

CONV 556/03

CONTRIB 245

BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van de heer Lamberto Dini, lid van de Conventie

- "Ontwerp-artikelen 1 tot en met 16 van het Constitutioneel Verdrag"

De secretaris-generaal van de Conventie heeft van de heer Lamberto Dini, lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

European Convention

**Draft of Articles 1 to 16 of the
Constitutional Treaty**

**Comments
by Sen. Lamberto Dini**

Brussels, February 17, 2003

The first sixteen articles of the Constitution

1. General assessment

The articles are commendable for their clarity and linearity; they reflect the “esprit de géométrie” typical of the culture of the President of the Convention.

The text contains provisions of great significance for the advance of the Union that need to be safeguarded and inserted in the final version. In particular, the reference to the administration of common competences on a “federal basis” (Article 1.1). This corresponds to an approach that is widely acceptable. The Constitution must define more clearly the respective competences of the Union and the Member States. What will be handled by the Union, moreover, should tend — with a time horizon going beyond that of the Constitution itself, in accordance with the evolutionary process characteristic of the European construction — to be based on a “federal” model. This does not necessarily coincide with the “Community” concept but includes elements, such as decision-making based on majority voting, that are indispensable to the proper working of an ever larger Union.

Equally deserving to be safeguarded are the principles of legal personality (Article 4) and of the primacy of Community law over the law of the Member States (Article 9.1).

2. **Substantive amendments**

As regards the Union's values (Article 2), it is worth asking whether it is necessary to include the creation of a "society at peace" — an ambiguous expression, which it is not clear whether it applies internally or externally and which adds nothing to the values already listed in the same article.

Among the Union's objectives (Article 3), one is missing that was introduced in the Amsterdam Treaty and which in the future will tend to enhance its political nature, with implications for the common foreign and security policy. The aim in question is that of safeguarding the "independence and integrity of the Union"; this is stated in Article 11 of the EU Treaty and its omission would be a retrograde step with respect to what has already been accepted.

Also missing in Article 3 is any reference to the role of the United Nations, as the only universal institution with respect to which the European Union is in the position of a regional institution, in support of a globalism based on law and more far-reaching solidarity. Today, by contrast, there are two references to the United Nations, in Article 11 of the EU Treaty.

In the same way as the present Treaties, the non-discrimination clause (Article 6) continues to treat discrimination based on nationality separately from that based on other factors (religion, race, etc.). It is worth asking whether these guarantees should not be brought together in a single article.

The title of Article 15 should evoke a specific category of competences, “subsidiary” or some such term, for instance, and not refer to them as “supporting action”. Together with others, I made this objection in the plenary session.

It is appropriate that energy should have been added to the list of shared competences (Article 12) and civil protection to the list of areas for supporting action (Article 15). At present they are only mentioned in the EC Treaty (Article 3), but have remained a dead letter (despite the proposals put forward by Italy during the negotiation of the Amsterdam Treaty) owing to the absence of a legal basis for the adoption of rules and common action in these fields. Now, instead, such a legal basis will appropriately be included in Part Two of the future Treaty. so that they will no longer be in the limbo in which they have been kept until now. Together with Greece, we had also proposed giving effect to the competence for tourism, which is also mentioned in Article 3 of the EC Treaty. Perhaps this attempt should be renewed.

Articles 13 and 14 mention, respectively, the coordination of economic policies and a common foreign and security policy as competences separate from the three-pronged division established in Articles 11, 12 and 15. In both cases the functions involved are of a basically executive nature and thus also in this respect distinct from the others, which are mainly of a legislative nature. However, it would be more appropriate to include the common foreign and security policy among the shared competences listed in Article 12, even if it would involve the application of specific procedures. With the current formulation, there is the risk of leaving a three-pillared architecture in place exclusively for foreign policy.

As formulated, Article 10.4, which refers to “the progressive framing of a common defence policy”, is undoubtedly a retrograde step. A distinction exists between a common policy for defence, a common defence policy and a common defence, three concepts that imply an increasing degree of integration. A common defence involves the creation of integrated structures and is referred to in Article 17 of the EU Treaty as an objective that is not for the immediate future but which can be attained through a simple decision of the European Council without having to revise the Treaties “... which might lead to a common defence, if the European Council should so decide”). This is the most advanced formulation and should be incorporated in Article 10 of the Constitution.

As regards the role of the European Parliament, it is important to keep its assent in Article 16.1 (Flexibility clause).

3. Drafting improvements

It would be better for the Charter of Fundamental Rights (Article 5) to be inserted as a second part of the Constitution rather than annexed to it as a protocol. In this respect it is worth recalling that the American Bill of Rights was added two years after the adoption of the US Constitution, with the enactment of the first ten amendments.

Articles 8 and 9 refer respectively to fundamental principles and their application. It would be more practical to merge the two articles or at least parts of them: e.g. paragraphs 3 and 2, 4 and 3, and 5 and 5.

The categories of competences (Articles 11, 12 and 15) should precede, in a logical order, the description of the ways in which they are exercised.
