

The Constitutional Treaty and the June Summit: A way forward?



Gaëtane Ricard-Nihoul

Gaëtane Ricard-Nihoul is Secretary General to Notre Europe. She holds a DPhil in European Politics and Society from Oxford University, she has specialised knowledge of

the Union's institutional development. In her capacity as adviser to the Belgian Vice-Prime Minister she has, notably, taken part in the Nice European Council and in the

preparation of the Laeken Declaration. For Notre Europe, she wrote the paper *"The French No Vote on 29 May: Understanding and Action"*.

A commitment to result before June 2009

The European Council of 21 and 22 June draws near amidst overridingly mixed feelings. The European crisis is undeniable and getting more entrenched as Member States' diverging positions become clearer. At the same time, the trend for a fresh start shows signs of shaping up now that the European Council has committed to resolving the

constitutional conundrum before the 2009 European elections. Put together these two stances have nothing to reassure: the will to find a solution combined to the range of desires expressed in European capital cities can only lead to the lowest common denominator whereas today's EU needs to come out on top.

Conclusions of the June 2006 European council

... The outcome of this examination (of the Presidency report) will serve as the basis for further decisions on how to continue the reform process, it being understood that the necessary steps to that effect will have been taken during the second semester of 2008 at the latest.

Berlin Declaration March 2007

... We are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

A Proactive German Presidency

In order to end the constitutional stalemate in the second semester of 2008, the European Council has provided for a report, based on in depth consultations with the Member States, to be handed in in the first half of 2007. Thus the task to set forth a "roadmap" on the way out of the crisis at the 21-22 June summit falls to the German Presidency. In keeping with its mediating role, the German Presidency has hitherto steered clear of any clear cut position as to the contents of this document. The Chancellor has said on several occasions that she wished to preserve the

"substance" of the European Constitutional Treaty (ECT) but passed on elucidating the shape this would take. At first glance, the gap between Member States' positions would appear unbridgeable but the German Presidency has proved pretty shrewd on other dossiers, notably the Energy question and Mrs Merkel's determination shows no sign of waning. She declares herself ready to feed some content into the roadmap and to set up an Intergovernmental Conference (IGC) as early as June in order to achieve a new treaty by December.

Europe and the French New Deal

We may play down the impact of the French "No" in the 2005 referendum, and allot to the countries who discontinued the ratification process their fair share in the responsibility for the current deadlock: it will not detract from the fact that France, founding nation and guiding light in the EU, has a key role to play in kick starting a relaunch process. The French electoral calendar is, in this respect, a double edged sword. On the one hand, the election of a new president last May afforded very little time for European consultation before the June European Council; on the other hand, the new political deal in France gives rise to hopes for a communicative fresh impulse.

It will not detract from the fact that France, founding nation and guiding light in the EU, has a key role to play in kick starting a relaunch process

to qualified majority decision, double majority voting within the Council, election of the President of the Commission by the European Parliament, monitoring of the subsidiarity principle by the national parliaments, more stable Presidency of the European Council, creation of a Minister for Foreign Affairs, Citizen's initiative, support to enhanced cooperation and the grant of legal personality to the Union. This text should be drafted promptly, starting under the German Presidency and the ratifications should, in his view, be completed under the French Presidency.

Parliamentary Ratification

It being essentially "technical", this mini-treaty should, according to Mr Sarkozy, be ratified, in France at least, by the Parliament and not by a referendum.

A second Round?

Nicolas Sarkozy was the first among the main candidates to frame a precise "exit" plan. Indeed he chose to state his views as early as September 2006 in Brussels. For Mr Sarkozy, the object is to "settle" the institutional question which currently jams Union dynamics. He suggests restricting the debate to the essential elements of the first part of the Constitutional Treaty, deemed relatively "consensual". With this in mind, he talked of adopting a "mini institutional treaty" containing the following provisions: extension of the domains subject

This second component of Mr Sarkozy's proposals got much less attention from the media and, if truth be told, was rather left in the shadows by its proponent. He did, however, refer to a second round in which a Convention would be called, after the 2009 European elections, and given a very broad mandate (apparently mostly on European policies) and a democratic designation.

French Proposals and European Realities

Mini or Maxi ?

Mr Sarkozy's advisers have tried to back pedal from a "mini" treaty to a Simplified Treaty, or indeed a "treaty by chisel" which would subsume all the advances in the ECT in the shape of amendments to the treaty of Nice. But the word "mini" has stuck and marked a line of cleavage. The group of 18 countries who have ratified the ECT insists on maintaining its substance. Others have leapt at the prospect of a mini-treaty, which would solve their problems. The Dutch government's problem, as it has to take into account the "*nee*" returned by 62% of its people. That of the British, the Poles and the Czechs for whom the idea of swap-

ping the constitution for a mini-reform is not only alluring but, with the game sent into extra-time, an opportunity to come back on a part of the constitutional agreement. And finally that of the Danes or the Swedes who have not yet started the ratification process and find it easier to countenance, given the Euroscepticism of a fair part of their electorate, on a minimal basis*.

A Risk to the Global Tradeoff?

The theory of the mini-treaty has given rise to mixed reactions among the experts. Many of them, often former members of the Convention, think that the broad balance achieved in the ECT text

makes its dismemberment very risky. Since Parts I and II of the text were signed by all the governments and did not create major problems at the ratification stage, some have suggested con-

centrating on the third part addressing policies, by improving the content on subjects like the environment or social issues, and easing the revision and ratification process.

* Ireland and Portugal have, for their part, joined the "Group of 18" by signing up to the declaration adopted at the Madrid Meeting in January 2007 and thus to the necessity to find an agreement acceptable to all and which respects the substance and tradeoffs in the ECT.

Propositions

Stay on course: down to brass tacks

1. Keep Pandora's Box Tightly Shut:

Part one of the ECT has not met with Member States' consensus. The institutional question, specifically regarding the voting procedure within the Council, or the number of EuroMPs or of Commissioners is none other than the one States have stumbled over ever since they were left pending in Amsterdam, that is nearly 10 years ago. The institutional trade-off of the ECT may not be perfect but it is an unforced compromise after so many years and especially Nice's failure. This part I touches on matters of national sovereignty, particularly sensitive in countries like the United Kingdom or Poland. To lay it open to further negotiation is tantamount to re-opening Pandora's box. On the basis that it has been accepted by the 27 governments it would probably have been wiser to propose that it be taken as read without renegotiation, reserving this to the third part of the text. In so far as this option seems excluded, it is crucial that the countries

striving for an ambitious agreement stand firm. The absence of agreement may be preferable to a bad result and there is no reason why the minimalists should have a monopoly on the use of the veto. Specifically the extension of majority vote - incidentally provided for in Part III of the ECT – is indispensable to the running of a true Union.

2. No Surrender on the Charter of Fundamental Rights:

History will judge the magnitude of the crisis caused by the failure of the ECT ratification. One thing, however, seems pretty clear today: the concessions obtained from the British during the Convention are not about to be repeated. The UK government, whether Brown be endorsed or replaced by his Conservative opponent, will not be as receptive as Tony Blair's was, reticent though he was in comparison with his European partners. The fact that the Brits accepted – admittedly subject to many and manifold conditions – that the

Charter of Fundamental Rights be integrated in the ECT was a real advance. Giving in on the binding legal status of this Charter at the time when the majority of the Union's citizens call on the latter to become more humane and more social would be a deplorable decision.

3. Plan a Second Round on Policies:

The ECT trade-off does not rest exclusively on its first part. Part III, which itemizes the policies the member states wish to run jointly should indeed have been improved by the Convention. But the existence of a component on policies is essential in order to show why the EU needs a renewed institutional framework. That is the reason why some have warned against a fragmentation of the ECT. Institutions and policies are of a piece. Wanting to tick the institutional box without talking about what it would be good to do together is as artificial as wanting to make Europe by results without trying to disentangle the institutional knots. This being

The absence of agreement may be preferable to a bad result and there is no reason why the minimalists should have a monopoly on the use of the veto.

so, it is more than likely that the option of a first essentially institutional round will be confirmed in Brussels on the 21-22 June. In this context it is paramount to build in a clause towards a second round dealing with Part III of the ECT and policies. One of the major causes of the citizen's disaffection towards the European project is that they do not perceive the value added by the EU in a globalised world. Worse: for some, the EU amplifies globalisation's negatively perceived effects. It is therefore indispensable for the Member States to set aside some time to define together what makes the relevance of the European project in this new geopolitical context.

4. The Convention Must not be Overlooked :

The vast majority of the options proposed to get out of the constitutional stalemate addressed the contents of a potential new agreement and very

few the means to that end. Most have insisted that a short IGC was called for. Now, of all the reasons that explain the negative referendums in France and the Netherlands, only one seems undeniably shared: the growing distance between the citizen and the European construction. And this remoteness has, in fact, grown more general throughout the EU since the beginning of the 90s, as shown by the last 15 years' Eurobarometer polls. The decision by the Heads of States and Governments to call a Convention was not only intended to try and go beyond their own 'red-lines': it also came out of the conclusion that it is critical to the survival of the European project to associate the citizens to its reviewing process. Its weaknesses – on which there is much to be said – notwithstanding, the Convention is an undeniable democratic progress by comparison with a stan-

dard IGC. If it is not chosen to renegotiate the institutional agreement, it must be retained for any ulterior reform of any importance.

5. Spell out the Consequences of a "No":

All these efforts to preserve a part of the ECT only make sense if the chances of ratification are real. And it is today apparent that there's the rub. A simultaneous ratification within the EU must be the goal to aim for. Furthermore, short of busting the unanimity log-jam at this stage, it is of the essence that the upshot of a "No" be clear. The 4/5 of states threshold referred to in the case of the ECT must take its full meaning. It must enable the countries ready thus to act to move on either by means of a form of enhanced cooperation or conversely, by an 'opting out' system which would create a *de facto* "rearguard"

Europe in the French Presidential Elections: Side show, Fall guy or just Conspicuous by its Absence?

The cover features the Notre Europe logo and the title in large, bold letters. Below the title, there is a small blurb and the author's name, Gérard Asfeld. The background is white with some dark text at the bottom.

"Europe in the French Presidential Elections"

Published alongside the Spanish institute Elcano before the first round of the French presidential elections, this article seeks to provide a few leads to grasp the tenor of the European debate in France, in an electoral climate tempered by the fall outs of the "No" to the Constitutional treaty at the May 2005 referendum.

Briefly surveying the reasons that account for the shift from a "European hotbed" to a "European taboo" in France, the article looks into the "low-key European campaign" and the positions of the main candidates on relaunching the Union. Merely sketched out and distinctly tentative, these proposals, set against a Euro-

pean reality poorly reflected in the French media leads the author to conclude with a warning. The President to be will, within a very short time before the June Summit, have to convert cautiousness into alert proactivity. ■