

Preface

The Nice Summit has adopted a new Treaty revising the Treaties establishing the European Union and the European Community. Moreover, the Heads of State or Government have added a Declaration on “The Future of the Union” in which new steps are announced to initiate a broad public debate on some central questions of what could evolve into a Constitutional Treaty of the European Union. The “European Constitutional Law Network” (ECLN) aims to participate actively in this debate and give it a legal dimension on the basis of a comparative constitutional analysis. The first ECLN Conference was organised on the 26th and 27th of January 2001 in Athens by the Centre for European Constitutional Law, Athens – Themistoklis and Dimitris Tsatsos Foundation on the Perspectives of the Nice Treaty and the Intergovernmental Conference in 2004. This volume presents the contributions produced at the conference to a broader public. Comments in other publications or by electronic device under the newly established site: <http://www.ECLN.net> are welcome.

The first of four round tables was headed The Delimitation of Competencies; between the European Union and the Member States and was chaired by Professor MEP Dimitris Tsatsos, Athens. Professor Tsatsos, representative of the European Parliament to the 2000 IGC pointed out that the Nice Treaty itself politically does not go far enough towards the enlargement of Europe. He criticised that the democratic deficit is still evident in the aftermath of Nice, as is a lack of transparency, effectiveness and demographic fairness. Yet, the most important aspect of the Nice Treaty could very well be the post-Nice process as acknowledged in the Declaration on the Future of the Union. For the coming reforms, he pleaded to follow the innovative and effective procedure that was used to draw up the Charter of Fundamental Rights.

Professor Vadapalas’ gave an insight into Lithuania’s preparations for entering the European Union and into the necessary amendments to its constitution which will have to take place in the coming years. To his mind, the delimitation of powers is rather a political than a legal task.

Professor Passas gave a critical appraisal of the Treaty of Nice and challenged the view that it marks the end of incrementalism. According to him, the 2000 IGC was dominated by discussions on institutional reform rather than the deepening of the integration process. He regarded the IGC as an insufficient process, a view that explains the Declaration on the Future of the Union in the Final Act of the conference where the need for a wide public debate on the future of the Union is acknowledged. In his view, a debate of this kind should first of all clarify whether a federal vision is indeed shared by all before discussing the institutional structure that would support it. To his mind, this structure should eventually be determined by a bottom-up approach and not by a comprehensive elite led top-down approach.

The second round table, chaired by Professor Pernice, was devoted to The Status of the EU Charter of Fundamental Rights. Professor Griller focused on the perception that the Charter contains a hidden agenda questioning the supremacy of Community law as established by the ECJ. Especially the wording of Article 53 of the Charter contains a

challenge to supremacy. The interpretation of this Article was therefore found to be important to the future balance between Community law and national law.

Professor Dutheil de la Rochere concentrated on the preparatory process of the Charter in the Convention, a process that provides for an unprecedented style of negotiation to be used for future revisions of the Treaty. While the legal status of the Charter is yet unclear, she assessed the practical value of the Charter as a potentially important means of interpretation for the ECJ and for future accession negotiations.

Professor Papadimitriou also paid tribute to the process itself, which entailed a yet unseen composition of the negotiators of the Treaty as well as public participation and transparency. For him, a further great innovation was the division of fundamental rights into six distinct groups instead of the traditional classification of civil, political and social rights. He suggested that the Charter, in the midst of the discussion on large changes to the structures of the European Union including the enlargement process, should put the citizen of Europe in the centre of the debate and serve as a forerunner for the endorsement of a Constitution within federal perspective.

Chaired by Professor Koukiadis, the third panel dealt with The Role of the National Parliaments in the European Union. In the view of Professor Zemanek, the IGC 2000 was a success for applicant countries such as the Czech Republic. The new democratic states, however, would be reluctant to surrender their newly won sovereignty. In any event, he deemed changes necessary to the Czech Constitution to prepare the accession of his country to the EU. He opted for the strengthening of parliamentary control over the executive branch and suggested a second chamber at the European level consisting of representatives of the national parliaments.

For Professor Pernice, a second chamber would impair the position of the European Parliament, provide for an over-representation of national interests and furthermore complicate the decision-making process. In his view, the function of national parliaments as European actors should be emphasised and measures taken allowing them to exercise this function properly. He proposed to create a “parliamentary subsidiarity committee” giving national parliaments an active role at the European level in serving as a procedural safeguard for the respect of the limits of European competencies and subsidiarity.

Mr. Maiani agreed that a second chamber model would be inefficient. A ratification model, where legislation should pass through national parliaments, would likewise result in considerable delays in the legislation process. Mr. Maiani accordingly suggested that the Protocol on the Role of National Parliaments in the European Union (Amsterdam) should be amended in the light of the contributions made by COSAC, whereas national parliaments should engage more vigorously in controlling their governments.

The final round table was devoted to The Fischer Proposal: The Federal Perspective of the European Union and chaired by Professor Papadimitriou. Professor Andenas addressed the fundamental question of a European Constitution and the schism that the Rome Treaty and subsequent amendments in fact contain features of a constitution, but are not generally regarded as such. He commented on the objections to the constitutional approach and discussed the notion of a popular will or social contract lying behind the concept of statehood. While he regards the social contract as a mythical perception, he argued that it still could be necessary and extended to the citizens of the Union to

accommodate with new European structures. Substantive work still lies ahead in the areas of comparative constitutional law and interdisciplinary studies.

Professor Lopez Pina started with strong criticism of the Treaty of Nice. The Heads of State or Government had hesitated to follow their own statements concerning the general interest and common good of European citizens and had not shown social responsibility. To break this pad lock and in order to establish a Union for citizens and not for their Heads of State or Government, he hoped that lawyers could contribute as midwives in the making of a European Constitution.

Eventually, Professor Melissas looked towards the IGC 2004, which again is due to be of a quasi constitutional character, where Member States will be even more pressed with the need of materialising the theory of European integration, not least because of the probable incorporation of the Charter of Fundamental Rights. According to him, Fischer's European vision entails full sovereignty to the federation while substantial powers will retain with the Member States. A Constitution of the Union would be a text that reshapes Europe institutionally and organisationally. The positive contribution of the Fisher proposal was seen by Professor Melissas in the conception of a new constitutional architecture in which a small group of the Member States may be permitted to proceed with the development towards a federal structure, while – at the same time – the participation of states that do not wish to precede or will need more time to enter such a structure is secured. He finally argued for a simplification of the Treaties.

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