

## Europe's Single and Powerful Amphibious Model

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Content	Pages
I. Introduction . . . . .	84
II. Historical Dates: Moments of Meeting . . . . .	84
III. Treaty and Constitution . . . . .	87
IV. States: «dédoublément constitutionnel» . . . . .	88

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## I. Introduction

One of the major challenges of the European Constitution for scholarship, and the leading ambition of the following piece, is to grasp into one single model the Union's *amphibious* existence and nature. Article I-443 perpetuates the Constitution as a treaty, to be modified by way of treaty. This keeps the Union firmly riveted into the sphere of public international law. At the same time the document has reality as a constitution. This roots the Union into its own constitutional law. The Union's life consequently draws both on treaty law and on its own constitutional law. Legally this produces something close to a conflict of categories.

To bring these two sources of life and their legal form into a single coherent reading will require – and allow – more than to deal with the apparent contradiction of categories. It will go further and demonstrate the particular genius of this model and its innovative linkups between domestic and international law in general.

The following argument squarely denies the Union a *sui generis* character, cherished by much of its specialized scholarship. The problem with this is that it tends to make the Union unintelligible in traditional notions and concepts and in fact only plays into the hands of the experts and of bureaucracy. Secondly the argument refuses the facility of considering the Union as now an intergovernmental, then a supranational system, as in part confederal and in part federal, depending on focus, context or expediency. This is too easy an escape. The Union is both intergovernmental *and* supranational overall, it escapes the duality, nay, turns this into solid synthetic structure. It must be seen in a single model encompassing its international and domestic characters.

This contribution identifies two channels between the worlds of public international law and that of domestic constitutional law, as established and employed by the Union's institutions and procedures. They are historical facts or dates (II); the Member States (IV). Inevitably in passing it will have to deal in its own way with the treaty/constitution question (III).

## II. Historical Dates: Moments of Meeting

When a novice in international scholarship at Geneva's IHEI, the present author had the privilege of being taught history by the late Jacques Freymond, its director. His opening seminar started with him putting before us the question: «what is an historical date? (qu'est-ce qu'une date historique)» It allowed each of the twenty or so young participants to make some statement for the sake of personal introduction. None of the answers deserves to go on record, least of all my own (which I have forgotten), but the question has remained alive with me ever since. Here's my answer. Let us take the date of 29 October 2004.











