

CONV 94/02

CONTRIB 43

NOTE DE TRANSMISSION

du: Secrétariat

à la: Convention

Objet: **Contribution de M. Filadelfio Guido Basile, membre suppléant de la
Convention**
– Les missions de l'Union européenne

Le Secrétaire général de la Convention a reçu la contribution figurant en annexe de M. Filadelfio Guido Basile, membre suppléant de la Convention.

EUROPEAN CONVENTION

THE MISSIONS OF EUROPEAN UNION

Contribution from Mr Filadelfio Guido Basile, alternate member of the Convention designated by the Italian Senate

Nowadays, as it is well known, neither the European Union nor its most important pillar, the European Community, may be regarded as a federal State, as it lacks a general and central European government which may be, also by virtue of a well determined sphere of competence, actually independent of the Member States' governments. Indeed, on the one hand, the second and third pillars of the European Union are solely based upon the Member States intergovernmental co-operation, and, on the other hand, the European Community operates on both supranational and intergovernmental mechanisms.

Considering that the European Court of Justice already underlined on several occasions the supranational character of the European Community, establishing the principle of the primacy of community law over national law and particularly regarding EC Treaty as the EC constitution rather than only a simple international agreement, one may reach the conclusion that at least on the legal point of view, if not yet on the political point of view, the European Community is "a federal State in the making". Nevertheless, it is not possible to maintain that a federal structure is already in place, although transfers of sovereignty from the Member States to autonomous European institutions have already occurred with regard to certain fields.

Unfortunately, European people has no general perception of being substantially subject to both European institutions and State governments powers and, when such perception exists, it is vague as it is difficult to understand what matters are within the competences of the European institutions and the State governments respectively. Moreover, what is important to underline here is that people has no general perception that in principle European institutions and State governments substantially pursue common purposes, their interests are obviously converging and complementary rather than conflicting and the European institutions action is carried out for the benefit of all Member States and their citizens.

It is not surprising then that a sense of European citizenship is not yet as developed as a real European State would require. In order to enhance the development of a sense of European citizenship among European people, the role of European institutions should be strengthened and their competences should be clearly outlined.

The rationale behind the Community idea historically was to reduce the power of the national State with a view to reducing the main cause of political conflicts and wars: the process of European

integration has then led to a continuous and increasing shift in the balance of power from the Member States to the Community institutions, since the Member States have widened Community competence and, correspondingly, reduced their own sovereignty.

It is impossible to deny the strict link existing between economic and political integration: as far as economic interdependence increases, the Member States' policies become less effective and may not but be replaced or largely supplemented by common policies adopted by the Community as a whole. Next stages of such an integrative process, as a result of the natural evolution of the economic interdependence, are hard to be achieved if the whole future process will be mainly based upon intergovernmental co-operation which seems unable to produce effective policies and democratically legitimate laws. As the making and implementation of laws and common policies are the task of governance, we should enable the Community institutions to accomplish such a task. Perhaps, considering the opinion of those wishing to see national governments keep their sovereignty in certain key areas, the European federal structure may not but gradually emerge: instead of being immediately established by a single constituent act, it may be the final of a series of steps whose basic idea has however to be the need to focus the most adequate institutions and competences in order to ensure the democratic governance of a single economy and society.

In this framework, the division of competences between the Union and the Member States should be clarified and adjusted also in order to assign new missions to the Union as well as strengthen its existing powers, although such a division of competences should be still founded on the traditional principle of the attribution of powers to the Union by the Treaties and on its corollary that all powers not granted - expressly or impliedly - to the Union remain with the Member States.

First of all, in order to facilitate the gradual creation of a federal State an increasing involvement of Community institutions in the area of common foreign policy and defence policy should be pursued. On the other hand, the police and criminal law cooperation certainly needs without any delay a much more integrated approach: in particular, such area should be brought within the Community institutions sphere of competence, at least the whole field of the fight against terrorism, criminal organizations, economic crimes as well as crimes against public administration, since these criminal activities adversely affect the normal efficiency of a single European economic system.

The exclusive competence of the Union should be clearly outlined in the constitutional treaty, but

considering that the border line between Union and national competence may not be merely static, otherwise it may jeopardise the natural development of the European economic, social and political system in the present global world. As a consequence, a general flexible clause should be laid down with a view to enable the European institutions to actually and fully accomplish their tasks at least in certain key areas.

The shared competence of the Union and the Member States should be widened as the range of subjects requiring common approaches and solutions will probably be wider and wider. Indeed, it is easily predictable that the matters which may no longer be faced by individual Member States in isolation will increase.

Of course, the principle of subsidiarity should still be applied in this area, provided that an efficient mechanism be established in order to ensure that the Member States sphere of competence will not be affected by the action of European institutions. Such mechanism may be based upon a very fast procedure before a special chamber of the European Court of Justice, having however no suspensive effect on the normative process at the Community level until a final decision will be issued by the cognizant chamber.

Furthermore, the principles of proportionality and mutual loyalty should be mentioned by the constitutional treaty.

Art. 308 of EC Treaty should survive as it ensures that the European institutions may exercise the necessary powers in order to achieve the objectives of the Community, as expressly listed by the constitutional treaty.