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## **Who is in the driving seat? The influence of three small countries in the “Cockpit of Europe” on European Union integration.**

The 21st century is quickly approaching, bringing with it new way of seeing ourselves, and the world in which we live. We live in the platinum age, where technology and ease of communication dominate our every day lives. The nineteenth century with its empires, and thereafter the birth of nationalism is long gone, and new political structures have been developed by the various states. Global regionalisation and internationalisation have become by-words for the modern political age, with legal structures being developed to govern and regulate the ensuing developments. The end of the W.W.II witnessed the end of empires, and the fragmentation of original power structures into various nation states. Some of these states, particularly in Western Europe, saw the strength in safety in numbers, and the benefits of pooling of national sovereignty for the benefit of all. Small states, and states weak as a result of the W.W.II came together to create International organisations and Supra-National bodies, in order to help the Phoenix to rise from the ashes. This view was reflected by Sean F. Lemass, a former Taoiseach<sup>1</sup> when he stated that “only in such a regional grouping” can small states “make the best of their resources and potential, preserve and develop their cultural heritage”. He even went on to say that small states can “make a contribution to the progress of Europe and the World”.<sup>2</sup>

The first moves in Supranationalism occurred with the forming of the European Coal and Steel Community in 1951,<sup>3</sup> with the Europe of the six eventually developing into what is now the complex and highly successful European Union. The success of European experiment has led to other regional organisations being founded around the world. Examples of these include NAFTA and ASEAN, with the increasing confidence of states operating in a shared sovereignty situation giving rise to the founding of the World Trade Organisation in 1994 pursuant the Uruguay Round of GATT. Each of these organisations is composed of both small and large countries,

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<sup>1</sup> Irish equivalent of Prime Minister.

<sup>2</sup> Noble Symposium 17: Small States in International Relations. EDS. August Shou and Arne Olav Bruntland, Wiley 1971. Sean F. Lemass.

<sup>3</sup> Treaty Establishing the European Coal and Steel Community, Paris, April 18, 1951.

with small countries no longer feeling intimidated by their larger neighbours. The answer to this revolution in global politics in such a short period of time since the end of the W.W.II rests with three small countries situate in the “Cockpit of Europe”, and with one of them in particular, Luxembourg.

The Benelux experiment itself has been used as a model for possible moves towards integration by both the Baltic States and the Visegard countries<sup>4</sup> when these two groups of nations were examining possible routes for exploiting their new found freedom. The Benelux undertook the initiative and invited these countries to “benefit from its experience” in creating free trade areas, and other issues pertaining to integration. While the uptake on this initiative has been varied, the Benelux foresees a role for itself as mentor to other new and evolving states with regard to other integration projects in the future.<sup>5</sup>

The first moves towards the development of the Benelux were signalled by the signing of the 1921 Belgium - Grand Duchy of Luxembourg Convention. This came into force in 1922, founding the UBEL (“L’Union Economic Belgo-Luxembourg”), which operated as an internal free trade association between Belgium and Luxembourg, complemented by a monetary association, and a common customs frontier. National sovereignty in the UBEL was not transferred to a supranational body, but rather the sovereignty and political institutions of the two partner states was mixed, thereby, from the point of view of Luxembourg, increasing its economic space, and gaining it access to the seaboard.<sup>6</sup> The UBEL operates through a Committee of Ministers, an Administrative Commission, and a Council of Customs,<sup>7</sup> with the UBEL Committee of Ministers operating much in the same was as the later Benelux Committee of Ministers.

The next sovereignty sharing arrangement entered into by Luxembourg and its partners was the agreement on the 5th September 1944 to the creation of a customs union with Belgium and the Netherlands. This became known as the Benelux, with the partner states holding the opinion that they had “not only a desire but a obligation to play an active role in

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<sup>4</sup> Comprising Poland, Hungary, the Check Republic and Slovakia.

<sup>5</sup> Benelux - Past Present and Future 1.10.93 General Secretariat of the Benelux Economic Union. Page 20.

<sup>6</sup> Luxembourg in the Economic Union of Belgium - Luxembourg, Benelux 87/4.

<sup>7</sup> Thus reflecting the looser structure of the organisation, and emphasis on customs issues.

world affairs”<sup>8</sup>. The creation of the Benelux was taken while the governments of the three partner states were still in exile in London. The ensuing delay until 1958 in enacting the Benelux Economic Union Convention was as a direct result of the “striking difference in post war recovery of Belgium and the Netherlands”,<sup>9</sup> with the convention being structured as an agreement between the Netherlands and the UBEL.<sup>10</sup>

The Benelux Customs Union developed into the Benelux Economic Union in 1958 with the signing at the Hague on the 3rd of February in that year of the Treaty instituting the Benelux Economic Union. This treaty states as its aims the co-ordination of policies “in the economic, financial and social fields”,<sup>11</sup> and the “pursuit of a joint policy in economic relations with third countries”.<sup>12</sup> Free movement of nationals,<sup>13</sup> goods,<sup>14</sup> capital,<sup>15</sup> and services<sup>16</sup> are also guaranteed, with a common foreign trade policy to be developed.<sup>17</sup> Like the Treaty of Rome<sup>18</sup> creating the European Common Market, the 1958 Customs Union treaty is aspirational in tone, encompassing both short term and long term objectives.<sup>19</sup>

The partner states of the Benelux, by virtue of their size, derive a higher proportion of their GNP from foreign trade than larger nations of the world. Luxembourg and its partners have therefore been guiding the development of their foreign policies towards the opening up of new commercial markets, with the minimum of “unnecessary political involvements”.<sup>20</sup> This drive to increase their economic hinterland has led the Benelux partner states to develop a dynamic internal and foreign Common Commercial Policy with “a relatively higher degree of idealism”<sup>21</sup> coupled with a pragmatic approach to resulting technical and procedural problems.

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<sup>8</sup> The Benelux Nations The Politics of Small - Country Democracies. Gordon L. Weil. Modern Comparative Politics. Series edited by Peter H. Mark. 1970 Holt Rinehart and Winston Inc.: The Benelux Nations in world affairs

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> Preamble to the Treaty instituting the Benelux Economic Union. Signed at the Hague, on 3 February 1958, and which came into force on 1st November 1960. Also Article 1(2).

<sup>12</sup> Article 1(2).

<sup>13</sup> Article 2.

<sup>14</sup> Article 3.

<sup>15</sup> Article 4.

<sup>16</sup> Article 5.

<sup>17</sup> Article 10.

<sup>18</sup> signed on the 25th March 1957, and in force 1st January 1958.

<sup>19</sup> *Op cit.* footnote no. 8.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

The lack of need for technical regulation of problems amongst the partner states has resulted in a steady and unspectacular achievement of goals set out in the treaties, with a slow weaving of a coherent whole from the legal and administrative tradition of the three partner states. The shared national outlooks and political concerns of the Benelux nations have contributed to the successful achievement of treaty targets, and the development of new and strong modes of economic integration. This phenomenon results from the common approach of small states that they are not powerful enough to operate on the world stage. This perception of relative weakness results in smaller state being “ready to shed the inhibitions of sovereignty in an effort to achieve a greater political stability”.<sup>22</sup> Through time the Benelux states have continuously coordinated their approach to issues arising on both the European and World stage, with the European Union’s Council of Ministers receiving representations as the Benelux point of view on various issues, as opposed to the view points of the separate partner states.

Within the European Union the continued development of the Benelux within the European context was provided for by Article 233 EEC.<sup>23</sup> It was envisaged that the Benelux, as a grouping of three states, might be able to circumnavigate some of the pan-European road blocks more easily than the Europe of six. It was not envisaged, however, that the Benelux Economic Union would become a force for change within the European Community itself.<sup>24</sup> The Benelux has been, and continues to be a trail blazer for the European Union in areas such as Common Commercial Policy, internal market issues, customs union, transport, administration, etc.<sup>25</sup> In addition, the Benelux countries have developed areas of co-operation yet to be addressed by the European Union, such as the “co-ordination of sea port policies, physical planning... and landscape and nature conservation”.<sup>26</sup>

An examination of the topic of road haulage cabotage is instructive in the comparison of the integration of the Benelux and the EU. In a true single

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<sup>22</sup> *ibid.*

<sup>23</sup> “The provisions of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of this Treaty”

<sup>24</sup> *Op cit.* footnote no. 8.

<sup>25</sup> La Genese de “Schengen”, Benelux 90/3. Page 5.

<sup>26</sup> The Benelux Union: a Pioneer in European Integration 1.7.87 page 31

market the movement of goods from one part of the market to the other should operate unhindered. Any obstacles placed in the way of road hauliers impede the flow of goods, resulting in a distorted cost structure and avoidable expense and competition distortion in the eyes of the consumer. By December 1992 Benelux liberation of road haulage was “completed”<sup>27</sup> with true cabotage<sup>28</sup> operating amongst the partner states. By contrast a common inland transport policy pursuant to Council Regulation 1017/68 has been slow in maturing in the European Community. By 1993 the European Community was still operating on the basis of licences granted on the qualitative criteria<sup>29</sup> with an initial limited measure of liberalisation of road haulage introduced by Council Regulation in 1989<sup>30</sup> to enter into force in 1998. This limited freedom is subject to the haulier obtaining community authorisation to be issued by the competent authorities of Member States, thus precluding the development of a true single market in Road Transport.<sup>31</sup>

Another example of the precursive role of the Benelux is the Convention d’Union du Territoire Douanier Benelux. This Convention, together with its Protocol, which came into force on the 1st February 1971<sup>32</sup> effectively created a single Benelux market, a full 20 years before the adoption of the highly problematic Single European Act 1992 of the European Community.

The trade association movement has gone from strength to strength around the world, with various states making local and global commitments to lower trade barriers. The concept of free trading blocks with common customs frontiers have been developed in the various global regionalisations that are coming to the fore as we reach the end of the 20th Century. A new chapter in European integration has recently been opened, with the launching of European Monetary Union pursuant to Article 3A EC.<sup>33</sup> The pursuit of monetary union brings with it the need to co-ordinate supporting policies, amongst them economic policy<sup>34</sup> and monetary policy,<sup>35</sup> as has

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<sup>27</sup> Benelux - Past Present and Future 1.10.93 General Secretariat of the Benelux Economic Union.

<sup>28</sup> This means that hauliers can participate in domestic haulage in a member state in which they are not residents

<sup>29</sup> Pursuant to council Regulation (EEC) 881/92 OJ 1992 L95, page 1.

<sup>30</sup> By way of Council Regulation (EEC) 4059/89 OJ 1989 L390 page 3.

<sup>31</sup> EC Competition law in the Transport Sector, Lus Oriz Blanco & Beb Von Houtte, Clarendon press, Oxford 1996 pages 11 and 12.

<sup>32</sup> “Le Territoire Douanier Benelux Unifie” Benelux 71/2/3.

<sup>33</sup> As amended by the TEU.

<sup>34</sup> Articles 102A and 104C EC.

<sup>35</sup> Articles 105 to 109 EC.

been provided for in the EC Treaty.<sup>36</sup> Monetary Union without political union may to some be a radically new idea, but for two of the EU member states, namely Belgium and Luxembourg, operating as the UBEL, this is an area in which they have over fifty years of experience. Monetary associations and full recognition of another's currency, has long been the practice with regard to the circulation of the Belgian Franc in Luxembourg.<sup>37</sup> The complexities involved in monetary union, and the courage required by the UEBL in taking such a step so many years ago is only now being fully appreciated with the advent of European Monetary Union, and the impending arrival of the euro in the citizen's pocket.

Monetary Union in the UBEL context includes, amongst other issues, the holding of gold and foreign exchange reserves in common, being managed by the "Institute Belgo-Luxembourgeoise du Change" with Luxembourg dispensing with the need for its own central or issuing bank.<sup>38</sup> The currencies of the two countries have been managed by the "Institute Belgo-Luxembourg du Change" a precursor of the European Central Bank designated to manage EMU under Article 109 EC.

The Benelux Union treaty for its part provides for the co-ordination of, in addition to investment and monetary policy, social policy. It is recognised by Belgium and Luxembourg that monetary union requires co-ordination and the gradual harmonisation of fiscal and social policy.<sup>39</sup> The Benelux has come to recognise that major differences in fiscal and social policy can give rise to "serious distortions in the exercise of freedom of establishment and the carrying on of economic activities"<sup>40</sup> in partner states, with the debate amongst Benelux partner states currently being conducted on these issues.<sup>41</sup> These deliberations in the Benelux forum have yet to be echoed at the EU level, but could well signal the path that will be taken by the European Union in pursuant of further integration and in support of the nascent euro in the not too distant future.

Another recent European Union development, Schengen, owes its genesis directly to the Benelux. The Schengen Convention, initiated by

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<sup>36</sup> As amended by the TEU.

<sup>37</sup> With the Belgian and Luxembourg franc fixed at parity since 1940.

<sup>38</sup> The Benelux Union: a Pioneer in European Integration 1.7.87 Page 11

<sup>39</sup> Benelux - Past Present and Future 1.10.93 General Secretariat of the Benelux Economic Union. page 11

<sup>40</sup> *ibid.* page 15

<sup>41</sup> *ibid.* page 19

France, Germany and the Benelux, to operate as a pilot project for the Community as a whole, has as its aim the free movement of both persons and goods. This reflects the 1960 Benelux development when the Benelux partner states transferred control of the free movement of persons through their external borders to the Benelux framework.<sup>42</sup> It was the Benelux itself, through its Committee of Ministers, which took the initiative in approaching both the French and German governments, requesting the issue of a gradual suppression of frontier controls for free movement amongst the five countries. The Benelux felt capable of broaching the issue at the level of the EU, as they had benefited from over 10 years experience within the Benelux of such an arrangement.<sup>43</sup> The Secretariat of the Benelux even took over the ensuing five years of difficult negotiations of the Schengen Convention. Issues to be addressed included organised crime, drugs and arms trafficking, international terrorism, the issuing of visas to third country nationals, and issues of asylum and refugee status. In order for the Convention to operate effectively the issue of International Legal and Judicial Co-operation has also to be addressed, not only by the four working groups set up by the European Commission to deal with this new policy, but also by the Trevi Group.<sup>44</sup> Many of these issues were resolved by recourse to the tried and tested solutions of the Benelux. The flexible approach to shared competency of the smaller organisation could not be replicated in the Schengen Convention, which had to address the needs and fears of more bureaucratic and regulated states, such as France and Germany.

In summation, the Benelux confers a dual benefit on its partner states. Firstly, it acts as protector of the interests of the countries within the larger forum of the EU. It fulfils this role by operating as an “instrument” by which three small states can occupy a prominent position on the European stage, and command greater respect than they could severally, thereby preventing them from being marginalised in the larger, and ever expanding European Union. The Benelux secretariat foresees its role in the future not only of protecting its own partner states but, more ambitiously, in the more altruistic role as a guardian of the interests of all smaller member states of the European Union.<sup>45</sup>

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<sup>42</sup> Benelux: Locomotive de Schengen et du Marche Interieur de 1992, Benelux 89/1.

<sup>43</sup> La Genese de “Schengen”, Benelux 90/3.

<sup>44</sup> Op cit. footnote no. 42.

<sup>45</sup> Op cit. footnote no. 39.

The second benefit to the Benelux partner states is the role that has fallen to the Benelux as precursor to the EU in matters pertaining to integration. The ability of the three smaller states to take a pragmatic approach to the problems they have encountered on the road to integration, and to adopt new and innovative policies in the face of a changing economic and political environment, adds to the potency of the Benelux in a world composed of an ever increasing number of small states. By virtue of their constant examination of external forces and trends, and because they are often less engrossed with internal regional or racial tensions smaller states “often have a contribution to make towards international co-operation, simply because they are small states”.<sup>46</sup>

The Benelux have, however, diverged from the path taken by the EU in some areas of integration, such as with regard to defence and foreign policy. Here the Benelux partner states have agreed that they can co-operate “provided there is a real need for such co-operation and it has a reasonable chance of success”.<sup>47</sup> This perhaps could provide a lesson the European Union, whose efforts to create a more structured Common Foreign and Security Policy, pursuant to Pillar II of the TEU, has been, to date, something of an embarrassment to its supporters. As appears to be the case with most Benelux policies, this co-operation “should be specific and based on pragmatic considerations”,<sup>48</sup> this pragmatism providing fewer stumbling blocks to the Benelux than the more idealistic and doctrinal backdrop to many of the European Union’s own integration policies.

The records show the important and ongoing input that three small states in the “cockpit of Europe” have had to date on issues pertaining to European wide integration. This input into integration philosophy and experience has been largely successful, and highly beneficial for the Benelux states. The benefits of this experiment have also been reaped at a cost of “the princely sum of six Belgian Francs” per each Benelux citizen, a year.<sup>49</sup> This return on investment is particularly high, while the lessons of an efficient and cost-effective bureaucracy could yet prove invaluable of the lumbering giant on the Kirchberg plateau. The Benelux secretariat has looked into the crystal ball, and predicts for itself a bright future within the new Europe, stating

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<sup>46</sup> Noble Symposium 17: Small States in International Relations. EDS. August Shou and Arne Olav Bruntland, Wiley 1971. Sean F. Lemass.

<sup>47</sup> Op cit. footnote no. 39.

<sup>48</sup> *ibid.*

<sup>49</sup> Op cit. footnote no. 38, at page 22.



that the “Benelux Economic Union must continue to serve as a laboratory, the model and the motor of European Integration”.<sup>50</sup>

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<sup>50</sup> Op cit. footnote no. 38, at page 41.