

## **GUEST EDITORIAL\***

### **Unity, Community, Union - what's in a name?**

“That which we call a rose, by any other name would smell as sweet.” Do Shakespeare’s famous words also apply to the various nouns introduced over time to describe the process of European integration? Does “Union” imply the same degree of unity as “Community”? Or has it at least the same potential? The question is of some importance since the Heads of State and Government of the twelve Member States of the European Communities decided in Maastricht, in December 1991, to establish a European Union. Hitherto – indeed, for twenty years! – they had only *talked* about creating a Union, in solemn declarations and in preambles, such as the preamble to the Single Act of 1986/7. But now, after ratification of the “Maastricht” results, we will have union! How does it smell? As sweet?

The Editorial Comments in this issue have already outlined some characteristics of the “Maastricht”-texts. They point to the “fairly hybrid structure” of the Union, which looks like a house half-built “a work in progress, suddenly abandoned by its builders”. That observation is correct and relevant, but it supposes implicitly that there is or was a masterplan, a complete concept that somehow has not been implemented yet. Like Gaudi’s structures, to which the Editorial Comments refer. The point is however that such an agreed masterplan does not exist. But “Maastricht” has not pretended to define the final state

\* With this contribution by Dr Wellenstein, the Editors are delighted to launch a series of occasional Guest Editorials by outstanding experts on community law.

of the union either; on the contrary, the final article expressly provides for another Inter-Governmental Conference in 1996 already, and the very first article speaks of a new step in the process of creating an ever closer union. So Union is a step towards union .... Where does this *confusio in terminis* come from?

From far back. "Nous ne coalisons pas les états, nous unissons les peuples" was one of Jean Monnet's catchphrases. In the preamble of the Treaty establishing the European Coal and Steel Community, the Heads of State of the original six member-countries solemnly declared themselves "resolved .... to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared." The preamble of the Treaty establishing the European Economic Community, five years later, pursues: ".... determined to lay the foundations of an ever closer union among the peoples of Europe." These very same last terms quoted from the 1957-EEC-preamble are now, thirty-five years later, the second indent of the first article of the Treaty of Maastricht.

The sense of the term is still the same, that of a political objective of a general nature. In order to give it a specific substantive meaning, one has to opt for specific common approaches to specific political problems and to devise institutions and procedures to cope with them, like in "customs union" (Article 9 EEC: "1. The Community shall be based on a customs union ... etc.").

In 1969, the concept of implementing the abstract notion of "union" by a concrete union relating to specific tasks, makes some headway. The new Chancellor of the Federal Republic of Germany, Willy Brandt, steals the show of one of the first European "Summits" by suggesting that they examine the feasibility of an economic and monetary union as a next step after the transitional period of the EEC Treaty comes to an end in 1970. This bold initiative is meant to give substance to the triad "achèvement, approfondissement, élargissement" which had been accepted as the "Leitmotiv" of this first meeting of the Six after President Pompidou had replaced General de Gaulle. On the same occasion, another new element enters the orbit of the Six: "European Political Cooperation", and endeavour at systematic but purely intergovern-

mental coordination of the diplomatic activities of the Member States, for the moment – and for a long time to come – not based upon a formal agreement or a binding instrument. Although the main actors in the Community decision-making process and at the highest echelon of this new EPC are the same people, namely the ministers of foreign affairs of the Member States, the two systems are, at least initially, kept totally separate, different venues and dates being chosen for their meetings. But, interestingly enough, they work under the same rotating presidency; EPC is in reality an offshoot of the Communities. One joins EPC by joining the Community, not the other way round. Nevertheless, nobody suggests using the word “union” to describe this new common adventure of the Six. It is and remains “European Political Cooperation”, at least up to December ’91. “Cooperation” surely is the more appropriate term, but “Political” is utterly confusing: the substance of EPC is foreign policy in the narrow sense of the word, diplomacy. That is certainly a political activity, but only one of many.

Let us pursue our excursion to the sources of “union”: When the negotiations for the accession of the United Kingdom, Ireland and Denmark have been completed in 1972, President Pompidou calls another European Summit meeting. The, by now, nine Heads of State and Government adopt a substantial catalogue of good intentions in an elated spirit. The term “union” figures twice in this catalogue: the Summitteers not only decide to pursue the work for monetary union, but also to transform their relations generally into a Union by the end of that decade (“transformer l’ensemble de leurs relations en une Union Européenne”, it sounds so much nicer in French ....).

Here, for the first time, “Union” appears in the Community jargon not as a generic political-moral objective, nor as a specific goal of common policy as in “customs union” or “monetary union”, but as an indication of the form European integration should aspire to in its final stage. It was meant to be a substantive notion of progress on the way to unity, but since it was totally undefined, everything beyond the existing “acquis communautaire” was open to speculation: no wonder that the reports produced by the institutions clearly indicated the lack of clarity of the whole concept.

A next European Summit (since 1974 the Heads of State and Govern-

ment meet three times a year under the name “European Council”) asks Minister Leo Tindemans of Belgium to take up the matter again. But the Heads of State and Government shy away from his conclusions, which are quite bold in the field of foreign policy. All that is left after vain debates is a plan for a European Foundation, which finally fails to be ratified by the Dutch Senate ....

A rose is a rose is a rose ...  
(Gertrude Stein)

But the Community would not be the Community if the story of “Union” had stopped here. The rest of the seventies, it is true, went by without real progress in the conceptual field, energy crises, so-called “re-negotiations” of Britain’s entry-terms, recession, stagnation, and quarrels about the British contribution to the Community budget absorbing practically all energy. Nevertheless, two important innovations – apart from the regular meetings of the “European Council” – succeeded: in the institutional field the direct election of the European Parliament and in the economic area the European Monetary System. Even if the latter was launched outside the Community institutions proper (although in no way without their help and support), both the elections and EMS clearly are very relevant to the concept of ever closer union. The EMS was even meant to consist of further stages, leading gradually to monetary union; but, at the time, the first phase of EMS was already a most useful beacon in a sea of European problems, which were only sorted out gradually in the first half of the eighties.

At last, 1985 brought the breakthrough, and in its wake the Single Act of 1986/7. In its preamble, the Single Act invokes the same ritual wording of 1972 about transforming the relations between Member States into a European Union. Indeed, the Single Act increases the powers of the Commission and the Parliament, increases majority voting in the Council, adds environment policy, technology and cohesion to the tasks of the Community. But the Single Act is not only a breakthrough, it is also a break: the preamble, but the structure of the Single Act itself too, spell out that “Union” does not mean a gradual application of the Community-method to other fields of common activities. On the contrary, according to the preamble, the Union-concept will be implement-

ed in a two-pronged approach, on the one hand on the basis of the existing Communities "with their own rules", and on the other hand on the basis of European cooperation in the field of foreign policy, i.e. EPC. The Communities on the one hand and EPC on the other, logically after reading the preamble, each have their own separate Title (II and III respectively) in the Single Act. How much "union" is there then in this Single Act, and how "single" is it in reality? Or is it just a name, to cover up the *lack* of cohesion in the further development of European integration?

Here we can make the link with what happened in Maastricht. Had the Single Act been drafted there, we would have called it a "two-pillar construction". What came out of Maastricht is, as we all know, a three-pillar-construction, the pillar of justice and home-affairs having been added to the Community-pillar and the Foreign Policy/Security pillar. The Heads of State and Government had promised us (and themselves) "a single institutional framework", but after the experience with the "single act" one should not have been too surprised to find a hybrid construction that is more singular than single, although there is indeed only one set of institutions. The Editorial Comments on page 202 of this issue pointedly speak of an institutional "géométrie variable". We refer to that description in order to avoid repetition.

### **Road ahead**

So there we are. We have (that is to say, after ratification we will have) a Union without real unity, a building half-built with an institutional "géométrie variable" and a "rendez-vous" in 1996 to try to improve on what was achieved in Maastricht. Between today and 1996 the world, especially the European world, will remain in constant turmoil. Enlargement of the Community will occur in those years, at least with two or three EFTA-countries. The inter-governmental conference in 1996 will be even more difficult to manage than Maastricht; thereafter, if membership of the Community grows further, it will become well nigh impossible to adapt the Union-treaty at regular intervals as we have been doing this last decade. 1996 should therefore concentrate on one

issue: how to streamline the institutions so as to be able to absorb, later, a score of additional members without paralysing the decision-making process by sheer weight of numbers. 1996, because of the necessity to deal with the future of the Western European union before 1998, will also have to deal with the relationship with WEU.

It would certainly be highly desirable, but it would also be rash to believe that the then enlarged Community would have the additional strength to overcome the "pillar-structure"; we have seen how the Dutch attempt to introduce a – moderate – unitary structure utterly failed in September 1991, although eight out of the twelve Member States had verbally endorsed this idea in the informal meeting of the foreign ministers in June in Dresden. The division of the negotiations into "EPU" and "EMU" suggested a false symmetry: EMU was well prepared (since twenty years !) on the basis of a clear concept, EPU was a mixed bag, largely improvised and without a common concept, even without a common denominator. It ranged from the ambition to create a common foreign and security policy *ad hoc* extension of Community competences and a separate cooperative endeavour in justice and home-affairs. If ever the term "union" was misplaced, it was in "EPU". EMU ended up neatly embedded in the Community structure, EPU was scattered over the three pillars and as such is not recognizable any more.

If we have to live for the foreseeable future with three pillars, how could things develop? It seems that a neat distinction has to be made between the "domestic" policies and the foreign and security policy. The Editorial Comments on page 202 rightly point to the fact that the Treaty allows substantive elements of "domestic" affairs to be brought over into the Communities, but never the other way round. The Comments also recall that good old Article 235 EEC is still in force, with its potential for extended Community activities. Pressure of events and the turmoil in the world surrounding Europe may well induce a shift to the Community-pillar. For other reasons, the bizarre construction of a social policy "à onze" may well succumb in due time and return to the fold of the normal Community.

A similar shift is hardly to be expected in the field of foreign and security policy. But it is worth noting that the present format, although remaining a separate pillar, is a far cry from the strict and doctrinal

dichotomy of the early seventies. Already in the Single Act, the European Commission fully participates in "European Political Cooperation", in parallel with its formal admission to the European Council of Heads of State and Government in that same instrument. The Maastricht Treaty goes further: the distinction between the Council and the same ministers meeting in "Political Cooperation" not only disappears, but it is the Council (of the other pillar!) which takes the decisions, sometimes even by majority vote, for the Union. The Commission fully participates, but also represents – together with the presidency – the Union abroad and, again with the presidency, informs the Parliament, which is entitled to regular debates and to have its views taken into account.

These provisions are a kind of "trompe-l'oeil": they look like Community procedures, because the same institutions (except the Court of course) come into play. But the essence is missing, the monopoly of proposal of the Commission and a real influence of Parliament.

Nevertheless, these bridges between the first and the second pillar might go a considerable way to overcome the division, unhealthy in itself, between those pillars. But in order to function positively and in a dynamic fashion, this hybrid system supposes a Commission composed and organized so as to be able to play this role effectively and with authority. The future composition of the Commission is, in this respect, of decisive importance.

This is the moment to point to an insufficiently noticed innovation which also came out of Maastricht: the synchronization of the Commission's and the Parliament's terms of office. Without this synchronization, effective from 1994 onwards, the newly acquired influence of the Parliament on the appointment of the President of the Commission and on the constitution of the entire Commission would not have been easy to exercise. But henceforth, a newly-elected Parliament will be involved in the choice of the politicians called upon after that election to man the Commission. The sequence: new elections – new government, so normal in our countries, will also become normal in the Community (read: in the Union). All this will, perhaps more importantly than specific new powers in selected areas, have the potential to raise the political activity in the Community to another level. Perhaps the Union, which shied

away from a bold decision on its political structure and cohesion, will receive some useful impetus through the backdoor exactly from the institutions to which it did not want to give too much additional scope and status.

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