

The Two Referenda on Nice,
The Security Debate in Ireland, and
The Limits of Europeanization

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Introduction

The rejection of the Nice Treaty in the first attempt to ratify it by referendum on 7 June 2001 was a great shock to the political establishment in Ireland, the only Member State that has ratified every treaty revision by both parliamentary approval and a referendum. The shock extended beyond Ireland to the leadership of the other Member States and to the applicant countries in central and Eastern Europe. The Fianna Fail – Progressive Democrats coalition government received most of the blame because they negotiated and signed the treaty and were responsible for seeing to its ratification. The ratification campaign was lacklustre, unmotivated, and failed both to explain adequately the treaty and to assert the government's positions in the face of criticisms from the anti-Nice campaigners. The electorate's general disillusionment with political leaders, the complexity of the treaty, and emotional appeals on immigration, the cost of enlargement, the place of small states in an enlarged Union, and perceived threats to military neutrality combined to produce a low turnout and a higher than anticipated "No" vote.

The political leadership in Ireland together shared an attitude of complacency with regard to the ratification of the treaty. Previous treaties, after all, had been ratified despite the lack of serious discussions of the issues involved and the major parties thought that the same rhetoric of staying within movement of European integration would carry the day. In the end, it did not. Therefore, the government's embarrassment at mishandling the first referendum campaign and the need to assure ratification of the treaty in the second led to a major effort to explain the treaty and to concessions to certain interest groups who were concerned about revisions in the Common Foreign and Security Policy and Ireland's policy of military neutrality. The changed wording from the first to the second amendment, a clause that prevented the Government from entering into a defence arrangement, shows the influence of a sensitive domestic issue – military neutrality or Ireland's tradition of non-participation in military alliances – on the government's freedom to respond to proposals for further integration in the area of security and defence policy.

The First Nice Referendum Campaign

The Government's first campaign to ratify the treaty focused primarily on enlargement of the EU and, given the support of all the major parties, the assumption was made that Nice would be ratified as easily as the previous treaty revisions. The Government launched its campaign on 9 May 2001, Europe Day, and the same general pro-European appeal used in previous referenda on the EU was made. The Taoiseach, Bertie Ahern, made it clear that approval of Nice would “make it clear that we stand

ready to welcome up to twelve new members.” He also expressed his confidence that the people would “say ‘Yes’ to the Treaty of Nice, just as they have said ‘Yes’ to Europe on four previous occasions.”¹ The theme that Nice was about enlarging and extending the EU continued through out the campaign and the Fianna Fail – Progressive Democrats coalition, supported by Fine Gael and Labour, underestimated the negative campaigning by opponents of the treaty.

The political parties that opposed Nice were the Green Party, Sinn Fein, and the Socialist Workers Party. These small political parties were joined by a loose coalition of individuals and groups that opposed Nice and had opposed the previous revisions of the EC/EU treaties. Brian Cowen, the Minister for Foreign Affairs, pointed out that there was “still a group of rejectionists in the country which does not recognise the tremendous benefits that Ireland has enjoyed from membership of the EU.” These groups were using spurious arguments to side-track the debate away from enlargement and the benefits Ireland would derive from this expansion of the Union. The claim that neutrality would be eroded or ended was one of the main arguments advanced by opponents of Nice.² The Minister also noted that Nice changed very little in the realm of the Common Foreign and Security Policy (CFSP) and that these issues, e.g., assisting with the Petersberg Tasks on a case by case basis, had been approved with the vote to ratify the Treaty of Amsterdam.³

¹ Speech by the Taoiseach, Mr Bertie Ahern TD at the Launch of the Nice Treaty Referendum Campaign, Press Release, Department of Foreign Affairs, 9 May 2001.

² Cowen Calls on Nice Treaty Opponents to ‘Come Clean’, Press Release, Department of Foreign Affairs, 25 April 2001.

³ *Petersberg Declaration (Extracts)* by the Council of Ministers of the Western European Union, Bonn, 19 June 1992.

II. On strengthening WEU’s operational role

4. Apart from contributing to the common defence in accordance with Article 5 of the Washington Treaty and Article V of the modified Brussels Treaty respectively, military units of WEU member states, acting under the authority of WEU, could be employed for:

The changes to the provisions for the CFSP were the deletion of references to the Western European Union and the creation of the political and security committee in Brussels. The inclusion of references to the WEU in the Treaty on European Union (TEU or the Maastricht Treaty) had been criticised by the same groups who objected to the EU itself taking control over missions involving the “Petersberg Tasks” through the revisions in the Treaty of Nice. The WEU is a military alliance with a mutual defence clause, while the changes in Nice envisioned the newly created political and security committee, under the direction of the Council, exercising political control and strategic direction of crisis management operations.⁴ These would be undertaken with the unanimous consent of the Member States and involved no mutual defence guarantees or links to any organisations with such guarantees, yet these changes were the focal point of controversy. Cowen pointed out that the context for the development of a European security and defence policy was the area of the Petersberg Tasks, crisis management and conflict prevention.

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- humanitarian and rescue tasks;
 - peacekeeping tasks;
 - tasks of combat forces in crisis management, including peacemaking.

⁴ The mutual defence clause of the treaty establishing the Western European Union is contained in Article V.

Treaty of Economic, Social, and Cultural Collaboration and Collective Self-Defence, signed at Brussels on March 17, 1948, as amended by 'Protocol Modifying and Completing the Brussels Treaty', signed at Paris on October 23, 1954.

Article V

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the party so attacked all military and other aid and assistance in their power.

These arguments had been addressed in the campaign to ratify the Treaty of Amsterdam, which had already been approved by the Irish people.⁵

The Minister for Foreign Affairs was correct, but bizarre interpretations of the Treaty of Nice and inaccurate descriptions of its contents continued throughout the campaign. While the changes in Nice regarding the CFSP were minimal compared to Maastricht (1992) and Amsterdam (1998), the Fianna Fail – Progressive Democrats coalition Government were in a different position in 2001 vis-à-vis critics of the CFSP and the implications for Ireland’s security policy.

**Albert Reynolds, Fianna Fail Taoiseach:
The Maastricht Treaty and Observer Status at WEU**

The difference in the domestic political contexts between the ratification of Maastricht in 1992 and Ahern’s position in 2001, can be seen in Reynolds remarks at the Institute of European Affairs at the time of the Maastricht campaign. Reynolds said: “The world of mutually antagonistic alliances, which gave neutrality its relevance, has gone.” While he attempted to reassure those who feared Maastricht undermined neutrality, he indicated the type of changes envisioned for negotiations in 1996 and beyond. The TEU itself did not end neutrality, but the next IGC would take into consideration the changed circumstances of post-Cold War Europe and the new security concerns presented. The Taoiseach noted that it “may be possible in a few years time to develop structures which will subsume in a creative and positive way both our ideals for a peaceful world and the

⁵ Treaty of Nice: Opening Statement by Minister Cowen in Seanad Debate, 3 May 2001. Extract in Press Release, Department of Foreign Affairs, 8 May 2001. The Seanad (Senate) is the upper house of the Oireachtas, the Irish Parliament.

legitimate security preoccupations of our partners.” (Irish Times, 19 May 1992) In the event of political union, he reminded his audience, Ireland had a long-standing commitment to the obligations involved, including defence. While Reynolds said no more than his predecessor, Sean Lemass, had said almost thirty years before, such candid comments close to a referendum were not the norm in the years between accession to the then EEC in 1973 and the TEU in 1992.

Reynolds walked a more careful line on the question of the Community’s relationship with the WEU in light of the TEU. The Taoiseach told the Dail in late May 1992 that Ireland had turned down the WEU’s invitation to become a member. He further noted for the record that Ireland would not participate in NATO, which showed that the two organisations were closely linked together in the Irish political context. In part this was because of the overlapping membership and the frequent, if less than precise, descriptions of the WEU as the European pillar of NATO made in the years before and after Maastricht. The section of the Irish electorate concerned with military neutrality viewed both alliances with suspicion because they possessed nuclear weapons for deterrence and their respective treaties each had a mutual assistance clause.

Reynolds was careful, at this stage, to note that Ireland had attended meetings on an *ad hoc* basis when the need arose to be fully informed of developments. The Taoiseach’s reference to the agenda items of said meetings, i.e., the Yugoslav crisis, the Community’s peace initiatives there, and its monitor mission, helped to set the context for the public debate on possible permanent observer status. In other words, Irish attendance at WEU meetings would help in the formation of a new security framework for Europe. Spring, leader of the Labour Party, suggested an interim White Paper on

neutrality, but the Government responded this was unnecessary. De Rossa, on behalf of the Democratic Left and proponents of neutrality generally, expressed his continued unease with the link between the Community and the WEU that would be created by the TEU. (Irish Times, 27 May 1992)

A few days later Reynolds announced that Ireland would apply for permanent observer status with the WEU. The decision met with very little opposition in part because the Danish rejection of the TEU later in the same week took over the headlines and the conversations over the future of Europe. This decision on observer status also coincided with a NATO policy announcement that it would contribute forces to peacekeeping missions undertaken through the CSCE. This helpful timing put the question of observer status in the WEU within the context of the overall and unprecedented changes in the realm of European security and focused the question on this expanding definition of security which included objectives popular in Ireland, e.g., peacekeeping. The decision on observer status with the WEU was announced before the June 18, 1992 referendum on the TEU and, therefore, discussions on security issues and the treaty's provisions in this field were a large part of the debate. The campaign became even more serious after the Danish vote and Reynolds, injecting a large dose of pro-European sentiment, told Irish voters that their task was to put the treaty "back on the rails." (Irish Times, 6 June 1992)

David Andrews, the Fianna Fail Minister for Foreign Affairs, was heavily involved in campaigning in favour of the TEU given the high level of interest in the CFSP provisions. He stressed that any further move toward a common defence policy would require both another IGC and another referendum in Ireland to approve its

revisions. At the end of the Dail debate in early May 1992, over the date of the referendum, Andrews refuted the many claims made by the anti-Maastricht campaigners. He specifically rejected claims that the treaty would force Ireland into a military alliance, open the door to conscription, and end the use of the veto in the area of CFSP and decisions on joint actions. "None of this is true" he told the Dail. (Irish Times, 8 May 1992) The number of references to conscription during the debate on the TEU and the referendum campaign showed the emotional response that this issue from Ireland's past could still incite. Many references were made to Jacques Delors' predictions of "resource wars" and the security concerns of the future which in Ireland were interpreted as moving toward "out of area" military operations. The Government described these allegations as the "conscription scare", but fear that the electorate might respond to these tactics increased the Government's efforts in the campaign. (Irish Times, 10 June 1992)

Closer to the referendum date, June 18, 1992, Reynolds again denied allegations that the TEU was militarising the Community and he made explicit reference to the veto that obtained in the area of CFSP. In the same interview in which he defended his decision to order RTE to broadcast a special programme on the TEU, Reynolds denied allegations that he was fudging the neutrality issue and asserted that observer status at the WEU meant exactly what it said. After dismissing claims that the TEU would lead to conscription and a European army, he repeated his assurance that "the Dail will have a say, and the people of Ireland, more importantly, will have a say if there's going to be any change in our position in relation to military alliances." Not only will another referendum be held after the IGC scheduled for 1996, but each Member State must agree

to changes during the negotiations. Ireland would use its veto if the need arose. (Irish Times, 15 June 1992)

The same issues came up in the campaigns to ratify Maastricht and Nice and the arguments of those urging a “No” vote on Nice had changed very little, if at all, over the years. The difference was that Reynolds was in a more secure position than Ahern on the changes in the CFSP and its relationship to Ireland’s security policy. Fianna Fail’s position in this area had been damaged by its reversal on Irish participation in Pfp.

Fianna Fail’s Policy Shift on Partnership for Peace (Pfp)

NATO set up the PFP programme in January 1994 for interested applicant states and in part to placate Russian concerns over NATO expansion. The programme was a transitional period for states interested in membership, but was also open to all states in the CSCE for joint training exercises focusing on international peacekeeping and humanitarian missions.⁶ Given Ireland’s long and extensive interest and expertise in UN peacekeeping operations there was an obvious overlap in interests and PFP appealed to some in Ireland, but the catching point was its sponsorship by NATO. The Irish government showed little public interest in PFP after it was launched even though it did not necessarily contravene neutrality [Keatinge, 1995 #4 p. 168]. Anything associated with NATO was controversial and PFP, in addition to being a NATO run programme, was initially set up for states interested in joining the alliance was therefore seen as a stepping stone to NATO membership. The government repeatedly informed the public

that participation in the program did not imply interest in NATO itself, but to no avail given the misinformation in the debate and the public perception.

The Rainbow Coalition's White Paper on Foreign Policy: Views on Partnership for Peace

NATO formed the North Atlantic Cooperation Council (NACC) in December 1991 as part of its strategic review of the changed security situation in Europe. This consultative body was composed of NATO states and their former adversaries. Ireland attended NACC's Ad Hoc Group on Peacekeeping, a forum for exchanging information and experience on peacekeeping, as an observer. This very limited initial involvement was the usual Irish approach to new security cooperation and anything associated with NATO had to be handled delicately. (WP 4.39) NATO also launched in January 1994 the PFP program to promote military and political cooperation in Europe and invited all OSCE members to participate. The Rainbow Coalition Government reconfirmed its interest in PFP and announced further exploration of the question in the White Paper, but did not announce a decision to apply. (WP, 4.53)

The points made in relation to PFP in the White Paper, however, clearly indicated the high level of interest on the part of the Rainbow Coalition. Participation by Russia and other neutrals (Austria, Finland, Sweden, and Malta) was noted as well as the individual and flexible nature of the programmes signed by the participants and NATO. (4.44) The benefits of joint training, exercises, and planning for peacekeeping operations that were objectives of PFP were noted. The advantages of the programme and the

⁶ The CSCE became the OSCE on 1 January 1995.

inclusive nature of its membership were highlighted and the White Paper asserted that the overall objectives of PFP were consistent with Ireland's approach to international relations. Ireland would benefit from the peacekeeping training, Search and Rescue training, and the practical cooperation on threats such as drug trafficking would be welcome. (4.49)

PFP was a NATO sponsored programme and therefore the White Paper was at pains to point out that the programme was distinct from NATO itself. The focus on training and the voluntary and flexible nature of PFP was stressed and the absence of any treaty commitments was repeated several times. (4.50) Participation in the PFP programme did not involve NATO membership, did not imply interest in future membership of NATO, and involved no mutual defence commitments. This repeated statement of these obvious points regarding PFP membership were designed to counter the perception in Ireland, fostered by those strongly supportive of neutrality, that PFP was the first step toward accession to NATO.

The sensitivity over NATO, and the PFP programme because of its NATO sponsorship, explains the lack of a decision on PFP in the White Paper. The Rainbow Coalition asserted that participation on appropriate terms would in no way affect neutrality and announced further study of the benefits of membership and the contributions Ireland could make especially in the area of peacekeeping. (4.52) A decision on participation would only be made in consultation with the appropriate Oireachtas committees and the approval of both Houses of the Oireachtas. The desire for the approval of both the Dail and the Senate is noteworthy, but the assertion that no

amendment to the Constitution was necessary for signing a PFP agreement was interesting given Fianna Fail's reaction. (WP, 4.53)

Fianna Fail's Reaction to the Rainbow Coalition's Views on PFP

The political parties reacted quickly – too quickly according to editorial opinion – to the Government's intention stated in its White Paper to consider participation in PFP. Democratic Left, the smallest of the three Coalition partners, reasserted its opposition to PFP, which explained the Government's inability to announce a decision in favour of PFP in the long delayed White Paper. Bertie Ahern, the leader of Fianna Fail and “ever alert to tactical advantage” in the opinion of the editors, called for a referendum if the Government proposed participation in PFP. This intervention would return to haunt him after he and his party returned to the Government benches and proposed a PFP framework agreement with NATO. The Green Party and a number of pro-neutrality lobbying groups joined with Fianna Fail in expressing the fear that PFP would compromise neutrality and bring Ireland closer to NATO membership. Ray Burke, the Fianna Fail spokesman on foreign affairs, repeatedly expressed his party's view that PFP involvement would be the “thin end of the wedge” regarding Irish neutrality. (Irish Times, 31 December 1996)

The Fianna Fail-Progressive Democrats Coalition
June 1997-May 2002
Bertie Ahern (Fianna Fail), Taoiseach

Fianna Fail's sense of ownership of the neutrality policy translated into increased vigilance while in opposition. The call for a referendum on membership in PFP after the release of the White Paper on Foreign Policy stands out as the clearest example of this in the period between Maastricht and Amsterdam. When Fianna Fail returned to government in a coalition with the Progressive Democrats after the 1997 election, it took a great deal of time and explanation to reverse that decision. The reversal was made easier by the presence of the Progressive Democrats in the coalition because they had not only advocated joining PFP since its inception, but they were the only party to publicly advocate joining NATO itself. Fianna Fail would not have supported joining NATO, but the party's definition of military neutrality during the period of 1992-1997 was reduced to a policy of non-participation in mutual defence clauses such as Article V of the WEU's treaty. Any security cooperation, including participation by Irish troops in UN sanctioned missions under NATO command, that fell short of a mutual defence commitment did not threaten military neutrality in Fianna Fail's view.

The decision by The Fianna Fail-Progressive Democrats Coalition to sign a framework agreement with Partnership for Peace (PFP) without a referendum, however, was a reversal of their stance on PFP and did not engender trust. Their reversal was criticised by the groups who defended the policy of military neutrality. This policy change on the need for a referendum to participate in PFP would be used against them during the first ratification campaign for Nice. It served to undercut their assurances that no closer defence ties were involved in the treaty or anticipated by the Government. The Government not only went to great lengths to consult and to receive advice from the office of the Attorney General after reversing itself on Partnership for Peace, but they

published in May 1999 an explanatory guide, which had the look of a short white paper on the subject.

The Fianna Fail-Progressive Democrats Coalition, after noting the many benefits to joining in Pfp, asserted that “military neutrality is a policy to which this Government is deeply attached.” While the Government had no interest in mutual defence alliances such as NATO, it noted that Ireland had “never been ideologically neutral, nor morally indifferent to the major international and security challenges of the day.”⁷ Military neutrality’s core defining characteristic is non-membership of military alliances.

Fianna Fail’s reversal on Pfp is not alluded to in the guide: “The Government are fully satisfied that participation in Pfp has no constitutional implications. The Attorney General’s advice is that there is no legal reason why a referendum would be required prior to Irish participation in Pfp.”⁸ The Progressive Democrats had supported joining Pfp since it was set up, but the guide took explicit note of the previous Government’s support for exploring participation in Pfp and their view that only parliamentary approval would be needed.⁹ The views of Dick Spring, who served as Taniaste and Minister for Foreign Affairs in the Rainbow Coalition, that participation in Pfp involved no mutual defence commitments and had no implications for neutrality were specifically noted.¹⁰

⁷ Ireland and the Partnership for Peace: An Explanatory Guide, Department of Foreign Affairs, May 1999, 77 pages. ¶ 16.

⁸ ¶ 66.

⁹ ¶ 67. The previous government was a coalition of Fine Gael-Labour-Democratic Left, The Rainbow Coalition, December 1994-1997. The change from the Fianna Fail-Labour coalition government to the Rainbow Coalition occurred without a general election and without change in the composition of the Dail. Labour withdrew from the coalition with Fianna Fail after a period of intense public criticism over Albert Reynold’s handling of a controversial extradition case. The Rainbow Coalition emerged after negotiations among various parties.

¹⁰ ¶ 67.

The guide took careful note that the major opposition parties – Fine Gael, Labour, and Democratic Left, had supported PpP when in government. The problem was that Fianna Fail and Bertie Ahern alienated supporters of military neutrality in the electorate by linking PpP with NATO and calling for a referendum when in opposition and then changing their position in government. Whether the Government could have ratified Nice by parliamentary approval alone is the subject of debate among legal scholars. The view of one senior official was that a referendum on Nice was not legally required, but that after failing to hold one on PpP the referendum on Nice was a political imperative.¹¹ Fianna Fail's history on the PpP issue not only helped the neutrality lobby and those urging a "No" vote, but also contributed to the cynicism regarding the political process that resulted in the low turnout in the first Nice referendum.

The First Campaign to Ratify Nice

The Minister for Foreign Affairs, Brian Cowen, took the lead in refuting the charges that Nice would erode or end neutrality, lead to a European army, increase the militarisation of the EU, and encourage neo-imperial wars on behalf of larger Member States. He noted over and over again that the peacekeeping and crisis management missions under EU auspices and any deployment of the Rapid Reaction Force would be subject to the specific agreement of the Irish government and the Dail. These missions also required the authorisation of the UN Security Council. The Minister called on the Greens, Sinn Fein, and the Socialist Workers Party to explain why assisting in peace

¹¹ Interview with a political affairs officer of the Irish diplomatic service, autumn 2002.

keeping in East Timor or the Lebanon was acceptable, but the same missions within the European continent were not. He argued: “We in Fianna Fail are determined, as we have done in every previous referendum on the European Union, to put the facts, the real facts about the Treaty, before the people of this country.”¹²

Fianna Fail on another level, however, were not as credible on military neutrality as they had been before their reversal on PfP. The NATO issue and claims that the Rapid Reaction Force opened this door persisted and Cowen publicly complained that posters with the exhortation “No to Nice; No to NATO” were misleading the electorate.¹³ On the eve of the first referendum the Minister, in a newspaper article that was also distributed by his department, reiterated the Government’s position: The vote on Nice “is about conflict prevention and poses no threat to our neutrality. It is not a vote for NATO.”¹⁴ The problem for Fianna Fail, however, was that while in opposition they claimed that PfP was the slippery slope to NATO membership. The “No” campaign in the referendum on Nice adopted the same line of thinking on the treaty revisions regarding the CFSP and used similar campaign tactics.

Reaction to the “No” vote in the first Nice Referendum

The Taoiseach, Bertie Ahern, expressed disappointment over both the result and the low turnout despite the appeals made by the Government, the main political parties,

¹² Treaty of Nice: Sharing Peace, Security and Prosperity Across Europe, City Hall, 18 May 2001 Remarks by the Minister for Foreign Affairs, Mr Brian Cowen, TD. Press Release, Department of Foreign Affairs, 24 May 2001.

¹³ Treaty of Nice: Opportunity & Enlargement, Remarks by the Minister for Foreign Affairs, Mr Brian Cowen, TD. Press Release, Department of Foreign Affairs, 29 May 2001.

¹⁴ Treaty of Nice: Vote to Open the Door For Exports, by the Minister for Foreign Affairs, Mr Brian Cowen, TD. Press Release, Department of Foreign Affairs, 6 June 2001. This article appeared in *The Star* on Wednesday, 6 June 2001.

and the social partners. He noted the shock and disappointment extended as well to Ireland's European partners and to the applicant countries. A new approach to the treaty could not be formulated in a matter of days, but Government did launch an immediate review of the factors involved in the "No" vote. The reasons for such a low turn out, the manner in which the Oireachtas monitors EU business, and the views of all parties and organisations in Ireland would be included. Ahern also noted the immediate willingness of the other Member States, short of renegotiating the treaty, "to contribute in every possible way to help the Government find a way forward, taking into account the concerns reflected by the referendum result." This willingness to help the Irish Government resulted in the Seville Declarations on Ireland's security policy vis-à-vis the Treaty of Nice. Ahern also announced that the Government had decided in principle to establish a national forum on Europe. The details would be discussed with the main opposition parties, but it would be open to political parties and other organisations.¹⁵

The Minister for Foreign Affairs told the Dail that it would be unfortunate for Ireland if the outcome of the referendum were seen as a vote against enlargement. He pledged to work to ensure that Ireland would not be associated with being greedy or selfish in pursuing its interests. He again stated the Government's position, against claims advanced by the "No" side, that Nice was indeed necessary for enlargement to take place, the treaty would in no way affect Ireland's security policy, and it would not result in a 'two-tier' in which Irish interests would be put at a disadvantage. He asked if there had been a failure to communicate to the electorate, especially the two million who did not vote, the substance of the issues involved. His most noteworthy comment, however, was

¹⁵ Statement by the Taoiseach, Mr. Bertie Ahern, T.D., on the Outcome of the Referendum on the Nice Treaty, Dail Eireann, Tuesday, 12 June, 2001 at 6:30 p.m. Press Release, Department of Foreign Affairs, 12

in asking about the part played by the electorate's unhappiness with politicians and the main political parties, which implied that the Government and perhaps the main opposition parties might have done more in the first referendum campaign. An "historic issue like the enlargement of the Union", stated the Minister, is too important to become "a scapegoat for the protest vote in respect of disappointments people may have about a whole range of issues, most of them domestic policy issues unrelated to EU matters."¹⁶

The National Forum on Europe

The Government launched the Forum on 18 October 2001 with a broad mandate to facilitate a "broad discussion of issues relevant to Ireland's membership of an enlarging Union" and topics related to the future of the EU. The Forum was designed to be as inclusive as possible, but the first of two reports notes in a terse footnote that Fine Gael did not send a delegation. The same report noted that a fairly consistent note was sounded during the first phase of its discussions, namely "frustration that consideration be given to a 're-run' of the Nice Treaty referendum, or more specifically, to putting the 'Nice question' in the same form to the people once again." The phrase "in the same form" was not highlighted, but the Government did not fail to take notice. The best news for the Government was that there was no body of opinion against enlargement *per se* (emphasis original), although there was disagreement over whether this could be accomplished without the ratification of the Treaty of Nice.¹⁷

June 2001.

¹⁶ Statement by the Minister for Foreign Affairs, Brian Cowen, TD, on the Outcome of the Nice Treaty Referendum, Dail Eireann, Tuesday, 12 June, 2001, Press Release, Department of Foreign Affairs, 12 June 2001.

¹⁷ Chairman's Report, The First Phase of Work of the National Forum on Europe, October 2001 to January 2002. Stationery Office, Dublin, February 2002, ¶ 10.

The first report from the Forum, which outlined the issues for further discussion, listed two issues under the section titled “Concerns over sovereignty and sensitive policy areas.” These were, in order, the safeguarding of the Irish viewpoint on taxation and the accommodation of the policy of military neutrality in relation to the EU’s security and defence policy. The second issue dominated the debate over sovereignty issues in the Forum. The Minister for Foreign Affairs noted correctly at the launch of the Forum that “more myths and misrepresentations abound about the CFSP than about any other aspect of the European Union.”¹⁸

The second report from the Forum confirmed that security and defence policy was the area that concerned most Forum participants and this also “reflected voices heard from the wider public.” The problem was in reconciling peacekeeping and the laudable goal of maintaining a peaceful Europe with Ireland’s traditional policy of neutrality and the Dail’s control over military activity.¹⁹ The positions of both sides on the CFSP and military neutrality were reported and a submission by the Irish Congress of Trade Unions (ICTU) summed up the concerns well: “It would seem that many of the people who voted against the Nice Treaty did so out of fear of compromising our neutrality through involvement in the rapid Reaction Force... This is a legitimate concern in our opinion... On the other hand there will be situations where the abuse of human rights is on such a scale that military intervention is necessary.”²⁰

The Taoiseach, Bertie Ahern during one of the Forum’s sessions asked “Neutral on what? Neutral to what?” The Forum, however, asked for further reassurances from the

¹⁸ National Forum on Europe, Friday, 1 February 2002, Remarks by Brian Cowen, TD, Minister for Foreign Affairs, Press Release, Department of Foreign Affairs, 1 February 2002.

¹⁹ Chairman’s Report, The Second Phase of Work of the National Forum on Europe, February to March 2002. Stationery Office, Dublin, May 2002, ¶ 69, 71.

Government that “nothing it commits to under Nice, or indeed earlier treaties, requires, suggests, or implies a departure from Ireland’s traditional policy of military neutrality or the values underlying it.” The Forum report also asked the Government to assure the public that they had no plans to enter into ant mutual defence alliance, to partake in the development of a European army, and “would not move from these positions without the express approval of the Irish people.”²¹ The Forum’s influence on the wording of the second proposed amendment allowing the ratification of Nice can clearly be seen.

The other influence the Forum on Europe clearly had on the Government’s handling of the second referendum campaign on Nice was its call for similar reassurances to be made by the other Member States of the EU. “At European level, a confirmation by partners that Ireland’s neutral status would be fully respected in relation to any initiatives in the security domain would also be a measure of reassurance.” The Forum specifically suggested that a “plainly worded statement of the Government’s perception of Ireland’s commitments under the treaties... could assuage these fundamental areas of concern.” The Government could then invite its EU partners to confirm their statement “in some broadly acceptable format, which some members of the Forum considered should have sufficient legal effect.”²² The results of these suggestions can be seen clearly in the two Seville Declarations of 21 June 2002, The National Declaration by Ireland and the Declaration of the European Council.²³

²⁰ ¶ 73.

²¹ ¶ 78, 80.

²² ¶ 81.

²³ White Paper: Treaty of Nice and Seville Declarations 2002, Stationery Office, Dublin, July 2002, pp. 7-8.

The Twenty-Sixth Amendment of the Constitution Bill, 2002

The influence of the Forum can also be seen in the wording of the amendment in the second referendum to approve Nice. The Government included a clause that prohibited them from adopting “a decision taken by the European Council to establish a common defence pursuant to Article 1.2” of the Treaty of Nice “where that common defence would include” Ireland.²⁴ The Government explicitly noted when the language of the bill was published the clause that would prevent it from participating in a common defence without another amendment and referendum. The commitment by the Government in the National Declaration by Ireland at Seville was thereby added to the Constitution.²⁵ This was indeed a major departure from the language of the first Nice referendum and a complete change in Fianna Fail’s position on the nature of the policy of military neutrality and non-participation in military alliances.

The Labour Party, Neutrality, and the Second Nice Referendum

The Labour Party’s positions on the European Community in general and the defence implications inherent in eventual political union were always complicated

²⁴ Twenty-Sixth Amendment of the Constitution Bill, 2002.

²⁵ Statement by the Government on the publication of the Twenty-Sixth Amendment to the Constitution Bill, 2002, Press Release, Department of Foreign Affairs, 27 June 2002, excerpts below.

“The proposed amendment, if approved by the people, will also have the effect of preventing the State from adopting a decision taken by the European Council on the establishment of a common defence in accordance with Article 17.1 of the Treaty on European Union (as set out in Article 1.2 of the Treaty of Nice), where that common defence would include the State. The insertion of this provision in the Constitution, which includes a significant change from the last Nice referendum, guarantees that Ireland could not participate in such a common defence without further amendment of the Constitution. That amendment could only be made if the Irish people vote in favour of it at a future referendum.

This gives constitutional effect to the solemn commitment in the National Declaration by Ireland at Seville that a referendum would be held in Ireland on the adoption of a decision taken by the EU to move to a common defence. This commitment has been the position of successive Irish governments.”

because of the party's commitment to neutrality.²⁶ Dick Spring showed some flexibility at times on the issue during his time as party leader, but the party's rank and file were attached to neutrality and to other causes to which that policy was symbolically linked. Indeed the Labour Party was responsible for the renewed enthusiasm for the neutrality policy because of its successful drive in the 1980's to recast neutrality by use of the adjectives "positive" and "active." Labour supported the ratification of the TEU (Maastricht) in 1992, but at the same time remained committed to neutrality and opposed any links to the WEU. In a Dail debate on the implications of the TEU for Ireland's security policy, Spring asked the Taoiseach if the Government could publish an interim White Paper on neutrality. Reynolds responded that such a move was unnecessary because the Government had unequivocally and clearly set forth its position. Any further moves toward a common defence policy or a common defence in a subsequent IGC would be placed before the Irish people for approval in a referendum. Under the terms of the TEU any interim changes, between its ratification and the next treaty revision, required the assent of all the Member States. Reynolds assured the Dail that Ireland would not join NATO nor become a full member of the WEU, but he noted that there were advantages to being an observer at the WEU. (Irish Times, 27 May 1992) This line of thinking worried the Labour Party, which saw this as a further step in the gradual erosion of the neutrality policy.

Spring criticised both major parties, Fianna Fail and Fine Gael, in the final two weeks of the Maastricht referendum campaign for statements by individuals in both major parties that the country's neutrality policy was a thing of the past. Labour,

²⁶ The Labour Party opposed the ratification of the amendment on accession in 1972. The party took no official position on the ratification of Single European Act in 1986-87 because of internal divisions.

however, also supported the ratification of the TEU and therefore Spring stressed that the people were not being asked to abandon neutrality in the vote on 18 June 1992. If they had been asked to do this, he would have urged a “no” vote. Even a combined effort by the two major parties, which he added seemed to agree on nothing but the redundancy of neutrality, would not be enough to ride rough-shod over the principles which had sustained Irish foreign policy over time. (Irish Times, 2 June 1992) Several articles of the Irish Constitution were cited by Spring, sections related to sovereignty and the exclusive right of the Dail to approve participation in any war, in support of Labour’s position that neutrality was part of Ireland’s political fabric.²⁷ Participation in defence arrangements, however, would not necessarily violate any of these constitutional provisions. Labour interpreted these articles as support for its views on neutrality, but the party still advocated a new constitutional amendment on neutrality.²⁸

The Labour Party’s attachment to the policy of military neutrality remained strong while at the same time it continued its support for European integration, a policy conversion that took place between the Single European Act and Maastricht. The defeat of the first referendum on Nice presented the Labour Party with an opportunity to achieve their goal of adding neutrality to the Constitution. Concerns over military neutrality had been a prominent issue in the referendum campaign and the same concerns were voiced

Neutrality was a major factor in both of these decisions.

²⁷ Constitution of Ireland, Article 1: The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic, and cultural, in accordance with its own genius and traditions.

Article 5: Ireland is a sovereign, independent, democratic state.

Article 28.3.1: War shall not be declared and the State shall not participate in any war save with the assent of Dail Eireann.

²⁸ Fianna Fail and Fine Gael had both ignored without comment numerous requests from the Labour Party over the years for an amendment to add neutrality to the Constitution. The two major parties regarded military neutrality as a policy matter subject to modification.

during the sessions conducted by the Forum on Europe. Indeed, Labour was an early proponent of the Forum after the first referendum was defeated.

Labour criticised the outgoing Fianna Fail – Progressive Democrats Government during the May 2002 general election campaign for their incompetence in responding to the case made against the Nice Treaty and for their broken promise on a referendum on PfP, which led to damaging ambiguity about the future role of the Defence Forces in relation to developments in the EU. Labour did not object to the Rapid Reaction Force as such and supported the tasks of combat forces in crisis management conducted under a UN mandate. At the same time, Labour pushed for a constitutional amendment on neutrality and the negotiation of a declaration on Nice, which would then be followed by another referendum on the Nice Treaty.²⁹

The Government's need to secure ratification of the Nice Treaty in the second referendum gave Labour and proponents of neutrality a leverage they had never before enjoyed. The Labour Party made the reference to military neutrality in the text of the amendment a condition for their support in the second ratification campaign.³⁰ The Fianna Fail – Progressive Democrats Government agreed because ratification of the treaty in the second referendum was critical. Fianna Fail, along with the Progressive Democrats and Fine Gael, had resisted over many years Labour's requests for the inclusion of neutrality in the Constitution. The set back in the first referendum gave Labour an opportunity to make a demand, rather than a request. The exigencies of domestic Irish politics had ensured that military neutrality was handled delicately over

²⁹ *Our Values, Our Pledges*, The Manifesto of the Irish Labour Party for the general election of May 2002. The text of the Manifesto is available at <http://www.labour.ie/>.

³⁰ Interview with Proinsias De Rossa, MEP, on 31 October 2002, in the Dublin office of European Parliament.

the years, but the text of the amendment in the second Nice referendum was the clearest limitation on the Europeanisation of Ireland's security policy.