THE DRAFT CONSTITUTION OF THE EUROPEAN UNION
A CONSTITUTIONAL TREATY AT A CONSTITUTIONAL MOMENT?

Ingolf Pernice, Berlin

I. Introduction

The constitutional development of the European Union puts us in a most important and exciting historic period. A "Draft Treaty establishing a Constitution for Europe" has been worked out and adopted by the Convention on the Future of Europe this summer. After almost eighteen months of discussion and hard work the Convention's President Giscard d'Estaing solemnly submitted the Draft for further consideration and adoption to the President of the European Council. In his "Declaration of Rome" of 18 July 2003[1], he urged President Berlusconi to keep the Draft Treaty as it is and not to reopen the debate. If the Intergovernmental Conference, indeed, reaches a unanimous decision to this effect until the Rome summit in December 2003, the "Constitution de Rome", as Giscard d'Estaing said, could be signed in May 2004, just before the European elections. But as exciting this period may be, do we live at a time of "constitutional moment"?

What is a constitutional moment? Apparently, it was Bruce Ackermann who forged this expression to describe the typical conditions under which constitutions are made: "moments of grave crisis"[2]. In the historic perspective, in particular with a view to the French revolution, constitutions seem to arise out of a battle for freedom and fundamental rights, or as the case may be, the catastrophic failure of an existing regime, such as the fascist system of the Nazi or socialist dictatorships in the former eastern world[3]. Are we in a comparable revolutionary period able to produce a (new) constitution for Europe? Difficult to say, since in Europe, we are in the middle of what future generations may call a calm and peaceful period – or an era of fundamental change, a real constitutional moment.

My friend and colleague Hasso Hofmann some years ago argued, with a view to the experience of the French revolution, that the conditions for a re-foundation of Europe are not present and that there is no room for a European Constitution because of the lack of enthusiastic fight for freedom, equal rights and self-determination of man and woman[4]. I agree insofar as there is no specific brutal break in recent European history which allows us to compare our period with the situation of the French revolution. Nor are we building a new society and founding a state like the Americans did when their Philadelphia Constitution

---

1 V. Giscard d'Estaing, Déclaration de Rome <european-convention.eu.int/docs/Treaty/Rome_ EN.pdf>.

2 *Bruce Ackermann*, We the people: Foundations (1991) and *ibid.*, We the people: Transformations (2000), passim.; quote taken from *his* study on: Our Unconventional Founding, U.Chi.L.Rev. 62, 475 at 476.

3 See *Dieter Grimm*, Ursprung und Wandel der Verfassung, in: Isensee/Kirchhof, Handbuch des Staatsrechts, 3rd ed. 2003, Vol. 1 Historische Grundlagen, § 1 note 55.

4 *Hasso Hofmann*, Von der Staatssoziologie zu einer Soziologie der Verfassung, Juristenzeitung 1999, 1065 at 1074 and 1069 et seq., talking of the "enthousiasmierende Pathos der Freiheit und der menschlichen Gleichheit": "Als Verheißung der Einrichtung souveräner menschlicher Selbstbestimmung hatte der Verfassungsbegriff den Charakter eines Zukunftsentwurfs, eines Plans, der Eröffnung eines neuen Zeitalters" – is it not what the constitution of Europe is about?

Convention produced the Constitution of the United States of America. In Europe, we do not talk about, we may even not intend the founding of a European State or of the United States of Europe. Let me quote Walter Hallstein who in considering what is new with European integration, made two important observations:

1. "The system of sovereign nation-states and their changing needs has lost its validity after it failed the sole important test which is really valid in the 20th century: it has proved itself unable to preserve peace."[5] After two disastrous world wars, a new approach was needed – and found by Jean Monnet and Robert Schuman with the idea of constituting a supranational authority vested with the power to control, in the common interest, the key industries which at that time were considered conditional for making war: coal and steel.
2. The European Community is a community of law: created by law, source of law and an autonomous legal system. The real innovation, against historic attempts to unify Europe, is the substitution of force and violence by law: "The majesty of the law shall constitute what blood and iron could not achieve: Only voluntary unity has a chance to subsist and legal equality and unity are unseparably bound to each other. No legal system without equality before the law, and equality means unity. This insight is the basis of the Treaty of Rome, and this is why this treaty creates a peace system par excellence."[6]

Was World War Two the "constitutional moment"? And if so, why did it take more than fifty years to come to conclusions on a Constitution for Europe? Let me first develop an answer to this question (infra II.), then try to offer more elements giving evidence for the continuation of the process of constitutionalisation (infra III.) for, finally, concluding on the specific nature of the Constitution for Europe and some lessons learned from the background described regarding the present Draft Treaty which is due to be considered and adopted by the Intergovernmental Conference starting next week in Rome (infra IV.).

II. From World War Two to the Constitution for Europe

The so-called Westphalian system of peace, put simply, was based on the sovereignty of the *princeps*, who functioned as guardians of peace and security for their respective peoples. The sovereign, be it the monarch or, at a later stage, the state-government in exercise of the people's sovereignty, was in principle not limited in its freedom of action in the relationship to other states and not prevented, in particular, to make war to other states when it was considered to be necessary for pursuing its interests. In any such case, the individuals or "subjects" of the Crown or government were supposed to give their life for their country, and the question whether or not the battle is in the interest of the individuals was not admissible. The League of Nations and the Hague Conventions were based upon this assumption, and even

---

5 *Walter Hallstein*, Der unvollendete Bundesstaat (1969), at 16 (my translation); this ideas have been taken up by *H. Steinberger*, Die Europäische Union im Lichte der Entscheidung des Bundesverfassungsgerichts vom 12. Okt. 1993, in: Festschrift Bernhardt (1995), 1313 at 1326: "Das System der Nationalstaaten hat den wichtigsten Test des 20. Jahrhunderts nicht bestanden: es hat sich in zwei Weltkriegen als unfähig erwiesen, den Frieden zu bewahren". See also *Günter Hirsch*, Nizza: Ende einer Etappe, Beginn einer Epoche?, NJW 2001, 2677 at 2678.

6 *Hallstein* ibid. at p. 33 et seq.

the system of the United Nations is based on the "sovereign equality of all its Members" (Article 2(1)) – though its first purpose is "to maintain international peace and security" (Article 1(1)) and all Members are bound, under Article 2(4), to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state..." Although these provisions clearly put legal boundaries upon the states, and other provisions of the UN-Charter focus the respect of human rights and economic and cultural co-operation as a basis for international peace, the sovereignty of the nation-state, member of the United Nations, remains untouched and continues to be the central feature of the international system.

Some call the United Nations Charter the "constitution of the international community"[7], others regard the WTO development as a process of constitutionalisation[8]. But the term "constitution" should be limited to instruments establishing public authority and regulating the relationship between individuals and the government so created – conditions which are not yet met on the global level[9]. This is, in reaction to the experience of World War Two, what the European Treaties aimed at in establishing the European Community for Coal and Steel and, later, the European Economic Community and Euratom. In contrast to the "international" approach chosen at the level of the United Nations, the European model is based on a "constitutional" approach, a system which creates from the beginning rights and obligations of the individual and provides for efficient instruments ensuring their respect and implementation[10]. World War Two was sufficiently disastrous, a deep crisis and, therefore, a

---

7 See *Alfred Verdross/Bruno Simma*, Universelles Völkerrecht, 3rd ed. 1984, § 75, S. 59; in depth: *Bardo Fassbender*, UN Security Council Reform and the Right of Veto – A Constitutional Perspective (1998), namely at p. 37 et seq., 89 et seq.: "The UN Charter as a Constitution". In more general terms see: *Martin Nettesheim*, Von der Verhandlungsdiplomatie zur internationalen Verfassungsordnung. Zur Entwicklung der Ordnungsformen des internationalen Wirtschaftsrechts, Festschrift Oppermann (2001), at 381, and, regarding the WTO; *Robert Uerpmann*, Internationales Verfassungsrecht, Juristenzeitung 2001, 565 ff; *Christian Walter*, Die Folgen der Globalisierung für die europäische Verfassungsdiskussion, Deutsches Verwaltungsblatt 2000, 1 at 5 et seq.; *Rainer Wahl*, Der einzelne in der Welt jenseits des Staates, Der Staat 2001, 49, talks about a "Prozeß der Konstitutionalisierung des Völkerrechts".

8 *Deborah Z. Cass*, The Constitutionalization of International Trade Law: Judicial Norm-Generation as the Engine of Constitutional Development in International Trade, EJIL 2001, 39 et seq.: "constitution making by judicial interpretation". See also *Ernst-U. Petersmann*, Europäisches und weltweites Integrations-, Verfassungs- und Weltbürgerrecht, in: Festschrift Oppermann (2001), at 367. More critical: *John Jackson*, The WTO "Constitution" and Proposed Reforms: seven „mantras" revised, Journal of International Economic Law 4 (2001), 67-78.

9 See *Joxerramon Bengoetxea*, Principles in the European Constitutionalising Process, King's College Law Journal 12 (2001), 100 at 103 et seq.); for a "post-national" concept of Constitution see also *Ingolf Pernice*, The European Constitution, in: Sinclair House Debates 16, Europe's Constitution – A Framework for the Future of the Union (2001), at 21-24, and: Multilevel Constitutionalism in the European Union, European Law Review 5 (2002), 515. Arguing the case for a "disorganised civil society" *Emilios Christodoulidis,* Constitutional Irresolution: Law and the Framing of Civil Society, European Law Journal 9 (2003), 401

10 See the prohibitions in the original EEC-Treaty under Articles 7 (discrimination), 85 and 86 (restrictive practices) and the right conferred, under Article 48(2) to migrant workers, but also the provision of Article 189(2) on regulations having direct effect. On this basis the Court of Justice, starting with Case 12/62, [1963] ECR 1 – *Van Gend & Loos* has pushed forward and brought to light, but did not invent the "constitutional" approach. The transformation or constitutionnalisation of Europe "by jurisprudence", described by *Joseph H.H. Weiler*, The Constitution of Europe (1999), at 10 et seq., therefore, has its sources in the treaties, correspond to, and develop their original approach. Examining the constituent power of the ECJ *Hans Lindahl,* Acquiring a Community: The *Acquis* and the Institution of European Legal Order, European Law Journal 9 (2003), 433, however argues, quoting *Giorgio Agambens* "paradox of power", that the ECJ "can only function as a constituent power to the extent that it *credibly* presents itself as constituted".

"constitutional moment" being able to produce a critical revision of the traditional system of nation-states and having led to a new and quite different concept of statehood and the self-organisation of the society.

But the conceptual revolution was not done with the conclusion and implementation of the Treaties of Paris and Rome and, in that, the Constitution of the European Community. The idea of creating the foundations of "an ever closer Union of the peoples of Europe" is an evolutionary and a procedural one, it conceptualises the Constitution of the European Union as a dynamic process of integration, in parallel to and driven by the continued challenges of the cold war and the split between eastern and western Europe. In this process, should the implosion of the communist regimes in central and eastern Europe, the peaceful revolution there and the re-unification of Europe not be considered as a new appearance of "grave crisis" allowing us to call the entire period from 1945 until today a "constitutional period"? Is it possible to say that the "constitutional moment" even persists and continues as long as the constitution of Europe does, the word "constitution" being understood not as a singular act adopted by a Convention, but as a living instrument, a process, driven by the citizens in search of freedom, peace and welfare?[11]

Thus, European integration equals the revolution of the traditional notions and concepts of statehood and constitution: In the "postnational constellation", described by Jürgen Habermas, state and sovereignty have changed – or even lost its meaning altogether. Supranational institutions are established for purposes which the nation-state is unable to meet individually. European nation-states and, in particular, their citizens join their efforts, "pool" their sovereignty and entrust powers to a supranational polity which is supposed to better achieve such purposes of common interest and goals. Multilevel constitutionalism[12] describes the establishment of such supranational public authority which is complementary to the state and leaves it as a part of a divided power system, in which the national constitution, as John Bridge put it quite clearly for the UK, in its traditional meaning no longer exists, it "operates and functions within the embrace of an over-arching European polity"[13]. Neither the Member States as states nor the national constitutions thereby are threatened in their existence and meaning, but they lose their exclusive and embracing role regarding public authority. A "postnational" concept of constitution, as I have proposed in view of the recent developments of our society, is not related to a state or nation only. It may also describe the basic statute of a supranational authority like the EU, understood as a Union of citizens and not primarily of states.[14]

Thus, the process of constitutionalisation of the European Union and, now, of the conclusion of a Treaty establishing a Constitution for Europe is nothing but a result of this ongoing

---

11 *Michael A. Wilkinson*, Civil Society and the Re-imagination of European Constitutionalism, European Law Journal 9 (2003), 451 about the pursuit of constitutionalism as a "never-ending agonistic struggle or experimental practice".

12 See *Ingolf Pernice*, Constitutional Law Implications for a State Participating in a Process of Regional Integration. German Constitution and "Multilevel Constitutionalism", in: Riedel (ed.), German Reports on Public Law Presented to the XV. International Congress on Comparative Law, Bristol, 26 July to 1 August 1998 (1998), at p. 40; *idem*, Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-Making Revisited, CMLRev. 36 (1999), 703 and <www.whi-berlin.de/pernice-cmlrev.htm>.

13 *John Bridge*, The United Kingdom Constitution: Autochthonous or European?, in: Hänni (ed.), Mensch und Staat. L'homme et l'Etat, Festgabe Fleiner (2003), 293 at 310.

14 See *Ingolf Pernice*, Europäisches und nationales Verfassungsrecht, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 60 (2001), 148 at 155-163.

conceptual revolution regarding the system in which the changing society is organising itself in view of their historical experiences of the first decades of the twentieth century, of the re-unification of Europe and of the upcoming challenges of globalisation.

III. The Process of Constitutionalisation Continued

Globalisation drives this revolution on, as the process of constitutionalisation of Europe goes on and already starts to have a global dimension. Europe is reorganising itself in striving for maintaining its position and enhancing its capacities to act as a global player. The need for this has become clear since – at the latest – the 1980s: The depletion of the ozone-layer, global warming and Kyoto, the breakdown of the communist world, Kosovo, Afghanistan, September eleven, the Iraq war etc. Is September 11th a new constitutional moment, now reaching a global level? Politics of, or in one country more and more touch and matter other countries, they may condition the life of the people worldwide, but democratic participation is limited to national citizens only. Trade, financial markets and communication through Internet have broken borders between the states, without efficient rules to be applied in cases of conflict. Ulrich Beck observes that states increasingly depend on the decision of international business to invest or not to invest in their country, while instead of non-existing public authorities the new power of political consumers, organised through Internet, outweighs the power of multinational undertakings. States have lost authority, private actors substitute or complement their role in a global system of governance which is ruled increalingly by real power rather than by law.[15]

Yet, international relations are not any more relations among states but among people, the political society mutes from a national to a European and now to an international society, and the establishment of a global legal – or constitutional – order is on the agenda. It requires the protection of human rights for the citizens of all countries, but also democratic participation of those who are concerned by the making of political decisions which touch their interests. Not the constitution of a community of states is needed, but the constitutionalisation of the global system according to the aspirations of the globalised society.[16]

Some first attempts have already been made. It was clear already in 1948 that international peace is depending on economic and social co-operation as well as on the respect and effective protection of human rights worldwide. Sovereign states individually had failed to ensure these conditions for peace and welfare. Consequently, in the framework of the UN both universal instruments of co-operation and the protection of human rights have been developed, but they are insufficient, as we all know. More efficient regional instruments have been developed, such as the European Convention on Human Rights. But they do not reach all regions of the globe. And it is still based on international law made and applicable between states, though individual rights are recognised to a certain extent. The first global instrument which breaks the wall of national sovereignty is the Statute of the International Criminal Court. The law and the authority so established are directly applicable to the individual. But it is not (yet) ratified by some important countries, namely the United States, is not vested with legislative

---

15 *Ulrich Beck*, Kosmopolitische Globalisierung, Internationale Politik 58 (2003), 9-13.

16 *Martin Nettesheim,* (note 7 *supra* at 402): "constitutionalism can unfold its formative power on supranational level as well".

powers to be exercised by democratic institutions and it derives its legitimacy from an international treaty with no direct involvement of the individual.

Nonetheless, step by step we are facing the establishment of institutions – UN, the World Bank, WTO, environmental regimes, the International Criminal Court – which may be considered as a nucleus of a process of constitutionalisation of a global society of citizens which may in the years to come gradually become aware that their relations to each other require a new layer of legal rules in particular for the protection of their rights and the fair and proper functioning of the system of global governance: It is not a global state, what we need, but new structures ensuring human rights, democratic participation and the authority of the law.[17] Multilevel constitutionalism, thus, may eventually reach a new, third dimension – a global level of constitutional governance. It seems well to be in the interest of the citizens of the European Union to ensure that the EU is vested with sufficient powers to represent their interests effectively in this new process of framing a "community of law", in the terms of Walter Hallstein, at the global level[18].

IV. Conclusions for the IGC of October 2003

To conclude, there are good reasons to argue that we are living a "constitutional moment", but the "moment" is a long period. It may never end, and so does the process of the constitution of Europe, triggered by World War Two, the Cold War, the unification of Europe and new developments like the rapid growth of world markets or the digital revolution. The Treaty establishing a Constitution for Europe, contrary to a widespread assumption even shared by the recent Resolution of the European Parliament[19], develops further, but does not create or establish a Constitution. Talking about a Constitutional Treaty or of a Constitution does not make a difference – as long as it is clear that it is, like the original European Treaties, an expression of the common will of the citizens of the Member States in the name of which the national representatives at the IGC agreed in the past and hopefully will find an agreement, at the Rome summit. Article I-1.1 of the Draft rightly refers to the will of the citizens as well as of the States of Europe reflected by the Constitution[20]. It would be a fundamental error in the process of ratification, to present the Treaty to the citizens as a treaty between states and not as the Constitution for Europe, as much as it would be unwise to pretend that it were fundamentally different from the EC Treaty which the Court of Justice repeatedly called the "constitutional charter of a Community based on the rule of law"[21]. It is important

---

17 *Christian Walter* (note 7 *supra* at 13) calls it "a completion of national constitutions by supranational constitutional elements"; *Rainer Wahl* (note 7 *supra* at 52*)* sees the possibility that supranational constitutionalism will lead to models completely different from stateness.

18 See the conclusions of *Walter Hallstein* in his speech on the 100 anniversary of the Deutsche Nationalversammlung, 1948, in: Oppermann (ed.), Walter Hallstein, Europäische Reden (1979), p. 79; see for more references *Ingolf Pernice*, Begründung und Konsolidierung der Europäischen Gemeinschaft als Rechtsgemeinschaft, in: Zuleeg (ed.), Der Beitrag Walter Hallsteins zur Zukunft Europas. Referate zu Ehren von Walter Hallstein (2003), p. 56 at 67-70.

19 European Parliament Resolution on the draft Treaty establishing a Constitution for Europe and the European Parliaments opinion on the convening of the Intergovernmental Conference (IGC) of 18 September 2003, point F.

20 See also point 30 of the Opinion of the European Parliament (ibid.) stressing that the draft Constitution "expresses the will of the citizens who will not be represented in the IGC".

21 Case 194/83, [1986] ECR 1339 – *Les Verts*; opinion 1/91, [1991] ECR I-6079 – *European Economic Area*.

to emphasise, instead, that this treaty makes clear that the European Union is the Union of its citizens, which is far from putting at risk the Member States and their constitutions, but is rather including them as its basis and necessary components – otherwise it would establish a European house without rooms.

The Draft Treaty on a Constitution for Europe, therefore, is an overwhelming step forward in the process of European integration, and it makes possible the enlargement of the Union. It is a huge step towards simplification, transparency, democracy and efficiency. The Draft gives the Treaties a new value and form, close to what may be accepted by the people as their Constitution of Europe, in particular by

- merging the three pillars into one text rightly called constitution,
- a more systematic order of competencies and provisions on the respect of subsidiarity in their application,
- the inclusion of the Charter of fundamental rights as binding law to be respected by the institutions, bodies and agencies of the Union and by the Member States when they are implementing Union law,[25]
- the new institutional setting with the President of the Commission being elected by the European Parliament and functioning as the head of the European executive,
- the Foreign Minister leading and representing the Union in CFSP and the legislative Council acting in public sessions, and
- many other innovations, including the "constitutional" language which leaves no doubt that "this Constitution establishes the European Union" (Article I-1(1)).

There are a number of points, however, in which the Convention does not meet the expectations on how the new Constitution should look like, and with a view to the needs explained above, the following points need careful consideration by the Intergovernmental Conference due to conclude before 2004:

1. The simplification stops half-way: The Draft combines provisions, in Part I, of real constitutional character with the maintenance of a threatfully complicated set of provisions in Part III which are simply taken over from the existing Treaties. The 465 Articles and several Protocols should be consolidated and simplified following basically the logic of Part I, starting with the fundamental rights, the European citizenship and the democratic life in the Union, followed by the provisions on competencies, the arrangements for the institutions and the rules on the exercise of the competencies, the financial provisions and final clauses on accession, membership, the entry into force and the revision of the Constitution. Such Titles should include all relevant provisions from Parts II to IV and the Protocols, and delete all repetitions and technical details which are the result of earlier diplomatic compromises and have no place in a Constitution.

---

22 See also point 30 of the Opinion of the European Parliament (note 19*supra*) stressing that the draft Constitution "expresses the will of the citizens who will not be represented in the IGC".

23 Case 194/83, [1986] ECR 1339 – *Les Verts*; opinion 1/91, [1991] ECR I-6079 – *European Economic Area.*

25 On the role of the EU Charter of Fundamental Rights *Gráinne de Búrca/Jo Beatrix Aschenbrenner*, European Constitutionalism and the EU Charter of Fundamental Rights, 9 Columbia Journal of European Law (2003), 355.

2. Among the provisions which should simply be deleted Article I-59 deserves special attention. While it seems to be an expression of the fact that the EU is a free association of states, the provision could imply a fundamental change of the character of the Union as a Union of citizens who decide to establish, in response to their historic experiences, a common legal system based on equality, freedom and solidarity. The voluntary withdrawal of one country would simply and unilaterally negate the rights, which the citizens of other Member States have in each Member State. It is also contrary to the general intention of the peoples of Europe, as it is expressed in the Preamble, "to transcend their ancient divisions and, united ever more closely, to forge a common destiny". It is, finally, contrary to what distinguishes a Constitution from an international treaty.
3. The parallelism of a President of the Commission, elected by the European Parliament, and a President of the European Council, "elected" by the Heads of State or Government is contrary to the aims of simplification and creating an efficient executive and representation internally and externally. George Berman, in January this year at our ECLN-meeting in Madrid, has already warned against such a solution which creates confusion and would not permit building a European identity through a person representing the Union, who is elected by and accountable to the European Parliament. In any event, care should be taken that the President of the European Council, as suggested by the European Parliament, is limited basically to function as the chair of the European Council. If its function in external representation of the Union were limited purely to matters of Protocol, the political function being reserved to the President of the Commission and to the Minister of Foreign Affairs, the risks of confusion would be reduced to a minimum.
4. The new provisions on the composition of the Commission will create a „two-class-system" of Commissioners and neither satisfy smaller Member States nor ensure a proper functioning of the Commission. There is no evidence that a Commission with 25 or more members with voting rights functions less efficiently than the very complicated two-class-system. A clear progress in efficiency and strengthening of the Commission as the executive of the Union would be a political appointment of only 12 Commissioners, including the Minister for Foreign Affairs by the President with the consent of the European Parliament, on a fair geographical basis. Personal skill, competence and independence would replace nationality as a criterion for the choice of the members. If national representation at the Commission continues to be considered indispensable, the system should be modified so to have one Commissioner from each Member State and give each of them voting rights in 12 areas of his/her interest, including his/her own portfolio, and exclude him/her from decision-making in the other. The Commissioners would, then, be equal and nevertheless the Commission would be, for each area of action, reduced to a reasonable number of voting members. This solution comes close to the "grouping-proposal" made by the Commission in its Opinion of 17 September 2003 on "A Constitution for the Union"[26], but it seems to be more flexible, allows each Member to participate – with voting rights or not – at all meetings and would ensure equal rights for each of them.
5. The right to veto for Member States should be eliminated throughout the Constitution, which is meant to organise political action in a Union of 25 and more Member States. The rule of unanimity is particularly an impediment to an efficient CFSP. Though it goes

[26] COM (2003) 548 final, point 4, http://europa.eu.int/futurum/documents/other/oth170903_2_en.pdf.

> too far saying that the veto would equal non-action in the respective area or the "right to blackmail", the discretion given to one government simply to block decision-making in a given policy is contrary to the principles of common action and solidarity on which the Union is based. Solutions like requiring a two-thirds majority support of the respective national parliament for the exercise of a veto to be pronounced by a national government, or with the general principle of qualified majority voting the introduction of an "alarm-bell" system allowing a (provisional) veto of one or more Member States under the same condition of two thirds national parliamentary support, may be an appropriate remedy. This should be the solution also for the case of the revision of the Constitution, when a clear majority of Member States vote in favour: To block the revision should be allowed only when a Member State's parliament or referendum decides so with a two thirds majority.

The European Parliament and the Commission have, in their respective opinions on the Draft Treaty, raised many other points, which need careful consideration. They will be discussed in other panels of this Conference. The Intergovernmental Conference may, this is my conclusion, with not much work achieve great improvements towards a Constitution which would allow the Union to be a transparent, effective and democratic instrument of the citizens striving for peace, security and welfare in a free global society.