

Review of some existing studies of EC/EU Treaty-Making and Reform

by

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Introduction

The purpose of this paper is to give an overview of some of the existing literature on the founding treaties of the European Communities (EC), the Treaty of Paris creating the European Coal and Steel Community in 1951 and the Treaties of Rome creating the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or EURATOM) in 1957 as well as later reforms of those treaties, including the creation of the European Union (EU) by the Maastricht Treaty in 1992 and later reforms via Amsterdam and Nice to the Lisbon Treaty in 2007.

These treaties and treaty-reforms have been studied by historians, lawyers and political scientists. We are particularly interested in locating political science studies. What kind of political science studies exist? What kind of approaches and theories have political science developed in this regard? And where do we go from here? Needless to say, the many analyses by historians and legal scholars can be very useful for those trying to understand the politics of the process.

Since the EC/EU treaties have been negotiated in Intergovernmental Conferences (IGCs) this paper will to a large extent focus on IGCs. What preferences have the founding and later also other Member States brought to these IGCs, how were the negotiations conducted, who had influence and why, what were the outcomes and why? This overview will not really try to answer these questions. The overview can be read together with the more theoretical discussion in the earlier paper in this series (Laursen, 2008b).

The Founding Treaties

A number of studies of the negotiation of the founding treaties exist, but systematic application of political science frameworks in these studies is rather uncommon. One of the more interesting accounts of the Paris Intergovernmental Conference (IGC), 1950-51, was actually written by Jean Monnet, who chaired the conference and who was the intellect behind the Schuman Plan in May 1950, which started the process of supranational institution-making in Europe (Monnet,

1978). A biography on Schuman by Raymond Poidevin includes informative chapters on the Schuman Plan and the birth of the ECSC, the latter chapter partly dealing with the IGC without being comprehensive (Poidevin, 1986). The Schuman Plan was studied early on by Diebold (1959). He had a section on what he called the Schuman Plan negotiations based on the information available at the time (Ibid, pp. 60-77). A more recent and well-researched historical account has been given by Gillingham (1991). The Dutch chief negotiator in the first IGC in 1950-51, later a member of the executive body of the ECSC, the High Authority, Dirk Spierenburg wrote a history of the ECSC together with French historian Raymond Poidevin (1994). In this book the first two chapters deal with the negotiations in Paris. There are further some informative shorter accounts, like one by Gerbet (1987a). The most interesting account from a political science perspective is probably the one by Berthold Rittberger (2001), trying to explain the particular institutional set-up of the ECSC treaty, arguing that instrumental calculations and considerations of ‘appropriateness’ were complementary.

A broader, now somewhat outdated, account of the early years of European integration was produced by Arnold Zürcher (1958). But, apart from Gillingham (1991), Monnet’s personal account and the historical accounts by Spierenburg and Poidevin, none of these studies outlined or analyzed the actual negotiations in the Paris IGC in great detail.

Parsons argued in a recent and interesting book that ideas and French coalitional politics were important at the beginning as well as later (Parsons, 2003). This book must be seen as one of the more important political science books trying to explain the EC/EU treaties.

Griffiths has written a detailed historical account of the European Defence Community/European Political Community (EDC/EPC) negotiations (Griffiths, 2001). These negotiations took place more or less in parallel with the negotiations of the ECSC, but the treaty was denied ratification by the French National Assembly in 1954. There is also a short account by Cardozo (1987). Rittberger also wrote a very interesting article on the EDC and EPC. The idea that transfer of sovereignty will lead to ‘democratic spill-over’ was proposed (Rittberger, 2006).

The negotiations of the Treaties of Rome have not been given the systematic political science account that these treaties, especially the EEC treaty, deserve. Again we do have memoirs from one of the most important actors during the process, Paul Henri Spaak (1971). But these memoirs are less fascinating and detailed than those of Monnet. A short but useful

account of the Treaties of Rome has been provided by Küsters (1987). Gerbet (1987b) goes into more detail, but his study is without references, which is regrettable from the point of view of serious scholarship.. A book by David Weigal and Peter Stirk that covers both the ECSC and EEC treaties is basically a collection of documents with introductions. (Weigal and Stirk, 1992). A book by one of the members of the first EEC Commission, Hans von der Groeben, is a mix of description and historical analysis of the 1958-66 period (von der Groeben, 1987). Its value for the study of IGCs is limited. The chief French negotiator of the Treaty of Rome, Robert Marjolin, has also written memoirs that include a chapter on the Treaty of Rome. It contains interesting details on French policy (Marjolin, 1989). The best collection of historical texts on the Treaties of Rome was edited by Enrico Serra on the basis of a colloquium in Rome in March 1987 celebrating the 30th anniversary of the treaties. Some of the texts, published in Italian, French, German and English, constitute detailed competent historical research (Serra, 1989). But none of the authors were political scientist trying to make theoretical conclusions, not to say apply theoretical frameworks.

General De Gaulle's effort to change the Communities in a more intergovernmental direction in the Fouchet negotiations was covered in great detail by Bodenheimer in the book *Political Union* (Bodenheimer, 1967). Although the book contrasted neofunctionalism and more Realism-inspired views of European integration the book was relatively a-theoretical. But in a certain way it anticipated liberal intergovernmentalism, the framework later developed by Andrew Moravcsik (1991, 1993 and 1998), by looking at domestic politics in the two main contending Member States, viz. France and the Netherlands, and by studying the interstate bargaining process.

Early reforms of the EC treaties

There are some accounts of the early reforms of the founding treaties. These include accounts of the Merger Treaty by Gordon Weil (1967) and P.-H. J. M. Houben (1965-66). But these were fairly descriptive legal accounts. Spierenburg and Poidevin also dealt with the Merger Treaty in their historical account of the ECSC (1994). We further have a more recent historical account of the Merger Treaty that had benefited from archival research in Brussels and Paris (Bitsch, 1998).

David Coombes dealt with the first budget treaty in *The Power of the Purse in the European Communities* (1972) and Strasser has had a section on both treaties in successive editions of *The Finances in Europe* (3rd ed. 1992). More recently Berthold Rittberger included a chapter on the first budget treaty, also called the Treaty of Luxembourg, in his book on the European Parliament (Rittberger, 2005, pp. 114-142). The Rittberger book must be seen as one of the more important political science contributions to the literature.

But, overall, we could use more detailed political science analyses of the early reforms. Nor are the primary documents, the various proposals put forward during the negotiations, readily available, although Commission and Council documents are now available at the EU Historical Archives in Florence.

Many historical overviews of European integration have largely ignored the early treaty reforms (e.g. Gillingham, 2003). Dinan (2005) does mention the Merger Treaty briefly. Gerbet also mentions the budget treaties – the Luxembourg Treaty of 1970 and the Brussels Treaty of 1975 (Gerbet, 1983). But these accounts are brief and descriptive with no theoretical ambitions.

The Single European Act

A rather detailed account of the Single European Act (SEA) IGC exists in French. The author, a Belgian official who assisted the Belgian chief negotiator was well placed to have access to primary sources (De Ruyt, 1987). The study is clearly well-informed, but a-theoretical. Sadly, the documentary section only includes a few widely available documents.

In terms of existing analyses and available documentation the Single European Act lies somewhere in between the early and later reforms. The interest in studying European integration re-emerged in connection with the SEA and the internal market plan in the 1980s. Moravcsik's first important article was about the SEA (Moravcsik, 1991) and other articles appeared, often with different interpretations, e.g. by Richard Corbett (1987), Sandholtz and Zysman (1989) and Tranholm-Mikkelsen (1991). None of these analyses really opened the 'black box' of the negotiations and when Derek Beach tried to do so, he focused on the role of the EC actors (Beach, 2005). Still the book by Beach must also be singled out as a very important political science contribution.

The Maastricht Treaty

The author of this review was involved in a research project on the Maastricht Treaty at the European Institute of Public Administration (EIPA) in 1990-93. He co-edited with Sophie Vanhoonacker two volumes that included the most important primary documents, kindly provided by various actors during the negotiation process (Laursen and Vanhoonacker, 1992; Laursen and Vanhoonacker, 1994). Also a major reference guide on the Maastricht Treaty by Richard Corbett includes a lot of documents (Corbett, 1993). The book contains an 85-page introduction and more than 400 pages of documents. Corbett headed the IGC Task Force of the Socialist Party in the European Parliament during the Maastricht Treaty negotiations.

There is also a 4-author analysis of the Maastricht Treaty in French (J. Cloos, G. Reinesch, D. Vignes and J. Weyland, 1993). Three of the authors, Jim Cloos, Gaston Reinesch and Joseph Weyland were involved in the negotiations through the Luxembourg delegation. The fourth author, Daniel Vignes was a former director of the Legal Service of the Council. The book includes about 100 pages situating the treaty in the context of *la construction européenne*. The second part of the book, more than 400 pages, gives a detailed legal account of the provisions of the treaty. Let's also mention a rather descriptive but well-structured account of the negotiations and content of the Maastricht Treaty (Doutriaux, 1992) and an edited volume with useful chapters, mostly legal in approach (Monar et al., 1993).

The literature on the Maastricht Treaty also includes a book by Michael Baun (1996) as well as one by Colette Mazzucelli (1997). The latter focused on Franco-German leadership, which was also considered important by Baun.

The Amsterdam and Nice Treaties

Due to the popular demand for access to documents after the Danish 'no' to the Maastricht Treaty in 1992 the most important documents were made available on the internet during the Amsterdam Treaty negotiations.

Also for the later reforms we have accounts written by involved actors, such as McDonagh's account of the Amsterdam negotiations (McDonagh 1998), Galloway's account of the Treaty of Nice negotiations (Galloway 2001) and Milton and Keller-Noëllet's account of the

negotiations of the Constitutional Treaty (Milton and Keller-Noëllet, 2005). These accounts are obviously not written from explicit theoretical perspectives. They are informative, but the accounts also have to be assessed critically because of the involvement of the authors.

The author of this review edited volumes on both the Amsterdam Treaty and Treaty of Nice (Laursen, 2003 and 2006b). These books were organized according to the Moravcsik scheme, looking at national preferences, interstate bargaining and institutional choice, but a number of the contributors had critical remarks about Moravcsik's liberal intergovernmentalism.

Other scholarly works on Amsterdam include a huge 640 pages volume by Stefan Griller, Dimitri P. Droutsas, Gerda Falkner, Katrin Forgó and Michael Nentwich (Griller et al, 2000) and a small well-written book by Franklin Dehousse (1999). An early book by Andrew Duff, with treaty texts and commentaries, is also very useful (Duff, 1997). Moravcsik co-authored an important article on Amsterdam, claiming the utility of liberal intergovernmentalism (Moravcsik and Nicolaïdis, 1999). The context and issues of the Amsterdam IGC were covered in a book edited by Edwards and Pijpers (1997).

Works on the Treaty of Nice, apart from the book by Galloway (2001) already mentioned, also include a legal account edited by three French scholars (Constantinesco, Gautier and Simon, 2001). This work has the advantage of including a CD-Rom with most of the documents put forward during the conference, missing some important ones on the weighting of votes put forward during the final negotiations in Nice. A work on the treaty of Nice in German, edited by Werner Weidenfeld, also includes a CD-Rom (Weidenfeld, 2001). Again we only find the CONFER documents, but not internal SN documents, through which the negotiations on the weighting of votes can be traced (see Laursen, 2006b).

The Constitutional Treaty

Interestingly we have more accounts of the process that produced the Constitutional Treaty than the Treaty of Nice, at least the Convention part of the process. Coming so soon after Nice, it seems that some scholars looked forward very fast.

Works on the Constitutional Treaty include two useful and informed accounts of the European Convention by two French Members of the European Parliament (MEPs), who took part in the Convention (Duhamel, 2003; and Lamassoure, 2004). The Convention's President

Giscard d'Estaing wrote a long introduction to a published version of the draft treaty (Giscard d'Estaing, 2003). One British MEP who was a member of the Convention also wrote a brief account of the Convention (MacCormick, 2005). We further have a well-informed journalistic account by Peter Norman in *The Accidental Constitution* (2003), as well as an account by a French journalist (Dauvergne, 2004). Useful articles on the European Convention also appeared in a special edition of the journal *Journal Européenne* edited by Paul Margette (2004). Another early collection of interesting essays, some by leading political scientists, was edited by Anna Michalski (2004).

After the Convention a colloquium of French and German scholars, including lawyers, political scientist and economists produced an 832 pages volume on the Convention and its draft treaty (Beaud, et al. 2004). The volume included chapters in both German and French, with English abstracts. Needless to say, the chapters went in a number of different directions. Certainly there was no overall conceptual framework. The same can roughly be said about two other collaborative volumes, one based on a conference at the T.M.C. Asser Institute in the Hague (Curtin, Kellermann and Blockmans, 2005), and one based on German-Italian collaboration between Erfurt University and Teramo University (Blanke and Mangiameli 2006). Both volumes have several chapters, largely legal-descriptive in approach.

Compared with the Convention we have relatively few accounts of the IGC that followed in 1993-94 and which concluded the governmental negotiations of the Constitutional Treaty. We have the earlier mentioned book by Milton and Keller-Noëllet (2005), and Peter Norman added a chapter on the IGC in the second edition of *The Accidental Constitution* (2005). The author of this review dealt with the IGC in an article (Laursen, 2004), which was partly reproduced in a book chapter (Laursen, 2006d), and later in an extended version in the book on *The Rise and Fall of the EU's Constitutional Treaty* (Laursen, 2008).

Once the Constitutional Treaty was ready for ratification more books appeared. The referendum debate in France in particular produced a number of books, mostly informative accounts of the treaty, including some very partisan perspectives.

Also Andrew Duff, who had been a member on the Convention representing the European Parliament, produced a book on the treaty (Duff, 2005). A volume edited by Van Thiel, De Gucht and Lewis had a number of interesting chapters, including chapters by Belgium

Prime Minister Guy Verhofstadt as well as former European Commissioner Antonio Vitorino, who played an important role in the Convention (Van Thiel et al., 2005).

Let's also mention a book by a lawyer who followed the negotiations closely, namely Jean-Claude Piris, Director-General of the Legal Services of the Council of the EU (Piris, 2006). This is a competent and informed legal analysis, but do not expect to find political revelations. He was Head of Secretariat of the IGC, and had also been involved with the Maastricht, Amsterdam and Nice IGCs.

Finally, we should mention a huge volume of mostly legal analyses edited at the European University Institute in Florence by Giuliano Amato, Hervé Bribosia and Bruno de Witte (2007). It also includes a chapter on the IGC 2003-04 by one of the Irish officials involved (McDonagh, 2007).

The Lisbon Treaty

When the French and Dutch voters rejected the Constitutional Treaty in 2005 a period of uncertainty followed. But in 2007 it was decided to produce another treaty, a Reform Treaty, which would follow the classical way of amending existing treaties instead of producing a new treaty to replace the existing treaties. And this new treaty should do away with all symbols of constitutionalism. Based on a mandate produced during the German Presidency in the first part of 2007 the latest treaty, the Lisbon Treaty, was finalised during the Portuguese Presidency in the second part of 2007. This Treaty in turn was rejected by the Irish in a referendum in June 2008. Most likely there will be a second referendum in Ireland in 2009.

At the moment (end of 2008) we are starting to have some studies of the Lisbon Treaty. A very useful legal analysis has been provided by a group of lawyers in a book edited by Stefan Griller and Jacques Ziller (2008). Another, less exiting, legal analysis has been provided by Sieberson (2008). An excellent article by Youri Devuyst has also been published (Devuyst, 2008). A number of books setting out to outline and to some extent explain what is in the treaty has been published in French, including by Sauron (2008), de Poncins (2008) and Priollaude and Siritzky (2008). There have also been a number of books published in German, some reproducing the treaty or large parts thereof, such as books by Fischer (2008) or Streinz et al.

(2008). A more policy-analytical approach is used in a book edited by Werner Weidenfeld (2008).

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