CHAPTER ONE

The "Spinelli Treaty" of February 1984

The Start of the Process of Constitutionalizing the EU

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On 14 February 1984, at the instigation of Altiero Spinelli, the European Parliament approved a draft treaty as the start of the process of constitutionalizing the European Economic Community. This initiative led first to the revision of the treaties establishing the European Community (the Single European Act, the Treaties of Maastricht, Amsterdam, and Nice) and later to the Constitutional Treaty of 29 October 2004.

Altiero Spinelli made his constitutional attempt—to provide the European Economic Community with a kind of constitutional text—at a time when the European Economic Community was embroiled in negotiations about the amount of Britain's contribution to the European budget, reforming the common agricultural policy and increasing the resources of the Community itself (not to mention negotiations on Spanish and Portuguese accession). In fact, these were the same problems that gripped the European Union in 2005 during the difficult discussions on the financial perspectives for the years 2007 to 2013.

In 1980, the European Parliament was frustrated by the fact that, despite being elected by direct universal suffrage, it did not have real political influence in the European decision-making process (with the sole and essentially negative exceptions of the power to reject the budget adopted by the Council and the power to censure the Commission, but without being able to influence its investiture). Departing from his purely advisory role, Altiero Spinelli

decided to prompt the European Parliament to become the "main weapon" of the constituent process within the European Economic Community and to revive the dynamics that were at least supposed to result in the radical reform of the European institutions as conceived by the 1957 Treaties of Rome, if not in the immediate adoption of a European "Constitution." In other words, he decided to take the initiative to lend new impetus to the process of European integration through the drawing-up of a "new Treaty" rather than a simple change of detail in the existing Treaties.

The Spinelli Project

Rereading the draft approved by the European Parliament in February 1984 under the decisive influence of Altiero Spinelli allows us to rediscover its extraordinary relevance and, at the same time, its precursory influence on the subsequent amendments to the Treaties of Rome. The relevance of the Spinelli Project lies at once in the method of drafting the Treaty and in the content of many of its provisions.

In the early 1980s, not unlike the situation today, the process of European integration found itself stuck in discussions about Britain's financial contribution, agricultural policy reform and increasing the Community's own resources. Moreover, the European Economic Community was starting its third expansion to embrace Spain and Portugal without making a provision meanwhile to reinforce its institutional mechanisms and powers. On the other hand, the European Parliament had been elected by direct universal suffrage in 1979 even though its essentially advisory powers remained unaltered. The exception to this rule was the power to reject the budget, which had proved to be a blunt weapon since the Council had been able to adopt a new budget similar to the one rejected by Parliament. The European Parliament's power of censorship over the college of Commissioners was equally blunt since, in the event of a vote of censure, the Member States could simply appoint a college of Commissioners not necessarily as welcoming to the European Parliament as the former (given that, unlike today, the Parliament did not have the power to approve the nomination of the new Commission). Therefore, the European Parliament was in danger of becoming, as Spinelli put it, "an assembly vested with acute moral and political responsibilities but devoid of the competences necessary to exercise them." Like any good strategist, Altiero Spinelli made himself the commentator of this unsatisfactory situation and in a speech to the European Parliament in 1980 he launched a political initiative to give the European Economic Community new powers and to its institutions the means of exercising them. It was in that very speech on 25 June 1980, that Altiero

Spinelli urged the European Parliament to take charge of the future destiny of the European Economic Community and launch the initiative of undertaking a "comprehensive reform" of the Rome Treaties.

In the interest of brevity, I shall confine myself to going over the main stages of Altiero Spinelli's initiative:

a. The creation of the "Crocodile Club" as a cross-party group of innovative European Parliamentarians (reminiscent of the ground-breaking coalition between innovators and conservatives already present in the *Ventotene Manifesto*);
b. The creation of an "Ad Hoc Commission" within the European Parliament in charge of drawing up the draft of the Treaty;
c. Bringing pressure to bear on such prominent political personalities as Enrico Berlinguer, Willy Brandt, Leo Tindemans and finally, after the vote of the European Parliament, François Mitterrand, who Spinelli felt was the political personality most likely to support the Treaty both as the president of France and because of his personal leanings. Spinelli's strategy came to fruition when Mitterrand delivered his speech on 24 May 1984 in Strasbourg: "Expressing myself in the name of France, I declare her ready to examine your proposal, whose spirit it finds most fitting."

Rereading it today, Mitterrand's declaration can be interpreted in the light of other factors, as behind the statement by the president there was also a French interest in supporting the Spinelli Project, as was revealed by J.-M. Palayret, who consulted the French diplomatic archives of the time. This interest lay in using a more ambitious European Union project to counterbalance English minimalism and keep open the option of a two-speed Europe (or one of variable geometry), as Article 82 of the Spinelli Project suggested (once there was a majority of States representing two-thirds of the population, it provided for governments to decide, by common accord, the date on which the Treaty entered into force and the relations with States that had not ratified it). As we can see, this clause is more ambitious than declaration No. 30 attached to the Constitutional Treaty of 29 October 2004, even though it is driven by the same desire to "sidestep" the unanimity rule.

The Essential Elements of the Spinelli Project

Rereading the text of the Treaty of 14 February 1984 shows that most of its innovative provisions were included in successive Treaties or in the text of the Constitutional Treaty of 29 October 2004. Let us go over them briefly.

The Method Used by Spinelli

Altiero Spinelli was the first to argue that a Constitutional Treaty could not be drafted by an intergovernmental conference according to the traditional diplomatic method. Governments adopted this position when, after the Treaty of Nice, they entrusted a European Convention on the Future of Europe with the task of preparing a new draft treaty. Furthermore, in the Spinelli Project there was the germ of participation by national parliaments and civil society, such as emerged later in the European Convention and its methods of work.

The General Structure of the Treaty

The Spinelli Project was intended to be a new institutional Treaty of the European Union and not a mere revision of existing Treaties (unlike the Single European Act, the Treaties of Maastricht, Amsterdam and Nice, but like the Constitutional Treaty of 2004). Therefore, rather than merely amending existing treaties, Altiero Spinelli really started the "constitutional" process of the Union.

Superseding the Various Forms of Political Cooperation/Integration

Article 1 of the Spinelli Project provides for the creation of a European Union that goes beyond the three European Communities that existed in 1984, the European monetary system and political cooperation. It is thus an approach that is equivalent to suppressing the three pillars as provided for by the Constitutional Treaty of 2004 (a suppression that will be maintained by the Lisbon Treaty, which came out of the Intergovernmental Conference that followed the referendum rejections in France and the Netherlands).

European Citizenship

Article 3 of the Spinelli Project introduces the concept of Union citizenship in parallel with national citizenship, the two being closely connected. This concept was revived by the Maastricht Treaty on the European Union (1992) and maintained in successive Treaties.

Fundamental Rights

Article 4 of the Spinelli Project introduced the idea of the fundamental rights that derive from the common principles of the national constitutions, as well as from the European Convention for the Protection of Human Rights and Fundamental Freedoms. This article referred not only to the classic rights of the ECPHR, but also to the new economic and social rights guaranteed by national constitutions—as would be done later by the

Charter of Fundamental Rights promulgated in Nice in 2000 and integrated into the Constitutional Treaty of 2004 as well as the Lisbon Treaty of 2007.

Sanctions Against Member States

To guarantee that fundamental rights are respected, Article 4(4) of the Spinelli Project introduced the principle of penalties against States that are in breach of the democratic principles or the fundamental rights themselves. This provision anticipates the articles later introduced in the Amsterdam Treaty (1996) as well as the subsequent penalties bilaterally applied against Austria by certain Member States in 2000 after the formation of a coalition government that included Joerg Haider's hard-right Freedom party.

The Institutionalization of the European Council

Article 8 of the Spinelli Project introduced the European Council as one of the formal institutions of the Union for the first time (whereas the Treaties of Rome make no mention of it and successive Treaties entrust the European Council with a few functions, but without making it an Institution of the Union). It would take the Constitutional Treaty of 29 October 2004 to "institutionalize" the European Council. In this area, too, the Spinelli Project proved to be the precursor of future constitutional developments.

The Methods of Operation of the Union

Article 10 of the Spinelli Project provided for two methods of operation of the Union. On the one hand, it outlined common action in accordance with the classic Community method (Commission proposal, majority vote of the Council, co-decision of the European Parliament); on the other hand, cooperation between the Member States in accordance with the intergovernmental method. The innovative element of the Spinelli Project is that the Union could move from intergovernmental action to the Community method by decision of the European Council (see Article 11). This provision anticipates the so-called bridging clauses introduced in successive treaties to permit the passage from one decision-making procedure to another more in keeping with the Community method.

The Principle of Subsidiarity

Article 12 of the Spinelli Project introduced the idea for the first time that, in the area of concurrent powers, Union action is necessary if it proves to be more effective than the action of the Member States, particularly when the dimensions of the action of the Union or its effects extend beyond national

frontiers. It is the first clear definition of the so-called principle of subsidiarity that would later be introduced into European law by the Maastricht Treaty.

Legislative Co-Decision between the European Council and the European Parliament

The Spinelli Project introduced the concept of a *European law* (taken up again by the Constitutional Treaty of 2004) voted on by the two branches of the legislative body (the European Parliament and the Council). Under this proposal, European law would be adopted by a procedure of co-decision between the European Parliament and the Council, as later provided for by the Maastricht Treaty (except that the European Parliament votes first and the Council then pronounces on the text of Parliament, and not vice versa as in the current system). This difference is explained by the desire to give precedence to the Lower House—the European Parliament—directly elected by the citizens, rather than to the Council of Ministers. The Spinelli Project also made a provision for a *Consultation Committee* between Parliament and Council, with the participation of the Commission, as introduced subsequently by the Maastricht Treaty (based on the German model of the Conciliation Commission between the *Bundestag* and the *Bundesrat*).

The Investiture of the European Commission

The Spinelli Project provided for the European Commission to take up office after obtaining a vote of investiture by the European Parliament. This provision was also included and improved upon in subsequent Treaties.

The Council of the Union

Article 20 of the Spinelli Project provided that the Council of the Union should consist of Ministers who are specifically and permanently responsible for European issues. This provision is a forerunner to the legislative Council provided for in the draft Treaty of the European Convention, although this was not resurrected in the Constitutional Treaty of 2004.

The Luxembourg Compromise on Majority Voting

An innovative clause of the Spinelli Project that was not included in subsequent Treaties is Article 23(3) that provided for the maintenance of the "Luxembourg Compromise" to prevent majority voting for a transitional period of ten years (should a vital national interest be recognized as such by the European Commission). Nevertheless, traces of this provision, which confirms Spinelli's political realism, can be found in the so-called bridging clauses, which provide for the passage from unanimity to qualified majority

after a certain number of years (see Article 67 of the Treaty on European Union). Even the temporary revival of the so-called Ioannina mechanism in the Lisbon Treaty is inspired by the philosophy of the Spinelli solution.

The Designation of European Commissioners by the President

This provision of the Spinelli Project (Article 25) was not taken up again in successive Treaties. Nevertheless, it is an idea that had already been formulated by Valery Giscard d'Estaing during the European Convention on the Future of Europe and proposed again by French president Nicolas Sarkozy in his speech in September 2006 in order to appoint a Commission independent of nationality and not subject to the regular rotation of the Member States. In this case, too, this is a proposal that was ahead of its time.

The Primacy of European law

Article 42 of the Spinelli Project articulated the primacy of European law over that of the Member States. This provision, which results from the jurisprudential decisions of the European Court of Justice, was taken up again in Article 6 of the Constitutional Treaty of 2004.

The Elements of the Spinelli Project Still Unincorporated in the EU Treaty System

Other innovative provisions of the Spinelli Project were not acknowledged in subsequent Treaties or in the Constitutional Treaty of 2004. For example:

The System of Financial Equalization

Article 73 of the Spinelli Project made provision for a system of financial equalization to alleviate excessive economic imbalances between the regions of the Union. Inspired by the German federal system as a way of attenuating differences between the *Länder*, this provision was not acknowledged in successive amendments of the Treaties.

The Entry into Force of the Treaties

Article 82 of the Spinelli Project provided for the possibility that the Treaty should enter into force even in the absence of ratification by all the Member States. A majority of States representing two-thirds of the combined population could decide on its entry into force and on relations with Member States that had not ratified it. This clause set out to modify the unanimity ruling imposed today by Article 48 of the Treaties. Even though not acknowledged

in subsequent Treaties, it triggered other solutions put forward to sidestep the need for unanimous agreement (see, for example, the solution proposed in the "Penelope" Project drafted by a group of European officials headed by François Lamoureux at the request of President Prodi).

Revision of the Treaties

Article 84 provided for a procedure to revise the Treaties through an agreement between the European Parliament and the Council in accordance with the procedure applicable to organic laws. This provision sought to remove from Member States the power to revise the Treaty and to abolish the need for unanimity. This procedure has recently been put forward again by MEP Andrew Duff for the new Constitutional Treaty.

The System of Revenues

Article 71 of the Spinelli Project foresaw the possibility of creating new revenues for the Union without needing to amend the Treaty (an organic law being sufficient). Moreover, the Commission would be authorized by law to issue loans. This proposal, highly innovative at the time, remains so even today.

Conclusion

A rough estimate shows that about two-thirds of the innovative provisions of the Spinelli Treaty have been adopted in subsequent Treaties. As far as the remaining third are concerned, about half were incorporated into the Constitutional Treaty and ultimately included in the Lisbon Treaty that is now in force since the end of 2009. This rereading of the Treaty of 1984 not only proves the vital importance of the Spinelli Project, it also underlines its farsightedness. Altiero Spinelli began the process of constitutionalizing the European treaties and proposed innovative solutions that have, for the most part, been adopted or recognized as valid solutions for the new Constitutional Treaty. Even though initially Spinelli lost the immediate battle of the Single European Act of 1986, we can say that today he has won the war to give the European Union a Treaty that is essentially, if not formally, constitutional and one which contains most of the solutions imagined by him and voted for by the European Parliament in February 1984.