of the double majority (of states and population) in order to define the qualified majority in the Council, the establishment of a link between qualified majority and codecision procedure in order to strengthen the role of Parliament as joint legislator, streamlining of enhanced cooperation, integration of the Charter of Fundamental Rights into the Treaties etc. The sense of urgency surrounding the need for institutional reforms to permit enlargement was generally accompanied by a desire to bring Europe closer to its citizens by making the ‘management of European affairs’ simpler and more effective and transparent. In the same line of thought, the strictly ‘diplomatic’ procedure for the revision of the Treaties was also challenged. Negotiations in an IGC should be conducted on the basis of in-depth preparatory work.

On 12 May 2000, in a speech given at the Humboldt University in Berlin, German Foreign Minister Joschka Fischer opened the constitutional debate at the level of European senior political officials by tackling the thorny subject of the ‘ultimate objective of European integration’. In a personal capacity, he proposed that an ‘avant-garde’ of a few Member States should drive progress from enhanced cooperation to a constitutional treaty. The latter, conceived as a ‘deliberate political act to recast Europe’ would be a precursor to full integration of the Union in the form of a ‘European Federation’. This was followed by a succession of speeches from Heads of State or Government on the future of the European Union.

For example, in a speech given on 27 June 2000, the President of the French Republic, Jacques Chirac, saw in the forthcoming extensive enlargement an opportunity to expand institutional thinking beyond the Intergovernmental Conference. After the IGC, a period of ‘great transition’ towards the ‘institutional recasting’ of the European Union would commence. A preparatory debate focusing on the reorganisation of the Treaties, conducted openly, could lead to the first European Constitution. According to Jacques Chirac, during this period of transition, a ‘pioneer group’ of countries supporting Germany and France could drive

the development of policies forward by participating in all the processes of enhanced cooperation.

But not all politicians saw the framing of a Constitution or enhanced cooperation as the solution to maintaining the ambition of 'Europe as a superpower' in an enlarged Union comprising over 25 Member States. Faithful to his own constitutional tradition, in a speech on 6 October 2000 British Prime Minister Tony Blair said that, instead of a European Constitution, it would be preferable to draw up a 'Statement of Principles' — which would be a political, not a legal document — having the function of a 'charter of competences'. In his opinion, the unique combination of the intergovernmental and the supranational which was the European Union would not stop it from becoming a superpower made up of equal nation-states.

These contributions to the debate were widely reported in the media. Despite the differences of opinion on the future nature of the Union, the term 'Constitution' had entered into current political discourse.

The 'constitutional process': the European Convention and the Intergovernmental Conference

The Nice European Council of December 2000 had been scheduled as the deadline for the close of the IGC and for the proclamation of the draft Charter of Fundamental Rights drawn up by the Convention, but the European Parliament, in a resolution dated 25 October, proposed that this should also be the occasion to initiate the 'constitutional process' by the adoption of a 'declaration annexed to the next Treaty'. This declaration would lay down a mandate, procedures and a timetable for the commencement of the drafting of a Constitution for Europe. In its resolution, Parliament listed the elements which the text of the Constitution should clearly state: the common values of the EU, the fundamental rights of European citizens, the principle of the separation of powers and the rule of law, the composition, role and functioning of the Union's institutions, the allocation of powers and responsibilities, the subsidiarity principle, the role of the European political parties and the objectives of European integration. Parliament also proposed that, in view of the 'collective, transparent and valuable work' carried out by the Convention in drawing up the draft Charter of Fundamental Rights, the 'same formula' be used for the drafting of the future Constitution of the Union.

Declaration 23 on the future of the Union annexed to the Treaty of Niceof 26 February 2001, albeit less forthright, responded in part to the call made by Parliament. In this Declaration, the IGC concluded that the Treaty of Nice opened the way to enlargement and called for *a deeper and wider debate about the future of the European Union*. This debate should involve all interested parties, including representatives of national parliaments, figures reflecting public opinion and representatives of civil society. The applicant countries would be associated with this process in ways to be defined.

Declaration 23 specified both the timetable for the next stages in the process and the 'questions' to be addressed by it, listed under four points: a more precise demarcation of thecompetences enjoyed by the European Union and the Member States reflecting the principle of subsidiarity, the status of the Charter of Fundamental Rights of the European Union, a simplification of the Treaties 'without changing their meaning', and the role of the national parliaments in the European architecture. Once this preparatory work had been completed, a new IGC would be convened in 2004 in order to make the corresponding changes to the Treaties. The ultimate aim of the IGC would be to improve the democratic legitimacy and transparency of the Union and its institutions in order to bring them closer to the citizens.

One year after the close of the IGC held in 2000, the Laeken European Council, in a declaration dated 15 December 2001 on the future of the Union, reworked the themes raised at Nice into a 'series of specific questions' to be put, including the division of competences between the Union and its Member States, simplification of the Union's legislative instruments, improvement of the legitimacy and efficiency of the decision-making process, and the possible adoption of a constitutional text putting an end to the proliferation of Treaties and incorporating the Charter of Fundamental Rights. In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council decided to convene a 'Convention on the Future of Europe', of which it specified the composition, length of proceedings and working methods.

The European Convention convened in Brussels from 28 February 2002 to 10 July 2003. Apart from its Chairman and its two Vice-Chairmen, it consisted of 15 representatives of the Heads of State or Government of the Member States, 30 Members of national parliaments, 16 Members of the European Parliament and two representatives of the Commission. The applicant countries preparing for accession participated fully in the work of the Convention but could not block any consensus that might emerge among the Member States. Representatives of the Economic and Social Committee, the European social partners, the Committee of the Regions and the European Ombudsman were invited to attend as observers. The Presidents of the Court of Justice and of the Court of Auditors were able to present views to the Convention at the invitation of the Praesidium. The debates of the Convention, which worked in the eleven working languages of the Union, and all the official documents were made public. In order to expand the debate and associate the public with it, a 'Forum' was opened up to organisations representing civil society, the contributions of which also formed part of the debate.

The final document of the Convention, adopted by consensus on 13 June and 10 July 2003 as a 'draft Treaty establishing a Constitution for Europe', was handed over to the President of the European Council in Rome on 18 July 2003. It served as a basic document for the discussions of the IGC which began on 4 October 2003.

The 2003–2004 IGC limited itself to a consideration of the most controversial issues of substance, avoiding renegotiation of the entire draft Convention. Because of the preparatory work carried out, the organisation of the IGC differed from that of its predecessors. Initially, no meeting was scheduled at the level of representatives of Member State governments. However, in order to channel the flow of information, the Member States appointed 'focal points' (officials with a mainly administrative role). On the other hand, a working group of legal experts — without any political role — carried out an important task in subjecting the text to legal and linguistic examination.

The negotiations were conducted at Foreign Minister level and were attended by a representative of the Commission and two observers from the European Parliament. The difficulty in reaching agreement on the most sensitive issues, in particular the voting system in the Council, made it impossible to close the IGC under the Italian Presidency at the December European Council. The negotiations continued in 2004 under the Irish Presidency and closed on 18 June 2004 with an agreement among the Heads of State or Government on the final text.

The Treaty establishing a Constitution for Europe

On 29 October 2004, the **Treaty establishing a Constitution for Europe** was signed in Rome, the same city in which the founding Treaty of European integration had been signed in 1957, an event symbolising the recasting of the Union in a new mould. The new text, once it came into force, would, indeed, replace both the Treaty establishing the European Community, or 'Treaty of Rome', and the Treaty on European Union adopted at Maastricht in 1992, as last amended at Nice in 2001. The Treaty establishing a Constitution for Europe, however, did not provide for the repeal of the second Treaty signed in Rome in 1957, the EAEC or Euratom Treaty.

Still taking the form of an international legal agreement, with its entry into force conditional on ratification by all the Member States of the Union (by way of a referendum or parliamentary process, depending on the procedure laid down by each State), the new text finally brought out the constitutional substance of the preceding Treaties by rendering it explicit. For the first time, the founding act of the 'Community subject to the rule of law' which is the European Union endowed the entity which it established with a 'Constitution'. The document, referred to in the light of its dual nature as a 'Constitutional Treaty', became the principal reference text, one that was much more comprehensible than the texts which it replaced.

With its simple structure divided into four main parts (objectives, Charter of Fundamental Rights, policies and functioning, general and final provisions), its clarity also owed much to the simplification of terminology. Thus, the 'legal acts of the Union' were subdivided into 'legislative acts' (European laws and framework laws) and 'non-legislative acts' (regulations, decisions, recommendations and opinions).

Legislative acts were to be adopted under the ‘ordinary legislative procedure’, or in accordance with ‘special legislative procedures’ in specific cases. The Council was to exercise ‘legislative and budgetary functions’ jointly with the European Parliament. It was stated that the functioning of the Union ‘shall be founded on representative democracy’. For the first time, reference was also made to ‘categories of competence’ of the Union (exclusive competence, shared competence and competence to carry out supporting, coordinating or complementary action). The semantic — and symbolic — value of the terms used had immediate consequences in shaping ‘European political awareness’. Citizenship of the Union — which ‘shall be additional to national citizenship and shall not replace it’ — finally emerged in visible form.

In this context, it is interesting to note the inclusion as objectives of the Union of a whole series of concepts which were, henceforth, to form part of a shared European political identity: for example, ‘sustainable development’, a ‘social market economy’ (which was ‘highly competitive … aiming at full employment and social progress’), ‘equality between men and women’, ‘solidarity between generations’, ‘economic, social and territorial cohesion’, respect for ‘Europe’s rich cultural and linguistic diversity’, the ‘eradication of poverty’ and ‘strict observance and development of international law’. Respect for the national identity of the Member States was also supplemented in order to take account of the complex reality of decentralised or federal states by specifying that the ‘national identities’, which were inherent in their political and constitutional structures, were to be respected by the Union ‘inclusive of regional and local self-government’.

Among the main constitutional contributions of the new text, compared with the preceding Treaties, the following stood out in particular:

— the Union was to acquire legal personality;
— the Charter of Fundamental Rights would form an integral part of the Treaty;
— the Union would accede to the European Convention on Human Rights;
— the competences of the Union were clearly defined;
— while the Treaty contained ‘specific provisions’ on the common foreign and security policy, on the common security and defence policy and on the area of freedom, security and justice, the old structure of the previous texts organised by ‘pillars’ was removed;
— as a general rule, the Union ‘shall exercise on a Community basis’ the competences which the Member States conferred on it, otherwise it ‘shall coordinate the policies’ by which the Member States aimed to achieve common objectives;
— a title devoted to the external action of the Union combined the provisions relating to the common foreign and security policy with those provisions relating to common commercial policy, cooperation with third countries and humanitarian aid, international agreements and relations with international organisations;
— the jurisdiction of the Court of Justice in the ‘area of freedom, security and justice’ was given general applicability;
— a ‘facilitating clause’ enabled Member States participating in enhanced cooperation to act by a qualified majority or under the ordinary legislative procedure, subject to a decision taken unanimously;
— the European Council was to become an institution in its own right, with a President elected for a term of two and a half years;
— the European Foreign Affairs Minister was to preside over the Foreign Affairs Council and would, at the same time, serve as a Vice-President of the Commission;
— the qualified majority in the Council, which was to become the general rule, was defined on the basis of the double majority principle (Member States and population);
— the distribution of seats in the European Parliament was calculated on the basis of the principle of degressive proportional representation, with a minimum of six seats and a maximum of 96 seats per Member State;
— by way of innovations, the Treaty made provision for a procedure by which the national parliaments could ensure compliance with the subsidiarity principle, for individual citizens to propose legislation, for solidarity in the event of a terrorist attack or natural or man-made disasters, and for voluntary withdrawal from the Union;
— in addition to the ordinary revision procedure (henceforth Convention and intergovernmental conference, followed by ratification), provision was made for simplified revision (provisions to facilitate the substitution

of qualified majority decisions for unanimous decisions and the ordinary procedure for special legislative procedures in Part III) and a procedure for simplified revision as regards internal policies and actions of the Union (Part III, Title III).

It should be emphasised that the Constitution did not specify the nature of the Union. However, the Preamble took up the theme of its evolving nature when the representatives of the Member States declared their conviction that the peoples of Europe were determined to ‘forge a common destiny’, ‘united ever more closely’. In the same spirit, enhanced cooperation was envisaged as a means of reinforcing the ‘integration process’ of the Union.

The hierarchisation of the text of the Treaty would facilitate future reforms, making it possible to revise Part III, which covered the policies and functioning of the Union, by way of the simplified procedure. The fact that the Convention — which prepared drafts ‘on behalf of the citizens and States of Europe’ (see Preamble) — would henceforth form part of the ordinary revision procedure, representing the stage preceding the IGC, finally demonstrated the dual legitimacy of the ‘Union re-established on new foundations’.