Statement for the Event: "The European Union after the Irish Referendum – No Way Forward, No Way Back?"

Achim Hurrelmann, Carleton University

July 3, 2008

Let me begin with a few fundamentals: What is the Lisbon Treaty, and why is it significant? As many of you undoubtedly know, the European Union does not have a document that is formally called a 'Constitution', but it does have a constitution in substantive terms, and that is made up of two international treaties that have been concluded by the member states:

- Treaty on European Union (TEU): This treaty is the 'umbrella' for all of the EU's activities, it defines basic objectives and principles of the EU, and – somewhat oddly – contains provisions on EU competencies and decision-making procedures in two specific policy areas that are particularly sensitive to the member states' sovereignty, Common Foreign and Security Policy (CFSP, pillar II) and Police and Judicial Cooperation in Criminal Matters (PJCCM, pillar III).

- Treaty Establishing the European Community (TEC): This treaty establishes the core EU institutions and defines their powers (Commission, Council, Parliament, etc.), it also regulates EU competencies and decision-making procedures in all policy areas not mentioned in the TEU (pillar I).

What the Lisbon Treaty proposes is to change these two treaties – it can hence be seen as an exercise in constitutional reform. The Lisbon Treaty is the follow-up treaty to the EU Constitution that failed in the French and Dutch referenda of 2005. It contains most of the institutional reforms already included in the Constitution, but drops the name 'Constitution' and a number of symbolic provisions that were criticized for being too state-like. The most important changes proposed in the Lisbon Treaty are as follows:

- Unified legal entity: The treaty merges EU and EC; the EC-Treaty becomes the 'Treaty on the Functioning of the EU'.

- EU competencies: The treaty establishes a new categorization of exclusive, shared, and coordinative EU competencies; the EU gains few new powers (e.g., energy); the treaty allows for more arrangements of flexible integration/national opt-outs.

- EU institutions: The treaty establishes a permanent presidency of the European Council (but not the Council of Ministers) with a 2.5 year term; the size of the Commission will be reduced after 2014 to 18 members; the treaty creates a stronger position for the

High Representative for Foreign Affairs (whose office is merged with that of the External Affairs Commissioner).

- Decision making procedures: (a) Council of Ministers: The treaty establishes new, lower thresholds for qualified majority voting (QMV) after 2014 (double majority: 55% of states, 65% of population); it expands QMV to more policy areas (e.g., external border control, asylum, immigration); but exceptions remain in particularly sensitive policy areas (e.g., tax harmonization, some aspects of foreign policy and internal security). (b) European Parliament: The treaty renames the codecision procedure (in which the Parliament is a fully co-equal legislator, together with the Council of Ministers) 'ordinary legislative procedure' and expands it to more policy areas (e.g., border control, agriculture, entire annual budget).

- Democratic control: The treaty expands the European Parliament's competencies (as mentioned above); it requires the Council of Ministers to meet in public when legislating; it allows national parliaments to formally protest against Commission proposals ('early warning mechanism'); and it introduces a citizens' initiative that allows citizens to make a legislative proposal.

- EU symbols: All symbolic provisions contained in the failed EU Constitution have been taken out of the treaty (e.g., name 'Constitution', new terminology for EU legislation, preamble, symbols, full text of Charter of Fundamental Rights).

Since the Lisbon Treaty is a treaty under international law, it can only enter into force if it is ratified in all member states, according to their national procedures. When the treaty was concluded last year, the member state governments agreed that wherever possible, they would avoid holding referenda. But this was not possible in Ireland, since there is a constitutional requirement in this state to hold referenda on all international treaties that transfer competencies away from the Irish state.

What are the consequences of the negative referendum outcome? Most importantly, the Lisbon Treaty will not be able to enter into force, even if it is ratified by all other member states. 21 member states in fact have ratified it already, including France and the Netherlands, and the ratification process continues in other countries. One might deplore that 4.4 million Irish might be able to impose their will on all 497 million citizens of the EU. But such is the nature of international treaty making, in which all states are treated as sovereign equals.

If the Lisbon Treaty does not enter into force, what does that mean for EU policy making? One of the main arguments used by proponents of the Treaty is that it will greatly increase the efficiency of EU decision making, since majority decisions in the Council of Ministers will be easier to achieve. So will the EU be condemned to perennial ineffectiveness? This is questionable. We should note that even under the current rules, the EU functions reasonably well, and there is nothing like a general stalemate in EU decision making.
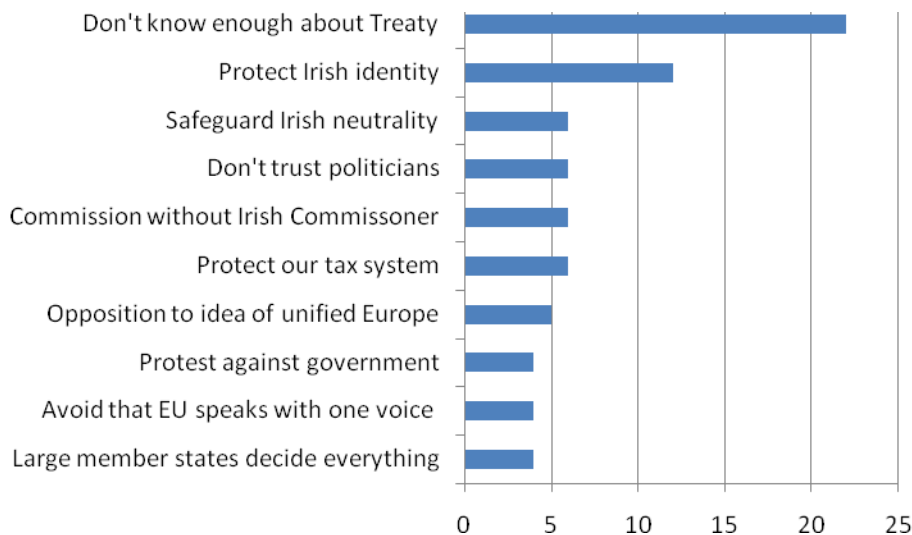
Another argument used for the indispensability of the treaty, namely that it is necessary for further enlargements, does not hold much force either, since the institutional changes to accommodate new member states could be made in the accession treaties as well.

A more serious concern is that if the ratification of the Lisbon Treaty fails, the democratic improvements included in the Treaty would not be realized. It might be possible to implement some of them informally, but I doubt that this would be a priority of European policy makers.

The situation this results in is somewhat paradoxical: The EU is often criticized for being insufficiently democratic, but institutional reforms that would go some way towards changing this have repeatedly been voted down by the citizens. This indicates that the most significant implication of the negative Irish referendum is *not* that the Lisbon Treaty's non-ratification has consequences for EU policy making, but that it reveals a fundamental dilemma of public attitudes towards the EU:

- In its day-to-day operations, the EU does not generate much interest in the population, in part because there is almost no direct contact between EU institutions and the citizens. Citizens know little about the EU, but there is also no evidence for a pervasive legitimacy crisis of the Union. If citizens are asked whether they trust the EU, most people actually place more trust in EU institutions than in national parliaments and governments. In short, if we focus on the everyday operations of EU policy making, the model of a 'permissive consensus' on European integration still seems to describe citizen attitudes on the EU remarkably well.

- By contrast, if people are asked to vote about EU treaty reform, outcomes have very often been negative. It seems that when citizens are forced to engage with the EU, the suddenly realize that they have never really been consulted about European integration, and that there are a number of things that they don't like (or don't understand) about it. These concerns do not necessarily have anything to do with the contents of the treaty that is under ratification, but might be much more general, or related to steps in the integration process that were taken years ago.

  For instance, if we look at the reasons that no-voters in the Irish referendum gave to explain their vote, it is remarkable that only one of the most important reasons really had anything to do with the contents of the treaty – the concerns that large member states might be advantaged over small ones. All the other concerns are either unspecific worries about European integration (e.g. worries about Irish identity), the result of prior treaties (e.g., a provision mandating a smaller size of the Commission is already part of the existing EU treaties), or completely unrelated to the EU (e.g., general mistrust of politicians or dissatisfaction with the national government).

Main reasons for voting against Lisbon
(Source: Flash Eurobarometer 245)

This dilemma has resulted in a situation in which there seems to be no way forward and no way back for the EU, as we put it in the title to this event. All options that remain for EU policy makers seem to be equally undesirable: Fundamentally revising the Lisbon Treaty, or – what is more likely – putting it before the Irish voters again with a number of Ireland-specific protocols, would mean risking another defeat. Since the reasons for rejection had so little to do with the contents of the treaty, it is very difficult to imagine how it could be changed to make it more acceptable.

On the other hand, giving up on the treaty and continuing to operate on the basis of the status quo is not a very attractive option either. After all, wouldn't this mean that one basically accepts that the European integration project can only work if citizen participation is intentionally avoided?

This danger is certainly real, but I would nevertheless advocate ending the EU's current preoccupation with treaty making, and trying to do the best within an admittedly suboptimal institutional framework. I want to point out that this does not necessarily imply bypassing the citizens. Rather, what the EU should do is to engage the citizens in public policy processes on issues of common concern, rather than constitutional politics.

Controversies about pressing issues of public policy – such as social security, economic growth or climate change – might also be the most promising way to create wider awareness for the obstacles that the current system of EU institutions implies for public policy making. The result might thus be increased appreciation in all member states and among their citizens about why an institutional reform is needed. Perhaps paradoxically, focusing on public policy might thus be

a more effective way to get institutional reform accepted than taking the high road of constitutional politics.