

Antecedents

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Right from the outset of a Community-based Europe, the drawing up of a genuine Constitution was advocated. Militant federalists were the main advocates, since their aim was to enshrine economic integration, which had begun with the European Coal and Steel Community (ECSC) (18 April 1951), in a genuinely political and democratic framework. When the Treaty establishing the European Defence Community (EDC) was concluded in 1952, it became apparent that a European Political Community (EPC) needed to be established. At the request of the governments involved, the ECSC Assembly had drafted a comprehensive proposal combining the federal system, with a parliament and an executive body, with the requisite involvement of national governments. This text was submitted to the ministers of the six ECSC Member States on 9 March 1953, but some of them (France, Belgium) deemed it too federalist, which meant that it was not taken into consideration, and it was then rendered void by the French National Assembly's rejection, on 30 August 1954, of the EDC Treaty. By contrast, when General de Gaulle returned to power he proposed, in 1961–1962, as part of the Fouchet Plan, an intergovernmental 'Union of States'. This was rejected by the small Member States because they feared that the Community system that worked in their favour would be overridden.

The European integration process was put back on track with the Rome Treaties (25 March 1957), when the Community system was extended to two new areas — the European Economic Community (EEC), with its general Common Market and common policies, and Euratom, with its objective of promoting the peaceful use of nuclear energy. Economic and technical integration continued, but other areas were also addressed (regional policy, social policy, cooperation in foreign policy, monetary policy, etc.). It became apparent that there was a need to 'globalise' the varying relationships — Community and intergovernmental — of the countries belonging to the three European Communities. Hence the decision taken at the Paris Summit (19–21 October 1972) to transform, 'before the end of the present decade and with the fullest respect for the Treaties already signed, the whole complex of the relations of Member States into a European Union'. The term was chosen in order to avoid the word 'confederation', which was so dear to French President Georges Pompidou but was rejected by German Chancellor Willy Brandt and the supporters of integration, and also the word 'federation', which was preferred by the latter but opposed by France and the UK. These differences of opinion explain why, having adopted the term 'Union', governments proved incapable of agreeing on its structures and hence of giving a tangible form to them.

It was the European Parliament that, having been elected in 1979 by direct universal suffrage for the first time, decided at the instigation of Italian federalist Altiero Spinelli to draw up a draft European Union Constitution. In so doing it was acting as a constituent assembly, taking advantage of its democratic legitimacy, but with no government mandate. The draft Treaty establishing the European Union adopted by MEPs on 14 February 1984 was original. It was not an abstract construction. It took the realities of the situation into account, being based on the Community system and providing for its gradual extension to the fields of intergovernmental cooperation within a democratic framework and assuring a division of powers between Parliament, as key initiator of legislation, and the Commission, whose executive role was strengthened. Member State representation was assured in a second house of Parliament and in the Council of Ministers, where the scope of majority voting was extended. The Union's competences were substantially expanded, but the subsidiarity principle was asserted — the Union would take on only tasks that could be conducted more effectively jointly than by Member States acting individually. A distinction was therefore drawn between competences exclusive to the Union (essentially, completing the Common Market, administering a common trade policy) and cooperative competences shared with the Member States (the majority of Community policies). Foreign policy and defence remained a matter for intergovernmental cooperation, during an initial stage at least.

The governments did not consider this draft, particularly since it provided for ratification by the national parliaments, to which it would be directly referred. The governments did not wish to be excluded from the drafting of a Constitution, and the members of the national parliaments themselves did not want to bypass their governments. Therefore the draft was not discussed at either ministerial or parliamentary level (except in Italy). However, the European Parliament's initiative made it clear that the European Union ultimately needed to be defined and that this needed to be done on the basis of the will of governments.

The governments appreciated this, and set out to revise the Community Treaties, although such revision had been sidelined by the 1972 Paris Declaration. The first result was the Single European Act of 17–28 February 1986, with its two parts, the first devoted to extending the Community Treaties (with the aim of completing the single internal market) and the second constitutionalising intergovernmental cooperation on foreign policy; all this operated within a common institutional framework. Then the Treaty on European Union (the Maastricht Treaty) of 7 February 1992 defined an overall architecture juxtaposing an expanded Community ‘pillar’ with economic and monetary union and two intergovernmental ‘pillars’ for justice affairs and foreign and security policy. Economic and Monetary Union proceeded successfully, with the adoption of the euro, but the way in which the remaining two ‘pillars’ functioned left something to be desired. The Treaty of Amsterdam (2 October 1997) brought only limited improvements. Above all, it became necessary to reform the entire institutional framework in order to adapt it so that it could cope with successive enlargements and to enable efficiency and democracy to be reconciled. The Treaty of Nice (26 February 2001) failed to achieve this. It therefore proved necessary to adopt a method other than intergovernmental negotiations.

At the same time, suggestions were being made as to the nature of the reforms that were required and the need for a European Constitution. In 1994, when Belgian MEP Fernand Herman submitted his report, the European Parliament returned to its draft Constitution based on cooperative federalism. On 18 October 1999, it adopted a resolution calling for the Treaties to be simplified and rationalised and suggested that the future Constitution should be limited to Union objectives, to fundamental rights, to institutional provisions, competences and decision-making procedures. Only this part of the Constitution would need to be ratified by all the Member States. A second part covering Union policies would not need to be ratified and, in order to take account of situations as they developed, it would be possible for the Council to amend it by unanimous or qualified majority vote, in order to avoid the need for constant and arduous revision of the Treaties. This solution was also adopted by the European Commission which, moreover, proposed a genuine programme of reforms on 10 November 1999 — general application of qualified majority voting in the Council, with the European Parliament having the power of codecision, revision of the system of weighting votes in order to take better account of the demographic factor, and restriction of the number of members of the Commission so as to ensure that the institutions worked efficiently in an enlarged Union. Lastly, the governments themselves began talking about a European Constitution, but with varying views on its nature, with German Foreign Minister Joschka Fischer favouring a federal basis and the French President, Jacques Chirac, supporting a much more intergovernmental approach.

As for the method to be adopted for the drafting of this new text, the experiences of Amsterdam and Nice had shown that the Intergovernmental Conference (IGC), in which different visions and mutually antagonistic national interests clashed, was not on its own capable of making much progress and that the debate needed to be widened. The way in which the Charter of Fundamental Rights of the European Union was drafted between December 1999 and September 2000 is an example of this — the task was successfully conducted by a Convention — consisting of representatives of governments, the European Parliament and national parliaments, and the Commission — deliberating publicly and incorporating contributions from many non-governmental associations and organisations. This was the model that must provide inspiration if we wished to succeed in producing a text informed by the general interest and one that would serve as a basis for intergovernmental discussions. A declaration annexed to the Treaty of Nice at the request of Chancellor Gerhard Schröder was inspired by this model when it provided for an extensive debate on the future of the European Union to be organised by the Laeken European Council in December 2001. The Benelux countries had already issued a memorandum in October 2000 suggesting that such a debate should be organised. The project was to be particularly dear to the heart of the Belgian Presidency.