Raquel Valls, A Constitution for Europe? Hardly a new idea!

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Looking ahead to the forthcoming consultative referendum to be held on 10 July 2005, a step that must be taken before Luxembourg ratifies the **Treaty establishing a Constitution for Europe**, it is impossible to ignore the debate surrounding the benefits of the new 'Constitutional Treaty'. For the first time, the people of Luxembourg are being asked to voice their opinion on the European integration process which began in Paris in 1951 when the Six (Belgium, Germany, France, Italy, Luxembourg and the Netherlands) signed the Treaty establishing the European Coal and Steel Community (ECSC). But the debate about the need for Europe to have a Constitution is hardly new.

A comprehensive strategy

Since the end of the Second World War, there have been several successive draft European Constitutions. The common denominator in all these drafts is the desire to create a peaceful, prosperous Europe governed by the rule of law. But the main hallmark has been the type of strategy proposed to achieve that ultimate goal.

It is a *comprehensive* strategy, where all the elements of the European political dimension are defined from the outset. The legal framework has to be established immediately and should preferably represent a union of *peoples* and of *States*, taking the form of a *federation* based on a system of parliamentary democracy. Once the new political entity is thus 'constituted' and has a basic law comparable to that of any State from the Roman-continental legal tradition, it is in a position to develop all kinds of policies: economic, social, cultural, human rights, foreign, security and defence.

Of all the main drafts adopting a comprehensive approach in the post-war period, two, one unofficial and one official, merit particular attention. Neither made it off the drawing board, but both served as a source of inspiration for subsequent drafts. The draft **Federal Constitution of the United States of Europe**, submitted in 1948 by François de Menthon, chairman of the Legal Committee of the European Parliamentary Union (EPU) — a private-law pressure group — originated in the militant action taken by post-war federalist movements which met at the Hague Congress in May 1948. The draft Treaty embodying the Statute of the European Community — drawn up in 1953 by the *Ad Hoc* Assembly instructed by the governments of the ECSC Member States to prepare a draft — envisaged the creation of a single legal entity by merging the ECSC and the European Defence Community (EDC). However, the idea of the '**European Political Community**' had to be abandoned in 1954 when the French National Assembly rejected the draft Treaty establishing the EDC. The comprehensive strategy was undoubtedly too premature.

The small-steps strategy compared with the comprehensive strategy

Compared with the comprehensive strategy and its direct method of giving Europe a Constitution, Jean Monnet and Robert Schuman conceived an alternative strategy for creating a **European Federation**. Since Europe *could not be created in one fell swoop*, they decided to prepare the way for political union by first establishing economic union. On their initiative, the European Communities (ECSC, EEC and Euratom) came into being in the 1950s as distinct supranational organisations that were essentially economic in nature. As the *basis for a broader and deeper community*, the Communities gradually developed towards an *ever closer union*. With each reform of the founding treaties, new integration phases were planned without the ultimate destination every being specified, since it was not known. The functional, stage-by-stage method which has been the hallmark of the European integration process therefore seeks to give Europe a Constitution by indirect means.

On the basis of what the European Communities had achieved, **the European Union** was founded in 1993, an 'unidentified political object' in the words of Jacques Delors. It did not have legal personality, it encompassed, but did not replace, the Communities, and it added two areas of intergovernmental cooperation (common foreign and security policy and justice and home affairs) to the areas already covered by Community action (which included the internal market and Economic and Monetary Union).

The Maastricht Treaty on European Union is often criticised on account of its complex structure and unreadable wording. However, it did consolidate several 'constitutional advances' long demanded by the European Parliament: the joint exercise of legislative power by the Council and Parliament (codecision procedure), the subsidiarity principle, the concept of citizenship, and new 'societal policies'.

The European Parliament: the return of the 'all-embracing' strategy alongside the small-steps method

The **draft Treaty establishing the European Union**, drawn up in 1984 by the European Parliament's Committee on Institutional Affairs, chaired by the Italian federalist Altiero Spinelli, is the only 'constitutional draft' produced by the European Parliament to be adopted by a very large majority of its Members. It proposed that the Member States of the European Communities create a European Union with legal personality, based on a two-chamber parliamentary system (Parliament and Council), whose exclusive or concurrent powers would be clearly defined. It was part of a strategy to stimulate the 'European political conscience', alongside the small-steps approach. Several of the demands made in the 'Spinelli draft' were gradually incorporated into the founding treaties as they were revised, in particular in Maastricht in 1992, in Amsterdam in 1997, and in Rome in 2004.

In 1994, ten years after the 'Spinelli draft' and one year after the Treaty of Maastricht had entered into force, a second draft prepared by the European Parliament's Committee on Institutional Affairs, the 'Herman draft' (named after the rapporteur responsible for drafting the text), continued the complementary, 'all-embracing' strategy adopted by Parliament. For the first time, the **draft Constitution of the European Union**, which Parliament 'noted with satisfaction', concentrates, in a clear, readable text which is unashamedly called a 'Constitution', the principles underpinning a community based on the rule of law, capable of generating legal rules 'to which […] States are subject' and 'which can be applied directly to their citizens'. The 1994 draft demonstrates the desire to put an end to 'the fiction of the abiding intact sovereignty of the Member States' and 'to the ambiguity which allows national governments to take the credit for Community activities when they are popular or successful and to blame Brussels when they are a failure'.

The legacy of the draft constitutional texts in the 2004 Constitutional Treaty

One of the main advantages of the 'Constitutional Treaty' signed in Rome on 29 October 2004 could be precisely that of *adapting vocabulary to facts and texts to reality*, as sought by the 'Herman draft'. Both the **Declaration on the future of the Union annexed to the Treaty of Nice** dated February 2001 and the **Laeken European Council declaration** dated December 2001 — setting in motion the two-pronged constitutional process, in the form of the Convention and the Intergovernmental Conference, which led to the 2004 treaty — expressed this great aim: to make Europe visible and close to the citizens. Would this aim be achieved at last? Could giving the European Union a Constitution help to form a 'European political conscience'?

First of all, the 2004 treaty makes explicit the constitutional nature of the European Union, something which already existed but was evidently not apparent enough. It should be borne in mind that, since the European Parliament was first elected by direct universal suffrage in 1979, its legislative, budgetary and supervisory powers have constantly increased as the Communities and the European Union have been gradually 'parliamentarised'. The same is true of the areas of Community policy that are subject to qualified majority voting in Council: they have expanded continuously. Furthermore, since 1986, the Court of Justice of the European Communities has regarded the EEC Treaty as the *constitutional charter of a Community based on the rule of law*.

That is why a new, more readable text, finally called a 'Constitution', will replace the previous instruments and confer legal personality on the Union. Regulations may be called 'laws' and directives 'framework laws'. It incorporates the Charter of Fundamental Rights and clearly sets out the Union's objectives and competences. It provides for the Convention to be used as the 'democratic' stage of the revision procedure before the traditional Intergovernmental Conference is convened. The aim is to clarify and democratise the legal framework, as advocated by the 'Herman draft'.

The Constitution does not define the nature of the Union, which remains ambiguous. It does not create a European Federation or a European super-state. In this way, it continues the strategy of an *ever closer union*, following the idea of Jean Monnet and Robert Schuman, and leaves open the question of the Union's ultimate destination, pending future compromises.

The Constitution incorporates further 'constitutional advances', including some included in the 1984 'Spinelli draft': accession to the European Convention on Human Rights, an ordinary legislative procedure where Parliament and the Council are placed on an equal footing, a classification of Union powers, a new terminology for legal acts, and 'bridging clauses' to allow simplified revision of certain parts of the text without the need to convene an Intergovernmental Conference.

This is, therefore, a new legal framework which includes some old ideas. It is probably not perfect, but it had to be based on the compromise that could be reached in the current circumstances. Times are changing, and the composition of the Union is becoming broader and more diverse. The common organisation of a Europe of 25 or more will develop further on the basis of future agreements. However, the 2004 Constitutional Treaty is undoubtedly a historic agreement whose symbolic importance is far from negligible. As a political entity with a tradition of integration going back more than 50 years, the European Union is mature and stable enough for its basic text to be called a Constitution.