

THE EUROPEAN CONVENTION

THE SECRETARIAT

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CONTRIB 6

COVER NOTE

from:	Secretariat
to:	Convention
Subject:	Contribution from a member of the Convention

The Secretary-General of the Convention has received the attached contribution from
Mr Andrew Duff, member of the Convention.

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**Contribution by Mr Andrew Duff,
representative of the European Parliament
at the Convention on the future of the European Union**

MISSIONS, OBJECTIVES AND COMPETENCIES IN A FEDERAL UNION

Structure of the constitution of a Federal Union

Europe deserves, and the world needs, a strong Union. The Convention must serve to strengthen the Union as well as to clarify its purpose and refine its objectives. Our perspective must take account of our ambitions for Europe in the world as well as our domestic preoccupations.

Our Constitution must have durability but not be wholly inflexible. It must entrench the values and principles on which the Union is founded and enshrine some purposeful, lasting goals without solidifying for all time either the competencies of the Union or the powers of the institutions. Both the share-out of political competencies and the distribution of institutional powers need to be able to be adjusted in the future (according to constitutional procedures) to reflect contemporary requirements, aspirations and anxieties.

In this and subsequent contributions I will be proposing certain articles of a comprehensive draft constitution for a Federal Union of states and peoples.¹ Together they are designed to form a model for a constitutional treaty of no more than twenty articles, in accordance with which the existing Treaties will then have to be rationalised, simplified and reduced in order to conform.

Purpose of the Union

PREAMBLE

The states and citizens of the European Union,

Determined henceforward

to live together in freedom, justice and peace,
to uphold democracy, fundamental rights and the rule of law,
to respect the diverse cultures of Europe,
to organise their relations together,

Do establish this as our constitution.

¹ The model of Federal Union is advanced in, one hopes, helpful contradistinction to alternative models such as the United States of Europe, European Union of States, Federation of Nation States and Confederal Europe.

Justification

The constitution needs a short preamble to establish what the Union is for. This version tries to strike a balance between ornate and prosaic language. It also tries to establish a sense of settlement, which, alas, the much-loved 'ever closer union' of the preamble of the Treaty of Rome does not. It features the dual nature of the sovereignty of the EU, that of the states (represented in the Council) and that of the citizen (represented in the Parliament).

Drawn from the Preamble and Article 1 TEU.

ARTICLE 1 - OBJECTIVES

The Union shall set itself the following objectives:

to promote social and economic progress,
to establish an area of freedom, security and justice,
to enhance the environment of Europe and the world,
to secure and defend the Union.

Justification

This sets out what the EU wants to do. By focussing on some key objectives it sets the parameters within which the delimitation of competencies then follows.
The main addition to existing tasks, of course, is that of security and defence - but it is not possible to be a member of a federal union without being committed to the concept of collective defence.

Governance of the Union

ARTICLE 4 - GOVERNANCE ¹

1. The Union is empowered to govern in accordance with its principles and in pursuit of its objectives as laid down in this Constitution. It shall fulfil its objectives in a manner demonstrating consistency, openness and solidarity. Decisions will be taken as closely as possible to the citizen without impairing the effective operation of the Union.
2. The European Union shall act only in accordance with this Constitution. Its actions shall not go beyond what is necessary to achieve its objectives.
3. Member states shall abstain from any measure that jeopardises the attainment of the Union's objectives. They shall refrain from actions contrary to the interests of the Union or likely to impair its effectiveness.

Justification

Before addressing directly the competencies of the Union it might be wise to set out some criteria for its self-discipline and good governance.

¹ Article 2 deals with the composition of the Union and Article 3 with citizenship, to follow.

1. *The first paragraph is drawn mainly from Article 1 TEU and 5 TEC. The explicit reference to the principle of subsidiarity is dropped for the sake of comprehension.*
2. *The principles of constitutional constraint and of proportionality are included here (Article 5 TEC).*
3. *Drawn from Article 10 TEC and Article 11.2 TEU, and addressed to member states.*

Competencies of the Union

ARTICLE 5 - COMPETENCIES

1. The principal competencies of the Union relate to trade and the customs union, the single market, monetary policy, environmental matters of concern to more than one state, and common foreign, security and defence policies. The Union shall have its own budget and financial resources.
2. The previous Treaties of the European Union and European Communities and all laws enacted under them shall be laws of the Union save where they are inconsistent with this Constitution.
3. The constitutions and laws of the member states shall apply save where they are inconsistent with this Constitution.

Justification

Although it features in the Laeken Declaration (and again in CONV 17/02), the concept of 'exclusive' competence of the Union remains problematic. In the existing Treaties there are only two procedural references to exclusive competence, and no substantive one - which means that so-called exclusivity is nowhere defined.

Moreover, both procedural references are unhappy. The first is in Article 5 TEC where exclusive competencies are relieved of the obligation (in my view, wrongly) to respect the application of the principle of subsidiarity. The second is in Article 11 TEC which includes exclusive competence as an additional pretext for not using the closer cooperation method of differentiated integration.

The Union has not evolved with vertically defined exclusive duties, but with widely shared responsibilities subject to different levels of legislative, executive and regulatory intervention. However, the idea that the Union has greater competence in some areas than in others is not a difficult one, and would better be expressed by adoption of the term 'principal' and suppression of 'exclusive'.

1. *The list of principal competencies is based on the *acquis communautaire* with the addition of common foreign, security and defence policies. The inclusion of the 'common' here implies that there are residual national duties in this field. 'Security' should be taken in its wider sense to include key common internal as well as external security policy - hence 'policies'.*
2. *This paragraph establishes that this Constitution is top in a hierarchy of treaties. It is intended as a supplement to but not a substitute for the existing EU Treaties, which will themselves be revised in order to conform to the Constitution. Reference to the existing Treaties here means that the Union will continue to be able to enjoy shared competence with the member states in the sectoral policies that flank the principal competencies (as laid down primarily in Articles 2, 11.1 and 29 and Article 3 TEC).*
3. *This clause determines states' rights without having to catalogue their residual powers.*