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CIP - Kataložni zapis o publikaciji
Narodna in univerzitetna knjižnica, Ljubljana

061.1EU(082)

WHERE are the Limits of the European Union? / [edited by Mateja Jančar]. - 1st ed. - Ljubljana : Inštitut dr. Jožeta Pučnika, 2009.

ISBN 978-961-6689-06-9

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245463808

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Matej Accetto

United in Crisis: The Development of the European Union through Concrete Problems

I. Introduction

I imagine that a discerning reader has immediately spotted the fact that the title is a somewhat uninspired play of words on two important dicta in the canon of European integration. The more obvious one is "United in Diversity", the would-be official slogan of the European Union which has been included in the failed Constitutional Treaty and then subdued with the de-constitutionalisation in the Treaty of Lisbon. The slightly less obvious one, but perhaps of all the more practical relevance, is a phrase originating from the Schuman Declaration of 1950, that ideological underpinning to the European integration on par with the US Declaration of Independence, which enunci-

ated the following: *"Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity."* Indeed, the slow but incessant development of an "ever closer union of the peoples of Europe" has ever since been premised on the approach of taking smaller steps forward on the basis of "common achievements".

On the other hand, "crisis" is also one of the buzzwords of the European integration, and has been so long before the last financial crisis[1] to hit the North-Atlantic democracies and the rest of the world. One need only look at the debates following the problems in ratifying the Treaty of Lisbon or the failed Constitutional Treaty, or the earlier problems of a similar nature with the Treaty of Nice and the Treaty of Maastricht, to see the ease with which many commentators and European powerbrokers bemoaned the deep institutional crisis which the EU has found itself in that absolutely required the new institutional refurbishment. Indeed, such has been the frequency of this "crisis talk" and problems to be overcome that for some, "being in a crisis" has jokingly almost become a natural state of the Union.

[1] Or, current at the time of editing the written version of this text but after the colloquium, the natural-gas crisis.

But why, then, whimsically replace achievements with problems?

In a book that deals with a mostly unrelated topic of personal or group transformation, Kegan and Laskow Lahey highlight the transformative power of problems which are often there not only for us to solve them but also for them to "solve us", by forcing us to learn from them and change how we think.[2] Sometimes, it is the problems we face that force us to make the changes in our habits, the changes that may very well be necessary anyway but that we would not have undertaken without the challenge or lesson posed by the problem.

Accordingly, I would submit that often it has been not simply a set of concrete achievements as such, but such achievements brought about as a reaction to existing problems that had to have been overcome, which has truly pushed the European integration forward, and that one can find several examples of this in the Union's portfolio. In this presentation, I will focus on three prominent and pertinent examples in the development of the Union, one

[2] Robert Kegan and Lisa Laskow Lahey, HOW THE WAY WE TALK CAN CHANGE THE WAY WE WORK (Jossey-Bass: San Francisco 2001), pp. 43-44. The obvious example that they cite is a math teacher assigning her pupils a set of math problems, where she cares little for getting the right answers from them but rather hopes that by solving them, the students will have to stretch and improve their math understanding.

from its familiar past, one from its reticent present and one regarding its uncertain future.

II. The familiar past

The famous and thus perhaps tedious example of closer European integration as a consequence of a crisis, but one that it is nevertheless worth revisiting for its important lesson, is the very creation of initial communities as a reaction to the decades of a global political crisis shaped by the two world wars. It is not so much this fact alone, however, that makes it pertinent here, but rather the significant transformation of attitudes to international cooperation it signified when the post-war project is seen against its prominent pedigree.

I have neither the time nor the need to go into detail on this point here, but it should be recalled that the history of *proposals* for a closely integrated Europe reaches at least as far back as the 14th and 15th centuries when the first initiatives for a united Europe as a defence alliance were put forward (by prominent political authors such as Pierre Dubois, a legal adviser to both the French King Philip the Fair and the King of England Edward I, and later by the King of Bohemia George of Podbrad, but even before that

by such unsuspecting authors as Dante).[3] Throughout the centuries, such proposals would continue to appear, including prominently by authors such as Emeric Crucé and Duc de Sully in the 17th and William Penn, Abbé de Saint-Pierre and Kant in the 18th century. And yet, all these proposals were ignored or rejected by those who should and could act upon them, and often even ridiculed for their naivety – when Frederick II wrote to Voltaire of Saint-Pierre's plan, he stated in his letter: *"The Abbé de Saint-Pierre [...] has sent me a fine work on how to re-establish peace in Europe. The thing is very practicable: all it lacks to be successful is the consent of all Europe and a few other such small details."*[4]

The failings of the traditional proposals were even evidenced in the final such proposal put forward in the inter-war period, the Briand Memorandum[5] authored by the French Prime Minister Aristide Briand which France sent to the other European governments in 1930. The Briand

[3] I offer a longer account of such initiatives in Matej Accetto, IZGRADNJA EVROPE: OD RAZVOJA IDEJE EVROPE DO NJENE USTAVNE PRIHODNOSTI [*The Construction of Europe: From the development of the idea of Europe to its constitutional future*] (Uradni list RS: Ljubljana 2006), pp. 81-117. I go on to argue that the post-war European project may well have learned even more from the successful political and economic initiatives of the 19th century such as the German *Zollverein*, albeit these lacked the grandeur of canonical plans calling for European unity.

[4] Frederick II, *Œuvres*, XIV, 247, cited from Denis de Rougement, THE IDEA OF EUROPE (trans. N. Guterman, Macmillan: New York 1966), p. 119.

[5] For the full text, see e.g. Ernest L. Woodward *et al.* (eds), *Documents on British Foreign Policy 1919-1939* (H.M. Stationery Office: London 1946-1985), 2nd series, vol. I, pp. 314-321.

Memorandum was yet another laudable plan of European integration and is often taken to be the formal forerunner (if not the forefather) to the post-war integration process. And yet, it also showed the frailty of such plans at the face of individual nation-state interests, all the more so because it was conscious of them and tried to overcome them. It was the first plan which attempted to pay utmost heed to the interests of all involved, starting with the jealously guarded notion of state sovereignty. To appreciate that, one simply needs to count the number of qualifiers in the provision of the plan that

> it is necessary to make the proposed study very clearly subject to the general principle that *in no case* and *in no degree* may the formation of the Federal Union desired by the European Governments affect *in any way any of the sovereign rights* of the States which are members of such an association.

What renders this timid tiptoeing around the notion of sovereignty particularly telling, however, is that it was fully reflective of the common mood of the period. Of the 26 European states that have responded to the Memorandum, all but one have stressed that, if such a union is to be established at all, it must take place "on the plane of absolute

sovereignty and of entire political independence".[6] Only the Netherlands noted in its response that the achievement of proposed tasks would necessarily require some limitations of the states' sovereignty.[7]

The historic precursors offer several lessons for the creators of the post-war integration project that one can deduce from their failures as well as successes.[8] And yet, it took a prolonged crisis and a miserable failing of the peace project as established by the Treaty of Versailles after the First World War to finally nudge the (albeit limited number of) states into accepting some limitations of their sovereignty for the sake of a common polity. Out of a crisis, the first European Communities were born.

III. The reticent present

The second example of integration "through concrete problems" has its origins in the recent past but still very much reverberates into the present. To understand it, we can start with a simple question: "What exactly is the

[6] Arthur Salter, THE UNITED STATES OF EUROPE (George Allen & Unwin, 1931), as cited in Christopher Booker and Richard North, THE GREAT DECEPTION: THE SECRET HISTORY OF THE EUROPEAN UNION (Continuum: London 2003), p. 11.
[7] Peter M. R. Stirk, A HISTORY OF EUROPEAN INTEGRATION SINCE 1914 (Continuum: London 2001), p. 36.
[8] I outline the ones I find most relevant in Accetto, note 3 above, pp. 168-177.

meaning of the term "European" in the context of the European Union?"

Surprisingly, this question was first seriously addressed only in 1992, in a paper that the European Commission prepared for the Lisbon European Council of that year, which includes this passage:[9]

> The term "European" has not been officially defined. It combines geographical, historical and cultural elements which all contribute to the European identity. The shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation.

Why was the issue tackled (only) in 1992 and why is that fact surprising? It is surprising because, more than just featuring in its name, the term "European" has prominently featured in the imagined breadth of the European Communities, as their Treaties have always included (and the EU Treaty then adopted) the provision that "[a]ny European state may apply to become a Member", so one would have assumed that the issue would have already been dealt

[9] European Commission, "Europe and the Challenge of Enlargement", Bulletin of the European Communities, Supplement 3/92 (Office for Official Publications of the European Communities, Luxembourg, 1992), 11.

with. Perhaps, in the early decades, it could be brushed aside as a self-evident non-issue (the 1987 application of Morocco notwithstanding); but it became highly pertinent in the 1990s with the fall of the communist regimes in East Europe, when it became obvious that a number of fragile new democracies from East Europe will seek membership in the Union, and that having at least some understanding of the final frontier may very well be necessary.

The impending Eastern enlargement thus necessitated a debate within the Union on what really made a given state a proper candidate for membership – but, and that makes it a prime example of "integration through problems", it was precisely through this forced debate that the Union finally crafted the value foundations of its own legal order.

The 1993 European Council in Copenhagen, faced with the same issue of impending applications for accession, formalized a set of the so-called "Copenhagen criteria" for membership, which focused on the economic criteria of a functioning market economy and on the political criteria of democracy, the rule of law, human rights and respect for and protection of minorities. With the Treaty of Amsterdam, these criteria have then also been referenced in the

Treaty provision on the "European" states which may apply for membership[10] and have thus, by logical extension and for the most part,[11] also found their way into the new Article 6 of the EU Treaty as the fundamental general principles of the Union.

The political identity of the European Union is of course far from complete, and far from clear as to the desired finality of the European integration or the end-model of the European polity. The heated debates on the inclusion of Christianity in the preamble of the failed Constitutional Treaty, the similar debates at least ever since the Treaty of Maastricht on Member States' distaste for the term "federal" to be used in any connection with the Union, or finally the exorcism of the word "constitution" from the revisions of the Constitutional Treaty resulting in the Treaty of Lisbon, are perhaps all apt reminders thereof. Nevertheless, the fact remains that it was largely the forced EU identity "crisis" which led to its first construction, reticent though it may still be.

[10] From the Treaty of Amsterdam onwards, the new Article 49 of the EU Treaty now reads: *"Any European state which respects the principles set out in Article 6(1) may apply to become a member of the Union."*

[11] All except the minority rights, a dubious double standard (requiring of the candidate countries something not required of the Member States) which still plagues the Union – for more on this see Matej Accetto, "Varstvo pravic manjšin v Evropski uniji" [*The protection of minority rights in the European Union*], Zbornik znanstvenih razprav, vol. LXVII (2008), pp. 11-15.

IV. The uncertain future

Finally, I offer an example regarding the Union's "future", whereby I do not wish to claim any prophetic powers but rather refer to the expressed fears of today and the potentially useful historic and comparative lessons for its future, although, for all we know, that "future" may already be here.

Many a euro-sceptic and even some of the euro-enthusiasts would often claim that the true test for the stability of the European integration project will come with the first "real" economic crisis. With that crisis, or so the bleak prognosis goes, the European Union may well show itself to be a rent-seeking association of states interested in little beyond economic benefits to be derived from it, and that at the first sign of a serious crisis they may well retreat back behind their national borders and focus on their own individual concerns.

The warning sounds apt, and yet it may not be entirely true. For, if we look at the major comparative example, the United States, a curious lesson is imparted: in the US, one of the biggest "constitutional moments"[12] that also

[12] The term most authoritatively defined and widely used by Bruce Ackerman, WE THE PEOPLE: TRANSFORMATIONS (Harvard University Press: Cambridge 2001), pp. 87-88, 409, 414-420 and *passim*.

signified the biggest transfer of competences from the state level to the federal level came about during and *because* of the biggest economic crisis in the 1920s and the 1930s. Before Roosevelt and the *New Deal*, the individual states in the US enjoyed a significantly higher degree of independence and for many of their citizens the feeling of attachment to one's state trumped the sense of belonging to the United States. But it was precisely the crisis which led to the greatest expansion of federal competences and a veritable deluge of newly-established federal administrative agencies with regulatory powers in the fields of economy, labour law and social security, and it was a transformation strongly supported by nearly all federal states and their voters.[13]

The major comparative lesson would thus seem to imply that an economic crisis may actually be a boost to the impulses of closer integration rather than their downfall. And, indeed, it is not too hard to imagine that the European experience might be similar.

[13] This is convincingly illustrated by the 1936 US elections, i.e. after the first mandate of Roosevelt and when his tactics of combating the depression was very clearly known. His Republican counterpart has only won the electoral votes of two minor states (Maine and New Hampshire), making the electoral count 523 against 8, and the Republicans have also held on to merely 16 seats in the 100-member Senate. In contrast, the moderately convincing win by today's standards of Obama and the Democratic party in 2008 netted him the electoral victory of 365 against 173, while the Democrats unsuccessfully chased the magic majority of 60 seats in the Senate.

For one thing, there are the historic precursors already showing that an economic crisis could be a stimulus taken on board by the states in seeking further integration, even if it happened at the mercy of their particular interests. France has notoriously used the mechanisms of the Communities in the 1960s to solve its own agricultural crisis, a crisis which, according to de Gaulle, was the "most important problem" facing France after the Algerian civil war and could, if not resolved, lead to "another Algeria on [their] own soil".[14] Perhaps even more interestingly, the "federalisation" of the Communities was also held to be helped by the economic crisis in the 1970s.[15]

Similarly, if one is allowed some speculation based on the daily news, there are several hints of such a transformative move towards closer cooperation coming from a previously reserved actors in light of the current financial crisis: news such as those coming out of an euro-sceptic Poland on the possible acceleration in the adoption of the euro, or from a nearly bankrupt Iceland which has, despite tender

[14] See Andrew Moravcsik, »De Gaulle Between Grain and Grandeur: The Political Economy of French EC Policy, 1958–1970 (Part 1)«, *Journal of Cold War Studies* 2(2) (2000), pp. 18-19, citing Alain Peyrefitte, C'ÉTAIT DE GAULLE, Vol. 1 (Fayard: Pariz 1994), p. 302.

[15] Thus Daniel J. Elazar and Ilan Greilsammer, "Federal Democracy: The U.S.A. and Europe Compared: A Political Science Perspective", in M. Cappelletti, M. Seccombe in J. H. H. Weiler (eds), *Integration Through Law* (Berlin 1986), pp. 113-121, cited in Michael Kreile, "Federalism Doomed?: Institutional Implications of European Union Enlargement", in Andreas Heinemann-Grüder (ed.), *Federalism Doomed?: European Federalism Between Integration and Separation* (Berghahn Books: New York 2002), p. 233.

relations with the Union, precisely because of the financial crisis started seriously considering the possibility of an EU accession. Finally, the "recovery plan" to the tune of 200 billion EUR with which to kick-start the Member State economies that the Commission has tabled in late November, which envisioned 170 billion EUR to be provided by the Member States themselves and the remaining 30 billion EUR by the Commission and the European Investment Bank, shows ambition to step closer rather than drift apart at a time of crisis.

It is, of course, impossible to confidently predict the future development of the European Union, let alone the likely finality of its external or internal, geographical or political borders. Rather than speculate on the concrete possibilities, I have attempted to show that in pursuing its aim of an "ever closer union among the peoples of Europe", the European integration project may find unlikely allies where it least expects them – the very crises which put the existence of a European unity most vividly into question may just be the drive it needs to grow further.