Crisis? What crisis?

R. Daniel Keleman and Anand Menon
University of Oxford and University of Birmingham

There is widespread talk of a crisis in the European Union, much of it engendered by the events of last summer. Just weeks after the French and Dutch rejections of the European Constitution, EU budget talks stalled as the French and British locked horns. Even the EU’s cheerleaders seemed to throw in the towel. Commission President Barosso declared that the EU was facing a ‘permanent crisis’, while Jean Claude Juncker, then holder of the EU’s rotating Presidency, warned that the Union was in ‘deep crisis’. The intervening year has brought little relief. While a budget settlement was achieved, mounting concerns about the stability of the Eurozone, about threats to the internal market posed by rising ‘economic patriotism’, about strains on the EU’s ‘absorption capacity’ as a new round of enlargement negotiations got underway, about the future of the Constitutional Treaty, and about the seemingly perennial unpopularity of the Union among its citizens have provided much grist for the doomsayers’ mill.

Such talk is, of course, not new. From the panic engendered by General de Gaulle’s decision to withdraw French representatives from the EEC in 1965, to the impact of the first, then second, oil shocks, to the Danish rejection of the Maastricht Treaty and beyond, talk of fatal illness has been a frequent accompaniment to the process of European integration. Indeed, it is hard to escape the impression that, if the Union were a hospital patient, someone would, by now, have flown it to Switzerland to be put out of its misery.

Yet, as we approach the Treaty of Rome’s 50th anniversary in March 2007, we would do well to recall what happened on the eve of its 25th birthday, when the cover of The Economist carried a tombstone bearing the inscription ‘born March 25, 1957, Moribund March 25, 1982’. No Swiss clinic, it would seem, was necessary. Looking back, we know that claims of the Union’s premature demise were exaggerated. Only three years later, the drive to ‘complete’ the single market by 1992 breathed new life into the EEC and paved the way for the Single European Act (SEA) and later the Maastricht Treaty on European Union. During the late 1980s and 1990s, the pace of integration accelerated dramatically. The EEC deepened, extending qualified majority voting, enhancing the powers of the Parliament and ECJ, and extending its authority to a wide range of new policy areas outside the economic realm. The EEC also widened – growing from (in 1982) 10 member states to 15 by 1995 and then to 25 in 2004.

Today’s dire predictions are little more credible. We are not here claiming that all is for the best in the best of all possible EU worlds. No political institution is perfect, and there is little reason to believe that one whose structure is decided on by unanimous agreement between 25 member states could ever be so. Yet any analysis of the contemporary Union should be placed in context. The challenges confronting the EU are significantly greater than those that confronted the community on the occasion of its 25th birthday. After all, the latter did not have a currency to run, and had no remit over contentious and complex issues such as immigration and defence policy.
Agreement within it depended on consensus between 10, rather than 25, member states. Given the range of policies for which it is responsible, and the complexities of its internal workings, the Union continues to function remarkably well.

To put the scale of the Union’s contemporary problems in perspective, we begin by considering what a genuine crisis within it might look like. The malaise following the failure to ratify the Constitutional Treaty pales into insignificance in comparison. Yet perceptions of serious crisis have the potential to become self-fulfilling prophecies if they continue to distract public and political attention away from the real problems.

**Crisis? What’s a crisis?**

It is possible to identify two schools of thought concerning the possible sources of future calamity. On the one hand, we have the ‘missionaries – those wedded to the notion of ‘ever closer union’. The ‘missionary position’ is premised – often implicitly – on the so-called ‘bicycle theory’ that came to prominence during Jacques Delors’ reign as Commission President. According to this, if European integration does not continue to press ahead – presumably by incorporating more and more functions at EU level – it will collapse like a stationary cyclist.

Eurosceptic analyses proceed from the opposite premise. If the EU continues to move forward unchecked, usurping member state powers, eroding national sovereignty and failing to address its ‘democratic deficit’, it will spark a backlash that, ultimately, will destroy it (logically, therefore, one might expect rabid Eurosceptics to back hugely ambitious integrative schemes – just as Lenin welcomed the immiseration of the proletariat – in order to hasten the ultimate day of judgment).

So, one side’s problem is the other’s solution. If nothing else, this provides a clue as to why it is that, whatever its actual state, there is always someone willing to proclaim that the Union faces impending doom. Yet, for all their vagueness, these claims represent a model of analytical clarity and precision when set against depictions of the form a future crisis might take. Certain that something is wrong and that something catastrophic will happen, the doomsayers offer very little explanation of what this might entail. So, what would constitute a breakdown of the EU? Would we recognise it if we saw it? Several options present themselves. The formal renunciation of the Treaties by all member states, the vacating of offices in Brussels, Strasbourg and Luxembourg – formal dissolution in other words – would clearly constitute a breakdown. If all member states agreed to end the EU, they could do so by signing a new treaty dissolving it. There is absolutely no sign of such a development.

While total, simultaneous dissolution seems implausible, the voluntary secession of one (or a small number) of members is easier to imagine. To deal with this possibility, the Constitutional Treaty includes a mechanism for secession from the Union. Indeed, secession is not totally unprecedented in that, although a fully-fledged member state has never seceded, Greenland did so in 1985 after achieving home rule from Denmark. It is conceivable that, if a member found itself repeatedly outvoted on issues of core national concern, and was unable to manufacture wiggle room through legislative derogations, it might consider quitting. Equally, one might imagine a scenario in which public opinion in a member state grew sufficiently hostile to the EU for a government to consider exit for electoral gain.

Yet the fact that, even intuitively, this seems so unlikely reflects the reality that the member...
states appreciate the benefits of continued membership. Whatever the shortcomings of the Union – and there are many – in today’s globalising and increasingly insecure world, states stand to gain from collective action aimed at managing security and dealing with globalisation. Indeed, one reason why no state has come close to being put in a position of seriously considering withdrawal is that the EU system is designed in such a way as to be respectful of the rights and sensitivities of its members.

Whatever the formal rules about qualified majority voting, or the supremacy of EU over national law, the member states go out of their way to avoid voting on issues considered contentious by any of their number. EU law reflects the preferences of the member states in the Council, and the most common form of it – the directive – leaves them with plenty of latitude in their transposition of it into national law. The very structure and functioning of the system works to minimise the likelihood of secession.

Perhaps the most plausible scenario is one of atrophy. Under this scenario, EU institutions would continue to exist in more or less their current form, but would grow increasingly irrelevant as member states ignored them (and after all, member states came increasingly to ignore the European Commission during the 1970s). Over time, the EU would cease to be a significant forum for policymaking. Atrophy would happen gradually, with the resurgence of protectionism, the erosion of the Single Market, the impotence of EU external policies and the softening of its legal regime. Were the EU to travel too far down this path, it might eventually degenerate into a toothless talking shop, like the OECD.

A related danger is that atrophy will breed fragmentation. The danger here is that member states, frustrated with EU impotence, will set up alternative arrangements to achieve their objectives. Variable geometry already exists in the EU, for instance with the Eurozone and Schengen, voluntary opt-outs in areas such as immigration and asylum, and plans for ‘enhanced co-operation’ in the European Security and Defence Policy. It is also a characteristic of many federal states where it goes by the title of ‘asymmetric federalism’, and is typically tailored to allow some states – for instance those with particularly distinct cultural identities – greater autonomy in policymaking. However, taken to an extreme, variable geometry could vitiate the Union. In order to discourage sceptical member states from either seceding or grinding EU operations to a halt, those who wish to push ahead will be tempted to simply allow them to opt out. If voluntary opt-outs and opt-ins became the norm, then eventually the EU might come to constitute more of an inchoate assemblage of overlapping clubs, than a union with a distinct and unique legal order.

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Measured against these scenarios, the recent brouhaha over the Constitutional Treaty can hardly be said to represent a major crisis for the Union. Not, it should be said, because the Treaty can or will be resurrected in something approaching its current form. The protestations of numerous political leaders notwithstanding, it is effectively dead, if not as yet buried, and attempts at resuscitation will almost certainly require new referendums to be held in both France and the Netherlands.

Rather, the real impact of the Treaty’s rejection is linked to its somewhat uninspiring content. There is, frankly, not much in the document that the EU would miss unduly, and there are some provisions it may perform better
without. Certainly, it represented a brave attempt on the part of conventioneers and governments to undertake some (limited) institutional reform in readiness for an enlargement that would see EU membership rise from 15 to 25. The limited extension of qualified majority voting would doubtless have facilitated decision making within the Council, the EU ‘Foreign Minister’ held out the prospect of providing a degree of leadership and coherence to the Union’s external policies, and the post of European Council President may possibly have provided overall leadership within the system. Yet some of the most hard-won reforms would have had few if any positive implications. We struggle to see how the reduction in the number of Commissioners would have enhanced efficiency (after all, Commissioners vote by simple majority, so as long as the College contains an odd number, votes will always be decisive). Still other changes – such as the proposed ‘yellow card’ system whereby a proportion of national parliamentarians could block Commission legislative proposals – may well have slowed EU decision-making still further.

Moreover, several of those elements of the Constitutional Treaty particularly valued by national governments may well be adopted by other means. One of the main, stated objectives of the constitution was to make the Union more transparent and comprehensible to citizens. The EU can achieve much on this front without any treaty revisions. We struggle to see how the reduction in the number of Commissioners would have enhanced efficiency (after all, Commissioners vote by simple majority, so as long as the College contains an odd number, votes will always be decisive). Still other changes – such as the proposed ‘yellow card’ system whereby a proportion of national parliamentarians could block Commission legislative proposals – may well have slowed EU decision-making still further.

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Yet perhaps the most significant reason not to overreact to the Treaty’s demise is that the Union itself seems to have continued to function pretty well without it. The EU has hardly ground to a halt. A number of important pieces of legislation are being adopted, such as the controversial services directive and the REACH directive on chemicals. The European Security and Defence Policy has become operational, and the member states have participated in a variety of missions, both civilian and military, all over the world.

Finally, important institutional reform has been achieved, without the need for a new treaty. In recent weeks, one of most contentious elements of the EU institutional system – the complex and opaque system of management committees, which allowed member states and the Commission to shape the details of legislation often involving the disbursement of large sums of EU cash without parliamentary oversight – has been opened to greater degree of European Parliament control.

Paradoxically, it is the perception of a crisis spawned by the French and Dutch ‘No’ votes, rather than the reality, that represents perhaps the greatest cause for concern. For one thing, since the fateful referendum, EU Heads of State and Government have devoted much of their time at their regular summit meetings to discussions of how and whether to attempt to resurrect some or all of the document. During the recent Austrian Presidency, hours of fruitless discussion on the Treaty’s future ate up time that could more usefully have been devoted to more substantive problems.

Second, the nature of the debate following the French and Dutch rejections of the Treaty has been highly revealing. The very fact that the events of the last year are portrayed as a threat
to the survival of the Union serves to underline its immaturity as a political system. For almost half a century, all debates about it (and about the Community before it) were existential in nature. That is to say, they focused on issues of competence – whether the EU should act, or even exist, at all – rather than on what it should do.

The real pity here is that the Union was starting to display real signs of political maturity. Whether it be the current initiative by Socialist MEPs to protect ‘public services’, or debates about Polish plumbers, or discussions of the need for tax harmonisation or ‘economic governance’, many recent debates within the Union have been polarised along the familiar left-right axis. Perhaps the clearest example of this was the recent travails over the services directive, with sharp ideological differences between member states finally being overcome with the help of a compromise bashed out after long debate between left and right wing members of the European Parliament. Such political normalisation raised the prospect of real debates within the EU on crucial substantive issues without the constant diversion of rows over competence and sovereignty. It represented, an opportunity for the Union to start focusing squarely on the substance of its policies and their effectiveness and rather than on its institutions and policy processes.

Discussions of the Treaty since the referendums show signs of reversing this trend. Much of the blame for these retrograde developments must be placed at the door of national political leaders. Given the state of politics in many member states, and the highly controversial nature of market regulation or initiatives intended to make labour markets more flexible (as proposed under the Union’s Lisbon agenda), it is understandable that many political leaders find it more comforting to grandstand in discussions over a moribund treaty rather than to address substantive policy problems at the EU level.

This is illustrative of a broader problem. Since the inception of European integration in the 1950s, national politicians have faced overwhelming incentives to allow domestic considerations to dictate their European policies. After all, the ultimate rewards of politics are to be found, not in Brussels, but in national capitals. Moreover, there is no real downside to playing the national card in one’s dealings with Europe. In no member state is the EU a particularly salient political issue. Insofar as it is, many political leaders seem to believe that a more critical stance is a vote winner. Nowhere do politicians stand to gain from running on a platform of having helped to build a more stable or effective Union.

Consequently, it makes sense for politicians to engage in strategies that enhance their domestic political strength, even if this is at the expense of the EU (and let’s face it, the decisions to hold referendums on the Constitutional Treaty in both Britain and France were based not on an overwhelming desire to make the Union more legitimate but, rather, on a desire to avoid difficult debates in the run up to European Parliamentary elections and divide the Parti Socialiste respectively).

This is clearest in the more Eurosceptic states, where blaming the EU for unpopular initiatives is commonplace. The UK’s Chancellor, Gordon Brown, is only too happy to attribute low growth in continental Europe on failure to implement reform, while proving strangely unable to acknowledge the role the single market has played in buttressing Britain’s strong economic performance. Even in traditionally more Europhile states, vague references to federalism or political union do
little to clarify the Union’s ultimate purpose. Heads of state and government merely exacerbate the EU’s popularity problems with rhetoric calculated to raise expectations artificially. It is all too common to hear European Council declarations spell out ambitious new goals that cannot possibly be met. The notion that the EU could, in 10 years, become the world’s leading knowledge-based economy was always somewhat fanciful. The enunciation of this ambition in the Lisbon Strategy served merely to foster the impression that the Union had failed to deliver yet again.

The real potential crisis confronting the Union stems from these tendencies on the part of national politicians. While only too happy to constantly criticise the Union and its perceived inefficiencies, they have been engaged in a steady process of asserting the control of national capitals over what happens in ‘Brussels’, thereby impeding the effectiveness of the Brussels institutions.

Take the case of the European Commission. Reliance on the feeble ‘open method of co-ordination’ at the Lisbon summit reinforced the sense that member states were unwilling to give the EU institutions the tools necessary to address core areas of public policy. The two major institutional initiatives in the draft Constitutional Treaty – the European Council President and the new role for national parliaments in overseeing the application of subsidiarity – both created new constraints on the Commission. Rather than addressing fundamental questions concerning the effective functioning of the EU system as a whole, and the Commission in particular, member states have chosen instead to focus their attentions either on the Council, or on their relative weight within the Commission, through debating the number of commissioners each member state has the right to appoint.

Yet an enlarged EU, with more policy responsibilities, has more need than ever of an honest broker to try to foster agreement between its bickering member states, of a regulator to ensure the continued effectiveness of its large market, and of an administration to ensure the full application of its laws. In order to fulfil these tasks effectively, the Commission needs resources, authority, and independence from interference by the member states in its own areas of responsibility. Yet all the recent developments outlined above – as well as the recent proposal by EU finance ministers to cut the Commission’s staff by 8.5 per cent – militate precisely against these qualities.

Recent developments in the single market clearly illustrate the nature and scale of the problem. When the member states reached agreement in the mid-1980s on the need to create a genuine single market by removing all barriers to the free movement of goods, services, capital and people, they did so in very general terms. Ambiguity was the price of arriving at agreement between political leaders as diverse as Margaret Thatcher and François Mitterrand. Now, some 20 years after the initial agreement, the member states are starting to address the details of the market deliberately left vague by its creators. Debates over working time and services illustrate the differences that remain in national perceptions of the correct balance to be struck between the market and state control.

In brokering between these conflicting visions and in ensuring that member states and their industries comply with their legal commitments, national capitals are fundamentally reliant on the European Commission. Yet they continue, by their own actions, to undermine it. They have exemplified this in their recent desperation to stymie attempts at European level restructuring of the
energy sector by protecting their national champions from foreign takeover bids. Thus, following a bid from a German firm for its national energy champion E.ON in February 2006, the Spanish government passed legislation extending the powers of the national electricity and gas regulator to allow it to block foreign takeovers. Meanwhile, the French government was putting into place poison pill arrangements also intended to stymie takeover attempts by foreign companies.

All this despite concerns voiced by the Commission that the Spanish legislative initiative violates the principles of free movement of capital and right of establishment. Indeed, in a recent report, the Commission declared that member states ‘persistently fail’ to implement the laws and regulations underpinning the single market, estimating that more than a quarter of the estimated 1,600 rules governing its operation have not been put into effect in at least one member state.

Member states are, in effect, throwing down a gauntlet to the Commission. Of course, the difficulty for the Commission is that, should it attempt to exercise its powers forcefully, it risks provoking critical reactions among national politicians anxious to grandstand in front of domestic audiences, thereby further damaging its own legitimacy and that of the EU system as a whole. Indeed, some Spanish politicians have already reacted furiously to the decision to refer Spain to the ECJ for alleged breaches of EU law.

A similar picture exists when it comes to agreeing to new legislation as opposed to enforcing pre-existing commitments. One continued stumbling block on the road to the creation of a genuinely pan-European marketplace relates to the issue of cross-border takeovers. The 2003 agreement on the takeover directive, reached after 14 years of bitter negotiation, was only possible on the basis that opt-outs be available to member states on the need to consult shareholders on bids and on the legality of certain forms of takeover defences. As of the time of writing, 21 member states have decided to opt out of the provisions on takeover defences, while Germany, Denmark, Luxembourg, Poland and the Netherlands have opted out of the provision on the need to consult shareholders on blocking takeover bids. All this without taking account of the fact that the directive itself will doubtless be implemented in different ways in the different member states.

National governments, therefore, are effectively impeding the creation of a market to which they remain rhetorically and legally bound, while focusing instead on debating a defunct Constitutional Treaty. With so much of the EU’s recent agenda devoted to ‘reflection’ over how and whether to revive it, too little attention has been focused on the real, practical issues that require action.

The French and Dutch referendums were important events, not least in that they underlined public dissatisfaction with the Union. However, the most appropriate response should be a concerted drive to ensure that the EU continues to perform its core functions effectively, rather than endless technical discussion of a treaty EU citizens have rejected. The danger is that if they continue to ignore the nature of the real problems confronting the Union, while discussing a largely illusory one, national leaders will turn talk of profound crisis into a self-fulfilling prophecy.

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