

COVER NOTE

from Secretariat
to The Convention

Subject : **Contribution by Dr. Alfred Sant, member of the Convention; Dr. George Vella, alternate member of the Convention:**
 - “General comments on the Draft Constitutional Treaty”

The Secretary-General of the Convention has received the contribution annexed hereto from Dr. Alfred Sant, member of the Convention and Dr. George Vella, alternate member of the Convention.

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Subject: General comments on the Draft Constitutional Treaty.

The diversity of cultures, languages, traditions, beliefs, and historical backgrounds, found in the present and future member States of the European Union, is the strongest factor against the claim that the European Union should assume the structures of a federal superstate.

The Draft Treaty Establishing a Constitution for Europe presented by the Praesidium to the Convention, does push somewhat towards a federalist direction. At the same time, it allows for enough subsidiarity and leaves a big enough role for the National Parliaments of the member states, so that the Europe defined in the future by this Constitutional Treaty could appropriately be considered as a Federation of Sovereign Nation States.

EQUALITY AMONG MEMBER STATES

In such a European Union there should be equality between member states. There should be no hierarchy between the member states. All should have the same rights and the same chances to participate in the Institutions. This notwithstanding the fact that territorial extent and demographic factors have inevitably to be taken into account for representation in the European Parliament and for voting rights in the Council.

The system of a rotating Council presidency, in spite of its drawbacks, should be maintained. The idea of electing a President of the European Council for a period of two and a half years, and the possibility of this post being filled by someone from outside the membership of the European Council, could jeopardize the balance between member states themselves.

The proposal to have the European Council, with the agreement of the President of the Commission, appoint a Union's Foreign Minister, to combine the roles of High Representative and Commissioner for External Relations, would be a useful development. However, there is still a lot to be clarified strictly as to the role, competencies, responsibilities, and executive powers this post is to carry with it.

THE COMMISSION

It is to be acknowledged that a Commission with 25 (and more) Commissioners could face the problem of not having enough portfolios to distribute to each and everyone. However the principle of a Commissioner for each member state should be kept.

More discussion needs to be conducted regarding the ways and means by which these Commissioners could be utilized in a substantive manner. It is definitely not acceptable that the ultimate choice of a Commissioner is not made by the country itself, but left in the hands of the elected Commission President to choose from three possible contenders whose names are submitted by the member state.

Small states have much to risk and to lose if this choice is left in the discretion of the President elect who "taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence". It is no consolation that the President may (*meaning that he is not necessarily bound to do so!*) appoint Associate Commissioners.

THE EUROPEAN PARLIAMENT

Small member states must feel that their full participation in parliamentary work at European level is threatened by the proposal that the representation of European citizens in the European Parliament “shall be degressively proportional, with a minimum threshold of four members per member state”, and that its (EP) members shall not exceed seven hundred in number.

It is inconceivable how a national representation made up of only four members in the European Parliament could possibly cope with attendance at plenary sessions, committees, meetings etc., and be productive. The minimum representation of any member state in the European parliament, no matter what ceiling is placed on the total number of Euro MPs, should not be set at less than 6.

A commendable policy is that of greater involvement of national parliaments in the monitoring of the application of subsidiarity. Similarly the allowance of at least six weeks for national parliamentary scrutiny of legislative proposals in Council before they are placed on the Council agenda for decision. Because of the sheer volume of material that has to be examined, studied and debated, this scrutiny is already proving at times to be difficult even in large national parliaments. The situation will be more difficult in the parliaments of the smaller member states.

FOREIGN AND SECURITY POLICY

As far as the common foreign and security policy is concerned, as well as with the common security and defence policy, it is worth noting that the draft Constitutional Treaty has maintained the possibilities of both “structured cooperation”, or what used to be known as “enhanced cooperation”, for willing partners to move ahead of other member states in their voluntary cooperation in certain matters, as well as the possibility of “constructive abstention” by member states who because of either their constitutional constraints, or because of valid national reasons, opt to refrain from taking joint action with their fellow member states. It is also worth noting that when it comes to the eventual development of “common defence”, the Draft Treaty still maintains the principle that this has to be secured by a unanimous vote in the European Council.

While this helps to make less problematic the situation of member states who profess neutrality, and even non alignment, as important features of their Constitution, difficulties might arise when one comes to implement the provisions both of Art.3 and of Art.9 of Chapter 1 A of Part Two B of the Draft Treaty.

Whereas as stated before, “constructive abstention” is to be accepted, difficulties might arise in the interpretation of the part which says that “The Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision...” taken by the other Member States. The key word here is “likely to conflict with”, as the interpretation is very subjective.

Such a phrasing -- as in the case of a hypothetical trade embargo against a third country, with which the member state asking for constructive abstention has long standing commercial relations -- may conceivably be used to bring pressure on that member state, to also apply the embargo or other restrictive measures agreed upon by the other member states, because otherwise it would be continuing with an action that is not only likely to impede, but is manifestly in conflict with the decision taken by the other member states. This notwithstanding the abstention in Council when the original decision was being taken.

Member states professing the doctrine of neutrality and non alignment, would do well to discuss this aspect of the Draft Treaty in greater depth, and to insist on positions that fully protect their status, without impeding the liberty of action of other member states.

When it comes to the subject of terrorism, the Draft Constitutional Treaty is very correct in including a Solidarity Clause, and to specify the objectives of prevention, protection, and assistance in cases of terrorist threats or terrorist attacks in member states. We support the principle of such solidarity without reservation.

WITHDRAWAL AND NEIGHBOURHOOD

Two very important aspects of the Draft Constitutional Treaty, are the article dealing with relations of the European Union with neighbouring states, and the article providing for voluntary withdrawal from the Union.

The stated objective of developing a special relationship with neighbouring states unable to become members of the Union, or not willing to become members of the Union, reflects the thinking on this subject of the two major political groupings in the European Parliament. It was comprehensively explained both in the Commission's Communication to the Council and the European Parliament entitled "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", of the 11th March 2003, as well as in a number of speeches on the subject of "a ring of friends" by Commission President, Romano Prodi. The prospects of creating a wider area of prosperity and stability cannot but be commended.

The other article dealing with the possibility of voluntary withdrawal from Union membership, is both innovative and interesting.

This provision in the Draft Constitutional Treaty, makes the Union more credible, and more democratic. It provides for the possibility of implementing the democratic decision of the citizens of a member state taken under particular extenuating circumstances, and makes the European Union appear less hegemonic, and more liberal in its dealings with member states. This does not in any way detract from the gravity of the taking of such a decision, and from the import of the negotiations, that have to be gone through to effect such a withdrawal, and from the responsibilities and obligations that have to be assumed by both sides once the process of withdrawal is effected.

THE CITIZENS OF THE EUROPEAN UNION

The ultimate objective of the Union of European States is the wellbeing and prosperity of its citizens. In Laeken, it was made clear that the citizens of European Union member states needed to feel that they belong to this Union. It is on this premise that after all is said and done this Draft Constitutional Treaty, and the Treaty that will emanate following the forthcoming IGC, will have to be adopted and accepted by the citizens of the Union.

Democratic citizen participation dictates that the eventual treaty should be subjected to the approval of the citizens of member countries, and its ratification at popular level carried out in each member country according to the constitutional requirement of the country concerned.

It is in this spirit of popular democratic acceptance that it is commendable that the Charter of Fundamental Rights, with its strong commitment to social rights, has found its rightful place in the Constitutional Treaty itself.

OTHER PRINCIPLES

There are other principles that need further anchoring in the article dealing with the Union's Objectives in the Draft Constitutional Treaty.

First, the principle of sustainable development. There is only a passing reference to it, which does not do justice to its economic, social, and environmental importance in the everyday life of every European citizen. The Commissioner for the Environment, Margot Wallstrom's appeal to include a Protocol on Sustainable Development in the Draft Treaty, is justified, commendable, and should be strongly supported.

Secondly there is the issue of gender equality. Even this very important social issue receives only passing reference. Gender equality and the fight against all forms of gender discrimination should be listed amongst the shared competences of the Union, and be included in the core values and objectives of the Union. More than that, the issue of gender equality should have a stronger legal basis in the Constitutional Treaty.

Thirdly, but definitely not the least important, is the concept of a Social Europe.

We do not agree completely and in toto with the document of the Spinelli Group entitled “The Europe We Need” of April 2003, but we sure agree with most of what is said in the section of this document entitled “A Social Europe”.

We take the liberty to quote the parts we fully agree with, as they best express our views on what the future European social model should be like.

As Social Democrats we have to see that (quote)

“ The European Social model must be a market economy completed with social protection and developed public services. The European Constitution must therefore include the creation of an area of social justice, of economic, social and territorial cohesion, of full employment, solidarity and sustainable economic development as well as a cultural dimension and the protection of its cultural diversity among the aims in its first chapter. The EU must set common minimum standards for social protection and social policy...

“ The Constitution should therefore contain a horizontal clause that places a stronger emphasis on the social dimension of the Union’s policies. Clearer competencies (as for example in the area of health protection, collective rights for workers...) must allow the EU institutions to develop specific action at European level...

“ ...Essential services of general interest must be protected and made accessible to all by a framework law based on the new Constitution.

“A strengthening of the social dialogue is another important step towards the development of a social Europe. The European Constitution should therefore improve the role of social partners in economic, employment and social policy.”

Finally, there remains scope for a strong assertion in favour of animal rights as one of the principles to guide the setting of sectoral policies by the Union, not least in the food and leisure industries.