Enlargement not only requires a new constitutional settlement for the EU, it actually shapes the crucial aspects of that settlement.

Abstract

This paper discusses the various issues that lie as a result of the decision of the European Union (EU) to enlarge its membership, making the EU to now have 25 member states from the previous 15 (a large difference from the original 6 countries when it was first established), and will even have more members in the near future. This paper will describe how this enlargement process affects the whole system of the Union, creating many challenges, both internally and externally, particularly in its institutional order.

The issue of a new constitution in the enlarged Union would also be addressed. At present, it is preparing itself for the possibility of applying a new constitutional treaty that would shape the structure of the EU as a whole. Whether or not this constitutional arrangement is sufficient enough and prove effective to overcome the complex issues that exist in the enlarged Union shall remain a question, as the constitutional treaty itself has not been applied and will only enter into force after all member states agree to ratify it within the next two years since its signing in November 2004. This poses another question for the Union. How will this new arrangement shape the future EU in the coming years? This paper will provide firstly the historical evolvement of the EU, and will then address the above questions by describing the constant emergence of challenges especially due to its

latest enlargement and describing how the EU tackle these problems through institutional changes in the hopes of shaping the EU for the betterment of the future of the Union in general, and the member states as well as its citizens in particular.

Table of Contents

Abstract

Table of Contents

1. Introduction

2. The historical background of EU and its Constant Changes
   - The Economic Cooperation of the Community
   - The Economic Spillover to other Fields of Cooperation
   - The Main Institutions and its Ongoing Criticisms

3. The Development of the European Union at a Time of Change

4. Issues of Enlargement: The Need for Structural Changes due to Enlargement

5. A Constitution for the future of Europe?

6. Conclusion: The future of EU: Enlargement and its Challenges

1. Introduction

After existing for over half a century, the European Union (EU) has continued to evolve itself in accordance with global conditions, while maintaining its efforts to achieve the aim of integration within the region. In the coming years, the EU shall continue to face many challenges in the arrangement and functioning of its institutions as well as upholding its integrity among its citizens. This can be evident, in particular, with the latest accession of the countries from Central and Eastern Europe in May 2004. Moreover, with several more
neighbouring countries lining up to join the Union in the near future, further enlargement will undoubtedly create more complexities in maintaining the smooth-running of this supreme international body.

Although this is not the first time an enlargement occurred in the EU (it had happened four times before in the past\(^2\)), this is the largest of its kind, with the joining of 10 new members simultaneously, coming from countries with totally different political, economic, legal, social and cultural backgrounds from the older member states which mostly come from more developed countries in western Europe. There is a huge development gap between these two groups of older and newer member states. With such diverse backgrounds from these members, there will be many challenges that the Union has to face in reaching the aim of integrating the European region.

As a result, changes had to be made from within the newer member states individually and by all member states as a Union. Before joining the Union, the newer member states had to assure that they would be able to fit themselves into the advanced and complex system of the Union. This is made, by among others, meeting political and economic goals by amending their respective national constitution and laws as well as accepting to adopt the *acquis communautaire*\(^3\). ‘Moreover, the division lines themselves are constantly changing, with the enlargement process constituting an important factor forcing adaptation and serving to push


\(^3\) That is, the body of laws and rules which have been developed over the years’ by the EU, see Avery (1998), The Enlargement of the European Union, p. 32.
individual states into a single regulatory framework…". In addition, the EU needed to make adjustments and several amendments to the existing treaty provisions, as they were no longer relevant as a legal framework for the future of the enlarged Union. The amendments are particularly made to its decision-making procedures and other stipulations in order to make the institutions more suitable and fitting than its current condition, which has been criticised for years of being inefficient in its functioning and decision-making process.

The process of amending the treaty provisions took years to complete. Many pros and cons occurred during and after the convening of the Intergovernmental Conferences (IGCs), which resulted to the agreement to establish the Single European Act, the Treaty of European Union (as well as the European Monetary Union) in Maastricht (1992), and also amendments of the treaty provisions in Amsterdam (1997) and Nice (2001). Many found that the changes of the treaty provisions during these periods created more complexities to the already complex arrangement, particularly on its institutional order. The drafting of the Constitutional Treaty by the Convention on the Future of Europe was the latest attempt to settle this problem, and the draft text was finally signed by both the old and new EU member states in November 2004. At present, the constitutional treaty is in the process of ratification by the member states. Only after accepted by all members will this constitutional treaty enter into force and be applied to the whole European Union.

2. The Historical Background of the EU and its Constant Changes

---


When it was first established in the 1950s, there were no signs or any possibility that the Union would grow into such a large international body as it is at present. There has been, however, ‘an ongoing debate in Western Europe about the direction and the way which European integration should proceed’. Now, with the majority of the countries in the European continent already joining the EU, the membership has expanded from only in the western part of Europe to include the northern, southern as well as the eastern part of Europe, and more are soon to jump the wagon.

The Economic Cooperation of the Community

At the beginning of its history, the European Union, which was known previously as the European Community, only had the aim to cooperate in the economic field, as mentioned in Article 2 of the Treaty of the European Community (signed in Rome, 1957):

“The Community shall have its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness a convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard living and quality of life, and economic and social cohesion and solidarity among Member States.”

---

The European Community was established by 6 leaders of western European countries, namely: Belgium, the Netherlands, Italy, France, Germany and Luxembourg, after the end of the second World War which created destruction and ruin in the region. In order to avoid such a war from reoccurring in the region, the founding fathers had the desire to cooperate together to secure a lasting peace between European nations by creating a European Integration.7

The Economic Spillover to other Fields of Cooperation

Within years, the issues that were discussed within the Community became larger, demanding the Community to change from dealing with only economic issues to ‘spill-over’ to other aspects. Thus, the European Economic Community (EEC), which was the main pillar of the Community and more dominant than the two other pillars (the Justice and Home Affairs and Common Foreign and Security Policy), became a European Union (EU), giving larger roles in other fields such as politics, human rights, defense and security.

The Main Institutions and its Ongoing Criticisms

For running its functions, the Community created 6 institutions, namely: the European Parliament, Council, Commission, Court of Justice and Court of Auditors, which shall act within the limits of the powers conferred upon it by the Treaty (Article 7 of the Treaty of the European Community).

The treaty stipulates the general rules of the Community, while the main institutions are the functioning bodies which provide the further detailed laws (case laws of the European Court, council directives, as well as other regulations, decisions or other laws as formal legal

methods to develop the Community policy\textsuperscript{8} applied to the Community as well as its citizens. The method of decision-making process of the institutions is based on the provisions stipulated in the treaty, which can be through unanimous voting with a possibility of veto, as well as qualified majority voting with certain calculation criteria based on the size of the country represented. The members of the institutions itself are made of a certain number of nationals of member states representing the respective institutions with certain timeframe and rotational system.

With the different enlargement taking place in the past several years, the composition of the members in the institutions and the system of decision-making has also been changed accordingly to the growing number of member states and the representation of member states’ seats allocation in the institutions. Previously, when the number of states was only a few and the issues discussed were not as complex, many decisions were made unanimously. However, with more member states joining and with the many issues to be decided, it became more difficult to reach a unanimous decision, particularly on certain sensitive issues that affect national interests of the member states. Thus, the system was eventually changed by applying more (qualitative) majority voting for most issues made by the institutions and unanimous decision for more important issues. However, until now, there has been much debate on the fair number of vote weighing for reaching a decision, as with the growing number of states involved, it would be very difficult to reach a decision. In time, criticisms were also raised towards the institutions for not reaching a decision on certain issues due to this inability to reach a quorum in the decision-making process.

\textsuperscript{8} Ibid., p. 111.
3. The Development of the European Union at a Time of Change

With such massive changes in the institutional body and scope of the EU, the existing treaty had to be amended to meet the new challenges. Through an Intergovernmental Conference (IGC), the Treaty Establishing the European Union was created in Maastricht in 1992. This treaty acknowledged the formation of the Economic and Monetary Union, marking the creation of a single European currency.

At about the same time, in the late 80s and early 90s, global changes occurred around the region. The end of the Cold War, the collapse of Communism with the breaking up of the Soviet Union, and the reunification of Germany with the fall of the Berlin wall as well as the breaking up of Yugoslavia and Czechoslovakia, gave a deep impact to the structure of Europe. The EU started to consider a possibility of extending its membership to countries in the Central and Eastern European area:

‘In a TV speech of 31 December 1989, that is, very shortly after the fall of the Berlin Wall, the French President Mitterand proposed the creation of a ‘European Confederation’ for creating a close institutional like between EU countries and the Countries of Central and Eastern Europe… This new organization could, for some of its members, form the first stage on the road towards membership of the EU…’

Since then, the EU began looking into the future. Aside from also finding ways to restructure by amending the treaty to include relevant substantive issues which have arisen (deepening the EU), the Union also looked into ways of reforming the Union with the possibility of

---

widening of the body to include much more members joining. In the Treaty of Maastricht, the EU for the first time introduced the application of flexibility, with the form of institutional flexibility in the field of economy (with the possibility to opt out from using the Euro currency) and in other social policy fields. Some link these forms of flexibility to the ‘applicable mode of addressing the problem of how to deal with the variety of interests and values of the member states… and possibly unpredictable newcomers’\textsuperscript{10}. However, the Treaty of Maastricht was still deemed unsatisfactory to meet such needs and in fact created controversies with demands for change. For instance, the treaty stipulated the powers of the institutions and its limitation, as mentioned in Article 5:

“The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them, and on the other hand, by the other provisions of this Treaty.”

The above article created the issue of competence in the EU. It limits the power of the Community by stipulating it to have a legal basis within the Treaties for every legal act it adopts, which can be problematic in relation to the internal and external competence of the Community\textsuperscript{11}.

This was a fact learned from the experience of Germany, which had such complexities in ratifying the treaties due to the issue of supremacy of EU Law to its national sovereignty. The

\textsuperscript{10} De Witte, Ibid., p. 243.

\textsuperscript{11} Craig, Paul and de Burca, Granine (2003) Ibid. p. 111.
German Federal Constitutional Court ‘cleared the way for Germany to ratify the Treaty of Maastricht, but which in truth raised some very difficult questions about the nature -present and future- of the European Community and the European Union (Brunner [1994] 1 CMLR 57 (unofficial translation))\textsuperscript{12}. Another similar experience came from Denmark, when the Danish citizens rejected in its referendum the Maastricht Treaty during its ratification process\textsuperscript{13} and fears of contradicting its national constitution (which the Supreme Court decided in 6 April 1998 that the ratification was not contrary to the Danish constitution)\textsuperscript{14}.

Thus, with constant demands for reforms, the provisions contained in the Maastricht treaty had to be amended. The Union had to hold yet another series of IGCs to amend and further refine the treaty provisions with considering the possible future of enlargement. The IGC in 1997 resulted in the Treaty of Amsterdam, which provided several amendments in the function of the institution. However, as it was also considered inadequate, another IGC was held in 2000 resulting to the Treaty of Nice. Although this conference only made very little contribution to the process of EU reform, it marked the establishment of the institutional basis for further enlargement, which adopted several declarations for the future of the enlarged Union\textsuperscript{15}. Declarations adopted by the Conference in Nice include, among others : Declaration on the Enlargement of the European Union, Declaration on the Qualified Majority Threshold and the Number of Votes for a Blocking Minority in an Enlarged Union, and Declaration on the Future of the Union. During the Conference in Nice, the conference called for a deeper and a wider debate about the Future of the Union. It was then followed by the 2004 IGC,


\textsuperscript{13} Ibid, p. 182.

\textsuperscript{14} Ibid, p. 187.

\textsuperscript{15} See Declarations annexed to the Treaty of Nice.
paving the way of the drafting of the Constitutional Treaty, which would replace the existing complex and ‘constantly amended’ treaties with a simple, single text consisting of the main principles contained in the previous treaties which covers the main principles for the future of EU. The discussions took place through a long and rocky process: from the Future of Europe Declaration-Laeken Declaration 2001, 2003 European Convention—which was later rejected by Ireland at a referendum, continued by further discussions in 2003-4, when the IGC was held. Finally, the Treaty Establishing a Constitution for Europe was signed during the European Council in Rome in November 2004\textsuperscript{16}.

4. Issues of Enlargement: The Need for Structural Changes due to Enlargement

In the effort to prepare itself for eastern enlargement, the Treaty of Amsterdam set out new provisions for the acceptance of new members. It had laid out the EU’s policy to welcome any European country to become its member, so long as it is in line with its principles. Article 49 of the EU Treaty states that: “Any European State which respects the principles set out in Article 6 (1) may apply to become a member of the Union”. Article 6 (1) mentions that: “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states”.

To-date, the EU has experienced 5 enlargements\textsuperscript{17}. The latest enlargement was the largest to take place, which gave way to 10 countries: Cyprus, the Czech Republic, Estonia, Hungary,

\textsuperscript{16} European Union website, \url{www.europa.eu.int} [December 2004].

\textsuperscript{17} The first was in 1973 when the UK, Ireland and Denmark joined the six original members. Then Greece became the ninth member in 1981, followed by Spain and Portugal in 1986, and
Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to join the other 15 member states of
the EU.

Although there were also some internal or external controversies in the joining of the other
member states\textsuperscript{18}, the latest enlargement proved to have the largest challenge. Before the
accession of the new member states, the older member states had been making efforts as a
form of foreign policy measures in maintaining good external relations with neighbouring
countries, including those of the Central and Eastern European area. Aside from Cyprus and
Malta, these countries mostly came from the eastern block ruled by the former communist
Soviet Union, therefore having such a different political or government system from the other
older member states. After the fall of the Soviet Union, they became independent states with
relatively poor economic condition in addition to having different cultural values as well as
different democratic system (if not lacking of it). As these countries had been facing
difficulties since becoming independent states, the EU provided assistance to these countries
to further develop their respective countries. Not long after, these countries decided to apply
for EU Membership (see Table 1).

When these countries decided to apply as members of the EU, the EU members split into two groups. Some welcomed the application, but some had reservations. The member states that had reservations found that several among these countries had a history of human rights violations or deep economic trouble, which would be difficult for those countries to be able to integrate with the other EU members by implementing the *acquis communitaire* as well as meet the conditions in the treaty provisions. With such different values and conditions, it would also pose a challenge for the two groups of old and new members to come up with

---

common positions for decisions affecting the Community within the framework of EC Law. Thus, these countries had to go through a long process in order to fulfill the EU Membership Conditionality, such as fulfilling the requirements of European identity, democratic status, respect for human rights as well as economic condition in addition to other administrative prerequisites, which were reported annually to the European Commission\textsuperscript{20}.

Many people criticize the reason to have such a condition towards the latest applicants of the EU before becoming a member, by debating that the EU applied a ‘double standard’ between the new applicants from the Central and Eastern Europe with the older members of the EU during their application for membership (as previously the older EU members did not have to go through such strict requirement process). One among the answers provided by the EU is, in most of the new applicants, there seems to be problematic issues of poor economic and political condition, which is feared by older member states would affect the ‘capacity to function within the Community’\textsuperscript{21}. The Commission had mentioned, that widening (of the EU through enlargement) must not be at the expense of deepening (of EU integration through cooperation), and that ‘enlargement must not be a dilution of the Community’s

\textsuperscript{20} Smith, Karen, Ibid., pp. 33 and 110. Note that Romania and Bulgaria were not yet granted approval to become EU members in May 2004 (along with the others) due to economic reasons. Turkey, which had also applied to the European Union since 14 April 1987, has yet been approved due to not meeting several economic and political conditions in the area of human rights. See European Union website, “Continuing Enlargement: Strategy Paper and Report for the European Commission on the Progress towards Accession by Bulgaria, Romania and Turkey”, www.europa.eu.int/eur-lex/lexuniserv/site/en/com/2003.

\textsuperscript{21} Smith, Karen, Ibid., p. 110.
achievement’\textsuperscript{22}. Therefore, before the applicants become an official member, the EU had provided certain conditions that need to be met by their neighbouring countries who intend to become prospective members of the EU. As EU officials pointed out, ‘promoting democracy and prosperity in Central and Eastern Europe is the EU’s primary foreign policy goal, and enlargement is the primary means of achieving that goal’.\textsuperscript{23}

As mentioned in the Copenhagen European Council in 1993, which was one of the early efforts to enlargement, accession would depend not only on the political and economic performance and state of preparation of the European Union: ‘the Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries, thereby internal reform of the decision-making capacity of the Union became a precondition for enlargement’\textsuperscript{24}.

With the enlargement of the EU to include more member states with different backgrounds, substantial internal and external reforms of the EU is a necessary precondition, as it would have a profound impact on the character and functioning of the EU as well as affect the structure and operation of the EU’s decision-making institutions\textsuperscript{25} in the long run.


5. A Constitution for the future of Europe?

Many people question why the treaties keep changing and constantly add more complex numbering problems, as it fails to amend the treaties particularly in meeting the challenges of the enlarged Union. The creation of the latest draft constitutional treaty was an attempt to solve this, by amending and incorporating the previous treaties in a single text. Although, there seemed to be another debatable issue, with the term ‘constitution’ in the constitutional treaty.

By definition, the notion of constitution itself is as follows: ‘The basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people’ (The Oxford Companion to Law).

Sionaidh Douglas-Scott mentioned that the ‘EU has already some sort of Constitution, albeit not in the traditional sense’. Therefore, the previous treaties were, although in fact was in the form of an international treaty, but the content in itself contains the elements of a constitution. However, the treaty -as a constitution- raised some criticisms, which were mainly due to the issues of sovereignty of the EU as the member states have their own constitutions and the need for the member states to uphold the supremacy of EU Law to be incorporated into their laws, which, at times can be conflicting with each other. This is where the European Court of Justice have to play its role in ‘constitutionalising’ the Treaties and in ‘federalising’ the relationship between EC Law and national law of its member states.

---

27 Shaw, Jo (2000), Ibid., pp. 159, 205 and 422.
Which differs from the previous treaties, is that the constitutional treaty contains provisions that further guarantee the rights to the people of Europe. In this constitutional treaty, it has included the Charter of Fundamental Rights\textsuperscript{28} into its treaty provisions, which was not included in any of the previous treaties. It has also mandated the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article I-7, Title II: Fundamental Rights and Citizenship of the Union).

The Charter itself was proposed in the 1999 European Council in Nice, but failed in the end to be included in its Treaty\textsuperscript{29}. At that time, the inclusion of such a Charter would describe it as ‘a proper European constitution’ and therefore could ‘seal the Union, giving it an unassailable moral and political legitimacy\textsuperscript{30}.

The uniqueness of the drafting of the constitutional treaty, which occurred during the process of the latest enlargement, is that the applicant countries (who were not yet member states at that time) were invited to join as observers in the discussions of drafting the treaty articles. The involvement of the new members showed the willingness of the member states to open up the process of formulating the treaty provisions to take into account joining of several countries as member states in the near future. In addition, the process of formulation was also made available to the public as it can be accessed through the European Union website. This was a giant step towards transparency and public accountability, enabling people to monitor the future of the Union which may affect them as citizens of the Union.

\textsuperscript{28} Treaty Establishing the Constitution for Europe, Title II: Fundamental Rights and Citizenship of the Union, 2004.


\textsuperscript{30} Ibid., p. 62.
6. Conclusion: The future of EU: Enlargement and its Challenges

The latest enlargement of the EU, gave way to institutional and structural adjustments through a cycle of events which took several decades to process. The whole body of this organization had to evolve significantly due to the enlargement process, particularly the latest, which acceded 10 new members of the EU to become a total of 25 member states. This process did not only require a new constitutional settlement in the form of an EU constitutional treaty, which affects externally to the body of the EU, but it also affected internally within the individual member states, with the need of the new member states to amend their own national constitution and laws. Unlike the other enlargements, the latest inclusion of Central and Eastern European countries in becoming members of the Union, had made the EU to change the way it accepts new members by requiring them to adhere to several conditions in line with the treaty provisions.

The whole settlement in adopting to the changes of the EU was not smooth, as continuous debates and criticisms on issues such as decision-making and ways to integrate the ever-diverse Union evolves, making the efforts of EU settlement even more challenging. The process itself is not yet complete, as the structural and institutional changes continue to take place in the form of the new constitutional treaty, which has not even been applied to the member states (as it is not yet in force). Thus, its effectiveness in settling the problems that have and might arise has yet to be proven.

There is also another scenario, where there might even be a possibility that the member states would not agree to ratify the treaty (either by the parliament in the legislation process or directly by its citizens through a referendum). It could be that some countries would find that...
a constitution of Europe would only create a more supreme Union and a lesser sovereign power to the individual member states. If so happens, the member states have to find a way to solve this issue in a just and democratic way, as the current treaties is no longer sufficient to cater to the needs of an enlarged Union.

There might not even be a final constitutional settlement for the EU. In fact, the future of the EU will be more challenging with the likely addition of more states into the Union, with the possibility of having a total of 30 or more member states, as well as other global developments that may arise along the way. This might create new institutional challenges which will likely lead towards further constitutional reform debates. The provisions of the constitutional treaty itself has, in its General and Final Provision, the possibility to be amended, through a proposal by the government of any member state with the submission to the European Parliament or the Commission who may submit to the Council proposals for the amendment of the treaty.

Therefore, the ongoing challenging reformations has, and will continue to affect the whole EU system, be it the older member states, newer member states as well as the future members of the Union. What the EU has to do, is to prepare itself and anticipate for any possible events that may emerge. It should also find ways to work together in facing the new challenges of the Union in the future, while still maintaining its efforts to integrate the region through close cooperation in all fields. What might lie ahead for the EU in the future, is a new enlarged Europe, with the hopes that member states would be able to work together, under a new constitution, binding the whole continent of Europe towards a peaceful, developed and democratic region in this dynamic and constantly changing world.

31 De Witte, Ibid., p. 252.
References

Publications


Websites

- European Union (Europa) official website www.europa.eu.int and its link to official documents