

STUDY GROUP ON THE EUROPEAN CONSTITUTIONAL PROCESS

Working Group 01 HISTORICAL META-ANALYSIS OF THE MAIN DRIVING FORCES FOR EUROPEAN UNIFICATION

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I INTRODUCTION

- 1 European integration is a continuous work in progress, and it is pen ended at the same time. This work is not the privilege of any caste but is a process in which every part of the society shall be involved. Every tier shall play its particular role by designing a unified and integrated Europe. Nevertheless, every step of European integration must be designed in such a way that the European people are taken along on this path and feel included. They must not be left behind, because the process of unification and integration is not an end in itself but serves first and foremost to improve the welfare of citizens. The choices of the European citizens will determine the political form a unified Europe eventually will take, although this will and must also be open to change.
- 2 Furthermore, any unification must be a peaceful one. The continent has been through two dramatic attempts at forced unification that have left deep scars until today. Napoleon's attempt to conquer Europe was brought to an end at the gates of Brussels in 1815. The Congress of Vienna refrained from punishing France because the war guilt was not attributed to the state but to a single person. The concert of European states was based on the reinstated Peace of Westphalia.
- 3 The Great War of 1914 to 1918 ended in the downfall of both the Austrian and German Empires and the birth of communism in the defunct Tsarist Empire. The continent was destabilised in the medium term. Above all, the Versailles Peace Treaty and its underlying punishment and isolation of Germany laid the groundwork for the great catastrophe of the 1930s and early 1940s.

- 4 The Third Reich's horrific attempt not only to subjugate the continent to fascism, but also to exterminate entire population groups and races, first and foremost people of the Jewish people, ultimately led to a reassessment at the political level.

For the first time in European history, the victorious powers refrained from punishing the loser, despite all the wounds suffered. The revolutionary approach of the Schuman Plan lies both in the fact that the focus was now on integration and not isolation and by the attempt to neutralise power centres, whereas after World War II that included inter alia heavy industry regions, by putting them under a new form of multilateral surveillance.

- 5 However, the Schuman Plan does not stand in a vacuum; rather, it draws on the world of ideas of Metternich and Castlereagh. In both cases, the ultimate goal is to ensure a just and long-term balance and distribution of power. While Metternich and Castlereagh still had in mind the concert of sovereign monarchs who, appointed by God's grace, look after the welfare of their peoples, the Schuman Plan was based on the modern concept of constitutionalism. This novel approach had become necessary for several reasons. The monarchy as a basic state unit had been called into question by the Napoleonic era and the emergence of the nation state, and with it the constitutional basis of the Peace of Westphalia. The Congress of Vienna was able to revive this system once again, but the era of the 1840s already showed the finiteness of this peace concept.

As early as 1946, Winston Churchill called for United States of Europe. It is a remarkable irony of history that it was a Briton introducing that idea in Switzerland. The United Kingdom was the first country to leave the European Union, Switzerland is the only country that deliberately abstains from joining the Union. Mr. Churchill did not go so far as to explain what format the basis of these United States of Europe should have. However, he very clearly postulated the overcoming of nationalism, which had ultimately led to two world wars as the ultimate objective.

- 6 The Schuman Plan de-emotionalised the process of integrating the victorious and losing powers of the Second World War by relying on the integrative power of constitutionalism. In the broadest sense, the doctrine of constitutionalism simply states that a government's authority is determined by

a body of laws or constitution. The Founding Fathers were fully aware that they could not achieve creating a European government, but at best a partial cession of state sovereignty to an authority supported and controlled by the Member States. The final decision would have to lie with the Member States, but not with this supranational authority.

7 The nucleus developed over seventy years, and the process is still an ongoing one. It is neither an anarchic nor a self-directed process. Ideas and tendencies may have changed, sometimes dramatically, there have been major setbacks and major developments, the crisis resistance and resilience of European integration has been pushed to its limits time and again. However, constitutionalism and the rule of law have remained like handrails to prevent the process from going astray.

II. DRIVING FORCES, IDEAS, AND APPROACHES

8 The process of integration is based on a huge variety of driving forces, ideas, doctrines, and approaches. They are overlapping, with changing dominance, being subject to the vagaries of societal trends.

9 We shall distinguish between realpolitik and academic concepts, and between long-term and short-term trends.

10 Our conclusions and our outlook shall take into account our findings and offer potential ways to deal with the question of conservative and progressive approaches towards a further developed European integration.

II.1 Long-term versus Short-term Trends

11 We shall not judge on first sight about the impact of long-term or short-term trends, as some of the latter eventually turn to become the former.

12 Memory studies provide us with a broad toolkit that enable us to make a robust impact assessment.

Memory studies is an established academic discipline. However, European integration poses a new set of research questions particularly in relation to the problem of the operational character of memory and integration itself.

Memory operationalizes the mechanisms of integration through the use of practices of commemoration and forgetting across different institutional, geographical, social and cultural contexts.

- 13 In at least three fields, valuable data can be produced:
- Normative: memory as sharing cultural experiences
 - Valuable: memory as everyday practice
 - Political: memory as politics (as a result mnemonic management is required)
- 14 Memory is the most important tool of identity building. Memory of the term “Europe” is certainly not a uniform one but as a contested meaning it is imagined in plenty of different forms. Prima facie, this can be seen as a major challenge for any integration or unification, but it is at the same time an opportunity, eventually leading to a dialogue between the contesting meanings, as common memory and identity are a driving force to strengthen political and institutional integration. The dialogue, nevertheless, must be facilitated or moderated, to overcome the challenge that lies in the fact that comparative memories can threaten peaceful integration.
- Another phenomenon in the context of memory is based in traumatic events. Not only individuals suffer from trauma but also whole societies.
- The concept of trauma and in particular the intention to overcome it lies at the bottom of European integrational approaches after World War II. After a phase of relative overcoming of trauma, especially in the relationship between Germany on the one hand, and France, Belgium and the Netherlands on the other, it has become apparent, especially in recent times, that the trauma is still present in varying degrees of intensity for states such as Poland, Greece or Italy.
- 15 Memory should not only be considered in the biological sense. In a figurative sense, there is also historical and institutional memory. The idea of the so-called Europe has changed over the centuries, and the speed of this change has increased dramatically in recent decades. Nevertheless, each new movement is based on the previous ones, either by continuing or developing them or by rejecting them altogether. In both cases, the basis for development is historical and institutional memory in relation to the previous worlds of ideas. We can identify two levels of these worlds of ideas, the so-called intellectual and the popular variety.

Conventionally, the first is associated with the "politics of the European idea" "ordered" by politicians and formulated by intellectuals, and the second with the "culture of the European idea" embedded in the consciousness of the population. At both levels, Europe is seen as an idea and a discourse rather than a political entity. This is a rough distinction, but its boundaries are rather blurred in some aspects and manifestations.

As a starting point, one may depart from the coherency of a Greek-Roman-Judeo-Christian cultural tradition that was the home for a cultural elite while since the Westphalian Treaty and the rise of modern states the cultural horizon of the major part of populations has been – and still is – focussed on emerging nation states, national languages, and nationalism. This explains the fact that popular discourse understands European unity only as a political idea, which may be endorsed or rejected. In a more philosophical approach, perceiving European unity as the existing common cultural horizon, worthwhile of being preserved and continued, this would turn political unity into an almost Shakespearean question of to be or not to be.

The challenge is to bring together different expressions of "Europe" based on different conceptions of Europe as a geographical, political and cultural concept, and to shape the competing identities in such a way that they at least allow bridgeheads to each other.

- 16 A critical examination of long- and short-term developments shows that a reinterpretation of the concept of Europe took place after the Second World War at the latest, with the Ventotene Manifesto already tending in this new direction. However, historical and institutional memory contributed to a certain continuity even after this caesura by reacting to exogenous and endogenous events, but without completely throwing the tried and tested overboard. Short-term trends lead to reviewing and correcting long-term developments if they can be consolidated over a considerable period of time. In order for long-term and short-term trends to be brought together in a meaningful way, they should result in a "management of the European idea".

II.2 Input or Output Legitimacy – Realpolitik versus Academic Concepts

- 17 The Founding Fathers had been solution-oriented. Their approach was quite a pragmatic one, legitimising the European integration by its solution capacity.

Only when the solution capacity of the European Community came into question, the legitimacy of the Community was challenged.

18 Realpolitik would have demanded a shift of competences from the Member States to the European level or a return of competences to the Member States. This would have been a classic response of realpolitik.

19 The academic answer was a different one and dealt with the question of the democratic legitimacy of the Community. The keyword was – in some aspects still is – “democratic deficit”. The evolving debate on the presumed democratic deficit is very complex and related to both the institutional and civic dimension, whereas the current institutional setup, i.e. the balance of power between the EU institutions and Member States, the functioning and procedural aspects of the EU are in the centre of the debate.

20 The question of whether such a deficit exists can be negated from a constitutional point of view, since the ministers represented in the Council and the heads of state and government represented in the European Council are all democratically legitimised. Therefore, if the Council and the European Council are assigned with the comparable position of a national government and the European Parliament with that of a national parliament, both parties would be considered sufficiently legitimized. Nevertheless, the European Union is not a nation state but an international organisation deriving its legitimacy from the respective legitimacy bestowed within the realm of the Member States. The supranational character of the Union has no divergent impact on that assessment whatsoever.

21 However, the perceived democratic deficit is not solely based on constitutional considerations.

22 Rather, it is – inter alia – the result of a decreasing capacity to find solutions, that causes people to lose faith in the organisation and at the same time gives rise to the feeling that decisions at the EU level are no longer close enough related to the people and can therefore no longer be comprehended. The European Union is an international organisation sui generis, based on the principle of supranationality and over the years ever more on multi-level governance. This means that democratic processes are mapped that are similar to those in the member states, but without having their democratic – regular – structures.

23 In this context, the principles of subsidiarity and proportionality must also be taken into consideration. The classical interpretation simply states that only when the subordinate level is no longer suitable to bring about a solution should the competence be exercised by the next higher level. In the EU context, however, there is a somewhat different interpretation. Here, the Union can only exercise a competence in those cases in which it has been bestowed with. In cases of so-called mixed competence, the two principles mentioned above take effect and represent a red line for the Union.

24 In whatever direction the future trend will go, the long-term acceptance of the European Union will certainly depend on its capacity to offer timely solutions, acceptable to a considerable majority of citizens. At the same time, the Member States will have to redefine their own position as with shifting competences from their level up to the Union level, their particular legitimacy will come under consideration. In ferally organised Member States this question will be extended on the regional level, too, with considerable impact on the respective legitimacy.

III. FINALITY OF EUROPE

25 We have already agreed that European integration is an evolving process. This applies not only to the legal level, but above all to the geographical expansion of the European Community. In several waves of enlargement, the original Community of six has developed into a Union that comprised up to 28 Member States, which has been reduced in size for the first time in its history following the withdrawal of the United Kingdom and now comprises 27 Member States.

26 Enlargement always posed great challenges for Europe, as the accession of new Member States was not only associated with an expansion of the territory, but also with the incorporation of different cultures, models of thought and values.

27 The events of recent years in some Member States in particular have massively called into question the common framework of values. Proceedings before the ECJ may offer legal solutions, but they are by no means suitable for reconciling competing cultural and political views. The divergence between the historical member blocs of the several enlargement waves plays out on

many levels and leads to a Europe of different speeds. The last wave in particular has shown that neither side was fully and sufficiently prepared for enlargement, especially in economic and rule-of-law terms. The most recent developments give rise to some justified doubts about the enlargement model. While the enlargement procedure has been adapted and subjected to an order-of-merit system, two states were most recently granted candidate status solely for political reasons, without meeting any of the requirements of the new system.

28 The Europe of different speeds has thus also been extended to the accession process, which in the eyes of some candidate countries now has either an economic-legal or a primarily foreign policy track, which puts the fulfilment of the accession requirements permanently into question.

29 The finality of Europe is by no means only a geographical question, although even this would be answered differently by different geographers. The finality of Europe is closely linked to the integration capacity of the community on the one hand and the willingness of the new members on the other hand to adopt and adhere to the given rules and values. Part of this process, however, is that all Member States, old and new, participate equally in the development of the community. This can possibly also lead to a medium- to long-term reorientation, if the so-called old Member States lose their majority.

30 The European Union will be confronted again and again with the question of which strategy weighs more heavily: widening or deepening.

IV. CRISIS MANAGEMENT VERSUS PRESUMED PERMACRISIS

31 Since 2008, the European Union suffered from a series of crisis developments.

32 We may assume that the assessment is correct that the financial crisis together with the Euro crisis had a tremendous impact on the European economy that we can still feel. Growth stuttered, interest rates fell down to zero, unemployment rates went up. Nevertheless, we have to ask if these impacts are part of the crisis or the consequence of the crisis event? The migration crisis of 2015 still reverberates in our minds and whenever an increased influx of – illegal – migration occurs, we conjure a continuation of the 2015 crisis. The fall of Kabul ended with the last US American soldier

leaving the airport. The invasion of Crimea by Russia constituted a security political crisis but that ended with the full annexation into the realm of the Russian Federation. The invasion of Ukraine constitutes an ongoing crisis for Ukraine as a breakthrough of Russian troops is looming daily and cannot be ruled out; for the European Union it is an ongoing crisis, as it has not devised the proper coping method so far.

33 We may therefore conclude that the – perceived – permacrisis is in essence an apparition, caused by the feeling of being haunted by a never-ending series of set-backs, which the EU is barely able to cope with.

34 Furthermore, the above discussed democracy deficit comes back into play. The European institutions, particularly the European Commission, have tried to use this perma-crisis to take over competences for the good of the common welfare or had been bestowed with such competences. In the context of the sanctions against Russia, nevertheless, it has become abundantly clear that several Member States are not prepared or willing to hand over their sovereignty to the European Union, in particular when it comes to energy questions. They defend their national interest by claiming that they are democratically elected by their constituencies to uphold their rights.

35 The ongoing series of crisis has strengthened the integrational forces on the one hand but on the other hand it has opened the gates for populism and even centrifugal forces.

36 It will be essential for the European Union on the way out of this perceived permacrisis and the accompanying incidents to deal with crisis events one at the time and treating the consequences as regular business but not as a continuous crisis process and living up to the challenges to be overcome.

V. Conclusions – Conservative versus Progressive Approach

37 In a nutshell, conservative and progressive approaches to European integration are concerned with the question of whether the original and still existing commitment to a supranational organisation should be overcome and the step towards a federal European Union or even United States of Europe should be taken.

38 The process of European integration since World War II is a continuous development towards an ever-closer community.

39 Any further strengthening of that integrational approach must be accompanied by an equally strengthening of the capacity of the European Union to deliver. If this mandatory requirement is not fulfilled, the process will not only be called into question but could possibly even be reversed by withdrawals of further Member States.

40 Eventually, the process of integration can lead to a European constitution, to a federal Europe, or even to United States of Europe but only successfully so and not only by name, if the European citizens are convinced by this way and support it actively.
