

EU Built on Treaty-quicksand

Dr. Leo Klinkers



Between the year zero and the present, the European state system evolved three times. Anno 2022, a fourth phase announces itself. That phase is what the book *The Making of the Constitution for 'The Federated States of Europe'* is about. To fully understand its seriousness, one needs to know the character of the previous three phases.

Until the 17th century, there was the Europe of warring tribes and nobles. Some were kings, others counts or dukes. Revolts prevailed in various places, including that of the Netherlands led by William of Orange against the Spanish king. With its affiliation to the Holy Roman Empire - a political alliance of secular and religious leaders in central Europe, not averse to decades of warfare - even the Pope of Rome was involved in that violence.

That phase of the European state system disappeared slowly after the Peace of Westphalia in 1648. People started making countries, with borders. Residents were no longer subjects of a nobleman or residents of a city, but became citizens of a state. This second phase was the birth of European nation states.

According to agreements in Westphalia, those states were sovereign. In the sense that no country had the right to attack and take over another.

The reality was different. Wars went on as usual. Some more gruesome than others. Up to and including the Second World War. After the violence of World War I (1914-1918), there was first an attempt to rule out wars for good with the forging of a League of Nations. But it was too weak to prevent World War II (1939-1945).

In essence, the book *The Making of the Constitution for 'The Federated States of Europe'* is about the legal nature of that weakness and that it can only be overcome by never again working with large-scale treaties and instead opting for a federal state in Europe.

The League of Nations was treaty-based. Treaties are good instruments when two or at most three states want to work together to preserve and guard one interest. For example, the treaty by which Belgium and the Netherlands undertake to keep the Dutch Westerschelde navigable for large ships that need to go to the port of Antwerp in Belgium. And at the same time to protect the natural history values in and around the Westerschelde. But trying to achieve world peace with dozens of countries on the basis of a treaty is a recipe for failure. Especially since this Treaty of Versailles (1919) humiliated defeated Germany to the bone and led it to an economic abyss. Thus the path was paved for Hitler.

After World War II, the third phase of the European state system began. First, the United Nations came into being in 1945. An organisation based on a system of treaties that any of the 193 member states [1] of the UN could ignore or breach without fear of being expelled from the UN under Article 6 of the UN

Charter. The way Russia continues to picket other people's land with impunity is the latest example of the structural weakness of working with treaties, including veto rights for those in charge of those treaties.

The Romans already knew this problem. Hence their saying: *pacta servanda sunt*; treaties must be obeyed. Well, that only happens if compliance with treaty obligations does not threaten a member state's interests. If it is felt to be a threat, the heels dig in. Treaties are in this way toys of administrators. They like working with treaties because that way they can avoid being politically accountable to a parliament. Indeed, it is a feature of treaties that while people's representations can play a role in concluding them, afterwards they have no, or greatly weakened, powers to be allowed to demand full political accountability from governors.

Treaties that use top-down directives to determine citizens' behavioural alternatives are undemocratic instruments by definition. This fact has characterized the weakness of treaty-based, intergovernmental cooperation from the emergence of large-scale cooperation between countries of Europe - started in 1951 with the European Coal and Steel Community. As a result, the European Union has gradually taken on the character of increasingly antagonistic cooperation. One country, the United Kingdom, quit. Other countries do not fulfil treaty obligations and also threaten to quit if they do not get their way. The Court of Justice's authority is challenged by some member states. Not only by Poland and Hungary, but even by Germany. The European Commission has been sued by associations of judges for preferring political interests to compliance with treaty obligations. The non-elected twenty-seven European Council of heads of government and state can take any decision it deems useful top-down, operates with an indirect veto system that produces decision-making based on horse-trading, and lacks full political accountability.

The current situation within the EU - but also externally in geopolitical terms - has the hallmark of an identity crisis. This is the last stage of a system's life before it collapses. An organisation arrives in an identity crisis when it consumes more energy than it stores to survive and renew. The European Union is in a state of (self-induced) entropy, a state of decay and disorder.

That this is recognised and acknowledged by some top EU officials [2] is shown by the fact that they dare to openly declare that Europe should become a federal state. They are beginning to understand that after some 70 years, the EU is at the end of its political life cycle and so must now renew itself by taking the form of a federal Europe. Well, that renewal] is the fourth stage in the natural process of evolution of the European state system.

But however sensible this open desire for a federal Europe is, there is one fundamental flaw in it: they advocate the transition from the treaty-based European Union to a - also - treaty-based federation. This is nonsense. A federal state is a federal state only if its legal foundation is a constitution. So equipped with all the conditions necessary to function democratically and effectively. A concise constitution that preserves the sovereignty of the federation's member states, and with the composition of a federal body looks after a small, limitative set of common European (not national) interests.

What such a concise constitution looks like and on what considerations it is based can be found in the book: *The Making of the Constitution for 'The Federated States of Europe'*. It was drafted by the Citizens' Convention of the Federal Alliance of European Federalists (FAEF). It is offered to the people of

Europe as the basis for the fourth phase of the European state system if the European Union collapses and a federal Europe can prevent an administrative vacuum from being filled by autocrats. Who in turn will continue to wage nation-state war.

Launching this book is Plan A of the Federal Alliance of European Federalists (FAEF). The book also outlines the subsequent Plan B: namely, sharing the ideas of this book with the people of Europe so that they can ratify the constitution. It is a constitution of, by and for the people based on the adage: 'All sovereignty rests with the people'. Followed by Plan C: the ratification of the constitution by the parliaments of those nations that joined the ratification process under Plan B. This then creates The Federated States of Europe.

[1] By 2022, the world has 27 federal states that together house just over 42% of the world's population.

[2] Including by Chancellor Olaf Scholz and Prime Minister Mario Draghi.

Dr Leo Klinkers is President of the Federal Alliance of European Federalists (FAEF). With a background in constitutional law and some other sciences to analyse the functioning of governments, he is the leader of FAEF's Citizens' Convention (analogous to the Philadelphia Convention, 1787), and the editor of its result: The Making of the Constitution for 'The Federated States of Europe'. leoklinkers@me.com