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The perverse impact of operating with treaties

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By Leo Klinkers |

EU politicians don't know the difference between an undemocratic intergovernmental treaty and a democratic federal constitution. The lack of knowledge is amoral, the result is immoral

The perverse impact of operating with treaties

My previous article^[1] was devoted to the merciless criticism by James Madison and Alexander Hamilton (Federalist Papers 1787-1788) of the dangerous impact of using a treaty to create a union. As an accumulation of national interests, a treaty is a disbanding thing if Member States consider that their national interests are being harmed. Result: a disunion.

This was the case in America between 1776 and 1787 with the treaty 'Articles of Confederation' of the thirteen states after the Declaration of Independence in 1776. Instead of offering a foundation for a union, the treaty favored decomposing forces. Exactly the same is the case in the European Union: the intergovernmental governance of the EU, based on the Lisbon Treaty, works divisive.

Even then, Madison and Hamilton understood that a treaty – as a means to try to unite Member States – is full of systemic errors; and that such errors can only do one thing, namely eroding the system so that it sooner or later implodes. In fact, they understood that any attempt to fix systemic errors would only create more errors; in system theory known as positive feedback (forward coupling). They saw modifying a faulty treaty and adapting it again and again as the stupidest thing one could do.

That is why they defended forcefully the decision of the Philadelphia Convention to throw the treaty that was incapable of holding their thirteen states together as a union into the dustbin and to draft a federal constitution, based on the adage: don't tamper with a treaty that isn't good and make something new that is good.

The question is of course: what is good? Well, Madison and Hamilton explained that the Philadelphia Convention, by drafting a federal constitution rather than a treaty, had made a unique constitutional innovation. On the basis of the ideas of European political philosophers such as Aristotle, Althusius, Montesquieu, Rousseau and Locke, they created, with binding law, a coherence between vertical separation of powers through which the thirteen states shared their sovereignty with a federal body, combined with standards of constitutional law-making (only seven articles), the trias politica, checks and balances based on a perfect allocation and distribution of powers, institutional structures based on a federal constitution, the process of developing and implementing policies and supervising their implementation. In Madison's and Hamilton's view, the treaty lacked the required coherence, as a result of which the legal foundation of the union eroded and would inevitably collapse. Resulting in nation-state anarchy with its inevitable wars

Why don't EU-politicians learn from the best practice ever?

What would make Europe happier than EU-politicians studying such fundamental wisdom and knowledge for an hour or so? I know, it is wishful thinking. It will not happen. If even Angela Merkel – chancellor of one of the strongest federal states in the world – indulges in statements like "We need to think again about a Constitutional Treaty", "It is necessary to adapt the EU treaties again" and "We have to show that a return to nationalism does not mean more, but less say", we must have serious doubts about whether the EU will survive. There is no such thing as a Constitutional Treaty. Like a 'pregnant man', it is a linguistic oxymoron: two words that do not match. The fact that she argues for new adaptations of the EU treaties proves that the legal basis of the EU – the Lisbon Treaty – is fundamentally wrong. Any attempt to fix faults of an erroneous system makes it worse. And her warning against a return of nationalism is grotesque when one knows that the EU-treaty is nothing more than an accumulation of national interests. As soon as a Member State feels its national interest affected, the first reflex is: 'Own country first', provoking the same reaction by other Member States. The resulting division between Member States is taking us back to the nation-state anarchy that created devastating wars between the Peace of Westphalia in 1648 and WWI.

There is another reason to doubt fundamentally whether the current EU-leaders know even a fraction of what they're doing because it is obvious that they don't learn from mistakes made twenty years ago. Around the year 2000, it was even clear to the most ignorant EU-politician that the system of EU-treaties was not binding but dissolving the Member States. Trying to come up with reparations they organised the 'Convention on the Future of Europe' 2001-2003 with the intention of giving the EU a better legal basis. It was even the ambition to work towards a federal constitution. But because they made all the mistakes from the big intergovernmental book of errors, it became a drama that resulted in 2009 in the multi-headed dragon called the Lisbon Treaty.

And what do they do now? The EU plans to launch soon a 'Conference on the Future of Europe' 2020-2022. Its goal and organisation are even more flawed than the 'Convention on the Future of Europe' 2001-2003^[2]. The result will be a multiplication of the errors inherent in attempts to establish state government with – again – an adaptation of the EU-treaties, producing – again – an undemocratic legal monster that might cause the eventual collapse of the EU. This is a realistic assumption in the light of the worldwide economic recession, predicted by leading economists, that might soon be upon us. The idea that this recession can be successfully combated by the treaty-based EU is culpable nonsense. The way in which the 2020-2022 'Conference on the future of Europe' is currently organised is hundreds of light years away from a strong democratic constitutional foundation of the EU that could be capable to resist the expected economic hurricane. This justifies me to say that this Conference – if carried through – together with the expected economic recession, might give the EU the final blow. Advice: EU-leaders, stop immediately the proceedings regarding this 'Conference on the Future of Europe', step back and let experts on the standards of federal law making show what to do to establish a federal Europe.

Madison's and Hamilton's observations in my previous article concerned disciplines such as political philosophy, constitutional federal law-making and systems theory. I now continue with fundamental criticism of treaty-law-operating from the discipline of psychology. I am going to show even more ruthless criticisms of treaties based on an essay by Roger Kotila^[3].

A closer look at psychological factors in UN charter review and the Earth Constitution

This is the title of Kotila's essay for a panel presentation at the Academic Council on the UN System annual conference (July 2020). As a psychologist Kotila focuses on errors of the treaty-system of the UN with concepts from psychology. Central is his view that the UN system of treaties should be replaced by a federal Earth Constitution. He supports that position with the metaphor that Bully Nations all over the world behave in exactly the same way as gangs in a prison; a behavior stemming from paranoia. He associates this with the role of sociopathic and psychopathic world leaders who should actually be locked up in prisons. However, the UN Charter provides the five veto-nations in the Security Council (and their allies and proxies) with a stay-out-of-jail free pass, even when a leader has committed horrendous world crimes.

Still, nothing changes as far as these veto-countries is concerned. There will be no change in the sense of a 'New UN' based on a federal Earth Constitution rather than the system of treaties because the five veto-countries are led by fear as the psychological resistance to change. Fear that the other 188 countries will seize the undemocratic UN system to curb the unlimited power of the five veto-countries. However, Kotila thinks that the time is ripe for those 188 countries to get rid of that system. Their feelings of humiliation and resentment as second class citizens within the UN are a powerful motivation for change, as is their need for respect and dignity. They will understand – according to Kotila – that they only get that in the context of a federal world constitution.

Kotila mocks the Security Council's image as 'responsible for peace and security' by observing that the five veto-countries actually operate as a criminal cabal in a war business. They are the leading arms suppliers in the world. That is hidden behind psychological denial in the sense of 'see no evil, hear no evil, and keep your mouth shut. Besides, the UN Charter puts Bully Nations above the law, "allowed to threaten, blackmail, overthrow, or invade weaker countries without consequence to the leaders who are responsible for these international crimes. The Earth Constitution brings us a global system with genuine 'Law and Order', the only practical way to stop sociopaths and psychopaths."

As pointed out by Madison and Hamilton, and as the administrative practice in the European Union regularly shows, Kotila notes that "nations, particularly the stronger ones, cannot be prevented from violating a treaty if they believe it is in their self-interest to do so – whether or not it is in the world public interest." To continue with: "We know from history that treaties are like building on quicksand. The reason for this is both political and psychological. Politically nations abandon treaties with shifting perceptions of self-interest. But the psychological factor is ultimately more powerful in a global system relying on treaties' by clinging to national sovereignty with institutional paranoia, added to greed. He characterizes institutional paranoia as a byproduct of the global system of nation states embodied in the UN Charter. Without an unmasking of that nation-state system there will never be disarmament and world peace: "When nations sign treaties, which relate to global issues, it gives us a false sense of security."

Kotila is clear about the structural weakness of working with treaties. History shows that they are always broken or ignored. Out of self-interest, private interests or religious interests. The psychological dynamics of paranoia and greed – the motives of prison gangs – are based on the fear that another party is looking for advantages. Because not to be attacked or deprived of wealth themselves, nation states – just like those gangs – will always want to arm themselves. It is an automatic reaction within the system of nation-state sovereignty – without cross-border governance that can prevent or resolve conflicts. It is governed by the mentality of 'the winner takes all' and the 'survival of the fittest'.

There is no escaping this hard psychological fact. Institutional paranoia and greed will never disappear, no matter how many treaties states with a focus on their own national interests will sign. Only within a federal state form in which states share their sovereignty with a federal body, in which inspections can take place at any time, anywhere, can paranoia and greed be curbed. The rule of law then applies to everyone:

"This rule of law is necessary because whereas people with a normal, healthy conscience will do the right thing without threat of punishment, those leaders of nations who are sociopaths or psychopaths must be restrained by knowing they will face punishment if they commit crimes. It is wishful thinking to believe that treaties or agreements alone can result in permanent full disarmament of weapons of mass destruction, prevent wars, or eliminate predatory economic behaviors. The psychiatric dynamic of paranoia (and greed), just like with prison gangs, will eventually sabotage any treaty-based agreements between sovereign nations."

Pay particular attention to Kotila's emphasis on the danger of nation-state anarchy as the most obvious byproduct of operating with treaties. The greater the territorial scale of a treaty to unite nations as a union, the faster paranoia and greed will strike and the treaty will be ignored out of self-interest, resulting in new wars as a product of nation-state anarchy. The fact that the vast majority of EU-leaders do not know this – or prefer to ignore it – is simply a product of politicians who do not know the foundations of the political office. But why a wise politician as Angela Merkel does not understand this, wanting to correct the mistakes of the Lisbon Treaty by changing the system of EU treaties again, instead of leading a process of fundamental change – i.e. the creation of a federal Europe – is incomprehensible.

Finally: what is in this context amoral and immoral?

How does all this fit in with the notions of *amoral* and *immoral* with which I gave this article the title:

EU POLITICIANS DON'T KNOW THE DIFFERENCE BETWEEN AN UNDEMOCRATIC INTERGOVERNMENTAL TREATY AND A DEMOCRATIC FEDERAL CONSTITUTION. THE LACK OF KNOWLEDGE IS AMORAL, THE RESULT IS IMMORAL

Amoral means: without an idea or conception of what is good or bad. Immoral means: something that is contrary to the good.

Well, I have been working as consultant in the public administration of various countries since 1980, after having studied the (mal)functioning of governments for ten years, which I still do today. Never have I met a politician who knew the root-foundations of the *political* office, the most important office in the world. Where the political office is absent, societies fall apart. I have experienced that *politics* – as the way the political office is carried out daily – is almost always the cause of the most serious social problems. Not the solution. Why is that? Because they are ignorant of the question which legal and organizational means are good and which means are bad to realise the freedom, happiness and prosperity of their citizens. Lack of knowledge of the destructive nature of intergovernmental treaties versus the positive nature of federal constitutions puts them in the position of amoral behaviour: they do not know the difference between good or bad. And because the strongest politicians are led by paranoia (fear that they will be attacked) and greed (the sublimation of wealth and power), the result of that behavior is immoral: contrary to good.

As far as the European Union is concerned, this amoral behavior and eventually immoral impact began by the serious error made by Robert Schuman (Minister of Foreign Affairs, France) in his famous Schuman Declaration on 9 May 1950. Between 1945 and 1950, numerous conferences made plans to finally federalize Europe. In 1948 even all the great political leaders of Europe met in The Hague to lay the foundations for this, to implement the famous Ventotene Manifesto of Altiero Spinelli (1941). This culminated in the Schuman Declaration, in which Schuman twice stressed the usefulness and necessity of a federal Europe. However, he made the unforgivable blunder (partly to be blamed on Jean Monnet) to dedicate the creation of that federal Europe to government leaders, while adding: "The essential principles and undertakings defined above will be the subject of a **treaty** signed between the States and submitted for the ratification of their parliaments." Thus, one year later in 1951, with the creation of the treaty of the European Coal and Steel Community, six heads of government laid the groundwork for the divisive intergovernmental EU-operating system. Which from then on – due to its accumulation of system errors – has been adapted many times, culminating in the current dividing conflicts between Southern EU-Member States against Northern, between Eastern Member States and Western, and all 27 Member States against 'Brussels.' I rest my case.

[1] See [Episodes of flaring up European unity in the context of federalism](#)

[2] See [To err is human but to persevere in error is diabolical. Observations on the Conference on the Future of Europe 2020-2022 in Europe Today](#).

[3] President of the Democratic World Federalists (DWF), Vice President of the World Constitution & Parliament Association and Board Member of the Center for UN Constitutional Research.

Dr. Leo Klinkers

President of the Federal Alliance of European Federalists (FAEF)
President of the Federalism for Peace Foundation

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