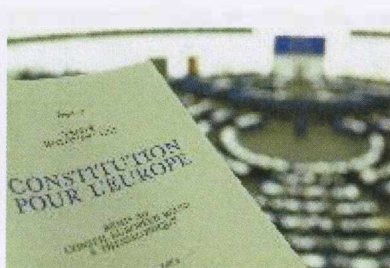


After the constitution?

Ulrike Guérot



In June 2004, Europe will – hopefully – get a constitution. Hopefully, since at the time of writing, there are again doubts arising as to whether the forthcoming EU Summit in Brussels on June 17th and 18th will succeed in adopting the document that the President of the European Convention, Valéry Giscard d'Estaing, presented to the European Summit in Thessaloniki last year.

Whatever the impact on transatlantic relations, this will be a very important moment for the EU itself. The EU has tremendous challenges ahead. A new parliament is to be elected, a new Commission is to be installed, enlargement needs to be 'digested'. By the end of the year, the Commission must issue a very important decision about opening membership negotiations with Turkey (or not), and finally, the budget negotiations about the budgetary framework 2007 – 2013 are looming ahead. In addition, whatever the future development in Iraq (and the greater Middle East) will be, one cannot deny that the European Union and the European member states are expected to take over a serious and constructive role in order to prevent this region from further destabilising. In one phrase: the EU is more than ever expected to become a 'global actor' and it needs to shape a European geo-strategy. It can do so only if it improves its capability to act (especially in the field of security and defence policy) through the new constitution.

The success of the constitution will, also on the other side of the Atlantic, be considered as the European will and power to finally move forward the European deepening process, at precisely the time, where the United States wants the European Union to be more engaged in international affairs and less inward looking. If the European Union fails to deliver this sign of unity – after the impression of turmoil and quarrels about the war in Iraq – it will lose face. And it will lose the recognition that, at some point, the EU could be an effective and potent partner for the US. It will also give further credit to those – already numerous – in the US who have believed for some time 'that Europe is going down the toilet'. Even worse: it will disappoint those – a minority – in the US, who still care about the EU, who are aware of the fact that ultimately the US needs the EU and want it to become a strong partner, but who dramatically would lack arguments for their assessment in case of a failure.

It is worth remembering that Europe has been discussing 'political Union' (or the constitution) for 12 years now, since the Treaty of Maastricht. In 1992, there were two inter-governmental conferences, one about the monetary union that has been successfully launched, and one about 'political union' that has never been finished. The questions that still have the potential to make the constitution fail – the weight of votes in the Council, the expansion of qualified majority voting and the number of Commissioners – are the same questions that the EU failed to address and to solve in Amsterdam in 1997 and in Nice in 2000. The decision has become even harder now that the EU is enlarged, since the power balance between smaller and larger member states is more difficult to organise. But times have also changed, and the world is not waiting for Europe. With the enlargement just accomplished, but further enlargement rounds on the horizon (that is, Bulgaria, Romania, Croatia, the Balkan states), the Turkish decision ahead and a dozen countries that need to be stabilised, from the Eastern borders of the EU (Ukraine and Belarus) down to the Southern neighbours in the Mediterranean region, let alone the greater Middle East, the EU is badly needed as an anchor of stability, if it does

not want to import instability. This is what makes the constitutional question so crucial at this time. Time is running out for the EU to finally enable itself to become a global actor.

What will change? The impact on CFSP and ESDP

If the constitution is adopted, the result will not be optimal and some might have wished for even more courageous results. However, a few elements could help the EU to grow into the role of a global actor. On the domestic side, (randomly chosen for the sake of illustration) the EU would improve its relations to the European citizen through the Charter on Human Rights, which would be part of the constitutional Treaty. Increased rights for the European Parliament, such as overseeing the whole budget, are equally on the positive side on the constitution. The integration of the former Third Pillar of Justice and Home Affairs (JHA) into the communitarian structures would be a big plus, for JHA is increasingly intertwined with security issues, and the EU would gain efficiency in this policy field. In terms of democracy and legitimacy it will be an advantage that the EU Council will need to consider the majority of the EP when choosing the President of the Commission, since this will increase the political importance of the EP elections. Other stipulations of the constitution are also valuable, in particular for the clarification of the competences of the EU.

But the largest impact of the constitution for transatlantic relations would certainly stem from major institutional changes and the fact that the EU would get a Foreign Minister. Abandoning rotation and the election of a permanent President of the EU Council would not only give a face (and a phone number) to Europe. It would also enable the EU to pursue clear foreign policy goals and to rank priorities independently from a country's presidency and national foreign policy priorities, as has been often the case. This would mean that the EU would be able to consistently work on an agenda with clear short-term and mid-term goals. The foreign minister would have to steer this agenda as the President of the foreign affairs ministers' council, creating new coherence.

Moreover, the combination of the position of the EU Commissioner for foreign relations and of the High Commissioner for foreign and security affairs would allow the European Union to combine political diplomacy with development and aid in foreign relations [1]. The EU could then start conditioning goals in foreign policy with the financial or trade aid that it provides and overcome the lack of co-ordination that has often been the focus for critiques. The budget of DG RELEX (Chris Patten) stands currently at a little over 10 billion Euros; Javier Solana's unit at the Council only disposes of some 40 million Euros. The merger of the two positions could streamline policy positions and economic engagements that the EU is undertaking with a country; it would also give the foreign minister a variety of tools in the area of foreign policy (trade, financial aid and so on) that go far beyond political diplomacy (soft-power).

Of course, there are shadows in the constitution. Majority voting will not take place, neither in CFSP, nor in ESDP. But it is a great success that the flexibility clause will apply under the constitution for the European Security and Defence policy, which is an important chance in comparison to the Nice Treaty. Article I, 40-43 in combination with Article III. 213 stipulate that a group of countries can engage in a 'structured co-operation', if they can comply with higher standards. In addition, the Council can charge a group of countries with a specific mission that is in the interest of the EU. Those are two possibilities to create a 'core' in the field of ESDP that might be able to move integration ahead and to take a more pro-active stance. Small, but also important is the so-called '*passerelle*-clause' (Art. II, 39-8), that enables the European Council to decide with unanimity that the Council of Ministers can take other or more decisions than enumerated in Chapter III of the Constitution with a qualified majority, which, indeed, is an opening towards more QMV. Last but not least, the creation of a European Defence Agency and the herewith expressed ambition of the EU to further merge its potentials in the armament and procurement industry are important in order to cope over time with the drastic capability gap of the EU in the military field. None of these stipulations are revolutionary, but in some is potential for a better CFSP and ESDP through the constitutional Treaty. Without, there would be no progress at all. With the constitution, there is at least a chance for progress. The impact of the new stipulations will depend on how seriously the EU member states will take their own new possibilities.

The complicated relationship between NATO and the EU

Ever since the 1990s, the NATO-EU/ESDP relationship has been ambivalent, torn between the US

rhetoric calling for a strong and autonomous ESDP and fears of competition and doubling of existing NATO structures. It has been a European anathema, for many European member states prefer NATO to what is called a 'Gaullist' concept of European security. However, the EU is in the process of achieving the Helsinki Head-line goals with a capacity of some 60,000 soldiers and has succeeded in taking over the mission in Macedonia ('Concordia'). The condition for this was compliance with the 'Berlin-plus' agreements that regulate the co-operation between NATO and ESDP, and that especially allow the EU to rely on NATO command structures for its missions. Before, a hard struggle had taken place between NATO (but not EU) member Turkey which demanded a say in autonomous EU missions on point of principle, and Greece (with Cyprus in mind), which wanted precisely to prevent Turkey from getting a de-facto veto right on autonomous military operations of the EU. The conflict has been solved, however, and the Turkish perspective of EU-membership will further ease the NATO-ESDP relations.

The constitution as such will not change much in pure institutional terms. But the tension between the 'Europeanisation of NATO' and the 'NATO-isation of the ESDP' will remain, more so for psychological reasons than anything else. There could be a psychological effect of self-affirmation on the EU/ ESDP side. However, in very practical terms, the EU would get neither more power, nor more capabilities through the constitution. The reason is that, since the agreements of the NATO Summit in Prague in November 2002 and the creation of a NATO Response Force (NRF), the same national contingents of troops are tied up with NATO *and* the European forces at the same time (the 'Single Set of Forces'-Principle). This means that the US and the EU are bound together to decide where and when to use these forces. The constitution does not give the EU any more autonomy on the operational side. But it could help to better organise the 'voice' within NATO.

How will the US react to the consequences of European constitutionalisation? An appeal for a US-EU dialogue on geo-strategy

The answer will probably vary between a re-elected President Bush and a newly elected President Kerry. There are reasons to assume that a new Bush administration is likely to be more NATO focused than a new Kerry administration; however, the slogan of 'coalition of the willing' and 'picking allies' also affected and divided NATO seriously. Even if the new Bush Administration would not take into account constitutional changes within the EU, it would still have to smooth out the wounds of the Alliance. The other important question is whether the Bush administration, in a second term, would be able to overcome its '*divide et impera*' approach towards the EU that dominated the first term, especially during the war against Iraq, and that has culminated in the famous 'old' Europe versus 'new' Europe division.

On the other side of the political spectrum, advisers to 'President Kerry' already spread the message that the US would reassess its relationship with the EU and 'up-grade' it, and the constitution would be helpfully symbolic for this [2]. Not only because of more sympathy or altruism, but because there is rising awareness of the fact that the US needs the EU in order to achieve its own security and geo-strategic goals. It is precisely because the security threats have changed that the Democrats are increasingly willing to consider that the EU might be an appropriate partner to work with. The new threat is the nexus of growing terrorism, religious fundamentalism and the ability to procure weapons of mass destruction in a region that is dramatically lacking any kind of stability. The greater Middle East, which is for a variety of reasons of utmost geo-strategic interest for the US, is a fertile, if not to say, an explosive soil to further nourish these new kinds of threats. However, NATO, shaped to respond to classical threats, might in the future not be the most appropriate tool to cope with these threats. NATO might be able to provide the 20 per cent of hard-core security required in the region, but not the 80 per cent of soft-power. NATO has no track record in state-building or policing, nor can it implement law, nor does it possess ample financial means to help countries to engage in a market economy, enhance development and transform societal processes. The EU, however, could, and that might it make it an attractive partner for the US. The EU could become an appropriate interlocutor with whom the US could convey and shape their own goals for a stabilised greater Middle East, as laid down in the various US papers and doctrines.

Therefore, the constitutionalisation of the EU could also be a first step to develop a better relationship between the US and the EU as such, and the EU should seize this chance. When Americans say Europe, they still mean NATO – or the EU member states. The constitutionalisation should promote a shift in this thinking. There is a need to establish a security and geo-strategic dialogue between the

US and the EU – outside of NATO, for the EU has tools, help and instruments to offer that the US need for their greater Middle East Strategy. This goes from trade agreements and financial aid to diplomacy, policing and support for societies in transition. If anything, the EU has proven with its Eastern enlargement that it is able peacefully to help transform societies and build up vivid democracies. For that to happen, new discussion channels between the EU and the US need to be created. One place could be the annual US-EU Summits that for the moment not only lack international attention, but that only deal with technical topics such as air traffic control. If these summits could become a forum for truly geo-strategic discussions between the US and the EU, this would be an important step. A constitutionalised EU with an elected President of the Council and a foreign Minister would be helpful in this respect.

The EU has its own, evident interest in this. The greater Middle East is in its neighbourhood, and presents an immediate security threat to Europe as much as for the US. But the EU has no interest in the US setting the agenda, without being consulted, or in having to step into the region being instrumentalised by the US. For instance, nobody knows what will come next in Iraq and, as weird as it may sound, with some likelihood there might be an independent Kurdish state in the future. What should be avoided is a situation where the US would call for EU membership for such a state in order to stabilise it, without previously developing a comprehensive concept for the whole region together with the EU. The US and the EU should commonly agree on a geo-strategic concept that spells out the goals and the realistic possibilities for the whole region. The EU constitution is a new and necessary step to move the EU to a position where it would be able to request this dialogue from the US.

However, the constitutionalisation can only cover and impact on the institutional aspects of the US-EU relationship. Beyond this the EU will need to prove its political will to take over international responsibility. One cannot expect the US to take the EU seriously as a geo-strategic partner for security issues, if the EU does not deliver unity. The US will be able to adapt to a new constitution and the EU being a serious partner for security and defence issues – as it has been able to adapt to the Euro – if the EU is able to pull it act together. On the EU side, this would require that those member states who consistently believe it is better to stand 'on the US side' in security questions could be convinced that the EU has more to deliver to the US when it is united, without fearing that European unity would necessarily bring the EU into a competitive stance towards the US. The outcome would be a win-win situation for both sides of the Atlantic. The ball is in the court of the EU on 18th June and, hopefully, – when reading this article – the EU will have taken a step further.

[1] For a detailed development of this argument see Steven Everts, 'Shaping a credible EU foreign policy' Centre for European Reform, February 2002, p. 11-30

[2] Ron Asmus at a dinner speech at the occasion of the Bundestagsforum of the German Marshall Fund of the United States, Berlin, 27th May, Deutsche Bank. The text is available on www.gmfus.org

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