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THE EUROPEAN CONSTITUTION AND CONSTITUTIONAL DEVELOPMENTS IN CEE COUNTRIES

Outline of the paper

On 1 May 2004, the European Union embarked on a historic and in many respects unprecedented expansion, admitting ten new countries, mainly from Central and Eastern Europe (CEE) that had been separated for half a century by the Iron Curtain. One of many aspects that makes this enlargement special is that the accession countries regained their sovereignty only a little more than a decade ago. In response to a painful past, the new constitutions of Central and Eastern Europe accord a prominent status to sovereignty and independence, and were notably closed to the transfer of powers to international organizations. In order to join the European Union, these constitutions therefore needed to be ‘opened up’, and the countries engaged into a major process of constitutional revision to enable the transfer of a part of their sovereignty to a highly integrated supranational organisation. This process is of particular interest because unlike previous enlargements, these countries joined at a time when the EU has been engaged into a major constitutional reform, involving on occasions federal undertones.

This paper will outline the constitutional amendments undertaken for EU entry, showing that in most countries, the amendments remained relatively minimal. This is because of a combination of factors such as euro-sceptic public opinion ahead of accession referendums, difficult amendment procedures, and theoretical views to sovereignty. In broad terms, these amendments portray the EU as a confederation of states or even just as an international organisation, a perception dominant across the region until recently.

Against this background, the aim of the paper is to look at the implications of the EU's Draft Constitution, with a view to assessing whether its eventual ratification might necessitate another wave of constitutional revision in the accession countries. The prevailing view in the CEE countries appears to be that the Union's new basic document forms an international treaty rather than a constitution. However, this paper will argue that taken together with rather far-reaching steps of integration introduced in previous treaties, the Draft Constitution appears to go beyond of what is normally associated with a treaty, giving ground for speaking about a 'constitutional treaty', with an emphasis on the 'constitutional'. This argument is developed on the premise that, as pointed out in an increasing amount of post-national literature, the constitutions are no longer inextricably linked to statehood.

The paper will be organised as follows. It will begin by outlining the constitutional framework for integration both in the CEE accession countries and in the 'old' member states, and provide then an overview of the new 'Europe'-articles in the former group of countries. The third part will explore the views of the then CEE candidate countries in the Convention on the Future of the Union and in the Intergovernmental Conference. The subsequent sections will look at discussions about the nature of Europe's new basic document and the debates surrounding its ratification. The prevailing view that the new document forms a treaty rather than a constitution will be assessed in the sixth section. Finding that the new document has distinct 'constitutional' dimensions, the last section will consider the implications of such conclusion upon the national constitutions.

It should be noted at the outset that Malta and Cyprus are not included into this paper, while it does briefly mention Romania and Bulgaria (whose accession is postponed until 2007), due to the similar constitutional background of these two candidate countries.