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Altiero Spinelli - European Federalist

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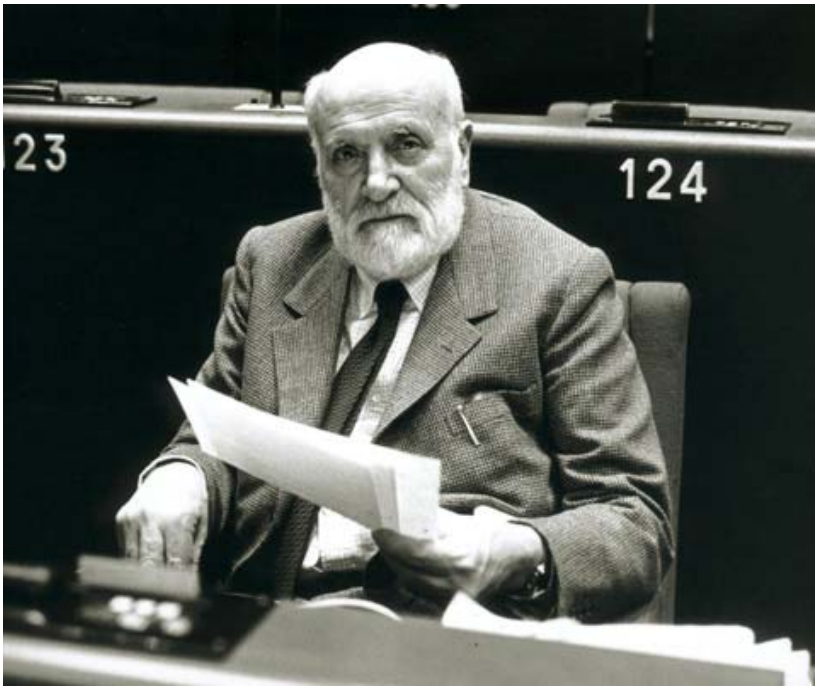

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Editorial Note

The papers presented here were submitted for a symposium organised by the Committee on Constitutional Affairs in September 2007. They were reprinted at the occasion of a commemoration of Spinelli's 100th anniversary which took place in the European Parliament on 5 March 2009, in cooperation with the *Lazio* region.

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Lucio Levi:
Altiero Spinelli, Founder of the Movement for European Unity

It is in the context of the turbulent history of the 20th century that the significance of Spinelli's political design must be interpreted yet today, on the occasion of the 100th anniversary of his birth. It is not enough to view him simply as a protagonist of those years. He was the founder of a new political movement: namely, the movement for European unity. For this reason he can be defined as an "historical man". According to Hegel, historical men "are those who first expressed what men want." They are not philosophers, but "men of action". They "know and want their work, because it corresponds to the age".[1]

In the summer of 1941, when Spinelli together with Ernesto Rossi wrote the Ventotene Manifesto, the document which defines his action plan for the United States of Europe, Hitler's swastika flags were waving all over the European continent. After the occupation of France, German troops were attacking the Soviet Union, but the founders of European federalism, though confined on Ventotene, were able to see beyond the apparent horizon and glimpse the future of post-war Europe's development.

When Spinelli was arrested and then convicted by the fascist special tribunal in 1927, he was just twenty years old and was a leader of the young communists. His solitary reflections in jail led him to choose the value of freedom and to give up communism in 1937. The choice of democracy represented for Spinelli only the beginning of a difficult intellectual journey. The encounter in 1939 at Ventotene with Ernesto Rossi, one of the leaders of the movement "Giustizia e Libertà," marked Spinelli for life. Rossi was the vehicle of federalist culture. As a professor of economics, he was authorized to correspond with Einaudi, who sent him some books by Lionel Robbins.

In a vivid autobiographical page of his memoirs Spinelli described how he discovered federalism and what are the sources of his federalist thinking:

> "In a volume of writings by Luigi Einaudi reproducing a few articles he published in the 'Corriere della sera' at the beginning of 1919, using the pen name Junius,2 […] the author brought the project of the League of Nations before the tribunal of reason, found it wholly groundless, and, recalling the constitutional events which led to the foundation of the United States of America, proposed a real federation uniting under the rule of law the peoples which were getting out of the blood bath.
>
> In the following years I have often been thinking that really habent sua fata libelli (little books have their own destiny). When those pages were written, they were

[1] G.W.F. Hegel, *Vorlesungen über die Philosophie der Weltgeschchte*, Leipzig, F. Meiner, vol. I, p. 77.

[2] The reference of this book is Junius, *Lettere politiche*, Bari, Laterza, 1920. This book has never been reprinted. However, the most significant articles have been reproduced in: L. Einaudi, *La guerra e l'unità europea*, Milano, Comunità, 1948, reprinted several times in the post-war period.

> received with indifference and the author himself put them aside, since he did not feel it necessary to dig more deeply into that matter. About twenty years later that book accidentally fell under the eyes of two people who had been living for more than ten years isolated from the rest of the world and were then observing with anxious interest the tragedy that had begun in Europe. We perceived that these pages were not written in vain, since they were beginning to fructify in our minds.
>
> Requested by Rossi, who as a professor of economics was authorised to write to him, Einaudi sent him two or three booklets of English federalist literature which had flourished toward the end of the thirties as a result of Lord Lothian's influence. Apart from Lionel Robbins's book The Economic Causes of War, which I subsequently translated and which was published by the publishing house Einaudi, I cannot recall the titles or authors of others. But their analysis of the political and economic perversion that nationalism leads to, and their reasoned presentation of the federal alternative, have remained to this day impressed on my memory like a revelation.
>
> Since I was looking for mental clarity and precision, I was not attracted by the foggy and contorted ideological federalism of Proudhon or Mazzini, but by the clean, precise thinking of these English federalists, in whose writings I found a very good method for analysing the chaotic state of affairs into which Europe was plunging and for drawing up alternative prospects".3

The core of Spinelli's federalist thinking lies in two elements. The first one is the concept of crisis of the national state, that enables to see contemporary history in a new perspective, made it possible for Spinelli to analyse in depth the causes of imperialism and fascism, whose essential elements were already present in the works of his mentors. At the root of these phenomena there is the fusion of state and nation, which creates an explosive mixture and gives rise to authoritarian trends within the state and to aggressive trends in the international plane. Ultimately, the cause of imperialism and war lies in state sovereignty and international anarchy. The more specific cause of imperialism in the era of the world wars is to be found in the crisis of the European system of states. It was brought about by the internationalisation of the productive process, which pushed every state to try to weaken its neighbours through protectionism and to enlarge the economic space under the control of each of them, driving Germany to wage war for getting hegemony over the whole continent. As far as fascism is concerned, it is the point of arrival of the historical evolution of the national state, the expression of the belligerent and authoritarian trends dormant in its closed and centralized structure and become virulent with the exacerbation of power contest in Europe. On the economic and social plane, fascism is seen as the totalitarian and corporative answer to the economic stagnation of a market whose dimensions are inadequate for the development of modern production techniques; an answer to the disintegration of society, which is reduced to a battle-ground among corporate interests; to the need to eliminate social divisions, which make weaker the State's capability to defend itself; and to the need to adjust the production system to the requirements of a war economy.

[3] A. Spinelli, *Come ho tentato di diventare saggio*, Bologna, Il Mulino, 2006, pp. 307-308.

The second element is the European Federation, designed as a means to overcome international anarchy and to assure peace. Spinelli drew from the experience of American federalism the lesson that European unity should be conceived as a constitutional objective. The history of the formation of the United States of America shows clearly that state sovereignty was the agent of the division of North America and that unity was achieved when a federal government, endowed with limited but real powers, was created.

This constitutional vision of European unity enabled Spinelli to point out the limits of international solutions to the problem of the construction of a European political order. Not only co-operation among states, which is the expression of an intercourse between sovereign powers and does not tend to create unity, but also international organisations, which generally are not endowed with a supranational power.

What distinguishes Spinelli from those who, before him, chose federalism for expressing their political position, but confined themselves to place the European Federation in a distant, indefinite future, is the idea of the current topicality of the European Federation. Eugenio Colorni in the preface to the *Ventotene Manifesto* described the European Federation as "an attainable goal, almost within our reach".[4]

If we consider the history of Europe after WWII, it cannot be asserted that the idea of the topicality of the European Federation was wrong. European unification is simply a gradual process, which is still unaccomplished. Overcoming the crisis of the nation-state through the construction of European unity requires long-term processes of such a complex nature that to achieve them takes longer than any man's natural life-span. Today however, 100 years after Spinelli's birth and 50 years after the creation of the European Community, we can assert that a considerable part of Spinelli's project has been achieved. That he has been admitted into the Pantheon of the Founding Fathers is shown by the fact that one European Parliament building is dedicated to him. The European Commission, the European Parliament, the European Court of Justice, the European Central Bank now regulate what were once considered the domestic affairs of the nation-states. The powerful growth of European unification highlights the erosion of states' sovereignty and fosters the strengthening of economic, monetary, social and environmental competences at the EU level.

It is in the field of political action that Spinelli's work made a really innovatory impact. He developed a new sector of federalist thinking: the theory of a democratic action for unifying a group of states. The great novelty of his vision consists in the strategic priority given to the goal of the European federation, over that of the renovation of the national state. What the parties of liberal, democratic, socialist and national ideologies have in common is the priority they give to the betterment of their state and their belief that peace is the automatic consequence of the establishment of the principles of, respectively, liberty, equality, social justice and national independence. The peculiarity of the federalist viewpoint consists in the overturning of this priority.

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[4] A. Spinelli and E. Rossi, *The Ventotene Manifesto*, Ventotene, Italy, The Altiero Spinelli Institute for Federalist Studies, 1988, p. 14.

> The question that must be resolved first, failing which progress is no more than mere appearance, is the definitive abolition of the division of Europe into national, sovereign states [...]. Anyone taking the problem of the international order as the central problem in this historical age, and considering its solution to be the prerequisite for solving all the institutional, economic and social problems imposed on our society, is obliged to consider all the issues relating to internal political contrasts and the attitudes of each political party from this point of view, even with regard to the tactics and strategies of daily struggle .5

Who attends only to national renovation does not act upon the cause of international conflicts, imperialism and war. Due to international anarchy, national independence tends to turn into nationalism, liberty tends to be sacrificed to the need to centralize power and favour military security; military expenses are an alternative to social expenses. Unlike political parties (and traditional ideologies inspiring them) which generally continue to confine themselves to plan government or regime changes within state borders, but do not question their own state, the federalist project aims at a more radical change, which affects the very nature of the state, i.e. its transformation into a member state of a federation. For Spinelli, federalism is the response to the greatest problems of contemporary society, which have acquired much wider dimensions than nation-states. The federalist outlook is the expression of the awareness that the European unification and the unification of other great regions of the world in the perspective of world unity, have the priority over the goal of renewing individual states considered separately All this highlights the lack of autonomy of internal politics and the illusion of the reform of the national state, by now surpassed by processes transcending it. Therefore, "if tomorrow the struggle were to remain restricted within traditional national boundaries, it would be very difficult to avoid the old contradictions".6 Since the traditional political forces pursue the reform of the national State, they remain prisoners of that institution, suffer from its decline and hence place themselves in the camp of conservatism. From the above it ensues, therefore, a shifting of the centre of political struggle from the national plane to the international. A new dividing line tends to be established between the forces of progress and those of conservatism:

> Therefore, the dividing line between progressive and reactionary parties no longer coincides with the formal lines of more or less democracy, or the pursuit of more or less socialism, but the division falls along a very new and substantial line: those who conceive the essential scope and goal of struggle as being the ancient one, the conquest of national political power, and who, albeit involuntarily, play into the hands of reactionary forces, letting the incandescent lava of popular passions set in the old moulds, and thus allowing old absurdities to arise once again, and those who see the main purpose as the creation of a solid international state, who will direct popular forces towards this goal, and who, even if they were to win national power, would use it first and foremost as an instrument for achieving international unity .7

In the era of the crisis of the national state and of the internationalisation of the productive process, the clash between the forces of progress and those of

[5] *Ibid*., pp. 31 and 13.
[6] *Ibid*., p. 29.
[7] *Ibid*., pp. 32-33.

conservatism takes no longer place in the national arena between the principles of liberty and dictatorship, or between those of socialism and capitalism. Who chooses to commit himself in the national plane, even if his objective is to realize more democracy or more socialism, places himself in the camp of conservatism, because his political action consolidates the national states. As a consequence, the objective to pursue above all by those willing to promote progress is the overcoming of the division of Europe and of the world in sovereign states. The supranational era makes a new dividing line emerge among the political and social forces: that between nationalism and federalism.

Spinelli defined the strategy to achieve the European federation. This objective has a dual nature. On the one hand, it is a treaty in which states agree to give up part of their power to a supranational government, and on the other it is a Constitution defining the structure of this union of states. Since the nature of the objective determines the character of the means to be used, Spinelli concluded that progress towards the construction of a European federation would not be possible without the agreement of the states, even though the latter represent the main obstacle to the transfer of powers to the European level.

The model of the Philadelphia Constitutional Convention was constantly in his mind. Following this example, Spinelli specified the characteristics of the constituent method which he saw as the only procedure possible for the successful construction of a European democratic power. It required on the one hand a European constituent assembly representing all the peoples and political forces of Europe. This would be the only body entitled to act since its legitimacy would derive from the fact that it was elected and therefore had the authority necessary to draft and propose a Constitution. On the other hand, as a democratic assembly it would take its decisions publicly and by majority vote together with procedures permitting a clear identification of responsibilities and therefore enabling democratic and productive decision-making. This is, namely, the opposite of the diplomatic method in which decisions are reached in secret and by unanimity: a process which protects national sovereignty and leads to compromises that have to take the individual interests of every participating state into account.

When the first European institutions were established, Spinelli's strategic goal became the bestowal of the constitutional mandate on the parliamentary bodies which were a significant aspect of those institutions. On the basis of this constitutional strategy, Spinelli twice succeeded in bringing Europe to the threshold of a federal union. First, he tried to put the European army – in course of construction between 1951 and 1954 – under a European political power. Second, in 1984, as a member of the European Parliament he tried again with the draft Treaty of European Union. In both cases it was a parliamentary body – the enlarged Assembly of the European Coal and Steel Community and the European Parliament – that drafted the constitutional document. And in both cases the constitutional project was defeated by a single government: France in the first instance, and then Britain.

The Convention summoned in 2001 to frame a European Constitution was the most recent incarnation of Spinelli's constitutional strategy, though at the same time it contained an innovatory element, namely a constitutional procedure based

on co-decision between associated national and European institutions and their governmental and parliamentary organs. On the one hand, member states' governments recognized that Spinelli was right in thinking it is unrealistic to entrust an intergovernmental conference (IGC) with the task of drafting a Constitution for the people's representatives are essential to the process. On the other hand, any attempt to eliminate the influence of national governments from the drafting of institutional reforms is wishful thinking and destined to fail. A federal Constitution is a pact between both states and citizens. This means that governments and parliaments, national and European institutions, are indispensable partners in the constitutional process.

The limitation of the constitutional revision procedure – as regulated by art. 443 of the Constitutional Treaty and now confirmed by the Reform Treaty – lies in the fact that the IGC, deciding by unanimity, has the last word as regards ratification. This rule compels the EU to proceed at the speed of the slowest of the 27member states.

This is the main problem to be resolved by a new Convention. A qualified majority of member states should be sufficient to pass constitutional revisions. As Britain and Poland have opted out of the EU Charter of Fundamental Rights – a genuine constitutional matter – it may be ventured that similar decisions might in future also be taken concerning other elements of a comprehensive project for a European Constitution.

If Spinelli were among us, addressing the decision of governments to abandon the Constitution and return to the method of international treaties, he would say: "In spite of all", let us go ahead. More specifically, we can guess that he would concentrate all his energy in the effort of convening a new Convention. Those are the words which, according to Max Weber – I am referring to the famous lecture on Politics as a Vocation he gave at the University of Munich in 1919 – express the "steadfastness of heart" which enables the political leader to "brave even the crumbling of all hopes". Spinelli was used to say that the strength of European unification lay in its "ability to rise from its defeats".8 This is the lesson we can learn from the history of the attempts to construct European institutions.

In the past, the rejection of the European Defence Community provided the premise for the EEC. Likewise, after the rejection of the Treaty of European Union, the adoption of the Single European Act created the conditions for Monetary Union. The Reform Treaty which will replace the European Constitution, however inadequately, nevertheless represents a step forward which can raise expectations and generate pressures likely to compel governments to consider more advanced solutions regarding the governance of the European economy, the unification of foreign and security policy, and majority voting in respect of constitutional revision.

[8] A. Spinelli, Come ho tentato di diventare saggio, op. cit., p. 348.

Richard Corbett:
Altiero Spinelli - European Federalist

I had the immense privilege as a very young official almost straight out of University, where I had actually read and studied Spinelli's work, to come and work with a small team (who are, I'm glad to say, all here today) on the project for the draft Treaty that Parliament adopted in 1984. It was an immense privilege as a young and very junior person to work with this legend who I had heard about but, until just before then, never met. And my abiding memory of Altiero in the Parliament was when he needed to think about something and he would sometimes come out of the Chamber, the Hemicycle, and he would walk up and down, four steps in each direction, looking a little bit upwards but pacing up and down, and of course those four steps must have been the size of the prison cell that he was in for those 17 years that he was incarcerated in Mussolini's jails.

But today I would like to ask what lessons we can learn from Altiero Spinelli. What lessons can we, as people who are active in politics now, learn from his experience? And I think there are four:

The first is that we need somebody, or some people, to be an avant-garde to have a clear vision of the future and where we should be going. Those of us who're involved in the intricacies of day-to-day compromises and deals and looking at what's possible under this government and maybe next year under that government, all too often we forget the vision of the long term. To have somebody there constantly over many years, like Spinelli and his movement did, to remind us of some vision for the future - that creates then more political space for those of us who are acting in the day-to-day.

The second lesson is persistence. Spinelli was nothing if not persistent. Because he was also a pessimist, perhaps - pessimism of the analysis but optimism of the will - and because at every stage he felt that Europe had missed the opportunity to go forward, but that you had to go out again (as in his analogy of "The Old Man and the Sea" taken from Hemingway) and start again almost from scratch. At the end of the war, he thought the opportunity to create a united Europe had gone when each country set up its own constituent Assembly to draw up its own national constitution, separately, without coordination. When, later, the Council of Europe was set up, he thought that was a waste of space, paralysed by the unanimity rule and he went out and fought again. Then there was the Coal and Steel Community, which he thought was far too sectoral, but he went out and fought again. There was the episode already alluded to of the Defence Community Treaty's paragraph inviting the Parliament, (then the ECSC Common Assembly), to draft a Constitution. That was his idea and he went out and fought for it, persuading the Italian government to propose it, and other governments to accept it, only to see it fall when France failed to ratify the EDC. And when that failed, he went out again and again. I won't go through all the episodes, but he was there at every stage in the

history of the Union and often, he was the first to want to resume battle. I remember the early meetings of the Institutional Committee when Gaston Thorn, President of the Commission, came out and warned: "Don't touch the treaties". Leo Tindemans, President of the Council, did the same, proposing a "small step" approach. Spinelli's reply was that you couldn't actually make a choice between small steps and big steps until you had legs to walk on, and that this was about giving legs to the European Community. And even at the end, as John Pinder said, he felt that the Single European Act was just a mouse and that you had to go and start the fight again.

The third lesson is to vary your methods. Sometimes I think the modern federalists have perhaps not drawn that lesson from Spinelli. He was consistent in saying you had to unite people sometimes against governments, because governments will be very conservative in this situation. And his instrument was always Parliaments, elected Parliaments. He always thought they were important. Constituent Assembly, if possible. And he used the Parliament all the time. But he was willing, from time to time, to go through what he called the "long march through the institutions" advising Italian Foreign Minister Nenni, and later when he was a Commissioner. So yes, you have to vary your methods according to what is feasible at the time.

And the final lesson is to build coalitions. He was a master at that, towards the end of his life, I would say, rather than at the beginning. But in the Parliament, the way he got the Parliament to draw up and adopt that draft Treaty, which he was always keen to say should not be called the Spinelli report. He said, "I'm just the mid-wife that is enabling Parliament to deliver this infant. It is not mine." He didn't want people to call it his. He wanted Parliament to have a sense of ownership shared by the political families in the Parliament. That's why there were six co-rapporteurs. That's why he went back again three times to Parliament on the principles, on the content and finally on the draft Treaty itself. That's why each time he tried to build up compromises and secure that huge majority. The art of compromise when you are a maximalist but choosing the right time to make the necessary compromise, that's the lesson we have all had to learn over these last few years but I think it is also a lasting contribution from Spinelli.

Ortensio Zecchino:
Altiero Spinelli – Federalist and European

If Spinelli, who was no lover of rhetoric, were among us today, he would encourage us to look back at the past not in a celebratory manner, but just to learn new lessons and gain fresh impetus with a view to overcoming tfhe succession of new obstacles along the road towards European unification. From this point of view, his struggle during the first legislature of the directly elected Parliament remains a vital point of reference for us all. Those were heady days politically, even ignoring some naïve enthusiasm about the end of a Europe of governments and the birth of a Europe of the peoples. A major contribution to the excitement was made by Altiero Spinelli, who dreamed up the draft Treaty and saw through its approval. The fact that the European Parliament arrived at such an important result, which undoubtedly impacted on all subsequent developments, was - as everyone knows - attributable to his far-sightedness and his tenacity in overcoming all resistance, including that caused by his sometimes cantankerous and unbending nature (as Jacque has just recalled).

Reading between the lines, the text hinted at a European Union with potentially universal competence, tempered by the principle of subsidiarity, and a distinctly federalist political vision, especially as regards the institutional set-up and the legal framework. As is well known, this endeavour was not crowned with success in spite of an overwhelming consensus within Parliament. Yet many of the outcomes envisaged in the draft text later found their way into the Single Act and the Treaty of Maastricht. In short, even though the text failed in terms of timing and method, its content left an indelible trace and served as a basis for steps taken over the following ten years and beyond. We are all aware that the Community project has seen many setbacks, from the collapse of the EDC to the period of the empty chair, from the bitterness of Mrs Thatcher to the failure of the Spinelli project. Nevertheless, every negative episode has left space for a fresh start, a step forward, be it even minimal or purely psychological, almost as confirmation, or sometimes a vindication, of the 'small steps' philosophy of Monnet and Schuman. What always emerged, above all else, was proof of the irreversibility of the European integration process. This does not, however, appear to be happening with the recent draft Constitutional Treaty.

This draft, like that of the 1980s, has not achieved the desired result despite having been ratified by a majority of Member States. But contrary to what I have just stated, this time the effect of the setback has been broadly negative from several points of view, including psychological. And the outcome of the latest European Council (June 2007) certainly did nothing to dispel this perception.

Indeed, the Final Declaration of that Council formally marks the first ever backward step in the integration process, in terms of both content and - even more significantly and worryingly - method.

The method has been revolutionised: no longer broad-brush strategic indications but a peremptory and far-reaching diktat. The constitutional nature of the Treaty was specifically denied; every external expression - the flag, the anthem, the motto - was abolished in order to eliminate the symbolism which is obviously highly potent; concerning the primacy of Community law, reference was made to the case-law of the Court. Never before have we seen such precision and so many detailed indications from a European Council to the Intergovernmental Conference, with extremely tight deadlines for its convocation and, as hardly needs pointing out, for the conclusion of its work, with precious little consideration given to the need for transparency and wide participation that has always been called for formally.

One need only highlight a few passages in the decision. Among the amendments to be made to the Treaty on European Union, the article on fundamental principles must specify that the Union shall act only within the limits of competences conferred upon it by the Member States, as if the general, explicit principle of conferred competences - the crux of the system since the outset - were not enough (paragraph 10). The national parliaments' powers of control over subsidiarity are to be stepped up (paragraph 11). Alterations to the voting system, in the direction of majority voting, will be postponed for a long while (2014-2017) and be subject to various complications (paragraph 13). The conferral of a legal personality on the Union will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it; this testifies to an outright obsession with the principle of conferral (paragraph 16).

Among the amendments to the EC Treaty, which will become the Treaty on the Functioning of the Union, it is furthermore worth emphasising the obduracy with which the European Council pronounced on the competences of the Union, which will relate not to topics but to categories and areas of competences conferred upon it. One major cause for concern is the explicit statement that an Intergovernmental Conference may reduce the competences of the Union (this gives cause for concern because even though it is a redundant statement - who could actually doubt that such an eventuality forms an obvious part of the powers of the Conference? - it is nevertheless indicative of an unsettling climate). Of particular note is the disappearance from Art. 3 of the Treaty of the objective of free competition in the internal market, and of Art. 4 which, like Art. 98, obliged the Member States to factor competition into their economic policy decisions. The subject of competition has been sacrificed to the interests of France, which has always favoured a strong State presence in the economy. The sacrifice has been partial until now, in that the Council's decision leaves it up to specific protocols to govern Union action to protect competition and public services of general interest, services of particular concern to France. It is now a matter of assessing the impact of the European Council's stance, and of the Intergovernmental Conference now underway, on where we go from here.

Thus there can be no doubting that a backward step has been taken in the overall journey towards European Union, in terms of both method and - as we have seen briefly - content. Given such a picture, the pleasure expressed by the rapporteur, Jo Leinen, at 'the extreme precision of the mandate and the rigorous timetable adopted for the conclusion of the IGC' (Report on the convening of the IGC: the

European Parliament's opinion, vote on 11.07.07) should perhaps be deemed an expression of hopeful optimism rather than rational realism.

In conclusion, contrary to the efforts to which the name of Altiero Spinelli was linked in 1984, the draft Treaty/Constitution has so far had solely negative results; we hope these can be reversed. The responsibility for all of this may well lie largely with enlargement, which was too extensive and too rapid not to cause perverse effects. All we can do now is hope and, while awaiting better times, take pains to embark once more on that road made up of small but gradual steps; a road which conceals the wisdom of relying on *de facto* solidarity to set the right pace for a journey that is not easy but is better able to accommodate the strong values that it is our duty to preserve for those who come after us.

Roland Bieber:
The Spinelli draft treaty: a remnant of better times or inspiration for a constitutional settlement?

PREFACE: THE BASES OF ALTIERO SPINELLI'S CONSTITUTIONAL CONCEPTS

Altiero Spinelli did not develop a theory of a constitution for Europe. He was a politician, who was driven by a desire to achieve his goal. For Spinelli, this meant realising a unique project – to unite the people of Europe by peaceful means. In his view, the 'peaceful means' par excellence were institutions and a legal framework to keep these institutions in check.

So it is not surprising that as early as 1972, in his book *Agenda pour l'Europe*, Spinelli – untouched by the doubts of some state-fixated theoreticians – described the further development of the EC Treaty as a 'constitutional reform'[9]. In doing so, Spinelli – very much the experienced European politician – emphasised that this process of constitutional reform could not be concluded with the simple adoption of a single text. In Spinelli's view, what was required, rather, was a '*période historique d'études constitutionelles successives*'[10].

Even at that time, 13 years before his draft constitution was adopted by the European Parliament, Spinelli had clear ideas about the content of the institutional reforms. His concept of a European constitution was not derived from an abstract model of the separation of powers, democracy and the protection of basic rights. Rather, it was based on an analysis of the institutional weaknesses of the integration process. His co-founders of the 'Crocodile Club' were similarly motivated: 'The Members progressively arrived at the conviction that it was not possible, with the existing structures, to solve the current problems facing the European project'[11].

The traces left by Altiero Spinelli in the development of the European constitution must therefore be interpreted, first and foremost, as attempts to solve practical problems by the methods which were regarded as realistic. And yet his ideas were not informed solely by what was considered **possible** from the outset; he also identified what he recognised as being **necessary**, without regard for politics or ideology.
This dual approach – the search for answers to practical questions **and** the willingness to tackle a problem at its roots – explains the continued relevance of Spinelli's constitutional ideas.

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[9] *Altiero Spinelli*, Agenda pour l'Europe, Paris, 1972, p. 41.
[10] *Spinelli*, op.cit., p. 46, 237.
[11] *Francesco Capotorti/Meinhard Hilf/Francis Jacobs/Jean-Paul Jacqué*, Der Vertrag zur Gründung der Europäischen Union, Kommentar, Baden-Baden, 1986, p. 26.

SPINELLI'S CONSTITUTIONAL IDEAS PRIOR TO THE DRAFT TREATY OF 1984

Spinelli's concepts for an EU constitution, which he unveiled in 1972, embraced both the constitutional process and institutional aspects. From the start, Spinelli was convinced that the Union's constitution could not be created in a single step; rather, it had to be the outcome of a multi-stage process.

As regards the procedure for Treaty revision (the then Article 236 of the EEC Treaty, now Article 48 of the Treaty on European Union), Spinelli believed that changes were required so as to enable the European Parliament to prepare formal draft amendments. These would then be reviewed by an intergovernmental conference and would finally be adopted in a form of codecision procedure between these two institutions before being submitted to the Member States for ratification[12].

Here, Spinelli developed a concept which, in some respects, although certainly not in all its implications, re-emerges in the 2007 Draft Treaty amending the Treaty on European Union (new Article 33). In essence, his concept was based on the notion that the representatives of the Member States and the directly elected representatives of the people must be able to exert equal influence over Europe's constitutional development.

As regards the development of its institutional architecture, as early as 1972, Spinelli was advancing views which – at least in principle – reappear in the texts of the most recent draft constitutions:

- Strengthening and involvement of the European Council[13];
- Comprehensive codecision rights for the European Parliament in the legislative process[14];
- Strengthening of the position of the Commission President[15];
- The Commission to be politically accountable to the EP[16];
- Transfer of common foreign policy competence to the Commission[17];
- Restructuring of the Council into a 'European chamber of states'[18];
- Establishment of separate EU diplomatic missions in third countries[19].

A prerequisite for these reforms, according to Spinelli, was the direct election of the European Parliament. However, a further four years would elapse before the decision on direct elections was adopted, and it would be a full seven years before such elections took place.

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[12] Spinelli, Agenda pour l'Europe, p. 44.
[13] *Spinelli*, op.cit., p. 236.
[14] *Spinelli*, op.cit., p. 45, 226, 240.
[15] *Spinelli*, op.cit., p. 49.
[16] *Spinelli*, op.cit., p. 67.
[17] *Spinelli,* op.cit., p. 57.
[18] Spinelli, op.cit., p. 229.
[19] *Spinelli*, op.cit., p. 57.

Spinelli was elected as a Member of the European Parliament in 1979 (having held a seat in the EP since 1976 as the delegated representative of the Italian Parliament). Soon, Spinelli and other likeminded Members formed the 'Crocodile Club', which was to prepare the parliamentary initiatives for comprehensive treaty reform. This initiative reached fruition with the Draft Treaty Establishing the European Union, adopted by the European Parliament on 14 February 1984. The text has gone down in history as the 'Spinelli draft'. Certainly, without the determination and political skills brought to bear by Altiero Spinelli, the draft would not have come into being – at least not with this level of coherence. Nonetheless, attributing the content of the draft entirely to Spinelli would fall short of the mark.

So what were the significant innovations in the 1984 draft, and how much interest do they merit today – either because they have now been taken up by the governments and incorporated as amendments in the Treaties, or because they are still ahead of their time and could form the content of future treaty reforms?

THE INNOVATIONS IN THE 1984 DRAFT

Summing up, it is important, first of all, to highlight the conciseness and the coherence of the 'Spinelli draft', which are exemplary and still unequalled today. Simplicity and clarity have always been a key demand for any European constitution, but never has any treaty reform come close to emulating the standard achieved in 1984. The manner in which the 2004 constitution was fragmented during the 2007 treaty reform demonstrates yet again the scale of the achievement during Spinelli's time – for in 1984 too, the text had to take account of the wishes of numerous political factions and individual MEPs.

The second impression left by a renewed reading of the 1984 text is the continued relevance of the provisions set out at that time. Certainly, there are passages that are now out-of-date, notably those concerning economic and monetary policy. The idea that the Council should consist of Ministers who are specifically responsible for Union affairs was also a product of its timen. Yet other innovations in the 1984 draft are now accepted as a matter of course in the treaty architecture. They include, in particular, the codecision procedure between Parliament and the Council in the legislative process. They include, too, the proposals on the definition of competences[20], and on citizenship of the Union (Article 3), protection of fundamental rights by the EU, and the obligation of Member States to uphold democratic principles and fundamental rights (Article 4). These provisions, formulated for the first time by Spinelli, have long been accepted elements of current law (*inter alia*, Article 6 of the Treaty on European Union and Article 17 of the EC Treaty). And yet the 1984 draft also includes proposals which even today do not feature, or no longer feature, in the constitutional debate because they are now considered to be incapable of achieving consensus. Yet that is not to deny any of their plausibility, or the need for them. They include, in particular, the following provisions:

- Precedence and direct applicability of the law of the Union in the Member States (Article 42 of the Spinelli draft);

[20] cf. Articles 55 – 62 of the 1984 draft.

- The powers of the ECJ (*inter alia*, the – not unproblematical – annulment of individual rulings by national courts = Article 43 of the Spinelli draft);

Appointment of the members of the Court of Justice and the Court of Auditors with codecision by the European Parliament (Articles 30 and 33 of the Spinelli draft; cf. Article 9f of the EU Treaty and 247 EC);

Definition of laws (Article 34 of the Spinelli draft; cf. Article 249 EC);

- Type of EU competence for individual areas (further, i.e. concurrent, competence in the Spinelli draft, e.g. Article 55; different arrangements in Articles 4 and 6 (new) EC);
- Right of representation abroad (Article 69 of the Spinelli draft; different arrangements in Article 13*bis* EU);

Procedure for decision-making on revenue (Article 71 of the Spinelli draft; different arrangements in Article 269 EC);

- Finally, the procedure proposed by Spinelli for the revision of the Treaty (Article 84) is particularly significant; according to Spinelli, this should be carried out exclusively within the framework of the EU institutions with subsequent ratification by the Member States. This proposal further develops his ideas from 1972. However, having embarked upon this course, he did not pursue it consistently, for he fell short of making it clear that the constitution should still enter into force in the event that the majority, but not all Member States, ratified the Treaty (Article 82 of the 1984 draft).
- Article 11 of the 1984 draft was of crucial importance in conceptual terms. This ruled out the option of transferring competences from the Union back to the Member States[21]. This underlines the federal nature of the project. In sharp contrast, the 2007 Reform Treaty expressly provides for the possibility either to increase or *to reduce* the competences conferred on the Union in the Treaties[22]. Accordingly, the Reform Treaty removes the guarantee of the '*acquis communautaire*' previously contained in the Treaty on European Union[23].

Although some of these proposals have not yet been implemented, it is not because they are no longer relevant or excessively idealistic; that is borne out by the fact that most of them were incorporated into the 2004 Constitution and reappear in the reform treaties of 2007. What is striking about the 2007 reform treaties, however, is that in some respects they break with all the previous reforms and Spinelli's proposals for the first time. Whereas the previous drafts and the reforms undertaken were guided by the goal of intensifying the integration process and strengthening the EU institutions, now, for the first time, antithetical elements can be discerned, towards the strengthening of the nation-states or their institutions. *To that extent,* the Spinelli draft could be said to symbolise the existence of 'better' times past.

[21] With the derogation provided for in Article 68 of the draft.
[22] Article 33 (new) of the Treaty on European Union.
[23] Article 2, 5th indent of the Treaty on European Union.

CONCLUSION

The Draft Treaty adopted by the European Parliament on 14 February 1984 can certainly be described as **visionary**, but by no means utopian. It was also only influenced by 'better times' to a very limited degree. In fact, there are rarely 'better times' in the ongoing process of European integration. Every period has its own difficulties and opportunities. A particular opportunity which presented itself between 1982 and 1984 was undoubtedly the great determination of Members of the European Parliament to utilise the legitimacy newly conferred upon them by direct election in order to exert fundamental influence on the shaping of the integration process. On the other hand, European politics were also substantially influenced by *Margaret Thatcher*, in the sense of delaying or rejecting reforms.

In truth, Spinelli, too, had to battle with a great deal of scepticism, opposition or mere indifference. We only have to read his impressive memoirs of that time to gain an impression of how much charisma and energy this elderly man, well into his 70s, had to (and could) exude in order to devise this project and steer it safely through Parliament[24].

The 1984 draft is the first text in which a European institution unveiled a fully formulated European constitution. The extraordinary nature of this approach by the European Parliament is illustrated by the fact that, until now, Parliament has only rarely been willing or able to adopt fully operational constitutional or legislative texts. In most cases, the European Parliament is content to pass 'resolutions'[25]. The Commission, too, has no longer had the courage to present a draft constitution. The so-called 'Pénélope' paper, produced by a task force from the Commission's services, testifies to the constitutional weakness of the College[26]. To that extent, the Spinelli draft is a historically unique configuration. Yet this draft opened the way for the series of treaty reforms which have, since then, characterised the integration process. Thus the enduring value of the 1984 draft is primarily its demonstration that the bases of the Union can indeed take shape in the form of a constitution, thereby initiating a process of constitutional *development*.

Spinelli – and with him, the European Parliament of the day – had the courage to formulate guiding principles for the European Union *and equip them with a constitutional form*. Spinelli created a benchmark – a minimum standard that the Union's constitution must achieve – which must still apply today if a durable, well-functioning and democratic architecture is to be created.

Spinelli thus created a momentum, first for Parliament and, later, the Union, which endures and still has an impact today.

Even though the draft was never adopted as a constitution in its entirety, Spinelli's text shows the extent to which the process of European integration can be

[24] Altiero Spinelli, *Diario Europeo*, Bologna, 1992, p. 593 ff..
[25] See Article 51 of the Rules of Procedure of the European Parliament.
[26] Alfonso Mattera (ed.), '*Pénélope*' – *Projet de Constitution de l`Union européenne*, Paris ,2003.

developed further – through the energies and determination of great minds – beyond the lifetime of a specific project.

John Pinder:
Altiero Spinelli's European Federal Odyssey

Altiero Spinelli's federal odyssey can hardly be understood without an insight into his remarkable motivation, due to his exceptional character and the unusual first thirty six years of his life.

His first commitment, at the age of fifteen, was to marxism. The fascists were on their brutal way towards Mussolini's seizure of power in 1923. His father was the legally responsible editor of the socialist *Avanti* but Altiero saw the communist party as the only source of strong opposition. He became the leader of the communist youth in the region of Lazio and, as such, was sentenced in 1927 to ten years in prison, which were followed by six more years confined in prison camp. He read enormously, in French, German, English and Russian as well as Italian and the Classics, and on subjects ranging from Hegel's dialectics, through literature, to Marshall's liberal economics. His refusal to let the party leadership in prison decide what books he should read was a symptom of his increasing disillusion with the communist party as an instrument of the oppressive Soviet regime; and this led by 1937, when already in 'confino', to his expulsion from the party for refusing to endorse Stalin's trumped-up show trials.

In 'confino' there was enough freedom to discuss and develop political ideas and to build strong personal relationships; and Spinelli became a close friend of Ernesto Rossi, who joined him on the island of Ventotene in 1939. Rossi was a leading liberal-social professor of economics who was on friendly terms with the eminent liberal economist Luigi Einaudi, and privileged communication between them was allowed Spinelli and Rossi read two articles that Einaudi had written in 1918, advocating a United States of Europe; and he sent them more literature on the subject, in particular books by leading participants in the then flourishing British federalist movement which included such luminaries as William Beveridge and Lionel Robbins. Spinelli later recalled how he had been attracted by 'the clean, precise thinking of these English federalists, in whose writings I found a very good key to understanding the chaos into which Europe was plunging and for devising alternatives';[1] and his thinking was influenced in particular by two books by Lionel Robbins: the first, published in 1937, had explained that a liberal international economy required an international rule of law, hence a federal legislature, executive and court; and the second, completed just after the outbreak of war in 1939, went on to affirm that the cause of war was not, as the marxists claimed, capitalism, but absolute national sovereignty, which could be limited within a federal Europe where, after the Nazis had been defeated, a democratic Germany should occupy a worthy place.[2] Thus Robbins concluded that nation-states would need a common government to deal with their mutual interdependence in the fields of both the economy and security; and among democratic states it was federal government that would be required.

Spinelli was profoundly motivated to do what he could to create a better political system for mankind. He was not religious; communism had failed him; and the federal idea filled the void by offering to deal with the scourges that had afflicted his generation: the two world wars; the great depression in between; and Europe's totalitarian dictatorships. The long years of incarceration had strengthened his resolve to make as powerful an impact as possible on a world that had ruined or destroyed the lives of so many people, and federalism gave him the key

The first outcome was the Ventotene Manifesto, a clarion call for a European federation, written together with Rossi in 1941, which analysed the problems that required a federal solution and outlined the characteristics of a democratic federation based on the rule of law and of steps that should be taken to create it.[3] One such step was to recognise that the fundamental distinction was no longer between traditional divisions such as right and left, but between those who insisted on maintaining the absolute sovereignty of the nation-state and those determined to transcend it by federation. Another was to establish a movement of people dedicated to the necessary political action in order to achieve this; and two years later a revised Manifesto was to become the basic text for the Movimento Federalista Europeo which Spinelli founded in Milan directly after his liberation in 1943.[4]

He then went to Switzerland and secured the support of representatives of other resistance movements for a declaration calling for a post-war European federation; and in March 1945 he was instrumental in organising a conference in Paris to the same end. In August 1947 he made a notable speech at the first Congress of the European Union of Federalists, in which he said that the recently launched plan for Marshall Aid gave Europeans the opportunity to unite in a federal union, but warned, with remarkable foresight, that if they failed to do so 'the Americans will be more and more tempted to move from the liberal alternative to that of imperialism'[5]

His ability to inspire and organise was demonstrated in the rapid rise of the MFE to become an influential force in Italian political life, which by 1950 was able to obtain half a million signatures, including those of Prime Minister Alcide de Gasperi and several other members of the government, to a petition for the establishment of a European federal state.

EUROPEAN POLITICAL COMMUNITY

Spinelli's first opportunity to carry his federalist mission into the highest political level in Western Europe came in 1951, soon after the Treaty establishing the European Coal and Steel Community had been signed by France, Germany, Italy and the Benelux states. The intergovernmental conference to draw up the Treaty, chaired by Jean Monnet, had opened in June 1950. Only five days later North Korea invaded South Korea; and substantial American forces were transferred from occupied Germany to support its defence. So the US insisted on enough German rearmament to maintain a balance of power with the Soviet Union in Europe; and

this touched the rawest of nerves in France. In order to prevent the disruption of the new relationship between France and Germany that was to be created by the Community, Monnet persuaded Prime Minister Réne Pleven to take the initiative for establishing an integrated European Army within the framework of a European Defence Community. Pleven did this and the project was accepted by France's five partner states.

In July 1951 the six foreign ministers produced an Interim Report on the preparation of an EDC Treaty. Spinelli immediately wrote a memorandum, insisting that an integrated army of a group of democratic states must be responsible to democratic, hence federal, European institutions. His memorandum convinced de Gasperi who, doubling as foreign minister, persuaded the other five foreign ministers in December that the EDC would have to be accompanied by a European Political Community in order to provide the necessary democratic control; and the EDC treaty consequently provided for the drafting of a treaty to establish an EPC for that purpose.[6]

Meanwhile Monnet, in agreement with the proposal for the EPC and impressed by the clarity of the memorandum, invited Spinelli to discuss it with him in Paris and, shortly afterwards, asked him to help with preparing a draft for his inaugural address as the first President of the ECSC's High Authority in August 1952. Spinelli's knowledge of the characteristics of federal government ensured that the federal elements in the Community's governance of the two industries were outlined with great clarity in Monnet's speech. It was well received; and Monnet invited Spinelli to remain at the High Authority and write for him a series of political speeches after the example of the federalist papers of Hamilton, Jay and Madison. But Spinelli declined, aiming instead to play a leading political role and to return to the Community, not as an official but in a political capacity.[7] This he indeed did, though not until 1970.

At the same time the Belgian statesman Paul-Henri Spaak was elected President of the Community's Common Assembly, which later became the European Parliament and which was now to prepare a Draft EPC Treaty. He was also President of the European Movement and Spinelli had already arranged with him that the Movement would prepare proposals for the Assembly's work on drafting the treaty. They set up a committee to do this, whose members included, in addition to Spaak and Spinelli, Fernand Dehousse, who was to be chairman of the Assembly's drafting committee, and two eminent Harvard professors, Robert Bowie and Carl J. Friedrich. Spinelli did much of the drafting of the preparatory papers, for which Bowie accorded him high praise.[8] The Draft Treaty of the Assembly, which had been slightly enlarged for the purpose, was presented to the governments in March 1953. It followed quite closely the committee's proposals, if with some dilution of the federal elements; and Spinelli regarded it as an adequate basis for further development into a European federation.[9]

Meanwhile the EDC Treaty had been signed by all six Community member states in March 1952 and was ratified by four of them in 1953. Spinelli's acute sense of political

realities was, however, shown in the entry in his diary on the day after Stalin died in March 1953, observing that another year of Stalin's life, prolonging the fear that he had evoked in the West since the Berlin blockade, would have been good for 'the constitution of European unity' and that his death could signify the end of the present attempt to create it.[10] The French government was indeed finding it increasingly difficult to persuade the Assemblee Nationale to approve the Treaty. Elections increased the number of Gaullist deputies, who were, like the Communists, hostile to the Treaty, and half the Socialists refused to approve it without the assurance of British support, which was not forthcoming, so in August 1954 the Assembly postponed the debate on the EDC Treaty *sine die,* and the EPC Treaty went down with it.

This was a bitter blow for Spinelli, who only a decade after liberation from his sixteen years of incarceration had, without holding any official or parliamentary position, initiated a process of bringing six states at the heart of Europe to take what could have been a great step towards the European federation which had not even entered his mind until 1940. His reaction was to conclude that, even though Germany and the Benelux countries had ratified the EDC Treaty and were certainly prepared to ratify the EPC, governments and parliaments could not be persuaded to accept the federal project, so it would be necessary to go straight to the citizens with a proposal for a directly elected convention to draw up a European federal constitution. He established a Congress of the European People to secure popular support for it, which was backed by the MFE and by some half of the membership of the EUF. But although a significant number of votes were obtained in elections organised by the Congress in some cities, mainly in Italy but also in Belgium, France and Germany, sufficient support was not secured.

Monnet's reaction to the demise of the EDC had been, on the contrary, to relaunch the building of a federal Europe through sectorial communities. The principal result was the European Economic Community with the common market at its heart; and the process of establishing it was set in train at the Messina Conference in June 1955. Spinelli's immediate reaction was that this was the end of Monnet's influence, with his idea of federation by steps and stages.[11]

The proposal for the common market had, however, already been incorporated in the Draft EPC Treaty which, on Dutch insistence, provided for the progressive establishment of a common market among the member states.[12] Thus, although not originally envisaged by Spinelli, it was a by-product of his initiative to establish a political federation: an early example of a synergy between his and Monnet's approaches to the building of a federal Europe. By 1962 he recognised that, with the EEC, Europe was, though 'in a strange and precarious way coming into existence', and he left the European political scene for a few years, in order to rethink his approach to 'the European problem', while, at the same time, he endeavoured to 'inspire and influence the political ciass'.[13] He taught at the Bologna Center of The Johns Hopkins University, he wrote *The Eurocrats,* which analysed the current crisis in the Community and showed that the Commission had become the servant of the Council of Ministers rather than the Community's driving force;[14] and in 1965 he established the Istituto Affari Internazionali, of which he was President until 1970.

Meanwhile, until his resignation in 1969, President de Gaulle exploited France's pole position to block the Community's development, but as the end of that Presidency approached, Spinelli began to look for ways to realise his intention to return to the Community in a leading political role.

This process began when he was appointed political adviser to Pietro Nenni, who became Italian foreign minister in December 1968. A few months earlier Spinelli had become enthusiastic about an idea for a European Political Community in a new form, which had emanated from the Federal Trust: the successor of the Federal Union Research Institute at which Beveridge and Robbins had discussed the ideas that launched Spinelli on his federal odyssey. This was a project for a Community to be established in parallel with the EEC, from which Britain had been excluded by de Gaulle's veto, with powers in the fields of foreign and security policy, money, and defence technology, together with some federal reforms of the institutions such as strengthening of the European Parliament, to be merged with the EEC when de Gaulle should cease to be President George Brown, until recently Foreign Secretary, also became enthusiastic about the idea and Spinelli arranged for him to visit Rome and meet the principal party leaders, leading members of the government and President Saragat. Brown was warmly received and Nenni was particularly favourable, so when Saragat and Nenni came to London for a State visit in April 1969, a declaration proposing such an initiative, which Spinelli had a hand in drafting, was on the agenda [15] n the second day of the visit, however, de Gaulle resigned. The focus immediately switched to the prospect of British membership of the EEC; and the idea of the parallel community became redundant, though the declaration did retain the proposal for direct elections to the European Parliament[16] but Spinelli had launched his return to a remarkable decade and a half of leading political influence in the Community.

SPINELLI AND THE COMMISSION

In June 1970 the Italian government, accepting Nenni's judgement, nominated Spinelli as a member of the Commission. He was given charge of industrial affairs, technology and research; and environment was soon added to the list. He dealt capably with the affairs of his portfolios and identified ways of using the Commission's powers for innovative ends. Thus as Commissioner for the environment, he invoked the rules of competition to prevent polluting enterprises from gaining an unfair competitive advantage, introducing the principle that the polluter pays four decades before it became generally applicable under Community law; and he used his responsibility for technology to jolt the Commissioner for competition policy into launching the Community's first challenge of a globally dominant company, by taking up the case of IBM. But he failed to secure the Commission's backing for such proposals as the initiation of movement away from support for farm prices to support for farmers for taking care of their land, which was not applied until twenty five years later; and he was in general frustrated by the inertia of a Community still dominated by the veto and the intergovernmental habits entrenched by de Gaulle.[17]

Within a month of coming to Brussels, however, he had demonstrated that his overriding interest was to break through that inertia by a political initiative, when he proposed that the Commission prepare a project for the development of the Community's institutions, starting with the introduction of budgetary and legislative powers for the European Parliament, and thus demonstrating the need for European elections which should create an 'authoritative interlocutor for the governments in the political construction' of Europe;[18] and he was particularly vexed by Commissioners' resistance to the idea. But a year later they approved his proposal for appointing a study group on institutional problems with the distinguished French constitutional lawyer Georges Vedel as its president.[19]

Shortly afterwards Spinelli again succeeded in imposing his will on a reluctant Commission, this time regarding a key appointment rather than a question of high politics. His Chef de Cabinet, Gianfranco Speranza, died suddenly and he nominated as successor Christopher Layton, whom he had got to know well following their participation in a number of Federal Trust conferences. This caused consternation in the Commission, as it would give the post to a British national over a year before the UK was to join the Community. Commission President Malfatti reflected the views of other Commissioners and senior staff when he demurred, pointing out that such posts were always given to nationals of member states and that, following the normal practice, Layton would moreover participate in meetings of the Commission itself when Spinelli was unable to attend. Spinelli stood his ground, affirming that 'it would be difficult to find somebody better suited to this function'. So he told Malfatti that the minimum he could accept would be a provisional status for Layton, to become definitive when the Treaty was signed a few weeks later. Rather than face a confrontation in the Commission, Malfatti consented and Layton started work.[20] While this incident demonstrated Spinelli's determination to make his judgement prevail over bureaucratic norms that were without legal foundation, it was also an example of the warm and high regard for British people that he had retained since he first encountered their federalist literature when, in 'the dark winter of 1940-41', as he put it, 'they were becoming transfigured in the eyes of all European democrats into their "patria ideale"'.[21]

The Vedel study group's report, delivered in the spring of 1972, recommended strengthening the institutions through majority voting in the Council and legislative codecision by Council and Parliament but Spinelli was not satisfied with it, in particular because the study group, preferring to put forward what it believed governments might accept, proposed only limited scope for the majority voting and codecision, and had modest ambition for the Parliament, whereas Spinelli was increasingly insistent, consonant with the view that he had already formed in the 1950s, that the constituent role for the citizens' representatives should be the prime institutional objective.[22] In 1977 he was to refer approvingly to Willy Brandt's proposal that the parliament should become a 'permanent constituent assembly' ^

The crucial decision which enabled Spinelli to start moving the Parliament in that direction was taken in December 1975 when a summit meeting of the then nine member states decided on direct elections to the European Parliament, which were

held in June 1979. Spinelli's mind was immediately focused on his next step: to become a member of the Parliament and thus play the leading role in drafting a European constitution

SPINELLI, THE EUROPEAN PARLIAMENT AND THE COMMUNITY BUDGET

Spinelli had already noted with interest the shift of the Partito Comunista Italiano towards becoming a normal player in democratic politics, with its accompanying development of eurocommunism. So he agreed to stand as an independent on the Party's list for the June 1976 elections to the Camera dei deputati which, before the direct elections three years later, was a necessary step towards membership of the European Parliament. When I asked him why he had joined the communists again, his answer was 'I didn't join them; they joined me', referring of course to the fundamental political change in the party since it had expelled him forty years before, and he added that he had insisted on his complete independence of the party line.[24] He was, incidentally, to tell me iater that the groups from which the most effective support came in his battle for the Draft Treaty on European Union were Italian Communists and, then predominantly europhile, British Conservatives.

So in June he became a member of the Camera and in October it elected him a member of the European Parliament, where his aim was, of course, to secure its support for a European federal constitution. But he realised that the first step had to be to 'radicalise', as he was to put it, the MEPs in order to prepare them for the struggle,[25] and his main instrument for this was to be the Parliament's recently acquired powers over the Community's budget, in order to demonstrate the need for institutional reform

In his interventions as a Commissioner, he had already shown the importance he attached to the subject of the budget. He had in mind the significance of the 'power of the purse' in the development of the British parliamentary democracy, stemming from the middle ages when the king summoned parliament only if he needed money.[26] The financial treaties of 1970 and 1975 had ensured that the EP gain some right of budgetary codecision with the Council; and apart from the ultimate deterrent of dismissing the Commission, this was the Parliament's only significant power, it could propose amendments to the budget for agriculture and expenditure arising from external commitments, but that would require the support of a qualified majority in the Council, which was almost unobtainable given the strength of the agricultural lobby. Amendments relating to any other item would, however, pass unless a qualified majority voted against, provided that Parliament respected the total of the budget given by the Council. Either way, the Parliament could at its second reading reject the Council's resubmitted version by a two-thirds majority, in which case the monthly rate of total expenditure would be frozen at the previous year's level and the whole procedure would begin again.

Spinelli's mastery of these technical complexities, backed by his willpower, enabled him to lead the Parliament in challenging the Council's gross bias against spending

on anything other than agriculture. Already in 1977 he insisted that the Parliament use its powers as the Treaty by then allowed and won a vote to start redressing the balance in 1978. In July 1978 he intervened in a similar sense in a debate on the Council's draft for 1979; and the next day, demonstrating the connection between the two, he announced his impending battle for the Parliament's constituent role.[27] The first significant impact of his leadership in budgetary affairs was that the Parliament voted to double the appropriations for the regional fund: a proposal welcome to enough member states to prevent a qualified majority for its rejection.

A second impact was more dramatic. The procedure for the 1980 budget started not long after the first direct elections in June 1979; and Spinelli, duly elected on the PCI's list, found that the newly elected MEPs responded well to the demand that the Parliament make full use of its budgetary powers. So Parliament amended the Council's draft, in order to cut agricultural expenditure substantially, while raising non-agricultural expenditure by ecu 311 million. The Council rejected the agricultural cuts and reduced the increase in other expenditure to ecu 85 million; and Parliament then rejected the budget in its entirety. The Commission presented a new draft in February 1980 but the Council delayed its response until July, when it adopted a budget that slightly moderated the agricultural spending and provided only a small increase for the regional fund. But it was an altogether inadequate outcome; and the delay had moreover kept the Parliament's own budget for half a year at the average rate of expenditure in 1979, which, since the direct elections had substantially increased the number of MEPs, seriously constrained its operations. The effect was, as Spinelli had foreseen, to radicalise many MEPs into accepting that Parliament should initiate a fundamental reform of the Community system [28]

THE DIRECTLY ELECTED EP AND THE MAKING OF THE DRAFT TREATY ON EUROPEAN UNION

Spinelli was, three decades after his initiative for creating a European Political Community in the early 1950s, once again at the centre of a major endeavour to federate Europe. But this time the Monnet method of building federal Europe by a series of steps had provided him with a directly elected Parliament to act as a constituent, and, aged seventy five, he now had not only an idea for achieving it in the form of a treaty to establish a federal European Union but also a capacity for leadership through persuasion as well as example; and, in order to get the Parliament's structures and party groups on board for the voyage, he realised that he should begin by securing the commitment of a sufficient core of individual MEPs to the idea.

He opened his campaign in May 1980 in a debate on the budget, when he judged that their treatment by the Council had irritated MEPs sufficiently, by declaring that the Council's behaviour regarding the budget was such that the Parliament must initiate reform of the institutions: if this was to be done by the governments ignoring the Parliament, the result would be an intergovernmental reform that would change nothing; if by Parliament, it would deliver stronger, supranational institutions capable of dealing with the problems. He followed this with a letter to

all MEPs and an invitation to a dinner at the Restaurant Crocodile, which was attended only by three other Italians, three British and two Germans, who did however found the Crocodile Club to promote the idea.[29] Membership grew, regular weekly meetings were held and by the end of the year some eighty had expressed interest. A resolution was drafted for MEPs to sign, proposing an ad hoc working party representing all political groups and currents of opinion, to devote itself to the task of drawing up a constitution to present to the member states; and by June there were a hundred and seventy nine signatures, from all the significant party groups. But the largest group, the Christian Democrats, was under-represented, evidently because, having been prominent in the Parliament's federalist initiatives, they saw Spinelli as an interloper. In discussion with them, however, Spinelli discovered that they would be satisfied if the resolution proposed a full parliamentary committee rather than a less formal working group, which he was ready to concede -and which was surely an important improvement.

The Parliament approved the resolution and the Committee on Institutional Affairs started work in January 1982, with a strong membership, balanced among the party groups and including three chairs from other committees. Spinelli wished to emphasise broad support rather than over-identification with himself. So chapters on the several aspects were drafted by six co-rapporteurs from the different party groups, within the framework of a basic general draft provided by himself as genera! rapporteur, underlining the principles of democratic and effective institutions and of competences attributed according to the principle of subsidiarity. The Committee repeatedly discussed and revised all the reports, until a full draft report was collated and edited by Spinelli, and it was debated, amended and approved by a large majority in the Committee. This vast task was completed and presented to plenary session, which, after discussing 185 amendments and adopting a few of them, approved the resolution in September 1983 by 202 votes to 37.

Four lawyers then worked with Spinelli on drafting a legal text, which included Article 82 stipulating that the Treaty could enter into effect when ratified by over half the member-states containing two-thirds of the Community's population. That was of course designed to prevent the whole enterprise from being torpedoed, like the EPC in 1954, by the veto of one or two member states. Knowing that this would be controversial, Spinelli had kept it until this stage so that MEPs could both appreciate the importance of the project and be confident that its implementation was legally well enough founded. That strategy was vindicated on 14 February 1984 when the plenary approved the legal text by the yet larger majority of 237 to 32.

THE PARLIAMENT'S DRAFT TREATY

Apart from Article 82, by-passing the veto on treaty amendment, the various provisions of the Draft Treaty establishing the European Union did not break with the method of building on the foundations of the European Community. Indeed many of the provisions have been put into effect in subsequent amending treaties.

The distinction was, rather, in the scale of what was proposed, designed as a radically new departure to create a more powerful, democratic and effective Union

Thus the European Union would inherit all the laws, practices and institutions of the European Community that were compatible with the new Treaty. The European Council would decide its own working methods and a new function would be to nominate the President of the Commission, who would select the list of other Commissioners to be presented for approval by the Parliament. The Council would decide mainly under the procedure of qualified majority and in legislative codecision with the Parliament. The Commission would be strengthened and the Court of Justice aided by a Court of First Instance. The division of powers between Union and member states would follow the principle of subsidiarity. There would be a monetary union and timetable for completion of the internal market; and the provision for environmental and social policies would be more explicit. The distinction between agricultural and other expenditure would be abolished and the Union would have power to raise its 'own resources'. These provisions were all in the line of the Community's federal development. But cooperation in defence and political aspects of foreign policy was to be the responsibility of the European Council, which was to determine its own procedures, i.e. to work on a basis of consensus until it should decide otherwise

Spinelli had carefully planned the next steps, towards winning enough support to ensure ratification of the Draft Treaty. The Parliament secured backing from the European associations of employers and trade unions as well from other elements of civil society. The Treaty was presented to member states' parliaments, was generally well received and was approved as it stood by the Belgian and Italian parliaments. But the breakthrough came when, two months after the European Parliament had approved the Treaty, Spinelli together with the President of the Parliament, Piet Dankert, and of the Institutional Committee, Mauro Ferri, visited President Mitterrand. Spinelli believed that French leadership would be the key to success. So he outlined the unique role that France, and hence Mitterrand himself, could play in launching the process of ratification and he proposed that Mitterrand should make a statement to that effect in his speech to Parliament in May 1984 as the current President of the European Council Mitterrand was evidently impressed by what Spinelli said because he ended that speech by expressing his support for the Draft Treaty, adding that 'France is available for such an enterprise'; that he, as President, was willing, on behalf of France, 'to examine and defend your project, the inspiration behind which it approves[1]; and, implicitly accepting the by-passing of the veto through Article 82, that consultations should begin leading up to a conference 'of the member states concerned'.

Meanwhile Parliament's delegation had visited Bonn, where Spinelli found parties and members of the Bundestag largely supportive. But the reaction of the Chancellor's office was that the time was not yet ripe to consider alternatives to ail the member states going forward together, with particular mention of the occupying powers, i.e. the UK as well as France. The preference for steps taken by all member states was a settled element in Germany's European policy;[31] and it may

well be that the political situation in the Soviet Union, where Gorbachev was to succeed to the leadership in a year's time, weighed heavily with Chancellor Kohl, who had long combined what seemed to many to be, for his generation, the contradictory ambitions of achieving both European and German unification - the latter requiring the consent of all four occupying powers.[32]

Mitterrand then secured the agreement of the European Council in June to set up an Ad Hoc Committee of the heads of governments' personal representatives, which became known as the Dooge Committee after the Irish Senator who chaired it, to prepare the ground for the proposed conference; and Mitterrand appointed as his own representative Maurice Faure, who had been one of the signatories of the Rome Treaties and could be relied on to draft a report for the Committee incorporating the main features of the Draft Treaty. This he indeed did in the Committee's Interim Report, presented to the European Council in December 1984, with the reservations of the British, Danish and Greek members expressed in numerous dissenting footnotes.

Spinelli had by now identified Germany as the 'weak point' among the states whose support for the Draft Treaty was necessary;[33] and Kohl proposed postponement of the decision on the Committee's final report, with presentation only to the foreign ministers in March and to the European Council not until June. Spinelli perceived that this delay was a danger for the Draft Treaty.

FROM DRAFT TREATY TO SINGLE EUROPEAN ACT

The destiny of the Draft Treaty had indeed been profoundly affected by another decision of the European Council under Mitterrand's Presidency: to appoint Jacques Delors as President of the Commission starting in January 1985. Delors was determined to get the Community moving again after two decades of relative stagnation but, like Monnet, he sought what he thought politically possible while being at the same time necessary, whereas Spinelli put all his effort into making his vision of the necessary possible. So Delors spent the latter part of 1984 visiting the heads of member states' governments to ascertain which they would accept among what he identified as four major necessary projects monetary union, common defence policy, reform to make the institutions more effective and democratic, or completion of the internal market.[34] Needless to say, the one that gained unanimous assent, including that of Mrs Thatcher, was the single market. So Delors began his Commission Presidency preparing, with great speed and energy, a very detailed White Paper on a programme for completing the internal market by 1992, for presentation to the European Council in 1985.

Spinelli was encouraged when Delors told him, in September 1984, that he was now convinced that institutions were decisive[35]. But Delors was doubtless thinking of institutional reforms that would be required to make a project such as the single market effective, rather than those of the Draft Treaty as a whole; and this offered a

way through Kohl's dilemma by providing for a significant reform which ail the member states were likely to accept.

Delors had the advantage of a close relationship with Mitterrand, including recent service as finance minister in his government; and this, combined with the Presidency of the Commission, helped to give him privileged access to Kohl. So it was perhaps not surprising that before the meeting of the European Council in June, both Kohl and Mitterrand made it known that they favoured reforms such as a move towards qualified majority voting in the Council, increases in power for the Commission and the Parliament, and an extension of Community competences, corresponding to what was to be required for what became the Single European Act rather than the full Draft Treaty.

This evidence that Mitterrand had abandoned the Draft Treaty was extremely disturbing for Spinelli, who underwent a major cancer operation on 22 May which seriously weakened him throughout the summer and prevented him from travelling until October Mrs Thatcher, who preferred trying to create the single market through a 'gentlemen's agreement' rather than treaty amendment, was against the proposal for an intergovernmental conference. But the Italian presidency called a vote, in which the six founder states plus Ireland prevailed over the negative votes of Britain, Denmark and Greece. While this was encouraging, the IGC was based on the Commission's White Paper and the Dooge Committee's report, not the Parliament's Draft Treaty. So the main institutional reforms incorporated in the Single European Act agreed by the European Council in December 1985 were confined to provision for qualified majority voting on single market legislation, a 'cooperation' procedure that gave the Parliament a foot in the door to legislative power and an assent procedure for accession treaties and association agreements; and there were some new competences in fields such as the environment, social policy and a fund to support the Community's less-developed regions, together with a commitment to the aim of monetary union.

Spinelli's first journey after his operation was to Bonn, in early October, where he was well received at the Bundestag, which had however delayed delivering its report, recommending that the Draft Treaty be the basis for the government's position, until after the IGC had been completed - perhaps because the Christian Democrats wished to express their support for the more federalist project while not embarrassing Kohl before the day of decision on the Single Act in the European Council. Spinelli followed this with a visit to Brussels for lunch with Delors, who said that not only Britain but also France and Germany were now opposed to the Draft Treaty and that the Commission, more realistically than the Parliament, was seeking a compromise; and after the European Council's meeting, Delors told the Parliament that what had been agreed was not enough, but nevertheless a significant step.

The Single European Act was signed in February 1986. Spinelli tried, despite his failing health, to rally MEPs into promoting a campaign to secure support from a group of member states for giving the Parliament a constituent role after the next

European elections. But MEPs no longer had the stomach for it.[37] So he died on the twenty third of May, believing that the result of all his efforts had been 'only a miserable little mouse, which many suspect is a dead mouse'.[38]

SPINELLI'S LEGACY

The legacy of the second great episode of Spinelli's European federal odyssey, from 1970 to 1986, was twofold. He put the idea of a European constitution back on the political map from which it had been deleted since the mid-1950s, and he made a major contribution to the relaunching of the process of the Community's federal development, after the stasis initiated by de Gaulle.

Delors, in his *Mémoires,* was to express himself as 'surprised and hurt' that Spinelli had criticised the Single European Act so severely, pointing out that, without the impact of the Draft Treaty, he would not have been able to insert so many 'factors of progress' in it.[39] The SEA did indeed initiate a period of dynamism in the Community during which important federal elements of the Draft Treaty came into effect. The Act's apparently modest institutional reforms led on, through subsequent treaties, to the application of the principles of qualified majority voting and codecision for most legislative decisions; to nomination by the European Council of the Commission's President subject to approval by the Parliament; and to the establishment of the Court of First Instance. Subsidiarity became a basic principle for the division of responsibilities between the member states and what is now called, as in the Draft Treaty, the Union. The Single Act's commitment to 'the progressive realisation of economic and monetary union' was honoured by the creation of the euro and the European Central Bank, for which British and Danish vetoes were circumvented by what amounted to a specific application of the principle of Article 82; and there is now treaty provision for this precedent enabling member states wishing to go farther and faster towards a federal polity to do so.

All this confirmed the constructive synergy of Monnet's and Spinelli's approaches to the building of a federal Europe. It had been Monnet's creation of the ECSC and initiation of the proposal for an EDC that gave Spinelli the opportunity to promote his project for a federal EPC; and from this in turn emerged the project of the common market for the relaunching of Monnet's Community process, with the successful extension of its scope in the EEC. It was thanks to the provision in the ECSC and subsequent Treaties for direct elections that Spinelli was able to go so far towards realising, in the form of the Parliament's Draft Treaty, his vision of the citizens' representatives drafting a federal constitution, which led on to the federal elements in subsequent treaties, as well as keeping the aim of a federal European constitution on the agenda.

Spinelli recognised this synergy when he said, on the day after the Parliament's first massive vote in favour; of the Draft Treaty in September 1983, that 'Monnet has the great merit of having built Europe and the great responsibility to have built it badly',[40] and while it was surely not feasible in 1950 to 'build Europe well' in the full

sense that Spinelli doubtless had in mind, his radical initiatives in 1951-53 and 1981-84 not only kept the aim of a European federal constitution on the agenda but were also major impulses towards building the Union better. Twenty years later the Convention put the idea of a constitution on the agenda again, though as the name for a less federal and more complicated project than the Parliament's Draft Treaty, and the outcome is almost certain to be some further federal steps. So the final destination of his odyssey is not yet in sight. But his life remains an inspiration for those who are continuing the journey, and in particular for those who wish to complete it

[1] Altiero Spinelli, *Come ho tentato di diventare saggio lo, Ulisse* (Bologna: Il Mulino, 1984), pp 307-8; in English in John Pinder (ed), *Altiero Spinelli and the British Federalists. Writings by Beveridge, Robbins and Spinelli 1937-43* (London: Federal Trust, 1998), p.4

[2] Lionel Robbins, *Economic Planning and International Order* (London. Macmiiian, 1937) and *The Economic Causes of War* (London Jonathan Cape, 1939). See also Altiero Spinelli, The United States of Europe and the Various Political Tendencies', in Pinder, ibid., pp 87-119

[3] Altiero Spinelli and Ernesto Rossi, *Il Manifesto di Ventotene* (Milan Mondadori, 2006), pp. 11-38, and Pinder, ibid., pp 73-85

[4] Lucio Levi, 'Altiero Spinelli: fondatore del movimento per l'unita europea', in Spinelli and Rossi, ibid , pp 165-240, here p 179

[5] Walter Lipgens and Wilfried Loth (eds), *Documents on the History of European Integration, Vol 3 The Struggle for European Union by Political Parties and Pressure Groups in Western European Countries 1945-1950 (*New York and Berlin: de Gruyter, 1988), p 173

[6] Luigi Vittorio Majocchi and Francesco Rossolillo, // *Parlamento europeo* (Napoli: Guida editori, 1979), pp 46-9, with annexed minutes of the meeting of foreign ministers,

pp 173-91

[7] Altiero Spinelli, *Diario europeo 1948/1969,* a cura di Edmondo Paolini (Bologna Il Muiino, 1989), pp 140-3.

[8] Carl J. Friedrich, 'Introduction', in Robert R Bowie and Carl J. Friedrich (eds), *Studies in Federalism* (Boston and Toronto: Little Brown and Company, 1954), pp xxvii, xxix

[9] Spinelli, *Diario 1948/1969,* pp 170-1

[10] Ibid., pp.167-8

[11] Ibid.,p 269

[12] See Richard Griffiths, *Europe's First Constitution. The European Political Community, 1952-1954* (London: Federal Trust, 2000), pp 85-90, 214-15

[13] *Diario 1948/1969,* p.423; Lucio Levi, op cit, p.236

[14] Altiero Spinelli, *The Eurocrats. Conflict and Crisis in the European Community* (Baltimore: The Johns Hopkins Press, 1966)

[15] Edmondo Paolini, *Altiero Spinelli; Appunti per una biografia* (Bologna; Il Mulino, 1988), pp.178-9

[16] See Richard Mayne and John Pinder, *Federal Union The Pioneers - A History of Federal Union* (Basingstoke: Macmilian, 1999), pp.181-4

[17] Evidence from Christopher Layton, Spinelli's Chef de Cabinet 1971-73, Director in the DG for Technology and Industrial Affairs 1973-81.

[18] Spinelli, *Diario 1970/1976,* a cura di Edmondo Paolini (Bologna: Il Mulino, 1991), p 25

[19] Ibid, pp192, 195

[20] Ibid, pp202, 211-12

[21] Spinelli, *Come ho tentato di diventare saggio,* p 311

[22] *Diario, 1970/1976,* pp 278-79, 295-98

[23] In a speech to the Camera dei Deputati on 10 February 1977, cited in Edmondo Paolini, op cit in n 15, p.236

[24] Spinelli provided a full explanation of his relationship with the PCI in *Come ho tentato di diventare saggio,* pp.255-57

[25] *Crocodile newsletter,* No 1, 10/1980, p 11, and Richard Corbett, *The European Parliament's Role in Closer EU Integration* (Basingstoke and New York: Macmillan Press and St Martin's Press, 1998), p.142.

[26] Evidence from Christopher Layton.

[27] Spinelli, *Diario 1976/1986,* a cura di Edmondo Paolini (Bologna: Il Mulino, 1992), p. 1327. For his speeches in Parliament on both budgetary affairs and the EU Draft Treaty, see Altiero Spinelli, *Speeches in European Parliament,* Pier Virgilio Dastoli (ed), (Brussels: Communist and Allies Group in the European Parliament, n d), listed on pp. 254, 255

[28] See Corbett, op cit, pp. 97-99 Chapters 6-9 of Corbett's book give an authoritative account of the Draft Treaty from start to finish.

[29] *Diario 1976/1986,* p. 496

[30] Corbett op cit, p 177

[31] See for example Simon Bulmer, Charlie Jeffery and William E. Patterson, *Germany's European Diplomacy: Shaping the regional milieu* (Manchester: Manchester University Press, 2000).

[32] Interview with Helmut Kohl by Christopher Layton, then Editorial Writer on European Affairs for *The Economist,* in early 1960s

[33] *Diario 1976/1986,* p 1117

[34] Jacques Delors, *Mémoires* (Paris: Plon, 2004), p 185

[35] *Diario 1976/1986,* p 1072.

[35] Corbett, op cit, p 215 and Spinelli, *Diario 1976/1986,* p 1217

[37] *Diario 1976/1986,* pp 1299, 1312-13

[38] Altiero Spinelli, *Discorsi al Parlamento europeo, 1976-1986,* a cura di Pier Virgilio Dastoli (Bologna: Il Mulino, 1986), p 369

[39] Delors, op.cit, p.175.

[40] Interview with Michael Burgess on 15 September 1983, cited in Burgess, *Federalism and the European Union. Political Ideas, Influences and Strategies in the European Community, 1972-1987*(London: Routledge, 1989), pp.55-6

Paolo Ponzano:
The 'Spinelli' Treaty of February 1984: the Constitutionalisation of the European Union is launched

INTRODUCTION

On 14 February 1984, at the instigation of Altiero Spinelli, the European Parliament approved a draft Treaty launching the process of constitutionalising the European Union. That initiative led first of all to the revision of the Treaties establishing the European Community (the Single Act; the Treaties of Maastricht, Amsterdam and Nice) and, subsequently, to the Constitutional Treaty of 29 October 2004.

Altiero Spinelli's constitutional endeavours (i.e. to endow the European Community with a constitution-style document) took place at a time when the European Community was embroiled in negotiations on the size of the UK's contribution to the European budget, reform of the common agricultural policy and the increase in the Community's own resources (not to mention the negotiations on the accession of Spain and Portugal). Clearly, these were the very same problems as those bedevilling the Union in 2005 during the difficult negotiations on the multiannual financial perspective for the years 2007-2013.

In those days, the European Parliament was frustrated by the fact that, despite being elected by direct universal suffrage, it had no real power of political influence over the European decision-making process (the sole exceptions, albeit of an essentially negative nature, being the power to reject the budget adopted by the Council and the power of censure over the Commission, but without being able to influence its investiture). Altiero Spinelli's idea was for the European Parliament to abandon its merely consultative role and 'spearhead' the constituent process within the Community. It should generate momentum resulting, if not in the immediate adoption of a European 'Constitution', then at least in a radical reform of the European institutions as conceived in the 1957 Treaties of Rome. In other words, Parliament would take the initiative in lending new dynamism to European integration by designing a 'new Treaty' and not merely amending the detail of the existing Treaties.

THE SPINELLI PROJECT

Rereading the draft text adopted by the European Parliament in February 1984 at the instigation of Altiero Spinelli enables us to rediscover how extraordinarily up-to-date it is and, at the same time, the amount of influence it was to have over subsequent amendments to the Treaties of Rome. The topical nature of the Spinelli

text lies both in the method of drawing up the Treaty and in the content of many of its provisions.

In the early 1980s, not without analogy with the current situation, the European integration process was bogged down by arguments over the UK's financial contribution, reform of the agricultural policy and the increase in own resources. Moreover, the Community was heading towards its third enlargement - to take in Spain and Portugal - without at the same time seeking to strengthen its institutional mechanisms and competences. On the other hand, although the European Parliament had been elected by direct universal suffrage in 1979, its essentially consultative powers had remained unaltered. One exception, the power to reject the budget, had proved to be a blunt weapon since the Council had been able to adopt a new budget similar to the one rejected by Parliament. The power of censure over the European Commission would likewise prove to be a blunt weapon, in that the Member States managed to nominate a new College of Commissioners that was not necessarily any more acceptable to the European Parliament than the previous one (given that, unlike nowadays, Parliament did not have the power to approve the appointment of a new Commission). Therefore, as has been pointed out, the European Parliament ran the risk of becoming '*une Assemblée investie d'une responsabilité morale et politique accrue mais dépourvue de compétences lui permettant de l'exercer*'. Altiero Spinelli, an able strategist, acted on this unsatisfactory state of affairs: as early as 1980 he made a speech before the European Parliament starting up a political campaign to equip the European Community with new competences, and its institutions with the means to exercise them. It was in his speech of 25 June 1980, when the budget approved by the Council was rejected, that Altiero Spinelli urged the European Parliament to take control of the European Community's future destiny and launch the initiative of drawing up a 'global reform' of the Treaties of Rome.

I shall confine myself, for the sake of brevity, to outlining the essential stages in the practical action undertaken by Altiero Spinelli:

a) establishment of the 'Crocodile Club', an all-party group of forward-looking MEPs (which harked back to the dividing-line between innovators and conservatives already present in the Ventotene Manifesto);

b) establishment of an 'ad hoc committee' within the European Parliament tasked with drafting the proposed Treaty;

c) intense lobbying of top-ranking politicians, such as Enrico Berlinguer, Willy Brandt and Leo Tindemans, even including - after the vote in the European Parliament - François Mitterrand, who struck Spinelli as the key political figure most likely to support the Treaty, on account of his personal background and his position as French President. Spinelli's strategy bore fruit when Mitterrand stated in a speech in Strasbourg on 24 May 1984: '*M'exprimant au nom de la France, je la déclare prête à examiner votre projet, dont l'esprit lui convient*'.

Mitterrand's statement, reread today, may be interpreted in a more restrictive fashion, but behind the President's statement there was a French interest in backing the Spinelli project, as revealed by J.M. Palayret, who has consulted the French diplomatic archives of the day. That interest lay in using plans for a more ambitious European Union to counterbalance UK minimalism and to keep open the option of a two-speed Europe (or 'variable geometry'), as suggested by Article 82 of the Spinelli draft Treaty (stipulating that, once the Treaty had been ratified by a majority of Member States representing two-thirds of the total population, the governments would decide by common accord on the date of entry into force and on relations with states not having ratified it). That clause, as can be seen, is more ambitious than Declaration No 30 annexed to the Constitutional Treaty of 29 October 2004, although prompted by the same concern to 'circumvent' the unanimity rule.

Key Aspects of the Spinelli Text

Rereading the draft Treaty of 14 February 1984, one notices that most of its innovative provisions have been taken up in subsequent Treaties or in the text of the Constitutional Treaty of 29 October 2004. Let us list them briefly:

The method used by Spinelli

Altiero Spinelli was the first to maintain that a constitutional type of treaty could not be drawn up by an Intergovernmental Conference according to the traditional diplomatic method. This belief was echoed by the governments when, after the Treaty of Nice, they entrusted a European Convention with the task of preparing a new draft Treaty. Moreover, the Spinelli text sowed the seeds of involvement by national parliaments and civil society, which subsequently became part of the working method of the European Convention.

GENERAL STRUCTURE OF THE TREATY

The Spinelli text takes the form of a new Treaty establishing the European Union and not simply that of a revision of the existing Treaties (unlike the Single Act and the Treaties of Maastricht, Amsterdam and Nice, but like the Constitutional Treaty of 29/10/2004). Thus Altiero Spinelli in fact launched the 'constitutional' process of the Union, as opposed to the mere amendments to the existing Treaties.

Superseding the various forms of political cooperation/integration

Article 1 of the Spinelli draft provides for the creation of a European Union going beyond the three European Communities existing in 1984, the European monetary system and political cooperation. This approach was therefore tantamount to abolishing the three pillars envisaged by the Constitutional Treaty of 2004 (which

will be maintained in the new Treaty resulting from the Intergovernmental Conference currently underway).

European citizenship

Article 3 of the Spinelli text introduces the notion of citizenship of the Union in parallel with national citizenship, the two being intimately connected with one another. This notion was taken up in the Maastricht Treaty on European Union and maintained in subsequent Treaties.

Fundamental rights

Article 4 introduces the notion of fundamental rights derived from the common principles of national constitutions and from the European Convention for the Protection of Human Rights and Fundamental Freedoms. This article refers not only to the classic rights of the ECHR but also to the new economic and social rights guaranteed by national constitutions (as did, at a later date, the Charter of Fundamental Rights promulgated at Nice in 2000 and incorporated into the Constitutional Treaty of 2004).

Penalties imposed on Member States

In order to guarantee observance of fundamental rights, Article 4(4) introduces the principle of imposing penalties on states that violate democratic principles or fundamental rights. This provision predated the articles subsequently introduced into the Treaty of Amsterdam, following on from the penalties imposed on Austria bilaterally by certain Member States.

Institutionalisation of the European Council

Article 8 of the Spinelli draft text makes the European Council an institution of the Union for the first time (whereas the Treaties of Rome make no mention of it at all and subsequent Treaties entrust the European Council with certain duties but without making it an institution of the Union). Not until the Constitutional Treaty of 29/10/2004 was the European Council 'institutionalised'. In this area, too, the Spinelli text proved to be the precursor of future constitutional change.

Methods of action of the Union

Article 10 of the Spinelli draft envisages two methods of action for the Union: firstly, common action in accordance with the classic Community method (Commission proposal, majority vote in Council, codecision with the European Parliament); secondly, cooperation among the Member States in accordance with the intergovernmental method. The innovative aspect of the Spinelli text is that the Union may, by a decision of the European Council, transfer from intergovernmental action to the Community method (see Article 11). This provision

anticipated the so-called '*passerelle*' clauses introduced into subsequent Treaties to facilitate the transition from one decision-making procedure to another one more consonant with the Community method.

The principle of subsidiarity

Article 12 of the Spinelli text introduces for the first time the notion that, in areas of concurrent competence, action by the Union is required only where it is more effective than action by the Member States, in particular when the dimension or effects of Union action extend beyond national frontiers. This is the first clear definition of the so-called principle of subsidiarity, which was later introduced into European law by the Treaty of Maastricht.

Legislative codecision by the Council and the European Parliament

The Spinelli draft introduces the concept of a *European law* (later taken up by the Constitutional Treaty of 29/10/2004), adopted by the two branches of the legislature (European Parliament and Council). A European law is approved through a process of codecision between the European Parliament and the Council, as subsequently provided for by the Treaty of Maastricht (with the difference that the European Parliament votes first and the Council expresses its view on Parliament's text and not vice versa, as under the existing system). This difference can be explained by the desire to give precedence to the lower house - Parliament - directly elected by the citizens, rather than to the Council of Ministers. The Spinelli text also makes provision for a *Concertation Committee* between Parliament and the Council, with the participation of the Commission, as was subsequently introduced by the Treaty of Maastricht (modelled on the German Conciliation Committee between the Bundestag and the Bundesrat).

Investiture of the Commission

The Spinelli text provides that the Commission will take up office once the European Parliament has voted on its investiture. This provision too was taken up and fine-tuned by subsequent Treaties.

The Council of the Union

Article 20 stipulates that the Council of the Union shall be composed of ministers who are permanently and specifically responsible for European affairs. This provision prefigures the Legislative Council envisaged by the European Convention in its draft Treaty, a solution which was not however taken up in the text of the Constitutional Treaty of 29/10/2004.

The Luxembourg compromise on majority voting

One innovative clause of the Spinelli draft that was not taken up in subsequent Treaties is that of Article 23(3), providing for the 'Luxembourg compromise' to be maintained in order to prevent a majority vote during a transitional period of ten years (as long as a vital national interest is recognised as such by the Commission). A trace of this provision, which confirms Spinelli's political pragmatism, can still be found in the so-called '*passerelle*' clauses providing for the transition from unanimity to qualified majority voting after a certain number of years (see Article 67 of the Treaty on European Union). The temporary revival of the so-called Ioannina mechanism in the new Treaty that will emerge from the IGC is likewise inspired by the philosophy behind the Spinelli solution.

Appointment of Commissioners by the President

This provision of the Spinelli text (Art. 25) was not taken up in subsequent Treaties. However, it is an idea that was put forward first by Valéry Giscard d'Estaing during the European Convention and then again by Nicolas Sarkozy in his speech of September 2006, calling for the appointment of a Commission free from constraints of nationality and not subject to equal rotation among the Member States. This proposal, too, was the forerunner of a future solution.

The pre-eminence of European law

Under Article 42 of the Spinelli draft, European law takes precedence over that of the Member States. This provision, which arises out of case-law of the Court of Justice, was echoed in Article 6 of the Constitutional Treaty of 29/10/2004.

Other innovative provisions contained in the Spinelli draft have not been incorporated either into subsequent Treaties or into the 2004 Constitutional Treaty. For example:

The system of financial equalisation

Article 73 of the Spinelli text provided for a system of financial equalisation aimed at alleviating excessive economic imbalances between the regions of the Union. That provision, inspired by Germany's federal system for attenuating differences between the *Länder*, has not been incorporated into subsequent amendments to the Treaties.

Entry into force of the Treaties

Article 82 of the Spinelli text allowed for the possibility of the Treaty entering into force even in the absence of ratification by all Member States. A majority of states representing two-thirds of the population could decide on its entry into force and on relations with the states not having ratified it. This clause sought to amend the unanimity rule laid down by Article 48 of the Treaties then in effect. Although not taken up in subsequent Treaties, it prompted other solutions put forward with a

view to circumventing the requirement for unanimous agreement (see, for example, the solution put forward in the 'Penelope' plan drawn up by a group of European officials headed by F. Lamoureux at the request of President Prodi).

Revision of the Treaties

Article 84 set out a procedure for revising the Treaties by agreement of the European Parliament and the Council, in accordance with the procedure applicable to organic laws. This procedure sought to remove competence for Treaty revision from the Member States and abolished the need for unanimity. It has recently been proposed once again by Andrew Duff MEP for the new Constitutional Treaty.

The revenue system

Article 71 of the Spinelli text provided for the possibility of creating new sources of revenue for the Union without the need to amend the Treaty (an organic law was sufficient). Furthermore, the Commission could be authorised by a law to issue loans. This proposal, highly innovative at the time, still remains so today.

CONCLUSIONS

A rough calculation indicates that about two-thirds of the innovative provisions contained in the Spinelli Treaty have been incorporated into subsequent Treaties. As for the remaining third, about half have been taken up in the Constitutional Treaty or are currently under discussion as provisions to be inserted into the new Treaty scheduled to enter into force in 2009. This rereading of the 1984 Treaty proves not only how absolutely vital the Spinelli text was, but also how far-sighted. Altiero Spinelli initiated the process of constitutionalising the Treaties and put forward innovative solutions, many of which have already been taken up or else recognised as valid solutions for the new Constitutional Treaty. Even though Spinelli initially lost the immediate battle of the 1986 Single Act ('the mouse brought forth by the mountain', as it has been described), he can be said to be winning today's battle to give the European Union a Treaty which is essentially - if not formally - constitutional in nature and will contain most of the solutions envisaged by him and endorsed by the European Parliament in February 1984.

Jean-Louis Quermonne:
Is Differentiated Integration a way forward towards a more (con)federal Europe ?

It may seem anachronistic for this question to turn on the concept of differentiation. Indeed, at the time of the Spinelli project differentiation was not considered as important as it is today. The idea of a 'variable geometry' did not yet feature on the agenda of the Europe of Ten. At most, the founding Treaties recognised Member States' right to take transitional measures to slow down the pace of the integration process. Moreover, as in other areas, the draft Treaty drawn up by the European Parliament in 1984 brought some innovations here, in the sense of broadening the meaning of the concept of differentiation by extending it to the decision-making process. That brought a new flexibility to the federalism underlying the Treaty, which led, as one text succeeded another, to the emergence of an unusual method of federation, somewhere between a Federal State and a Confederation of States, which has still not really been given a name.

THE VARIOUS MEANINGS OF THE CONCEPT OF DIFFERENTIATION

1. In its current sense, differentiation applies to the diversity of Member States' statuses in their relations with the Union. Accordingly, Article 35 of the Spinelli Treaty enshrines the status quo arising out of the founding Treaties by providing that any state may take transitional measures. Prudently, however, it adds that 'such… measures must be designed to facilitate the subsequent application of all the provisions of the law to all its addressees.' Consequently, transitional does not in this case mean by derogation.

Article 66 appears rather more ambitious in that it provides that 'the Union shall conduct its international relations by the method of cooperation where Article 64 of this Treaty [concerning common action] is not applicable' and where those relations involve 'matters directly concerning the interests of several Member States of the Union'. That means that it concerns several but not all of them, thereby introducing differentiation.

Finally, and above all, Article 68 goes a step further by providing that when authorising the European Council 'to transfer a particular field of cooperation to common action in external policy… the Council of the Union, acting unanimously, may exceptionally authorise one or more Member States to derogate from some of the measures taken within the context of common action'. So those are certainly measures of derogation rather than transitional measures. That harks back to the idea put forward by François Lamoureux of creating a 'rearguard' for the event that some states concluded 'enhanced cooperation' agreements among themselves!

The Spinelli project thus leads European integration along the path towards differentiation, as would be illustrated later on by the 'opting out' and 'opting in' clauses introduced in subsequent Treaties.

2. We should, therefore, extend the concept to other areas, such as the diversity of decision-making processes.

We must, indeed, remember that the founding Treaties referred to only one method, the Community method, described here as common action. That is because in the 1970s, on the basis of what were known as the 'Davignon Reports', cooperation among states in external policy had developed outside the Treaties. One of the innovations introduced by the Spinelli project, which is rarely mentioned, is, therefore, that it officially established in a single act the coexistence of two distinct decision-making methods: common action and intergovernmental cooperation on the basis of a distribution of competences laid down in so many words. The Single European Act reiterated that, as its name implies, as did the Maastricht Treaty, in more elaborate terms, with its classification of subject areas into 'pillars'.

While the Maastricht Treaty tended to create a rigid differentiation, the Spinelli Treaty was more concerned with flexibility and introduced a system of what would today be described as 'passerelles'. Thus its Article 11(1) provides that, according to an ad hoc procedure, 'a matter subject to the method of cooperation may become the subject of common action'. Its Article 68(2) even extends that possibility to external policy. Article 11(2), however, does not allow for the inverse procedure, providing that 'in the fields subject to common action, common action may not be replaced by cooperation'. That reflects Altiero Spinelli's wish to move the European Union towards federalism.

3. Lastly, if we look at differentiation in its broadest sense, we must recognise that Article 82 concerning ratification of the Treaty by the Member States raises a question that is extremely topical today. It provides that a majority of the Member States whose population represents two-thirds of the total population of the Communities 'shall meet at once to decide by common accord on the procedures by and the date on which this Treaty shall enter into force and on the relations with the Member States which have not yet ratified'. That implies the possibility of creating a major differentiation of status between the two groups of Member States.

THE SEARCH FOR AN UNUSUAL FORM OF FEDERALISM

These considerations regarding differentiation, which were introduced in and by the Spinelli project, are bound to raise the question of whether they pave the way forward to a confederal or a federal Europe. We are well aware, however, of the unswerving devotion to federalism of the man who inspired the draft Treaty the European Parliament adopted in 1984.

In fact, experience had shown Spinelli during his time in the Commission that serious obstacles lay in the way of promoting the idea of a United States of Europe

on the basis of the model created by the Philadelphia Convention. He had also understood the need to show a sense of realism within the Strasbourg Parliament if there was to be any chance of progress. Hence the introduction in the draft Treaty of provisions that would not be 'set in stone' but that would allow those states that wanted to move forward to do so without being prevented by the veto of others. Resorting to the provisions on differentiation formed part of that strategy.

That led to a procedure that borrowed both from the concept of a Confederation of States, based mainly on the method of cooperation, and from that of a Federal State, based on direct action. As a result, with hindsight, we can spot the beginnings of a 'third way' that is still difficult to define in legal terms. We had made an awkward attempt to describe it as 'intergovernmental federalism'. Today, however, it is described in the terms invented by Jacques Delors, as a 'Federation of Nation States', or better still as a Federation of States and Citizens. Its theoretical basis can be found in the very recent works of jurists, primarily Olivier Beaud.

At present, that search for an unusual European model has certainly been hindered by the refusal of some Member State governments to retain in the draft Reform Treaty the symbols referred to in the text of the Constitutional Treaty. All that counts, however, is reality, while its interpretation is a matter of doctrine.

In truth, the process that began under Spinelli's influence can be identified by comparing European positive law with the model of the Federal State. Now, although in the framework of the latter, Member States' participation in the Federation is limited within a second chamber to exercise of the legislative function, in the European Union that participation extends, within the European Council and the Council of Ministers, to the governmental function. That naturally produces uncertainties in areas where qualified majority voting does not apply. Furthermore, the idea of creating a 'double-hatted' Foreign Minister introduced in the Constitutional Treaty was designed to remedy that dysfunction to some extent by trying to create a synthesis between the powers of the Commission and the Council respectively. Whatever the title, only the future will tell whether he or she will keep the same prerogatives under the new Treaty. If this proves to be a positive experience, there is no reason why it should not be extended to other 'double-hatted' vice-presidents of the Commission in other areas of Union action. That would make it possible to give the Union a 'mixed government' combining, within a single executive body, the prerogatives of the Council and the Commission.

In conclusion, Altiero Spinelli had a remarkable vision of the future: his project was founded on legal precision and coherence, and on the flexibility reflected in the concept of differentiation, and the Treaty he inspired still serves as the matrix of a specific kind of federalism. One day the European states will recognise its nature and that will help them to define the identity of the Union's institutions. If that should happen, they will also have to award Altiero Spinelli the title of 'founding father'.

Philippe de Schoutheete:
The constitutional process after the June 2007 European Council

The first thing to do, in addressing this matter, is to pay tribute to the German Presidency. Thanks to the Chancellor's commitment, the diplomatic expertise of her colleagues, the judicious way in which the country holding the presidency applied its influence, it proved possible to square the circle. That meant that the basic substance of the Constitutional Treaty was safeguarded while its form was radically transformed so as to make it acceptable to those who had rejected it. Clearly, today we are in a much better situation than we were at the beginning of the year.

The German Presidency has done Europe a service. It has relaunched the process. It has inspired new hope. It is worth emphasising that point, especially if, as I am about to do, we take a critical look at some aspects of that relaunch.

There is another point we must consider in the context of this symposium: the current constitutional process is almost exactly the reverse of what Spinelli was trying to achieve.

Spinelli drafted a text that aimed to be clear, legible and coherent. The text that is currently being drafted is deliberately avoiding clarity, legibility and, no doubt, coherence.

The 1984 text was drawn up, in a totally transparent manner, by a democratically-elected parliamentary assembly; it was the first exercise of that kind since the collapse of the EDC. The current text is being drafted by a committee of jurists working entirely behind the scenes.

One of the chief merits of the Spinelli Treaty was that it strengthened the Union's decision-making capacity by making majority voting the general rule (Article 23). The text of the June European Council seems mainly concerned with strengthening blocking minorities by introducing new variants of the Ioannina compromise.

What worries me most, however, is the ambiguity of the texts. Spinelli made a serious attempt to avoid ambiguity, especially in areas that are still causing difficulties, such as the Union's legal personality (Art. 6) and the primacy of European law (Art. 42). In practice, all the European Treaties, whether or not actually concluded and ratified, involve some ambiguity (for example, the system of pillars introduced by the Maastricht Treaty). There is nothing wrong with that as such, indeed it is no doubt inevitable; constructive ambiguity is a traditional method of resolving certain difficult problems in multilateral diplomacy. In this case, however, perhaps we have gone beyond the pale.

The Treaty that is now being drawn up is essentially ambiguous in that it pretends to be quite different from the draft Constitutional Treaty, whereas in fact it differs in terms of form but not substance. It is riddled with other ambiguities, the most striking of which is, perhaps, the one relating to the 'symbols'. We all know that there is a European flag, which flies over this building as over hundreds of others, which features on signs beside roads or bridges throughout Europe and which even appears on the official photo of the President of the French Republic. Yet it turns out to be unacceptable to describe that flag in the Treaty. That is not ambiguity; it is hypocrisy.

I am not trying to moralise here. The situation is worrying because it seems clear that in the long run there will be a price to pay. The current constitutional process began in Laeken in 2001. The declaration the European Council adopted at the time said that 'the European institutions must be brought closer to [the Union's] citizens' and that 'the Union needs to become more democratic and more transparent' because citizens 'feel that deals are all too often cut out of their sight and they want better democratic scrutiny'. Nobody has ever questioned the diagnosis put forward at Laeken, quite the reverse: it largely inspired the Convention's activities. Six years later we are, no doubt, nearing the end of the process and we have to admit that we have not achieved the objectives set out at the time. On the contrary, the final stage is marked by less democratic scrutiny, less transparency, more distance between the citizens and the institutions. That is a deliberate trend, accepted as a necessary condition for government approval. Can anyone really believe it will have no repercussions? That the challenges and risks identified not so long ago will miraculously disappear? That it will not have a knock-on effect on public opinion?

These are the questions we must keep in mind when we look to the future. I am starting out from the idea that the *Reform Treaty* referred to in the conclusions of the June 2007 European Council will in fact be signed this year. That does not mean that there will not be difficulties during the negotiations, and we can even pinpoint the capitals they may come from, but I think it is likely, considering the strong mandate given to the Heads of Government, that those difficulties will be overcome.

On that basis, we can put forward two hypotheses. Either the ratification process runs smoothly, concluding before June 2009, as envisaged in the European Council's conclusions. Or the process is blocked again: everybody knows that you cannot bank in advance on all 27 Member States ratifying a treaty and even the best-informed politicians sometimes get it wrong.

Assuming the first hypothesis, I believe that the Members of the European Parliament (as, indeed, the Members of the Commission) should set themselves the urgent task of intervening actively, by all means at their disposal, in the national ratification processes, whether based on the parliamentary method or on a referendum. It is only by triggering debate and fuelling discussion, by explaining again and again what the Union does, and more importantly what it could do, that we may manage to overcome the popular disenchantment and the distancing of public opinion that the Laeken Declaration had already expressed concern about six years ago. The new Treaty will confirm and increase national parliamentary

participation in the Union's legislative decision-making process. So surely it is only natural to see, in return, members of the European institutions playing a more active part in national debates. That would also be a way of responding to those who question Parliament's legitimacy, utility and representative nature.

At the same time, I believe that we should abandon the idea, put forward all too often, that this Treaty can resolve the Union's institutional problems once and for all. Intellectually speaking, I am not convinced that the complex procedures of the *Reform Treaty* represent the *ne plus ultra* of the Union's constitutional arrangements and will definitively resolve problems that have been debated for decades. Aesthetically speaking, it really would be a pity if the endeavours made to ensure coherence and adequate presentation, for example by Spinelli and by the Convention, were consigned to the dustbin of history and if we inflicted on our fellow citizens, on a long-term basis, the obligation to accept and implement texts that they will continue to regard as largely incomprehensible. Finally, politically speaking, I do not believe that it will in fact be possible to implement certain provisions (e.g. in particular, on the composition of the Commission) without encountering serious objections, leading to renegotiation. It would be an insult to the future to exclude that possibility.

That leaves the hypothesis of another failure to ratify. Would that plunge us into lamentations and nostalgia? I think not. We would have to agree (after two successive failures!) that the time of the 'big' Treaties that amended the powers and procedures of the Union horizontally and in depth is now gone. We would have to accept that it has become impossible to control the ratification process of that kind of text in a Union made up of so many members. We should, therefore, restrict ourselves to 'little' treaties, concerned with specific points. A treaty that confined itself to providing the Union with a solid legal basis, and an effective decision-making process, with the aim of creating a serious energy policy, would no doubt survive even the most exacting referendum. The same would apply to a treaty giving the Union a credible capacity for action to meet the challenge of climate change. Public opinion would support that kind of proposal. Those who may want to progress in other areas or go a step further can already resort to enhanced cooperation, within or outside the institutional framework (the Prüm Treaty is an interesting example in this respect). They would have to say as of now that they have decided to resort to it. Today, those who say 'no' are counting on the continuation and approval of the status quo. If they were convinced that integration will continue in any case, if need be without them, perhaps they would take a more balanced view.

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