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Plan B: How to Rescue the European Constitution

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Foreword

The pun got around fast: Are we to understand that the period of reflexion called by the Heads of State and Government at the June 2005 European Council (in the aftermath of the French and Dutch “nos” to the Constitutional Treaty) has now turned into just *period*?

The fact is that the great public debates announced by the Member States, determined to reconnect the frayed links between citizens and the European project, are thin on the ground. Between mourners of an immaterial “yes”, yesterday’s unwavering champions of a “no” today left in the closet, pseudo-undecided and sitters on the fence, the project of constitutional Treaty has shunted to a halt unsteady to say the least.

In this context, Andrew Duff’s pamphlet is timely. His chosen title sets the tone: time has come to launch the debate on a potential “plan B”. And Andrew Duff is right: it is about time this plan B, non-existent though much talked about throughout the referendum campaign in France (where it featured in a diffuse conspiracy theory) be today outlined, debated, pulled apart and put together again until a remedy is found to the current paralysis. Without adopting all Andrew Duff’s proposals, *Notre Europe* has considered useful to publish his text as a contribution to a debate that must be revived.

But the reader should make no mistake about it: the strategy set forth by the MEP is no *tabula rasa*. An active member of the Convention, he robustly defends a project born of several years’ work within an instance the democratic credentials of which should need no recommendation. Rebuild, extend and improve what is extant, namely the Draft Constitutional Treaty, that is the starting point proposed by the author and which would seem dictated by both wisdom and respect for those European democracies who have already approved this text.

Andrew Duff goes so far as to suggest that some dispositions in the project be preserved since they do not appear to have been at the heart of the most heated ratification debates, where they took place, specifically those in the first, truly “constitutional” part of the text. That is not to say that the author sets us on the tracks of a partial implementation of the Draft Treaty, in line with those who moot the adoption of a mini institutional Treaty. No, the project is an overall even-handed trade-off and so it must remain.

Those oratory precautions out of the way, the MEP feels no need to be tentative in his renegotiation proposals. In the knowledge that many objectors to the text demurred at its third part, which defined Union policies, Andrew Duff declares it in need of attention, even putting forward the themes, which should be prioritised. The more precise the detail the closer we get to the dicey question of whether it is wise to open this or that can of worms, to chance this or that stake in the Treaty, but Duff’s approach has the merit to have no bars held: economic governance, social dimension, climate change, enlargement and finances are the five headings he sets on the agenda.

The author does not shrink either from another conundrum for the detractors of this third part, namely the so called "carved in stone" character given to dispositions the legislative nature of which does not warrant such rigidity. For Andrew Duff, this third part must be clearly subordinated to the first and supplemented with a more tractable revision clause. Duff also proposes that the second part of the Treaty, that of the Charter, be moved to an Annex, whilst keeping its full force – which perhaps leaves the fittingness of this last proposal in need of some justification.

Andrew Duff has proposed a mode of renegotiation founded on a constitutional co-decision formula involving the Council and the European Parliament: the compromise he has sought between Convention and IGC is understandable. Yet, of his own admission, he would prefer, if it were possible, the solution of a new Convention. Is it not – subject to a reflexion on potential improvements to its mechanisms – the only legitimate instance fit to pursue the work it had started? It is a point undoubtedly worth debating, as are his proposals to temper the ratification procedure. How is one to ensure that one single Member State cannot hold up the whole process, whilst respecting the Union's double legitimacy, that of its peoples and that of its States?

Reading this pamphlet, it is easier to understand why there was not, before 29 May 2005, a carefully penned plan B, sitting quietly in some European civil servant's drawer. The problem is complex, with multiple questions to answer. *Notre Europe* is grateful to Andrew Duff for having got down to it.

The drafting of a plan B should probably have been the penance of those who so lightly dismissed the value of the trade-off offered in Plan A. Never perfect, the European compromise is the end product of a long drawn effort and of procedures based on mutual respect. Its reconstruction is a trying and now pressing task.

Gaëtane Ricard-Nihoul

EXECUTIVE SUMMARY

- The Treaty establishing a Constitution for Europe, signed in October 2004, will well equip the European Union to meet the demands of the 21st Century and the aspirations of a large majority of its citizens. Without the constitution, Europe will lack internal cohesion and external strength, and the Union's development into a mature, post-national democracy will be halted.
- Unfortunately, this constitution will not now come into force because France, the Netherlands and the United Kingdom cannot ratify it, and several other member states are making no progress towards ratification. If the constitution is to be saved, it will have to be modified. There are no other options. Europe badly needs its Plan B.
- By improving the 2004 treaty it is certainly possible to address many of the concerns expressed by public opinion during the ratification process. The renegotiation must be judicious, tactical and modernising. No single prescription will be sufficient to refresh the consensus around the constitutional project. Simplistic or superficial solutions have to be avoided.
- The 2004 text must be ring-fenced where the consensus that lay behind it still holds good. This applies in particular to the hard core of the original treaty – that is, the constitutional provisions in Part I, none of which have proven particularly controversial during the ratification process.
- The constitution needs to be restructured, however. Part II, the Charter of Fundamental Rights, would achieve greater visibility by being annexed to the constitutional treaty and accorded a unique revision procedure (new Article IV-443 bis). The Charter's content and legal status would be unchanged.
- Part III, concerning the policies and functioning of the Union, should become clearly subsidiary to Part I, with a softer revision procedure (Article IV-445). The general passerelle clause, allowing shifts from abnormal to normal decision-making, should be simplified (Article IV-444).
- There are five policy areas deserving of modification or innovation. First, the economic governance of the Union should be strengthened (Article III-184). The autonomy of the eurozone should be enhanced (Article III-194). And the Lisbon agenda should be written into the constitution (Article III-178).
- Second, the constitution should define a common European framework for the organisation of economic society (Article III-209). A Declaration on solidarity should be drafted to highlight the social dimension of European integration. And those member states wishing to go further should commit themselves to a Protocol on a social union.
- Third, combating climate change should become an imperative to which all common policies need to conform (Article III-119). In this context, the common agriculture policy should be modernised (Article III-227), and separated out from the common fisheries policy (new

Article III-227 bis). Environment policy should be up-graded (Articles III-233 & 234), and common energy policy revised to meet current concerns (Article III-256). Euratom should be brought within the scope of the constitution.

- Fourth, a new Title should be drafted into Part III that would insert the Copenhagen criteria, governing the enlargement policy of the Union, into the constitution. The accession process should also be laid out in full. In the context of the EU's neighbourhood policy, a new category of associate member should be introduced.
- Fifth, the revised financial system, which is to be negotiated in any case in 2008, should be enshrined in Part III of the constitution. It should cover both revenue (including the UK rebate) and expenditure (including the CAP). The reform should aim at greater fairness, buoyancy, transparency and accountability - thereby allowing the EU's budget better to match its political priorities.
- The IGC, which is destined to take place in 2008, should interact with the European Parliament in a form of constitutional co-decision. All three EU institutions, the Council, Commission and Parliament, have a duty to engage during the renegotiation with national parliaments and political parties. In 2009, an EU wide poll should be considered as a means of ensuring democratic consent for the revised constitutional package (Article IV-447).

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1. Europe's Constitutional Dilemma

The Treaty establishing a Constitution for Europe was signed by the heads of government of the twenty-five member states of the European Union in Rome on 29 October 2004. The ceremony was the culmination of five years' difficult constitutional negotiation, beginning with the Convention on the Charter of Fundamental Rights in 1999, and continuing with the Convention on the Future of Europe in 2002.

The two Conventions achieved new levels of openness, pluralism and democratic legitimacy. They were able to craft a comprehensive and sophisticated package of constitutional innovation that largely survived intact the classical Intergovernmental Conference which closed the proceedings in 2004. No constitution, of course, is beyond criticism, but the verdict of Members of the European Parliament rings true. Over two-thirds of the Parliament endorsed the constitution as 'a good compromise and a vast improvement on the existing treaties ... [which] will provide a stable and lasting framework for the future development of the European Union that will allow for further enlargement while providing mechanisms for its revision when needed'.¹ It is worth recalling that all previous treaty revisions had been greeted by MEPs with a chorus of disapproval and a catalogue of demands for further reform.

So what are the main achievements of the constitution?² It enhances the capacity of the Union to act effectively abroad, not least by creating the post of Minister Vice-President of the Commission in charge of foreign affairs, along with a ministry. The constitution strengthens the rule of law within the Union by widening the scope of the Court of Justice. It establishes a legal personality for the Union in international law. The powers of the European Parliament are greatly increased in respect of the budget, legislation, international agreements, and the scrutiny and appointment of the executive. Member state parliaments are equipped with a mechanism to verify how the principle of subsidiarity is being applied. By enforcing openness in the Council when it acts in a legislative capacity, the constitution will help national MPs hold to account their own ministers for their performance in Brussels. The constitution makes binding the Charter of Fundamental Rights and facilitates the EU's accession to the European Convention on Human Rights. European citizenship is strengthened in terms not only of rights but also of participative democracy. The Council gains credibility through transparency; it gains flexibility through the wide extension of qualified majority voting (QMV); and it gains leadership by way of a permanent presidency. The contrivance of the 'three pillars', a legacy of the Treaty of Maastricht, is abolished: henceforward, EU policy in the field of interior affairs and cooperation between police, customs and judicial authorities is to be brought within the mainstream. Greatly improved provisions for the making of common foreign, security and

¹ Mendez de Vigo-Corbett Report, January 2005.

² For a much fuller description of the relative strengths of the constitution, see *The Struggle for Europe's Constitution*, Federal Trust/I.B.Tauris, 2005.

defence policy offer the prospect of closer cooperation between those member states which are both militarily capable and politically willing. With the constitution it will make practical sense in the enlarging Union for certain groups of member states to go further and faster in any given sphere of integration.

The constitution re-casts the values and principles which lie behind European unification. It consolidates the competences conferred on the Union by its member states. It determines the powers of the institutions. Instruments are rationalized, decision-making procedures streamlined, and jurisprudence codified. What had previously been long-winded and obscure is now shortened and clarified. Certain ambiguities and inconsistencies thrown up by previous treaty revisions - Maastricht (1992), Amsterdam (1997) and Nice (2001) - are now resolved. The overall effect of the reform is to turn the pile of international treaties which has hitherto formed the basic statutes of the EU into a more visible and distinct supranational legal order. The mandatory nature of the Charter, the acquisition of legal personality, and the power of the European Parliament to initiate future amendment are examples of this process of constitutionalisation. That is why the document is called *A Treaty establishing a Constitution for Europe*. It is a constitutional treaty replacing the earlier treaties; it is an international treaty whose consequence is to re-found the Union on a constitutional basis.

ENCOUNTERING DIFFICULTIES

Until the constitution comes into force, the constitutional process is governed by the present Treaty on European Union. This says, in Article 48, that no revision of the treaties can take place unless it is agreed first by the governments of all the member states and then ratified by all those states according to their own constitutional requirements. One government veto or one failure to complete a national ratification process brings the whole scheme to a grinding halt.

The possibility of an upset in one or more member state was foreseen by the Convention and the IGC. Declaration 30 annexed to the constitution states that 'if two years after the signature of the Treaty Establishing a Constitution for Europe, four fifths of the Member States have ratified and one or more Member States have encountered difficulties with proceeding with ratification, the matter will be referred to the European Council'. But that, in truth, was not a serious contingency plan. A crisis meeting of the European Council is hardly a constitutional solution to the very real legal and political problem which the Union now faces. Even if four fifths of member states were to ratify, that would be of symbolic value only and would make no material difference to the Union's present predicament. The heads of government, at their critical meeting, would still be confronted by the impasse of Article 48: and they have no Plan B.

To date, only fifteen member states have successfully ratified the constitution according to their own constitutional requirements: Austria, Belgium, Cyprus, Estonia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Slovenia and Spain. As is well known, France and the Netherlands, following referendums held on 29 May and 1 June 2005 respectively, failed to ratify the constitution. But they are not the only rejectionist states. The

United Kingdom cannot and will not ratify the 2004 constitution. Neither Denmark nor Ireland is prepared to run the gauntlet of referendums for the sake of the present text. The governments of the Czech Republic, Poland and Sweden are reluctant in these circumstances to proceed with ratification. Portugal would like to, but has promised a referendum and therefore cannot risk it. Only disciplined Finland, which currently enjoys the presidency of the Council, is planning to ratify the constitution through its parliament before the end of 2006. That will make sixteen.

Some argue, especially from Spain which itself, with Luxembourg, underwent the tribulation of a referendum, that every country has a legal duty to formally express itself on the constitution. That is not a correct reading either of the Treaty on European Union or of the Vienna Convention on the Law of Treaties. Moreover, if the eight reluctant member states were pressed now to come to an official decision about the impeded constitution, in most cases it would certainly be a negative one.

Naturally, it is necessary to respect the verdict of those member states and their peoples which have ratified the constitution as well as those which have not. The fact that the accession states of Bulgaria and Romania have also endorsed the 2004 constitution should not be forgotten. The constitution gains a certain democratic credibility by having been backed by a majority of the member states, representing a majority of citizens. Nevertheless, the unavoidable and paradoxical consequence of the result of the two formal Noes and the several informal Noes is to maintain the Union as it is, imperfections and all, and to block reform.

THE PERIOD OF REFLECTION

In the immediate aftermath of the French and Dutch verdicts, the heads of government met in the European Council on 18 June 2005. The leaders adjudged that the referendum results 'do not call into question citizens' attachment to the construction of Europe', but that 'citizens have nevertheless expressed concerns and worries which need to be taken into account'. The European Council therefore decided on a 'period of reflection ... to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties'. The heads of government agreed that in the first half of 2006 they would 'make an overall assessment of the national debates and agree on how to proceed'. Somewhat contradictorily, however, they also declared that the ratification process could continue if individual member states wished it do so, and they extended into the distance the original timetable for the entry into force of the constitution (1 November 2006).

What the European Council did not do was to give a clear focus to the period of reflection or to define its methods of evaluation. The British presidency of the Council in the second half of the year showed no aptitude for either of the options available to it: there was no active reflection and nothing was done to encourage forward the stalled ratification process. The Austrian presidency in the first half of 2006 was more alert. A 'Sound of Europe' jamboree was organised in Salzburg, possibly to underline the Austrian government's hostility to Turkish membership. Yet another fairly sterile conference was mounted on the much-trampled question of subsidiarity. Chancellor Schüssel exercised his preoccupation about the supposed

activism of the Court of Justice which had forced Austrian universities to respect EU law on equal access for German students.

Meanwhile, the European Commission prepared to up-grade its communications policy. In autumn 2005 *Plan D - for debate, dialogue and democracy* was launched by Vice-President Margot Wallström. The purpose of Plan D was to contribute to the period of reflection by supporting national debates, by providing information about the constitution and by working directly with civil society actors at the EU level. But otherwise the Commission gave no strong push to the period of reflection on the constitutional crisis.

In circumstances where the Council is paralysed and the Commission weak, it falls naturally to the European Parliament to fill some political space. MEPs have sought to steer the period of reflection towards a distinct target - namely, that of salvaging the constitution.³ Parliament recognises the need to deepen and democratise the constitutional consensus formed at the level of the elites. It also wants to avoid uncoordinated, narrowly focussed national debates which would serve only to harden national stereotypes and accentuate divisions.

MEPs have gone out of their way to ensure the active collaboration of colleagues from national parliaments, with whom they enjoyed such fruitful combination in the two Conventions. Parliament proposed that a series of conferences between European and national parliamentarians - 'Parliamentary Forums' - should be organised in order to stimulate the debate and to shape, step by step, the necessary political conclusions. The first of those took place in Brussels in May 2006; the second is scheduled for December. It may be hoped that out of this parliamentary exercise comes a sound analysis of where the original consensus enshrined in the constitution holds good and where the controversial questions lie. The Parliamentary Forums are establishing working groups to address some of the major difficult questions about the future of European integration. Agreement on fundamental issues will open up new perspectives and prepare the ground for reform of the common policies in those areas where dissent exists.

National governments and the Commission should now add their weight to this parliamentary effort by helping to organise public meetings and media debates on the future of Europe - 'Citizens' Forums' - at national, regional and local level, structured along commonly agreed themes. The social partners and civil society organisations should get engaged in these debates. Above all, however, Europe's many political parties must give much more prominence to the European dimension in both their internal debates and electoral campaigning. Citizens' petitions to the Parliament could contribute to shaping the debate.

³ Duff-Voggenhuber Report, January 2006.

OPTIONS

The first, and for some most difficult, thing is to acknowledge, even implicitly, that the ratification of the existing constitution has now encountered insurmountable difficulties. This admission is particularly painful for those who fought on the losing side in France and Holland, and is complicated by the reigning confusion about what to do next.

In theory, at least, there are numerous options. They range from abandoning the constitutional project altogether to tearing up the 2004 text and starting again from scratch. In practice, of course, the options are more limited. As the months pass, the number of diehards who advocate continuing blithely with ratification of the present text as if nothing has happened diminishes. Apart from anything else, it is obviously important to stop more countries from saying No, thereby compounding the difficulties faced.

Some cling to the view that it is up to France and the Netherlands to come up with solutions before others proceed to a vote of their own. However, the incidence of such persons is very low among the French and Dutch, most of whom are demanding a European solution to the crisis they have instigated. In any case, as the period of reflection demonstrates, French and Dutch leaders have no simple or straightforward answers as to why they lost the referendums. Furthermore, tidy as it might seem, a solution tailored specifically to satisfy one strand of French and/or Dutch public opinion would be highly unlikely to be found neutral by others.

It is suggested that new protocols may be added to the constitutional treaty addressed to one or more or all of the member states. But any protocol would be binding on every member state and would require ratification by all – including those which had already ratified the original text. Declarations are a less ponderous instrument. Interpretative declarations were a useful tool in the case of Denmark and Ireland when their ratifications of the Treaties of Maastricht and Nice, respectively, provoked initially negative outcomes. In theory, it would be possible, all other things being equal, to repeat the Danish and Irish experience with respect of France, the Netherlands and the UK. But in practice, the scale of popular rejection and its multiple causes raise serious doubts about whether such a tactic would be sufficient on its own to convert hostile political opinion. In both Denmark and Ireland, the compromises reached with their EU partners served also to unite domestic political forces that had been antagonistic over the initial proposition. Tinkering on the margins of the constitution seems unlikely to induce similar bipartisan harmony in France, Holland and Britain, or, for that matter, among the fractious Czechs and Poles.

Nevertheless, Angela Merkel, among others, has suggested that something be added to the constitution to make more visible its social dimension, presumably without changing its meaning or creating legal uncertainty.⁴ This is an idea which we discuss in more detail below, although it is worth flagging up our concern here that deft editorial work alone will not be enough to save the constitution.

Nor is there magic in a change of name. We have already argued that the official title of the document – *Treaty establishing a Constitution for Europe* – is entirely apt. It is undeniably a constitutional treaty, and the Convention and the IGC were quite correct to describe it accurately. There are those who have convinced themselves subsequently that if the treaty had been called something else it would have met with universal popular acclaim. Paradoxically, that argument is made much of in Holland despite the fact that the official Dutch name for the treaty is not ‘constitution’ at all but ‘grondwet’. In Germany (where the constitution was ratified without any difficulty whatsoever) one hears ironic proposals to change the name from ‘Verfassung’ to ‘Grundgesetz’. Yet this semantic debate does not seem to penetrate the wider public whose more pressing need is for politicians who can explain the difference between the constitution of their state and that of their Union - and justify the existence of both. Even in Britain, where every club has a constitution, the question of the name is not the burning issue: those who will campaign against the constitution will do so regardless of the name. In light of the fact that the constitutional treaty is already called ‘constitution’ in popular shorthand *and is bound to continue to be so*, what could possibly be gained from seeking now to change its official name? Those who sought to perpetrate such a deceit would surely be opening themselves up to the charge of being stupid. Or, to be more polite, to belatedly change the name of the constitution hardly seems necessary and will of itself never be sufficient to secure its entry into force.

As usual in circumstances of a political crisis, there has been much talk of differentiated integration among a number of member states which may choose to go faster or further in one direction or another than the Union as a whole. Nicolas Sarkozy, for example, has floated the idea that the six largest countries could form a directorate to steer the Union. Many German politicians, in particular, are attracted to the notion of a federalist hard core. Guy Verhofstadt, Belgian prime minister, argues for the eurozone to become the engine of integration; it is unfortunate for his thesis that two of the most important members of the eurozone have just declined to take a big step forward in political integration.

The European Parliament, on the other hand, has made it plain that it rejects the establishment of core groups of certain member states bound together exclusively by size, wealth or mutual self-esteem. It would also regret at this stage the formation of coalitions of certain states outside the EU system as a way of bypassing the constitution.⁵ While the

4 At the European Council of December 2005.

5 Notwithstanding the Treaty of Prüm, May 2005, between Austria, Benelux, France, Germany and Spain (‘Schengen III’).

constitutional process is still in train, any attempt to deploy the Treaty of Nice provisions for enhanced cooperation between integrationist minded member states as a way out of the constitutional crisis should be resisted. In any case, it is not obvious that the Nice provisions could be implemented purposefully. Only the entry into force of the constitution would permit enhanced cooperation across the whole range of policy, including defence. And only the constitution would make the key change of allowing a core group to adopt QMV where unanimity would remain the general rule for the rest. Why settle for second best? An initiative to launch a core group today would be truly divisive, and would be certain to ruin any chance of rescuing the whole constitutional package.

Another option advanced – perhaps the most fashionable - is that the EU should implement the constitution selectively by way of a judicious deconstruction of the 2004 package. Sarkozy, notably, in an effort to extricate France from another capricious referendum, has proposed a 'mini-treaty' or Treaty of Nice *bis*, designed to make minimal but important institutional innovations.⁶ It is telling, however, that few of those who took an active part in the construction of the constitution agree with this approach. It is a basic error to underestimate the scale, complexity and sophistication of what was achieved by the Convention and the IGC. The 2004 text represents a vast compromise built upon a series of reciprocal concessions. Cherry-picking would destroy this carefully constructed consensus among the very disparate member states and between the hotly competing institutions, thereby aggravating rather than alleviating the Union's crisis of confidence. Ask twenty-seven governments to choose their favourite bits out of the constitution, and at least twenty-seven answers will come back – presaging, among other things, a renewed struggle for power between the larger and smaller states. As far as the EU institutions are concerned, the reforms prescribed by the constitution are mutually reinforcing: all emerge strengthened. The 2004 constitution has an admirable internal logic to it. Its new inter-institutional balance, so carefully struck, should be respected at all costs.

Another possibility now canvassed is to try to phase in the ratification and implementation of the different parts of the constitution. This incremental approach would involve an early implementation of the more palatable institutional changes with the promise to deliver the whole package later. But this, too, gives rise to insuperable problems. Who could really trust each and every government to keep its word about completing the project? The constitutional treaty cannot subsist alongside the existing treaties, intended, as it is, to replace them. The new budgetary and legislative procedures appear not in Part I but in Part III, as do the rules governing the establishment of the new external action service. Only in Part III does one discover the political objectives that stem from each area of EU competence as conferred in Part I. Moreover, the extensions of QMV in the Council, an essential key to the constitutional

⁶ See especially Nicolas Sarkozy's speech in Brussels of 8 September 2006. His mini-treaty would include the constitution's provisions for QMV and co-decision, election of the Commission President, subsidiarity mechanism, European Council presidency, Foreign Minister, citizens' initiative, enhanced cooperation, and legal personality.

package, are laid down in Part III. It is not true, as is often evinced, that Part III is either inconsequential, on the one hand, or merely reproduces the existing Treaty establishing the European Community, on the other. Part III cannot therefore be simply dropped; nor can it be put on hold.

The fact is that there is no quick fix possible on institutional reform. Those who, like the British, are tempted to advocate simplistic solutions must be suspected of ulterior motives. The deconstruction of the constitutional package deal and its piecemeal implementation should only be considered as the last resort, if all else has failed.

There remains the nuclear option, which is to try to change Article 48 of the existing Treaty so that its further revision – that is, the entry into force of the new constitutional treaty – would be enacted before all member states had completed national ratification according to their own constitutional requirements. Declaration 30 and Article IV-443.4 of the 2004 text would suggest a threshold of four fifths. The US Constitution can be amended by three quarters of the states – and has been so amended twenty-seven times. No modern international organisation, let alone a federal union, has imposed such a ponderous statutory revision procedure upon itself as the European Union. The Convention was unable to agree on a more supple way to bring the constitution into force. The Commission's unofficial 'Penelope' draft treaty proposed that a separate treaty be enacted in parallel to the constitution that would give the go-ahead once five sixths of member states had ratified.⁷ However, given the half-hearted and defensive mood of many heads of government when they came to justify their signatures on the constitution, there is clearly no appetite for such radical ideas today. As we will discuss later, some relaxation of the future revision procedures may be agreeable as part of an overall, fresh consensus on a modified constitution – but a special IGC just to modify Article 48 looks impossible now.

Needless to add, the stalling of the ratification of the 2004 constitution does not preclude the carrying through of certain democratic reforms that can be given effect without treaty change by way of a revision of existing rules of procedure or inter-institutional agreements. Much progress has been made under the recent Austrian presidency on implementing overdue reforms according to the provisions of the existing EU treaties. These interim reforms are not cherry-picked from the constitution, although they can usefully prepare the ground for the reception of the whole package. Agreement has been reached on increasing the transparency of law making in the Council of Ministers. The European Commission has agreed to send its official documents directly to national parliaments in order to assist their scrutiny procedures, as well as promising to duly consider comments received from national parliaments on the grounds of subsidiarity or proportionality.⁸ The inter-institutional agreement on comitology has been improved to put the European Parliament on the same basis as the Council with respect

⁷ The 'Spinelli' Draft Treaty of 1985 suggested a majority of states representing over two thirds of the total population of the EU (Article 82).

⁸ European Council, 15-16 June 2006.

to quasi-legislative implementing measures.⁹ Deploying the *passerelle* clause in the field of justice and home affairs so that the use of QMV and co-decision can be extended has been agreed by the Council in principle, though not yet in practice.¹⁰

The European Parliament, with its large vested interest in the constitutional project, has welcomed all these measures of sub-treaty reform while at the same time confirming its own commitment to reaching without undue delay a comprehensive settlement based on the 2004 treaty. MEPs are conscious, of course, that too much anticipation of certain provisions of the constitution enacted on the basis of the Treaty of Nice could weaken the case for continuing with the whole project. They are right, therefore, to recall that the grave political problems and institutional weaknesses that the Convention was set up to address will persist regardless – and, indeed, grow – unless and until there is a broad settlement along the lines of the proposed constitution.

The Treaty of Nice is not a viable basis for the continuation of the integration process. Further enlargement beyond Bulgaria and Romania is at any rate impossible without a further revision of the treaty. Even in the case of Croatia, likely to join during the next mandate of the Commission and Parliament, it will be necessary to revise Nice. Agreement will have to be reached between twenty-eight governments on the size and shape of the Commission and Parliament, as well as on the re-weighting of votes in the Council.¹¹ Not easy.

To summarise, although some democratic improvements are possible under the existing EU Treaties, the Union will not work well in the future without a constitution. Decision making in the Council is already very difficult; the Commission is too big; and the Parliament is too weak. Without a constitutional settlement it will be impossible for the Union to expect the loyalty of its citizens, to maintain the momentum of integration or to become a respectable partner in world affairs.

As for the options, (1) only a nationalist minority wants to put integration into reverse and ditch the constitution. (2) Because the ratification of the 2004 text has encountered insurmountable difficulties, it is not realistic to expect its entry into force unmodified. (3) France and Holland have no magic solutions. (4) A radical re-drafting of the constitution in any particular direction, let alone a more federal one, is impossible. (5) Explanatory texts added to the existing document in the form of either protocols or declarations might contribute to a solution but will not of themselves be sufficient to secure popular ratification. (6) A change of name is disingenuous. (7) The formation of federalist core groups is at the very least premature. (8) Piecemeal implementation, either in terms of content or schedule, will destroy the consensus behind the 2004 package deal. (9) To separate out Part III would be simplistic.

9 Assent of European Parliament, 6 July 2006.

10 Council decision of 22 December 2004.

11 The question of the Commission can be decided by the Council under Article 4 of the Protocol on enlargement attached to the Treaty of Nice. Voting weights in the Council and seats in the Parliament need an IGC, and would normally be enshrined in the Croatian accession treaty.

(10) Now is not the time to relax the requirement that all member states need to ratify before the constitution can come into force.

The last option, and the best, is (11) a judicious modification of the 2004 constitutional treaty resulting in its improvement and eventual successful endorsement. What precisely needs modifying, and how, depends on the outcome of the reflection now underway, and, more stringently, on an analysis of the present state of the Union.

A PERIOD OF ANALYSIS

What is the state of European public opinion since the referendums on 29 May and 1 June 2005? The most comprehensive and systematic source we have of polling data is Eurobarometer. Its regular survey in March-April 2006 found that an average of 61 per cent of EU citizens still support the concept of a European constitution (France 62 per cent; Netherlands 59 per cent; UK 42 per cent).¹² 22 per cent are against (France 27 per cent; Netherlands; UK 35 per cent). These figures may be compared to those of spring 2000, in the run up to the Treaty of Nice, when the EU average was 70 per cent in favour of the idea of a constitution (France 75 per cent; Netherlands 88 per cent; UK 47 per cent). The decline in overall support for the constitutional project is significant but not catastrophic.

As its contribution to Plan D, Eurobarometer conducted a special survey in February-March 2006.¹³ For those who may still be wedded to holding referendums, it is sobering to learn that only 30 per cent of those who evince an interest in national politics claim also to be interested in EU politics. Worse, only 22 per cent know how many member states there are, and that the European Parliament is directly elected and that their country has a European Commissioner. A modest 31 per cent say that they would be very likely to participate in an EU-wide referendum held on the same day (France 41 per cent; Netherlands 47 per cent; UK 29 per cent).

Only 45 per cent of EU citizens think that their country's membership is a good thing (France 44 per cent; Netherlands 71 per cent; UK 33 per cent). Although the EU has a generally positive image, there is widespread criticism, even among pro-Europeans, that the EU is technocratic and inefficient. Rescuing the constitution vies with enlarging the eurozone as factors that would be helpful to the future of Europe: the most popular suggestion, especially in Central Europe, is to raise living standards.

There is widespread support for more decision making at the EU level – even in some areas where the EU actually lacks legal competence. Eurobarometer finds that the EU's performance is judged most positively in the fields of R&D, equal opportunities, democracy and peace. Citizens feel that the EU 'could do better' in relation to the fight against terrorism and organised crime, in energy and environmental policies, and in public health and food safety.

¹² Standard Eurobarometer 65, July 2006.

¹³ Special Eurobarometer 251, May 2006. I am also grateful to Gaetane Ricard-Nihoul for her analyses of the French referendum result.

Most criticism is directed against the EU's record on economic growth, social rights, unemployment and agriculture. Overall, 'there is a feeling that not everything has yet been tried at the European level'.

A harmonised European social welfare system and the constitution are seen as the best ways of strengthening European citizenship – although a quarter of British respondents volunteered that they do not want to be European citizens.

47 per cent of EU-25 fears that globalisation represents an economic threat (France 72 per cent; Netherlands; UK 38 per cent). 55 per cent sees EU enlargement as something positive (France 42 per cent; Netherlands 61 per cent; UK 49 per cent). Nevertheless, 63 per cent fears the employment consequences of enlargement (France 72 per cent; Netherlands 62 per cent; UK 64 per cent).

Eurobarometer draws the conclusion from the survey that a 'strong Europe and solidarity appear to be increasingly necessary for guaranteeing the security (economic, social, internal) challenges ahead'.

Following its heavy defeat in the referendum, the Dutch government launched a major online survey of public opinion.¹⁴ This found, among other things, that a majority of Dutch people feel that the rate of change in the EU is too rapid. A self-effacing majority see themselves as poorly informed about European issues. Although the need to revise the EU treaties is supported, opinion is divided about whether this requires a constitution or not. Enlargement is clearly a big issue in Holland, with insistence on a strict application of the criteria and rules before any candidate state is allowed to cross the threshold. Turkey is especially unpopular, being seen as too large, too poor and too Islamic (22 per cent in favour, 68 per cent against). Clearly, many Dutch citizens regard enlargement as a zero sum game. There is strong support for a common EU asylum policy. On the economic front, the EU services directive is regarded with great suspicion, although there is a clear majority (59 per cent) for more economic cooperation between member states.

The Dutch government felt able to draw certain conclusions from this elective survey of 100,000 citizens, as follows:

'The government feels that now is not the time for a debate on institutional change; rather, ... we must concentrate on attaining concrete results in areas where the public expects them, like growth and employment, security and energy. We also need a fundamental debate on the further enlargement of the Union. ... Support for Dutch membership of the EU remains high, but it is not unconditional.'¹⁵

One notes a certain lack of critical self-appraisal: to this observer, at least, the pro-constitution forces in the Netherlands seemed strangely ill-prepared and even ill-equipped to fight a decent referendum campaign. Dutch politicians are not uniquely guilty among the constellation of

14 www.nederlandineuropa.nl

15 Statement of Dutch government to parliament, May 2006.

Europe's political parties in having failed to mount, over time, a sustained and intelligent discourse about the EU dimension to domestic politics. But they did not surpass themselves during the 2005 campaign in demonstrating a capacity to argue convincingly for the constitution and to market the product they were trying to sell.

The French government has been even less forthcoming about the consequences of its own referendum defeat than the Dutch. Official statements have been confined to what might be accomplished under the Treaty of Nice in the way of institutional improvement.¹⁶ Doubtless, the presidential and then parliamentary election campaigns in 2007 will occasion dolorous introspection about France's identity in this era of globalisation. There will be many, and not only in France, who would prefer the French to talk about anything but the future of Europe during these electoral contests. But such a self-denying ordinance hardly seems realistic, and from a democratic point of view would certainly not be desirable.

For there can be no solution to Europe's constitutional crisis without the engagement of France. There can be no restoration of French confidence in the European Union by running away from the same delicate and difficult issues that were exposed in the 2005 referendum campaign. France's socio-economic performance, its identity crisis and democratic weaknesses do not simply pose problems for the French. They matter to Europe as a whole both because the EU without France is inconceivable and because those problems are by no means confined to France. The European way is to find shared solutions to common problems. France has to share its problems better.

The referendum campaign in France was notable for deploying two disconnected but simultaneous debates: one, mainly among supporters of the constitution, concerned France's role in Europe and, more widely, Europe's role in the world; the other, mainly absorbing those who would vote No, dwelt on France's economic woes. It was striking to any outside observer that almost every French citizen assumed that a No would automatically bring about a new, bilateral negotiation between Paris and Brussels that would result in a more perfect constitution, fashioned in the French style. So a curious dialogue of the deaf was compounded by a dangerous delusion.

What lessons can be learned from these painful experiences in France and Holland? First, Europe needs a common template to which its political discourse must relate. Narrowly focussed national debates, conducted in any language, no longer serve the interests of Europe's emerging post-national political society. We should try to address the same questions, electoral calendars permitting, at the same time. Europe's parliaments and political parties, social partners, civil society and media should make more of a self-conscious effort to embrace the European dimension.

¹⁶ Letter of the French Minister of Foreign Affairs and Minister of European Affairs to the Council presidency, 20 April 2006.

The lead has to come from the European Council whose members, at present, seldom accept individual responsibility for the decisions they take collectively. Most meetings of the European Council deal only in rhetoric. Finding the going tough, the current European Council has ceased to work hard at the diplomacy of the EU and seems frightened of engaging in politics. The leaders declined to organise a common European campaign for the constitution they jointly and ceremoniously signed. The lack of coordination meant that twenty-five different national ratification processes began to emerge. The failure at the top to write a single story about the constitution meant that the EU citizen was faced with a show that was confusing and contradictory. Is the constitution a radical innovation or just a modification of the status quo? Indeed, is it really a constitution at all? Is its ratification important enough to resort to referendums, or will national parliaments suffice? Does the constitution mean we can stand up to the United States, or will it entrench NATO? Who wins the power struggle: the Council, the Commission or the Parliament? Are national parliaments genuinely reinforced or is the subsidiarity check a false trail? All these, and many others, are good questions. But from the European Council comes no answer at all. Even today, more than one year into the self-imposed 'period of reflection', most of our leaders are struck dumb about the future of Europe.

The European Commission, for its part, still seems strangely reluctant to play its classical role as broker of agreement in time of dispute. Plan D is worthy enough, but lacks a real target. The less motivated citizen must be left wondering what all the fuss is about, and will decline to be engaged in a dialogue unless there is the clear prospect, at the end of the talk, of policy change. Active in other spheres, President Barroso believes that an improvement in the quality of public policy that flows out of Brussels and Strasbourg will be enough to brighten the political mood. He may be right. But better regulation and successful delivery of the Lisbon agenda will not of themselves deliver an outcome to the crisis over the constitution. The reform of the EU's common policies is all very well, and in many cases long overdue. Yet if policy change is not connected up to issues of competence, powers, instruments and procedures, the practical results will be negligible.

The Union has suffered for too long from being damned for failing to do things it is not entitled to do. In the 1990s the EU was blamed for having not prevented the Balkans War by those same member states which had not permitted it to develop a common foreign and security policy. A decade later, the EU is being criticised for having not created more jobs by those very same political forces which jealously protect their national employment policies. Unfortunately, it seems that our leaders realise the importance of European integration only with the benefit of hindsight - like Jacques Chirac in his TV broadcast of 26 May 2005; like Tony Blair in his Oxford speech of 2 February 2006: both too little, too late.

In these circumstances, it is hardly surprising that the European Council of 15-16 June 2006, charged to take forward the constitutional dossier, reached such lame if laborious conclusions. The frustration of Austrian Chancellor Schüssel, who presided, was evident. The heads of government 'hoped' that ratification will be completed 'in line with the conclusions of June 2005'. They agreed a two-track approach, as follows:

'On the one hand, best use should be made of the possibilities offered by the existing treaties in order to deliver the concrete results that citizens expect.

'On the other hand, the [German] Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments.

'The report will subsequently be examined by the European Council. The outcome of this examination 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. Each Presidency in office since the start of the reflection period has a particular responsibility to ensure the continuity of this process'.

What are we to conclude from this? That the current Finnish presidency will begin the consultations; that the Germans will make as much progress as possible in spite of the impediment of the French elections; that the Portuguese presidency in the second half of 2007 will take 'further decisions on how to continue the reform process'; and that, one year later, the French presidency will be responsible for 'the necessary steps'. 'Necessary steps' is a European Council euphemism for an Intergovernmental Conference to amend either the current Treaties or the 2004 constitution. An IGC needs a timetable of one year to do its business. It also needs a mandate, which, one may reasonably assume, comprises the 'further decisions' required of the Portuguese presidency. So it falls to Slovenia to preside over the first stage of the IGC in early 2008, passing on the chair to France to reach a suitably glorious conclusion.

It is a pity that the recent European Council could not agree on this timetable and process more decisively and, indeed, clearly. It is fairly obvious that, in addition to Plan D, the European Union now needs its Plan B. Europe's leaders must face up quickly to their dilemma over the constitution. Over one year has already been wasted in dozy reflection. We cannot afford to waste two as Chirac and Blair serve out the fag end of their mandates. In 2009 a new European Parliament and Commission will be elected. Both of those institutions will have to know their size and shape in good time; it would be useful also for them to know their powers. The world will not stand still for the European Union to sort itself out. More political integration is urgently needed if the Union is ever to stand on its own two feet in world affairs and be able to improve its delivery of sound social, economic and environmental policies at home. A constitutional settlement is a prerequisite for widening and deepening.

2. Renegotiation

So the period of reflection is to be drawn to a close in the second half of 2007 with a clear decision at that stage about how to proceed with the constitution. The likely – and correct - decision is that the current constitutional text will have to be improved in order to renew consensus and facilitate ratification. The 2004 constitution should be the single basis for renegotiation. Its constitutional core should be retained, comprising the key institutional reforms which improve the democratic governance of the EU and which have not proved controversial during the ratification process. Plan B must not backtrack from the great advances made in the 2004 text, but it has to be designed to be more popular than its predecessor. It must genuinely seek to address the legitimate concerns of the citizen as expressed in the dissenting majorities in France, the Netherlands, and widely elsewhere. Plan B is not *maquillage*. The surgery must be more than cosmetic.

If the original consensus still holds good on most of the purely constitutional elements, the mandate of the 2008 IGC can be drawn up so as to ring-fence Parts I and II from substantive renegotiation. To open up these strictly constitutional parts can be deemed to be unnecessary (because what we have is good), or undesirable (because the result would almost certainly be worse), or premature (as we do not yet know any better). In any case, it is foolish to exaggerate the extent to which the constitutional hard core of the treaty has provoked dissent during the ratification process. Where there is no serious controversy, it would be absurd to try to start all over again.

It follows, then, that the target of the new IGC will be Parts III and IV. Here judicious changes must be made in terms of structure, presentation and content to improve the overall product and to meet the anxieties and aspirations of the citizens. A final polishing of the text will be needed at the end of the renegotiation to give effect in Parts I and II to any substantive changes made in Parts III and IV and to ensure overall coherence and consistency.

I would stress the limited nature and number of the amendments proposed here. A later process of amendment can be instituted once the constitutional treaty is in force. The First Amendment, doubtless to be proposed in due course by the European Parliament, will be able to re-visit Part I as and when the constitution has been tested in practice, as the future size and shape of the EU becomes more settled, and the appetite for political reform returns.¹⁷

¹⁷ For example, I forsake for the moment most of the suggestions made in *The Struggle for Europe's Constitution* [op cit], not least the very expeditious organic law (see p. 206) and the ultimately essential integrated presidency (p. 87).

RE-STRUCTURING THE CONSTITUTION

There is no doubt that a reform of the structure of the constitutional treaty could help its re-presentation to peoples and parliaments. The four parts of the 2004 constitution – comprising the constitutional hard core, the Charter, ‘policies and functioning’ and ‘general and final provisions’ – are placed on an equal footing. They are all integral to the treaty and, with various additional protocols, have the same legal force. And they are almost equally difficult to amend in the future. In the renegotiation we propose, Part IV should be revised so as to create a proper hierarchy within the constitution, rendering Part III distinctly subsidiary to Part I. Part II (the Charter) becomes a semi-detached Annex.

It has been proposed by several commentators that the whole of Part III, or at the very least Title III of Part III, should be detached from the main document and annexed to it. I am not so persuaded. It will be sufficient to accentuate that Part III has a different, and subsidiary standing to Part I. The fact is that Part I is not comprehensible without Parts III and IV, and vice versa. Ease of cross-reference matters in a constitution, as does internal cohesion. The same argument does not apply to the Charter which was especially designed to stand alone, with its own preamble, as an eloquent bill of rights. Moreover, one can well imagine the reaction of the more eurosceptical members of the public who, having once been offered Part III, would suddenly find themselves deprived of it.¹⁸

RELAXING THE REVISION PROCEDURE

The only exception to the general horizontal rigidity of the constitution is Article IV-445 which allows a revision of Title III of Part III – essentially comprising the EU’s common domestic policies – to take place without an IGC in cases where a shift in competences is not involved. This welcome element of flexibility is not dramatic because the procedure still entails unanimity at the level of the European Council as well national ratification all round. But the simplified revision procedure, however limited in its effect, already introduces a modest element of hierarchy between Title III of Part III and the rest of the treaty.

This hierarchy should be greatly strengthened and made visible by extending the scope of Article IV-445 to the whole of Part III, including the horizontal provisions of general application, the clauses on non-discrimination and citizenship, the chapters on external policies, and the detailed institutional provisions which include the legislative and budgetary procedures. To introduce a desirable and necessary degree of flexibility, the present requirement that all member states ratify amendments according to their own constitutional

¹⁸ If brevity is thought to be the key to recruiting supporters to the constitution, it would be possible to publish only those articles in Part III that were wholly or partially new, leaving the interested (and persevering) reader to discover for him or herself which of the many articles from the present Treaties have been completely taken over unchanged by the constitution. But such an approach would hardly enhance the transparency or comprehensibility of the exercise. Again Altiero Spinelli’s Draft Treaty adopted a more radical approach: Article 7 simply adopts en bloc ‘the Community patrimony’.

requirements should be modified so as to allow changes to Part III, where no new competence is conferred on the Union, to enter into force once four fifths of the states, representing two thirds of the population, had done so. The European Court of Justice should be empowered to verify the issue of competence.

SIMPLIFYING THE GENERAL PASSERELLE

Article IV-444 is the general *passerelle* clause which allows the European Council, acting by unanimity and with the consent of the European Parliament, to switch away from unanimity towards QMV and the ordinary legislative procedure. Unfortunately, it was also provided, late in the day, that any single national parliament may block the deployment of the *passerelle*. (Other, sector specific *passerelle* clauses do not allow for a national parliamentary veto.) To give the constitution more of an evolutionary facility, Article IV-444 should be changed so as to oblige one third of national parliaments to raise an objection to the use of the instrument. The threshold of one third would be consistent with that needed by national parliaments to trigger the subsidiarity early warning mechanism.

LIBERATING THE CHARTER

The issue of hierarchy and presentation also affects the Charter of Fundamental Rights. One of the greatest virtues of the constitution is that the Charter is made binding. But the Charter is also squeezed like a sandwich filling between Parts I and III, and lacks proper visibility. Worse, it cannot be altered without the full panoply of the ponderous revision procedure that pertains to the rest of the constitution. It would be helpful to use the renegotiation to make the Charter more susceptible to future adaptation to changing social, cultural or scientific circumstances while maintaining exactly its same statutory force within the EU's constitutional set up. Bills of rights are not immutable, and will enjoy lasting credibility and respect only if they remain relevant and contemporary.

A better solution than the one reached in 2004, therefore, would be to turn the Charter into an Annex of the constitution, and to give it a unique amendment procedure. That specific revision clause – a new Article IV-443 bis - should always involve the holding of a Convention followed by a unanimous decision of the European Council (not an IGC) plus endorsement by the European Parliament (voting by a suitably high threshold). But amendments to the Charter would be allowed to come into force once a large number of member states – say, five sixths - had completed their own ratification procedures. Such a reform would provide a safeguard against a veto by one or two states in temporary breach of human rights. It would have the additional effect of strengthening the primordial status of Part I of the constitution. Printing the Charter as an Annex would also remove the present embarrassment of there being two, competing preambles within the main text of the constitution.

EASING ENTRY INTO FORCE

Strictly speaking, only Ireland need hold a referendum as part of the ratification process for any change to an EU treaty. The several governments which have chosen the referendum route more or less voluntarily, for one reason or another, would be relieved, no doubt, to find an alternative democratic solution that would enhance the prospects of the constitution entering into force eventually. Denmark, France, Holland, Portugal and the UK fall into this category. Conversely, governments of other member states, including Germany, which stuck to the parliamentary route, have been under pressure from both pro and anti-Europeans to submit the constitution to a popular vote.

Is there a way of squaring that circle? One suggestion is to hold a consultative ballot to test public opinion about the final package across the Union, preferably at the same time as the European Parliamentary elections in June 2009. That would have the advantage of bringing a European focus to those elections and, one would hope, in boosting turnout. The consultative nature of the exercise would not make it in a strict sense part of the formal ratification process.

Another proposal is to allow all the classical parliamentary ratification procedures to take place first and then to submit the constitution to a final, yet formal and single referendum across the EU.¹⁹ In this case, the national ratifications would establish the constitution on a provisional basis subject to confirmation by a (simple or qualified) majority of European citizens. Article IV-447 would have to be re-drafted to accommodate either scheme.

In both cases, more thought has to be given to the plight of a member state which refuses to accept, perhaps for the second time, the constitutional settlement as agreed by its government. The present Treaty on European Union, as we know, allows any single state to block the constitutional progress for everyone else regardless of its own moral or political credibility on the matter. The enlarged EU badly needs an escape route for such an obdurate state - an issue to which we return below.

Judicious restructuring of the constitution in these ways would strengthen hierarchy within the constitution, facilitate future amendment and illuminate important features. The changes should appeal especially to those who feared that the 2004 constitution would cast into rigid concrete those aspects of the EU that naturally require regular up-dating. Those who cling to national sovereignty need be reassured that even with these changes no constitutional amendment could be agreed without the unanimous decision of the democratic governments of all member states.

¹⁹ I am grateful to my former colleague in the Convention, Professor Sir Neil MacCormick, for this.

POLICY CONTENT

The Convention was dissatisfied at the condition in which it had to leave Part III, partly because of a lack of allotted time but also, it must be admitted, because of a failure of political nerve. It was particularly frustrated in its efforts to subject some of the common policies to serious review. There is a real sense, therefore, that to open up Part III now for revision is not so much a renegotiation as a welcome continuation of unfinished business. With the benefit of hindsight and drawing on the experience of the stalled ratification, five topics suggest themselves as priorities for modification: economic governance, the social model, environmental policy, enlargement policy and the financial system.

ECONOMIC GOVERNANCE

The Convention established a working group to examine whether the arrangements for the economic governance of the Union necessitated reform. Its conclusions were slim, not least because the rules establishing economic and monetary union were, only three years after the introduction of the single currency, comparatively untried. There was a natural reluctance to renegotiate the Maastricht convergence criteria or the Stability and Growth Pact, which had supplemented the treaty in 1997. Since then, however, the Union has had more experience, most of it unhappy, about the strengths and weaknesses of the arrangements for running economic and monetary union. The introduction of the single currency has not proved to be the spur to structural reform of national economies that it was expected to be. The unwillingness of France, Germany and Italy, in particular, to conform to the disciplines of the Pact, coupled with the mendacity of the Greek authorities about their budgetary situation, fuelled anti-constitution forces in the Netherlands. Jean-Claude Juncker, chairman of the eurogroup ministers of finance, has sparred publicly with the President of the European Central Bank, Jean-Claude Trichet, about the management of the euro. There has even been controversy about the application of the rules to admit new member states to the eurozone. Now is the time, therefore, to strengthen the rules of economic governance of the Union in order to give the eurozone autonomous responsibility, to make economic policy more cohesive and to impose more discipline on fiscal policy.

The assumption on which the Maastricht settlement was reached, that member states could trust each other to exercise fiscal discipline on behalf of the common good and to eschew short-term advantage in domestic politics, has proved optimistic. The surest way for the eurozone members to strengthen coordination of economic policy would be to establish themselves formally as the Union's first core group under the enhanced cooperation provisions of the constitution.²⁰ The eurogroup should indicate that it intends to take full and immediate advantage of the constitution's facility of enhanced cooperation. It could propose a

²⁰ However, Article I-44 forbids enhanced cooperation in the area of the Union's exclusive competences, including monetary policy. So an adjustment to remove this anomaly is needed.

refurbishment of Article III-194 accordingly to establish a concerted fiscal policy for the eurozone, to guide exchange rate policy and to increase the powers of the eurogroup Council to insist on compliance with the broad economic policy guidelines. Institutionalising the eurogroup would cause the heads of government of the euro countries to confer on a regular basis; it should encourage them to face up to their common labour and pension problems together, and to act as a united reformist lobby within the wider European Council. Such a signal of the eurogroup's political determination to move on from the budgetary confusion of the early years of the euro would command the support both of those French who want to curb the absolute independence of the European Central Bank and of the Dutch who want to enforce compliance with fiscal discipline. Even the Italians, once again under the leadership of former Commission President Romano Prodi, would welcome the prospect of the tighter enforcement of agreed EU norms. In particular, in Article III-184.6 the Commission should be empowered to make actual proposals on what should be done to correct an excessive deficit - in place of 'recommendations' as of now - thus requiring the Council to act unanimously (minus the offending state) if it wished to overturn them.

The IGC in 2004 added Declaration 17 to Article III-184, committing the Council to the subsequent reform of the Stability and Growth Pact. The import of that reform, which adjusted the Pact to combat pro-cyclical policies and to take more account of the size of structural deficits, needs now to be reflected faithfully in the constitutional article itself, and not just as an *aide-mémoire*.²¹ There were many in the French referendum debate who expressed fears that excessively rigid EU control of national budgetary options would restrict public investment. It would be helpful for the constitution to explain in plain language why an EU framework is necessary if the monetary union is to work, and to place the disciplinary rules within the overall context of the Union's economic policy goals – in other words, the Lisbon agenda.

The EU and its member states are jointly responsible for addressing Europe's economic problems, although the mix of competences can lead to frustrated delivery. Reforms are needed at both levels of economic government. The EU has done fairly well, through the ECB, at keeping interest rates low and at deregulation of the capital and product markets. Yet the internal market remains in a much unfinished state, not least with respect to the service sector and intellectual property. The Commission should be more entrusted with the implementation of both the Stability Pact and the Lisbon agenda in place of the Council, where trade-offs between national governments tend to dilute the force of decisions. The Commission would be right to press on with its single market programme as the central feature of its legislative agenda. It also needs to devise stronger instruments to deliver the Lisbon goals of global competitiveness. The open method of coordination, much fussed over in the Convention, has clear limitations because it relies almost entirely on the good will of national governments to take unpopular decisions within their areas of competence, namely fiscal and labour market policies.

21 Council Regulation 1055/2005.

It is indeed astonishing that the objectives of the Lisbon agenda, which is the central policy plank of this Commission and has set the economic priorities of the Council since 2000, are nowhere inscribed as such in the constitution. A new 'Lisbon clause' – for example, a revised Article III-178 - should make explicit the synergy between macro-economic policy coordination at the EU level, on the one hand, and the micro-economic policies of the Union, on the other. The division of responsibilities over economic, monetary and fiscal policies between the EU and member states could be clearly and accurately described, including the open method of coordination. The description of the Lisbon agenda should include a reference to the innovatory instrument of the National Reform Programmes which, since 2005, oblige member states to produce a self-assessment of their economic performance. The 'Lisbon clause' should insist on the use of quantifiable targets and common statistics in place of the fairly anecdotal evidence offered up so far in the national action plans. Reference should be made to those instruments of micro-economic policy at the disposal of the Union, such as the European Research Council and the European Institute of Technology, and the Commission should be tasked with designing a common template for the evaluation of the Lisbon national reform programmes. The European Parliament will have new responsibilities in scrutinising how the Commission deploys its wider powers.

THE SOCIAL MODEL

The second, and related, area of Part III that deserves a rethink concerns the famous European social model. The goal is to articulate an unambiguous framework for the organisation of economic society that provides diverse but not divergent solutions to Europe's social problems and that emphasises the link between conditions for increased investment (both public and private) on the one hand, and employability, on the other.

Much is made of the contrasting variety of social models which co-exist within the European Union. Too much was – and is - made of the apparently unbridgeable divide between the Anglo-Saxon (that is, British) model and continental (that is, French) model. Unfortunately, the drafting of the constitution did not occasion much of a convergence of view between the social partners about the architecture of the social market economy. The Convention's working group on social policy was not very productive, and the resulting 2004 constitution has been criticised in several respects by both employers' organisations and trades unions.

Not enough is made of the fact that every so-called model is to some extent deficient in marrying equity with efficiency. Faced with the challenges of globalisation, all Europe has to some degree common problems of jobs, productivity, mobility, education and skills, over-exploitation of natural resources, and the pension time-bomb. Both the EU and its member states should emphasise employability – that is, the capacity to work in decent jobs – as the essential bridge between the drive to competitiveness on the one hand and the need for social solidarity on the other. This means tackling in a holistic way all the issues which relate to the

smooth operation of the internal market: legal jurisdiction, fundamental rights, sustainable development, health and safety, working time, training, insurance, pensions, mortgages, social security, collective agreements, and so on.²² The EU's common immigration policy should be developed specifically to meet Europe's labour market needs - and portrayed as such, rather than as a means of keeping foreigners out. The EU's social model must also feature a common and equitable approach to inter-generational solidarity. The design of the framework social model could be laid down in a revised Article III-209.

In the ratification debates, it seems to have been hardly noticed that the constitution strengthens the social dimension in a number of ways, not least by making binding the Charter of Fundamental Rights. In Part I, the 'open market economy' of the Treaty of Nice becomes a 'social market economy' (Article I-3.3). Part III introduces a horizontal social clause (Article III-117) to which all common policies have to conform; and it creates a legal base for services of general economic interest (Article III-122). The social dialogue is enhanced (Article I-48). It is far from the truth, as was often alleged in the French referendum campaign, that the constitution serves to harmonise social legislation downwards to the level of the lowest common denominator. Moreover, in cases where management and labour can reach collective agreements, these will be respected by the EU. Unfortunately, these positive points were lost sight of during the faulty ratification process.

It would indeed be a good idea, as Chancellor Merkel has suggested, to gather together all the clauses in the constitution relevant to the social dimension, scattered as they are throughout Parts I, II and III. An executive summary of these provisions, drafted as a Declaration, would give the social aspects of the constitution added coherence and visibility without changing their meaning.²³ Such a high profile 'Declaration on Solidarity' would at least act as a useful crib sheet for pro-constitution campaigners during the subsequent ratification process.

In addition, it would be possible for those member states which are willing to go farther in harmonising their social policies to commit themselves to establishing, as soon as the constitution enters into force, a European social union. This could be achieved without institutional rupture using the normal provisions on enhanced cooperation as long as nine member states were so committed (Article I-44.2). The strategy could be heralded in a new social protocol. Using the constitutional system of enhanced cooperation would be less divisive than the option canvassed by some which is to resurrect the social protocol of Maastricht that, in its time, deliberately excluded the United Kingdom.²⁴ We are, after all, trying to solve the British problem rather than exacerbate it. Core groups formed under the normal rules of enhanced cooperation remain hospitably open to the participation of all member states.

22 The work of Professor Andre Sapir is extremely helpful in this regard.

23 Although it would also be sensible to iron out the anomaly between Article I-3.3 which speaks of 'full employment' and Article III-117 which speaks only of a 'high level of employment'.

24 Notably by Dr Andreas Maurer.

CLIMATE SECURITY

The European social model has played too little attention to the ecological wing of the concept of sustainable development. So it is high time to up-grade climate security policy to become the driving imperative of the other EU common policies, notably the common agriculture policy (CAP), energy and transport.

In the 1950s it was public insecurity about food that led the founding fathers of the European Community to develop the common agricultural policy. It worked. Today, that sense of insecurity has been replaced by a widespread anxiety about the pace, causes and consequences of climate change. Concern about the environment is particularly salient among young people who would be greatly attracted to the adoption by the EU of a new sense of purpose in this direction. Europe's potential is that of global leadership in saving the planet, but to reach it the EU must exert itself to become the most energy and resource efficient economy in the world and, of course, adopt the constitution which will enhance its capacity to act abroad.

Even the staunchest patriot knows that pollution does not respect national borders. The case for EU-level action is unanswerable. But the Union has yet to make a convincing case for the linkage between strict environmental regulation, on the one hand, and competitiveness, on the other. The evidence is that good environmental policy is a driver of industrial innovation and economic development. The technological possibilities flowing from Europe's science effort are exciting. New markets in energy conservation and renewable energy supply are waiting to be exploited. Europe can be a world-beater in greening the social market economy.

Environmental policy first crept into the EU lexicon in the Single Act (1986). It has continued to develop as one of several common policies that flank the single market. The constitution maintains the same, rather prosaic approach. A new horizontal clause (Article III-119) speaks of the need to integrate 'environmental protection requirements' into the definition and implementation of other EU policies and activities. One is left here, and on reading the later environmental policy chapter, with the overriding impression that the environment is yet another neuralgic problem that the EU has to face. There is little sense of challenge, or of rising to the occasion.

I would propose re-writing the environmental clauses of Part III and of promoting them in sequence to give them both greater force and visibility (Articles III-233 and 234). The EU's pioneering carbon emissions trading scheme should be enshrined as part of the environment policy redraft. The focus of the policy as a whole should shift from dealing with pollution to combating climate change. That should become a criterion by which all other relevant common policies are judged.

Not least among those affected will be the common agriculture and fisheries policies, whose constitutional provisions, now fifty years old, pre-date the concept of sustainable development, the need to intensify care for the ecology of the countryside, or the introduction to farming of genetically modified organisms. As far as the CAP is concerned, the constitution is obsolete even before it comes into force, lacking references to the primary objective of the present-day

CAP - income stability – or to rural development, decoupling, cross-compliance, public health, animal welfare and the EU's obligations in agriculture to the WTO. The constitution's stated objectives of the CAP are still 'to increase agricultural productivity', 'to ensure a fair standard of living for the agricultural community', 'to stabilise markets', and 'to assure the availability of supplies ... at reasonable prices' (Article III-227).

It would also be useful to separate out fisheries from agriculture, as common sense and current practice dictates. The constitution should refer to the specific objectives of the common fisheries and aquaculture policy in a new Article III-227 *bis*.

The Convention had struggled to get member states to install a decent legal base in the constitution for a common energy policy. Eventually, the new Article III-256 protects each member state's right to 'determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'. A special Council law, decided by unanimity and excluding co-decision with the Parliament, will be needed to take any fiscal measure in the energy sector. Needless to say, it was the British government which was at that stage the most vehemently opposed to the opening up of the energy market. Now Tony Blair appears to have changed his mind, with all the enthusiasm of the convert, and claims personal credit for having put energy security on the EU's agenda 'and not a moment too soon'! He says:

'Energy is becoming an instrument of leverage and in some cases, intimidation the world over. Yet as President Chirac said recently, we in Europe have no clear common policy to define our own needs and interests. Let us get one. Get a functioning internal market in place; complete a common EU infrastructure and make energy policy a priority in external relations'.²⁵

Let us take this as an invitation to re-visit Article III-256 in order to ensure that the new common energy policy implements a single market in energy, diversifies supply, improves efficiency, and develops a strategy for EU relations with source and transit countries.

The Euratom treaty, promoting nuclear fission, is the only existing EU treaty to be left untouched by the constitution. A renegotiation of the constitutional package might take the opportunity that was missed in 2002 and, after deliberation, decide to incorporate the essential provisions of Euratom within the energy chapter in Part III.

ENLARGEMENT

My fourth policy proposal is that a re-drafted Part III should clarify for the benefit of the citizen and third countries alike how the Union defines its borders. Apprehension about recent, prospective and putative enlargement plays a large part in affecting the mood of public opinion towards the European project as a whole. There is a fear that the process of expansion is poorly managed, badly explained and, even, unstoppable. Such criticism is at least partly

²⁵ Speech at St Antony's College, Oxford, 2 February 2006. See also the Energy Policy for Europe agreed by the European Council on 23-24 March 2006.

justified. The accession of the ten new states on 1 May 2004 was barely explained to the electorates of the existing member states. The effect of enlargement has been seen mainly in an influx of migrant labour from Central Europe and in a reduction of the sums of money available via the EU's structural fund programmes to the older, richer regions. Coupled with the more dramatic aspects of enlargement, comes the challenge, implicit in the constitution, that the concept of EU citizenship is to be reinforced. If people are asked to transform themselves into engaged post-national citizens, they deserve to know something quite definite about the size and shape of their new political society, of the processes by which it can grow, and of the pace by which it is likely to do so.

The existing EU treaties are fairly cryptic about enlargement policy. As soon as the Berlin Wall collapsed, it became necessary to supplement the treaty provisions. The 'Copenhagen criteria', agreed by the European Council in June 1993, have since governed the actions of the Union in the matter of enlargement. Yet, astonishingly, as with the Lisbon agenda, the Copenhagen criteria have not found their way into the constitution. Article I-58, on conditions of eligibility, says simply that the Union 'shall be open to all European States which respect the values referred to in Article I-2, and are committed to promoting them together'. Part III adds nothing at all about enlargement – in contrast to the extensive way in which Articles III-323 to 326 deal with the procedures for agreements between the EU, third countries and international organisations.

The Convention was not blameless for this lapse. Perhaps because the accession states were already represented in the Convention, insufficient attention was given to the political impact of enlargement on the drafting and ratification of the constitution. Renegotiation gives us a chance to greatly improve the constitution with respect to future enlargement before any more mistakes are made.

The constitution is the right place to lay down appropriate strictures about enlargement, and to prohibit deviance from them. The Council, for example, should never have been allowed to relax the accession process for Bulgaria and Romania by promising them entry according to a specific timetable. This was an unfortunate lapse which should not be repeated. Conclusions should also be drawn from the regrettable admission of Cyprus before it had resolved its own ethnic, religious and boundary divisions. The gradual emergence of the candidature of the Western Balkan countries gives cause to hope that the case of Cyprus has not set a precedent.

Of course, exceptions are one thing. In general, the fact is that the criteria for membership are already both clear and strict, and the processes by which a candidate is assessed fit for duty are rigorous. The Commission, unlike the Council, has a good track record in managing accession negotiations well. The constitution, far from lowering the threshold of membership, raised it. Since the constitution was agreed, the European Council has added extra safeguard provisions in respect of Croatia and Turkey. It will be a very good deal more difficult for Turkey to become a member of the Union than it was for the UK some forty years earlier.

I propose, therefore, that a new Title be added to Part III which spells out in full the Copenhagen criteria for membership as well as the processes associated with candidacies, namely, pre-accession strategies, screening, the opening and closing of chapters, derogations,

transition periods and permanent safeguards. Among other advantages, this change would afford candidate countries the full protection of the Court of Justice during their accession trials.

As for membership, so for neighbourliness. Article I-57 establishes the Union's neighbourhood policy. In substantive terms, all we have is: 'The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation'. Again, there is nothing more in Part III.

It would be wise, in my view, for a renegotiated constitution to amplify the nature of the Union's neighbourhood policy. This would be fair on those neighbouring countries to the East which either choose not to apply for EU membership or, for one reason or another, do not meet the membership criteria. It could also cater in the future for southern Mediterranean countries which, not being 'European', are ineligible to become candidates. Such an exercise would oblige the current member states and institutions of the European Union to be more explicit about what they mean by the fashionable but ambiguous terms of 'absorption capacity' and 'privileged partnership'.

In re-visiting neighbourhood policy, it would be opportune to create a new category of EU associate member. This should be designed to cater for any existing member state which chose to resile – if only temporarily - from the obligations of full membership, possibly after having persistently failed to ratify the constitution. The change would complement the secession clause (Article I-60 on 'voluntary withdrawal'), which is one of the major innovations of the 2004 constitution. Associate membership would consist of joining the European Free Trade Area (EFTA) and the European Economic Area, using the existing institutional mechanisms of the EEA but not participating directly in the further development of EU law. Associate member states would lose the privilege of direct representation in the EU institutions. Doubtless, associate members could negotiate to continue to operate one or other of the common policies of the EU on an ad hoc basis. Not tidy; not simple; but expedient.

FINANCE

The Convention was unable to make radical proposals to reform the EU's financial system. To put it simply, the British blocked any discussion of reform of revenue while the French blocked any discussion of the reform of expenditure. Happily, as part of the package devised to extricate the European Council from its quarrel over the new financial perspectives in December 2005, it was decided to initiate a comprehensive reassessment of the financial system of the Union, both revenue and expenditure. The European Commission is charged to deliver its 'full, wide ranging review covering all aspects of EU spending, including the CAP, and of resources, including the UK rebate' in 2008 - in good time, indeed, for its results to be integrated into the revised constitution.

The procedures for establishing the level and type of revenue are laid down in Article I-54 of the constitution – the Union's 'own resources' – and involve a Council law decided by

unanimity, with the Parliament consulted, and ratified by all member states. A Council law will also determine the multi-annual financial framework, with the Council acting unanimously after having obtained the consent of the Parliament (Article I-55). The annual budget is to be determined by a law enacted under a variant of the ordinary legislative procedure, granting full powers of co-decision to the Parliament (Article I-56 and Article III-404). I would recommend no change to this package which was only arrived at after long and somewhat testy debate in the Convention. Particularly controversial was the choice of unanimity for the multi-annual framework. The Council's later experience of trying to negotiate the new financial perspectives for 2007-13 rather proved the point made by the Convention – but not accepted by the IGC - that a switch to QMV would have been preferable. Nevertheless, it was the Dutch who insisted on retaining unanimity unless and until they got a fair deal from the financial package. They even inserted a unilateral Declaration 42 to make their point. It is to be hoped that a successful conclusion of the review of the financial system will allow the Netherlands to drop their objection to a shift from unanimity to QMV, thereby removing an important *casus belli*.

This is not the place to prescribe a single blueprint for the review of the Union's financial system. There are many options, ranging from the introduction of direct EU taxes to remaining more or less with the current system. In anticipation of the Commission's 2008 report, discussions within and between the institutions are already underway. There is no easy answer, but at least now there is the incentive to deepen the discussions begun in the Convention, and to continue the debate firmly within the constitutional context. One may hope that the reform is radical.

Historically, the Union's financial system has developed in accordance with no strategy, federalist or otherwise, but has merely been adjusted on a pragmatic basis to meet various conflicting demands. As a result, the system is hideously complicated. Simplification must be at the forefront of the review. And a very basic choice has to be made: is EU spending supposed to redistribute wealth from rich states to poor? If the answer is unequivocally yes, the most equitable system is the GNI resource. The problem is that this stream of revenue, like the less progressive VAT element, is regarded inside member states as being an annual national fee for EU membership. Domestic political debate becomes preoccupied, in Britain hysterically, on net budgetary balances. EU structural funds are distorted in order to soften financial losses.²⁶ At least the creation of a tax-based resource would shift the focus away from the balance sheet of national treasuries towards the European duties of the individual citizen.

How large the EU budget should be rather depends on how it is to be spent. We have noted above how reform of the CAP and other policies will be eased by orientating the debate towards the goal of combating climate change. The review of the financial system is a similarly effective, indeed essential, catalyst of policy reform. As the recent debate over the new financial perspectives demonstrated, the European Council's excitable rhetoric over the Lisbon agenda has to be measured against its unwillingness to re-direct EU spending in the same

26 A point made eloquently by Professor Iain Begg.

direction. In 2013, at the end of the next financial framework, agricultural support will still command about one third of all EU spending, mainly benefiting richer countries (like France and the Netherlands) with the highest yields on specific products. Less than 10 per cent will be spent on meeting the specific goals of the Lisbon agenda, notably R&D. It is also apparent that there will not be nearly enough money to spend on meeting Europe's aspirations in the fields of either internal or external security.

What is clearly desirable, therefore, is that the outcome of the review is a system of financing the Union's activities which is fairer, more transparent and more buoyant than at present. There is a democratic interest which has to be met on behalf of taxpayers. The reform must promote the ability of the Union to square more directly its financial resources with its contemporary political priorities. And there is the long-lasting problem of financial management and accountability in the EU budget which really has to be solved. An advance on all three counts would significantly enhance the public mood as it began to concentrate again on the need to make progress on the constitution.

PROCESS

When the European Council in December 2007 decides to modify the constitution, it will also have to lay down a procedure for doing so.

Article IV-443, the constitution's 'ordinary revision procedure', ordains that a Convention shall be held to adopt by consensus a recommendation to an Intergovernmental Conference unless the European Council, with the consent of the European Parliament, decides that the extent of the proposed amendments does not justify a Convention. Article IV-445, as we have already noted, dispenses with the need for an IGC (and, by implication, a Convention) if the proposed amendments relate solely to the common policies (Title III of Part III).

In that the changes proposed here involve Part IV as well as Part III, it will certainly be necessary to have a new IGC. Whether or not to hold another Convention is a moot point. There are many, including this author, who might be expected to favour such an approach. Continuity is attractive, although it must be admitted that the five years elapsing since the closing of the former Convention under the formidable presidency of Valéry Giscard d'Estaing suggest that a new team would need to be appointed.

A wholly new Convention, however, would carry serious risks. In 2007-08 the Union will face a direct reversal of the situation in 2001-02, when the federalists wanted an unlimited agenda and the nationalists sought to narrow the scope of the Convention. Today it is the federalists who prefer only a limited, judicious renegotiation, according to a tight mandate and timetable. Nobody could foretell how the balance of argument might be struck inside a new Convention, where the axis of opinion might be very different to that of the old. Consistency cannot be guaranteed even at the level of the European Council. Already only fifteen out of the twenty-five original signatories of the 2004 constitution survive in office. Others, notably Chirac and Blair, will be on their way shortly. Pro-Europeans cannot assume that all the potential

democratic advances made on behalf of a stronger European Union will be realised in such circumstances. It is always possible in European politics to go backwards.

Whatever renegotiation process is chosen, it is out of the question simply to return to the old-fashioned formula of an IGC, with the European Parliament invited to nominate two observers. During the last five years, the Parliament has grown in stature and confidence. It now has a distinct constitutive role in the life of the Union. MEPs cannot be ignored by the member states in the redrafting of the constitution in which they played such a key role. Indeed, the active participation of the Parliament is not only desirable for democratic purposes but also necessary for diplomatic purposes. Left to its own devices, an IGC of twenty-seven government ministers and national officials will find it very difficult to reach agreement on the agenda here proposed. Most governments know that they need the contribution of the European Parliament's large experience of pluralistic, cross-party, multi-national politics if they are to reach a new settlement on sensitive economic, financial and social matters. The European Council certainly could not risk a rejection by MEPs of the final package. The fact is that there must be a real element of constitutional co-decision between Parliament and Council if this IGC is to succeed. If texts were shuttled between the IGC and the Parliament, and a conciliation committee established, the quality of the constitutional amendments would quickly improve, and an overall democratic consensus would be more likely to emerge.

If the spirit of the co-decision procedure were to be applied to the negotiation of Plan B, a way would have to be found to systematically involve national parliaments. Whatever happens, national parliaments will not be deprived of their constitutional right to veto Plan B. Member state governments clearly need to engage their own parliaments in the proceedings in a more intensive way than hitherto, and national MPs would need to share their own scrutiny experiences more critically in their joint forum of COSAC. The European Commission, which is destined to play a major role in this IGC, will have enhanced obligations to inform and consult national parliaments about its activities. The European Parliament, by continuing the series of inter-parliamentary forums set up in the period of reflection, will commit itself to engaging more deeply with parliamentary colleagues from the national and, where appropriate, regional capitals. And, finally, political parties will have at last to accept their historic responsibility to reinforce their integration both vertically, within individual parties, and horizontally at the trans-national level. The prospect of an EU-wide poll at the end of the process should serve to concentrate wonderfully the European political mind.

Conclusion

Europe evolves from crisis to crisis. Jean Monnet taught us how a setback to European unity in one field could spawn an advance in another. No doubt the European Union will weather the storm caused by the rejection of the 2004 constitution. If that treaty cannot be successfully renegotiated and brought into force, the EU will have no alternative but to survive without a constitution for some years to come. Yet the Union will be much the poorer without its constitution: less confident, less capable, and less democratic. And these are exceptionally difficult times for the Union, facing, as it does, acute problems abroad as well as loss of support at home. So for those who wish Europe well, it becomes essential to try to rescue the constitution.

In this manifesto, we consider how the rescue might best be done. We propose to keep all that is good in the 2004 text but to restructure it. We target five elements for revision or supplementary drafting: economic governance, social model, ecology, enlargement and finance. We lay out a timetable and a process that should both widen and democratise the consensus behind the constitutional treaty.

We hope for success. In public life, as in private life, second thoughts are often best.

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