# THE CONSTITUTIONAL DEBATE IN THE EUROPEAN UNION.
# A QUEST FOR A NEW PARADIGM

## Frank Delmartino and Valérie Pattyn[*]

**Abstract**

*The first quinquennium of the 21st century started in a promising way for the EU's institutional development, but is ending in uncertainty regarding its future. After the Nice- (2000) and Laeken (2001) declarations and the innovative and successful Convention (2002-2003), finally an agreement on a Constitutional Treaty was reached in the Intergovernmental Conference.*

*In October 2004 this Treaty was solemnly signed by all member states and the candidate countries. Despite this apparent breakthrough, during the ratification process all demons of the past re-emerged. The nicely formulated parts 1 and 2 of the draft Constitution could not dissimulate the fundamental lack of clarity in the 'finalité politique' of the Union.*

*Is the EU in 'crisis' (Juncker, Delors), or is this just a setback as there have been many in the 55 years of European integration? Can we go on with 'business as usual', neglecting the signal of so many citizens, especially if one takes into account the very probable 'no' in the rather eurosceptic countries where a referendum was on the agenda?*

*The political class has learned to live with rather vague definitions as "an ever closer union" that dissimulate the lack of consensus among the member states on the very nature of the project and its institutional development. The problem is not new: exactly 30 years ago, the Belgian Prime Minister Leo Tindemans formally raised the issue in the newly born European Council (1975). His colleagues were most embarrassed and found a way-out by commissioning a report that, although well elaborated and very much to the point, was never seriously discussed.*

*This time the debate no longer takes place behind closed doors or in academia. By organizing referenda, the general public has been invited to participate in a decisive*

---

[*] Both authors are staff members of the Institute for International and European Policy of Leuven University (Belgium). Prof. Frank Delmartino holds the Jean Monnet Chair and teaches as well at the College of Europe in Bruges. Valérie Pattyn is coordinating the 'Master of European Politics and Policies' programme.

*way. Although in depth sociological studies on the negative response are not available yet, it is clear that for some voters the EU is perceived as a threat to national identity and sovereignty. For others, it paves the way to an ongoing process of enlargement that jeopardizes the existing welfare state model. A few groups, on the contrary, have regretted the lack of a 'social model', of a 'projet de société'.*

*Whatever the arguments might have been for the citizens' negative reactions and whatever our opinion might be on their validity, one cannot deny the serious clash between the 'inner circle' of European policy-and decision-makers- both at the national and European level- and the general public, even in strongholds of 'believers' such as Luxembourg. The European Commission announced a period of reflection and launched its Plan-D for Democracy, Dialogue and Debate.*

*It this contribution we would like to embark on a more structural approach. In our view the fundamental problem lies with the refusal by some member states of clarifying the state concept behind the Union. Of course, the European experience is a unique feature and its structures are 'sui generis'. However, an unbiased analysis of the EU's institutions, its decision-making processes and its policy formation, reveals quite a number of federal-type arrangements. Far from expecting any solution from an explicit qualification of the Union as a European Federation, we nevertheless start from the assumption that a more transparent and constitutionally entrenched division of tasks between member states and Union would contribute to clarifying the issue. Reference could be made to well-established federations, such as Germany, however without taking it as a model.*

*In this article, we would firstly like to enumerate the many federal-type arrangements that can be observed in the EU's present-day functioning. Confronted with the theories on federalism and federation developed in literature (M. Burgess e.a.), the EU appears as a quasi-federation, lacking the political philosophy of federalism. This imperfection should not prevent us from presenting the EU as a federal arrangement, since this model is widely appreciated for its clear division of competences and the constitutional guarantees it offers to the (hard core of) national sovereignty.*

*Belgium is known for the strong federalist views of its political leadership and most of its citizens. Since Tindemans and Martens, prime-ministers as J.-L. Dehaene and, presently, Guy Verhofstadt, have played a pro-active role in*

*promoting the process of constitutionalisation of the Union. Recently, M. Verhofstadt published an essay with the somewhat provocative title "The United States of Europe". Those countries that would be unwilling to join the ongoing process of integration, should, in his eyes, be left out from the 'avant-garde' (Delors) and just take part in a free trade zone, called 'Organization of European States'.*

*Our contribution is not aiming at defending and propagating any particular Belgian view or position. However, in the current period of 'reflection' it may be interesting to notice the benefits of a structural approach, trying to elucidate the weaknesses of the present model instead of blaming the uninformed citizens.*

*It was Robert Schuman who already had a federation in mind when presenting his Coal-and Steel Community. After realizing a 'Pax Belgica' in their highly complex country, many Belgians think that a federal solution would indeed be meaningful for Europe as a whole, combining a clearly defined 'self rule' for the member states with forms of 'shared rule' for the Union.*
*Giving a name to the game would in any case make the exercise more transparent and, hopefully, more enjoyable.*


**Introduction**

The first quinquennium of the 21$^{st}$ century started in a promising way for the EU's institutional development, but has ended in uncertainty regarding the future. After the Nice-(2000) and Laeken (2001) declarations and the innovative and successful Convention (2002-2003), finally an agreement on a Constitutional Treaty was reached in the Intergovernmental Conference. In October 2004 this Treaty was solemnly signed by all member states and the candidate countries. Despite this apparent breakthrough, during the ratification process some demons of the past have re-emerged. The nicely formulated parts I and II of the draft Constitution could not dissimulate the fundamental lack of clarity regarding the 'finalité politique' of the Union.

According to authorities as the then president of the European Council, Prime Minister Juncker of Luxembourg, and the former Commission president Jacques Delors, the EU is in 'deep crisis'. In this contribution, therefore, we will not recommend a strategy aiming at saving

the Constitutional Treaty (CT) by agreeing on cosmetic changes or conceding 'opt out' facilities, as was done in the past. Neither do we advocate a fundamental choice to be made at short notice between two diverging models, either a 'maximalist', federal type Union, or a 'minimalist' free trade area that could expand into the countries currently covered by the 'neighbourhood policy'.

In our eyes, the process of European integration can be seen as a succession of breakthroughs and setbacks, of attempts at defining the objectives and failures in implementing some of them. Truly supranational institutions have been set up, but they happen to serve national interests as well. Out of recent overviews the EU neither appears as a federal state in the making, nor as an intergovernmental organization. William Wallace probably comes close to the reality by qualifying the EU as a 'system of governance without statehood'.[1]

Until recently, this 'sui generis' character did not prevent the EU from functioning and even achieving remarkable successes in quite some policy fields, first and foremost in realizing the Single European Market. However, the wish for institutional clarification is regularly re-emerging and most strikingly since the Nice Treaty. The agreement on the technicalities of the process of enlargement has drawn the attention on the imbalance with the 'deepening' of the institutions. For the first time, the European Council was feeling the need of announcing a reflection on the basics of the balance between Union-and member states commitments (Nice Declaration).

In our view, despite the signing of the Constitutional Treaty, this period of reflection is ongoing. Apparently the CT did not offer the citizens the clear *balance* referred to. The French and Dutch negative votes are only signalling a huge iceberg of cleavage between the inner circle of decision-makers and the general public. No lasting constitutional arrangement can be made unless a kind of permissive consensus can be reached among all actors involved, first and foremost among the citizens in an EU that claims to be founded on representative and participatory democracy.[2]

---

[1] H. Wallace, W. Wallace and M. A. Pollack (eds.) (2005), *Policy-Making in the European Union*, Oxford University Press, fifth edition, p. 482 and ff.

[2] EUROPEAN COUNCIL, *"Treaty establishing a Constitution for Europe"*, I, Art. 46 and 47.

In this article we would like to proceed in two steps. The first one aims at reminding us at earlier *moments of reflection* that were equally ambitious but only partially successful: the Tindemans report in 1975 and the Laeken declaration in 2001, both under Belgian supervision. These exercises highlight the ongoing character of constitutional reflection and the pitfalls of wishful thinking in the EU.

The second step is a plea for developing an *alternative paradigm* for the institutional development of the EU. One should avoid approaching the issue from a maximalist or a minimalist view, but start by simply referring to the features of the present-day policy-making process. By doing so, one discovers a lot of federal-type arrangements, however without having to conclude on a particular 'state form'. Using a model as multilevel governance brings us probably closer to reality than claiming a straightforward federalist paradigm.

Finally, by way of conclusion, we will suggest a reorientation of the constitutional debate in view of overcoming the present-day institutional deadlock.

## 1. An ongoing constitutional reflection.

Following the negative referendum results on the CT in two founding member states, France and the Netherlands, the European Council explicitly announced a 'period of reflection' to enable a broad debate on the future of Europe and of the CT itself (European Council, 16/17 June 2005). The present constitutional undertaking, as initiated by the Convention, can indeed be considered as *unprecedented* in terms of intensity and scope, but clearly not as *unanticipated*.

We can argue that the history of European Integration is in fact a continuous sequence of interrelated moments of reflection, the one being much more explicitly developed than the other. As such, shedding light on previous moments of reflection can be helpful in getting a better understanding of the current constitutional crisis and help us in finding any successful remedies. For the purposes of this paper, two examples of evident 'momentum' will be highlighted: the Tindemans Report on the European Union (1975) and the more recent Laeken Declaration (2001).

Though both are of mainly Belgian origin, this paper explicitly wants to avoid an exclusive 'Belgian narrative'; since we acknowledge that other equally valuable initiatives could have been selected as well.


## 1.1. Tindemans' Report on the European Union. A qualitative step forward?

The initial impetus to the drafting of the Report on the European Union, at which the Heads of State and Government decided at the Paris Summit of December 1974, originated already two years earlier, at the Paris Summit of October 1972.[3] In a Declaration of Intent, following the 1972 First Summit Conference on the Enlarged Community, national leaders "assigned themselves the key objectives of converting (…) all the relationships between Member States into a *European Union*".[4] For the first time, the adagium 'European Union' was officially launched, as a comprehensive concept, including a diversity of common policy areas.[5] Though, even the proponents of this text did not unanimously agree how to reach this common goal.[6]

Recognizing the need for an overall approach, the Paris Summit of December 1974, charged Leo Tindemans, Belgian Prime Minister at that time, with the task to report how this *qualitative step forward* might be exactly understood and realized; this "on the basis of the reports received from the institutions and of consultations with the governments and with a wide range of public opinion in the Community".[7] Some observers were surprised about the momentum chosen for this challenging undertaking, as Europe was plunged into a deep economic crisis, caused by the collapse of

---

[3] H. Schneider, *The Constitution Debate*. European Integration Online Papers (EIoP), 7, (2003), 4, http://eiop.or.at/eiop/texte/2003-2004a.htm (WWW).

[4] EUROPEAN COMMISSION, "Statement from the Paris Summit", in *Bulletin of the European Communities*, 10, (1972), p. 26.

[5] F. Delmartino (2001), *Profiel van de Europese Unie. Een inleidend handbook*, Leuven, Garant, 47.

[6] L. Tindemans (1995), "Het Rapport Tindemans twintig jaar later", in *Internationale Spectator*, 49 12, p. 642.

[7] EUROPEAN COMMISSION, "Communiqué of the meeting of heads of Government of the Community (Paris, 10/12/1974)", in *Bulletin of the European Communities*, 12, (1974), pp.7-12.

the Bretton Woods system; and the 1973 OPEC oil crisis. Also politically, there was still a lot of frustration (notably in France) due to the failure of the 'Fouchet-plan'.[8]

Tindemans nevertheless accepted the challenge and gave it a maximalist interpretation; though respecting the limitations set by the Heads of State and Government. As such, the report submitted[9] did not entail a (federal) constitutional blueprint which would be the right one for Europe in the future. It was not nor a mere summary of the proposals received from the different institutions and civil society actors. Instead, Tindemans advocated a *moderate* and *pragmatic* approach, pointing out the necessary practical commitments feasible in the near future; and essential to make the qualitative step forward towards the 'Union'.[10]

Accordingly, taking the input of public opinion on the common future of Europe as a point of departure, the Report advocated a set of policy and institutional prescriptions, essential to safeguard a truly European identity and strengthen Europe's voice in the world.

Tindemans first of all stressed the importance of pursuing a common European foreign policy, able to give a suitable 'common' answer to the following four key challenges, being of fundamental importance in that period of international détente (though not being of less relevance in the current post Cold War world order, as Tindemans pointed himself in an article published twenty years after the presentation of the Report): the new world economic order; relations between Europe and the United States; security; and the crises in the immediate geographical surroundings of Europe.[11]  The Report provided a legal framework to agree on a common position by majority vote, where necessary, and binding on all the member states. As far as security and defense are concerned, the establishment of a European armaments agency was proposed. Precisely this element, in

---

[8] L. Tindemans, *loc. cit.*, p. 642

[9] The 'Report on the European Union' was published on 29 December 1975. On 2 April 1976, it was presented to the European Council in Luxemburg.

[10] EUROPEAN COMMISSION, "Statement by Leo Tindemans", in *Bulletin of the European Communities*, 12, (1975), pp. 5-7; Van De Meerssche, P., (2006), *Internationale Politiek 1815-2005. Deel II: 1945-2005*, Leuven: Acco, 2nd edition, 225-226.

[11] L. Tindemans, *loc. cit.*, p. 645 ; EUROPEAN COMMISSION, "Report on European Union", in *Bulletin of the European Communities*, Supplement 1, (1976), pp. 11-35.

addition to the extension of qualified majority voting, went too far for most member states.[12]

In order to ensure a common front to non-member states, the Report further advocated parallel practical measures which needed to be taken in the Union's internal structure. In this respect, Tindemans emphasized the need to re-establish a political consensus on the development of a common European economic and monetary policy, an objective already set by the States themselves at the Paris Conference of 1972, though without any significant progress so far.

Because of the lack of a general agreement and objective difficulties of certain states to move ahead, the Report explicitly defended that progress should initially be sought between member states which considered themselves in a position to advance further (suggesting to start with those countries who already cooperated in the framework of the so-called 'Snake', a nucleus of monetary stability). Other states would be offered aid and assistance to enable them to gradually catch the others up.[13] Also this proposal, labeled by observers as a 'Europe with two speeds', was not positively accepted by all member states, the UK in particular.[14]

In line with the policy reforms proposed, the Report further underlined the need to strengthen the existing institutional machinery, crucial to prevent a return to intergovernmental cooperation and to handle the qualitative step forward. In Tindemans' words: "The European Community has integrated markets. The European Union must integrate policy".

Reforms were henceforth especially suggested with regard to the European Parliament and the European Council. In accordance with the 'quality' principles of performance, authority, legitimacy and coherence; Tindemans emphasized the need to improve the legislative and controlling powers of the soon-to-be directly elected European Parliament. In his view, the Parliament should share the right of initiative with the Commission; a proposal which was considered as highly controversial. The Parliament should in addition be given a greater say in the Commission's President

---

[12] L. Tindemans, *loc. cit.*, p.644.

[13] EUROPEAN COMMISSION, "Report on European Union", *l.c.*, pp.11-35.

[14] D. Dinan (2004), *Europe Recast. A history of European Union,* Basingstoke: Palgrave Macmillan, 162-163.

appointment. Complementary to a strengthening of the European Parliament, particular attention was given to the European Council. To ensure its authority and efficiency, it should act in accordance to the procedures prescribed by the Treaties (including majority decisions) and consequently indicate the institution entrusted with executing its decisions. After all, according to Tindemans, only the Heads of Government could guarantee the "continuing political momentum needed for the construction of Europe".[15]

In order to assert the support of the 'European citizen' towards the entire undertaking, the Report finally encouraged initiatives for the protection of fundamental rights; consumer and environmental protection; and for the extension of freedom of movement in education.

In spite of this deliberately pragmatic and realistic approach, close to the citizen, the Report did not arouse much enthusiasm among the Nine member states at that time.

As Dinan states: "Each member state rejected one or more of Tindemans' key proposals", France and Britain being the most reactionary. We already pointed to the resistance with regard to the extended qualified majority voting, and the proposed differentiated integration. Also the strengthened powers of the European Parliament were not positively welcomed. Although supporting the idea of a 'European Union', the member states were not willing to take any major qualitative step forward, in a time of severe economic and political recession.

While no immediate action was taken after the presentation of the report, a lot of Tindemans' suggestions were nevertheless realized at a later stage, notably with the Single European Act and the Treaty on the European Union. Hence, the Report on the European Union nonetheless provided a valuable point of reference in the path towards the Union.[16]

A second key 'act of reflection', of significant importance for the current 'state of affairs' in the Union is the Declaration of Laeken.

---

[15] EUROPEAN COMMISSION, "Report on European Union", *l.c.*, pp. 11-35.
[16] D. Dinan, op. cit., 163-164.

### 1.2. The Laeken Declaration on the Future of Europe[17]

"*Europe at a crossroads*". The opening sentence of the Laeken Declaration on the Future of the European Union (2001) clearly marks the atmosphere in which this document has been written.

The Belgian Presidency, taking over the torch from Sweden in July 2001, came at a crucial moment for the European Union. The suboptimal outcome of the Nice Summit (December 2000) had generated a widespread feeling of malaise in the European arena. The 'mathematical' agreement reached, to prepare the Union for the forthcoming enlargement (by introducing a new system of qualified majority voting, a new distribution of seats in the European Parliament, etc.), was generally not considered as sufficient to tackle the core challenges which the 'widened' EU would face. Uncertainty remained whether the Union would überhaupt stay manageable; nor was there any clear consensus about the final 'telos' where the Union was heading to.[18] The European leaders, assembled in Nice, realized that a wide and deep debate about the EU's future development was of utmost priority, to counter the general negative attitude of the 'European citizen' about the integration project (as e.g. clearly demonstrated by the ever decreasing voter turnout at the European Parliament elections).

To this end, the European Council agreed to attach a 'Declaration on the Future of the Union' (Declaration No. 23) to the Treaty of Nice, in which they explicitly requested the coming 2001 Swedish and Belgian Presidencies to encourage wide-ranging discussions with all interested parties, which would form the basis for a new Intergovernmental Conference in 2004.

In concreto, the debate should address four core issues:

- how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity.
- the status of the Charter of Fundamental Rights of the European Union.

---

[17] EUROPEAN COUNCIL, *The Future of the European Union- Laeken Declaration, 15/12/2001.*

[18] H. Voss, E. Bailleul, *The Belgian Presidency and the post-Nice process after Laeken*, ZEI Discussion Paper C 102, 2002, http://www.zei.de/zei_deutsch/propro_neu/fpg_zeic_europeangovernance.htm (WWW).

- a simplification of the Treaties.
- the role of national parliaments in the European architecture.[19]

In conformity with the Declaration, in March 2001, Sweden launched the official discussion; but the debate was really pushed forward during the Belgian Presidency.[20] As already stated in its Presidency priority note (May 2001), Prime Minister Guy Verhofstadt was decisive to give a maximalist interpretation of its European mandate (the first sentence of the conclusion being much illustrative: "The Belgian Presidency is ambitious").[21] One can in this respect point to the political voluntarism of the Prime Minister himself, being determined to break with the until then relatively low profile role of Belgium on the international and European scene. But also external circumstances (11 September attacks) urged the need to critically reflect on the future of the EU. Taking full opportunity of the momentum, G. Verhofstadt didn't want to restrict the debate to the four topics identified in the Declaration on the Future of Europe; but intended to initiate a qualitative different discussion, including more fundamental and symbolic issues.[22]

The 'Laeken Declaration', presented at the end of the Belgian Presidency ride (December 2001), describes the main parameters of this debate: i.e. "the agenda (…), the methods to be employed and the timetable".[23]

The Laeken Declaration was innovative in many respects. Not at least in terms of the *methods* adopted for the debate. Starting from the acknowledgement that the IGC's proved twice (in Amsterdam and Nice) unable to revise the Treaties as much as deemed necessary; the European Council agreed to 'test' a different approach, in the form of a Convention. This method already demonstrated its efficiency for the setting up of the

---

[19] EUROPEAN COUNCIL, "Treaty of Nice" in *Official Journal of the European Communities*, C80, 10/3/2001.

[20] H. Voss, E. Bailleul, *op. cit.*

[21] BELGIAN PRESIDENCY OF THE EUROPEAN UNION, *The Belgian Presidency of the European Union, 1 July-31 December 2001, Priorities Note*, May 2001, http://www.eu2001.be (WWW).

[22] P. Bursens (2003), Het Belgische optreden tijdens de Europese Conventie", in *Internationale Spectator*, 57, 9, p.415.

[23] BELGIAN PRESIDENCY OF THE EUROPEAN UNION, *op. cit.*

Charter of Fundamental Rights. Ideally, by installing a Convention it should be avoided that the discussions would immediately be hijacked by national interests. By including all interested parties (i.e. European Commission, European Parliament, National Parliaments, civil society organizations) on an equal footing in the debate, it should further be guaranteed that the reached outcome would be considered as more democratic and legitimate.

The agreement on the creation of a Convention, which would hold its deliberations in public, is already an enormous breakthrough in itself. Though, the Laeken Declaration itself is of course the result of purely intergovernmental bargaining. Not all member states, the large states (Britain, Spain and France) in particular, were initially so enthusiast about Verhofstadt's activism and the idea of a Convention. Primarily concerned that the institutional issues agreed upon in Nice would be renegotiated again, it was compromised that the Convention would only be a 'preparatory body' for the 2004 IGC, and that the main treaty reforms would remain entirely in hands of the governments. In addition, by applying a strict timetable and introducing a 'cooling-off' period between the end of the Convention and the beginning of the IGC, a second 'safety measure' was incorporated to reduce the potential impact of the Convention, and to ensure the (veto) power of the Heads of States and Government.

A second element in which the Laeken Declaration distinguishes itself, is the *agenda* adopted for the debate (if we can at all name this an 'agenda' stricto sensu).

In order to avoid constraining the discussions in a certain direction, the agenda was formulated in a very open and comprehensive way. The Laeken Declaration listed more than fifty questions to be ideally addressed, grouped into one of the four subsections: 'A better division and definition of competence in the European Union', 'Simplification of the Union's instruments'; 'More democracy, transparency and efficiency in the European Union'; and 'Towards a Constitution for European citizens'.

As such, the Laeken Declaration is the most open text ever adopted by the European Council.[24] The 'open format' should enable the

---

[24] P. Magnette (2005), "In the name of simplification: Coping with constitutional conflicts in the Convention on the Future of Europe", in *European Law Journal*, 11, 4, pp. 434-435.

Convention to start discussions with a 'tabula rasa'.[25] Verhofstadt's deliberately vague attitude about its intentions, and the ambiguous formulation of questions on the most contentious issues, made it possible that the Laeken Declaration would be adopted by the most critical member states.[26] The subsection titled 'Towards a Constitution for European Citizens' clearly testifies this strategy.  The title itself gives a clear indication of the intended finality; the questions listed however are not so unambiguous. The reorganization and simplification of the existing Treaties has to be envisaged; though an adoption of a constitutional text is presented as something for the distant future: "The question *ultimately* arises as to whether this simplification and reorganization might not lead *in the long run* to the adoption of a constitutional text" (emphasis added).[27]

However, once the Convention on the Future of Europe started its work (on the 1st of March 2002), it soon became clear that a large majority was eager to give an extended interpretation to the Laeken Declaration.[28] The future will show if this ambition was mature enough for being successful.

### 1.3. Does "l'histoire se répète"?

The qualification 'period of reflection', as announced by the European leaders last June 2005, should be cautiously interpreted, and put in a right perspective. Having focused on two earlier 'points of reflection' on the European integration timeline, we wanted to 'nuance' the novelty of the present constitutional discourse and to underline the dynamic and ongoing character of the reflection period.

Without going so far as to argue on the aptitude of 'path dependency theories' in this discussion, it should nevertheless be clear that the CT, currently pending for ratification, would definitely not exist in its

---

[25] P. Bursens, o*cl .cit*., p. 416.

[26] P. Magnette, *loc. cit*., p. 434.

[27] EUROPEAN COUNCIL, *The Future of the European Union- Laeken Declaration, 15/12/2001, o.c.*; P. NORMAN, *The Accidental Constitution. The Story of the European Convention,* Brussel, EuroComment, 2003, pp. 22-23.

[28] P. Magnette, loc. cit., p.435.

present form without previous 'manifestos' presented in the course of European history, all calling for a more qualitative discussion on the future of the Union. As can be concluded from the presentation of the Tindemans Report and the Declaration of Laeken, one should not underestimate the importance of individual leadership in this respect. Though difficult to compare, also the pragmatic approach characterizing both initiatives, proved probably one of the determining factors, explaining their success (be it in the long run in case of the Tindemans report).

## 2. The name of the game.

At first sight, one could wonder why the EU's reflection on its very *nature* is such a laborious exercise. Is there any other international organization that spends that much time and energy questioning its 'finalité politiqué'? If only the debates could corroborate the common understanding of the project, the attention given to 'constitutional' issues would be fully legitimate. However, neither after the Laeken declaration, nor even after the signing of the Constitutional Treaty by all member states, a full consensus has been reached.

In the public debate preceding the ratification of the CT, either via the national parliaments or via referendum, the signatories have interpreted this agreement in different ways. Instead of assuming their role of exegetes of the Treaty they have signed, some of them played the political card of eurominimalism or even euroscepticism when dominant on the home front. Why are European 'elites', belonging to the inner circle of decision-making, so double-headed: eager, on the one hand to find a consensus in Brussels, and, on the other hand, reflecting the main trend of public opinion in their capital cities?

In our view, a decisive element in explaining such ambivalent behaviour has to do with the deficient conceptual framework regarding the institutional *formula* defining the Union. Despite all efforts, especially of the Treaty on European Union (Maastricht), the recent Convention and the CT itself, the key concepts are open to a huge variety of interpretations. Actually, nobody should be blamed for this lack of consistency. The experience of European integration is without precedent and this unique

endeavour at sharing sovereignty among member states has given rise to a very particular set of institutions that can hardly be compared to traditional models.

The EU is indeed a 'sui generis' creation, not fully comparable to whatever international organization and certainly not to a nation state. Everybody agrees that the EU is *not* a state. It is rather a *polity*, however difficult to qualify. Nevertheless, right from the start of the European Communities, efforts have been made towards theorizing about the process. Political scientists have elaborated on the factors explaining the willingness to cooperate and even to integrate after decades (if not centuries) of antagonism. Politicians and academics, alike have focused their attention on 'the name of the game'.[29]

For many of the founding fathers, to start with Robert Schuman himself in his famous 9th of May 1950 Declaration, the ultimate aim was a kind of European federation, i.e. a solid and stable institutional arrangement among states taking collective responsibility in certain policy fields. This *federal idea* was a very general one, mobilizing a significant part of the political class and of civil society. The slogan "United States of Europe" has been launched by Winston Churchill in 1946, although at that time no longer in government.[30] However, as soon as the *federalist movement* made the crucial choice of a particular institutional model, the consensus broke down. The General Assembly of all European Federalists in The Hague (May, 1948) was most disappointing in this regard. As an architect of the European Coal-and Steel Community, Jean Monnet therefore did not refer to any particular state theory as a model.

The Communities proved to be successful without an explicit reference to any 'finalité politique'. One could even say that the mere questioning of the formula was considered 'not done' within the system. It was left to activists from the federal movement and to academics. The Tindemans report can be seen as a remarkable exception to that rule, exactly as the Spinelli revolt in the European Parliament (1984) proposing a draft constitution. The 'system' took notice but did not alter its preference for 'business as usual'.

---

[29] An overview of all theorizing efforts can be found in: B. Rosamond, (2000), *Theories of European Integration*, Basingstoke: Macmillan, 232p.
[30] Speech delivered at the University of Zürich on 19 September 1946.

Nevertheless, the teaching on the EU at universities and advanced training colleges, such as the College of Europe in Bruges, was mainly in the hands of 'believers' in the federal destiny of the integration process. Even scientific historiography had a federal bias, as Desmond Dinan is arguing in his latest work.[31] The elites in the core countries of the EU were exposed to a scheme of interpretation that did not fully coincide with the realities on the policy-making scene.

The Intergovernmental Conference preparing the Treaty on European Integration (1990-1991) was offering a new opportunity for a fundamental turn into the 'politicisation' of the mainly economic-oriented project, thus bridging the gap between the single market and the 'finalité politique'. Most leaders were indeed prepared to a major 'constitutional shift': a dramatic extension of the policy horizon, a new role for the European Parliament, more qualified majority voting among themselves, the introduction of the concept of citizenship, and, rather symbolically, a new name for the common project: *Union* instead of *Community*. However, mainly due to British resistance, no consensus could be reached on the federal character of the newly-born Union. The principle of *subsidiarity* was introduced instead of a federal-type catalogue of competences, and both Berlin and London claimed this innovation as a breakthrough of their views on, respectively, a reinforcement or a toning down of 'Brussels'.

In exposing his views on the future of Europe, the German Minister of Foreign Affairs Joschka Fischer, was the last prominent leader explicitly claiming federalism as the guiding constitutional model for Europe.[32] This time, not only the British government, but quite some member states in Northern and Southern Europe were not prepared to share that view. The German federal government and especially the German Länder had to give up their quest for a specific state philosophy, turning their efforts towards a federal-type competence delimitation in the oncoming Constitutional Treaty.

Paradoxically enough, despite reluctance to confess to a particular state model, the member states in 2004 agreed on a 'Constitution', be it that its article 1 simply states that member states "confer competences upon the

---

[31] D. Dinan (2006), *Origins and Evolution of the European Union*, Oxford: Oxford University Press, p. 297 and ff.
[32] Speech delivered at the Humboldt University, Berlin on 12 May 2000.

Union to attain objectives they have in common". Any mentioning of or reference to the very *nature* of this 'Union' is carefully left out.

One should thus not be surprised that this constitutional charter is 'read' in different ways. To some, this EU with its constitutionally enshrined objectives, values, structures and policies, is the anticipated European polity, an ever closer Union on its way to become one day a kind of 'United States of Europe' as the Belgian Prime Minister Verhofstadt put it.[33] Others, not only in the peripherical or new member states, are stressing that actually not too many innovations have been introduced in terms of policies. So, the CT is rather seen as a cosmetic operation, loaded with symbolism, but with limited impact on the functioning of the institutions.

The citizens, however, called to express their agreement with the CT, have taken the opportunity for sending a signal to the signatories. Having no part in the 'inner circle' political culture of European leaders who can 'live' with conceptual ambinguities, a significant number of citizens has rejected (or intended to reject) the draft constitution. Most of them perceive the EU as a threat to national identity and sovereignty. In their eyes 'Brussels' represents a bureaucracy that infringes on the achievements of national welfare systems and cannot submit clear results in policy fields that really matter, such as employment or security.[34]  In other words: the output legitimacy of the Union is questioned.

As mentioned above, among a variety of factors, the unclear mission statement of the EU should be blamed for the current crisis of democratic legitimacy. Due to the inconsistency in the views of the leaders, no coherent picture on what the EU is all about can be presented to the general public. As a result, the credibility of the project is fatally undermined.

Is this conceptual inconsistency congenitally determined? Is there, in other words, no way out from the 'impasse' that since decades is affecting the Union? In our view, politicians and academics should cope with the present democratic deficit by giving up for a while their stubborn preference for a particular institutional model that does not reflect the realities of the day but rather refers to the state form they are familiar with.

---

[33] G. Verhofstadt (2005), *De Verenigde Staten van Europa. Manifest voor een nieuw Europa*, Antwerpen, Houtekiet, 92p. This manifesto is now available in all vehicular languages.
[34] EUROPEAN COMMISSION, *Standard Eurobarometer no. 63*, Spring 2005, Brussels, 2005.

In their eyes, the European construction should mirror the national political traditions they are attached to. One can indeed observe some *state analogy* in the way issues as leadership, transparency, accountability, democratic legitimation and many other structures and values are approached. By doing so, expectations are created the EU cannot meet at all.

Without fully adhering to the views of Domenico Majone or Andrew Moravcik on the non-existence of a democratic deficit, one should not underestimate the impact of reflecting in terms of state analogy when discussing EU affairs.[35]

Why not assess the EU on its own merits, elaborating on its achievements and deficiencies, on the policies that benefit to all (or most) people and to the sectors or dimensions that have been neglected? A transparent account on de facto-objectives, on the functioning of the institutions as well as on the successes and the setbacks, would probably be more credible and attractive to citizens than suddenly being confronted with an ambitious charter that rather raises questions and even hesitations instead of mobilizing support.

Therefore, in the present situation, there is an urgent need of developing a *paradigm* on what the EU is actually performing, before developing a theoretical discourse on its teleological dimension. In the next paragraph building blocks for such paradigm are presented by qualifying the EU as a system of multi-level governance that proceeds via federal-type arrangements.

## 3. The EU as a system of multi-level governance

If one observes the EU from some critical distance, with an open eye for the actors and the system, the power games and the policy outcomes, the overall picture is much broader and more colourful than the Treaties would suggest. As in most political systems, the legal framework primarily sets limits and fixes procedures: competence delimitations and 'rules of the game' to be observed.

---

[35] For a discussion of these issues, we refer to:  S. Hix (2005), *The political system of the European Union*, Basingstoke: Palgrave Macmillan, second edition, 516p.

Within this arena for policy-making new ideas flourish and become objectives. Political dynamics are convincing actors to develop new policies at the edge of national interest and collective benefit. We have already quoted William Wallace qualifying the EU very correctly as 'a system of governance without statehood'.[36] If the EU is indeed, properly speaking, not a state, its decision-making processes are genuinely political and its decisions legally binding.

The actors involved in this process are of a great variety. The member states are omnipresent, not only at the tri-monthly European Council's 'grand-messe' and the frequent Council of Ministers' meetings, but first and foremost at the Permanent Representatives' headquarters with their expert knowledge and bargaining capacities. The European Parliament, on the other hand, has shown its determination in rejecting or amending directives or budgetary proposals that it judges inappropriate, thus highlighting the increased powers it was given in recent years.

The most emblematic institution, however, is still the European Commission. No longer the 'chef de file' it was in the Delors period (1985-1995), sometimes confronted with a legitimacy and credibility deficit, it functions nevertheless at the focal centre of the policy-making process. Governance is indeed more than a power game. The terms of the debate are taking shape, the expertise is located, the 'dossier' is constituted at the crossroads of the institutional actors just mentioned and numerous informal actors representing interest groups and, ultimately, civil society. The *White Paper on Governance*, issued by the Commission in 2001, explicitly refers to this type of interactions as a guarantee for efficient and effective policy-making.[37]

Next to the variety of actors in the Brussels-Luxembourg-Strasbourg arena, it should be acknowledged that no policy of any complexity is dealt with at the EU-level only. In a *globalizing* world, the *continental* (in casu: European) level constitutes for sure a crucial tier of governance in many fields, however, next to the *national*, sometimes *regional* and in any case *local* ones. Issues as energy, for instance, the hot topic on the March 2006

---

[36] H. Wallace, W. Wallace and M. A. Pollack (eds.), *op .cit.,* p. 482 and ff.

[37] EUROPEAN COMMISSION, "*European Governance. A White Paper*", COM (2001), 428 final, Brussels, 25.7.2001.

European summit, illustrate the point. The core question is not the one of *delimitation of competences* but of *convergence of strategies*. In other words, the EU should not become the master of the game, but is well positioned for the role of a *broker*. It has the size for being recognized as a global player and has the know-how and the legitimacy for being accepted as a fair representative of public and private interests. The concept of multi-level governance refers exactly to both horizontal and vertical dimensions of coordination.

This paradigm, therefore, reflects a reality most political-, business- and societal elites are actively involved in. They have understood their interest in joining policy networks that compensate for the rather small size of most players. Thanks to the EU, their voice has world-wide to be taken into account. It is not by coincidence that all European countries, Russia and Belarus excepted, but including the non-member states, are actively involved in all or some common strategies. In other words: the EU offers unique opportunities to member- or associated member states, rather than being a super-state in itself.

The problem arises when this practice of 'shared sovereignty' has to be communicated to citizens.

First, the degree of policy integration varies considerably. Monetary affairs in the eurozone have been fully integrated, as was the external representation in foreign trade affairs. But in most fields the competences are *shared*, let alone the cases where the EU is mainly coordinating or supporting national efforts. It's a difficult message to pass, especially since some minor policy fields sometimes attract major attention, student mobility, for example. In the worst case scenario, the EU is blamed for not taking action in fields where it has no competences at all…

Secondly, and even more importantly, referring to a federal vocabulary for expressing these shared responsibilities, unfortunately evokes a federal practice that is not European at all. The USA has evolved into a highly integrated federation in which all major policy decisions are centrally taken. The U.S. experience has, for sure, its own merits, but is definitely not a model for the European integration process.

How to characterize and to visualize then an institutional model uniting national identity and common European interest into a dynamic equilibrium? All European states are indeed involved in a balancing act

between national political systems and a "collective political system".[38] The perfect design has not been invented yet, but a series of concentric circles comes close to the reality of a system of multi-level governance.

What could be the institutional characteristics of this paradigm? How can the balance between all actors involved be guaranteed? Paradoxically enough, the institutional *practice* of well developed federal states offers the crucial rules of the game. Federal-type arrangements are solidly built on a clear division of tasks, not that much allocating an entire policy field to a single actor, but distinguishing between *functions*. Which level, for instance, gets responsibility for establishing the problem definition ("What is an endangered species"?), for setting and assessing the quality standards, for precising the rules of operation, for financing the efforts, for implementing this policy in a concrete situation?

Depending on the issue, the operational aspects can greatly vary, but one can clearly notice an emerging space in Europe for social and economic strategic decisions, whereas the welfare state models are still national and the implementation is primarily local. The success of a policy - food safety, for instance- will greatly depend on the way the macro-, meso- and micro-levels of policy-making will be interacting. Centralistic planning models have clearly failed, but we are still lacking well-established alternative models. The federal-type arrangements offer the advantage of stressing an *integrated* approach, including all levels of governance in a single endeavour. On the other hand, they avoid the temptation of a hierarchic interference from the 'centre', since they are based on the legally supported respect for the specific role each level has to play.

In his well known treatise on federalism, Daniel Elazar has specified that "federalising involves both the creation and maintenance of unity and the diffusion of power in the name of diversity".[39] Federal-type arrangements start from the assumption that the social, economic and political reality is diverse and that power should be spread over all actors in society on all relevant levels of governance. But collective action should be as well coherent and consistent if it wants to be effective. "Unity in

---

[38] H. Wallace, W. Wallace and M. A. Pollack (eds.), *op. cit.*, p. 482 and ff.

[39] D. Elazar (1987), *Exploring Federalism*, Birmingham: University of Alabama Press, p. 64.

diversity" happens to be the motto of the EU, as introduced by the Constitutional Treaty.[40]

Since, for historical reasons, classical federalism is not appealing to the European Union as a whole, we would like to advocate a less ideologically sensitive conceptual framework for characterizing the functioning of the Union's policy-making. Federal-type arrangements are by no means an anticipation on a desired 'finalité politique', but a set of legal principles and quality standards, framing the paradigm of multi-level governance in the European context.[41]

## 4. The ongoing constitutional debate

By way of conclusion, we would like to suggest a new understanding of the constitutional challenge, and, consequently, a new approach of the present-day impasse.

First, it is important that the European elites, both the national leaders and the Brussels-based technocrats, should provide the European citizens with a clear picture of their understanding of the key role the EU is playing in safeguarding and promoting national and continental interests. The communication strategy, launched by the European Commission, should not only stimulate citizens and NGO's to express their views. A real debate should be based on a *mission statement* presented by the 'leadership' in Europe as a stepping stone for open discussion.

Based on the convergence among Europeans, europhiles and eurosceptics alike, on the 'core business' of the EU, the aims, values and basic institutional arrangements could be entrenched in a *charter*, that, per definition, will be of a constitutional nature since it solemnly fixes the 'rules of the game'. However, one should avoid all resistance merely resulting from the terminology used. If the notion 'constitution', exactly as what happened with the concept of 'federalism', is dividing people (or even peoples) rather than uniting them, such symbolism should not jeopardize the overall exercise.

---

[40] EUROPEAN COUNCIL, "*Treaty establishing a Constitution for Europe*", Article I, 8.

[41] For a present-day overview of the debate on 'Multi-level governance', see the work of I. Bache and M. Flinders (2004), *Multi-level governance*, Oxford University Press, 237p.

The elaboration of a basic charter is crucial indeed, both for the purpose of clarification vis-à-vis the outside world as for the understanding of the common endeavour within the Union. Actually, in our view, not so much should be altered in the wording of parts I and II of the present Constitutional Treaty. But these articles, i.e. their *message*, should be understood in reference to the mission statement that was mentioned as a first step in the exercise of clarification of the minds.

The third part of the Constitutional Treaty is, of course, essential in legal terms but indigestible for the general public. This is no constitutional charter at all, but a status quaestionis of the existing arrangements. This synthesis of the *acquis communautaire* and overview of intergovernmental compromises is, per definition, subject to review and amendment as soon as there is evolution in the policy context or in the power positions. Therefore, part III should keep its status as a *treaty*, not as a constitutional text.

Perhaps, somewhere in the future, the 'crise grave' of 2005 will be qualified by historians as a moment of fundamental change in approaching the basic arrangements within the EU. For the first time the general public, not of *one* member state but of *most* member states, has expressed its rejection of a formula of *consultation* once the fundamental *decision* has already been taken by the political elites.

We can no longer go on with this dichotomy between decision-makers and general public. The future of the European construction lies in the hands of all actors involved, including the citizens. This public opinion should become an informed and active partner, very much in line of what a democratic process is ought to be.

The aims of the current constitutional debate should therefore reach beyond the 'yes' or 'no' to the signed Constitutional Treaty. This constitution, however valuable as a decisive step in the self-definition of the integration process, is only the crystallization of the institutional balance in the first decennium of the 21st century. New challenges will arise in the coming years and new arrangements will have to be negotiated, shaping a new profile for the Union. So, we should be prepared for a never ending constitutional dialogue, exactly as the first half a century of European integration has taught us.

**References**

1. BACHE, I., FLINDERS, M., *Multi-level governance*, Oxford University Press, 2004, 237p.
2. BELGIAN PRESIDENCY OF THE EUROPEAN UNION, *The Belgian Presidency of the European Union, 1 July-31 December 2001, Priorities Note*, May 2001, http://www.eu2001.be (WWW).
3. BURSENS, P., "Het Belgische optreden tijdens de Europese Conventie", in *Internationale Spectator*, 57, (2003), 9, pp. 415-419.
4. DELMARTINO, F., *Profiel van de Europese Unie. Een inleidend handbook*, Leuven, Garant, 2001, 200p.
5. DINAN, D., *Europe Recast. A history of European Union*, Basingstoke, Palgrave Macmillan, 2004, 373p.
6. DINAN, D., *Origins and Evolution of the European Union*, Oxford, Oxford University Press, 2006, 362p.
7. ELAZAR, D., *Exploring Federalism*, Birmingham, University of Alabama Press, 1987, 335p.
8. EUROPEAN COMMISSION, "Communiqué of the meeting of heads of Government of the Community (Paris, 10/12/1974)", in *Bulletin of the European Communities*, 12, (1974), pp.7-12.
9. EUROPEAN COMMISSION, "*European Governance. A White Paper*", COM (2001), 428 final, Brussels, 25.7.2001.
10. EUROPEAN COMMISSION, "Report on European Union", in *Bulletin of the European Communities*, Supplement 1, (1976), pp. 11-35.
11. EUROPEAN COMMISSION, "Statement by Leo Tindemans", in *Bulletin of the European Communities*, 12, (1975), pp. 5-7.
12. EUROPEAN COMMISSION, "Statement from the Paris Summit", in *Bulletin of the European Communities*, 10, (1972), pp.14-26.
13. EUROPEAN COMMISSION, *Standard Eurobarometer no.63*. Spring 2005, Brussels, 2005.
14. EUROPEAN COUNCIL, "Treaty establishing a Constitution for Europe" in *Official Journal of the European Union*, C310, 16/12/2004.
15. EUROPEAN COUNCIL, "Treaty of Nice" in *Official Journal of the European Communities*, C80, 10/3/2001.

16. EUROPEAN COUNCIL, *Declaration by the heads of state or government of the member states of the european union on the ratification of the treaty establishing a constitution for europe*, 16 and 17 June 2005.

17. EUROPEAN COUNCIL, *The Future of the European Union- Laeken Declaration, 15/12/2001*.

18. HIX, S., *The political system of the European Union*, Basingstoke, Palgrave Macmillan, 2005, second edition, 516p.

19. MAGNETTE, P., "In the name of simplification: Coping with constitutional conflicts in the Convention on the Future of Europe", in *European Law Journal*, 11, (2005), 4, pp. 432-451.

20. NORMAN, P., *The Accidental Constitution. The Story of the European Convention*, Brussel, EuroComment, 2003, 406p.

21. ROSAMOND, B., *Theories of European Integration*, Basingstoke, Macmillan, 2000, 232p.

22. SCHNEIDER, H., *The Constitution Debate*. European Integration Online Papers (EIoP), 7, (2003), 4, http://eiop.or.at/eiop/texte/2003-2004a.htm (WWW).

23. TINDEMANS, L., "Het Rapport Tindemans twintig jaar later", in *Internationale Spectator*, 49 (1995), 12, pp. 642-651.

24. VAN DE MEERSSCHE, P., *Internationale Politiek 1815-2005. Deel II: 1945-2005*, Leuven, Acco, 2006, 2nd edition, 466p.

25. VERHOFSTADT, G., *De Verenigde Staten van Europa. Manifest voor een nieuw Europa*, Antwerpen, Houtekiet, 2005, 92p. [Available in all vehicular languages]

26. VOSS, H., BAILLEUL, E. *The Belgian Presidency and the post-Nice process after Laeken*, ZEI Discussion Paper C 102, 2002, http://www.zei.de/zei_deutsch/propro_neu/fpg_zeic_europeangovernance.htm (WWW).

27. WALLACE, H., WALLACE, W. and POLLACK, M. A. (eds.), *Policy-Making in the European Union*, Oxford University Press, 2005, 5th edition, 570p.