

## **THE CRISIS OF RATIFICATION OF THE TREATY WHICH ESTABLISHES A CONSTITUTION FOR EUROPE**

### **1. THE RATIFICATION OF THE CONSTITUTION IS AT A STANDSTILL. FROM YOUR POINT OF VIEW, HOW AND WHEN MUST IT BE SALVAGED?**

The European Constitution should enter into effect without any doubt and there are two types of reasons for this. Some are related to its drafting method and others with the model that it introduces. The European Constitution is the most legitimate European constitutional text in terms of its drafting from a political point of view. It resulted from a democratic process, more participatory, open and transparent than that of the Intergovernmental Conferences, and furthermore the process relied on the contribution of civil society. We say that it is a more democratic process because the organ that is drafting the constitutional Treaty is made up primarily of national and European parliamentarians who are the direct representatives of citizens, as opposed to the Intergovernmental Conferences, which only fulfills the indirect legitimacy of national executives. Therefore, the virtue of the Convention method is that for the first time a federal method has been used in drafting the Treaty, in this way combining state legitimacy, represented by its Governments and national parliaments, together with European legitimacy from the hands of its representatives in its common institutions, the European parliament and the Commission.

One cannot dismiss the value of constitutional consensus, fruit of a long process of open debate, which matured in the heart of the Convention, endorsed by the agreement of the Intergovernmental Conference and backed primarily by this European Parliament. Nor can it be forgotten that it has already received the support of a majority of Member States (fourteen) and the majority of citizens of the European Union, almost 235 million inhabitants. Moreover, among Europeans who voted in the referendum in four Member States, a majority support the Treaty (26.6 million citizens versus 22 million). And so the democratic mandate of Europeans as such, not as nationals of their States, gives effectiveness to the European Constitution.

In relation to the model, the Constitution has to be salvaged for various reasons, among which we point out:

- a) It provides a more democratic and transparent European Union through the specification of its political model, its values, principles and powers;
- b) It is the European text that best approaches and takes into consideration European citizens through the constitutionalization of the Charter of Fundamental Rights and the introduction of elements of a participatory democracy;

- c) It permits greater effectiveness of its institutions through improvements and more democratic decision procedures.
- d) For the first time it constitutionalizes the European social model;
- e) It is key for the European Union's greater visibility and presence on an international scale through institutional novelties and new instruments of exterior action.

In relation to how and when it could find a solution to its standstill, I would support three hypotheses out of all those that are circulating in the debate:

- The application of the “Danish Method”. That is, Declarations are drafted, directed at France and the Netherlands, and that are once again submitted to referendum. In any case, it is still difficult to specify the content that these declarations would have, taking into consideration that the concerns expressed by the French and Danish regarding the Constitutional Treaty are not clear and even, contradictory. It does not seem that the new referenda could be repeated in any case, before the French elections of 2007.
- The division of the Constitutional Treaty in two parts, salvaging Parts I and II by resubmitting them to referendum in these two Member States. In any case, it does not seem necessary to repeat ratification in the States that have already done so since it is understood that voters who approve the entirety approve its parts.
- The return to the “Spinelli” method. In the extreme case that the Governments were not capable of agreeing on a solution to the crisis, the European Parliament should take the initiative. As such, it could focus on the next election in 2009, making it clear to the electorate that it proposes to tackle the drafting of the European Constitution, receiving as such a constituent mandate: The resulting text should be directed at the National Parliaments for its ratification.

**2. IN THE EVENT OF A RENEGOTIATION OF THE CONSTITUTION, WHICH SHOULD BE ITS PRINCIPAL CHARACTERISTICS TAKING INTO ACCOUNT THE NECESSITY OF CONSENSUS? WHAT CLAUSES, IN PARTICULAR WOULD YOU CHANGE?**

The crisis of ratification of the European Constitution produced after the “no” in the referendum in France and the Netherlands cannot be interpreted as a rejection of the text, but an important role of the context has to be especially recognized.

The problem of “no” is a national question; it is a French and Dutch problem. They are the ones who committed themselves to ratifying by means of referendum and have not achieved it. Those two Member States are the ones who have to look for a solution. Interpreting the impossible electoral mandate, they have to indicate to the rest of the member States and the European institutions what it is that they want to change in the European Constitution.

The refusal to ratify is the clear message of the French and Dutch urns. What is less clear is a mandate on how to change the content of the Treaties of the European Union. In the rejection of the Constitutional Treaty, antagonistic positions have surfaced. As such, some defend a more social Europe, others less, defending liberalism. Some want more Europe and to them the advances seem insufficient; other want less Europe and defend the independence and sovereignty of their respective member states. While “yes” gives rise to a model, “no” gives rise to two antagonistic models at the same time. The task of working out these problems corresponds to the “no” countries that have to propose a translation of this electoral mandate, if such a translation is possible. Only by using the suggestions of those countries as starting points, can the rest of the member States and European institutions start moving.

The ideal would be to not have to negotiate anything. At most, from the indications of the countries involved, introducing some exception or flexibility through the Declarations in order that they could once again hold a referendum. It seems convenient in any case to separate parts III and IV in such a manner that it remains clear that it is typical of a Constitution and that it is a text that develops constitutional principles. This is precisely because that which is contested is the content of the activities of the Union: its policies. In this reorganization, the constitutional aspects that are in the third part should be developed a little in Part I.

As a further reason not to renegotiate, one must stress that many questions cannot be tackled alone without opening up others to debate since the entirety of what is agreed to by the Convention and by the CIG forms a part of a single consensus.

### **3. IF THERE DOES NOT HAVE TO BE A RENEGOTIATION OF THE CONSTITUTION, WHAT INSTITUTIONAL REFORMS OR POLICIES MUST BE PRIORITIES AND HOW?**

Possibly the greatest shortcoming of the European Union for citizens is its lack of visibility and intelligibility. It is felt that the Union is too far away; its procedures and means of operation are incomprehensible and impossible to control. Thus, the priority reforms point to a greater “politicization” of European political power, in the sense that, as Delors proposed, the executive power of the Commission would be linked to the results of European elections. It is necessary

that citizens see that the person who leads is someone that they have chosen and that can be recalled in the event that they do not agree with the political line developed.

In any case, in the current political process there are two different problems, the ratification of the Constitutional Treaty and the political paralysis of Europe. There does not exist in any manner a political or constitutional crisis. Both problems feed off each other, although it is preferable to resolve them separately rather than mix them. Fundamentally, at this time the political paralysis is due to the impossibility of agreeing on the financial prospects in June and the inactivity of the British Presidency, who said that he had great ideas at the beginning of his term and midway through has still not presented anything.

#### **4. WHAT SHOULD THE EUROPEAN UNION DO IN ORDER TO RECONNECT WITH CITIZENS?**

In the first place, there is a lack of European public opinion, which at this time is non-existent. For any political debate, the expression of citizens through published opinion, communication media on a European scale, Internet etc. is vital. They give a European vision of matters, and they do not have a purely national focus. The European Union must prepare members so that in the near future that public European opinion which is so necessary is possible. Moreover, it must sell its policies and results more and better through effective communication plans and means of social communication.

Likewise, it would not be so farfetched to introduce the study of history and the institutions of the European Union in its study plans: it is difficult to connect with something when one does not know what it is nor how it works. Nor can one love someone who one does not know, even though they share the same values and interests.

In our judgment, it is necessary to increase the visibility of European political power, not only through politicization, but also through the participation of those in charge in more events and national and international affairs. It is necessary to show its face to Europe. It does not have to be that of the President of the European Council, but could also be that of the Commission. A face that is present abroad, but also in events relevant for European citizens.

It is essential in order to connect with citizens to not resolve all problems through debates, reflections or postponing decisions for the future, but rather taking decisions, even though they are risky.

It is curious how one of the readings that is made of this crisis is the lack of European leadership. Leaders in national Governments are being looked for, but no one is looking at

common institutions. The heads of institutions are those who should face the responsibility of offering leadership to European integration as was done from the first Parliament elected by universal suffrage or from the Commission presided over by Delors.

Finally, it cannot be forgotten that many formulas for connecting with European citizens are found precisely in the application of the Constitutional Treaty that contains important advances in terms of democracy and transparency. Lastly, another suggestion for linking citizens to the European construction would be resorting to Spinelli's idea and electing the next European Parliament with the explicit mandate of drafting the Constitution of the European Union.

In conclusion, two things at the same time are lacking, reactivating the European political process from the institutions, especially from the Presidency and launching ambitious communication policies for reconnecting with citizens. At this time, from the point of view of Europeanism and the advance of a social and political Europe, little can be hoped for from the British, who do no more than satisfy their obligations since traditionally Britain is a member State that is not in favor of the political integration of Europe nor its social development. Therefore, we will have to wait for an Austrian President or the subsequent ones, the Finnish presidency in the second half of 2006 or the German in the first half of 2007. And all this without forgetting that the necessary push should come from the European Commission or the European Parliament.

Francisco Aldecoa Luzarraga

Chairman of International Relations

Universidad Complutense de Madrid