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Dear Friend,

Holidays time is, or should be, a time for serenity/tranquillity. An appropriate time to reflect on the events which have just taken place and on future prospects.

This is what I have endeavoured to do with regards to the draft Constitution and the IGC. Below are the conclusions of my thoughts. I am convinced that they will raise criticism and I will be happy to receive yours.

1- The results of the Brussels Summit

These results are well and truly a failure as far as the IGC is concerned. To try to pinpoint responsibility for this failure may be useful in order to prove the validity of one or the other position confronted, but is completely useless in finding solutions out of this deadlock.

The history of the European Union is the best evidence of the impossibility of forcing the change of the treaties on a country, even if all other countries agree. In this specific case, it is not even possible to use the “opt-out”, as this relates to the functioning of the institutions.

Within a union of 25 members, new rules are necessary for the efficient carrying out of all competencies transferred to Brussels. This is equally valid as much for those competencies concerning the large market as well as for others, for rules accepted by the States and citizens. What makes the draft Constitution strong is its necessity.

With 90 % of the draft Constitution being agreed upon, either explicitly or implicitly, we have yet to find the remaining 10 % of solutions to obtain this double consensus. For all those who want this Constitution, the time has come to stop deceiving ourselves, reiterating that the draft must be adopted without change, and to work henceforth, to seek solutions in order to reach agreements.

2- The wrong track of the “pioneering group”, “avant-garde” or “hard core”

I understand the nostalgia of those who miss the good old days of a Europe of six members (as well as the long period of stagnation from 1960 to 1986?...) just as the resoluteness of those who say: “let’s make a hard core together with those who are ready to adopt the draft Constitution with change”. But have they really thought about the possibility of doing it? Let me question it; the draft Treaty, creating a Constitution is not about a reinforced cooperation on a specific point, but about replacing all treaties currently in force.

Those among the twenty-five who would like to adopt a Constitution on the fringe of the others, should then denounce the existing treaties, i.e. to leave the Union and create a new one, in order to re-negotiate the links which would unify the new Union with the members who would remain in the current Union. But how many states are ready to endanger the *acquis communautaire* (including the Euro) with this decision?

Either we reach a consensus on this division in two parts – this consensus would be much more complicated and hazardous than a change in the composition of the Commission or in the rules of voting in the Council – or we ruin everything which has been patiently built over the past 50 years.

This means that those who brandish this proposal as a threat are completely wrong. A threat which cannot be taken seriously is ridiculous, and can only increase distrust, which is already too important. This has to be avoided.

3- The interest of Europe is not the interest of a group of states.

Europe’s common interest is not, by definition, the interest of the Franco-German axis, nor the interests of the founding states or the states which are ready to accept 100% of the draft Constitution. It is common to all, or it cannot be called common interest. It is a statement of the obvious, but one which we often tend to forget and to use the registered designation of origin “European interest” when it suits us.

It is time to ask: which Europe do we want? Let me explain: I do not want to talk about the federal/intergovernmental dilemma. Limping along, the federal Europe is making progress, going through relatively long intergovernmental detours.

I am referring to the unification model which we are following: do we want to build a Bismarckian Europe, around a strong hard core, as Bismarck’s Germany was unified around Prussia? Or would we prefer an Adenauerian Europe: polycentric and balanced between the North, the Center, the South, the East and the West? This is similar to an awkward family question, which one does not like to talk about. However, we must do it, because it explains the behaviour of everybody during the Iraqi crisis and when deciding within the IGC on how to exert power in Europe.

Let’s say it another way: the good functioning of the Franco-German axis is very useful – maybe even essential – for Europe, but it is not sufficient. The agreement of other members states is necessary.

In my opinion, a good solution to the existing disagreements on the other 10 % of the Constitution requires a clear option for the polycentric model, if we want to reach sustainable

solutions, which do not heal wounds superficially and which will not be a source of conflicts in the future. With a little goodwill, we should be able to reach these solutions. The Union is formed due to compromises, not coercion.

4- Taking advantage of this time to settle the European Parliament's composition

The draft Constitution has not settled this difficult problem, because it was limited to establish:

- a maximum number of members of the Parliament (736 members)
- a distribution criteria: regressive proportionality
- a minimum limit: 4 MEPs for each member state
- a procedure to set this composition

But the procedure chosen is complicated, because it requires:

- the European Parliament's proposal
- the unanimous decision of the European Council
- the approval of the European Parliament by a less complicated procedure

The adoption of a status for MEPs has dragged on since 1998. What is going to happen if the decision setting the number of MEPs per country – a much more vital subject for most countries – has not been approved before the elections in 2009?

The Treaty of Nice will cease to exist once the new treaty establishing a Constitution is put into effect.

How does one force the European Parliament and the European Council to take this decision, in order to avoid a gap?

A procedure should at least be foreseen to fill the gap if no decision is taken. The Constitution does not provide for this kind of procedure. Why not simply solve this problem now?

This is what Prof. Tsatsos and I have suggested in our report on the results of the work of the Convention. Our proposal has been endorsed by the European Parliament. The European Council can now solve this question on its own authority, and the Parliament would be well advised to make a proposal in order for its voice to be heard.

5- Seeking a consensus on the way to calculate qualified majority in the Council.

This is not impossible if we are not biased in favour of the systems of Nice and the Convention. The latter has advantages over the very complicated system of Nice, but it is neither perfect nor unchangeable.

It has probably to be adapted by playing either on the approval threshold (within the IGC itself, a proposal of 54/64 or 55/64 seems to have been submitted by the Presidency), either, if we want to keep the 50/60, on the introduction of degressive proportionality for the population concerned for the calculation of the 60 %. Why not? Degressive proportionality was used by the Convention itself to calculate the number of seats within the European Parliament. Furthermore, in federal states, the upper chambers are almost never elected

according to a simple proportionality, but according to systems which favour members with a smaller population.

Since keeping the system of Nice - even revised - would not be the way of reaching a consensus, we should try to find a good solution by correcting the Convention formula.

6- Returning to the compromise formula, at least, of each nationality with the right to vote.

There is no magic threshold, beyond which the Commission would not function. The Commission of the Europe of six members, with its nine members, would not work better than today's Commission of twenty members. Why would it be a catastrophe to have twenty-five members?

Fallacious ideas are often more attractive. But this attraction does not make them feasible, and the reduction of the number of real Commissioners, suggested by the Convention, is not politically feasible in the current Union.

Besides, this is the stand of the Commission itself, and which was approved by a large majority within the IGC.

It is useless to protest. It is better to accept the reality as it is and try to compensate for the increase in members with a better internal organisation and functioning rules adapted to a larger Commission.

7- Conclusion

I am returning to my starting point. It is worthless dwelling on missed opportunities, getting bogged down in a series of mutual accusations or jumping to conclusions. Whatever the cost, we have to find a way to break the deadlock and reach unanimous solutions,. This is the task of the institutions, both community and national ones, but it is also the task of civil society and all those who are driven by the will to make Europe move forward.

We therefore need a frank and open dialogue. This letter only means to initiate this dialogue.

In anticipation of your remarks, thank you for your attention.

Wishing you a very happy new year,

José Maria Gil-Robles