

SUBSIDIARITY

The European Humanist Federation,

CONSIDERING

- 1) The fundamental importance of a constitutional Treaty for the future of the European Union;
- 2) Its contributions to
 - the Commission White Paper on European Governance, notably on the founding principles of the European Union (essential values, reinforcing the state of law, political goals) *
 - the Convention work on civil society, European citizenship, the increase of the Union competencies and the founding principles of the future Constitution **
- 3) The Amsterdam Treaty, and notably
 - article 13 prohibiting any form of discrimination
 - the additional Protocol n° 7 on the implementation of the subsidiarity and proportionality principles, article 5, 1st, 2nd and 3rd paragraphs
- 4) The key role that the implementation mechanism of the subsidiarity principle is called upon to play in the coherent sharing out of the competencies between Community institutions and Member States in an enlarged Union, and in optimising its effectiveness ***;
- 5) The ruling by the Strasbourg European Court of Human Rights of 23 October 1990 in the case Darby vs. Sweden;
- 6) The need to extend the precautionary principle to matters falling under the constitutional Treaty, thus ensuring the protection of social cohesion at Union level through ombudsmen trained in European law and the subsidiarity principle, and acting as guarantors of the well functioning of a democracy closer to the people;
- 7) The fact that
 - In its articles 20, 21, 22, the European Charter of Fundamental Human Rights asserts the principles of equality of rights, of non-discrimination, of cultural, religious and linguistic diversity ; in its articles 52, 53 and 54, it defines the scope of guaranteed rights and the possibility for the Union's law to grant a wider protection, the protection level of human rights and fundamental liberties, while prohibiting the abuse of law.

* Contribution to the Commission White Paper on European Governance, March 2002, annex I

** EHF contribution, June 2002, Annex II

*** Cf. President Valéry Giscard d'Estaing's declaration on 28.10.02

- The proposals formulated by the EHF in its contributions to the Commission White paper on European Governance and to the Convention work on civil society, the increase of the Union competencies and the founding principles of a Constitution (Annexes I and II) are totally in line with the provisions of the Charter.
 - The values upon which the European Union must rest constitute a common basis reinforcing its social cohesion, of which no single Member State can guarantee the enforcement throughout the Union as a whole. Consequently, and to the extent that the European Charter of Fundamental Human Rights and these values would have gained the status of Community *acquis* by their integration in the Constitution, the task of watching over their enforcement in all Member States will be incumbent on:
 - the common institutions (European Parliament, Council, Commission, European Court of Justice), solely able to fulfil it in virtue of the principle of subsidiarity;
 - the ombudsmen, seized by citizens' complaints concerning breaches in these matters. Being trained in Community law and the subsidiarity principle, these ombudsmen will be competent to judge the admissibility of these complaints ; they will thus contribute to the effectiveness and the efficiency of the rule of law in this area.
 - It is now of prime importance for the enlarged Union that the European Charter of Fundamental Rights be anchored in the Constitution, thus acquiring legal force for all Member States as Community *acquis*.
- 8) The importance of the matters falling under the competence of the International Penal Court, and in order to avoid that the constitutional Treaty might prevent the full implementation within the Union of the Treaty setting up the International Criminal Court.

INSISTENTLY REQUESTS

- 1) That the European Charter of Fundamental Rights be organically incorporated into the constitutional Treaty, and that an adequate procedure be devised to optimise its implementation;
- 2) That the values upon which the European Union rests, once integrated into the Constitution, gain the status of guaranteed minimal standards;
- 3) That, through its enforcement, the subsidiarity principle directly ensures the optimised implementation of these guaranteed minimal standards in all Member States of the Union;
- 4) That the above-mentioned requests be included respectively under articles 6 (Title II), 2 (Title I) and under articles 7 et 8 (Title III) of the Constitutional Treaty;
- 5) That all precautions be taken so as to prevent the constitutional Treaty from obstructing the full implementation within the Union of the Treaty setting up the International Criminal Court.