CHAPTER –II

FRANCE, GERMANY AND THE MAASTRICHT TREATY

In the European Community (EC), the outcome of integration had always been related to a particular pattern of institutional and constitutional development.¹ The form of integration launched by Robert Schuman in 1950 was characterized by a transfer of powers from the Member States to the Community. Since its inception, the Community has seen an expansion of its policy, scope and membership while other West European organizations, like, the Council of Europe, European Free Trade Area (EFTA) and the Norden have found themselves adapting to the development of the EC. The late 1980's brought in several new challenges which created incentives for greater cohesion and deeper integration. Faced with increasing global competition from the United States and Japan and hampered by rigidities in industrial structure and labour market policies, Europe's future economic policy demanded a renewed vigour and integrational thrust. The 'European malady' which the Albert and Ball Report spoke of, engulfed the EC.² Although the Treaty of Rome set out to establish a Common Market, a host of non-tariff barriers to trade remained and free movement of goods and capital was not fully achieved. It was the Single European Act of 1986 that installed an area without frontiers in which the free

¹ Helen Wallace, "The Europe that came in from the cold", International Affairs, vol.67, no. 9, no.4, 1991, p.647.

movement of goods, persons, services and capital was ensured in accordance with the provisions of the Treaty.

THE EUROPEAN COMMUNITY AND THE END OF THE COLD WAR

A year of revolutionary change has given both East and West Europeans a new vision of common destiny distinct from the needs and ambitions of the Soviet Union and the United States. The year 1989 heralded a glorious upheaval against a dying order in Eastern Europe and in the prosperous Western Europe, it brought an adjustment replete with apprehensions, hopes and new challenges. While visible and radical changes were occurring behind a collapsing Iron Curtain, more subtle and fundamental shifts in power balances were under way in the western part of the continent. West German influence on European events became dominant, filling much of the vacuum created by the collapse of the Soviet Union. Gorbachev's "Common European Home" and Bush's "Europe Whole and Free" produced by an economic and ideological collapse of the Soviet power, appeared to be gaining new dynamism and economic clout.

The EC's decision to embark on the completion of the internal market by 1992 gave renewed impetus to economic integration. It led to a reassessment of policies on economic and social cohesion, on the environment and social issues. However, there was one aspect of the Community which, despite all the strenuous efforts and setbacks and sporadic bursts of optimism, could never be touched. The vapid preamble of the Rome Treaty about the "ever closer union of the
peoples of Europe" was something no one could really say how and whither it was really moving. Economic integration was all that was promoted. The political structures which formed a system of traditions was an extremely sensitive zone. Convinced Europeans consoled themselves over and over again with the idea that economic integration would sooner or later be followed by political union. But as all the wars of this century revealed, how quickly the network of economic cooperation is hampered by political antagonism, the idea of political union gradually gained predominance in order to retain the economic integration in a tighter framework.

The idea of European Union (EU) suddenly received a special, new and unexpected thrust when the Soviet Union began to disintegrate in the autumn of 1989. The European idea which had hitherto rested on the premise of a divided world found itself faced with pressures, no longer from outside but from within, from the United Germany which was already beginning to haunt some Member States in the shape of a "Fourth Reich". The most pertinent of all was France which suddenly found itself abruptly forced into the periphery.

---


The profound political changes in Europe along with the Gulf War provided the motivation for renewed interest in the international role of the EC. The Gulf War highlighted how diversity rather than coherence characterized the Member States' responses to the war. It also demonstrated the striking gap between EC's economic weight and political capacity.

The decline of the Soviet threat and acceleration of disarmament also changed Europe's security environment in a profound manner. The former Soviet Union's formidable nuclear arsenal, the fear of a unified Germany and a destabilized Eastern Europe bringing in the question of minorities, frontiers and self-determination gave rise to new pleas for restructuring European security. While the EC was characterized by integration, high levels of material welfare and political stability, the Eastern bloc was characterized by political turbulence, destruction of civil society, economic stagnation and revival of ethnic tensions. The EC became a central pillar in the reconstruction of Eastern Europe and an anchor of stability in a rapidly changing continent. The EC established itself as a point of reference for the future stabilization of Eastern Europe through its democratic credentials and its resources for economic opportunities for trade.

---


The key question in the early 1990's was whether or not the EC could amass sufficient political and economic capacity to tackle the multiple challenges facing it - the challenge of internal integration, and the demands of the East Europeans and the EFTA group who sought to refashion their relation with the EC for better access in the Community's Single Market. On the face of it, there was a tussle between the impulse towards deeper integration through Political Union and Economic and Monetary Union and the aspiration of the non-members for membership in the EC. With the end of the Cold War, the EC had new tasks in its agenda:

- consolidation of its economic and political integration;
- to assist the East European countries in transition to a free market economy and pluralist civil society;
- to find means of socio-economic and political rehabilitation of Soviet Union, the failure of which might have led to a resurgence of nationalist forces;
- to restructure its capabilities as a world economic power in the emerging new world order;
- to confront a cluster of issues that emerged with the blurring of the political boundary of the East and the West. Enlarging its domain geographically became a potent factor.

It was no longer the internal market, with the famous four freedoms which was to be effected on schedule; monetary union with a common central bank became the target. At the same time the first steps were to be taken towards political union through a Common Foreign and Security Policy (CFSP), including common justice and home affairs.
FRANCO-GERMAN COOPERATION AND EUROPEAN INTEGRATION

European integration has always received a special impetus from the Franco-German axis. From the very outset, Germany has been the driving force of European integration and whenever it has teamed up with France, the rest of the EC has had very little choice but to follow. The decision to establish the European Coal and Steel Community (ECSC) in 1951 was based on a realization by the French that integration produced the best anchor for the new and truncated West Germany. The Elysee Treaty of 1963 on Franco-German cooperation provided an institutional basis for the development of an intensive bilateral relationship between these two countries at political levels. The Franco-German relationship has not only been critical in fashioning major political initiatives in the EC but also enabled the two governments to ensure that bilateral disputes on various policy issues did not prevent agreement on a wider forum. During the 1970s, the Paris-Bonn axis was cemented by a very close relationship between Chancellor Helmut Schmidt of the Federal Republic of Germany (FRG) and President Giscard d'Estaing of France. In the 1980s, Chancellor Helmut Kohl and President Francois Mitterrand undertook major policy initiatives in European integration which bore the stamp of Franco-German accord.

Faced with multiple challenges in the 1990s, it became a major

---

issue for France and unified Germany to amass the EC with sufficient political and economic strength to help face the challenges. United Germany's keenness to enhance European integration and French eagerness to bind a united Germany within the European framework came in the form of a Kohl-Mitterrand resolution of April 1990 which called for an Intergovernmental Conference (IGC) on political union which was to run parallel to the Economic and Monetary Union. The IGC was essentially a strong political statement that the Franco-German axis had partly overcome the uneasiness created by German unification. Following the two IGC on Economic and Monetary Union (EMU) and European Political Union (EPU), the Maastricht Summit culminated in December 1991. It was a giant leap for the Community to gradually transform into a Union.

**FRENCH MOTIVATIONS BEHIND THE MAASTRICHT TREATY**

Since the end of the Second World War, France supposedly had a geopolitical interest in avoiding German unification. In a divided Europe with divided Germany, French overall interest was maximized. It pursued three policy options in order to check an over-powerful neighbour.

---


10 See the Kohl-Mitterrand letter published in Agence Europe, no. 5238, 20 April 1990.

- form an alliance with the eastern neighbours of Germany to contain Germany from both sides;
- draw Britain and the US into a tight commitment to maintaining the European balance against German power;
- draw Germany itself into an intimate partnership with France, forging bonds of economic and political interdependence. 12

The French argument against a centralized Germany was two fold: that Germany in the past was peaceful when de-centralized and that a unified Germany could pose a threat in Europe.

The unification of Germany beneath the roof of the EC brought new dimensions and controversies to European integration and to Franco-German cooperation. When unification became a fait accompli, many West European states, particularly France sought to bolster up European unity and include a unified Germany in the European framework as a necessary step to persuade Europe that Germany can and will be accommodated as a part of a wider structure. Germany's remarkable involvement with Eastern Europe, its strategic location at the centre of Europe and its demographic and economic weight made France fear that a united Germany could be tempted to strive for a hegemonic role in Europe. The consequences of German unity was in Pierre Lellouches pungent words,

an economically super-powerful Germany, politically dominant in Central Europe and France reduced to a secondary role, an end to Gaullist dreams of a Europe directed politically by a nuclear France. 13


This brought out a long term view of the concentric circles of French policy for Europe: the Community within the Confederation and the Franco-German axis at the centre. The 'grand design' which Mitterrand sought to give the EC could be realized by assuming the leadership role which France coveted so much. The Maastricht Treaty, a by-product of Franco-German cooperation came at a time when the need to further European integration became the foremost goal for French European policy.\textsuperscript{14}

**GERMAN MOTIVATION BEHIND THE MAASTRICHT TREATY**

From the outset, the Federal Republic of Germany (FRG) has been closely involved with European integration. The essential feature of FRG's policy towards European integration was that Germany must never find itself again in the situation which led to the outbreak of both world wars, not float aimlessly and become a danger to peace. This implied a rejection to neutrality and entering into the EC and membership of the western defence alliance. In the 1950s the FRG saw the political momentum towards economic and political integration in Western Europe as a means for re-establishing its credentials as an independent state in the international community.

The collapse of the Soviet Union which synchronized with the unification of Germany increased the significance of Germany and heralded a new phase in the country's history. In terms of its population,

\textsuperscript{14} For an assessment on Mitterrand's policy see, Elizabeth Haywood, "The European Policy of Francois Mitterrand", *Journal of Common Market Studies*, vol.31, no.2, June 1993, pp.269-282.
its economic power and geographical location in Europe, Germany became a power factor which in the views of its partners, required a counterbalance. The history of the two world wars which still looms large in the minds of Germany's neighbours, made them view unified Germany with mistrust and scepticism. The rejoining of the two German states gave the neighbours the impression that Germany could, yet again pursue a policy geared to purely national goals, create new spheres of influence, and foster the intention of shifting the already changed balance of power in Europe even more markedly in its favour. The "bridge-head function" propagated by some Germans between Western and Eastern Europe was viewed as an attempt to move along special ways and to ensure a new hegemonic status in Europe. Fiscal and monetary strength had aroused suspicion that unified Germany could in future, again concentrate to a greater extent on interests viewed in a purely national light and ruthlessly play its power off against its partners.

In order to nip in the bud the fears of a new German hegemony or a new German megalomania, Germany's primary intention after unification was to counter this suspicion harbouried by its neighbours. Therefore, its policy towards Europe was to strike a balance between

16 Christian Hacke, "Deutschland und die neue Weltordnung", Das Parlament, 6 November 1992, p.15.
"clarity on issues, restraint, in style and sensitivity towards its neighbours".\textsuperscript{18} There were considerable persuasive power in the assertion by Germans that a united Germany would be frightening for many Europeans and therefore Germany can actually exercise that power more effectively, without endangering fear within and outside as a member of the EC.\textsuperscript{19} The concerns evoked by unification of Germany brought about an acceleration in the movement towards European integration. This was explicit from Hans Dietrich Genscher's statement at a meeting of the WEU, in March 1990, when unification became a fait accompli, he stated:

\begin{quote}
We seek the process of German unification in the context of EC integration, the CSCE process, East-West partnership for stability, the construction of the common European house and the creation of a pan-European peaceful order. We Germans do not want to go it alone or to follow a separate path. We want to take the European path.\textsuperscript{20}
\end{quote}

German motives to deepen integration struck a familiar chord with French concern to bind united Germany in a European network and this joint endeavour culminated in the draft Treaty on European Union at Maastricht. West Germany's experience with federalism, and a distribution of power throughout the political system, made it less sensitive concerning sovereignty than its partners. This was probably one reason why Germany was the only Member State which proposed

\begin{footnotes}
\end{footnotes}
political integration in the EC, without which monetary integration did not hold much meaning. Moreover, for the EC aspiring for supranationalism in a federalist structure, political union would be a necessary prerequisite to achieve its goal of an "ever closer union of the peoples of Europe".

**THE MAASTRICHT TREATY**

The aim of the draft Treaty on European Union (TEU) was to unify the basic elements that would entail in supranationalism in the EC. These are as follows:

- to bring about the EMU over three stages; between 1992-94, to strengthen the fixed exchange rate parity of currencies through the Exchange Rate Mechanism (ERM);
- to promote the convergence of monetary and fiscal policy;
- to establish a common currency and a central bank by 1999;
- to initiate a design for the EPU which aimed to harmonize foreign policy interests of the Member States and establish a Common Foreign and Security Policy (CFSP) and create common policies in justice and home affairs;
- to include the eventual framing of a common defence policy and in time lead to a common defence;
- to adopt a Social Charter to standardize health and labour laws.\(^{21}\)

The principal intent at Maastricht was to constitute a federal Union and to transform portions of national sovereignty to the EC's centralized agency. The Maastricht European Council of December 1991 marked the end of year-long negotiations on EPU and EMU. A substantial agreement on the timetable for the EMU was created. A single currency was decided to be introduced in 1997 if seven states

conform to the convergence criteria concerning economic performance laid down in the Treaty. In case this did not materialize then a single currency would be established in 1999 by those states who were capable of it. Following British reservations about a single currency, a protocol included to the Treaty, allowed Britain to opt out of the move to a single currency. The inclusion of a date in the Treaty regarding the introduction of the single currency was the most important decision taken by the Member States since the foundation of the EC.\textsuperscript{22} It also signified a political commitment to hand over responsibility for exchange rates to a European system of central bank.\textsuperscript{23}

The TEU differed from the Treaty of Rome and the Single European Act in the following aspects. It introduced a Regional Cohesion Fund for the poorer members of the EC, due to the demands made by the Southern members of the EC. However this provision was not a part of the Treaty but annexed as protocol which promised a thorough evaluation of Structural Funds.\textsuperscript{24}

The inclusion of the opt-out clause in a protocol following British reluctance to accept the Social Charter, was an entirely new
concept. It led the other Member States to agree to proceed on matters of social policy on the basis of eleven Member States.\textsuperscript{25}

The TEU sought to establish for the first time a direct relationship between the EC and the peoples of Europe. The goal for 'an even closer union of peoples' found more credence with the introduction of a common citizenship of the Union which intended to protect the rights and interests of the nationals of the Member States not only as workers but also as individuals.\textsuperscript{26}

The TEU created two new pillars for the EC which extended its policy scope of the Union on the basis of an even stronger role for the Council of Ministers. These new pillars which provided for the creation of CFSP and Justice and Home Affairs was an attempt of bringing uniformity of policies and practices into the Community fold. While these new pillars sought to increase the policy scope of the new European Union in comparison to the old Community, they also illustrated the weakness of the 'single institutional structure' which the Union aimed to achieve.\textsuperscript{27} The diversified structure of the Union could lead to the weakness in its ability to act ineffectively.

\begin{footnotes}
\footnote{25}{See Protocol on Social Policy of the Treaty. It reads, "The United Kingdom of Great Britain and Northern Ireland shall not take part in the deliberations and the adoption by the Council or Commission proposals made on the basis of this Protocol and the above mentioned agreement i.e. Social Charter".}

\footnote{26}{Art. 8(1) of Part II of the Treaty states, "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union."}

\footnote{27}{Art. C of Title I dealing with Common Provisions states, "The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity and building upon the acquis communautaire".}
\end{footnotes}
ECONOMIC AND MONETARY UNION

Under the Maastricht Treaty, the Member States of the EC were committed to an Economic and Monetary Union (EMU) by the end of the century. The EMU implies three stages as envisaged in the Delors Report of 1989. Stage I was meant to comprise the consolidation of the Exchange Rate Mechanism (ERM), removal of the remaining exchange controls and passage of the other EC legislation to complete the Single European Market in goods, services, labour and capital. It was almost flown off the track by the currency turmoil of 1992-93 due to some delays in the ratification of the Treaty. During the period, the lira and the sterling were forced out of the ERM, several other currencies were devalued, and the mechanism only survived by resorting to massive widening of the fluctuation bands. Stage II of the EMU process came into effect in January 1994 which implied the transition between Stage I and full EMU. The essential objective of transition was to achieve close convergence of economic performance among the states which were candidates for EMU. The Treaty set out four main criteria by which convergence was to be attained. They were as follows:

- the respective national rate of inflation should not exceed the average rate of inflation of the three best performing Member States in terms of price stability by more than 1.5 percentage points,
- the long-term nominal interest rate level should exceed the corresponding average of the three best performing Member States in terms of price stability by at the most two percentage points,

EC, Committee for the Study of Economic and Monetary Union (Delors Committee), Report on Economic and Monetary Union in the European Community (Luxembourg: Office for Official Publications of the European Communities, 1989).
- the level of public debt should not be excessively high (annual new borrowings should not exceed 3 per cent and the total government debt 60 per cent of national gross domestic product), and
- the national currency should stay within the fluctuation margins provided for the EMS without devaluation during the past two years.

Otherwise, the Treaty's regulations required entry into the final stage of the European Monetary Union by 1 January 1999 at the latest. As specified in Article 109J(4)TEU, however, only those EU Member States could participate in this case which have fulfilled the aforementioned convergence criteria. 29

Apart from the convergence criteria and the 'excessive deficit' procedure aimed at limiting fiscal deficits, the main innovation in Stage II was the establishment of the European Monetary Institute (EMI), a new body empowered with the tasks of strengthening the monetary policy coordination during the transition and making the technical preparations for Stage III.

The essential feature of Stage III would be the pooling of responsibility for monetary policy in the hands of a new European Central Bank (ECB). Its chief function would be to formulate and administer the single monetary policy, managing short-term conditions in all the Member States participating in the EU. Stage III implied the irrevocable locking of exchange rates between participating currencies. The ECB has the absolute commitment to convert currencies at those

---

rates without limit and without margins.30

The EMU aspects of the Treaty implied the creation of a 'multi-speed Europe'. From the outset, it was obvious that some states would be unable to meet the convergence criteria. At the time of the Maastricht Treaty, only the Benelux countries were eligible to meet the convergence criteria while Greece, for instance, had little chance of meeting this criteria. If EMU resulted in close economic integration and speedy growth in the participating countries but slow growth in the countries which remained outside the Union, it would become more difficult for those outside to catch up with the pace of the Union. It could also lead to a "Europe a la carte" or of "variable geometry". Given the development of EMU in some parts of the EC and the exclusion of some would violate the notions of equal standing and change the spirit of a uniform Community.31

COMMON FOREIGN AND SECURITY POLICY

The second major decision taken at Maastricht was the inclusion of a chapter on CFSP. Art J.1 of the TEU states that the main treaty revisions were designed to define and implement a CFSP covering all areas of foreign and security policy. Setting the objectives of the


CFSP, it called upon the Member States:

- to safeguard the common values, the fundamental interests and the independence of the Union;
- to strengthen the security of the Union and its Member States;
- to preserve peace and strengthen international security;
- to promote international cooperation, to develop and consolidate democracy and rule of law, respect for human rights and fundamental freedom (Art J1.2)

The provisions of CFSP as embodied in the TEU called for states to consult within the Council in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action (J.2.1); it required national foreign policies to conform to the EC's common positions (J.2.2.) and instructed the Member States to coordinate their actions and promote common positions in international organisations (J.2.3).

An important aspect of the Treaty was the demarcation between the economic and political aspects of security and the defence aspects. The dividing line between the two became very thin. The Treaty referred to the Western European Union (WEU), which despite having a shadowy existence so far, emerged as the implementing arm of the Community concerning defence and security matters.\[32\] In view of the ongoing split among the EC members between an "Atlantist" or a "European" defence strategy, the TEU sought to establish a framework for the elaboration of a European defence strategy.

---

\[32\] See Title V, "Provisions on a Common Foreign Security Policy" of the TEU. Treaty provisions on CFSP are covered from Art. J-19. Also see "Declaration on Western European Union" of the TEU, which separately states WEU's relations with the EU and the Atlantic Alliance.
It was more or less agreed at Maastricht that foreign and security policy would subsequently pass to the jurisdiction of the EU. However, there was more of ambiguity centering the CFSP and the absence of a cohesive foreign policy was evident in the discord between the EC Member States that followed the Yugoslav crisis. The EC proved ineffective in face of German recognition of Croatia and Slovenia; while Britain and France disagreed upon the role of North Atlantic Treaty Organisation (NATO) and the United Nations (UN) peacekeeping forces. As far as security was concerned, the hopes of a common European defence remained an empty phrase. The Franco-German plan to form a joint Eurocorps collapsed with the intensification of the Yugoslav crisis. It became clear that neither the WEU nor the Eurocorps could be a possible supplement to NATO as a bedrock of European security. While Britain and Germany and the "neutral" EFTA states agreed on the continuation of US presence in Europe, France maintained its historical thrust of opposition to the security umbrella providing US nuclear hegemony.

Another syndrome which emerged to block a smooth movement towards European unity in 1992 was the demand made by the Southern members of the EC for more regulation and structural aid from the richer north and applicant countries of EFTA. The budget which had

---


always been the cause of conflict for many years within the EC did not provide any better ground for peace. The more affluent states in the north were unwilling to hike community-wide taxes and spending, while the poorer states continued to make their demands.

Apart from the Articles which formed the basis of the Treaty, 17 Protocols and Declarations were attached to the Treaty covering matters ranging from the EMU and Social Charter to special provisions giving the Danes privileged access to second homes in parts of rural Denmark. These Protocols however, represented serious challenge to the acquis communautaire. The Protocol on EMU allowed the United Kingdom to decide not to participate in the monetary union. The Protocol on social policy by which the eleven members would attempt to implement it gave the impression that parts of the Community law may not have application throughout the EC territory. The Protocol on the acquisition of property in Denmark which allows the Danes to buy certain property in Denmark is a derogation to the general principle of free movement in economic activity. These Protocols attached to the TEU also showed that the Member States could undermine the general application of Community law.

INSTITUTIONAL REFORM

So far as institutional changes were concerned, the TEU allowed for more majority voting, one Commissioner per Member State and a

---


36 Ibid, p.582.
limited form of co-decision for the European Parliament. Though this
reflected a continuation of the process started with the Single European
Act in matters concerning institutional changes, but through the
provisions of the Maastricht Treaty, the institutional capacity of the EC
was meant to be strengthened.37

The introduction of majority voting implied an exacerbation of
the powers of the Council of Ministers. This move could be interpreted
as a strong step towards the federal direction. At the same time, it
weakened the already feeble control of national parliaments over the
Council of Ministers. The increase of the powers of the Council of
Ministers and the simultaneous decrease of the mechanism of
accountability represented an aggravation of the democratic deficit. The
Commission was not expected to be able to operate effectively as a
counter weight to the Council of Ministers for the former lacks the
democratic characteristics of an institution. The Commission would
have to be drastically overhauled to match up the standards of
transparency and democracy in order to safeguard the credentials of a
more federal state of the EC. The Maastricht Treaty did not entail a
significant increase of the Parliament's powers apart from introducing
the co-decision procedure. This allowed the Parliament to reject
legislations over which an agreement could not be made between the
Council and the Parliament. Nevertheless, the Treaty did not seek any

37 Art. 137-238 of Part V of the Treaty consists all provisions dealing with the
Institutions of the Community.
solutions to the problems of democratic accountability.\textsuperscript{38}

**FRANCE AND THE RATIFICATION OF THE MAASTRICHT TREATY**

On 20 September 1992, the French electorate voted 51 per cent to 49 per cent to ratify the Maastricht Treaty in a referendum. It was the eighth referendum held in France since the creation of the Fifth Republic in 1958, which produced one of the narrowest of approvals.\textsuperscript{39}

The referendum campaign over the Maastricht Treaty had given rise to a public debate for both the proponents and the opponents of the Treaty.

At the core of the debate was the question of French national identity in a post-1992 Europe. The fears of French national identity focussed on the EC which,

... often decides against French interest which moves towards a concept of European citizenship that goes against the Jacobian strain... and whose institutional system is far closer to the German federal model than to the French unitary one.\textsuperscript{40}

The Treaty required a ruling from the Constitutional Council of France to set out the yardsticks by which its compatibility with the French Constitution could be measured. The Council found three sections of the Treaty to be controversial in French constitutional terms.

These included common citizenship of the European Union, the EMU


\textsuperscript{40} Stanely Hoffman, French Dilemmas and Strategies in New Europe, Harvard University, Working Paper, no.38, 1992, p.33.
and Immigration. 8b(1) which dealt with common citizenship stated, "every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate in elections in Member States in which he resides under same conditions as the nationals of the state".41

This aroused the most intransigent among those favouring a centralized notion of state and citizenship. Opposition to this provision came especially from the Communist Party (PCF), a minority in the Socialist Party (PS), most of the Gaullists (RPR) and the National Front.42 The immigration clause which read in Act 100c(1) of the TEU stated,

The Council acting unanimously on a proposal from the Commission after consulting the European Parliament shall determine the third countries whose nationals must be in possession of a visa, when crossing the Member States.43

This issue raised by Le Pen of the National Front brought in the question of French national identity. Gaullists argued that this would weaken the state and lead to separatism on the part of ethnic minorities and contribute to their ghettoization and permanent impoverishment.44


43 Ladrech, n.42, p.74.

44 Safran, n.42, p.226.
The pro-Maastricht campaigners consisted of the political establishment who then comprised the French Government, the Socialists, RPR and UDF, the business community and the Church. The ‘NO’ campaigners consisted of the ‘excluded’ and the ‘peripheral’. The main spokesmen of the rebel left-wing were Jean-Pierre Chevenment, Phillipe de Villers, a right wing nationalist (UDF) deputy and Phillipe Sequin and Charles Pasqua. The ‘NO’ campaigners made a considerable impact on the public mind. Phillipe de Villiers who sought a "Europe of sovereign states", rejected Maastricht Treaty as deflationary, encouraging immigration diminishing sovereignty and increasing technocracy.\textsuperscript{45}

A similar chord was struck by Le Pen who identified Maastricht Treaty as a world wide conspiracy organized by “Maastricheurs” leading France to national suicide. The Communists concentrated on Maastricht as the Europe of bankers and of job losses of public sector employees by EC competitive rules. Chevenement, a left wing member denounced Maastricht as a masochist propaganda which would lead a number of Member States into real austerity thereby threatening French export markets.\textsuperscript{46}

The basic reservation towards the Maastricht Treaty was that it would have a negative impact on the essential attributes of

\textsuperscript{45} Criddle, n.39, p.232.

\textsuperscript{46} Ibid., p.233.
sovereignty. The question of sovereignty which was raised by many revolved around the European Parliament which as a multi-national body lacked legitimacy. They believed that "democracy is inseparable from national sovereignty". The debate in France was between the Gaullist support for "Europe des patries", or "Europe of nation-states" versus some form of supranationalism.

Pro-Maastricht elements in France readily admitted the limits of national sovereignty in a complex and interdependent world. In support of the Maastricht Treaty, former Prime Minister Biregovoy argued,

The most enterprising go as far as recommending a confederal Europe to which they contrast a federal Europe.... But we are going further than a Europe of nations, because we accept in sharing the competencies in those areas where one can do better with Twelve than going alone and failing.... What is necessary for us to refuse, in all cases, is a return backwards.

The political debate over EMU also brought in questions of financial sovereignty. Industry Minister Dominique Strauss-Kahn justified the EMU as follows,

..... whether one deplores it or applauds it, our states hardly constitute any longer, and will allow Europe to create itself in the same manner as the franc, lira, mark allowed the development of France, Italy and Germany.

---

49 Ladrech, n.42, p.75.  
The 'YES' campaigners did not fail to hammer on German domination which they hoped would be enabled by the implementation of the Maastricht Treaty. Prime Minister Rocard said that Maastricht had to be approved in order "to preserve Germany from its demons, for after two generations of democracy, Germany might be tempted by romantic irrational forces and pursue interests backed by the all powerful D-Mark". In a similar vein, it was stressed that a 'NO' vote would bring a divorce between Paris and Bonn and that Germany would look more to the east, "probably encouraging an anti-democratic ferment".

The referendum results showed that the 'YES' vote was more urbanized, professional and well-educated, while, the 'NO' vote was mostly rural which reflected farming hostility to current EC policies and the working classes who were disenchanted by high unemployment.

The motivation of French voters in the French referendum on the Maastricht Treaty was largely determined by the prospects of peace, prosperity and competitiveness. The protesting character of the NO vote was in the form of hostility to Mitterrand and the political class in general. Beyond the pro-Maastricht debate, a constitutional argument supporting a transfer of sovereignty had also been developed. It was
felt that implementation of the Treaty would entail a 'transfer of competencies' and a 'limitation of sovereignty' and hence a constitutional revision in France was incumbent which would allow for sovereignty to be ceded in relation to provisions of the Treaty that were earlier found incompatible with the Treaty.\textsuperscript{55} The new Title XIV, Art 88(1) of the French Constitution which mentions the EC in the Constitution for the first time removed the old distinctions between limitations of sovereignty and transfers of sovereignty.\textsuperscript{56}

**Germany and the Ratification of the Maastricht Treaty**

When the Maastricht Treaty came up for ratification in Germany there seemed to be two rather thorny issues which led to intense debates. The Opposition had mounted a vigorous campaign in Germany against the proposal for a single currency and the central bank. 70 per cent of Germans refused to trade off their national crown jewel the strong D-mark for a dubious and untested unit--the European Currency Unit (ECU).\textsuperscript{57} Many spoke of a compelling national interest: to curb

\textsuperscript{55} Ladrech, n.42, p.76. For a background appraisal of sovereignty of the Member States vis-a-vis the EU, see, S. Williams, "Sovereignty and Accountability in the European Community" in R.Keohane and S.Hoffman (ed.), The European Community Decision-making and Institutional Change (Boulder: Westview, 1991), pp.150-165

\textsuperscript{56} A report from the National Assembly Commission in charge of the Constitutional revision relative to the Maastricht Treaty confirmed the jurisdictional evolution of the concept of sovereignty. Commenting on the Constitutional Council decision of 9 April 1992, Commission spokesman Gerard Gouzes stated "It is not illegitimate to give the notion of sovereignty a new meaning (in which France) by a sovereign consented act, the signing of a treaty, accepts the limitation of its sovereignty in view of realising an objective of higher interest". Le Monde, 6 May 1992.

\textsuperscript{57} Goldstein, n.21, p.121.
the alarming surge of money supply and an inflation rate rising towards 4 per cent. Germany was making public transfers of $100 billion a year to build the Eastern Laender (States) and running a deficit equal to 4 per cent of the Gross Domestic Product.58

The second debate centred around political union, which was a poorly defined concept in the Maastricht Treaty. It entailed a greater democratic input into decision-making by recognizing that the power of European Parliament remained weak in relation to other European institutions. Maastricht seemed to lose its psychological credibility when the Christian Social Union (CSU) Bavarian Minister, Edmund Stoiber attacked the idea of a European federal state which he said, ran the risk of a democratic deficit so far as decision-making is concerned.59 For Stoiber, democracy for the nation comes first and he wanted Germany's internal state position to be based on democracy and majority decision before Germany supports a position in the European confederation. It was primarily the fear of Bavaria, a state with 12 million people and historical tradition of 100 years old, being stripped off her statehood as the European super state emerges. The CSU leader justified his position on the ground that since the European Parliament was not a directly represented body, it lacked "democracy and transparency".

58 Ibid., pp.121. Also see, Karl Cordell, "Birth Pangs of the new Germany", International Relations, vol.11, no.4, April 1993, pp. 381-92.

The German Länder which maintained liaison offices in Brussels complained of the rigid centralized institutional structure and stressed subsidiarity as an inviolable principle. They argued that by conforming to the directive decisions of the EC, they would be denied the right to decision-making in this centralized system. This debate took the Treaty to the constitutional court.

After a prolonged judicial procedure on the debate over the democratic deficit, the Federal Constitutional Court at Karlsruhe unanimously declared the Maastricht Treaty to be in conformity with the Basic Law. After months of speculation over the awaited discussion from Karlsruhe, the Court found that the objections raised were unfounded. The Federal Court stated in its verdict that the Union founded in Maastricht Treaty, remains an "association of states and is not a state that can be based on a European population in as much the EC Member States remain masters of the Treaty". On the issue of democratic deficit, the Court declared that the European institutions obtained their legitimacy from the democratically elected national parliaments for that reason responsibilities and powers that are of substantial importance must be left up to them. The judges found that there was sufficient democratic control over the development of the Union but warned that an "over preponderance of tasks and responsibilities at the European level would weaken democracy at the

state level". On German pressure, the principle of subsidiarity was strengthened to control any excessive centralization of power. Fears that Germany was subjecting itself to an automatic process towards a monetary union which no longer could be steered were dismissed. The Bundestag stipulated that it would be consulted on whether or not to proceed to the third stage of Monetary Union involving the introduction of a single currency.

The Karlsruhe Court's decision of 12 October 1993 finally removed the hurdles on the way to the European Union. However, Helmut Kohl's speech in the Bundestag on 11 November 1993 lent a new dimension to German initiatives towards European integration. Kohl asserted,

We want a Europe -- a unified Europe. We want a political union that concentrated its powers but at the same time preserves the diversity and identity of its Member States. In this Europe, we of course remain French, Italian, Dutch and German and at the same time Europeans. Unity in diversity is the only reasonable alternative to an empty centralism.

Though the ratification seemed to lose its psychological credibility when the CSU Bavarian Minister Stoiber raised these debatable issues thereby making the process cross bumpy stretches, yet

---

61 Ibid., p.29.

62 'Subsidiarity' has been described as a larger unit which assumes functions in so far as the smaller units of which it is composed are unable or less qualified to fulfill their role. See in this contest K. Neunreither,"Euphoria about Subsidiarity: A Constitutional Debate in the European Community", Political Science and European Unification, no.2, 1991, p.1. Subsidiarity was incorporated in Art. 3b of the Maastricht Treaty.

63 Speech by Helmut Kohl in the Bundestag, 11 November 1993, FBIS, Western Europe, 15 November 1993.
it strengthened the influence of the Laender within Germany. The Laender gained extensive co-determination rights with regard to European political decision-making at the federal level. The German model of federalism cannot simply be transferred to the European Union but it did represent a source of varied experience in the practice of federalism which could be used to help shape Europe.

The Karlsruhe judgement on the Maastricht Treaty did not place any insurmountable problems, on the contrary, it conferred legal legitimacy on the Treaty. This shifted the debate out of the courtroom to where it really belonged --- the political arena. The fact that only 17 per cent of German populace saw advantage to the EC membership and over half were concerned about German independence demonstrated the extent of the need for consciousness and commitment towards European integration. There were of course reasons for a growing coolness of the Germans towards the EC -- the tragedy in the Balkans, mass unemployment and infiltration of refugees which made the Germans more inward looking.

However, in Germany, there was no major disagreement between

---


the political parties over the Treaty and all the political parties agreed to the Maastricht Treaty without much controversy. They were probably aware that they could not afford to let the Treaty founder lest it aroused the suspicion that a united Germany wanted to withdraw from Europe and tread the old Sonderweg (special way). Germany also was aware of the nightmare of history, not so much because it had learnt more from the past than others but because the horrors of history start on its immediate borders.68

A CRITIQUE OF THE MAASTRICHT TREATY

The Maastricht Treaty was supposed to capitalize upon the triumph of the Single European Market by opening the way to a political union that would complement the economic union that was virtually complete by December 1991.69 In a clear illustration of the logic of ‘spillover’70, the true completion of the Single European Market required a single currency which in turn required a single central bank and thereby a single monetary policy. A pre-requisite for a single monetary policy is a coherent policy-making in political matters. So the Treaty on European Union was in some way a natural follow-up of the Single European Market project. The TEU was not


70 For a theoretical approach on European integration see, E. Haas, The Uniting of Europe: Political, Economic and Social forces 1950-1957 (Stanford: Stanford University Press, 1958). Also see for neo functionalist approaches to integration, Keohane and Hoffman, n.19.
only supported by the EC Member States but also by a vast majority of political forces throughout the EC. However, in some countries there was a formal requirement to hold a referendum before the document could be ratified. The initial accomplishments of the draft treaty received its first setback when a wave of popular opposition emerged, the volume of which raised questions about the underpinnings of EC.

In June 1992, the Danes rejected the Treaty in a referendum, held as a constitutional necessity for ratification and in September 1992, the French came within a hair's breadth of doing the same. It was obvious that voters resented discretionary power passing to the Commission in Brussels. The public opinion in Europe turned against the 'federal dream' of Chancellor Kohl and President Mitterrand. The Maastricht Treaty pushed the hitherto existing 'permissive consensus' regarding Europe beyond its limits. 71

European integration which was originally established as an elitist project, 72 confronted with the basic question of political legitimacy during the ratification of the Maastricht Treaty. The political actors who shaped European integration had relied on persuading the masses that integration was directed towards the general welfare. As long as people did not perceive themselves as being

---


72 Haas, n.70, According to Ernst Haas, the political actors in the Community's decision - making process are essentially the leaders of political groups and in definition are elites.
directly affected by European decisions, they went along without opposing the elite decisions. This scenario which posited a 'permissive consensus' for accepting, although not necessarily embracing the EC policies, enabled the elites to carry on the integration without any restraint from the people. With the entry into force of the Treaty, European integration amassed an ever-widening range of policy competence.

This proved that the 'permissive consensus' was incapable of providing sufficient support to sustain the Maastricht Treaty agreements. The referendum in Denmark and France made it clear that the elite-driven process no longer was enough for further integration. These also indicated that the question of the policy legitimacy needed to be tackled more directly in view of the gulf between the perceptions of decision-making elites and the public. The ratification process also widened the credibility gap and aggravated the problem of legitimacy.

Lindberg and Scheingold had earlier pointed out that the 'permissive consensus' might not withstand a major increase in the scope or capacity of the EC. The debate on the Treaty made the people realize that the European project was developing in ways which

---

73 Lindberg and Scheingold, n.71, p.41-42.
75 Ibid., p. 193.
76 Lindberg and Scheingold, n.71, p.277.
they did not favour.\textsuperscript{77} When 'permissive consensus' gave way to squabbling divisiveness over each component of the Treaty, it was rightly pointed out as to how,

decisions that will profoundly change the way Europe works, are being taken in tortuous negotiations behind closed doors. That is why some puzzled Europeans have been slow to appreciate the scale of what is happening. How, they wonder, has Europe come to this?\textsuperscript{78}

The institutional ambiguity and combination of confusion, fuss and empty phrases which was created by the Maastricht Treaty raised questions amongst Europeans as to whether the TEU was the beginning or the end of a development. At the heart of Western European integration policy lies the intention of creating a supranational federal structure which can be realized by Member States' initiatives to relinquish their sovereignty. In principle, a state restricts its sovereignty in some form through every international commitment into which it enters. The significance of Maastricht Treaty can also be assessed from the extent to which the EC moved towards supranationality. The CFSP proved impossible to include any unanimity in foreign policy matters and to form any concrete security policy, let alone a relinquishment of sovereignty, beyond the creation

\begin{footnote}{77}{However, another view holds that the apparent unpopularity of the Maastricht project reflected the unpopularity of the governments in France and Denmark. The referendum in Ireland, where the government was more popular, received a good majority just as it did in the referendum conducted a year later in France and Denmark after a more popular government assumed office. This view is sought from Mark Franklin, M.Marsh and L.Mclaren, "Popular Opposition to European Unification," \textit{Journal of Common Market Studies}, vol.32, no.4, December 1994, pp.462-68.}
\end{footnote}

\begin{footnote}{78}{The \textit{Economist} (London), 30 November 1991.}
\end{footnote}
of a new acronym.

Even after 43 years of integration, Member States of the EC resolved to carry on the process of an "ever closer union of the peoples of Europe", in which the decisions were taken as close to grassroot level as possible in line with the 'subsidiarity' principle. The inclusion of this principle was not only a response to public fears of over centralization, but it also was a retrogressive move with regard to integration. As opposed to the centripetal policy of integration which aimed to transform nation-states into supranational federal state, the application of the centrifugal principle of 'subsidiarity' sought to transfer competence back to the nation-states. Subsidiarity also proved to be a 'double-edged weapon' which, although originally initiated by the federalists, was used by the intergovernmentalists to restrict integration. The reference of the 'subsidiarity' principle in the treaty reflects the Member States' political message that they are not prepared to accept an unlimited extension of EC powers.

Maastricht Treaty failed to resolve the debate between the federalists and intergovernmentalists. The opt-outs which Britain,

---

79 Ibid., pp.272-273. Keohane and Hoffman, n.55, argue that in many respects the TEU is more intergovernmentalist than the Single European Act.

80 This view has been expressed in several articles in Renaud Dehousse (ed.), Europe after Maastricht: An Ever Closer Union? (Munich: 9 Wilhemstrasse, 1994).

81 European integration has always been influenced by the a federalists (integrationists) and the functionalists (intergovernmentalists). See in this connecton, Paul Taylor, The Limits of European Integration (Kent: Croom-Helm, 1983) and Martin Holland, European Community Integration (London: Pinter, 1993).
Portugal and Denmark pushed through during the Treaty negotiations, can be viewed as "breaches of contract". The predictable inability of some of the states to meet the convergence criteria of monetary union demonstrated that there would be a possibility of a Europe of different speeds. 82

Maastricht was not a departure to new shores but, as a French observer said,

only a calculated move against the predominance of the Bundesbank and against the existence of an independent German currency. 83

A French newspaper spelt out more blatantly what France expected from monetary union: "Maastricht is the Treaty of Versailles without war." Incessant reference to the "return of Germans" revealed how the abysses of the past opened up all over Europe, with the loudest fears coming from France, Britain and Italy. Maastricht reflected the political priorities of the Member States where each of them tried to ensure that the Treaty outcomes were as close as possible to their national interests. The Treaty also increased the existing divisions between the potential beneficiaries and the potential loosers, i.e. the unskilled labourers, the farmers and immigrants. 84

Unlike the Treaty of Rome of 1957 and Single European Act of 1986, which laid down a precondition for peace creating Euro-phoria

82 Fest, n.3, p.59.


84 For instance, the 'NO' vote in France was basically rural- reflecting the farmer's hostility to EC policies and the worker's against problems of unemployment.
and a revival of enthusiasm amongst the Europeans, the Maastricht Treaty came at a rather inauspicious time. Europe was facing not only an economic crisis characterized by high rate of unemployment and inflation, but also a problem of political legitimacy amongst the discredited Western political class. Much of the resentment which came from the non-receptive audience was due to their disenchantment with the state of affairs in the heart of Europe.

The Maastricht Treaty was expected to lay down provisions to enable the EC to tackle the challenges that arose in Eastern Europe with the collapse of Communism and also draw an agenda on possible eastward enlargement of the EC. However, the Treaty could not even provoke a common European consciousness which was the much needed design for a wider Union. In view of the changed European scenario, all that was left was "yesterday's answers to yesterday's problems". No constitutional debate arose over the eastern enlargement nor did a decision materialize on the ongoing theme "widening versus deepening". The Treaty did not provide a clear enough strategy for dealing with the surge of membership requirements from the aspirant countries of Europe. Europe remained a mere "nameplate behind which the old nation-states continued to live as silent ghosts". 85

The Treaty remained silent while contradictions continued between national and supranational policies and between a federal state and a confederation of states. Above all, the Treaty on European

85 Fest, n.3, p. 59.
Union, apart from coining a loosely defined term "union" also proved how a 'European identity' cannot be introduced by decree. The loopholes of the Treaty which became prominent even before the ink was dry, made the Europeans wake up to the risks that a defective structure carries with it. Once the triumph of short-sighted affirmations was over, a new period of reflection began with the awareness that the second stage of creating an "ever closer union of the peoples of Europe" had to be opened with the IGC of 1996 in order to review the TEU, tackle those issues that EU continued to confront and find solutions to the unanswered questions of institutional reforms, enlargement and integrational challenges which the Maastricht Treaty failed to resolve.

86 A reference can be made to Chancellor Kohl's speech on Bundestag, November 1993, Footnote n.63.