

ABSTRACT

This paper discusses the role that territory plays in the contemporary process of European integration. In particular, the juridical notion of territoriality, as well as its philosophical and historical counterparts, are being reshaped today. The right to free movement across the borders of EU member states is one of the main instruments through which this transformation is taking place. Therefore, its relationship with the right to European citizenship raises the question whether it is possible to speak about one European territory which is different from the sum of its member states' territories or not. We try to find traces of a common, supranational, principle of territoriality looking at the text of the European Constitutional Treaty. In particular, this paper takes into account the link between the European enlargement to the East and the process of constitutionalization: the intertwining of the geographical widening, on the one side, and of the claim for a political deepening of the common institutions, on the other, is here analyzed as one of the main elements in order to understand the reasons of the crisis the EU is currently facing. We make the hypothesis that there is a tension between the modern, "hard" sense of territoriality and the "soft", idealised notion of space that is most frequently used in the European Constitutional Treaty. There is no juridical term such as "European territory", nevertheless the modern, national meaning of the territory is present in various parts of the European Constitutional Treaty. There is therefore no rupture between the modern, national principle of territoriality, related to the semantic field of power and of exclusion; and the supranational, more irenic, ideal of a common European space without borders. We make the hypothesis of the centrality of territorial and spatial re-shaping of modern territoriality in the present phase of European integration, and European citizenship, in connection with the right to free movement, is one of the core factors of this rebundling.

Key words: European Union, Enlargement, Constitutional Treaty, Territory, Nation-State, Free Movement, Citizenship

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## 1) ARGUMENT

The present paper aims at discussing the transformation of territory within the European Union. The thesis we argue for is that the issue of space, especially in relationship with citizenship rights and the definition of authority beyond Nation-States, is crucial to the political development of the European Union, both at the internal and at the external level. There is no “unbundling of territoriality” (Ruggie 1993), on the contrary, the European Union is experiencing an important evolution of its spatial structure, both in its physical and in its symbolic meaning. We do not share the diagnosis of the decline of the Nation-State and consequently of national territoriality. At the opposite, we claim that there is no rupture between the process of redefinition of European space and the modern category of territoriality. The process of construction of a European territory is built on a continuous tension with the modern national idea of territory and it is an attempt at re-bundling it.

## 2) QUESTIONS AND FIELDWORK

We analyse the occurrences and meaning of the category of territory in the text of the *Treaty establishing a Constitution for Europe*. Even if this text has not been adopted, the new Lisbon Treaty reproduces almost integrally the Constitutional Treaty, with the main difference that it is not called constitution anymore. We focus on the link between territory and citizenship. Territory and citizenship are intimately connected. According to the famous definition of Max Weber (Weber 1968), a State is defined by the sovereign power it can exercise over a group of people residing in a given territory. Membership space and geographical space are therefore in a relationship of mutual implication: the way in which a given State defines the control over its territory affects the internal hierarchization of the political community and *vice versa* the definition of membership affects the structuring of geographical space.

Our question is how Weber’s definition can apply – if it can – to the European Union, which today has no clear borders and where territory, membership and identity are issues of contestation and renegotiation. The ‘no’ at the French referendum in May 2005 was largely motivated by the fear of a deepening of political integration right after the enlargement of 2004, the biggest one that the European Union had never experienced.

In particular, we explore the meaning of the categories of territory and space at the level of the European Union, as they appear in the text of the Draft Constitution ; the tensions between traditional forms of territoriality and traditional territorial imperatives and the vision of the

European Union's space as an area of shared values and of a softer type of territoriality, like for example the creation of an area without abolition of internal frontiers and the promotion of territorial cohesion.

Our aim is to demonstrate that territory plays a crucial role in the shaping of the supra-national polity. Nevertheless, we experience a change of paradigm in relationship to modern Nation-States. Today, the problem of EU institutional actors is to control the circulation of a whole made by fluxes of people, of capitals, of goods and of services. In the EU, the issue of political sovereignty, which is closely linked to citizenship, becomes therefore the problem of controlling circulation. Citizenship and territory do not address anymore this unity that was the Nation-State, but this new space which is made by circulation, European governance and EU borders.

## ***B. Definitions***

### **1) EU'S TERRITORY**

#### *i. Member States' Territory*

The right of free movement in association with European citizenship questions the concepts of territory and of space applied to the European Union. Free movement and European citizenship presuppose the 'sharing' of national territories or, to be more precise, of the right to cross national borders and to stay a member state's territory. This leads to the question of what national territories do have in common in order to justify a sharing of rights and of geographical spaces. Is there something that we could call *a European territory*? However, the term of territory is rarely used when talking about the EU and in EU's official documents and texts; the expression that are mainly used to talk about EU's geographical dimension are the ones of 'space' or 'area'. How are territory and space defined in the EU's grammar?

First of all, EU's territory is defined in relationship to member states' territories: it coincides with the territorial components of the different national States and therefore its nature is terrestrial, maritime and air space. The definition of European territory therefore refers back to the domestic law of every single State, which means that the European Union is not competent to define its own territory, delimitations being either bilateral or unilateral (Charles-Le Bihan 2004:12). Article 18 of the *Treaty establishing the European Community* (European Union 2002) declares that : "Every citizen of the Union shall have the right to

move and reside freely within the territory of the Member States”. The only occurrences for the term ‘European Union’s territory’ are the ones concerning specific policies. This gives to the Union’s territory a moving and variable character. It can be bigger or smaller according to the policies taken into account.

ii. *Functional definition*

Ziller writes that territory “is not a title competing to the European Union or Community. It is only determined by the necessity of fixing the area of application in the space of functional tasks attributed by the constitutive treaties of each of the communities of the Union” (Ziller 1998:4). However, if there is no European definition of territory, there are several functional definitions, such as ‘statistical territory’ of the Union or its ‘fiscal territory’ or again ‘customs duty’s territory’. It is important to observe that none of these terms gives a definition of EU’s territory itself, this is always defined on the basis of member states’ territories. But EU’s policies concerning free movement of people and goods make reference to a *common space*. If we can assume that there is not *one* European territory, at the same time it is difficult to agree on the fact that European territory is only the sum of national territories.

iii. *Territorial Cohesion*

The policies of free movement and of circulation’s control build a space that is something else than the sum of member states’ territories. The expression ‘territory of the European Community’ can be found in EU’s documents, like, for example, in the Amsterdam Treaty, concerning the Council’s right to decide on the working conditions of the third-countries nationals.

Article 16 of the *Treaty establishing the European Community* (European Union 2002) defines the concept of social and territorial cohesion as following:

Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

What does social and territorial cohesion mean? It is defined like “economic and social cohesion” and expresses the solidarity among the member states and regions of the European Union. It favours a well-balanced development of the Union’s territory, the reduction of structural gaps among EU regions and the promotion of equal possibilities among people.

This policy includes several financial interventions, like the structural funds and the cohesion funds. The draft constitution proposed to add the objective of territorial cohesion, which would enhance the territorial dimension of regional policy and reinforce the role of territorial authorities as well. The Committee of regions would become also more concerned in the control of the respect of the subsidiarity principle.

Danielle Charles-Le Bihan sees territorial cohesion as the core of a European territory: “Introducing in the Treaties the innovation of territorial cohesion, article 16 of the consolidated version of the *Treaty establishing the European Community* mainly underlines the political dimension of the construction of a European territory, to which the general economic interest services would contribute [...]. This provision sanctions the specific acknowledgment of territory as an object of European law” (Charles-Le Bihan 2004:12).

iv. *European Spatial Development Perspective*

In 1999, the Council of ministers in charge of spatial planning met in Potsdam and redacted the European Spatial Development Perspective: “unique in its genre, it constitutes an innovative approach and it participates to the construction of the EU as a polity because it allows to envisage the communitarian dimension of member states’ territories, becoming the object of a common interest and not only the functional area of exercise of Community’s competences” (Charles Le-Bihan 2004:67). But in the text of the European Spatial Development Perspective (ESDP) there is no definition of a European territory. There are only very general formulations and territory has always a teleological character: it seems to be an attribute that concerns the future of the EU and a progressive concept. In the text of the European Spatial Development Perspective we can read that : “the European Spatial Development Perspective conveys a vision of the future of the territory of the EU”.

The European Spatial Development Perspective has a peculiar position in EU’s organisation, since it does not appear in European law. According to Anne-Claire Lucas, this gives evidence to the consideration that it touches a key issue for EU’s politics : “spatial planning, being a structuring action for territory, is a particularly delicate policy area because it concerns an identifying element for the population. The ESDP is therefore a crucial issue, especially in terms of national sovereignty over a given territory” (Charles-Le Bihan 2004:73). We can conclude that, even in EU’s treaties there is no definition of European territory, the notions and policies of free movement, general interest services, social cohesion and European citizenship mobilize what national territories have in common.

## 2) EUROPEAN UNION'S SPACE

### v. *The EU as an "area" of...*

In EU's directives and treaties, the notion of space is much more used than the one of territory. The impossibility of using the word 'territory' has led the legislators to talk about the much more general notions of 'space' and 'area'. Article 14 of the *Treaty establishing the European Community* (European Union 2002) states, for example, that:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

The term 'area' has been translated in the French version with the one of *espace*. The notion of area is introduced in the Amsterdam Treaty to designate the 'area of freedom, security and justice'. It is important to note that this definition is inextricably linked to the right of free movement, as stated by article A, paragraph 3:

*[the countries who are signatories]* resolved to facilitate the free movement of persons, while ensuring the safety and security of their peoples, establish an area of freedom, security and justice, in accordance with the provisions of this Treaty.

At the article B we can read that the Union's aim is:

to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

The term of 'area' is not better defined in EU's documents. The ESDP uses it to define the notion of European territory in the section significantly called "The 'Territory': a New Dimension of European Policy":

The characteristic territorial feature of the European Union (EU) is its cultural variety, concentrated in a small area. This distinguishes it from other large economic zones of the world, such as the USA, Japan and MERCOSUR1. This variety – potentially one of the most significant development factors for the EU – must be retained in the face of European integration. Spatial development policies, therefore, must not standardize local and regional identities in the EU, which help enrich the quality of life of its citizens (European Commission May 1999).

### vi. *Spatial Planning*

In this document, the notion of area is used in association with the one of spatial planning, which is rather an economic and social concept than a political one, since it recalls the issues of coordination among the different functionalities and policies of the EU in order to reach an homogeneous development of the different regions. The term of spatial planning considers both the internal and the external dimension of EU's territory and territorial policies. The

internal dimension comprises the one of regions and functional spaces, the international one includes borderlands' policies and EU's attitude towards its neighbour countries. The notions of area and spatial planning are therefore playing an ever more central role in the definition of EU's policies.

### *C. The redefinition of European Territoriality*

The concept of spatial planning makes also reference to the present unbundling and re-bundling of territoriality<sup>1</sup> in the context of globalisation and regionalisation. Nevertheless, the current emergence of the notions of area and spatial planning in EU's lexicon does not refer to the hypothesis of the 'end of territory' but to its inevitable re-organisation in a political and historical context which has modified the paradigm of modern Nation-State. The problem is the one of rationalisation and de-structuring of territories and the solution is the production of spaces taking into account the new interdependences between inside and outside, private and public actors, the global and the local. As Chris Rumford writes (Rumford 2006):

The relationship between governance, spaces, and borders is becoming a key theme in contemporary European studies. This shift in focus is the product of greater multi-disciplinarity and the result of EU scholars coming into contact with a range of literature from a broader field of European studies which was hitherto seen as peripheral: planning, anthropology, geography, education, sociology, cultural studies. The most significant developments to emerge from this multidisciplinary exchange are twofold. First, the recognition that distinctly European spaces are emerging, but that the properties, dynamics and potential of these spaces are not sufficiently understood. The corollary of this is that these European spaces cannot be reduced to the interconnectivity of previously existing places or agglomerations of member-state space. Second, the idea that the EU represents a complex configuration of spaces and borders which have created the need for unique forms of spatial governance. EU governance works by constructing European spaces which the EU alone is capable of managing. In other words, EU governance is concerned with the construction and management of European spaces, borders, and networks, as distinct from the territorial places and spaces characteristic of the Nation-State. European spaces —that is to say, spaces that are genuinely European rather than aggregations of Nation-States — are synonymous with EU integration. The most familiar European spaces, for example the Single Market, Euroland, a European education space, are all spaces organized by the EU. But there is another dimension to European spaces not captured by the EU's narrative of integration. Put simply, European spaces do not map neatly onto the space of the EU. There is not always a good fit between the European spaces constructed by processes of integration and the EU to which they belong. For example, Europeanized spaces such as the Single Market, Euroland or Schengenland, in addition to promoting the idea of deeper EU integration also make us aware of the incomplete nature of this processes (the Single Market extends beyond the borders of the EU; not all EU members share the single currency; not all EU members comprise Schengenland). Similarly, the idea of network Europe suggests both dynamic processes of pan-European connectivity, and, at the same time allows for the possibility of breaking down barriers between Europe and the rest of the world, and blurring the distinction between Europe and beyond, between EU and non-EU space.

The question we are going to deal with in this paper is the one of the link between the two categories of European territory and of European area or space. Is there a European territory, expressing what national territories have in common? Is the category of European space based on the one of national territory or is it something completely different? A large part of the literature on the subject argues for a de-territorialisation of the European space: the EU's

geographical and political space does not structure itself anymore according to characteristics expressed by modern national territoriality, which are exclusivity and sovereignty<sup>2</sup>. We argue against two aspects of this interpretation. First of all, European Union's political integration is based upon sharing national territories and rights. EU's spatiality is not reducible to the sum of national territories but at the same time it can't be separated by them and by their structure. Secondly, there is no rupture between modern national territoriality and spatiality and EU's territoriality and spatiality, what is happening is instead a process of reconfiguration, rescaling and recalibration of modern national territoriality.

## 1) TERRITORY, SPACE AND THE EU CONSTITUTIONAL TREATY

### vii. *Toward a de-territorialized Europe?*

In this section, we analyse EU's discourse on territory and space in the *Treaty Establishing a Constitution for Europe*, with a specific focus on the link between European citizenship, territory and space. One of question we would like to rise is: is European citizenship a territorial citizenship or not? Some of the literature on the subject defends the hypothesis of a de-territorialized European citizenship. The argument can be reframed in two steps. First of all, saying that EU citizenship is de-territorialized means that it does not refer anymore to this historically contingent type of political space which is territory. The last one is therefore defined, in this context, as the specific spatiality of modern Nation-State. This implies that European citizenship is a category that evolves outside the historical and political framework of modern European Nation-States. As a consequence, saying that the European one is a de-territorialized kind of citizenship implies thinking that there is a rupture, a discontinuity between EU citizenship and national citizenships. Secondly, the status of European citizen is not based anymore on the relationship with a given territory defined as a fixed and geographically bounded space, as instead it is the case for national citizenships. According to this perspective, the status of European citizenship would not be determined by any coincidence with a specific space, but on the contrary it would be completely dissociated from any relationship with a delimited geographical space, like territory. This implies that European citizenship is seen as an abstract institution, detached from any belonging to a given political community. It would be a status specific to 'moving' individuals who circulate through political communities. The other side to this vision of a fluid and immaterial European citizenship would be represented by illegal immigrants pressing at the borders of this space of free movement which is the European Union and from which they are excluded. In the perspective of a totally de-territorialized European citizenship, territory is supposed to

have lost its role and meaning in determining political membership and all the individuals, independently of their nationality, should have the right to freely circulate in the European space. This vision goes beyond the dissociation between European citizenship and member states' national citizenships and theorizes a sort of membership that avoids the materiality of political space.

Starting from this perspective, two questions arise on the relationship between European citizenship and territory. First of all, is there a rupture with the spatiality of national citizenships? Is it possible to talk about territory in the case of the European Union, i.e. in a process of political integration that, for the moment, can't be defined as state-like? Is the category of territory specific and limited to the historical experience of modern Nation-States? Secondly, it is important to answer the question if European citizenship defines itself in relationship to a given space or if its peculiarity consists in breaking all theoretical and historical links with any form of spatiality? Is spatiality a constitutive element of citizenship in general and of EU citizenship in particular?

viii. *Citizenship and Nationality*

We should not mix up nationality and citizenship talking about territory. Nationality refers to a juridical relationship that determines the membership of a given community – this can be decided either according to the *jus soli* or the *jus sanguinis*. Citizenship is a status that defines the rights and duties of the members in relationship to their political community and it goes beyond its juridical determination. It indicates the very possibility for its members to be linked to their political community. It is in this respect that space and territory become extremely important. Territory has three dimensions that foster political integration. Territory is first of all social, since, independently of scale, peoples inhabit it collectively; territory is political, since groups fight to preserve and enlarge their space, it is cultural, because it gathers memories and symbols that shape a community. Territory, which is at the same time a theoretical and a physical construct, associates conflict and changes to political identity.

ix. *The unity of the polity*

The relationship between territory and identity allow us to introduce the question of the unity of the political community. Aristotle, in *The Political*, defines the *polis* like this kind of political community in which, if there is an invasion or an attack, the whole community is mobilized at the same time. On the contrary, if there is an invasion in a part of the empire, the other parts will realize it a few days later. The issue of territory is therefore the one of the

‘parts’ of the *polis* and of their relation. The link between territory and citizenship is at the core of modern Nation-State, both theoretically and historically, and, since in this paper we do not share the thesis of a radical rupture between national citizenships and European citizenship, we can’t avoid the issue of territory.

x. *The relevance of modern, national territory at the time of globalization*

The Greek philosopher Nicos Poulantzas underlines, in a book originally published in 1978, the mistake that most of Marxist political theory made underestimating the concept of nation. There is no analysis of the category of nation in Marxist theory since it considered that it was inevitably going to disappear. At the opposite, according to Nicos Poulantzas nation and especially its relationship to territory are at the core of political modernity and it would be an error to dismantle them too early:

[...] why and how do territory, historical tradition and language chart, by means of the State, the new configuration that is the modern nation? What makes it possible for these seemingly transhistorical elements to be articulated at the focal point of the modern nation? [...] Failure to pose these questions obviously leads to underestimation of the present-day weight of the nation. If territory, language and historical tradition retain the essence which they had when nation’s role was less important, and if the tendency of capitalism really is towards internationalization of markets and capital, then it would be easy to conclude, together with a number of contemporary writers, that the role of the nation is diminishing in the current phase of transition to capitalism. [...] As I have shown elsewhere, the current internationalization of the market and of capital does nothing to reduce the peculiar weight of the nation. [...] Thus, territory and historico-cultural tradition – to take but two, apparently ‘natural’ elements – acquire a meaning under capitalism that is completely different from the one they assumed in the past. It is this difference which defines the problem of the market a that of the unity of the ‘internal’ market. [...] I shall argue that territory and tradition now have this quite novel meaning because they are inscribed in the still more fundamental changes of the underlying conceptual matrices of space and time (Poulantzas 2003:67).

The issue of the evolution of Nation-State, in the current time of globalization, sounds extremely actual. The link between political community and territory is at the centre of this problem and we could apply Poulantzas’ words to contemporary debates on the development of EU integration, on the European process of constitutionalisation or again on the Bolkestein directive.

xi. *Territory and power*

Space in general and territory in particular are important parameters since they make it possible to reintroduce the issue of power in the analysis of European citizenship:

Transformations of the spatio-temporal matrices refer to the materiality of the social division of labour, of the structure of the State, and of the practices and techniques of capitalist economic, political and ideological power; they are the *real substratum* of mythical, religious, philosophical or ‘experiential’ representations of space-time. Just as these changes are not reducible to the representations which they occasion, so they cannot be identified with the scientific concepts of space and time which allow us to grasp them (Poulantzas 2003:68).

The issue at stake here is not the objectivization of space and time, or, to say it differently, to consider them as natural and unhistorical realities. Instead, the aim is to understand how space reflects the concrete organisation of the political community and its internal hierarchization. Territory is the modern expression of this general feature of the State which is space. John Ruggie defines modern territoriality as mutually exclusive and fixed. He makes the hypothesis that today we are experiencing a break-up of this kind of territoriality, in favour of a system of sovereignty in which there is no exclusive allocation of space nor stable frontiers: such a system would be similar to the one of Medieval sovereignty. Ruggie, in his argument, underlines the fact that non-territorial systems of law existed also in the modern era, such as diplomacy, and they were the specific features of transnational society. Ruggie writes that; after 1989, this kind of transnational systems, characterised by the denial of an exclusive territoriality, succeed in imposing themselves:

[...] the unbundling of territoriality is a productive venue for the exploration of contemporary international transformation. Historically, this is the institutional means thorough which the collectivity of sovereigns has sought to compensate for the “social defects” that inhere in the modern construct of territoriality. This negation of the exclusive territorial form has been the locale international sociality throughout the modern era has been embedded. The terrain of unbundled territoriality , therefore, is the place wherein a rearticulation of international political space would be occurring today. Take first the EC, in which the process of unbundling has gone further than anywhere else. [...] It may constitute the first multiperspective polity to emerge since the advent of the modern era. That is to say, it is increasingly difficult to visualize the conduct of international politics among community members, and to a considerable measure even domestic politics, as though it took place from a starting point of twelve separate, single, fixed viewpoints. [...] In the nonterritorial global economic region, however, the conventional distinctions between internal and external once again are exceedingly problematic and any given state is but one constraint in corporate global strategic calculation. [...]This nonterritorial global economic region is a world, in short, that is premised on what Lattimore described as the ‘sovereign importance of movement’, not of place. The long-term significance of this region, much like that of the medieval trade fairs, may reside in its novel behavioural and institutional forms and in the novel space-time constructs that these forms embody, not in any direct challenge that it poses as a potential substitute for the existing system of rule (Ruggie 1993:172).

These issues, which could seem very abstract, are instead crucial when dealing with the concrete political questions that the European Union needs to face today. We can think about the problem of EU’s borders and about all those European citizens that find it difficult to recognize themselves as such since they do not see the exact limits of the EU, which seems therefore abstract and far away from their every-day life. During the French referendum on the *Treaty Establishing a European Constitution for Europe*, the fuzziness concerning the limits of EU frontiers has played as a major obstacle to the ‘oui’.

#### ***D. EU Enlargement to the East and the Constitutional Treaty: the re-bundling of Eu territory***

## 1) THE INTERTWINING OF THE TWO PROCESSES

### *i. The Present Political Crisis*

The rejection by the French and Dutch citizens of the Treaty establishing a Constitution for Europe has signed the beginning of a period of crisis for the Eu, a crisis that the EU member states and institutions are trying to solve with the Reform Treaty of October 2007. The process of constitutionalisation of the European Union preceded and will follow both the Constitutional Treaty and the Reform Treaty, which, even if avoiding the word 'constitution', is just one more step of this process. With the expression 'constitutional process' we mean the decisions and juridical texts (for example the judgments of the Court of Luxembourg) that, outside of a properly constitutional framework, have contributed to give a content, or 'material constitution', to the political project of the Eu. The Constitutional Treaty is still of interest after its rejection, and it is important to understand the motivations that led to it. It seems to us that the issue of space has been one of the key factors in the failure. In France, the ghost of the Polish plumber and the mix between the third part of the Constitutional Treaty and the Bolkestein directive make reference to the difficult relationship between political deepening and geographical enlargement of the Union. The political structuring, through a formal constitution, of a much larger and diversified area without internal borders has aroused the fears of European citizens:

Europe is perceived primarily as a big market, in which the ambitions in the matter of security do not necessarily equal the public's expectations. The formation of a European space seems all the more so threat in that this space tends to expand without precise limits. The free circulation of persons benefits not only students but also immigrants, and the exposure to competition, if it is certainly a source of increased wealth for some, can also lead to corporate closures. Furthermore, Europe imposes on national governments constraints that can reduce their abilities to act. The elimination of border controls and the budgetary austerity imposed by the stability pact limit states' possibilities to assure their traditional functions as security providers, and the EU has not really taken over from them. The dangers that can result from this gap are evident. The impression – justified, or not – that the expectations of the population in this respect are not adequately taken into account has clearly played a role in the 'anti-system' votes that have been registered in the past few years in a number of European countries. The European referenda have breathed new life into them (Dehousse 2006).

The Constitutional Treaty arose from the need to renegotiate the system of vote in a European Union having integrated ten new member states<sup>3</sup>. The Nice Treaty left some problems of constitutional engineering open that the next Intergovernmental Conference had to take into account. Nevertheless, this does not seem to be enough to explain the link between the fifth enlargement and the elaboration and submission of the European constitution. We shall at first observe that there is a circularity between the two events: the years 2000 see at the same time the accomplishment of one the main enlargements and the proposal of a European Constitution followed by a new 'Lisbon Treaty'.

ii. *The Constitution as a Response to Enlargement*

Before the European Constitution and the following modifying Treaty, the EU already experienced a constitutional movement at the time of the Single European Act in 1986. This was the starting point of the important treaties' revisions in anticipation of futures integrations. The association of enlargements and treaties' revisions has therefore been specifically included in the texts with the *rendez-vous* clause, like the one appearing in the protocol on institution annexed at the *Amsterdam Treaty* (European Union 1997): "At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions". It is always the *Amsterdam Treaty*, article 49, that has introduced, as a modification of the *Treaty on the European Union*, the norms which a State needs to respect in order to integrate the EU: "Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union". In such a way, the *Amsterdam Treaty* has increased the constitutional exigencies for the member states. Looking at the text, we can notice that the constitutional exigencies are included in the enlargement procedure and they are mainly addressed to the candidate states. Nevertheless, the reference to article 6§1<sup>4</sup> creates a circularity between Union's enlargement and the necessity of strengthening the constitutional requirements inside the Union, as H el ene Gaudin says:

The norms of article 6§1, political norms, structural norms, elements of a 'Community of values', these norms are therefore close to federal norms. They sketch a new status of the member States of the European Union and therefore a new nature of the European Union itself. [...] The respect of article 6§1 imposes, both at the Union and at the candidate and member States, a constitutional procedure. Therefore, the respect of these norms implies, for the Eu, new revision procedures or, if not a constituent power, at least an adequate constitutional procedure (Gaudin 2005, traduction personnelle).

In 2002, date of the conference of which the above quotation is an extract, it was already possible to foresee the risks that the temporal intersection of these two events would entail. The constitutional process imposed important choices concerning the reorganisation of treaties and the political nature of the EU. This, added to the pressure produced by the enlargement, was a factor of inaction, considering the fact that the Union has always been characterised by a slow evolution: "If anxiety has to be the rule it is because, once the two terms get in contact, they mutually influence one another and they alter on issues of unity and diversity. The intersection of the aims will not be without consequences. And if the image of

intersection or crossroad expresses both an encounter and a distance, it poses also, above the apparent simultaneity of the two events, the question of priority” (Gaudin 2005:436).

iii. *Something more than an International Organization?*

As it was possible to notice during the French referendum of 2004, the concomitance between enlargement and the Constitutional process has produced several tensions. In part, those tensions are caused by the difficulty of finding at the EU level the specific link between citizenship and territory that the Nation-State established. This involves the issue of state’s sovereignty, according to the well-known definition given by Max Weber. Therefore, its redefinition is inevitably inscribed in the evolution of the EU and at the same it provokes conflicts between the member states and the Union. This becomes even more problematic when we consider that the Union is not a state and therefore can’t centralise national sovereignties at the community level. We also have to take into account that it is not possible, or at least not directly, to apply the general theory of the state, which regulates the issue of territory, sovereignty and borders of the modern state, to the EU. It is nevertheless useful to use some of the insights of the modern theory of the state for the issue of European territory. How and according to which method would it be possible to analyse the link between territory and citizenship in a political entity which is not a state? On the one side, we could say that the problem of the link between European territory and citizenship does not exist, since there is no European territory but only member states’ territories. We could therefore ask only the question of the link between them and European citizenship within the framework of European integration. Enlargement as a juridical category does not exist in European law: all we can find is the history of the different integrations. From a strict juridical point of view, the only formalised case is the one of admission in an international organisation, and enlargement is nothing than a simple extension of the European Union. Nevertheless, reducing the enlargement process to the admission of one or more states in an international organisation means avoiding all the aspects that associate it to the redefinition of the European Union as a political entity. The common points between enlargement and admission in an international organisation are the will of ensuring cohesion among member states following political criteria discretionary fixed and the determination of pursuing the original aims. But EU enlargement shows formal and substantial differences from such a situation. The political criteria expressed in article 6§1 of the Maastricht Treaty did not always exist: in the former article 237 CEE the only character that a state needs to have to candidate is to be European. Treaties do not even mention the thirty and one chapters of the *acquis communautaire* as a condition for integration, so that some commentators express doubts on

the juridical basis of the obligation of adopting the *acquis* by candidate states. Enlargement is the spatial, temporal, political and juridical realization of the project of the founding fathers of a Union always more integrated among European people. The acceptance, by the member state, of the homogenization of national systems of law according to common norms means that the spatial construction of the EU is symmetrical to its political integration<sup>5</sup>. The two processes – the enlargement and the constitution – are characterised by intergovernmental elements which are nevertheless brought back into a political framework that goes beyond Nation-States. Territory is located at the crossroad of the two events. The issue that the right to free movement of EU citizens arises is whether there is something in common among the territories of the member states. Bernard Coulie, concerning the European directive 2004/38/CE, writes

The right to free movement recognized by the directive is extended to the territory of the member states and therefore recognizes, implicitly, that there is something in common among those territories that justifies the right to free movement. Outside the membership of the State to the Eu, what do those territories share? To put it differently, this is the question of the nature and characteristics of a European space (Coulie 2006):

iv. *Political authority and the exercise of competences*

Inquiring about European space means also questioning about European identity, about what allows to have a common system of references and about the political bond that helps building a common space and that is at the same time produced by it. In which way is territory at the crossroads of enlargement and constitutionalisation? Which is the link between territory and a European political bond? We argue that, even in the time of globalisation, territory remains the basis of the exercise of powers and competences of every juridical and political entity : “all juridical reflections can’t avoid territory because law is the unity of order and localisation” (Andriantsimbazovina 2005:444). Therefore, territory and European citizenship are bounded together by the fact that they both refer to the issue of the political unity of the EU. The problem is if the EU, an atypical political entity, disposes of a territorial basis over which it can exercise its competences. In this respect, the peculiarity of the EU is double. On the one side, there is the problem of the borders of the EU and of their limits, a problem which is extremely relevant today if we think about the integration of Turkey. How can European citizens identify with a political entity that has no defined borders? European territory is on this point substantially different from national ones, whose frontiers are constitutive of the political identity, but it also differs from imperial systems. The geographic expansion of the EU is not done by the means of invasion and war but in a pacific way. The EU is one of the rare cases of political entity that increases its territory without the use of

violence and by mutual agreement of all the actors. The second peculiarity of EU's territory is that it is not one from a juridical point of view. Nevertheless, the French juridical theorist Georges Scelle drafted, in the Thirties, the idea of territory as a limit of competences:

The territory could therefore be the support of different political collectivities, which could be inter-states, supra-states or extra-states and it could in this way delimit the competence of various series of governments or actors. Territory can't be the distinctive element of a given juridical system, in this case the State system, when other juridical systems use the same territory to delimit the competence of their subjects of right. The use of territory is in no case exclusive and the evolution of international bonds has tendency to make it become more and more common (Andriantsimbazovina:445).

Can we apply this conception of territory to the EU? For the moment, we can argue for an idea of the EU as a political community and therefore of European citizenship as 'territorial'. Territory, as modern political category, plays an essential role in the political integration of Europe. The Constitutional treaty, the French and Dutch referenda and their results confirm the relevance of an analysis of the link between territory, both national and European, and the constitution of a European citizenship. Is the reinforcement of the feeling of identity of the citizens to a given political community compatible with a geographical and political enlargement without limits? How can enlargement and constitutionalisation go together? This is the debate on the deepening of political integration and its relationship with geographical enlargement. On the one side, the conservative forces say that it is not possible to progress in the direction of a further enlargement before the *acquis communautaire* has been digested by the candidate States; the reform voices incite on the contrary to progress in the enlargement, estimating that this can reinforce political integration. Certainly, enlargement, and therefore the integration of new states and territories with their own juridical systems, provokes tensions in the political and juridical integration of the EU. The categories of territory and citizenship are at the core of such pressures and, even if the national heritage is not cancelled, it is certainly radically modified. Tensions between conservative and progressive forces in respect to political and geographical enlargement contribute to the changes of the national structure of both territory and citizenship. Michel Virally, talking about juridical continuity, says:

In every juridical order there is a tension between forces that want changes and forces that want the preservation of the *statu quo* and their balance can be very different according to the periods and the societies taken into account. The result is in any case that this order can't indefinitely immobilise the norms that constitute it and at the same time can't suddenly be revolutionized. This permanent transformation is what it is called the continuity of right. Nevertheless, the inner tension of the juridical order can lead to a break-up, to a crisis or a revolution that creates a rupture in the continuity of the juridical order. To which extent and in which measure is this rupture relevant, it is what we still need to ask (Virally 1998:188).

The tensions between the deepening of political integration and the geographical extension have led, for the moment, to a political crisis of the European Union. Charles Leben defined revolution in international law as ‘a way of transformation through conflicts of one of the constitutive elements of State, in practice either power or territory’ (Andriantsimbazovina 2005:450). In the case of the EU there is no revolution and no State at least in the modern sense of the term, but there are deep transformations of both territory and power.

## 2) THE CONSTITUTION OF A EUROPEAN TERRITORY

### *i. On a peculiar absence*

What surprises the reader of the European Constitutional Treaty is the absence of any explicit reference to the issue of European territory. We could say that territory is what it is left unthought in EU integration and in the process of its constitutionalisation. This absence is even more noticeable since it is traditionally the role of a constitution to define the territory over which it has its validity. In general, but not always, constitutions formalize the appropriation of a territory of the unification of different territories that were separate before. An example is given by the Constitution (Fundamental Law) of the USSR written in 1997 and stating that: ‘the territory of the Union of Soviet Social Republics is a unique entity and it comprehends the territories of the Union’s Republics’ (art. 75). Another example is given by the post-soviet constitution of Latvia : “The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale” (art. 3). There are also constitutions that do not say anything about the borders and the extension of the territory, but that in any case affirm its sovereignty and inviolability, like the constitution of post-soviet Bulgaria: “the integrity of the territory of the Republic of Bulgaria is inviolable”. In the main cases in which there is an explicit statement of state’s borders, like the constitution of the United States of America, of the USSR or of the German Länder, they refer to the union of separate territorial elements. Often this implies that the borders of these constituting units are not defined and this means that, even in constitutions that make explicit statements on territory, these statements are based on a priori. The issue of territory is therefore a puzzling question for each constituent act, because, on the one side, constitution applies to a defined territory, but, on the other side, if the territory to which the constitution applies is already defined, this is an extra-constitutional act.

European Constitution seems to consider the issue of territory as non problematic, since it does not treat it. Nevertheless, all the conflicts created by the possible integration of Turkey

or by the enlargement to the East tell us exactly the opposite. The silence that surrounds the issue of European territory is therefore even more revealing. The notion of territory of the European Union is problematic exactly because it is difficult to talk about it, as, symmetrically, it is difficult to talk about the political aims of the Union and to talk about a European Constitution 6. To the silence of the European Constitution on territory, we should add its ambiguity concerning the issues that implicitly treat about territoriality. This ambiguity derives from the fact that the process of European integration is built on national territoriality: European territory is made by the sum of national territories but it is also something else than a simple accumulation. The European process is built on a project of reconfiguration of the European political space. The European Union is therefore an attempt to reframe national territoriality, this is why it is so crucial to interpret the way in which the institutional actors talk about European space. Luiza Bialasiwecz writes on the ambiguous way in which the European Constitution talks about territory:

Nowhere is this ambiguity more apparent than in the draft Constitution of the EU. The document is both an exercise in consolidation and a statement of aspiration, and this is particularly the case when the draft Constitution speaks, or on occasion does not speak, of territory. Indeed, territory is powerful precisely when it is absent, because it is taken for granted. It would be tempting to think that this absence is logical, given the Union's particular condition. [...] Rather, precisely because of peace, it appears that the territory at stake can be assumed in the document, can be left unquestioned and unsaid as, more generally, can the sense of territory this presupposes. But can it be left unsaid? And, more important, is it really? We suggest that the ghost of modern territoriality continues to haunt the draft document and all deliberations surrounding it. In particular there is a profound tension in how the draft Constitution conceives of territory. It is used *both* to mark 'traditionally' territorial (read: Nation-State) imperatives (such as the defence of sovereign space and the regulation of immigration) – *and* in a more aspirational sense, to evoke the birth of 'a special area of human hope' called 'Europe' (Bialasewicz, Elden and Painter 2005:340).

If it is possible to say that the ghost of modern territoriality is still hunting European integration, is the EU a modern political entity or not? Can we identify *tout court* modern or 'hard' territoriality with the modern Nation-State or modern territoriality can also exist outside of the Nation-State?

ii. *European space of liberty, security and justice: the idea of a space with no internal borders.*

One of the main features of European territoriality since the beginning of the European project is the absence of internal borders. It is the dream of a homogeneous space, without ruptures and hierarchies. It is the opposite of 'hard' territoriality, which is typical of Nation-States and which presupposes enclosure and differentiation. The removal of internal borders is one of the two essential territorial aims of the European political project and it is explicitly addressed in the Constitutional Treaty through the promotion of territorial cohesion. The article I-3§2 of the *Treaty establishing a Constitution for Europe* states: "The Union shall

offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted”. Among the specific provisions relating to the area of freedom, security and justice, article I-42§1 establishes that:

The Union shall constitute an area of freedom, security and justice: (a) by adopting European laws and framework laws intended, where necessary, to approximate laws and regulations of the Member States in the areas referred to in Part III; (b) by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions; (c) by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences.

These specific dispositions are ambiguous: first of all, the use of the verb ‘constitute’ makes the reader doubt if the EU is composed by already existing elements – in this case the area of freedom, security and justice is the sum of national spaces – or if the EU establishes something new – in this case an area of freedom, security and justice to be further added to national spaces. The clause I-42§1 seems to suggest this second hypothesis, since it describes the European space as unfinished and as a work-in-progress. The term used is the one of ‘area’: which is its link with the term of ‘territory’, both European and national? The notion of ‘area’ is often used in the EU lexicon. The terms of area and space are often in relationship with the category of ‘European common market’ and this indicates that the notions of area and space are preferred to the one of territory to express the idea of unity and homogeneity. Territory, on the contrary, indicates the part, the division, what is fragmented and hierarchical.

### *iii. Smooth and Striated Space*

To use the concepts of Deleuze, we could say that the ideal EU space is smooth, instead the spatiality that the EU inherits is the striated space. The smooth space is qualified by Deleuze as nomadic, instead the striated space is seen as sedentary. The striated space is the one of the State and of the polis in opposition to the rural and pre-urban space and the migration space, which are smooth. It would be tempting to apply this opposition to the couple EU/Nation-State; nevertheless, it would be too simplistic. Deleuze himself says that the dichotomy smooth/striated is much more complex than it seems at the first sight. He says that the two kinds of space never exist separately, but, on the contrary, they are always entangled and indivisible. It would be easy indeed to identify the smooth and nomadic space with the European area of free movement. But, according to Deleuze, homogeneity is the feature of striated space, the one of the State. The European Union is characterized by the entanglement of smooth and striated space, or, to put it differently, of a space of circulation and a Nation-State space. One example is given by the Schengen area: at the beginning it was an initiative of some member states and only in 1999 it has been incorporated in EU law. Schengen space

is a complement to the area without internal borders. The same tension between 'hard' and 'soft' territoriality can be found in the features of the area of freedom, security and justice: there is the need to encourage free movement but at the same time to assure security.

If the idea of an area of free movement was present since the beginning of European integration, the area of freedom, security and justice was born with the Amsterdam Treaty. The economic borders were formally abolished with the completion of the single market on the 31st of December 1992. Nevertheless, the right to free movement of citizens as distinguished from free movement of workers has been established by the Maastricht Treaty in 1992. Despite this, the suppression of internal borders achieved with the single market was a 'fiction'. It is only with the creation of the Schengen area and then with its incorporation in the Amsterdam Treaty that the idea of a space without internal frontiers becomes concrete. The Amsterdam Treaty has formally established an area of freedom, security and justice and it has therefore 'communitarised' 'visas, immigrations and other policies connected to free movement of people'.

The Constitutional Treaty is a significant step in the development of the area of freedom, security and justice. Even if Amsterdam has been an important moment in the accomplishment of this area, there were still many inefficiencies and some procedures were too complex. Recent events, like the 11th of September or the stronger migratory pressure called for substantial modifications that the reticence of member states could not prevent anymore. The symbolic date of 1st May 2004 was crucial in this respect, because of EU enlargement. The treatment of the area of freedom, security and justice is therefore unified in the European Constitution. Nevertheless, the tension between the communitarian treatment of these policies and their fragmentation in national competences persists, as the article III-257§1 testifies: 'the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States'. This articles suggests the need for the whole European construction to respect the role and the competences of the Nation-States. The article I-42§1 specifies the conditions for the constitution of the area of freedom, security and justice. The convention for the European Constitution had to find a way to give relevance to the roots of this area national juridical systems and practices.

In this respect, a more innovative clause is introduced in the European Constitution, the 'solidarity' clause at the article I-43:

The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: (a) prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

The solidarity clause is also cited in the general dispositions of chapter IV, part III, concerning the area of freedom, security and justice, at the article III-257§2:

It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Chapter, stateless persons shall be treated as third-country nationals.

iv. *Hard and Soft Territoriality*

First of all, we can notice that the notion of territory is evoked in its national meaning: it is the strong, hard sense of territoriality, which is specific to the general theory of the state and which is the mark of the sovereign power of the state. It is not idle to ask why the possibility of an armed aggression is limited to member states' territories: why the eventuality of an attack in international waters or air space is not mentioned? And what about an aggression that would have as object citizens of a given member state being on the territory of another member state? There is the permanence of a notion of territory which is maybe not the best adapted to the security needs of today's EU. Territoriality of member states is in part in conflict with European aspirations to a common territoriality. Nevertheless, the solidarity clause and especially its use in the context of migration policies suggest that the control of national states over their territories is weakened by the demand of the creation of a European space of control of the fluxes of people, a tendency that is testified by the abolition of pillars in the European Constitution. The solidarity clause is not pure rhetoric. Until today the theme of the 'burden sharing' often evoked by Germany was only supported by the article 63§2 of the *Treaty establishing the European Community* on the reception of asylum seekers. With the Constitutional Treaty is the whole 'common' migration policy that is concerned, because of the worries of borderland states.

According to the article I-3§3, one of the essential aims of the EU is territorial cohesion: "the Union's aim is to promote peace, its values and the well-being of its peoples". We are here confronted to an idea of European space quite abstract and vague, whose essential feature seems to be the progressive suppression of all inequalities among EU regional and national territories. The expression of 'territorial cohesion' is an innovation introduced by the

Constitutional Treaty in the EU lexicon. The ideas of economic and social cohesion were forged by the Single European Act in 1986 and they concerned the achievement of the common market. The less economically performing member states, fearing that the common market would penalise them, insisted for the adoption of measures favouring a well-balanced development of the market. Territorial cohesion is a revision of this concept specific to the Constitutional Treaty. Article III-220 establishes that:

In order to promote its overall harmonious development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions. Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

v. *Between Homogeneity and Heterogeneity*

The aspiration is to smoothening all the differences related to territoriality, both as natural resource and as political organisation of this natural resource. We find again the idea of an homogeneous space, which is the result of a political action of the Union. Even if EU policies of inequalities' reduction create specific territorialities, the idea of territorial cohesion is an aspiration, an ideal. The image of a European space without differences is a response to the desire of evacuating modern territoriality. Nevertheless, modern national territoriality is extremely present in the Constitutional Treaty. The structuring of European territoriality is based on the ambiguity according to which the EU does not have its own territory but at the same time adopts the ideal of a space without national borders and ruptures. How can these two aspects coincide: on the one side, the fragmentation of the European space in national territories, on the other side the ideal of a homogenous and continuous space? This attempt to create a territorial cohesion and an area without internal borders is apparently in contrast with the clause I-5§1, that suggests that "the union shall respect the equality of member-states before the constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. it shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security". As Linda Bialasiewicz and Stuart Elden write:

This tension between an 'area' or 'territorial cohesion' at EU level, and 'territorial integrity' of individual states maybe merely the usual EU problem of trying to balance state powers and supra-national powers. Territorial cohesion refers to (mainly) economic disparities whereas respect for territorial integrity of member states refers to security issues and possible secessionism. But is it simply the case of the coexistence of 'hard', Nation-State territorialities alongside (apparently non-territorial) aspirations? The straightforward sense of the territory of a state is that 'any state has a clearly delimitable space where it

operates. In order to specify that area in detail it is necessary to consult international law...The basic institution is the control of the employment of physical force in a territory (Lane 1996:91, following Weber 1971:510-511). But the question is wider than merely physical force, for it also relates to the jurisdiction of any legal power. EU lawyers, for example, talk of the 'legal space' within which 'European' laws hold sway (Bialasewicz *et al.* 2005:345).

The problem of EU external borders has not been dealt with in the European Constitution. On the contrary, this issue remains the unsaid of European integration. It is reflecting on this silence that the importance of territory becomes evident as a key element for the definition of a community of citizens. The political and territorial enlargement of the EU does not follow the classical modalities of conquering, but it employs desire and demand to become part of a 'club'. Nevertheless, it is a difficult task to politically master such modalities of territorial extension exactly because there is no political discourse that makes them acceptable to citizens. European citizens feel disoriented by the fuzziness of moving frontiers and they do not see neither their end nor their aims. The Constitutional Treaty does not talk about the geographical borders of the Union and of the way of limiting them. The very problematic issue of the integration of Turkey had an impact on the elaboration of the text, as well as the future integration of the Balkans. However, the silence of the Constitutional Treaty on the limits of EU borders can be read in different ways.

One possible reading is that there is actually no agreement on the external borders of the EU and, in this case, the silence is justified by the real uncertainty of the situation; the second possible interpretation is that, at the opposite, there is a consensus on the definition of European borders but it is difficult or even impossible to say it openly since it would create too many controversies in the public debate. The third hypothesis is that there is no need to say which are the geographical limits of Europe because it is the prerogative of the member state to decide according to each specific candidate state. The last possibility is that each State that accepts European norms and values can join the Union. The last two cases would make it possible for states situated outside the conventional geographical limits of Europe to become members. The articles I-1§2 and I-2 of the Constitutional Treaty seem to validate these two hypothesis, which are not mutually exclusive: it could be that there are normative criteria for the adhesion but that they are not transparent and specific enough to elude all arbitrariness in the final decision, which would be taken by member states. The article I-1§2 states that "the Union shall be open to all European States which respect its values and are committed to promoting them together".

This formulation evokes the well-known Copenhagen criteria that must be respected by each country which is candidate for integration. These criteria can be efficient on the juridical level, but they rise possible conflicts on the political and cultural level for the definition of a European territory. Even if the institutional actors have stated that negotiations with Turkey would become effective when the country will respect the Copenhagen criteria, Turkish political leaders say to doubt about it and the French clause of a popular referendum concerning the integration of Turkey is not the last of their worries. The integration of Turkey poses the problem of territorial borders of the EU in association with the one of cultural borders, especially in relationship the other unsaid issue in the Constitutional Treaty: the problem of the religious identity of the EU. During the years of the Cold War, the limits of EU were already established by the geopolitical situation. The end of the Soviet empire has posed the problem of the identity and the frontiers of the EU.

vi. *Toward a Common European Immigration Area*

EU borders, even if moving and fluid, are however constantly redefined by migration movements, both of European citizens and of third country nationals. The Constitutional Treaty does not modify the Maastricht and Amsterdam dispositions on free movement. The article I-10 confirms that 'Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have the right to move and reside freely within the territory of the Member States'. But on migration policies the Constitutional Treaties and the new Lisbon Treaty go further than former Treaties. They inscribe the conclusions of the Tampere meeting of 1999 in EU law in order to create a EU policy of asylum and immigration. The institutional framework of this policy is developed in the section III, title III of the Constitutional Treaty and we can find here the classical, modern and national sense of territoriality.

The capacity of deciding who can come in and under which conditions is an essential attribute of national sovereignty and it is central to the capacity of the state to make claims over its territory. Nevertheless, we see that this traditional meaning of territoriality is modified by the relevance of a European control over fluxes of people. In this respect, the treatment of the migratory issue is at the same an important indicator and a factor in the process of construction of a European territory. It is not insignificant that the migratory policies of the EU are put under the title III of the part III, whose title is 'internal policies and actions'. Nowadays, the European Union does not have a common policy concerning immigration, on this point the Constitutional and the Lisbon treaty innovate, also because they foresee the

abolition of the three pillars. It is the tentative to create something new, a European space of immigration, even if the specific term is not used. A European immigration space would be a new and powerful form of European territoriality. The article III-265 states that:

The Union shall develop a policy with a view to: (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders; (b) carrying out checks on persons and efficient monitoring of the crossing of external borders; (c) the gradual introduction of an integrated management system for external borders. C 310/114 EN Official Journal of the European Union 16.12.2004 2. For the purposes of paragraph 1, European laws or framework laws shall establish measures concerning: (a) the common policy on visas and other short-stay residence permits; (b) the checks to which persons crossing external borders are subject; (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period; (d) any measure necessary for the gradual establishment of an integrated management system for external borders; (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders. 3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Analysing this text, we can see that the will to create a common space is evident. The ambition expressed in Tampere is now assumed also by those who preferred to stick to ‘minimal measures’ – in virtue of article 63 of the Treaty on the European Union<sup>7</sup> - expressed by the *Amsterdam Treaty*. Instead, the Tampere conclusions promised to “put into being a common European asylum regime, based on the integral application of the Geneva Convention and aiming at ensuring therefore that nobody will be sent back there where he risks again to be persecuted” (Labayle 2005: 463, *personal translation*). The tension between a traditional form of territoriality and a different form of it, even if equally powerful, is evident. Article III-265§3 wants to reassure member states on their sovereign prerogatives on national territories, but articles III-265§1 and III-265§2 state the pre-eminence of a territoriality at the scale of the EU and the importance of managing and controlling the fluxes in provenance from the outside but which will occupy and reframe the inner space. Article III-267 states that: ‘the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows’. The accent is on people’s movements, both at the inside and at the outside of the Union. Immigration policies are therefore the other side of citizenship policies and of the process of construction of a European territoriality. Article III-267§2 paragraph b introduces also rights, still to be determined, for third-country nationals, concerning free movement on EU territory:

For the purposes of paragraph 1, European laws or framework laws shall establish measures in the following areas: (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.

It is true that, because of the abolition of internal frontiers, it will be in any case difficult or even impossible to prevent free movement of third-country nationals from one member state

to the other. Nevertheless, article III-267§5 wants to support member states' sovereignty concerning migratory fluxes: 'This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed'. The development of a European system of right for non-citizens, a sort of denizenship, would be particularly important for European citizenship. This would enable all who are not European citizens, but who reside legally in one of the member states, to benefit from at least a part of the rights associated to European citizenship on the totality of the European space. One of the paradoxes of European citizenship is that it is possible to acquire it by obtaining the citizenship of a member state, and the member states continue to exercise their sovereignty on the conditions of attribution of citizenship. It is therefore impossible to directly become European citizen. At the opposite, if the norms of the Constitutional Treaty and now of the new Lisbon Treaty concerning EU rights for third-country nationals legally residents on the European space are going to be applied, it will be possible to directly acquire some of the rights being part of European citizenship without being citizens of one of the member states.

The chapter of the Constitutional Treaty concerning the European immigration policy talks about a European territoriality much more developed than the one formalised at present by the Treaties. The abolition of internal borders and the perspective of extending the right of free movement to non-citizens, with the reinforcement of controls at the external borders, reinforce at the same time the internal and the external aspects of European territoriality. Nevertheless, as we can see from articles III-265§3 and III-267§5, there is an ambiguity and a tension between the notion of national territoriality and the one of European territoriality. The traditional, state-national, sense of the notion of territoriality resist, but the fact that it needs to be explicitly reaffirmed signifies that it is also weakened and re-bundled by the process of European integration. The association of a homogeneous territoriality – the one of the space of freedom, security and justice – with a differentiated and hierarchical territoriality – the one of the European space of immigration – shapes a form of political territoriality that take over some aspects of traditional territoriality but at the same time transforms them in a different form of territoriality.

We can conclude from this analysis that the European Union is not a de-territorialised and a-spatial political entity. On the contrary, European citizenship, which is the expression of the project of a European political community, is a territorial and spatial concept. In the European space there is the coexistence of the two forms of territoriality: modern, hierarchical

territoriality, striated by divisions and differentiations and ‘nomadic’ territoriality made of fluxes of citizens, moving in a space without internal borders, smooth and without closures. The tension that characterizes the European space as well as member states’ spaces is at the core of modern territorial imaginary. It is a tension between an aspirational and normative territoriality which allows everyone to freely circulate and a ‘hard’ territoriality that is a tool for controlling who has access to this space and who can not. All constitutive acts need to ordinate norms and ideals in space and all presuppose the territorialisation of power, security and identity of the political community. As a consequence, all constitutive acts and all political constructions are marked by the imaginary of modern territoriality.

The issue of the construction of a European territoriality is of course much wider than the case of the European Constitutional Treaty and now the new Lisbon Treaty. Nevertheless, the analysis of the European Constitution helped us understanding the relevance of the connection between spatial and political integration of the European Union.

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<sup>1</sup> On the debate concerning the unbundling of territoriality in the post-modern State, see the well-known article of Ruggie on *Territoriality and Beyond: problematizing modernity in International Relations*; for a critical account of Ruggie's argument, see Ansell, *Restructuring Authority and Territoriality*, in Ansell and Di Palma (2004).

<sup>2</sup> See for example the thesis of Enrica Rigo (Rigo 2007) : "Arguing that European space has cut any stable link with territory cannot of course mean that it claims for an unlimited sphere of validity, but only that its limits are not for ever and precisely fixed like in the case of State's territory. Nevertheless, this has another meaning that needs to be underlined. In the case of modern State, the limits of territory have also marked the limits of the exclusive sphere of sovereignty of the State. To put it differently, they represented the demarcation lines along

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which the different spheres of State's sovereignty rejected one another with mutual exclusion: it is not possible for two States to exercise their sovereignty on the same territory at the same time, since sovereignty expresses a power that excludes other powers from its exercise. On the contrary, the spatial distribution of the political efficiency of European space does not exclude the Member States. And it is probably for this reason that there is a trend not to use the category of sovereignty to talk about the Eu. The term of 'de-territorialization' is used in this book to state not only the fact that Eu's borders do not coincide with any geographical and precisely delimited expression, but also to stress the fact that they represent a privileged place where the exercise of sovereign power is shared among different actors" (personal translation).

<sup>3</sup> "Materially, the case for the CT [Constitutional Treaty] was that, like the Amsterdam Treaty before it, the Nice Treaty left unfinished institutional business in the face of the pending CCEE Enlargement, particularly with regard to streamlining legislative voting procedures and refining the executive direction (through Commission and European Council) of an EU of twenty plus. But this calculation was never about the overall scale or scope of the reform program. Even if we define the urgent contemporary agenda more generously than the management of enlargement, and include other timely initiatives that found their way into the text such as greater foreign policy co-ordination through an EU foreign minister and steps towards a more extensive, but also more accountable, post 9/11 supranational capacity in the area of internal security, the changes contemplated by the CT were no more significant than those wrought by various earlier treaties" (Walker 2006).

<sup>4</sup> The article 6§1 of the consolidated version of the Treaty on European Union states that: The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

<sup>5</sup> "Enlargement is an instrument and a manifestation of the progress in European integration, which is a dynamic process that develops the common exercise of members' competences, or substitutes to the them the specific competences of the organisation itself. Such a process transforms the organisation and the member states. Of course, at each step their agreement is necessary, but the conception of the Union's structure tends to radically overtake inter-statism through a new form of political organisation. The Eu is different both from a classical international organisation and from a super-state and tends to become an original kind of political society. Which would exceed the traditional state framework without absorbing it' (Andriantsimazovina 2005:443, *traduction personnelle*).

<sup>6</sup> "The French 'no' translated the preoccupation for a badly managed acceleration on the level of territorial extension. The Maastricht Treaty, approved in 1992 in France by a restrained majority, created a common currency and confirmed the integration of the re-unified Germany in the European system. But in 2005 the geopolitical conjuncture was different. At the continental level, the enlargement of May 2004 to ten new member states, even if justified at the historical level, has not been the object of clear political discourses: this decision was taken without a public pronouncement and this has created the feeling of a 'history without words. Certainly the French electors perceived this triple change of scale, full of consequences, that would have needed a deep reformulation of the European project. Why should citizens identify with a European political project in a situation marked by economic and geopolitical uncertainty?" (Foucher 2007).

<sup>7</sup> The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt: 1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas: (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States, (b) minimum standards on the reception of asylum seekers in Member States, C 325/58 EN Official Journal of the European Communities 24.12.2002 (c) minimum standards with respect to the qualification of nationals of third countries as refugees, (d) minimum standards on procedures in Member States for granting or withdrawing refugee status; 2. measures on refugees and displaced persons within the following areas: (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection, (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons; 3. measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion, (b) illegal immigration and illegal residence, including repatriation of illegal residents; 4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States. Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements. Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.