



Pros and Cons of the Constitutional Treaty

Introduction

It would require a very detailed analysis of all the 465 Articles and the several protocols and declarations which form part of this Constitutional Treaty to make a full assessment of all that is good, all that is not so good, and all that is bad in this document. Furthermore, and in order to assess whether it is reasonable to come down in favour or against this document as the current way forward for the EU, it would be necessary to also assess what is new and what is simply re-stating the situation as it is.

We are not attempting to do this here. What we are attempting to do is to pick out a few key issues where we can see positives and negatives which may help to inform debate and, ultimately, decisions about this document.

Values and Objectives

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. **Article I-2**¹

The Union's aim is to promote peace, its values and the well-being of its peoples. **Article I-3(1)**²

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers and an internal market where competition is free and undistorted. **Article I-3(2)**³

The Union shall work for a Europe of sustainable development based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced. **Article 1-3(3)**⁴

In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular the rights of the child, as well as to strict observance and to development of international law, including respect for the principles of the United Nations Charter. **Article I-4**⁵

The Union shall pursue its objectives by appropriate means, depending on the extent to which the relevant competences are conferred upon it in the Constitution. **Article I-5⁶**

These articles caused quite a lot of debate at the Convention stage of the process but not since then. Clearly, they contain much that one would want to applaud and some elements one might want to take issue with.

Overall, though, we would argue that having a statement of values and objectives is positive and that the general tenor of the statement as it stands is more positive than negative.

Legal Personality

One of the new things in the Constitutional Treaty is the fact that it will give the EU a legal personality. That means that the EU can accede to international treaties and conventions. Indeed, in **Article I-7(2)**, it is agreed that the EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Given that all Member States of the EU have already acceded to this European Convention, one might argue that this won't make that much of a difference. However, it does give greater weight to the Protection of Human Rights and Fundamental Freedoms in the context of EU legal acts.

Beyond that, the legal personality of the EU means it is possible for the EU to accede to new international treaties and conventions ahead of Member States, thus leading by example. However, whether this is likely ever to happen is really a matter of political will.

It also defines the EU as one body with different institutions. Until now there is a distinction between different aspects of the EU which are described as pillars. This was explained in the briefing papers QCEA published at the beginning of the Convention process as follows:

The EU Pillar System:

One of the most confusing elements of the way decisions are made in the European Union is the 'pillar system'. Each pillar refers to a different area of policy in which the European Union has a competence to act. The method of decision-making used is different in each pillar. The pillar system is summarised as follows:

First Pillar	Second Pillar	Third Pillar
<i>The Community dimension, i.e. Union citizenship, Community policies, Economic and Monetary Union, etc.</i>	<i>Common foreign and security policy</i>	<i>Police and judicial cooperation in criminal matters.</i>
<p>The first pillar uses the 'Community method': Commission monopoly of the right of initiative; widespread use of qualified majority voting in the Council; an active role for the European Parliament; uniform interpretation of Community law by the Court of Justice.</p>	<p>The second and third pillar use the 'Intergovernmental method': the Commission's right of initiative is shared with the Member States or confined to specific areas of activity; the Council generally acts unanimously; the European Parliament has a purely consultative role; the Court of Justice plays only a minor role. <i>Note: The Treaty of Amsterdam has transferred some of the fields covered by the old third pillar to the first pillar (for example the free movement of persons).</i></p>	

The structure set out in the Constitutional Treaty is simpler and clearer, even if the names chosen for some of the institutions are still somewhat confusing.

However, giving the EU legal personality may imply for some that this is another step on the road to a federal or united Europe. This is an argument, but in many ways the development of the EU including its role in international affairs where it now represents its Member States in some areas and where there is general agreement that it is advisable and desirable that Member States act together in others, is more significant in this context than the fact of the EU's legal personality.

Clarification of Structures

The description, definition and explanation of the Institutional framework, structure and architecture starts at Article I-18 and continues to Article I-31.

What is new here is the fact that the Council (i.e. the forum in which the Heads of State/Government meet) has been created as a separate Institution. This will have its own president, appointed for 2.5 years. The President of the Council will not be able to hold any office in their own country whilst in office as President.

What is somewhat confusing is that the Council of Ministers (i.e. the forum in which relevant government ministers from Member States meet) will continue to be chaired by the representative from the country holding the Presidency, which will continue to rotate as now twice a year. However, three consecutive Presidencies are expected to work together to ensure continuity.

So whilst the clarification of structures has helped, there is still room for confusion.

The maximum number of Members of the European Parliament (EP) has been defined and the powers of the EP have been widened in some respects. Many would argue this has not gone far enough.

The Constitutional Treaty also includes a Protocol on the Role of Member States' National Parliaments in the European Union, which clarifies the role of national parliaments and, some would argue, strengthens them. This includes a section on inter-parliamentary cooperation.

Generally speaking, the approach of the Constitutional Treaty to the clarification of structures is seen as a positive move in the right direction. Despite that, it can't be described as easy reading.

Fundamental Rights

The inclusion of the Charter of Fundamental Rights in the Constitutional Treaty is considered an important positive factor in favour of this text. The fact that its inclusion has been qualified to make clear that the Charter governs EU action and legislative acts and national legislation only in so far as the national legislation is implementing EU legislative acts may be a disappointment to some, but it is a first step to give this charter legally binding status at the European level, at least.

Militarisation of the EU

QCEA has done much work on this subject and has produced separate Briefing Papers on this which are available from our website at www.quaker.org/qcea. Here we want to simply highlight the many Articles in the Constitutional Treaty which focus on this area:

- The improvement of military capability is enshrined in the Constitutional Treaty in **Articles I-40(3), III-210(1) and III-342**. It is certainly regrettable that this has been included in the Constitutional Treaty as it is both contrary to the letter and the spirit of the UN Charter (the observance of which is, incidentally, included in the objectives of the EU).
- The European Parliament has no say in the use and deployment of EU military capabilities.
- The European Court of Justice has no jurisdiction in the field of the Common Defence and Security Policy (CFSP).
- The right to Conscientious Objection is still recognised only subject to the national laws relating to it. However, as the EU Member States are also Members of the Council of Europe, they must meet more stringent criteria in line with the Resolution adopted there in 1967. The fact that some EU Member States do not fully comply with that resolution is, however, a matter for concern.

The question which arises in the context of the ratification of the Constitutional Treaty is: would a no vote stop this trend towards the militarisation of the EU? In short, it would not. There is broad agreement amongst most Member States on this issue. Even the proposals to spend some resources on developing alternative civilian security structures are hard to get across to most of the Member States. The European Armaments Agency has been set up already and is now being developed. A no to the Constitutional Treaty would not change that.

Market and Competition Focus

The EU started as an economic cooperation between States. The underlying theory was that economic cooperation would lead to peace. The underlying economic ideology of the EU is and has been that of the free market, competition which is to be widened more and more, and the survival of the fittest. Among its Member States this has been offset to some extent by

- Support to agriculture (the Common Agricultural Policy)
- Support to the fishing industry (the Common Fisheries Policy - though some fishing communities might not agree with this assessment)
- Support to specific heavy industry sectors, notably coal and steel
- Support to regions which are significantly less developed than the average in the EU with assistance in infrastructure development.

None of this is likely to change significantly in terms of the basic approach, though the overall level of support to agriculture is intended to decrease (not as a result of the Constitutional Treaty, but as a result of ongoing negotiations on this subject) and the question of who will be eligible to receive regional structural support has changed with the enlargement of the EU in May 2004.

In terms of the role of the EU in the world the basic free market/competition ideology is tempered by the extensive development aid provided by the EU and its Member States.

The EU represents its Member States in the World Trade Organisation and its role there is not always obviously supportive of fair trade, or even of free trade if it is a question of not subsidising EU agricultural products to be dumped on the markets of developing countries with the effect of undermining the agricultural industry there.

Again, would any of this change if the Constitutional Treaty was not ratified? In short, the answer must, again, be no. What the Constitutional Treaty does, is to reflect the broad political consensus of the Member States of the EU. So if we don't like the tenor of what we read there, it is not the Constitutional Treaty, but the politics of our own national governments that must be taken issue with.

Asylum and Migration

The right to asylum and respect for the rules of the Geneva Convention are included in the Charter of Fundamental Rights. That means that at EU level no legal acts can be agreed that would breach this right and the respect for the Geneva Convention. This in itself is a positive factor.

Because the EU has no internal borders (at least within the area of the Member States which are party to the Schengen Agreement - this excludes the UK and Ireland) there is a need for common asylum and migration policies. These are being developed even before the Constitutional Treaty is implemented because this is not a new issue. The need for such common policies opens up the risk of having policies which represent the lowest common denominator. Fortress Europe is a real danger and remains so. The Constitutional Treaty makes no change to that.

Conclusion

There are some elements of the Constitutional Treaty which can be considered broadly positive. There are some which are broadly negative.

However, the question arises as to whether the implementation of the Constitutional Treaty would make some of the negatives worse than the current situation. That remains, in our view, unlikely.

What is possible, is to use the issues raised in the debates which could form part of the referendum campaigns in order to alert politicians at national level in particular, to the concerns citizens have about the EU as reflected (but not generally introduced) by the Constitutional Treaty.

What we must remember are the key issues which Heads of State/Government found it so difficult to agree on in December last year:

- The method of election/appointing a President of the Council and/or the Council of Ministers

- The number of Commissioners there should be in the European Commission
- The balance of votes between Member States on issues where votes are taken by Qualified Majority Voting.

The key issues of fundamental approach in economic, political, and military terms were not at the heart of that debate. If those are the key issues we are concerned about, it appears likely that the discussion about the Constitutional Treaty and its ratification is not the right arena to pursue those concerns.

¹ As quoted in Jens Peter Bonde, *The Constitution - reader friendly edition*, July 2004, p 9

² As quoted in Jens Peter Bonde, *op. cit.*, p 9

³ As quoted in Jens Peter Bonde, *op. cit.*, p 9

⁴ As quoted in Jens Peter Bonde, *op. cit.*, p 10

⁵ As quoted in Jens Peter Bonde, *op. cit.*, p 10

⁶ As quoted in Jens Peter Bonde, *op. cit.*, p 10