

TOR VERGATA UNIVERSITY OF ROME  
JEAN MONNET INTERNATIONAL SUMMER SEMINAR  
Tuesday, 1<sup>st</sup> July 2008, CSA - Centro Studi Americani, Rome

## **The will-be-benefits of the Lisbon Treaty. An Overview.**

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SUMMARY: 1. *Introduction*; 2. *A background as a “trptych”*; 3. *The content of the Treaty and its “technical” benefits*. 4. *The political benefits of the Lisbon Treaty and the next scenario after the Ireland's rejection: three different outcomes.*

1. *Introduction.* - In my brief lesson, I will try to underline the benefits political and technical of the Lisbon Treaty. To do so, first of all I will present - really as a glance- the historical, political and constitutional reasons which pushed to have a new Treaty; then, I will overview the content of the Treaty and its “technical” benefits. Finally, I will illustrate the political benefits of the Lisbon Treaty and the next scenario on the political solutions after the Ireland's rejection.

2. *A background as a “trptych”.* – I’m very sorry but, first of all, it will be necessary a very short synthesis on the hard and long road to have a general (and binding) “Constitution” for the Europeans; a basis that is necessary and that cannot be omitted, in order to understand the reasons which pushed to have the Lisbon Treaty.

We could try to use an image, the “trptych”, to draw the background that can permit us to get to the Lisbon Treaty. I choose the “trptych” because this

image could be useful to bring with you, in every moment of this lesson, the complexity but also the simplicity of the European construction.

The triptych, as you know is a unitary art work but composed in three – sometimes, also, independent- parts or pieces. One work in three. Three works in one. They exist altogether, they each exist alone. Therefore, you can see the picture, the piece, separately or united. You can follow the comprehensive stream, or you can dive and lose yourself in a singular piece. But certainly you know that to understand really and deeply the meaning, the *ratio*, the sense of a triptych, you have necessity to keep in your mind -at the same time- the global vision with the distinctive features, the peculiarities, and the details of each piece. The whole influences each part; each part influences the whole.

I propose that you need the same attitude and effort to follow the road to the Lisbon Treaty.

Then, we could divide the triptych into its single parts: (a) the intellectual movement around an idea of a "Constitution" for Europe; (b) the substantive political-institutional strengthening of the idea of a "Constitution" for Europe; (c) the opportunity to write a real "Constitution for Europe" and the.....“exit strategy” through the Lisbon Treaty.

At the end, if you mix each part with the others parts, you can see a concise (then superficial but -you know- it isn't the topic of his lesson...) *affresco* where to draw and to outline the Lisbon Treaty.

*(a) Part I. The intellectual movement around an idea of a "Constitution" for Europe.* - The Europe movement during and after the Second World War produced detailed draft constitutions, in addition to a number of political studies and manifestos. Even during the War, incitement in this direction came from all nations. Of the studies and manifestos which resulted in draft constitutions, we would mention here only *Altiero Spinelli's* pamphlet "Gli Stati Uniti d'Europa e le varie tendenze politiche" from October 1941, *Arnold Brecht's* minimum requirements of a European Constitution of February 1942 and the manifesto of the French Resistance "Combat", of September 1942. As examples, detailed draft constitutions were presented in 1940 by the Oxford constitutional lawyer *Ivor Jennings*, in 1942 by the European Union and in 1944 by the Legal Committee of the Paneuropean Conference.

At the end of 1947, many of the existing European associations were coordinated within the "International Committee of the Movement for European Unity".

The most important activity of this committee was the Congress on Europe held in The Hague on 7 — 10 May 1948 under the Presidency of Winston Churchill, which was attended by 750 delegates, including several former

Prime Ministers, a number of Ministers and Members of Parliament and leading political, economic and cultural personalities from all the countries of Europe.

Further initiatives and drafts followed, despite the disappointment resulting from the fact that the governments of the six Member States of the European Coal and Steel Community (ECSC) had allowed the draft constitution, which the Parliament of the European Coal and Steel Community in 1952 had solemnly requested, to disappear without trace within the Ministries.

The efforts made in the Seventies at improving the institutions and mechanisms of the EEC, which had proven to be inadequate, finally led, via the *Spinelli Report*, to the draft of a Treaty establishing the European Union, which was adopted by the European Parliament on 14 February 1984..

When it passed its resolution on 10 February 1994, the European Parliament called for "the project on a European Constitution". The subsequent efforts principally involved harmonisation of the treaties, which consisted of the TEU (Treaty of European Union) and the Treaties establishing the European Communities (i.e. the European Economic Community, EEC) now referred to as the European Community (EC), the European Atomic Energy Community (Euratom) and the (now expired) European Coal and Steel Community (ECSC), following the "formation" of the European Union which arose out of European Political Cooperation (EPC).

In summary, the conception of a "European Constitution" was developed and promoted as a means of integration in particular by private initiatives, in which mainly scholars but also politicians, including those in government office, were involved. Meanwhile, amongst the institutions, it was only the European Parliament which took the initiative, with the draft constitution which it produced in 1984...and with the exception of political "Sunday speeches", the governments of the Member States reacted with some degree of reticence about it. A reticence that became evident when at the Intergovernmental Conference in Nice the European political-constitutional system appeared to be at the edge of a cliff.

*(b) Part II. The substantive political-institutional strengthening of the idea of a "Constitution" for Europe.* - The existing treaties establishing the European Communities and the European Union are also described as the "Constitution" of the European Union/European Community. The ECJ talks of the "Basic constitutional charter [of the Community], the Treaty"<sup>1</sup>. This is not a new concept: Joseph H. Kaiser spoke of a "second constitutional

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<sup>1</sup> See Case 294/83, Parti Ecologiste "Les Verts" v. Parliament [1986] ECR 1339.

legislator" or Peter Badura spoke of the "constitutional character" of the act of that founded the EEC.

Meanwhile, *contra*, we could find Dieter Grimm, Christian Koenig, Paolo Ridola or Jurgen Habermas. Their objections brought against this, which focus on the fact that the EC lacks the capacity of a state, prompt clarification of the original point of view but are not decisive. If we acknowledge that the term "constitution" is related to the state primarily because the state was the form of political authority which had to be and must be ordered and held in check with the aid of the constitution, and if we relate this to all the manifestations of institutionalised political authority, then this favours a broad definition of the concept of the constitution, which also covers the primary law of the EC/EU, since this is intended to order and to restrict the public power of the EC/EU in the interests of its citizens.

It's important to consider, in fact, that the European Communities and the European Union were not only founded by the Member States, they are still based on them, and need the authority granted under constitutional law, notwithstanding all the special features of this unique integrated community, in particular the primacy of Community law. However, in order to permit integration, the constitutions of the Member States must be made capable of accepting this arrangement and must take account of the special features and requirements of the European Union. In particular, they must not only enable the transfer of sovereign powers, but must also accept the consequences thereof.

"Constitutional law of Europe" and "European constitutional law" are interrelated. The constitutional requirements for the cooperation of individual Member States with the EU are linked to their "constitution", although in different forms and levels of intensity.

The interaction of "European constitutional law" and the constitutional law of the Member States is increasingly recognized. Therefore the national and the "union" (as it is uniformly to be called in the future) levels need to be incorporated into a constitutional union.

*(c) Part III. The opportunity to write a real "Constitution for Europe".* - The "Laeken missions" fixed namely to simplify the Treaties in the interests of greater transparency--driven partly by public opinion--accelerated the movement towards a Constitution for Europe.

An European Convention was created and The European Council has appointed Mr Valéry Giscard d'Estaing as Chairman of the Convention and Mr Giuliano Amato --as you know, the keynote speaker of your Official Opening Lecture and President of Centro Studi Americani- and Mr Jean-Luc Dehaene

as Vice-Chairmen. The Convention was composed of the main parties involved in the debate on the future of the European Union.

The choice of a Convention represented a departure from previous treaty revisions and reflected the desire to do away with backroom meetings attended only by Heads of Government. The establishment of the Convention was an institutional innovation, despite the precedent created by the Convention that drew up the Fundamental Rights Charter. This new type of body was charged with preparing the subsequent IGC in a transparent and open manner.

They worked hard and produced a text, the "Treaty establishing a Constitution for Europe", which contains in some parts the distinction between a "Constitution" and a "Constitutional Treaty": not a quarrel about nothing, but a sign of the fact that in the final analysis, the Member States hold, and as demonstrated, retain constitutional authority.

The main innovations in the draft constitutional Treaty have been grouped together in four Chapters, as summarised by the European Convention:

(a) The founding principles of the Union:

- The values and objectives of the Union are consecrated, as for are the rights of European citizens, thanks to the incorporation into the Constitution of the European Charter of Fundamental Rights.
- The Union is accorded a single legal personality (merger of the European Community with the European Union).
- The competences (exclusive, shared and supporting) and their distribution between the Member States and the Union are defined clearly and permanently.
- For the first time, with the introduction of a voluntary withdrawal clause, Member States may withdraw from the Union.
- The instruments of action available to the Union are simplified, reducing their number from 15 to 6, as is the terminology, with regulations and directives being replaced by European laws and European framework laws.
- For the first time, the democratic underpinnings of the Union, including participatory democracy, are defined and a genuine right of citizens' initiative is introduced.

(b) The institutions:

- The seats in the European Parliament will be distributed on a digressively proportional basis.

- The European Council, headed by a President elected for two and a half years, is formally institutionalised and the rotating Presidency of the Union is discarded.

- The Council of Ministers, which will convene as the Legislative Council when adopting legal acts, is reformed.

- A smaller Commission is established, comprising a College of 15 members and a number of non-voting Commissioners and subject to a fair system of rotation between these groups.

- The President of the Commission is to be elected by the European Parliament.

- A Minister for Foreign Affairs attached to the Council is to be appointed, taking over the tasks of the External Relations Commissioner and the High Representative for the Common Foreign and Security Policy.

(c) Decision-making:

- A new qualified majority system is established, in which the majority of the Member States representing three-fifths of the population will amount to a qualified majority.

- Qualified majority voting in the Council of Ministers has been extended to about 20 legal bases for Union internal policies and action.

- Several "passerelle" (switchover) clauses are created for facilitating subsequent extensions of qualified majority voting.

- The joint adoption of European laws and framework laws by the European Parliament and the Council is to become the norm (normal legislative procedure).

(d) Union policies:

- Economic coordination between the countries that have adopted the Euro is to be improved and the informal role of the Euro Group is to be recognized.

- The pillar structure is to be abolished: the second (common foreign and security policy) and third (justice and home affairs) pillars, which were hitherto subject to the intergovernmental method, are brought within the Community framework.

- The common foreign and security policy is strengthened with the creation of a European Minister for Foreign Affairs and the progressive definition of a common defense policy with the creation of a European Armaments Agency and the authorization to initiate enhanced cooperation.

- A genuine area of freedom, security and justice is to be created through the planned implementation of common policies on asylum, immigration and external border control, the development of Europol and Eurojust actions and the creation of a European Public Prosecutor's Office.

All of these provisions are only “old wine in new bottles” or a substantial innovation?

Maybe, the second one, even if the Brussels European Council of 12-13 December 2003 did not reach an overall agreement on the Constitution.

In fact, the Member States failed to reach agreement on two basic issues, (i.e. the future arrangements for qualified majority voting in the Council and the composition of the Commission) and therefore the intergovernmental conference asked the Irish Presidency to continue the consultations.

Then, with a political agreement reached on 18 June 2004 following the work of the IGC, the draft Constitution was sent to the Heads of State who all signed it on 29 October 2004. The ratification of the Constitution was the final stage prior to its entry into force. It had to be ratified by all the Member States in accordance with each one's constitutional rules, namely either parliamentary ratification or referendum.

Following the difficulties in ratifying the Treaty in some Member States (failure of the referenda in France and Holland, in the first one for internal political problems especial in the socialist party, in the second one to demonstrate his weight in Europe), the Heads of State and Government decided, at the European Council meeting on 16 and 17 June 2005, to launch a "period of reflection" on the future of Europe.

After, in the first semester of 2007 the negotiations was been driven by the German EU Council Presidency which lead really to have a new Treaty, in front of the danger which the paralysis and the risk of division would persist.

And at the European Council meeting on 21 and 22 June 2007, European leaders reached a compromise and agreed to convene an IGC to finalise and adopt -not a Constitution- but a "reform treaty" for the European Union: the Lisbon Treaty.

3. *The content of the Treaty and its technical benefits.* – The agreement reached in Brussels consistently retain the substance of the Constitutional Treaty, surpassing the purposes of those Member States which fully supported and had already ratified the Constitutional Treaty, and of those which were

demanding substantial changes in response to criticism from their populations.<sup>2</sup>

Keeping in mind the main innovations of the draft constitutional Treaty, we can find three cardinal key-principles of the Lisbon Treaty:

- (a) *Democratic equality*: the European institutions must give equal attention to all citizens;
- (b) *Representative democracy*: a greater role for the European Parliament and greater involvement for national parliaments;
- (c) *Participatory democracy*: new forms of interaction between citizens and the European institutions, like the citizens' initiative.

Along on these bases, the structure of the Treaty consist in 7 articles, 12 protocols (to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and, where applicable, to the Treaty establishing the European Atomic Energy Community), and other 3 protocols to be annexed to the Treaty of Lisbon. After we can find an Annex and a Tables of equivalences referred to in Article 5 of the Treaty of Lisbon.

We can summarize the principal “technical” benefits of the Lisbon Treaty on these topics:

- EU's voting system: it will become simpler and more reflective of a nation's population size and the changes will be phased in between 2014 and 2017. A majority vote in the Council of Ministers (which represents national governments) will be carried if 55% of nations representing 65% of the overall EU population say yes.
- Qualified majority voting. The shifting from unanimity to majority voting it's very important, and the majority voting will become the rule in some 50 policy areas currently decided by unanimity, for i.e. migration, criminal justice and judicial and police co-operation. Nevertheless, in those areas, Britain and Ireland have obtained the right to stand aloof from individual measures: in practice may opt in quite often.
- A full-time standing President of the European Council. The President -probably an ex-prime minister or similar bigwig- will be elected by serving heads of government for a two-and-a-half-year

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<sup>2</sup> See the Speech by Federal Chancellor Dr Angela Merkel to the European Parliament reviewing the German EU Presidency, Brussels, 27 June 2007 in [www.eu2007.de](http://www.eu2007.de)



stint, renewable once, and will prepare and host four or more summits a year.

- A smaller European Commission. Under the new treaty, the Commission will be reduced from 27 to 18 members from 2014, with membership rotating every five years. This means that only two-thirds of member states will have their own commissioner at any one time, and each country will lose its commissioner for five years at a time.
- A new foreign minister. He will have political clout, money and his own diplomatic service and will speak for the EU in places like the United Nations, whenever governments have agreed on a foreign policy position. And under the Treaty it's possible also that member states may also push ahead with defence co-operation among themselves.
- European Parliament: more power, reduced numbers. The Lisbon Treaty provide which the co-decision will be extended to virtually all areas of EU policy. Meanwhile, the European Parliament comprises 785 MEPs from across the union, but under the treaty, this will be permanently reduced to 751.
- Legal force to the Charter of Fundamental Rights. The Lisbon Treaty makes the EU Charter of Fundamental Rights a legally-binding document. The Charter lists the rights recognized by the European Union.
- Citizens' initiative. Under the Lisbon Treaty, the commission is obliged to consider any proposal signed by at least one million citizens from a number of member states.
- National parliaments and the "early warning". All proposals for EU legislation will have to be sent to national parliaments, who will then have eight weeks to offer a 'reasoned opinion' on whether they believe the proposal respects the principle of subsidiarity. If enough national parliaments object to a proposal, using the "early warning" as a 'yellow card', the Commission can decide to maintain, amend or withdraw it.

- New areas of EU competence: The Lisbon Treaty will set out those areas over which the EU has exclusive competence, shared competence with member states, or supporting competence. The treaty gives the EU no new areas of exclusive competence; however, it establishes joint competence in the areas of space and energy. It also gives the EU the role of supporting competence in several new fields including for i.e. health, education, tourism.
- Changes to common security and defence policy: The Lisbon Treaty provides for the progressive framing of a common defence policy for the European Union, which will nonetheless respect the neutrality of member states (for ie. Ireland). Excluding military and defence, it also allows the European Council to change decision making from unanimity to majority voting in a number of areas. However such changes will themselves require unanimous decisions. The treaty extends also the range of peacekeeping and humanitarian missions for which the union may draw on member states to include disarmament operations, military advice and assistance and post-conflict stabilization.

4. *The political benefits of the Lisbon Treaty and the next scenario after the Ireland's rejection: three different outcomes* – On this basis, the Treaty signed by the Heads of State or Government of the 27 Member States in Lisbon<sup>3</sup>, under the Portuguese Presidency, on 13 December 2007, represents, first of all, a “sign of life” of the European Union to his citizens and the definitive ending of the “period of reflection” on the future of Europe, giving the possibility to the Reform Treaty –without considering the stop after the Ireland's rejection and its reflections on the process- to enter into force in time for the European elections in 2009<sup>4</sup>.

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<sup>3</sup> *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, signed at Lisbon, 13 December 2007, 2007/C 306/01, Official Journal of the European Union, Volume 50, 17 December 2007.

<sup>4</sup> Hungary was the first of 18 countries to approve the Treaty in parliament. The Republic of Ireland was the only member state to hold a referendum on the Treaty. According to an Irish Supreme Court ruling in 1987, any major amendment to an EU treaty entails an amendment to the constitution - and that in turn requires a referendum.

In particular, approved by parliament are: Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, UK. Defeated by referendum: Irish Republic. There are legal objections in Czech Republic, and no firm date in: Belgium, Cyprus, Netherlands (held up by referendum proposal), Italy (new government), Spain (new government), Sweden.

The innovations introduced by the Lisbon Treaty seems important to clarify better the new Union, however -as you know- the success of institutional innovations depends not only on legal provisions, but also on the way the provisions are implemented.

Therefore, we can appreciate the real political benefits only mixing the text of the new Treaty with the political context.

Then, after the Ireland's rejection, and apart from the text, I suppose that it's impossible to have another paralysis and a "period of reflection" on the future of Europe, because it's too difficult to justify again in front of the European public opinion: then I exclude the definite stop of integrating process. And I suppose that the political context could present three different scenarios:

- (a) *The ratification process starts again with more pressure.* Countries that have not yet ratified the Treaty press on with ratification despite the Republic of Ireland's No vote. In this case, a solution for the Irish "exception" might have been always negotiated (at the end, Ireland could hold another referendum).
- (b) *The developing of a "two-tier" Europe.* Promoted in particular by Luxembourg Prime Minister Jean-Claude Juncker, the "theory of "two-tier" Europe" consist in an informal club inside the EU in which some countries keen on further EU integration form.
- (c) *A looser Union with free options.* Ireland, the UK and a few other countries, which prefer a looser union, would stick to various opt-outs, without formally ratifying Lisbon.

We can find also another solution: the secession from the Union by the Countries, as Ireland, which votes against. But, despite this possibility that ironically and paradoxically would be introduced by the Lisbon Treaty, legally now the current Treaty does not foresee secession<sup>5</sup>.

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<sup>5</sup> See F. Bindi, *Ireland's Rejection of the Lisbon Treaty*, in The Brookings Institution, 16 June 2008, [http://www.brookings.edu/opinions/2008/0616\\_lisbon\\_treaty\\_bindi.aspx](http://www.brookings.edu/opinions/2008/0616_lisbon_treaty_bindi.aspx)

For a general overview on the Lisbon Treaty, see :

- G. Amato, *Il Trattato di Lisbona e le prospettive per l'Europa del XXI secolo, paper*; now in F. Bassanini, G. Tiberi (eds), *Le nuove istituzioni europee. Commento al Trattato di Lisbona*, Astrid, Bologna, Il Mulino, 2008 (forthcoming);
- G. Amato, *Il no dell'Irlanda non può fermarci*, Interview, "Il Sole 24 Ore" del 14 giugno 2008;
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