

European Nuclear Disarmament - A Constitutional Issue for the EU?

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1.

At first sight, it may seem that we are here mixing things, which should be kept securely apart. The purpose of a constitution is to describe the principles and political institutions of the state in a normative way and thus to function as a basic law of the society. Nuclear disarmament, on the other hand, is a policy on a particular kind of weapons systems, and measures which implement the policy.

In the current debates over the constitution of the EU, the European policies on ABC-weapons are sometimes mentioned by leaders or commentators who dream of the emergence of a European military superpower. European Nuclear disarmament, on the other hand, has been almost totally absent from these discussions at the beginning of the 21st century.

Nuclear disarmament seems to be separated from constitutional debate by insurmountable mental barriers. Decisions concerning nuclear weapons are considered *too strategic* to be decided by legislation and thus, in principle at least, democratically. Add to this that constitutional issues are in themselves often seen as so complicated that the citizen cannot be allowed to have a say on them. Thus in many countries the people is not allowed to decide on the constitution of the European Union. Constitution and military strategy being both problematic in their own right, who would even dream of tackling the problems of both at the same time?

Yet there are in the real world some zebra-looking political animals with stripes of the white toga of the law-giver running parallel to marks from the dark harness of the soldier. Senior US statesman Philip Bobbitt, author of *The Shield of Achilles*, is one living example of this strange species who takes a special interest in 'the dynamic between constitutional struggle and strategic change.'¹

The subject-matter of these notes invites to look for that 'dynamic'. Needless to say, it is not necessary to share Philip Bobbitt's opinion about the role and mission of the United States in the world of today in order to appreciate his comprehensive approach..

2.

During the Cold War between the USA and the USSR it was practically impossible for Europeans to combine a strategic with a constitutional perspective. All efforts had instead to be directed towards maintaining or, alternatively, breaking the existing political and military dead-lock over Europe. Those who wanted to break that dead-lock had to *imagine* a Europe beyond the

Cold War: *'We must commence to act as if a united, neutral and pacific Europe already exists'*,²wrote E.P.Thompson and the other signers of the END Appeal in April 1980. For the peace movement of the 1980s, it was first of all necessary to adopt this (at the time) Utopian vision of an undivided Europe.

The goal of the European disarmament movement of the 1980s was to end the division of Europe in two military-political blocs and free Europe from nuclear weapons 'from Poland to Portugal'. Its perspective was limited to military strategies over Europe and the cultural or civic relations between the peoples of Western and Eastern Europe. Thus the movement took no interest in the constitutional developments, which took place simultaneously within the group of Western European states known as the EEC or the Common market.

At the beginning of the decade there was, notably, the ambitious project of Altiero Spinelli and the European Parliament to take a decisive step towards a political union of the Western European common market countries. And the European Parliament was, for the first time, composed of members who had been elected by the peoples (in the elections 1979).

The *Draft Treaty establishing the European Union*³, which is nothing less than the constitution of a democratic European - albeit only Western European - state, was approved by a great majority of the members of the European Parliament in February 1984.

The EU constitution of the European Parliament, however, was soon buried by the governments of Margaret Thatcher, François Mitterrand and others.⁴ One may ask why.

A reason for the burial of the Spinelli project was, undoubtedly, its strategic implications. How would the transatlantic military alliance between the EU and the USA have developed if the envisaged political union of France, Britain, the German Federal Republic, Italy, the Benelux countries, Denmark and Greece had been achieved? What would have happened between Western Europe and the Soviet bloc?

Let's not speculate about contrafactual history. However, let's compare the actual provisions of the constitution of the European parliament (1984) with the articles of the constitution of the European Convention (2004) and the reform treaty of Lisbon (2007) .

The constitution of 1984 makes no mention of NATO, or any other military alliance, while the constitution of 2004 and the reform treaty of 2007 both contain provisions, which mention NATO and in fact also bind the EU to that military organization.⁵

So there seems to be a *strategic* difference between these draft constitutions from two different historical periods. It would, however, be simplistic to infer that the makers of the draft treaty of 1984 were contrary to the Atlantic Alliance. We may assume, instead, that they thought that provisions about military alliances do not fit well into constitutions. The reasoning behind that thought may be that the international situation is usually rapidly changing, while a constitution should be designed to last over long periods of time. Thus it should be possible to make or to break external alliances without changing the constitutions.

It must be added, however, that the *primus motor* behind the constitutional treaty of 1984 tended to see the Atlantic Pact and European unity as strategic alternatives. Already in 1962, in an article for the American journal *Foreign Affairs*, Spinelli wrote:

“The United States must be prepared to disengage itself militarily and to accept the denuclearization of Europe. It should do this on condition, however, that the defense of Western Europe against attack with conventional weapons is entrusted to a European army and not to a coalition of national armies.”⁶

3.

The Soviet bloc dissolved and Europe soon became the undivided and relatively pacific continent, which E.P. Thompson and the END activists had only been able to dream of. New steps were also taken in the direction of ‘an ever closer union’ of Europe, meaning a political union with a foreign minister and a common security and defense policy.

The Atlantic Pact and NATO, on the other hand, were corroborated as a military alliance and organization instead of being regarded as superseded and transformed into a non-military alliance of friendship and mutual trust.

‘The denuclearization of Europe’, which had been one of the premises of Spinelli, did not take place either.

Was European nuclear disarmament discussed by Giscard d'Estaing and delegates of the European Convention? Was the possibility of abolishing the atomic bombs from the lands of Europe and from the submarines of France and Britain taken into account by the European political and military leaders of the last decade?

Unfortunately, the answer is no. To be sure, some politicians from the non-nuclear states have continued to lobby for nuclear and general disarmament, but other and more influential or powerful men like Tony Blair, Jacques Chirac and Nicholas Sarkozy have done the opposite. Hans Blix, the chairman of the Weapons of Mass Destruction Commission Chairman, notes:

There are even some waves of new armaments: the US missile shield may be triggering countermeasures by China and Russia in the nuclear weapons area; and nuclear weapons with new missions may be developed in the US and elsewhere.⁷

‘Elsewhere’, here, refers to Britain and France among others.

With the exception of key decision-makers (such as Blair, Des Brown, Chirac and Sarkozy), who are actively *promoting* ‘modernization’ of nuclear arms as a solution to the strategic problems of today, politicians in general have remained passive. The same must be said about the press and the public. Even the most ardent critics of the Capitalist bias⁸ and the undemocratic procedures of the current European constitution-making have tended to neglect the problem of nuclear disarmament.⁹

4.

Governments believe that maintaining and modernizing the nukes is still *the right choice*¹⁰, but the crux of the matter is that the people has never been asked. Nowhere, ever, has the people democratically decided that the state should set up a nuclear weapons program and proceed to the fabrication, stockpiling and eventual use of such weapons.

With this comment we are back to the beginning: nuclear weapons *ought to* become a constitutional issue so that the people have the possibility to say no. ‘*The peoples of Europe need to take control of this question*’ as Jean-Marie Matagne wrote not long ago.¹¹

We, the people, must have the right to insert a provision in the constitution, which outlaws the ABC-weapons. Do we have that right? If yes, what are our chances to make use of it?

5.

Supposing that we have that right, at least *de jure* if not *de facto*, it may still be asked if it is a good idea to use it. Would it not be wiser to keep the nuclear and the constitutional issues apart and to tackle them one at a time?

In my humble opinion, the constitutional *outlawing* of ABC-weapons from Europe and the political union of Europe can only be achieved together. The one is not possible without the other.

What are the alternatives? To go on as hitherto means more of the same: nuclear modernization, nuclear proliferation and a fake European Union under US supremacy? Or to create, successively, a European superpower, which is armed to the teeth with European ABC-weapons? It is difficult to find another word than *criminal* to describe these “alternatives”.

Of course, these alternatives are also very far from the sobering proposal of Spinelli to create ‘a democratic European power’.¹²

We must go back to the roots of the European Union, to the Manifesto of Ventotene¹³ and the idea of the EU as a peace project. But the foremost challenge is no longer how to stop the wars in Europe, because that goal has by and large been achieved. Henceforward, the challenge of the EU is to abolish the weapons of mass destruction from its own soil and thus to set the good example that the whole world badly needs.

6.

I can hear the objection: the ABC-weapons, or at least the nuclear weapons, form an essential part of the present military strategies of France, Britain and NATO. How are these strategies going to be changed if the ABC-weapons are going to be eliminated? In order to answer these questions it is necessary, firstly, to consult with the military. The military are no great supporters of ABC-weapons, anyway. Secondly, it is necessary to develop a ‘network-centric’¹⁴ strategy as an alternative to the present “weapons-centric” strategy.

NOTES

- 1 Quoted from the interview with Philip Bobbitt at <http://www.randomhouse.com/knopf/authors/bobbitt/qna.html> (accessed 13 April, 2008).
- 2 E.P.Thompson and Dan Smith (Eds): *Protest and Survive*. A Penguin Special 1980, p 225.
- 3 This draft treaty, which is sometimes also called the Spinelli project, can be read in French and English at <http://www.spinellisfootsteps.info> ; or, alternatively, here: http://www.ena.lu/draft_treaty_establishing_european_union_14_february_1984-020302470.html
- 4 Reports on the reception of the draft treaty in the various EC member countries are found in Bieber, Jacqué and Weiler: *An Ever Closer Union. A critical analysis of the Draft Treaty establishing the European Union*. Luxembourg 1985.
- 5 See Article I-41 in the draft constitutional treaty of the Convention (2004); The Reform Treaty of Lisbon is a rather messy document, but it is clear to jurists, at least, that "The Treaty of Lisbon would take the European Union one step closer to a meaningful common security and defense policy (CSDP) and the prospect of a common defence, compatible with NATO", quoted from <http://grahnlaw.blogspot.com/2008/01/eu-treaty-of-lisbon-security-and.html> Accessed April 2008.
- 6 See Spinelli, A.: "Atlantic Pact or European Unity". *Foreign Affairs* 40, July 1962, p 552. The quoted passage continues: "It will be necessary to recognize the present frontier between East and West, and thereby to accept the division of Germany; but instead of Western Germany being abandoned to the unavoidable nationalistic resentments natural to a sovereign state, it would become a vital part of the new European federal democracy."
- 7 *Weapons of Terror. Freeing the World of Nuclear, Biological and Chemical Arms*. The Weapons of Mass Destruction Commission, 2006, p 15.
- 8 By Capitalist bias I mean that the constitutional treaty and the reform treaty are imbued with a Neoliberal ideology that favours the unrestricted and unregulated movements of capital and shows a general aversion against public services and the redistribution of income.
- 9 However, the *Charter of principles for another Europe*, which has been elaborated by a network of organizations and individuals in the process of the European Social Forum (ESF), does include the following passage: "[Our] Europe repudiates all use and production of nuclear arms, all weapons of mass destruction as well as torture, the death penalty, and all forms of degrading treatment. It is committed to disarmament and demilitarization, in order to construct an open and welcoming world and a society that ensures the free circulation and settlement of human beings." See <http://www.fse-esf.org/spip.php?rubrique86> .
- 10 Minister Des Browne, for instance, still believes that it is *morally right* to construct and maintain new nuclear weapons in the 21st century. See "THE UNITED KINGDOM'S NUCLEAR DETERRENT IN THE 21ST CENTURY". SPEECH BY THE SECRETARY OF STATE FOR DEFENCE KING'S COLLEGE LONDON 25 January 2007. <http://image.guardian.co.uk/sys-files/Politics/documents/2007/01/25/Nucleardeterrentspeech.doc> - Accessed in April 2008.
- 11 In a personal email to the author of this notes, April 2008. Jean-Marie Matagne is active in the Action of Citizens for the total Dismantling of Nukes (<http://www.acdn.net>).
- 12 Spinelli: "*una sobria proposta di creare un potere democratico europeo*"; Quoted from Spinelli, A.: *Come ho cercato di diventare saggio*. Società editrice il Mulino 1987, p 309.
- 13 *The Manifesto of Ventotene* is a famous call for a free and united Europe, co-authored by Ernesto Rossi and Altiero Spinelli in the spring of 1941. Spinelli and Rossi were at the time political prisoners and exiled to the small island of Ventotene. - The original text is reproduced in Angelino, Luciano: *Le forme dell'Europa*. Genova 2003, pp 107-201. Various editions and translations are available on the web.
- 14 *Network-Centric Warfare* (also called "network-centric operations") is a buzzword of the military (see http://en.wikipedia.org/wiki/Network-centric_warfare , accessed April 2008). This reflects the profound implications of the digitalization of information and the Internet for all human activities, warfare and military strategy included. To define global netcentric strategies is a task for the future.

The Campaign for Nuclear Disarmament (CND) is an organisation that advocates unilateral nuclear disarmament by the United Kingdom, international nuclear disarmament and tighter international arms regulation through agreements such as the Nuclear Non-Proliferation Treaty. It opposes military action that may result in the use of nuclear, chemical or biological weapons and the building of nuclear power stations in the UK. It claims to be Europe's largest single-issue peace campaign. Between 1958 and 1965 it organised the Aldermaston March, which was held over the Easter weekend from the Atomic Weapons Establishment near Aldermaston to Trafalgar Square, London. Contents. European Nuclear Disarmament (END) was a Europe-wide movement for a "nuclear-free Europe from Poland to Portugal" that put on annual European Nuclear Disarmament conventions from 1982 to 1991. The founding statement of END was the European Nuclear Disarmament Appeal issued in April 1980 and circulated by the Bertrand Russell Peace Foundation (<http://www.russfound.org>). It was provoked by NATO's decision in December 1979 to respond to a Soviet upgrading of intermediate-range nuclear missiles in Europe. The European Union has long sought to raise its profile as a significant actor in the global effort to curtail the proliferation of weapons of mass destruction (WMD). From this perspective, the 1995 Nuclear Non-Proliferation Treaty (NPT) Review Conference represented a pivotal event where the EU could demonstrate the strength of its Common Foreign and Security Policy (CFSP). During a month it illustrated the widening rift between the EU member states, in particular in the area of nuclear disarmament and related issues. The EU's inability to maintain a coherent common position limits its effectiveness and impedes its quest for visibility.