

## **Peace and Constitutions** *And what if we stayed home?*<sup>1</sup>

**The citizens of Geneva decided to revise their constitution. A canton like Geneva with a strong international activity and influence in the field of peace, more than any other State, must therefore largely include peace in its constitution.**

**Let us take a little tour of what is possible and what already exists in the Swiss constitution and the constitutions of the French speaking States of Switzerland<sup>2</sup>.**

**The preamble** of a Constitution is likely to include a reference to peace. It should be noted that although preambles do not directly hold the force of law, they are nevertheless part of the constitution, giving a spirit valid for the whole text. Hence, preambles are often cited by Courts and by those who apply the constitution, the legislators, the administration and of course, inhabitants or any one concerned can make a reference to them. Therefore, preambles are significantly more important than we usually think and their importance is further underlined by the fact that the ideal values they evoke must be put into practice on a daily basis. For peace there is still a lot to be done, many possibilities to progress. So a well-written preamble is essential.

The current constitutions of Geneva and Valais respectively do not have a preamble. For Switzerland, one of the goals of the alliance among the people and the cantons is to « reinforce peace»<sup>3</sup> (1999). Jura « encourages cooperation among peoples »<sup>4</sup> (1977). Bern « created a collectivity in which all people live in solidarity »<sup>5</sup> (1994). The people of Neuchâtel are « anxious to ensure the peace »<sup>6</sup> (2000). For the people of the canton de Vaud, the constitution must « favor the thriving of each and everyone within a harmonious society »<sup>7</sup> (2003). Finally, the people of Fribourg just mention « mutual understanding »<sup>8</sup> (2004).

So we can see that peace is present in most of our constitutions, in a more or less specific or emphatic way. In Switzerland, it can be said to be in our hearts.

### **The goals of the State and the principles guiding its action**

Switzerland «is committed to a just and peaceful international order » (art.2, in fine)<sup>9</sup> and contributes (...) to the promotion (...) of a peaceful existence among peoples » (art.54, al.2)<sup>10</sup>. In the fields of international relations, human rights, international law and development, Switzerland has made a lot of progress towards a more peaceful world. When it comes to its actions, Switzerland takes in consideration conflict prevention. Economic ethics showed some advancement as well, but there is still a lot to be done in this area. However, the arms sales and the army somehow spoil the picture.

Only Vaud included a specific disposition regarding the central role of peace in the activities of the state, quoted (our translation):

« Article 6. Goals and principles

1. The goals of the State are: (...)

2. In all its activities, it [the State](...) :

c) Shall see that justice and peace prevail, and supports conflict prevention efforts (...) <sup>11</sup> “.

This disposition is very important as it provides the method the State should employ to maintain public order, to rule the use force, and to intervene, should the need arise and even in the absence of a legal basis, in case of emergency<sup>12</sup>. This is a notable progress in the way that the power of the State is no longer tied to the use of force, but to the promotion of peace and justice as prime values and to the prevention of violence. This is an important change of paradigm, whose substantial advantages must still be largely exploited, but it should lead, on the mid-term, to a less violent State. Moreover, support to conflict prevention efforts can lead to funding to these activities.

### **More specific areas related to peace, human rights state missions<sup>13</sup>**

Both the Universal Declaration of Human Rights and the European Convention of Human Rights entail a « right to security » (art.3 and 5)<sup>14</sup>. It is very regretful that neither the Swiss, nor the here studied local Swiss constitutions included or deepen this subject<sup>15</sup>. In fact, the recognition of personal security and consequently of peace as a human right is in our view one of the most appropriate and also one of the most peaceful means which would encourage States to have peace as a central element of all their activities (as it does for gender or environmental issues). And to realize this right to peace (or security), the States will have to include peace values and methods in education and to render mediation or other conflict resolution mechanisms easily available for the population. Such a right will also imply more prevention and case being greater control of the use of force<sup>16</sup>.

It is then important to note that the cantons (and the municipalities) which are not bound by the presence and the obligation to maintain armed forces could and should go much further regarding peace than the Confederation.

Finally, it must be specified that the federal constitutions and several other canton's constitutions include dispositions concerning humanitarian aid<sup>17</sup>, international cooperation<sup>18</sup>, and sometimes dispositions concerning mediation<sup>19</sup>.

In conclusion, a constitution – even if it has to be voted by a majority in order not invite too much dissatisfaction or opposition- is not only the smallest common denominator of a population or people. It also allows advances with what is, in the beginning, only an ideal. A constitution is built to last and to progressively meet its objectives.

Peace is a need, but it also equals a happiness humanity and its members aspires to, ever since one experiences the awareness of a possible harmony. The abolition of war is also a necessity<sup>20</sup> which can only be accomplished by progressively reinforcing a culture of peace which will finally provide us sustainable peace. Constitutions and the concrete effects they may have are part of this process.

To the future!

Christophe Barbey

*Translation: Crina Resteman, including the unofficial translations of the legal dispositions below, except for the Swiss constitution where a state translation, though unofficial as well, exists. With great thanks.*

---

<sup>1</sup>This article is part of a series that was already published in our journal, see Issue no. 73 (peace and the constitutions of countries without army and Security Council members or candidate states) and Issue no. 76 (peace and the constitutions of newly formed countries: Montenegro and Timor Leste).

<sup>2</sup>With the exception of Valais and Geneva, all Romand cantons recently reviewed their constitution.

<sup>3</sup>The Swiss Federal Constitution of April 18, 1999: "Preamble: In the Name of Almighty God! The Swiss People and the Cantons, mindful of their responsibility towards Creation, resolved to renew their alliance as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world, determined to live together with mutual consideration and respect for their diversity, conscious of their common achievement and their responsibility towards future generation, and in the knowledge that only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members; adopt the following Constitution (... ).

<sup>4</sup>The Constitution of the Republic and Canton of Jura of 20 May 1977. "The people of Jura, mindful of their responsibilities to God and to people, wishing to establish sovereign rights and to create a united community, give themselves a Constitution which reads as follows: Preamble, The people of Jura use as inspiration the Declaration of Human Rights of 1789, the United Nations Universal Declaration of Human Rights of 1948 and the European Convention of Human Rights of 1950. By the virtue of these principles, the Republic and Canton of Jura, as created by the self-determination act the 23<sup>rd</sup> of June 1974,-promotes social justice, encourages cooperation among peoples, and holds an active role within the community to which it belongs-".

<sup>5</sup>Constitution of Canton of Bern of 6 June 1993. "With the intention to protect liberty and the right to create a colectivity in which all people live in harmony and are mindfull of their responsibility towards Creation, the people of Bern give themselves the following Constitution:

<sup>6</sup>Constitution of Neuchâtel of 25 September 2000: The people of the Canton of Neuchâtel, mindful of their responsibilities regarding the individual, the community, the natural environment and future generations, respectful of the diversity of its cultures and regions, anxious to ensure, within its possibilities, freedom, justice, peace and prosperity within a democratic order and to create a collectivity which is lively, united, solidaire and open to the world, give themselves the following Constitution: (...)"

---

<sup>7</sup>Constitution of Canton of Vaudois of 14 April 2003; "Preamble: To favorize the thriving of everyone within a harmonious society, respectful of the Creation as a cradle to future generations, being open to the world and feeling united with it, measuring the force by the care it provides to its weakest member and making the State an expression of its determination, the people of the Canton of Vaud give themselves the following Constitution: (...)"

<sup>8</sup>Constitution of Fribourg of 16 May 2004: "We, the people of the Canton of Fribourg, believing in God or drawing our values from other sources Mindful of our responsibility to future generations, Wishing to live our cultural diversity in mutual cooperation, Determined to build an open, prosperous and solidaire society, upholding fundamental rights and respectful of the environment, we give ourselves the following Constitution."

<sup>9</sup>Constitution of Switzerland: Art.2 Aims. 1. The Swiss Confederation shall protect the liberty and rights of the people and safeguard the independence and security of the country. 2. It shall promote the common welfare, sustainable development, internal cohesion and cultural diversity of the country. 3. It shall ensure the greatest possible equality of opportunity among its citizens. 4. It is committed to the long term preservation of natural resources and to a just and peaceful international order.

<sup>10</sup>Art. 54: Foreign relations. 1. Foreign relations are the responsibility of the Confederation. 2. The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful coexistence of peoples as well as the conservation of natural resources. 3. It shall respect the powers of the Cantons and protect their interests

<sup>11</sup>Constitution of Canton of Vaud: "Art. 6 Goals and principles 1. The goals of the State are: a) the common good and the cohesion of the state; b) the harmonious integration of all the social body; c) the preservation of the physical foundations of life and the sustainable conservation of natural resources; d) the safeguard of the interests of the future generations. 2. In its activities it shall: a) protect the dignity, rights and liberties of individuals; b) ensure public order; c) see that justice and peace prevail and it sustains conflict prevention efforts; d) acknowledge the family as the fundamental element of society; e) ensure a balanced representation of women and men amongst authorities". Also see article 71: "Humanitarian aid and development cooperation. 1. The state and communes cooperate with other public powers, relevant organizations and enterprises in the field of humanitarian aid, development cooperation and the promotion of fair trade. 2. They are committed to the respect of human rights and politics of peace".

<sup>12</sup>Public order, use of force and extraordinary situations: Constitution of Switzerland, art. 57 to 61, 185. Constitution of Bern art. 37 and 91. Constitution of Fribourg art. 76 and 117. Constitution of Geneva 126 and 127. Constitution of Jura art. 92g. Constitution Neuchâtel art. 5, 74 and 75. Constitution of Vaudois art. 44, 124 and 125 and Constitution of Valais art. 56. It would not be practical to enumerate all the dispositions which are mostly dedicated to violent situation than to the promotion of peace. They can be easily found online.

<sup>13</sup>Reading recommendation: "Geneva- Republic of Peace", text of initiative by Group Suisse sans Armée, Geneva, at <http://www.gssa.ch/grp/texte.html>

<sup>14</sup>Universal Declaration of Human Rights, art. 3:" Everyone has the right to life, liberty and security of person". European Convention on Human Rights, art. 5: "Everyone has the right to liberty and security of person".

<sup>15</sup>Since the writing of this paper, Geneva did review its own constitution.

<sup>16</sup>If you would want to know more about the human right to peace, you can read articles I already wrote on this subject: <http://www.demilitarisation.org/spip.php?rubrique16>

<sup>17</sup>Constitution of Jura, art. 53 "The State encourages humanitarian aid and development cooperation in favor of disadvantaged persons".

<sup>18</sup>Constitution of Bern, art. 54 : "The Canton participates to cooperation efforts among regions of Europe. It contributes to the improvement of the economic, social and environmental situation existing in disadvantaged countries and supports the provision of humanitarian aid to populations that need it. In this activity, it encourages the respect of human rights". Constitution of Fribourg, art. 70: "Humanitarian aid and development cooperation. The State encourages humanitarian aid, development cooperation and fair trade. It promotes exchanges among people. Constitution of Neuchâtel, art.5q, simply makes note of cooperation.

<sup>19</sup>Constitution of Fribourg, art. 119 : "Mediation. The State Council establishes in the administrative area an independent mediation body". Constitution of Vaud, art. 43: "Administrative and private mediation 1. The State establishes an independent administrative mediation service. The mediator is elected by the Parliament. 2; The State may encourage private mediation". (However, judicial mediation also exists).

<sup>20</sup>Reminder: The UN Charter prohibits war with the exception of legitimate defense (art.2 and 51) and in the same vein, several countries without army, Japan and Italy constitutionally prohibit the existence of an army our do not recognize war as an international relations tool.