

PROBLEMS OF FEDERALISM AND OF THE FIGHT FOR EUROPE

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For a Federal Pact Among Europe's Founder Member States

*The impotence of Europe and the need for a European foreign
and defence policy*

The European Union today finds itself in a situation of impasse on many fronts - political and economic. But the occupation of Iraq, by British and American troops, coming in the wake of events in the Balkans, has made it patently and dramatically clear that the unity of the continent is much more than just a question of safeguarding the wellbeing of the Europeans, and closing the technological gap that separates Europe from the United States. It is, as former German chancellor Kohl never tired of repeating in the final years of his mandate, a question of peace or war. Europe has shown itself to be quite incapable of assuming any role on the international stage. Its peoples wanted peace, but its governments have proved incapable of making their wishes count. Some governments, to avoid incurring the displeasure of the imperial power, were even willing to challenge the wave of public opinion at home. Others opposed the American position, but as a result of their impotence, were able to achieve nothing more than ensure that the preventive attack mounted by the United States and Great Britain went ahead without the approval of the Security Council.

Dating back at least to the end of the Second World War, America's hegemony over Europe is by no means a recent reality. During the Cold War, this American domination was, to an extent, masked by the common endeavour to contain the Soviet power and by the considerable convergence of European with American interests. With the end of the Cold War, however, this convergence of interests ceased to exist and the United States found itself faced with a new task: that of guaranteeing

some form of world order, however precarious, by bringing the entire world under its hegemonic influence. In this setting, the European states' vassal-like dependence has become dramatically evident; at the same time, within the most sensitive section of public opinion, an acute awareness has developed that Europe's incapacity to act is a consequence of its division. As a result demand has grown for a Europe that *speaks with a single voice*.

The Convention

Many felt that this demand might be met by the European Convention, whose work has recently drawn to a close, but they were wrong. The Convention has, as expected, only delivered what the Laeken European Council asked it to deliver: a very modest *dressing up* of the previous treaties. Of the institutional innovations it has proposed all, moreover, of very limited scope – the ones that appear to have something to do with foreign policy (although not defence, an area covered by the entire anodyne measures contained in article I-40) are the regulations relating to the President of the European Council of Ministers (who cannot be a head of government in office, must devote himself entirely to his role, and will remain in office for a maximum of two two-and-a-half-year terms), and to the creation of the so-called Union Foreign Minister, who, elected by the governments, will also fulfil the role of vice-president of the Commission and incorporate the prerogatives of the High Representative for CFSP and of the EU commissioner responsible for external relations).

Clearly, in the presence of twenty-five member states whose sovereignty remains intact and who thus have both an independent foreign policy and the instruments needed to implement such a policy, these personages can have little more than a symbolic role. Obligated to interpret and represent the divergent orientations of twenty-five sovereign states, they will be bound to find themselves impotent and quite unable to act. One need only ask oneself what an EU president or foreign minister might have been able to do in the face of the contrasting positions on the war in Iraq assumed by the UK and France.

The majority rule

Many feel that the work of the Convention might have been viewed in an entirely different light had it proposed (and had the Intergovernmental Conference accepted) the application of majority voting in the areas of foreign policy and defence (as well as in that of fiscal policy).

This view, too, is clearly flawed. In truth, Europe's capacity to act on foreign policy and defence matters is not a question of rules, but of *power*. Certainly, decisions relating to foreign policy and defence do indeed have to be *taken* (albeit in most cases by a government and not, except in exceptional cases, by a legislative body). But having been taken, they then have to be *implemented*. The taking and the implementing of decisions are two stages that, in the government of a state, go hand in hand, as the political majority in a state naturally has at its disposal the instruments of power needed to enact the decisions that are reached. The same cannot be said of a confederation of sovereign states, like the current European Union, where the power to implement decisions is wielded not by the Union institutions that actually take the decisions, but by the governments of the Union's member states, which reserve the right to act on them or not to act on them, in accordance with the line that their pursuit of their own interests prompts them to follow. Certainly, when the majority rule was, from 1781 to 1787, effectively applied in the thirteen ex-English colonies in North America under the *Articles of Confederation*, whose total failure highlighted the need to unite the thirteen ex-colonies in a *more perfect union* the states that, in each instance, found themselves in the minority, above all over decisions relating to the furnishing of military contingents for the Confederate army and the payment of their financial contributions, refused systematically to act on the decisions passed by the Congress.

It must be appreciated that the refusal of one or more states to act on a decision is, in a confederation, a disintegrating force that undermines the very existence of the union. It follows that the cohesion of the union, however weak, depends exclusively on the *consensus* of the member states, and thus on the observance, legal or effective, of the unanimity rule. Neither should it be forgotten that the governments of a confederation's member states are answerable to *their own* electorate and that, should the organs of the confederation make highly unwelcome decisions, it would be the governments of the member states that would feel the full force of popular discontent and of the protests that would be mounted by the citizens and by the different factions into which the latter are organised. In extreme cases, such a development could even jeopardise the public order that the governments themselves, and certainly not the confederation, are required to guarantee.

Today's European Union is far more solid and well organised than the union of the thirteen ex-English colonies of 1781-1787. But this simply means that that, within the EU, majority voting is not even adopted in the most important areas. And on the occasions when, in relation to

non crucial matters, it is adopted, it is hardly ever applied in practice. What takes place instead is a general bartering and reaching of compromises that ensures that any sacrifice a government might make in one area is balanced out by its procurement of an advantage in some another area. Thus it is that practically all decisions reached are unanimous ones.

The need for a European state

It is clear therefore that the whole decision-making process conditions both the way in which decisions are taken and their very content. Decisions reached by a union of sovereign states are compromises based on the interests of all the governments. And the greater in number and the more diverse the states taking part in the decision-making process are, the lower the profile and the smaller the impact their ultimate compromise will have. No confederation can have an effective foreign policy, and clearly a confederation embracing as many as twenty-five states, with, in some cases, diametrically opposed geopolitical positions, cannot hope to have even the semblance of one. It must therefore be realised that if Europe is to make its voice heard in the world and to give expression to its people's will for peace, what is needed is not a President of the Council with an extended mandate, a European "Foreign Minister", or the introduction of the majority rule in the areas of foreign policy and defence (or even in the more technical sphere of fiscal policy). It is, rather, a question of *sovereignty*, that is to say the creation of an out-and-out *federal state* decentralised certainly, being federal, but within which the capacity to make decisions is not divorced from the power to implement them. And the term state implies a monopoly on physical force, in other words, the disarmament of the member states and the exclusive control, by a European government, of a single European army. Certainly, it implies much more than the creation of a so-called "rapid reaction force" made up of 60,000 men, with a commander answerable to, and required to act upon the instructions of twenty-five heads of state and of government. It can be remarked, in passing, that were an out-and-out federal state to be formed, the question of whether or not it would be opportune to preserve institutional ties between Europe and the United States of America would be irrelevant. A European federal state would be able, independently, to provide for its own defence. It would certainly draw up agreements and enter into alliances, but the policies it would follow would be determined, in each instance, by the nature of the interests at stake, and would not necessarily always coincide with those of the United States.

The federal core

A European state cannot be founded within the framework of the current institutions, which is not to say that this framework might not be re-introduced after its foundation. Indeed, even to think of founding a European state on the basis of the consensus of the governments of twenty-five different countries, in most of which public opinion is openly hostile to any move towards political union of any kind, and which differ from one another vastly in terms of their level of integration and their foreign policy and defence traditions, would be pure folly. The founding of a European federal state can come about only upon the initiative of a group of countries that are highly homogeneous, closely interdependent economically and socially, and in which the European ideal is strongly rooted in public opinion. These requisites can be met only by Europe's founder nations – the six countries that formed the first European Community. In spite of the ambiguous signals being given out by the Italian government, this grouping has already emerged, albeit in an embryonic form, on a number of occasions. What must be patently clear, however, is that the initiative required of these countries must be more than a general mounting of pressure, or the proposing of a design to be negotiated with the Union's other member states. Instead, it must involve the creation of a *federal core* that, without further negotiation and once its Constitution has been definitively approved, will be open to any other members of the Union that wish to sign up to it.

It must be reiterated that this step must be taken *outside* the sphere of the EU institutions. To imagine that a federal core might be established within it, through the instrument of enhanced (now “structured”) cooperation, would be to attempt, hypocritically, to neutralise the initiative – to set it on a different, dead-end track. Structured cooperation is nothing more than an updated version of the old *Europe à la carte* idea. The mechanism behind it is the formation of different groups of states according to the objectives being pursued; besides, this form of cooperation has to be authorised by *all* the EU member states. Were this procedure to be followed, the birth of the federal core would depend on the consensus even of those countries opposed to the idea, and it would be an entity compatible with the institutional structure and the laws of the union. This is clearly impossible. The birth of a federal core must inevitably be the expression of the strong and unanimous political will of the countries wishing to be part of it, and must inevitably involve a breakaway action – the kind of split that led to Germany's reunification. In the latter instance, all that the other member states could do was wit-

ness the emergence of the new reality and, when the dust had settled, adapt the Community rules to it.

The objections

The federal core design is usually met with two main objections. The first is that it is divisive, as it excludes from the outset the majority of the EU member states. Nothing could be further from the truth. The idea of the federal core was born precisely of the realisation that political union is, in the presence of a line-up of twenty-five states, an impossible objective. The idea of asking the British or Spanish government, or the governments of the eastern European states, to join Europe's founder nations in this groundbreaking initiative and to unite under a binding federal agreement, is quite simply ludicrous. But many of these countries, and in the mid-term all of them, would be unable to resist the pull of a federal state that already existed. It must therefore be appreciated that the federal core would serve as a driving force of unity and that it is the *only* instrument with the capacity to give meaning and a political outlet to European enlargement, and to prevent the EU from becoming totally ungovernable, with rules that are impossible to apply, and destined, following its transformation into a free trade area, ultimately to disintegrate. The federal core would thus be a decisive factor in the promotion of that unity of Europe as a whole that the current EU is completely unable to guarantee.

The second objection is that the strong political will needed to establish a federal core does not, as yet, exist in any of Europe's six original member states. This is true, and it is a truth rendered all the more stark by the fact that the government of one of them is led by a person like Berlusconi and has a cabinet comprising three Northern League members. But while the will to form a federal core is yet to be formed, it is certainly realistic to imagine that it *can* be formed, given the right conditions. The creation of these conditions will, in turn, depend on the framework within which the problem of reforming the Community institutions is broached, because it is only in the framework of a small and cohesive group of countries that the crises, increasingly frequent and increasingly severe, that are besetting Europe might be allowed as to an extent they already are doing to give rise to uniform and prompt reactions on the part of public opinion. This is why the group of founder member states is the only one within which it currently makes sense, and indeed is possible, to battle for the founding of a European federal state.

The difficulty of the choice and the alternative

The fact remains that it is an extremely difficult battle. The idea of national sovereignty took root in Europe over many centuries. It conditions the behaviour of governments, political parties, the media and public opinion. But the problem is now a desperately urgent one. And it is important to realise that failure to solve it will result in the transformation of Europe into a group of states entirely subservient to the hegemonic power, condemned to a future of impotence and impoverishment and, in the final analysis, condemned to exit definitively the historical stage. This is the fate that has unfailingly befallen those world regions that have not been able, quickly enough, to adapt the dimensions of the state to changing circumstances: we might cite, as examples, Greece at the time of the Macedonian and subsequently Roman conquests, and Renaissance Italy. Unless it proves able to change course drastically, Europe is heading towards its own “South Americanisation”. It needs to decide whether it intends to resign itself to its decline, opting for the easy course, that of inertia and subordination, or to fight it, choosing the more arduous course of political unification.

The federal pact

The story of European unification is a story of corruption of words. In recent times particularly, the attempt to delude public opinion into seeing a process that is running out of steam as a process that is, on the contrary, advancing and moving towards progressive goals, has resulted in a twisting and minimisation of the significance of terms such as “federation” and “constitution”. It is thus important to stress that a federation is a state, which enjoys the prerogative of sovereignty and thus has a monopoly on physical strength, and that there is no such thing as a constitution that is not the constitution of a state. But it is equally important to guard against corruption of the very word “state,” which would lose all its essential connotations were credence to be given to the falsehood that “state” corresponds to the extension of the majority principle to the areas of foreign policy and defence (as well as fiscal policy).

Similarly, it is important to clarify that the union of a number of nation-states in a single European federal state, quite apart from the problems relating to the size of the framework within which this is achieved, can never come about as a result of decisions reached by an assembly. The protagonists in the creation of a federal state can only be those

agents that are invested with the highest political responsibility, in other words the governments. These are the subjects that exercise real power, and that are thus in a position to transfer real power to another entity, even though it must be granted that such an initiative could come about only in exceptional circumstances, with the backing of a strong wave of public feeling since constituent power rests ultimately with the people and in a climate of openness and political debate involving the entire political class. A quite different matter will be the drawing up of its constitution, in other words the formulation of the rules that will govern the life of this new entity, once it has been created: the *pactum unionis* is not the same as the *pactum constitutionis*. And this is reflected in the sequence of events that, in the wake of the Second World War and in a non federal setting, characterised the rebuilding of the republican states of France and Italy, where the republican government was *first* formed, and *subsequently* given a constitution.

The initial core of a European state must therefore be born of a *federal pact* that, entered into by the governments of the founding nations, transfers their sovereignty to the new state. It will create a provisional government, which will control the European army and subsequently convene a Constituent Assembly.

The terms of the federal pact

Clearly it is neither appropriate nor possible, here, to give anything more than a brief indication of the content of the federal pact, whose completion, refinement and correction clearly falls to individuals who possess the necessary technical expertise. An initial drafting is, however, necessary in order to highlight the nature of the problems that will be encountered; in other words, in order to clarify what the creation of a federal state really means and to prevent the ambiguity of expressions like “federation of nation-states” from being exploited. It also allows us to see, in a harsh light, just how difficult an objective this is. The design will in fact be judged, by many, as a dream or as a purely theoretical exercise. The fact remains that, if the Europeans really do want to achieve European political unity the objective that has guided the whole course of European integration then *these*, and not others, are the problems that they must tackle and solve, because there is no other way to relaunch the process and prevent Europe from falling into a rapid and inexorable decline. To argue, on the other hand, that the federal core design is purely utopian, and that public opinion in Europe’s founder member states, as well as the politicians that represent it, is not and is not in

the foreseeable future likely to be able to give expression to the energy and the will needed to realise it, is tantamount to resigning oneself right now to a sorry end to the adventure of European unification and consequently to a crisis of the democratic institutions and to the degeneration of civil cohabitation in the continent. Europe is drawing closer and closer to a radical crisis, and radical crises demand radical answers. History, to be sure, is one long alternation of periods of slow evolution with periods of rapid and profound change. In the latter, it becomes possible to achieve things that, in normal periods, seemed utopian. We are thus faced with a difficult battle, but it is the only one that, today, it is worth fighting.

Here, then, are the fundamental points that the federal pact should contain:

1. The governments of the founder countries agree to unite their states in a federal pact, thereby creating a federal state that will be called “The United States of Europe”.

2. The United States of Europe will be ruled by a provisional government made up of the heads of state and of government of the signatory nations.

3. The provisional government of the United States of Europe will comprise a president, a vice-president and four ministers who will be responsible, respectively, for foreign affairs, defence, the economy and finance, and relations with both the EU and the states that subscribed to the pact.

4. Foreign affairs and defence will be the exclusive responsibility of the provisional government of the United States of Europe, which will have full powers in these spheres; the economy and finance will be managed concurrently and in collaboration with the relevant national and European institutions; relations with the European Union and with the member states will be managed in ways dictated by the nature of the problems to be solved.

5. The pact will name the president of the provisional government of the United States of Europe and assign the vice-presidency and ministries to the other government members.

6. The provisional government of the United States of Europe, by a process of co-optation and in the shortest time possible, will increase its number to twelve, appointing to each of the ministers, as well as to the president and vice-president, an undersecretary, to be chosen in each of the member countries, preferably from the ranks of the opposition. Each of these must be assigned to a ministry other than that run by the head of his/her respective national government.

7. The selection of the successors to the heads of state or of government who have become members of the provisional government of the United States of Europe will be subject to the procedures in force in each individual country.

8. The national armies, navies and air forces, as well as the gendarmeries, will form a single European army whose supreme commander will be the President of the provisional government of the United States of Europe. The European army will come under the command of a European General Staff, which will be made up of the Chiefs of the General Staff and of other high-ranking officials from each of the countries that have entered into the pact. The Chief of the General Staff will be answerable to the defence ministry of the provisional government of the United States of Europe and will be appointed in the pact.

9. The foreign and defence ministries of the countries that have entered into the pact will automatically be abolished and their budgets will be pooled in the budget of the provisional government of the United States of Europe.

10. The diplomatic and consular staff of the states that have entered into the pact will, in the shortest time possible, be amalgamated. Until this occurs, each embassy and consulate will cease to represent a single member state, and instead represent the United States of Europe.

11. The economy and finance minister can issue public loans, in accordance with procedures defined by the provisional government upon the proposal of the same economy and finance minister.

12. Until the first general election is held and this will be held upon completion of the work of the Constituent Assembly mentioned in the next paragraph parliamentary control of the activities of the provisional government of the United States of Europe will be exercised, in a consultative capacity, by the MEPs belonging to the states that have entered into the federal pact.

13. Within two months of the completion of the process of ratifying the federal pact, the provisional government of the United States of Europe will call the election, through a uniform electoral system, of a Constituent Assembly, whose mandate will be to draw up the constitution of the United States of Europe. The latter must take the form of a federal state, founded on the principle of subsidiarity, in which the European institutions will have responsibility, at least, for foreign policy and defence, for the general guidelines of economic policy and the policy of infrastructures, and for policies on scientific research and technological development; the head of government or the government in its entirety

must be democratically answerable before the electorate or before the parliament (or a branch of the parliament) and must, accordingly, be elected by the citizens or by the parliament; legislative power will be entrusted to a two-chamber parliament in which one chamber will represent, proportionally, the citizens and the other will represent the states; the highest expression of judicial power will be the Court of Justice, which will be responsible for interpreting the constitution, declaring void any legal provisions that are in conflict with it; the Constitution must be open to amendment through a procedure that does not require the unanimous consensus of the member states; the right of secession will be excluded; the European institutions will be equipped with a power to levy taxes that is exercised independently or in concert with that of the member states, the regional and local authorities; the constitution will contain a provisional regulation that will allow any EU member state that has not entered into the federal pact to become a member state of the United States of Europe, accepting the constitution and the obligations it imposes. The constitution drawn up by the Constituent Assembly will be put to a public referendum.

14. The United States of Europe will continue to be part of the European Union and of the European Monetary Union, providing the relevant EU institutions agree. The United States of Europe minister responsible for relations with the EU will, without delay, begin negotiating with the EU authorities the conditions that will allow this participation to continue.

15. The pact will be submitted for ratification to the states whose representatives have signed it, in accordance with the procedures provided for by the constitutions of each of them, and it will come into force in the countries that ratify it on condition that these countries represent at least five-sixths of the states that signed the pact and three-quarters of the overall population of the latter.

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