



In August the Georgian war was on European home ground. Again, as with Yugoslavia, the Union did not measure up to its own ambitions. The French Presidency moved swiftly to secure a cease-fire. The terms gave Russia what it wanted –the separation of Southern Ossetia and Abkhazia from Georgia and a buffer zone which Russia controlled. The EU sent in unarmed monitors. Russia at first refused them entry into the break-away areas and only on sufferance let them into the *cordon sanitaire*, where they observed the withdrawal of Russian troops. The EU's sanction was to freeze preparations for a new EU-Russian Federation agreement. The sanction was then dropped.

In September the world tumbled into ever deeper financial crisis. There was little sign of EU solidarity. National policies took over, without regard for extra-territorial effects. The Commission was sidelined. It was formally recognized that problems of banking liquidity are for national governments to address. After three weeks of apparent inactivity the Presidency proposed (first version) or did not propose (second version) a financial bail-out distantly similar to the Paulson Plan in the USA. But as the European Central Bank pointed out there could not be a Federal plan because the EU ,not being a federation, does not have a federal budget. If there ever was a Presidency bail-out plan, it disappeared. Disregarding the principle that all Member States are equal partners, the Presidency gathered the G7 members of the EU together, plus Luxembourg (sometimes known as downtown Frankfurt) but there was little of the preparation which such summit meetings require if they are to have practical result. Summiteers need Sherpas, the officials who work out guidance on the options.

The announced decisions were largely of matters already known and were not enough for chaotic markets. The next day Germany announced, without giving prior information to other Member States, that it was guaranteeing bank deposits. Ireland had already done so.

Finance Ministers met on 7 October to follow up the mini-summit. They agreed that Economic and Monetary Union is proving to be a "major asset". In veiled language they endorsed the easing of competition rules and of the Growth and Stability Pact which limits government budget deficits. They agreed that for a year all Member States would guarantee deposits of individuals up to €50,000 (£39,682), noting that some would raise/had raised their minimum to € 100,000 (£79,365).

In other words, they caught up with what was for the most part already happening. This judgment is not a harsh one. No government in the world has known how to get on top of events in the banking and stock exchange spheres. But the near- Armageddon of financial markets in the second week of October finally drove the Eurozone countries, unusually along with the UK, which was showing leadership quality, into concerted national action to pump funds into the banking system. A few days later the remaining Member States joined in the action plan. The European Council met in Brussels on 14/15 October. It confirmed that there would (now) be rapid and concerted action Banking supervision would be reinforced on an EU basis. The Union called for the reform of the international financial system The President of the European Council and the President of the Commission went immediately to Washington for discussions with President Bush. The latter announced that the USA would host an international conference, later styled the

G20, to draw up norms for banking supervision. By then he was a lame duck. Meanwhile one Union institution was active, the European Central Bank participating in a collective reduction of Bank Rates.

Stock markets remained volatile and the talk was no longer of a credit crunch but of global economic slowdown – rising unemployment, falling demand, falling exports, bankruptcies. The slowdown persists. The Commission produced a plan for a financial stimulus- one among many. One conclusion emerges with stunning clarity. The “pooling of national sovereignty” in the European Union does not mean that national authority is superseded. Europhobes cannot crow that the Union lacks power because the last thing they want is for it to be all-powerful. The Union is not a federation, a super-state or a power-grabber. It does what the Member States allow it to do.

### **Light on Dark Doings**

Much hot air has been expelled over ex-Commissioner Mandelson’s relations with a Russian plutocrat. It should be blown away.

First: there is no dispute that Commissioners should not immure themselves in the ivory towers of Rue de la Loi, Brussels, but should get out meeting people who wield economic power.

Second: Commissioners do not decide trade measures off their own bat. Their staffs investigate problems and submit solutions. If the Commissioner agrees with the recommendation, he or she still has to carry colleagues who may be concerned, for example with the industry affected by the prospective decision. But the Commission *en masse* cannot decide either. It makes a proposal to the Member States, who can accept it (in this case by majority vote) or reject it. It is only when the proposal goes through them that it can be put into effect. Anti-dumping or other measures can follow or, with the same procedures, be terminated.

Naturally, Commissioners are keen to be seen to be active in their own right and may tend to play down their dependence on the Member States. Europhobes for their part do not like the reminder that the Commission is not all-powerful.

### ***Identity***

What kind of society, country, Union do we want to be? Robert Cooper, diplomat and Eurocrat, regards identity as one of the formative forces in decision-making, alongside the (self)interest which it is human nature to maximize. Crudely put, one way of trying to understand how the EU functions is the pseudo-equation:

$$GO/NO GO = TO + EI +/- NI$$

Or, a new proposal will work if there is a Treaty obligation (**TO**) or at least no Treaty obstacle, attachment to a **European Idea** and a **National Interest** gain. It will not work if the equation gives a negative.

By and large a national interest is calculable, often in cash. We joined the EEC as it then was because we thought that we would enjoy greater prosperity in than out. We do not like the Common Agricultural Policy because it costs us more than we think it is worth.

(In the above case of possible co-operation on banking interventions, there was no TO, EI was minimized and National Interests conspired against taking in others' dirty washing. NO GO until national interests were magnified by the collapse of markets, requiring an immediate response.)

Identity, the idea of Europe, is intangible. It is the kind of social and political organization we want to live in. It is of the utmost difficulty to "identify an identity". There is little consensus on what "Britishness" means, despite official attempts to crystallize it. (Remember "Dipso, Bingo, Disco, Asbo, Tesco"?) Whatever it is, it is different from Danishness or Slovenishness. But there would have to be an amalgam if there were to be "Europeanness". Symbols were devised in an attempt to fill the gap:

- A European Hymn (not a religious song, but an "anthem"), Schiller provided the words: "All men will be brothers." Beethoven put it to music.
- A European Flag, borrowed from the Council of Europe, which designed it.
- A European motto, originally "An ever closer union", which was thought to frighten the horses, and was to be replaced by "Ever more closely united", which does not imply that there is an end-point.

The symbols gained formal recognition in the Constitutional Treaty but were dropped from the Reform Treaty. They survive in practice, and still provoke dissent – see the "Flag Fury" described in our last issue.

When Winston Churchill declared at the European Congress in the Hague in 1948 "I am a European" he did not mean that he had adopted a new identity. He probably meant: "I am with you who come from other countries of Europe." With Europe, not of it.

We can now, sixty years on, say that we are of Europe (by which we mean most of it) and are European but we would be hard put to it to explain what about us is distinctively European. Which does not stop us from knowing that being in, with and of is beyond doubt a national British interest which is also a European interest. But the **EI** term in the equation does not score high with some of our own leaders, who still regularly talk about "co-operating with Europe" as if we were something else.

### **On constitutions**

There are innumerable definitions of what is meant by "constitution" and they do not imply that it is a single written document. Most specify that it is a body of principles according to which a collectivity, usually a state, is governed. This simplified account does not identify the nature of the principles. But most constitutions pre-suppose a

principle of *constitutionalism*, which has been defined as “the quality of imposing restraints upon those who wield power within a state.” The institution of Government is restrained; its powers are defined; the governed are empowered to appoint and remove the government. When questions arise whether a government’s action is *constitutional* a judicial body, independent of government, rules. The established constitution can be amended but the procedure is usually more resistant to change than that used to make new laws.

Britain, almost alone in the world, manages without a written constitution but is deeply attached to constitutionalism, established by law. Since our laws do not have the superior authority of a constitution there is continuing anxiety over new law which appears to increase state power at the expense of the rights and wellbeing of the citizens, such as the current proposal to log all electronic communication in a Government data base

The European Union does not have a written constitution and seems to be fated not to have one. (Local resident, UKC Professor-emeritus Clive Church, has a collection of over 100 drafts.) The procedures for appointing the members of the Union’s law-making institutions are set out in treaties. The powers which its institutions exercise are contained in a corpus of laws. An independent Court rules on whether acts of the institutions are lawful. A Social Charter stipulates conditions of employment and is legally enforceable. A Charter of Fundamental Rights exists but has no legal basis (presently). These are recognizable components of constitutionalism, along with the division of power between legislature, executive and judiciary.

In the time-honoured triptych the Economic Community/ Community/ Union “widened, deepened, completed” itself. Each stage - new member, new policy, new procedure - brought complexity, compromise, uncertainty. There was not, and is not, an understanding about an end-point, or even whether there is one. The original treaty basis of 1957 worked more or less for twenty years but from then on was overhauled every few years to catch up with what the body was doing or attempting. By the end of the century it appeared that make do - and- mend was not producing a Union fit for purpose. There loomed ahead the accession of 12 new Member States, with more to follow. A Babel of tongues, a disparity of economic conditions, a range of diverse political systems, some ancient and some so new as to be untried, and prospectively new demands for Union action and Union spending... There were strains within the “old” Union, especially in its approach to new policies on law and order, foreign relations and defence. It had fallen into disunion on monetary and defence policies, frontier controls, civil law, financial burden-sharing and even the length of the working week.

There were signs of widespread popular discontent, and not only in the legendary awkward partner, Britain. In Denmark and Ireland voters rejected two new treaties. In Sweden voters rejected membership of the euro. In the 1999 European Parliamentary elections turn-out dropped below 50%. In the 2004 elections it dropped further in nine of EU-15 (and was well below 50% in six of the new members). Far right, anti-EU parties in France and in Austria registered gains, and in Austria continue to do so. In Britain the

UKIP was noisily ineffective. Opinion polls put Britain among the low levels of support for European integration. There were “IPs” in some of the new members. The Commission, which had shown its strength under President Delors, had been forced to resign under President Santer on charges of financial mismanagement or worse. Its authority suffered.

There is never any dearth of proposals whether for strengthening the EU to make it more effective or weakening it to make it less intrusive. Some of them – a Federal Europe or at the other end a European Free Trade Area – stand no chance.. But reform was in the air, especially to make the EU ready to accommodate its new members without loss of momentum. In pro-European Germany the Foreign Minister, speaking, he said, in a private capacity in 2000, urged the creation of a Federation, equipped with a federal constitution.. A month later the French President, who was busily supervising a reform treaty (Nice), spoke up for the maintenance of roles of the nation states. He recognized diversity (or British separatism) by suggesting coalitions of the willing to address major problems where unanimity was not and would not be available. In October Mr Blair contributed his view of future development. He did not want a constitution although earlier he had favoured one. He called for a “statement of principles”, of unstated content, to take the Union onward. He wanted to maintain the mix of “supranational and intergovernmental” which should be run by the European Council. He accepted the idea of a second chamber of the European Parliament. This notion was likely to provoke more of the conflict and delay which other plans sought to circumvent and soon disappeared.

The Nice Treaty, concluded at the end of 2000, did none of the far-reaching things. A confused French Presidency upset other delegations, especially Germany, without producing anything purposeful. The discussions produced a “Declaration on the Future of Europe”, with an agenda for debate and the proclamation of a Charter of Fundamental Rights, which a Convention had meanwhile drafted. Britain in particular declined to treat it as a binding text, belittling it to the status of a “showcase”, one for looking at but not taking out for daily use. In practice the European Court of Justice began to use it as a point of reference to the traditions common to the Member States, which was already its doctrine.

When the European Council met in Laeken (Belgium) in December 2001, the Presidency masterminded a questionnaire of 50 items which needed answers. The list was rambling and repetitive – the fingerprint of compromise. It did not recommend a constitution, but asked whether the answers to the questions might point in that direction. The Laeken Declaration entrusted the study of these problems to another Convention, to be composed of the member governments, national parliaments and the European Parliament and Commission. Britain, although sceptical, agreed and took the precaution of providing the Secretary- General. To some surprise, the Laeken meeting appointed Valéry Giscard d’Estaing as Convention President.\* On 13 June 2003, within the time limit Laeken had set, President Giscard was able to deliver almost a complete Draft Treaty establishing a Constitution for Europe. Europe was here used in its colloquial sense, not as a geographical term. It is anomalous that the Constitution should also be a Treaty. It is not a proclamation by “We, the people...” like the US Constitution. Whether any of the

people would be consulted would depend on the practices of the Member States. Some would hold referendums, either by legal necessity or as a political stratagem. Others would do as they did with earlier treaties – vote them through the national parliament by organizing the necessary majorities. Mr Blair’s government was satisfied, his representative, Peter Hain, having fought throughout for “red lines” to be drawn round politically sensitive subjects like taxation and social security.

The document was presented to the European Council Meeting in June 2003 in Thessalonika. It was given a fair wind, with some explicit and other hidden reservations. In the familiarly cautious language of the Council, the Treaty was hailed as “a good basis for starting negotiations” in an Intergovernmental Council (IGC), the instrument used for Treaty revision. The Convention, however, had some outstanding business: Should qualified majority voting (QMV) be the rule for cultural and audio-visual matters? Final answer: mostly yes but unanimity possible. Should QMV rule for trade negotiations? Final answer: yes unless European culture is being threatened, i.e. by American films and TV. These and other matters disposed of, the Convention closed with self-congratulatory speeches and encomia for its President.

Regardless of its contents, the Constitutional Treaty fell down on one of the set requirements. It was not understandable. A Constitution drafted in the form (fictitious example):

*In Article xxx of the Treaty of Bologna, indent iii is amended: “for a period of three months” is deleted; “for a period not exceeding three months” is substituted*

repeated time after time would have looked eccentric. The Convention adopted a radical alternative. It annulled the previous Treaties and produced a single consolidated and amended text. It is a vast document in size and weight, replete with annexes, protocols, declarations and explanatory statements. It was nothing like what Jack Straw, when Foreign Secretary, had said he looked forward to – something to slip into his jacket pocket.

Likewise the mega-treaty lacked direct appeal. It could not match the emotional simplicity of :

“One nation, under God indivisible, with liberty and justice for all.”

in the pledge of allegiance which every US schoolchild recites daily. At best it would be something banal:

“A gathering of Sovereign nations, ever more closely united, committed to building by common consent an area of freedom, security and justice”. \*\*

In substance the Treaty delineated the powers of the Union and marked which powers

are shared with the Member States and which are the property of the Member States, but without any clear distinguishing criterion. It stated that the Union's powers were

\*born 1926, President of the French Republic 1974-81, Republican [right wing] Party

\*\*The Poles, the Irish hierarchy and the Vatican wanted reference to Christianity but others thought this divisive

conferred (principle of conferral); that its actions must be proportionate (proportionality); and that the Union should not act if the Member States could better achieve the desired result individually (subsidiarity). It made Qualified Majority Voting the standard decision-making procedure in the Council and made national voting weights in the Council proportional to the size of populations. It kept many of the features of the rotational Council Presidency but gave the European Council a fixed term chairperson. It unified the conduct of foreign policy by making the External (economic) Affairs Commissioner also a Foreign Minister ("Special Representative") working for the External Affairs Council. It reduced the number of Commissioners, with more leeway for possible subsequent correction than had been provided in the parallel provision of the Nice Treaty. It gave Parliament a limited number of new powers, including over the annual budget settlement. It included a Mutual Aid article for national defence in case of attack. It gave national parliaments power to test legislative proposals for subsidiarity ("yellow card") but not to block them ("red card"). It gave Britain its red lines for direct taxation, social security and foreign policy.

The draft constitutional Treaty passed to the Intergovernmental Conference, which has the same composition as the European Council, although formally distinct from it. Italy was now in the chair. Its hopes of bringing out a swift settlement were soon dashed. The Member States had many demands for change. The French President was not prepared to give Italy the glory of success. The Presidency showed itself incapable of devising solutions – culminating in the December 2003 meeting in which PM Silvio Berlusconi reportedly suggested that the gathering should give up and talk about football and women. When Ireland took over in January 2004 it set to business seriously. It studiously worked out compromises over conflicting demands relating among other things to voting majorities, the composition of the Commission, unanimity for the adoption of the budget and for trade measures which could affect social policy and to the number of seats per country in the European Parliament. The Union was in more serious mood following the Al Qaeda attack on Spanish trains on 11 March. Late on 18 June 2004, with only 12 days of Irish Presidency left, the IGC agreed on a Constitutional Treaty, at the cost of some further complexities. It now needed to be ratified by each Member State, in accordance with its own constitutional requirements – by voters or by parliamentarians.

Mr Blair's government underwent a change of heart. In a White Paper of September 2003 it had said that the Giscard version was a good deal for Europe and "good news for Britain". It said that a referendum, demanded by the Conservative Opposition, was not needed because there would be no change in the constitutional relationship between the Union and the UK. This distinguished the Treaty from the earlier debate about membership of the eurozone. In briefing it made much of the European treaties passed by

Conservative Governments without referendums. But six months later Mr Blair announced that there would be a referendum, on the question “Should the UK approve the Treaty establishing a Constitution for Europe?” and this pledge was repeated in the manifesto for the upcoming general election. This was a high risk strategy. An opinion poll conducted by Eurobaromètre in November 2004 put the UK at the bottom of support for the draft treaty, with only 20% ( in an EU27 average of 49%). Why did Mr Blair change his mind? The explanation offered by a close aide is that the PM foresaw the House of Lords using the ratification Bill to vote in a referendum. There would not be time to reverse it before the election. Labour would go into it with this defeat and the Conservative Party would be able to portray itself as trusting the people.

( This narrative draws heavily on Peter Norman’s magisterial work “The Accidental Constitution”, Eurocomment, 2005)

States’ ratifications began but were halted when in referendums in May and June 2005 voters in France and the Netherlands unexpectedly said NO to the Constitutional Treaty. This was usually considered to be not so much a rejection of Europe as an attack on sitting governments. There was no suggestion that the French and Dutch electorates should be asked to vote again to get it right. The Constitutional Treaty was a dead letter.

All concerned were at a loss how to proceed, except by carrying forward the ratification processes and seeing what turned up. The inside story of what was afoot in Brussels and in the Chancelleries of the Member States has not been told. It will doubtless engage political scientists and historians in years to come. To cut to the chase: on 14 June 2007 the German Presidency said that it had a clear idea of the wishes of the Member States and that it recommended the convening of another IGC. The European Council on 21/22 June agreed and drew up a mandate for the Conference of Heads of State and Government. The key words were:

**“The constitutional concept, which consisted in repealing all existing Treaties and replacing them with a single text called “constitution”, is abandoned. The Reform Treaty will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC [see above] as set out below in a detailed fashion”**

In ensuing discussion the British Government routinely quoted the abandonment of the constitutional concept. It did not give the same prominence to the prescribed nature of the Reform Treaty. The beauty (in the eye of the beholder) of the proposed Reform Treaty is that having allegedly no constitutional effect it need not go referendum, except in the one country, Ireland, where ratification of European treaties must by law be by referendum. The Reform Treaty was duly approved at the December 2007 meeting of the European Council, sitting as an IGC. It soon began to collect national ratifications, although with some hesitations.

On 13 June 2008 (the anniversary of the ceremonial closure of the Convention) another wheel came off, when voters in Ireland said NO to the Reform Treaty. Once again, things began to happen behind closed doors in Brussels and in Foreign Offices in preparation for

an end-year meeting of the European Council to consider the way forward, if any. Nothing came out about preparations – disclosure would have been prejudicial. The options being canvassed were:

- dropping the whole idea, at least for some years and relying on the existing treaties. Research had shown that they were working well enough in Eur27

- dropping the Reform Treaty but using parts of it in future Accession Treaties.

- a second referendum in Ireland ,after

- (a) the Government had run a stepped-up information campaign and, possibly

- b ) the addition to the Reform Treaty of explanatory statements, e.g. assurances that Ireland will continue to nominate a Commissioner for x years; that Irish neutrality is inviolable; that the Union cannot command conscription; that voting weights in the Council will be reviewed in every new accession and in any case after y years ; that Irish Gaelic will become a working language; that Irish law and practice on abortion, same-sex marriage, stem cell research and euthanasia will remain intact; that the Reform Treaty has no constitutional effect etc. etc.....

It was reported that the Irish government was consulting Council Secretariat lawyers on such sweeteners. Having no legal force they would not require a new ratification round in EUR26 and might persuade a majority of Irish voters to vote YES in a new referendum in 2009 or 2010. Whether the Irish man or woman in the street and in the grip of an economic crisis would regard the EU as a safe haven in times of trouble is a good question. One recent poll suggests that they might. Meanwhile the Irish government suffered setbacks in its domestic programmes and had little political capital to draw on

The final European Council meeting under France, on 12-13 December 2008, becomes the next crucial date – unless the economic whirlwind stops play. If the issue is unresolved when the Czech Presidency begins in January, there will be a curious situation in which the Presidency, setting the agenda, is one of the two Member States not to ratify the treaty\*

Meanwhile the Irish government has not committed itself to a second referendum, but has said that if there were one it would be after the European Parliament elections at the beginning of June 2009. The Commission's term ends in October, so that the next Parliament and the next Commission will be installed under the terms of the Treaty of Nice and not the Treaty of Lisbon. And the Conservative Party leadership has said that if the Lisbon Treaty is not in force when/if it comes to power ,it will hold a referendum and call for rejection.

\*The Czech Constitutional Court has cleared the treaty, but its anti-EU State President declines to sign approval

## Goings and comings

Lord Thomson of Monifieth, one of the first pair of British Commissioners has died. He had had a brilliant political career. He used to recall that the speech which he would have made on behalf of the Labour Government to launch the British membership application was taken over word almost for word by his Conservative successor. His handiwork in Brussels was to develop the nascent Regional Fund. He later lost sympathy with Labour policy on Europe and joined the Liberal Democrats, remaining active in public life.

Ken Avery, a long-serving member of the Branch Committee and sometime Treasurer has died. Ken's strong political connections were an important asset in the Branch. He is well remembered for his sterling work in the 1975 referendum

Lord Mandelson resigned from the Commission on appointment to the British government, his third such post. He is succeeded by Baroness Ashton, a newcomer on the Brussels circuit, apart from involvement in the British Presidency of 2005. In an impressive appearance at her confirmation hearing before the European Parliament, "Kathy", as she said she hoped to be known, emphasised her commitment to open markets and maintained that the Doha Round of trade negotiations was not dead. On relations with the Third World she recalled that with changes in the CAP farmers in poorer countries are no longer "squeezed". The Baroness was fiercely assailed by the UKIP spokesman but had no difficulty in putting him straight. Her appointment was confirmed by a massive majority vote. She has a year of the mandate to serve.

In a reshuffle the post of Minister for Europe went to Caroline Flint MP. She lists tap dancing among her recreations. A future *Strictly Come Dancing* contestant?

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