THE EUROPEAN UNION HAS A FUTURE

Zlat Milovanovic, PhD
University American College Skopje (UACS), Macedonia

Abstract:

Addressing the Chatham House Conference in London on January 30th, Guy Verhofstadt said it was Europe's "last chance to form a more perfect union". He called for giving the EU more powers so that it could tackle its crises. Europe should be rebuilt along the lines of a confederation or a federation based on the US model. It may have not been the last chance, but the EU needs reforms. The threats to the EU are real and should be dealt with. The EU can be reorganized as a state because it already performs so many functions of a state. Should it become a federation or a confederation? Should it be based on the US model? These questions require major research and rethinking. This paper addresses several issues: the EU power and its geo-strategic position, constitutional development and other reforms currently taking place, some federalist theories behind European integration, and the EU's future. Our research here is mainly in the realm of legal and political study. Our conclusion is that the EU has a future as a well-established and indispensable part of today's world.

Keywords: Federation, Federalism, Constitution, EU legal system, recent developments

JEL Classification code: K-L

Introduction

Addressing Chatham House in London on January 30th, 2017, Guy Verhofstadt said that it was Europe's last chance to form a more perfect union (Verhofstadt, 2017). He defined three threats to the EU: radical Islam, President Trump, and President Putin (Reuters, 2017), and called for rebuilding the EU "to give it the powers and the means to tackle the crises it faces." More specifically, he called for the United States of Europe, i.e. a confederation or a federation based on the US model.

Is this the last chance? The question has certainly been raised at the right time. The EU is a unique economic, social and political organization, created with the goal of preserving peace and security through free market cooperation among its now 28 Member States. In recent years, populists and new nationalists, opposed to the EU and supportive of BREXIT, have predicted further "exits" and ultimately the demise of the EU. The new nationalism and isolationism are seen as a world problem (The Economist, 2016).

The EU as a power

Without exaggeration, the EU can be considered as a world power if not a super-power. With a population of 510 million in 28 countries, and a global presence, the EU is one of the world's largest trading partners. EU is the largest economy in the world with a GDP of 25 000 EUR per person (Eurostat, 2017).

The EU is an active participant in world global organizations, including the UN, the World Trade Organization, G 7, G 20, world conferences on climate, Council of Europe, OSCE and many more. The EU system of outermost regions and overseas countries and territories spans all continents and oceans of the globe. The EU cooperates, i.e. with candidate countries, neighborhood countries, the Mediterranean Union (43 Member States), the countries of Africa, the Caribbean and the Pacific (74 countries).

In terms of defense and security, EU cooperates most closely with NATO, but it is also a defense actor on its own. There is EUROCORPS, organized around the Franco-German brigade, with five full and four associated members, and there are EU-flagged peace-keeping missions, border and coastal units, some nation-building, police training, EULEX, humanitarian assistance, etc. The EU's forces are those of its 28 Member States, two of which are nuclear powers and four more of which have "dual key" access to some nuclear weapons stored on their territory.

The EU's global impact is significant and could potentially be far greater. Its unique geostrategic position as a power situated between Western Europe and Eastern Europe-Eurasia, but also comprised of members in Eastern Europe such as Bulgaria, Romania and Poland, could potentially make the EU a mediator in world politics. Its links with the Middle East area are important as well. The EU is present in South America (the European Space Center), in New Caledonia (the Pacific Ocean), in Greenland (where uranium has been discovered), in the Arctic area, in the Falklands (this may change with BREXIT), in the Caribbean islands, etc, etc. Turkey is a candidate country with a customs union with the EU and Morocco would like to be a member but cannot, as it is not considered a European country... This list is long!

Historic evidence shows clearly that an organization, much less a country, of this size and importance cannot possibly be defeated or demoted. While contemporary anti-colonial movements do exist in its Member States, the EU attracts its former colonies into its membership, which is a unique case in recent history. When the EU has crises, it manages to overcome them. In 2017–2018, no Member State will leave the EU. Scotland may be trying to rejoin it following BREXIT. Donald Tusk dixit.

The Constitution making

The EU needs a Constitution, sooner rather than later. A Constitution can help any state, especially a powerful one. Those who favor EU constitutionalism point to major problems to be resolved.

For instance, there is a Central Bank in Frankfurt but there is no Finance Ministry or Finance Minister in the EU. As there is no Treasury, bonds cannot be issued. There is a Defense function but no Ministry of Defense. There is Foreign Policy, but no Ministry of Foreign Affairs, etc. There is no Government of the EU per se, there is only the European

Council and the European Commission. The legislative function is weak, as most laws are voted in national parliaments. The laws differ from country to country, which does not help citizens at large. Labor laws, health services, and education also vary throughout the EU.

The idea of an EU Constitution is not new. Back in 1952, there was a project of the then European Coal and Steel Community (ECSC) to create a European Defense Community (EDC) for the six ECSC members. The EDC treaty was signed and opened for ratification on May 27th, 1952 – at the Council of Europe in Strasbourg. The ECSC Assembly and the EDC proposed a European Political Community, in 1952, as well as a Constitutional Committee. That Committee, presided by Heinrich von Brentano, proposed a Constitution in anticipation of a European Confederation or a Federation. A Parliament, a Senate and an Executive Council were envisioned, as was a Council of National Ministers (Verhofstadt, 2017). The EU would have become a sovereign authority in its own right. Due to the opposition of the French National Assembly (on August 30th, 1954), the proposed Defense Community, the Political Community and the Constitution were all rejected. The goal was not defeated, however. The Constitutional Convention on the Future of Europe began in Belgium in the fall of 2002, presided by Valery Giscard d'Estaing. A Convention on the Future of Europe (i.e. a treaty) was signed by the Heads of State and Government in 2004. This initiative of 25 Member States failed to be approved by the referenda in France and in the Netherlands, after which five other countries cancelled their referenda. The question is: Would there be more success today?

A federation is a form of state characterized by a union of partially self-governed states under a central state government. A confederation is a union of sovereign states engaged in common action but still independent. In a confederation, but not in a federation, a state can leave the union (the Swiss Union is called a confederation, but it is a federation). De facto, the EU is a confederation (Schuman, 1953). In the United States, The Articles of Confederation and Perpetual Union of 1776, ultimately judged wanting in practice, were replaced by a federation created by the US Constitution of 1787.

The EU is not a state in its own right, but it could become one if its members decide so. The EU already performs some of the functions of a state though not all. It does not have, for instance, an enforcement mechanism of its own, i.e. the ability to apply its decisions directly, without going through national mechanisms, even in recalcitrant Member States. The Treaty of Rome, 60 years ago, promised to "lay the foundation of an ever closer union." The Treaty of Maastricht, signed in 1992, set out an almost utopian vision: diverse people in diverse geographic areas united by a single currency, a common foreign and defense policy, one European citizenship – in addition to 25 citizenships of Member States, a common market and a labor market, social rights, etc. Only in 2016 has the alternative of a community (even "a club") emerged and with it a focus on sovereign rights and specific national interests to be protected by the EU!

Instead of a joint road to a more developed union, the idea of "five pathways for Europe" was proposed by Jean Claude Juncker, addressing the European Parliament on March 1st, 2017. The exclusive responsibility for trade, security, migration, asylum, borders and defense would still remain unified.

In the first scenario, the EU would continue its present direction in the search for unity and solidarity among all Member States, solving existing problems, as they come. All Member States will not necessarily want to pursue this path.

The second scenario would be less ambitious, developed and demanding: there would be a single market, internal security, solving the problems of refugees and migrations, more bilateral than collective decision making...

The third scenario would create a "multi-speed Europe", in which only those who want more collective action would do more as "coalitions of the willing".

The fourth scenario is for the EU to do less together but more efficiently, for instance, deepening the single market, focusing on research and development, e.g. on digitalization and decarbonization.

The fifth scenario would be to do much more together to respond better to global challenges, make decisions and act more rapidly, have a single seat in international fora, build a common defense with NATO, etc. (The Telegraph, 2017).

Each scenario has some background in EU history. Technically, such a proposal would create several EU organizations and develop major differences among them. On the other hand, it could include the candidate countries and strengthen the cooperation of all. Even the UK after BREXIT could find its place within it.

Political theory

Whether one looks at the ancient Roman example or focuses on the ideas jointly held within European civilization (Cartou, 1986), European nations and their leaders have consistently sought to create a larger union among themselves. Despite this, Europe remains divided, economically, politically, socially, each state being sovereign in its own right. The theory of federalism has been developing, too, at least since Dante Alighieri and his "De Monarchia" (1203).

In 1929, Aristide Briand, the French Foreign Minister (and a former Prime Minister) proposed to the League of Nations Assembly the idea of a European Federal Union, based on economic prosperity, social and political cooperaton. He said that *"nations which live in close geographic proximity should create a federation among themselves."* Briand's proposal had the backing of German Chancellor Stresemann and of many Member States (28 of them, as the EU today!). His Memorandum should have been adopted but was not!

After World War I, a first Pan-European congress was organized in Vienna in 1923 by Richard von Coudenhave Kalergi, the founder of the movement called "Pan-Europa." Briand was named its Honorary President. The movement, which still exists today, was reorganized after WWII, for many years under the Presidency of Otto von Habsburg, a German member of the European Parliament.

Some of the most prominent Europeans, including socialists, revolutionaries, nationalists, economists, philosophers from across the continent, supported and promoted European unification. In 1849, at a Peace Congress in Paris, Victor Hugo even proposed the creation of the United States of Europe! Earlier still, Saint-Simon envisioned a European Parliament with the Lower Chamber representing economic and professional interests, including scientists. Proudhon proposed a federal union of Europe based on municipalities and provinces. Immanuel Kant, Abbe de Saint Pierre, Jean Jacques Rousseau, King George Podiebrad and many others drew up plans which are in one way or another still relevant today. William Penn, in his essay written in 1693, proposed a plan of a unified Europe with arbitration and armed forces of its

own. Emeric Cruce, in 1623, considered wars as misunderstandings among nations and the result of domination of societies by a warrior class. He favored a permanent peace congress to be held in Venice, with the participation of all European nations including Turkey.

What should change in the EU?

As far back as the 13th century, a majority of those who thought and wrote about unifying Europe emphasized the concept of a federation or a union of states. This has been proposed in various forms but not in the form of parallel projects. The historical movement is clearly in favor of a federation of states, to be joined by most European states, even those with unequal wealth and power.

Each state being sovereign, no one proposed variable levels of sovereignty between states which are members of a given federation. Even before the Treaty of Westphalia in 1648, which was dedicated to peace, sovereign states have been considered as equal among themselves. If, as is proposed now, there are five pathways to unification, there will be some more equal, some less equal members which is not acceptable in international law. The smallest state in Europe, San Marino, is equal to the largest states in the UN, each nation being equal to all other nations.

Thus, instead of applying "different speeds", we actually need the EU as it is, de facto and de jure! The choice between a federation and a confederation is suggested by history, too: in the U.S., confederation yielded to federation, as it did in Switzerland and Germany. It is useful to recall here Amendments 9 and 10 of the US Constitution, which provide that the rights not delegated to the states or to the federal government remain with the people. This will probably find its place in future EU basic documents.

The EU was originally established as an international organization, its major documents being adopted as international conventions even when they are internal legislation of the EU. This feature of the EU system will most likely change, although its advantage now is in the possibility to use reservations (to the treaties).

The necessary governmental structure of the EU can be built to deal with the EU affairs at its highest level. Most likely, this will be achieved through a constitution. The US legal system is unified on a federal level by the US Supreme Court, which is not the case in the EU. The unification of the EU legal system could be one of the future projects, of which very little has been said so far. What is clear is that this is indeed a historic chance for the EU to start work on its legal unification. After BREXIT, practically all European nations remain within some form of the *continental legal system – as distinct from the Anglo-Saxon or other world systems.* Despite the differences in the French or the Montenegrin Civil Code, their principles or traditions go a long way back. This will facilitate the work of lawyers at all levels throughout the EU, whether in Brussels or Madrid.

What about the armed forces? To say that there are no EU forces is inaccurate, to say the least. More specifically, the joint forces are relatively small but the EU states, taken together, have an enormous force at their disposal. The combined active military force numbers about 1.8 million. The EU can be called the third nuclear power in the world, although a part of that force is British, a part is French, and a part would be a joint force with NATO, which is in charge of the territorial defense of the EU. Article 42 of the Treaty of Lisbon (TEU) calls for

the integration of Member States' military forces – if and when decided unanimously by the European Council. This has not occurred so far but remains a possibility.

Last but not least, the EU Common Foreign Policy needs to develop more independently, taking into account the common interests of the Member States. The EU may be often prevented from creating its own foreign policy because of inability to arrive to a joint position of all. It has concentrated on trade more than on other common interests, for instance, the wars in the Middle East. The EU interest is peace in that area, not endless wars. The EU should engage in peace talks and initiatives rather than in military action. Its interest would be to help rebuild Iraq and Syria, no matter who is in charge in those places, if for no other reason than that there are enormous business opportunities. Additionally, some of the refugees may be in a position to go back to their countries. There are many other possibilities, all around the world, but Syria, Lebanon, Egypt, Libya et al. are all members of the Mediterranean Union (Syria being suspended).

The challenges facing Europe are significant but not intractable. The debate about the future, now taking place within the European Commission and among the people of the EU, may lead to some new ideas. The results of the debate will be announced by Jean Claude Juncker in his State of the Union Address of September 2017.

According to Giles Merritt, writing for the Financial Times, the major problems for Europe are: a demographic crisis and the economic slow-down caused by low productivity (now at about 50% of US productivity). The even tougher conditions of the globalizing world economy have their impact, too. The TTIP between the US and the EU raised some hopes, but the new US position remains a major obstacle (Merritt, 2017).

The US-EU relationship goes back to World War II and to US post-war support which has been essential to the EU's growth. The EU as a whole has never had to fight a war, as the wars were fought by the Member States. Some Member States were and remain neutral. Consequently, the EU does not have a war to worry about, which is definitely an advantage. This means that the EU can define and build its own foreign policy, directed to peace, economic cooperation and growth. Although the US President may speak of the advantages of BREXIT and encourage some other states to go for "exits" of their own, the EU will stay firm and has already asked President Trump to stop his propaganda of that nature.

The EU's potential may be greater than anybody can imagine! In varietate concordia!

BIBLIOGRAPHY

Verhofstadt, G. (2017) *Europe's Last Chance: Why the European States Must Form a More Perfect Union*. New York: Basic Books.
Verhofstadt, G. (2017) His address, *Reuters News*, January 30th.
The Next French Revolution (2017) The Economist, March 4th.
Schuman, R. (1953) in Reuter, P. *La Communaute* du Charbon et d'Acier, Preface, p. 7.
European Commission (2017) *Press Release Future of European Debates*, Brussels, March 1st.
European Commission (2017) *The White Book*. The Telegtaph, March 1st.
Cartou, L. (1986) *Communautes Europeennes*. Paris, Dalloz.
Merritt, G. (2017) *The Challenges facing Europe: Focus on US-Europe relatinships* The Foreign Service Journal, April, pp. 29–35.
How to Save Europe? (2017) and *A Special Report on the Future of the European Union* (2017) The Economist, March 25, pp. 8 and 3–16.