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Salvaging the Constitution for Europe
A Reform Treaty for the EU

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by

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I. Introduction:

European Integration has, for a long time, been considered an unprecedented success story. It has put in place more than 60 years of peace between countries whose common history, throughout centuries, had been marked by iron and blood. Compared to large parts of the globe we are now living in an exceptional oasis of continuing prosperity. At least from the outside, the European Union is regarded as a strong political entity and a serious partner, not only in trade, but also in global negotiations on issues taht shape our common future, like sustainable development, climate change and global governance.

Internally, the situation is perceived differently: Since 2004 the European Union has almost doubled the number of its members, but the "deepening" that would be required as an institutional pre-condition for this enlargement has not yet been achieved: The Amsterdam Summit of 1997 was a failure in this regard as was the Nice Summit of December 2000. Until today, we have not been able to settle the so-called "left-overs" of Amsterdam satisfactorily . The "new method" in preparing the necessary reforms, introduced with the Charter of Fundamental Rights and then also chosen in the "Post-Nice-Process" by the Laeken-Declaration (2001) – the European Convention – may have proved very successful. But its latest outcome, the Treaty establishing a Constitution for Europe drafted by this Convention and signed, with very few minor amendments by all the Member States in October 2004, did not. It was rejected by the people's votes in two Member States, two original Member States: by the referenda in France and the Netherlands.

The peoples of Spain and Luxembourg, as well as the parliaments of sixteen more Member States have decided to ratify the Constitutional Treaty. And while at least five other Member States could be expected to agree as well, the rules of the game under Article 48 of the EU-Treaty are that such reform needs the ratification of all Member States, 27 meanwhile. There was no hope, whatsoever, that the French and the Dutch peoples would change their mind, nor that the British people

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would accept the Constitutional Treaty. Thus, the Constitutional Treaty was declared “dead”.

Two years of a reflection period and discussions, from 2004 to late 2006, however, have allowed to bring together people and minds of the governments from the “yes-countries” as well as those who were – or felt – unable to find a favourable vote for the Treaty of Rome II. Speeches of Prime ministers, presidents, ministers and other experts held at the Humboldt-University during that period show how difficult the search for solutions has really been. *Guy Verhofstadt*, *Bertie Ahern* and *Valéry Giscard d’Estaing* defended the “Constitution”, while *Jean-Claude Juncker* said that already using this term was a great mistake.[1] The Dutch minister for European affairs, *Frans Timmermans*, confirmed this view: For the Dutch people the word “constitution” implied a “European super-state”. The Treaty would never get into force, he said, unless all symbolism in the Treaty, like the anthem, the flag, the terms “law” and “foreign minister” resembling the constitution of a nation state was abolished.[2]

Salvaging the Constitution for Europe thus seems to be an unrealistic project. Why then did I stick with the title of this lecture agreed with my friends from this faculty earlier this year? Is it still an issue, given that the “Brussels Mandate”[3] clearly states that:

> „The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned“.

And:

> „The TEU and the Treaty on the Functioning of the Union will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto“.

Let me first explain what actually did happen at the political level of heads of state and government. In a second step I will present you some elements of what I consider to be the adequate concept of “constitution” in the European and possibly also in the global context. My conclusion, thirdly, will be that – if you follow my approach regarding a

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[1] Jean-Claude Juncker, Die Denkpause nutzen: Strategien zur Verfassung für Europa, Speech held at the Humboldt-Universität zu Berlin the November, 21, 2005, http://whi-berlin.de/hre, p. 5. For the other speeches referred to, see the same web-adress.

[2] Frans Timmermans, Das Europa der Anderen, FCE 5/07, http://whi-berlin.de/fce/2007.dhtml#05/2007, S. 5 ff.

[3] IGC-2007 Mandate, http://register.consilium.europa.eu/pdf/en/07/st11/st11218.en07.pdf, point I.1.

"postnational" concept of constitution – the "Reform Treaty" which is presently being negotiated at the IGC 2007 according to the Brussels Mandate may be considered an improved Constitution for Europe.

1. The battle for the substance of the Treaty

What was wrong with the Constitutional Treaty? All the Heads of State or Government of all Member States had accepted the use of the term „constitution" in the famous Laeken Declaration by which the European Convention was established and the agenda was set for it to prepare a substantive reform of the European Treaties.[4] The taboo was broken, or as the Belgian Prime Minister *Guy Verhofstadt* put it in his speech of November 25, 2003 at our University: „That is one sacred cow which has now been slain".[5] These heads of state and government have even finally signed the „Treaty establishing a Constitution for Europe" in October 2004 in Rome.

Nevertheless, after the „non" in France and the „nee" in the Netherlands, a real campaign of „roll-back" was started by some governments. This is not what one should be able to expect after the signature of a treaty, at least not with a view to international public law.. But governments restarted quarreling on points in which, during the work of the Convention and later at the IGC they had remained unsuccessful and which they hope to renegotiate now. France dreams of a „gouvernement économique" and wishes to put less emphasis on competition. Britain asked to drop the Charter of Fundamental Rights. The Czech Republic – like the Netherlands – is against using the term Constitution or any „constitutional" symbolism and related language/ in the text. Finally, Poland put the issue of „double majority"-voting in the Council back on the table: „square root or death" was the new motto, after they had failed with their slogen „Nice or death" in Rome.

There was a consensus, however, that a substantial reform of the European Treaties – the primary law of the EU – is needed after enlargement. Making the EU „fit for enlargement" and bringing it closer to the citizens was and remains the agreed goal. This means simpler and more effective institutional arrangements, more transparency and more democratic legitimacy and accountability. For most of the Member States, in addition, it was essential to provide the Charter of Fundamental Rights with legally binding force, whereas (only) the British government was horrified by this idea. Thus, the German presidency, in charge of preparing a „roadmap" for the reform to be achieved before

[4] 23 Declaration on the Future of the European Union, attached to the Treaty of Nice, 2001, see: http://europa.eu.int/eur-lex/lex/en/treaties/dat/12001C/pdf/12001C_EN.pdf, OJ 2001 C 80 p. 85.

[5] *Guy Verhofstadt*, The new european constitution – from Laeken to Rome, Humboldt-Speech of 25.11.2003, to be found under: http://whi-berlin.de/hre, at page

the next elections of the European Parliament in 2009,[6] indeed had a difficult job.

The first step of the strategy already developed under the Austrian Presidency in 2006 was to have the „Berlin Declaration" adopted by a special European Summit on the 50th birthday of the European Union on March 25, 2007. In spite of great reluctance shown by the Polish government, the German Chancellor, Mrs. *Angela Merkel* managed all her colleagues to commit themselves to undertaking renewed efforts, in order for the reforms of the EU to be achieved in due course. The last paragraph of the Declaration states:

> „With European unification a dream of earlier generations has become a reality. Our history reminds us that we must protect this for the good of future generations. For that reason we must always renew the political shape of Europe in keeping with the times. That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009".[7]

Given the difficult situation in that period – the Constitution had been declared „dead" by many observers, this Declaration must be regarded a major achievement. The success of Mrs. *Merkel* may be due to the political weight she had gained already in December 2006, when it was her who found a solution for another extremely difficult issue, the EU financial perspectives 2007-2013.[8] The positive picture Germany succeded to convey from the 2006 Football World Cup has probably raised the credits for the new German Chancellor, too.

The resulting strategy of the German Council Presidency during the first six months of 2007 was, as I see it, based on two core elements:

- One was the insight that a six-month term of presidency is not enough time to bring the entire constitutional project back on track. As a result, the German government was therefore well

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[6] Presidency conclusions of the Brussels European Council 15./16. June 2006, to be found under http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf, para: „47. ...the Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments.

48. The report will subsequently be examined by the European Council. The outcome of this examination will serve as the basis for further decisions on how to continue the reform process, it being understood that the necessary steps to that effect will have been taken during the second semester of 2008 at the latest. Each Presidency in office since the start of the reflection period has a particular responsibility to ensure the continuity of this process.

49. The European Council calls for the adoption, on 25 March 2007 in Berlin, of a political declaration by EU leaders, setting out Europe's values and ambitions and confirming their shared commitment to deliver them, commemorating 50 years of the Treaties of Rome."

[7] See: http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf.

[8] See: http://www.bundeskanzlerin.de/nn_4800/Content/DE/Reiseberichte/eu-Eu-einigt-sich-auf-finanzielle-Vorausschau-2007-2013.html. See also the comments by EURORDIS: http://www.eurordis.org/article.php3?id_article=952.

advised to work together closely already with both preceding presidencies in 2006, Austria and Finland. But above all, it organised, for the first time in history, a genuine „trio-presidency“ which collectively decided upon a joint program for the next 18 months with the subsequent two presidencies: Portugal and Slovenia. The „future of the Union“ and, in particular, the reform of the Treaties before the end of 2008., was established as first priority of the “trio program”[9]

- The other basic element was an insight learned from the example of the Irish Presidency for the conclusion of the Constitutional Treaty in June 2004: First listen, then select, then act. Thus, the first stage was rather an inquiry based on a catalogue of twelve questions put to all partner governments with the aim to understand what the essential problems and the „red lines“ of each Member State would be. This process enabled the Presidency to identify the key issues for the final round of negociation, while secondary issues were clarified in bilateral meetings and plenary sessions of the representatives whom each government had to determine. It was agreed that no more than one person from each government had the power to commit his country during these preparatory talks.

As a result, the Brussels Summit of June 2007 concluded to convoke a short intergovernmental conference, the IGC 2007, to be held from July until October 2007. It produced a clear „mandate“ indicating very specifically the points which had to be realized to draft a „Reform Treaty“ that would amend the existing EU and EC Treaty. It was a master-piece of diplomacy to achieve this compromise between the very diverging views of the „yes“ and the „no“-countries or –governments, and to meet the main objectives, as they are set out in the mandate now:

a. to salvage the substance of the Treaty and, in particular the provisions necessary for more efficiency of the institutions and the procedures, more democratic legitimacy and accountability, and more transparency and simplicity so to bring the EU closer to the citizens;

b. to exclude the call for a referendum whereever possible, in particular in France, the Netherlands and Britain, so to ensure, as far as possible, that the needed reforms will be put into effect smoothly, timely and effectively under the normal procedures provided for in the national constitutions for the ratification of international treaties.

[9] See: http://www.eu2007.de/en/The_Council_Presidency/trio/index.html, the „trio-program“: http://www.eu2007.de/includes/Download_Dokumente/Trio-Programm/trioenglish.pdf, Part II, point 1 (p. 10).

The latter point explains why the „Brussels Mandate“ not only provides for a simple amendment of the existing treaties instead of an amended Constitutional Treaty and for deleting all references to „constitution“ and a state-like structure of the EU. In addition, it also specifies how the exact terms of these amendments of the EU and the EC Treaty shall be drafted. Substantially, on the other hand, these amendments do aim at preserving very closely the contents of the Constitutional Treaty , including them into what is today the EU- and the EC Treaty.

2. Constitution without a State

It is clear, therefore, that the future European Union will not have a legal foundation bearing the name „Constitution“. Does this mean that it will not be a Constitution? All depends, in my view, on what we mean when we are using this term. There are, basically, two concepts:

a. One is what I would call the classical „nation-state-concept”, having its origin in the monarchies and the constitutionalism of the eighteenth and nineteenth century. It is based on the substitution of popular sovereignty for the absolutist monarch’s sovereignty. In this concept, the state comes first, its existence is presupposed. Until today in Britain the state is represented by the „Queen in Parliament“. *Hegel* has taught us that the state is a holy entity with presumably unlimited power over its subjects, but the state subsequently was given a constitution, or better: the monarch was tamed and bound by a constitution, which bases the legitimacy of the government on the will of the people. In the light of this concept, thus, only the people of that given state has the “pouvoir constituant”, and without a state, without a predefined people having the “pouvoir constituant” you cannot have a constitution.

b. The opposite concept is a contractualist approach or, as I call it, the “postnational concept”.[10] Here, the constitution comes first. It is ideally an expression of the form and rules of government for the people who have agreed and continue to agree to organise their community according to these structures. By setting up their constitution the people concerned define institutions, confer powers on these institutions, define procedures for the election of their representatives, organise decision-making and control, and define their political status as citizens of that community including their duties and fundamental rights. Whatever may be the historic conditions under which a constitution is made, in modern democracies at least, it is the legal instrument for the individuals to or-

[10] Developed in detail: *Ingolf Pernice*, Europäisches und nationales Verfassungsrecht, in: Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 60 (2001), p. 148 (155 et sequ.), also as WHI-paper 13/2001, http://www.whi-berlin.de/documents/whi-paper1301.pdf.

ganise their political life. There can only be as much of a state as the constitution establishes.[11]

It is apparent that the „post-national" concept allows to apply the term „constitution" to a state as well as to other political organisations or communities. With the „nation-state" concept, instead, such an extension is not possible, and making a Constitution would mean establishing a state.

It is also clear that we have to distinguish the two concepts, but the „post-national" concept must even be distinguished from a broader application of the term constitution as we can find it e.g. with the International Labour Organisation. The instrument establishing the ILO, indeed, is called „constitution". The difference is that the ILO is not legislating or enacting measures that have direct effect for the individual. Instead, all of its acts require previous ratification or acceptance by the Contracting Parties. Consequently, this international organisation differs fundamentally from a supranational organisation such as the EU the acts of which do have direct effect for all individuals and are even awarded primacy over conflicting national law.

Based on the „post-national" concept I argue, for many years now, that the EU already has a constitution. The European Founding Treaties indeed implement exactly the basic (material) functions of a constitution:

- They establish institutions: The European Parliament, the Council, the Commission, the European Court of Justice.
- They confer powers onto these institutions, competencies such as for legislating on the establishment and functioning of the Internal Market, leading to a common commercial policy, taking action for the protection of the environment etc.
- They provide for the election of the Members of the European Parliament, for the nomination of the Members of the Commission, the ECJ etc., and they foresee democratic control of these persons so installed as well as judicial review of the European policies.
- They organise the decision-making procedures for European legislation and for other acts of the Council and the Commission regarding the implementation and execution of such legislation at the national level.
- They define the legal and political status of the „citizens of the Union" vis-à-vis the European institutions as well as the Member

[11] *Peter Häberle*, Europäische Verfassungslehre, 4th ed. 2006, p. 35, with references to *Adolf Arndt* and *Rudolf Smend*.

States, and provide for effective protection of the fundamental rights of the individual on the basis of general principles of law.

This is what the existing European primary law already stands for. The Constitutional Treaty would not have changed the constitutional character of the existing primary law, but it would have made explicit what the ECJ has recognised in what today is established case law more than twenty years ago:

> „the EEC Treaty, albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a Community based on the rule of law".[12]

The Constitutional Treaty would have improved this „constitutional charter" to a great extent, albeit without reversing its character as a constitution. It would have merged the existing Treaties into one coherent text. It would have adapted the language so far used in the Treaty to what the Treaties in fact are: The constitutional foundation of the European Union, an organisation with legislative and executive powers, the legitimacy of which is based upon the will of the citizens of the Union. It would have added the symbols mentioned above, and it would have included the Charter of Fundamental Rights which makes the existing individual rights more visible.

3. A new step for the constitution of the EU

If you are willing to follow my position concerning the possibility of a postnational constitution without a state, the answer to my question whether or not the new „Reform-Treaty" is salvaging the Constitution for Europe is: yes and no. The answer is yes insofar as the European Union will be based upon a „renewed common basis" – to use the terms found in the „Berlin Declaration" of March 2007, and insofar as most of the substantial achievements in the Constitutional Treaty can now be found in the Reform Treaty. But the Constitution for Europe will look different from what the heads of states had foreseen in the Constitutional Treaty of 2004. What many political leaders and commentators had cherished as an historic achievement and a major step towards a real constitution of Europe as a political union, has indeed been replaced by a more pragmatic approach, a purely technical improvement of the primary law of the EU by simply amending its Founding Treaties. This appears to be the „European" way of salvaging the „Constitution for Europe".

It is one open question whether or not the governments will agree on a Reform Treaty. A first draft is presently discussed by the IGC conve-

[12] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61991V0001:EN:HTML, Opinion 1/91, European Economic Area I, para. 21; already Case 294/83, Les Verts, para. 23: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61983J0294:EN:HTML, calls the EC-Treaty „...the basic constitutional charter".

ned following the.European Council Summit in June[13]. Another open question is whether this treaty will eventually be successfully ratified by all (the) Member States. Not surprisingly doubts arise particularly when listening to news from Poland and the UK. The Polish government does not seem satisfied with the compromise on the double majority issue, although there was agreement on postponing the introduction of the new system until 2014/2017, not even to speak on the agreement already found in 2004. And in Britain, strong presssure start to be exerted on the government for not abondoning the referendum promised by *Tony Blair* with regard to the Constitutional Treaty. Prime Minister *Gordon Brown* has announced not to hold a referendum on the Reform Treaty, given that the idea of a Constitution was clearly dropped and Britain has additionally succeeded in obtaining a number of favourable opt outs, including the most prominent one on the Charter of Fundamental Rights. But calls for a referendum are nonetheless strong and are increasingly so, coupled with the reasoning that most of the Constitutional Treaty is now contained in the Reform Treaty, with only the form having been changed: While the Constitutional Treaty was a clear, consolidated text, the Reform Treaty is – as a first commentator says – „completely unintelligible unless it is read alongside the existing Treaties". Only when the amendments are included in the existing treaties people will be able to see and understand what the new foundation of the EU truly looks like.[14] The Economist of August 9th 2007 reports that „the EU's new treaty was deliberately made as unintelligible as possible so as to make it easier to win new powers for Brussels".[15]

This is, however, the way amendments to the existing treaties have always been made. But for the first time people seem to be interested in even such bureaucratically presented amendments; apparently, they start to understand that amending the Treaties on the European Union is not the same thing as amending any other international treaty. What has not yet been understood by most of the political leaders and the public in Europe, though, is that it is not the Constitutional Treaty which would have given the European primary law a constitutional character. Nor will the Reform Treaty have this effect. The existing treaties, as I have already explained, indeed are the Constitution of the European Union and the Reform Treaty will modify it – not less and not more.

And let me add one more aspect: It is quite surprising that British papers criticise that the Reform Treaty is unintellegible. Is any treaty amending another treaty intellegible in itself? What about laws amending other laws. Only the consolidated text including the amendments

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[13] See: http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1317&lang=de&mode=g.

[14] For a first attempt to produce a consolidated text of the EU- and EC-Treaties after the reform, with comments see: Statewatch analyses: The EU's new Reform Treaty, http://www.statewatch.org/news/2007/aug/eu-reform-treaty-texts-analyses.htm.

[15] *Peter Schrank*, Why do so many European leaders favour unintellegibility?, The Economist, Aug 9th 2007, http://www.economist.com/world/europe/displaystory.cfm?story_id=9619050.

will be clear for the reader. The approach of the Reform Treaty, indeed, permits much more easily than the Constitutional Treaty did, to identify where and how the existing Treaties would be modified. I was not aware e.g. that with the Constitutional Treaty we would have had a new and explicit competence for the EU to create European intellectual property rights (Article III-176), but a quick look at the Reform Treaty allowed me to discover this new provision (Article 97a) easily. Insofar the Reform Treaty provides for more transparency than the Constitutional Treaty did. And I expect that once the consolidated text of the amended EU- und EC-Treaties will be available, we may even acknowledge that they are more systematic, simple and easily readable than what we have today and not much less intellegible than the Constitutional Treaty.

4. Conclusion

To conclude, what do I mean, after all, when I refer to the European Conytitution being salvaged?

One explanation is that I really mean salvaging the very substance of the Constitutional Treaty or, more simply, finally putting into force the necessary institutional reforms of the Union as it has been overdue to do since Amsterdam. This is a rather formal view of the subject.

The other explanation goes far beyhond this narrow perspective: What I also mean is more fundamental for the Europeans but probably for other people around the world as well. It concerns the future of an audacious joint venture of the European peoples who had to learn a lesson from centuries of war among them up to World war II: Pooling national sovereignty at a supranational level, with parts of the people's sovereignty to being exercised by common institutions within the framework of a Community or Union „based", as the ECJ put it, „on the rule of law" – this was the revolutionary concept of *Jean Monnet* and *Walter Hallstein* for the preservation of peace among the European states and for effectively pursuing interests which are common to their citizens: economic, environmental, social – at the European and at the global level. The EU is, thus, a system of divided-powers conferred by the citizens on either the state or the Union level, a system in some way similar to what has been described by *J. Madison* in Federalist no. 46:

> "The federal and state Governments are in fact but different agents and trustees of the people, instituted with different powers, and designated for different purposes".[16]

However, the European Union has developed differently and is different from a federal State. There is no European police or military force, and the monopoly for the legitimate exercise of physical force and power remains with the Member States. Membership to the EU is decided

[16] *A. Hamilton/J. Madison/J. Jay*, The Federalist Papers (1787/88), Federalist No. 46.

upon by voluntary agreement between the citizens represented by their respective governments. The enforcement of European law is primarily a matter for the national authorities which function as European ‚agents' in this respect. Both levels of action are autonomous to a certain extent, but also strongly interdependend. Notwithstanding the principle of primacy, the ECJ cannot scrap any national judgement or decision as, in turn, national authorities may not annull acts or legislation of the European institutions. The functioning of this „multilevel constitutional system" is rather based upon mutual trust and on the full respect of the law.

So, the question may be asked what the Reform Treaty does add to this system ? To answer this question allow me to mention a few examples:

- The Reform Treaty would enhance the legitimacy of the Union and its policies by four instruments: Clear provisions on the common values and objectives, new provisions on the democratic principles of the Union including a citizen's initiative, more powers for the European Parliament and for the national parliaments and provisions for the Council to meet in public when acting as a legislative body. In addition, the future provisions on double majority will add to the democratic legitimacy of the Council and to the transparency of the system.
- In combination with double majority the passage from unanmity to qualified majority voting in almost all policy areas will enhance the efficiency of European decision-making, as may the limitation of the size of the Commission.
- New provisions for a 2 ½ - 5 years' office of the President of the European Council and for what was supposed to be the Foreign Minister, renamed the „High Representative of the Union for Foreign Affairs and Security Policy" will ensure that the Union has a „personal" face and is more effectively and more coherently represented in external relations.
- The new treaty defines the competencies of the Union more systematically and provides for a more effective „early warning system" in cases where the respect of the principle of subsidiarity is questioned by national parliaments. This is of fundamental importance for the EU and its ‚raison d'etre' from the beginning: Powers at European level and their exercise are only justified insofar as action only at the national level would not work (e.g. for the establishment of the internal market) or be ineffective (e.g. for air pollution, climate change).
- The amended Treaties, will clarify the limits of European interference with individual rights by referring to the Charter of Fundamental rights as a legally binding instrument, which also makes more visible these rights as guiding values for all the EU-policies.

- New provisions in the Treaties would enhance the respect for the national identity of the Member States including their internal constitutional structures with particular regard to regional and local self-government, and so confirm the basic role of the Member States and their autonomy in the EU multilevel system.
- The EU-Treaty would include, finally, the new provision for the volontary withdrawel from the Union (new Article 35 EU), a provision which underlines the volontary character of the membership to the EU.

These are just a few examples, chosen from a great number of improvements the Reform treaty will, if concludeed in the present form, introduce into the primary law of te EU. Taking a closer look at the provisions of the Reform Treaty, the Protocols and the Declarations, we can also find many new provisions fostering solidarity between Member States as well as with other countries, not only as a principle in the EU's Common Foreign and Security Policy, but also in areas like immigration and asylum policies, terrorism, natural or man-made desasters as well as energy supply and -security.

You may find that all the amendments mentined refer to issues which are typically „constitutional". Thus, talking about necessary progress made regarding democracy, conferring, organising and limiting powers, institutional arrangements and the protection of individual rights in case the Reform Treaty is brought into force, means talking about salvaging the Constitution for Europe. While a failure of the reforms mentioned could well produce a disruption of the Union which so far is based on the rule of law and the principle of solidarity, a success would give the world an example of peaceful coordination of interests trough multilevel constitutionalism which could be further developed with a global perspective to build on our common future.[17]

[17] For some thoughts on this see *Ingolf Pernice*, The Global Dimension of Multilevel Constitutionalism, in: Pierre-Marie Dupuy, Bardo Fassbender, Malcolm N. Shaw, Karl-Peter Sommermann (Hrsg. / Editors), Völkerrecht als Rechtsordnung. Common Values in International Law, Festschrift für / Essays in Honour of Christian Tomuschat, 2006 (Kehl, Strasbourg, Arlington), p. 973-1005.