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The European Council: spreading knowledge and fostering research on a key institution

Key-Note address by Jim Cloos

THE EUROPEAN COUNCIL: ANCHOR IN STORMY TIMES?

I am very pleased to be here today at this conference devoted to the European Council. I very much value the work done by Wolfgang Wessels over many years to further a better understanding of what the EU is and, may I add, is not. I'll come back to that in a second.

We live in very troubled times. BREXIT is but one of many challenges that the EU faces right now. There are others:

- a growing divorce between élites and ordinary people;
- a post-factual world where lies and untruths seem to get the same airing as truths and facts; not an entirely new phenomenon, since **Darwin** already noted that *"Ignorance more frequently begets confidence than knowledge"*, but we seem to reach unprecedented heights in this respect;
- a severe migration crisis coming after other major crises;
- uncertainties surrounding our closest ally's future direction;
- a very troubled neighbourhood.

Against this background it is even more important that the EU delivers and responds to what Europeans want and need. And that we, practitioners and academics alike, reflect on how the EU can help Europeans face the many challenges surrounding us.

A PLEA

But let me **start with a plea** to you who are "friends of the EU". Please, from time to time, do defend the Union as it is, warts and all. We all dream of a better system, and that is fair and legitimate. I am reminded of a Spanish King in the 13th century, Alfonso X, who is reported to have said: *"Had I been present at the creation, I would have given some useful hints for the better ordering of the universe."* But he was not, and neither are we. We can regret that the EU is not exactly as we would like to have it in an ideal world, we are perfectly entitled to lobby for a better system, but we should not systematically everything the Union does because it does not live up to our expectations. Sometimes one gets the feeling that there is a competition between the euro-sceptics and the euro-enthusiasts on who can say the most negative things about the EU as it is and functions. Concerning the euro-enthusiasts, I have to say to them that it is dangerous to constantly measure the EU against the yardstick of what you think it should be in an ideal world. You risk chucking out the baby with the bathwater.

Interestingly enough, the Brexit drama has helped bring this point home to people across Europe. It is all very nice to criticise everything the EU does, ...until you start realising that people may actually take you by your word and act or rather vote accordingly... Talking about the Brexit, let me quote

Oscar Wilde: *"To disagree with three-fourths of the British public is one of the first requisites of sanity."*

Jaurès said one day: *"Pour aller à l'idéal, il faut d'abord commencer par comprendre le réel."* Reality is a union of States and peoples, a system of checks and balances, and ... it is a European Council that has played an absolutely key role for the last 40 odd years. Without the European Council we would never have reached the state of integration we know today. And in recent times we might have seen a collapse of what is one of the most marvellous political constructs mankind has ever developed, a Union of equal, free and democratic nations and peoples. Yes, the EC has been over the past years an anchor in troubled times.

But it is of course much more than that. I will look at it from **three angles**:

- **Why and how was it created?**
- **How did it develop and how does it function?**
- **And most importantly, what does it do?**

THE ORIGINS

WHY?

Neither the Paris nor the Rome treaties mention anything like the European Council. They foresaw no direct role for the Heads of State or government. The latter invented their own club and made it work.

Why did they do that? For three very practical reasons:

- As the Community developed and became more important for their respective countries, the Heads felt they needed to give guidance and steer things.
- They found it odd that they met the American President or other international leaders more often than their counterparts in the Community.
- And lastly, it became more and more difficult over time to cleanly separate issues that fell under EEC competence and national competences; this was particularly noticeable in the external area. The advantage of Heads meeting at their level was that they could, as the superiors of the Ministers acting within the Council, talk about Community questions, but they could also as the highest representatives of their countries act as a kind of club discussing other issues. This is a key point to understand the importance of the EC even today.

If truth be told, there was also at least on the part of one major country, France, a more ideological motive: the French considered that European issues were too sensitive and important to be left entirely to a system that gave important powers to a supranational body like the Commission. They wanted some adult supervision, and for them that could only be the Heads of State or government.

HOW?

For all these reasons, the Heads started, in the sixties, to organise so-called summits, at irregular intervals. As time went on, the pressure increased to do this in a more organised and regular

fashion. This led to the actual birth of the "**European Council**" in December 1974 when President Giscard d'Estaing invited his colleagues to Paris and staged a little coup. The leaders agreed to meet more regularly henceforth, and the French President went to his press conference and claimed that the European Council was born. That term had not been used in the discussions and certainly was not agreed, but it stuck. Henceforth, the EC would meet four times a year and play a decisive role in European politics, and this despite of no basis in the treaty, no formal role, and no power to take decisions.

The first **mention in the treaties** came with the SEA in 1986, which recognised the existence of this strange animal. Subsequent treaties then reinforced the strategic role of the EC, but without transforming it into an institution as such. This only happened in 2009 with the Lisbon treaty.

What is important to understand is that in the case of the EC the treaties did not stand at the beginning but at the end; in fact, they mainly recognised and formalised the facts created on the ground, without changing them very much. The only real exception here is of course the creation of a full time President in 2009 and the elimination of the Foreign Ministers from the gatherings. And there has over the years been a move towards a more transparent way of preparing EC meetings. But that has not actually fundamentally changed the nature of the beast characterised by

- an informal way of functioning;
- a consensus-based approach;
- "government" by conclusions ("Presidency conclusions" initially, now EC conclusions, but the same really) "giving political instructions" to the Council and other institutions, launching new ideas, and commenting developments in Europe and the world.

HOW DOES IT FUNCTION?

This is maybe the right moment to say a few practical things about the **practical functioning** of the EC¹:

- **Who sits in the room?** (*Heads/FM to Heads/ No civil servants except .../President COM (not obvious at first summits!)/HR/The question of the EP President: before the meeting (some exceptions)/External visitors!*)
- **How is an EC meeting being prepared?** (*From the origins to the Thatcher revolt (chucking out a text done by civil servants) and then to Sevilla 2002 and the Lisbon Treaty); ADA, guidelines, draft conclusions, PEC invitation letter...*)
- **What does a meeting of the EC look like?** (*Normally a two-day meeting starting on Thursday afternoons, but with variations, and there is an ongoing debate about possibly limiting to one day; the EP President addressing Heads since late 70s (Jenkins); plenary, dinner where more sensitive questions are being addressed, and conclusions the next day, but since 2010 conclusions often adopted as issues come up...new role rotating Presidency Head (importance of link EC//Council)*)
- **How often does the EC meet?** (*Well, a minimum of 4 times a year, but actually as often as required (be it in formal or informal meetings, the difference is not really important!), as we*

¹ See oral intervention for more details

have seen over past years; remember the outcry when Herman Van Rompuy mentioned the possibility of once per month; then that is exactly what happened because of the crisis).

- **What happens after a EC meeting?** *Usually a negative press coverage, because expectations are always very artificially being whipped up before, as if one EC meeting could settle the migration crisis... but more seriously, a lot of work, a GSC note to Coreper and GAC on follow up...)*

WHAT DOES THE EC DO?

Now what is the **exact role(s) of the EC?** As I mentioned before, the treaties are now more explicit about the role of the EC, but the actual role goes over and above what the treaties say, which at times can lead to tensions with other institutions, particularly the EP. I will not here talk about the rare cases where the EC actually takes formal decisions, primarily on nominations and on quasi-constitutional matters (passerelles). I will look at the core business of the EC.

1. **The EC sets the constitutional framework (IGC):** technically speaking, this is the job not of the EC but of intergovernmental conferences as set out in Article 48 of the TEU, but in reality this is very much the same since treaties are agreed by the IGCs at the level of the Heads, and the way they discuss here is very much the same as when they do classical EU business. The fact that between 1985 and 2009 the EU underwent a whole series of constitutional reforms naturally led to the European Council being even more prominent than before.
2. **The EU sets the general political directions** within the EU, as stated in Article 15 of the TEU and in various specific articles dealing with individual policies like JHA, EMU or external relations. The adoption of the Strategic agenda in 2014 is a good instance of this role. One can also mention here the adoption of the so-called Bratislava roadmap setting out key orientations for the future EU 27. But the EC also uses normal EC conclusions to break new ground and launch new initiatives, like the European Monetary System in the late 70s, a ground-breaking declaration on the Middle East policy at Venice in 1980, or, more recently, the Tampere declaration on JHA matters, or the 2000 Lisbon summit inventing the famous Lisbon agenda, a fundamental statement of our energy and climate change policy in 2008, the relaunching over the past months of a new reflection on defence and security.
3. **The EC does from time to time act as the Council Über-Vater**" if I may call it that way. Now this is a role that is a bit border-line in the sense that it can be seen as interfering with legislative matters which is, strictly speaking, not its business. **There are three ways this plays out.** i) The first one is rather classic and entirely in line with the political orientations prerogative of the EC: you have countless examples in the conclusions that **call on the other institutions to get on with their business** and to sort out an issue by a certain date. This has proven to be a very useful tool over the years. ii) Then there are cases where the EC to all effects and purposes **takes over the role of the Council** because the matter is so horizontal and sensitive that only Heads can arbitrate nationally and speak with the necessary authority to do deals. The best example here is the MFF negotiations, starting with the first Delors package in the 80s. Now this is something the EP does not like, because once the EC has spoken, there is not that much to negotiate anymore for the EP. This is however less shocking as it may look at first glance. Why? For two reasons: one, the MFF regulation and the regulation on Own Resources are subject to unanimity in any event, so moving it up to the EC level does not change matters here; and two, the EP is only a co-legislator on the

implementing regulations, but has a power of consent only on the MFF Regulation itself and no role on the Own Resources. There are however cases where Member States quite consciously push for an issue to be pushed up to and "decided" at the level of the Heads, which of course means by consensus. This has happened in the past in the area of climate change, for instance. This is more problematic. The argument of the defence here is a purely practical one or one based on the fact that without an intervention at the top level the Council will not achieve a position and hence not be in a position to start negotiating with the EP. This practice should really only come as a last recourse because otherwise you transform qualified majority into consensus, and that is not what the treaty says. **iii)** Finally, there are countless cases when the Council, being stuck at its level, **turns to the EC for guidance or for arbitrating** on the most sticky points. These are not cases where the EC takes over but where it intervenes up to a point so as to unblock a situation and allow for negotiations with the EP to start; the debate here is about what "up to a point" exactly means.

4. Then, **last but certainly not least, the EC manages crises and becomes the anchor in a stormy sea.** This was the case when the controversy about the British cheque crippled the action of the Community, it was the case when the collapse of the USSR and the end of Europe's division opened up a whole new landscape, or when the Danish "No" and subsequently other "NOs" to treaty changes threw the EU into crises; and it has certainly been the case since 2008 when one crisis chased the other, Georgia, sub-prime and sovereign debt crisis, Ukraine, migration, and now also BREXIT. This string of crises has cast the EC even more to the forefront than it usually is. The reason is simple: in the absence of a clear chain of command and in view of our highly de-centralised system with many important actors, the EC is the closest you get to some kind of collective European government. And in times of crisis, it is the executive that takes over, that is the same everywhere. Now the EU, which is a very efficient machinery to do legislation and work on medium and long term reforms, struggles with crises; we always seem to go through a cycle of panic, chaos, intense self-doubt and then a slow and steady move towards getting control and doing the reforms that are needed. Take **the post-2008 economic crisis.** It took the EU some time to get its act together, we had to be on the brink of absolute disaster before doing so. But then we did, taking unheard of emergency measures, including deciding over a single weekend the setting up of a financial safety fund of €750 billion, emergency packages for several EU Member States and, as importantly, an overhaul of the governance of the euro zone with key decisions on the Banking Union and on better supervision. None of this would have been possible without the European Council. Why? Because it takes the most legitimate representatives of each country to decide such weighty measures and get their parliaments to go along. But also because the beauty of the EC is that it can act both as the repository of EU business and as a club of leaders bringing in their considerable national resources (much higher than the EU budget!). So before calling for abolishing or emasculating the EC, think twice; not that I am very worried, to be honest, because of Max Weber's *magische Kraft des Faktischen*, but the constant attacks on the EC as being some kind of horrible intergovernmental structure that thwarts the pure intentions of the true European institutions do have over time a negative effect on the image of the EU as such. Now a word on **migration.** This is for sure a mega-crisis, and those who tell you there are easy solutions are either demagogues or idiots. This will be with us for many years to come.

Whether there is a EU or not, incidentally. It would be far worse if there weren't. Now let us look back one and a half years. Where were we then? In quite a bit of disarray I would say. An ever increasing number of people coming to the EU, in a chaotic fashion, particularly via the Balkans route. A sense that we had lost control of our external borders. A string of internal border controls being brought back. A catastrophic situation for frontline countries. A very acrimonious debate about the notion of relocating refugees among member states. Now, 18 months later, where are we? In a much better shape, even though claiming that we had mastered the crisis would be foolish. I recommend you to re-read the EC conclusions over that whole period. You will see a consistent effort at building, step after step, a comprehensive policy on migration. There has been a real effort to help refugees in the neighbouring countries of Syria. The eastern Mediterranean route has been closed; the arrivals have dramatically decreased, thanks to a concerted package of actions also including the Turkish deal, an instance of *Realpolitik*. May I add in this respect that this has severely dented the business model of smugglers and other such criminals and has brought down the number of deaths by drowning in this part of the region to practically zero. It is now vital to apply *mutatis mutandis* similar recipes to the Central Mediterranean route where the situation is very difficult, including in the loss of lives. I say *mutatis mutandis* because these are different geographic conditions, different migrants, and different interlocutors, Libya is not Turkey. The Heads will at their Malta meeting on 3 February pursue their discussions on the external aspects of migration and particularly with regard to the central Mediterranean region. They will also look again at the compacts set up with five African States and that are beginning to yield results on the grounds while also laying the groundwork for more sustainable solutions over time. But much more has happened over the past months: the agreement on a European Coast and Border Agency with enhanced means, a strengthened EASO, a fully operational IPCR system to monitor developments on the ground, and the launching of a difficult but much needed discussion on a revision of the European Asylum system, thanks to excellent preparatory work carried out by the European Commission. In this context, allow me to say a word on the notion of solidarity. The unfortunate notion of "flexible solidarity" came up briefly in this context, giving the impression that we were talking about solidarity when it pleases you, solidarity à la carte. That is not what is meant, because solidarity in our Union is a Kantian category if I may say so, it is absolute and not negotiable. We now talk about "effective solidarity", which is very different indeed because it talks about ways of expressing solidarity. This is not easy but I am absolutely convinced that at the end of the day the Union will come to an agreement on this.

COMMUNICATION

This brings me to my last point, and a bit back to the beginning of my speech: I want conclude with a word about communication. There is a real gap between the reality of how the EU functions (which is actually quite impressive, look at co-decision) and the perception of the EU. If only we had an ounce of what de Tocqueville called "*the Americans' constant utterance of self-applause*". We Europeans seem to relish the perpetual utterance of self-flagellation. There is no easy answer to this dilemma, the more so since it is in the nature of our very de-centralised system, with many Presidents, not to speak of Heads of State or government, Ministers and Parliamentarians, to create a certain cacophony. And that quite a few of those who try to

communicate have, like Shelley's aunt, *"lost the art of communication but alas not the art of speech"*. But we could certainly do better if we did a certain number of rather simple things:

- try to understand our own system rather than communicating on the basis of our respective national systems (remember what Jaurès said about the need to understand reality and remember my old friend Alfonso X);
- focus on the issues that really matter to Europeans (and that is not institutional in-fighting!)
- challenge more robustly simplistic views and false rhetoric.

And there is another message I want to leave with you. You, the people who believe in this project, who want Europe and the EU to thrive, should speak out with passion and not leave the field to those who shout loudest, who ignore facts, who preach intolerance and the return to the past. Remember what happens when, as Yeats put it in *"The Second Coming"*, *"The best lack all conviction, While the worst are full of passionate intensity."* One can be moderate and reasonable and a rigorous and objective academic and yet be passionate.

Which better way to end than with a quote by **Jean Monnet**, who said what follows at the time of yet another European crisis in 1954 when the French Assembly threw out the EDC treaty: *"Beaucoup crurent à un cataclysme, mais, bien que je fusse très déçu, je ne pensais pas que ce fût la fin de l'Europe...Encore une fois, j'ai dû expliquer à mes amis que les seules défaites sont celles qui s'acceptent"*

Let me finish on this happy note.
