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EVER CLOSER UNION

Ireland and the EU

Brendan Halligan
Chairman, IIEA

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Sharing Ideas
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The Institute of International and European Affairs
8 North Great Georges Street,
Dublin 1,
Ireland

Tel: (353) 1-874 6756 : Fax: (353) 1- 878 6880
www.iiea.com
e-mail: reception@iiea.com

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Contribution by
Brendan Halligan
Chairman
Institute of International and European Affairs
on the theme of

“Ever Closer Union”

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• Introduction

The first recital to the Treaty of Rome states that the six countries establishing the European Economic Community were:

“Determined to lay the foundations of an ever closer union among the peoples of Europe”.

The phrase “ever closer union” implies a dynamic process in which the aim is to bring the peoples of Europe closer together in a series of steps. The recital did not attempt to define what was meant by “union”, a wise decision as it remains undefined to this day. Ever closer union, or creating “Europe” as it’s sometimes called, has been famously described by Andrew Shonfield as a “journey to an unknown destination”, the best definition so far on offer since it captures the essence of the European adventure; a journey gives a sense of movement, of progression and of purpose; unknown destination leaves the end goal open to redefinition and to adaptation as circumstances change.

• Interdependence

Concluding his “Memoirs” in 1978, the architect of “Europe”, Jean Monnet, asked of his readers in his final paragraph, “Have I said clearly enough that the Community we have created is not an end in itself? It is a process of change”. His rationale for change was a belief that “the sovereign nations of the past can no longer solve the problems of the present. They cannot ensure their own progress or control their own future”. For that reason, he said, they must “learn to live together under common rules freely arrived at”.

Living together was important for Monnet as he had gone through two World Wars in which countries had tried to annihilate each other. Common rules freely arrived at were his central preoccupation for he had witnessed the collapse of the League of Nations from the

inside as its Assistant Secretary General and understood, as few had, the inherent weaknesses of intergovernmentalism. He believed on the basis of his extensive experience in international affairs that intergovernmentalism had to be replaced by interdependence and this insight is his great contribution to political thought and, more importantly, to political action for it was he who first proposed the creation of supra-national institutions within Europe.

It is appropriate, and consistent with his view of international politics, that the major biography of his life is called “The First Statesman of Interdependence”. For him, the interdependence of nations, especially European nations, was a necessary condition of survival and the only alternative to the self defeating economic and political competition that is inherent in nationalism and which, in certain circumstances, leads to war and mutual destruction. His message was that nationalism had to give way to supranationalism.

• Union by Consensus

Altiero Spinelli, the other architect of Europe, had some years earlier (1972) opened his book on “The European Adventure” with an outline of the purpose behind European integration. A socialist, who had spent sixteen years in a Fascist prison for his beliefs, he had arrived at the same conclusions as Monnet but from a different life experience and ideological outlook.

“The purpose of the European Community”, he wrote, “is to unite progressively the destinies of several nations by the development of a body of laws and institutions common to them all, obliging them to face certain great tasks with a common policy and to adopt a common position and responsibility towards the world outside”.

It’s a densely packed opening paragraph but when parsed it can be seen he shared Monnet’s view that the achievement of the Union was to



be progressive. Like Monnet he laid stress on interdependence and, most importantly, insisted it was to be achieved on the basis of free consent. On this point of free consent he claimed that

“The special quality of the plan to unite the European Community is that it is proposed to achieve union not by means of force and conquest, but by the free consensus of the European nations. The Community is, for this reason, one of the most important achievements of the human spirit”.

And then, in words that are as powerful as they were when he wrote them, he immediately added:

“It will be difficult, if not impossible, to appreciate its profound meaning if this particular characteristic of the union is not understood”.

He followed this insight with references to past attempts at enforced unifications from the past demonstrating that they were always bound to fail because of lack of consent, something we Irish understand from our own history. On the other hand, unity on the basis of free consent was unique in history. The European Adventure, as he described it, would endure precisely because it was based on the free consent of free peoples.

The purpose of these quotations has been to identify three essential features of the European Adventure, to use that phrase of Spinelli:

- it's a dynamic process;
- its end goal remains open; and
- it proceeds on the basis of free consent.

They will now be explored in turn for their relevance to the future of Ireland in Europe and on the meaning of national sovereignty in contemporary affairs.

• Dynamic Process

The beginnings of the European Adventure in interdependence can be traced back to the declaration made by the “Congress of Europe” held in the Hague during May 1948 and to the Schuman Declaration made on 9 May 1950. Both declarations sketched out the concept of a united Europe but the first concrete step towards that goal was made in the Treaty of Paris agreed a year later in which France, Germany, Italy, the Netherlands, Belgium and Luxembourg formed the European Coal and Steel Community.

Since that first treaty, the dynamic nature of the process has resulted in seven other treaties being concluded: the Treaty of Rome, the Single European Act, the Treaties of Maastricht, Amsterdam, Nice and Lisbon, culminating most recently in the Stability Treaty, which incorporates the Fiscal Compact. In addition, there have been many intervening technical treaties codifying rules of procedure and the role of the common institutions.

Interdependence has proceeded in a series of steps, starting with the integration of the coal and steel industries, then the creation of a common market in goods and services, next its elaboration into an internal market covering all the factors of production, followed by the establishment of an economic and monetary union, including a single currency, and, most recently, agreement on a pact regarding the management of the public finances.

While the creation of an European Economy has been the main thrust of this progress towards deeper integration there have been parallel developments extending interdependence to areas of politics as diverse as foreign and development policy, world trade, human rights, climate change, health, culture and the fight against crime.

In addition, the common institutions have been constantly modified and new ones created as needed, such as the Presidency of the European Council and the European Stability Mechanism.

The decision making processes have been progressively modified to the point that qualified majority voting and co-decision between the Council and Parliament are the norm, indicating how far Europe has progressed from conventional intergovernmentalism to a unique form of supranationalism. Even the name of the organisation has been changed from “Community” to “Union”; a union connotes a much closer bond between the states comprising it.

These diverse developments are usually bundled together under the heading of “deepening” the integration process. Parallel with “deepening” is the twin concept of “widening” which has been achieved through a series of enlargements.

The Coal and Steel Community began with but six members. The European Economic Community expanded that number to nine (including Ireland) and then to twelve. The European Union increased membership to fifteen, then in one big burst to twenty-five and, finally, to the current twenty-seven. The enlargement process goes on and, in addition to another new member next January there are many potential members waiting in the wings. The Union will ultimately have thirty-five or more members.

Enlargement is, itself, confirmation of the dynamic nature of European integration but of the attractiveness of interdependence. The fact that twenty-one countries chose to join the Union is a powerful proof of Monnet’s claim that sovereign states can no longer master their own destiny.

This brief account of deepening and widening proves that progress towards ever closer union goes on apace and suggests it will continue indefinitely.

•The End Goal

But we still don’t know what is meant by “union”, and may never know. Monnet, for example, said it couldn’t be described as either a federation or confederation since it was neither. It may be that at any given moment “union” consists of whatever the Member States are doing together and that it can only be defined in terms of what they have deemed necessary and proportionate to the demands of the day. So, “union” could prove to be a movable feast, in the words of Hemingway.

Movement will be sporadic because when things seem calm the status quo will prevail, but when crisis develops then change will occur, sometimes at great speed. Statesmen, as Monnet observed, only act in response to crises and it is solely under the threat of imminent danger that they agree to measures would previously have been regarded as unthinkable.

That insight is key to understanding why the process is dynamic and goes forward in periodic leaps and bounds as exemplified by the creation and management of the euro. An economic and monetary union had been regarded as the logical next step following the creation of an internal market but it was only in the face of destabilising currency fluctuations in the seventies and eighties that the Member States agreed to create a single currency in the Maastricht Treaty.

To many, that seemed the end of that particular story. But the collapse of Lehman Brothers five years ago changed the context for managing a single currency and required new measures for shoring up and then strengthening the governance of the eurozone. As we in Ireland know only too well, three members had to be bailed out through emergency procedures, new institutions had to be created to deal with the need for continuing financial support and then common rules had to be installed to ensure the prudent management of the public finances by each member of the eurozone.



As to what has to be done next, the agenda is being fashioned by the President of the European Council but it has been debated publicly by many think tanks and individuals, for example, by George Soros in numerous articles, including the current issue of “Prospect”. He identifies a Banking Union as the next step forward which would involve a European Supervisory or Regulatory Authority in order to correct the anomaly whereby banks and regulators operate in different spheres with the result that the global operations of financial institutions can’t be supervised by local regulators. This is inherently dangerous because, given the degree of interdependence in global capital markets, it takes but one financial institution to set off a chain reaction that brings the whole edifice tumbling down like a house of cards, as has happened on a catastrophic scale.

For these reasons there is widespread consensus that Europe needs a common supervisory authority and enforcement regime to ensure that all financial institutions, particularly banks, comply with common rules and run their affairs prudently so that they serve society rather than periodically endangering it. Soros includes a Deposit Interest Scheme as part of the Banking Union and spells out a process for ensuring their recapitalisation using both the ESM and ECB.

The biggest step forward in terms of deeper interdependence is his proposal to establish an European Financial Authority which would oversee the Banking Union and consist of the Finance Ministers of the Eurozone. In a carefully constructed sequence of events he foresees the creation of a Debt Redemption Fund whereby national debt in excess of 60% of GDP would be purchased by European authorities through the issuance of European Treasury Bills. While most of these ideas have been around for some time in various guises his proposals have the great merit of coherence and help concentrate the mind on what lies ahead.

In that regard it is well known that the President of the European Council, Herman Van Rompuy, is working on a set of proposals for the Heads of Government at their Council meetings next month and later this coming December. There is widespread consensus that the recommendations in prospect are necessary responses to the demands of the day and that they must be implemented with urgency. There is little doubt either that the economic and financial changes ahead must be matched by changes in the way the members of the Eurozone share sovereignty and do business together.

While none of the advances to-date in interdependence could be called political union the upcoming suite of proposals will come close to it. The European Financial Authority, for example, would institutionalise the common management of key aspects of economic and financial affairs and give greater substance to the concept of the union than has been the case so far. It is inevitable that further changes to the treaties will be proposed and also inevitable that they will be endorsed by the European Council and that yet another new Treaty will emerge, to be ratified later by way of referendum. I suspect the public debate on the package of proposals will be labeled “political union” and will be presented as something sinister which should be rejected.

That brings the third characteristic of European Union into focus, namely, interdependence on the basis of free consent.

• Free Consent

Spinelli had said that it would be impossible to appreciate the profound meaning of union by free consent if that particular characteristic of the union was not understood. These were wise words because here in Ireland many do not understand, or profess not to understand, that free consent is the basis of any treaty, just as it is the basis of any contract. If a country does not want to take on new responsibilities then it doesn’t have to.

The people of Norway have twice chosen not to become part of the European Union, while the peoples of Switzerland are so wedded to remaining outside that they haven't even bothered to put the issue to the test. Nobody is going to coerce them to join.

But the concept of free consent goes further because once inside the Union nobody is going to force a country to keep pace with the others and it remains possible for a Member State to refrain from taking the next step forward, as David Cameron and his Czech counterpart proved last December. Cameron exercised his right to say "No" to a new treaty, a valuable reminder that countries are free at all times to stick with the status quo and refuse to take on new obligations. Since every political decision to deepen the integration process is ultimately expressed in legal form by way of a treaty and since a treaty is a contract between states it follows logically that the free consent of all the contracting parties is required for it to be valid in law and legitimate in the eyes of the electorate.

Cameron's decision also demonstrated that where a minority of Member States exercise their right of refusal the others retain their right to agree further progress. By going ahead without Britain and the Czech Republic the others confirmed that no Member State can veto progress by the others, a point for consideration later.

In respect of Ireland, we chose to become a member of the European Economic Community when Britain first applied. We weren't invited to join, on the contrary, we elected to apply or, more accurately, we nearly broke the doors down to get inside. Fifty years ago last January, Seán Lemass, as Taoiseach, appeared before the Council of Ministers in Brussels to make the case for Ireland's admission, alongside that of Britain, Denmark and Norway. His address to the Council, which is reprinted in "The Tortuous Path", Denis Maher's history of Ireland's entry into the EEC, stated that Ireland was willing to take on all obligations of membership, both present and future. There

was no equivocation on the point. It is clear from the speeches of Lemass, from Dáil debates and government White Papers that the political leadership of the day well understood that Ireland would be required to share sovereignty with other Member States but it is equally evident that they feared being left outside like an orphan, and feared that prospect more than any perceived loss of sovereignty in joining the Community. Which brings us to the question of sovereignty and consent.

In the Crotty case of 1987 Chief Justice Finlay famously defined sovereignty as "the unfettered right to decide: to say Yes or No". This is open to question. We didn't have the unfettered right to join the EEC at birth because Britain took that decision for us. When they said "No" to the invitation to participate in its construction we said "No". Those were the economic realities we had to obey. We had no freedom of action. Nor had we any freedom of action when Britain changed its mind and decided to apply for EEC membership. When they said "Yes" we followed suit and also said "Yes". Lemass was courageous enough to admit publicly that this was how things stood, all the more courageous from one who had fought in the GPO as a Fianna Boy and had opposed the Anglo/Irish Treaty on grounds of sovereignty. Being a sovereign state we had the formal or nominal right to stay outside the EEC but economic reality dictated otherwise, confirmation that few countries enjoy an "unfettered right" to choose whichever course of action they please in international affairs. It was accepted by the political leadership of the sixties and seventies that history and geography had left us with only a nominal right of independent action but they reasoned that membership of the EEC would give economic content to sovereignty.

Subsequent history has shown them to be right; what the legal mind would have classified as a diminution of sovereignty has turned out to be what the political mind would regard as the means to achieve some element of sovereignty. Small and all as this sovereignty was in the



beginning, it grew as the economy grew bigger and as our economic dependence on Britain grew smaller. In the international arena, the exercise of sovereignty ultimately boils down to weighing the costs and benefits of any course of action and of deciding where the balance of advantage lies. In our case, membership of the EU has progressively enlarged the range of options open to us; in other words, it has enhanced rather than reduced real as distinct from nominal sovereignty. It has given us the right to decide for ourselves, limited though that right may be. Yet on occasion, it can be crucial.

Last December, for example, Ireland was able to decide that it would be part of the Stability Treaty when Britain chose not to. Looking to next December, we will have the capacity, if we so wish, to be part of a new Treaty irrespective of what Britain decides. It is at least a plausible scenario that Britain will opt to remain indefinitely outside the euro and so turn itself into an EU outsider. It will be open to us to decide, if we so wish, to do otherwise and remain an insider.

•Ireland in Europe

We have come a long way from 1961 and that introduces the question of Ireland in Europe. The context is that the process of creating ever closer union among the peoples of Europe will continue, with or without us. It will continue to deepen and to widen. To borrow another phrase from Chief Justice Finlay, the “essential scope and objectives” of the Union will be changed whenever the needs of the day so dictate. Such changes will be negotiated freely by the member states and will be submitted in treaty form to national parliaments for ratification. The exception to this procedure is Ireland.

In our case, the government negotiates, the people endorse and the parliament ratifies a new treaty. One way of interpreting this situation is to say that Ireland’s commitment to “ever closer

union” is conditional in that it is limited to what has been agreed in the latest treaty and there can be no presumption that we will sign on for the next phase because, when the Irish government negotiates a new Treaty with others Member States it has to go through the intermediate step of putting the Treaty to the people to decide before it puts it to the parliament. That opens up the possibility of rejection, as happened with the Nice and Lisbon Treaties. And rejection opens up the possibility of being left behind, as has happened with Britain and the Czech Republic with the Stability Treaty.

Given that the integration process is a dynamic one, as was established at the beginning, Ireland could be left further and further behind, like a runner who becomes more and more detached from the pack as the race goes on. That is the risk we run by subjecting each new Treaty to ratification by way of referendum. It wasn’t intended that way, of course. The original amendment to the Constitution, as drafted by the then government, foresaw that the integration process was dynamic and would lead to further Treaties which would be ratified through the normal parliamentary process as laid down in the constitution. The wording of the amendment was, however, itself amended in the Dáil at the Committee stage of the debate and, in a dramatic example of the law of unintended consequences, each new Treaty now requires its own specific amendment to the Constitution.

•Constitutional Convention

In practical terms we are putting our membership on the line each time a new Treaty is agreed and it is my belief we can expect a plethora of new treaties over the next decade and, hence, as things stand, a plethora of referenda. The odds of one being lost are high and, I suggest, are unacceptable given that our economic survival is so utterly dependent on our continuing membership of the EU.

The best way to handle this threat is to put our membership of the European Union on the agenda of the forthcoming Constitutional Convention and ask it to come up with a formula that would express Ireland's political commitment to membership of the European Union as an enduring policy choice, perhaps based on the wording of the original amendment of 1972.

If that proposal were freely accepted by the people as part of their constitution it would leave the ratification of future EU treaties in the hands of Dáil Éireann, the democratically elected parliament of the Irish people, which under the Constitution is charged with ratifying international treaties. Such a move would be a re-affirmation of the role of Dáil Éireann as the institutional expression of the sovereignty of the Irish people and place it on all fours with the national parliaments of all the other Member States. Such a move would also be a re-affirmation of representative democracy which is being challenged by the proponents of direct democracy and, more recently, by extra parliamentary agitation which even questions the authority of the courts and the fundamental right of the state to raise taxation.

The thrust of this presentation is that sovereignty is not a philosophical abstraction but a political reality which has to be managed in the international arena; in our case, in the European Union. Sovereignty is not an unfettered right to do as one pleases. That belongs to a make-believe world. Rather, it is the capacity to promote and defend the national interest to the maximum extent practicable in arriving at common rules with other countries for the conduct of international and European affairs.

The stronger we are economically the greater our capacity to defend our interests. That is how Arthur Griffith saw it, as his biographer Brian Maye reminded us when marking the ninetieth anniversary of his death. I believe Griffith was right. He was, above all, a pragmatist devoted to the cause of his country. In following his

philosophy we would pursue the course that would best develop the economy. After forty years in which, despite the current crisis, our economic circumstances have been transformed beyond recognition, it is self evident that this has been done through membership of the European Union.

Ever closer union holds no terrors for the nation states of Europe. For small countries it is the process within which they enhance and enlarge their sovereignty, through which they control their own future, as Monnet said. My main thesis has been that Ireland's destiny lies in being part of this noble experiment, as Spinelli called it, and that we should enshrine that reality in our constitution and thereby do away with the conditionality which currently governs our membership of the European Union.

It is, at least, an issue for debate. It is to be hoped that the government will put our membership of the European Union on the agenda of the Constitutional Convention and that the people will endorse whatever changes it proposes.

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