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# UNIT 6 TREATIES: MAASTRICHT TREATY, AMSTERDAM TREATY, NICE TREATY AND SUBSEQUENT TREATIES, EUROPEAN CONSTITUTIONAL TREATY

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## 6.0 INTRODUCTION

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European Union has come to exist through in process of evolution developed through **treaties**. The Treaty establishing the European Coal and Steel Community (ECSC), which was signed on 18 April 1951 in Paris, came into force on 23 July 1952 and expired on 23 July 2002. This treaty not only created a free trade area but laid the foundations for a common market in coal and steel – two key materials for a modern industrial society. The Treaty establishing the European Economic Community (EEC), which was signed on 25 March 1957 in Rome – often referred to as the "Treaty of Rome" – came into force on 1 January 1958. The Treaty establishing the European Atomic Energy Community (Euratom), which was also signed in Rome along with the EEC Treaty.

The first three of these treaties created the three "European **Communities**", i.e. the system of joint **decision-making** on coal, steel, nuclear power and other major sectors of the member states' economies. The Community institutions which were established to manage this system were merged in 1967, which led to the creation of a single European Commission and a single Council.

Subsequently, the EC/EU treaties have been changed and updated to keep up with the changing needs and developments in European society. The **fourth** treaty (the Maastricht Treaty) renamed it simple as the "**European Community**". Further amendments to the treaties were done by the Single European Act (SEA) (signed in February 1986; in force on 1 July 1987) (see Unit 5: Single European Act and the Single Market); the Treaty of Amsterdam (signed on 2 October 1997; in force on 1 May 1999), the Treaty of Nice (signed on 26 February 2001; in force on 1 February 2003), and the Treaty on the European Constitution (June 2004), which could not come into force. **In** this unit we will have a **leap** into the contents and nature of the treaties **forming** European Union.

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## 6.1 OBJECTIVES

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After going through this unit, you should be able to know:

- about the various treaties leading to the formation of European Union;
- about the simplification and replacement of existing treaties by the treaty on European Constitution; and
- about the difficulties that have come in the way of ratification of the treaty including initial rejections in some cases

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## 6.2 THE MAASTRICHT TREATY

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The Maastricht Treaty or the Treaty on European Union was signed on **7 February 1992** and entered into force on **1 November 1993**.

The Maastricht Treaty brought together in a single text all the existing Treaty provisions and led to the creation of the **European Union**, which was to be based on three pillars, viz. the European Communities, the **Common Foreign and Security Policy** (CFSP), and **Justice and Home Affairs** (JHA).

The Maastricht Treaty marked "a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen". The Treaty's provisions, among others, were as follows:

- a) **1<sup>st</sup> Pillar: the European Communities:** (i) The *acquis communautaire* or the body of rules and regulations of the three European Communities, viz. the EEC, the European Coal and Steel Community and Euratom treaties, were preserved and strengthened. (ii) The principle of subsidiarity was formally incorporated and Union citizenship, whereby each and every national of a member state became a member of the Union. (iii) A number of changes were introduced to enhance the efficiency and democratic functioning of EU institutions. These included the introduction of a new co-decision procedure, extension of the term of Commissioners from four to five years w.e.f. January 1995, and establishment of a Committee of Regions and an Ombudsman.
- b) The main features of the Economic and Monetary Union (EMU) and the stages of its implementation were outlined. Under this, exchange rates were irrevocably fixed to facilitate the introduction of a single currency and the establishment of a European Central Bank. Member states were required to coordinate their economic policies with the Council. The EMU was to be established in three stages: by the time the Maastricht Treaty was signed the first stage was already underway; the second stage began in January 1994 with the establishment of the European Monetary Institute which was entrusted with the tasks of creating, along with member states, the conditions for transition to the third stage; the third stage beginning no later than 1 January 1999 for those states which were able to meet the five-fold convergence criteria (rate of inflation, long-term rate of interest, government budget deficit, government debt fluctuation margins of currencies).
- c) **2<sup>nd</sup> Pillar: Common Foreign and Security Policy:** The Maastricht Treaty defined the objectives of CFSP in general terms and stated that Member States "shall define and implement a common foreign and security policy. . . covering all areas of foreign and security policy". The CFSP was built on the foundation of **European Political Cooperation** (EPC), but brought it under a treaty and extended it. Cooperation in the second pillar remained essentially intergovernmental in nature, but decisions by a qualified majority voting could be taken to implement a joint action.
- d) **3<sup>rd</sup> Pillar: Justice and Home Affairs:** Nine new areas of common interest were included in JHA. These included cooperation in law enforcement, criminal justice, civil judicial matters, as well as asylum and immigration.

Ratification of the treaty was fraught with difficulties in various states. In Denmark, the Danish people did not ratify the Maastricht Treaty. After some concessions were made, viz. an option to opt-out of from the

Treaty provisions for a single currency and for a possible future EU defence policy, the Danes approved it when a second referendum was held in May 1993. In France, the Treaty was approved by a narrow margin in the referendum which took place in September 1992. Germany was the last country to ratify the Maastricht Treaty after it was referred to the German Constitutional Court, which gave its verdict in October 1993 that it did not infringe the German Basic Law.

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## 6.3 THE AMSTERDAM TREATY

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The origins of the Treaty of Amsterdam go back to June 1994, when EU leaders established a special Reflection Group comprising 15 representatives of the Member States' foreign ministers, one Commission representative, and two observers from the European Parliament to consider future reforms. It was decided to convene an intergovernmental conference in January 1996. An intergovernmental conference began in March 1996 and lasted for over a year. The Treaty of Amsterdam was finalized on 17-18 June 1997 and was signed on 2 October 1997. This was followed by a long and **ardous** ratification process, which included two referenda and 13 decisions by national parliaments. The European Parliament endorsed the Treaty on 19 November 1997. This treaty entered into force on **1 May 1999**.

The Amsterdam Treaty comprises 13 Protocols, 51 Declarations adopted by the Conference and 8 Declarations by Member States plus amendments to the existing Treaties set out in 15 Articles. Article 1 (containing 16 paragraphs) amends the general provisions of the Maastricht Treaty and covers the CFSP and cooperation in criminal and police matters. The next four Articles (70 paragraphs) amend the *EC Treaty*, the *European Coal and Steel Community Treaty*, the *Euratom Treaty* and the Act concerning the election of the European Parliament. The final provisions contain four Articles. The Amsterdam Treaty also set out to simplify the Community Treaties, deleting more than 56 obsolete articles and renumbering the rest in order to make the whole more legible.

The Amsterdam Treaty emphasised on citizenship and the rights of individuals, extended democracy in the shape of enhanced powers for the *European Parliament*, a new title on employment provision, a Community area of freedom, security and justice, the beginnings of a *Common Foreign and Security Policy* (CFSP) and the reform of the institutions in the run-up to enlargement. Thus, four key chapters were affected, viz. citizenship and fundamental rights, the establishment of an area of freedom, security and justice, the CFSP, and the reform of the institutions.

Certain common provisions of the Treaty on the European Union were amended to stress the general principles underlying the EU, viz. liberty, democracy, respect for human rights, fundamental freedoms and the rule of law. The Social Charter, which existed only as a protocol attached to the Maastricht Treaty, was fully incorporated into the Amsterdam Treaty. The Treaty opened the way for dialogue between the EU and its citizens by safeguarding basic rights (for the first time Member States failing to respect such rights may face penalties and could even be suspended), tackling discrimination of all kinds and forms, providing for equal opportunities for men and women across gender, focusing on social issues and assets such as voluntary work, sport, public-service television broadcasting, disability, churches and non-confessional **organisations**, public credit institutions operating in certain countries and a rejection of the notion of death penalty. But the Treaty also dealt with the major issues facing European society such as employment and social affairs, the environment, public health and consumers' rights, and transparent government. It also included a number of issues reflecting the people's values and aspirations like abolition of the death penalty, the needs of the disabled, etc.

A number of issues related to justice and home affairs were transferred to the European Commission in order to establish "an area of freedom, security and justice". These policy areas included visas, asylum, immigration, refugees and displaced persons and judicial cooperation in civil matters. At the same time, intergovernmental cooperation was intensified in the police and criminal justice arena so that Member States will be able to coordinate their activities more effectively. Through a protocol annexed to the treaty, the *Schengen Agreement* was now been incorporated into the legal system of the EU. (Ireland and the UK remain outside the Schengen Agreement).

The Treaty lays down new guiding principles underlying the EU's foreign and security policy, viz. (a) to safeguard the common values, fundamental interests, independence, integrity and security of the Union; and (b) to preserve peace and strengthen international security and cooperation, and to consolidate democracy, the rule of law and fundamental rights. Decisions on CFSP, according to the Treaty of Amsterdam, would be taken in two stages:

- a) the European Council (the Heads of State or Government plus the President of the Commission) decides common strategies and guidelines by consensus;
- b) the Council (made up of the foreign ministers) decides joint actions and common positions. Decisions putting into practice a common strategy already agreed by the European Council are taken by qualified majority. However, if a Member State has major reservations, it can ask for the decision to be referred back to the Heads of State or Government. Otherwise, the Council normally takes decisions unanimously, although it can ignore "constructive" abstentions if the countries do not account for more than one third of the votes. European Commission, 1999 p. 18).

The European Commission and the European Parliament can also play their roles in the decision-making process. The Commission has to ensure that Community activities are consistent with the CFSP, while the Parliament delivers opinions and has to approve the necessary budgetary appropriations.

The treaty introduced a **High Representative** for CFSP, who was to assist the Council, especially the Council Presidency, in all CFSP matters, including external representation. A early planning and early warning unit was established in the Council Secretariat under the responsibility of the High Representative. For the first time, the TEU recognized specific security tasks by incorporating the Petersberg Tasks as falling within the competence of the EU, viz. "humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacekeeping.

The TEU strengthened the European Parliament by granting it the power to frame its own rules for its members; a greater say in the appointment of the European Commission by giving it the right to first approve the nomination of the Commission President and subsequently approve the appointment of the **Commisison** as a whole. The TEU simplified and extended the co-decision procedure, whereby the Council cannot adopt an act without an agreement with the European Parliament. **Moreover**, the TEU extended the budgetary powers of the Parliament and included the CFSP under this.

The TEU made major legislative revisions. The "cooperation procedure" introduced in 1986 with the Single Act, whereby the European Parliament and the Council gave Commission proposals two readings, almost disappeared except in two areas concerning economic and monetary union. This was replaced by the "co-decision procedure". The scope of the co-decision procedure was extended and made more effective: (a) "If Parliament and the Council agree on a Commission proposal, it is approved; (b) If they disagree, Parliament can either accept the Council's common position, or reject or amend it by a majority of its members; (c) If the Council cannot accept the amendments, it convenes a conciliation meeting, after which Parliament and the Council approve the agreement reached. If they are still unable to agree, the **proposal** is not adopted." (European Commission, 1999, p. 26.)

The TEU made decisions in the Council easier by the extension of Qualified Majority Voting in the first pillar (European Communities) to include employment guidelines, social exclusion, etc. and in the second pillar (CFSP) for implementing CFSP joint actions and common positions.

Under the Amsterdam Treaty, the appointment of the President of the European Commission had to be approved by the European Parliament. Moreover, the President of the Commission is consulted on the choice and appointment of other Commissions by the Member States.

The Amsterdam Treaty did not settle all institutional questions once and for all. Work is still in progress on reforming the institutions to make them capable of operating effectively and democratically in a much enlarged EU. The most pressing issues are the composition of the **Commission**, the weighting of Member States' votes, and qualified majority voting.

## 6.4 TREATY OF NICE

The Amsterdam Treaty did prepare EU institutions for enlargement because of the lack of political will on part of leaders of Member States to address key issues. The Treaty of Nice dealt with the "Amsterdam leftovers", viz. the composition of the Commission, weighting of the votes in the European Council and further extension of Qualified Majority Voting in new areas. It was adopted after an Intergovernmental Conference (IGC) deliberated from February 2000 and closed at the December 2000 Nice European Council. It came into force on 1 February 2003.

The changes in the number of seats and votes made by the Treaty of Nice in various EU institutions is given below:

### Treaty of Nice: Seats and Votes in an Enlarged EU

Country	Population	Seats in European Parliament*	Weighted Votes in EU Council*	Seats on Economic & Social Comm.*	Seats on Com. of the Regions*
Germany	82,008,445	99	29	24	24
Britain	59,555,228	72	29	24	24
France	58,679,375	72	29	24	24
Italy	57,579,163	72	29	24	24
Spain	40,032,756	50	27	21	21
Poland	38,640,141	50	27	21	21
Romania	22,355,121	33	14	15	15
Netherlands	15,967,897	25	13	12	12
Greece	10,779,739	22	12	12	12
Czech Rep	10,279,995	20	12	12	12
Belgium	10,235,462	22	12	12	12
Hungary	10,086,040	20	12	12	12
Portugal	9,994,610	22	12	12	12
Sweden	8,862,504	18	10	12	12
Bulgaria	8,270,215	17	10	12	12
Austria	8,106,083	17	10	12	12
Slovakia	5,418,706	13	7	9	9
Denmark	5,363,897	13	7	9	9
Finland	5,182,982	13	7	9	9
Ireland	3,706,224	12	7	9	9
Lithuania	3,698,523	12	7	9	9
Latvia	2,424,150	8	4	7	7
Slovenia	1,792,603	7	4	7	7
Estonia	1,437,358	6	4	7	7
Cyprus	794,815	6	4	6	6
Luxembourg	434,772	6	4	6	6
Malta	382,246	5	3	5	5
<b>Total</b>	<b>482,069,050</b>	<b>732</b>	<b>345</b>	<b>344</b>	<b>344</b>

Source : European Commission, Treaty of Nice, Declaration on the Enlargement of the European Union, Annex II

\* As stipulated in the Treaty of Nice..

In the Council, the small states continued to be under-represented whereas Germany remained under-represented because of French resistance to Germany having more votes. As of 1 January 2005, the Qualified Majority Voting threshold was changed from the existing 62 votes out of 87 (71.26 per cent) to 169 out of 237 (71.3 per cent). When the EU reached 27 members, the threshold would be 255 out of 345 (73.91 per cent).

The Treaty provided for an increase in the number of seats in the *European Parliament* to 732 from the ceiling of 700 established by the Treaty of Amsterdam. The Treaty provided for the creation of subsidiary courts below the *European Court of Justice* and the *Court of First Instance* to deal with special areas of law such as patents.

The Nice Treaty enhanced the cooperation procedure which was too restrictive and almost unworkable under the Amsterdam Treaty. It extended the application of the co-decision procedure (which gave the European Parliament a veto over **proposals**) and the assent procedure by applying it to areas where enhanced cooperation was operable and in view of the participation of Jorg Haider's extreme rightwing party it would henceforth be applied in determining whether "there is a clear risk of a serious breach by a Member State" of the principles on which the EU is founded.

The Nice Treaty also entrusted the task of drawing up a Charter of Fundamental Rights to a 62-member Convention.

The Nice Treaty was comparatively narrower in focus as it dealt with primarily institutional matters. It was however driven for the most part by concerns about the relative power and influence of member states in the EU and the issues arising from the forthcoming enlargement in May 2004. At Nice, it was agreed to establish a *European Convention*, leading to a new IGC in 2004, which would deal with the criticisms levied against the Nice Treaty.

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## 6.5 TREATY ON THE EUROPEAN CONSTITUTION

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In order to simplify and replace all existing treaties with a single treaty, the Heads of State/Governments of the EU Member States established the 108-member Convention on the Future of Europe and was headed by former French President Valery Giscard D'Estaing. The Convention began its work in February 2002 and deliberated for over 18 months, with the concluding session held on 13 June 2003. The draft "Treaty establishing a Constitution for Europe" was adopted on 18 June 2004. It sought to replace the overlapping set of *existing treaties*, to codify and evolve uniform human rights and usher in democratic principles throughout the EU, as well as to streamline decision-making in the enlarged EU of 25 Member States.

The constitutional treaty was signed by representatives of the member states on 29 ~~October~~ 2004, and was in the process of ratification by the *member states* until the rejection of the treaty in referendums in France (29 ~~May~~ 2005) and the Netherlands (~~1 June~~ 2005). The failure of the Constitution to win popular support in these countries caused other countries to postpone or slow down their ratification procedures. Had it been ratified by all Member States, the treaty would have entered into force on ~~1 November~~ 2006.

The EU constitution defined the powers of the Union and states where it can act, what it can and cannot do and where the member states retain the right of veto. The key provisions of the EU Constitution, among others, include the following:

- a) The creation of a new post of an EU Foreign Minister. This post combined the existing posts of External Affairs Commissioner and the High Representative for CFSP. The Foreign Minister would be a member of the Commission, but would be answerable to the Council of Ministers.
- b) Instead of the current system wherein each member state holds a rotating presidency for six months, the Constitution would have replaced it by a permanent president (with a term of two and a half years; renewable once) for the Council of Ministers. The president would chair the Council and "drive its work forward and ensure, at his level, the external representation of the Union".

- c) The EU's Charter of **Fundamental Rights** became Part II of the Constitution. The Charter outlined "rights, freedoms and principles" which included a list from the right of life to the right to liberty as well as the right to strike.
- d) The powers of the European Parliament were strengthened. It was accorded the powers of "co-decision" with the Council of Ministers for those policies requiring a decision by qualified majority.
- e) The EU constitution replaced the old system under which countries got a specific number of votes since it failed to represent a fairer balance between large and small countries. It introduced a "double majority". A qualified majority was defined as at least 55 per cent of the members of the Council, comprising at least 15 of them and representing Member States comprising at least 65 per cent of the population of the Union.
- f) Member states retained the right of veto in key areas like foreign policy, defence and tax.
- g) The constitution provided that each member state shall have a Commissioner for its first term of five years starting from November 2004. After that, it would be slimmed down to "a number of members... corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this figure". It was finally agreed to reduce the number of commissioners to 17, starting in 2014. These commissioners would be selected on a rotating basis and would serve for five years.
- h) For the first time, the draft constitutional treaty laid down an exit clause and prescribed the procedure for leaving the Union.
- i) It contained a new suspension clause whereby member states agree to suspend a country which violates the basic principles of the European Union.
- j) The EU constitution added new areas of cooperation into justice policy, especially asylum and immigration.
- k) There was some controversy amongst member states on whether a reference to Christianity or **Judaeo-Christian** tradition ought to be included in the preamble to the constitution. The final text stipulated that the EU "draws inspiration from the cultural, religious and humanist inheritance of Europe".

## 6.5.1 Ratification Difficulties

It was initially expected that almost all member states would ratify the Constitution by a parliamentary or other similar political process, which would be quite straightforward (given the support of all ruling governments). Indeed, the number of EU countries which approved the treaty by a *parliamentary* vote now forms a majority.

The first country to attempt a test of public opinion in a popular referendum was Spain and at that stage the campaign was framed simply as one of support for the European project, without much controversy about the particular form or content of the EU constitution. Luxembourg was the second country to ratify the constitution. In the United Kingdom, Prime Minister Tony Blair unexpectedly promised a referendum in order to undercut opposition from the Conservative Party and to avoid division amongst his own supporters. It was widely recognised that the outcome of a United Kingdom referendum was doubtful. But after its rejection by the voters of France and the Netherlands, he was ambivalent about its future.

The reasons for the rejection of the constitutional treaty in the referenda in France and the Netherlands included, among others, enlargement anxieties with fears of economic competition, social and cultural change, feelings of disempowerment and failure in the political process. The vote was about the context rather than the content. The rejection of the treaty sent shock waves through the European Union since these countries were regarded as amongst the most committed members of the European enterprise. It provoked a crisis of confidence in the European project and led to a re-examination of the **constitutional** question.

Of the 25 EU Member States, 10 countries had decided to hold a referendum; 5 were not holding a referendum; 7 countries, which were undecided had ratified in 2005; and three countries ratified it without a referendum.

By August 2006, 16 Member States had ratified the Constitutional Treaty.

The non-ratification of the Treaty on the European Constitution does not mean that the European Union has ceased to function because the provisions of the Treaty of Nice would allow the Union to function till its membership of 27 member states, which was reached after the entry of Bulgaria and Romania on 1 January 2007. However, subsequent enlargements cannot be done without an amendment of the treaties.

After the rejection of the Constitutional Treaty in France and the Netherlands, the European Union entered into a "phase of reflection". The 470-page Constitutional Treaty is in limbo for the time being. There seemed to be four options:

- a) **No change:** The European Union carries on as before. Enlargement, especially that of Turkey, is postponed while Schengen and Eurozone integration moves forward simply to do nothing for the time being in order to allow the dust to settle;
- b) **Gentle decline:** The effectiveness of the *acquis communautaire* is eroded and the Schengen and Eurozone are not extended any further.
- c) comprehensively to re-draft the Constitution altogether so as to make it more acceptable. However, there presently appears to be no desire in any country to start from ground zero.
- d) **Cherry-picking:** Implement the key ideas of the constitution one by one; to bring in parts only of the existing draft, so as to make the document more amenable and the process less contentious.

However, since it is obvious that neither France or the Netherlands will successfully ratify the Constitutional Treaty if it were resubmitted to them in its present form, therefore, some re-writing is widely regarded as a precondition for re-votes in both countries. It is also clear that things will begin to move forward only after the elections in France and the Netherlands in 2007.

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## 6.6 SUMMARY

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The European Union (EU) and its treaties are concluded amongst democratic European countries. Member states have established a number of common institutions to which they delegate some of their sovereignty so that decisions on specific matters of joint interest can be made democratically made. Any European country can join EU and be a signatory to the treaties, provided it has a stable, resilient **democracy** that guarantees the rule of law, human rights and the protection of ethnic, linguistic and religious minorities.

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## 6.7 EXERCISES

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- 1) Discuss the broad contours of the Treaty of Maastricht
- 2) What are the salient features of Treaty of Amsterdam?
- 3) Briefly outline the key elements of Treaty of Nice
- 4) Describe the main provisions of the EU Constitutional Treaty.

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