



**Treaties as *travaux préparatoires*:
Conference on the 60th Anniversary of the Treaties of Rome**

Organized by
Max Planck Institute for European Legal History, Frankfurt/Main
and
Saxo Institute, University of Copenhagen

Date: Thursday and Friday, 22 and 23 June 2017
Venue: Max Planck Institute for European Legal History

The use of *travaux préparatoires* in the interpretation of European law has traditionally been met with suspicion. While there has been a limited willingness to consider the preparatory materials of regulations and directives, there has been outright hostility to the idea of referring to the proceedings of the negotiations leading to the Treaties of Rome. As is well known, the Court of Justice rejected recourse to the *travaux préparatoires* in the interpretation of the Treaties early on, both explicitly and implicitly. Explicitly in the extrajudicial writings of influential ECJ judges, such as Pierre Pescatore and Hans Kutscher: they emphasised the dynamic, forward-looking character of the 'European Communities' and suggested that the *travaux* of the Treaties were not only unpublished (and thus not widely accessible) but also did not reflect the spirit of the negotiations which had mostly been conducted orally. Implicitly, the Court rejected recourse to the *travaux* in the landmark cases of *Van Gend en Loos* and *Costa v Enel*. They referred to the spirit, the general scheme and the wording of the provisions as permissible aids in the interpretation of the Treaties; references to the drafting history were conspicuously absent.

Only a few heretics, such as the late Danish scholar Hjalte Rasmussen, argued that European law should follow the more conservative approach that has traditionally been used in public international law. There, the use of *travaux préparatoires* and reference to the intentions of the contracting parties are widely recognized as a permissible aid to treaty interpretation, albeit of 'supplementary' character and with less relevance than the ordinary meaning, the context and the 'object and purpose' of the Treaty in question.

Both these traditional positions are deeply problematic. The claim that the *travaux* should not matter in the interpretation of the Treaties at all allows the Court to move beyond and against the wishes of the contracting states and is thus difficult to reconcile with the role of the Member States as the 'Masters of the Treaties' or, more broadly, any conception of the separation of powers, however loosely conceived in the context of the European Union. Likewise, Rasmussen's contention that an examination of the *travaux* could lead to a clear



understanding of the intentions of the contracting parties which would then simply have to be implemented by the Court appears to be too simplistic. It ignores the fact that states rarely have singular and unambiguous motives. More importantly, life goes on, the Union evolves and something said more than half a century ago in a Committee room may simply be irrelevant today.

On the occasion of the 60th anniversary of the Treaties of Rome, our conference will attempt to go beyond the two traditional positions on the status of the *travaux*. Bringing together lawyers and historians in an unprecedented fashion we will first revisit the largely forgotten history of the negotiations. What exactly was discussed by the representatives of the contracting states? What were the motives for their decisions? And how can these negotiations be situated in the political and legal context of the post-war period and the *longue durée* of legal history? In a second step we will ask to which extent, if any, the *travaux préparatoires* and the legal history surrounding them still speak to today's European lawyers. Are they still relevant? Does their full understanding require us to reconsider established doctrines and orthodox positions of EU law, particularly at a moment where the idea of an 'ever closer union' is being subjected to unprecedented challenges? In short, should we go back to history in order to shape the future of the Union?

The two-day conference will be held at the Max Planck Institute for European Legal History which has recently established its new research field 'History of EU Law'.

We are currently exploring whether the conference proceedings will be published as a special issue in a scholarly journal or as a volume of essays with a leading UK publisher.



Programme:

Thursday, 22 June 2017

A. Towards a New History of the Treaties of Rome

Panel I: Key Areas of Law and Policy

Chair: Professor Antonio Varsori, University of Padova, Chairman of the European Union Liaison Committee of Historians

09:00 Arrival/Registration

09:30 Professor Stefan Vogenauer, MPIeR Frankfurt:
Introduction and Welcome

09:45 Professor Michael Gehler, University of Hildesheim:
***The Treaties of Rome. Background, results and consequences:
An overview***

Commentator: Professor Monica Claes (M.L.H.K.), Maastricht University

10:30 Professor Morten Rasmussen, University of Copenhagen, and
Anne Boerger-De Smedt, University of Alberta:
Legal-institutional aspects

Commentator: Professor Wilfried Loth, University of Duisburg-Essen

11:15 Coffee

11:45 Dr Sigfrido Ramírez Pérez, MPIeR Frankfurt:
External Relations (Trade and Overseas)

Commentator: Professor Jan van der Harst, Rijksuniversiteit Groningen

12:30 Giorgio Maganza, former Director at the Legal Service of the Council of the
EU, Brussels:
General Comments

13:00 Lunch



Panel II: Key Areas of Law and Policy

Chair: Professor Anne Deighton, University of Oxford

- 14:30 Professor Lorenzo Mechi, University of Padova:
Free Movement of Persons
Commentator: Professor Robert Schütze, Durham University
- 15:15 Professor Lise Rye, Norwegian University of Science and Technology (NTNU), Trondheim:
Social Policy
Commentator: Professor Antonio Varsori, University of Padova, Chairman of the European Union Liaison Committee of Historians
- 16:00 Coffee
- 16:20 Professor Carine Germond, Norwegian University of Science and Technology (NTNU), Trondheim:
Common Agricultural Policy
Commentator: Professor Francis Snyder, Peking University, School of Transnational Law
- 17:05 Professor Laurent Warlouzet, Université du Littoral Côte d'Opale (UCLO), Boulogne-sur-Mer:
Common Market and Competition
Commentator: Professor Heike Schweitzer, Freie Universität Berlin
- 17:50 Professor Guido Thiemeyer, Heinrich-Heine-Universität Düsseldorf:
General Comments
- 20:00 Dinner (Rist. "Fontana di Trevi", Mittelweg 60, 60318 Frankfurt)
- 21:30 Dr Dieter Schlenker: HAEU, Florence
Cooperation with the Historical Archives of the European Union



Friday, 23 June 2017

B. The Treaties of Rome in the *longue durée* of Legal History

Panel III: Key Actors and Their Inspirations from History

Chair: Dr Jean-Marie Palayret, President of the Friends of the Historical Archives of the European Union (HAEU), Florence

09:15 Dr Philip Bajon, MPIeR Frankfurt:
A vision of Europe based on legal history: Walter Hallstein, 19th century constitutionalism and a Europe built on law

Commentator: Professor Wolfgang Wessels, University of Cologne

10:00 Dr Vera Fritz, Université Aix-Marseille:
A vision of Europe based on legal history: Pierre Pescatore, from internationalist to supranationalist

Commentator: Dr Antonio Grilli, European Commission, Brussels

10:45 Alexandra Kemmerer: Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Berlin:
General Comments

11:00 Coffee

Panel IV: Key Developments in Historical Perspective

Chair: Professor Monica Claes (M.L.H.K.), Maastricht University

11:20 Professor Matthias Goldmann, Goethe University, Frankfurt:
The Treaties of Rome in the history of international law

Commentator: Professor Gregori Garzón Clariana, Universitat Autònoma de Barcelona

12:05 Professor Daniel Halberstam, University of Michigan, Ann Arbor:
The Treaties of Rome in the history of federalism, compared to the experiences of the United States and Germany

Commentator: Professor Bill Davies, American University, Washington, D.C.

12:50 Professor Fernanda Nicola, American University, Washington, D.C.:
General Comments

13:00 Lunch



C. The Treaties of Rome and the Future of EU Law: Lessons from the *travaux préparatoires* and Their History?

Panel V: Lessons from the *travaux préparatoires*

Chair: Professor Daniel Halberstam, University of Michigan, Ann Arbor

14:30 Professor Stefan Vogenauer, MPIeR Frankfurt:
The role of legal history in the interpretation of EU law: status quo and future possibilities

Professor Siniša Rodin, Judge at the Court of Justice of the European Union, Luxembourg:

A view from Luxembourg

Professor Christoph Grabenwarter, Judge at the Constitutional Court of Austria, Vienna:

A view from a Member State Constitutional court

15:45 Coffee

16:15 Professor Mattias Kumm, New York University, Berlin Social Science Center (WZB):

The Treaties and the travaux préparatoires from the perspective of European constitutionalism

Commentator: Professor Peter L Lindseth, University of Connecticut

17:00 Professor Stefan Vogenauer, MPIeR Frankfurt, and Professor Morten Rasmussen, University of Copenhagen:
Concluding Observations