



## Check Against Delivery

Address by Ms. Annemie Neyts-Uyttebroeck, Deputy Minister of Foreign Affairs at the  
Clingendael Institute  
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Dear colleague,  
Mister Chairman,  
Your Excellencies,  
Ladies and Gentlemen,

It is a great honour for me to be given the opportunity to speak at this well-known Institute at the eve of the Belgian Presidency of the European Union.

Let me begin by reminding you of two great truths about EU-presidencies: no Presidency ever stands alone, and however well a Presidency is prepared, actuality often decides otherwise. The outcome of the Irish referendum is a case in point. No EU-treaty can enter into force unless ratified by all 15 Member States. The negative outcome of the referendum is therefore extremely important. I do hope that the debate on the future of Europe will help to dispel some of the doubts and misunderstanding that fuelled the “no’s”.

Although the debate on the future of Europe should, in the first place, deal with the substantive question of what Europe is about, one should not disregard the question of the institutional shaping of the Union, nor the question whether or not we are evolving towards the establishment of a European Constitution.

I am not a lawyer, nor a constitutionalist, but I have been involved with Belgian and European constitutional and institutional matters for almost 25 years. Most observers regard institutional questions as rather dry and dull. Something that is better left to specialists. As a result, politicians dealing with them often tend to be misunderstood if not ignored. Politicians are urged to deal with the “real problems” of the citizens – that is everything from food safety to football transfers, but not with institutional issues.

Although I would never dispute that it is the task of politicians to tackle “real” problems as well, I do believe that the “institutional” problems should not be left out. As a citizen of a country that is constantly reshaping its institutions to better accommodate the aspirations of the citizens for greater cultural, regional and community autonomy; as a citizen of a country where only government coalitions have been the victims of successive constitutional reforms; as a citizen of a country where institutional reform is judged important and is subject of controversy and passions, but never ever a motive for violence. I regard institutional questions as both important and extremely interesting.

And may I ask, who, if not the elected representatives of the citizens, have the right and indeed the duty to deal with these questions. The institutions are the backbone, the architecture of every political system. No political system is viable or sustainable without an institutional structure.

I am talking about a “political” system and that is exactly what the European Union has become over the years and through the successive Treaties. There is no doubt that the blueprint of Europe’s Founding Fathers – there were very few mothers at the cradle of Europe – was eminently political, but the system that was originally put into place was not perceived as such. The goal of the European Coal and Steel Community was to bring under one single authority the industries that until then had fuelled two devastating world wars. The audacity, some must have thought the “temerity” consisted precisely in uniting the heavy industries of nations that no less than 10 years before were waging war on each other. The Treaty of Rome that founded the Common Market was also perceived as having primarily an economic finality. The 1954 failure to establish a European Defence Community has put, for a long time, a halt to every explicit political ambition.

You know all this. I am just recalling it to underline that the beginnings of the European construction or, if you wish, the establishment of a European institutional system, took place in a primarily economic perspective and not in a political one in the customary sense.

This has some importance, because it explains why the institutional questions did not, at the start, have the same importance as today. The first institutions were put in place not out of concern for a proper separation of powers, fair representation of the citizens or a choice between a parliamentary and a presidential or a mixed system, but out of concern for efficient management. From this stems the independence of the Commission, the exclusive right of legislative and regulatory initiative of the Commission and the system of rotating Presidencies. These origins also explain the absence of a genuine Parliament during the first twenty years of existence of the European Communities.

The decision to directly elect the European Parliament from 1979 on, the enlargement to nations that had just freed themselves from authoritarian rule and joined the family of democratic nations, the European Monetary System, the Single Act, the Economic and Monetary Union with its single currency and the political cooperation, all these are elements that greatly reinforced both the political dimension and the political ambition of the European Community, which rightly became the “European Union”.

I do not know who first suggested the idea of a European Constitution. What I do know, is, that Altiero Spinelli and his friends of the Crocodile Club were the first to draft a European Constitution that was welcomed by several national parliaments and that had the immense merit of really launching the debate.

The successive treaties of Maastricht, Amsterdam and Nice have set the foundations of today's European constitutional framework. These treaties are quite extraordinary. Extraordinary, in what way? Because they put into place a new sovereignty that is distinct from that of the Member States of the Union, but in which all Member States participate on an equal footing regardless of their different weight. Yes, it is indeed a new sovereignty and what is more, it has most of the state powers: the power to legislate, to mint, to enforce the law and in a near future the power to assemble a rapid intervention force on the basis of voluntary commitments of those governments willing to participate. Lacking until now is the power to levy taxes.

None of these powers is absolute or total, but each one of them is present in the treaties. The exercise of some of these powers is subject to the consent of either the European Parliament, or the representatives of the governments of the Member States in the Council of Ministers, or both, according to modalities that can differ. The European Court of Justice, the European auditor's office and the European Central Bank, all of them totally independent institutions, are also part of the institutional system of the Union.

In order for this sovereignty to take shape, Member States have renounced to be the sole keepers of sovereignty and did accept to exert it in common. What the Member States have actually done is to federate (which etymologically indeed means "to bring together") important elements of their respective sovereignties. In spite of those who dislike the "F"-word, the establishment of a European institutional system, as we know it today, has been a genuine process of federation.

This process is also a process of constitutionalization. By this I mean that the Treaties increasingly operate as a Constitution and that they increasingly fulfil the same function as a Constitution of a state. The European Commission and the European Court are the guardians of the Treaties. The treaties are the fundamental reference, also for the national jurisdictions. Most of the Member States, and certainly the most federally inclined like Belgium, accept the precedence of the Treaties and the resulting legislation over their national laws and even over their constitution. More than once, the European Court has qualified the Treaties as a "constitutional charter".

Has this process of constitutionalization come to full maturity? Has this process become sufficiently acceptable to all member states and populations to allow me to state that the Treaties have become in fact the Constitution of the European Union? I should add a third question, less fundamental perhaps, but nevertheless significant: Are the Treaties legible and comprehensible enough to fulfil the role of a Constitution?

The answer to all of these questions is: “no”. The constitutionalizing process is not finished yet; it has not even reached maturity as it has only been going on for about ten years. Moreover, I am not sure that all national governments, national parliaments and consequently, all populations, share my point of view. I do not think that the Scandinavian and British governments and parliaments see the European Union as a sovereignty in its own right with a distinctive dynamism or, in short, as a distinctive political and institutional system with precedence over their own system.

Finally, I need to mention another level of power, one that is relatively new but that is increasingly undergoing the consequences of European decisions.

I am referring here to the Regions that call themselves “constitutional regions”. This terminology refers to Regions that, by virtue of their national constitution, have full and exclusive legislative powers in a certain number of policy areas. The claims of constitutional regions started in Germany during the ratification of the Maastricht Treaty. The so-called constitutional regions demand that the European Union respect their competences and that the Union does not substitute itself to them.

During successive summits in Luxemburg, Cardiff, Lisbon and Feira, the Heads of State and government made commitments in the fields of education, professional training, and the fight against unemployment. These and other policy areas belong in several Member States to the exclusive or shared competences of the regions and/or the communities. The fact that the constitutional regions should rather address their demands to the Heads of State and government does not diminish the fact that it would be wrong to ignore their claims.

With regard to the role of the constitutional regions, may I remind you that Belgium will introduce a novelty during its Presidency, namely the fact that some of the Councils of Ministers will be chaired by a regional or community Minister. This will, for example, be the case for the Council of the Ministers of Education or the Council of the Ministers of Tourism. This stems from the fact that, by virtue of the Belgian Constitution, these policy areas belong to the exclusive competence of the Regions and/or the Communities that constitute the federal Belgian state. It was at the express demand of Belgium that the Maastricht Treaty for the first time provided in the possibility of such a representation in the Council. It is of course understood that decisions taken by the regional or community Ministers engage the Belgian government as a whole.

What can we conclude from all of this?

The process of shaping a constitution is well under way, even if it is not yet perceived as such by all of the governments, nor by all of the national parliaments and even less so by our populations.

There is an urgent need for the Treaties to be coordinated, clarified and simplified in order to function as a constitution or as a homogeneous text with a constitutional vocation. Moreover, apart from the Treaties, there is since the summit of Biarritz, a Charter of Fundamental Rights. The next intergovernmental conference will have to decide on the exact legal status of the Charter.

Should the Charter be integrated in the Treaties? Should it become the Preamble of the Treaties? Should it become a Treaty in itself? How should it relate to the European Convention on Human Rights? These are some of the questions that will have to be addressed.

Ladies and Gentlemen,

Do you think I hereby mean that it is still too early to re-launch the debate on the question whether or not to write a Constitution for the European Union or to give to the Treaties, in part or as a whole, a clear constitutional character? I think that the time is right for this debate to be launched, even if I am not sure whether it will be possible to conclude it by the next Intergovernmental Conference in 2004.

How should we go about it?

I think that it is of the utmost urgency that governments, national parliaments and populations come to realize that the European Union has become an entity that is eminently political and vested with real powers. In other words, an entity vested with competences of its own that confer to it a real sovereignty. A sovereignty that is distinct from that of the Member States, but a sovereignty in which all of the Member States participate.

Ladies and Gentlemen,

One cannot start this debate without taking into account the future Member States, the candidate countries that will join the Union in the near future. The enlargement of the Union will not only affect the way in which the institutions work, but also influence the priorities that need to be set, as well as affect our mentalities. The enlargement of the Union will have as a consequence that questions regarding Justice and Internal Affairs or those pertaining to the European Defence Policy, will be higher on the political agenda than is the case today. It is precisely in these areas that the democratic deficit is most striking. In these areas, Justice and Home Affairs and the

European Security and Defence Policy, I must remind you, there is no co-decision and the European Parliament only has the right to be informed.

Moreover, it seems unlikely that national parliaments will accept that their Justice and Interior Ministers decide to modify their civil and penal codes without even being heard. The drafting of a Common Policy on migration and asylum will soon make this clear. Furthermore, it is unlikely that the parliaments of the future Member States would willingly give up powers that they acquired only recently and after a long and hard struggle.

The awareness of the political dimension of the European Union is a necessary prerequisite for a broad acceptance of either a constitution, or of the constitutional nature of the Treaties. Then comes the difficult question what sort of a constitution is desired and desirable. Although the subject is still not mature, I would like to point out that, in my view, there are only two possible outcomes: either a constitution such as the Declaration of Rights, or a constitution that closely resembles the present Treaties. Either a short, inspiring text that confines itself to the Principles, or an elaborated and detailed text with hundreds of articles that resembles the existing Treaties, but in a coordinated, clarified and simplified form.

What difference does that make? The difference lies in the way in which the texts would be adopted and modified afterwards. A constitution should be adopted by the institutions of the Union according to a method to be determined by the Member States. Such a text would cease to be an international treaty negotiated by governments and ratified by national parliaments.

I do not doubt that this is the crucial point of this debate on an eventual, or may I say, on the future constitution of the European Union.

Ladies and Gentlemen,

I have outlined what could be called the parameters of the institutional debate. Now, I would like to take a brief look at the task ahead for the next couple of years when it comes to defining tomorrow's Europe. With her Benelux partners, here is what Belgium proposes:

- Clarify the delimitation of competencies between the European Union and the Member States according to the principles of proportionality and subsidiary.
- Clarify the European treaties and re-group them under one constitutional Treaty.

- Strengthen and extend the community method, which has proven to be very sound.
- Give the Union legal personality.
- Extend the legislative competencies of the European parliament to all budget expenditures
- The Commission must remain, in our view, the driving force of the enlarged Europe. Therefore we want to strengthen it by the direct election of its President.
- Enable the European Parliament to dismiss either the entire Commission, or one or several Commissioners. As a corollary, the possibility to dissolve the European Parliament should be introduced.
- Rationalise the work of the Council by distinguishing between the legislative, executive and deliberative functions.
- Generalise Council decision-making by qualified majority, to be coupled with co-decision for the European Parliament. Extend qualified majority vote and make use of the enhanced co-operation mechanism in order to ensure that the Union remains strong and fully operational.
- To strengthen the consistency and efficiency of the external action of the Union.

Bearing in mind the Benelux Memorandum, which constitutes a solid piece of common work, I want to offer some final Belgian specifics. We will continue to strengthen the role of the High Representative – Secretary General of the Council and we will do that in order to increase the visibility of the Union's external policy.

Starting in July's General Affairs Council, we will introduce a horizontal overview of the state of work in the other formations of the Council of Ministers. We do indeed believe that the General Affairs Council, besides conducting the exterior action of the Union, should also substantially coordinate the preparation of the European Council meetings.

The Laeken Summit, in six months time, will of course be the crowning event of our Presidency. You know that the Declaration of Laeken must define the method and the calendar of the preparatory work for the 2004 IGC. Besides that, everybody expects the Declaration to indicate also what issues should be addressed, and in what perspective they should be addressed.

Regarding the method, I think I may say today, with some degree of safety, that a consensus is growing towards a Forum-type preparatory framework, chaired by a political personality of great ability. It is my personal opinion that this Forum should define its own working- and decision-making methods within broad guidelines to be defined by the European Council.

It will be of the utmost importance that this Forum, by way of its President or Presidium, reports back on a regular basis to, I would say, the General Affairs Council and the European Council. The 15 governments must be able not to conduct, but to steer this preparatory process. The work of the Forum cannot and should not result in a “take it or leave it” draft Treaty. There should be no misunderstanding that only an IGC can draft and adopt a Treaty.

As stipulated in the Nice conclusions, the Forum would be composed of Representatives of the 15 national Parliaments, the European Parliament – if she so wishes – the Commission and of course Representatives of the Governments of the Member States. Also according to the Nice conclusions, the candidate- Member States will be associated in this process. Exactly how, needs to be discussed in depth. The same, by the way, applies to the by now sacrosanct civil society.

So what should this Forum come up with, if not with a final draft? I would say, with a set of recommendations and options on “inter alia” the so-called Nice-items.

It is by now time to conclude. Our incoming Presidency is our eleventh one. As I indicated earlier, no EU-Presidency ever stands alone, nor does a Presidency stand on its own. Having reminded you of this, and asking you to bear in mind the French saying: “La Présidence propose, mais l’Actualité dispose”, I assure you that we will exert ourselves to the utmost to complete a successful semester, in all due humbleness and with all due ambition.

I thank you.