

The existence of the Nation State, in its current form and as defined by frontiers and struggles of influence, is but one possible form of organization of the human society. Such organizations exist in all societies, should they be egalitarian or hierarchical, authoritative or cooperative², traditional or regulated institutions. The more numerous the members of a society, the more elaborated and structured the institutions they create.

The States, when looked at as institutions, are in principle governed by constitutions. History of constitutions tends to demonstrate that constitutions – birthed sometimes in wrathful struggles – progressively enforce the rights of individuals. What about peace then? Having already explored how peace is included in the constitutions of several larger states and also in the constitutions of states without army³, we shall continue our global search for constitutional “peace seeds” through a look at the latest formed countries.

The Constitution of **Montenegro** is two months old (19 October 2007). It includes a few well-known legal advances among which the right to a healthy environment and the constitutional prohibition of incitement to hatred and intolerance. But unfortunately, if the Montenegrins are to make a commitment to peace (preamble) and if building friendly international relationships is the obligation of the state (art. 15), those principles are too general and not adequate enough if compared to the detailed description of the army and its structure (art. 11, 129, 130). Fortunately, it is clearly stated that the army is subject to civilian control. It should be noted though, that most likely, Switzerland had a part in the writing of those articles. In fact, the Center for the Democratic Control of the Armed Forces (DCAF), a Geneva-based institution financed by the Swiss Confederation, supervised or advised the State of Montenegro, helping with the establishment of its new military legislature⁴. The compatibility between neutrality and providing support to the creation of an army is questionable and this is not what we understand by active peace, a peace based primarily on non-military security. In addition to this, the un-proportional balance between an exhaustive development of the military component in the constitution and the understated and anemic promotion of peace is just too bad. Article 48 recognizes the right to conscientious objection.

Finally, we must mention that APRED, (coordinated by the author of this article) had envisioned a campaign meant to dissuade the Montenegrins from creating a military force. The association had to forgo this campaign because of lack of funds, which given the recent developments, was indeed regrettable. Actions aiming towards raising awareness about non-militarization and peace promotion should be carried one whenever a new state emerges.

The Constitution of **East Timor** entered into force in 2002. The preamble does not mention anything related to peace. “To promote the establishment and the development of relations of friendship and co-operation among all Peoples and States”, article 6, is one of the goals of the State. Article 8 mentions the following goal: “International cooperation will be maintained with all States”. The universality which is underlined in this article is important. If all States cooperate with all States, peace will be reached. The goal of cooperation is the peaceful resolution of differences, yet however crucial the statement, putting it into practice is crucial as well⁵. “This cooperation should aim towards general, simultaneous and controlled disarmament”. This is essential at a time when

1 This article was published in “Une Suisse sans armée”, n°76, Winter 2007. It follows a first article about the constitutions of the UN Security Council member-states and the constitutions of the countries without army, also published in “Une Suisse sans armée”, n°73, Spring 2007. An article on the European constitution was published in “Terres civiles”, n°. 30, 2005, and another article one on the inclusion of peace in the constitutions of the French-speaking cantons was published in “Une Suisse sans armée”, n°77, Spring 2008.

2 The comparisons between authority and cooperation, hierarchy and equality, but also between sharing and monopolizing, open and secret have been proposed and approved by the UN during the campaign for culture of peace, <http://www.unesco.org/cpp/fr/index.html> and http://www3.unesco.org/iYCP/fr/fr_sommaire.htm

3 For “Une Suisse sans armée”, the GSSA journal n°73, <http://www.gssa.ch/journal/display.php3?id=458>

4 <http://www.dcaf.ch/montenegro-law-commentar/index.cfm?navsub1=33&nav1=3>

5 East Timor could do more, for example, it could accept the competence by default of the International Court of Justice or by signing diverse treaties on peace and disarmament.

disarmament is on hold. Yet, it is not enough, on the one hand because in the case of controlled disarmament the risk is that no party will take the initiative to disarm first (which is currently the case) and on the other hand, this attitude preserves the militaristic syndrome dictating that each state should have an army because other states have one. Disarmament is a commitment and it cannot depend on other parties or only on other parties. The fundamental right to “refuse to execute an unjust order” (art. 28) is also included in the Constitution. This is a general principle, included in humanitarian law, but this is the first time I see it mentioned in a constitution, great! It is bizarre that serving in the army is a right, but also a duty (art. 49). It must be noted though that the army is below 1,200 men (for a million inhabitants), all volunteers. Finally, the police, the army, as well as their control by the civil authority are briefly described (art. 146 to 148).

These two countries, both coming out of war, have not dared to follow the example of Costa Rica, Panama and Haiti, who totally demilitarized after a war, and to take advantage of the newly found peace, turning their back to the institution, the army, that had caused so much harm. In contrast with those three countries, Timor and Montenegro were under scrutiny from the international community, which, may be, was not ready to take the leap.

This time will come and we shall work towards this goal as much as our modest means will allow.

Happy trails,

Christophe Barbey

Translation Crina Resteman