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SELECT COMMITTEE ON
THE EUROPEAN UNION

THE FUTURE OF EUROPE - THE
CONVENTION'S DRAFT
CONSTITUTIONAL TREATY

WITH EVIDENCE AND GOVERNMENT
RESPONSES TO EARLIER REPORTS

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EUROPEAN UNION COMMITTEE

THE FUTURE OF EUROPE – THE CONVENTION’S DRAFT CONSTITUTIONAL TREATY

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

Abstract

The draft Constitutional Treaty for the European Union is a significant document, meriting serious scrutiny and wide public debate. With ten new countries set to join the EU next year, it is necessary to agree a new Treaty now, as it is generally agreed that the present institutional structure would not function satisfactorily in a Union of 25.

Whether or not the draft Treaty is a “constitution” is of less importance than what it says and how it will affect all our lives.

The draft Treaty was prepared by the Convention on the Future of Europe, which was composed of representatives of national parliaments and governments, including from the applicant countries, and of the European Parliament and the Commission. The Convention met in public. The draft is now being considered by Ministers meeting in the Intergovernmental Conference, which does not meet in public.

The draft Treaty:

- Reforms the institutions of the EU

- Incorporates a Charter of Fundamental Rights

- Changes the way the EU works, including granting the Union some new powers (“competences”)

- Enhances the role of national parliaments.

But the draft Treaty is also largely composed of the text of current Treaties – i.e. much of what it provides for is not new.

With an eye to whether the draft Treaty is good for Britain, and for the European Union, this report examines the draft Treaty against four key themes:

- Does it confirm the EU as a union of Member States, rather than a state in its own right?

- Does it mean significant improvements in democracy, accountability and transparency?

- Will it make any difference to citizens, and bring the EU’s institutions closer to them?

- Will it make the EU more efficient?

The report concludes that the answer to the first question is yes. But, as a consequence, provisions for direct democratic legitimacy are harder to achieve. For example, it is precisely because the EU is not a state that the Treaty does not provide some of the direct mechanisms (such as the power to remove a government) that would exist in a state.

Overall, the report concludes that the draft Treaty would make some contributions to democracy, accountability and efficiency in the EU. For example, the Treaty clearly sets out what the EU is. But it is far less successful in securing transparency or bringing the EU closer to citizens.

The Government could do much more to explain the draft Treaty, particularly to specialised audiences, but should also continue to do more to provide information to the public.

The report also concludes that the Intergovernmental Conference should not rush to agree the Treaty – they need to get it right. The report also makes recommendations for changes to the Treaty text in a number of areas, including with regard to the proposed European Foreign Minister.

A final key theme of the report is the need for national parliaments to do more, both collectively and individually, to hold the Governments, who take so many of the EU’s decisions, to full account.

CHAPTER 1: INTRODUCTION

Why are we having yet another European Treaty?

1. On 1 May 2004 the European Union will undergo its greatest enlargement to date. Ten new countries are planning to accede, taking the number of EU Member States to 25. The institutional structure of the EU, however, has not changed substantially since the founding Treaty of Rome was agreed by the first six Member States. It is generally agreed that this institutional structure would not function satisfactorily in a Union of 25. Accordingly, in December 2000 when adopting the Treaty of Nice, the Member States, in addition to introducing some reforms to the voting system, identified a number of areas where further reform would need to be considered in the run-up to the next round of EU Treaty revision at the Intergovernmental Conference (IGC) then scheduled for 2004.

Agreeing a Treaty – the process*The Convention on the Future of Europe*

2. As a step towards implementing the agreement reached at Nice, the Heads of State or Government of the Member States in December 2001 agreed the Laeken Declaration which, among other things, established the Convention on the Future of Europe (“the Convention”) as the method for this Treaty revision. The Convention would “consider the key issues arising for the Union’s future development and try to identify the various possible responses”.¹

3. The Convention has provided the means for the widest input into any EU Treaty reform to date. The Convention comprised representatives not only from the EU institutions and Member States’ governments but from Member States’ and Applicant States’ national parliaments and from the European Parliament, with a strong contribution from the representatives of the United Kingdom Parliament. All these representatives, guided by a Praesidium, worked tirelessly over many months, meeting both in plenary and in working groups. The Convention at the end of its work agreed² a “Draft Treaty establishing a Constitution for Europe”.

The Thessaloniki European Council

4. The Convention’s chairman, Valéry Giscard d’Estaing, presented Parts I and II of the Convention’s work to the European Council at Thessaloniki on 19/20 June 2003³. The Presidency conclusions of that summit state that the text as presented: “marks a historic step in the direction of furthering the objectives of European integration:

- bringing our Union closer to its citizens,
- strengthening our Union’s democratic character,
- facilitating our Union’s capacity to make decisions, especially after enlargement,
- enhancing our Union’s ability to act as a coherent and unified force in the international system, and
- effectively dealing with the challenges globalisation and interdependence create”.

The Convention’s work going forward - the IGC

5. Member States’ governments are now discussing the text in an Intergovernmental Conference which began on 4 October. The conclusions of the Thessaloniki European Council also state that “the text of the Draft Constitutional Treaty is a good basis for starting in the Intergovernmental Conference”. This is clearly a compromise text between the views of those who see the draft text as “a good basis” and those who view it as “a starting point” for the IGC.

6. Herein lies a significant question for discussion as we move to the next phase of negotiations: how far, if at all, will it be possible for Member States meeting in the IGC to agree changes to the

¹ Declaration on the Future of the Union, available in the Government’s Command Paper Cm 5897.

² Albeit with a minority report from a few members (CONV 851/03) Annex III – “*Alternative Report – The Europe of Democracies*” <http://register.consilium.eu.int/pdf/en/03/cv00/cv00851en03.pdf>

³ Parts III and IV of the draft were produced by the Convention on 10 July. All four parts with the attached protocols were presented to Parliament on 12 August 2003 as Cm 5897.

text? Or will there be a fear that, if one section unravels, then everything can be unpicked, so nothing can change?⁴

7. Another significant question is how the IGC will work. The Government has told us that the process will involve Heads of State or Government, assisted by foreign Ministers. The question of whether national parliaments might be represented has also been raised.

8. The Italian government, who hold the EU presidency until the end of 2003, have set a demanding timetable for the IGC, designed to complete the work by the end of the year. It is also reported that there have been attempts to limit discussion to only a few issues identified at the outset⁵. The Commission for one fears that the timetable decided upon for this IGC will not be sufficient to completely rework provisions⁶.

9. Politically, all Member States will need to ensure that their concerns are aired and that any new suggestions put forward in the IGC are thoroughly analysed. At a technical level, where detailed examination of the text will, and we believe should, take place, it is essential to allow time for high-quality and detailed discussion. **Such discussion has to be during the IGC, as the subsequent ratification process by national parliaments does not allow an opportunity for amendment of the Treaty, only for its approval or rejection.**

10. The draft Treaty is in four parts. Part I sets out for the citizen the broader structure and powers of the Union. Part II comprises the Charter of Fundamental Rights. Part III is concerned with the policies and functioning of the Union and Part IV comprises general and final provisions. Part III very largely repeats existing Treaty text but will nevertheless need careful examination to ensure that the final wording is accurate, provides necessary legal certainty and deals with any issues that are of particular concern to individual Member States. Our own Government has recognised the importance of close examination of Part III⁷.

11. Such technical work cannot, however, given the subject matter, be neatly divorced from negotiations on substance, which further strengthens our view that this process should be allowed sufficient time. A rushed negotiation could also serve to undermine transparent and accountable debate.

12. We are concerned that if absolute priority is given to reaching agreement by the end of the year, this will undermine the need for a serious discussion of what are complex and significant issues. We nevertheless endorse the decision made by the European Council⁸ that the IGC should complete its work in time for it “to become known to European citizens before the June 2004 elections for the European Parliament”.

How should we judge the Convention’s draft Treaty?

The big question: is the draft Treaty good for Britain?

13. The case for and against the draft Treaty needs to be examined in the broad context of the European Union’s overall direction and effectiveness. But each national parliament has a duty to examine the text from the perspective of its own citizens. A key question to be answered in judging the draft Treaty is accordingly whether it contains measures which are in the UK’s national interest, and that of our citizens.

14. Our own Government’s position is clear. Peter Hain MP (who represented the Government at the Convention and is currently Leader of the House of Commons and Secretary of State for Wales) told the Committee “I think [the Treaty] is a good deal for Britain” (Q 63).

15. The Government’s latest White Paper⁹ argues that the draft Treaty meets key UK goals as it:

- Consolidates the existing EU treaties into a single logically ordered text

⁴ See the evidence from Jo Shaw, printed below (p 49).

⁵ European Report, 10/9/3.

⁶ Opinion of the Commission (12654/03) p.13.

⁷ For example the Minister for Europe, Dr Denis MacShane, speaking on 23th September at a Chatham House Conference “Brave New World: Europe in Transition”.

⁸ See Cm 5897, p. 186.

⁹ *A Constitutional Treaty for the EU – The British approach to the EU IGC* Cm 5934 (1 September 2003), referred to in this Report as the “The White Paper”.

- Sets out a more transparent and accountable structure for the EU
- Makes it clear that the national governments of Member States remain in control
- Provides for a more efficient EU.

16. The Government has also argued that¹⁰:

“The Convention's draft text meets most of the Government's objectives. It succeeds in simplifying the Union's instruments by streamlining them and defining them more clearly. The Convention's draft also proposes more democracy, transparency and efficiency by, for example: making it clear where the Union can and cannot act; reinforcing the role of national parliaments in policing the principle of subsidiarity; providing for greater openness in the meetings of the Council of Ministers; replacing the Maastricht “three pillars” system with a single Treaty structure: and setting up a Chair of the European Council.”

17. We consider in the rest of this report how far this analysis by the Government is correct. We note, however, that the Government does have reservations about a number of matters and has made it clear that there are some issues on which it will take a firm stand. One key purpose of this report is thus to test how far the draft Treaty is indeed good for Britain. There is a particular need for thorough scrutiny and debate to inform discussion on whether a series of apparently small individual changes to be made by the draft Treaty do not, taken together, have unwelcome or unexpected consequences. With these general considerations in mind we explore a number of individual themes in this report.

Another big question: does the draft Treaty do what it is supposed to do?

18. The Laeken Declaration¹¹ set a number of questions that needed to be addressed and in particular drew out the following key priorities for the new Treaty:

“The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world.”

19. Thus one of the aims of the Laeken Declaration was that the Convention should produce proposals to make the EU more efficient and effective. The Government's White Paper reflects this spirit¹² arguing that the EU must change because “the EU works. But it could work better” and “the EU needs a clearer statement of what it does, why it does it and how. Its legal structure should be made clearer to understand”. The White Paper concludes that “the auguries are good that the IGC will agree a new Treaty for a more efficient and accountable EU”.

What this report is; and what it is not

Our work

20. We have already produced a number of reports on the detailed texts that have been considered by the Convention¹³. We do not repeat that exercise here. This report is an overview, designed to draw attention to the key political questions as discussion moves into the IGC. We have taken as our starting point the text being considered by the IGC as it began its work on 4th October. We have not tried to respond to fast-moving and as yet formally unpublicised developments since that date. Appendix 1 lists our Members and Appendix 2 records a number of divisions in which members of the Committee opposed particular provisions of this report.

21. In this report we hope to identify both the significant improvements that will be made by the Treaty and the points on which our Government should not give way in negotiation. We also hope to shed some light on the most significant reservations that other Member States have about the draft Treaty (see Appendix 4) and thus inform debate about whether, as some fear and others would perhaps wish, our own Government is objecting to the draft Treaty more than others. **We make this report to the House for debate. We encourage the House to find an opportunity for such a debate during the IGC.**

¹⁰ HC Deb 15 September 2003, col QWA 586.

¹¹ Cm 5897, p 181.

¹² Cm 5934, paragraphs 10, 16 and 25.

¹³ See Appendix 3 for a list of our earlier reports.

Our key themes

22. We seek to test the draft Treaty against the objectives set by Laeken, which the Government clearly believes have been met. We have accordingly examined the provisions of the draft Treaty against the following four key questions:

- The Union and the Member States - does the draft Treaty consolidate the EU as a union of Member States?
- Openness, democracy and accountability – does the draft Treaty represent significant improvements in these areas?
- What difference will the draft Treaty make to the citizens, in particular in bringing the institutions of the Union closer to the citizens?
- Will the draft Treaty lead to a Union that is more efficient?

23. We have also noted the significance in the draft Treaty of measures concerned with foreign affairs, defence and security on which the most work remains to be done. It is in these areas that the Government appears to have the strongest reservations about, and indeed objections to, the draft Treaty.

24. We do not, however, consider in detail the draft Treaty's provisions concerned with Europe's economy and the need for sustainable growth. In these areas, much of the draft Treaty is unchanged from the Maastricht Treaty: provisions for economic and monetary union in particular are largely unaltered¹⁴. **We nevertheless urge the Member States, as they engage in constitutional discussions, not to lose sight of the overriding importance of ensuring that reforms to complete the Single Market are carried through. To this end we make recommendations in paragraph 129 below about the need for flexibility in the Stability and Growth Pact.**

The need for more detailed analysis

25. While much of the text of Part I of the draft Treaty is new or amended from previous treaties, and while the Charter of Fundamental Rights appears for the first time in a Treaty (forming Part II), most of the 342 Articles in Part III of the draft Treaty repeat existing provisions and it has been suggested that only 15 are new¹⁵.

26. In order to gain clarity on what is indeed new in the Treaty, however, the Committee has pressed the Government to provide Parliament with a comprehensive written analysis of how the draft Treaty differs from the existing EU treaties which it replaces; and in particular how far the draft Treaty would extend Qualified Majority Voting (QMV). While we commend the clarity and accessibility of the recent White Paper, we are disappointed that the Government has not taken that opportunity to provide, even in an Annex, detailed information that will underscore how far the Treaty is, and is not, new.

27. We are accordingly pleased to note the Government's undertaking¹⁶ to provide an analysis of the draft Treaty against existing Treaty provisions. We would expect this document, in analysing every Article of the draft Treaty, to identify in particular which provisions are new, and where there are changes to competences and to provisions for QMV. It will also be important for the Government to set out their understanding of the inter-relationship between the provisions which affect decision-making, including the passerelle, the right of initiative and the flexibility clause - all of which we discuss in more detail later in this report. The Government's analysis should be made available to Parliament and to the public as soon as possible as the IGC unfolds, as our Government's negotiators are already engaged in work in the IGC. The analysis should also include a more detailed glossary than that provided for the general reader in the White Paper.

Structure of this report

28. In chapter 2 of this report we examine some of what we see as new in the draft Treaty and in particular what the EU will do under its provisions. We examine extensions to competences and to QMV, as well as the proposed new mechanism involving national parliaments designed to enhance respect for the principle of subsidiarity.

¹⁴ See paragraph 212 below on the ECB.

¹⁵ See HL Deb 9 September 2003, col 239.

¹⁶ *Ibid*, col 272.

29. In chapter 3 we examine who will run the EU if the provisions of the draft Treaty take effect.

30. In chapter 4 we consider how far the draft Treaty makes the EU more democratic, accountable and transparent.

31. We examine in detail in chapter 5 two policy areas of particular importance – the Charter of Fundamental Rights and matters of justice and home affairs.

32. In chapter 6 we deal with matters of foreign policy, security and defence.

33. We end in chapter 7 with a summary of conclusions.

34. In Appendix 4 we provide a flavour of how some other governments and other national parliaments are responding to the draft Treaty. Other appendices contain material supplied by the Government, including a number of responses to our earlier reports.

35. We will report separately over the coming months in more detail on the draft Treaty's proposals regarding the European Court of Justice.

Terminology

36. In this report we use the phrase “the draft Treaty” to refer to the proposed draft constitutional Treaty for the European Union prepared by the Convention and submitted to the Heads of State and Government at the Thessaloniki European Council, along with the subsequent amendments. The draft Treaty refers to itself as “the Constitution” and some of our witnesses who we quote talk of the “draft constitutional Treaty”. The Government's White Paper refers both to a “draft constitutional Treaty” and “the draft Treaty”.

37. The Laeken Declaration made clear that the Convention was to examine whether the EU needs a constitution: one of the headings of the Declaration was “Towards a Constitution for European citizens”. The document the Convention produced is entitled “draft Treaty establishing a constitution for Europe” although the White Paper in which the Government presented this document to Parliament was itself entitled “The Draft Constitutional Treaty for the European Union”¹⁷.

38. We note that the Foreign Secretary has said¹⁸:

“The constitution is no more than a treaty labelled “constitution”. It is a treaty that we shall ratify in the same way as any other treaty”.

39. We leave it to others to consider whether this document is a constitution and if so what the practical significance of that is. The House's own Constitution Committee has been considering this question¹⁹. We examine in paragraphs 127-130 below the significance of the terminology for future revisions of the draft Treaty.

40. We note, however, that, since the founding Treaties of Paris and Rome (which themselves were constitutions of some kind), there has been a continuous evolution in the Treaties agreed by the Member States which form what is now the European Union. In public discussion, some clearly think that agreeing now a document containing the word “constitution” in its title is in itself a significant step. Will it bring to pass their worst fears of the creation of a European state? Others however have argued that there is no issue here - even a golf club has a constitution! Using the terms “constitution” and “constitutional” to describe the Convention's output has clearly provoked debate and, while they can be thought to have simplified the language used, it is an open question whether such terms have added any clarity.

41. We hope that debate will now turn away from terminology and focus instead on whether the draft Treaty improves the efficiency of the EU and whether it is indeed “good for Britain”. Nevertheless, in view of the serious concerns expressed we examine in the next Chapter how far the provisions of the draft Treaty can be thought to point towards a European state.

*Evidence*²⁰

42. There has been little time between the agreement of the Convention's final text in July and the start of the IGC in October. We have accordingly not taken extensive evidence for this inquiry, as we

¹⁷ Cm 5897.

¹⁸ HC Deb 16 September 2003 col 796.

¹⁹ See their 9th Report, Session 2002–03, HL Paper 168.

²⁰ In this report, references in the form (QQ) are to questions in sessions of oral evidence; and those in the form (pp) to pages of written evidence printed below.

draw here mainly on published texts and our earlier work. But we are very grateful to those who sent in papers which are printed with this report. We urge readers not to overlook the detailed comments made in evidence, and indeed the detailed proposals for textual amendments to the draft Treaty, not all of which are covered in the body of this report.

43. We thank the Rt. Hon. Peter Hain MP who, in one of his last duties as the Government's representative on the Convention, appeared before our Committee. His evidence is printed with this report. Mr Hain was at the time newly installed as both Leader of the House of Commons and Secretary of State for Wales so we are particularly grateful to him for assisting us.

44. We also took this opportunity to hear from another distinguished member of the Convention, M. Hubert Haenel, Président de la Délégation pour l'Union Européenne of the French Senate. A transcript of his evidence is printed with this report. We are grateful to the senator for making himself available to us. We hope that this will be the first in a series of constructive bilateral exchanges with colleagues in other national parliaments.

45. Our sub-Committee C also held a session with witnesses from the Ministry of Defence and the Foreign Office, which informed Chapter 6 of this report in particular. A full transcript is printed in Appendix 5 below.

CHAPTER 2: DOES A CONSTITUTION IMPLY A EUROPEAN STATE?

What is the draft Treaty about?

46. Some have argued that the draft Treaty turns the European Union into a state, others that what is proposed is principally consolidation of existing Treaties. We accordingly asked what kind of entity will the European Union be if the draft Treaty is adopted?

47. The Foreign Secretary has told the House of Commons:

We have a draft that begins by reciting that the Union is based on certain key principles—dignity, liberty, democracy, the rule of law and respect for human rights. It calls for a union of sovereign states of Europe, with decisions taken as closely as possible to the citizens. It specifies that the Union exercises only the powers that Member States give to it, acting at the EU level only when it needs to. It gives this House greater powers to police the principle of subsidiarity²¹.

48. The Government has also told this House that there is no suggestion that the draft constitution then being debated by the Convention “will lead to significant changes in the relationship between the European Union and its citizens”²².

49. In this chapter we deal first with the definition and objectives of the Union: what does the Treaty say the EU is for? We then examine the competences of the Union: in which areas will the draft Treaty allow the Union as opposed to the Member States to make laws? We also examine how far the draft Treaty will ensure respect for the principle of subsidiarity, before concluding by examining the Treaty’s provisions to allow Member States to withdraw from the Union and the processes for future Treaty revision.

What is the EU?*Definition of the Union***Box 1***Article I-1 (1)*

Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall co-ordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.

50. The definition of the European Union was not without controversy in the Convention. Introducing the Convention’s final text to the European Council at Thessaloniki, the Convention’s Chairman, Valéry Giscard d’Estaing said “In the course of the debate, extreme solutions were gradually set aside. The idea of creating a single European federal state which would ultimately swallow the identity of the Member States, which some people supported at the beginning of our work, was gradually abandoned as inappropriate to the structure of the new Europe. Similarly the watering down of Europe in a Confederation comprising only unshared, individual interests, by depriving it of the means of action it needs, was rejected almost unanimously.”²³

51. He described the definition of the European Union set out above as the expression of “the dual nature of the European system”, “a Union of peoples and Union of States”.

52. Several features of the definition are noteworthy. First, the definition refers to the will of the “citizens” of Europe. This term has been welcomed by our Government in contrast to the term “peoples”²⁴. It is, however, unclear, who exactly comprise the “citizens ...of Europe”. Under the present Treaty, every national of a Member State is a citizen of the Union (the relevant provision is repeated in the draft Treaty as Article I-8 and the term has significance for the definition of rights under the Treaty²⁵). We are not certain whether the term “citizens of Europe” is intended to be wider

²¹ HC Deb 9 July 2003, col 1207.

²² HL Deb 2 June 2003, col 1049.

²³ Oral report to the European Council: <http://european-convention.eu.int/docs/speeches/9604.pdf>

²⁴ See paragraph 6 of the Government response to our report on Articles 1-16 (Appendix 6 below).

²⁵ Article 1-8(2) lists the rights of EU citizens presently found in Articles 18-21 TEC.

than “citizens” of the Union. **We are satisfied, however, that a definition of “citizens” is not necessary for the purposes of Article I-1.**

53. Secondly, while Article I-1 does not speak of the “peoples” or “people” of Europe²⁶, the aim of the Union is later stated (in Article I-3 (1), emphasis added) as “to promote peace, its values and the *well-being of its peoples*”. In the absence of a genuine European demos any reference to “people” of Europe would be premature. By contrast, the term the “peoples of Europe” has a well-established legal pedigree, having been employed (apparently successfully to date) in both the Treaty establishing the European Community (the Treaty of Rome, as amended) and in the Treaty on European Union (the Maastricht Treaty, as amended). **Hence we see no cause for concern in Article I-3(1).**

54. There is no reference in the draft Treaty to the objective of creating an “ever closer Union”, a phrase whose inclusion in the Treaties of Rome and Maastricht has continued to give rise to debate. **We welcome the removal of the phrase.** We note, however, that the Preamble (paragraph 4) speaks of “the peoples of Europe... united ever more closely”.

55. On the other hand, **the draft Treaty expressly states that the Union can only act within the limits of the competences which the Member States have conferred upon it (Article I-9(2)). We support this approach because the draft Treaty makes plain the intention that the European Union remains a union of sovereign Member States.**

56. The phrase “in the Community way” has replaced the words “on a federal basis” which appeared in a version of Article I-1 earlier considered by the Convention. No doubt some will be delighted by the loss of the word “federal”. It is not, however, clear what those drafting the Treaty had in mind by this new formulation. There will be no “Community”²⁷ after the draft Treaty enters into force. If the intention is to refer to what is now known as the “Community method” problems may arise, particularly if the phrase is in any way intended to govern the Common Foreign and Security Policy (CFSP).

57. The “Community method” connotes the order and procedures under the EC Treaty (First Pillar). The Commission has the sole right of initiative, legislation is adopted by the Council, frequently jointly with the European Parliament, and Community legislation and other action is subject to the jurisdiction of the Court of Justice and the principles of the primacy of Community law. The Community method is to be contrasted with the “intergovernmental” approach which has been a fundamental characteristic of the Second Pillar (CFSP) and Third Pillar (Police and Judicial Co-operation in Criminal Matters).

58. It has also been suggested²⁸ that the Community method would not always be appropriate to meeting the challenges of the post-Lisbon economic reform process.

59. **What is meant by “in the Community way” needs to be made clear. The extent to which this phrase, because of its position and prominence in Article I-1(1), may, intentionally or not, constitute a superior rule or governing principle also needs further examination and explanation. In particular, the relationship between Article I-1(1) and those provisions of the new Treaty dealing with the CFSP need further careful examination. The concern strongly expressed about this matter in the House’s debate on 9th September supports our view.**

60. **Overall, however, the draft Treaty’s definition of the EU clearly sets out for the citizen what the EU is.**

²⁶ On many occasions the comparison has been made to the opening words of the US Constitution; “We the People of the United States, in Order to form a more perfect Union ...”

²⁷ What is to happen to the Euratom Treaty is unclear. It seems possible that that Treaty and the Community which it created will continue.

²⁸ By our own Government, quoted by Lord Owen on page 39 below.

Objectives of the Union

Box 2

Article I-3

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for the sustainable development of Europe based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights. The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safe-guarded and enhanced.
4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.
5. These objectives shall be pursued by appropriate means, depending on the extent to which relevant competences are attributed to the Union in this Constitution.

61. The objectives of the Union are set out in Article I-3²⁹. Some are new (for example “to promote peace, its values and the well-being of its peoples”) and need careful scrutiny. Others are familiar but the wording appears to be broader in scope than those currently in Article 2 TEU. This may reflect the development and aspiration of Union activity in the relevant areas. There is, for example, a clearer and stronger commitment to combating social exclusion and discrimination and to promoting social justice and protection.

62. The present objective of asserting the Union's identity on the international scene is broadened, to expressly include wide ranging and various aspects on Union external activity.

63. Another of the objectives of the Union is to “offer its citizens an area of freedom, security and justice without internal frontiers” (Article I-3 (2))³⁰. The wording, but not the concept, is new and emphasises the absence of internal frontiers. This could call into question the continuance of the UK's special position, secured at the Amsterdam IGC, entitling the UK to maintain its external border controls. The Government has indicated that it does not intend to give this up³¹.

64. One other change is noteworthy. It is no longer an express objective of the Union to maintain the *acquis communautaire*. That provision was inserted as part of the compromise reached at Maastricht to appease those Member States seeking a more integrationist structure for the Union. **By dropping an unnecessarily rigid formulation, the draft Treaty could provide some flexibility, which we welcome.**

65. We recommend that the Government, as part of its analysis of the draft Treaty, indicates in the case of each objective of the Union set out in Article I-3 how the wording has changed from any previous text. In addition, to promote public understanding and thus help to meet the objective of clarity, the European Union should publish with the final Treaty a detailed explanation of how each of the objectives affects citizens as individuals.

Competences

Introduction

66. The issue of competences is central to the discussion of how far the EU is to change under the draft Treaty. Is the EU in fact taking new or extended powers? The question of competences can, we

²⁹ See also our 9th report 2002-03 HL Paper 61.

³⁰ See also paragraphs 261–279.

³¹ Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland. The Protocol was annexed to the EC Treaty by the Treaty of Amsterdam. See paragraph 136 below.

believe, be usefully considered under four headings: the basic principles; the division of competence; new competences; and future extension of competence.

67. The Government has supported the clearer logic provided by the draft Treaty's account of competences³². There is, however, no evidence that any competence has been or will be returned to Member States, as some had sought during the Convention. It is nevertheless noteworthy that, in defining the division of competence as between the Union and Member States, the Treaty expressly contemplates the Union deciding to cease exercising its competence, presumably in relation to a defined subject matter (see Article I-11(2)).

The fundamental principles

68. Article I-9(1) makes clear that the "limits" of Union competence are governed by the principle of conferral: it is clearly stated that the Union can only act within the limits of the competences which the Member States have conferred upon it – Article I-9(2). The principle has paramount significance as can be seen from the fact that it is, as mentioned above, also a constituent part of the definition of the Union in Article I-1.

69. The use of Union competence is expressly stated to be governed by the principles of subsidiarity and proportionality. What is not said, though it may be implicit or be implied from Article I-7, is that the exercise of Union competences is also governed by the need to respect fundamental rights. We believe that this should be made express in Article I-9.

The division of competences

70. Title III of Part I seeks to identify those competences which are exclusive to the Union (Article I-12); those shared between the Union and the Member States (Article I-13); and those where the Union may only take supporting, co-ordinating or complementary action (Article I-16). Economic and employment policies and the Common Foreign and Security Policy (CFSP) are excluded from this division and are the subject of separate Articles (Article I-14 and I-15 respectively).

71. Title III is completely new and responds to the request in the Laeken Declaration that there should be "a better division of and definition of competences in the European Union". We commented on this division in our earlier Report³³ and are pleased to see that a number of the criticisms we made have been addressed in the final text. For example the reference to the free movement of persons etc has been removed and "internal market" is more clearly a matter of shared competence. **However, the reference to "competition" being a matter of exclusive competence, though qualified by the phrase "necessary for the functioning of the internal market", is still confusing and needs clarification.**

72. We note the White Paper's assurance (in paragraph 56) that the draft Treaty "for the most part clarifies rather than alters the current division of powers". The list of exclusive competences is short and according to the Convention's Praesidium reflects the list of exclusive competences under the existing Treaties³⁴. We accept this assurance. Article I-12(2), however, appears to give a power to amend the list in the case of concluding international agreements and we would welcome an explanation of the effect of this provision.

³² See paragraph 27 of the Government's response to our report on the Institutions (Appendix 6 below).

³³ 9th report 2003-03 HL Paper 61.

³⁴ To quote the Praesidium's notes in document CONV 724/03: page 70: *The areas referred to in this paragraph are areas which currently fall within the exclusive competence of the Union. The Praesidium thinks that the list of areas of exclusive competence (like areas of supporting action) should be restrictive. However, the list of areas of shared competence should not be restrictive as the latter is a residual category. This is all the more necessary given that in areas of exclusive competence it is the Union alone which can legislate and adopt legally binding acts. The order in which the areas of exclusive competence are listed has been changed so that the policies most relevant to the citizen are placed first. Free movement of persons, goods, services and capital has been deleted to accommodate several amendments to the effect that, since the four freedoms did not constitute a field in itself (the field being the internal market), they should be placed outside the Title on competences The new Article I-4 incorporates the four freedoms as freedoms guaranteed within and by the Union. The Praesidium has not added any new areas of exclusive competence to the list, given that the areas which some Convention members wanted to add either are not areas as such but acts which by their nature can only be adopted by the Union (budget, rules to ensure the functioning of the Institutions, Union statistics, etc.) or constitute areas of shared competence in accordance with the current provisions of Part Three (common agricultural and fisheries policy, common area of freedom and security, etc.) or constitute aspects of a broader area already covered by exclusive competence (monetary law and exchange-rate policy). Given that in areas of exclusive competence the Union has sole ability to legislate and adopt legally binding acts (except for the delegation of powers), a specific reference to the provisions in Part Three was not considered necessary since the question of delimitation of competences between the Union and the Member States arises in particular in relation to areas of shared competence and areas for supporting action. In any event, the reference in Article I-11(6) to Part Three covers all the fields under Title III of Part One, and thus includes areas of exclusive competence.*

73. We also note the definition of shared competence in Article I-11(2). We would welcome further explanation of where the boundaries of shared competences will be set and who will have jurisdiction to settle disputes.

New competences

74. The detail in Part III of the Treaty shows where new competences for the Union are proposed or existing competences extended. Some of the areas where the Treaty creates new legal bases and where as a result the Union will have new or increased competence are:

- capital movements – combating organised crime and terrorism (Article III-49)
- combating tax fraud and evasion (Article III-63)
- intellectual property (Article III-68)
- space (Article III-155)
- energy (Article III-157)
- integrated management of external borders (Article III-166)
- criminal procedure (Article III-171(2))
- a European Public Prosecutor’s Office (Article III-175)
- sport (Article III-182(2)(g))
- civil protection (Article III-184)
- administrative co-operation (Article III-185) and
- implementing solidarity (Article III-231).

75. The Treaty also makes changes to the text of the Articles dealing with the common commercial policy. (Article III-217). **This appears to create a simpler regime than applies under the Nice Treaty, which we welcome, but Article III-217 remains complex and the Government should explain this provision.**

76. The Government should provide a clear statement of the nature and extent of the new competences that would be accorded to the Union under the draft Treaty. As a contribution to accountability, the implications of these changes to the Treaties should be explained and justified to Parliament.

77. In addition, as these will be matters over which national parliaments will lose competence, Parliament must, on the specified occasions, have an opportunity to express a view on the proposed changes before the Government signs the Treaty. What we propose is a new procedure, in addition to the normal ratification process that will take place once the Treaty is signed. As we have already stressed, under the ratification process Parliament can only accept or reject the Treaty, not amend it. It is therefore essential, where the competences of national parliaments are at stake, to find new ways of involving Parliament at an earlier stage.

78. In addition, interested parties should be consulted as soon as possible so that the Government is fully informed of concerns as detailed discussion in the IGC proceeds. It is essential that such detailed consultation is begun by all the relevant Government departments well before any legislative measures begin to come forward that would have an impact on businesses and consumers. Only with such detailed supporting work will what is proposed by the draft Treaty be able to deliver a genuine enhancement of the Union’s efficiency.

Future extension of competence

79. There were some who, at the beginning of the Convention’s work, envisaged the new Treaty setting out a definitive list of competences if not for all time at least for the foreseeable future. The retention of a so-called “flexibility” clause in Article I-17 may therefore be controversial and needs examination.

Box 3*Flexibility Clause**Article I-17*

1. If action by the Union should prove necessary within the framework of the policies defined in Part III to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall take the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article 9(3), the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.
3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

80. The article has its precedent in the EC Treaty (as Article 308 EC)³⁵. Its scope has been debated but what is clear is that it has been used on many occasions during the history of the European Community and has provided the basis for significant developments of Community law and policies. This Article has been seen by many as a major source of the mistrust which many people feel towards the existing Community and Union. It can be seen as a way to bypass domestic parliamentary control of Treaty amendment and the national constitutional requirements that would apply. Such mistrust may be heightened by the new Article I-17, because the new version of the flexibility clause would not be limited to traditional Community (First Pillar) matters but would extend to all the policies within Part III of the new Treaty, which includes the CFSP and police and criminal law.

81. Lord Owen urged the deletion of the Article as it provided an open door to amending the Treaty without full procedures. Amendments to a constitution should not be made easy, and keeping the text fixed would aid stability³⁶.

82. There are, however, certain safeguards: the Council can only act by unanimity after having obtained the "consent" of the European Parliament. The Commission must also "draw Member States' national parliaments attention to proposals based on" Article I-17. This is, however, only the slightest nod in the direction of national parliaments, even though the draft Treaty acknowledges that national parliaments constitute an important link in giving effect to the principle of representative democracy³⁷. **The Government welcomed the Article provided that CFSP was excluded from its provision³⁸. Clarity in this regard is essential - it is simply too dangerous to leave the status of CFSP unclear - and we accordingly recommend that the Government ensures this.**

83. **The Government must also satisfy itself and Parliament that the new provisions, including those on shared competences in Article I-13, are not so open-ended that they could lead to a considerable expansion of European Union activity.**

84. **Furthermore, as we said in our earlier report, if national parliaments are to have a meaningful role in the context of Article I-17 their views on the *vires* and merits of a proposed extension of Union competence should be fully taken into account. The current provisions accordingly need to be strengthened to this effect.**

85. **In addition, any proposal to use the flexibility provision in Article I-17 to increase the competences of the European Union should not be supported by the Government without the prior approval of Parliament in each case. We call on the Government to state clearly whether they accept this new safeguard.**

86. **Nevertheless, subject to these caveats, we are satisfied with the safeguards provided in the new flexibility clause and would wish it to be retained as a contribution to the enhanced efficiency of the Union.**

³⁵ It was originally Article 235 of the Treaty of Rome. The Article was once known as "*la petite revision*" and became, after the consolidation of the Treaties *post* Amsterdam, Article 308 TEC.

³⁶ See pages 41-42 of the evidence printed below.

³⁷ Article I-45(2).

³⁸ See the Paragraph 24 of the Government Response to our Report on Articles 1-16 (Appendix 6 below).

Qualified Majority Voting (QMV)

87. A significant issue in examining the draft Treaty is how far its provisions would extend the use of qualified majority voting into areas currently subject to unanimous agreement. Behind this lies the question whether QMV is the only realistic method for taking decisions and is essential in a Union of 25 or more Member States.

88. In introducing the draft Treaty at Thessaloniki, Valéry Giscard d'Estaing said that the number of areas subject to QMV and co-decision would be increased from 37 to around 80. He said: "In future, all the areas governing the most important Union policies will be governed by our legislative procedure, with qualified majority voting in the Council".³⁹

89. The Government appears generally prepared to accept the proposed changes, indeed noting that certain extensions of QMV can be in the United Kingdom's interest if other Member States are blocking sensible changes. The Minister for Europe has told the House of Commons "More QMV is essential to push through our solutions to Europe-wide problems in key areas, such as asylum and immigration"⁴⁰. And the White Paper makes it clear that QMV does not weaken the UK's position in Europe because "we are rarely outvoted.... We therefore welcome the use of QMV as the general rule for legislative proposals" (paragraphs 63 and 65).

90. On the other hand, the Government has made clear that there are some particular areas into which they would not wish to see an extension of QMV, principally in the areas of the CFSP (on which see Chapter 6 below) and also of taxation. In his Statement on the Thessaloniki European Council the Prime Minister identified the role of qualified majority voting as one of the "areas where there is continuing negotiation".⁴¹ He was most likely referring to the desire of some to increase even further the matters which would become subject to QMV. The Minister for Europe has told the House of Commons that "there are areas on which we would not be prepared to move from unanimity. We would not agree to any changes on foreign policy, defence, taxation or social security which threatened the national interest"⁴².

91. The White Paper (paragraph 66) sets out the following areas where the UK will insist on retaining unanimity: "Treaty change; and in other areas of vital national interest such as tax, social security, defence, key areas of criminal procedural law and the system of own resources (the EU's revenue raising mechanism). Unanimity must remain the general rule for CFSP, as proposed in the final Convention text".

92. Baroness Scotland of Asthal, Peter Hain's alternate at the Convention, was even more specific in the plenary session of 4th July⁴³, setting out the Government's objections to extending QMV in the following areas (in addition to CFSP) where further work was needed on the final text:

- most of the economic and financial provisions in Part III, where the UK was looking to establish effective procedures without weakening national autonomy
- Articles III-18 (system of benefits to migrant workers)
- Article III-59 (harmonisation of indirect taxation) and
- the UK strongly supported the principles of mutual recognition in judicial co-operation, but could not support QMV on criminal procedure.

93. The draft Treaty does not propose to extend QMV to matters of tax or social security. We encourage the Government to stand firm in resisting any attempt to amend the draft Treaty to do so.

94. Other Member States have reservations about proposed extensions of QMV: Germany in the field of immigration and asylum⁴⁴ and France on cultural matters which Peter Hain explained as follows: (Q23) "I think this is about the proportion of French-made television programmes, so that is going to be interesting. France is generally in favour of qualified majority voting when its national interests are at stake, but there you go."

95. The Commission on the other hand would support more QMV in well-defined, detailed areas with more precise demarcation of Union authority. The Commission wants QMV for Article I.53 Own

³⁹ See note 23 above.

⁴⁰ HC Deb 8 July 2003 col 735W.

⁴¹ HC Deb 23 June 2003 col 707.

⁴² HC Deb 8 July 2003 col 735W.

⁴³ http://www.europarl.ep.ec/europe2004/textes/verbatim_030704.htm

⁴⁴ HC Deb 9 July 2003, col 1208.

Resources (the UK rebate), immediate transition to QMV in Article III.8 combating discrimination, Article III 10 right to vote in European and municipal elections, Article III 191 association agreements, Article III 221 financial co-operation with third countries and Article III 227 signing of European Convention of Human Rights, seeking in other areas a commitment to the move to QMV by a certain date. The Commission has also called on the IGC to examine the options for replacing unanimity, for example by a reinforced form of QMV, or by preventing the maintenance of a veto by one or two Member States over a set period of time.⁴⁵

96. It is clear that the draft Treaty will not alter the way the economies of the EU will work. **On the question of principle, however, we urge caution on the part of those strongly objecting to QMV in a particular area. This is because we agree that, in a Union of 25, the unanimity provision could make the decision-making process unduly rigid in some areas.** We examine in Chapter 3 below certain specific procedural concerns regarding the use of QMV in the Council, including the Passerelle clause. We also examine in Chapter 5 below the extension, with the abolition of the Union's Pillar structure, of QMV into areas such as immigration and asylum.

97. **The revisions to QMV are clearly designed to enhance the efficiency of the Union. Concerns about its use, however, remain and, in the interests of clarity and accountability, we accordingly urge the Government to set out, in detail and as a matter of urgency, those areas where concerns over QMV remain.**

Subsidiarity

98. The Protocol on the Application of the Principles of Subsidiarity and Proportionality attached to the Amsterdam Treaty states that "for Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community"⁴⁶.

99. The principle of subsidiarity therefore obliges the Commission to justify all EU legislative proposals and formally limits the Commission to legislate only in areas where action cannot be achieved sufficiently at national constitutional level. The draft Treaty states that "the use of Union competences is governed by the principles of subsidiarity and proportionality"⁴⁷. The draft Treaty has further developed the importance of the principle of subsidiarity in the European decision-making process in three distinct ways, set out in a revised version of the Amsterdam Protocol.

100. First, the draft Treaty extends the requirements for the Commission to justify its legislative proposals with regard to subsidiarity. The Commission is obliged to send all its legislative proposals and its amended proposals directly to national parliaments at the same time as to the EU institutions. The draft Treaty also obliges the Commission to justify all legislative proposals with regard to subsidiarity and proportionality by issuing a detailed statement which will allow clear assessment of whether subsidiarity is being adhered to.

101. The draft Treaty stipulates that the subsidiarity statement must include an assessment of proposals' financial and legislative impact in Member States and must also substantiate the reasons for pursuing Community action through qualitative and wherever possible quantitative indicators. When proposing legislation, the Commission is obliged to take account of financial or administrative burdens at Union, national, regional or local level implied in proposed legislation. The Commission is also obliged by the draft Treaty to submit to EU institutions and the Member States' national parliaments an annual report on the application of the principle of subsidiarity.

102. Secondly, the draft Treaty introduces a formal role for national parliaments in monitoring compliance of legislation with the principle of subsidiarity. The draft Treaty states that any national parliament or chamber of a national parliament can issue an objection to a legislative proposal on the grounds of violation of the principle of subsidiarity. This objection must be sent (within six weeks of transmission of the Commission's proposal) to the Presidents of the European Parliament, the Council and the Commission and must consist of a reasoned opinion stating why the proposal does not comply with the principle of subsidiarity.

103. This procedure is referred to as the "yellow card". Unicameral national parliaments will have two votes, while the chambers of a bicameral parliament will have one vote each. If objections on the grounds of violation of the principle of subsidiarity are received from at least one third of all the votes allocated, the Commission will review its proposal and decide to maintain, amend or withdraw its

⁴⁵ Op cit n. 6 above, p 7.

⁴⁶ Protocol on the application of the principles of subsidiarity and proportionality, Art 5.

⁴⁷ CONV/1/03, Art I-9.

proposal. (In the case of proposals in the area of freedom security and justice the level is set at one quarter). The Commission must give reasons for its decision.

104. In addition, the European Court of Justice will have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity brought by a Member State on behalf of its national parliament. There will, however, be no obligation on a government to do so. The Committee of the Regions may bring such an action in legislative areas where it has a right to be consulted.

105. It is unclear whether the proposed yellow card procedure will only apply when the Commission initiates or amends a proposal. What about proposals originating from the Council or the Member States, and amendments made by the Council or by the European Parliament, for example during co-decision and conciliation? Peter Hain told us (Q51):

I am pretty sure that the spirit at least of this proposal, as any new legislative proposal coming from wherever it is initiated from, is that this subsidiarity mechanism applies and it also tracks it through the process. One of the points made to me in the context of the Convention was that ... sometimes it is the Council or the Parliament that amends Commission legislation that threatens subsidiarity or proportionality more than the Commission's proposal might have done.

106. In addition, under the provisions of the Protocol, national parliaments are, when operating the subsidiarity mechanism, to consult "where appropriate" regional assemblies with legislative powers.

107. The Protocol on Subsidiarity also refers to the principle of proportionality stating that: "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty" (Protocol on Subsidiarity, Art 5.3) The principle of proportionality therefore requires any Union measure to be no more burdensome than is necessary to achieve its objectives. A judgement on whether a Union measure complies with the principle of proportionality is less clear-cut than one on the compliance with the principle of subsidiarity as it relates to substance. Nevertheless, in monitoring the compliance of measures with the principle of subsidiarity, national parliaments should also take into account the closely related principle of proportionality. Once the legitimate aim or objective of a measure is identified, an assessment of compliance with the principle of proportionality could be made by applying a three-fold test: is the measure a suitable or useful means of achieving the objective; is it necessary for achieving the objective; and is there a reasonable relationship between the measure and the objective⁴⁸.

108. We have considered carefully whether proposals giving national parliaments a "yellow card" procedure on subsidiarity go far enough. Some have argued that this procedure introduces an entirely new dynamic to the EU decision-making process. For the first time in the EU's history, national parliaments will have, by Treaty, a right to object directly to the Commission about proposed legislation. It was suggested to us that the very fact of the Commission having to read the views of national parliaments would be a contribution to enhancing the democratic legitimacy of the Union⁴⁹.

109. The Government has accordingly described the procedure as "groundbreaking"⁵⁰ arguing that it greatly strengthens the role of national parliaments in the EU decision-making process and provides mechanisms to ensure that the EU shall only act if the objectives of the intended legislation cannot be sufficiently achieved by the Member States. As such, it is argued, these proposals emphasise the role of Member States and introduce a voice for national suffrage in the EU decision-making process where none existed previously.

110. On the other hand some have described the procedure as "a mouse"⁵¹ presumably on the grounds that none of this really matters if the Commission can just ignore the wishes of national parliaments and proceed with a proposal anyway. Hence there has been a call for a "red card", which would trigger the withdrawal of a Commission proposal. Its use could perhaps be confined to cases where the Commission has ignored a yellow card; or, as an alternative, the Council could be required to act unanimously in any case where a yellow card has been shown⁵².

111. Some have argued that the Commission would not in practice ignore a yellow card. M Haenel suggested (Q10) it would be "very difficult" for the Commission to ignore the collective will of national parliaments under this procedure, a view endorsed by our own Government (White Paper, paragraph 69).

⁴⁸ Law of the European Union, Jo Shaw, third edition, Palgrave 2000.

⁴⁹ See evidence from Professor Eileen Denza, page 35 below.

⁵⁰ HL Deb 7 January 2003 col 981.

⁵¹ HL Deb 9 September 2003 col 189.

⁵² As suggested by Professor Denza (p 35) and Lord Owen (p 24) respectively.

112. We accept the argument that, if national parliaments operate effectively, the yellow card procedure could have the effect of causing the Commission to change its proposals. We nevertheless also see force in the argument that the Protocol should also contain a “red card” procedure by which a higher threshold of national parliamentary votes – say two thirds (or half in the case of proposals in the area of freedom security and justice) – would have the effect of blocking a proposal if the Commission ignored the yellow card. This, it could be argued would provide a valuable long-stop, which would be only very rarely, if ever, used, but the fact that such a number of national parliaments continued to maintain serious concerns would indicate that there were significant issues that needed to be addressed.

113. On the other hand, we note that the existence of a red card might weaken the effect of a yellow card if that procedure was not sufficiently robust to be of value in itself. The danger would be that a yellow card would be easy to ignore, not being the ultimate sanction of a red card; and that a red card in turn would be almost impossible to obtain, given the high threshold.

114. The Government has argued that the subsidiarity provisions provide “a good basis for securing a more active role of national parliaments”⁵³. If the Government and others are right that the yellow card will have effect in practice, then there is a significant duty on national parliaments to make these new provisions work.

115. Although we have previously pressed for a red card, we accept that the subsidiarity mechanism as it stands in the Protocol to the draft Treaty is intended to strengthen democracy in the EU. To do so, however, the mechanism must work, and must work effectively. The Government must accordingly satisfy Parliament that the yellow card will indeed be an effective mechanism. We consider that the yellow card procedure requires further safeguards and to this end we make a series of recommendations to strengthen what is proposed in the draft Protocol.

116. The draft Protocol provides for the Commission to give its reasons in responding to a “yellow card”. If the yellow card is indeed to be the only procedure, there is a duty on the Commission to adhere strictly to its obligations and to be accountable for its decisions. **Accordingly, the Commission’s reasons for responding as it does to a “yellow card” should be detailed, should relate directly to the concerns expressed by national parliaments and should be promptly transmitted to national parliaments and to the Presidents of the European Parliament and the Council of Ministers (to whom the Protocol provides for national parliaments’ concerns to be conveyed).**

117. **We also recommend that the Protocol’s subsidiarity procedure should extend to issues of proportionality, that is cases where the Commission is thought to be acting correctly but too intrusively or too heavy-handedly. Although we can see an argument that concerns about proportionality will be less clear cut than those of subsidiarity, and the mechanism thus harder to operate, we nevertheless consider that, to enhance the democratic safeguards provided by the yellow card procedure, it should extend to proportionality as well as subsidiarity. We are thus pleased to see that our Government is pressing for this**⁵⁴.

118. **The draft Protocol also needs to make it clear that the proposed subsidiarity mechanism applies at every stage of every legislative proposal.**

119. **Looking to the role of national parliaments, we first recommend that this House develops a strong internal procedure for the subsidiarity mechanism, drawing on co-operation with the Commons where appropriate but recognising that each Chamber will have an independent vote.** It should be noted that, even if the two Houses reach a different conclusion in a particular case, the votes will not cancel each other out, as the procedure envisages votes building to a threshold rather than seeking to achieve a majority. **Once the draft Treaty has been agreed, we will report further to the House on the mechanics of operating the subsidiarity mechanism.**

120. **An effective subsidiarity mechanism will also require resolute and efficient collective action by national parliaments to ensure that concerns are shared within the timescales set by the Protocol.**

121. On matters of detail, the draft Protocol does not specify who will count, record and announce the result of the voting under the yellow card. It may be implied that it will be the Commission. This would not be acceptable: an independent monitor should be appointed for this purpose.

122. We accordingly recommend that national parliaments develop a system to allow the collective recording of subsidiarity objections by a simple means – preferably by way of

⁵³ See paragraph 25 of the Government’s Response to our Report on the Institutions (Appendix 6 below)

⁵⁴ HL Deb 9 September 2003 col 271.

contributions by each national parliament to a special website. National parliaments, again acting collectively, should appoint a monitor to count objections and notify the Commission when the threshold is reached.

123. Overall, we consider that a subsidiarity mechanism with these additional features would indeed represent an important development of democracy in the Union and, by clearly stating and enhancing the role of national parliaments in helping to ensure that the Commission does not act when it should not do so, would help to confirm that the European Union is a union of Member States.

Exit Clause

Box 4

Voluntary withdrawal from the Union

Article 59

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council of Ministers, acting by a qualified majority, after obtaining the consent of the European Parliament.
The representative of the withdrawing Member State shall not participate in Council of Ministers or European Council discussions or decisions concerning it.
3. This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council in agreement with the Member State concerned, decides to extend this period.
4. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 57.

124. The Foreign Secretary has told the House of Commons that “For the first time, there are provisions for a Member State to leave the EU, which is important”⁵⁵.

125. We asked why the Government was convinced that the European Union, having survived for many years without an exit mechanism, now required one. Peter Hain told us: “the exit clause is not something we particularly argued for, but found its way into the draft Constitution, and once it had found its way into it, I do not think it would have been politically sensible to try and pull it out because then you would almost be conveying the impression to Europe’s citizens that they did not have a way out of the European Union. Of course every European Member State has the right to withdraw under existing provisions.” (Q 52)

126. We doubt that the reality of any attempt to withdraw would be as simple as the draft implies. For example, what would be the consequences were a member of the eurozone to indicate that it wanted to leave the European Union? We would also not wish to see this provision used to force Treaty change on members.

Future Treaty revision

127. The White Paper makes it clear that the Government will “oppose anything which would undermine the role of national parliaments in Treaty change” (paragraph 62). The Commission, on the other hand, would support procedures for revising the Constitution which are more flexible: the Council should be able to make amendments to Part III by five/sixths majority of members following approval by the European Parliament and a favourable opinion by the Commission. Unanimity would remain the requirement in cases where the proposed amendment would alter the Union’s competences or the balance between the institutions.⁵⁶

⁵⁵ HC Deb 9 July 2003 col 1203.

⁵⁶ Op cit n.6 above, p 8.

128. We see no case for the Treaty to make a general provision for future revisions to be achieved other than by the normal process of Treaty amendment requiring unanimity between Member States and a process of ratification involving, in the case of the United Kingdom, the national parliament.

129. Nevertheless, we accept that there may be specific areas where some less rigid procedure is required. For example, we have made proposals for more flexibility in the Stability and Growth Pact⁵⁷. To achieve that, the Treaty might usefully make express provision, in specified articles, for those articles to be amended by the Member States acting unanimously rather than by way of the formal Treaty revision process. By specifying the articles in the Treaty now, Parliament would be aware of what was envisaged before the Treaty came to be ratified.

130. On a separate point, we do not oppose the provision that, in certain cases, the convening of a Convention would precede the process of Treaty amendment and ratification. Article IV.7 sets out circumstances in which Treaty change would be preceded by consideration by a Convention. We will be examining in a separate report the extent to which the Convention procedure can be judged a success – a key test will of course be by how far the IGC needs to unpick the Convention's work – and we will look more closely at this Article in that report.

Conclusions

131. Is the draft Treaty consolidation or something new? The Prime Minister's foreword to the White Paper describes the draft Treaty as "based largely on the existing European Treaties, but with some important modifications...[the EU] is not and will not be a federal state... [the Convention's proposals] do not alter the fundamental constitutional relationship between the Member States and the Union".

132. There are clearly a number of ways in which the European Union will not be a state, let alone a "superstate" (whatever that means), if these provisions are agreed. Under the draft Treaty, the Union cannot do a number of things a state can do, such as raise taxes, run a budget deficit or autonomously raise a military force. In addition the Union can only act on competences conferred on it by its Member States, while Article 1(5) strengthens identities of Member States and 1(9) their independence. Member States remain masters of constitutional change (by Treaty revision) and, for the first time, there is express provision for a Member State to leave the Union.

133. Lord Owen, however, remained concerned: "the more gradual and diffuse the transfer of powers the harder it is to define the threshold" beyond which the Union acquires the character of a national state. In particular it was important to retain the existing range of opt-outs: removing them all would fundamentally change the Union (p 15).

134. A considerable range of matters have already become subject to EU law in earlier Treaties⁵⁸. The extension of EU law in this Treaty seems relatively limited by comparison and we repeat our earlier conclusion⁵⁹ that "it is clear that the balance of power is going to shift from the Commission to the Member States".

135. Thus there is considerable re-assurance in the draft Treaty for those who fear that the EU is becoming too like a state. We will be examining more closely in a further report whether there is a need to clarify the language of Article 10 of the draft Treaty about the primacy of EU law which has existed since 1964 and was, according to the White Paper (page 30), a key condition for UK membership of the EU. **There is, however, a need for clarification whether matters of CFSP fall within the scope of Article 10.**

136. **There is also a need for clarity on the future position of the various existing national "opt-outs" under the draft Treaty.** The Government has confirmed that the protocols attached to the Treaty will remain an integral part of it⁶⁰. **It is unclear, however, whether the IGC will amend the draft Treaty to provide for further opt-outs should they be desired by any Member States.**

⁵⁷ See our 13th Report, Session 2002-03 (HL Paper 72, March 2003).

⁵⁸ For examples see HL Deb 13 June 2003, col WA 90 and 4 July 2003 col WA 140-148.

⁵⁹ 21st Report, paragraph 11.

⁶⁰ HC Deb col 582W, 17 July 2003 and Peter Hain Q25.

CHAPTER 3: WHO WILL BE RUNNING THE EU?

The European Council**Box 5***The European Council**Article 20*

1. The European Council shall provide the Union with necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative functions.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene a special meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

137. We commented in our earlier report⁶¹ that the draft Treaty's provisions regarding the European Council were a significant development. The Foreign Secretary has told the House of Commons that "national Governments should be seen to be setting the agenda of the EU with the European Council setting the EU's priorities...[The Treaty] puts the European Council...in charge of the Union's political direction"⁶². We examine in this chapter how the provisions for the European Council will operate.

138. We were particularly concerned in our earlier report that enhanced powers of the European Council need to be matched by increased transparency and accountability. In its response the Government made clear that they support "efforts to increase the democratic credentials of the Union" and looked to us to make proposals⁶³.

⁶¹ 21st Report paragraphs 18-27.

⁶² HC Deb 9 July 2003 cols. 1206-7.

⁶³ See paragraph 11 of the Government response to our Report on the Institutions printed in Appendix 6 below.

President of the European Council**Box 6***The European Council Chair**Article 21*

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.

2. The President of the European Council:

- shall chair it and drive forward its work,
- shall ensure its proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
- shall endeavour to facilitate cohesion and consensus within the European Council,
- shall present a report to the European Parliament after each of its meetings.
- The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the responsibilities of the Union Minister for Foreign Affairs.

3. The President of the European Council may not hold a national mandate.

139. It is widely (but not universally) accepted that the present system of rotating presidencies is already strained and would be unviable in a Union of 25. A key development in the proposals regarding the European Council is the proposal for a full time president, or chair, an idea which we believe originated in the United Kingdom. In our previous report we noted that this proposal was “clearly intended to alter the institutional balance of the European Union” and we sought further clarification from the Government⁶⁴. We examine further here the arguments for and against the post; what the job might involve; and who might be eligible to apply.

The job description

140. Peter Hain identified the following responsibilities of the new post (Q61):

- chairing and taking forward the European Council’s work
- “providing a much more serious co-ordinating role than can be done by a job that changes every six months”
- to increase Europe’s global influence
- to be the person “to whom the foreign president pick[s] up the phone”
- co-ordinating and preparing the work of the General Affairs Council
- co-operating with the Commission President
- to be accountable to and speak for the governments.

141. In addition, the Government has made clear:

- the post’s role is largely that of the existing rotating presidency⁶⁵: under the current TEC the Council is responsible for organising the order of the rotating Presidency by unanimity⁶⁶.
- the post will have a role in co-ordinating the sectoral councils.

142. The post is to be held for two and a half years, renewable once. The Commission wants the term to be limited to one year.

⁶⁴ 21st Report paragraph 27.

⁶⁵ See paragraph 9 of the Government Response to our report on the Institutions (Appendix 6 below).

⁶⁶ Art 203 TEC.

Arguments for and against the new post

143. The Foreign Secretary has said “There has always been a president – this proposal is not about further accretion of powers at the centre”⁶⁷. The Government has advanced a number of detailed arguments for why this change is necessary⁶⁸:

- “to give the leadership that the Heads of Government, including ours, can have confidence in and that that person is accountable to”
- to provide “much greater capacity to give direction and momentum to the EU’s Agenda, for example on the Lisbon process”
- to improve the stability, coherence and continuity in the Council
- more permanency means co-ordination of the EU in a more strategic and long-term manner
- to ensure proper preparation and presentation of policy
- the current end of term rush every six months would end, improving efficiency; and time spent on handovers every six months would be better employed (although we note that it is proposed that some system of rotation is expected to remain for the Council of Ministers, thus weakening this argument if it applies only to the European Council).

144. Peter Hain also stressed that the new role would enhance democratic legitimacy: “the job will now be elected, full-time for up to five years, and I think people will then see a change of accountabilities because governments will elect that person right the way down through governments, national parliaments to the citizen, and I think it will be better for democratic legitimacy” (Q 61). M Haenel too noted that the new President would be stable and identifiable (Q 5).

145. Some of the smaller Member States have, however, opposed the proposal, fearing that their influence might be lessened or perhaps, according to Peter Hain, because they were “more federalist-minded” (Q 23). He noted, however, that the Danish and Greek Presidencies had changed their minds, moving from opposition to the principle of a full time chair to supporting it “when they actually had to do the job” themselves during their recent presidencies (Q 63).

146. Our Government has aimed to reassure this House about some of these concerns: “The chair is designed to add coherence and continuity and not to lock in the interests of any particular Member State or States”⁶⁹. The Minister stressed that the post was to “bring great continuity to the Union’s actions and ensure that the agenda decided upon by national states is kept at the forefront of its operational priorities”⁷⁰.

147. From a different perspective, the Brethren expressed concerns in evidence to us that there were insufficient safeguards to prevent “a charismatic incumbent from exceeding his mandate” (p 22).

148. Few details are available about the administrative support for the post. We recommend that the Government clarify whether this would be drawn from the Council secretariat, or whether a *cabinet* would be created and if so what the presentational effect of that would be given the concerns expressed about the potential influence of the post.

The job title: a president or a chair?

149. We suspect that some of the suspicion about the proposed post might be connected with the term “President” which is used in the text of the Article. The heading, however, refers to the “Chair” and the verb “chair” is also used in the Article. These words, in English give a clearer sense of what is proposed, although in each case in the French text the words *Président* and *préside* are used. **We understand that the term “chair” in this sense has no equivalent in French but we recommend that the IGC amend Article I-21 so that it consistently adopts, in the English text, the term “chair”. This would made the functions of the post clearer.** For the purposes of this report, however, we continue to use the term President as that is in general use in discussions of the draft Treaty.

⁶⁷ HC Deb 16 September 2003 col 790.

⁶⁸ See Q 39; paragraph 50 the White Paper; and paragraph 9 of the Government Response to our Report on the Institutions (Appendix 6 below).

⁶⁹ Baroness Symons of Vernham Dean, HL Deb 24 June 2003 col 134.

⁷⁰ HL Deb 9 September 2003, col 152-3.

Candidates for the job

150. Peter Hain also shed some light on who the candidates for the post might be, a matter on which we have had concerns. He told us “most people see it as being a former Head of Government, although an explicit requirement for that in the original draft was taken out, with my support actually because you might find somebody like Javier Solana, for example, who enjoys the confidence of member governments because when he was Secretary General he was so good for the job” (Q 61).

151. Others were concerned that the post might be open to someone who was not a former Head of Government, raising the possibility that the Commission President might chair the European Council. It was suggested to us that this would lead to a massive concentration of power in the hands of one individual⁷¹.

152. We recommend that the earlier wording be re-instated to make it clear that the postholder cannot hold office in another institution at the same time as chairing the European Council.

Conclusion: the chair should be supported

153. **Some may be concerned that there is no opportunity for citizens directly to elect the President of the European Council. It might be argued that this is an opportunity missed to bring the Union closer to the citizens and to make it more democratic and accountable. It is, however, a consequence of the fact that the European Union, a union of Member States, is partly intergovernmental and partly supra-national that some of the normal attributes of a democratic state, including the ability of citizens to remove a government that displeases them, do not apply.**

154. We have previously expressed reservations about the post of President of the European Council. We note that the Government, however, has consistently supported this proposal. We also note the Government’s continued efforts to flesh out the functions of the post and to clarify what kind of person will be eligible to hold it. We nevertheless remain concerned that the detailed functions of the post, set out so briefly in the draft Treaty, have not been thought through. **We would welcome more details on the precise role and functions of the European Council President, including a clearer definition of the tasks to be undertaken in the long-term.**

155. We also understand the force of the arguments of some Member States that they might lose influence by never having a guaranteed turn at the Presidency. In our view, however, these concerns will be met if all Member States are satisfied that there will be fair and equitable access to the post; and that they have assurances that the interests of all Member States will be represented in other ways, including, for example, by the proposed system of annual rotation among the presidencies of other Council formations (as proposed in Article I-23(4)); by a system of team presidencies ensuring a spread of Member States taking the chair across Councils; and by open access to Commission posts.

156. France and Germany in their joint submission to the Convention⁷² called for the President of the European Council to be elected by a majority vote in the Parliament followed by approval by QMV by the Council. However, the draft Treaty does not include any role for the Parliament in this appointment. On the other hand, Article I-21 provides for the President to present a report to the European Parliament after each meeting of the European Council. **As a contribution to democratic accountability, we recommend that Member States’ Governments formally deposit the President’s reports after each European Council for scrutiny by national parliaments in accordance with their established procedures. We accordingly propose that the regular statements to Parliament after each European Council be supplemented by an annual debate in each House on the priorities of the Union.**

157. We also remain concerned that more needs to be done to ensure that the process by which the post of European Council chair will be filled will be transparent and accountable. **As a contribution to transparency and legitimacy, we would welcome a clear and agreed statement by all Member States at the IGC on the process of choosing the Council chair.**

158. Subject to a satisfactory outcome on these points at the IGC, we would support the post of chair of the European Council as a contribution to a more effective Union.

⁷¹ See evidence from Lord Owen, p 36.

⁷² CONV 489/03.

Procedures in the European Council

159. We have previously queried⁷³ the draft Treaty's provision that decisions of the European Council shall be taken by consensus (as opposed to unanimity which applies at present). The Government's response⁷⁴ helpfully clarifies which areas are not to be subject to agreement by "consensus" (and specifically indicates that the draft treaty provides for unanimity in CFSP matters (Article I-39 (7)) but sheds no light on what "consensus" itself involves. **We accordingly recommend that the Government explains precisely how in practice the process of agreement by consensus will operate.**

The Council of Ministers: a Legislative Council

160. The current Treaties do not define or restrict the number of formations in which the Council of Ministers can meet. The new Treaty defines two formations of the Council, the Legislative and General Affairs Council; and the Foreign Affairs Council⁷⁵ (Article I-23 (1) and (2)). Other formations would be established by decision of the European Council (Article I-23 (3)). The White Paper (paragraph 5) envisages these councils being chaired by representatives of Member States "on the basis of equal rotation".

Box 7*Legislative Council**Article I-23 (1) paragraph 3*

When it acts in its legislative function, the Council of Ministers shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers.

161. The main change from the earlier draft is that the Legislative Council has now been joined to the General Affairs Council. The position, though not always the drafting⁷⁶, has become a little clearer. It is not clear from the text whether only the Legislative and General Affairs Council, exercising its "legislative function" as distinct from its "General Affairs function", can consider and enact legislation.

162. If this is indeed the case, other Council formations would no longer be able to consider and adopt legislation or convert themselves into a Legislative Council for that purpose. Ministers from other Council formations would attend the Legislative Council: Article I-23(1) provides that when the Legislative and General Affairs Council is exercising its legislative function "each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers".

163. The Government has taken a cautious approach to the notion of a Legislative Council. In its Explanatory Memorandum of 2 June 2003, the Government stated that it "remains unconvinced of the case for a Legislative Council". It could lead to better co-ordination of legislation but the Government were "not persuaded that the Council's legislative and executive functions could easily or logically be separated".

164. In its later (24 June) Explanatory Memorandum⁷⁷ the Government, while acknowledging that there were some merits in the proposal to create an over-arching legislative role for the General Affairs Council, remained unconvinced that it was the most effective way forward. The Government argued: "We would not want to duplicate the work done in Sectoral Councils".

165. The Government also recognises that it is not always easy to separate the executive and legislative functions of the Council. The Government would press for the proposed Legislative Council to be the subject of further consideration in the IGC.

⁷³ See paragraph 21 of our 21st Report on the Institutions.

⁷⁴ See paragraph 12 of the Response to our report on the Institutions printed in Appendix 6 below.

⁷⁵ The Foreign Affairs Council would be chaired by the Union Minister for Foreign Affairs, whose role we consider further in Chapter 6 below.

⁷⁶ Article I-21(2), for example, continues to refer to the "General Affairs Council".

⁷⁷ Explanatory Memoranda are deposited in Parliament and are available from the relevant Government Department.

166. Peter Hain saw “a very compelling argument” for the Legislative Council in that Europe’s legislating would be done in public. He reminded us (Q23) of the genesis of the proposal for a Legislative Council:

“The idea ...[was] promoted most actively by Giuliano Amato, Vice-President of the Convention, ... all legislation [was] to be negotiated in the sectoral councils but then to come to a new Legislative Council to be finally legislated for and voted on and national country positions declared in public, transparently.”

167. The Government nevertheless remained uncertain as to what the proposal meant and it remained contentious in a number of Member States. The Government had objected on the grounds that the proposal would take away the negotiating role of ministers with individual policy responsibility - “those with a real grip on the policy and accountability for the policy.” The proposal had accordingly turned into “a kind of ... third reading on, say, the Transport Council’s negotiated new legislation, for example” (Q 23).

168. We fear that the Legislative Council as proposed could be no more than a rubber stamp, thus undermining the contribution of its open proceedings to democratic accountability. We see no presumption that open and accountable discussion of policy will be secured in this forum or that significant records of deliberations will be made publicly available.

169. If, as we fear, the Legislative Council were simply to endorse the decisions of other Council formations, any public record of its work would be merely formal. The proposal fails to ensure that the Council when discussing significant policy as part of the process of legislating does so in public. There is a risk that the Legislative Council in its present form will do nothing to deliver the openness and transparency required by the Laeken mandate.

170. In particular, we agree with Peter Hain’s concerns that the proposed Legislative Council will break the link between final decision making and sectoral expertise. The direct connection to national policy, national decision making and parliamentary accountability would be lost.

171. Peter Hain also noted, however, (Q26) that there was a possibility of greater transparency in the work of sectoral councils: there was “general support for the principle of transparency while legislation is taking place.” In our view, this provides the solution to the problem of the Legislative Council. **There is no need for a separate Legislative Council to meet in public if each individual council meets in public (and is televised) when agreeing legislation and if a full “Hansard” of proceedings, including details of any votes taken, is published promptly after each meeting. We recommend that the Government seeks to amend the draft Treaty at the IGC to achieve this as a more efficient contribution to transparency and democratic accountability than would seem to be provided by the proposed Legislative Council.**

172. We do not, however, underestimate the practical difficulties of distinguishing between legislative and executive functions, and in determining exactly when the legislative function begins. This is relevant not just for identifying the appropriate forum for discussion at ministerial level but also whether that discussion will take place in public (as would be required by Article I- 49 (2), if the ministers were to be considered to be “examining and adopting” a legislative proposal).

173. We also note that some system of rotation is to continue for Council of Ministers formations (in contrast to the European Council). The Government has suggested amending the rotation to provide for a series of four or five rotating chairs for a set period⁷⁸. We would welcome more detail of how this will work in practice. **The Government should present a proposal to Parliament on how the complex mathematics of chairing Council formations would work.**

The operation of QMV in the Council of Ministers

Passerelle – a bridge too far?

174. As for the operation of the Council of Ministers, there are two important procedural points both concerned with QMV. The first is that the draft Treaty would provide a procedure, the so-called “passerelle” or bridge (in Article 24(4)), to transfer matters from unanimity to QMV⁷⁹.

175. Some in the Convention were critical of the provision because the procedure would not require ratification by Member States and therefore infringe the rights of national parliaments. Lord Owen

⁷⁸ See paragraph 16 of the Response to the Report on the Institutions (Appendix 6 below).

⁷⁹ The Article refers to moving from a “special legislative procedure” to the “ordinary legislative procedure”.

went further: he saw this as unacceptable - a “temporary political unanimity replacing a constitutional requirement for unanimity” (p 39). The Brethren too opposed the provision (p22).

176. Others have doubted that the procedure would ever be used. We note that that was the case as regards the passerelle in Article K9 of the Maastricht Treaty (which would have enabled Third Pillar matters to be transferred to the First Pillar). We consider in Chapter 6 below the case for a passerelle in CFSP.

177. There are safeguards in that using the passerelle would require unanimity and six months consideration. The European Parliament would have to be consulted and national parliaments informed. **In spite of these safeguards we oppose the passerelle provision. It could have the effect of allowing the Council to abolish unanimity in certain areas without any substantive involvement of national parliaments. This would both weaken democratic accountability and undermine the role of Member States. It would also weaken public confidence in the stability of the Treaty’s provisions, in particular in the division of competences.**

178. **We note that the Government too is unconvinced by what is proposed and we urge the Government to secure the deletion of this provision at the IGC. The only circumstances under which a passerelle would be acceptable would be if the Treaty itself specified particular articles in relation to which a passerelle could be used. If the Government decides that it could accept such a limited and specifically targeted provision, the onus will be on the Government to satisfy Parliament that the potential negative effects of the procedure in general can be countered in those specific cases.**

The calculation of votes in the Council

179. Secondly, the method of calculation of a majority under QMV would change. At present votes for the qualified majority are weighted on the following basis:

- (a) France, Germany, Italy, United Kingdom – 10;
- (b) Spain – 8;
- (c) Belgium, Greece, Netherlands, Portugal – 5;
- (d) Austria, Sweden – 4;
- (e) Denmark, Ireland, Finland – 3; and
- (f) Luxembourg – 2.

Adoption of a measure by qualified majority requires 62 votes in favour.

180. At Nice it was decided that there would be a change in the voting weight to take account of enlargement. These voting weights are more clearly in favour of smaller Member States:

- (a) Germany, UK, France and Italy - 29
- (b) Spain - 27
- (c) Netherlands - 13
- (d) Greece, Belgium and Portugal - 12
- (e) Sweden, Austria - 10
- (f) Denmark, Finland, Ireland - 7
- (g) Luxembourg - 4

A majority in Council will require 169 out of a total of 237 votes, cast by a majority of Members. This is equivalent to 71.1% of the vote in the EU 15. The blocking minority will be constituted by 69 votes.

181. Under the draft Treaty a majority would “consist of the majority of Member States, representing at least three fifths of the population of the Union” (Article I-24(1)), combined in the case of CFSP with a two-thirds majority of Member States (under paragraph (2) of the Article). This would mean that three large States could block a measure and it is perceived that the voting power/weight/influence that some States currently have would be diminished. It is reported that Spain, Poland and possibly other States will argue that the new Treaty should stick to the rules agreed at Nice.

182. The draft Treaty provides that Article I-24 (1) and (2) take effect only in 2009. The system devised at Nice (with which the Government is content - see page 33 of the White Paper) will remain until then. By 2009, the Union may have more than 25 members.

183. **A dual majority clearly enhances the democratic accountability of the Union by providing a calculation for the weighting of votes which includes both population and states. The dual majority is accordingly welcome.**

Co-Decision – the Legislative procedure

184. Since Maastricht, there has been a gradual extension of the use of co-decision such that the Government can argue that, in practice, it is already the standard procedure, although not appropriate for CFSP and JHA matters. The draft Treaty provides for further extension of co-decision: Lord Owen thought the draft Treaty provided for 36 new areas of co-decision (p 37). Indeed, according to Article I-33, it appears that the normal method of agreeing EU laws will be co-decision, which, depending on the number of exceptions, improves democratic accountability by increasing the involvement of the European Parliament.

185. Significantly, decisions taken on justice and home affairs under ‘Area of Freedom Security and Justice’ in Part III of the draft Treaty will be subject to co-decision. This is an increase in the powers of the European Parliament, which is currently merely consulted both in Title IV and in Third Pillar matters. This is discussed in more detail in Chapter 5 below.

186. The extension of the use of co-decision appears to be where the European Parliament will gain most influence. In previous reports we have welcomed the greater accountability provided by greater use of co-decision, but reinforce our view that this will mean greater responsibility for national governments and parliaments to ensure that they perform effective scrutiny of proposals subject to this procedure.

187. Corresponding provisions accordingly need to be made for national parliaments to scrutinise decisions by their own governments where the European Parliament and Council will be acting together under the co-decision procedure.

188. Two significant obstacles remain to proper national parliamentary scrutiny during conciliation. First we question whether the four week period for conciliation is long enough to allow meaningful scrutiny by national parliaments. A second issue is the lack of provision for publication of documents, particularly as conciliation operates by way of negotiation between the parties rather than by way of a consecutive presentation of views (as is the case, for example, in the way our bicameral parliament operates). The opportunities for outside involvement are accordingly limited.

189. **We have previously called for proposals from the Government to improve accountability during co-decision⁸⁰ and we would wish to see progress from the Government very soon.**

Competences of the European Parliament

190. The draft Treaty contains in Part I the general structure and duties of the European Parliament. The number of Representatives in the Parliament is a maximum of 736, elected for a term of five years.

Box 8

The European Parliament

Article I-19

The European Parliament shall, jointly with the Council of Ministers, enact legislation, and exercise the budgetary function, as well as functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.

191. Peter Hain told us (Q39) that the Parliament is to have more powers over comitology matters, which we welcome. The Government argued that this would represent a contribution to democratic accountability and transparency⁸¹.

192. **The draft Treaty clearly provides for an increase in the powers of the European Parliament, which in turn enhances democracy in the Union. There is, however, a need for**

⁸⁰ See paragraph 35 of our Review of Scrutiny of European Legislation (1st Report Session 2002-03, HL Paper 15).

⁸¹ See paragraph 11 of the Response to our Report on Articles 24-33; and paragraphs 6-7 of that to the Report on the Institutions (Appendix 6 below). See also paragraph 91 of our Scrutiny Review (note 80 above).

increased powers for the Parliament to be matched with increased responsibilities, including the provision of impact assessments on amendments to legislation.

Changes to the Commission

193. The draft Treaty proposes three changes to the Commission. The first relates to the role and election of the Commission President, the second concerns the number of Commissioners and their voting rights, and the third the role and position of the Union Minister for Foreign Affairs. We deal with the first two of these issues here: the Foreign Affairs Minister is discussed in Chapter 6.

The President of the Commission

194. A joint proposal by France and Germany submitted to the Convention, called for election of the Commission President by a majority vote of the European Parliament, approved by the European Council by QMV⁸². A subsequent contribution from Peter Hain and Ana Palacio⁸³ called for the Commission President to be appointed by QMV in the European Council and approved by the Parliament, essentially maintaining the existing system⁸⁴.

195. The draft Treaty reflects the process of the UK/Spanish proposal, enabling the Council to first approve a single candidate by QMV, whilst specifying that a subsequent Parliamentary majority vote is required to ‘elect’ the candidate. If the candidate does not gain majority approval, the process starts again with another candidate previously approved by the Council.

Box 9

President of the European Commission

Article I-26

Taking into account the elections to the European Parliament and after appropriate consultations, the European Council, deciding by qualified majority, shall put to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure.

196. Under the current TEC the President and list of potential Commissioners is “subject as a body to a vote of approval by the European Parliament”⁸⁵ before being appointed by the Council acting under QMV. This vote is retained under the draft Treaty⁸⁶.

197. “The Commission as a College shall be responsible to the European Parliament”⁸⁷ under the draft Treaty and the Parliament is able to pass a censure motion requiring the College to resign, reflecting existing practice in the TEC⁸⁸.

198. Under Article I-21 the Parliament has no power over the choice of the Chair of the European Council. Formations of the Council of Ministers will also be decided without the Parliament.

199. The draft proposes that the European Parliament should elect the Commission President. However, the Parliament would only be able to elect the candidate who had already been chosen by the European Council, “taking into account the elections to the European Parliament” (Article I-26 (1)). This proposal is almost identical to the present procedure, apart from the reference to taking into account the election results. Yet Lord Owen argued that the draft Treaty would represent completely unrestrained power for the new President who would have the sole authority to sack Commissioners and set the direction of the Commission. (p 37)

⁸² “Après l’élection du président de la Commission par le Parlement européen à une majorité qualifiée de ses membres, il est approuvé par le Conseil européen statuant à la majorité qualifiée.” CONV 489/03.

⁸³ CONV 591/03.

⁸⁴ Art 214 (2) TEC.

⁸⁵ Art 214 (2) TEC.

⁸⁶ Article I-26 (2).

⁸⁷ Article I-25 (5), CONV 820/03.

⁸⁸ Art 201 TEC.

200. The proposal to create a European Council President could have the effect that the Commission President would no longer speak on behalf of the Union on the international stage. The implication is that the Commission, and its President, is intended to focus on core tasks, such as making the Single Market function more effectively.

201. Arguments were advanced in the Convention for securing greater accountability in the election of the Commission President, perhaps by making the post directly elected by the people or by involving national parliaments. There are arguments that a more accountable post will be a stronger one; and arguments the other way that such election would make the Commission President a prisoner of the politics of the day or, if elected by the European Parliament, of that parliament's majority. Involving the Parliament in the election of the Commission President could go against the principle of the separation of powers.

202. M Haenel argued that if the European Parliament elects the Commission President, they would have the right to censure the Commission which would thus be weakened (Q4). It has also been suggested⁸⁹ that the Commission President could be elected by the Parliament subject to ratification by the Council.

203. The Committee supports the draft Treaty's provisions for the election of the Commission President. As with the chair of the European Council the apparent lack of direct democratic legitimacy is a consequence of the Union being a union of Member States.

Number of Commissioners

204. In the draft Treaty, each Member State retains a Commissioner, but only 15 would have voting rights (Article I-25(3)). The Article distinguishes these "European Commissioners" from "non-voting Commissioners". In a last minute deal to bring the smaller countries on board, the Convention agreed that the restriction on voting rights would only come into effect in 2009, after the completion of the Commission's next term.

205. We questioned what role there would be for the proposed non-voting Commissioners. We were also concerned to discover how an EU of 25 Member States will be able to function until the proposed changes to the Commission take effect in 2009.

206. Peter Hain told us (Q60) that the intention of the reform was "to give the Commission a much better organisational focus in order to make it leaner and, therefore, more efficient and better at delivery". There was general support for the principle of one Commissioner per Member State, and in order to ensure that the whole of this large body was knitted together properly in any Commission portfolio, it would be extremely useful to have supporting, albeit non-voting, Commissioners to be the link Commissioners to Member States in their particular areas. For example there might be, under the Commissioner dealing with external relations, subordinates dealing with areas such as North Africa. The Government had reservations about the complexity of the procedure for selecting Commissioners in Article 26(2), while M Haenel did not think that equality between states was realistic (Q4).

207. The Commission itself clearly believes that a large Commission can be efficient if re-structured. In its opinion paper⁹⁰ the Commission has proposed one Commissioner per Member State each with the same rights and obligations, split into groups with specific portfolios. These groups could take decisions in the name of the whole College. The full College would still discuss sensitive issues and the President of the Commission could also refer certain issues for full College debate. The Commission believes this scheme would retain a full College and solve small country concerns about influence. The Commission criticises the present draft Treaty as complicated, muddled and inoperable on this issue.

208. In general terms it is in the interests of Member States to have a strong Commission within an inter-institutional balance that also gives significant powers to the Member States and to the European Parliament. The Government believes that the draft Treaty rightly preserves the Commission's core strengths of independence and impartiality⁹¹. The draft Treaty's proposals for the number of Commissioners would, however, by creating two tiers of Commissioners, undermine the important collegiate nature of the Commission.

209. In our view, the draft Treaty's proposals concerning the number of Commissioners are not ideal in enhancing the efficiency or accountability of the Union. Although there is a strong argument against having too many portfolios within the Commission, a bigger Commission need not

⁸⁹ See HL Deb 9 September 2003, col 191.

⁹⁰ See note 6 above.

⁹¹ See paragraph 23 of the Response to our Report on the Institutions (Appendix 6 below).

necessarily be less effective if properly organised. We believe that the Commission's own proposals are intended to solve this problem, although there are dangers in presenting the Commission's proposals as an attempt to form a government for Europe. Such language is unhelpful.

210. On balance, however, we accept the provisions of the draft Treaty. We can also see that the Commission's own proposals might gain support, particularly to meet some of the concerns of smaller Member States about changes to the Council presidency. We accordingly urge the Government to study the Commission's proposal closely and report to Parliament on its practicability.

Other Institutions

The European Court of Justice

211. We are conducting a separate inquiry into the role of the European Court of Justice under the draft Treaty. This will include the power of the Court under Article 230TEC to review the legality of the acts of the institutions which is maintained by Article III-270 of the draft Treaty⁹² and in particular the right of individuals to challenge matters affecting their interests. Our report at the end of that inquiry will complement this report: we stress here that **adequate access to the Court is of fundamental importance.**

The European Central Bank

212. We are also conducting a separate inquiry into the European Central Bank. Our report will be published shortly.

The Court of Auditors

213. The Government clearly wishes the Court of Auditors to remain an institution but to be reformed. We have expressed our support for reforms to the Court (and particularly its size, as one representative for each Member State is already an unworkable system). We accordingly welcome the Government's latest proposals in this regard⁹³. It is now imperative that the Government promotes its proposal in the IGC.

Overall conclusion: Reforming the institutions – a more effective Union?

214. The key test in judging the institutional changes proposed by the draft Treaty is whether they enhance the Union's ability to operate effectively and efficiently and whether they contribute to democratic accountability. We stress again that direct democratic legitimacy may well be difficult to obtain as long as the European Union remains a union of Member States rather than a state.

215. We conclude that the proposals for reforming the European Council – and in particular for the reform of the Presidency – meet this test, provided that remaining uncertainties are clarified, and provided that there is adequate accountability to national parliaments. The Commission's own proposals for its reform need further study but the proposals in the draft Treaty are likely to pass the efficiency test. Proposals in the draft Treaty for reforming the European Parliament make a contribution to democratic accountability.

⁹² HC Deb 4 June 2003 col 434W.

⁹³ See paragraphs 4 and 32 of the Response to our Report in the Institutions (Appendix 6 below); and the letter from Peter Hain printed on pages 18-21 below.

CHAPTER 4: TRANSPARENCY, DEMOCRACY AND ACCOUNTABILITY

Introduction

216. The Laeken Declaration states “the European institutions must be brought closer to its citizens”. How far does the draft Treaty satisfy the Laeken mandate in particular by making the EU more accountable and comprehensible to the citizens? How will this significant and lengthy document be presented so that it can be digested by the media and the public?

217. We have considered in Chapter 2 how the provisions on subsidiarity strengthen national parliaments and thus contribute to a more democratic Union. We have considered in Chapter 3 how institutional changes could enhance transparency, democracy and accountability. This Chapter looks in turn at more general questions under these headings.

Transparency*The Convention*

218. The Convention was a remarkably open affair. A considerable amount of material was made available on the internet, although there were some concerns that the Praesidium operated in secret. We will in due course review the success of the Convention method.

219. **Our own Government has continued in the open spirit of the Convention**, publishing in July two Command Papers giving the background and the full text of the Treaty. A further document, containing much of general interest, was published in September and we have taken account of that in preparing this report.

220. Recent debates held in Parliament reflect the Government’s willingness to engage in dialogue, as do ministerial commitments to appear before specialist committees and in public fora. The Government is also to be commended for launching a public debate on the internet and for making so much useful material about the Convention and the draft Treaty available to the public if they choose to read it. We in particular commend the handy “ten key points” from the Treaty that the Foreign and Commonwealth Office made available on their website.

An open IGC?

221. The IGC, however, is by its very nature a body where diplomatic and political negotiations take place. That by definition imposes constraints on what information can be released. But it would be a great pity if the open spirit which has characterised discussions so far was allowed to become lost in the traditional secrecy of Intergovernmental negotiations.

222. The IGC process too remains unclear. Are negotiations to be conducted at a political level or in technical groups? And what about substantive negotiations on a detailed text?

223. **As a contribution to ensuring that citizens feel that discussions about the future of Europe – their future – are being made openly and as far as possible in accordance with democratic accountability, we urge the Government to release more information about the IGC.**

224. What is needed are the basics - factual details such as who is involved; what they are to discuss; and, most importantly, what are the outcomes. The Foreign Secretary has made a good start by promising to make draft agendas available but the key requirement is for records of deliberation and conclusions to be made quickly and freely available. We ourselves will continue to scrutinise the IGC openly and to make records of our own work freely and publicly available.

225. The relevant information needs to be communicated to Parliament and must be made public in order to counter suspicion that this Treaty is yet another imposition by a European elite on citizens who are not involved in the process. That suspicion is real and goes against the whole spirit of the Laeken declaration and the Convention itself.

226. More importantly, the Government has made clear that it does not expect formal records of the IGC deliberations to be kept or published⁹⁴: this strengthens the case for direct reporting to Parliament. **We regret the lack of any published records of the IGC. There should accordingly be regular reports back by Ministers to Parliament on substantive issues being deliberated on at the IGC.**

227. To that end, we support the creation of a new joint forum in which the Secretary of State for Foreign Affairs and other ministers representing this country at the IGC can be held to account by

⁹⁴ HL Deb 9 September 2003 col 272.

members of both Houses. This may seem like a dry procedural matter but it goes to the heart of what will be a crucial element in the success or otherwise of the Convention's work: namely the question whether, when the decisions are finally taken by the IGC, parliamentarians, commentators and the public have faith that the decisions arrived at really are in their interests.

228. A separate question concerns the role of national parliaments at the IGC, where the European Parliament is to have observer status. M Haenel wanted national parliaments to be "regularly informed and associated" with the IGC work (Q 7). Our own Government has pressed for a greater engagement between the IGC and national parliamentarians. We await the outcome of the efforts of the Prime Minister and the Foreign Secretary to this end.

What do people make of the Treaty?

229. Is the draft Treaty in fact clear? There were some criticisms that the new titles of legal instruments would confuse practitioners not least because the old terminology would remain in force as well⁹⁵. In France, M Haenel told us that there was a generally positive response to the Treaty but without people necessarily understanding it and there was a need to explain why the result was a good one (Q 6). **General public interest in EU affairs in this country remains limited.⁹⁶ Nevertheless, the new provisions on subsidiarity have the potential to contribute to a greater public engagement, provided that the word itself is explained. Any objection by a national parliament would be seen as that parliament standing up for national interests.**

Government's duty to inform the UK public

230. We clearly see it as the duty of the Government to inform the public both fully and clearly of the import of the draft Treaty. As recently as June this year, Ministers told this House that "we are at a very early stage...[the Treaty] will... be discussed at great length...by the IGC later this year and into next year"⁹⁷. The IGC has, however, begun earlier than anticipated; and there is considerable pressure to conclude negotiations during this year. The more truncated the timetable of the IGC, the less time there will be to inform national parliaments and the citizen of what is being negotiated and agreed.

231. **Public understanding of the issues raised by the draft Treaty is low and we question how far a document with the significance of a Treaty will ever be wholly understood by every citizen. It is the duty of the government in a democracy not only to convey the Treaty's key themes to the public (as our Government has done) but also to set out fully and clearly what the Treaty means. This must include its effects on Parliament, on the Government, on the role of the Courts and on citizens' rights. Whatever the timetable of the IGC, there is clearly a need for a significant enhancement in public presentation by the Government.**

232. The EU is a complex subject to grasp fully. It is in the Government's interest that the UK public understands the basics of the European Union better and is therefore better able to evaluate the arguments being put forward. The Government therefore has a duty to inform the public in a fair and simple way what the implications are of the decisions reached at the 2004 IGC. **The European Strategy Committee recently set up by the Prime Minister and charged with coordinating the pro-European effort across Whitehall should not only concentrate on the question of British membership of the Euro, but should take a wider remit in informing the public about the EU in general⁹⁸.**

233. We accordingly welcome the Foreign and Commonwealth Office's on-line consultation on the draft Treaty and Peter Hain's commitment to scrutiny and debate; and we are pleased that the Minister for Europe in particular will be engaging directly with the public on the issues raised by the draft Treaty (QQ19-20). Given the lack of balanced reporting of European issues by some sections of the media, the Government's direct engagement with the public is welcome. **In particular, we urge the Government to direct further resources to discussion and debate in schools and universities, in addition to the material being disseminated by the European Union.**

234. **The Government should also do more actively to heighten the profile of British MEPs and explain the pivotal role they will have in a Union where increasingly decisions are taken by co-decision between the European Parliament and the Council.** Only by making the UK public understand better the role of MEPs as the direct link between the supranational level of decision-

⁹⁵ See pages 13-14 of the evidence below.

⁹⁶ A eurobarometer poll reported in the European Report on 26 July showed that fewer than 30% of Britons had heard of the Convention – 81% of Greeks by contrast had heard of it!

⁹⁷ HL Deb 2 June 2003, col 1048.

⁹⁸ http://news.bbc.co.uk/1/hi/uk_politics/3024010.stm

making in the EU and the local interest of a British region can the general belief in the lack of EU democratic accountability be tackled.

Democracy and accountability

Role of National Parliaments

235. In an EU composed of sovereign Member States where many decisions are taken by elected and accountable national Ministers (or their representatives) it is a duty of all national parliaments to subject their ministers to rigorous scrutiny and to hold them to account. The revised Protocols on Subsidiarity and on National Parliaments in the draft Treaty provide a clear and welcome increase in the role of national parliaments in the EU decision-making process (see Chapter 2 above).

236. The Protocol on National Parliaments obliges the Commission to send all documents directly to national parliaments and stipulates a minimum period from publication before a legislative proposal is placed on a Council meeting agenda. All Commission consultation documents shall be forwarded directly by the Commission to Member States' national parliaments on publication. National Parliaments shall also receive the Commission's annual legislative programme as well as any other instrument of legislative planning or policy strategy. All legislative proposals shall also be sent to national parliaments at the same time as to the EU institutions. The Court of Auditors must also send its annual report to Member States' national parliaments.

237. The Protocol also makes provision for the Conference of European Affairs Committees (known as COSAC). The protocol refers to involvement in COSAC by "special committees". **The text should be amended to make it clear that COSAC is a body for national parliamentary committees specialising in European scrutiny to co-operate (along with the European Parliament) and not a body for so-called sectoral committees specialising in individual policy areas.**

238. Under the draft Treaty, six weeks must elapse between a legislative proposal being made available and the date when it is placed on an agenda for the Council of Ministers for adoption of a position. In situations of great urgency this rule will not apply, but the Council will have to provide reasons for this in the position it takes. Ten days must elapse between the placing of a proposal on the agenda for a Council meeting and the adoption of a position by the Council of Ministers. **Stipulating such minimum timescales before decisions can be reached on legislation in the Council will, if the timescales are observed, allow national parliamentary scrutiny of EU legislation to be more effective.**

239. A particular question of detail, however, is what status, if any, should the Treaty give to national parliamentary scrutiny reserves? As Peter Hain made clear (Q43), the draft Treaty does not do this, relying instead on improved provisions for the transmission of documents, and the subsidiarity yellow card.

240. We will be working with our colleagues in the Commons and with the Government to try to secure the most effective parliamentary scrutiny. But there will be a number of matters where we will be pressing the "Usual Channels" and the House itself to take forward some ideas where we wish to go further than the Government itself would wish. These include finding a means to strengthen the effect of the House's scrutiny reserve resolution. Appropriate additional resources will be required.

Democratic life of the Union

241. Title VI of the draft Treaty is entitled the Democratic Life of the Union. This section of the Treaty contains a key provision relating to the openness and transparency of the Union's institutions. There are also some broad and important statements of the principles of democratic equality and of representative and participatory democracy (Articles I-44, 45 and 46).

242. Article 46 provides that one million citizens of the EU "coming from a significant number of Member States" may invite the Commission to bring forward a legislative proposal. This is a novel provision, the details of which will be set out in an EU law. How far the procedure will allow the individual citizen, as opposed to lobbyists, groups and organisations, to have an impact on the Commission remains to be seen. It is therefore too early to judge whether the new petition procedure will provide an effective supplement to the present ability of any individual (albeit not enshrined in the Treaty) to raise a matter directly with the Commission.

243. The provision concerning representative democracy has been added since our earlier Report. It describes how citizens are represented directly and indirectly:

“Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council of Ministers by their governments, themselves accountable to national parliaments, elected by their citizens”.

244. Given the comparative remoteness of the European Parliament and MEPs, Article I-45 underscores the need for national parliaments and individual parliamentarians to be aware and react, both through the formal process of Parliamentary scrutiny and in other ways, to developments in the Union.

245. As we indicated in our earlier Report it will be in the translation of the principles of democratic equality and of representative and participatory democracy into rights for the individual and into ensuring reformed conduct on the part of the institutions that the real benefit of such provision will be judged. So of potentially greater practical significance for the individual are those provisions in Title VI dealing with the European Ombudsman, the transparency of the proceedings of Union institutions, access to documents and the protection of personal data (Articles I-48, 49 and 50 respectively).

246. Some important changes have been made. One such is the requirement that the Council of Ministers shall meet in public when examining and adopting a legislative proposal (Article I-49(2)). This is welcome, though precisely what change it will make beyond what was agreed at the Seville European Council has yet to be seen.

247. It is unclear whether the “and” in the phrase “examining and adopting” in Article I-49(2) is conjunctive or disjunctive. If the latter (which we hope is the correct interpretation) we pose the following questions:

- how far will “examining” extend?
- Will it be the case that as soon as a proposal has been adopted by the Commission and submitted to the Council all discussions in the Council (presumably at Ministerial level but not in Working Groups or in COREPER) will be in public?
- How will those matters now dealt with as “A points” (i.e. without substantive debate) be dealt with?
- Will Council agendas be made available publicly and in good time before meetings?

248. As we have already argued (see paragraphs 160—173 above) it is unclear whether the examination of legislation will be the monopoly of the Legislative Council (one of whose functions it would be to “consider” and “enact” legislation - Article I-23(1)) and/or how far other Council formations will be able to discuss legislative proposals. The Government acknowledges that it is not always easy to separate executive and legislative functions⁹⁹. **The Government must, however, ensure that answers to these questions are provided during the course of the IGC.**

249. Overall, it will not be easy to persuade the individual citizen that this Title of the draft Treaty brings them any new or substantially improved rights, or provides any detail on how their participation in the democratic life of the Union can be enhanced. The Government will need to explain more clearly why this is so.

250. The right of access to documents is widened (to include Union bodies and agencies) but still do not go far enough (the applicant must still show that he or she is a Union citizen or is resident in a Member State). The opportunity to extend that right to all persons in the Union has been missed. The Government has said that the right may exist in subordinate access regulations but we continue to believe that it should be in the Treaty. **As a contribution to transparency, we therefore urge the Government to revisit during the IGC the right of access to documents.**

⁹⁹ Explanatory Memorandum 24 June 2003.

CHAPTER 5: THE EU IN ALL OUR LIVES

Introduction

251. This report has so far examined constitutional, institutional and presentational issues. But how will the draft Treaty actually affect daily life? This Chapter looks in detail at two specific and significant policy areas covered by the draft Treaty: the question of human rights; and matters of freedom, security and justice. We hope by studying these areas in detail to shed some light on how the draft Treaty will actually have an impact on issues of direct concern to citizens¹⁰⁰.

A Bill of Rights? - the Charter

252. Article I-7 of the draft Treaty requires the Union to “recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights”. The Charter itself is set out in Part II of the draft Treaty. Any constitution needs a bill of rights and the Charter is the Convention’s choice for the Union.

253. The Government has, however, been less than enthusiastic about the Charter becoming the Union’s bill of rights. While it had welcomed the idea of a statement of rights and freedoms to be respected by the Union’s institutions the Government had not supported incorporation of the Charter into the Treaties because it lacked legal precision. Paragraph 103 of the White Paper makes it clear that the Government will make a final decision on the incorporation of the Charter into the Treaty “only in the light of the overall picture at the IGC”.

254. Faced, however, with the fact that the large majority of Member States saw the Charter as an indispensable part of the draft Treaty and their reluctance to open up the text of the Charter Articles for revision, the Government has concentrated its efforts on seeking to strengthen the “horizontal clauses” and to improving the content, and securing the status of, the “explanations”. This is also something which we thought necessary and we accordingly welcome this change.

255. Overall, the Government has generally been successful in making changes: Peter Hain told us (Q31) “we opposed a straightforward insertion of the Charter into the new constitutional Treaty without very important safeguards on it and we negotiated very hard and expertly in the case of one of your colleagues, Baroness Scotland, who turned the whole debate around from a position where it was pretty well only ourselves, Ireland and Denmark with perhaps a bit of support from some of the newer Member States, we were under pressure to accept the wholesale implementation of the Charter, to the one we now have which is a whole series of safeguarding arm locks around it”. Some detailed discussion on wording would, however, still be required.

256. Peter Hain also drew our attention to three safeguards:

- a horizontal clause that stops the Treaty changing our domestic law in areas where European competence does not apply - i.e. the Union’s powers cannot be extended
- the preamble which makes the status of the Charter clear: “the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter”
- a linking reference to the commentary that requires due regard to be paid by the European Court of Justice (ECJ) to the commentary.

257. These safeguards are indeed stronger than was the case with earlier drafts. **We welcome these changes to the provisions regarding the Charter.** We have, however, some concern whether these safeguards will be sufficient formally to bind the Commission. Peter Hain agreed that this point would need to be put to the IGC (QQ33-4). In view of concerns expressed in debate in the House¹⁰¹ **we seek a specific assurance that the safeguards applied to the Charter in the draft Treaty are indeed binding on the Commission. We also question how far the efficacy of the provisions of the commentary will withstand the development of case law by the ECJ.**

258. On the broader question of whether the Charter should be in the Treaty at all, we note that the Government will reach a final decision on incorporation of the Charter at the IGC itself. The presence of the Charter in the Treaty does have the effect of showing the citizen that the EU should respect fundamental rights, thus meeting the Laeken test of both clarity and of bringing the EU closer to the citizens. **We seek an assurance from the Government that, were the Charter to be omitted,**

¹⁰⁰ We have already referred in paragraph 211 above to our ongoing work on the European Court of Justice.

¹⁰¹ See HL Deb 9 September 2003, cols 188, 245 and 257.

alternative means would be found of clearly re-assuring the citizen that the draft Treaty enhances human rights.

259. We are also pleased to see the positive statement in Article I-7(2) that the Union “shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹⁰². We note, however, that when taking decisions on accession to the ECHR, including that authorising negotiations to be opened, the Council must act unanimously and the European Parliament must be consulted before any agreement on accession is concluded (Article III- 227).

260. Much technical work has already been done. The citizen should have confidence in knowing that the institutions and bodies serving the Union are clearly bound by the requirements of the ECHR. **We would, however, welcome further clarification of the effect accession to the ECHR would have on any decision to adopt the Charter.**

Area of freedom, security and justice

Background

261. The development of the European Union as an area of freedom, security and justice (AFSJ) has been a central EU objective since the entry into force of the Amsterdam Treaty. However, the framework for establishing an AFSJ is currently far from coherent, with justice and home affairs matters falling between the Community framework (Title IV TEC) and the Third Pillar (Title VI TEU).

262. A main task of the Convention has been to simplify and clarify the position, with the aim of making EU action more efficient and thus more relevant to the citizen’s needs¹⁰³. In his oral Report to the Thessaloniki Council, Valéry Giscard d’Estaing went so far as to say that the establishment of an AFSJ is “a fundamental reform which citizens want to see”¹⁰⁴. In the light of the clear political will to develop the AFSJ further, it is not surprising that justice and home affairs is one of the areas of EU action which have been subject to far-reaching reforms. Changes involve both institutional and competence matters and are highlighted below.

The abolition of the pillars

263. One of the most significant changes brought by the draft Treaty is the abolition of the pillar structure. There is now one Chapter in Part III of the Treaty entitled ‘Area of Freedom, Security and Justice’, encompassing matters currently falling under both the First and Third Pillars. A major consequence of this change is that, with few exceptions, decisions in justice and home affairs matters will be taken “in the Community way”¹⁰⁵ with intergovernmental elements being reduced to a minimum. The main changes involve:

- *The type of legal instruments and direct effect:* all AFSJ legislative action will take the form of European Laws, Framework Laws and Decisions (which will replace Regulations, Directives and Decisions). At the moment the Third Pillar provides for a separate set of legal instruments, namely Framework Decisions (the equivalent of Directives but not entailing direct effect), Decisions and Conventions. Legislative action on AFSJ matters currently falling under the ‘Third Pillar’ can thus also take the form of directly applicable ‘European Laws’ (there is no equivalent in the TEU to an EC Regulation) and the instrument of Third Pillar Conventions has been abolished. ‘Third Pillar’ AFSJ legislation may also have direct effect.
- *Voting in the Council:* with few exceptions,¹⁰⁶ the rule is qualified majority voting. This is a significant departure from the current arrangements in both Title IV and the Third Pillar, where in general unanimity is required. The Government welcomes QMV in immigration and asylum matters but not for criminal procedure (see paragraphs 82—3 of the White Paper).

¹⁰² See our comments on this on our 9th report 2002-03 HL Paper 61.

¹⁰³ As the final Report of the Convention Working Group has noted, ‘the battle against crime is an area in which the European Union can demonstrate its relevance to its citizens in the most visible way’ CONV 426/02, 2.12.02, p.1.

¹⁰⁴ See note 23 above: SN 173/03, p.8.

¹⁰⁵ See paragraphs 56–59 above.

¹⁰⁶ Unanimity is required for the adoption of measures on family law (Article III-170(3)); decisions to include areas of criminal procedure in the Treaty (Article III-171(2)(d); the establishment of a European Public Prosecutor (Article III-175(1)); measures on operational co-operation between national police authorities (Article III-176(3)); and police operations in the territory of another Member States (Article III-178).

- *The role of the European Parliament:* again with few exceptions,¹⁰⁷ the rule is that decisions will be taken under the legislative procedure (currently named ‘co-decision’). This marks a significant increase in the powers of the European Parliament, which is currently merely consulted both in Title IV and in Third Pillar matters.
- *The right of initiative:* The shared right of initiative between the Commission and Member States remains. But the latter’s powers have been limited, with the Treaty requiring the initiative of a quarter of the Member States for a proposal to be put forward (Article III-165(b)) (currently a proposal by one Member States suffices).
- *The jurisdiction of the European Court of Justice:* apart from a limited (and largely tautological) exception,¹⁰⁸ AFSJ measures will now be subject to full judicial control by the Court. The latter’s jurisdiction is thus significantly extended.¹⁰⁹

The role of national parliaments

264. The role of national parliaments has been enhanced, and the Government welcomes this (see paragraph 81 of the White Paper). AFSJ proposals will be subject to subsidiarity scrutiny in accordance with the arrangements in the Protocol on the application of the principles of subsidiarity and proportionality (Article III-160). National parliaments may participate in the evaluation mechanisms of the implementation of AFSJ measures by Member States – and will be informed of their outcome (Articles III-160 and 161). Parliaments will also be informed of the proceedings of the standing committee which will be set up in order to enhance operational co-operation on internal security (Article III-162).¹¹⁰

265. The Treaty also provides for the involvement of national parliaments in evaluating the activities of Eurojust (Article III-174(2)) and scrutinising, together with the European Parliament, the work of Europol (Article III-177(2)). **We welcome the express reference to scrutiny of Europol by national parliaments and the European Parliament, which reflects our earlier recommendations.¹¹¹ However, we would like to see a specific reference to ‘scrutiny’ being also inserted in the provision relating to Eurojust.**

Border checks, asylum and immigration

266. Noteworthy developments in this area include the explicit reference to the creation of a ‘common European asylum system’ and to partnership and cooperation with third countries with a view to managing inflows of asylum seekers (Article III-167(2)) which the Government has pressed for.¹¹² The Treaty also establishes a specific legal basis for the gradual introduction of an integrated management system for external borders (Article III-166(1)(c)) and includes a specific provision, Article III-169, establishing the principle of solidarity (including its financial implications) between Member States in the areas of immigration, asylum and border controls.

267. We welcome these developments. In our recent Report on proposals for a European Border Guard¹¹³ the Committee endorsed the concept of financial burden sharing. The Committee also noted with approval that a specific legal basis for integrated border management, along with the merging of the pillars, would subject border control measures to a high level of judicial control and parliamentary accountability, although it remained uncertain whether it would lead in time to the establishment of a European Border Guard which we would oppose, in line with our earlier report.

268. The AFSJ Chapter is silent on the subject of the UK’s participation in EU border control measures. The Government notes in its Explanatory Memorandum that Article E of the General and

¹⁰⁷ Articles III-170(3), 176(3) and 178 provide for consultation. Consultation is also required in Article III-164 (administrative co-operation). Articles 171(2)(d) and 175(1) on the other hand require the ‘comment’ of the Parliament. ‘Comment’ presumably means ‘assent’ but this is currently not clear.

¹⁰⁸ The Court will have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member States or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, where such action is a matter of national law- Article III-283.

¹⁰⁹ See Articles 35 TEU and 68 TEC, both limiting considerably the Court’s jurisdiction in AFSJ matters.

¹¹⁰ The separation between ‘legislative’ and ‘operational’ tasks has been one of the key objectives of the Convention’s AFSJ Working Group (see CONV 426/02). The creation of a Standing Committee dealing with operational matters reflects this move.

¹¹¹ *Europol’s Role in Fighting Crime* (5th Report, Session 2002-03, HL Paper 43).

¹¹² Explanatory Memorandum, paragraph 27.

¹¹³ 29th Report, session 2003-03, HL Paper 133.

Final provisions provides that the protocols will remain an integral part of the Treaty¹¹⁴ and confirms that its position on the UK's Protocols has not changed.¹¹⁵ The Government has made clear that it "will not give up the United Kingdom's right to carry out frontier controls and the protocols which safeguard the United Kingdom's position" (see paragraph 84 of the White Paper).

Judicial co-operation in criminal matters

269. An important development in this area has been the explicit reference to the principle of mutual recognition in criminal matters (which the Government particularly welcomes) (see paragraph 81 of the White Paper) and the extension of EU competence in the field of criminal procedure (which the Government accepts only to a limited extent¹¹⁶) (Article III-171). There would be a very large transfer of power from Member States to the Union in the area of criminal justice (see page 12 of evidence below).

270. The text has been amended since its early version: the Treaty now provides for minimum rules to facilitate judicial co-operation in criminal matters 'with a cross-border dimension' on the mutual admissibility of evidence between Member States¹¹⁷, the definition of individual rights in criminal procedure and victims rights. The remit may be extended by a unanimous decision of the Council after receiving the 'approval' of the Parliament. A new paragraph has been added stating that minimum rules will not prevent Member States from maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure (Article III-171).

271. We welcome the limitation of action in the field of criminal procedure to cases having a cross-border dimension, which is in conformity with the recommendation in our earlier Report.¹¹⁸ We also welcome the tightening of the wording on the admissibility of evidence, but regret that the adoption of such rules remains subject to majority voting.

272. The provision on substantive criminal law has also been redrafted (Article III-172). Measures in the field would take the form of European Framework Laws (and not of European Laws which are directly applicable) – this means that Member States will retain a level of discretion in the implementation of EU standards.

273. Like the earlier draft, the provision includes an exhaustive list of offences for which the EU has competence to act - but the list may be expanded by the Council acting unanimously and after obtaining the consent of the European Parliament. Approximation may also take place where it is necessary to ensure the effective implementation of an EU policy where there has been harmonisation (an example would be fraud). In these cases, the type of law-making procedure will be the same as the procedure followed for the adoption of the harmonisation measures.¹¹⁹

274. We welcome the safeguards in this provision. However, we are concerned that Articles III-171(2)(d) and 172(2) would permit the extension of EU competence in criminal law and procedure without the need for a Treaty amendment and thus for ratification by national parliaments. We accordingly call for any such extensions of competence to be subject to the prior approval of Parliament in each case (as we have recommended in paragraph 85 above (Flexibility Clause)). We note that the Foreign Secretary has told the House of Commons: "we will oppose...measures that would undermine our system of common law and criminal law"¹²⁰.

275. In spite of opposition from our own Government and the lack of consensus between the Convention members, the provision on the establishment of a European Public Prosecutor (EPP) has been retained (Article III-175). It has been amended and provides for the possibility of the EPP Office

¹¹⁴ Although presumably the 'Title IV' Protocol will have to be redrafted in view of the merging of the pillars in the draft Treaty.

¹¹⁵ Paragraph 25.

¹¹⁶ According to the Explanatory Memorandum, the Government remains firmly opposed to giving the EU wide-ranging competence to harmonise criminal procedural law but it may be necessary to develop 'some light minimum standards' in the areas where people facing criminal proceedings in a Member States of which they are not a national would be disadvantaged by virtue of that fact- (paragraphs 32–33).

¹¹⁷ According to the explanatory note accompanying the revised Treaty text, this wording has been inserted to 'obviate any misunderstanding': the sole purpose of the provisions is to establish minimum standards such that evidence obtained in conformity with those rules can then be used in proceedings in other Member States, but without prejudice to the freedom of the court to take into account other evidence in accordance with its national law. (Doc. CONV 727/03, 27.5.03, p.32).

¹¹⁸ *The Future of Europe: Constitutional Treaty—Draft Article 31 and draft Articles from part 2 (freedom, Security and Justice)*, 16th Report, 2002–03, HL Paper 81, paragraph 54 (p.30).

¹¹⁹ The Explanatory notes to the amendments make clear that there must be a link to harmonisation measures already adopted by the Union and that the legislator must in fact assess whether criminal sanctions prove essential to ensure the effective implementation of the policy. (Op. cit., p.32, emphasis added).

¹²⁰ HC Deb 16 September 2003 col 798.

being established not ‘within’, but ‘from’ Eurojust by unanimity in the Council and with the consent of the Parliament. The Government’s White Paper¹²¹ makes clear that they see no need for the Prosecutor “who would have power to decide – at EU rather than national level – how to investigate and prosecute serious crimes”.

276. As we stressed in our earlier Report, this Article is a surprising and undesirable inclusion in the Treaty.¹²² We recommend its deletion, although the provision for unanimity in this case means that any one Member State could veto any proposal actually brought forward.

277. Article III-174 confers a broad mandate on Eurojust, whose actions cover “serious crime affecting two or more Member States or requiring a prosecution on common bases”. As we mentioned in our earlier Report, **it is questionable whether Eurojust should be given such an open-ended brief.¹²³ It would be preferable to define Eurojust’s mandate on the basis of specifically enumerated offences.**

Police co-operation

278. The scope of Article III-176 (on police co-operation between national authorities) has been tightened, with the vague reference to the possibility of adoption of ‘any other measure that encourages co-operation’ by majority voting being removed from its second paragraph. Paragraph 3 enables the adoption of measures regarding operational co-operation, but this is subject to unanimity in the Council.

279. The provision on Europol (Article III-177), along with the arrangements for parliamentary scrutiny referred to above, continues to define Europol’s mandate through a general reference to serious transnational crime, terrorism, and forms of crime which affect a common interest covered by EU policy. **As we mentioned in our earlier Report, a defined exhaustive list of offences would be preferable (possibly set out in a Protocol annexed to the Treaty).¹²⁴**

¹²¹ Paragraph 85.

¹²² *Op. cit.*, paragraph. 59 (p. 33).

¹²³ *Op. cit.*, paragraph. 61 (p.34).

¹²⁴ *Op. cit.*, paragraph 68 (p.38).

CHAPTER 6: THE EU, A PLAYER ON THE GLOBAL STAGE?

Introduction

280. The Convention was mandated by the Laeken Council to consider ‘Europe’s new role in a globalised world’.¹²⁵ Against a backdrop of the war in Iraq in March 2003, the EU’s international role became central to the Convention’s deliberations. The Iraq crisis exposed very considerable differences in Member States’ approaches to foreign affairs. The effect, it would seem, was to limit the Convention’s proposals on CFSP to structural changes. The Union’s competence over CFSP and Member State obligations in this field (Article I - 15) remain unchanged from the TEU (Article 11). Similarly, the Union’s CFSP objectives remain largely unchanged (Article III – 193).¹²⁶

281. The key question that this section seeks to address is whether the institutional changes proposed in the draft Treaty will make the EU more efficient at realizing its international objectives. In this chapter we look at provisions concerned with foreign policy and defence. The EU also has a significant role in international trade and development co-operation, topics which are not discussed here.¹²⁷

Security and Defence

282. The most far-reaching proposals for change that the draft Treaty makes on CFSP are in the articles concerned with security. It was expected that the draft Treaty would update the Petersberg Tasks (Article III - 210) to reflect the EU’s growing role in peace-keeping operations. Similarly, the inclusion of a ‘solidarity clause’ (Article I – 42 and Article III – 231) follows from a well-received recommendation by the Defence Working Group that Member States should commit to mobilising all instruments to prevent or respond to a terrorist attack or natural disaster within the EU.

283. Article I – 40 proposes some very significant changes to the Union’s security policy. Article I – 40 (6) (along with Article III – 213) proposes that those Member States ‘whose military capabilities fulfil higher criteria and which have made more binding commitments to one another’ shall be able to collaborate more closely using EU institutions. At the moment, all Member States (except Denmark) decide on all forms of military co-operation for the Union by unanimity. The Government, in paragraph 96 of the White Paper, emphasised that it would not want to see enhanced military co-operation between some Member States written into the Treaty undermining “detailed and military robust arrangements (which were agreed by all Member States at the Nice European Council) to provide for flexibility in ESDP”.

284. More recent evidence to the Committee from the Ministry of Defence¹²⁸ was that “we do see potential possibilities and opportunities from this concept [of new forms of co-operation]” although problems remained and the attitude was “cautious”. It appears that the Government’s position has changed as a result of Prime Minister Blair’s meeting with President Chirac and Chancellor Schröder on 20 September 2003 in Berlin¹²⁹. **We urge the Government to recall in the forthcoming negotiations the view expressed to us¹³⁰ that “none of these structures pretends to provide an operational EU military command structure either at the strategic or the tactical levels. There are no standing EU headquarters (just as there is no EU standing force). Any such EU operational command structure would duplicate existing NATO and national assets”.**

285. The proposal for closer co-operation between some Member States is combined with a proposal giving these Member States the choice (but not the obligation) to sign up to a mutual defence clause (Article I – 40 (7) and Article III - 214). The Government’s White Paper (paragraph 95) made clear its intention to resist the inclusion of any security guarantee in the new treaty which could rival or come to replace the security guarantee established through NATO. **We fully support the Government in this.**

286. Article I – 40 (3) further proposes a European Armaments and Strategic Research Agency to co-ordinate defence technology research, encourage harmonisation of arms procurement between

¹²⁵ Annexes to the Presidency Conclusions, Laeken, 14 and 15 December 2001.

¹²⁶ By contrast, in the spring of 2003, the Council of Ministers asked the High Representative, Javier Solana, to prepare the EU’s first Security Strategy (SO138/03). The Government has confirmed that the Security Strategy, which specifically deals with policy, will not be included in the Constitutional Treaty. (See the letter from Peter Hain printed on pages 16-17 of our evidence below).

¹²⁷ The EU’s international development policy will be the subject of a separate, forthcoming report from the Committee.

¹²⁸ Evidence taken by Sub-Committee C (9 October 2003). See Q5 of the transcript printed in Appendix 5 below.

¹²⁹ Meeting between the Prime Minister, President Chirac and Chancellor Schröder, Berlin 20th September 2003.

¹³⁰ Response to the Committee’s 11th Report, Session 2001–02 on ESDP, paragraph 20.

Member States and ensure that national defence equipment is compatible throughout the EU (Article I -40). **We strongly support the creation of such an agency since it could improve the capabilities and inter-operabilities of the armed forces of Member States, but care needs to be taken to ensure that it does not become a tool for protectionism or constrain the ability of Member States to order armaments independently.**

Foreign Policy

287. The most significant change proposed to the EU's foreign policy is a reduction in the number of individuals who represent the EU internationally.

288. At present there are four positions which represent the EU internationally:

- the head of Government of the Member State holding the Presidency of the Council (which changes twice a year);
- the High Representative based at the Council;
- the Commission President; and
- the Commissioner for External Relations.

289. The draft Treaty proposes to reduce the number of EU representatives to two positions: the European Council President and the Minister for Foreign Affairs.

290. Article I – 21 proposes that the European Council Chair would take on some of the CFSP representational responsibilities currently held by the presidency. 'The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy'. These responsibilities shall continue to be exercised 'without prejudice to the responsibilities of the Union's Minister for Foreign Affairs'. Nonetheless, the exact relationship between the two remains unclear.

291. The draft Treaty proposes the creation of Union Minister for Foreign Affairs (Article I-27 and Article III - 197). This office will bring together in one, 'double-hatted' role the functions of the present High Representative and the Commissioner for External Relations. The point of this 'double-hatting' would be to ensure that the EU's diplomacy and aid work better together, thus enhancing efficiency.

292. It is proposed that the new Minister:

- will be appointed by the European Council by QMV with agreement of Commission President;
- shall contribute proposals to the development of CFSP and ESDP, which the Minister shall carry out as mandated by the Council;
- shall be one of the Vice Presidents of the Commission;
- within the Commission, shall be responsible for handling external relations and co-ordinating other aspects of the Union's external action, including trade;
- shall be bound by Commission procedure for the Minister's responsibilities within the Commission;
- shall chair the Foreign Affairs Council;
- shall ensure implementation of European decisions adopted by the European Council and Council of Ministers;
- shall represent the Union for matters relating to CFSP and conduct political dialogue on the Union's behalf;
- shall express the Union's position in international organisations and international conferences;
- shall be assisted by a European External Action Service which will work in co-operation with the Diplomatic Services of Member States (as set out in Part I Article 27 and Part III Article 197).

293. The Government told us¹³¹ that the primary aim of the proposal was to make CFSP more efficient and effective. Peter Hain assured us that the Minister for Foreign Affairs will be accountable to Member State governments for CFSP issues:

¹³¹ Explanatory Memorandum 724/03.

“we are very clear that it must be a post accountable to and appointed by the European Council, that is to say, Heads of Government. There is a lot of detail to negotiate to get that satisfactorily pinned down so that the link and the co-ordination with the President of the Commission does not result, as it were, in a reverse Commission takeover.” (Q64)

294. The complexity of the EU’s international representation is one of the reasons the Union has been ineffective in achieving its foreign policy goals. In its representational aspects ‘double-hatting’ is a good idea. We have strong concerns, however, about the policy role the new minister for Foreign Affairs is to have. We have discussed these concerns in detail in our earlier Report.¹³²

295. Chief among our concerns remains the relationship the Union Minister would have with the Commission. There is a danger that as vice-president of the Commission, the Minister would be subject to Commission collegiality. Given that the Minister will have the right of initiative over the whole area of CFSP this is a serious problem. There are risks in the opposite direction. The Minister’s role in ensuring coherence across the Union’s external policy could lead to micromanagement by the Council of such Commission policy areas as transport and environment, as well as trade and development.

296. We urge the Government to negotiate the role of the Union Minister for Foreign Affairs with extreme care. The person appointed to this post must remain firmly based in the Council, accountable to Member States. In order to make the status of the post less susceptible to unnecessary suspicion, we propose that a better job title be found, perhaps “Foreign Affairs Representative”.

297. The Union Minister will have a vast role in representing, co-ordinating and implementing the Union’s policy on foreign affairs, external relations, defence, trade and overseas development. **We are therefore concerned that the Minister have sufficient institutional support. We support the creation of a ‘Joint European External Action Service’ which would bring together all the present Commission External Relations staff with Council staff.**

Decision-making in foreign and security policy

298. Many, in the Convention and elsewhere, have suggested that retaining the unanimity rule in CFSP in a Union of 25 will make the policy impractical. Some have suggested that an effective CFSP can only be achieved through QMV decision-making. We do not share this view. We firmly believe that foreign and security policy is central to the national interest, and, as such, each country must retain the right of veto. We are therefore pleased to note that Article I -39 and Article III – 194 restate the principles that CFSP is intergovernmental and is decided, as a rule, by unanimity.

299. The Treaties of Amsterdam and Nice introduced some QMV decision-making into CFSP. These exceptions to the rule of unanimity relate to the Council of Ministers taking implementing decisions. In the draft Treaty, Article III – 201 (2) (a), (c) and (d) restates the use of QMV when appointing a special representative (introduced at Nice); or when adopting an implementing decision based either on a strategic interest or objective, or alternatively an action or position, agreed to by the European Council by unanimity (introduced at Amsterdam).

300. The draft Treaty proposes one extension to QMV in CFSP. According to sub-clause 2(b) of Article III – 201, the Council of Ministers would be able to take a decision by QMV ‘when adopting a decision on a Union action or position, on a proposal which the Minister has put to it following a specific request to him or her from the European Council made on its own initiative or that of the Minister’.

301. In other words, the European Council would decide by unanimity on whether to mandate the Minister to make a proposal which could be decided by QMV. The suggestion to do so could come from the Minister. This extension of QMV seems warranted given the new role of the proposed Minister for Foreign Affairs. We are pleased to note that the proposal in earlier drafts that joint proposals from the Minister and the Commission be decided by QMV has been dropped, in favour of this more limited extension of QMV.

302. We recommend that Article III – 201(2)(b) be amended by deleting the words “or that of the Minister” so that it clearly states that any implementing decision based on a proposal coming from the Minister must be preceded by a unanimous European Council request for such a proposal. This is particularly important since the Minister will have formal right of initiative across the whole area of CFSP, including defence¹³³.

¹³² 23rd Report, Session 2002–03, HL Paper 107.

¹³³ See the letter from Peter Hain printed on pages 16-17 of our evidence below.

303. The extension of QMV is thus limited to one new proposal. A passerelle clause is, however, suggested for CFSP. Article I – 39 (8) states that ‘The European Council may unanimously decide that the Council of Ministers should act by qualified majority voting in cases other than those referred to in Part III’ (repeated in Article III – 201(3)). In other words, Member States may, by unanimous decision, choose to act by QMV in other areas than those specified in Article III – 201 (2). **As we argued above in paragraph 177, we wholly resist the inclusion of a catch-all passerelle clause in the draft Treaty. Having a passerelle clause for CFSP, with the safeguards set out in paragraph 178 above, could be of value in the interests of some flexibility.**

304. Peter Hain confirmed that extending QMV into defence was a matter on which the Government would not give way (Q 27). The Government has admitted that there are difficulties in drawing a line between defence and foreign affairs¹³⁴. Article III 201 (4) states that none of the exceptions to the rule of unanimity specified in the article shall apply to ‘decisions having military or defence implications’. **We are satisfied that this provides a sufficient safeguard against any extension of QMV into defence, provided that the Article also catches any attempt to extend QMV to defence issues under the provisions of Articles 39 and 40.**

305. **We strongly support the inclusion of the right of any Member State to require a vote not to be taken by citing reasons of national policy (as set out in the final paragraph in Article III – 201 (2): see also Peter Hain’s assurance (QQ 27-29)).**

Relations with International Organisations

306. Member States will continue to be obliged to co-ordinate their actions in international organisations and uphold the common EU position (if such a position exists) in international organisations, including the UN (Article III – 206).

307. A new provision, aimed at raising the Union’s profile with the UN Security Council, states that:

“When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union’s position”. (Article III – 206 (2)).

308. We have raised concerns¹³⁵ about the proposal to mandate the Union Minister to present the EU’s position in the UN Security Council. **We recognise that there may be considerable value in having the Union’s Minister speaking in the Security Council but this should not be a mandatory requirement. The word “may” should therefore replace the word “shall”.**

Openness and Accountability in the Union’s conduct of CFSP

309. We are concerned that the proposals for the scrutiny of the EU’s foreign affairs and defence do not go far enough. We are pleased to note that Article I – 39 (6) restates the European Parliament’s right to be ‘regularly consulted on the main aspects and basic choices of the common foreign and security policy and shall be kept informed of how it evolves’ (see also Article III – 205). As CFSP remains intergovernmental, national parliaments must exercise effective scrutiny. Peter Hain argued that, as a result, national parliamentarians should be informed as far upstream as possible in the policy process (Q52). We accordingly welcome his agreement that the system of depositing documents for scrutiny in these areas should be developed (Q53) but in our view a new scrutiny process is required.

310. Particularly in the light of the possible demise of the Parliamentary assembly of the Western European Union, there is a need for a collective forum for national parliamentary scrutiny of CSFP and defence issues. **We recommend that there should be a parliamentary Foreign Affairs Committee of the European Union. This should be composed of both national parliamentarians and European parliamentarians. It should be an advisory body and thus not have decision making powers.**

Conclusions

311. **In the CFSP field, the draft Treaty consolidates the EU as a union of Member States. CFSP will continue to be intergovernmental, and, as a rule, decided by unanimity.**

312. **The final treaty may come to increase the effectiveness of how the CFSP is run. Much will depend on the detail of the proposed Minister for Foreign Affairs’ role. We are not**

¹³⁴ See evidence printed as Q 6 in our 15th Report, Session 2002–03, HL Paper 80.

¹³⁵ See our 23rd Report, Session 2002–03, HL Paper 107.

convinced that enhanced military co-operation between some Member States is the answer to a more effective security policy.

313. We remain, however, unconvinced that the draft Treaty goes far enough in ensuring proper parliamentary scrutiny of CFSP. More could be done to increase the openness and accountability of the way the Union conducts CFSP.

CHAPTER 7: SUMMARY OF CONCLUSIONS

The IGC

314. We are concerned that if absolute priority is given to reaching agreement on the draft Treaty by the end of the year, this will undermine the need for a serious discussion of what are complex and significant issues. We nevertheless endorse the decision made by the European Council that the IGC should complete its work in time for it “to become known to European citizens before the June 2004 elections for the European Parliament”. (paragraph 12)

315. Discussion of issues raised by the draft Treaty has to be during the IGC, as the subsequent ratification process by national parliaments does not allow an opportunity for amendment of the Treaty, only for its approval or rejection. (paragraph 9)

316. We urge the Member States, as they engage in constitutional discussions, not to lose sight of the overriding importance of ensuring that reforms to complete the Single Market are carried through. To this end we make recommendations about the need for flexibility in the Stability and Growth Pact. (paragraph 24)

The need for analysis of the draft Treaty

317. We are pleased to note the Government’s undertaking to provide an analysis of the draft Treaty against existing Treaty provisions. We would expect this document, in analysing every Article of the draft Treaty, to identify in particular which provisions are new, and where there are changes to competences and to provisions for QMV. It will also be important for the Government to set out their understanding of the inter-relationship between the provisions which affect decision-making, including the passerelle, the right of initiative and the flexibility clause. Such analysis should be made available to Parliament and to the public as soon as possible as the IGC unfolds, as our Government’s negotiators are already engaged in work in the IGC. The analysis should also include a more detailed glossary than that provided for the general reader in the White Paper. (paragraph 27)

Definition and objectives of the Union

318. We are satisfied that a definition of “citizens” is not necessary for the purposes of Article I-1. (paragraph 52)

319. We see no cause for concern in Article I-3(1) (the Union’s aim). (paragraph 53)

320. We welcome the removal of the phrase “ever closer Union”. (paragraph 54)

321. The draft Treaty expressly states that the Union can only act within the limits of the competences which the Member States have conferred upon it (Article I-9(2)). We support this approach because the draft Treaty makes plain the intention that the European Union remains a union of sovereign Member States. (paragraph 55)

322. What is meant by “in the Community way” needs to be made clear. The extent to which this phrase, because of its position and prominence in Article I-1(1), may, intentionally or not, constitute a superior rule or governing principle also needs further examination and explanation. In particular, the relationship between Article I-1(1) and those provisions of the new Treaty dealing with the CFSP need further careful examination. The concern strongly expressed about this matter in the House’s debate on 9th September supports our view. (paragraph 59)

323. Overall, however, the draft Treaty’s definition of the EU clearly sets out for the citizen what the EU is. (paragraph 60)

324. By dropping an unnecessarily rigid formulation requiring the Union to maintain the *acquis communautaire* the draft Treaty could provide some flexibility, which we welcome. (paragraph 64)

325. We recommend that the Government, as part of its analysis of the draft Treaty, indicates in the case of each objective of the Union set out in Article I-3 how the wording has changed from any previous text. In addition, to promote public understanding and thus help to meet the objective of clarity, the European Union should publish with the final Treaty a detailed explanation of how each of the objectives affects citizens as individuals. (paragraph 65)

Competences

326. The use of Union competence is expressly stated to be governed by the principles of subsidiarity and proportionality. What is not said, though it may be implicit or be implied from Article

I-7, is that the exercise of Union competences is also governed by the need to respect fundamental rights. We believe that this should be made express in Article I-9. (paragraph 69)

327. The reference to “competition” being a matter of exclusive competence, though qualified by the phrase “necessary for the functioning of the internal market”, is still confusing and needs clarification. (paragraph 71)

328. We note the Government’s assurance that the draft Treaty “for the most part clarifies rather than alters the current division of powers”. The list of exclusive competences is short and according to the Convention’s Praesidium reflects the list of exclusive competences under existing Treaties. We accept this assurance. Article I-12(2), however, appears to give a power to amend the list in the case of concluding international agreements and we would welcome an explanation of the effect of this provision. (paragraph 72)

329. We note the definition of shared competence in Article I-11(2). We would welcome further explanation of where the boundaries of shared competences will be set and who will have jurisdiction to settle disputes. (paragraph 73)

330. Article III-217 (Common Commercial Policy) appears to create a simpler regime than applies under the Nice Treaty, which we welcome, but the Article remains complex and the Government should explain this provision. (paragraph 75)

331. The Government should provide a clear statement of the nature and extent of the new competences that would be accorded to the Union under the draft Treaty. As a contribution to accountability, the implications of these changes to the Treaties should be explained and justified to Parliament. (paragraph 76)

332. In addition, as these will be matters over which national parliaments will lose competence, Parliament must, on the specified occasions, have an opportunity to express a view on the proposed changes before the Government signs the Treaty. What we propose is a new procedure, in addition to the normal ratification process that will take place once the Treaty is signed. As we have already stressed, under the ratification process Parliament can only accept or reject the Treaty, not amend it. It is therefore essential, where the competences of national parliaments are at stake, to find new ways of involving Parliament at an earlier stage. (paragraph 77)

333. Interested parties should be consulted as soon as possible so that the Government is fully informed of concerns as detailed discussion in the IGC proceeds. It is essential that such detailed consultation is begun by all the relevant Government departments well before any legislative measures begin to come forward that would have an impact on businesses and consumers. Only with such detailed supporting work will what is proposed by the draft Treaty be able to deliver a genuine enhancement of the Union’s efficiency. (paragraph 78)

334. The Government welcomed the Flexibility Clause (Article I-17) provided that CFSP was excluded from its provision. Clarity in this regard is essential - it is simply too dangerous to leave the status of CFSP unclear - and we accordingly recommend that the Government ensures this. (paragraph 82)

335. The Government must also satisfy itself and Parliament that the new provisions, including those on shared competences in Article I-13, are not so open-ended that they could lead to a considerable expansion of European Union activity. (paragraph 83)

336. If national parliaments are to have a meaningful role in the context of Article I-17 their views on the *vires* and merits of a proposed extension of Union competence should be fully taken into account. The current provisions accordingly need to be strengthened to this effect. (paragraph 84)

337. In addition, any proposal to use the flexibility provision in Article I-17 to increase the competences of the European Union should not be supported by the Government without the prior approval of Parliament in each case. We call on the Government to state clearly whether they accept this new safeguard which we also recommend should apply to any extension of EU competence in criminal law and procedure. (paragraphs 85 and 274)

338. Nevertheless, subject to these caveats, we are satisfied with the safeguards provided in the new flexibility clause and would wish it to be retained as a contribution to the enhanced efficiency of the Union. (paragraph 86)

Qualified Majority Voting (QMV)

339. The draft Treaty does not propose to extend QMV to matters of tax or social security. We encourage the Government to stand firm in resisting any attempt to amend the draft Treaty to do so. (paragraph 93)

340. It is clear that the draft Treaty will not alter the way the economies of the EU will work. On the question of principle, however, we urge caution on the part of those strongly objecting to QMV in a particular area. This is because we agree that, in a Union of 25, the unanimity provision could make the decision-making process unduly rigid in some areas. (paragraph 96)

341. The revisions to QMV are clearly designed to enhance the efficiency of the Union. Concerns about its use, however, remain and, in the interests of clarity and accountability, we accordingly urge the Government to set out, in detail and as a matter of urgency, those areas where concerns over QMV remain. (paragraph 97)

Subsidiarity

342. Although we have previously pressed for a red card, we accept that the subsidiarity mechanism as it stands in the Protocol to the draft Treaty is intended to strengthen democracy in the EU. To do so, however, the mechanism must work, and must work effectively. The Government must accordingly satisfy Parliament that the yellow card will indeed be an effective mechanism. We consider that the yellow card procedure requires further safeguards and to this end we make a series of recommendations to strengthen what is proposed in the draft Protocol. (paragraph 115)

343. The Commission's reasons for responding as it does to a yellow card should be detailed, should relate directly to the concerns expressed by national parliaments and should be promptly transmitted to national parliaments and to the Presidents of the European Parliament and the Council of Ministers (to whom the Protocol provides for national parliaments' concerns to be conveyed.) (paragraph 116)

344. We also recommend that the Protocol's subsidiarity procedure should extend to issues of proportionality, that is cases where the Commission is thought to be acting correctly but too intrusively or too heavy-handedly. Although we can see an argument that concerns about proportionality will be less clear cut than those of subsidiarity, and the mechanism thus harder to operate, we nevertheless consider that, to enhance the democratic safeguards provided by the yellow card procedure, it should extend to proportionality as well as subsidiarity. We are thus pleased to see that our Government is pressing for this. (paragraph 117)

345. The draft Protocol also needs to make it clear that the proposed subsidiarity mechanism applies at every stage of every legislative proposal. (paragraph 118)

346. Looking to the role of national parliaments, we first recommend that this House develops a strong internal procedure for the subsidiarity mechanism, drawing on co-operation with the Commons where appropriate but recognising that each Chamber will have an independent vote. Once the draft Treaty has been agreed, we will report further to the House on the mechanics of operating the subsidiarity mechanism. (paragraph 119)

347. An effective subsidiarity mechanism will also require resolute and efficient collective action by national parliaments to ensure that concerns are shared within the timescales set by the Protocol. (paragraph 120)

348. We recommend that national parliaments develop a system to allow the collective recording of subsidiarity objections by a simple means – preferably by way of contributions by each national parliament to a special website. National parliaments, again acting collectively, should appoint a monitor to count objections and notify the Commission when the threshold is reached. (paragraph 122)

349. Overall, we consider that a subsidiarity mechanism with these additional features would indeed represent an important development of democracy in the Union and, by clearly stating and enhancing the role of national parliaments in helping to ensure that the Commission does not act when it should not do so, would help to confirm that the European Union is a union of Member States. (paragraph 123)

Future Treaty Revision

350. We see no case for the Treaty to make a general provision for future revisions to be achieved other than by the normal process of Treaty amendment requiring unanimity between Member States and a process of ratification involving, in the case of the United Kingdom, the national parliament. (paragraph 128)

351. Nevertheless, we accept that there may be specific areas where some less rigid procedure is required. For example, we have made proposals for more flexibility in the Stability and Growth Pact. To achieve that, the Treaty might usefully make express provision, in specified articles, for those articles to be amended by the Member States acting unanimously rather than by way of the formal Treaty revision process. By specifying the articles in the Treaty now, Parliament would be aware of what was envisaged before the Treaty came to be ratified. (paragraph 129)

352. On a separate point, we do not oppose the provision that, in certain cases, the convening of a Convention would precede the process of Treaty amendment and ratification. (paragraph 130)

What is new in the Treaty?

353. A considerable range of matters have already become subject to EU law in earlier treaties. The extension of EU law in this Treaty seems relatively limited by comparison and we repeat our earlier conclusion that “it is clear that the balance of power is going to shift from the Commission to the Member States”. (paragraph 134)

354. There is, however, a need for clarification whether matters of CFSP fall within the scope of Article 10. (paragraph 135)

355. There is also a need for clarity on the future position of the various existing national "opt-outs" under the draft Treaty. It is unclear whether the IGC will amend the draft Treaty to provide for further opt-outs should they be desired by any Member States. (paragraph 136)

President of the European Council

356. Few details are available about the administrative support for the post. We recommend that the Government clarify whether this would be drawn from the Council secretariat, or whether a *cabinet* would be created and if so what the presentational effect of that would be given the concerns expressed about the potential influence of the post. (paragraph 148)

357. We understand that the term “chair” used in Article I-21 has no equivalent in French but we recommend that the IGC amend Article I-21 so that it consistently adopts, in the English text, the term “chair”. This would make the functions of the post clearer. (paragraph 149)

358. We recommend that the earlier wording be re-instated to make it clear that the postholder cannot hold office in another institution at the same time as chairing the European Council. (paragraph 152)

359. Some may be concerned that there is no opportunity for citizens directly to elect the President of the European Council. It might be argued that this is an opportunity missed to bring the Union closer to the citizens and to make it more democratic and accountable. It is, however, a consequence of the fact that the European Union, a union of Member States, is partly intergovernmental and partly supra-national that some of the normal attributes of a democratic state, including the ability of citizens to remove a government that displeases them, do not apply. (paragraph 153)

360. We would welcome more details on the precise role and functions of the European Council President, including a clearer definition of the tasks to be undertaken in the long-term. (paragraph 154)

361. As a contribution to democratic accountability, we recommend that Member States' Governments formally deposit the President's reports after each European Council for scrutiny by national parliaments in accordance with their established procedures. We accordingly propose that the regular statements to Parliament after each European Council be supplemented by an annual debate in each House on the priorities of the Union. (paragraph 156)

362. As a contribution to transparency and legitimacy, we would welcome a clear and agreed statement by all Member States at the IGC on the process of choosing the Council chair. (paragraph 157)

363. Subject to a satisfactory outcome on these points at the IGC, we would support the post of chair of the European Council as a contribution to a more effective Union. (paragraph 158)

364. We recommend that the Government explains precisely how in practice the process of agreement by consensus will operate in the European Council. (paragraph 159)

Legislative Council

365. We fear that the Legislative Council as proposed could be no more than a rubber stamp, thus undermining the contribution of its open proceedings to democratic accountability. We see no

presumption that open and accountable discussion of policy will be secured in this forum or that significant records of deliberations will be made publicly available. (paragraph 168)

366. If, as we fear, the Legislative Council were simply to endorse the decisions of other Council formations, any public record of its work would be merely formal. The proposal fails to ensure that the Council when discussing significant policy as part of the process of legislating does so in public. There is a risk that the Legislative Council in its present form will do nothing to deliver the openness and transparency required by the Laeken mandate. (paragraph 169)

367. There is no need for a separate Legislative Council to meet in public if each individual council meets in public (and is televised) when agreeing legislation and if a full “Hansard” of proceedings, including details of any votes taken, is published promptly after each meeting. We recommend that the Government seeks to amend the draft Treaty at the IGC to achieve this as a more efficient contribution to transparency and democratic accountability than would seem to be provided by the proposed Legislative Council. (paragraph 171)

Other Council formations

368. The Government should present a proposal to Parliament on how the complex mathematics of chairing Council formations would work. (paragraph 173)

The passerelle

369. In spite of the safeguards we oppose the passerelle provision. It could have the effect of allowing the Council to abolish unanimity in certain areas without any substantive involvement of national parliaments. This would both weaken democratic accountability and undermine the role of Member States. It would also weaken public confidence in the stability of the Treaty’s provisions, in particular in the division of competences. (paragraph 177)

370. We note that the Government too is unconvinced by what is proposed and we urge the Government to secure the deletion of this provision at the IGC. The only circumstances under which a passerelle would be acceptable would be if the Treaty itself specified particular articles in relation to which a passerelle could be used. If the Government decides that it could accept such a limited and specifically targeted provision, the onus will be on the Government to satisfy Parliament that the potential negative effects of the procedure in general can be countered in those specific cases. (paragraph 178)

Majority Voting

371. A dual majority clearly enhances the democratic accountability of the Union by providing a calculation for the weighting of votes which includes both population and states. The dual majority is accordingly welcome. (paragraph 183)

European Parliament

372. We have previously called for proposals from the Government to improve accountability during co-decision and we would wish to see progress from the Government very soon. (paragraph 189)

373. The draft Treaty clearly provides for an increase in the powers of the European Parliament, which in turn enhances democracy in the Union. There is, however, a need for increased powers for the Parliament to be matched with increased responsibilities, including the provision of impact assessments on amendments to legislation. (paragraph 192)

The Commission

374. The Committee supports the draft Treaty’s provisions for the election of the Commission President. As with the chair of the European Council the apparent lack of direct democratic legitimacy is a consequence of the Union being a union of Member States. (paragraph 203)

375. In our view, the draft Treaty’s proposals concerning the number of Commissioners are not ideal in enhancing the efficiency or accountability of the Union. (paragraph 209)

376. On balance, however, we accept the provisions of the draft Treaty. We can also see that the Commission’s own proposals might gain support, particularly to meet some of the concerns of smaller Member States about changes to the Council presidency. We accordingly urge the Government to

study the Commission's proposal closely and report to Parliament on its practicability. (paragraph 210)

Other Institutions

377. We are conducting a separate inquiry into the European Court of Justice. Adequate access to the Court is of fundamental importance. (paragraph 211)

378. The Government clearly wishes the Court of Auditors to remain an institution but to be reformed. We have expressed our support for reforms to the Court (and particularly its size, as one representative for each Member State is already an unworkable system). We accordingly welcome the Government's latest proposals in this regard. It is now imperative that the Government promotes its proposal in the IGC. (paragraph 213)

Institutional change

379. The key test in judging the institutional changes proposed by the draft Treaty is whether they enhance the Union's ability to operate effectively and efficiently and whether they contribute to democratic accountability. We stress again that direct democratic legitimacy may well be difficult to obtain as long as the European Union remains a union of Member States rather than a state. (paragraph 214)

380. We conclude that the proposals for reforming the European Council – and in particular for the reform of the Presidency – meet this test, provided that remaining uncertainties are clarified, and provided that there is adequate accountability to national parliaments. The Commission's own proposals for its reform need further study but the proposals in the draft Treaty are likely to pass the efficiency test. Proposals in the draft Treaty for reforming the European Parliament make a contribution to democratic accountability. (paragraph 215)

Transparency

381. Our own Government has continued in the open spirit of the Convention. (paragraph 219)

382. As a contribution to ensuring that citizens feel that discussions about the future of Europe – their future – are being made openly and as far as possible in accordance with democratic accountability, we urge the Government to release more information about the IGC. (paragraph 223)

383. We regret the lack of published records of the IGC. There should accordingly be regular reports back by Ministers to Parliament on substantive issues being deliberated on at the IGC. (paragraph 226)

384. General public interest in EU affairs in this country remains limited. Nevertheless, the new provisions on subsidiarity have the potential to contribute to a greater public engagement, provided that the word itself is explained. Any objection by a national parliament would be seen as that parliament standing up for national interests. (paragraph 229)

385. Public understanding of the issues raised by the draft Treaty is low and we question how far a document with the significance of a Treaty will ever be wholly understood by every citizen. It is the duty of the government in a democracy not only to convey the Treaty's key themes to the public (as our Government has done) but also to set out fully and clearly what the Treaty means. This must include its effects on Parliament, on the Government, on the role of the Courts and on citizens' right. Whatever the timetable of the IGC, there is clearly a need for a significant enhancement in public presentation by the Government. (paragraph 231)

386. The European Strategy Committee recently set up by the Prime Minister and charged with coordinating the pro-European effort across Whitehall should not only concentrate on the question of British membership of the Euro, but should take a wider remit in informing the public about the EU in general. (paragraph 232)

387. In particular, we urge the Government to direct further resources to discussion and debate in schools and universities, in addition to the material being disseminated by the European Union. (paragraph 234)

388. The Government should also do more actively to heighten the profile of British MEPs and explain the pivotal role they will have in a Union where increasingly decisions are taken by co-decision between the European Parliament and the Council. (paragraph 233)

Democracy: National Parliaments and scrutiny

389. The text should be amended to make it clear that COSAC is a body for national parliamentary committees specialising in European scrutiny to co-operate (along with the European Parliament) and not a body for so-called sectoral committees specialising in individual policy areas. (paragraph 237)

390. Stipulating minimum timescales for scrutiny before decisions can be reached on legislation in the Council will, if the timescales are observed, allow national parliamentary scrutiny of EU legislation to be more effective. (paragraph 238)

391. We will be working with our colleagues in the Commons and with the Government to try to secure the most effective parliamentary scrutiny. But there will be a number of matters where we will be pressing the “Usual Channels” and the House itself to take forward some ideas where we wish to go further than the Government itself would wish. These include finding a means to strengthen the effect of the House’s scrutiny reserve resolution. Appropriate additional resources will be required. (paragraph 240)

392. Given the comparative remoteness of the European Parliament and MEPs, Article I-45 underscores the need for national parliaments and individual parliamentarians to be aware of, and react to, developments in the Union both through the formal process of Parliamentary scrutiny and in other ways. (paragraph 244)

393. The Government must, ensure that answers to questions concerning the separation of executive and legislative functions are provided during the course of the IGC. (paragraph 248)

394. Overall, it will not be easy to persuade the individual citizen that the draft Treaty brings them any new or substantially improved rights, or provides any detail on how their participation in the democratic life of the Union can be enhanced. The Government will need to explain more clearly why this is so. (paragraph 249)

395. As a contribution to transparency, we urge the Government to revisit during the IGC the right of access to documents. (paragraph 250)

The Charter of Fundamental Rights

396. We welcome the changes to the provisions regarding the Charter. We seek a specific assurance that the safeguards applied to the Charter in the draft Treaty are indeed binding on the Commission. We also question how far the efficacy of the provisions of the commentary will withstand the development of case law by the ECJ. (paragraph 257)

397. We seek an assurance from the Government that, were the Charter to be omitted, alternative means would be found of clearly re-assuring the citizen that the draft Treaty enhances human rights. (paragraph 258)

398. We would welcome further clarification of the effect accession to the ECHR would have on any decision to adopt the Charter. (paragraph 260)

Freedom, Security and Justice

399. We welcome the express reference to scrutiny of Europol by national parliaments and the European Parliament, which reflects the Committee’s recommendations. However, we would like to see a specific reference to ‘scrutiny’ being also inserted in the provision relating to Eurojust. (paragraph 265)

400. We welcome developments on border checks, asylum and immigration. The Committee has endorsed the concept of financial burden sharing. The Committee also noted with approval that a specific legal basis for integrated border management, along with the merging of the Pillars, would subject border control measures to a high level of judicial control and parliamentary accountability, although it remained uncertain whether it would lead in time to the establishment of a European Border Guard which we would oppose in line with an earlier report. (paragraph 267)

401. We welcome the limitation of action in the field of criminal procedure to cases having a cross-border dimension, which is in conformity with the recommendation in our earlier Report. We also welcome the tightening of the wording on the admissibility of evidence, but regret that the adoption of such rules remains subject to majority voting. (paragraph 271)

402. We welcome the safeguards in the provision on criminal law. However, we are concerned that Articles III-171(2)(d) and 172(2) would permit the extension of EU competence in criminal law and procedure without the need for a Treaty amendment and thus for ratification by national parliaments. We accordingly call for any such extensions of competence to be subject to the prior approval of

Parliament in each case (as we have recommended in paragraph 85 above (Flexibility Clause)). We note that the Foreign Secretary has told the House of Commons: “we will oppose...measures that would undermine our system of common law and criminal law”. (paragraph 274)

403. Article III-175 (European Public Prosecutor) is a surprising and undesirable inclusion in the Treaty. We recommend its deletion, although the provision for unanimity in this case means that any one Member State could veto any proposal actually brought forward. (paragraph 276)

404. It is questionable whether Eurojust should be given the open-ended brief conferred by Article III-174. It would be preferable to define Eurojust’s mandate on the basis of specifically enumerated offences. (paragraph 277)

405. A defined exhaustive list of offences would be preferable under Article III-177 (possibly set out in a Protocol annexed to the Treaty). (paragraph 279)

Security and Defence

406. We urge the Government to recall in the forthcoming negotiations the view expressed to us that “none of these structures pretends to provide an operational EU military command structure either at the strategic or the tactical levels. There are no standing EU headquarters (just as there is no EU standing force). Any such EU operational command structure would duplicate existing NATO and national assets”. (paragraph 283)

407. The Government’s White Paper made clear its intention to resist the inclusion of any security guarantee in the new treaty which could rival or come to replace the security guarantee established through NATO. We fully support the Government in this. (paragraph 285)

408. We strongly support the creation of the European Armaments and Strategic Research Agency since it could improve the capabilities and inter-operabilities of the armed forces of Member States, but care needs to be taken to ensure that it does not become a tool for protectionism or constrain the ability of Member States to order armaments independently. (paragraph 286).

Foreign Policy

409. We urge the Government to negotiate the role of the Union Minister for Foreign Affairs with extreme care. The person appointed to this post must remain firmly based in the Council, accountable to Member States. In order to make the status of the post less susceptible to unnecessary suspicion, we propose that a better job title be found, perhaps “Foreign Affairs Representative”. (paragraph 296)

410. We are concerned that the Minister have sufficient institutional support. We support the creation of a ‘Joint European External Action Service’ which would bring together all the present Commission External Relations staff with Council staff. (paragraph 297)

Decision-making in foreign and security policy

411. We recommend that Article III – 201(2)(b) be amended by deleting the words “or that of the Minister” so that it clearly states that any implementing decision based on a proposal coming from the Minister must be preceded by a unanimous European Council request for such a proposal. This is particularly important since the Minister will have formal right of initiative across the whole area of CFSP, including defence (paragraph 302)

412. We wholly resist the inclusion of a catch-all passerelle clause in the draft Treaty. Having a passerelle clause for CFSP, with the safeguards we set out in paragraph 178, could be of value in the interests of some flexibility. (paragraph 303)

413. We are satisfied that Article III-201 (4) provides a sufficient safeguard against any extension of QMV into defence, provided that the Article also catches any attempt to extend QMV to defence issues under the provisions of Articles 39 and 40. (paragraph 304)

414. We strongly support the inclusion of the right of any Member State to require a vote not to be taken by citing reasons of national policy (as set out in the final paragraph in Article III – 201 (2)). (paragraph 305)

415. We recognise that there may be considerable value in having the Union’s Minister speaking in the Security Council but this should not be a mandatory requirement. The word “may” should therefore replace the word “shall”. (paragraph 308)

416. We recommend that there should be a parliamentary Foreign Affairs Committee of the European Union. This should be composed of both national parliamentarians and European parliamentarians. It should be an advisory body and thus not have decision making powers. (paragraph 310)

CFSP-overall conclusions

417. In the CFSP field, the draft Treaty consolidates the EU as union of Member States. CFSP will continue to be intergovernmental, and, as a rule, decided by unanimity. (paragraph 311)

418. The final Treaty may come to increase the effectiveness of how the CFSP is run. Much will depend on the detail of the proposed Minister for Foreign Affairs' role. We are not convinced that enhanced military co-operation between some Member States is the answer to a more effective security policy. (paragraph 312)

419. We remain unconvinced that the draft Treaty goes far enough in ensuring proper parliamentary scrutiny of CFSP. More could be done to increase the openness and accountability of the way the Union conducts CFSP. (paragraph 313)

Recommendation to the House

420. We make this report to the House for debate. We encourage the House to find an opportunity for such a debate during the IGC. (paragraph 21)

APPENDIX 1

European Union Committee

The members of the Committee are:

Baroness Billingham
Lord Brennan
Lord Cavendish of Furness
Lord Dubs
Lord Grenfell (Chairman)
Lord Hannay of Chiswick
Baroness Harris of Richmond
Lord Jopling
Lord Lamont of Lerwick
Baroness Maddock
Lord Neill of Bladen
Baroness Park of Monmouth
Lord Radice
Lord Scott of Foscote
The Earl of Selborne
Lord Shutt of Greetland
Baroness Stern
Lord Williamson of Horton
Lord Woolmer of Leeds

APPENDIX 2

Minutes of Divisions

In agreeing this report, the Committee agreed certain provisions after divisions, as follows:

In the abstract, Lord Lamont of Lerwick moved to leave out “The report concludes that the answer to the first question is yes”.

Content: Lord Lamont of Lerwick

Not-Content: Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, Baroness Park of Monmouth, Lord Radice, Lord Scott of Foscote, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

In paragraph 258, Lord Lamont of Lerwick moved to leave out “We seek an assurance from the Government that, were the Charter to be omitted, alternative means would be found of clearly reassuring the citizen that the draft Treaty enhances human rights.”

Content: Lord Lamont of Lerwick

Not-Content: Lord Cavendish of Furness, Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, Lord Jopling, Lord Neill of Bladen, Baroness Park of Monmouth, Lord Radice, Lord Scott of Foscote, Baroness Stern, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

In paragraph 321, Lord Lamont of Lerwick moved to leave out “We support this approach because the draft Treaty makes plain the intention that the European Union remains a union of sovereign Member States.”

Content: Lord Lamont of Lerwick

Not-Content: Lord Cavendish of Furness, Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, Lord Jopling, Lord Neill of Bladen, Baroness Park of Monmouth, Lord Radice, Lord Scott of Foscote, Baroness Stern, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

In paragraph 340, Lord Lamont of Lerwick moved to leave out “On the question of principle, however, we urge caution on the part of those strongly objecting to QMV in a particular area. This is because we agree that, in a Union of 25, the unanimity provision could make the decision-making process unduly rigid in some areas.”

Content: Lord Lamont of Lerwick, Lord Neill of Bladen

Not-Content: Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, , Lord Radice, Lord Scott of Foscote, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

In paragraph 349, Lord Lamont of Lerwick moved to leave out “would help to confirm that the European Union is a union of Member States.”

Content: Lord Cavendish of Furness, Lord Lamont of Lerwick, Lord Neill of Bladen

Not-Content: Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, Baroness Park of Monmouth, Lord Radice, Lord Scott of Foscote, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

In paragraph 353, Lord Lamont of Lerwick moved to leave out “The extension of EU law in this Treaty seems relatively limited by comparison and we repeat our earlier conclusion that “it is clear that the balance of power is going to shift from the Commission to the Member States”.”

Content: Lord Cavendish of Furness, Lord Lamont of Lerwick

Not-Content: Lord Dubs, Lord Grenfell (Chairman), Baroness Harris of Richmond, Lord Radice, Lord Williamson of Horton, Lord Woolmer of Leeds

Amendment disagreed to.

APPENDIX 3

Previous Reports

Thirty-Fifth Report: The Future of Europe: Progress Report on the Draft Constitutional Treaty and the IGC, HL 150, 15 July 2003

Twenty-Seventh Report: Government Responses: Mid-Term Review of the Common Agricultural Policy: External Implications; and the Future Status of the EU Charter of Fundamental Rights HL 114, 9 June 2003

Twenty-Sixth Report: Government Responses: The Stability and Growth Pact; EU-Effective in a Crisis; and the Future of Europe: Convention Working Group – reports on Defence and External Action HL 112, 27 May 2003

Twenty-Third Report: The Future of Europe: Constitutional Treaty — Draft Articles on External Action HL 107, 15 May 2003

Twenty-Second Report: The Future of Europe: Constitutional Treaty - Articles 33-37 (The Democratic Life of the Union) HL 106, 15 May 2003

Twenty-First Report: The Future of Europe: Constitutional Treaty - Draft Articles on the Institutions HL 105, 15 May 2003

Eighteenth Report: The Future of Europe: Constitutional Treaty - Draft Articles 43-46 (Union Membership) and General and Final Provisions HL 93, 10 April 2003

Sixteenth Report: The Future of Europe: Constitutional Treaty - Draft Article 31 and Draft Articles from Part 2 (Freedom, Security and Justice) HL 81, 28 March 2003

Fifteenth Report: The Future of Europe - Convention Working Group Reports on Defence and External Action HL 80, 31 March 2003

Fourteenth Report: The Future of Europe: "Social Europe" HL 79 7 April

Twelfth Report: The Future of Europe: Constitutional Treaty - Draft Articles 24-33 HL 71, 13 March 2003

Eleventh Report: The Future of Europe: National Parliaments and Subsidiarity - The Proposed Protocols HL 70, 13 March 2003

Ninth Report: The Future of Europe: Constitutional Treaty - Draft Articles 1-16 HL 61, 27 February 2003

Sixth Report: The Future Status of the EU Charter of Fundamental Rights HL 48, 4 February 2003

Minutes of Evidence: The Convention on the Future of Europe (Ms Gisela Stuart MP, Mr David Heathcoat-Amory MP, Lord MacLennan of Rogart and Lord Tomlinson) HL 33, 24 December 2002.

APPENDIX 4

Some views from other Member States

We have sought to determine the views of some other Member States' governments and parliaments on the draft Treaty.

According to the European Report on 10 September 2003:

- Smaller Member States have reservations about the proposed changes to the Commission
- Spain wants to retain its voting weight as agreed at Nice
- Finland wants to review the QMV provisions
- Denmark has concerns about matters of Justice and Home affairs, defence and their euro opt-out.

Our own research on the websites of the governments and parliaments of selected Member States has revealed the following. This is necessarily a selective account, reflecting what we had discovered by the time we agreed the report. It is not intended to be exhaustive or comprehensive but to give a flavour of the debate. We know that a number of other national parliaments, including in Greece and Ireland, are considering the issues raised by the draft Treaty.

Denmark

The Danish Government published a position paper on the IGC in September 2003. In general, the Danish government supports the draft Treaty as a good basis for negotiations, as a good 'compromise between many different interests'. The key-points raised by the paper are:

-The draft Treaty confirms the EU as a Union of Member States 'It establishes that the EU is based on co-operation that is entered into voluntarily by equal sovereign states, which respects the national identity of Member States and the fundamental rights of citizens'.

-The Danish government would want to see a permanent President of the European Council whose 'job description is to contain a delimitation of competence vis-à-vis the EU Foreign minister and the Commission President'. Meanwhile, 'maintaining full and equal rotation of the Presidency of the individual Council formations will, in our opinion, contribute to ensuring that the EU remains deeply rooted in the Member States'.

-Denmark is sceptical of a separate Legislative Council and wishes to maintain sectoral Ministers' responsibility for EU legislation within their areas.

-The Danish government is of the view that present voting rules in the Council are unnecessarily complicated and is open to new rules being adopted. Denmark supports the proposed extensions of QMV but remain firm on unanimity on social and labour market policy.

-The Danish government supports the new composition of the Commission as proposed by the draft Treaty.

-The Danish Government supports enhanced co-operation between Member States in CFSP and is 'open to the view that unanimity does not apply to all issues'. It is also supportive of the proposed new Union Minister for Foreign Affairs, subject to the detailed job description being agreed satisfactorily.

-On defence, the Danish government is prepared to consider a smaller group of countries entering into enhanced co-operation 'provided it is based on clear rules, on equal terms, and is open to all'.

-The Danish government interprets the draft Treaty as providing for enhanced coordination of Member States policy and is supportive of this change. Further, 'we are open to discuss whether the Commission's role is to be strengthened in the procedure for excessive budget deficits'.

-The Danish government wishes to see stronger co-operation in the areas of freedom, security and justice.

Finland

Prime Minister Vanhanen, in his submission to Parliament on 29 August, expressed concern about:

- The idea of a permanent president of the Council. Finland is prepared to accept this proposal, however, provided that 'inter-institutional balance and member-state equality are preserved'.

Moreover, Finland expects the President to have a representational and chairing role rather than a policy role.

- the limited extension of QMV, i.e. Finland is happy about more QMV, including in foreign affairs.
- the openness of the Council. Finland thinks more could be done to increase the transparency of the Council. Note however that Finland does not think a Legislative Council is a good idea.
- a core group of countries pursuing closer defence co-operation in the name of the EU. This sits very uncomfortably with Finland's tradition of neutrality.

However, Vanhanen stressed that all of the above is negotiable. What is **not** negotiable for Finland is the composition of the Commission (if the Prague statement of 1 September of 15 other small countries is anything to go by, this would seem to be the case for most of the small countries). Finland will insist on a one Commissioner per country formula. Moreover, Finland does not see any reason why the IGC must be concluded by December.

The Finnish parliament was generally supportive of the government's position. The Finnish Parliament is not interested the idea of red card/yellow card system. The MPs seem very satisfied with the amount of influence they have over European affairs through their own government - in their view having to deal with the Commission and other national parliaments might not add value.

France

The French government has not come out with any statement except comments by senior ministers - reported on the European websites, but always unattributed - in support of what seems to be a common position of the original six Member States.

The French government has been one of the strongest advocates against unravelling the compromise presented in the draft Treaty. Foreign. According to press reports the French government has linked budget negotiations on the new financial perspectives with the IGC negotiations, threatening Spain and Poland in particular with financial repercussion if they insist on maintaining the Nice voting system.¹³⁶

France, along with Turkey, is also the main country resisting any references to Europe's Christian heritage in the draft Treaty. President Chirac is reported to have said "France is a lay state and as such she does not have a habit of calling for insertions of a religious nature into constitutional texts".¹³⁷

The Assemblée Nationale's EU Committee held a joint session to review the draft Treaty with the German Bundestag's Committee for EU matters on 24 September. The Senate EU Committee met on 30 September to discuss the draft Treaty. Both French Committees expressed their broad support for the draft Treaty as it stands. The Senate's *délégation pour l'Union européenne* considered three key questions:

-Does this project, presented as a 'Constitution', modify relations between the Union and the Member States?

-What changes does the draft Treaty propose to the functioning of the Union?

-Does the draft treaty develop the role of the Union ?

In relation to the first question, the Committee concludes that the draft Treaty does not substantially alter the present balance: the EU will remain a Union of Member States rather than become a federal state. The second section sets out the proposed changes to legislative procedure and the EU institutions. The final section concludes that the Union's competencies are no more clearly delimited in the draft treaty than in the present treaties. However, the draft treaty provides for national parliaments to be able to monitor that the Union does not exceed its competence. The Committee makes the observation that while the draft treaty proposes a clear mechanism for monitoring subsidiarity, nothing comparable is proposed for proportionality.

Overall, the Committee appears to consider the draft treaty favourably as it simplifies the treaties and provides the Union with more effective representation and decision-making structures.

For the French Assembly, see the joint declaration under "Germany", below.

¹³⁶ <http://www.euobserver.com/index.phtml?aid=12921>

¹³⁷ <http://www.euobserver.com/index.phtml?aid=12680>

Germany

The German Government website has a number of articles stating that ministers want the present text to be adopted without intervention at the IGC. The Bundestag, however, in a report by the EU Committee (4 June 2003) offers a different view:

- It agrees that Own Resources should be determined by unanimity.
- The subsidiarity clause should be strengthened, but the report makes no mention of the red card.
- It would like a mention of God in the preamble, or at least a clear reference to religious values.
- The Open Method of Coordination should be limited to exchange of information and experience and not become a decision-making process. Levels of immigration should be determined by the Member States.

Joint Declaration by the Deutscher Bundestag and the French Assembly, 3 October 2003

We take pleasure in sending you a joint declaration on “The Intergovernmental Conference and the European Constitution” adopted unanimously by the European Affairs Committee of the German Bundestag and the Delegation pour l’Union Européenne of the French Assemblée Nationale at a joint committee meeting in Paris on 24 September 2003.

In the run-up to the IGC, we felt it was essential to emphasise the quality of the draft Constitution presented by the European Convention and the need to preserve the balanced compromise it represents. In their joint declaration both Committees also stress their intention to enhance the role of national parliaments in the European process and to closely follow the negotiations at the IGC with the aim of ensuring transparency and democratic legitimacy.

At the COSAC meeting in Stockholm in 2001 the European Affairs Committees of the national parliaments and the European Parliament paved the way for parliaments to play a new and expanded role in the European process. Since the next COSAC (5-7 October) is to take place shortly after the opening of the IGC, it would be important to take this opportunity to demonstrate our common desire to uphold the spirit of the Convention and to ensure close parliamentary scrutiny of the IGC’s work.

Matthias Wissman, MdB

Chairman

Pierre Lequiller

Chairman

Joint Declaration by the Délégation pour l’Union Européenne of the Assemblée Nationale and the Committee on the Affairs of the European Union of the German Bundestag on the Intergovernmental Conference and the European Constitution

Within a matter of days, the Italian Presidency of the European Council will open the Intergovernmental Conference on the European constitution. In light of this occasion, the Délégation pour l’Union Européenne of the Assemblée Nationale and the Committee on the Affairs of the European Union of the German Bundestag jointly reaffirm their support for the draft Treaty establishing a Constitution for Europe, which was adopted by the European Convention On 13 June and 10 July 2003.

Under M. Valéry Giscard d’Estaing’s successful presidency, the best possible outcome has been achieved with this draft, which is a coherent and unified document. The Convention has succeeded, through a judicious combination of ambition and realism, in drawing together the disparate requirements of enlargement and deepening to create a European constitution which will continue to evolve. In doing so, it has safeguarded the enlarged Union’s capacity to act through a clear division of powers.

Notwithstanding the necessarily divergent positions of the various actors, the Convention method, which was initiated by parliamentarians, has shown itself to be a successful new negotiating instrument for Treaty reform, involving the European Parliament, the national Parliaments and governments, and the European Commission. The Convention method has strengthened the parliamentary dimension and democracy in European politics. We therefore welcome the fact that draft Treaty revisions will in future be scrutinized in a Convention process after consultation with the European Parliament and the Commission. This approach will ensure not only more closeness to citizens, more democracy and transparency, but also efficient and future-oriented results.

We endorse the conclusions of the Thessaloniki European Council of 20 June 2003 and its decision on the draft Treaty establishing a Constitution for Europe. We urge the Intergovernmental Conference to respect this draft as a good basis for its work and request that it bring the Convention's open, pluralist and consensus-minded spirit to the IGC's conference table too.

The Convention has supplied the national governments with a sound basis, whose further treatment will be monitored very closely by the German and French Parliaments. We are in favour of a fixed timetable for the Intergovernmental Conference. The successful conclusion of the Intergovernmental Conference is extremely important for the future of the enlarged Union. We urge the Member States to conclude the Intergovernmental Conference within a short timeframe, preferably by December 2003, so that a broad public debate can take place before the constitution is signed on Europe Day, 9 May 2004, just before the European elections take place in June.

We welcome the pledge that the European Parliament will be closely involved in the deliberations at the Intergovernmental Conference. We call on the Heads of State and Government to inform the national Parliaments promptly about all aspects of the Intergovernmental Conference's work. Regular and detailed exchange with the national Parliaments will also ease the way for subsequent ratification. We therefore wish to see an intensive exchange of views between the national Parliaments and the European Parliament in this context. This is possible, for example, at the meetings with representatives of the national Parliaments which are to be organized by the European Parliament's Committee on Constitutional Affairs, and at meetings of the Convention's parliamentary members, as proposed by the Vice-President of the Italian Senate, Lamberto Dini. In this exchange of information and ideas, the European Parliament's observers at the Intergovernmental Conference would play a particularly important role.

The role of the national Parliaments in the European Union must be further strengthened, especially through stronger controls over their governments' actions in European affairs. The draft Constitution grants them more opportunities for participation. In this context, the national Parliaments have a central role as the guardians of subsidiarity. Through this involvement at the start of, and throughout, the legislative process, the national Parliaments will have the opportunity to take on more responsibility, especially through their scrutiny of the Council's work. Moreover, it is important to explore how Europe's significance can be underlined more effectively in the national Parliaments. One option is to proceed on the basis of the proposal made by René van der Linden, the Dutch parliamentary representative in the Convention, that in future, the relevant committees of all the Member States' national Parliaments and the European Parliament should deliberate the European Commission's annual work programme in the same week of sittings. This would reinforce the importance of the Commission's work and parliamentary scrutiny thereof at national level, and would also help to enhance democracy in European politics and therefore encourage the development of a European consciousness.

We are convinced that a key task for the national Parliaments and the European Parliament in the coming months will be to promote broad popular approval for and acceptance of the constitutional process. As the Délégalion pour l'Union Européenne and the Committee on the Affairs of the European Union of the German Bundestag, we therefore propose that the deliberations and outcomes of the Intergovernmental Conference be dealt with, as far as possible, in parallel sittings of the Assemblée Nationale and the German Bundestag.

As part of their close cooperation, the Délégalion pour l'Union Européenne of the Assemblée Nationale and the Committee on the Affairs of the European Union of the German Bundestag will continue to engage in an exchange of information on their positions on the Intergovernmental Conference and hold joint sittings in order to ensure that the historic project to establish a constitution for Europe is brought to a successful conclusion.

Greece

Briefing of diplomatic journalists by Foreign Ministry spokesman Mr. Panagiotis Beglitis:

“The third issue to which I would like to refer is the progress of negotiations at the Intergovernmental Conference. You will already know that the proceedings of the Intergovernmental Conference began with the meeting last Saturday in Rome. The essential negotiations will be held on the level of Foreign Ministers at the meetings they will have, as scheduled by the Italian Presidency, on the margins of the General Affairs Council, and, of course, the political issues that are not resolved on the level of Foreign Ministers will go to the level of Heads of State and Government, the first meeting of whom has been scheduled by the Italian Presidency on October 16-17, in Brussels.

For us, as stressed by both the Prime Minister and Foreign Minister, the Draft Constitution Treaty voices the general balances of the 25. It is a text that we would like to be stronger in the direction of

Federal prospects, but looking at the interrelations realistically, it is a positive compromise, a positive composition of individual opinions and proposals. We believe that the general architecture and structure of the Draft Constitution Treaty must remain as is, because otherwise we risk opening Pandora's box, as the Prime Minister said in Rome, with incalculable consequences for developments in the European Union.

This doesn't mean that the Draft Constitution Treaty does not require additions, changes, or some clarifications, and based on this position we will continue the negotiations on the level of Foreign Minister Mr. Papandreou.

I would like at this point to note two basic issues that Greece will focus attention on during the negotiations. Two issues that have already been brought to the attention of the Italian Presidency, and which were reiterated by Mr. Papandreou at the evening conference of Foreign Ministers in Rome.

The first issue is the composition of the European Commission and the responsibilities of Commissioners. We must say that the Draft Constitution Treaty establishes the principle of "one Commissioner for every member state". Our concern and our proposal refer to the issue of the responsibilities of the Commissioners. We do not agree to the separation of Commissioners into European Commissioners who will have responsibilities and will participate in the College, and Commissioners of, let's say, a second category, to whom ad hoc responsibilities will be given, and who will not have the right to vote and will not participate in the College.

Our proposal is that all Commissioners should have the right to vote and participate in the College. In an attempt to find a compromise solution on this, given that there is support for the proposal contained in the Draft Constitution Treaty, our proposal is that even the Commissioners, the second category of Commissioners, must have the right to vote on those issues for which they are made responsible, and to participate in the College of Commissioners.

This is an issue in which we are particularly interested and on which we will focus our negotiating strategy in the coming period.

The second issue on which we will focus our negotiating tactics is the issue of the qualified majority. Let me remind you that in the Draft Constitution Treaty the majority is defined as consisting of the majority of the Member States, representing at least three fifths of the population of the European Union. We believe that the democratic principle of majority is better expressed - and that possible attempts of a suspending minority might be averted - by the proposal for a majority of Member States consisting of a majority of 50% plus 1, of the population of the European Union.

With this proposal we are much closer to respecting the democratic principle of majority, and we will lay great importance on this during the coming negotiations.

In any case, though, the position of Greece is that the general balance of the text of the Draft Constitution Treaty - its general architecture and structure, as I said before - should not be changed. What is of specific interest to us is that the negotiations be completed within the timeframe provided, so that afterwards there will be time for the completion of the processes of ratification, whether through referendums in the members states, or through national parliaments, as dictated by national constitutions.

There are two important dates before us in 2004. One is May 1, 2004, when the ten new members will formally accede to the European Union, and the other is that of the June 2004 European elections. And for this reason, because of these two important events in the European Union, we believe that the process of negotiations on the Draft Constitution Treaty must be completed soon, so as to avoid any problem with the progress of the European Union and the formulation of a new institutional and political framework."

Monday, 6 October 2003

Netherlands

The Dutch Foreign Minister and EU Minister on 16 September presented to the House of Commons ("Twede Kamer") a report on the 'state of the EU' (De staat van de Europese Unie) which provides background on the Convention and goes through the text section by section stating which points followed the Dutch Government's wish and identifies, albeit briefly, those matters that it wanted included which did not get through to the final text.

On our Government's firm commitment to unanimity with regards to Community Own Resource (Art 53.4) the Dutch Government states: ' it is proposed that the level of Own Resources should continue to be determined by unanimity, Member State ratification and European Parliament consultation'. It

seems the UK line in favour of the UK rebate will be supported (for similar support from the German Bundestag, see above).

The Dutch Government also states that it does not think a specific date should be given for the end of the IGC, 'the overriding criterium for conclusion of the IGC must be the quality of the final product' (p.46) – they are content for the Treaty to be signed in Rome whenever it is agreed.

The Dutch Parliament has not reacted to this statement (as of 17 September).

Poland

RESOLUTION of the Sejm of the Republic Poland of 2nd October 2003 on a Treaty establishing a Constitution for Europe

Compliance with the will of the Nation, as expressed in the referendum on 7th and 8th June 2003, involves Poland's active participation in de-fining the principles of European co-operation. We want to take part in the creation of a European Union as a commonwealth of sovereign states, a Union which combines effective Community mechanisms with respect for cultures and national identities. The Sejm of the Republic of Poland sup-ports the preserving of the principle of unanimity in relation to those issues which affect vital interests of the Members States.

The objectives of the Convention, specified by the European Council in Laeken in December 2001, have been mostly achieved as a result of numerous compromises. The Sejm believes that the future Constitutional Treaty will provide the basis for a new and strong Europe, a Europe founded on respect for the values and rights of every individual in the UE, in which Poland will assume her rightful place within the family of democratic nations who share the values of freedom and solidarity.

The Sejm acknowledges great progress made by the Convention, including, in particular, confirmation of objectives, missions and values determining the idea and practice of integration of communities, incorporation of the Charter of Fundamental Rights into the Treaty, clear specification of competences, simplification of the system of legal acts and also an increased transparency and democratisation of the functioning of the Un-ion.

We support the strengthening of the role of the European Parliament and the extension of its co-decision powers, as well as an increased role of national parliaments in the control of the principles of subsidiarity and proportionality.

The Sejm supports the Government's position presented during the debate by the Minister of Foreign Affairs. The Sejm of the Republic of Poland expects the Polish delegation to the Intergovernmental Conference to:

-Insist on the incorporation of Christian values into the Preamble to the Constitutional Treaty;

-Recognise the Atlantic Alliance as the basis of the European security in the light of new defence initiatives based on cooptation and competitive to NATO;

-Adhere to the principle of, one state - one commissioner" and the principle of collective presidency of the Council;

-Refrain from giving consent to the weakening of Poland's position in the Council of the Union as compared to that guaranteed by the principles adopted in 2000 in Nice, which were known to Poles when they voted in the European referendum. We urge the Government to take a strong position on this issue, and to use its veto power if our reasons are not convincing to the Intergovernmental Conference of the European Union.

The Sejm of the Republic of Poland calls on the Government to include the following phrase in the Treaty establishing a Constitution for Europe, in Subsection 2: "Aids granted by Member States", in Article III-56 paragraph 2 subparagraph c: "aid granted to the economy of certain areas affected by the division of Europe after the Second World War, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division".

Poland's participation in the historic act of European unification crowns great national efforts made after 1989. Mindful of our responsibility to future generations, we have to use this historic chance, and this means that we should be better prepared for accession and for benefit from our forthcoming membership of the EU.

FOR MARSHAL [SPEAKER] OF THE SEJM Tomasz Nałęcz Vice-Marshal

Sweden

The Swedish Government have made a few comments in their annual address - but will be publishing a paper 'later' in the term setting out their full views.

The following excerpt from the address gives a flavour:

“The Intergovernmental Conference on the future of Europe will open on 4 October. A communication on the Convention will shortly be presented to the Riksdag. The Government is seeking broad consensus on the shape of the future constitutional Treaty. Close consultation will be established with the Riksdag during the negotiation process. By and large the proposal presented by the Convention for the division of power between the EU institutions is a good one. Unanimity should continue to apply to decisions related to fiscal and defence policies and to major sections of foreign policy. Sweden will continue to work towards a transparent, democratic Union which combines a common decision-making process with voluntary intergovernmental cooperation.”

The Parliament has no specific documents on this.

The Swedish government published its view on the draft Treaty in a 89 page document presented to the Swedish parliament on 2 October. Overall, the Swedish government is satisfied that the draft Treaty represents a good basis for a new treaty, it would make the Union more ‘effectiveness, democratic and open’. The most significant points of the document are:

- The Swedish government suggests removing the general passerelle clause as having one would, in their view, undermine parliamentary democracy in Member States.
- The Swedish government is not in favour of a special legislative council.
- While the Swedish government is generally supportive of the proposed extensions of QMV, it would not want to see QMV on tax issues.
- The Swedish government would like to introduce QMV decision making on asylum and immigration issues (which is not proposed by the draft Treaty).
- The Swedish government is generally supportive of the proposed President of the European Council and Union Minister for Foreign Affairs but maintain that the positions need to be defined more carefully.
- The Swedish government will not support the proposals for enhanced military co-operation between a small group of member states or including a mutual defence clause for this group.

APPENDIX 5

Transcript of oral evidence taken by Sub-Committee C

THURSDAY 9 OCTOBER 2003

Present:

Bowness, L.

Harrison, L.

Hilton of Eggardon, B.

Jopling, L. (Chairman)

Maclennan of Rogart, L.

Park of Monmouth, B.

Williams of Elvel, L.

Williamson of Horton, L.

MR N WITNEY, Director General, International Security Policy, Ministry of Defence; DR SARAH BEAVER, Director, Europe and UN, Directorate for Policy and International Organisations, Ministry of Defence; MR PAUL JOHNSTON, Head, Security Policy Department, Foreign and Commonwealth Office, examined.

Chairman

1. Mr Witney, welcome. Can I thank you and your colleagues for coming? We are, as you know, interested in the Draft Treaty with particular reference to the elements which concern defence in that. Sadly, Lord Inge is not with us today. Would you first of all like to introduce your colleagues and if you would like to make a short opening statement feel free. Perhaps I could start by asking what are the significant changes which are proposed by the Draft Treaty with regard to defence?

(Mr Witney) I am supported on my left by Dr Sarah Beaver, who is the director for the EU and the UN within the MoD and Mr Paul Johnston, who is the head of the Security Policy Department in the Foreign and Commonwealth Office. I have no opening statement to make. I know you will understand that it will be difficult for us to comment on specifics about what the government's precise negotiating position might be, still less what compromises might emerge from the great negotiation which has still to begin on defence matters, but we shall do what we can to elucidate our understanding of the Treaty and the government's approach to the negotiation as set out in the White Paper. You ask me about the significant changes in the new draft. I have a list here of perhaps seven and a half, which is possibly too long. We are not sure that they are all significant or even potentially significant but for the sake of completeness. Most relate to Article 40 and the associated Articles in Part III of the Treaty and, with your permission, I will just canter down this list. Firstly, there is the updating and expansion of the Petersberg tasks. The details of that are to be found in Part III, Article 210 but that relates to Article 40.1, the first part. Second, there is the development of the familiar language about a future perspective for common defence which is found at Article 40.2. I think that is one of the points we might regard as not especially significant but no doubt we will discuss that. Thirdly, there is the establishment of what is called in the Draft Treaty at the moment a European Armaments Research and Military Capabilities Agency, to be found at 40.3. Fourthly, there is the provision at 40.5 allowing the Council to entrust the execution of a task to a group of Member States, again we think not very significant and essentially a Treaty based development of current Nice arrangements. Next, the introduction of structured co-operation at Article 40.6. Sixth, the introduction of closer co-operation on mutual defence at Article 40.7. Lastly, the removal from the current Treaty of the explicit exclusion of military and defence matters from the enhanced co-operation provisions which are to be found in Part III between Articles 322 and 329. Those are the seven primary issues, we think, but for completeness I would add an eighth which is the new solidarity clause to be found at Article 42 in the first part. I think properly that is more a matter of the common security and defence policy, but it has bearings on European defence as well.

2. That last point is purely with regard to terrorism and manmade disasters? Is that right?

(Mr Witney) That is correct, mutual solidarity in such an event.

Lord Williamson of Horton

3. Thank you for the list. You did comment on one or two that they were not very significant. There is a slight difference, if I may say so, in the existing Treaty provision on the famous words that we spent a long time negotiating about this may lead to a common defence and the current text. I realise that there is still a stop on it but it is a little bit different to say this will lead to a common defence when the European Council acting unanimously so decides. There is a slight nuance which is a little different and it implies that there is a genuine possibility of leading to a common defence and it requires only this further decision. I do not want to make too much of it but the people who proposed the change must have thought there was some difference. Would you care to comment?

(Mr Witney) I accept that point entirely. There is a difference. The move from the subjunctive to the future is a change in language, clearly.

4. As a classics scholar, I am sure you realise there is a significant element of change in that.

(Mr Witney) Balanced by the explicit insertion of the statement that this will only happen when the Council decides by unanimity. I suppose if I sounded dismissive of the importance of this change our view probably is that it is a statement of political intent which is clearly important to some Member States but has no bearing on the real world in the foreseeable future.

Lord Williams of Elvel

5. Can we concentrate on Articles 40(6) and 40(7)? Is the government in favour of a core group of Member States collaborating on defence throughout the EU framework? Has the Berlin meeting changed that? Is the government in favour of the creation of a mutual defence clause for a core group of Member States and has the conversation in Berlin changed any of that?

(Mr Witney) Taking the question of the core group first, the position is that we regard the language here as a little cryptic. There is talk of this core group being defined by higher criteria and there is talk of the core group undertaking more binding commitments. In the White Paper we make clear that we do have detailed military, robust arrangements to provide for flexibility in ESDP and we are concerned that provisions of new forms of co-operation such as possibly this core group should not undermine these arrangements. To a degree, we approach this with caution. That said, we do see potential possibilities and opportunities from this concept. I think the government has been clear that it wants an inclusive ESDP, one in which the fundamentals are agreed by unanimity, an ESDP with which all 25 Member States are comfortable. There is also a recognition that once the Union expands to 25 an effective ESDP may well benefit from provision for some Member States to be more ambitious, to go faster, to do things which other Member States would not feel comfortable to do. To that extent, this is possibly an opportunity. The other thing that is potentially attractive about this is the concept of peer pressure, the way in which it might well be used to leverage European capabilities to encourage people to spend more on defence or produce more effective forces for the tasks of ESDP. At the moment, a cautious attitude. We see potential problems. We see potential opportunities with this.

6. We are not proposing at this stage, as I understand it, to tie in what I will call the Tervuren group?

(Mr Witney) We thought the 29 April summit was perhaps not a particularly happy precedent for small group activity. It is well known that some of the proposals that came out of that the government has had difficulty with. This would, as we read the text, involve clear criteria for the group to come together. We would like it as inclusive as possible and it would involve clear commitment, so no direct read across between the Tervuren group and what might come out of this Article on structured co-operation.

Chairman

7. With regard to the activities of the group of four and the concerns about setting up a command structure which was apart from NATO, I see in a press handout that we have had circulated, in *The Financial Times*, "In a symbolic gesture Paris and Berlin could agree to the military centre being located within NATO's European military headquarters in Belgium." Is that a true reflection and to what extent does that relieve anxieties which were created by the proposal of the four to set up a separate command/control structure?

(Mr Witney) There is no doubt that a certain amount of political symbolism has now begun to attach to the very word "Tervuren". We know that there are anxieties and concerns in the United States about

this. Tervuren has acquired a certain resonance as a place name. Nonetheless, our concerns about this are not really an issue of geography. As the Prime Minister's spokesman made plain shortly after the Berlin summit, we just do not see this as the way ahead. The issue here is the function of a European operational headquarters in Brussels. There are things that we believe can be done with the EU military staff in the centre of Brussels. We see some scope for expanding their capability to undertake strategic planning. We have advocated the idea of an EU planning cell being established at SHAPE to improve co-ordination with NATO but at the moment an operational headquarters in Brussels, whether at Tervuren or not, seems to us not the way ahead, in the words of the Prime Minister's spokesman.

8. I do not think you have answered fully Lord Williams's question about a mutual defence clause.

(Mr Witney) I am sorry. That is 40.7. The starting point has to be the White Paper and what the government had to say there, a fairly categorical statement that we will not agree to anything which is contradictory to or would replace the security guarantee established through NATO. To pick up the words of the Prime Minister's spokesman after Berlin, he said that nobody at that trilateral meeting was challenging the fundamental point that NATO remained the basis of our territorial defence. Our view remains that ESDP is essentially about conducting crisis management operations outside the EU's borders and that collective defence is the province of NATO. As the solidarity clause recognises, if an individual Member State were to suffer attack, it is clearly the case that other EU Member States would not stand by, but the wording as it is currently presented in this Article 40.7 is difficult. This must fall under the heading of the sort of language which the government was alluding to in the White Paper when it said it could not support all the proposals in the current Draft Treaty as currently drafted.

Lord Williams of Elvel

9. There has been some discussion of an extension of the Petersberg tasks. Does that fit anywhere near government thinking?

(Mr Witney) I think we are very happy with what is proposed for the extension of the Petersberg tasks. They do not in practice extend the range or difficulty of the tasks being set out. The most challenging task is peacemaking and has been included for a number of years. That has been, if you like, the top of the menu in terms of challenge. What the revision of the tasks does is to round out the range of activities that we could see ESDP tackling and reflect the realities as we have seen them develop in Afghanistan, in Macedonia and as we have seen potential for future possible ESDP engagements.

Lord Maclennan of Rogart

10. On mutual defence, Article 40.7, this is not very different in its formulation from the provision in the Western European Union Treaty under Article 5. Why is there concern about it and what sorts of changes would make it more acceptable?

(Mr Witney) On the first part of the question, the WEU commitment predated NATO and when NATO arrived it was made explicit that the commitment there was to be discharged through NATO. To benefit from the WEU guarantee, you must be both a member of the European Union and NATO. That seems to us a rather different proposition from what we find in the text here which is plainly a Treaty for the European Union as such. It is possible that one of my colleagues is more expert on this and could elaborate.

(Mr Johnston) That is the main point. The Western European Union guarantee was never in any sense a guarantee that was backed in terms of the WEU by a military structure that would be capable of providing collective defence because NATO was already there. In the presidency report on ESDP endorsed by the European Council at Nice which effectively set up the permanent architecture of the European Union, the Council recognised that NATO remained the basis for the collective defence of its members; and emphasised specifically that the European Security Defence Policy was about conducting crisis management tasks. That seemed to us an entirely appropriate and complementary division of labour between the European Union and NATO. It is underpinned by the EU/NATO permanent arrangements. One of the things that has changed since the adoption of the ESDP permanent arrangements at Nice is of course 11 September and the much greater political and practical recognition of the dangers posed in European countries by the threat of terrorism or of natural disasters, which is why the Treaty recognises this with a cross-pillar, in the old terms, solidarity clause. We regard it as a political reality that if a Member State was attacked, using all the instruments at its disposal, the European Union and its Member States would want to help. We see, as our White Paper says and as the Prime Minister's spokesman says, that commitment to helping out a partner in

trouble as being very different from a collective EU territorial defence commitment, in particular one that appeared to sit alongside NATO rather than being exercised through NATO. One has the additional point that, whereas all WEU Member States were NATO Member States, that is not the case in the European Union and still will not be the case after enlargement. You will have a number of EU Member States who are not or are not likely to become members of NATO.

11. I remain a little unclear as to what it is you take exception to in the language and drafting of subsection (7) which does actually spell out in the second last sentence that participating Member States in this sphere shall work in close co-operation with the North Atlantic Treaty Organisation. The language is very close to that of the WEU and I am bound to say it seems a little as though you are starting at shadows.

(Mr Johnston) One of the points about which we are unclear relates to the Article 3 elucidation of this Part I Article which makes it clear that what one is talking about here is not a provision that applies to the European Union as a whole, but suggests that a small subset of states would establish this mutual defence commitment amongst themselves. That is one of the areas lacking in clarity which we think the IGC needs to probe. This is not solely a British preoccupation. There have been quite a few Member States both in the Future of Europe Convention, as you will know Lord MacLennan, and in the general discussions rather than specific discussions of a draft constitution, who have raised concerns about this and how it relates to the other forms of co-operation provided for. It is worth noting that the reference to Article 51 of the UN Charter implies something more than simply providing help to a Member State facing problems. It does imply some form of collective self-defence. We start from the position as set out in the White Paper that nothing should be done that would undermine NATO's security guarantee but, with that position we are prepared, as we have been ourselves in advocating a solidarity clause, to look at ways in which one can recognise and turn into practice the reality that in the modern security environment the EU is a community of nations with common security interests. We would not stand idly by if another member was in trouble. It is a question of making sure that whatever the EU does complements rather than in any way undermines the basis of what NATO does.

12. Is that not exactly what this sentence provides? Not all members of the EU are members of NATO and it would be difficult to go further than that without ruling out any kind of mutual defence arrangement affecting non-members of NATO.

(Mr Witney) There is also a more fundamental point here. Our vision of ESDP is that it is part of crisis management. It is there to serve the purposes of the common foreign and security policy. We are not attracted to the idea of ESDP concerning itself with territorial defence. We see that as the business of NATO and we regard ESDP and NATO as two complementary instruments with distinct roles. To associate ESDP more closely with armed aggression against the territory of a Union Member seems to us something of a misdirection of what is the important, main thrust of ESDP. That is why we can regard this as one of those articles which the government would find difficulty in accepting as drafted here.

Baroness Park of Monmouth

13. The Solana strategy, which we were told I believe is not going to be part of the Treaty, is nevertheless being taken quite seriously and is at the IGC going to be recognised as an acceptable policy. Would you not say that one of the problems in all this is that more and more the EU or rather that group of enhancement people in the EU is moving towards taking on defence, which is a very different thing from the Petersberg tasks on limited peacemaking? I notice that the strategy speaks about defence very frequently and says that there is no reason why we should not "be able to sustain several operations simultaneously. We need to develop a strategic culture that fosters early, rapid, and when necessary, robust intervention and operations involving both military and civilian capabilities". The whole tone of that is going to encourage, is it not -- and here I am entirely with you -- that group of states who wish to set up their own particular group to behave more and more as if Europe is in practice and in reality self-sufficient? It is not just a question of the Americans not liking this; it is a very dangerous issue for us because our troops are already double hatted and treble hatted and now they are probably going to be quadruple hatted. It is still only one soldier. Would you not agree that one of the problems is that sidelining NATO -- and this does sideline NATO -- is going to bring appalling problems?

(Mr Witney) We rather like the Solana strategy. It seems to us to focus on exactly the right things. It deals with the true threats that ESDP should concern itself with as being the global threats that are coming from terrorism, weapons of mass destruction, state failure and ethnic conflict. These are things

which are out there, beyond the borders of Europe, nothing to do with the collective or territorial defence of Europe. We think that strategy is heading in the right direction. You are quite right. It is an encouragement to the development of robust and realistic military capabilities for Europe to take its share of responsibilities around the globe. That does not rule out -- and I am sure it is acknowledged in the strategy -- that Europe also has a great many other instruments to bring to bear on dealing with international crisis management. We see it as one of the comparative advantages, if you like, of the ESDP that so many other instruments, civil as well as military, can be brought to bear on these circumstances of state failure and so forth.

Chairman

14. Mr Johnston referred to the WEU. Have we some sort of timetable for the demise of the WEU?

(Mr Johnston) I do not think so. There was, as I recall, a declaration by the WEU Council in 2000, in which the WEU Council agreed that the WEU had now served its purpose. There was a collective agreement among the governments concerned that ESDP, now being well on its way to being up and running, the operational purpose of the Western European Union had ceased. It was in effect put in cold storage. There is still a continuing WEU formally in the sense of the Assembly and it not having all been wound up. Part of the reason for that was a recognition that there was going to be after Laeken, in a different part of the forest, a convention on the future of Europe and a future Inter-Governmental Conference. The decision was taken, probably wisely, not to decide what would be the timetable for the rest of the WEU's future until it was clear what was happening in the IGC on CFSP and ESDP. My understanding is that that is still the position.

Lord Williamson of Horton

15. I would like to come back to Article 40, paragraph 2, but this time to the second paragraph of it which is the NATO paragraph. We have had acres and acres of column inches over the last year about the relations between NATO and the European Union and the rapid reaction force, the European non-army and so on. It is very important that we should be absolutely satisfied that this text which is 40(2)(2) is really satisfactory for us, because it is a definitive text at the end of rather a long saga. It is going to be quoted again and again. I quite understand as a long term civil servant myself that you cannot say absolutely whether the government will query one word or another word in these texts in the IGC, but basically do you think that this definitive part of Article 40(2) does provide the belt and braces that we need?

(Mr Witney) My colleagues will correct me if I am wrong but my understanding is that these words are verbatim from what has been in the Treaty on European Union before and therefore are a tried and trusted formula.

(Mr Johnston) Article 17 of the Nice Treaty has the very same formulation as the second subparagraph of Article 40(2).

Lord Maclennan of Rogart

16. 40(7) seems to provide belt and braces. It seems the government needs to have assurance that nothing in the provision for mutual defence will undermine the commitments and obligations of the NATO arrangements and makes it the more difficult to understand the not very clearly specified objections to Article 7. Article 2 recognises that different members of the Union have different views about how their common defence is to be realised but Article 7 is dealing in part at least with the situation which is not covered by the NATO obligations. Why, because we are members of NATO, should we seek to exclude from mutual defence provisions within Europe those who are not members of NATO? Is it the view that they should sign up to NATO? What lies behind this objection? It remains elusive and unclear. What language in Article 7 would supplement Article 40.2 and make it more acceptable?

(Mr Witney) I am not sure I can improve on what I have tried to say about Article 40(7) in itself. We are concerned that it looks duplicative of the NATO guarantee.

17. Which does not apply to other non-members, if I may interrupt.

(Mr Witney) Non-members who have not joined NATO so far have not felt the need for a mutual security guarantee.

18. Why should they now not be permitted to have it?

(Mr Witney) Our concern is that ESDP, in the government's view, should be directed towards crisis management activities beyond the boundaries of the European Union and that collective defence should be left to NATO and that you would get into a position of unnecessary duplication between the two organisations if we went down the track of collective defence as part of the European Union's mandate. There is the further concern that we do not seem to have, judging by Part III of the Treaty, a very inclusive proposal here. It is for a limited number of Member States. As for whether our concerns should be adequately regarded as covered off by what you find in Article 40.2, this comes down to the overall feel and balance of the text in the round, the possibility for individual Articles to be taken and used out of context in the Treaty overall. I am afraid I cannot speculate as to exactly what language or negotiating positions might be acceptable, other than to indicate the government's discomfort with the draft as it currently stands on 40.7 and the reasons for it.

19. It really does sound increasingly like a spoiling operation to prevent countries that are not covered by the NATO mutual assistance arrangements from having any under this Treaty. You are saying it is all right for them to have ESDP arrangements but they may not have mutual security arrangements. I cannot understand why the government would take this view. It is quite clear from the drafting of Article 7 that it only applies to those who wish it to apply.

(Dr Beaver) The countries that are not in NATO have not expressed a wish to be part of such a mutual security guarantee. Indeed, they would have difficulty because many of these are by constitutional arrangements neutral countries. Our discussions with fellow Member States suggest that other countries would also have a difficulty and would not wish to see a mutual security guarantee through the EU.

20. With respect, I think they may be allowed to speak for themselves. That has not surfaced in the Convention. It may be the case but that remains to be seen. What we are looking at is the attitude of the British government to this. It looks to me just like a spoiling operation designed to distinguish us from the non-members of NATO and saying, "Up with this we will not put because you are not members of NATO."

(Mr Johnston) In conceiving the European Security and Defence Policy, we did so against a backdrop that this had been an issue which had been controversial in European and domestic terms. It is in some ways quite remarkable that a community of Member States in which you have full NATO members, one country which is not fully in NATO, a Member State, Denmark, which has an opt out from ESDP and a number of Member States who are not in NATO at all, could have all coalesced around a project which defined its ambitions in terms of the Petersberg tasks and its scale in terms of the headline goal, has developed ESDP very quickly over the last few years, and has been conducting three operations this year. I think there is a concern which is not solely a British concern but has come up with a number of other countries that the clear parameters of ESDP, in terms of doing crisis management outside the European Union, are not fully reflected in this text and that there might be political difficulties for a number of countries if it looked like the European Union was being moved from an organisation with the military capacity to support its foreign and security policy towards third countries towards an organisation which was developing either as a whole or as a subset some sort of embryonic mutual defence commitment.

Baroness Park of Monmouth

21. Surely there is the practical point that the members of the EU recognise that if they were dealing with armed aggression they could not do it without NATO.

(Mr Johnston) Yes.

Chairman

22. I know this is something Lord Inge is bothered about. Is there not a danger that we have here a grey area, a sort of wilful misunderstanding between those states within the Union who wish to see a much stronger European military capacity in competition with NATO and those other states who think in the way you have described this morning that NATO is the prime area of defence co-operation? In 40, paragraph 2, when it talks about a common defence without really setting out what "common defence" means, are you not worried that there is this grey area between so-called common defence and reliance on NATO which means that various groups or individual states can go their way but in the end it will end up with a mighty row in years to come?

(Mr Witney) Whether or not the aspirations of Member States who do not think entirely like us are to act as a counterweight to the US, it is a fact with which we have had to live for many years that there

are Member States who have a long term aspiration for something called common defence. It is something that I do not think successive British governments have been particularly enamoured of as an aspiration. We have to recognise that there will be different views within the Union and we have lived with that since the words "common defence" were first introduced at the time of Maastricht. The language is evolving slightly here but not as fast as the pace of the actual development of a real, practical, useful ESDP which we strongly support.

Lord Harrison

23. I notice in your CV that at one time in your life you worked on the Common Agricultural Policy for the European Community Department before seeking refuge in a secondment to the Ministry of Defence. I must say how much I sympathise with anyone who seeks refuge from the CAP. I would like to turn to the creation of an armaments agency which is proposed in Part I, Article 4(3) and Part III, Article 212. I would like you to give us the views of HMG in the light of a couple of comments. First of all, perhaps you could say what the government thinks would be useful about an armaments agency, especially in the light of Lord Robertson's general comments about the money that the European taxpayer pays and hence the British taxpayer pays, and whether we get value for the money we put into common defence as a whole. Of course the creation of an armaments agency may help to ensure that our money is better spent. Could you say a little bit about what are some of the problems which you envisage with the creation of such an agency? It has been put to our Committee that it could be vulnerable as a tool for protectionism or indeed constrain the ability of Member States to order armaments independently. Perhaps you could balance those two and say why the government on the whole does favour the armaments agency, which I think it does.

(Mr Witney) Yes. The government does favour the creation of this agency and the only thing that we have a particular problem with about this is simply the title, as is currently reflected in the Treaty. The full title is European Armaments Research and Military Capabilities Agency. We think it has that the wrong way round and that the starting point for the agency's activities should be capabilities. The European Council Thessaloniki conclusions produced an alternative version. It is more of an essay than a title: "An inter-governmental agency in the field of defence capabilities development, research, acquisition and armaments." It is not just a semantic point. Our fundamental concern about what the agency should focus on is the development of Europe's defence and military capabilities and, in support of that, what could be done to extract better value for money out of the defence technological and industrial base and ensure that that base prospers. We have a very clear sense of priorities. The defence industry is there to support European defence ministries and their armed forces and not, as perhaps some others have tended to think, the other way round. This particular issue is being quite intensively negotiated through the normal European channels and we like to think we are making good progress. All Member States have explicitly agreed that the agency should be capabilities driven. They accept that work in relation to strengthening the European defence technological and industrial base must be directed at creating an internationally competitive base. It is absolutely no use attempting to establish Fortress Europe or constraining people's options to buy military equipment overseas, significantly from the United States. At the moment, we feel that the way the discussion within Europe on the agency is going is quite satisfactory. We do strongly support Lord Robertson and collectively European states spend in the order of \$200 billion or 200 billion euros a year on defence and we do not get enough out of it. A clearer view on what we actually need in the way of capabilities, a clearer approach to seeing where we can harmonise our requirements, do things together and achieve economies of scale hopefully will mean that that money is better spent.

24. What about those two possible criticisms that it will be used as a tool for protectionism and constrain the ability of Member States to order armaments independently? Do you have those worries?

(Mr Witney) It has been a debate which we have been engaged in for some months to establish the consensus that this is an agency fundamentally directed at making sure that we get the tools for the job, not just in terms of armaments but in terms also of force structures and military capabilities in the round and not as a benefit bonanza for the defence industry. Defence industrial policy is always tricky ground. It can never be entirely divorced from the very particular position of governments as the sole customer for their industries. All governments have concerns for employment. We know that the European Commission is interested in finding ways to promote and support defence industries within Europe. I am sure this is a debate about the exact balance between looking after industries and promoting capabilities that will continue. We think that on balance this is a good proposal and we are tolerably confident today that the agency will come out with the right pedigree.

(Dr Beaver) One of the things we have been discussing in our more detailed negotiations in Brussels is how the agency might operate. We have made it clear to our partners that we would expect to see the agency working for the progressive adoption of the kind of agreements that have been LoI framework agreements and any procurement to be done through OCCAR which involves the renunciation of the narrowly based *juste retour* principles. Although some countries would not necessarily be able to sign up for LoI framework agreements, I think there is a general acceptance that we might be able, through the agency, to encourage those states to at least adopt some form of adaptation of those agreements. I think it could be quite a useful instrument for opening up the European defence market.

25. I am very grateful to Dr Beaver and Mr Witney for those answers with which I wholly agree. My criticism therefore is this: is the government not being lukewarm about this? Is this not an area which we should really drive home with enthusiasm because of the kinds of benefit in terms of how it would strengthen our defences and so on, as well as the Robertson point about taxpayers getting value for money?

(Mr Witney) I do not think we are being lukewarm. It is mentioned in the White Paper as an innovation which the government welcomes. Dr Beaver was in Brussels last week pursuing this. I shall be in Brussels next week pursuing it. It is buying up quite a lot of our time at the moment.

Lord Williams of Elvel

26. I am trying to penetrate the thicket of language here. Does this particular paragraph allow for a move towards interoperability?

(Mr Witney) The concept of the agency is very much in terms of ensuring that the capabilities that we develop are indeed able to work together to meet the needs of operations as ESDP is beginning to undertake them. There is a recognition that much of the basis for interoperability within the European Member States is inevitably all the good work that NATO has done for 50 years on standardisation and standard procedures, but the large, central thrust of the agency proposal is that Member States should come together, understand and agree collectively what are the capabilities that they need to generate together, be able to field together, and therefore interoperability is very much part of the equation. Whether we have the language that reflects that ----

(Dr Beaver) We are trying to develop a more detailed specification of what this agency would be trying to do. We are not content with the language that we have in 212 where it says "Evaluating observance of the capability commitments given by Member States." What we see the agency doing is taking a much more proactive role in assessing and evaluating the contributions of Member States against agreed criteria, one of which, although it is not spelled out, would be interoperability.

(Mr Witney) Mr Johnston has just pointed out to me that at Article III- 212, subclause (b), there is reference to promoting the harmonisation of operational needs which is the ghost at least of this interoperability idea.

Baroness Hilton of Eggardon

27. Can we go back to peacemaking, crisis management and the Petersberg tasks and so on and ask you to speculate about what situations you think the EU would be involved in. In Bosnia, we needed United States assistance to be effective. Most other operations outside Europe have been individual countries like ourselves and Sierra Leone. What sort of scenarios do you see as being appropriate for peacemaking?

(Mr Witney) We are still very much at the foothills of this enterprise. The Helsinki Headline Goal set quite an ambitious target for European capabilities to be achieved by the end of this year and at the mid point of this year, when Thessaloniki took stock of how far we had got to, there was acknowledgement that there was a degree of operational capability achieved across the range of the Petersberg tasks but limited and constrained by recognised shortfalls. We have a way to go. After the hold-up over Berlin plus, we have had less than 12 months in which ESDP has been there ready to operate, with its operations in Bosnia, Macedonia and, most recently, Bunia, which have all been good learning and development experiences. We are by no means even at the first target point that we set ourselves in this enterprise and therefore the scope of what could realistically be undertaken tomorrow is still limited and constrained. The aspiration is clear. At the highest end of the activity, it would be peacemaking, which would be the separation of warring parties. The headline goal was intended to produce a capability to tackle that sort of task, modelled on some of the experience of the Balkans in the 1990s. In what scenarios could one envisage peacemaking activity taking place? I think we must think of ethnic conflict situations, probably in a broadly consensual diplomatic or political

environment, but where maybe the writ of the central government does not run or where there are still parties who are determined to pursue their conflict and obstruct the diplomatic or political process. The Balkans have shown recent examples. There must be other examples in Africa which one can only speculate what might emerge.

28. The Balkans obviously are a European concern but countries beyond Europe's borders surely should be under the auspices of the United Nations rather than a separate EU initiative? That is what I find rather puzzling. Surely we should be going in at the request of the United Nations rather than an EU initiative?

(Mr Witney) That is exactly right. That was indeed the basis upon which the operation in Bunia was undertaken. There is quite a wide consensus within the European Union that as ESDP is developed it should be developed in ways which make it available, on many occasions, as a tool essentially for the United Nations.

Chairman

29. This is another matter which I know Lord Inge was bothered about. Let me ask whether you are satisfied with the extended terms of Petersberg which are in general set out in Article III, 210? Are you satisfied with that extension and what exactly will be the practical implications as far as the EU and the UK are concerned in order to be able to fulfil those extended tasks?

(Mr Witney) The expansion of the tasks is essentially a rounding out of the definition of the sort of missions that we should be thinking about rather than making them more difficult or challenging. If you interpret peacemaking as the separation of warring parties, it is the most militarily challenging aspiration for ESDP and that has been around since the original Petersberg tasks were formulated in 1992, I think. The new bits here are joint disarmament operations, the task that NATO undertook in Macedonia, Operational Essential Harvest. That is a precedent. Military advice and assistance. Conflict prevention and peacekeeping tasks. I suppose you could characterise Bunia as an example of conflict prevention. And post-conflict stabilisation, which might look forward to a potential European role in the sort of situation which NATO is handling in Afghanistan at the moment. So nothing more militarily challenging but a wider sense of the range of how ESDP might usefully be employed overseas.

Baroness Park of Monmouth

30. I cannot lay my hands on it but I am sure I have seen recently a statement about a proposal for the EU to co-operate closely with the UN on operations, including training together, planning together and so forth. What do you feel about that?

(Mr Witney) We have just had a reorganisation in the Ministry of Defence and Dr Beaver has only within recent days assumed a responsibility for the United Nations which reflects exactly the thought that you are bringing out there, that we are going to have to think about the EU and the UN and the way they interact on the global stage more closely in future.

(Dr Beaver) This is very much an initiative of the Italian presidency, which I think in principle we support. There are quite a lot of things in the statement which would be quite challenging in terms of achieving full interoperability between the EU and UN. There is obviously a wide range of quality of forces available to the UN. The UK would like a bit more time to work through the details of these proposals. In principle, we are very supportive of the idea of getting more effective synergy between the EU and the UN.

31. Have we the resources? Or has the EU the resources?

(Dr Beaver) I think the general view of the UN is that the EU under-commits military resources to UN peace-keeping operations. One thing that the EU might be able to do is through the ESDP it has a way of assembling forces and developing and presenting capabilities which could be used on an UN operation. So we do see them as essentially complementary, but obviously there is only one set of forces which can be used at one time for particular operations and decisions would have to be made.

Lord MacLennan of Rogart

32. I wanted to clarify what Mr Witney meant when he said that the definitions of the Petersberg Tasks in Article 32(110) would not involve anything more militarily challenging from the wider range of situations which would be covered. Is the confinement as described purely a reflection of the current limitations of military capability? If the wider range of situations gave rise to challenges which

are mentioned in the Government White Paper as actually requiring a greater military capability than at the hands of the Union would that be excluded by the language of the definitions, as I understand it?

(Mr Witney) I may have been guilty, Lord MacLennan, of slightly underselling the importance of the expansion of this list of tasks. When I said there was nothing more challenging there, I was referring to a scale of intensity of military operations, the sophistication of the fire-power you would need to bring to bear to deal with the situation and peace-making remains at the top of the scale in those terms. Certainly the explicit inclusion now in the list, or proposed new list of Petersberg Tasks, of post-conflict stabilisation could be very challenging in terms of the resources and capabilities which might have to be brought to bear on a situation over a considerable period of time. I cite Afghanistan as an example of that. There could be much more that governments need to do to make sure they could undertake those operations and sustain them over a considerable period.

33. Is it fair to say this is an attempt, which the Government accepts, to construct an enabling clause that reflects not the capabilities but the challenges?

(Mr Witney) I think it would, yes.

Chairman: Let us move on to the last series on QMV. Lady Park?

Baroness Park of Monmouth

34. Are you satisfied that Part III Article 201(4) is sufficient to ensure that CFSP decisions with defence implications cannot, under any circumstances, be decided by QMV? I wonder how that can be reconciled with Article I-39(8) which states “The European Council may unanimously decide that the Council of Ministers should act by qualified majority voting in cases other than those referred to in Part III”, in other words a passerelle clause for the CFSP? We are concerned too because the Minister is going to have a formal right of initiative right across that area. He has to be mandated I believe by unanimous decision by the Council but nevertheless there are a lot of pitfalls, again such as Article III 201 2c when “adopting any European decision implementing a Union action”. That in shorthand, I understand, is if there is a common strategy or a common position, action within that is implemented and therefore could be decided by QMV and not by unanimity. How do you feel about whether we really have a technical position as far as defence is concerned?

(Mr Witney) This is a very dense and complicated area. I myself feel ill-qualified to be very definite on this point and this has been considered by government legal advisers on a cross-government basis. Provisionally the advice I have had is, yes, we think we are all right here. The only explicit exception to the unanimity rule on defence implications is the proposals for the agency we have been discussing to be set up by qualified majority voting. We do not have a difficulty with that because we think in practice the agency will come into being before this Treaty enters into force. There is an article in Part III, Article 201, which sets out that the CFSP decisions and therefore those which concern us will be taken by unanimity. There are derogations in the following two sub-paragraphs and the final clincher says that those derogations do not apply where there are military and defence implications. None of that deals with your point about the famous passerelle clause, which is an issue which is being thought about at a cross-government level.

35. What concerned me was when the Foreign Secretary spoke to the House of Commons Committee, he expressed great confidence that all would be well but he went on to say later that if it were not so, he recognised in a very short aside that it was not impossible we would be confronted with exactly what we do not want. What is being done to ensure there is an absolute veto on that?

(Mr Witney) I am afraid I am not able to help you on exactly what is being done. This is, as I say, being dealt with by government lawyers broadly across the whole of the Treaty. There is an interesting contrast between this sub-paragraph you have just quoted, the passerelle clause, at 39.8 and the immediately preceding sub-paragraph which seems to state equally explicitly that “European decisions relating to the Common Foreign and Security Policy shall be adopted by the European Council and the Council of Ministers unanimously.”

36. “Except in the cases referred to in Part III.”

(Mr Witney) Yes, “... except in the cases referred to in Part III.”

37. That is Article 319.5 I think you will find, “Positions of the Union: Implementation of Actions and Position.”

(Mr Johnston) If one looks at the Part III provisions which cover this, which is Article III 201, it replicates in a sense the structure of Part I in that paragraph 1 says, “The European decisions referred

to in this chapter”, i.e. the CFSP including ESDP, shall be done unanimously. Then in paragraph 2, as Mr Witney says, a certain number of derogations are set out. In paragraph 3 the derogation is set out which is essentially the passerelle clause referred to in Part I in Article 39.8, i.e. that the European Council may decide unanimously that the Council of Ministers will decide on an issue by qualified majority. Paragraph 4 clearly states that paragraphs 2 and 3 do not apply in the field of ESDP. So we take that to mean that the passerelle clause does not apply to ESDP.

Chairman

38. Could I suggest with regard to your difficulty in answering Lady Park’s questions, you should write to the Committee, or rather get legal advice which you understandably do not have, so the Committee can be acquainted with what the Department’s current view is on the questions Lady Park was asking? I think that would be helpful.

(Mr Witney) Thank you, Chairman. We are very glad to do that.

39. I think we will bring this to a close now because we have to consider other things in private; the Committee will be reverting to a private session. Can I say to you, Mr Witney, as a fellow escapee from the Common Agricultural Policy, that we are very grateful to you and your colleagues for coming. I think you have certainly enlightened us most helpfully. Thank you.

(Mr Witney) Thank you, Chairman.

Supplementary Memorandum from Sharon Wroe, HCDC, Liaison Officer, Ministry of Defence

Dear Audrey

When Mr Witney and colleagues appeared before your Committee on 9 October, they agreed to provide a written response to your question whether “Article III-201(4) is sufficient to ensure that CFSP decisions with defence implications cannot under any circumstances be decided by QMV”.

Article I-39(7) sets out that European decisions relating to CFSP shall be adopted unanimously except as set out in Part III. The only specific provision with defence implications in Part III which requires QMV is III-212(2): the decision on the Defence Agency’s statute, seat and operational rules. In practice the Agency is likely to be established, by unanimity, by a Council decision before the Treaty comes into force. The Government supports this. I-39(8), the “passerelle” clause, additionally provides for a future European Council decision taken by unanimity to authorise the Council of Ministers to take decisions by QMV, including in CFSP.

The detailed provision for CFSP are set out in Part III. III-201(1) sets out the general rule established in I-39(7), adding provision, as in the current Treaty, for constructive abstention. III-201(2) and (3) specify the limited areas where the general unanimity rule does not apply. In particular III-210(3) merely repeats I-39(8), the “passerelle” clause. III-201(4) makes clear however that the exceptions in the previous two clauses do not apply to decisions having military or defence implications. In other words such decisions are by unanimity.

The Committee will accept that the draft Treaty itself is subject to change, both substantively in the IGC, and through a process of legal toilettage to clarify ambiguities or inconsistencies, as well as to ensure that the various translations of the Treaty properly match. Equally our legal advisers’ work on the draft Treaty and its implications continues.

Sharon Wroe

APPENDIX 6

Government Responses

Note: All text in bold is from our Reports. All text in italics is taken from the version of the draft Constitutional Treaty available at the time the Government response was prepared.

NINTH REPORT - THE FUTURE OF EUROPE CONSTITUTIONAL TREATY – DRAFT
ARTICLES 1-16¹³⁸

INTRODUCTION**We make this Report to the House for information (paragraph 5 of Report).**

1. The Government welcomes this Report as a valuable contribution, and acknowledges the efforts of the Committee in producing a large number of high quality Reports on the draft Treaty Articles produced by the Convention on the Future of Europe.
2. The draft Articles 1-16 define the European Union and set out its objectives and its values; they define citizenship of the EU and fundamental rights; and they set out the competences of the EU. There is much that the Government supports and welcomes, although there remain a small number of issues that require further work in the intergovernmental conference (IGC).
3. The Committee is right to acknowledge that the draft Articles are likely to change. In the draft Constitutional Treaty presented to Heads of State or Government at the Thessaloniki European Council on 19-20 June, they can be found as draft Articles 1-17.
4. The Government recalls that the Thessaloniki European Council agreed that the draft Treaty Articles represent a good basis for starting negotiations at the IGC, to be convened in October 2003. We look forward to those negotiations.

ANALYSIS OF ARTICLES 1-16 OF THE CONSTITUTIONAL TREATY

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article 1: Establishment of the Union

5. The re-drafted Article I-1 now reads:

1. *Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.*
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

6. The Government agrees with the Committee in favouring retention of the name “European Union”. The Government made clear that we never supported any change to what is now a well-known and clear title. We are welcome the decision to refer to “citizens” of Europe rather than the “peoples”.

7. The Government is pleased that the revised text of this draft Article makes clear that it is the Member States, by freely entering into the Treaty, that confer certain competences on the Union.

8. The Government further welcomes the deletion of any reference to the word “federal” in this Article. As the Committee notes, this word can mean different things to different people. We see no place for such terms in a Constitutional Treaty, which must provide clarity of meaning.

Article 2: The Union’s values

9. The revised wording of this draft Article now reads:

¹³⁸ Government Response dated 23 July 2003.

“The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non discrimination.”

10. The Government broadly welcomes this draft Article.

Article 3: The Union’s objectives

11. This draft Article has been re-drafted to read:

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.

3. The Union shall work for a Europe of sustainable development based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

12. The Government welcomes these objectives, especially the clear statement of the importance of competition; the inclusion of all three pillars of sustainable development (social, economic and environmental); and the respect for diversity. The Government is sceptical of the need in paragraph 1 to refer to the Union’s “aims” in an Article that covers the Union’s objectives.

13. Two new draft Articles have been inserted in subsequent revisions. These are:

Article I-4: Fundamental freedoms and non-discrimination

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.

2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

14. The Government welcomes this Article, although it believes that the anti-discrimination clause should specify EU citizens as its scope. We will therefore be examining closely any implications for UK immigration controls in relation to non-EU citizens.

Article I-5: Relations between the Union and the Member States

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self government. It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.

2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

15. The Government welcomes this Article.

Article 4: Legal personality

16. This draft Article has not been altered in substance, but can now be found as Article I-6. The detail of the capacities conferred by legal personality will be fleshed out in Part III of the Constitutional Treaty.

17. The Government is clear that having a single legal personality for the European Union would have advantages, for simplicity and for the EU's international profile. However, to be acceptable, the Constitutional Treaty must make it clear that the common foreign and security policy (CFSP) and some areas of justice and home affairs (JHA) remain subject to their own distinct arrangements. The according of Union legal personality should also not affect Member States' current rights in terms of representation in international bodies.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article 5: Fundamental rights

18. *This is now Article I-7 in the version of the draft Constitutional Treaty presented to the Thessaloniki European Council. It reads:*

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II of this Constitution.

2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

19. The Government has always supported the idea of a clear statement of fundamental rights, freedoms and principles applicable at Union level. Equally, the Government has always made clear that any incorporation of the Charter of Fundamental Rights into the constitutional Treaty would have to provide legal clarity and not extend EU competence. The Charter as contained in the draft Constitutional Treaty maintains and strengthens the explicit statement that the Charter does not extend EU competence and makes clear that the Charter applies primarily to the EU institutions. The Charter would apply to the Member States only when they implement EU law. The full proposals for incorporating the Charter are not yet finalised. The Government will reach a final decision about incorporation of the Charter in the context of the forthcoming Intergovernmental Conference.

20. The Government can see some arguments in favour of EC/EU accession to the ECHR. But if this were to happen, further work would be required to ensure, inter alia, that accession did not enlarge Community/Union competence or prejudice national positions.

Article 6: Non-discrimination on grounds of nationality

21. This draft Article now forms the second paragraph of the new draft Article I-4: Fundamental freedoms and non-discrimination.

Article 7: Citizenship of the Union

22. This draft Article has not altered in substance, but is now Article I-8. The Government supports this draft Article.

TITLE III: THE UNION'S COMPETENCES

Article 8: Fundamental principles

23. The re-draft of this Article reads:

1. *The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.*

2. *Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.*

3. *Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. *Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.*

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

24. The Government is pleased that this re-draft omits the references to loyal co-operation that were present in the original. We have no difficulty with the concept itself, which appears in the existing Treaties. However, in the original draft of the Articles "loyal co-operation" appeared four times in the first fourteen Articles. We felt this was excessive and so argued for its removal from this draft Article, in the interests of simplicity and clarity.

25. The Protocols on the application of the principles of subsidiarity and proportionality, and the role of national parliaments in the EU offer a good basis for securing a more active role for national parliaments in the European Union. The Government believes that national Parliaments should be more involved in the EU. We have been strong advocates of the proposal to create a new mechanism for national Parliaments to enforce the principles of subsidiarity and proportionality. The Government has also welcomed the recognition of a role for regions within the mechanism.

Article 9: Application of fundamental principles

26. The Government broadly welcomes this draft Article, now found at Article I-10. It has been re-named "Union law" and now reads:

1. *The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.*

2. *Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.*

Article 10: Categories of competence; Article 11: Exclusive competences; Article 12: Shared competences

27. The Government supports the proposal to set out more clearly in the Constitutional Treaty the nature of the European Union's competences. There is logic in categorising these competences as either "exclusive" or "shared". It will be important to ensure that the policy areas are placed under the appropriate heading.

Article 13: The coordination of economic policies

28. *This draft Article, which is now Article I-14, has been re-named "The coordination of economic and employment policies". It reads:*

1. *The Union shall adopt measures to ensure coordination of the economic policies of the Member States, in particular by adopting broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.*
2. *Specific provisions shall apply to those Member States which have adopted the euro.*
3. *The Union shall adopt measures to ensure coordination of the employment policies of the Member States, in particular by adopting guidelines for these policies.*
4. *The Union may adopt initiatives to ensure coordination of Member States' social policies.*

29. The Government has made clear its belief that this Article should reflect the competences outlined in the existing Treaties.

Article 14: The common foreign and security policy

30. The re-drafted Article, now I-15, reads:

1. *The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence.*

2. *Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.*

31. *The Government welcomes this draft Article, which usefully links CFSP and ESDP and repeats existing Treaty language (Article 17.1 TEU) on the progressive framing of a common defence policy. The Government further welcomes the use of existing TEU language on loyal co-operation (Article 11.2 TEU). That language appears in other places in the draft Constitutional text, so we have proposed its deletion from this draft Article, in the interests of simplicity, and to avoid unnecessary duplication.*

Article 15: Areas for supporting action

32. The re-drafted Article I-16 is now called "Areas of supporting, co-ordinating or complementary action" and reads:

1. *The Union may take supporting, coordinating or complementary action.*

2. *The areas for supporting, coordinating or complementary action shall be, at European level:*

- *industry*
- *protection and improvement of human health*
- *education, vocational training, youth and sport*
- *culture*
- *civil protection.*

3. *Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part III may not entail harmonisation of Member States' laws or regulations.*

33. The Government broadly welcomes this draft Article. It will be important to ensure that the policy areas are placed under the appropriate heading.

Article 16: Flexibility clause

34. The Government broadly welcomes this draft Article, which is now Article I-17. We have suggested additional language to make clear the CFSP would be excluded, in order to make clear the distinct nature of CFSP.

ELEVENTH REPORT - THE FUTURE OF EUROPE: NATIONAL PARLIAMENTS AND
SUBSIDIARITY – THE PROPOSED PROTOCOLS¹³⁹

PART 1: INTRODUCTION

We make this report to the House for information although we hope that the House will soon have a further opportunity for another debate on the Convention and that this report would inform any such debate.

The Government is a strong advocate of enhancing the role of national Parliaments in EU business. National parliamentarians are the closest and most visible link to citizens. So it is right that they be more involved in EU affairs. This would help to re-connect our citizens to the Union and address concerns about the EU's democratic legitimacy.

The Convention were concerned primarily not to dictate measures to national Parliaments but, rather, to offer a framework within which national Parliaments can develop their role.

The Government has been a major proponent of creating a new mechanism through which national parliamentarians can monitor compliance of EU legislative proposals with the principle of subsidiarity: ensuring that action is taken at the appropriate level – be it European, national or sub-national.

PART 2: NATIONAL PARLIAMENTS

Scrutiny: The Council

We agree with the case for greater openness in the Council when it is legislating, as do the Commons Committee and the UK Government.

We accordingly support the provision in the proposed protocol on national parliaments for the direct transmission of Council Agendas and outcomes to national parliaments. The protocol should make clear that this transmission must be prompt. Council Agendas should be transmitted in advance and as soon as available, to allow for effective national parliamentary scrutiny.

As the Committee rightly notes, the Government continues to advocate greater openness in the Council when it is legislating. We welcome the recognition of this in the draft Constitutional Treaty.

We also support the proposal in the draft Protocol on the role of national Parliaments to transmit Council Agenda and outcomes to national parliaments direct. We agree with the Committee that such transmission must be timely if national Parliaments are to take full advantage of this innovation.

NATIONAL PARLIAMENTS

While we do not argue that there is any one model of scrutiny that can fit all national parliaments, we have suggested that our system, of involving Members with expertise in policy areas in the work of European scrutiny, could provide a model from which a national parliament wishing to scrutinise European legislation in depth and on the basis of genuine expertise might be able to learn some lessons.

We would wish to see the proposed protocol strengthened by more direct reference to the importance of effective scrutiny.

We agree that these are all important factors and we are working to enhance our own activity in these areas. The Cabinet Office's undertaking that it will press for the electronic transmission of documents from Brussels is accordingly welcome.

The Government agrees with the Committee that the United Kingdom's system of parliamentary scrutiny is an effective model for scrutinising EU legislative proposals and holding the Government to account. The ten accession countries are already considering how best to provide for national parliamentary scrutiny of EU legislation. The Government encourages the Committee to raise

¹³⁹ Government Response dated 10 July 2003.

awareness among national parliamentarians from other Member States of the Westminster model of scrutiny.

The Government further agrees that national Parliaments should take seriously their role in holding their Governments to account. Effective scrutiny is an important element of that. The draft Protocol on the role of national Parliaments is designed to provide the framework within which national Parliaments – whose organisation is not a matter for Union regulation - can set out their own processes, to take account of the different constitutional and historical traditions that span the national Parliaments of the Union's Member States. We favour this approach, which is neither too prescriptive nor heavy-handed. We recognise, however, the need for this to be complemented with more effective and more frequent inter-parliamentary co-operation and exchange of best practice, to encourage all national Parliaments to take their scrutiny role as seriously as the Committee.

The Government supports the Committee's efforts to further enhance the effectiveness of the national scrutiny system. The Cabinet Office, which has responsibility for sifting and assessing for deposit the majority of EU documents, now receive documents electronically from the Council Secretariat. This arrangement has resulted in documents being deposited significantly earlier than would have been the case under the old system of paper transmission from the Secretariat. The Cabinet Office is working with the Council Secretariat and Departments to extend this service to all Government Departments. The aim is for this work to be completed during the Summer.

THE SCRUTINY RESERVE

We continue to recommend that no form of agreement should be reached in Council during the six week period allowed for parliamentary scrutiny.

All national parliaments should endeavour to operate a strong and effective scrutiny system. We also recommend that the Treaty should formally recognise the status of scrutiny reserves in the Council.

The Government is committed to observing the terms of the scrutiny reserve resolution and believes that it serves as an important and effective discipline on Ministers to observe the need for scrutiny to be complete before decisions are taken in the Council of Ministers. For all cases where this does not happen, Ministers must account for their actions, including appearing before the Committees. The Government continues to work closely with the Committees in the forward planning of business to ensure that occasions when overrides occur are reduced. In responding to the Committee's report on the review of scrutiny of European legislation, the Government undertook to provide additional information about scrutiny overrides in a twice-yearly report to the Committees. Also, in this context, the Government is committed to bringing forward proposals for improving the procedures for keeping the Committees informed during the passage of proposals through the co-decision procedure.

The Government has made clear that the reaching of a "general approach" in the Council of Ministers describes the position on a text before the EU's legislative preconditions for a vote in the Council have been concluded. The Government has maintained in the Council that it would be prepared to revisit the text of a dossier after a general approach had been reached, if significant new concerns were raised by the Committee with which the Government agreed.

The Government agrees with the Committee that national Parliaments should endeavour to operate a strong and effective scrutiny system. The Government encourages the Committee to take that strong message to their parliamentary colleagues, particularly at COSAC meetings.

SCRUTINY AT AN EARLY STAGE

We recommend that the proposed protocol on national parliaments be amended to stress the importance of national parliamentary scrutiny at an early stage, including at the stage of the Council's Strategic Agenda and the Commission's Annual Work Programme; and before the formation of legislation proposals.

The Government welcomes the Committee's commitment to ensure effective scrutiny and agrees fully that early scrutiny is key. We stand ready to help the Committee achieve this, principally by working closely with the clerks of the Committee.

The draft Protocol on the role of national Parliaments provides for the early and electronic transmission of documents to a range of national Parliaments, to assist their endeavours to be involved in scrutiny at as early a stage as possible. The Government believes that this is the right approach.

However, we urge the Committee to take their message about the importance of beginning scrutiny as far upstream as possible to parliamentary colleagues in other Member State national Parliaments.

MEPs

We will be pursuing these recommendations in the coming months. We welcome the proposed protocol's emphasis on joint working between national parliaments and the European Parliament to improve inter-parliamentary co-operation.

The Government welcomes the Committee's support for greater inter-parliamentary links and congratulates the Committee for its continued efforts to reform COSAC. The Government firmly hopes that the Committee will continue in its endeavours to make COSAC a more effective forum for inter-parliamentary contact.

The Government believes that there are many advantages to be had from greater links between national and European parliamentarians and encourages the Committee to do all it can to pave the way for more meetings and contacts – both formal and informal.

COSAC

Recent attempts by COSAC to reform itself, however, are not wholly encouraging. The possibility remains that a new structure may need to be considered by the IGC in order to meet the objectives which COSAC should, in our view, be achieving.

As noted above, the Government is grateful for the Committee's efforts in pressing for reform of COSAC. Whilst recognising that such efforts have been largely frustrated to date, not least by the requirement for decisions within COSAC to be taken by unanimity, the Government encourages the Committee to continue to emphasise the role that COSAC could and should have, and the benefits that would accrue from reform of this body.

PART 3: SUBSIDIARITY

CLOSER MONITORING OF SUBSIDIARITY

We agree with the Working Group's conclusion that the monitoring of compliance with subsidiarity has a strong political content. We welcome the importance that the Working Group has attached to greater involvement of national parliaments in the monitoring of the application of subsidiarity. An opportunity has to be provided for such monitoring at the earliest possible stage of the legislative process. We accordingly undertake to continue to monitor all proposals coming before us in this light. We also note that an alternative means of controlling the application of subsidiarity would be the creation of a constitutional council. If any such proposal were to emerge – particularly during the Convention's deliberations or at the forthcoming IGC – we would examine it in due course.

The Government welcomes the Committee's agreement that there is a strong political content to monitoring the compliance of EU legislative proposals with subsidiarity. We believe that national Parliaments should be involved in monitoring compliance with this principle. That opportunity should begin as early in the legislative process as possible.

We have also pressed for national parliamentarians to consider whether legislation complies with the principle of proportionality, which relates to how detailed legislation should be. We believe that this is a primarily political, rather than technical, matter, as with subsidiarity.

The idea of a constitutional council was raised by a small number of delegates at the Convention. It did not, however, generate significant support. Conventioneers preferred the creation of an early warning mechanism.

EARLY WARNING SYSTEM

We recommend that the proposed subsidiarity protocol likewise be amended to provide two votes per Member State, with the presumption that bicameral parliaments will allocate one vote to each House.

We nevertheless recommend that the Commission be required to communicate its reasons direct to national parliaments.

The Government agrees with the Committee that providing national Parliaments with one vote could lead to complications for bicameral Parliaments. Accordingly, we have supported calls for the subsidiarity mechanism to be based upon two votes per national Parliament, as the Committee recommends.

The precise details of how the subsidiarity mechanism will work in practice are likely to be a matter for the Intergovernmental Conference. That said, the Government agrees in principle that the Commission should be required to communicate directly to national Parliaments its reasons for proceeding with a legislative proposal against the objections of the relevant number of national Parliaments.

STRENGTHENING THE YELLOW CARD?

We note that the Praesidium’s proposed protocol on subsidiarity takes forward only the “yellow card” proposal and not the “red card”. We consider that this will, in most circumstances, strike the right balance, providing an individual right to be heard, rather than a collective right to block. We nevertheless recommend that the “red card” proposal be maintained. The successful marshalling of the necessary majority to activate the “red card” will, in our view, be a very rare event. The fact that so many national parliaments were concerned about a proposal might well reveal a serious concern that would need addressing. Any effective early warning system would of course require an effective mechanism to allow national parliaments to exchange information.

The Government welcomes the Committee’s thoughts. Compelling the Commission to reconsider a proposal if one-third of national Parliaments object on subsidiarity grounds does indeed offer a sanction and provides some accountability. In the vast majority of instances there will be no need for the mechanism to provide for any stronger process. Indeed, as the Committee notes, if a significant number of national Parliaments had serious concerns about a given legislative proposal, it seems unlikely that national Governments in the Council would sign up to such an initiative. But the Government will continue to look at ways in which the “yellow card” proposal can be strengthened.

BROADER COURT OF JUSTICE REFERRAL

We agree with the Working Group that it is important that national parliaments should have the possibility of challenging a measure in the Court of Justice on subsidiarity grounds. The proposed protocol accordingly needs strengthening, as Gisela Stuart proposed, to give national parliaments the right to bring proceedings for violation of the principles of subsidiarity and proportionality.

The creation of a new mechanism for national parliamentarians to monitor the application of subsidiarity reflects the largely political nature of such decisions. However, the Government believes that the existing ex-post legal provisions should remain, enabling the Courts to judge on whether EU legislation complies with subsidiarity.

Paragraph 7 of the draft Protocol on the Application of the Principles of Subsidiarity and Proportionality provides for Member States to bring a case to the European Court of Justice on the grounds of infringement of the principle of subsidiarity, on behalf of their national Parliament. It does not, however, extend the right of direct access to the ECJ to national Parliaments themselves. Rather, they would do so through the Member States. As the Committee notes, this preserves the status quo in this respect, which the Government feels is an appropriate balance, and one which does not impinge upon the relationship within the Member States between national Government and national Parliaments.

TWELFTH REPORT—THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—DRAFT ARTICLES 24-33¹⁴⁰

INTRODUCTION

We make this Report to the House for information.

1. The Government welcomes the Committee’s Report, which provides a helpful introduction to this set of draft Treaty Articles. The legal procedures and instruments at the Union’s disposal is a very

¹⁴⁰ Government Response dated 14 July 2003.

technical, but important, area. We have broadly welcomed the proposals, which would go some way to making the Union simpler and easier to understand.

2. These Articles can now be found in the draft Constitutional Treaty at Part I, Title V: Exercise of Union Competence. Chapter I: Common Provisions contains draft Articles 24-28, 32 and 33. Chapter II: Specific Provisions, contains the draft Articles set out here as 29-31.

ANALYSIS OF ARTICLES 24-33

Article 24: The legal acts of the Union

In the meantime creating a new category of “regulation” and categorising some Union legislation “legislative acts” and some “non-legislative acts” does not seem helpful.

The term “a European law” in Article 24 raises difficulties which need further consideration.

Working Group IX (on Simplification) recognised that the new Treaty might continue to provide that instruments adopted in the area of police and judicial cooperation in criminal matters be characterised as not having direct effect. We agree.

Limiting the number of types of act to a few (six in Article 24(1)) may be a useful simplification but corraling what are essentially different types of acts (particularly under the CFSP) under one name is far from desirable and could be counterproductive.

3. The Government welcomes the proposals to simplify and reduce the number of instruments, and rename them. We believe the new terms “Law” and “Framework Law” reflect better the underlying concept and purpose of those instruments. We note the Committee’s concerns about making a distinction between legislative and non-legislative acts. However, the Government believes that such a distinction will contribute to greater clarity, in particular of the legislative role of the Council.

4. We have proposed amendments to the Convention that aim to ensure simplification whilst preserving the key elements of the current system, which we believe has served us well.

5. The Government has also made clear its commitment to retaining the distinctive instruments for the common foreign and security policy (CFSP) and some elements of justice and home affairs (JHA).

Article 25: Legislative acts

“Co-decision” would be a better and far more accurate term to describe the type of legislative procedure in question.

Article 25(3) is especially welcome.

6. The Committee rightly points to the gradual extension of the co-decision procedure since its introduction at Maastricht. In practice, co-decision is already the standard procedure for adopting legislative acts. Of crucial importance is that the draft Article provides for exceptions to the norm of the co-decision procedure (to be specified in Part III of the Constitutional Treaty).

7. There are some policy areas where the Government believes co-decision is not appropriate. For example, the distinct nature of CFSP and some elements of JHA must be preserved.

Article 26: Non-legislative acts

8. This draft Article, which is now Article 34, has been re-drafted to read:

1. *The Council and the Commission shall adopt European regulations or European decisions in the cases referred to in Articles I-35 and I-36 and in cases specifically laid down in the Constitution. The European Central Bank shall adopt European regulations and European decisions when authorised to do so by the Constitution.*

2. The Council and the Commission, and the European Central Bank when so authorised in the Constitution, adopt recommendations.

9. The Government welcomes this Article.

*Article 27: Delegated regulations***In the meantime we welcome the overall objective of Article 27.**

10. The Government welcomes the Committee's positive reaction to this Article, which would alter the way that the EU's primary legislation is implemented. Under the new category of "delegated acts", the Commission would adopt legislation to supplement non-essential aspects of primary legislation. Delegation to the Commission would be subject to control mechanisms by the European Parliament and the Council.

11. The Government broadly supports the proposal for a new category of "delegated acts". The Council and the European Parliament should more often set the frameworks in primary law at the EU level. The implementing of the detail of legislation within those frameworks could then be carried out through simpler decision-making procedures. The Government believes that this would result in lighter and speedier legislation. This would make the Union more efficient, and be particularly welcome in fast-moving policy areas. Giving the European Parliament the same role as the Council in scrutinising a large amount of secondary legislation would also help to make the process more transparent, and enhance the Union's democratic accountability.

12. We have suggested to the Convention that the detail of the conditions of application for delegated regulations should be set out in Part III, in order to keep Part I clear and simple.

Article 28: Implementing acts

We have for some time argued that the Parliament should have a greater role in comitology. That will now extend to establishing the ground rules for comitology. We therefore welcome this.

The future of comitology under the new Treaty is something to which we will want to return.

13. The Government welcomes this Article which, along with Article 27, proposes to distinguish between delegated and implementing acts. This should allow a more effective European Parliament role in a large swathe of implementing legislation.

14. As with Article 27 above, we have proposed that the detail of the conditions of application for implementing acts should be set out in Part III, in order to keep Part I clear and simple.

Article 29: [Common foreign and security policy]

15. This draft Article is now Article 39: Specific provisions for implementing common foreign and security policy. It is currently drafted to read:

1. *The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.*

2. *The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with the arrangements in Part Three of the Constitution.*

3. *The European Council and the Council of Ministers shall adopt the necessary decisions.*

4. *The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.*

5. *Member States shall consult one another within the Council and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the Council or the European Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.*

6. *The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves.*

7. *European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part Three of the Constitution. Discussion shall be based on a proposal from a Member State, from the Union's Minister for Foreign Affairs or from the Minister with the Commission's support. Laws and framework laws are excluded.*

8. *The European Council may unanimously decide that the Council should act by qualified majority in cases other than those referred to in Part Three of the Constitution.*

16. The Government welcomes the overall thrust of this Article, which makes clear that CFSP is conducted by the Member States, the European Council, the Council of Ministers and the European Foreign Minister. The Government also welcomes the retention of unanimity as the general voting rule for CFSP, and the inclusion of the possibility of the European Council deciding unanimously that the Council should act by qualified majority on a case by case basis. Article 39(8) duplicates the formula we suggested in the External Action Working Group last autumn.

17. We have raised our concern about the impracticality of having a commitment to prior consultation on CFSP. Given that the European Council meets only every three months, there will be occasions when CFSP decisions cannot await the next Council meeting. Introducing this time-sensitive element contradicts the overall objective of making CFSP more operational and more effective.

Article 30: [Common defence policy]

18. This is now Article 40: Specific provisions for implementing common defence policy. It reads:

1. *The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capability drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.*

2. *The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.*

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. *Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.*

Member States shall undertake progressively to improve their military capabilities. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

4. *Decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union's Minister for Foreign Affairs or from a Member State. The Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.*

5. *The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to maintain the Union's values and serve its interests. The execution of such a task shall be governed by Article [III-206 (ex 18)] of the Constitution.*

6. *Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to more demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article [III-208 (ex 20)], of the Constitution.*

7. *Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article [III-209 (ex 21)] of the Constitution.*

8. *The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.*

19. The Government welcomes the clear articulation on the link between CFSP and the European Security and Defence Policy (ESDP) at the beginning of this draft Article. We also welcome the re-statement of the need for compatibility between ESDP and NATO. However, the Government has made clear in the Convention that we consider the introduction of a common defence guarantee, including as a form of enhanced co-operation, to be a divisive and unnecessary duplication of the guarantees that 19 of the future 25 EU Member States enjoy through NATO.

20. We welcome the creation of an intergovernmental agency to support the efforts of Member States, as we believe capability development is fundamental to the credibility and operationality of ESDP.

21. We have expressed concern at the proposal to create standing inner groups for ESDP operations. Such proposals risk undercutting the inclusive and flexible arrangements for operations that were agreed at the Nice European Council. We want to maintain an approach to ESDP which allows groups of States to co-operate flexibly in carrying out operations, but under the control of the Council and on a basis which values all contributions, whether military or civilian, from large or small States.

Article 31: [Police and criminal justice policy]

22. This is now Article 41: Specific provisions for implementing the area of freedom, security and justice. It reads:

1. *The Union shall constitute an area of freedom, security and justice:*

- *by adopting European laws and European framework laws intended, where necessary, to approximate national laws in the areas listed in Part Three of the Constitution;*
- *by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;*
- *by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences.*

2. *Within the area of freedom, security and justice, national parliaments may participate in the evaluation mechanisms foreseen in Article [III-156 (ex 4)] of the Constitution, and shall be involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles [III-169 (ex 19)] and [III-172 (ex 22)] of the Constitution.*

3. *In the field of police and judicial cooperation in criminal matters, Member States shall have a right of initiative in accordance with Article [III-160 (ex 8)] of the Constitution.*

23. The Government welcomes the inclusion of mutual recognition as a fundamental constitutional feature of the area of Freedom, Security and Justice. Indeed, we would like to see this reference strengthened further. It should also be made clear that the approximation of national laws should take place only where necessary, in accordance with the provisions of Part III of the draft Constitutional Treaty.

24. The Government supports the proposal in Article 31(3) to retain Member States' right of initiative in the fields of police and judicial co-operation in criminal matters. In line with the proposals from the Convention's Working Group on Freedom, Security and Justice, such Member State initiatives would require the support of one-quarter of Member States. The Government supports this requirement to have the backing of a significant proportion of other Member States prior to launching a legislative initiative. We believe that it will result in much greater coherence to future work in the area of justice and home affairs.

Article 32: Principles common to acts of the Union

25. The Government welcomes this draft Article, which would require EU legislation to state the reasons for the measures it adopts.

Article 33: Publication and entry into force

26. The Government welcomes this draft Article.

FOURTEENTH REPORT - THE FUTURE OF EUROPE: "SOCIAL EUROPE"¹⁴¹

Further consideration needs to be given to whether "equality" should be included as a value of the Union.

1. The Government agrees. The Government is supportive of the inclusion of "equality" in the most recent draft of Treaty Article I-2 on the Union's values (document CONV 724/03 of 26 May 2003). It will work to ensure that "equality" remains listed in this Treaty Article.

If "full employment" is included as an objective, it will be important to establish a clear understanding of what it means.

2. The Government considers that the purpose of the proposed objective of "full employment" should be chiefly aspirational (indeed, Article 3.2 of Part I of the draft Treaty provides that the Union is to "aim" at full employment). It should signal the importance that the Union attaches to tackling unemployment and inactivity. The Government shares the consensus of the Social Europe working group that an objective of "a high level of employment" is not sufficiently ambitious.

3. However, European Union competence in the field of employment is limited, with activity at the European level focusing on the co-ordination of national employment policies through the European Employment Strategy. The Committee acknowledges that it would be difficult to establish a common definition of "full employment" in Europe, given the variety of traditions in Member States. The Government agrees with this analysis, and therefore does not consider that an objective of "full employment" should be defined in the Treaty. The Government does not believe that a single, "one size-fits all" definition of full employment is either necessary or desirable, given that there is no single, "one-size fits all" European employment policy. Rather, the EU objective of full employment will be pursued through national policies guided by national circumstances and conditions.

There is little pressure in the United Kingdom for any general extension of the competence of the EU in the social policy area, but there is a case for extending it to public health, provided that such an extension is confined to issues that are genuinely cross-border and does not impinge on Member States' control over how their health services are run.

4. The Government agrees with the Committee's analysis that "there is little pressure in the United Kingdom for any general extension of the competence of the EU in the social policy area". The Government believes that an appropriate balance has now been reached in the social field, with most competences supporting national action, and some selected competences (e.g., Single Market related issues) being shared between the Union and its Member States.

5. The Committee considers that there is a case for extending Community competence in the field of public health, provided that such an extension is strictly confined to cross-border issues and does not affect Member States' abilities to run their own health systems. The Government has already stated in its written Memorandum to the Committee of February 2003 that it strongly supports the view given in the report of the Social Europe working group that the existing recognition in Article 152.5 of the

¹⁴¹ Government Response dated 11 June 2003.

EC Treaty that Community action in the field of public health must fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care should be retained, and so agrees with the Committee on this latter point. More generally in the field of public health, the Government has not reached a final position on whether Community competence should be extended. The Government will consider the Committee's conclusions alongside recommendations from other fora, including the High Level Process of Reflection on Patient Mobility and Healthcare Developments in Europe, in deciding how to progress on this issue.

There is a need to clarify (and simplify) the legal base of EU social policy, and in particular the extent to which different aspects of social policy are areas of shared competence.

6. The Government agrees. In order to reduce the potential for confusion, the Government considers that Part I of the Treaty should only specify areas of exclusive competence and supporting action, with shared competence as a residual category. For those policy areas where there is a mixture of shared and supporting competences (such as social policy), the detail should be set out in Part II of the Treaty. The Government has already submitted suggested draft Treaty amendments to the Convention's Secretariat to this effect. The Government will work to ensure that the new Treaty is clear and consistent in specifying competences, particularly in the social and employment fields.

7. The Government notes that social policy has a special character, given that specific combinations of instruments and procedures are appropriate in different cases. The Government considers that this particular nature of social policy must be reflected in the eventual Treaty provisions dealing with social policy, in line with, for instance, existing Article 137 of the EC Treaty.

8. The Committee raises the particular issue of competences in the field of public health. Article 152 of the EC Treaty provides for a mix of shared competence and supporting action on public health issues, whereas the first draft of Part I of the Treaty lists public health as a shared competence. In its comments to the Convention Secretariat on this draft, the Government has highlighted this inconsistency. The Government commented that public health should be listed in Part I of the Treaty as an area of supporting action, except for those areas – to be listed in Part II – where harmonisation is currently permitted (namely, quality standards for organs, substances of human origin, blood and blood derivatives, and measures in the veterinary and phytosanitary fields).

It is doubtful whether in a Union of 25 unanimity will offer a practicable means of agreeing measures in the social policy field.

9. The Government considers that qualified majority voting and co-decision should be the general voting arrangement for Union decision-making in what is now the first pillar, except in areas of vital national interest, where unanimity should apply. The Government believes that this exception should operate in remaining areas of the social and employment fields where unanimity currently applies, in order to respect the diversity of national traditions in Member States.

10. The Government disagrees with the analysis that unanimity will block decision-making in a Union of 25. The power of veto for selected areas of social and employment policy is used sparingly and responsibly by existing Member States, and the Government sees no reason why this situation should not continue in an enlarged Union. Furthermore, new arrangements are envisaged in the post-enlargement Council to facilitate compromise solutions, particularly in areas where unanimity applies. These arrangements are likely to include enabling increased collaboration between like-minded Member States. Also, the Government believes that the amendments introduced by the Nice Treaty in this area, including provisions to allow the Council to move by unanimous decision to qualified majority voting in certain areas of social and employment policy, should be fully tested before considering extending qualified majority voting.

11. Finally, paragraph 19 of the Committee's Report discusses whether unanimity has been a bar to the adoption of legislation in the social policy field. In his evidence to the Committee, Mr Hain cited Regulation 1408/71, which relates to social security, as one example of legislation adopted under unanimity. The Report is critical of this example, as it notes that the original Regulation was adopted over 30 years ago when there were six Member States in the European Community. However the Regulation has been annually updated since 1971 and nowadays is updated by unanimity in a Union of 15. The Commission's recent proposal to extend the legislation to third country nationals was scrutinised and adopted within four months of its being presented on a legal base acceptable to all Member States. The Government therefore does not believe that unanimity delays or impedes decision-making in the social and employment fields.

National parliaments should have an opportunity to scrutinise action taken under the Open Method of Co-ordination at an early stage in the process.

12. The Government welcomes the Committee's interest in the Open Method of Co-ordination. It agrees on the importance of national parliaments being fully involved in scrutinising developments under the Open Method of Co-ordination. The Government takes note of the Committee's views on scrutiny by national parliaments and will bear these in mind in further discussions on the Open Method of Co-ordination in the Convention and the Intergovernmental Conference. Once the most appropriate means of dealing with the Open Method of Co-ordination into the Treaty has been agreed, the Government will return to the Committee's specific suggestion that a procedure should be developed to enable full parliamentary scrutiny of processes under the Open Method of Co-ordination. The specific nature of any procedure developed for the UK Parliament will depend on the nature of any Treaty reference that is finally agreed.

There would be advantage in giving the Open Method of Co-ordination a Treaty base, provided that it does not reduce the present flexibility of its application.

13. The Government would not be opposed to giving the Open Method of Co-ordination a Treaty base, as long as doing so allows flexibility of its application.

If the social partners and civil society are to be given a greater role in the decision-making of the Union, a number of important issues need to be clarified.

14. The Committee highlights that the report of the Social Europe working group suggests that the role of the social partners should be "facilitated and enhanced", but that the report does not specify the means for doing so. The Committee also suggests that issues such as the definition, role and representation of civil society should be clarified.

15. The Government recognises the key role played by the social partners in the social and employment policy fields. However the Government does not consider that further procedures or powers are needed to facilitate or enhance the social dialogue.

16. The Government acknowledges the important involvement of civil society organisations in the social policy arena and is pleased that that this has already been recognised in the draft Treaty. The Government considers that Article 34 of Part I of the draft Treaty (on "the principle of participatory democracy") provides an appropriate means of recognising the dialogue between the Union's institutions and civil society. The Government does not believe that further definition of civil society in the Treaty (such as setting out prescribed roles) is necessary.

Any amendment of Article 16 EC relating to services of general interest would be fraught with difficulty.

17. The Government agrees. It also agrees with the Committee's suggestion that a better approach than revising Article 16 of the EC Treaty would be to support the Commission's strategy of using Communications which clarify the position in general terms and propose Community action only where there is consensus on the need for further clarification of the policy for services of general interest.

SIXTEENTH REPORT—THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY – DRAFT ARTICLE 31 AND DRAFT ARTICLES FROM PART 2 (FREEDOM, SECURITY AND JUSTICE)¹⁴²

Introduction

These draft Articles propose a number of important changes. They would take forward common policies on immigration, border controls and asylum. They would strengthen the roles of Europol and Eurojust and enhance operational cooperation between police forces and other law enforcement agencies across Europe. The Commission would have a right of initiative in police and criminal law matters and the majority of measures would be adopted by co-decision (of the European Parliament and Council) and by qualified majority voting (QMV). The jurisdiction of the European Court of Justice would be significantly extended. Particular concern arises from

¹⁴² Government Response dated 2 July 2003.

the proposals to increase Union competence over criminal procedures and to create a European Public Prosecutor. We make this Report to the House for information.

1. The Government welcomes the Committee's report on the draft articles on justice and home affairs. It provides an important contribution to the debate on the Future of Europe. We share the Committee's views that these articles propose some important measures, including building on the existing Treaties in the areas of asylum and immigration, improving the effectiveness of Europol and Eurojust, enhancing operational cooperation between police forces and other law enforcement agencies across Europe, and applying QMV to some areas of police and judicial co-operation.

2. We agree with many of the Committee's specific conclusions. We welcome, for example, the references to the mutual recognition principle, the proposed article on right of initiative, as well as efforts to provide a stronger role for national parliaments of the EU. The Committee identifies some concerns, in particular regarding criminal procedural law and the creation of a European Public Prosecutor. We share those concerns about the proposals to increase Union competence over criminal procedural law and to create a European Public Prosecutor. We are not alone in this. There is no consensus in the Convention on these key areas, and we are working hard to identify an acceptable way forward. The Government has suggested to the Convention that a provision be inserted into the JHA chapter to retain unanimity for all aspects of these articles that affect tax.

Draft Article 31, Part One: Implementation of the area of freedom, security and justice

Article 31(2) is innovative in two respects. It implies the establishment of "evaluation mechanisms". Second, it provides for an enhanced role for national parliaments, in participating in such evaluation as well as in monitoring Europol's initiatives. We welcome both these developments. We support, in particular, the notion of national parliaments scrutinising the activities of Europol. There is, however, a problem with the language of the second clause of Article 31(2). The words "shall be involved" imply that the new Constitutional Treaty can impose obligations on national parliaments. We therefore suggest that "shall be involved" should be deleted or that "shall" be replaced by "shall have the right to".

3. The Government welcomes the inclusion in Article 31(1) of mutual recognition as a fundamental constitutional feature of the area of Freedom, Security and Justice. Indeed, we believe that this reference could be strengthened further. It should also be made clear that approximation of national laws should take place only where necessary in accordance with the provisions of Part II of the draft Treaty.

4. We agree with the Committee that the reference to "all competent authorities of the Member States for internal security" could be clarified. The Government would prefer the term "law enforcement" rather than "internal security".

5. On Article 31(2), the Government agrees that it is important to enhance the role of national parliaments in the EU. Evaluation mechanisms are one useful way of achieving this.

6. We further agree that it is necessary to improve the accountability of Europol. We welcome the Committee's recognition that duplication should be avoided by working together with other national parliaments. We also note the Committee's drafting suggestion to avoid any implication that the new Constitutional Treaty can impose obligations on national parliaments.

Article 31(3) maintains Member States' right of initiative in the field of police and judicial cooperation in criminal matters. But following the Working Group's suggestion, Member States' initiatives would have to have the support of a quarter of Member States. This is a welcome limitation.

7. The Government agrees. We share the Committee's view that there is a need to provide some limitation on Member States' right of initiative. A requirement to have the support of a significant proportion of other Member States prior to launching a legislative initiative will result in much greater coherence to future work in the justice and home affairs area.

Title X: Area of Freedom, Security and Justice

Article 1: [Definition of the area]

There is an express reference to the need to respect fundamental rights and to take account of "the different European legal traditions and systems". This is welcome.

8. The Government agrees. We welcome the explicit reference to the need to take account of the different European legal traditions and systems. This is an important guiding principle for future action in this area. This article also includes welcome references to the mutual recognition principle.

Article 3: [Role of national parliaments]

We welcome the involvement of national parliaments in these matters. For the same reason as given above in relation to Article 31(2), “shall be involved” should be deleted or “shall” replaced by “shall have the right to”.

Article 3(2) is intended to be placed in the Protocol on national parliaments and provides a special rule for national parliaments monitoring the principle of subsidiarity in the area of freedom, security and justice. A lower (one quarter in place of one third) threshold for the “yellow card” is proposed (this would require the Commission to reconsider its proposal). This is welcome in so far as it goes. But while the “yellow card” will in most cases strike the right balance between the right of national parliaments to be heard and a right of veto, the “red card” principle (which would require the Commission to withdraw its proposal if two thirds of national parliaments objected) should be maintained. If national parliaments are to have a collective voice which could actually make a difference then the “red card” should be available here, perhaps with a one half, instead of a two thirds, threshold.

9. The Government supports efforts to provide a stronger role for national parliaments in the EU. We have been strong advocates in the Convention of a new mechanism for national parliaments to monitor and enforce the principle of subsidiarity and proportionality. The key to the success of such a mechanism will be its credibility. The Commission should not be able to disregard the strong view of a significant majority of national parliaments that a certain proposal was in breach of subsidiarity.

Article 5: [Operational cooperation]

It is envisaged that the new Committee would have responsibility for co-ordinating the action of national police, customs and civil protection authorities in the event of a crisis of the sort mentioned in the Praesidium’s note (“a major catastrophe, attacks and events or demonstrations on a European scale”). To what extent this would mean giving the Committee a power to direct the actions of national police and other authorities, and is so to whom the Committee would be accountable, needs to be clarified. As drafted the Article would seem to extend Union competence beyond police and judicial co-operation in criminal matters.

10. The Government strongly supported Working Group X’s recommendation that the Treaty should separate legislative and operational tasks and strengthen co-ordination and operational collaboration. However, we agree that there is a need to clarify the scope of operational collaboration for which the new Committee would be competent.

11. The Government is also seeking to clarify that, while the new Committee should have a strong co-ordinating function, it should not have powers of direction in relation to specific actions. We want to give the new Committee the role of assisting the Council in identifying priority areas for Europol. The operation of the Management Board to date has demonstrated the need for some external identification of priorities.

12. The new Committee would be established within the Council. However, we agree that further consideration needs to be given to the accountability of the new Committee and the exact way in which it would work within the Council structures.

Article 9: [Judicial control]

We recommend that the ECJ should be entitled to measure the legality of Union action, including that of Member states and their authorities when implementing EU law, against the norms contained in the Charter and the ECHR. Accordingly we are pleased to see that the new Treaty will remove the current limitations of the Court’s jurisdiction in relation to justice and home affairs matters. We note that Article 9 contains a very limited (indeed an apparently tautological) exception.

13. The Government has proposed that there should be JHA-specific rules in connection with the ECJ. For instance, Article 68(1) TEC currently limits the national courts which can make a request to the ECJ for a preliminary ruling to those against whose decision there is no judicial remedy. This acts as

a filter mechanism, and stops the ECJ being overloaded with requests in, for instance, the asylum and immigration field. We have proposed that the option to make this limitation be retained, so that Member States would have the flexibility to decide which arrangements for preliminary rulings fit best with their national judicial systems, maintaining the theme of respect for the diversity of legal systems and traditions which needs to run throughout the JHA Title.

14. We also support the retention of a provision corresponding to Article 35(5) of the Treaty on European Union to make it clear that the European Court of Justice does not have jurisdiction in relation to Member States' law enforcement operations or their responsibilities for maintaining law and order and safeguarding national security.

Article 10: [Check on persons at borders]

As mentioned above, the document is silent on the question of the special position of certain Member States, including the UK, in relation to the subject matter of this Title (see paragraphs 9-13 above).

15. Article E of Part Three (General and Final Provisions) of the draft Constitution provides that the protocols shall remain an integral part of the new Treaty. As the Committee has noted, the question of reconsidering these protocols has not been raised in the Convention. The Government position on the UK's Protocols has not changed. The Government does not intend to give up its right under the Treaties to exercise at its frontiers with other Member States such controls on persons seeking to enter the UK as it considers necessary.

Article 11: [Asylum]

The references in Article 11(2) to "subsidiary protection" are especially welcome.

The last paragraph of the Praesidium's Explanatory note on this Article states: "Nationals of third countries" must be understood to include stateless persons". We agree. The text of Article 11 should be amended accordingly.

16. The Government supports the interpretation of third country nationals as including stateless persons. As this is an accepted interpretation, the Government does not believe that the text of the draft articles needs to be amended to reflect that position.

Article 12: [Immigration]

In our Reports and day-to-day scrutiny we have repeatedly emphasised the need for a 'common' EU approach to immigration. A further impetus towards the enhancement of EU action in the field, in particular as regards more 'inclusive' measures, will be provided by the shift from unanimity and consultation to qualified majority voting and co-decision ("the legislative procedure") provide for by Article 12(2). This is a positive step to avoid legislative paralysis in an EU of 25, but will be controversial in view of Member States' reluctance to relinquish power in sensitive matters such as the treatment of TCNs.

17. The Government recognises the need for greater use of QMV in an EU of 25. Nevertheless, in certain sensitive areas, including social security matters relating to third country nationals, it will be necessary to retain unanimity within the Council and consultation with the European Parliament. Our amendments to the articles reflect that position.

CHAPTER 2: JUDICIAL COOPERATION IN CIVIL MATTERS

Article 14: [Judicial cooperation in civil matters]

The "internal market" criterion has sometimes seemed rather artificial and strained, for example, in the context of measures relating to the recognition and enforcement of judgments in matrimonial matters and to matters of parental responsibility. The new test is preferable, being more apposite to closer co-operation in non-economic matters. What is important is that there should be a genuine and proven need for action at the European level and that in future the Commission will take full account of the need to respect different legal systems, and their values and traditions (as envisaged by Article 1 above).

The opportunity should also be taken to clarify the meaning of "extrajudicial cases" and "extrajudicial documents". Further, we note that the eighth indent of paragraph 2 of this Article refers to "support" for the training of judges, while the third indent of Article 15(2) (criminal matters) refers to encouraging judicial training. What is the significance of the different wording? Does "support" imply making money available?

18. The Government welcomes the proposition that judicial co-operation in civil matters should be based on the principle of mutual recognition.

19. However, this article goes significantly further than Article 65 TEC by providing expressly for the adoption of measures for the approximation of national laws having cross-border implications. The Government has considerable reservations about this extension of competence and has tabled an amendment to delete the second sentence of Article 14(1). Approximation of substantive and procedural civil law should not be an end in itself and should only follow where there is a proven need for it, in particular as a consequence of implementing the principle of mutual recognition.

20. The "internal market" criterion may indeed seem artificial, but it is significant, as is clear from the tobacco advertising jurisprudence of the European Court of Justice. Recent experience in the context of negotiations on civil legal aid has shown that its absence risks allowing measures to be brought forward which primarily have an impact on purely domestic cases, on the grounds that the laws in question are capable of having cross-border implications. That would be an unwelcome development.

21. The Committee sought clarification of the meaning of "extrajudicial cases" and "extrajudicial documents". These expressions already appear in Article 65(a) TEC. The former relates to an ambition to promote mutual recognition of decisions made in the context of alternative dispute resolution. The latter has its origin in the Hague Convention dating from 1965 on the service abroad of judicial and extrajudicial documents.

22. The Committee drew attention to the different wording in the paragraphs in Articles 14 and 15 concerning support for the training of judges. The Government sees no need for a difference of approach in relation to the subject matter of the two Articles.

Article 16: [Criminal procedure]

As the Praesidium's Explanatory note indicates, Article 16 reflects Working Group X's Conclusions with the addition of a provision on victim's rights. It is a new and potentially controversial provision.

Rules on the admissibility of evidence in criminal proceedings may be closely related to the mode of trial (for example, in England and Wales, to trial by jury). That such rules could be changed without the consent of a Member State is, we believe, unacceptable.

Accordingly we recommend that if Article 16 is to remain in the Treaty, it should be amended so as

(i) to be limited to the adoption of minimum rules under the "legislative procedure" (i.e. co-decision and QMV) concerning

(a) the definition of the rights of individuals in criminal procedure so as to ensure compliance with fundamental rights;

(b) the rights of victims of crime.

(ii) to enable the Council, acting unanimously, to adopt minimum rules relating to other specific aspects of criminal procedure, which shall have been identified in advance by the Council acting unanimously and with the assent of the European Parliament.

Further, the power to make any European laws or framework laws under this Article should, as a matter of the division of competence between the Union and the Member States, be restricted to cases having cross-border implications, as would be the case under Article 14 (Judicial cooperation in civil matters). We recognise, however, that even with such restriction any EU legislation under Article 16 would most likely have substantial effects on procedure in purely domestic criminal cases.

23. The Government shares the serious reservations of the Committee about the proposed article on criminal procedural law, including the Committee's concern that rules on evidence could be changed without the consent of a Member State.

24. The Government remains firmly opposed to giving the EU wide-ranging competence to harmonise criminal procedural law. Judicial co-operation in criminal matters should be based on the principle of mutual recognition and respect for the diversity of Member States' legal systems. Common procedures should therefore be pursued only where they are a necessary consequence of implementing that principle.

25. We recognise that it may be necessary to develop some light minimum standards in the areas where people facing criminal proceedings in a Member State of which they are not a national would be disadvantaged by virtue of that fact. The Government has therefore tabled an amendment to provide for this in the areas of legal advice, information, interpretation and access to diplomatic and consular authorities. The amendment would also make any approximation in this limited area subject to the use of framework laws and unanimity.

Article 17: [Substantive criminal law]

We have argued that the definitions used in EU criminal law approximation measures should also be used to define the offences listed in the Warrant. This would improve legal certainty and aid consistency, as between Member States, in the application of the Warrant.

26. The Government is content with the basic approach in this article. On the list of offences, the Government has tabled an amendment proposing that "computer crime" should be replaced by "attacks against information systems", which is the title of the recent Framework Decision in this area. The amendment also proposes the deletion of "organised crime" from the list of offences since there is no common understanding within the EU of this category of criminal offences.

27. As for approximating substantive criminal law where this is considered essential to ensure effective implementation of a Union policy, the Government has suggested that the policy areas to be covered should be listed in the article. The voting regime should also be based on the voting regime applicable to the Union policy area, as suggested by Convention Working Group X. For example, in the case of approximating criminal offences related to discrimination based on race, this would be governed by unanimity (Article 13 TEC).

28. In relation to the European Arrest Warrant, the current EU legislation provides for warrants to be issued based on the definition of the offences in the issuing state. EU approximation measures may bring about greater convergence in these definitions, but would not prevent a Member State from criminalising additional conduct which still falls within one of the generic offence categories. The Government believes this is the right approach as it gives the fullest effect to the principle of mutual recognition.

Article 18: [Crime prevention]

Being a new area of competence, EU action is only supporting and excludes approximation of legislation. That is welcome. However, the Article should be amended so as to ensure that Union action can be taken only where there are cross-border implications.

29. The Government agrees that it is important to make clear that competence is restricted to incentive and support measures to improve cross-border co-operation on crime prevention.

Article 19: [Eurojust]

It is not clear what is meant by 'serious crime affecting two or more Member States', but it would seem to differ, and be more extensive in scope, than the definition of "particularly serious crime with cross-border dimensions" in Article 17. We question whether Eurojust should be given such an open-ended brief. The current approach, and that of the new Article 17, is preferable.

Second, Eurojust could be tasked to supervise Europol's operational activities, thus subordinating Europol to Eurojust. This would not be objectionable and mirrors the regime in some Member States whereby police activity may be subject to the control of the prosecuting authority. It is unclear, however, whether this new supervisory role is intended to compensate for lack of supervision by the courts, since Europol, as an EU agency, will presumably become subject to review by the Community courts.

30. The Government agrees that the tasks of Eurojust should be more tightly defined in the new Treaty. We have proposed amendments to achieve this. We have also sought to ensure that unanimity

will apply to any further extension of the tasks and powers of Eurojust, and that any such extension should take place only on the basis of demonstrable need and taking into account the different European legal traditions and systems.

31. As for the proposed role of Eurojust to supervise Europol's activities, this would not be compatible with the United Kingdom's legal tradition and system. However, we are prepared to consider such a role for Eurojust where Europol is supporting an investigation in a Member State whose legal tradition and system provides for the judicial supervision of the investigation. We have proposed an amendment to this effect.

Article 20: [European Public Prosecutor's Office]

This Article, establishing a European Public Prosecutor's Office, is a surprising and undesirable inclusion in the new Treaty. There is no doubt that more could be done to ensure that effective action is taken against fraud with the Union. But the European Public Prosecutor (EPP) is not a realistic and practical way forward. We recommend the deletion of Article 20.

32. The Government agrees. We remain firmly opposed to the creation of a European Public Prosecutor's Office. We share the Committee's view that further action needs to be taken to tackle fraud within the Union, but that the European Public Prosecutor is not a realistic and practical way forward. The UK and seven other governments co-sponsored a contribution to the Convention on 21 May entitled 'Improving the Union's response to fraud – alternatives to the European Public Prosecutor' (CONV 753/03 CONTRIB 331). This explained why we are opposed to the creation of a European Public Prosecutor and suggested an alternative way forward based on the principle that criminal prosecutions should remain a national responsibility.

Article 21: [Cooperation with regard to internal security]

Article 21(2) would enable the adoption of 'any other measure' which encourages police cooperation. The wording is vague and could lead to extensive EU competence in police matters. We recommend the deletion of the third indent of Article 21(2).

In view of the vast amounts of data that may be collected, analysed and exchanged under the police cooperation chapter, we believe that adequate data protection safeguards are essential and should be clearly reflected in the Constitutional Treaty. This is something to which we will return when the Praesidium publishes its proposals on data protection.

33. The Government agrees that "any other measure" is too vague and should be deleted.

34. The Government agrees that data protection safeguards are important for police and judicial co-operation in criminal matters.

Article 22: [Europol]

It is important to note that Article 22(2) does not contain an exhaustive list of Europol tasks, but merely indicates areas of action. This could lead to a significant extension of Europol powers without democratic supervision. A defined exhaustive list would be preferable (possibly set out in a Protocol annexed to the new Treaty).

As we have said above (see comment on Article 31), the Committee strongly supports enhancing the accountability of Europol and has recommended the creation of a joint scrutiny committee of members of national parliaments and the European Parliament.

35. The Government agrees that this article is currently too broad and open-ended. In particular, crimes which affect a common interest covered by a Union policy should fall within Europol's mandate only to the extent that the crime is serious and affects two or more Member States. If a crime is purely internal to a Member State, it is a matter for that Member State's law enforcement authorities.

36. The Government supports increasing the accountability of Europol particularly with regard to ensuring that due care is taken to protect EU citizens' rights in the treatment of personal data. The UK has supported the Danish proposals to amend the Europol Convention which seek to increase the oversight of Europol by the European Parliament for example on Europol's relations with third countries. The continued involvement of national parliaments in scrutinising Europol's work is equally

important. The Government agrees that there is a need to consider establishing inter-parliamentary mechanisms for the supervision of Europol's work.

EIGHTEENTH REPORT—THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY – DRAFT ARTICLES 43-46 (UNION MEMBERSHIP) AND GENERAL AND FINAL PROVISIONS¹⁴³

Introduction

The Government welcomes the Committee's contribution and notes the amendments that were presented to the Convention by the Right Honourable Peter Hain MP, as the UK Government Representative to the Convention.

In the Praesidium's re-drafted Constitutional Treaty, presented to the Convention on 26 and 27 May, these Articles now feature as Articles 57-59 of Part I, Title IX: Union Membership; and Articles 1-9 of Part IV: General and Final Provisions. The Government is broadly content with these draft Articles.

ANALYSIS OF ARTICLES 43-46

Article 43: Criteria to be eligible for Union membership

This draft Article is now Article 57, which has been re-named "Conditions and procedure for applying for Union membership" and merged with Article 44. It now reads:

- 1. The Union shall be open to all the European States which respect the values referred to in Article 2, and are committed to promoting them together.*
- 2. Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the Member States' national Parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. That agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.*

The Government proposed that it be made clear that it is the States themselves, rather than the people, that must demonstrate respect for and commitment to promoting the values of the Union. We welcome the Praesidium's support of this, and its inclusion in the re-drafted Article.

Article 44: Procedure for applying for Union membership

As noted above, this draft Article has now been merged with Article 43.

Article 45: Suspension of Union membership rights

The Government welcomes this draft Article.

Article 46: Voluntary withdrawal from the Union

This is now Article 59. It has been re-drafted to read:

- 1. As previously.*
- 2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

The representative of the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

¹⁴³ Government Response dated 20 June 2003.

3. *This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.*

4. *If a State which has withdrawn from the Union asks to re-join, that request shall be subject to the procedure referred to in Article I-57.*

We see value in including a withdrawal procedure in the Constitutional Treaty. Whilst we believe that it would only be drawn on in very exceptional circumstances, it is useful for completeness to have an explicit reference to the process to be followed should a Member State decide to withdraw from the Union.

GENERAL AND FINAL PROVISIONS

Article A: Repeal of earlier Treaties

The re-drafted Article proposes that a Protocol be established, listing the acts and treaties which supplement or amend the Treaty establishing the European Community and the Treaty on European Union and which are to be repealed. We believe that producing such a Protocol would be a complex task. Care would need to be taken to ensure that, in drawing up the Protocol, there was no inadvertent repeal of necessary provisions, for instance those setting out the status of the UK's overseas territories.

Article B: Legal continuity in relation to the European Community and the European Union

The Government welcomes this draft Article: we believe there is a need for an Article dealing with legal continuity.

Article C: Scope

The Government has proposed the deletion of the second tiret of Article C(3) and C(6(b)) on the grounds that they are redundant. The latter, which concerns the United Kingdom's sovereign base areas in Cyprus, is dealt with in the Cyprus Accession Treaty.

Paragraph 4 covers Gibraltar which, as the Committee notes, reflects wording on territorial scope at Article 299(4) TEC. The Government has made clear in its commentary on the draft Articles that further work will be required to ensure that Gibraltar's special status is protected.

The Government recognises that this raises a question about the territorial application of TEU measures to Gibraltar. We are currently in discussion with the Government of Gibraltar on this point.

Article D: Regional Unions

The Government is content with this draft Article.

Article E: Protocols

The status and content of the Union's Protocols have not been discussed widely at the Convention. Various important matters are currently dealt with in the Protocols to the Treaties. The Government welcomes the recognition that the existing Protocols and their status are to be maintained under the future Constitutional Treaty

Article F: Procedure for revising the Constitutional Treaty

This draft Article has been revised to read:

1. *The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaty establishing the Constitution. The national Parliaments of the Member States shall be notified of these proposals.*

2. *If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in*

the case of institutional changes in the monetary area. The European Council may decide by a simple majority not to convene the Convention should the scope of the amendments not warrant this. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.

The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

3. The conference of representative of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaty establishing the Constitution.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

The Government welcomes the fact that, as at present, the draft requires representatives of Member States to decide upon proposed Treaty amendments by unanimity at an Intergovernmental conference. We believe that the only feasible option for revising the Constitutional Treaty is for future amendments to enter into force after ratification by all Member States.

Article G: Adoption, ratification and entry into force of the Constitutional Treaty

The Government is content with this draft Article.

Article H: Duration

The Government is content with this draft Article.

Article I: Languages

The Government is also content with this draft Article.

TWENTY FIRST REPORT—THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—
DRAFT ARTICLES ON THE INSTITUTIONS¹⁴⁴

Introduction

In paragraph 11 of their Report, the Lords' Select Committee concludes that:

We make this report to the House for information. We stress, however, that it is clear that the balance of power in the European Union is going to shift from the Commission in favour of the Member States if the proposals here are adopted. This makes it all the more important that the Treaty makes adequate provision for the role of national parliaments and that all national parliaments effectively hold their own national ministers to account. In addition, steps need to be taken to ensure both accountability and transparency in the work of the Council.

1. The Government welcomes the Committee's Report which provides a further useful contribution to the debate about the work of the Convention. The Government has broadly welcomed the draft Articles on the Institutions. Many elements reflect the Government's thinking on, for example, creating a full-time elected Chair or President of the European Council. However, there are still some elements which need to be addressed.

2. The Government believes that any reform or strengthening of the Institutions must preserve the existing institutional balance, which has served the Union well.

3. The Convention's President, Valéry Giscard d'Estaing, presented the text of Parts I, II and IV of the draft Constitutional Treaty to Heads of State or Government at the Thessaloniki European Council on 19-20 June. In that version, the Institutions Articles can be found as Articles 18-31, in two Chapters. Chapter One – Institutional framework encompasses Articles 18-28; the remaining Articles are in Chapter Two – Other Institutions and bodies.

¹⁴⁴ Government Response dated 23 July 2003.

Article 14: The Union's Institutions

4. The text as presented to the Thessaloniki European Council does not include the European Central Bank or the European Court of Auditors as Institutions. We have no difficulty with the European Central Bank not being an Institution. However, we would prefer the European Court of Auditors to remain an Institution. To withdraw this status could reduce its role and imply a watering down of its independent status.

Article 15: The European Parliament

We wish to see further consideration given to enhancing the Parliament's scrutiny role in such matters and hope to see suggestions in subsequent texts when they emerge. (Paragraph 15 of the House of Lords' Report.)

We would welcome an explanation of this term ("degressively proportional"). (Paragraph 16 of the House of Lords' Report.)

5. The revised draft Article 19 provides for a maximum number of Members of the European Parliament to be 736 rather than the 700 proposed in the initial draft. This represents the number agreed at Nice (732) plus two extra for both the Czech Republic and Hungary, who were under-represented in the Nice figures vis-à-vis Member States with a similar population size. There is a new additional paragraph which reads:

"Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter for further elections, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out above."

6. The Government agrees with the Committee that the European Parliament's ability to scrutinise some subordinate legislation should be enhanced. Draft Articles 27 and 28 of the draft Constitutional Treaty, as submitted to the Thessaloniki European Council, relate to the so-called comitology procedure. They propose a new category of "delegated acts" which aims, inter alia, to give the European Parliament a similar role as the Council in scrutinising a large amount of secondary legislation. The Government supports this move, which would help to increase the transparency of the process and enhance the EU's democratic legitimacy.

7. The Committee asks about the term "degressively proportional". A degressively proportional system would allocate seats in the European Parliament in proportion to the population size of the Member States. The "degressive" element would mean that increasingly larger populations are represented by increasingly fewer additional seats. The draft also makes provision for a minimum of four seats per Member State. The Government broadly welcomes a proportional system, although a final decision would depend upon the ratio of degressivity.

Article 16: The European Council; and Article 16a: The European Council Chair

The new reference to "general political directions and priorities" is a highly significant change, which needs to be fleshed out and complemented with proposals for greater transparency and accountability. In addition, the relationship between the European Council and the other Council formations is not sufficiently clearly defined. (Paragraph 19 of the House of Lords' Report.)

We accordingly stress the need for further accountability of the individual members of the European Council, including the President, to national parliaments. Such accountability should include accountability of an individual Head of Government to their national parliament. (Paragraph 20 of the House of Lords' Report.)

We would welcome an explanation of this term ("except where provided otherwise, decisions of the European Council shall be taken by consensus"). (Paragraph 21 of the House of Lords' Report.)

The proposal for a President of the European Council is clearly intended to alter the institutional balance in the European Union. Further clarification – and further provisions on accountability – are required before we can give the proposal our full support. (Paragraph 27 of the House of Lords' Report.)

8. As noted above, the Government believes firmly that any reform of the Institutions must not upset the existing institutional balance. The proposals for a full-time President of the European Council would strengthen the European Council, in parallel to the suggestions for enhancing the role and working practices of the European Parliament and the European Commission. We have been a strong advocate of having a full-time figure at the head of the European Council; the rotating Presidency system cannot provide the effectiveness required of the Council in a Union of 25 or more Member States.

9. We envisage the role of a full-time President of the European Council being largely that of the existing rotating Presidency. That individual would be elected by Heads of State or Government who are themselves elected by their citizens. By virtue of being a more permanent figure, the President would be able to co-ordinate the work of the European Council in a more strategic and longer-term manner. The Government believes that, in order to fully realise the potential gains in coherence and consistency, the Council President should also co-ordinate the work of the sectoral Council formations.

10. The Government acknowledges the Committee's concerns that some of the detail remains unclear. This will be a matter for the discussions at the intergovernmental conference (IGC).

11. The Government notes the Committee's emphasis on enhancing the accountability of members of the European Council to their national Parliament. We support efforts to increase the democratic credentials of the Union. The precise way in which national Parliaments hold their Governments to account is a matter for each Member State to determine. The Government would welcome any proposals from the Committee about how this might be achieved even better at Westminster.

12. The term "except where provided otherwise, decisions of the European Council shall be taken by consensus" refers to those policy areas where the Constitution specifies that the European Council shall act according to a different rule. This includes unanimity (for example the common foreign and security policy (CFSP)) or qualified majority voting (the appointment of the European Council Chair and the External Representative, and the nomination of the President of the European Commission).

Article 17: The Council of Ministers; Article 17a: Council formations; and Article 17b: Qualified majority

This provision (on the voting system in the European Council) requires clarification. (Paragraph 31 of the House of Lords' Report.)

The Treaty should also provide for a verbatim record of legislative proceedings to be made quickly and readily available. (Paragraph 33 of the House of Lords' Report.)

13. The revised draft Article 23 on the Council of Ministers now reads:

1. *The Legislative and General Affairs Council shall ensure consistency in the work of the Council of Ministers.*

When it acts in its General Affairs function, it shall, in liaison with the Commission, prepare, and ensure follow-up to, meetings of the European Council.

When it acts in its legislative function, the Council of Ministers shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers.

2. *The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union Minister for Foreign Affairs.*

3. *The European Council shall adopt a European decision establishing further formations in which the Council of Ministers may meet.*

4. *The Presidency of Council of Ministers formations, other than that of Foreign Affairs, shall be held by Member State representatives within the Council of Ministers on the basis of equal rotation for periods of at least a year. The European Council shall adopt a European decision establishing the rules of such rotation, taking into account European political and geographical balance and the diversity of Member States.*

14. As noted above, there remain some outstanding details on which discussion will focus at the IGC. The proposed reforms to the calculating of Qualified Majority would mean that voting arrangements agreed at Nice would be replaced by an alternative system. Under Nice, 321 votes will be distributed amongst the 25 Council members, from 2005. A qualified majority would be formed by 232 votes, cast by a simple majority of states (or two-thirds when not acting on a Commission proposal), with a population lock that the majority must represent 62% of the EU population. This is a triple majority system.

15. The draft Constitutional Treaty proposes replacing this system with a dual majority system. The adoption of any measure would thus be subject to support from a simple majority of Member States representing 60% of the EU population.

16. In line with our support for equality of Member States, we advocate a system of team presidencies in which four or five countries, by rotation, would chair the sectoral councils for a set period of time. The team presidency idea would spread the burden or chairmanship between Member States and provide longer-term continuity, whilst maintaining the important connection between the Member States and the EU that is inherent in the current rotating Presidency system.

17. The Government is not convinced of the case for having a Legislative Council. We recognise that there could be benefits, for example in the better co-ordination of legislation. However, we have concerns that a permanent Minister, based in Brussels, sitting on a Legislative Council, could weaken that individual's link to their national Parliament. That would have negative consequences for accountability. The Government is also not persuaded that the legislative and executive functions carried out by the Council could be separated easily or logically.

18. The Government believes that a new Constitutional Treaty should provide clarity and stability for the EU. We have not supported proposals in draft Article 24(4) for the so-called "passerelle" clause, which would build provision for changes in voting procedure throughout the Treaty.

19. Paragraph 5 of The Protocol on the Role of National Parliaments, annexed to the draft Constitutional Treaty, proposes that:

"The agendas for and the outcome of meetings of the Council of Ministers, including the minutes of meetings where the Council of Ministers is deliberating on legislative proposals, shall be transmitted directly to Member States' national Parliaments, at the same time as to Member States' governments."

20. The Government supports this initiative wholeheartedly.

Article 18: The European Commission; and Article 18a: The President of the European Commission

We are aware of arguments that having a directly elected Commission President would provide a clear link between citizens and the EU but we note that no such provision is made in the draft articles. We also note that the Government is against any enhancement of the role of the European Parliament in appointing the Commission President. (Paragraph 38 of the House of Lords' Report.)

21. The revised draft Article 25 on The European Commission, as presented to the Thessaloniki European Council on 20 June reads:

1. The European Commission shall promote the general European interest and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and steps taken by the Institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.

3. The Commission shall consist of a College comprising its President, the Union Minister of Foreign Affairs/Vice-President, and thirteen European Commissioners selected on the basis of a system of equal rotation between the Member States. This system shall be established by a European decision adopted by the European Council on the basis of the following principles:

(a) Member States shall be treated on a strictly equal footing as regard determination of the sequence of, and the time spent by, their nationals as Members of the College; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;

(b) subject to point (a), each successive College shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.

The Commission President shall appoint non-voting Commissioners, chosen according to the same criteria as apply for Members of the College and coming from all other Member States.

These arrangements shall take effect on 1 November 2009.

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties, the European Commissioners and Commissioners shall neither seek nor take instructions from any government or other body.

5. The Commission, as a College, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-238, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign. The Commission shall continue to handle everyday business until a new College is nominated.

22. The revised Article 26 on The President of the European Commission now states:

1. Taking into account the elections to the European Parliament and after appropriate consultations, the European Council, deciding by qualified majority, shall put to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.

2. Each Member State determined by the system of rotation shall establish a list of three persons, in which both genders shall be represented, whom it considers qualified to be a European Commissioner. By choosing one person from each of the proposed lists, the President elect shall select the thirteen European Commissioners for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the College, including the future Union Minister for Foreign Affairs, as well as the persons nominated as non-voting Commissioners, shall be submitted collectively to a vote of approval by the European Parliament. The Commission's term of office shall be five years.

3. The President of the Commission shall:

- lay down guidelines within which the Commission is to work;*
- decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis;*
- appoint Vice-Presidents from among the members of the College.*

A European Commissioner or Commissioner shall resign if the President so requests.

23. The Government is keen to look at ways to reform the European Commission to make it more efficient and effective. In doing so, it is essential that the Commission's core strengths of independence and impartiality are preserved. We believe the current proposal does that.

24. However, the Government does not consider that the system for selecting Commissioners proposed in Article 26, paragraph 2, would attract the best candidates for the positions. The complexity of the proposed system risks dissuading candidates of the highest calibre from putting themselves forward.

Article 19: The Foreign Minister

25. The Government welcomes the fact that the "European Foreign Minister" would be mandated by, and answerable to, the Council on CFSP. But we believe there must be greater clarity about the exact status of any "European Foreign Minister" in the Commission. We also believe that naming this

individual the “External Representative” (as suggested by the External Action Working Group report published last December) rather than “Foreign Minister” would be a better reflection of the nature of the job.

Article X: The Union’s Democratic Life

We see merit in national parliaments scrutinising the annual programmes of the Council and the Commission. The body proposed, however, is too large and diffuse to provide meaningful scrutiny of these initiatives and will accordingly be purely symbolic. Presentations to a much smaller group of national parliamentarians with expertise in EU affairs would allow more time for genuine discussion and questioning and therefore be of more value in ensuring accountability. (Paragraph 43 of the House of Lords’ Report.)

26. The Government agrees with the Committee that national Parliaments could usefully scrutinise the annual programmes of the Council and the European Commission, and welcomes the Committee’s commitment to becoming more involved, and further upstream, in the Commission’s Annual Policy Strategy.

27. This draft Treaty Article, which proposed the creation of a Congress of the Peoples of Europe, did not receive broad support in the Convention. It has accordingly been removed from the draft Constitutional Treaty. However we see merit in the Committee’s proposals.

Article 20: The Court of Justice of the European Union

Article 20(3) needs substantial revision. (Paragraph 47 of the House of Lords’ Report.)

28. The Government agrees that the earlier draft of this article needed revision. It is important that the jurisdiction of the ECJ is clear. There have been helpful changes to the text, making it narrower in scope and clearly subject to the detailed provisions in Part III. In its current form, Part III of the draft Constitutional Treaty provides a complete and accurate description of the Court’s competences. On this basis, the Government broadly welcomes this draft Article.

29. The revised draft Article 28 now reads:

1. *The Court of Justice shall include the European Court of Justice, the High Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Constitution.*

Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. *The European Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General.*

The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice.

The judges and the Advocates General of the European Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles III-256 and III-257, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

3. *The Court of Justice shall:*

- rule on actions brought by a Member State, an Institution or a natural or legal person in accordance with the provisions of Part III;*
- give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the Institutions;*
- rule on the other cases provided for in the Constitution.*

Article 21: The European Central Bank (ECB)

30. The Government welcomes this draft Article.

Article 22: The Court of Auditors

The Committee remains concerned that, with the enlargement of the EU now imminent, it is still the case that very little has been done to reform the ECA. The opportunity afforded by the Convention to reform the Court appears to be passing by. We look forward to further proposals from, and discussions with, the Government on this question. (Paragraph 50 of the House of Lords' Report.)

We are therefore deeply disappointed that the new Article 22(3) simply retains the provisions introduced by the Nice Treaty and states that the Court "shall consist of one national of each Member State." (Paragraph 52 of the House of Lords' Report.)

The Government must be more pro-active in promoting reform of the ECA, both within the Convention and ahead of the forthcoming Intergovernmental Conference. The IGC will present the Member States with a unique opportunity to equip the Court to meet the challenge of enlargement; it is an opportunity which we urge the Government to exploit. (Paragraph 53 of the House of Lords' Report.)

31. The Government agrees with the Committee that a Court of Auditors with 25 Members is less than satisfactory. That is why we put forward a paper to the Convention with proposals for an alternative structure. That would have seen the 25 member Court being replaced by:

- a Governing Committee, made up of one representative from each Member State, to elect the President, provide strategic direction and agree the annual business plan; and
- a nine member executive Board of Auditors General, made up from Member States, strictly rotated on the basis of equality, with a President at its head.

32. These proposals made no headway at the Convention. However, the Government will continue to pursue the question of reforming the Court of Auditors at the IGC.

Article 23: The Union's Advisory Bodies

33. The Government welcomes this draft Article.

TWENTY SECOND REPORT—THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—
ARTICLES 33-37 (THE DEMOCRATIC LIFE OF THE UNION)¹⁴⁵

Introduction

The Government welcomes the Committee's Report, which provides a useful factual compendium of the Praesidium's draft Articles and commentary. The Government is grateful for the Committee's own comments on the draft Articles and notes the amendments presented to the Convention by the Right Honourable Peter Hain, as the UK Government Representative to the Convention.

In the Praesidium's re-drafted Constitutional Treaty, presented to the Convention on 12 June, these Articles now feature as Articles 44-51 in Part I, Title VI: The Democratic Life of the Union. The Government believes that the re-drafted Articles represent an improvement. There is much to commend these draft Articles.

Article 33: The principle of democratic equality

This is now Article 44 of the draft Constitutional Treaty, which reads:

"In all its activities, the Union shall observe the equality of citizens. All shall receive equal attention from the Union's Institutions."

The Government shares the Committee's concern about the generality of the term "citizens" in this, and other Articles. We have stressed that such terms must be precise throughout the Constitutional Treaty. We have, accordingly, proposed that the text makes clear that the citizens referred to here are those of the Union.

¹⁴⁵ Government Response dated 20 June 2003.

The latest Praesidium draft includes a new Article 45: The principle of representative democracy. This reads:

1. *The working of the Union shall be founded on the principle of representative democracy.*
2. *Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council by their governments, themselves accountable to national Parliaments, elected by their citizens.*
3. *Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.*
4. *Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.*

Article 34: The principle of participatory democracy

Article 34 should spell out much more clearly what is intended by the concept of participatory democracy, what it means for the individual citizen and by what practical means he or she may take advantage of the rights given.

The use in Article 34 of the terms “representative associations” and “civil society” makes such clarification even more necessary and important. Does “civil society” include voluntary associations?

This is now Article 46. The revised wording reads:

1. *The Union shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action.*
2. *As per previous draft Article 34(3).*
3. *The Commission shall carry out broad prior consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.*
4. *A significant number of citizens, no less than one million, coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions for the specific procedure and conditions required for such a citizens’ request.*

The Government welcomes the new commitment in Article 46(3) for the Commission to consult broadly with all parties concerned. This is important to ensure that, inter alia, the regions are involved as fully and early as possible in discussions about issues that will affect them. In this respect, we have also proposed that the Union Institutions maintain a dialogue with the regions, as well as representative associations and civil society, under Article 46(2). This will help to improve the Union’s transparency and enhance its democratic credentials. However, the Government remains to be convinced that the provision in Article 46(4) would improve the existing arrangements for submitting a legislative proposal.

As with Article 33 above, the Government agrees with the Committee that the terminology must be legally clear.

The Praesidium’s draft of 26 May inserts a new Article 47: The social partners and autonomous social dialogue. This reads:

“The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.”

Article 35: The European Ombudsman

The requirement that he or she be appointed by the European Parliament (Article 195 TEC) is an important guarantee of the Ombudsman’s independent which we believe could usefully be included in this Article rather than in Part Two of the new Treaty.

This is now Article 48 and has been revised in line with the Committee’s point, that the appointment of the Ombudsman by the European Parliament be included in this Article. It now reads:

“A European Ombudsman appointed by the European Parliament shall receive, investigate and report on complaints about maladministration within the Union Institutions, bodies or agencies. The European Ombudsman shall be completely independent in the performance of his duties.”

The Government is broadly content with this draft Article. However, we have questioned whether it is appropriate for this Article to apply to the common foreign and security policy (CFSP), given the distinct, intergovernmental nature of that policy area. We have proposed a new Article (238) in Part III of the draft Constitutional Treaty that would exclude CFSP from the provisions of this Article.

Article 35a: Political parties at European level

This draft Article has been removed from the Praesidium’s 26 May re-draft and succeeding drafts. It now appears in Article 45(4).

Article 36: Transparency of the proceedings of the Union’s institutions

The application of the principle should be expressly extended to include all agencies and bodies established or created by or under the Treaties.

But a general rule in the Treaty, such as that in Article 36(2), would be an important step forward.

We recommend that Article 36(3) be amended so that any natural or legal person (irrespective of his, her or its nationality or residence) should have the right of access to EU documents.

We recommend therefore that Article 36(3) be extended to cover all bodies and agencies established or created by or under the Treaties.

The Government believes that the revised Article represents an improvement in clarity and drafting. It now reads:

1. *In order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies and agencies shall conduct their work as openly as possible.*
2. *As previously.*
3. *Any citizen of the Union, man or woman, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part Three of the Constitution.*
4. *A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.*
5. *Each institution, body or agency referred to in paragraph 3 shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4 above.*

The Government’s position on openness is clear. We are keen advocates of greater openness in the working of the EU. However, protection must be ensured for genuinely sensitive information and to ensure legal certainty for the EU’s citizens and its Member States. It was in this spirit that the UK approached negotiations of the EU’s Access to Documents Regulation.

Article 2(2) of the Access to Documents Regulation already provides that the Union Institutions may extend the right of access to natural or legal persons not residing or having their registered office in the Union.

Article 36a: Protection of personal data

We believe that the limits of the power in Article 36(2) need to be defined. It must be clear that Article 36a does not confer any general power on the Union to legislate on data protection.

This is now Article 50. It has been redrafted to read:

1. *As previously.*

2. *A European law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by the Union's Institutions, bodies and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority.*

We have recommended that Article 50(1) be deleted as it simply repeats what is already in the Charter of Fundamental Rights. Such repetition does not aid legal clarity. We have further proposed that Article 50(2) would be more appropriate in Part III of the Constitutional Treaty.

Article 37: Status of churches and non-confessional organisations

Whether Article 37 is necessary or helpful requires careful consideration.

This Article, now 51, has been slightly re-drafted:

1. *The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.*
2. *The Union equally respects the status of philosophical and non-confessional organisations.*
3. *Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.*

As the Committee notes, this Article formalises the status of churches and non-confessional organisations as set out in the Treaty of Amsterdam. It helpfully recognises that Member States, rather than the EU, have responsibility for policy on religious matters.

The Government notes the Committee's comments about this Article. In keeping with the aim of greater clarity, the Treaty sets the scope of the Union's relations with Member States and non-state actors. This Article deals with churches and non-confessional organisations. Other provisions cover participatory democracy and the Union's relations with social partners.

THIRTY FIFTH REPORT—THE FUTURE OF EUROPE: PROGRESS REPORT ON THE DRAFT
CONSTITUTIONAL TREATY AND THE IGC¹⁴⁶

1. The Government welcomes the Committee's Progress Report and forward look to the forthcoming Intergovernmental Conference (IGC). We have valued the Committee's interest in the work of the Convention on the Future of Europe and look forward to a continued exchange of ideas during the IGC negotiations.
2. Heads of State or Government agreed at the Thessaloniki European Council, 19-20 June 2003, that the IGC will be conducted by themselves, assisted by Foreign Ministers. We welcome wholeheartedly the decision that the acceding States will participate fully in the IGC, on an equal footing with the current Member States. The three candidate countries will take part as observers.
3. Negotiations are due to begin on 4 October. At the time of writing, the Italian Presidency has not yet finalised the detailed arrangements about how the IGC process will work. We do not yet know how long they will last, although the Conclusions from the Thessaloniki Summit called for the IGC to "complete its work and agree the Constitutional Treaty as soon as possible and in time for it to become known to European citizens before the June 2004 elections for the European Parliament."

We accordingly make this Report for debate, and recommend that such debate takes place jointly with that on the Government's motion on 9 September. (Paragraph 6 of the Report)

4. Time on the floor for debates is, of course, a matter for the Business Managers. We look forward to the debate that has already been arranged on the Convention on 9 September and hope that it will be possible in that debate to look ahead to the work of the IGC as well.
5. The Committee will be aware of the considerable pressures on Parliamentary business. We shall do our best, however, in consultation with the Business Managers, to identify suitable time to examine the work of the IGC.

¹⁴⁶ Government Response dated 4 September 2003.

We accordingly welcome evidence to help us with our final report. Evidence should be submitted in writing by 10th September. (Paragraph 6)

6. The Government notes the twelve Explanatory Memoranda deposited with Parliament on the draft Constitutional Treaty, as well as the Government Responses to the many Reports published by the Committee and its sister Committee in the House of Commons. We have published two Command Papers containing the text of the draft Constitutional Treaty. We are publishing in early September a White Paper setting out the Government's approach to the IGC. We are considering what additional documentation would be helpful.

We recommend that the Government publicises its strategy for keeping Parliament informed of the work of IGC (to include both written reports to both Houses and proceedings on the floor, including statements and debates). The Government is also working to present the draft constitutional Treaty to the public and should do more to make known the content and effect of the Treaty. (Paragraph 7)

7. Without knowing yet the precise arrangements for the IGC negotiations, it is difficult to determine how best to ensure that Parliament and the public are kept informed about progress. The Government does take this issue seriously and we recognise the need for Parliament to be aware of the process as early as possible, in order to put in place its own mechanisms for following the IGC's work. We undertake to inform Parliament at the earliest opportunity of how the IGC negotiations will be organised, and set out our proposals for keeping Parliament informed. The Government hopes to respond positively to the proposal for a Joint Standing Committee on the IGC.

8. As part of the Government's continuing efforts to ensure that the public is informed about the future of Europe debate, we are as stated above publishing a White Paper, setting out our thinking as we approach the IGC negotiations. In addition, the Foreign and Commonwealth Office has launched an on-line consultation on the draft Constitutional Treaty. This public forum is open to all members of the public, including parliamentarians. It was officially launched by the Minister for Europe on 19 August and will run throughout the Summer, until the IGC begins on 4 October. The Hansard Society – an independent, non-partisan, educational charity which promotes effective parliamentary democracy – is monitoring the consultation.

9. The Government hopes that this will be an opportunity for the public to feed their opinions on the draft Constitution to the Government, as we make our preparations for the IGC.

10. In addition, the Europe Minister, Dr Denis MacShane, is undertaking a series of visits around the United Kingdom to discuss with regional audiences the Union's enlargement and its implications for the future of the European Union. Details of his regional visits are available on the FCO website (www.fco.gov.uk).