



Towards Statehood? The EU's move towards Constitutionalisation and Territorialisation

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Abstract

The recent period of European integration has witnessed the attempt by elites to formalise the long-standing trend towards a constitutionalisation of the European Union. The paper asks whether this process of constitutionalisation, together with a twin process of territorialisation – the development of the EU as bounded political space – can be seen as a move towards state-building at the European level. In order to address these issues, the paper assesses in turn the significance and the impact each of the two processes may have on the ‘remaking’ of Europe. In this context, the EU's Nordic Dimension, the debate surrounding the Turkish application for EU membership and the evolving Neighbour Policy of the Union are looked at in more detail. By way of conclusion this paper argues that the discourses – rather than the decisions – which have dominated the integration process in recent years, mark something of a departure from the previous ‘post-Westphalian’ path of European integration, and instead point towards a more statist conception of the European Union. It remains to be seen to what extent these discourses will subsequently have ramifications in normative, institutional and policy-terms, and what resistance to the choices implicit in these discourses will have to confront.

Introduction

In the first few years of the 21st century, the EU has continued to develop at remarkable speed. 2004 stood out in particular as a year in which important decisions were taken which may in the future be regarded as historic. In particular the accession of 10 new member states to the Union, agreement among EU leaders to sign a Constitutional Treaty and the decision to begin accession talks with Turkey in 2005 may come to define the kind of polity the EU is seeking to become. All these developments are ‘constitutional’ choices in the wider sense in which they reflect the underlying values of the integration project, while also seeking to provide the EU with a firmer and more lasting normative structure. However, both the Constitutional Treaty and the accession of Turkey are aims at this point, with the very real possibility that either or both may run into objections in one or more member states and be derailed as a result. Still, unless and until this happens, the decisions of 2004 constitute indicators of the likely normative direction of the European project.

Whereas the Constitutional Treaty, and the more formal process of constitutionalisation that led up to it, are about the legal-normative structure of the Union, the decisions concerning accession are not explicitly about normative choices. Indeed, past and future accessions to the Union imply the acceptance of acceding states of the ‘acquis’ – the existing legal framework based on treaties and secondary legislation. However, the nature and the sheer size of the recent and possible future enlargements have a qualitative impact on the Union itself. They may come to define the Union in a territorial sense given that they significantly extend the border of the Union outwards, and that the new external border may indeed become the ultimate border of the Union.

In this way, in response to and in preparation for EU enlargement, two long-term processes – constitutionalisation and territorialisation – have come to a head (if not quite to a conclusion) in the early 21st century. The time is right to ask where that leaves the European Union and its relationship with the ‘margins’ or

the ‘periphery’, in particular in the North of Europe, as is the aim of this volume. This paper approaches the subject by first taking a closer look at the driving forces behind, and the consequences of, each of these two processes. The paper then assesses the significance and the impact of these processes on the ‘remaking’ of Europe in the margins. By way of conclusion this paper argues that the discourses more than the decisions, which have dominated the integration process in recent years, mark something of a departure from the previous ‘post-Westphalian’ path of European integration, and instead point towards a more statist conception of the European Union. It remains to be seen to what extent these discourses will subsequently have ramifications in normative, institutional and policy-terms, and what resistance to the choices implicit in these discourses will have to confront.

The New Discourse of Constitutionalism in Europe

From International Treaty to ‘European Constitution’

While the formal – or officially sanctioned – debate about a European constitution began only after the Nice European Council in 2000, partially as a response to perceptions of failure given the limited decisions taken at that summit, the wider process of constitutionalisation has been going on for a long time (de Witte, 2002). The original legal framework underpinning the integration process was, of course, a set of international treaties, the Paris Treaty and the Rome Treaties. That these treaties and the institutionalised cooperation among member states were viewed as an issue of *foreign* policy was demonstrated by the fact that the key decision-making institution, the Council of Ministers, only met in the configuration of foreign ministers for the first decade of the EU. In the early years, European integration was foreign policy. In particular it was about reconciliation among France and Germany and the anchoring of cooperative behaviour among states in war-torn Europe. It was also about the political and economic strengthening of Western Europe during the first Cold War. Thus,

foreign policy objectives dominated the initial phase of integration, and economic concerns (which later came to dominate the process) were regarded as means towards the end of creating a lasting peace in Europe.

Over time, a number of factors eventually shattered this image of integration as foreign policy. First, the very nature of the issues under discussion demanded a kind of expertise from ministers and officials that could only be found outside foreign ministries, and soon the Council of Ministers developed into multiple fora with sectoral ministers given increasingly large rein in the decision-making process. Second, the growth of common institutions and the gradual increase in their competences, meant that the European Communities were increasingly involved in regulating the 'internal' affairs of the member states. It became evident, especially in the course of the 're-launch' of Europe in the 1980s, that through their membership in the European construction states were not only, and perhaps not even mainly, managing the relationship between themselves, but were in effect governing commonly an emerging polity in its own right.

The supranational institutions of the Commission, Parliament and, in particular, the Court of Justice (ECJ) all contributed to the formalisation of this process of polity-building. The European Commission was periodically instrumental in pushing forward the boundaries of defining what the integration project stands for, and the European Parliament, since the first direct elections in 1979, has been essential in democratising an institutional architecture that was originally essentially about diplomatic and bureaucratic decision-making. The ECJ has been the key factor in the creeping constitutionalising of the Union, not least through a case law in the 1970s and 1980s which recognised individuals as (European) citizens who had rights under the treaties, also *against* their own states. Through its fundamental rights jurisdiction the Court laid the foundations for the subsequent formalisation of these citizenship rights in the EU treaty, and through its willingness to introduce the 'C' word into the official language of the Union, by talking about the 'European constitutional order', the Court anticipated and prepared the eventual formal constitution-building process.

The process of constitutionalisation was a long and often slow road, and for a long time remained hidden behind the apparent stage of high politics on which statesmen and women fought pitched battles over national interests. However, once the spotlight turned on the formal constitution-building process it became apparent that the ground had been well-prepared, indeed that the house was pretty much built on it already. What remained was the task of knocking down a few walls and extensive re-decoration.

The Constitutional Convention: Europe's Philadelphia?

This task of giving formal expression to the constitutional nature of the European Union was handed to the Convention on the Future of Europe in 2001. Its life and impact is an interesting lesson in the potential of consultative politics, and the power of ideas: for the formal role of this convention, which was composed of national and EP parliamentarians and Commission and government representatives from all 25 old and new member states, was simply to 'prepare' the following Intergovernmental Conference (IGC) in which government representatives would actually take the decisions over treaty reform. In this sense, the Convention was formally little more than similar discussion fora such as the Dooge Committee (preparing the Single European Act negotiations), the Delors Committee (preparing the Economic and Monetary Union Treaty negotiations) and the Reflection Group (preparing the Amsterdam Treaty negotiations), which previously had been used to explore national positions and search for possible compromise solutions.

However, under the chairmanship of Valéry Giscard d'Estaing, the Convention turned out to be a much more important institution than its formal powers indicated, and perhaps than governments expected when they chose this format of preparing treaty reform. Several factors aided the impact of the Convention, but one important aspect was the changing discourse about European integration.

Launched by German Foreign Minister Fischer's 2000 speech about the need for a debate about the *finalité politique* of the integration process (Fischer, 2000), and fuelled by the response from both the political class and the wider European public, the idea of discussing the future of Europe in constitutional terms gained steady momentum. Coming too late to make an impact on the Nice Treaty negotiations, the issue of constitutionalising Europe came to define the so-called post-Nice process which was to deal with the 'left-overs' of Nice – key issues about institutional reform, simplification of the treaty and democratising the Union which had not been successfully concluded at Nice itself.

Envisaging a further instance of treaty reform to deal with such leftovers is common practice in the EU, as is the creation of reflection groups to prepare IGCs. What was special, indeed unique, in this case was the willingness of all key actors, European institutions but also national governments and parliaments, to debate European integration in *constitutional* terms (Walker, 2003). This was a discursive move which did not in itself imply any substantive choices. Indeed, as discussed above, it was largely the explicit recognition of implicit choices that had already been made in the course of European integration. However, the discourse of defining publicly and formally the choices facing Europe as being 'constitutional' did have a number of critical effects. It elevated the debate about institutional reform to greater public awareness, whilst it also bestowed greater significance and status on the Convention.

It was in this context that the Convention's President could then compare the European experience to the drafting of the US Constitution at Philadelphia, and describe the efforts of the Convention as a 'constitutional moment' for the European Union. This discourse, which aligned itself with the constitutional experience of the modern (federal) state, continued in the actual discussions in the Convention and the drafting of the treaty. Thus, there were proposals early on to change the name of the 'European Union' to the 'United States of Europe' and to create a 'Congress of the European People' – proposals which did not make it into the final draft agreed by the Convention.

But a sense of purpose and of occasion prevailed, and the Convention succeeded in maintaining a broad consensus in the drafting of a constitutional treaty, agreeing on a raft of reform proposals and effectively determining the agenda of the IGC. When the Convention came to a close, Giscard d'Estaing again emphasised the idea of a 'constitutional moment' by claiming that the draft treaty would lay down the institutional structure for decades to come. Regardless of the actual content of the treaty, and its relation to previous processes and existing provisions, the discursive construction of Europe's 'constitutional moment' was successful in a sense that the constitutional nature of the European construction is now recognised, and the need for broader, public debate about the resultant choices is established.

Statist Imagery and Terminology in the Constitutional Treaty

The Constitutional Treaty was eventually agreed by governments in June 2004, after a previous attempt to conclude the IGC in December 2003 had failed. The treaty is to a large extent a revision of the existing treaties, changing certain provisions, spelling out existing ECJ case law in treaty articles and incorporating the Charter of Fundamental Rights. Despite the fact that compromises on long-standing issues such as the size of the Commission and Council voting were found, overall it remains a further step on the already existing path of integration, not a departure in a radically different direction. The existing institutional architecture, policy-making process and range of competences remain the basic building blocks of the Union, though there are several new and revised features. In substantive legal terms it remains a constitutional *treaty* rather than a European *constitution*.

However, the key change in this regard is *not* the substance of the new treaty, but the language which is used in it, and in which it is talked about. Just as the convention managed to elevate itself from a mere reflection group to the EU equivalent of Philadelphia, the significance of the treaty has been changed through

the discursive choices made in and about it. Beyond the terminology of the 'constitution' itself, these concern above all the titles of key posts in the revised institutional arrangements. Under the 'constitution' there will be a President of the European Council and a European Union Minister for Foreign Affairs. The treaty also envisages the creation of a European External Action service, which sounds fairly similar to the diplomatic service known from the nation-state. The terminology for the key legal acts available to the EU is also set to change: what have been known as regulations and directives are now to be called European Laws and European Framework Laws.

The use of such statist language is presented under the banner of simplification, and it is true that it makes it easier to communicate to the public what European institutions are, and are doing. However, using the imagery and the terminology of the state in this way is a double-edged sword. What may be seen to encourage easier communication may also carry the risk of greater confusion. Giving the impression, purposefully or not, that the institutions and instruments of the EU are like those of the state, may lead to the perception that the EU *is* like a state, or is seeking to become a state. Depending on one's standpoint, that may be a blessing or a drawback, but either way it is a departure from the gradualist path which has characterised European integration so far. Convention members and observers have agreed that the language used in and about the Constitutional Treaty exceeds the substance contained in it, but have justified or explained this in terms of the heightened expectations which will subsequently have to lead to further changes that would then approximate political practice and legal form to the new language of constitutionalism. In other words, because we are speaking about a European Constitution, the people – the *people* – would push decision-makers and institutional actors to further reform the Union and thus lead the way to a genuine European constitution.

Constitutionalising the European Union: Implications for Future Developments

It remains to be seen whether this is a workable strategy. It certainly is high-risk, since it seems to confirm the scenarios of Euro-sceptics about the emergence of a European super-state while at the same time pro-Europeans with high expectations about more effective, transparent and democratic governance at the European level are bound to be disappointed. Thus, the result may be threats to the legitimacy of the integration path from a number of different directions.

The discursive choices will nevertheless leave their mark, independent of the fate of the Constitutional Treaty in the course of ratification in 25 member states. The past process of constitutionalisation has been recognised and been made more visible, and large parts of the political class in Europe have participated in and contributed to a debate about the 'European Constitution'. The aim of providing the EU with its *finalité politique* remains, even if the treaty itself is hardly going to provide that. As a result of this debate, this discourse and this treaty, the EU has embraced the language of statehood. While still lacking key aspects of the modern state, this has been a significant turn for the EU.

The EU's constitutional discourse is not the only development that has pointed towards a more statist, and therefore less post-Westphalian, path of integration. For example, the rapid development of an EU military capacity, the identity politics connected to the issue of Christianity in the Constitutional Treaty, or the emergence of an internal security agenda for the EU in the wake of 9/11, are all signs that there is much less ambivalence about institutional and policy choices which have traditionally remained off-limits to the EU precisely because they are seen to be closely connected to the core role of the state. But at the end of 2004 security and identity are not only firmly on the EU's agenda, they have also become important aspects of the Union's constitutional politics.

One attribute of the modern state, territoriality, has been another problematical issue for the EU. On the one hand, there has been a long-standing effort by the EU to achieve greater economic and social cohesion, a key policy that has

essentially been defined in territorial terms and received much financial and institutional attention. On the other hand, the 'bordering' of the Union has remained elusive, precisely because enlargement has been a the long-term process. Eastward enlargement was preceded by partial policy-export and followed by lengthy transition periods, opt-out arrangements and differentiated integration (Friis and Murphy, 1999). The 'export' of integration towards the outside, and the numerous exemptions from integrative measures and policies on the inside, have created a polity with 'fuzzy borders' that has been better described in terms of concentric circles or 'neo-medieval empire' rather than clearly bordered space (Wæver, 1997; Christiansen, Tonra and Petito, 2001).

Yet, even in this respect recent developments have been interesting and to some extent contrary to past trends. With the achievement of Eastern enlargement and the landmark decision to open accession negotiations with Turkey, the culmination of the *process* of territorial expansion can be envisaged – the EU may then be reaching the point at which a definite border will (have to) be drawn. We may be 15–20 years away from that point, but the territorial shape of things to come may be visible much sooner. In other words, just as the process of defining a *finalité politique* is in full swing, we may be witnessing a separate, but related, process of establishing the *finalité territoriale* of the Union. The following section will look at this process of territorialisation in some greater depth, before the conclusions from the effects of both constitutionalisation and territorialisation can be drawn.

The Territorialisation of European Integration

Cohesion Policy and Territorial Politics in the European Union

The process of seeking to achieve *territorial* integration came relatively late to the European project. For most of its life the integration process had its emphasis on functional sectoral integration, geared towards greater mobility of goods, people

and services in a common and single market. While this concerned the regulation of cross-border flows, there was considerable resistance to address the mobility goals in terms of the integration of the Community territory – in part precisely because of the sensitivity of member states, and indeed of the modern state as such, about territoriality. The EC/EU could regulate transborder flows and mobility issues *between* the territories of states, but it could not be seen to be governing territory itself.

Serious attempts at redressing the balance of functional and territorial integration only came in the 1980s with the reform of the structural funds. From 1988 onwards the EC devoted, for the first time, significant amounts of money to regional policy and centrally laid down fairly tight rules about the way in which this money could be spent. Institutional mechanisms were being developed, and through a mixture of competitive behaviour at the state and sub-state level, and subtle pressure from the centre, the reformed structural funds had an impact not only on the economic situations of the regions, but also on the territorial politics in the member states more generally.

The management of the structural funds required active cooperation and significant co-financing from national, regional and local authorities. This in turn was widely seen to require an institutional capacity at the sub-state level that would permit local and regional actors to apply for, prepare, co-finance, manage and evaluate substantive projects. In many cases, in particular in the traditionally more centralised member states, such institutional capacity at the sub-state level was lacking and only developed gradually during the 1980s and 1990s, in part due to ongoing domestic reforms in many member states, in part due to the pressures, incentives and opportunities at the European level.

This indirect, and in some ways unintended, impact of EU structural policies on the territorial politics of the member states has generally been seen as successful, because it strengthened the capacity of local and regional actors without threatening the territorial integrity of the member states. This can be seen as an achievement against a background of domestic territorial politics which are

traditionally often seen in zero-sum terms: if the sub-state level gains, then the central government level must be losing. Or worse: if regions are being strengthened, then the unity of the state must be in danger – the ‘break-up of Britain’ scenario (which is not exclusive to the UK). The management of EU structural funds since the late 1980s, applying the principle of partnership between the various levels of government, has demonstrated that it could lead to regional policies being positive-sum games, where all levels would gain from the economic benefits arising, and where political power-sharing could be conceptualised as multi-level governance (Marks et al., 1996).

Thus, other EU policies with a more explicit territorial impact followed in the 1990s: the establishment of a Cohesion Fund, the development of a European Spatial Development Plan and the identification of a number of key infrastructure projects that would help to establish trans-European networks. All these policies developed in the 1990s began addressing the challenge of territorially integrating an expanding and increasingly diverse and disparate European Union. To some extent, it can even be said that territorial integration became mainstreamed in a sense that it entered into sectoral policies, for example research policy or, through territorial employment pacts, social policy.

The EU’s Approach to Border Management

One dimension of the reformed structural funds that turned out to be particularly appealing to policy-makers was cross-border cooperation (CBC). This policy-instrument that was initially only a fairly limited Community initiative turned out to be much in demand at the local and regional level, addressing precisely the issues of territorial integration at the borders of the member states that had been neglected by functional integration. The positive response from ‘below’ led to further promotion of CBC activities elsewhere, and CBC became an integral part of PHARE, TACIS, and pre-accession strategies more generally. CBC policies of the EU became more diverse and sophisticated, meaning that there was increasing

recognition that different functional logics required solutions aimed at different territorial levels. Thus, CBC developed both at the micro- and meso-level, and both on the inside and the outside of the Union. Crucially for our purposes here, CBC policies tied in very well with attempts to manage the periphery of the Union, and in particular the Baltic, the Balkans and the Mediterranean became fertile areas for experimentation with policy-instruments that had initially been developed for overcoming problems at state borders on the inside of the Union.

In the process of designing, developing, mainstreaming and eventually exporting CBC policies the European Union established a particular approach to the management of its borders – an approach that was distinct from the way in which states manage their borders. The binary understanding of borders in the modern state has been that of a dividing line between inside and outside, and thus as an essential element in defining the political community and thereby also the identity of the state. In contrast, in the EU an approach has emerged that regards borders as spaces rather than lines, and that seeks to bring together rather than divide communities in the border area (Christiansen and Jørgensen, 2000). In this way the EU's CBC policies seek to ensure that the periphery of the EU is territorially better integrated.

The EU's particular approach to borders, together with the differentiated nature of integration, has created a kind of politics in the EU which have been described as 'concentric circles'. That is to say that even though membership is clearly defined, there are numerous ways in which member states, or parts of member states, may opt out of aspects of European integration. In turn, territories and states that are not members have ample opportunity to opt-in to EU policies and even into institutional structures. As a result, integration (as opposed to membership) is not a binary distinction between everything and nothing, of 'in' and 'out', but rather a question of more or less involvement in EU policy-making, institutional adaptation and social and economic orientation towards the EU centre.

This dimension of European integration is very much in line with the neo-medieval or post-Westphalian understanding of polity-building. Together with other aspects, such as the dispersion of sovereignty and the absence of internal hierarchies in the decision-making structure, the limits of territorial integration and the particular development of border management in the EU has contributed to a type of polity that is distinct from the modern state. However, as the previous discussion of the discursive turn in the process of constitutionalisation has shown, there have been developments to challenge the post-Westphalian nature of European integration in recent years. This is also true in the case of territorialisation, where over the past few years the trend towards providing the EU with a 'hard border' has become stronger. Two developments should illustrate this trend in particular and will be discussed below: first, the moves towards securitising the EU's border, and second, the nature of the discourse about Turkey's application for EU membership.

The Securitisation of the EU's Borders

While the EU has pursued a pro-active and innovative policy of encouraging cross-border cooperation, it has also experienced a number of counter-trends. These have contributed to EU borders becoming more divisive, and turning the EU's territory more into that of a bordered space of inclusion and exclusion. In part, this is a secular trend following logically from the growth of EU policy-competences and the repercussions this has in terms of the economic, social, and political Europeanisation of national domains. However, in addition to these indirect and perhaps unintended consequences of the integration process, specific policies have been developed to make the EU's borders more 'secure' and thus provide more of a hard shell for the EU. Given the developments of the past few years it may be fair to say that this process of the securitisation of the EU's borders has become more significant and effective than previous – and continuing – attempts to manage cross-border cooperation. Indeed, in a twist of irony, an

increasingly important part of cross-border cooperation has been cooperation between customs officials and police forces on either side of the EU border to make this border more secure, i.e., to prevent illegal entry into EU territory from the outside.

The securitisation of the EU's borders goes back to the Schengen agreement and its subsequent incorporation into the EU's legal framework. As part of Schengen the abolition of border controls for private individuals, in order to improve mobility inside the Union's territory, has been linked to tighter controls at the external borders. This, in turn, has required cooperation among EU states on issues such as immigration and visa controls, asylum policies, and border policing. It has been a process that has been largely successful in terms of achieving its stated aims: while those living inside the EU now can move freely across state borders without facing any regular checks, those seeking to enter the EU from the outside have to undergo more extensive controls and, in many cases, visa application procedures. Thus, Schengen has contributed to a greater divide between the inside and outside at the borders of the EU.

Two aspects have further fuelled this process: first, the concerns inside the EU about immigration, and; second, the EU's response to 9/11 and the global 'war on terror'. Both have had the impact of leading EU states to further tighten immigration policies, using existing measures to control movements across borders, whilst also developing new mechanisms to improve control. The issue of 'immigration' has in most EU countries been discursively linked to economic migration (and thus to a perceived threat to employment of EU citizens), but also to benefit fraud, organised crime, and human trafficking. Given the predominant discourse about immigration, the voices of those arguing that the EU in fact needs more immigration given its demographic prospects, and that immigration on the whole has a positive impact on labour markets and social systems, remain marginal.

And while the perception that immigration heralds instability and constitutes a threat to social and economic welfare is long-standing, the aftermath of 9/11 has

contributed to further aggravate the situation. The EU has been drawn into a global 'war on terror' pitching 'the West' against 'Islamic extremists', and even though the European response has been distinct from the US approach, it has nevertheless also involved a further securitisation of immigration policies. The EU is agreed that it needs to protect itself from an external threat, and that it must do so *collectively*, this requiring member states to work together in the defence of the EU's territory. The 11 March bombings in Spain, and the realisation that these were carried out by an al-Qaeda cell based in Morocco – a territory from which Spain faces the regular influx of immigrants – has further linked the issues of immigration and security in the public mind.

The perception that this external threat is coming from the *Muslim* world has also had an impact on the process of identity-formation in the EU. As part of this process of identity formation there has been greater awareness and, by some, greater emphasis, on the religious heritage of Europe. In particular, there have been arguments about the way in which the EU ought to recognise a particular debt to *Christianity* in its cultural development. In fact, the debate as to whether such a statement should be part of the preamble to the Constitutional Treaty was one of the major divisive issues in the final stages of the negotiations (Norman, 2003, pp.83-4).

As a result of these developments the EU's borders have become securitised, and the EU has become more of an integrated territory. Based on these trends there are attempts to define the EU, not only as an economic and political space, but also as a space with a common identity that is distinct from other spaces outside that are different and must therefore be excluded. It is against this background of a more security-aware, territorially-integrated and identity-conscious EU that the question of Turkish EU membership has been discussed. It is a question that has long been on the table and has seen many attempts at postponing an answer, but which has not gone away. In 2004 the issue reached the top of the agenda, leading to debate in and across many EU member states, as well as in Turkey. The point had been reached where a principled decision on the

prospect for membership had to be taken, a decision which was all the more difficult to address because beyond the immediate significance of Turkey's accession to the EU it would also define the nature and the extent of the borders of the EU in a much wider sense.

The 'Turkey Question' and the Construction of Europe

The question about the possibility of Turkish membership of the EU has been debated for some decades, but not always as the subject of front-page news. The EC/EU and Turkey have a long history of economic and trade cooperation, culminating in the 1990s with the agreement on a customs union. However, while on the Turkish side this has always been seen as a process that would ultimately lead towards full membership, on the EU side decision-makers have been more circumspect. Economic indicators, human rights problems, the lack of civilian control over the military and Turkish occupation of Northern Cyprus for a long time excluded any serious consideration of the Turkish application for membership. Instead, the EU has sought to steer towards an arrangement that would tie Turkey politically and economically to Europe *without* offering full membership (Buzan and Diez, 1999). Bringing Turkey in as a full member would, among other things, also pose serious questions to both the redistributive policies and the institutional life of the Union.

Behind these issues of preparedness for Turkish EU membership, or rather the lack of it, on both sides, a broader question has been lingering all this time: to what extent is Turkey a 'European' state that could or should belong to a Union that defines itself in geographical and cultural terms? Ironically, perhaps, the 1989 fall of the Berlin wall and the subsequent process of 'Europe growing together again' complicated this picture further. Whereas previously the integration process was clearly a *West* European process of market integration, it now subsequently turned into a process of unification of the entire continent. As various studies of the process of enlargement towards Eastern Europe have shown, accession of the

countries of Central and Eastern Europe was not really a question of a rational choice among the existing members (though such choices certainly affected the timing and the conditions of entry) – eventual accession of the CEECs was simply taken for granted and viewed as a question of time (Fierke and Wiener, 2001).

If Europe as a whole has been united in the post-Cold War phase, then a decision about the Turkish application was bound to become a defining issue for the territorial reach of the EU. Beyond that, the *taking* of such a decision, regardless of whether that decision would be favourable or negative, implied that integration would become territorialised in a way it had not been until that point. Deciding that Turkey could join would imply a ‘greater EU’ that was ready to expand towards the Middle East, the Caucasus and the Caspian Sea regions. A decision to reject Turkey as an EU member state, on the other hand, would limit the EU to a smaller core that sought to privilege homogeneity over diversity.

Following this logic, the decision to take a decision is almost as significant as the eventual decision itself. It is in this respect that 2004 appears to have been a watershed year. Pressure on both sides, in Turkey and in the EU, led a situation in which a decision had to be taken. Until then, the EU appeared to be content, and rather successful, at postponing the decision and achieving a situation in which eventual Turkish membership was always seen as possible, but ultimately remained elusive. Various strategies, including the customs union, the device of a ‘European Conference’ bringing all European states together, the Euro-Mediterranean partnership and the inclusion of Turkey in selected EU programmes and policies were used, not so much as *preparation* for accession, but as ways of delaying the taking of a decision on accession. Turkey thus became a territory on the fringes which was highly affected and influenced by the EU, and was partially included in its institutional structures, but which lacked the prospect of eventual membership. Turkey was a territory that by this nature of being both inside and outside the EU exemplified the fuzzy borders of the European construction (Christiansen, Tonra and Petit 2000).

With the debate shifting to questions of membership and the starting date, length and outcome of accession negotiations, the discourse has shifted to such an extent that it is almost exclusively about the question of 'in' or 'out', rather than the continuation of the 'in-between' status that had been the order of the day until then. This is not to say that for the duration of the accession negotiations there will not continue to be uncertainty about the final outcome, about when a decision about membership will be taken and when that may be. In any case, by general agreement that is at least a decade away. However, a process has been set in motion that requires a decision to be taken. In spite all the uncertainties and the careful language applied in the Commission reports and Presidency conclusions, this is understood in the discourse which is about whether Turkey should join or not. While negotiations will be 'open-ended' and may lead to alternative solutions other than membership, the outcome has been discursively constructed, by advocates and opponents alike, as a decision about Turkey being 'in' or 'out'. The EU has set itself on a path which is bound to lead to the construction of a hard border and the creation of a European Union that will also be defined in territorial terms.

Conclusions: Implications for the Remaking of Europe at the Margins

Constitutionalisation and Territorialisation: Developing the Hard Core and the Hard Shell of Europe?

It is on this issue that we can also observe how the processes of constitutionalisation and territorialisation, which we have so far observed in isolation, have become linked. The question of Turkey's potential EU membership is seen to define the Union not only in terms of fixing a lasting territorial border, but also as a crucial test of the development of a polity based on values, culture and, in the views of some, identity. The presence of democratic values and respect for human rights in the Turkish state has been a crucial issue in the process of approaching the question of membership. But beyond that, as the

Turkish state has succeeded in addressing these issues and otherwise made progress in meeting the Copenhagen criteria, other concerns have come to the surface: the question of whether Turkey fits into the EU culturally, and whether the identity of the EU is compatible with a member state that is both as different from the existing members, and as large and populous as Turkey. In other words, a decision on Turkish EU membership raises cultural and ideational issues in a way that a Norwegian or Polish application does not.

Religion plays a central role here. In the constitutionalisation process, the question of whether Europe's Christian heritage, or indeed a reference to God, should be mentioned in the preamble was a highly divisive issue. Apart from the power politics issues of voting weights in the Council, the inclusion or otherwise of such a 'Christian reference' was one of the unresolved items at the Brussels December 2003 European Council that failed to conclude the Constitutional IGC. And while this dispute was eventually resolved in favour a more general reference to 'the cultural, religious and humanist inheritance of Europe' in the preamble of the Constitutional Treaty, the discourse as to whether the EU is defined as a *Christian* polity is alive.

Here it links up with the discourse about Turkish EU accession, where some opponents reject the possibility of membership on the grounds that a state with a large Muslim population cannot have a place in the European Union. It is an argument that is presented in different degrees and intensities, but it does feature increasingly in the debate about Turkey and Europe. Thus, a discourse about the identity of the EU as a polity based not only on economic interest, functional interdependence, efficiency of governance, or on the development of a legal and institutional framework, but also on *Christian* values, has had a significant place in both the process of constitutionalisation and in the process of territorialisation.

Together these twin processes, and the policy and institutional developments they encompass, have led to a hardening of the 'core' of the European Union. They have contributed to an image of the EU that is more statist, in that it has a clearer sense of its underlying norms and values, as well as in having a more

clearly defined outer boundary. And each of these attributes also come with the aspiration towards greater permanence – a ‘constitution’ that should not require frequent reform, a border that will be closer to the ‘final’ boundary of the Union – that is traditionally the hallmark of the modern state. Thus, the *process* of European integration, which has been in flux both constitutionally and territorially during most of its history, is moving close to becoming a *state*.

The EU’s Neighbourhood Policy: Maintaining Fuzzy Borders

It would be misleading, however, to present these recent developments as pointing only in one – a more statist – direction. Whilst there have been these developments there have also been countertrends, or rather, some of the underlying, non-statist aspects of the EU have been hard to eradicate and continue to work away within the institutionalised structure of the Union. Several examples could be given related to both the constitutionalisation and the territorialisation processes. Compare, for example, the willingness of the drafters of the Constitutional Treaty to include a provision for the withdrawal of member states from the EU with the way in which West European states have responded to even moderate moves towards greater autonomy from territorial minorities. Such a withdrawal provision, and the resultant uncertainty about territorial integrity, is not something that one would expect to be written into a state constitution.

A similar observation can be made about the emerging EU policy on developing a special relationship with its neighbours. The ‘European Neighbourhood Policy’ (ENP) demonstrates a willingness of the EU to continue a policy of managing its outer borders and maintaining special relationships with countries and territories bordering on the Union (European Commission, 2003). While being based on several long-standing instruments of EU policy-making, namely the instances of cross-border cooperation such as the Northern Dimension and the Euro-Mediterranean Partnership, the ENP is also clearly and explicitly

connected to the mainstream foreign policy of the European Union, and in particular to the security strategy (Council, 2004). It is a classic case of a policy that cuts across several domains (internal and external, political and economic) and indeed across the institutional boundaries between the Commission and Council Secretariat. Even inside the Commission it spans across the DGs for Enlargement and External Relations, being managed by a joint task force made up of members of both services.

While the EU makes it clear that this is *not* an enlargement policy, it constitutes a policy that brings together numerous instruments, combines several objectives and involves almost all the sectoral policies of the Union. Its territorial target is clearly twofold – on the one hand, being aimed at Russia and the countries of Eastern Europe that have no prospect of EU membership, and on the other hand, looking to the South Mediterranean and the Near East. While the security and economic concerns the EU has with regard to these countries are fairly obvious, the idea of developing an integrated approach bringing together sectoral policies and applying these selectively in neighbouring territories is an innovative way of making policy. Or rather, it would be innovative from a statist perspective, but in the EU this approach of addressing territorial issues in such a way is long established. Indeed, in the EU this has been the *traditional* way of doing things.

The ENP, which has received a boost in the course of the appointment of the Barroso Commission and the institutional changes that came with it, is a sign that the EU is still able to develop, promote and execute policies which look for new and unconventional ways of managing territory, and that as such distinguish the EU from the standard practices of the modern state. Thus the ENP is one, albeit small and limited, example of the kind of elements in the integration process that make the EU a polity remaining distinct from the idea of modern statehood.

For the governance of the North of Europe these developments spell both opportunity and constraint. To the extent to which the statist claims have an impact on discourses, policies and institutions, the kind of post-modern governance that many have identified in the North of Europe, and around the

Baltic Sea in particular, may have a more difficult time in sustaining themselves. Even if the statist discourses in the constitutional debate and in the territorialisation process will take time to filter through, they would be expected to have an effect there just as they will elsewhere. A special regime, if that is what has developed around the Baltic, may sustain itself in the face of a European centre developing in a different direction, but that would in any case weaken its ability to provide inspiration for the European project as a whole. The North of Europe would therefore continue to live in the margins, and perhaps even more so. Of course, this may also mean that further experimentation would be possible there, given that it would be considered a part of the Union (if not the world) that is simply different.

Such a distinctive development in the North of Europe, a post-Westphalian part of a more statist European Union, may still have significant support to expect from the centre, in particular in the form of the ENP which may provide instruments, resources and legitimacy to continue a particular kind of policymaking in this area. Thus, there may well be strong grounds for a North European *Sonderweg* in the EU, even if global, i.e., EU-wide trends are pointing in a different direction.

In any case, the most likely development is that European integration continues to be an open-ended and to some extent contradictory process. The statist claims that have come with the twin processes of constitutionalisation and territorialisation point in one direction of future development, whereas other aspects of the EU, such as the ENP, point in the opposite direction. And while the EU remains a polity best characterised as *sui generis*, constitutionalisation and territorialisation have pushed its developmental path away from the kind of post-Westphalian construction that it has been identified with by many scholars in the past, towards a more statist development. What this demonstrates is that the conceptual dichotomy between a more statist and a more post-national trajectory remains a valid and useful analytical tool, but also that we need to re-assess

continuously how discourses, policies and institutions develop in order to be able to better understand the nature and the direction of European integration.

Note

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