

Peace and Constitutions¹

The constitution is the fundament upon which the State is based. It includes four types of information: Basic values of the country, human rights and obligations of its citizens, rules that govern the organization and the functions of the State and finally, rules governing the modification of the constitution. Peace-related issues mostly take the form of values and rights, and at times, obligations. Below is a review of what has been done here and there to include peace in Constitution, plus some comments²:

In the the constitution of the UN Security Council permanent members:

The constitution of **China** mentions in the preamble the peaceful co-existence among nations and the implementation of world peace. The rest is more militaristic, including the description of the army and the obligation to serve (civil service is not included).

In **France**, the Constitution and earlier integrated texts say close to nothing about peace. The 1946 preamble prohibits wars of conquest or wars against freedom and accepts sovereignty limitations in situations concerning the implementation or the defense of peace.

The **United Kingdom** is the only “constitution-less” state of the world. The constitution is replaced by a series of laws and legal decisions.

Russia (Constitution of 1993) barely makes a mention of peace. The preamble reads that Russia tends to establish “civil peace” and acknowledges itself as “member of the world community”. The constitution includes a description of the army.

The **United States of America** (Constitution of 1787) foresees in the preamble domestic tranquility but nothing is mentioned regarding relevant external policy. The rights to carry guns is guaranteed.

The five nations which are currently the most responsible ones for world peace are therefore very far from making peace a core value, not even domestically. A few statements of intention and specific protection measure for the individuals are found. So it is not surprising if the protection of world peace fails so badly! It would be important to have more countries that promote and forward peace participate more actively in its realization at the highest level of the world political system.

This leads us to look at the constitution of the states candidates to a permanent seat at the Security Council:

Germany is “inspired by the determination to promote world peace” (preamble). Art. 1 states that peace is the base of all human rights. It recognizes the authority of international bodies regarding the promotion of world peace and is committed to accept international justice provisions under all circumstances (art. 24). Civil service and the description of the army are included in the text of the constitution.

Brazil incorporates the defense of peace and peaceful conflict resolution as principles guiding political and state action (Preamble, art. 4).

India makes no mention in the preamble, but a disposition on the principles guiding state action in art. 51 urges the state to promote peace and to solve conflicts peacefully.

The constitution of **Japan** is described elsewhere in this column³.

There is a difference in the tone of the member-states and the tone of the candidate-states. If the latter live up to the wording of their constitutions, their membership to the Security Council is highly desirable.

And what about the countries without army? Costa Rica and Panama prohibit the existence of a national army. Liechtenstein prohibits the army during times of peace. Kiribati only authorizes

¹ This article was published in “Une Suisse sans armée”, issue no.73, Spring 2007. It is preceded by an article on the European Constitution, published in “Terres civiles”, n°. 30, September 2005. It was followed by an article on newly-formed countries, Timor Leste and Montenegro,

² Due to space considerations, this text was published at first without including legal references and an annex was available upon request. The original annex is included here at the end of the text.

³ See www.apred.ch

the existence of the police. Some other countries legislation includes provisions on conscientious objectors, even if they do not have an army! Others are silent on the subject⁴.

In Switzerland, peace is stated as an objective in the preamble and art. 54 specifies that Switzerland must “contribute to the peaceful co-existence among people”. The new **constitution of Canton Vaud** says that in its activities the state shall see that justice and peace prevail and supports conflict prevention efforts (art. 6).

To conclude, constitutional law is not yet an actual peace promotion tool, but peace is not absent from constitutions and must be reinforced accordingly. It is desirable to see this progress continue; that peace needs to be re-affirmed as a value, included in legal documents and it is important to see peace be a part of all actions undertaken by the State.

Citizenly yours,
Christophe Barbey

References:

China:

Constitution of 4 December 1982. Several amendments. Updated on 14 March 2004. Official translation.

Preamble. It mentions defense and armed forces. The language is quite war-like and includes the reintegration of Taiwan. It recognizes the peaceful coexistence among nations. It encourages the protection of world peace.

« China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries; China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress ».

29. Armed forces. Nothing on peace, except social peace of the work place, that must be protected.

« The armed forces of the People's Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction, and work hard to serve the people. The state strengthens the revolutionization, modernization and regularization of the armed forces in order to increase the national defence capability. »

55. The obligation of military service for men, and women. The civil service is not defined in the text of the constitution.

⁴ Details and references concerning those countries will be published in an upcoming book on countries without army (English). The analysis for these army-less countries, here does not include the preambles.

« It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression. It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law. »

62. The decisions on peace and war are made by the National Congress.

« The National People's Congress exercises the following functions and powers : (...) (14) To decide on questions of war and peace; (...) »

94 and 94. Central military commission. Rules the armed forces. Definition of this organ remains quite unclear.

« SECTION 4. THE CENTRAL MILITARY COMMISSION

Article 93. The Central Military Commission of the People's Republic of China directs the armed forces of the country. The Central Military Commission is composed of the following: The Chairman; The Vice-Chairmen; and Members. The Chairman of the Central Military Commission has overall responsibility for the commission. The term of office of the Central Military Commission is the same as that of the National People's Congress.

Article 94. The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee. »

Remarks: General impression: The section on human rights is modern, but it does not match reality. The section on democracy is doubtful, especially regarding complaints against the State.

France:

Constitution of 4 October 1958. Several amendments. Updated on 27 February 2007. Official version.

Preamble of 1946 is part of the 1958 constitution.

It forbids wars of conquest or against freedom.

«(...) The French Republic, faithful to its traditions, shall conform to the rules of international public law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people. Subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organization and preservation of peace».

Russia:

Constitution of 12 December 1993. Very few amendments. Official translation.

Preamble: It acknowledges a “civil” peace. It identifies itself as member of the world community.

« We, the multinational people of the Russian Federation, united by a common fate on our land, establishing human rights and freedoms, civic peace and accord, preserving the historically established state unity, proceeding from the universally recognized principles of equality and self-determination of peoples, revering the memory of ancestors who have conveyed to us the love for the Fatherland, belief in the good and justice, reviving the sovereign statehood of Russia and asserting the firmness of its democratic basic, striving to ensure the well-being and prosperity of Russia, proceeding from the responsibility for our Fatherland before the present and future generations, recognizing ourselves as part of the world community, adopt the constitution of the Russian federation. ».

59. Military duties and civil service.

1. Defence of the Fatherland shall be a duty and obligation of citizens of the Russian Federation.

2. A citizen shall carry out military service according to the federal law.

3. A citizen of the Russian Federation shall have the right to replace military service by alternative civilian service in case his convictions or religious belief contradict military service and also in other cases envisaged by the federal law.

87. Chain of command

1. The President of the Russian Federation shall be the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation.

2. In case of an aggression against the Russian Federation or of a direct threat of aggression the President of the Russian Federation shall introduce in the territory of the Russian Federation or in its certain parts a martial law and immediately inform the Council of the Federation and the State Duma about this .
3. The regime of the martial law shall be defined by the federal constitutional law.

102. Powers of parliament

1. The jurisdiction of the Council of the Federation includes:

- a. (...)
- d. deciding on the possibility of using the Armed Forces of the Russian Federation outside the territory of the Russian Federation;
- e. (...)

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Liable to obligatory consideration by the Council of the Federation shall be the federal laws adopted by the State Duma on the following issues:

- a. (...)
- f. peace and war.

United States of America:

Constitution of 17 September 1787, several amendments. Updated official version.

Preamble: "Domestic tranquility".

« We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. »

Article 1, section 8: The Congress. Chain of command.

The Congress shall have Power To :

(...)

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

(...)

Article 2, section 2: The President. Chain of command.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment

Amendments: Bill of rights.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Germany:

Basic Law of 23 May 1949. Numerous amendments. Non-official translation (an official English version is not available online). Updated in 2002.

Preamble:

“Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law.”

Articles:

1. Effects of human rights

Article 1 – Human dignity, legally binding force of basic rights

(...)

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and justice in the world.

12a: Military and civil service. Legal restrictions in certain cases.

Article 12a – Compulsory military and civil service

(1) Men who have reached the age of eighteen may be required to serve in the armed forces, in the Federal Border Police, or in a civil defense organization.

(2) Any person who, on grounds of conscience, refuses to perform the military service involving the use of arms may be required to perform military service. The duration of the alternative service shall not exceed that of the military service. Details shall be regulated by a law, which shall not interfere with the freedom to make a decision in accordance with the dictates of conscience, and which shall also provide for the possibility of alternative services not connected with the units of the armed forces or of the Federal Police Border.

(3) Persons liable to compulsory military service who are not called upon to render service pursuant to paragraph (1) or (2) of this article may, when a state of defence is in effect, be assigned by or pursuant to a law to employment involving civilian services for defense purposes, including the protection of the civilian population; they may be assigned to public employment only for the purpose of discharging police functions or such other sovereign functions of public administration as can be discharged only by persons employed in the public service. The employment contemplated by the first sentence of this paragraph may include services within the armed forces, in the provision of military supplies, or with public administrative authorities, assignments to employment connected with supplying and servicing the civilian population shall be permissible only to meet their basic requirements or to guarantee their safety.

(4) If, during a state of defence, the need for civilian services in the civilian health system or in stationary military hospitals cannot be met on voluntary basis, women between the age of eighteen and fifty-five may be called upon to render such services by or pursuant to a law. Under no circumstances may they be required to render service involving the use of arms.

(5) Prior to the existence of a state of defence, assignments under paragraph (3) of this Article may be made only if the requirements of paragraph (1) of Article 80a are met. In preparation for the provision of services under paragraph (3) of this article that demand special knowledge or skills, participation in training courses may be required by or pursuant to a law. In this case the first sentence of this paragraph shall not apply.

(6) If, during a state of defence, the need for workers in the areas specified in the second sentence of paragraph (3) of this Article cannot be met on voluntary basis, the right of German citizens to abandon their occupation or place of employment may be restricted by or pursuant to a law in order to meet this need. Prior to the existence of a state of defence, the first sentence of paragraph (5) of this Article shall apply *mutatis mutandis*.

Article 17a Restriction of basic rights in relation to

(1) Laws regarding military and alternative service may provide that the basic right of members of the armed forces and of alternative service freely to express and disseminate their opinion in speech, writing and pictures (first clause of paragraph (1) of article 5), the basic right of assembly (article 8), and the right

of petition (Article 17) insofar as it permits the submission of requests or complaints jointly with others, be restricted during their period of military or alternative service.

(2) Laws regarding defence, including protection of the civilian population, may provide for the restriction of the basic rights of freedom of movement (Article 11) and inviolability of the home (Article 13).

24: International relations, collective security, promotion of peace, international justice, prohibition of war, arms regulation, state of emergency (articles not reproduced here).

Article 24 – International Institutions

(1) The Federation may transfer by law sovereign powers to international organizations.

(1a) Insofar as the Lander are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to transfrontier institutions in neighboring regions.

(2) With a view to maintaining peace, the Federation may enter into a system of collective security, in doing so it shall consent to such limitations upon its sovereign powers as will bring about a lasting peace in Europe and among the nations of the world.

(3) For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive and compulsory international arbitration.

Article 26 Interdiction of waging international wars

(1) Acts tending to and undertaken with the intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be criminalized.

(2) Weapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government. Details shall be regulated by a federal law.

65a: Chain of Command

Command of the armed forces shall be vested in the federal Ministry of Defence.

Article 73 Exclusive legislative powers of the Federation, list of content

The Federation holds exclusive legislative power over the following matters:

(1) Foreign affairs e.g. defense, including protection of the civilian population

(...)

9. War damages and reparations

87a: Armed forces

(1) The Federation shall establish Armed Forces for purposes of defence. Their numerical strength and general organizational structure must be shown in the budget.

(2) Apart from defence, the Armed Force may be employed only to the extent expressly permitted by this Basic Law.

(3) During a state of defence or a state of tension the Armed Forces shall have the power to protect civilian property and to perform traffic control functions to the extent necessary to accomplish their defense mission. Moreover, during a state of defence or a state of tension, the Armed Forces may also be authorized to support police measures for the protection of civilian property, in this event the armed forces shall cooperate with the competent authorities.

(4) In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, the Federal Government, if the conditions referred to in paragraph (2) of Article 91 obtain and the police forces and the Federal Border Police prove inadequate, may employ the Armed Forces to support the police and the federal Border Police in protecting civilian property and in combating organized armed insurgents. Any such employment of the Armed Forces shall be discontinued if the Parliament so demands.

87b: Federal Defense Administration

(1) The Federal Defense Administration shall be conducted as a federal administrative authority with its own administrative substructure. It shall have jurisdiction for personnel matters and direct responsibility for satisfaction of the procurement needs of the Armed Forces. Responsibilities connected with pensions for injured persons or with construction work may be assigned to the Federal Defence Administration only by a federal law requiring the consent of the Parliament. Such consent shall also be required for any

laws to the extent they empower the Federal Defense administration to interfere with the rights of third parties, this requirement, however, shall not apply in the case of laws regarding personnel matters.

(2) In addition, federal laws concerning defense, including military service recruitment and protection of the civilian population, may, with the consent of the Parliament, provide that they shall be executed, wholly or in part, either by federal administrative authorities with their own administrative substructures or by the Lander on federal commission. If such laws are executed by the Lander on federal commission, they may, with the consent of the Parliament, provide that the powers vested in the Federal Government or in the competent highest federal higher authorities; in this event the law must provide that such authorities shall not require the consent of the Parliament in issuing general administrative rules pursuant to the first sentence of paragraph (2) of Article 85.

Brazil: Constitution of 5 October 1988. Numerous amendments. Official version. Updated at least in 2004.

Preamble : We, the representatives of the Brazilian People, convened in the National Constituent Assembly to institute a Democratic State, for the purpose of ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes, promulgate, under the protection of God, this constitution of the federative republic of Brazil.

Article 4. The international relations of the Federative Republic of Brazil are governed by the following principles:

- I - national independence;
- II - prevalence of human rights;
- III - self-determination of the peoples;
- IV - non-intervention;
- V - equality among the States;
- VI - defense of peace;
- VII - peaceful settlement of conflicts;
- VIII - repudiation of terrorism and racism;
- IX - cooperation among peoples for the progress of mankind;
- X - granting of political asylum.

The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the peoples of Latin America, viewing the formation of a Latin-American community of nations.

Articles on its military organization and chain of command are not reproduced here because there are too many. For more information got to:

<http://www.v-brazil.com/government/laws/constitution.html>

India: Constitution of 26 May 1950. Numerous amendments. Updated official version. The preamble does not include relevant information.

Part IV: Directive principles of state policy

51. Promotion of international peace and security.

The State shall endeavour to:

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

Translation : Crina Resteman