

# European Integration through the Eyes of its Treaties' Preambles

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## Abstract

Can the history of European integration be told on the basis of the textual development of the preambles to the European treaties? This is the fundamental question of this text which looks at European integration through the eyes of its treaties' preambles. In a first step, possible forms, content and functions of preambles are introduced. This provides the analytical framework for the following part that explores the European treaties' preambles and layers of integration. It focusses on three central hypotheses: Beginning with thoughts on the speaking entity of the preambles, i.e. their subjects, the text examines directions and reasons of European integration. Starting point to this is the "ever closer union among the European peoples" and the discussion on values.

**Keywords:** Preambles, European Integration, European Treaties, Ever Closer Union, Values

## A. Introduction

The term "integration" first appears<sup>1</sup> in a European treaty preamble in 1954: It is the preamble to the protocol creating the Western European Union leading to the accession of Germany and Italy to the Brussels Treaty of 1948. The preamble states:

Desirous to this end of promoting the unity and of encouraging the progressive integration of Europe<sup>2</sup>

When looking at the treaties currently in force, the term "integration" can be discovered again.<sup>3</sup> The first recital<sup>4</sup> of the Treaty of the European Union (TEU) states:

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities

The text reveals a historical dimension and development: The process of *European* integration has long been "undertaken" and it is now time to "mark a new stage" with the treaty. The term reappears in the ninth recital, where it is preceded by the adjective "economic":

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and en-

1 See *Olechowski*, in: Ehs (ed.), p. 75, p. 87. On the conceptual history of "integration" and its transfer to the beginnings of European unification see *Herbst*, *Vierteljahreshefte für Zeitgeschichte* 1986/2, p. 161.

2 Protocol N° I modifying and completing the Brussels Treaty (Paris, 23 October 1954).

3 The preamble version of the treaty of Maastricht contains almost exactly the same wording.

4 *Klabbers* points out that different terminology for these clauses exists, e.g. paragraphs, recitals or considerations, *Klabbers*, in: Bowman/Kritsiotis (eds.), p. 172, p. 174.

vironmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields

Furthermore, the final recital stresses that integration is to be understood as an ongoing process:

IN VIEW of further steps to be taken in order to advance European integration

These preliminary observations raise the question of whether the history of European integration can be told by analysing the preambles to the European treaties. Naturally, it cannot be a matter of studying whether the literal term “integration” appears in the preambles to those treaties out of which the EU emerged. Rather, the question is if and how the history of European integration is reflected in the textual development of European treaties’ preambles.

According to some researchers, the importance of preambles is currently increasing – both quantitatively and qualitatively.<sup>5</sup> More importantly however, they have become an integral part of many legal texts: According to a recent comprehensive count, four out of five constitutions contain preambles.<sup>6</sup> The same study finds that the preambles to different constitutions are interdependent: There are common phrases to numerous constitutions,<sup>7</sup> whereby “We the People” is the most prominent.<sup>8</sup> At the same time, courts seem to be giving preambles increasing consideration.<sup>9</sup>

These general observations on preambles show that their analysis raises conceptual issues with regard to the question of how European integration is reflected in the European treaties’ preambles. In order to understand their distinguishing features, three abstract questions are to be discussed (A.): Which forms do preambles appear in (I.)? What is the typical content of preambles (II.) and, finally, what are the common functions of preambles (III.)? Answering these questions is necessary to identify “layers of integration” in the preambles of the European treaties (B.).

## B. Forms, contents and functions of preambles

### I. Preambles as introductive parts

When looking at standard definitions of preambles one realizes that their form and content can differ significantly.<sup>10</sup> In his analysis of preambles, *Liav Orgad* distin-

5 For this distinction see *Kopetz*, in: Becker et al. (eds.), p. 9, p. 32, p. 33; also see *Orgad*, *ICON* 2010/4, p. 714, p. 738; for recent monographs see *Voermans/Stremmler/Cliteur*, *Otoo*, *Frosini*; older ones *Kulow*, *Papenheim* and *Waser-Huber*.

6 *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, p. 101, p. 117.

7 *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, p. 122.

8 *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, p. 119.

9 See *Frosini*; *Kotzur*, in: *Niedobitek/Zemánek* (eds.), p. 187, pp. 189–192; *Schepers*, *European Law Review*, 1981/5, p. 356; *Canor*, in: *Meng/Ress/Stein* (eds.), p. 87, pp. 96–111.

10 For a standard definition see *Mbengue*, in: *Wolfrum* (ed.) para. 1.

guishes preambles “in formal terms” and “in substantive terms”.<sup>11</sup> Preambles are, in formal terms, an introductory part to a constitution, a treaty or another legal text and might even bear this title. Furthermore, *Cornelia Vismann* points out the distinctive formatting of preambles. They are often written in capital letters, which already typographically distinguishes them from the provisions that follow them.<sup>12</sup>

In principle, preambles in a formal sense can precede various kinds of legal texts.<sup>13</sup> Not only international treaties or constitutions, but also statutory law can contain introductory parts. Also, EU secondary law, especially EU regulations and directives, contains preambles. The interinstitutional agreement on common guidelines for the quality of drafting of Community legislation states that “acts of general application shall be drafted according to a standard structure (title – preamble – enacting terms – annexes, where necessary)”.<sup>14</sup> In respective legislation, “preambles” are not labelled as such, but always appear at the beginning of the text and follow a predefined structure. As they contain the recitals for the legal act to follow, they are often referred to as “recitals” and not “preambles”. Their significance especially with regard to legal interpretation is a recurring topic of legal research.<sup>15</sup>

## II. Typical contents of preambles

According to *Orgad*, the content of preambles to constitutions can be classified into five categories, i.e. references to the sovereign, historical narratives, supreme goals, national identity, and God or religion.<sup>16</sup> The contents of preambles can also be (re)found in the legal text that follows them. *Peter Häberle* identifies overlapping and common elements such as educational objectives, oath clauses and articles of confession.<sup>17</sup> Other elements could be added, such as general objectives and fundamental principles. If one takes a brief look at the EU treaties currently in force, they are clear proof of this phenomenon.<sup>18</sup> Some of the recitals of the preambles can be re-discovered in the subsequent text. To take an example from the TEU, both the preamble and the later text refer to European citizenship and the principle of subsidiarity.

11 *Orgad*, ICON 2010/4, p. 715 and p. 716.

12 *Vismann*, p. 40.

13 The idea of introducing a subsequent main section by an introductory part can also be observed in other fields, e.g. overtures to pieces of music, editorials to magazines, opening sequences to movies or prologues to books.

14 *European Parliament, Council, Commission*, Interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, 1999/C 73/01, guideline 7.

15 See *Klimas/Vaiciukaite*, ILSA Journal of International & Comparative Law 2008/1, p. 61; *Den Heijer/Van Os van den Abeelen/Maslyka*, Amsterdam Law School Legal Studies Research Paper 2019/31; *Humphreys/Santos/Di Caro/Boella/Van der Torre/Robaldo*, in: Rotolo (ed.), p. 41.

16 *Orgad*, ICON 2010/4, pp. 716–717.

17 *Häberle*, in: Listl/Schambeck (eds.), p. 211, pp. 235–237.

18 Also see *Kulow*, pp. 6 et sqq.; *Otoo*, pp. 151 et sqq.

### III. Functions of preambles

Many concepts describe the different functions of preambles. *Jan Klabbers*, whose research mainly focusses on international treaties, subdivides the legal effects of preambles in “aid in interpreting a provision”, “aid in identifying a treaty’s object and purpose”, “informative purposes”, “the declarative function” and “the legislative function”.<sup>19</sup> *Orgad* speaks of “ceremonial-symbolic preamble[s]”, “interpretive preamble[s]” and “substantive preamble[s]”.<sup>20</sup> *Hedwig Kopetz* outlines an “attempt to construct a ‘hierarchical structure’ (Stufenbau) of the normative binding effect of preambles” differentiating between preambles as parts of the constitution with legally binding content, preambles as an aid to interpretation, state objectives in preambles as well as normatively innovative preambles.<sup>21</sup>

In this author’s view, three different functions in preambles can be distinguished on a comparative legal basis:

#### 1. Preambles and legal reasoning

Courts make use of preambles in their legal reasoning. The French Constitutional Court, the German Federal Constitutional Court and the Court of Justice of the European Union (CJEU) demonstrate the practice of courts using and referring to preambles as legal arguments.

##### *a) French Constitutional Court*

The importance given to the preamble of the French Constitution of the Fifth Republic of 1958 according to the jurisprudence of the French Constitutional Council, that has the function of a constitutional court in the French legal system, is vast. The preamble to the Constitution refers to the Declaration of the Rights of Man and of the Citizen of 1789, as well as to the preamble to the Constitution of the Fourth Republic of 1946, which in turn refers to the general principles of law recognized by the laws of the Republic. Based on these references, the Constitutional Council, in its famous 1971 decision *Liberté d’Association*<sup>22</sup> derives fundamental rights directly from the Constitution.<sup>23</sup> Nowadays, this interpretation of the law, according to which fundamental rights are derived from the reference in the preamble, is broadly accepted. However, the Constitutional Council did not give any reasons for this in its original decision. According to the traditional French apodictic style of reasoning, the decision presents this innovation as if having logically resulted from this set of norms. No reasons are given as to why the preamble to the Constitution is for

19 *Klabbers*, in: Bowman/Kritsiotis (eds.), pp. 182–95.

20 *Orgad*, ICON 2010/4, pp. 722 et sqq.

21 *Kopetz*, in: Becker et al. (eds.), pp. 17–25. She additionally distinguishes historical-legitimizing, political, normative, and innovative functions of preambles, p. 16.

22 See Conseil constitutionnel n° 71-44 DC of 17 July 1971.

23 On the “bloc de constitutionnalité” see *Lange*, pp. 57–69.

the first time used as a standard of review.<sup>24</sup> This example describes particularly well that preambles can have normative significance insofar as they are used as an argument creating and granting rights in the first place.

### *b) German Federal Constitutional Court*

In the case law of the German Federal Constitutional Court (FCC), references to the preamble to the Basic Law are found repeatedly, although not very often. At the very beginning of its judicial activity, the Court, in its decision banning the Communist Party of Germany (KPD), refers explicitly to the preamble. On this occasion, the Court writes about the political and legal status of the preamble in general terms stating that it is “primarily of political significance”, but “also has legal content”.<sup>25</sup>

This demonstrates the Court’s understanding that the preamble contains constitutional law. It is important to note that the Court interprets the content of the preamble quite broadly. If one looks at the case law, however, one notices that the preamble to the Basic Law is only of significance in specific constitutional matters, if only for its brevity. Moreover, in these cases, the preamble is not used as an argument on its own, but together with other articles of the Basic Law. In the *KPD* decision, the Court invokes article 146 of the Basic Law when reasoning on the subject of reunification.<sup>26</sup> This leads to the conclusion that (in this case) the preamble functions as an auxiliary legal argument.

In a different field of German constitutional law, a reference to the preamble can be found. The Court regularly cites the preamble, in conjunction with other articles such as articles 1, 24, and 25 of the Basic Law, when arguing the Basic Law’s openness towards international law and the integration of the Federal Republic into the international community of states.<sup>27</sup> In its decisions in the context of European inte-

<sup>24</sup> Weber, p. 107.

<sup>25</sup> BVerfGE 5, 85 (127) – KPD-Verbot: “The preamble to the Basic Law is, by its very nature, primarily of political significance. [...] Beyond that, however, the preamble also has legal content. It is not limited to certain legally significant statements and legal provisions that must be taken into account in interpreting the Basic Law. Rather, the legal duty of all political state institutions of the Federal Republic of Germany to strive with all their strength for the unity of Germany, to direct their measures towards this goal and to allow the suitability for this goal to be a yardstick for their political actions, is to be derived from the preamble.” This ambiguity of preambles also resonates in *Hans Kelsen’s* analysis of the preamble to the UN Charter of 1945. *Kelsen* stresses that “the Preamble has rather an ideological than a legal importance”. *Kelsen* – as far as can be seen – only wrote one text on preambles, cf. *Kelsen*, J. Pol. 1946/2, pp. 142 et sqq. He did not work further on preambles in the rest of his oeuvre. It is noteworthy that the Austrian Federal Constitutional Law of 1920, in the drafting of which *Kelsen* played a decisive role, does not contain a preamble.

<sup>26</sup> There are more cases in the context of reunification citing the preamble, see for example BVerfGE 36, 1 (16 et sqq.) – Grundlagenvertrag.

<sup>27</sup> BVerfGE 31, 58 (74 et sqq.) – Spanier-Beschluß; BVerfGE 108, 238 (247 et sqq.) – Naps-ter; BVerfGE 111, 307 (318) – EGMR-Entscheidungen.

gration, the preamble functions as a topos of argumentation. In its *Lisbon* decision, the Court again cites the preamble along with other provisions in the Basic Law containing fundamental principles.<sup>28</sup> Unlike in the *KPD* decision, the significance of the preamble for the argumentation is not explicitly addressed.

Furthermore, in its *Lisbon* decision, the Court not only refers to the preamble to the Basic Law, but also includes that to the Lisbon Treaty in its reasoning. The references to the preambles to the EU treaties are used in particular to describe the tasks and objectives of the EU.<sup>29</sup> The Court took a similar approach in its decision on the 5% clause in the electoral law for the European Parliament of 1979. Here, the Court cited the preamble to the ECSC and EEC treaties to substantiate the “pan-European idea” of the Treaties of Rome, which were not to be seen as purely economic agreements.<sup>30</sup>

### c) Court of Justice of the European Union

In the case law of the CJEU, references to the preamble can be found from time to time,<sup>31</sup> although not frequently and, according to *Iris Canor*, increasingly rarely in recent times. *Canor* explains this by stating that due to the frequent treaty amendments with new preambles each time, no reference to one preamble is possible, which according to her ultimately makes it less attractive as a legal argument. At the same time, she emphasizes that the “elasticity” of preambles “enables a court to cope with new problems arising under ever-changing conditions and circumstances”.<sup>32</sup>

One of the CJEU’s most fundamental decisions for the development of EU law is the *Van Gend en Loos* decision of 1963,<sup>33</sup> in which the CJEU established the principle of direct effect. In its brief reasoning, the CJEU *inter alia* used the preamble to the EEC treaty to justify its decision. The CJEU argues that “the spirit, the general

28 BVerfGE 123, 267, para. 222 – Lissabon: “After the experience of devastating wars, in particular between the European peoples, the Preamble of the Basic Law emphasises not only the moral basis of responsible self-determination but also the willingness to serve world peace as an equal partner in a united Europe. This willingness is lent concrete shape by the empowerments to integrate into the European Union (Article 23.1 of the Basic Law), to participate in intergovernmental institutions (Article 24.1 of the Basic Law) and to join systems of mutual collective security (Article 24.2 of the Basic Law) as well as by the ban on wars of aggression (Article 26 of the Basic Law)”; also see BVerfGE 123, 267, paras. 225 and 227.

29 BVerfGE 123, 267, para. 32, para. 396.

30 BVerfGE 51, 222 (238) – 5%-Klausel.

31 References to preambles include important decisions such as CJEU, case C-43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena*, ECLI:EU:C:1976:56 and CJEU, case C-621/18, *Andy Wightman and Others v Secretary of State for Exiting the European Union*, ECLI:EU:C:2018:999. Also see *Müller/Christensen*, para. 101 et sqq.

32 *Canor*, in: Meng/Ress/Stein (eds.), p. 111 analysing CJEU’s case-law. Also see *Kulow*, pp. 28 et sqq.

33 CJEU, Case C-26/62, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, ECLI:EU:C:1963:1.

scheme and the wording of those provisions” in question have to be considered. It proceeds by reiterating the objective of the EEC treaty where the preamble is invoked. The Court states that the “objective of the EEC treaty [...] implies that this treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the treaty which refers not only to governments but to peoples”.

For the purposes of examining the function of preambles, the function of the preambles in the case law of the CJEU is similar to that which has been described in regard to the FCC: On the one hand, legal status is attributed to the preamble. At the same time, it simply “confirms” the normative conclusion that has already been drawn. In addition, an even stronger line of argumentation commences in the sentence that follows. The CJEU states that this “is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects member states and also their citizens”. Subsequently, the CJEU enumerates further arguments.

## 2. Preambles unveiling their creators’ self-understanding

Limiting the functions of preambles to those appearing in the case law of courts by no means suffices to describe all potential functions. This becomes particularly clear when recalling the typical contents of preambles already mentioned. Similarly to *Orgad’s* analysis, *Tom Ginsburg* and others distinguish between “defining the subject” and “defining the ends”, in their analysis of preambles to constitutions.<sup>34</sup> *Marie Theres Fögen* points out four recurring parts of preambles from a legal history perspective: The initial “exordium” contains opening remarks. The subsequent “narratio” recounts past experience and present problems whereas the “argumentatio” reveals the intention and accentuates the legitimacy of the following legal text. Finally, the “dispositio” clarifies the provisions and makes them acceptable.<sup>35</sup>

These descriptions show that preambles as a whole are not aiming at direct application of the law, but rather function as elements that create legitimation. This becomes quite clear if one examines the subject of the sentences in the preamble. Every preamble contains a speaking person, group of persons or other entities, already for grammatical reasons. Moreover, preambles often reveal more, especially the self-understanding of this speaking entity.

The question of an underlying self-understanding expressed in preambles resonates with many studying preambles.<sup>36</sup> According to *Häberle*, the self-understanding can be discovered within the articulation of specific values, ideals, convictions

34 *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int’l Law Review* 2014/2, Table 2, ‘Typology of Preambular Language’, p. 116.

35 *Fögen*, *Chicago-Kent Law Review* 1995, p. 1593, p. 1597; similarly also *Kopetz*, in: *Becker et al.* (eds.), pp. 15–16.

36 *Miliopoulos*, in: *Marchetti/Demesmay* (eds.), p. 35; *Robbers*, in: *Blankenagel/Pernice/Schulze-Fielitz* (eds.), *Festschrift Peter Häberle*, p. 251.



and underlying motivations.<sup>37</sup> He points out that the main functions of constitutional preambles are “communication, integration and possibilities of identification [...] for the citizen and thus legitimation of the constitutional state”.<sup>38</sup> He repeatedly makes the link to the “often-hidden cultural layers of constitutional texts” that can be found “within the depths of the preamble”.<sup>39</sup>

Thus, when they are linked to norms outside written law, preambles fulfil a highly important normative function in unveiling the self-understanding of their creators. This shows that preambles are closely linked to legitimation.

### 3. Preambles and persuasiveness

The last function of preambles described here appears to be its oldest: The normative dimensions of preambles can be found in *Plato's Nomoi*. In the corresponding dialogue, *Plato* draws a comparison between doctors and legislators who can – by means of a convincing preface – ensure that their treatment or law is effective.<sup>40</sup> Ultimately, then, the preamble serves the purpose of persuasion and efficacy of law.<sup>41</sup>

Whilst the described function of unveiling the self-understanding emphasizes the legitimation of the preamble- and law-creator itself more strongly, the function of persuasiveness looks to the future.<sup>42</sup> In this way, the preamble is intended to ensure that the following text is applied in the way that its creator has envisaged.

*Fögen* emphasizes this aspect in her history of preambles,<sup>43</sup> especially describing the (mis-)use of preambles by totalitarian regimes such as the Nazis. Commenting on *Plato*, she describes preambles as a “platform to express [...] personal maxims or [...] commitment to safeguard common convictions and the status quo”.<sup>44</sup> It is important to keep in mind that preambles thus are favoured by authoritarian regimes, as they serve as an ideal means of expression of power. *Fögen* concludes – *inter alia* – that in the Nazi regime, preambles turned out to be “no less than the substitute for the non-existing national socialist constitution”.<sup>45</sup> We therefore should be highly aware of the fact that “there is no preamble that can hide its socio-political context and commitment”.<sup>46</sup>

37 *Häberle*, in: Listl/Schambeck (eds.), p. 231 [This and the following translations are by R.W.].

38 *Häberle*, in: Listl/Schambeck (eds.), p. 230; also see *Kopetz*, in: Becker et al. (eds.), p. 16.

39 *Häberle*, in: Listl/Schambeck (eds.), p. 230.

40 See *Plato*, *Nomoi*, 719e-720a, 753e-743a, 925c.

41 *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, p. 107.

42 On this perspective also see *Lazar*, *Law & Literature* 2021/1, p. 1, studying the examples of Hungary and China.

43 On the history of preambles *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, pp. 107–109; *Häberle*, in: Listl/Schambeck (eds.), pp. 214–219; *Kopetz*, in: Becker et al. (eds.), pp. 12–13.

44 *Fögen*, *Chicago-Kent Law Review* 1995, p. 1603; on *Plato* see pp. 1597–1598; on Nazi regime see pp. 1608–1612. *Fögen* describes Nazi preambles as “tough, demanding, and aggressive propaganda”, p. 1609.

45 *Fögen*, *Chicago-Kent Law Review* 1995, p. 1612.

46 *Fögen*, *Chicago-Kent Law Review* 1995, p. 1618.

#### IV. Interim conclusion: Scope of analysis of the European treaties' preambles

Given this scope of analysis regarding forms, contents and functions of preambles in general, the analysis of the European treaties' preambles can be specified as follows: As the preambles to the European treaties will be used to explore the different ways in which the European Union has understood itself over time and thereby help to understand the history of integration within the European Union, the focus will be on the EU and EC treaties, respectively, and therefore on primary law.<sup>47</sup> The analysis will deal with the contents of the preambles, but in a formal sense, i.e. only with regard to the preliminary parts of the treaties. As has been shown, the typical contents of preambles are not necessarily only found in preambles themselves. As all European treaties are preceded by preambles, and since precisely their comparative analysis is the topic here, it nevertheless makes sense to limit the analysis primarily to the contents of their texts. The function unveiling the law-creator and its self-understanding is of great importance for the research question and will therefore play a central and recurring role. The same is true with regard to their persuasiveness, as this might be revealing for their connection to the history of the EU. In contrast, the use of preambles by courts will not play a decisive role. This is mainly due to this text's concern asking about the history of integration, which emerges from the text of the preambles themselves. As discussed above (B.III.1.c), the CJEU rarely refers to preambles in its reasoning.

#### C. European treaties' preambles and layers of integration

When analysing the preambles to the European treaties in more depth, the central question is whether and if so how the history of European integration can be told using the textual development of preambles to the European treaties.

After giving a short overview of the different preambles taken into account (I.), the analysis focusses on three central questions: Firstly, the question of who is speaking in the respective preambles will be studied (II.), secondly, the general direction of European integration in the wording of the preambles will be analysed, by focusing on the formula of "an ever closer union among the European peoples" (III.). In a third step, the question will be as to which reasons are given to the process of integration (IV.).

<sup>47</sup> Functionally, the primary law of the EU can be compared with national constitutional law since the treaties contain essential organisational rules and the Charter of Fundamental Rights also contains overarching human rights, see *Calliess*, p. 43, p. 54; *Terhechte*, EuR 2008/2, p. 143; for a more critical perspective see *Heinig*, JZ 2007/19, p. 905.

## **I. First approach: European treaties taken into (ac)count**

The complete history and development of the European treaties follows a string of numerous treaties, not all of which it is possible to discuss here.<sup>48</sup> Of interest, of course, are the first preambles to the Treaties of Paris and Rome in which the three original European Communities were established. The preamble to the Treaty Establishing the European Coal and Steel Community of 1951 is one of the shortest and counts 200 words.<sup>49</sup> In general, one might say that one finds shorter preambles in the early years, with the Treaty establishing the European Economic Community (1957) containing 267 words and the Treaty Establishing the European Atomic Energy Community (1957) containing 206. The subsequent Treaty of Brussels (1965), which concerns institutional structures, is less interesting for further analysis, if only in view of its extremely brief preamble with only 157 words. The preamble to the Single European Act (1986), on the other hand, is again more interesting, as it contains, on the one hand, a preamble, which is significantly longer than the previous ones with 545 words. On the other hand, the European Communities had in the meantime expanded by several members with the accessions of Denmark, Ireland and the United Kingdom in 1973, Greece in 1981 and Portugal and Spain in 1986.

A major change in European primary law is the Maastricht Treaty (1992) in which the original version of the TEU was born. Although its preamble was subsequently amended, it remains the core of the preamble currently in force. This is also shown – in a cursory way – by the fact that the number of words has increased from 449 in the version of Maastricht to 584 in the Lisbon version. The subsequent treaties of Amsterdam and Nice can be neglected: While the Amsterdam Treaty (1997) itself does not contain a preamble; it merely adds another recital to the

48 For the purpose of this study, the preambles of the following treaties and charters were analysed: Treaty of Paris: Treaty Establishing the European Coal & Steel Community (1951/1952), Treaties of Rome (1957/1958): Treaty Establishing the European Economic Community and Treaty Establishing the European Atomic Energy Community, Treaty of Brussels (Merger Treaty): Treaty Establishing A Single Council and A Single Commission of The European Communities (1965/1967), Single European Act (1986/1987), Treaty of Maastricht (1992/1993): Treaty on European Union, Treaty of Amsterdam, Amending the Treaty on European Union, the Treaties Establishing the European Communities & Certain Related Acts (1997/1999), Treaty of Nice, Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts (2001/2003), Treaty Establishing a Constitution for Europe (2004), Treaty of Lisbon, Amending the Treaty on European Union and the Treaty Establishing the European Community (2007/2009), Charter of Fundamental Rights of the European Union (2000/2009).

49 In order to receive a first impression, I counted how many words the different preambles contain, following the example of the empirical evaluation by *Tom Ginsburg* and others. In their legal linguistic study, they came to the conclusion that the average length of a preamble to a Constitution was 175 words, see *Ginsburg/Foti/Rockmore*, *The Geo. Wash. Int'l Law Review* 2014/2, p. 111. I did not count the names of the plenipotentiaries.

TEU's preamble.<sup>50</sup> The Treaty of Nice (2001) contains a preamble but is itself rather technically worded<sup>51</sup> and will therefore not be analysed further.

The Treaty of Lisbon (2007) reformed the TEU and the Treaty establishing the European Community, which was given the new name Treaty on the Functioning of the European Union (TFEU); it also amended the Euratom Treaty by Protocol No. 2. While, as previously mentioned, the preamble to the TEU is particularly long, the preamble to the TFEU is shorter with 338 words. The general perception of this preamble is one of surprise at how little has changed compared to the previous preamble of the EEC.<sup>52</sup>

In addition, the Treaty establishing a Constitution for Europe (2004) is taken into account. It was precisely its preamble that gave rise to many discussions. According to *Kopetz*, the preamble even became the “platform of a public debate on the fundamental values in Europe”.<sup>53</sup> Indeed, the content of the preamble to the Constitutional Treaty is substantially different from that to the Maastricht Treaty. The comparatively shorter text, at 435 words, was possibly intended to avoid the confusing digressions of the previous preamble.

If the Constitution for Europe had entered into force, it would have been accompanied by the Charter of Fundamental Rights of the EU, which was already proclaimed in 2000. It contains, in turn, a preamble whose analysis is very revealing in comparison to the other treaties and which has therefore been included here. The Charter entered into force together with the Lisbon Treaty in 2009 and contains 362 words.

## II. Subjects – thoughts on the speaking entity of the preambles

Essentially, the preambles to the treaties analysed here have always featured a similar structure: Formally, they do not contain a full stop, but only commas and colons.<sup>54</sup> The first thing to appear is the subject of a very long sentence, i.e. the contracting heads of state.

The official versions of the TEU and TFEU currently in force contain only the names of the heads of state who were involved in the first signing of the treaty, i.e. for the TEU those from Maastricht, and in the TFEU those from Rome. The newly

50 Article 2: The Treaty establishing the European Community shall be amended in accordance with the provisions of this Article 1. In the preamble the following recital shall be inserted after the eighth recital: “DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating.”

51 Besides its first recital (“RECALLING the historic importance of the ending of the division of the European continent,”), its main purpose is to refer to the accession negotiations (recital 3), see *Fischer*, pp. 83–85.

52 *Terhechte*, in: Groeben/Schwarze/Hatje (eds.), *Präambel AEUV*, para. 1.

53 *Kopetz*, in: Becker et al. (eds.), p. 31.

54 This strict formalisation recalls the style of reasoning of French courts practiced since the French Revolution and subject to reform only in recent years. For further explanation see *Weber*, pp. 85–127.

joined members are mentioned only in a footnote. In contrast, the draft of the Constitution intended to mention all members in the preamble that had acceded at that time, most likely as an expression of a new beginning.<sup>55</sup>

The list of heads of states is followed by a long section with various recitals, the introductory wording of which, just like the enumerated heads of state, is always written in capital letters.<sup>56</sup> This enumeration varying in length from treaty to treaty is followed by the closing formula with the subsequent naming of the plenipotentiaries. At the end, the treaty itself is announced:

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

The preamble of the Charter of Fundamental Rights differs substantially from that of the other treaties. First of all, it abandons the form of the artificially long sentence and also does not contain recitals introduced with capital letters. Instead, it is a text divided by seven paragraphs. Moreover, a significant difference can be found right at the beginning: Here, the subjects of the sentence are no longer the heads of state, but the “peoples of Europe”. In full, the first sentence reads:

The peoples of Europe, in creating an ever-closer union among them, are resolved to share a peaceful future based on common values.

The concluding sentence then states:

The Union therefore recognises the rights, freedoms and principles set out hereafter.

So why were the “peoples of Europe” placed at the beginning of this preamble? While the position of “peoples” as subjects was not explicitly discussed,<sup>57</sup> a lively discussion arose in the Convention about whether one should speak of “people” or “peoples”.<sup>58</sup> The starting point for the discussion was an early draft of the Charter which spoke of the “people” in the singular.<sup>59</sup> Accordingly, the Charter was to contain a first article with the wording “All public authority shall emanate from the people”. While consensus emerged that it would be better to include such a formulation in a preamble, the wording itself was met with diverse criticism. Various counterproposals were submitted.

Some proposals were to keep “people” in the singular, but to expand the wording. For example, the Belgian MEP *Jean-Maurice Dehousse* proposed the wording

55 For further details see *Nowak*, in: Frankfurter Kommentar EUV, Präambel, para. 4–5; *Häde* in: Frankfurter Kommentar AEUV, Präambel, para. 1.

56 See *Vismann*, p. 40; also see part A.I.

57 For a reproduction and analysis of the debates on the preamble see *Meyer*, in: Meyer/Hölscheidt (eds.), GRCh Präambel, para. 14–25.

58 Especially in this section, I follow, partly verbatim, the considerations published in my essay “Von europäischen Völkern und Werten. Altes und Neues zur europäischen Integration in der Präambel der Grundrechte-Charta (2000)”, in: Themenportal Europäische Geschichte, 2022.

59 Document CHARTE 4170/00 CONVENT 17.

“from the commune to Europe, all public power emanates from the people” in order to clarify the unconditional application of the principle of democracy “to all levels of public action”.<sup>60</sup> To avoid misunderstandings, French MEP *Pervenche Berès* proposed to speak not of “all” but of “the” public power, which emanates “first” from the people.<sup>61</sup>

Other members of the Convention, in particular from Germany, focused on the use of the plural and observed: “A European people has not been formed [...]. The reference point of the Charter must therefore remain the peoples of the Union States [...]. Therefore, it is proposed to insert the words ‘of the peoples of the states brought together (or: united) in the European Union’ instead of the phrase ‘of the people’.”<sup>62</sup> The remarkable feature of this proposal was that it did not simply put “people” in the plural, but added “states” as their point of reference. The proposal of the Luxembourg liberal politician *Simone Beissel* “All public authority emanates from nations” went even further, dropping the reference to people or peoples altogether.<sup>63</sup>

How much does this disagreement tell us about the state of integration? The discussions in the Fundamental Rights Convention show that the phrase “peoples of Europe” gave rise to exchanges on various questions of the principle of democracy. As far as the working documents and protocols show, the members of the Convention did not discuss these questions systematically, but associated various specific aspects with them, such as the election of judges, the transparency requirement or access to documents. It is likely that their associative approach is an expression of the ambiguity of the reference to democracy.<sup>64</sup>

Furthermore, the wording is slightly misleading because the “peoples of Europe” are mentioned as an acting subject, but they neither directly participated in the creation of the Charter nor voted on it directly. Yet the reference to peoples in the preamble is not to be understood literally as a retelling of the constituent act, as comparisons to nation-state constitutions clearly show. The preamble of the German Basic Law of 1949 speaks of “das Deutsche Volk”, the French Constitution of 1958 begins with “Le peuple français” and the US Constitution of 1789 with “We the People of the United States”. Only the current French Constitution was approved by the people in a referendum. The German Basic Law, on the other hand, was passed by the Parliamentary Council, approved by the occupying powers and ultimately ratified by the Länder. The US Constitution was ratified by the 13 states at the time. This comparison shows that the mere declaration of a certain entity as the subject in a preamble does not allow an automatic conclusion to be drawn in

60 Document CHARTE 4332/00, p. 21.

61 Ibid., p. 24.

62 Document CHARTE 4203/00 CONTRIB 84, Arbeitsgruppe der deutschen Länder; also see Document CONVENT 28, CHARTE 4332/00, p. 14.

63 CHARTE 4332/00, p. 22.

64 On the vagueness of the reference to “democracy” in the preambles of the treaties see *Otto*, SRIEL 2021/5, p. 691.

regard to the identity of the creator.<sup>65</sup> At the level of nation-state constitutions, this rather shows that the “people” as a subject describes the normative entity of the constitutions’ legitimation.

Regarding the EU Charter, the wording could be explained by the self-understanding of the creators that becomes manifest in the preamble. In contrast to the treaties on which the TEU and TFEU are based, which refer to the heads of state as the subject, the fundamental rights are intended to include all citizens in a more prominent way. *Nora Otoo* cites as another argument that the legitimacy of the European Convention was higher given its composition.<sup>66</sup> Furthermore, the Charter followed the Maastricht Treaty that introduced citizenship of the EU. Additionally, there is also an element that is directed at persuading those whom the Charter addresses, in addition to the unveiling of the self-understanding.<sup>67</sup>

A comparison with national constitutions shows that ambiguity regarding the subject of the preambles is not unique to the European treaties. But it is precisely for the latter that the comparison provides a first indication of the underlying self-understanding: While all treaties of the EU, including the one for a Constitution of Europe, are based on the heads of state and thus show similarities to treaties in international law, only the Charter of Fundamental Rights creates a new kind of agreement whose subject is *the peoples of Europe*.

One could furthermore argue, that the mention of peoples in the plural form is an expression of that there is no existing European people in singular.<sup>68</sup> *Armin von Bogdandy* stresses that “the plural makes clear that the intention of the Constitution is not to wipe out the ‘peoples’ for one European people. Rather, their respective identities, traditions and political organisations are an integral part of the integration project”.<sup>69</sup>

### III. Directions – “An ever closer union among the European peoples”

“The people” or “the peoples” do not appear as the subjects of preambles to the treaties. But they are referred to in them and even appear in their perhaps most famous phrase, namely “an ever closer union among the European peoples”.

The notion of “an ever closer union among the European peoples” in the preambles to the European treaties has a clear temporal dimension: The adverb “ever” indicates the ongoing continuity of the process of European integration from a temporal perspective. The adjective “close” that is used in its comparative form suggests

65 This problem is already addressed by *Kelsen*, J. Pol. 1946/2, pp. 137–139, in respect to the preamble to the Charter of the UN. *Orgad* gives another reason for the framers of the US Constitution adopting the phrase “We the people of the United States” in stating that “they were uncertain how many states would join the Union, and this term was more flexible” (*Orgad*, ICON 2010/4, p. 736 referring to *Sanford Levinson*).

66 *Otoo*, pp. 44–46.

67 See part A.III.2.

68 *Weiler*, European Law Journal 1995/3, p. 219, pp. 230–231 stating that “the Union and its institutions can have neither the authority nor the legitimacy of a Demos-cratic State”.

69 *Von Bogdandy*, in: De Witte (ed.), p. 3, p. 8.



a potential and intended increased degree of the noun “union”<sup>70</sup> not only in a temporal but also in a spatial sense.

When Häberle is describing preambles functioning as a “bridge in time”,<sup>71</sup> he stresses that preambles contain a possible interpretation of history and at the same time are able to write history themselves by uniting the past and the future.<sup>72</sup> This, one could argue, is a phenomenon of language itself; preambles tend to make these references more explicit by addressing previous experiences and future expectations as recurring elements. This intertemporal connection resonates also in the functions of preambles, on the one hand demonstrating the self-understanding of the creators, and on the other hand intending to give more weight to the text itself.<sup>73</sup>

Apart from this, one can look more closely into the text of the different preambles and examine whether the phrase “an ever closer union among the European peoples” can be discovered from the very beginning in all preambles and in which context it is mentioned.

It is, first of all, noteworthy that this phrase first appears in the Treaty establishing the EEC and not, as one might expect, in the Treaty Establishing the ECSC. The preamble to the ECSC, unlike later treaties, strongly emphasises the peace motif by referring to it in the first two recitals:

CONSIDERING that world peace can be safeguarded only by creative efforts commensurate with the dangers that threaten it,  
CONVINCED that the contribution which an organised and vital Europe can make to civilisation is indispensable to the maintenance of peaceful relations

The sixth and last recital can be seen as the predecessor of the well-known notion of an “ever closer union”:

RESOLVED to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared

The notion of “a broader and deeper community among peoples long divided by bloody conflicts” can be seen as a first predecessor of the “ever closer union”. The community is designed for “broader and deeper” co-operation. The “peoples” are not yet called “European”. Rather, their point of reference (“long divided by bloody conflicts”) demonstrates the temporal context, the recent end of the war,

70 In the German versions of the preambles, the word “union” was initially translated exclusively as “Zusammenschluss” and later also as “Union”. Nowadays, the TEU speaks of “Union”, while the TFEU speaks of “Zusammenschluss”. This could be interpreted as a sign that the concept of “ever closer union” is not clearly defined. This should, however, like all arguments with translations and language versions in European law, not be overrated.

71 Häberle, in: Listl/Schambeck (eds.), p. 233, „Brückenfunktion in der Zeit“.

72 Häberle, in: Listl/Schambeck (eds.), p. 217, pp. 234–235.

73 See part A.III.2 and 3.



particularly well. In addition, the opening words of this recital refer to “age-old rivalries”. These illustrative references to the peace motif cannot be found in such wording in the later preambles.

Mere six years later, when the treaties of Rome were negotiated, the notion of “an ever closer union among the peoples of Europe” appeared for the first time and has served as “the succinct core ideal”<sup>74</sup> of the EU ever since. It appears directly in the first recital and reads in full:

DETERMINED to establish the foundations of an ever closer union among the European peoples

*Canor*, who puts an emphasis on the EEC treaties’ preamble in her work, stresses that the narrative component of this preamble turns out to be rather meagre. Although we find a reference to an “ever closer union” directly in the first recital, it lacks other historical references.<sup>75</sup> Quite unlike the ECSC preamble, the peace motif is hidden in one of the last recitals and is not central here either:

RESOLVED to strengthen the safeguards of peace and liberty by establishing this combination of resources, and calling upon the other peoples of Europe who share their ideal to join in their efforts

The remaining recitals are rather technical. They describe the tasks of the EEC and show its clear orientation towards economic and commercial politics. This might be the reason why *Canor* concludes that the “Treaty of Rome commences with a highly economic prelude, which evolved over the years into the spell of the Community’s genius philosophy of having political ends achieved by economic means”.<sup>76</sup>

In this and also the later treaties, the frequent use of “peoples” recurs – in addition to the phrase “ever closer union” itself. References to peoples in general can be found regularly in the preambles. The EEC preamble, for example, speaks of “their peoples” in its third recital:

DIRECTING their efforts to the essential purpose of constantly improving the living and working conditions of their peoples

The possessive pronoun “their” refers to the subject of the sentence, i.e., the heads of state. So, even if they are now European – as designated in the first recital of the preamble – the point of reference of the peoples is still their respective heads of state. The reference to “their peoples” is also found repeatedly in later treaties, for example in Maastricht, Amsterdam and Lisbon.

In a further chronological review of the treaties, the preamble to the Single European Act deserves to be mentioned. It does not contain the phrase “ever closer union”, but it is the only one of the preambles analysed here to contain a reference

<sup>74</sup> *Canor*, in: Meng/Ress/Stein (eds.), p. 91.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Canor*, in: Meng/Ress/Stein (eds.), p. 93.

to the European Parliament. In its fourth recital, the preamble also speaks of the “democratic peoples of Europe”:

CONVINCED that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression

From 1979, the European Parliament was elected by direct vote and acquired more competences through the Single European Act. The wording in the preamble alludes to this, but is otherwise rather vague: What does the description of peoples as democratic mean? And what is meant by the European Parliament being “an indispensable means of expression”? It is probably a good idea not to overinterpret the exact wording of these statements. If you look at the preamble of the Single European Act, however, it becomes clear that it differs from the first preambles to the treaties on the Communities: It does no longer primarily refer to the economy, but also to democracy and human rights, both notions that are mentioned here for the first time and are to be found in the later preambles as well.

The preamble to the Maastricht Treaty follows this trend. First of all, it should be mentioned that it revisits the phrase “ever closer union”. The eleventh – and not the first – recital states:

RESOLVED to continue the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity

A new nuance that can be seen here is that now we no longer speak of the European peoples, but of the “peoples of Europe”. Whereas this does not change the meaning, it is remarkable that in the same recital the principle of subsidiarity is mentioned, for the first time ever in a preamble. In the TEU under the Lisbon Treaty, the wording is identical, albeit two recitals below. However, the first recital of the Maastricht preamble also addresses the development of European integration, which can still be found in the TEU today, namely:

RESOLVED, to mark a new stage in the process of European integration undertaken with the establishment of the European Communities

Even if this introduction can be deemed “more festive”,<sup>77</sup> it lacks concrete content and along with the ambiguous juxtaposition of “ever closer union” and mention of the principle of subsidiarity later on, a clear direction is absent. An incoherence can also be seen in the fact that all three preambles (TEU, TFEU and Charter) now contain the phrase “ever closer union”, albeit, as already described, in different places. The TFEU modelled on the EEC preamble refers to it in the first recital. In addi-

<sup>77</sup> Canor, in: Meng/Ress/Stein (eds.), p. 94.

tion, the Charter also mentions it at the very beginning, notably with the peoples of Europe as the subject of the sentence, which then reads:

The peoples of Europe, in creating an ever-closer union among them, are resolved to share a peaceful future based on common values.

Interestingly, the phrase is now linked to the “common values”. This new phenomenon of mentioning values will be discussed in more detail in the next section.

To conclude, one last preamble shall be examined, namely the preamble to the failed Constitution. First, it should be noted that the Constitution does not use the wording “ever closer union”. One reason for this is perhaps that it was supposed to enter into force together with the Charter, which in turn refers to the phrase. Moreover, very similar wording can be found in the third recital of the preamble to the Constitution, stating:

CONVINCED that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their former divisions and, united ever more closely, to forge a common destiny

In this author’s eyes, the invocation of a “common destiny” exceeds the previous wording even further. In addition, the following, fourth recital, introduces the European motto “United in diversity” into the preamble and invokes the “best chance” Europe offers:

CONVINCED that, thus ‘United in diversity’, Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope

In contrast, the preambles to the treaties currently in force represent a “*retour en arrière*”<sup>78</sup> and leave the question of finality more open once again.<sup>79</sup> This is hardly surprising, as after the failure of the Constitution, in the wording of the Treaty of Lisbon, particular attention was paid to avoiding all state- or constitution-like symbolism in primary law. Accordingly, the preambles again put greater emphasis on economic and efficiency-oriented aspects, embracing the well-known “ever closer union”. Thus, in the end, this phrase appears to be a broad and somewhat “cloudy”<sup>80</sup> concept of further integration.

#### IV. Reasons – the myth of common European values

The discussion surrounding the preamble to the failed Constitution for Europe is particularly suitable to immerse oneself in the question of the overall history and development of European integration and its connection to its preambles. When the

<sup>78</sup> Canor, in: Meng/Ress/Stein (eds.), p. 96.

<sup>79</sup> Miliopoulos, in: Marchetti/Demesmay (eds.), p. 44.

<sup>80</sup> Von Bogdandy, in: De Witte (ed.), p. 7.

draft of the Constitution of Europe was presented at that time, it was pointed out that the step from an economic community to a community of values would be ultimately completed.<sup>81</sup> *Christian Calliess* emphasizes that the preamble to the Constitution explicitly refers to the values developed over the centuries, forming the basis of humanism. He describes this as an attempt to establish a historical reference for the community of values. At the same time, he regrets that an explicit reference to God or Christian values is missing and, in addition, criticizes that the peace motif is not specified more explicitly.<sup>82</sup> It is therefore necessary to take a closer look at the debates surrounding the creation of this preamble. In its final version, the first recital of the preamble of the Constitution reads:

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law

This wording is the expression of compromise. The first fundamental question that arose was that of an “*invocatio Dei*” in the preamble. Even if many found the final solution to be insufficient,<sup>83</sup> the sole reference to the “religious inheritance”<sup>84</sup> seems to be an expression of the fact that the traditions of the member states, as far as the connection between state and religion is concerned, differ so strongly that an explicit reference to Christianity was not possible.<sup>85</sup>

But there is more to be discovered behind the expression “cultural, religious and humanist inheritance of Europe”. France had first proposed to open the preamble with a reference to *Thucydides*’ reproduction of *Pericles*’ Funeral Oration, stating:

It is true that we are called a democracy, for the administration is in the hands of the many and not of the few.

At first, this introduction was referred to as a “bow to Greek culture” and “to the history of Europe”.<sup>86</sup> *Orgad* puts it in context with “an enduring unifying symbol” and the “desire to develop a collective idea of Europeaness”.<sup>87</sup> According to *Miliopoulos*, the fact that the wording had been dropped was due to the fact that no refer-

81 *Calliess*, JZ 2004/21, p. 1033, p. 1037.

82 *Ibid.*

83 *Calliess*, JZ 2004/21, p. 1037; *Miliopoulos*, in: Marchetti/Demesmay (eds.), pp. 38–41, pp. 46–50; for a critical perspective see *Orgad*, ICON 2010/4, p. 736; *Kotzur*, in: Niedobitek/Zemánek (eds.), pp. 191–192; *Kopetz*, in: Becker et al. (eds.), pp. 28–31.

84 The Charter of Fundamental Rights, on the other hand, speaks of “spiritual and moral heritage”, which has been translated into German as “geistig-religiös”, whereas the French version, for example, leaves it at “patrimoine spirituel et moral”. This could be seen as a sign that the different versions of the translations show indications of national preferences. Thus, it is not surprising that the German version emphasizes religion, whilst the French version has a broader definition of the spiritual.

85 Speaking of christophobia – as *Weiler* and *Miliopoulos*, in: Marchetti/Demesmay (eds.), p. 44 did in this context – seems somewhat exaggerated.

86 *Robbers*, in: Blankenagel/Pernice/Schulze-Fielitz (eds.), p. 252.

87 *Orgad*, ICON 2010/4, p. 737.

ence to God had been included either.<sup>88</sup> In contrast, the historian *Klaus Kiran Patel* points out that the quotation was not suitable “as an edifying reference to the great past of the continent” in the first place.<sup>89</sup> The quote does not reflect the modern understanding of democracy. Minority protection and fundamental rights did not exist at that time; women and slaves, for example, were excluded from demos.<sup>90</sup> Both the debates on the invocatio Dei and the quotation from *Thucydides* ultimately reveal the compromise-based nature not only of the preamble but also of the project of integration as a whole.<sup>91</sup>

This first recital of the preamble to the Constitutional Treaty, which had resulted in a compromise, finally found its way into the TEU in the version of the Lisbon Treaty as the second recital, with the exact same wording. One noteworthy aspect of this is that “values” are now explicitly mentioned in the preamble, which was not the case before. In this respect, it is worth recalling the development that began with the Single European Act: It is the first to mention equality, democracy, human rights and freedom in its preamble. The rule of law was then added with the Maastricht Treaty.

*Patel* is critical of these references in the Single European Act. According to him, it was primarily “a verbal commitment to values [...] without precise legal binding force”.<sup>92</sup> He especially takes a critical point of view with regard to the third recital of the Maastricht preamble stating

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law

In his eyes, this can be understood as a sign of the “myth of a long history”<sup>93</sup> of values that were not present at the beginning of the European communities. He also stresses that underlining the dedication to values has “an instrumental character” which is characterized by “ambivalences and inconsistencies”.<sup>94</sup>

It remains to be mentioned that the Charter of Fundamental Rights also refers to “values”, both in its second and third paragraphs. This is not surprising due to the previously mentioned distinctive character of a Charter of Fundamental Rights. But it also shows that in the preambles to the other treaties these commitments come rather as unfamiliar elements. In this context, it is to recall that the ECSC preamble made vast references to the peace motif which was later neglected. In contrast to many other constitutional preambles, the preambles to the examined EU treaties do not contain large explicit narrative components. Returning to the functions of

88 *Miliopoulos*, in: Marchetti/Demesmay (eds.), p. 41.

89 *Patel*, p. 187.

90 *Patel*, pp. 186–187; *Da Silva*, *Histoire antique* 2008, pp. 38 et sqq.

91 Kopetz speaks of *Thucydides* and the invocatio Dei as “catalysts of the European integration debate”, *Kopetz*, in: Becker et al. (eds.), p. 28.

92 *Patel*, p. 215.

93 *Ibid.*

94 *Patel*, p. 189.

preambles, this could be seen as a sign of an undecided self-understanding of its creators.

#### D. Conclusion

The history of integration is much more complex than the preambles alone can reflect. However, precisely because of their function of revealing the self-understanding of their creators and providing the legal text with persuasion and effectiveness, the preambles are illustrative objects for studying the history of integration.

The pre-selection of the various treaties, their overlap and mutual references in the preambles already shows that there is not one simple way of understanding integration history. Still, at the end of this analysis, guided by the three questions, the following picture emerges:

The text of the preambles to the treaties all use the states, or more precisely their leaders as subjects, thereby stressing their importance to the process of integration. Only the Charter of Fundamental Rights deviates from this. This can be interpreted as an indication of the vast structural changes the latter has had on the development of the EU.

Moreover, the phrase “ever closer union among the European peoples” continues to be the recurring slogan of the preambles. Currently, it can be found in the TEU, the TFEU as well as in the Charter of Fundamental Rights. Closer analysis has shown that these mentions also occur in each case in a different normative environment, subsidiarity principle on the one hand, values on the other. Ultimately, it becomes apparent that a clear pro-integrationist tendency can probably not be deduced from the phrase’s reoccurring use over decades.

Finally, the discussion on the question of “community of values” showed that the preamble to the Single European Act first mentioned democracy, equality and freedom and this at a time when these standards did not yet play a fully institutionally consolidated role at the level of the European Communities. It is therefore not surprising that the earlier preambles do not mention them, but at the same time it is contradictory that the Maastricht Treaty refers to the long tradition of these values. The fact that now, in turn, the Charter of Fundamental Rights puts special emphasis on values shows that with their introduction and extensive validity, European integration is subject to change.

The lack of contour in the preambles is also reminiscent of the debates on the structural deficits of the European treaties themselves, currently, for example, in the area of the financial constitution in connection with the Covid19 reconstruction fund “Next Generation EU” and subsequent measures. It is therefore necessary to engage in discussions on the basis of the questions posed here regarding preambles – i.e. their subjects, directions and reasons – in relation to European integration as a whole. This is true irrespective of the fact that the possibility to convene a new Convention to amend the European Treaties, which was expressed in connection with the Conference on the future of Europe launched in 2021, did not materialise

yet and that a major reform process is currently considered unlikely. The stakes are too high and the question of where European integration stands is too urgent.

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