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**CONSTRUCTING A NEW EUROPE**

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- 1 I am greatly honoured to be here today to speak before this distinguished audience about European integration and the European future. Normally foreign ministers speak about their own country and its future; that, after all, is the job of foreign ministers. At the same time, however, it is assumed that a foreign minister has some kind a foreign policy vision. But visions are not usually part of a government's agenda, or the day to day work of a Foreign Minister. Rather, visions are private, personal or reserved for ministers who add to their titles *a.d.* or *außer Dienst*. That is why sitting foreign ministers seek out those politically incorrect situations where it is indeed possible to speak one's mind. This, therefore, is why I am so pleased to be able to speak today at Humboldt University, where a tradition of sorts has been established to offer foreign ministers the chance to speak of their personal visions, unencumbered by the straightjacket of *ex officio* restrictions or silenced by the implications of their personal views for their government's official position. If Chatham House has given us the "Chatham House Rules", then perhaps we can begin to speak of the "Humboldt University Freedom".
- 2 Tonight, I should like to speak not about how well Estonia is doing, or how many chapters we have closed in our EU negotiations, or even about the misguided positions that some European politicians hold regarding NATO enlargement and the Baltic countries.
- 3 Instead, I would like to consider issues regarding the European Union and its future. These are issues that I believe we shall have to deal with one way or another, issues I would raise in the future as a citizen of an EU Member States in precisely the same way as I do today as the citizen of an EU candidate country. Thus, in short, what I have to say today is my own view, and not necessarily the view of the Government of Estonia. It is a personal view expressed in the same spirit and manner as Joschka Fischer spoke here nine months ago.
- 4 Ladies and Gentlemen,  
As we look forward to next decade or so, I see three issues of a fundamental nature that we shall all face in the EU. In order to bring these into sharper focus I would pose these issues as dichotomies that call for some kind of resolution. These are:
  1. New vs. old members
  2. Small vs. large members
  3. Democratic legitimacy vs. effective decision-making
- 5 The first dichotomy of new versus old members is more a cultural and psychological issue. The remaining two – the dichotomy of small versus large members and democratic legitimacy versus effective decision-making – center on the need to develop the rules by which the Union will function in the future. These more fundamental issues that touch upon all future Member States, such as the role of small and large members and the issue of democratic legitimacy versus effective decision-making, are issues I will discuss in the second half of my talk.
- 6 When I talk about new vs. old Members I do not mean the process of enlargement and the accession negotiations underway. Rather, I am referring to the general view of the new members in the current European Union.
- 7 Throughout the nineties, the dichotomy dominating the discussion of the European future was expressed in the rather metaphysical metaphor of "deepening vs. widening"; do we first make the Union strong and then include new members, or do we include them, cast the die, and then see what happens? From the viewpoint of maintaining stability, it is understandable that deepening has initially won out. However, the discussion at times has begun to strike some – perhaps overly sensitive – people from the East as being a euphemism for the thought: "Let's get it all fixed before the barbarians are let in". If this sounds a bit harsh, then allow me to

- place it in a German context: would it have been conceivable for a hypothetical German politician in, say, 1990, for example, to advise: "First let us revise the German constitution, and discuss it only among ourselves in West Germany. That way we can make sure that the decision-making process is in place before we bring in the new *Länder*". I doubt it.
- 8 I detect among many people in Europe a kind of dread of the upcoming enlargement, a fear that people very different from "we Europeans" are about to join, a fear of the unknown, a fear that we new members are going to change this Union into something alien. Allow me to illustrate this with a quote from a prominent West European who is a past president of the European Parliament and, like me, a social democrat:
- 9 "The forthcoming enlargement is not comparable to any previous one. This is true not only – and not primarily – because of the immense gulf between the West and the potential East of the Union in terms of the standard of living. More important is that the citizens and the politicians of the Central and Eastern European countries differ fundamentally from those in the present EU Member States as regards their *national emotional traditions, experiences, interests and value judgments*. What needs to be overcome here is not only the legacy of 50 years of separate development but also far older and more fundamental differences rooted in European history" (translation by the author).<sup>1</sup>
- 10 Let's look at that again: people from Central and Eastern Europe are supposed to differ fundamentally from those in the present EU Member States as regards their "*national emotional traditions, experiences, interests and value judgments*"??? I am sure most historians of Europe would agree that those fundamental democratic values which form the basis of the EU were absent a mere sixty years ago in large parts of what we today have come to call the European Union. Indeed, as Joschka Fischer pointed out here last year, the Union was created to prevent a recurrence of conditions that led to the Second World War.
- 11 I don't wish to cavil here with this concrete example of an attitude toward the candidates from the post-Communist East. I do believe, however, that the subtext of the passage I quote above bodes ill for the success of the *Osterweiterung*. The subtext suggests that until now, the EU has enlarged to include people like "us", in the classic sense of "us" and "them". But if that has been the case up till now, then with the enlargement now underway, we are taking in some other kinds of strange beings, beings that share our continent but, as the quote says, "*differ fundamentally as regards their national emotional traditions, experiences, interests and value judgments*".
- 12 Now I shall not belabor you with examples of why this is simply wrong. I would just bring one example: in the case of Estonians, the "*emotional traditions, experiences, interests and value judgments*" of our pre-Soviet occupation probably differ from the Finns less than do those same qualities in Danes and Swedes. By this logic, despite the similarities between Finns and Estonians, Finns would enjoy a reputation for being model Europeans – which they do – while Estonians would carry the legacy of "*differences deeply rooted in history*". Which they do not.
- 13 It is a fallacy and I am sure that fifteen years after the next enlargement everyone will realize this to be the case. The problem, to my mind, is what to do in the interim? Certainly the post-war Franco-German *rapprochement*, that itself forms a pillar of the European Union, was a far more formidable task than the need to change attitudes toward East Europeans. It worked between France and Germany, so we know it can be done elsewhere.
- 14 I would venture to explore the origins of this idea. For it is indeed true that in the West, Eastern Europe was considered alien and backward long before the image of the Iron Curtain created, for so many, the image of dull-gray people leading dull-gray lives in dull-gray

<sup>1</sup> Klaus Hänsch, Beitrag für die Frankfurter Rundschau vom 23.2.2000, <<http://212.63.138.148/haensch/publikat/presse/Artikel%20Frankfurter%20Rundschau.htm>>, para. 9.

apartment blocks. The image of Eastern Europe as a far away place, of which we know nothing – to paraphrase Chamberlain's 1938 description of Czechoslovakia on the eve of its dismemberment – was indeed an unfortunate by-product of that most illustrious period of European History, the Enlightenment. As cultural historian Larry Wolff writes of the differences between Eastern and Western Europe in his marvelous book, "Inventing Eastern Europe":

- 15 *It was not a natural distinction, or even an innocent one, for it was produced as a work of cultural creation, of intellectual artifice, of ideological self-interest and self-promotion...It was Western Europe that invented Eastern Europe as its complementary other half in the eighteenth century, the Age of Enlightenment. It was also the Enlightenment, with its intellectual centers in Western Europe, that cultivated and appropriated to itself the new notion of "civilization", an eighteenth century neologism, and civilization discovered its complement within the same continent, in shadowed lands of backwardness, even barbarism.<sup>2</sup>*
- 16 Indeed, if we recall that the Enlightenment sought to bring reason to bear on all matters concerning man, then we should keep in mind that the Enlightenment had a political program as well. In addition to philosophizing, Voltaire and Diderot and Gibbon were politicians, too. And as all politicians know, indeed, as we all know from the experience of the Cold War, nothing proves one's own goodness and righteousness better than a good counter-example.
- 17 I mention all of this because we need to launch a process that bridges the immediate tasks of the EU, which include enlargement, CAP reform, and so forth. We need to reach toward the *finalité* of Europe. That bridge is the genuine integration of the whole of Europe. I do not mean integration here as taking over the *acquis*. Rather, I mean an integration in attitudes toward the new members of the EU.
- 18 The great Greek poet Constantine Cavafy (1863-1933) wrote a wonderful poem called, "Waiting for the Barbarians". In it, Cavafy describes the anxiety among an imperial citizenry awaiting the arrival to their city of the Barbarians. The Consuls of the Empire put on their dazzling jewelry, because Barbarians are said to like sparkling baubles. But the imperial orators are silent, because Barbarians are said to be bored with rhetoric and eloquence. Like it or not, "Waiting for the Barbarians" is a rather apt metaphor for much of the subtext in discussions on EU enlargement. It is a metaphor for the fear that haunts citizens of Member States, the fear of an Eastern Enlargement. It is a metaphor for the fear that haunts politicians who cast doubt on the wisdom or speed of enlargement.
- 19 I believe Germany has a special role to play in bridging the gap, just as it played a key role in the rapprochement of Western Europe. This seems natural, given that Germany physically abuts two candidate countries. But Germany also has a strong and centuries-old cultural affinity to so many of the candidates, including my own. For six-hundred years, Estonia's capital Tallinn, Reval in German, was primarily a German-speaking city.
- 20 Thus, Germany enjoys close, longtime contact with the candidates, and possesses the expertise to allay the fears of other EU members. More importantly, Germany has a long, fine tradition of explaining and indeed transmitting the cultures of Eastern Europe to the West. It was, after all, your brilliant Johann Gottfried Herder, who, disagreeing with the Enlightenment characterization of the East, went forth to study these lands, including my own, and came back inspired.
- 21 Ladies and Gentlemen,  
Allow me now to really take off my foreign minister's hat, roll up my sleeves and tackle a far more difficult topic.  
If we wish to begin to think of how Europe will function in the future, the fundamental

<sup>2</sup> Larry Wolff, *Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment*, Stanford, 1994, p. 4.

- problem we face is not deepening vs. widening. In the renewed debate on the future of Europe, kicked off here last year by Joschka Fischer, observers have focussed on the question of whether we want a superstate. In the call for a constitution and a federal system, some see a hidden agenda to do away with the nation-state, national sovereignty, etc. I will argue here, however, that there is a fundamental misunderstanding about the meaning of Federalism and Constitutionalism. Furthermore, the solutions offered by a federalist approach resolve rather than create the problems we fear. The core issue we face in the EU is legitimacy versus effective decision-making among subjects of greatly differing size and economic power. How do we make decisions that are acceptable and transparent to the citizenry? How do we do this so that the constituent Member States, which vary in size, language (not to mention *national emotional make-up*), believe their interests have been accounted for?
- 22 This was not a problem facing the *Bundesrepublik* when it adopted a federal system, which was more an administrative solution imposed by General Lucius D. Clay than the result of a serious political debate involving equally sized subjects, the *Länder*. It was *the major* problem, however, two hundred years ago, when John Jay, Alexander Hamilton and James Madison set out to provide a model of governing another conglomeration of small and large states, and faced the fundamental issue of legitimacy.
- 23 For some forty years, the community method of decision-making worked extremely well in dealing, as it largely did, with economic issues, standardization, etc. But as the Union has deepened, has created a common currency, a common foreign and security policy, a common area of justice and internal security at the Tampere conference, so has the scope of Union activities broadened to include issues at the core of the citizen-state relationship. The EU has not become a state, super or otherwise, but it has taken up issues that once were the sole prerogative of the nation-state. And, this has been agreed to by all the Member States.
- 24 In democratic countries, these issues have often been the focus of the citizen-to-state relationship. When the citizen-to-state relationship becomes an issue of the Union, then we, too, must move beyond sole reliance on the community method, because this is a fundamental issue of the liberal democratic state. Whether or not we accept that the EU is a state, we must admit that for some time now, we have been dealing with citizen-state issues. This, in turn, demands that we take into account the established norms of democratic decision-making that lie at the core of each democratic nation-state's legitimacy.
- 25 No, I am not arguing against moves toward greater European integration. I am saying, however, that both candidates and Member States share a suspicion that, in turn, is at the root of much of the euro-scepticism we see. This is the suspicion that fundamental decisions, previously made in a transparent and legally understandable way at the level of the democratic post-Westphalian nation-state, are now being transferred to a higher body. Moreover, decision-making in this higher body is not always clear and transparent, or even understandable from the standard of parliamentary procedure. In this body, the Montesquieuan division of powers is muddled. Finally, in this body, the link between the opinions of an individual and his opportunities to express them through established means (such through a political party or pressure on his parliamentary representative) is no longer clear.
- 26 Placed in another context, what the citizen senses, in the famous words of Saint-Simon (or was it Engels?), is that Europe is engaged in "replacing the government of persons with the administration of things". I believe that precisely this administration of things causes unease among European citizens, as does the fear that a government of persons is becoming less and less relevant.
- 27 The democratic nation-state that developed in most of Europe after the Enlightenment and the French Revolution holds that the citizen has a say in what happens in his country. It is the absence of this feeling that distinguishes undemocratic countries from democratic ones, it was

- the failure to allow the citizen his say that led ultimately to the fall of the Berlin Wall.
- 28** This, I believe, is the crux of the dilemma facing the *finalité* of Europe. How do we maintain the same sense of democratic legitimacy and transparency in European Union decision-making that we are accustomed to within our own countries. That citizens lack faith, and thus do not participate in the decision-making process underlies the refrain among euro-sceptics in the post-communist world: "We just were in one union, why should we now enter another?" British, Danish and Swedish citizens harbor fears about integration, about a superstate, about the rejection of a common currency. But we cannot dismiss this anxiety either as a "fear of modernity", as an outmoded longing for the nation-state, or even to the failure of those citizens to be good Europeans.
- 29** These fears are legitimate, they stem from those countries' strong democratic national traditions. In opinion polls and referenda, citizens are deciding that if the choice is between effectiveness (and a concomitant greater economic well-being) on the one hand, and democratic decision-making and transparency on the other, we will opt for the latter. Moreover, the Small fear the domination by the Large, and even the Large fear the tyranny of the majority, to borrow from James Madison.
- 30** Most of the objections to a federalist approach come precisely from Member States that look to the today's United States, with its strong federal government, or to Germany, ascribing to this country a desire to impose its own model on the rest of Europe. I disagree. First of all, the strong central government of the U.S. acquired its modern shape only under the New Deal and WWII. It took 150 years and two catastrophes – the Great Depression and a World War – for the U.S. to accept central solutions. In the case of Germany, federalism was created with not inconsiderable assistance from the outside.
- 31** For the first 150 years of its federalism, however, the U.S. was not a strongly centralized country. Beyond the issuance of a common currency and a central command of the military – which was still composed largely of state-based militias – the bulk of decision-making resided in the legislatures and governments of the individual states. I don't wish to engage here in a discussion of U.S. history, but I raise this point because the lexical meaning of the term federalism has changed dramatically in 21<sup>st</sup> century Europe from when it was invented by John Jay, Alexander Hamilton and James Madison in 18<sup>th</sup> century America.
- 32** I would submit, however, that the 18<sup>th</sup> century approach ought to be the intellectual source of our onward movement. We should not look to contemporary America as the model – good or bad – for the future of EU integration. It was 18<sup>th</sup> century America that grappled with the issues virtually identical to those facing Europe today. These include the need to balance the interests of large and small constituent states; the question of how to distribute competencies, i.e. – what should be the prerogatives of the central government and should not; the creation of a monetary union and mechanisms to ensure a common defence.
- 33** Nowhere is the Federalist approach as relevant as in the structural tension between small and large constituent members. I believe there is only one way to maintain citizen support in both large and small countries. That is to balance the legitimate democratic concerns of the Large (through a proportionally elected lower chamber) with the justified fears of the Small (by way of equal representation in an upper chamber of the legislature). If we want democratic legitimacy for EU decisions, we need a strong European parliament. We will not, however, have a strong parliament as long we have a single chamber parliament with semi-proportional representation.
- 34** That is because large states will not fully trust a parliament where their interests are not proportionally represented. Germany has a population sixty times the size of Estonia's. But when Estonia becomes a member of the EU, Germany's representation will only be 15 times larger than Estonia's – what do Germans think of that? Or, to put it crudely, one Estonian is worth four Germans. Small countries, on the other hand, worry that a few large countries have

- enough votes to push through legislation detrimental to the interests of the Small. The result of this tension is that no one – neither the Large nor the Small – is willing to give the European Parliament the kind of law-making authority that we, in the case of our national parliaments, consider to be the *sine qua non* of democratic and legitimate decision-making.
- 35** If we want our people to think of the EU as democratically legitimate, if we want our people to think of Brussels not as an administrative bureaucracy but as the seat of democratic decision-making, then we need to create a two-chamber parliament. I don't think this means we will become a superstate or even a federal state, but I do think that this clearly *federalist* approach provides a solution.
- 36** Once we take this step, we can move on to diffuse and resolve the difficult issue of how many commissioners a country is entitled to have. Let's face it, we have a kind of strange senatorial set-up in the Commission. This is largely because the idea of each country having its own commissioner sates those cravings, especially prevalent among the small countries, to have their own place at the table. The result is somewhat odd, however, and violates Montesquieu's wise and fundamental requirement for a separation of powers. What, after all, is the Commission but an executive branch staffed on a senatorial legislative formula? I find it perverse that one of Europe's great contributions to the idea of how a democracy should work--that is, the separation of powers among the legislative, judicial and executive – is ignored in Europe's own executive and legislative structure. In the past, when the commission functioned much more as a secretariat, the representational element clearly made sense. Today, when the decisions of the Commission already have far-reaching and fundamental effects on the lives of our citizens, a much greater degree of democratic legitimacy is required.
- 37** How to elect Commissioners is probably too complex an issue to go into here, given the number of political parties, national and regional interests of Member States and so on. Rather, this is an issue that will require serious proposals and a serious debate, at the latest when the Union moves to include more than twenty members.
- 38** Before moving on from the topic of federalist solutions to EU governance, I would like to mention one area where I disagree with Joschka Fischer. This is on the need for a popularly elected president. I disagree for the same reasons that lead me to believe that we need a bicameral legislature: the advantage that is given to candidates hailing from large Member States. Here, also, the original Federalists foresaw the problem, insisting that the U.S. president win a majority of the electors in at least fifty percent of the states. This arrangement, probably the first case of QMV, has not been without its own problems, as we all have noted in recent elections in Florida. The initial impulse for the requirement, however, stemmed from the desire for a president who represents a wide distribution of regional interests as well as smaller states. If nothing else, the system forces a presidential candidate to campaign in all of the States, not just in the more populous ones. Should it ever have an elected Commission president, and I believe that for the sake of democratic legitimacy, it should, the EU will also have to ensure that all citizens of Member States believe themselves to be a part of the process.
- 39** Finally, I would like to talk a little about the division of sovereignties, and I hope that in doing so I can win back some of the support I have lost here with some of our British friends, not to mention Estonians. As I noted in the beginning, the fear of an EU superstate that makes all manner of decisions is a real one. Some of this anxiety can be allayed through introduction of the mechanisms I have discussed here.
- 40** There is a more fundamental issue we need to address, and that is subsidiarity, which Joschka Fischer succinctly has described as "a subject that is currently being discussed by everyone

and understood by virtually no one"<sup>3</sup>. I must admit that while I have always thought that decision-making taken at the lowest possible level is a good idea, something about it still bothers me. Something was metaphysically wrong with the idea, not in its intent but in its assumptions.

**41** The idea of subsidiarity, comes, of course, from the Catholic Church. Among the many differences between the European Union – or any other democratic institution for that matter – and the Catholic Church is that the Church has a higher ultimate authority than the temporal world, its authority comes from above. The EU's ultimate authority, on the other hand, comes from the citizen. In other words, the Church can legitimately appeal to God, but in the material world with no higher authority, we can only appeal to the will of the electorate, the citizens.

**42** Here I would suggest we return to those great European minds Jean-Jacques Rousseau, Thomas Hobbes and especially John Locke, who, with their insistence that all rights ultimately inhere in the individual, laid the philosophical foundations for the modern democratic state. It was Locke, after all, who gave us the notion that government exists only at the consent of the governed. What this philosophical difference means in practice is difficult to say; certainly I don't think we should require that all European leaders read *Two Treatises on Government*. I do, however, believe a fundamental shift in attitude is necessary. Instead of this Hegelian, trickle-down theory of government in which the higher body pushes decision-making downwards, we need a Lockean-Rousseauan vision of bottom-up legitimacy. It is not merely the nation state that accedes some decision-making to the Union, it is really the citizen who accedes to the nation-state and from there on upward to the Union. I believe that until we enshrine this basic idea of the Enlightenment we will not achieve that noble goal of a Europe of Citizens.

**43** Ladies and Gentlemen,

These issues I have touched upon in the second part of my talk lead perforce to the question of a constitution. As with the dreaded "F-word", that is to say, "Federalism", the "C" word conjures up images of a state or, given that the EU is a union of nation-states, then a superstate. This makes people very nervous. But as with federalism, so too with a constitution: you can have a constitution without automatically ending up with a super or supra-state. A constitution is a way to codify the relationship between citizens and the political process. But now the Union, with the consent of its members, has begun to deal with such fundamental issues as the citizen-state relationship, issues that previously were the monopoly of the nation-state. Given this development, we need to formalize and legally enshrine this relation in such a way so that everyone understands what he can and cannot do, what rights he enjoys and what the duties of those structures created to make the Union work are. I think we need a constitution precisely for these reasons. This means that people who oppose a superstate should want an EU constitution and a federalist decision-making model just as much, if not more, than those who want to see the Union become an ever stronger body.

**44** Thus, I think we should begin to codify the Union-decision making process and only then decide for ourselves what kind of European Union we want.

Thank you.

Das *Forum Constitutionis Europae* wird aus Mitteln der Robert Bosch Stiftung gefördert.

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<sup>3</sup> Joschka Fischer, *From Confederacy to the Federation - Thoughts on the Finality of European Integration*, <[www.rewi.hu-berlin.de/WHI/english/fce/fcespez2/fischerengl.htm](http://www.rewi.hu-berlin.de/WHI/english/fce/fcespez2/fischerengl.htm)>, para. 33.



