

Carlo Curti Gialdino, The Symbols of the European Union: the Constitutional Treaty

Caption: In his book entitled The Symbols of the European Union, Carlo Curti Gialdino, Professor of International Law at the University of Rome 'La Sapienza' and Legal Secretary at the Court of Justice of the European Communities from 1982 to 2000, gives an account of the preparatory work of the European Convention on the integration of the symbols of the Union into the Constitutional Treaty signed in 2004.

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[...]

3. The preparatory work for the Treaty establishing a Constitution for Europe — the symbols of the European Union

Some of the symbols of the European Union referred to in Article I-8 of the Constitutional Treaty, namely the flag of 12 golden stars on a blue background, the *Ode to Joy* from Beethoven's Ninth Symphony (adopted by the Communities from the Council of Europe) and 9 May as Europe Day, ⁽³⁹⁾ were already part of the tradition of the Communities and the Union even though they had never been enshrined in primary law, whereas the euro, provided for under the amendments made by the Treaty of Maastricht to the Treaty establishing the European Community (EC Treaty), where it was called the ECU, was the common currency of the Member States participating without derogation in the third phase of European Economic and Monetary Union. Therefore, although these symbols became enshrined in the Constitution, the motto was the only new symbol of the European Union provided for under the Constitutional Treaty.

Nonetheless, the inclusion of a provision on symbols was the result of protracted efforts, as evidenced notably by the fact that it was inserted into the draft Constitutional Treaty only on the final day of the Convention chaired by Valéry Giscard d'Estaing. This was the reward for the determination shown by a group of Convention delegates including the French MEPs Olivier Duhamel and Alain Lamassoure.

Let us discuss matters in their proper order, however. Analysis of the work of the European Convention shows that one of the first delegates, if not the very first, to point to the need to highlight symbols and, in particular, to propose a motto was the Slovenian Government representative Dr Matjaž Nahtigal, who said that the vital question for Europe was the question of coexistence while taking into account diversity, and that Europe's motto could only be *Diversity within unity*. ⁽⁴⁰⁾ Provisions on symbols also appear in the draft constitutions tabled by Robert Badinter ⁽⁴¹⁾ on his own account and by Elmar Brok on behalf of the Group of the European People's Party (EPP) ⁽⁴²⁾ at the Convention.

Talk of symbols, however, began only after Giscard d'Estaing's presentation on 28 October 2002 of the preliminary draft treaty drawn up by the Praesidium. ⁽⁴³⁾ Indeed, despite the fact that many Convention members had declared themselves in favour of a provision on symbols and that the motto *Peace, freedom, solidarity* appeared in Badinter's draft constitution, ⁽⁴⁴⁾ the Praesidium had not taken it any further.

As a result, when the Praesidium presented the first set of articles (1 to 16) of Part I at the session of 6 and 7 February 2003, several Convention members, mainly MEPs, submitted a series of amendments to Articles 1 and 6 to include a provision on the symbols of the Union. ⁽⁴⁵⁾ In particular, in an amendment to Article 1, Duhamel referred to the flag, the currency, the anthem and the day — a public holiday; Brok and other Convention members, acting on behalf of the EPP Group at the Convention, proposed four symbols in a new Article 6 (flag, currency, anthem and day), ⁽⁴⁶⁾ while Lamassoure proposed an amendment to Article 1 referring to the symbols, namely the capitals of the Union (Brussels, Strasbourg and Luxembourg), the flag, the currency, the anthem and the day. Frenchman Pierre Lequiller put forward an amendment to Article 1 that included the flag, the anthem, the motto (with empty square brackets for the wording), the currency and the day as a public holiday; Convention members Pervenche Berès, Duhamel and others proposed — alongside the flag, the anthem and the day (a public holiday) — the motto *Peace, equality, freedom*. ⁽⁴⁷⁾

The plenary debate took place on 27 February 2003 and included speeches by French MEPs Lamassoure and Duhamel and a reply by the Chairman Giscard d'Estaing. ⁽⁴⁸⁾ Lamassoure noted that the public was conscious of the external symbols of the Union. He was therefore of the view that, together with the flag, the anthem and Europe Day, one of the first articles should include the capital cities (the historic Brussels–Luxembourg–Strasbourg triangle), the currency and, finally, the motto. On the motto, Lamassoure suggested holding a wide-ranging consultation to find a formula that 'speaks to everyone's hearts'. Duhamel was less diplomatic: he argued that the draft had not only forgotten the symbols already in place (the flag and the anthem) but also the symbols that should be added (the motto and Europe Day, which he proposed as a public holiday). Duhamel

did not even entertain the notion that the Praesidium might have refused to refer to the symbols, even less that they might object to including them. In response to these two Convention members, Giscard d'Estaing acknowledged that the text presented by the Praesidium was dry and lacking in warmth. He also was of the view that it was appropriate to include a provision on symbols referring, naturally, to the flag and the anthem. He noted that a better description of the extract from Beethoven's Ninth Symphony was needed, as well as lyrics, and talked of a competition financed using Convention funds. ⁽⁴⁹⁾

The inclusion of a provision on symbols — a vital step if Europe were to avoid being perceived as a 'faceless edifice' ⁽⁵⁰⁾ — was not without controversy, however. Concerned that symbols could presage the birth of a European super-state and even have repercussions for national symbols, Danish and British socialists, along with some Swedes, declared their opposition. Members in favour countered that even football teams and local bodies have flags, anthems and mottoes. ⁽⁵¹⁾

The Convention debate was reopened following the Thessaloniki European Council, where Giscard d'Estaing presented the first two parts of the draft Constitutional Treaty. It included a Preamble which, although not drafted by Giscard himself, was heavily inspired by him and was merely amended by the Praesidium. The phrase 'united in its diversity' appeared in the Preamble, deliberately in inverted commas, implicitly indicating it to be the motto of the Union. ⁽⁵²⁾ However, neither in the two parts presented in Thessaloniki nor in the Articles in Parts III and IV of the draft Constitutional Treaty did the Praesidium propose anything on symbols. ⁽⁵³⁾ As a result, Duhamel and other Convention members suggested an amendment containing a proposal for a provision on symbols to include the flag, the currency, the anthem and the day, which was to be a public holiday.

At the plenary session on 4 July 2003, Convention members Alojz Peterle, Duhamel, Lamassoure, Brok, Lequiller and Adrian Severin raised the matter of the symbols. Peterle highlighted the value that symbols have for citizens and proposed the inclusion of a provision on the flag, an anthem, a currency and a Europe Day in Part III if inclusion in Part I were not possible, amending the text presented to the Thessaloniki European Council. Duhamel expressed surprise that the proposal for an article on symbols, which had met with general consensus at the Convention, and on which the Chairman, Giscard d'Estaing, had given extensive assurances, had disappeared, apparently 'either the victim of a talented kleptomaniac, or of Freudian amnesia'. ⁽⁵⁴⁾ He also suggested incorporating it into Part IV among the final provisions, while still hoping that the Intergovernmental Conference (IGC) would position it in Part I, as strongly recommended. Lamassoure added his voice to the requests from Peterle and Duhamel; deploring the absence of a provision on symbols (flag, anthem, day and currency) and noting that this was 'an issue on which we are unanimous', he asked ironically, 'Why censure us when we are unanimous?' Finally, Brok, Lequiller and Severin spoke, pressing home the value of symbols in creating a feeling of belonging among citizens.

At the plenary session of 9 July 2003, many Convention delegates, particularly among the members of the national parliaments, raised this issue once again, leading Lamberto Dini, speaking on their behalf and aware that the matter had been discussed by the Praesidium, to insist that, like some Member States' national constitutions, the symbols should be enshrined in the Constitutional Treaty. ⁽⁵⁵⁾ In response, Giscard d'Estaing said that, if demand among the Convention members were high, a text would be drafted at the afternoon's Praesidium meeting. Immediately afterwards, Íñigo Méndez de Vigo y Montojo spoke on behalf of the European Parliament delegation, requesting that the provision on symbols be included in Article 1 of Part III. Duhamel spoke at length about an article on symbols: he noted that the flag, anthem, Europe Day and currency had been adopted a long time ago, that they were important signs that made Europe visible and were a part of the European identity that citizens valued, that they had no cost implications and definitely did not create a super-state. He said that he had received Henning Christophersen's support to raise the matter with the government delegates and had halted the petition he had begun with Lamassoure when the extensive support among Convention members became evident. In a change to what had been stated at the previous plenary session, he proposed including the provision on symbols in Part III as Article 339, as this would avoid having to change the numbering of the articles, leaving it to the Intergovernmental Conference to insert wording in Article 1 of Part I. On the specific matter of the position of the provision in the Constitution, Giscard d'Estaing noted that insertion in Part III did not seem at all appropriate to him because that part focused essentially on policies; it would undoubtedly be better placed in Part I, and he would state as much in his letter to the

European Council. Others who spoke in favour of a provision on symbols were Haenel, Johannes Voggelhuber, Peterle, Lamassoure (who noted that even the Olympic Games have a flag and an anthem), Proinsias de Rossa and Vytenis Andriukaitis. Lequiller, a member of the French Parliament, emphasised the importance of symbols that speak to citizens and expressly mentioned the flag, anthem and day but neither the currency nor the motto. The request for a provision on symbols was finally raised by the MEP Brok on behalf of the European People's Party and by Dutchman Frans Timmermans on behalf of the national parliaments. Of particular note among the speeches was Francesco Speroni's: he was apparently the only Convention member who raised the problem that the flag of the European Union and the flag of the Council of Europe were identical and suggested that there should be some 'differentiation'. The suggestion, which Vice-Chairman Giuliano Amato described as 'a good point', was nevertheless not taken up by the Convention.

The Praesidium had no option but to follow up the request at this point. Duhamel's determination was justly rewarded; in addition to continually petitioning Giscard d'Estaing, he had found an ally in Christophersen, a representative of the governments in the Praesidium.⁽⁵⁶⁾ The new articles proposed on the evening of 9 July 2003 included Article IV-1.⁽⁵⁷⁾ Some continued to maintain that it would have been better to include the provision at the start of the Constitutional Treaty, but since the Convention had already presented Part I to the Thessaloniki European Council, the decision was taken to fall back on Part IV with a footnote stating that it would be better placed in Part I. The legal experts at the IGC took that suggestion into account and moved the provision to Part I as Article I-6a.⁽⁵⁸⁾

The Intergovernmental Conference accepted the proposal, and the provision became Article I-8 of the Constitutional Treaty⁽⁵⁹⁾ and was placed in its ideal logical position after the provision conferring international legal personality upon the European Union.⁽⁶⁰⁾ Therefore, as with many states, the distinctive signs of the European Union, a subject of international law, were set forth in its constitution.

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(39) The Council of Europe celebrates its day on 5 May, the anniversary of the signing of its Statute in London on 5 May 1949.

(40) CONV 19/02 of 5 April 2002.

(41) CONV 317/02, CONTRIB 105 of 30 September 2002. Article 4 reads: 'The motto of the Union is "PEACE, FREEDOM, SOLIDARITY". The emblem of the Union is the blue flag stamped with a circle of gold stars. The hymn of the Union is "Ode to Joy" by Ludwig Van Beethoven. The currency of the Union is the Euro.'

(42) Elmar Brok submitted two documents. In the first (CONV 325/02, CONTRIB 111 of 8 October 2002), which followed the meeting held by the EPP in Roquebrune in June 2002, Article 81 on symbols of European identity refers to the flag, the anthem and the day; in the second (CONV 325/1/02 REV 1, CONTRIB 111 of 6 December 2002), which reflects the discussions of the EPP study days in Frascati (8–10 December 2002), the provision on symbols appears in Article 61 and includes the currency in addition to the flag, the anthem and the day.

(43) At the plenary session of 29 October 2002, Giscard himself stated that he had thought of the motto *Freedom, justice and solidarity*, the key word being the final one, given that solidarity was, at the time, the key aspect of European society and of future relations between Europe and the rest of the world. However, his proposal was not approved by the Praesidium, whose initial response was 'no motto, that's a matter for a later date'.

(44) CONV 317/02 of 30 September 2002.

(45) CONV 574/1/03 REV 1 of 26 February 2003.

(46) They referred to Article 61 of the EPP Discussion Paper (text adopted at the Frascati meeting of 8–10 December 2002, as amended on 27 January 2003).

(47) In his 'Diary of a Convention member', Olivier Duhamel wrote on 13 February 2003 that 'Giscard was thought to be sensitive to the issue of symbols and keen to address what he termed "opinion". It is therefore all the more surprising that the symbols of the European Union were not included in the draft Constitution' (O. Duhamel, *Pour l'Europe. Le texte intégral de la Constitution expliqué et commenté*, Seuil, Paris, 2003, pp. 92–93, 95).

(48) The report of proceedings can be viewed at http://www.europarl.europa.eu/Europe2004/index_en.htm.

(49) See *infra*, Ch. II, No 8.

(50) As noted by Italian President Carlo Ciampi in his speech to the Parliamentary Assembly of the Council of Europe in Strasbourg on 26 September 2000. Barely two months later, President Ciampi returned to the notion of Europe, noting that 'efforts to give the concept of European identity a soul are revealed as a fascinating challenge for our times, a responsibility towards new generations, a commitment borne of great fruits' (speech on the inauguration of the Italian rooms at the Hermitage Museum, St Petersburg, 25 November 2000).

(51) Recalled by E. de Poncins, *Vers une constitution européenne. Texte commenté du projet de traité constitutionnel établi par la Convention européenne. Présentation et commentaires*, Éditions 10/18, Département d'Univers Poche, Paris, 2003, p. 482.

(52) See on this point E. de Poncins, *op. cit.*, p. 77; O. Duhamel, *op. cit.*, p. 149. Duhamel himself had proposed an amendment on 3 June 2003 in which he suggested removing the inverted commas; although this was entirely logical given the specific provision

on symbols, including the motto, the suggestion was not taken up either by the Convention or the Intergovernmental Conference.

(53) CONV 848/03 of 9 July 2003.

(54) O. Duhamel, *op. cit.*, p. 139.

(55) See, in particular, Article 2 of the French Constitution (on this topic see J.-C. Colliard, ‘Liberté, égalité, fraternité’, in *L’Etat de droit: Mélanges en l’honneur de Guy Braibant*, Dalloz, Paris, 1996, pp. 89–103) and Article 193 of the Belgian Constitution, as well as provisions in other national constitutions referred to above in the Foreword, note 2.

(56) O. Duhamel, *op. cit.*, p. 144.

(57) CONV 853/03 of 23 July 2003.

(58) CIG 50/03 of 25 November 2003.

(59) The provision reads ‘The flag of the Union shall be a circle of twelve golden stars on a blue background. The anthem of the Union shall be based on the “Ode to Joy” from the Ninth Symphony by Ludwig van Beethoven. The motto of the Union shall be: “United in diversity”. The currency of the Union shall be the euro. Europe day shall be celebrated on 9 May throughout the Union.’ On the Constitutional Treaty, I would refer the reader to C. Curti Gialdino, *La Costituzione europea. Genesi – Natura – Struttura – Contenuto*, Istituto Poligrafico e Zecca dello Stato, Rome, 2005.

(60) N. Verola, ‘L’identità dell’Unione’, in F. Bassanini, G. Tiberi, *La Costituzione europea. Un primo commento*, Il Mulino, Bologna, 2004, pp. 45–46, recalls that British Convention members had agreed to inclusion of the provision on symbols in the draft treaty only on condition that it would be ‘hidden’ in Part IV and notes that ‘only after countless assurances did it become possible during the IGC to shift the article on symbols to its natural place among the first few articles of the Treaty’. See also the position of the British Minister of State for Europe, Douglas Alexander (*infra*, p. 195, note 12).