

CONV 234/02

CONTRIB 82

COVER NOTE

from Secretariat

to The Convention

Subject : **Contribution by Mr Andrew DUFF, Member of the Convention**
"A Model Constitution for a Federal Union of Europe"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Andrew Duff, Member of the Convention.

Contribution by Mr Andrew Duff MEP, Member of the Convention

This contribution submits for the consideration of the Convention one example of a new constitutional treaty for the European Union.¹ It proposes a streamlined form of decision making and an effective merging of the pillars, although security and defence policy would remain primarily under the control of the Council.

The Constitution has two Protocols, one comprising the Charter of Fundamental Rights, the other — which need not be adopted by all member states — encapsulating the mutual defence guarantee of West European Union.

It also proposes the introduction of an Organic Law, a new form of legislative act at the top of the hierarchy, designed for quasi-constitutional matters where the balance of power between the institutions and among member states is affected. A number of Organic Laws are stipulated: for the financial system of the Union, for the codecision procedure, and for the statutes of certain institutions, including the defence force.

In the formula suggested here, the Constitution would be supplemented by one subsidiary treaty, which would include the detailed chapters on policy. This filleted version of the Treaty of Rome should be subject to a softer amendment procedure than that adopted for the Constitution. All other existing EU treaties would be annulled.

A MODEL CONSTITUTION FOR A FEDERAL UNION OF EUROPE

Preamble

The member states and citizens of the European Union,

Determined henceforward

to live together in justice, freedom and peace,

to uphold democracy, fundamental rights and the rule of law,

to respect the diverse cultures of Europe,

to organise our relations together,

do establish this as our Constitution.

Article 1 — SCOPE

1. 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.

¹ This contribution builds in particular on CONV 22/02 and CONV 57/02.

2. 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 conform to this Constitution and the supplementary implementing provisions, conditions and timetables laid down in the Treaty of Rome.¹

3. All 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.

4. The constitutions and laws of the member states shall apply save where they are inconsistent with this Constitution.

Article 2 — COMPOSITION

1. The European Union comprises its member states and citizens. It shall have legal personality under international law.

2. The Union shall admit new member states on a proposal of the Commission according to the provisions of Article 18.2.

3. It may extend to any democratic state not being a member state of the Union any of the provisions of this Constitution. Such states will be associate members of the Union.

4. Member states may withdraw from the Union on terms to be agreed with the Union acting under the provisions of Article 18.2.

5. The rights of a member state or associate member may be revoked or reinstated on a proposal of the Commission or on an initiative of the Court with the approval of a three-quarters majority of the member states in the Council and by an absolute majority of Members of the European Parliament.

Article 3 — CITIZENSHIP

1. Nationals of the member states are also citizens of the European Union.

2. The Charter of Fundamental Rights of the European Union is established as a Protocol to this Constitution. It is binding upon the institutions, bodies and agencies of the Union in its entirety. It is binding upon member states and political authorities within them when and in so far as they implement Union law and policy.

3. An Ombudsman shall be appointed by the European Parliament. The rights and duties of the Ombudsman will be laid down in a Statute that will take the form of Organic Law.

Article 4 — GOVERNANCE

1. The Union 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 respect the national identities of the member states. Its actions shall not go beyond what is necessary to achieve its objectives.

3. The Union will ensure that its actions do not give rise to distortions or imbalances between the member states. It will seek to add value in terms of effectiveness and economies of scale. It will foster cohesion between its member states, regions and citizens. It will cherish Europe's natural environment.

¹ Revised. See introductory note.

4. 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.

Article 5 — COMPETENCE

1. The principal competencies of the Union, at home and abroad, relate to trade and the customs union, competition and monetary policy. The Union is fully competent to manage the euro and to uphold the free movement of goods, persons, services and capital. Accordingly, it will coordinate the macro-economic policies of the member states and may establish common policies in the fields of employment, equality of opportunity, the financial market, transport and communications, energy, science, research and technology, food, consumer protection, the environment, overseas development, immigration and asylum.

2. The Union shall have a common foreign policy and a joint capability in the field of external security and defence.

3. The Union has competence in the fight against international crime, and shall promote the coordination of member state police, customs, and judicial authorities. It is enabled to act to protect its own financial and security interests.

4. The Union may contribute to member state policies in the fields of sport, youth, tourism, planning, civil defence, public health, social services, culture and education.

Article 6 — ACTS

The Union shall act by way of:

Organic Law, for certain measures of institutional significance;

Regulation, which shall be binding in entirety and directly applicable throughout the Union;

Directive, which shall be binding as to the results to be achieved but shall leave to member states the choice of method;

Joint Action, which shall establish the mandate for a specific operation;

Decision, of an executive nature, which shall be binding on those to whom it is addressed;

Opinion, of an advisory nature;

Code of Conduct, which may be either mandatory or advisory;

Interinstitutional Agreement, which shall bind its contracting parties.

Article 7 — LAW-MAKING

1. The legislature of the Union comprises the Council of Ministers and the European Parliament. No law shall be enacted nor budget agreed unless approved by both Parliament and Council. The European Parliament shall have the right of assent to all international treaties entered into by the Union.

2. The Commission shall have the sole right to make legislative and budgetary proposals.

3. All laws shall be passed in public session and a verbatim record of proceedings shall be published.

4. An Organic Law shall be passed by a three-quarters majority of the member states in the Council and by an absolute majority of Members of the European Parliament.

Article 8 — FINANCE

1. The Union shall have its own budget and financial resources. It shall set its expenditure within limits expressed as a defined percentage of the Union's gross domestic product.
2. It shall establish, in the form of Organic Law, a system of own revenue resources which may include the levying of taxes and duties.
3. It shall lay down provisions for a system of financial control.

Article 9 — INSTITUTIONS

1. The institutions of the Union shall comprise the Congress, the Convention, the European Parliament, the European Council, the Council of Ministers, the European Commission, the European Court of Justice, the Court of Auditors and the European Central Bank.
2. All institutions shall be responsible for their own working arrangements.
3. The Congress shall meet to elect or to impeach the President of the Commission. It shall comprise the European Parliament and an equal number of representatives of member state parliaments.
4. The Convention is the constituent assembly of the Union and shall consist of a President, delegations from the European Council and the Commission, and an equal number of delegates from the European Parliament and member state parliaments.

Article 10 — EUROPEAN PARLIAMENT

1. The Parliament shall have 700 Members elected for a five-year term by the citizens of the Union by direct universal suffrage according to proportional representation. 630 Members shall be elected in regional constituencies and 70 Members shall be elected from across the whole territory of the Union.
2. It shall act by a simple majority of the votes cast except where this Constitution or its rules of procedure otherwise provide.
3. It shall elect its President from among its Members.
4. It shall be dissolved if the Commission is dismissed under the provisions of Article 13.6.
5. Members of the European Parliament shall enjoy immunity from prosecution for opinions expressed and votes cast in performance of their parliamentary duties.

Article 11 — EUROPEAN COUNCIL

1. The European Council comprises the head of state or government of each member state together with the President of the European Commission. Its meetings will be chaired by a head of state or government by rotation for a period of six months.
2. It shall establish the work programme of the Union, on a proposal of the Commission, after having consulted the European Parliament and member state parliaments. It shall give overall political direction to the Union. It may act on behalf of the Council of Ministers.

Article 12 — COUNCIL OF MINISTERS

1. The Council comprises ministers of the governments of member states. Its meetings will be chaired by the President of the Commission or his or her representative. The chairman will have no vote.
2. The Council shall have the power, on a proposal of the Commission and after consulting the Parliament, to take a Joint Action or Decision. In the field of external security and defence the Council shall have the right of initiative.
3. The Council may issue an Opinion on its own initiative.
4. It shall act by a qualified majority except where this Constitution or its rules of procedure otherwise provide. The qualified majority shall be made up of a majority of member states representing a majority of the population of the Union.

Article 13 — EUROPEAN COMMISSION

1. The European Commission comprises its President, a Vice-President responsible for foreign, security and defence policy, and thirteen members.
2. The President of the Commission shall be nominated by one or more member states immediately following the election of the European Parliament and elected by the Congress acting by an absolute majority of its members.
3. The Vice-President shall then be nominated by the Council and appointed by the Parliament.
4. The President shall then nominate the other members of the college, who shall be appointed by the Parliament.
5. The Commission has the power to take Decisions and issue Opinions. It shall propose a work programme to the European Council. It shall propose an annual budget to the Council and Parliament. It shall be responsible for implementing the acts of the Union, the management of policy and expenditure, and the negotiation of international treaties on behalf of the Union. It shall ensure effective consultation with member state parliaments and with representatives of regional and local government, the social partners and civil society.
6. The Commission shall serve for a five-year term unless dismissed by the Parliament acting by a two-thirds majority of its Members.
7. The President of the Commission may be impeached by the Congress acting by a two-thirds majority of its delegates on the initiative of the Council or Parliament.

Article 14 — EUROPEAN COURT OF JUSTICE

1. The European Court of Justice shall be the supreme court of the European Union. There shall be a Court of First Instance. The Statutes of the Courts shall take the form of Organic Law.
2. The judges and advocates-general shall be chosen from jurists whose qualifications and independence are beyond doubt. They shall be appointed by the Council and the Parliament, acting by a majority of its members, for a renewable term of office of seven years. The judges will elect a President for a term of office of four years.
3. The Court of Justice shall ensure that, in the interpretation and application of this Constitution and of acts made under it, the law is observed.

4. The Court shall have jurisdiction in actions and disputes brought by an institution of the Union or by a member state government or parliament on grounds of lack of competence, infringement or failure to act, and in actions brought by regional and local government for the purpose of protecting their prerogatives under this Constitution.

5. Any citizen directly affected by an act of the Union may institute proceedings in the Court of First Instance. The Ombudsman may refer cases concerning fundamental rights to the Court of Justice.

6. The Court may deliver preliminary rulings, annul an act of the Union, issue injunctions, arbitrate claims and impose penalties.

Article 15 — EUROPEAN CENTRAL BANK

1. The European Central Bank comprises its President, Board of Directors and Governing Council. Its Statutes shall take the form of Organic Law.

2. The President and Directors, chosen from persons of proven financial experience whose independence is beyond doubt, shall be nominated by the Council and approved by Parliament, acting by a majority of its members, for a non-renewable period of seven years.

3. The European Central Bank shall issue the euro and manage the monetary policy of the Union.

Article 16 — COURT OF AUDITORS

1. The Court of Auditors comprises its President and members. Its Statutes shall take the form of Organic Law.

2. The President and members of the Court, chosen from persons of proven accountancy experience whose independence is beyond doubt, shall be nominated by the Council and approved by Parliament, acting by a majority of its members, for a non-renewable period of seven years.

3. The Court of Auditors shall be responsible for the audit of Union finances.

Article 17 — DEFENCE FORCES

1. The Union may establish armed forces with the capacity to undertake security and defence operations and to engage in peace-making, peace-keeping and humanitarian duties. The Council shall establish the military command.

2. The Statutes of the Armed Forces shall take the form of Organic Law.

3. A Protocol is established to this Constitution committing its signatories to collective, mutual defence. The Protocol will come into effect once it has been signed by three-quarters of the member states.

Article 18 — AMENDMENT

1. The Commission or a member state shall submit to the Convention any proposal to amend this Constitution or its Protocols. The Convention will work by a large consensus.

2. Amendments to the Constitution, or the accession or secession of a member state or associate member, will take effect if supported either:

(i) by the Council, acting by a three-quarters majority of the member states, and by the Parliament, acting by a two-thirds majority of the votes cast, and ratified thereafter by all member states according to their own constitutional requirements; or

(ii) by a referendum of the citizens of the Union, by the Parliament and by the Council.

Article 19 — ENTRY INTO FORCE

1. This Constitution shall enter into force once it has been submitted for ratification by the European Council and if supported thereafter either:

(i) by the Parliament, acting by a two-thirds majority of its Members, and by a referendum of the citizens of the Union; or

(ii) by all member states of the Union according to their own constitutional requirements, after having received the assent of the European Parliament, acting by an absolute majority of its Members.

2. Any existing member state of the Union deciding not to adopt this Constitution may seek associate membership as Article 2.3 provides.

3. This Constitution shall enter into force at the start of the second month following its ratification.
