

EU-CONSENT WP II/III

Team 2 : Visions from the Past & Lessons for the Future

Cycles and periods in the development of the EU-System

Annual state of the art paper 2009 / D 15d

Wilfried LOTH

The historical analysis shows that - numerous difficulties and delays notwithstanding - “deepening” in the double sense of a rise in the *scope* and the *level* of European integration in the terms of institution-building, democratic legitimacy and European policies was the predominant trend in the history of European integration. “Widening” in the sense of a geographical spill-over never did prevent “deepening”. Rather it proved to be, even if at different degrees, a precondition for some steps of “deepening”. In order to substantiate this thesis this final state of the art paper of Team 2 will combine findings on the driving forces of European integration (I) and the resulting cycles in the development of the EU-system (II) with an analysis of the institutional logic of this development (III). As result, an assessment of the present situation will be presented (IV).

I.

Regarding the functional deficit of nation-states which have led to the steps toward integration, there are several problem areas to be distinguished, which, firstly, can be of different degrees of urgency and, secondly, can also call for different solutions. It seems sensible to distinguish among four types of problems from which there result driving forces for European integration. Two of them are old and have

acquired new urgency due to technological development in the twentieth century; the other two emerge directly from this development.

The first problem is that of preserving peace among sovereign states - or in other words, the problem of overcoming anarchy among states. This constitutes the essential motive of the European unification plans of earlier centuries, from Dante to Immanuel Kant and Victor Hugo. The urgency of this problem has grown dramatically due to the development of modern military technology in the twentieth century. The vast increase in the number of casualties, the amount of human suffering, and economic destruction has strengthened calls for institutions capable of securing peace, especially during and after the catastrophes of the two world wars. Thereafter, the danger of nuclear destruction and self destruction and the emergence of new nationalisms after the end of the East-West Bloc structure have accentuated this problem in new ways.

Secondly, the German question must be seen as a special aspect of the preservation of peace. This problem too is older than the twentieth century but has become more pressing with the development of industrial society in Europe. For reasons of population and economic power, a German nation-state in the centre of Europe constituted and constitutes a latent threat to the independence of its neighbours. This resulted in a vicious circle of encirclement and expansion, which could only be broken by integrating the Germans together with their neighbours into a larger community. To have understood this after two calamitous turns of that vicious circle is undoubtedly one of the great achievements of the Europeans in the second half of the twentieth century.

Economics in a narrower sense can be characterized as the third functional deficit: it became increasingly clear that the national markets in Europe were too small for rational production methods. Their mutual walling-off was only sensible on a temporary basis and depending on the specific production sector; in the long term, this threatened to result in a loss of productivity and consequently also a loss of the state's legitimacy.

This was linked, fourthly, to a loss of power and competitiveness vis-à-vis larger state units, as the US in economic and political terms, and as the Soviet Union in military terms. Thus, self-assertion in the face of the new world powers became an additional motive of European unification policies. Depending on one's perception, it was either defence against American hegemony or against Soviet expansion that stood in the foreground. It was often the case that both were pursued simultaneously: the preservation of the Europeans' freedom of action in an alliance with the US.

These four motives have not always been equally strong, and they have not always worked in the same direction. This lack of coherence can explain both the timing of specific integration initiatives as well as the decision for specific types of integration, which are themselves at the same time always decisions not to proceed with other conceivable forms of integration.

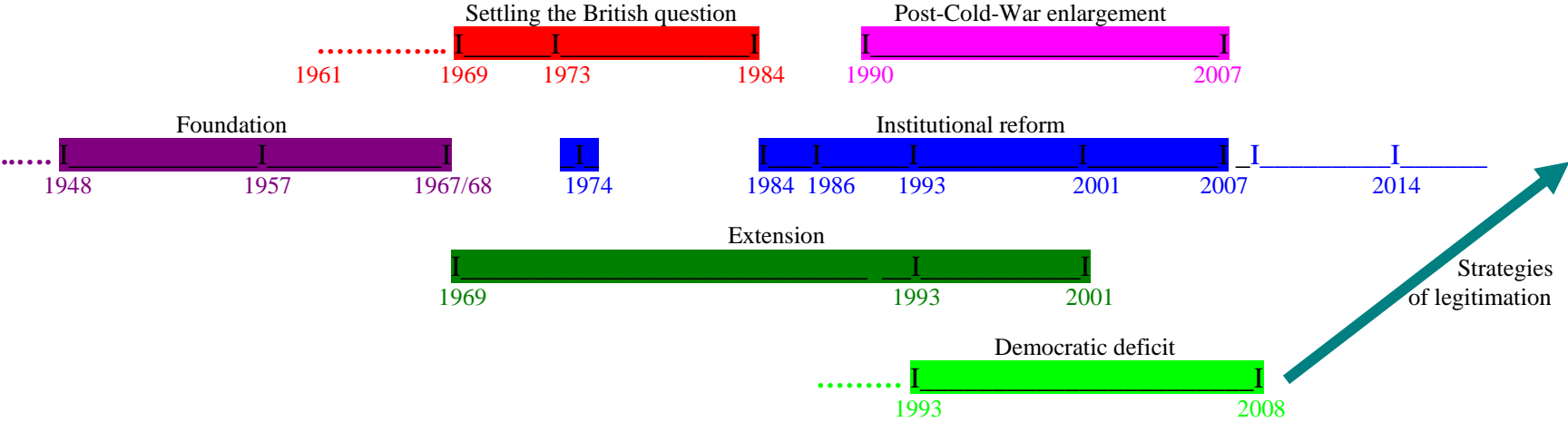
II.

From the combination of different driving forces resulted a series of political problems to be solved. Over the time, six major problems can be identified which occupied the people and the institutions involved in the process of European integration and urged them to find solutions. As a result, the history of European integration is stamped by six different and partially overlapping cycles:

1. *The era of foundation* in the Cold War, starting with the negotiations on the Council of Europe in 1948 and leading to the fundamental compromises of the Treaties of Rome (compromises on politics and institutional questions); including a period of implementation which ended with the outcome of the Hallstein – de Gaulle quarrel in 1967
2. *The era of settling the British question*, starting with the decision of the Hague summit in December 1969 and going over the first enlargement in 1973 up to the end of British re-negotiations at the Fontainebleau summit of 1984

3. *A cycle of extension of political fields* (economic and monetary union, foreign and security policies, domestic security and environmental policies), discussed and negotiated since the Hague summit, with the Maastricht treaty as milestone of institutionalisation and the years 1999/2001 as a dense period of implementation
4. *A cycle of institutional reforms* which had a first start with the establishment of the European Council in 1974 and a second one with Kohl's and Mitterrand's decision in 1984 to re-launch the reform, leading to a series of compromises with left-overs and finally to a large consensus on the level of governments and elites as represented in the Constitutional treaty and the Lisbon treaty
5. *A cycle of Post-Cold-War enlargements*, bringing the EU much closer to traditional ideas of "Europe" and enhancing its political impact
6. *A growing "democratic deficit"* due to the shortcomings of the original technocratic compromise in an era of growing impact.

Cycles and periods in the EU-System



III.

The institutional arrangement of the EU as it was laid down in the Rome Treaties does not mirror a constitutional or regulation idea that is consistent within itself. Rather it emerges from a very coincidental compromise, which clearly remained behind the possibilities of supranational design that would have been conceivable in the constellation present at the creation. During the negotiations on the treaties three different concepts were confronted: a technocratic understanding of economic politics, as it was pronounced especially by the Dutch representatives, German and Italian constitutionalism and French substitute tactics in a difficult domestic situation. This led to a construction that not only refused any categorisation in constitutional-theoretical concepts of order, but also tended to suffer from two deficits: a deficit in the ability to act due to the dependency on the unanimous vote of the Council of Ministers, and a deficit of parliamentary control. Both deficits varied in degree, but depended on each other. To that degree to which the governments used the Single European Act of 1985/86 to strengthen the Community's ability to act by increased application of the principle of majority rule, they simultaneously worsened the problem of parliamentary control of the Community's activities.

As a consequence, there were numerous attempts to do away with the institutional deficits of the Rome Treaties. From the beginning on the basic structure of the EEC/EU was open for amendment, and, therefore, creation and extension of the EEC from the start went hand in hand - although the mixing of the tasks led to the failure of some early efforts at extension such as Hallstein's reform initiative provoking the "empty chair" crisis in 1965.

The present efforts to reform the EU, therefore, are only a further development of the constant efforts for its extension, emerging from the extension of the areas of responsibilities of the European level and the increase of the number of member states. The deficits in efficiency and legitimacy that have already been visible at the time of its foundation have meanwhile become far more recognizable. Proposals for reform that only aim at simplification of the existing treaties, hence, were of no avail or failed because of their inner contradictions. Rather, the discussion after the Nice

Treaty proved that it was unavoidable to address the core problem of treaty construction.

This consists of the interdependence of majority decisions in the Council and the parliament's right to co-decision. Just as the refusal of parliamentary rights led to a delay in the transition to majority rule, the transition to majority rule vice versa has to go hand in hand with an corresponding extension of the participation of parliament. It corresponds to the inner logic of the treaty that this principle always showed up in the further reform proposals. Its realization will create the loyalty to the European Union it obviously has previously been lacking.

From this, the question is to be separated for which areas it should apply that a majority is needed for the decision and that the parliament participates on equal terms in the decisions. Primarily the stabilization of the system requires the full parliamentarization of the present common actions. Furthermore, the President of the Commission should emerge from the parliament's majority. In contrast, the communising of further areas is secondary. It should remain possible, but cannot be decided merely by way of constitution-building.

IV.

In 2007, the cycles of institutional reforms and Post-Cold-War enlargements had come to provisional ends. This doesn't exclude further enlargements, but further institutional reforms cannot be expected before a longer period of implementation of the Lisbon treaty, including its ratification and going beyond the official full application in 2014.

Considering the Lisbon Treaty in the light of these structural problems it must be recognized that the new regulations to a large degree correspond to the demand for congruence of majority rule in the Council and co-decision in the parliament. The "pillar structure" of the Maastricht Treaty no longer applies; both domestic and legal politics will be included in the common arrangements. The number of legal

procedures of the EU will be reduced. With the exceptions of foreign policy and taxation, the resolutions principally have to be passed with a qualified majority in the Council of Ministers. For this purpose, the rules for the determination of a qualified majority will be simplified.

When acting as legislator, the Council of Ministers must be in open session – a provision which will be a major step towards transparency and responsibility. Furthermore, the European Parliament advances its standing to an almost equal legislator. Generally, the procedure of co-decision is understood as the regular legal procedure of the EU.

The President of the Commission is to be recommended by the European Council and is to be elected by the Parliament. At first glance, this does not go beyond the corresponding arrangement in the Treaty of Nice. Yet, Article 9d of the Lisbon Treaty in section 7 explicitly states that the European Council is to make its recommendation “under consideration of the elections for the European Parliament.” It is to be assumed that in practice the elections for the European Parliament will gain in importance: The citizens of the Union will understand them as preliminary decision for the appointment of the President of the Commission. Accordingly, the party structures and the public will Europeanise more strongly.

Even if due to the decisions of the European Council of 11-12 December, 2008 the number of commissioners will not be limited the strengthening of the President of the Commission strengthens the Commission’s ability to act.: He will decide about the choice of the commissioners among several national candidates, about the structure of the Commission, and about the directions of the policies of the Commission.

Opposed to that it remains unclear which effect the appointment of a full-time President of the European Council is going to have. It is rather improbable that the President of the Council can compete with the President of the Commission for the leadership of the executive. Possibly, the President of the Council may develop into a role like the President of the Federal Republic or the President of the Italian Republic. The High Representative for Foreign Affairs and Security Policy primarily

is to be understood to be a member of the Commission. It does not change anything in his being dependent on the President of the Commission and the parliamentary majority that he also chairs the Council of Ministers for Foreign Affairs.

There can be no doubt that in accepting these regulations the European Union will take a major step in direction of its ability to act and transparency. However, this effect will take place only in the long run, after the eventual implementation of the major changes in 2014. In the short run, the decision to present a complicated treaty amendments to existing treaties instead of a constitutional treaty and the denominational downgrading (no constitution, no laws, no Foreign Minister) may even aggravate the crisis of legitimacy. Therefore, the crucial question of political leadership during the years to come will be how to orientate the ongoing discussion towards the long-term effects. If the ratification of the Lisbon treaty should fail, new political strategies of legitimisation will be needed.