

# **Jean Monnet Chair**

## ***Jean Monnet Seminars***

***The proposed Reform Treaty: constitutionalism without Constitution?***, by Professor Paulo Canelas de Castro

**Paulo Canelas de Castro** is Associate Professor of Law and Jean Monnet Chairholder at the University of Macau; Invited Assistant Professor of the University of Coimbra, Portugal (on leave). He is a Member of the International Law Association. Formerly, he taught and held conferences in four continents and was legal counsel for different States in international negotiations in different '*fora*'; he has equally appeared on several occasions, as legal counsel, before the International Court of Justice and the Court of Justice of the European Communities.

### **OUTLINE**

Constitutionalism has been a burning issue in the development of the European integration ever since the former European Communities engaged in an “ever closer political union” and, in the process, realized that the European citizens remained somewhat aloof. Furthermore, with more powers, responsibilities and calls for playing a more identifiable role in the world stage, the European Union started to wonder more and more on the governing principles, as well the nature and legitimacy of its unique structure and identity. At the turn of the century and millenium, the Treaty of Nice marked a awareness highpoint in the process, because, in spite of the effort involved, it did not manage to find a positive normative answer for the challenges posed by both the aforementioned issues and the new globalised world as well as the prospect of successive numerous enlargements. In view of this, a Declaration annexed to the Treaty of Nice and, subsequently also, the Laeken Declaration, mandated the Union to engage in a “constitutionalisation” process, which, firstly, determined the setting up of the Convention for the Future of Europe and eventually the drafting of what has later been adopted as the Treaty establishing a European Constitution. However, the referenda results in France and the Netherlands in mid-2005 meant a cold shower in the

enthusiasm of the supporters of constitutionalism and the momentum of the European construction, from which both took some time to recover. A crisis or “reflection period” ensued.

2007, which coincides with the 50<sup>th</sup> anniversary of the adoption of the “founding” Treaties of Rome, seems, however, destined to become a vintage year in the process of European integration. This, in particular, if, as a consequence of the German impetus in the early semester (noticeably translated in the Berlin Declaration and the definition of the mandate for an Intergovernmental Conference called to adopt a new Treaty) and the subsequent conduction of the process under the Portuguese Presidency, it shall materialize into the proposed “Reform Treaty”. If this later amending treaty is indeed adopted in the Lisbon Summit, at the end of the year (thus justifying it becoming termed “the Lisbon Treaty”), and the required ratifications obtained before the 2009 elections for the European Parliament, conditions seem to have been met for the European Union to enter a new phase in its construction.

The doubt however arises as to what this new phase may represent. Namely, one may wonder whether the fact that the Reform Treaty seems to have been conceived in a less grandiose context and tone than the failed Constitutional Treaty necessarily means that the constitutionalisation process is truly over. The speaker reviews the available record of the June and IGC negotiations, and especially analyses the proposed text, as it is currently known, in most of its main normative developments (the definition of values and principles, the recognition of the Charter of Fundamental Rights as legally binding, a President, a High Representative of the Union for Foreign Affairs and Security Policy, the distribution of parliamentary seats, reduced number of commissioners, role of national parliaments, legal personality for the European Union, the end of the Pillars system, boosted competences in old and new policy areas, new powers for the European Court of Justice, the “ratchet clause” on amendments, amongst other solutions), to substantiate the claim that the structural features of any constitutional endeavour are still present, albeit somewhat diluted and adopted in a lower-key mode.

Thus, the conclusion seems warranted that the constitutional debate and reflection are still in order. The dynamic and evolutionary search for a new constitutional paradigm for the original European polity is still ongoing. In any event, with the proposed “Reform Treaty”, the European Union seems to have entered a phase of (quiet) constitutionalism without a Constitution.