

# Is the Draft treaty of the European Constitution a consociational suggestion?

- A strike in the Consociational battle

# Abstract

Europe's violent history led to the European cooperation in order to maintain peace in the diverse Europe, after World War 2. The 4<sup>th</sup> of October 2003 the European Convention presented a Draft Treaty establishing the European constitution, in Rome, aiming at establishing a constitutional framework for the Union. Consociational theory explains how stability in diverse societies is accomplished and has therefore, over the last decades, widely influenced constitutional designing. If Consociationalism leads to stability then it appears to be a pertinent basis for the European Magna Charta. In this thesis I examine the level of consociationalism in the European union and the Draft Treaty using the four key concepts of consociationalism as parameters; grand coalition, segmental autonomy, mutual veto and proportionality. The study demonstrates how certain consociational features can be established in the Union though in the Draft Treaty a decrease in consociational elements is displayed. According to Consociationalism this would destabilize the union.

Keywords: Consociationalism, The Draft Treaty of a European Constitution, Consociational key concepts.

# Table of Contents

|   |    |
|---|----|
| <i>Abstract</i> .....   | 2  |
| <i>Table of Contents</i> .....                                  | 3  |
| <i>Introduction – Developing an European Constitution</i> ..... | 4  |
| <b>The Problem Area</b> .....                                   | 5  |
| <b>Method and Material</b> .....                                | 5  |
| <b>Definitions and Limitations</b> .....                        | 7  |
| <i>The Theoretical Framework</i> .....                          | 8  |
| <b>The Evolution of Consociationalism</b> .....                 | 8  |
| <b>The Four Key Concepts of Consociationalism</b> .....         | 9  |
| Grand Coalition.....  | 9  |
| Segmental Autonomy .....  | 12 |
| Proportionality .....   | 14 |
| Mutual Veto .....   | 14 |
| <i>Consociationalism and the EU</i> .....                       | 16 |
| <b>Grand Coalition within the European Union</b> .....          | 17 |
| <b>Segmental Autonomy in the European Union</b> .....           | 19 |
| <b>Mutual Veto in the European Union</b> .....                  | 20 |
| <b>Proportionality within the European Union</b> .....          | 20 |
| <i>Summarizing the Draft Treaty</i> .....                       | 22 |
| <b>Background Introduction to the Draft Treaty</b> .....        | 22 |
| <b>Overview of the Draft Treaty</b> .....                       | 22 |
| <i>Conclusion</i> .....   | 26 |
| <i>Literature</i> .....   | 28 |

# Introduction – Developing an European Constitution

Europe consists of a multilingual and multicultural diverse societies, with linguistic, cultural and ethnic barriers. Since the end of the Second World War the European countries have tried to find ways of keeping the peace and maintain stability. How can these barriers be overbuilt? How can a more integrated Europe be created?

In 1950 the European Coal and Steel Community (ECSC) was formed, this being the first step in order to unite Europe politically and financially in order to stop the fighting. The signing of the Treaty of Rome 1957 further enhanced the ECSC. Since then the European cooperation has evolved into what we today know as the European Union. The current Union consists of 15 members at the verge to be enlarged into 25 member states. Through time of growing, the Union has formed three treaties defining the laws and rules of the cooperation.<sup>1</sup> The 4<sup>th</sup> of October 2003 the European Convention presented a draft treaty establishing the European constitution, at the intergovernmental conference in Rome. Making this the 4<sup>th</sup> attempt to unify the Union's policies and institutions, aiming to create a more transparent and democratic organization where the citizen will feel included instead of excluded by vast bureaucracy.<sup>2</sup>

How is it possible to design a constitution resulting in a stable and lasting democracy? History shows of a number of successful and less successful constitutions. A theory that has had a strong influence on designing is consociationalism. During the last decade it has been an important founding element in new constitutions especially in countries with ethnic, religious or linguistic minority groups and with previous account of interstate conflict e.g. Iraq, Bosnia-Herzegovina, South Africa, Dagestan and Northern Ireland.<sup>3</sup> Consociationalism is supposed to be the democratic political system accomplishing a stable democracy; overbuilding internal cleavages. If we were to create a better integrated Europe wouldn't a constitution built on consociationalist ideas be ideal? Assuming consociationalism were the ideal political system for the European integration, is the new constitution in line with this?

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<sup>1</sup> Bernitz – Kjellgren (1999) "EUopparättens grunder" p.8-17

2004-03-15 The Official homepage of the European Union - history

<sup>2</sup> "The CER guide to the draft EU constitution, Centre For European Reform 2004

<sup>3</sup> Byman, Daniel M. – Pollack, Kenneth M. (2003) "Democracy in Iraq"

"Ethnic parity and democratic pluralism in Dagestan: A consociational approach" Ware, Robert Bruce ; Kisriev, Enver, *Europe-Asia Studies*, *vol:* 53 *issue:* 1 *pages:* 105-132, 2001

Guelke, Adrian (2003) "Civil society and the Northern Ireland peace process" p.61-78

Shirlow Peter (2001) "Devolution in Northern Ireland/Ulster/the North/Six Counties: Delete as appropriate"

Can the European Union be interpreted along consociationalist lines? According to a number of scholars it can (e.g. Chrysschoou (1997, 2000), Lijphart (1996), Crepaz (2002) and Steiner (1981)), showing clear features of a consociation. According to critics this is nothing but a conceptual stretching of a theory with too many leaking holes to be padded, and not suitable to be applied on an organization as the European Union (e.g. Bogaards (2000), Barry (1975), Kaiser (2002)).

## The Problem Area

The theory is presented as an over-all remedy for diverse and segmented political systems, influencing constitutional designing worldwide. Why shouldn't this remedy be used in the European constitution? The main question of this thesis is the level of consociationalism in the draft treaty. How do we determine the level of consociationalism? By looking at the elements of consociationalism in the Union of today, comparing it with new elements in the Draft Treaty suggest we can determine if the components of consociationalism has increased or decreased. From this we can draw a number of conclusions; a high or low level of consociationalism in the draft treaty would perhaps settle the constant battle among scholars of the Union as a consociational organization. Looking at the Draft Treaty it could also determine if the new constitution promotes a stable democratic order or not.

Consociationalism in constitutional design has been used because it promotes stability and peace in diverse societies. Europe with its violent history and with the initial aim of the European Union to create stability could find the solution to instability in this political system. Has this already been done or is the Draft Treaty a first step in that direction? If the Draft Treaty doesn't show consociational features is destabilizing Europe lying ahead? If the treaty were to be accepted as suggested then it will reveal something about the Unions future as well. However, as current affairs look right now, the treaty will never be approved in its proposed form. It is though still interesting to examine it for further research on the issue. The result from this study can discharge into a number of new interesting questions, which would make this thesis only a step at the way. For instance, there can be made comparisons between the suggested draft and the later implemented draft and from there determining if the level of consociationalism has increased or decreased further.

## Method and Material

When approaching my research field I first thought discourse analysis would be appropriate. Discourse analysis can be defined as "*analysis of how texts work within sociocultural practice*" or in a wider definition as a way "*to cover all forms of spoken interaction, formal and informal, and written texts of all kinds*".<sup>4</sup> The main aim is to look at both text and context and make a contextual view of the impact of the text in the societal structure studied. But I found that since I

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<sup>4</sup> P. 1 "Diskursanalyse for statsviteere: Hva, hvorfor og hvordan?", Werner Christie Mathisen, 1997

rather look at how the theory is funded in a text this method would bring me off track. I therefore found the case study, with its wider range, better suited. Case studies can be used with one or several cases and is one of the most common methods of comparative politics. The advantage of using case study with one single case is that it allows further theoretical exploring.<sup>5</sup> “*A single case, if properly constructed and researched, can be used to expand the analytic knowledge of political science and to illuminate, and even test directly, theories commonly used in the discipline.*”<sup>6</sup> One of the problems of case study is to determine the number of cases. In my case I have decided to use only one case—the Draft Treaty but since my study is diachronic it still gives some reference to earlier Treaties and the current institutional order of the Union, to give the case a contextual background. Usually when working with a single case the experimental variance must be assumed here it is partly assumed by the presupposition that the reader have a common knowledge of the earlier treaties of the European Union.<sup>7</sup> This approach has been chosen in order to allow me to go deeper on the theoretical discourse and the operationalization of the conceptual framework.

The case study allows a lot of freedom for the researcher but also puts a lot of responsibility on the researcher in the conducting of the study. It is easy to lose clarity working with a case study. I have in my study tried to maintain this clarity through the foundation of the conceptual framework given in the theory. In the chapter of the theory I will operationalize the concepts used. In this chapter I also further discuss the validity of these concepts as a part of the evolution of the theory; how it has been revised and retested. A problem using conceptual framework or ideal-type analysis, like the one within Consociationalism is the risk of Conceptual stretching. I have found though that the use of consociational solutions in diverse societies are common in constitutional designing why I find it interesting to try whether it is possible to apply it on to the European Constitution. This conceptual framework has first been applied to the European union giving a background to the Draft Treaty and explaining the empirical travelling problems the theory have, and then applied on the Draft Treaty, finishing with a conclusion of the study.

The material I have worked with is mainly research articles of different scholars, both followers and critics, within consociationalism, in order to depict the theoretical discourse. Some of the information, such as simple facts in order to help the reader follow the later reasoning of the Draft Treaty, has been collected from the official homepage of the European Union along with an EU dictionary. For analysing the Draft Treat I’ve had some additional help from research articles. In order to keep a good level of intersubjectivity though I have cross-referenced the articles with the treaty.

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<sup>5</sup> Peters, Guy B (1998) “Comparative politics”, p. 137 –138

<sup>6</sup> Peters, Guy B (1998) “Comparative politics”, p. 138

<sup>7</sup> Peters, Guy B (1998) “Comparative politics”, p. 142

## Definitions and Limitations

In some of Lijpharts work he has mentioned favourable conditions as part of the definition of Consociationalism. These are 8-9 conditions said to stimulate the consociational democracy but they are not necessary conditions for a consociational democracy. I have here been hesitant if whether I should add these conditions or not. Just the fact that Lijphart himself changed these conditions a number of times and it has also been discussed very intensely by other scholars of their validity. In Anderweg's description of Consociational Democracy he scrutinize the discussion concerning the conditions and arrives at the conclusion the conditions are rather confusing elements of the theory. I therefore infer that adding the favourable conditions to this discussion are less useful and has not been defined as necessary for analysis by Lijphart.<sup>8</sup>

Scholars appear to use different terminology defining central concepts of consociationalism. I have tried to choose the words most frequently and commonly used in the studied literature. The groupings of the diverse society are called cleavages, subcultures and segments, to mention an example. I found this word particularly difficult. Lijphart himself uses a number of different descriptions and this is in fact some of the criticism of the theory caused by its confusing terminology.<sup>9</sup> I have chosen to label the groupings of the diverse societies described as segmented as segments, by the simple reason it is the easiest word still keeping the essence of the key concepts.<sup>10</sup> Further operationalization will be given by each key concept in the theoretical discourse.

As for when I refer to the Draft Treaty in my text I exclusively mean the Draft Treaty establishing a constitution for the European Union. I have limited my analysis of the Draft Treaty to only be on new elements of the treaty and only the constitutional part. To analyse the treaty as a whole would have given a deeper insight on the treaty but I have tried to compensate this by giving reference to earlier treaties giving a variance allowing the changes to appear.

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<sup>8</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.511

<sup>9</sup> Barry, Brian (1975) "Political Accommodation and Consociational Democracy" p. 477-505

<sup>10</sup> segment= one of the constituent parts into which a body, entity, or quantity is divided or marked off by or as if by natural boundaries (Merriam Webster Online dictionary)

# The Theoretical Framework

## The Evolution of Consociationalism

Consociationalism started evolving in the 1960's and has since then been revised a couple of times. Professor Arend Lijphart has mainly outlined the theory and his works are very central in the theoretical discussion. I have chosen to describe the theory first in a short introduction of how Lijphart derived the theory and then from the key concepts and characteristics he introduced of the system. I will draw the picture of the ideal consociational democracy or system. The reader should note though that this is a normative system and just as Lijphart claims the pure consociationalist state is rare. More common is states or democracies with consociational features rather than a pure consociational scheme.<sup>11</sup> Lijphart defines consociationalism as an ideal and polar type – having majoritarian system as the opposite polar, and an empirical category. Lijphart doesn't bother to make a distinction between the empirical and normative types since he means the definition, in this case, is the same.<sup>12</sup>

What is Consociationalism or a consociational democracy? The ideal democracy of consociationalism is built on four central concepts, as pillars of the theory. Important to note is how the four pillars don't just build up the system but also define the system. The theory itself is rather normative than explanatory and it doesn't explain the existence of a political system but rather defines how the system is supposed to work – how stable democracies are achieved in diverse countries.

Arend Lijphart has defined the consociational democracy accordingly: *“Consociational democracy means government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy.”*<sup>13</sup> Although the definition is more than 30 years old and has met a lot of intensive critique, it still stands as the definition of the theory.<sup>14</sup>

How did Lijphart come up with this definition? Consociationalism intend to answer the question of how divided societies remain stable democracies. Lijphart derived inspiration from Gabriel A. Almond's typology of political systems. In his typology Almond had characterized three groups of democratic systems according to their stability – Anglo-American, Scandinavian and Low Countries and Continental European. Almond's idea was that socially integrated societies are more stable than socially fragmented societies.<sup>15</sup> He found that the Anglo-American system showed on a good integration and this would explain its higher stability than the other groups. The more heterogeneous a country gets the more

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<sup>12</sup> Lijphart, Arend (2000) "Definitions, evidence and policy – a response to Matthijs Bogaards' critique" p. 427

<sup>13</sup> Lijphart, Arend (1969) "Consociational Democracy" p.216

<sup>14</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.511

<sup>15</sup> Lustick, Ian S. (1997) "Lijphart, Lakatos and Consociationalism" p. 88-117

fragmented and unstable it is. The Continental European system showed most fragmentation, according to Almond.

Lijphart didn't agree with this typology since he found that the middle group – Scandinavia and the Low Countries, consisting of partly integrated and stable countries. Lijphart discovered how Scandinavia showed more homogeneity than the Low Countries, where the cleavages between societal groups were more profound. He also found that the Low Countries showed a high stability and initiated a study of this phenomenon. From his studies of the Netherlands he formed a new typology; looking at the three religious groups of the Netherlands; Roman Catholic, Calvinist and secular. Socio-economic life in the Netherlands was more or less completely organized around these three main groups. Lijphart found that the groups were segmented but what kept the society from falling into totalitarianism, like Almond argued in his typology on Continental Europe, was the fact that the leaders – elites, cooperated over segment lines. Governing was then further implemented into the groups from the top elite-level.<sup>16</sup> In conclusion Lijphart ascertain that the stability of a segmented or divided country is depending of how well the elites of these segments are able to cooperate and then implement this cooperation downwards to the segment.

## The Four Key Concepts of Consociationalism

From further studies of how this cooperation worked Lijphart developed the key concepts of consociationalism. This along with the initiating quoted definition of the consociational democracy usually serves as the framework of the theory.

The four key concepts will here be introduced one by one but the reader shall have in mind that they interact with each other. Division is merely help in order to understand the concepts. Initially there was five concepts introduced in the works of Lijphart in 1977 but later Lijphart himself chose to take out the fifth (plural society), claiming it had been derived on overestimated facts.<sup>17</sup> Lijphart has because of this been accused of “Conceptual stretching” – applying the concept outside its proper domain, trying to adjust the theory so that it fits its subject.<sup>18</sup> Lijphart's response to this has been: “[...] *not all conceptual stretching needs to be condemned; on the contrary when the original concept is unnecessarily and undesirably narrow it **must** be stretched.*”<sup>19</sup>

### Grand Coalition

Grand coalition or cartel of elites refers to the co-operation of political elites. As Lijphart concluded in his case study of the Netherlands the consociational democracies consisted of subcultures or segments, governed by an elite. When

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<sup>16</sup> Peters, B Guy (1998) “Comparative politics – theory and methods”, p. 94

<sup>17</sup> Lijphart, Arend (2000) “Definitions, evidence and policy – a response to Matthijs Bogaards' critique” p. 425-431

<sup>18</sup> Bogaards & Crepaz, (2002) “Consociational interpretations of the European Union” p. 368

<sup>19</sup> Lijphart, Arend (2000) “Definitions, evidence and policy – a response to Matthijs Bogaards' critique” p. 426

these elites interact and co-operate it is named a grand coalition. How this coalition is performed differs a bit from different countries. Usually it takes the form of a cabinet coalition consisting of ethnic, religious or linguistic parties. Examples of this are found in for instance Austria, Malaysia and South Africa. Note though that the feature of grand coalition of co-operating political elites is not only occurrent in the cabinets but also other institutions such as Councils and committees. In Belgium for instance the coalition isn't represented by all significant parties but it corresponds to the criteria of grand coalition by its equal representation of French and Dutch-speakers in the cabinet. Another example is the Lebanon representation where the governmental offices show features of grand coalition, representing different religious and ethnic groups.<sup>20</sup>

In the early work of Lijphart a few criterias concerning the elites were stipulated. Lijphart had found that the elites had to be aware of the problems of political fragmentation and because of this had to have a commitment striving for improving the system towards stability and cohesion. He argued that the elite had to have the ability to overbuild the cleavages and join in a common governing effort with rivalling elites and thereby also being able to consider the interests and demands of the subcultures.<sup>21</sup> *"The essential characteristic of consociational democracy is not so much any particular institutional arrangement as the deliberate joint effort by the elites to stabilize the system."*<sup>22</sup> In later work Lijphart stressed the motive and aim of the elites as a central factor of success of consociationalism. When studying consociational system Lijphart suggested looking at the institutional arrangements examining the effectiveness of the cooperation overbuilding fragmentation. This would determine the level of consociationalism.<sup>23</sup>

Are leaders actually able to recognize the cleavages and overbuild them? Tsebelis argues that the fact the elite have to have electoral support from its segment, in turn risking the segments replacing their leaders if they are not happy with its governing, forces the leaders to recognize the needs of the segments and work with the aim of satisfying the segment.<sup>24</sup>

In consociationalism political elites do not compete but cooperate, in contrary to the majoritarian countries.<sup>25</sup> Why would elites chose to cooperate instead of compete? If none of the segmental groups have a majority hold or are able to achieve it the political elites must chose to avoid majority decisions in favour of other solutions. In deeply divided societies coming to an agreement can be hard and the compromise is achieved rather by "give-and-take"-agreement, where the

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<sup>20</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p.259

<sup>21</sup> Lustick, Ian S (1997) "Lijphart, Lakatos and Consociationalism" p. 88-117

<sup>22</sup> Lijphart, Arend (1969) "Consociational Democracy" p. 213

<sup>23</sup> Lijphart, Arend (1969) "Consociational Democracy" p.216

<sup>24</sup> Tsebelis, George (1990). "Elite interaction and constitution building in consociational democracies"

<sup>25</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.519

different parties lose on some issues and win on others.<sup>26</sup> There are a number of different problem-solution-openings; some conflicts are solved by depoliticization i.e. to define the problem, not as ideological, but rather technical, economical or judicial. Another solution is to remove the issue from the agenda completely, both these solutions excludes the majority voting elites want to avoid. Why do elites want to avoid majority decision? Perhaps in order to escape dead-lock, perhaps in order to escape not accomplishing any of their ideas. In these situations the elites can then benefit from choosing co-operation instead of competition. Another way of agreement is to assign the elite of the different areas or segments (territorial) power in certain issues and thereby allowing some segmental autonomy (see next concept).<sup>27</sup>

Characteristic for the cartel of elites is the power structure of a top-pillar-down organization, where the elite cooperate with rivalling elites and implement the decisions downwards to the segment. The organizational structure of the grand coalition and the segments include a “segmental isolation”, where interaction between segments are few, due to their indifferences. A diverse society where interaction between different groups are high inhabits a cross-pressure that stabilize the system itself, this is missing in the Consociational system.<sup>28</sup>

The grand coalition concept has been criticized for indicating it being an all-party coalition, with all segmental parties represented proportionally which is not completely true. It should have a more flexible definition as can be seen in for instance India’s “catch-all” party in the Congress, which absorbs a number of segments into one party. *“The combination of the Congress Party’s inclusive nature and political dominance has generated grand coalition cabinets with ministers belonging to all the main religious, linguistic and regional groups.”*<sup>29</sup> According to Lijphart the definition is not to be applied literally but could be described onto all the institutions bearing a representation of the different segments. It has been argued for instance by S.M Halpern that this loser definition of the grand coalition concept becomes a “catch-all” –concept trying to describe any form of coalition in order to suit the theory. Anderweg argues that the function of the theory is still valid. The feature of consociationalism is intersegmental elite cooperation and if this can be shown in any institution, mechanism or venue then the theory is valid according to its concepts.<sup>30</sup>

Brian Barry asks if the “recognizing” of cleavages as Lijphart suggest would imply that grand elites might exaggerate the cleavages for their own purposes.<sup>31</sup> Van Schendelen advance claiming Lijphart has exaggerated the cleavages

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<sup>26</sup> Tsebelis, George (1990). “Elite interaction and constitution building in consociational democracies” p. 8

<sup>27</sup> Andeweg, Rudy B. (2000), “Consociational Democracy” p. 511-512

<sup>28</sup> Andeweg, Rudy B. (2000), “Consociational Democracy” p. 522

<sup>29</sup> Lijphart, Arend (1996), “The puzzle of Indian Democracy: A consociational interpretation” p.260

<sup>30</sup> Andeweg, Rudy B. (2000), “Consociational Democracy” p.520

<sup>31</sup> Barry, Brian (1975) ” Political Accommodation and Consociational Democracy” p. 477-505

described in his historical survey of the Netherlands, in order to suit his typology. The power abuse of the elite is a very central criticism towards consociationalism. Another crucial point is the preserving of cleavages. If the elites are depending on the segmental support then wouldn't it be logical for the elites to maintain these cleavages instead of choosing integration? <sup>32</sup> Daalder takes the criticism even further claiming the elites enforce the segmentation for their own purposes, giving increased segmentation after introduction of consociationalism in the Netherlands as example. Lijphart has responded to this claiming the enforced cleavages were a result of hindering hostility between segments.<sup>33</sup> The criticism raises the question of the lasting segments; are the segments or cleavages permanent? Lasting segments would mean no matter how much the elite strive for integration they will always exist. It all actually depends of the definition of the segments, which will now be discussed under segmental autonomy.

### **Segmental Autonomy**

In Lijphart's latest work he has referred to this as just "autonomy".<sup>34</sup> In earlier work he has also named it "cultural autonomy", "segmental autonomy" and "subsystem autonomy", though other scholars seem to refer exclusively to "segmental autonomy", which is why I have chosen to do so as well.<sup>35</sup> The different labelling may be a consequence of the critic in operationalization Lijphart has received.<sup>36</sup> Segmental autonomy means that the segments have some self-governing rights or possibilities. In order to establish this the segments first has to be defined.

In response to criticism of not operationalizing the concept of segmental autonomy Lijphart presented some general criteria of defining the segments. Segments must be easy to identify i.e. have clearly defined segmental lines in accordance with linguistic, ethnical or cultural lines. Examples of this is for instance the linguistic groups of Belgium, ethnical groups of South Africa etc. Each segment's size must be possible to measure accurate. The segmental borders should coincide with political, social and economic organizations. The segmental parties must receive a stable electoral support from respective segments.<sup>37</sup> The segment has further been characterized by its immobilism over group lines, lack of interaction or cross-pressure as described earlier, with other groups, which outlines the different segments more clearly.<sup>38</sup> Lijphart have said it favours

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<sup>32</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p. 362 - 363

<sup>33</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.529

<sup>34</sup> Lijphart, Arend (2000) "Definitions, evidence and policy – a response to Matthijs Bogaards' critique" p. 425-431, 2000

<sup>35</sup> Lijphart, Arend (1969) "Consociational Democracy" p. 207-225

Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p. 258-268

Andeweg, Rudy B. (2000), "Consociational Democracy" p. 509-536

Bächtiger, André - Spörndli, Markus - Steiner, Jürg, 2002. "The consociational theory and deliberative politics. A conceptual framework for a Cross-National Analysis"

<sup>36</sup> Barry, Brian (1975) "Political Accommodation and Consociational Democracy" p.477-505

Andeweg, Rudy B. (2000), "Consociational Democracy" p. 519

<sup>37</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.519

<sup>38</sup> Steiner, Jürg (1981) "Research strategies beyond consociational theory" p. 1242, 1244

consociationalism if there is no majority segment being able to win over the others, in order to maintain stability. Further on cooperation is stimulated by a low number of segments, the segments being of equal size and geographically concentrated, this all relating to the concept of proportionality, explained as next concept.<sup>39</sup>

Some of the criticism of this concept being vague has been solved through a better definition. Lijphart admits there is a problem defining segments. Few segments have distinct cleavage lines as Lijphart describes but this doesn't make the segmental or diverse nature any less. Does the Netherlands have three or four segments; should the liberals and socialist be put in one segment or be broken into two different? Or as in the example with Belgium and its segments of Catholics, liberals and socialist versus a linguistic segmentation into French and Dutch. The problem of defining the segments is merely operational according to Lijphart, and the feature of segmentation perhaps cannot be easily defined but this is not equivalent to it not existing.<sup>40</sup>

Are the segments lasting? Andeweg emphasize defining segments along lines of social class is not appropriate from this point of view and Lijphart himself prefer the definition of segments along linguistic, regional, religious, ideological, ethnical, and racial lines.<sup>41</sup> Linguistic, regional, religious, ideological, ethnical and racial differences must be claimed to be a rather permanent status and even though the segmental leaders were to achieve ever so good integration the groups remain. Hostility might have disappeared but the feature of the group still persists. It is inherent to the feature of the segment that it endeavors to maintain its identity. Social class cleavages do not really have this preserved feature when social classes inherently strive to make a shift in classes.

Segmental autonomy implies a certain independence from the governing elites for self-governing.<sup>42</sup> The main principle of the autonomy is that the elites take decision in common affairs but that decision-making concerning all other issues is delegated to the segments.<sup>43</sup> Segmental autonomy can be given to for instance a territorial segment, letting the elites in a particular segment, take the decision in an area of issues.<sup>44</sup> It can also be organized along linguistic lines as in Switzerland, and Belgium, giving each group a linguistic autonomy. Another feature of the autonomy is educational autonomy; the segments become responsible of administering some of their own institutions such as schools, supported by public funding, as can be seen in Netherlands, Belgium and India.

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Lijphart, Arend (1969) "Consociational Democracy" p.219-221

<sup>39</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p.522-525

<sup>40</sup> Lijphart, Arend (1981) "Consociational theory: problems and prospects. A reply" p.356-357

<sup>41</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p. 522

Steiner, Jürg (1981) "Research strategies beyond consociational theory" p. 1247

<sup>42</sup> Steiner, Jürg (1981) "Research strategies beyond consociational theory" p. 1242

<sup>43</sup> Chrysochoou, Dimistris N. 1997 "New Challenges to the study of the European intergration : Implications for theory-building" p.525

<sup>44</sup> Andeweg, Rudy B. (2000), "Consociational Democracy" p. 512

Some autonomy within laws can also be a characteristic; segments having own family laws, as seen in Lebanon and Cyprus, also see India's separate personal laws for Hindus, Muslims and smaller minority religions.<sup>45</sup>

### **Proportionality**

The principle of proportionality meets less definitional problems than the other two key concepts. Proportional and equal representation among the different segments or subcultures is accustomed, this can for instance be seen in the way almost equal proportionality was achieved in Malaysia by giving minority groups sole right to nominate candidates in certain districts so that they could be represented.<sup>46</sup> The principle of proportionality is signified by proportional electoral systems.<sup>47</sup> For this to be achieved the segments should be quite homogenous in comparison to each other, concerning size. As already discussed a difference in size would result in competition among the segments rather than cooperation.

Both of these features are central in the concept of proportionality. The different segments should retrieve equal representation in for instance the congress or the Parliament. Lijphart has though, as already mentioned, explained that the equal representation cannot be interpreted literally, and overall view has to be accredited instead. This has been criticized as mentioned under the concept of grand coalition for being a too wide definition of inclusion.

### **Mutual Veto**

The efficiency of the grand coalition depends on the existence of the mutual veto- an equal ability to oppose decisions. Lijphart has in some work called this "Minority veto" in others used the term of "mutual veto".<sup>48</sup> The concepts of both are generally the same; minority veto is used in countries where one segment have a stronger hold than the others and in order to assure the smaller segments a proportional right, minority veto is enforced. Mutual veto is based on an equal ability of veto. The veto can consist of understanding or notion of minorities ability to effectively block a decision in order to protect vital interests of their own. Some consociational democracies show a more clearly defined veto where the protection of minority interests have been taken into the constitutions, such as in Belgium and Cyprus (minority veto).<sup>49</sup> The veto works best if it is not put into practise too often since it then threatens to destabilize the system and cause

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<sup>45</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p.260-261

<sup>46</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p.261

<sup>47</sup> Reiley, Ben (2002), "Electoral systems for divided societies" p. 157

Andeweg, Rudy B. (2000), "Consociational Democracy" p. 529

<sup>48</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p. 261

Lijphart, Arend (2000) "Definitions, evidence and policy – a response to Matthijs Bogaards' critique" p.425-431, 2000

<sup>49</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p. 261

deadlock situations. The mutual problem of the mutual veto shows well how integrated these concepts are. If the grand coalition has not chosen a problem-solving model securing the interests of the segments it might result in a veto, which risk deadlocking the situation.

In the early stages of developing the consociational concept I experience the criticism of the operationalization fiercer than it is in later work. Operationalization of the concepts and a number of studies testing the concepts seem to have made them generally accepted. The reduced critic of the concepts can also be due to the fact that Lijphart himself partially abandoned the theory, claiming very few countries were able to meet the criteria. Instead he continued working on the concept of consensus democracy, which is a similar system though not as narrowly defined as consociationalism. Scholars though still keep working with the concepts of consociationalism and referring to the key concepts of the theory and it is the dominating model for democracy in divided societies.<sup>50</sup>

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<sup>50</sup> Reiley, Ben (2002), "Electoral systems for divided societies" p. 157

# Consociationalism and the EU

*“The European Union has delivered half a century of stability, peace and prosperity”*. It is further proclaimed in the Union’s official homepage: *“Unity in diversity: Europe is a continent with many different traditions and languages, but also with shared values. The EU defends these values. It fosters co-operation among the peoples of Europe, promoting unity while preserving diversity and ensuring that decisions are taken as close as possible to the citizens.”* It is no coincidence that this fact inspires consociationalist scholars to study the characteristics of the Union.<sup>51</sup>

The European Union as a consociational concept was acknowledged already as early as in 1974 when the scholar Leon N. Lindberg detected the similarities between the features of consociationalism and the EU, since then, especially the last decade, has become increasingly popular as theoretical approach.<sup>52</sup>

The main bodies of the European Union are the European Council, the Commission and the European Parliament. The European Council is the legislative and decision-making body of the European Union. It consists of the representatives from all the member-states governments. The Commission is the administrative and executive body of the Union. It is responsible for law-proposals and supervising implementation of new laws and spending of EU funds. The body consists of 20 Commissioners, one from each country, representing the EU and not the country they originate from. The European Parliament is the directly elected body of the European Union, with 626 members (distributed by population size). It is divided into seven political blocks instead of national groups with some of its members not belonging to any particular group.

Critics have argued that consociationalism shouldn’t be applied at the European Union since the theory was set out to analyse political systems described on nations and not organizations. Critics advocate that the EU system has a much more complicated structure compared to one single country. The theoretical political systems, such as consociationalism, were designed to be applied on single countries and not an apparatus like the EU, which makes a holistic capture hard.<sup>53</sup> The restriction of how to apply the theory has been discussed by among others Steiner who welcomes a less restrained research strategy for consociationalism and suggests an issue-based strategy instead of the nation based.<sup>54</sup> Few critics have opposed to applying the theory on the European Union in whole, as Kaiser does and most critics settle with criticizing the

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<sup>51</sup> “The European union at a glance” The European Unions official homepage

<sup>52</sup> Bogaards & Crepaz, (2002) ”Consociational interpretations of the European Union” p. 357-358  
Lijphart, Arend (1996), ”The puzzle of Indian Democracy: A consociational interpretation”  
p.258

<sup>53</sup> Kaiser, André (2002) ”Alternation, Inclusion and the European Union” p. 446

<sup>54</sup> Steiner, Jürg (1981) ”Research strategies beyond consociational theory” p. 1249-1250

operationalization of the analysis. Despite this criticism a number of scholars still seem to find the analysis of the European Union interesting.

## Grand Coalition within the European Union

When analysing the EU through a consociational perspective the first problem one encounters is the problem of defining the Union. The choice between recognizing the Union as an intergovernmental organization or an incipient federal state, determines the main area of the study. The intergovernmental perspective supports the idea that EU is an organization composed by a number of governments working together in a common body. The federal perspective advocates the idea of the EU member states governed under the main body of the Union. When analysing the theory with an intergovernmentalistic starting point, scholars tend to leave out the Commission and the European parliament and instead focus on the European Council, defined as the grand coalition. When analysing the theory with an incipient federal starting point the Commission usually stages the executive body of the theory and thereby also the grand coalition.<sup>55</sup> How to define the union is a discourse on its own. I will reason from a consociational point of view in order to determine the grand coalition.

From a consociational point of view the European Council could stage the grand coalition with its representing ministers as the cooperating segmental leaders. The ministers have been elected by each segment to represent them in the cartel of elites. The aim to overbuild cleavages is there, ambition to strive for improving the system towards stability as well along with the necessary cooperation between elites. The Council further on shows the characteristic of avoiding majority decisions taking decisions to a great extent with unanimity.<sup>56</sup>

Critics argue though that these consociational features are not as strong enough. Kaiser argues that the coalitions in the Council, referring especially to the Council of Ministers are formed on a temporary basis changing from issue to issue and therefore no actual cooperation between elites can be found in the Council. Is this true? Following the criteria given by Lijphart about the aim and ideals of the grand coalition; representing the segments, safeguarding its interests, trying to overbuild the cleavages and cooperating with “rival segments”; it complies with the works of the European Council. As far as I can see this is the very aim of the European Council being the decision-making and legislating body of the Union.

As for the elite leaders, the Council with its ministers from respective country doesn't show any defined groupings and it is constantly changing due to national elections, according to Kaiser.<sup>57</sup> Tsebelis have argued that the constantly changing representation is itself an accommodation of the will of the segments. He further on argues that the elite leaders will because of this try and rule in the

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<sup>55</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p.359

<sup>56</sup> Voting in the Council EU ABC 2004-03-17

<sup>57</sup> Kaiser, André (2002) "Alternation, Inclusion and the European Union" p. 452 453

compliance of the segmental will. According to this the actual ruling within the European Council shouldn't be shifting that drastically, as Kaiser mean it does.<sup>58</sup>

Lijphart described the aim of the grand coalition as the main characteristic. According to Markus L. Crepaz you find a deliberative effort by the elites to find a cooperate solution to problems. Decision-making in the Council shows on a clear avoiding of majority decision, this despite an increased usage of majority decisions in the Union in toto. The decision-making choices of the elites are one of the main features of the grand coalition. If cooperate decisions are chosen rather than majority decisions as a way of finding a solution and understanding, then it can be argued that the criteria for grand coalition is filled, according to Crepaz.<sup>59</sup> Another feature of the grand coalition is the way the members of the segment have put trust in their leader to bargain with other elites on their behalf, according to Chrysochoou.<sup>60</sup> In the Council this can also be accounted for since the members of the Council are elected leaders of their respective country.

The Commission of the European Union is the executing body Union doing the day-to-day work of the Union. Lijphart argued that the executive body should be the grand coalition, which it isn't in this case. The Commission represents the common interest of the Union, the Commissioners are though not to represent the interests of their originating countries; this according to critics cannot make them into segmental leaders. Though the theory prescribe that the grand coalition can have many faces sometimes not even constituted by a main executive body, such as a cabinet, but instead a much loser connection. Lebanon and Cyprus are examples of this where allocation of top governmental offices shows segmental groupings along ethnic and linguistic lines.<sup>61</sup> Eventhough the Commission fulfils the aims of the grand coalition partially I find the condition of being segmental leaders such a strong feature of the concepts that the Commission cannot be seen as a grand coalition.

Some critics claim the European Parliament cannot be accounted for as a grand coalition because of it party division, instead of national division, which cannot make members of the parliament into segmental leaders.<sup>62</sup> Recent studies shows though the party polarisation of the Parliament to be rather weak and mainly issue-oriented and that members of parliament tend to vote according to national borders instead of party groupings.<sup>63</sup> The Members of the Parliament could in this case be considered as segmental leaders. As for the working procedures of the Parliament majority-voting is more common which would exclude the aim of the

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<sup>58</sup> Tsebelis, George (1990). "Elite interaction and constitution building in consociational democracies"

<sup>59</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p.372

<sup>60</sup> Chrysochoou, Dimistris N. 2000 "Integration theory and Treaty Reform: A consociationalist approach" p.4

<sup>61</sup> Lijphart, Arend (1996), "The puzzle of Indian Democracy: A consociational interpretation" p.259

<sup>62</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p.365 -366

<sup>63</sup> Kaiser, André (2002) "Alternation, Inclusion and the European Union" p. 452

grand coalition avoiding majority decisions. Consociationalism distinguish poorly to which extent majoritarian features, such a majority decision should be avoided, only that it should be avoided, in favour for cooperate decision solutions. The question is if the grand coalition can keep its aim of efficiency always choosing consociational decision processes? Since the theory shows weaknesses here I come to the conclusion the European Council shows features of the grand coalition while the Parliament and Commission only partially show these features.

## Segmental Autonomy in the European Union

Conditions for Segmental autonomy are defining segments easily, electoral support and finally autonomy. Most scholars seem to define the segments within the Union according to national borders. Criticism towards this comes from Bogaards who define the segments by their existence or not, if consociationalism broke down. He refers to segments being a lasting phenomenon. The consociational segments are self-determined while the member states of the Union are predetermined. Further on the segments are characterized by a top-down pillar organization this to compare with the liberal democracies of the Union, according to Bogaards. If the cleavages were to disappear due to successful integration it would mean the segmental constituencies had dissolved. Within the EU a successful integration along consociational lines doesn't result in the dissolving of national states.<sup>64</sup>

Crepaz means the sovereignty of nations doesn't really exist in the form Bogaards claim. Due to the stability and growth pact the member states have limited their own economic policy-making. The control of nation's macro-economy is now controlled by the European Central bank; shaping policies for the economic policy. Further on all member states have accepted the precedence of European law over national law, which also limits the member's sovereignty. Crepaz concludes these are all typical features of segments as described by Lijphart.<sup>65</sup>

Within the Union the power is divided over different competences, defined into exclusive competence, where the Union has exclusive right to make laws, shared competence; here the member states loses its right to decide on issues the Union decide to regulate on, on issues where the Union has not defined its own competence the member states have the right to regulate.<sup>66</sup> This right is though restrained to art. 10 of the Rome Treaty, establishing member states regulating in compliance with EU-law.<sup>67</sup> These rules of the Union can be seen as the autonomy of the segments, being allowed to rule on certain issues. Bogaards argue though that member states have willingly given up some of its inherent right to regulate letting the EU law precede, while consociational segments are given the right to govern on some issues.<sup>68</sup> Consociationalism doesn't define how autonomy should be given, whether it is the segments giving up autonomy or segments being

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<sup>64</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p. 361 -362

<sup>65</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p. 371

<sup>66</sup> Competence, EUABC 2004-03-17

<sup>67</sup> art. 10 Treaty of Rome, Europafördrag (s. 71)

<sup>68</sup> Bogaards & Crepaz, (2002) "Consociational interpretations of the European Union" p. 363

granted autonomy. Consociationalism merely says autonomy is needed as a stabilizing element. I agree there is a difference in initiative comparing with national segments (within a nation) but since consociationalism doesn't establish how autonomy shall be granted autonomy in the EU should be accountable.

## Mutual Veto in the European Union

Most scholars, even the ones disagreeing with defining the European Union as a consociation, agree that the concept of mutual veto is completed through the Luxembourg Compromise of 1966. Imposed by Charles de Gaulle who decided not to attend any meetings as a protest towards the abolishing of the unanimous voting on agriculture issues, changing into majority decisions. In 1966 it was decided a country could veto a decision if it violated a countries vital interests. The Luxembourg compromise was never formally accepted though and has over the years lost a lot of its influence. Member countries right to veto in the European Council is maintained though through issues demanding unanimity.<sup>69</sup> As for the Union in general it gives little choice to veto a decision. The increased usage of qualified majority makes it possible to form coalitions of vetoing countries but a single minority cannot veto. The solution of last resort is derogation or “op-out”; an exception from certain EU-regulations granted to a country claiming the regulations cannot be met due to special conditions in the country. These are though rare and not very accepted in the Union since the aim is to create a unified Union law.<sup>70</sup> Countries can also ask for a prolonged implementation time referring to special conditions when applying for the Union, so called transition periods.<sup>71</sup>

## Proportionality within the European Union

As for the proportionality within the European Union you have to look at equal proportional representation within the Union. One of the conditions for proportionality is proportional election, which is met by the elections to the Parliament. The quotients of constituencies are based on country population divided in favour of smaller countries. Which means the equal representation isn't completely met in the Parliament giving the less populated countries a “manufactured majority”. The segments are equally represented in the Council when ruling on consensus. When the Council votes with majority decision each country is given one vote though when the European Council votes on qualified majority the less populated countries again gain an advantage, which doesn't completely meet the condition of equal proportional representation.<sup>72</sup> Further on each country nominates one Commissioner per country, which is in accordance with the proportionality principle. Proportionality is also distinguishable in the European Court of Justices having one judge from each member states, approved by all the member states, for instance.<sup>73</sup> The proportionality of the union seem to be a bit dubious showing a proportional administrative structure, as in the

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<sup>69</sup> Definition “Luxembourg Compromise” from [www.EUabc.com](http://www.EUabc.com)

<sup>70</sup> Definition “Derogation” and “Danish derogations” from [www.EUabc.com](http://www.EUabc.com)

<sup>71</sup> Definition “Transition period” from [www.EUabc.com](http://www.EUabc.com)

<sup>72</sup> art 204-205 Treaty of Rome, Europafördrag 2002

<sup>73</sup> Bernitz, Ulf – Kjellgren, Anders 1999. “Europarättens grunder”,

European Council, the Commission and to some extent the Parliament, though at the same time decision-making are not always chosen on consensus or avoidance of majority decisions. Consociational proportionality illustrates to be problematic. Consociationalism is vague on how equal representation is supposed to be conducted. In the European union proportionality is represented through the population, giving less populated countries an advantage. The essence of proportionality is to overbuild cleavages and counter effect majority hold, which may have a destabilizing result, as far as I can determine this is established in the European institutions.

To summarize it is rather complex to without obscurity to apply Consociationalism to the European union. Some of the theoretical weaknesses become very obvious in the light of the union. The key concepts are used to determine a consociational system but does not inhibit measuring features such as to which extent majority decisions should be avoided, how much autonomy a segment should be allowed, how equal representation is supposed to be conducted etc. Concluding the European union show consociational features even though it is sometimes oppugned.

# Summarizing the Draft Treaty

I will now try to summarize the Draft Treaty, drawing the main lines and features of the proposal. The Treaty is 240 pages long divided into four sections. The first section can be defined as the actual constitutional section based on 59 articles. Section two presents the fundamental rights of the Union, section three policies and functioning of the Union. Section four includes protocols and declarations concerning the roles of the national parliaments, application of the fundamental principles etc.<sup>74</sup> I will here only analyse the first section since this is accounted as the constitutional section.<sup>75</sup>

## Background Introduction to the Draft Treaty

The work on the new constitution started in 2000 when the European Council reached an agreement on the revision of the Treaties. Three phases were outlined at this point; first a phase of discussion, second a closer structure to be determined at the meeting in Lakaen 2001, and third an Inter-governmental conference in 2004 deciding on amendments to the treaty. At the meeting in Lakaen, Belgium 2001 it was decided to form a convention in order to draft a new treaty.<sup>76</sup> The convention consisted of representatives from member state governments, national parliamentarians MEPs and the European Commission. A declaration was formed (Lakaen declaration) settled by the European Council, to guide the convention, based on the following questions: *“How to organise the division of responsibilities between the Union and the Member States? How to better define the respective tasks of the European institutions? How to ensure the coherence and effectiveness of the Union's external action? How to strengthen the Union's legitimacy?”*<sup>77</sup> Lead by the president of the convention, Valéry Giscard d'Estating, the convention outlined the treaty from February 2002 till July 2003. The Treaty was presented in Greece summer of 2003 and formed the basis for discussions at the Intergovernmental conference in Rome 4<sup>th</sup> of October 2003.

## Overview of the Draft Treaty

The constitutional section is divided into nine titles. I will very briefly introduce each title and then go deeper into the pieces of certain interest, illustrating changes of the treaty from earlier treaties.

Title I defines the aims and objectives of the Union. It establishes some fundamental rights such as non-discrimination and also the legal personality of the Union; making the Union into a single legal personality being able to act solely in for instance signing international treaties.<sup>78</sup> Interesting to look at here is the aim of the Union working in the interests of the member state according to art. 3. It aims

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<sup>74</sup> Mény, Yves (2003) “Making sense of the EU- The achievements of the convention” p. 66

<sup>75</sup> References referring to the Draft Treaty, will be given with the title number first followed by article number i.e. I-6 = Title I Article 6

<sup>76</sup> “History of the draft Constitution” From the European Unions official homepage.

<sup>77</sup> “History of the draft Constitution” From the European Unions official homepage.

<sup>78</sup> “The CER guide to the draft constitution”, CER Centre for European Reform, October 2003,

<sup>78</sup> I- 1-6 Draft Treaty establishing a Constitution for Europe

to protect the diversity and the cultural richness of the member states. It aims at stability and peace. In art. 5 it is specified how the Union is respecting the member states and their national rights.

In title II the fundamental rights of citizenship is presented. Title III presents the competences of the Union. Here you find one of the main changes of the Draft Treaty compare to earlier treaties; the better defined competences and power division. The competences are presented in a catalogue of competences more clearly defining the exclusive and shared competences. Within the exclusive competences the Union has extended it's rights to establish competition rules within the internal market.<sup>79</sup> The shared competences are shown in art. 13. Shared competence means the member states keep their autonomous right to rule only on the fields the Union haven't decided or determined not to decide on. In this title the employment policies are also presented, making little changes and still allowing the member states to constitute their own rules, as for the exception of the member states sharing information, setting bench marks and employing peer-pressure to improve performance.<sup>80</sup> The Foreign and Security policy is also defined in this title demanding loyalty, mutual solidarity and actions in compliance with the constitution.<sup>81</sup> What has worried a lot of member states is this loyalty clause but the very same loyalty clause can be found in the Maastricht Treaty, and do not belong to the news of the treaty.<sup>82</sup>

Title IV covers the institutions of the European Union; The European Parliament, The European Council (along with the Council of Ministers, here covered under the European Council), The European Commission and the European Court of Justice. The changes within the European parliament is first the way it is elected on degressive proportionality according to population of the member states. Which means increasingly larger populations are represented by increasingly fewer seats i.e. Germany has approx. 1 seat per mill. inhabitants. Sweden on the other hand has approx. 2 seats per mill. Inhabitants, which gives less populated states a stronger representation in the Parliament. The European Parliament has strengthened its powers through co-decision on legislation and budgetary functions with the European Council. The co-decision between Parliament and Council increases from 37 to 92 areas of decision in the Treaty.<sup>83</sup> Further on the Parliament is assigned to elect the president of the European Commission.<sup>84</sup>

Within the European Council the separation between executive and legislative powers have been more clearly; sharing the executive powers with the Commission and the legislative with the Parliament.<sup>85</sup>

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<sup>79</sup> III- 12 Draft Treaty establishing a Constitution for Europe

<sup>80</sup> III-14 Draft Treaty establishing a Constitution for Europe

"The CER guide to the draft constitution", CER Centre for European Reform, October 2003,

<sup>81</sup> III-15 Draft Treaty establishing a Constitution for Europe

<sup>82</sup> art 11:2 Treaty of Maastricht, EUropafördrag 2002

<sup>83</sup> Voight, Stefan (2003) "Towards ever more confusion? The convention's proposal for a European constitution" p- 187-188

<sup>84</sup> IV- 19 Draft Treaty establishing a Constitution for Europe

<sup>85</sup> Mény, Yves (2003) "Making sense of the EU- The achievements of the convention" p. 69

The presidency is proposed to change within the European Council abandoning the rotating presidency and instead electing a president, with qualified majority, for 2,5 years. This change was made because the rotating presidency has shown to be inefficient since each country has favoured issues of their own, leaving little coherence to the leadership. Countries outside of the Union have also found the constant changing of presidency confusing. The president's task, who would not hold a national mandate, would be to drive the work forward ensuring "proper preparation and continuity" and "cohesion and consensus".<sup>86</sup> The result is hopefully more consistency in the work of the Council as well as a representant of the Union towards other countries. The European Council is also given the power to appoint a minister of foreign affairs, by qualified majority, in agreement with the president of the Commission. This minister will be responsible for the common foreign and security policy.<sup>87</sup> The minister would chair the meetings on foreign affairs but not be responsible to the Commission but instead directly to the member states.<sup>88</sup>

Decision-making within the Council is supposed to be on a consensus basis, except when the constitution demands otherwise.<sup>89</sup> The new qualified majority voting will be introduced on a broader basis in the Council. It shall represent a majority of the member states (13 countries out of 25) and 3/5 (60%) of the Union's population.<sup>90</sup> The new voting system is supposed to be fairer for highly populated countries than the one used now is.<sup>91</sup> It could though result in the scenario where all the European countries, except France, Britain and Germany, agree on an issue but still not get more than 55.6 % of the population of the Union. Currently (as suggested in the Nice treaty) this phenomenon would give the countries in favour a majority hold gaining 234 votes out of 232 needed.<sup>92</sup> The new qualified majority voting gives the less populated countries a disadvantage since it becomes less interesting to cooperate on an issue with a less populated country than a highly populated country, in order to get a majority hold.

The European Commission is proposed to change in its voting procedures giving 13 of the 25 Commissioners a voting-power. The right to vote would rotate among the member states on equal rotation between large and small countries.<sup>93</sup> Small countries oppose to this suggestion since it would give them less power. The decision to limit the number of voting Commissioners has been proposed in order to secure a efficient work order even after the enlargement.<sup>94</sup> The president of the Commission, creating a dyarchy with the president of the Council, is proposed to

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<sup>86</sup> IV- 21, 22 Draft Treaty establishing a Constitution for Europe

<sup>87</sup> IV- 27 Draft Treaty establishing a Constitution for Europe

<sup>88</sup> "The CER guide to the draft constitution", CER Centre for European Reform, October 2003

<sup>89</sup> IV- 20 Draft Treaty establishing a Constitution for Europe

<sup>90</sup> IV- 24 Draft Treaty establishing a Constitution for Europe

<sup>91</sup> "The CER guide to the draft constitution", CER Centre for European Reform, October 2003

<sup>92</sup> "Votos en el Consejo Europeo , El Mundo

<sup>93</sup> IV-25 Draft Treaty establishing a Constitution for Europe

<sup>94</sup> "The CER guide to the draft constitution", CER Centre for European Reform, October 2003, "What the EU constitution says" BBC news, world edition, 14 June, 2003

be selected based on the outcome of the elections of the European Parliament; from this the European Council would elect, by qualified majority, a candidate, later to be presented for the Parliament. The Parliament is then supposed to elect the president by majority voting.<sup>95</sup> The president of the Commission is the one appointing the voting Commissioners in accordance to the demographical and geographical range of the Union.<sup>96</sup> The rest of the title describes other institutions such as the European Court of Justice, the European Central Bank, The Court of Auditors, Advisory bodies etc. There are no major changes here and the Draft Treaty didn't outline any new policies concerning the European Central Bank. The draft only confirms the banks independency and gives it broad guidelines on its decision-making rules and monetary policy targets.<sup>97</sup>

Title V establishes the exercising powers of the Union competences, for instance how legal acts are supposed to be adopted and implemented by member states. It also further elaborates the Foreign and Security policies, determining how it should be conducted on a mutual basis among the member states. Within this policy area the commonly used qualified majority is changed for unanimity, allowing the states to veto a decision. Title VI drafts democratic principles of the Union, along with its aim of transparency and protection of the individual integrity and religious freedom. This Title shows some of the examples of vagueness the Treaty has been strongly criticised for; such as the Union aiming for giving its member states equal attention from the Union's institution.<sup>98</sup> Title VII contains the rules of the Union's finances such as its budgetary and financial principles. The only significant change here is the European Parliament's extended budgetary powers as already mentioned. Title VIII constitutes the Union's relation with countries or organizations outside of the EU, Title IX turns inwards and explains the conditions of accession to the Union, how a member state's rights can be suspended if it violates the principles stated in art. 2 and also, which is new for the treaty, how a member state can withdraw from the Union.

What do the changes mean? One of the big changes of the treaty, and also greatly debated, is the system of voting. The usage of qualified majority is proposed to increase, reducing the number of areas demanding unanimity from 84 to 37.<sup>99</sup> The new ministers of the European Council and the Foreign Affairs minister along with the changed procedures of the President of the Commission and voting Commissioners have also proven to be controversial. Some of the changes have been welcomed but not all of them have been taken with equal appraisal. How the consociational features of the Union are affected will be shown in next chapter and the discussion about the treaty will be further elaborated.

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<sup>95</sup> IV- 26 Draft Treaty establishing a Constitution for Europe

<sup>96</sup> IV- 25 Draft Treaty establishing a Constitution for Europe

<sup>97</sup> "The CER guide to the draft constitution", CER Centre for European Reform, October 2003,

<sup>98</sup> VI-44 Draft Treaty establishing a Constitution for Europe Also see for instance VI-46:1-3, VI-47

<sup>99</sup> Voigt, Stefan (2003) "Towards ever more confusion? The convention's proposal for a European constitution" p- 187-188

# Conclusion

Analysing the Draft Treaty all conclude into representation, proportionality and voting procedures. Why? The changes in the Draft Treaty showed of little changes in the grand coalition. The constitution of the European Council is the same; the influential change is rather the procedures of the Council shifting towards a greater usage of qualified majority. As for the aims of the grand coalition the objective of the European Council is only described in an administrative level in the Draft Treaty. Though art. 3 and 5 of the Draft Treaty establishes a general aim for the Union, including the Council, Parliament and Commission. Voting in the Council, with a decreased number of unanimity disciplines is not in accordance with the grand coalition's aim for consensus though.

Referring to the segmental autonomy the segments are defined by national borders. Autonomy is by the elites granted self-governing possibilities. Within the draft the member states still keep some autonomy within the field of labour and social policies. The main changes have been made on home and justice policies along with the foreign and security policies. The exclusive competences of the Union have not increased though the shared competencies have; extending the Union's governing authority and decreasing the segments autonomy. Within security and foreign affairs the member states still have a mutual veto power through unanimity decisions. Consociationalism has never stated any measure for how much autonomy the segments should be allowed only that some autonomy should be allowed. Augmented competencies of the Union can though be seen as an attempt at reducing the member states autonomy allowing the segments less self-governing. Were the self-governing to disappear completely then this element of consociationalism would be lost.

In total the unanimity voting abate with the new draft treaty, which is a blow at the mutual veto or the minority veto giving the segments, especially the less populated, diminished power to oppose decisions, they find threatening to their vital interests. The increase of qualified majority decisions based on population gives highly populated segments a stronger hold and the diversion between "big" and "small" countries become greater. Moreover this is not only a problem within the veto but also with the proportionality.

The proportionality and equal representation is affected when the number of consensus decisions decreases. The suggested qualified majority of the treaty grants the large countries such a strong hold that it becomes unappealing to cooperate with less populated countries such as for instance Malta. It lies in the concept of proportionality that the minority segments get an equal representation. As I have already shown this cannot be accounted for fully in the Parliament, though it could partially be accounted for due to consensus ruling in the Council and in the Commission due to the nomination of one Commissioner per country.

In the draft treaty this element decreases not only as a result of less unanimity disciplines but also when the Commission will only grant 13 of the Commissioners voting powers. We should not forget though the other institutions of the Union such as the court of Justice and court of auditors. In these administrative bodies the member states still hold an equal representation.<sup>100</sup>

In conclusion it can be said the key concepts helps us outlining a loss for the less populated segments of the Union as power is diverted towards the larger segments and towards the Union itself. Autonomy for the segments decreases. In the spirit of consociationalism this reduced power for some of the segments should have a destabilizing effect creating greater segmentation.

Consociationalism seems to work fine in small communities with a low number of segments. The element of veto and proportionality along with the problems of representation becomes an obstruction as soon as the number of segments increases. The changes within the Union due to the enlargement show diminishing consociational elements, as the convention tries to maintain efficiency through the Draft Treaty with a larger number of member states. It seems as if when the number of segments grow it becomes more problematic to preserve the mutual veto and maintain proportionality and the European Union apparently serves as no exception of this. The changes in the Draft Treaty aiming at higher efficiency, would according to consociationalism create a greater fragmentation as “smaller” segments gets less representation. If there should be done any recommendations of changes in the Draft Treaty then they should be in conformity of strengthening the power of the less populated segments. How this is achieved without hindering efficiency is yet to be solved.

The study shows some of consociationalism’s inherent problems, especially in its inability to accurately measure a phenomenon in a society through the key concepts. Did Consociationalism prove to be useful? I would argue it despite its weaknesses still could be used as conceptual framework in determining how well cooperation function in a diverse society. The theory may not be able to measure precisely but I believe it is still capable of depicting the problems a consociational society might meet. Applied on the European union the theory helps us to display how the differences of the countries in population and size are a constant problem and struggle. Maybe it is a balancing problem where the union finally will find the right measure giving the appropriate level of participation, representation and proportionality. A decrease of consociational elements could also show how the Union is moving towards a majoritarian system. If this is the case then a further study could be examining how the Union manage to implement the “cross-pressure” on segmental levels that consociationalism means have a stabilizing effect in majoritarian systems.

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<sup>100</sup> IV- 28, 30 Draft Treaty establishing a Constitution for Europe

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