



# Is Europe heading towards a federal constitution?

BY UWE LEONARDY

**There** have been ideas and ideals about a European Constitution ever since the original six-member European Community was founded more than four decades ago. Now, for the first time, these ideas are emerging into the realm of political reality—in part because of the anticipated expansion of the EU.

Leading politicians have taken up the challenge.

In May 2000, Joschka Fischer, the German Foreign Minister, got the ball rolling with a controversial speech where he reflected on the next phase in European integration. Shortly thereafter the argument was joined by French President Jacques Chirac and Jacques Delors, former President of the European Commission.

Last fall, shortly before the European Council met in Nice, Prime Minister Tony Blair presented the British response in a speech in Warsaw entitled Superpower—not Superstate. The first to weigh in after the signing of the Treaty of Nice in February was the German Federal President Johannes Rau, with a Plea for a European Constitution in an address to the European Parliament early in April 2001.

Early in May 2001, the German Social Democratic Party—at the instigation of its leader Chancellor Gerhard Schroeder—published a Draft Resolution, Responsibility for Europe which the Party will consider at its Convention in the fall.

Finally, late in May, French Prime Minister Lionel Jospin entered the fray with a series of detailed proposals laid out in a speech in Paris.

## ***Some common ground***

There are vast differences in the proposals put forward by these leaders. But they all agree on a few points—almost all of which are covered by the Treaty of Nice:

The European Union (EU) is a hybrid. Although originating in international law it contains numerous elements of a state's constitution. It has wide-ranging legislative powers which it mainly exercises in the name of so-called "community objectives", i.e. broadly defined political aims rather than clear-cut competence provisions.

At the same time it establishes a comprehensive set of institutions both for the making of the EU's own laws and for co-ordinating functions between the Union and its member states. Its capacity to create laws of its own, which are binding either directly on individual citizens ("ordinances") or on the member states as framework rules ("directives"), distinguishes the EU from all other international bodies.

The "constitution" of the EU is set out in texts of international law, commonly referred to as "the Treaties": first the Treaty on the European Economic Community of 1957, and second, the Treaty on the European Union of 1992 (the Maastricht Treaty), revised by the Treaty of Amsterdam of 1997 and presently under revision again by the 2001 Treaty of Nice.

The Union Treaty distinguishes between 3 component parts of the EU, known as its 3 "pillars": 1) the EC as the centrepiece of full supranational activity, 2) rules on

Joint Foreign and Defence Policy, and 3) provisions on co-operation in the areas of police and administration of justice.

The European Commission is the "guardian of the Treaties" and the "motor of integration", exercising the sole right of legislative initiative and carrying out functions similar to those of the executive branch of a nation-state.

The Council of Ministers (with the European Council of the Heads of Governments at its top) and the (elected) European Parliament now share the right of legislation in most fields. The European Court of Justice has the last word in disputes both on the applicability of EU law itself and on the conformity of national law (including constitutional law) with the supranational rules.

The EC originally had 6 member states. It now has 15. Currently it is expanding, mainly into eastern Europe—with the aim of growing to a possible 27 member states. The existing decision-making process is quite cumbersome. Some cases still require unanimity and many others require qualified majorities in a complicated system of weighted voting. That is why many believe it is necessary to devise a kind of new "European constitution" before the EU gets much bigger.

- a new system of weighting the votes of the member states in the Council;
- a considerable increase in the matters decided by majority voting;
- rules for the future maximum size both of the European Parliament and of the Commission (after EU expansion);
- an “officialization”, though still not in a legally binding form, of a Charter of Basic Rights;
- and a pledge to define the legislative competencies of the EU vis-à-vis its member states in clearer and more calculable terms than exist at present (to be achieved by 2004).

There is also general agreement on the need for more transparency and democracy in the EU-structures.

In addition, nobody is proposing abolishing the sovereign nation-states that make up the EU—whatever its future constitutional shape.

Then there are the many more points where the main players are in disagreement.

### ***A constitution for Europe?***

On the need for a European Constitution as such, Rau, Fischer, Delors and (though vague in substance) Chirac are in favour. Schroeder is silent on the issue. Rau’s plea outspokenly aims at a Federation of National States comprising all member states from its start.

Fischer, however, sees a European Federation as the last step towards integration by a Constitutional Treaty. But he asserts that this step can be achieved only after temporarily creating a centre of gravity—organized under a new European Basic Treaty with a Constitution of its own—for a select group of those member states who are prepared to go ahead and act as a kind of vanguard for the rest.

Delors comes closest to that, while Chirac agrees with the idea of such a Vanguard Group but one that would not have a treaty and institutions of its own. Instead he prefers intensified cooperation open to all—which should end in a European Constitution that would include a Charter of Basic Rights.

In sharp contrast to all of this, Blair refuses to envisage a constitution in a formal document. He wants Europe to be

an economic and political superpower—not, in its constitution and organization, a superstate.

### ***A European “Senate” and an executive branch***

On the future institutional structure the most “federalist” ideas are those proposing a bicameral EU Legislature, which are contained in the German and the British concepts. Rau and Schroeder suggest that the EU Council of Ministers be converted into a Chamber of States (similar to the German Bundesrat) with the present European Parliament as an equally empowered Chamber of Citizens.

Fischer discusses an elected Senate as an optional model for the second chamber. Blair, however, prefers this chamber to consist of members of the national parliaments.

Similar proposals for “indirect election” also come into play in some visions on restructuring the European Parliament. Fischer wants only members of the national parliaments in it, while Delors proposes a (transitional) parliament of the “avantgarde” that would be composed equally of members of national parliaments and of the current European Parliament.

As for an executive branch of government for the EU, Rau and Schroeder want the present Commission to serve that function, while Fischer has floated the option of either developing a European Government out of the present European Council or of having the President of the Commission popularly elected. Jospin suggested that the winning bloc of parties in European elections select a Commission President.

### ***Is a federal structure emerging?***

Where the new Europe really starts to look more and more federal is in the proposals for a division of powers between the EU and the governments of its member states.

All agree that a clear demarcation of legislative powers would be an essential part of a future European Constitution. But legally such a step would entail a profound restructuring of “the Treaties” that govern the EU. Given his general reluctance to go too far on integration, it is not surprising that Blair only wants a

“Statement of Principles” on this matter—a political not a legal document in a “charter of competencies”.

Britain is not alone in having reservations on this point. On the delicate question of sovereignty—whether divided, joint, national or EU—there is a wide divergence of views among the member states. Although Jospin and Chirac disagree on many details, they agree that, in Jospin’s words, they are committed to “making Europe without unmaking France.”

### ***A time to define terms***

When you consider the degree of disagreement it is obvious there is still a long way to go towards a European Constitution and in particular to a generally understood and accepted “federal” one.

Despite this, the Treaty of Nice constitutes a decisive and even compelling point of departure down the road to a “federal Europe”. The Treaty started a public debate on the question of the distribution of powers among different orders of government—a process which it pledges will result in concrete changes by 2004. The agreement to distribute authority and responsibility between different levels of government is the hallmark of a federal system. Once achieved such agreement would become the centre-piece of a federal constitution for Europe.

This debate will inevitably have two main effects. First, it will bring to the surface the reality that the EU is, by its very existence as a supranational body, already a kind of functionally determined federation. And second, it will prove that Delors is only too right in stating that “federalism”, “subsidiarity”, “constitution” and “charter” do not have the same meaning for everyone.

And so, the political debate, as it stands now, is obscured by misunderstandings and sometimes deliberate distortions of those terms.

If the people of Europe are to make a lucid decision about their future they’ll have to arrive at some consensus as to what words such as “constitution” mean in the context of the EU. And to achieve such a consensus, intellectuals, the media and Europe’s political leadership will all have to do their part. ☺