



Europe's referendum challenge: What happens next? 31 May 2005

REPORT

The European Constitutional Treaty is in political reality dead following France's No vote. While Europe's governments should not rush into new institutional plans, some important features of the stillborn Constitution could in time be salvaged as 'organ transplants' onto the current Treaties, argued former Italian Prime Minister Giuliano Amato, speaking at a conference to debate Europe's future co-organised by the Centre for European Reform, the Fabian Society and the Centre for European Legal Studies and hosted at the Irish Embassy in London on Tuesday 29th May.

"The Treaty can not be rescued. It is politically and legally impossible to vote again on this text, and it is very difficult to see that it can be renegotiated substantially in the way the French left wants. What is feasible is to pick some parts which are technically useful and which everybody can agree. I would say that my daughter is dead but that it may be possible to transplant some of the organs to the benefit of the Nice Treaty and its future health", said Amato, who served as Vice-President of the European Convention which drew up the Treaty.

Amato highlighted the simplified double-majority voting system and the improved foreign policy arrangements as important elements which could be saved but stressed that any such 'transplants' would be limited in scale, and could not be undertaken for some time. "This is something that can be taken on board by member states, without negative reaction, only in a couple of years", he said.

Charles Grant, Director of the Centre for European Reform, agreed that "we shouldn't do anything in a hurry. It would look like we aren't listening and would provoke fury, and not just from eurosceptics". But he agreed that institutional changes to deal with the most obvious weaknesses of the Nice Treaty should be considered later. "I can't see eurosceptics objecting to televising the Council of Ministers or to involving national parliaments more – and if they did, they would be laughed at", said Grant, arguing that any such 'salvage' operation should be limited to three or four changes in "a two-page Treaty which was clearly not threatening" and which did not transfer powers to the EU: "It could not involve more Qualified Majority Voting. If you are transferring powers to the EU, people will ask for a

referendum. You will never change the Treaties again in a substantial way without referendums. That is now a political fact”, said Grant.

The lessons of the no vote

Sylvie Goulard, leading French academic and author on EU issues, opened the event with an analysis of the French ‘non’. “While the result is clear – but the message is not yet clear”, she said. Poll results showed that the most important reason for ‘Non’ voters was unemployment, a factor for 46% of no voters, followed by those seeking to express discontent (40%), to renegotiate the Treaty (35%), those who felt the Treaty was too liberal (34%), too difficult to understand (34%), a threat to French interests (19%). Hostility to Turkish membership (18%) was the seventh most important reason for those voting no.

For Goulard, what was striking was the interlocking of domestic and European debates, and how “the illusion of renegotiation” had played a significant impact. This drew on a distinctively French political attitude of “believing that progress is more likely through crisis and revolution than through political compromise”. The French had voted ‘non’ in the spirit of 1848, she argued. Goulard, though she had supported the Yes camp, also stressed the value of France’s national debate: “We have never had such a debate over politics in France – neither over Europe nor domestic politics. Everywhere, citizens were discussing Europe. This is what we wanted from the Convention - but not with this result”.

“The need to change our working methods in the European Union” was the most important conclusion. The worst response would be to seek a technical fix - “there is no plan B where people in Brussels can meet and find a solution”. the Treaty itself is politically dead – “we can not vote again on the same text: this is impossible after the debate which we have had in France”, said Goulard.

Thom de Graaf, former deputy Prime Minister of the Netherlands, was gloomy about both the prospects of the Dutch referendum and declared the Treaty “already dead and buried – there is no political way to rescue the Treaty itself now”. De Graaf saw a complex mix of factors contributing to the likely Dutch rejection – “it is a vote about enlargement, against the elites, against economic liberalisation, on France, on the social society and against the Dutch government”. The French and Dutch referendums suggested that “the rational politics of the centre have lost the confidence of the voters for this concept of Europe” and had been defeated by “the far ends of politics” of both left and right. That this was the first ever modern Dutch referendum had also played a part. Voters had treated it as a general election, expressing discontent with an unpopular government, while those in favour on the centre-left had found it difficult to campaign alongside the government.

For Giuliano Amato, this analysis of France and the Netherlands showed the Constitution to have been “the accidental victim” of economic stagnation in France and of the EU’s longstanding democratic deficit, even though the Convention process had been an attempt to ensure broader participation in the EU. Amato had battled to limit the text to parts one and two, and argued that governments had paid a heavy price for ignoring this: “Citizens have said ‘how can I say yes to a text which I can not even read?’”.

The future of institutional reform

”The French have not only killed the Treaty but have killed off a process of integration that has gone on for twenty years”, said Charles Grant, Director of the CER, as the afternoon session focused on the implications for the British Presidency of the European Union.

Alan Dashwood, Chair of the Centre for European Legal Studies at Cambridge University, analysed which of the changes in the Constitutional Treaty could be pursued without further Treaty amendments, identifying the Treaty’s main gains as improved democratic accountability; more functional institutions, and simplification of the Treaties and the Union’s structure.

On democratic accountability, greater involvement of national parliaments could be agreed politically as could increase transparency of the Council of Ministers. The increased use of co-decision making required Treaty amendments, the existing Treaties did provide a basis for greater coordination of asylum and immigration policy at EU level, which Dashwood argued was vital since national states could not deal with the issue effectively on their own.

On institutional reform, the picture was mixed. Dashwood argued it was possible to supplement the rotating Presidency with the proposed ‘team presidency’ approach by political agreement between governments, but that on voting weights within the European Council, “we are stuck with the Nice arithmetic unless we amend the Treaties”, said Dashwood. There could be no change to the number of Commissioners, although the proposed reform would not anyway have been implemented before 2015. On simplification, Dashwood argued that it would be useful over time to preserve Part I of the Treaty, as this was a useful and relatively accessible guide to the current institutional relationships, though this would require a Treaty amendment.

“The one thing we absolutely must salvage now is our enhanced capacity in foreign policy”, said writer and Oxford academic Timothy Garton Ash. “We have made significant progress since the debacle of the Iraq war. There was a coherent European approach to the Ukraine, which was decisive in a democratic revolution. There is a coherent European approach to Iran ... When the Bush administration in its second term has come to Brussels and said we would like to work with the EU, this is something we must salvage”.

For Garton Ash, Javier Solana’s increased authority leading shifting “intra-European coalitions of the willing” was partly in anticipation to his new role under the Treaty, and so could now be lost. “We can happily throw over the title of Foreign Minister. Solana can go on being High Representative. But he needs to have an active and authoritative presence in decision-making”, said Garton Ash, who also argued that the EU external service was important if Europe was to develop a coherent foreign policy approach. Alan Dashwood suggested that giving the High Representative a speaking but non-voting observer role at was one way forward.

The implications for enlargement

“Enlargement will stop”, said Sylvie Goulard, arguing that the French No would block Turkish entry and recommending that this should be faced sooner rather than later: “We

should say that Turkish membership is not feasible and so avoid the worst case scenario where the no comes not from the governments but from the people – and then you would have the clash of civilisations which you wanted to avoid”, said Goulard, arguing for a substantive special partnership status to be substituted for full accession. This perspective was challenged by participants who pointed to the unanimous decision to open talks on full accession following many decades of discussions.

”I fear the French vote has killed off enlargement as well”, said Grant. “What the British don’t often understand is that widening and deepening do go together. The moment you stop the deepening, the widening becomes much more difficult for political elites in France, in Germany and in several other countries too”. This was likely to have major and unwelcome implications for Turkey, Croatia, for Ukraine and for the stability of the Balkans.

Although accession talks with Turkey would start, it was a different question as to whether they could finish, or how long any chapter of talks would take when unanimity was required for the closure of a chapter. “We may see referendums on the opening of accession talks in the coming decade”, predicted Grant.

Economic reform in Europe

Speakers were equally pessimistic about the prospects for economic reform, arguing that the French vote would make this more difficult. Garton Ash worried that the British government’s support for reform would prove counterproductive, despite the merits of this agenda: “In substance, the Blair government has got the closest of any European government to finding the right balance, to combining economic growth with social protection and a measure of redistribution. Blair’s instinct will be to say ‘now, more than ever’ Europe needs to step up reform. But I fear that Blair’s advocacy of this substantially correct position will damage its chances of being realised. He is a genuine European but he does not speak European”, said Garton Ash, arguing that Sarkozy in France and Angela Merkel in Germany could more effectively win the necessary support for reform: “It is a case of Nixon to China. It will take old Europeans to make Blairite reforms – they have to be presented in a common European language”.

The ratification process and the British Presidency

In the immediate aftermath of the French vote, would individual member states continue with ratification? Most, except Britain, had declared their intention to do so. Alan Dashwood argued that it would be “politically unrealistic and undesirable to go through this process to the bitter end”, delivering only "stagnation in the Union and an artificial and bad tempered debate". Sunder Katwala, Fabian General Secretary, also questioned whether it made any sense to continue with the ratification process for a dead Treaty given that nobody believed this could possibly end in actual ratification. This would simply send the signal that Europe’s leaders were in denial about the French and Dutch results if they were seen to be carrying on as if nothing had happened.

Timothy Garton Ash said it was clear that there would be no British referendum but suggested that it would be unwise for the British government to make this their formal position too soon, while other governments were saying that they would proceed, especially

as the British would have the EU Presidency next. “There is a point of national interest: this would be to offer Britain up as the bad Europeans who could be blamed for this. It is a tactical question of when to admit that the King has no clothes”.

Giuliano Amato expected the ratification process would continue and that this could still be the official position of the EU after June’s European Summit meeting, though the British government would want to prevent this. Amato pointed out that the formal process could be halted only by unanimity - given that article 30 of the Treaty made provision for the situation where one or more countries rejected the Treaty. Individual members could not be prevented from halting the process of ratification in their own countries, in which case they would be counted with those who had rejected the Treaty. Despite regarding the Treaty as dead, Amato argued that the process could still affect the substantive outcome if twenty members were to ratify: “If four-fifths of the members ratify, they could reopen a political negotiation for a wider transplant than would otherwise be possible - even though those who have said no can not be asked to accept the existing text for which unanimity is necessary”.

De Graaf agreed that many countries would not want to have their view decided by France but that the process of referendums offered little guide to any subsequent negotiations over reform: “Others must have a voice. But even after you have had the referendum, we don’t know which parts are acceptable and which are not”. Responding to claims that it was unfair for those who had ratified if a French No ended the process, Charles Grant accepted this was unfair but pointed out that the rules were clear: ratification must be unanimous. Grant also warned against the British Presidency focusing too much on institutional questions: “There are so many real problems out there in the real world, and the British Presidency will have to spend a lot of time dealing with them. It can not spend all of the time on institutional questions”.