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FILE TITLE:

FUTURE OF EUROPE

SERIES

EUROPEAN POLICY

PART

11

PART BEGINS

PART ENDS

CAB ONE

5 MARCH 2003

16 MAY 2003

Labour Administration

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PART

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DATE CLOSED	16.5.03
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Series : EUROPEAN POLICY

File Title : FUTURE OF EUROPE

Part : 11

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16 May 2003

MR
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AC/Press

(LH)



Foreign &
Commonwealth
Office

London SW1A 2AH

Dear Matthew,

BVP

Prime Minister's Dinner with Giscard

The Prime Minister is having dinner with Giscard on 19 May. This is probably the last opportunity to talk privately to him before the end of the Convention. Giscard set great store by personal contact with Heads of Government. What the Prime Minister says to him will register and will help to shape the final Convention outcome. So we need to use the meeting to give him a clear idea of what issues most matter to us, and how we can be squared.

The Prime Minister should also take the opportunity to congratulate Giscard on his institutional proposals, commend his toughness in forcing them through the Praesidium and resisting criticism from the Convention floor. He should say that Giscard has produced a well-balanced package. He should stick to it and we will support him.

First of the issues to raise is the **use of language**. Even if the substance of the Treaty is acceptable, it will provoke opposition if it is phrased in the visionary language of federal Europe or give the impression that the EU is a nascent government. This week's British press can be cited to demonstrate the political and presentational downside of euro speak.

Friday's debate revealed a threat to our position on **QMV in CFSP**. Giscard (who is sympathetic to us) needs to be clear that we will not accept it. Likewise it must be clear that **CFSP and defence** remain the province of the Council. Giscard does intend to rule out **ECJ jurisdiction of CFSP**, but we will also need to secure agreement on a double-hatted European Foreign Minister who is answerable solely to the Council and who cannot be bound by Commission collegiality or be over-ruled against the wishes of the Council. On the linked issue of **ESDP**, Giscard needs to understand that a **common defence guarantee** is wholly unacceptable.

The Prime Minister has already written to Giscard outlining our position on **tax and social security**. The Convention has now widened its attack to include QMV for the Own Resources system – the UK abatement is in their sights. Giscard knows this is not on, but must be persuaded that it is pointless



to include this in the draft Treaty. But likewise we will not agree to any move towards **communitisation of economic policy**.

On the **Charter** we face a challenge. Giscard told the Athens European Council that the Charter would be incorporated as Part II of the Treaty. Peter Hain has just written to him to set out the package needed for the UK to agree. Incorporation via a protocol (ie not Part II) is part of the deal. The content and status of the commentary are also vital.

On **JHA**, where we do want to give the EU further powers, we cannot accept a European public prosecutor or QMV in criminal procedural law.

The Prime Minister should also raise the **Single Legislative Council**. He should note that we understand this is Amato's vision – and that it is difficult for Giscard to oppose it. We shall do so as will most other member states.

*Yours ever,
Jonathan*

(Jonathan Sinclair)
Private Secretary

Matthew Rycroft Esq
10 Downing Street

PRIME MINISTER

From: Stephen Wall
16 May 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

CONVENTION: WEEKLY UPDATE

The Plenary on 16 and 17 May provided Convention members with their first opportunity to "debate" Giscard's draft articles on the institutions. 650 amendments had been submitted in writing in advance.

Most interventions at Plenary turned out to be predictable recapitulations of people's existing positions. For the majority of speakers, this meant almost ritual denunciations of the proposal for a full-time Chair of the European Council, opposition to re-opening the institutional provisions of the Nice Treaty, and support for "the Community method" as the bedrock of future developments. Many also favour "enhancing the democratic legitimacy of the Commission President" by giving the Parliament a greater say in his or her selection.

Within this mainstream, there are, however, different currents, and some possible emerging areas for compromise:

*we must not compromise on
the F/+ members of the Council.
What exactly is Amato's
single legislative Council -
what does it mean in
practice?*

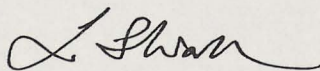
- the Benelux have come out in favour of a smaller Commission, with a system of associate Commissioners, who would not vote in the College, but would nevertheless allow all Member States to be represented;
- the Irish support a strong "Secretary-General" of the Council: a political appointee who would fulfil many of the functions we envisage for our Chair, but alongside the continuing rotating Presidency.
- the Irish also want an electoral college of MPs and MEPs to select the President of the Commission. So do the Danes and Swedes;
- the Greeks could accept a full-time Chair of the European Council, as long as he/she was directly elected by the citizens of the EU;
- the Danes, Poles and Swedes could live with our proposals to combine a full-time Chair with Team Presidencies, as would (I suspect) the Dutch;
- there is growing doubt about how a "double-hatted" Foreign Minister could actually work. The problem of how you could force someone of the Council to be subject to Commission collegiality (even for first pillar issues) is attaining the status of an EU West Lothian question. The Irish and Swedes are particularly hostile, which is helpful since the proposal is hard to resist but equally hard to make workable.

So there are some emerging outlines of possible convergence. But it is not yet the time to make substantive concessions.

As for Giscard himself, his summing up at the end of the debate suggested that he is not about to bend to popular opinion. He offered to look again at the Praesidium text to see how various concerns might be accommodated, but with no promises. He mentioned the Benelux model of Commission reform (which is remarkably similar to his own) as meriting particular attention.

This single-mindedness does not benefit us across the board however. In response to Peter Hain's intervention, Giscard pointedly refused to accept our criticisms of the Single Legislative Council. He insisted that sectoral Ministers would continue to accompany the Government representative to meetings. This misses the point, and supports our theory that he has agreed to back this in return for Amato's support for the full-time Chair. This is risky, coupled with outright support now from Italy and France, and indifference from Germany and several others. You might mark his card on this on Monday. John Kerr thinks we can see off the idea in the end.

Finally, on the Convention timetable, Giscard confirmed that he would present a final version of Part I (the "constitutional" provisions) and Part II (what he assumes will be the Charter) to the Thessaloniki European Council on 20 June. He noted that Part III (the Union's policies) would not be ready by then and that only the Council could decide whether to take this work on itself in the IGC, or to grant the Convention an extension to mid-July. In a choreographed move, Papandreou then piped up saying that the Presidency understood the desire for an extension which they would "take on board." We may be asked for our views in due course. We could live with an extension to mid-July.



STEPHEN WALL

PRIME MINISTER

From: Stephen Wall

Date: 16 May 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steve Morris
Sir Andrew Turnbull
Sir Nigel Sheinwald

YOUR DINNER WITH GISCARD: 19 MAY

You are giving dinner to Giscard on Monday. Jack Straw and Peter Hain will be there. This is the last opportunity to talk privately to him before the end of the Convention. Giscard set great store by personal contact with Heads of Government. What you say to him will register and will help to shape the final Convention outcome. So we need to use the meeting to give him a clear idea of what issues most matter to us.

First the use of language. Even if the substance of the Treaty is acceptable, it will provoke opposition if it is phrased in the visionary language of federal Europe or give the impression that the EU is a nascent government. Giscard will be sympathetic if you say that it is not the concept of a federation of nation states which causes problems, but the language.

Likewise it must be clear that CFSP and defence remain the province of the Council. QMV for implementation only, as now. Giscard does intend to rule out ECJ jurisdiction of CFSP. We will also need to secure agreement on a

double-hatted European Foreign Minister who is answerable solely to the Council and who cannot be bound by Commission collegiality or be over-ruled against the wishes of the Council. On the linked issue of ESDP, Giscard needs to understand that a common defence guarantee is wholly unacceptable.

You have already written to Giscard outlining our position on tax; and social security (Article 137). The Convention has now widened its attack to include QMV for the Own Resources system – the UK abatement is in their sights. Giscard knows this is not on, but must be persuaded that it is pointless to include this in the draft Treaty. Likewise we would not agree to any move towards communitisation of economic policy. Giscard appeared to rule this out in his / 'Today' interview this morning.

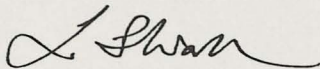
On the Charter we face a challenge. Giscard told the Athens European Council that the Charter would be incorporated as Part II of the Treaty. Peter Hain has just written to him to set out the package needed for the UK to agree. Incorporation via a protocol (ie not Part II) is part of the deal. The content and status of the commentary are also vital. Patricia Scotland is very keen that you stress this.

On JHA, where we do want to give the EU further powers, we cannot accept a European public prosecutor or QMV in criminal procedural law.

We should also raise the Single Legislative Council. Peter Hain spoke against it in the Convention this week. But Giscard said, to applause, that it would happen. Giscard himself is not enthusiastic. John Kerr thinks we may be able to kill it off in the end.

/ Giscard's institutional proposals (summary attached) provoked the wrath of the
smalls. The French have given him total backing. You said at Nice that we
favoured a smaller Commission but were content to live with the Nice outcome
(review when the EU gets to 27). The important point is that John Kerr thinks
we will get a satisfactory compromise, including the Chair of the European
Council, by the end of the Convention.

On timing, Giscard will present the Convention outcome at Thessaloniki. He
will ask for time (until July) to present Part 2. This makes sense because Part 2
will then go straight into the IGC ie potentially helpful to us.



STEPHEN WALL



TRANSCRIPT

Programme(s)	<i>The Today Programme Radio 4</i>
Date & time	<i>Friday 16th May 2003 0810</i>
Subject / interviewee	<i>Europe – Giscard d'Estaing</i>
Prepared by:	Sarah Mouncey
Contact numbers:	020 7276 1080 – Pager 07659 137 572 – 24hrs, every day

JAMES NAUGHTIE: Presenter

The Draft Constitution for the European Union that will emerge from the Convention being chaired by the former French President, Valéry Giscard d'Estaing, is described by the Government here as a 'tidying up exercise' - streaming... streamlining the EU rule book, making sense of a Union that's soon going to expand to have about 25 countries as members.

But there's another view, that this is the embryo of a United States of Europe, with economic informed policy decided at a federal level, away from nation states, and that in Britain's case it is therefore in that potent phrase "the end of a 1,000 years of history."

Well, this morning, I spoke to Valéry Giscard d'Estaing to try to get a picture of the sort of Europe he wanted to emerge. I asked him first to describe what he hoped the Constitution would produce?

VALÉRY GISCARD D'ESTAING: Chairman, European Union

It will be an union of states, the older states will continue to exist of course and to have their competence and importance, but these states will have in common certain common competencies, and they will address these competences jointly.

JAMES NAUGHTIE:

It's undeniable though, and you talk about the... the First Article of the Constitution, that this will be a Federal set-up, it will be something in which the nation states of the European Union become - as critics would have it here - subservient to a central power.

Isn't that the inescapable point about this Constitution?

VALÉRY GISCARD D'ESTAING:



No. *(Laughs)* Well, this is the real fantas... but rather amusing because when you read these days the British press, the... the very strange view of our proceeding and our work, well working there openly because everything we do is published, published on the Internet all the documents, but things are very easy to access, to our real thinking. There's absolutely even no debate on a sort of single Federal State, there's no proposal for that.

The question is that it's a Union of States in which Britain will be... is... will be a member, and in this Union we have certain common competencies. If you take the case of the single market, you have competition, you have foreign trade, you have certain common competencies, and these competencies will be exercised in a common way, and you call... you could call this common way a federal way - for these special competencies, not at all for the structure of the organisation.

JAMES NAUGHTIE:

The argument, however, from those who wanted to protect the nation state to a greater extent than this Constitution allows, say that inevitably what will happen is that there will be, for example, a common foreign policy, and an economic policy which will be coordinated from the centre. Now there are many people who think that's a very good idea, who want a Federal Europe, who want a United States of Europe, and they're very open about it. There are many people, and the polls tell us it's a majority in this country, who don't want to move so far down the road.

Isn't this the way towards a common foreign policy and a common economic policy?

VALÉRY GISCARD D'ESTAING:

No. One must be very fair and very honest about it. First, it's a debate, it's a discussion, it's a proposal, it's not a decision. The decision will be taken later in what is called an Intergovernmental Conference, and the decision will be taken by unanimity. So if Britain or another country do... does not agree, it has a perfect right and a practical right to oppose.

On the two points you mentioned, they are different. One is economic policy. The only thing which is said which is of *(unclear)* important, is the need for coordinating the economic policies because we are in a single market. In this market there is several currencies, but the euro is a common currency for now 12 countries out of 15. If you have a single country... a single monetary policy, it's normal to have some form of coordination of economic policies. But it's coordination, and the wording we use is very clear. We say the states... the member states coordinate their economic policy.

For foreign policy it's a different topic. It's enshrined in the national sovereignty of the states, and the old states like Britain and France and Italy and so on. So we know that it's not a question to transfer the power to decide the stage when *(words unclear)* is a coordination of our national foreign policies.

For instance: on Iraq, Britain took a certain course with Spain also and some other members; Germany, France and others took another course. The point is not to impose that the minority will



follow the majority, which probably not be accepted by anyone by now. But the point is to try to have as much as we can a common attitude.

For instance: in the Security Council we were four member out of 15 coming from the European Union, four out of 15. If we had had a coordinated attitude you will have an enormous influence on events. So what we're trying to achieve is to give a role to Europe, not to substitute the whole of Europe to the national sovereignty, but to try to coordinate our actions to influence more the events on the international scene.

JAMES NAUGHTIE:

Coordination of course is a word that can mean many things. You say that in the euro zone... in those countries who've adopted the zeuro... the euro, there is an inevitability about more coordination in economic policy, and those who would take a different view from your own about the future of Europe say this: that if there is a single currency, of course it means that economic policies will have to converge. It also means inevitably in the end – because it's the only way a currency can work – political union, doesn't it?

VALÉRY GISCARD D'ESTAING:

No. Well you *[laughs]* well, you jump from one fact, which is a fat, to an extreme conclusion, and...

JAMES NAUGHTIE:

[Interrupting] Well, no, it's not a conclusion, it's a question?

VALÉRY GISCARD D'ESTAING:

Yes, a question. No... okay. No, well, when you have a common currency and in the past we had a common currency, we had the gold standard in the past. When you have a common currency something is common, and what is common is the impact of the monetary policies. So it's common to have some sort of coordination, and this coordination does exist at the moment. It works, not perfectly well, but it works, and the British take part in it because it's made in the Council of Finance Ministers, in which Britain is a member.

You imagine or it's a sort of fear, a sort of dictatorship on economic policy. No one speaks of that. The French wouldn't accept it, the Germans certainly not, and so the question is to what extent should we have some coordination that it means to adopt jointly some macroeconomic goals for our economic policy, which you do in Britain, and which we could do on the European level.

JAMES NAUGHTIE:



Would you like to see a President of the European Community elected by the people across the continent directly?

VALERY GISCARD D'ESTAING:

Well, by now it wouldn't be realistic at the moment because there is not the basic political structure for that. What we are... propose, which we will propose, and we have the support of the British representative on that, we have what we call the Open Council, which is the place where member states come to express their support of that... of the open policy.

At the moment we have a rotating Presidency, so this President is ignored by people. No-one in Britain, I'm absolutely sure, but all over Europe and all over the world know the name of the man who is effectively in charge of this rotating Presidency. In a world of image, of...

JAMES NAUGHTIE:

That may be his fault...

VALERY GISCARD D'ESTAING:

We need...

JAMES NAUGHTIE:

...the man whose name no-one knows?

VALERY GISCARD D'ESTAING:

(Laughs) Well, it may be his fault or it may be the function which is ignored. So we have absolutely no future, not debate, not vision of the future if we have not a President but a Chairman, because more a Chairman than a President. This man or this woman may be... will be thinking of the future of the world situation, domestic situation, and will help all the members of the Open Council of having more converging views. And so it's... this man cannot be elected at the beginning by popular vote. Perhaps in 50 years, we don't know what will happen, there will be a sort of time the global ???(Not sure this sentence makes sense) if Europe become more organised, but that is not a proposal we will put in for our Constitution.

JAMES NAUGHTIE:



It's inescapable that this is another step along the road which those who founded the Common Market and wanted to see a united Europe dreamed about.

Why not call it the United States of Europe?

VALERY GISCARD D'ESTAING:

Well, you know we... we had a debate on that. We proposed different names... the old names, the European Community, and the present name (unclear) the Open Union. The name United States of America... of Europe, of course, and the name United Europe...

JAMES NAUGHTIE:

What do you favour?

VALERY GISCARD D'ESTAING:

My... my favourite would be United Europe.

JAMES NAUGHTIE:

Do you think that will get majority support?

VALERY GISCARD D'ESTAING:

No, majority support (laughs) frequency is at now time an existing formula which is the Open union.

JAMES NAUGHTIE:

Valery Giscard d'Estaing, thank you very much indeed.

End.

conqueror

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From: Stephen Wall

Date: 25 April 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Katrina Williams

EUROPEAN CONVENTION: WEEKLY UPDATE

The most important week in the Convention so far, with the publication of the Praesidium's proposals for reforming the institutions.

The articles themselves are not radically different from the drafts you saw before Easter, but there are some important differences. These are the result of the heated two day debate in the Praesidium (summarised in Roger Liddle's attached note) where MEPs and the Commission tried desperately to claw something back from Giscard's original unashamedly intergovernmentalist vision.

The articles would:

- create a full-time Chair of the European Council, elected by qualified majority in the European Council, for a term of two and a half years, renewable once. In foreign policy terms, his role is described as ensuring that the Union is effectively represented in the wider world. In internal terms, it is driving

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forward the work of the European Council, ensuring proper preparation and continuity, as well as facilitating cohesion and consensus within the European Council;

- allow the possibility of the European Council deciding by consensus to create "a board" to support the Chair. This would consist of three serving members of the European Council (which could, by implication, include the President of the Commission), who would be chosen from the European Council on a rotating basis;
- provide for the European Council's choice of President of the Commission to be "elected" by the Parliament by simple majority. In a concession to the integrationists, the European Council are supposed to "take into account" the outcome of elections to the European Parliament in making their choice;
- cap the size of the Commission at 15, and allow the President of the Commission the right to choose his Commissioners from a slate of 75 provided by the Member States – i.e. 3 nominated by each – taking into account the need for political and geographical balance. No guarantee therefore of one Commissioner per Member State, although there is the possibility of a further 15 "Associate Commissioners" being appointed by the President. No guarantee either that Prime Ministers would get their first choice candidate selected;
- create a Single Legislative Council, whereby EU laws would be voted on by specially appointed Ministers, accompanied if necessary, by sectoral Ministers;

- create an EU Foreign Minister double-hatting the Solana and Patten roles, to carry out the EU's foreign policy "as mandated by the Council." Less helpfully, this figure would be subject to "Commission procedures" when exercising the responsibilities previously exercised by the Patten figure;
- attempt to re-open Nice, by reform of the Commission as above, a cap of the size of the European Parliament at 700, and a reform of the QMV system to ensure that all laws are passed by a majority of the Member States, representing at least three fifths of the population of the Union;
- allow for the possibility of the Congress of the Peoples of Europe, made up of MEPs and MPs, to debate the state of the Union once a year.

In presenting the articles, Giscard stressed the importance of a settled constitution for the "united Europe" for the next 50 years. He underlined that the proposals were intended to strengthen the institutional triangle as a whole and not benefit one institution at the expense of another.

Reactions in and around the Plenary varied: from quiet satisfaction from the French and, even more quietly, Peter Hain; to relief from MEPs that the articles were not as bad as they had feared; to acceptance that they were a realistic basis for negotiation from Fischer and Vitorino. However, most representatives from Governments (i.e. the Smalls) reacted with anger at what they saw as intergovernmentalist proposals which did not reflect the majority view in the Convention. The Irish, Portuguese, Austrians and Dutch were particularly

vociferous in their criticism of Giscard appearing to ignore their concerted approach at Athens last week.

Although the rhetoric smacked of the worst moments of Nice, in the margins the Smalls are not so intransigent. Much of their resentment is due to Giscard's handling and what they see (with some justification) as his arrogant and single-handed attempts to force his own agenda on the Convention – especially on re-opening Nice and, most blatantly, on the Congress. They are ready to do business – even if it must be behind the scenes for now.

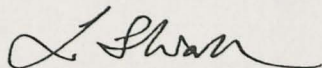
Where does this leave us? On the whole, we are well placed. The articles are not perfect for us by any means and we should expect that they will get worse, rather than better. We need to 'lose' the single legislative council and improve the description of the powers of the foreign minister. But the fact is that all our key objectives are on the table. The more fires the Smalls have to fight, the more they will struggle to put them all out. For example, I would guess that they will fight harder to keep their Commissioners than they will to oppose the Chair of the European Council. And we have a real opportunity to appear as the bridge builders and the conciliators, exploiting the genuine good will that Peter Hain and Patricia Scotland have built up across the Convention. Our proposals for combining the Chair of the European Council with Team Presidencies, do genuinely interest the Smalls as a possible way forward.

There are still risks – not least that Giscard's approach provokes the Smalls into a policy of non-cooperation (there are whispers of wholesale alternative texts being produced). More likely is that governments now look for a deal between

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themselves. I have already had the Belgians on looking for a negotiation. That is not unhelpful.

A handwritten signature in cursive script, appearing to read 'S. Wall'.

STEPHEN WALL

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PRIME MINISTER

From: Stephen Wall

Date: 16 May 2003

cc: Jonathan Powell
Sally Morgan
Roger Liddle

YOUR MEETING WITH GISELA STUART: 19 MAY

You are meeting Gisela Stuart on Monday. This is a good opportunity for you to talk to her ahead of the final phase of the Convention and to remind her of your key negotiating objectives.

Gisela's performance at the Convention has been somewhat erratic. Since publication of the disappointing first set of draft Treaty articles in February, her relative lack of influence on the Praesidium has become clear. In some ways this ought not to be surprising: Gisela was always going to struggle to hold her own against the likes of Amato, Dehaene or the Commission machine.

Gisela seemed to decide that attack was the best form of defence. In private discussions, but also in a couple of public speeches, she suggested that the real problem was the Government's lack of vision for the EU, which deprived her of a clear rationale and strategy for debating with Dehaene and co. She has also been somewhat alarmist in her assessment of the potential impact of Giscard's draft Treaty, in less lurid terms than the Mail, but still in a way that is basically unhelpful.

/ In her note to you of 3 February, she sets out her concerns. On several of these points, she misinterprets the Convention proposals, or indeed, the Government's

/ own position. My note to the Foreign Secretary (also attached) explains why she is missing the point.

On the bright side, the Foreign Secretary had a positive meeting with Gisela on 12 May. Gisela agreed that we had a number of clear objectives, and that she could do more in the Praesidium to try and advance them. She has also accepted to replace her House of Commons legal adviser with a political officer from Nigel Sheinwald's team for the crucial upcoming Praesidium meetings. This will not play well in Parliament (and Gisela has always been at pains to stress that she is Parliament's, not the Government's representative), but is essential if she is to make headway in the crucial next few weeks.

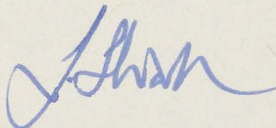
In your meeting, you might usefully set out your key objectives for the endgame, which are essential parts of your vision of a more integrated and efficient EU, rooted in the democracies of the Member States. In other words, stress the importance of:

- the language. "Ever closer Union" is the least of our worries. It will be imperative for readers of the constitutional Treaty to recognise that the EU only enjoys powers that are bestowed on it by the Member States: i.e. no superstate. This means explicit references to the principle of conferred powers and a marked improvement on the existing text which talks about the Constitution alone bestowing powers on the Member States;
- an intergovernmental CFSP and ESDP. We cannot accept a Commission foothold in CFSP via an ill-thought out double hatted "Foreign Minister."

Nor can we accept a mutual defence guarantee – even for a small group of the willing through enhanced co-operation;

- seeing off QMV for tax. This is likely to be a Part II issue, but will be one of the key Convention/IGC outcomes for us;
- incorporating the Charter as a Protocol, rather than in the main body of the Treaty. The Attorney's legal advice is that this is important, and we are part of a determined minority of 7 or 8 Member States who want this;
- seeing off any tinkering with the rules governing the UK abatement;
- keeping a unanimity lock on a European Public Prosecutor, and avoiding QMV for harmonising criminal procedures.

It would also be worth reassuring Gisela that we are all on the same side, and that we appreciate her efforts. She should not regard her role as being the last line of defence, nor to negotiate the Treaty as a whole, but to give the rest of us the best possible chances of success by ensuring that the Praesidium present texts which offer a basis for further debate.



STEPHEN WALL



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

14 April 2003

Dear Secretary of State,

GISELA STUART'S PAPER ON THE EUROPEAN CONVENTION

You may not exactly "welcome" my comments on Gisela's paper but here they are, section-by-section:

(i) Strategic Vision of the EU's 21st Century

Gisela regrets that there has not been more analysis of the core functions of the EU, what it should and should not do, inclusion of the Lisbon agenda etc. She has a point. But I think it is a pretty big leap from there to suggesting, as she does, that the outcome of the Convention will give the Union many of the attributes of a state, combining the worst features of the Community method and intergovernmentalism. The very fact that the outcome will be a treaty negotiated between 25 independent governments and subject to ratification by the national parliaments of all of them, gives the lie to Gisela's contention.

(ii) Constitution and Single Legal Personality

Gisela suggests that, in due course, there will be "soft Treaty amendments". All I can say is that there is no sign of that so far among the member states. As regards legal personality, most of us believe that the EU has exhibited legal personality over the last several years and that it is a matter of defining it in the Convention rather than creating it.

(iii) Charter of Fundamental Rights

Yes there is a risk, but this is a classic case of where the UK is in a minority almost of one. The vast majority of the member states believe that the Charter is a valuable protection of the rights of the citizen. Hence the Prime Minister's desire to negotiate a satisfactory incorporation. Does Gisela not accept that?

(iv) Justice and Home Affairs and Common Security and Defence Policy

I do not recall the then Opposition hailing the creation of the pillared structure at Maastricht as a triumph. As regards the Third Pillar, this was rapidly shown to be a constraint rather than a help. Of course we have to be careful on CFSP, but that is a red line for us and one where I believe we can protect our interests. As regards the European Public Prosecutor, the Prime Minister does not share either Gisela's views or those of David Blunkett. He is perfectly content with a clause in the Treaty which says that the Council may by unanimity decide to create an office of the European Public Prosecutor. It is bizarre that the very unanimity which we cherish as a vital safeguard for our interests on tax is thought to be a broken reed when it comes to the EPP. It seems to me to fly in the face of all reason.

(v) Simplification of Legal Instruments

It is simply not true that simplifying the legal instruments will result in the loss of the political protection which member states thought they had achieved. We will achieve distinctions between QMV for, eg, the single market and the provisions that we apply to the JHA area. But we cannot kid ourselves (let alone convince anyone else) that more majority voting is not necessary if we are to have effective decision making in a European Union of 30.

(vi) Legislative Council

Gisela says we will be left with a legal structure which will allow the idea to be resurrected in the future without requiring significant changes in the institutional architecture. I see no evidence that anything will be changed. The idea could be raised at any time. But it will only get anywhere if it has support of the member states. There is absolutely no sign of that.

(vii) Majority Voting

Yes we have some problems on majority voting. But some of our red lines should not be red lines. It does not make sense for us to be on the same side as the French on agriculture and on trade, both areas where our interests are diametrically opposed to those of France.

(viii) Budget

"Necessary means" would be dangerous for us. That is why we will not accept it.

(ix) Qualified Majority Voting

Gisela says that we will have to make compromises and accept QMV in areas where ideally we would not want it. That may be true. That is the nature of EU negotiation. That is why you have to decide where your priorities lie.

(x) Subsidiarity and National Parliaments

I agree that Gisela has so far failed to deliver as good a subsidiarity protocol as we want. She was the representative of national parliaments, not us.

(xi) Competences

Other than in the Third Pillar where we want to see more communitisation, there will be no significant shift of competences by virtue of the Constitution. The present reality, even before this Convention, was that there are very few exclusive national competences.

(xii) Flexibility Clause

The key question is not so much whether we have one as whether it is governed by unanimity. It should be, and is in the Praesidium draft.

(xiii) Conclusion

Gisela argues that the constitutional treaty "amounts to a huge shift of power towards the Commission without any gain for the member states or the Council of Ministers". She believes that the EU has now become a superstate entrenching institutional models "which may prevent us from implementing our domestic policies". The things she cites in support of her case are largely things that exist already, including the means of raising revenue (own resources was in the Treaty of Rome), its own currency (do we not want to join the euro?), dealing with criminal issues (also something we want if it is properly defined), citizenship (dates from the Maastricht Treaty), a Court (dates from 1957), a Parliament (dates from the Single European Act).

In other words, Gisela is objecting to the European Union, not as it will be following the Convention and the IGC, but as it exists now. So she has fallen into the trap we are always accusing the Conservatives of ie the logic of her stance is that we should not be in the EU at all.

Yours ever,
JS Wall
J S WALL

The Rt Hon Jack Straw MP

Note to the Prime Minister from Gisela Stuart MP
3rd February 2003

Prime Minister,

I am sorry our meeting for today has had to be cancelled and please accept my apologies for not being present for your meeting on the Convention on 5th of February, as I will have to attend a Presidium meeting in Brussels.

I thought I might be helpful if I briefly put down the points I wanted to raise with you.

1) State of negotiations inside the presidium

Giscard is determined to ensure agreement from all four components of the convention i.e. the commission, national governments, The European Parliament and national parliaments. Whilst Giscard clearly supports us in our desire to protect the integrity of the nation state, as evidenced in his support for the subsidiarity mechanism, he ultimately wants to create a Union driven by the large countries.

The key people to work with on the Presidium are Ana Palacio, Henning Christopherson and Antonio Vitorino.

2) Dynamics of decision-making

Whilst the secretariat and Giscard himself have considerable influence, this is neither an IGC where governments start with taking maximum positions to be negotiated down, nor is it comparable to the Charter Convention, which was chaired by a constitutional lawyer, worked with a smaller group and enabled a single individual like Peter Goldsmith to have huge influence. The process of negotiations is conducted at the four levels of the components.

3) Working with Peter Hain

Clearly there are some areas where decisions will be made by governments e.g. role of commission president, role of Council Chair, but there are a number of significant other areas where influencing the Convention will take place at different levels.

I have therefore set up small group of national parliamentarians who work together to table submissions to the convention.

We would weaken our input if I simply tried to duplicate the work Peter does and have focused on building up a second line of defence to support and supplement his work.

I am always mindful that I am there as the representative of Parliament.

This week I am tabling a paper spelling out in detail how the "subsidiarity mechanism" will work and suggested a strengthening of the process. This involves 1/3 of national parliaments being able to require the Commission to reconsider their proposals [yellow card] and strengthen the mechanism by introducing a further step, which would mean that if 2/3 of national parliaments object, the commission would have to withdraw its proposals.

4) Domestic handling of the Convention

I am mindful that the Commons and colleagues in the Labour Party have not fully appreciated the full implications of the possible outcome of the Convention e.g. agreement to a written Constitution, giving the union legal personality, incorporating the Charter on Fundamental rights. This must not come as a shock to them later in the year.

To ensure that they are fully involved in the process I have been giving regular evidence to Commons as well Lord's committees explaining the reasons for our position. I expect there to be some backlash when the first Treaty articles appear at the end of the week, and when I have to give 3 hours evidence to a joint Lords and Commons Committee next week.

To answer our sternest critics in the Commons I feel it is necessary to have further three things in addition to strengthening the subsidiarity mechanism:

- a) A clause, which spells out the process of returning competences to Member States. This provides an answer for those who argue the EU is a one-way street, which simply weakens the national state at every turn. I have succeeded to have such a clause introduced into the treaty at the last presidium meeting
- b) An explicit exit clause. In the interest of logic, if we spell out how to join the union, there is a rational case for spelling out

how to leave the union. In practice this has happened once when Greenland left. I will need to be careful in pursuing this aim, to ensure that the "exit clause" does not become an "expulsion clause" which would be most unhelpful. However for domestic political reasons I think an exit clause is desirable

- c) Should we remove reference to "an ever closer union"? Symbolically that would be extremely helpful to have the clause removed, to counter the argument that the Union is a "Maoist permanent revolution" with only one aim – deeper federal integration. When we discuss this in the presidium on Wednesday I will argue for its removal, but mindful that it is not replaced with something which would be more damaging in presentational terms.

I trust you are content with this approach in addition to the aims set out by FCO in its briefings to ministers.

5) Working with PES and MEPs

I would be most surprised if PES as a political group emerged as an important grouping to influence decisions in the Convention. The only significant force is Guiliamo Amato who has so far succeeded in holding the group together. I intend to remain on the PES steering committee and actively participate in the meetings, but mainly as a damage limitation exercise to ensure that we minimize the integrationist drive displayed by so many who now again enjoy being in opposition, and not having to take responsibility for their actions.

I am working with Finnish colleagues on an interinstitutional agreement to improve the way national parliaments and the European Parliament can work together more effectively. I am also taking this work forward with the Labour Party. However I am mindful that we should not create any "hybrid bodies" as this usually means neither group is prepared to take absolute responsibility. I am resisting any attempts by the European Parliament to give them locus standi in CFSP and Defence.

Yours GS



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

file
Copy = OCO 1554
16 May 2003

Dear Stephen,

**CONVENTION ON THE FUTURE OF EUROPE:
EXTERNAL COMPETENCE**

I understand that Home Office officials are submitting to Ministers this weekend on external Community competence. I wanted to set out some views on the subject.

In his minute to the Prime Minister last autumn, the Home Secretary signalled his desire to retain 'flexibility in the area of external competence' in the third pillar. I understand that the Home Office is now seeking a Treaty provision which would allow Member States to conclude bilateral agreements which were **inconsistent** with Community law.

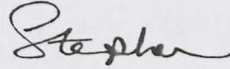
It would be presentationally very damaging for the UK to seek explicit Treaty provisions to act counter to Community policy and against the duty of loyal co-operation. I understand that there are valid policy reasons behind this: but such an amendment is likely to generate extremely negative reactions from Conventioneers, the Commission and many other Member States, and risks making the UK look like a back marker. It might also be counter-productive to our objectives on national security.

I would favour tabling a general amendment stating that Member States should be free to conclude bilateral agreements with third countries which are **consistent** with Community law. I understand COLA are preparing language. We should then negotiate on an instrument-by-instrument basis EU agreements with third countries which would allow the UK to maintain advantageous bilateral arrangements where necessary: as we do in other policy areas.

CM

I am copying this letter to Kim Darroch (FCO), Nigel Sheinwald (UKRep), Martin Donnelly (HO), Chris Jones (HO) and Mike Thomas (COLA).

Yours ever,

A handwritten signature in cursive script, appearing to read 'Stephen'.

J S WALL

Stephen Boys Smith
Home Office

RESTRICTED

file

From: Stephen Wall

Date: 8 May 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Sir Nigel Sheinwald
(UKRep Brussels)
Katrina Williams

**INCORPORATION OF THE CHARTER OF FUNDAMENTAL RIGHTS:
LETTER TO THE ATTORNEY-GENERAL ON OUR PREFERRED CHARTER
PACKAGE**

The issue of incorporating the Charter is moving rapidly towards a decision point. Giscard has written to Convention Members saying that there is now general agreement that the Charter should be incorporated fully into Part II of the Treaty. We will now need to move quickly to secure our key negotiating objectives. Peter Hain will be replying to Giscard making clear that we have consistently proposed an alternative approach. This is incorporation of all the Charter (preamble, substantive and horizontal articles) via a Protocol, rather than as Part II of the Treaty, with the strengthened horizontal articles as agreed in the Charter Working Group and enhanced status for an amended Charter Commentary which should be the authoritative source for the interpretation of the Charter. Peter Hain's letter to Giscard will set out the key elements of the Charter package which must be secured in an acceptable way before we can agree to its incorporation.

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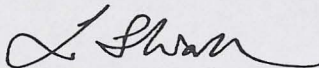
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- 2 -

Peter has also written to the Attorney-General, setting out our ideas for a Charter package designed to meet our essential negotiating objectives and asking for the Attorney's confirmation that it would in fact do so. This package was prepared by officials on the basis of the Attorney's recent advice on methods of Charter incorporation. The package represents – on the Attorney's advice – a very high bid for these objectives. We may not get all of the specific language, and it is unlikely that partners will accept the Charter being incorporated in a Protocol (as we much prefer) rather than as Part II of the Treaty, which the overwhelming majority of the Convention want. But that is ultimately not a show stopper for us, so long as our substantive objectives are secured. Peter's letter to the Attorney restates these constraints and asks for the Attorney's view on whether our package is an adequate starting point for negotiation.

So we are effectively moving into the Charter endgame within the Convention, and Peter is keen to have your support for his negotiating remit.

If, as I expect, the Attorney endorses Peter Hain's approach then I recommend that you too should suggest it. Do you agree?

A handwritten signature in cursive script, appearing to read 'S. Wall'.

STEPHEN WALL

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Draft letter from Peter Hain to Giscard d'Estaing

Charter

My Government has always understood that many members of the Convention believe incorporation of the Charter of Fundamental Rights to be an essential ingredient of a new Constitutional Treaty. For that reason we have consistently engaged in a positive dialogue in pursuit of an acceptable formula. I am very grateful to you and to Commissioner Vitorino and his staff for working so closely with us to find a way forward.

In that spirit, I would like to use this personal letter to set out as clearly as I can the elements of a settlement that would meet the political and legal concerns of my Government and allow us to resolve the issue at the Convention.

For our part, we are prepared to take the significant step of agreeing to incorporate the Charter as a legally binding part of the new constitutional structure. But you understand the extreme sensitivity of this issue in the UK, and why we must insist that incorporation be done in a way that affords us legal certainty and respects the Prime Minister's commitment that incorporation will not extend the competence of the Union.

Antonio Vitorino's working group agreed elements to strengthen the horizontal articles and commissioned further work to enrich the Commentary. We look forward to receiving that draft language, and are hopeful that we might shortly reach an agreement that will be acceptable to others in the Convention.

The other remaining elements of the package are the wording used in Article 5 of Part One, and the form of incorporation. All these elements are essential to the UK and closely linked, and I attach a draft that is intended to clarify how the UK considers its needs can best be met.

As I understand it, you reported to the European Council at Athens that the Convention had agreed the Charter should be incorporated as part II of the Constitution. The UK does not agree. The joint submission I signed with a number of other Government Representatives made the UK position clear. The UK wants the Charter to be incorporated in the form of a Protocol.

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- 4 -

That still stands. We are not attempting to diminish the status of the Charter: indeed we fully expect the new Constitution to contain a provision, as now, stating that Protocols are an integral part of the Treaty. Rather we are seeking to ensure legal incorporation in a way reflects the consensus achieved in the Working Group on how to render legally water-tight certain key elements.

Incorporation via a Protocol would reflect that consensus by:

- Maintaining the distinct character of the Charter and its "horizontal" provisions.
- Facilitating the retention of the Preamble to the Charter.
- Respecting the degree of hierarchical priority for the treaty itself, which Charter Article 52(2) demands.
- Avoiding confusion arising from duplication of text in the treaty itself (eg. Charter article 39 and current articles 19(2) and 190(1) EC).
- Facilitating the addition of important explanatory paragraphs (about replacing the original Charter, etc)

I hope this letter serves to clarify the basis on which the UK can agree to incorporation of the Charter. I would, of course, be happy to discuss this at any time.

RESTRICTED

DRAFT 7 May 2003

INCORPORATING THE CHARTER OF RIGHTS

Part I, Article 5(1)

“The Union’s Charter of Fundamental Rights is set out in the Protocol annexed to this Constitution. “

Protocol

“CHARTER OF RIGHTS OF THE EUROPEAN UNION

[insert complete text of Charter, as amended by the Convention]

* * *

The Union has agreed the rights, freedoms and principles set out in this Charter. It replaces the Charter of Fundamental Rights solemnly proclaimed at Nice on 7 December 2000.

The scope, applicability and legal effect of the Charter are described in Part VII of the Charter. References in Part VII to “Union law” or to provisions of the treaties are to provisions other than those in the Charter.

The Charter shall be interpreted and applied in accordance with the Commentary agreed by the Convention on the Future of Europe. The Commentary shall be published in the Official Journal.”

From: Stephen Wall

Date: 8 May 2003

PRIME MINISTER

Cc: Jeremy Heywood
Jonathan Powell
Alastair Campbell
Sally Morgan
Roger Liddle
Matthew Rycroft
Steve Norris
Nigel Sheinwald
Andrew Turnbull
Katrina Williams

EUROPEAN CONVENTION: ROUND-UP

Suggested amendments to Giscard's draft articles on the institutions came flooding in from all quarters this week. As you know, Peter Hain's response was essentially to welcome Giscard's proposals, but to record opposition to the Legislative Council and reservations on the idea of a "European Foreign Minister." We also sounded a note of caution on the wisdom of reopening the Nice package on the institutions, following your intervention on the matter at Athens.

Views from others fell into three broad camps:

1) Generally content: France, Germany, Italy (separate amendments)

- Few changes, reflecting general satisfaction. Support for the full-time Chair of the European Council, re-opening Nice (i.e. to reduce the size of the Commission and the Parliament, and alter voting weights). Also silence

(indicating support?) for the Legislative Council (unhelpful), and the Congress (although not Italy) ;

we must be with France

- Some differences of view on selecting the President of the Commission. France would prefer the candidate to be chosen from a shortlist provided from the European Council. The Germans want a candidate to be proposed to the Parliament by a "joint committee" of the European Council and the Parliament, and then elected by a majority of the Parliament and a Qualified Majority of the European Council. Italy just wants the President of the Commission to be elected "by the Parliament;"
- Agreement on proposals for a double-hatted European Foreign Minister. France and Germany agree that the President of the European Council should nominate the candidate for Foreign Minister, who would enjoy a special status, defined in Part II of the Treaty. They have not provided further details on this, suggesting that they have, for the time being, fudged the issue to cover up a failure to agree. ✓

2) Generally content, but strongly opposed to any re-opening of Nice:

Spain, Denmark, Sweden (separate amendments)

- Spain, Denmark and Sweden support the broad thrust of Giscard's proposals, but strongly criticise the idea of re-opening the Nice compromise on the institutions. Helpfully, Sweden opposes the double-hatted Foreign Minister being a member of the Commission.

3) Unhappy with Giscard's proposals. Criticisms that they alter the fundamental institutional balance, give too much power to the large Member States, and re-open Nice.

- For the purposes of submitting amendments, the Smalls decided to split up into three groups, rather than act en bloc. These ended up as:
 - Benelux
 - Ireland
 - Austria, Finland plus the Central European new Member States

The Commission also fall into this category. The broad themes of this group's amendments were:

- Firm opposition to the proposal for a full-time Chair of the European Council and maintenance of the rotating six month Presidency (all). There are, however, varying degrees of rejection; the Irish say, for example, that "the case has not yet been made" and propose a strong, political Secretary-General of the European Council alongside the rotating Presidency. All the Smalls concede in private that a deal will have to be done on this.
- Different solutions to deal with the chairs of the other Councils. The Benelux want the President of the Commission to chair the GAC, but can support the Legislative Council (which the Irish oppose). The Commission would like each Council to elect its own Chair for up to one year, renewable;

- Stick to Nice on the institutions package: one Commissioner per Member State until the EU reaches 27. Some interesting variants on the size of the Commission, including openness to the idea of "Associate Commissioners" from the Benelux, and, more elliptically, from the Commission itself. All agree on the need to maintain equal rotation when selecting Commissioners;
- Support for an EU Foreign Minister, who would, with different degrees of emphasis, be a normal Commissioner (a Vice-President in fact) when transacting first pillar (i.e. Patten) external business. Our view is that this would undermine CFSP as an intergovernmental area of activity;
- Proposals to allow the Parliament a stronger role in electing the President of the Commission. The Benelux would like the President nominated by the Parliament and elected by three-fifths of its members, confirmed by a Qualified Majority in the European Council. Austria and Finland would at least allow the European Council to propose a shortlist of three candidates. Ireland would prefer the President of the Commission to be elected by an Electoral College of national MPs and MEPs (also supported by Denmark and Sweden).

COMMENT

Giscard put forward proposals on a smaller Commission, etc, partly because he believes them to be right and partly for tactical reasons ie to put pressure on the smalls so that, in having to fight against what they dislike (smaller Commission) they would have no energy left to fight against what we want (Chair of the Council). So far, the tactic has provoked more fury than fear among the smalls and has made them even more suspicious of Giscard's chairmanship than before.

Because, at Athens, you said "let's stick to Nice", and because of our inclusive stance on European defence, we are regarded as the acceptable face of the large member States.

I think it would actually suit us best if Giscard's tactic failed at this point ie that disagreement on these institutional issues meant that they could only be resolved in the IGC. That would make it easier for us to keep open the issues which the Convention might otherwise try to resolve against our interest: CFSP, ESDP, JHA, Charter and tax, being the main areas.

It is very difficult to judge at present how it will plan out. A compromise on institutions may be reached in the Convention. In which case our need to keep the other issues I have mentioned open into the IGC would be plain to view, though we have just enough allies on them to make us unpleasantly conspicuous rather than dangerously isolated. But on CFSP, ESDP, tax and the Charter we look like being quite a long way from the French and Germans.

The key decision point for us will be when the Presidium publish their complete treaty text at the end of the month. We shall need a meeting with you, Jack Straw and Peter Hain during or just after the Whit weekend to decide what our key sticking points and objectives are. We must, at that point abandon the "bottom up" approach of Whitehall co-ordination which does not allow for prioritisation.

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- 6 -

I am sending you a separate, more detailed, note on the end game issues.

Stephen

STEPHEN WALL

We shd start to understand
the ~~nonsense~~ about the
outcome. This is in fact, good
for us

RESTRICTED

10 DOWNING STREET
LONDON SW1A 2AA

From the Senior Policy Adviser

30 April 2003

**CONVENTION: UK AMENDMENTS TO CFSP/ESDP AND
INSTITUTIONAL ARTICLES**

The Praesidium's proposals give us most of what we want:

- An intergovernmental CFSP with a pretty tight **unanimity lock**;
- A **chair of the European Council** and a streamlining of the Council system, symbolising the pre-eminence of the Council, alongside the Commission, as the 'government of Europe'. Once we have got this firmly agreed at the Convention, but not before, we can sell this proposition as the essential guarantee of a Europe that does not evolve into a federal superstate but remains run, in key respects, by the Member States.

So, **now is the time to prioritise, not fulminate**. We should not submit a flood of fiddly amendments, suggesting that we have fundamental difficulties with these proposals, when we have not. We should concentrate on the political essentials.

To my mind these are:

- On CFSP, clarification of the **accountability of the double hatted European Foreign Minister** to the Foreign Ministers' Council for CFSP decisions.
- On QMV in CFSP, retention of the whole of Part Two Article 9 which has a satisfactory unanimity lock attached to it, but deletion of Article 2.2 which is duplicatory and does not. We should **not object per se to the notion of joint initiatives by the Foreign Minister and the Commission**, which is the basic rationale for double-hatting that the Solana/Patten functions need better

integration in some circumstances: **but these joint initiatives must have the Article 9 unanimity lock.**

- On ESDP, **tighter drafting of the enhanced cooperation clauses** to ensure **removal** of references to Member States that have much more binding security commitments to each other (i.e. facilitating Article 5 'inner cores' within the EU) but **retains the flexibility** for groups of States to work together within the Treaty on **research, procurement and force pooling** (where the UK already participates in a number of arrangements analogous to the UK/Dutch Marine Corps) which we want more of. **Without some kind of inner core provision, it will be difficult to drive capability improvement through EU political commitment** – which was our original logic behind European defence.
- A clause that unambiguously **keeps the ECJ out of CFSP**
- On Chairing the Council, some reference to **team Presidencies working with a permanent Chair of the European Council**. This should be aligned with, **not an alternative to**, the Praesidium proposal for a **Bureau** of Prime Ministers to assist the Chair of the European Council in consensus building **within** the European Council itself. This is a sensible (pro-small) proposal designed to ensure that it is not just the leaders of the big counties that the leadership of the European Council has time to pay attention to. I would propose a European Council Chair plus four Prime Ministers to assist in a Bureau for 2 ½ years with Ministers from these same Member States sharing out the chairing of the other Councils, apart from Foreign Affairs chaired by the European Foreign Minister.
- On the **Commission**, Member States should make a **single nomination in consultation with the President, not offer a panel of three** from which the President makes a choice. Also the Commission's accountability should remain a dual one – to the European Council as well as Parliament.

I see most other amendments I have seen as either politically ill advised or inessential (should be dealt with by correspondence with the Convention Secretariat).

Examples of the former:

- The Prime Minister's Cardiff speech makes clear he does believe in "ever closer union" in CFSP, even if he doesn't use that phrase.
- There is **no point in arguing for a separate and distinct categorisation of CFSP instruments**. This goes against the whole thrust of the conclusions of the Simplification Working Group – and no one else will back us on this. It does not matter whether something is called a "decision" or a "common position". We do not need distinct instruments for CFSP: it is the decision-making procedures that need to be distinct.
- **Deletion of the title "European Minister of Foreign Affairs" is unwise tactically**. The Praesidium is likely to come up with Secretary of State as the alternative. A big role for the double-hatter is **Dehaene's price** for acceptance of the European Council Chair: his voice is critical with the "smalls".
- If we start trying to introduce references to NATO in the Constitution, I have come to the conclusion that we will get grief from both ends of the spectrum – the neutrals and France.
- This Government believes in **European defence**, as the PM has said on many occasions. So why keep references in to the Maastricht 'might's' – this is not John Major. The crucial point is **we proceed by unanimity because that enables us to ensure that it is our vision of European defence that prevails**.
- Surely the Solidarity Clause on terrorism is about more than 'consequence management': why are we spending so much time on strengthening JHA instruments if it is not? Isn't part of the European defence mission in the Balkans to ensure the region does not become a base for terrorists? Let us stand on the basis principle of no mutual defence guarantee within the Treaty, not lots of theological fine points of NATO purism.
- **I would advise strongly against us trying to bolster the role of the European Council chair** by writing in coordination responsibilities and making him or her also chair of the General Affairs Council. I know we put forward these ideas in our paper. But we should now be demonstrating that we have modified our original ideas in the light of representation from the 'smalls'. We have been flexible: so should they.

- On the streamlining of the Council, we should support the general thrust of what the Praesidium wants to achieve **a more political Council that is more visible to electorates in Member States**. This is a central objective of our policy: an EU clearly run by the Member States. In the European system at the moment, political and official roles are hopelessly muddled: yet our amendment proposes to maintain this unsatisfactory status quo. It is wrong in principle that officials should cast votes for Member States in the Council or negotiate with the elected MEPs. COREPER should do its job, which is vital, (and fewer Councils should help to do it better) and the Council should be streamlined so that national politicians do theirs properly at European level. The point of the Legislative Council (where I accept there may be practical difficulties, but we are not in a perfect world) is not that it precludes Departments and their Ministers from negotiating on the nitty gritty in sub-Council formations, but that it puts the big decisions on legislation under a more intense political spotlight – where they should be. Elected Ministers take responsibility and it is impossible for folks back home to blame unelected bureaucrats in Brussels. But by having a Legislative Council distinct from other Councils, it also clarifies that the Council in its other formations retains crucial executive responsibilities for policy making and strategy and that the Commission is **not** the ‘Government of Europe’. This is positively my last word on this subject but I do not think that Whitehall “gets” at all how reform of the Council is central to the Blair vision of a more integrated Europe with Member States clearly in the driving seat alongside a strengthened Commission and Parliament.

I hope this is helpful. I have copied my comments to the Foreign Secretary and Denis McShane, to Stephen Wall, Jonathan Powell and David Manning in No10 and to Kim Darroch in the FCO.

Signed electronically
Roger Liddle
30.4.03

ROGER LIDDLE

The Rt Hon Peter Hain MP



File

Foreign &
Commonwealth
Office

London SW1A 2AH

28 April 2003

MR
c SW
JTB
Prens
DCU

Dear Matthew,

**Invitation by Keith Vaz MP to the Prime Minister to Contribute
an Article to a Conference Brochure**

Keith Vaz wrote to the Prime Minister on 8 April inviting him to submit an article for a conference brochure. The conference, which Mr Vaz is chairing, will be held at the House of Commons on 14 June on the subject of enlargement and institutional reform. Dr MacShane, the Minister for Europe, has agreed to speak at the conference.

Mr Vaz has asked the Prime Ministers of all ten new Member States to contribute to the conference brochure. Although it is not known what response this will draw, an article by our Prime Minister would be a useful opportunity to demonstrate further the UK Government's strong support for enlargement.

... It hasn't been possible to draft an article by your deadline. If the Prime Minister is content, I suggest that a positive response (along the lines of the enclosed draft), promising an article in due course, be sent to Mr Vaz at this juncture. I will send you a draft article for your consideration in advance of Mr Vaz's deadline of 14 May.

Yours ever,
Jonathan

(Jonathan Sinclair)
Private Secretary

Matthew Rycroft Esq
10 Downing Street

DRAFT RESPONSE FOR THE PRIME MINISTER TO SEND TO MR VAZ

“Wider, deeper, stronger: A conference on the future of Europe”: 14 June 2003

Thank you for your letter of 8 April in which you invited me to contribute an article for the brochure of the above conference. I strongly support your initiative in hosting this conference, and am happy to contribute an article.

I will arrange for a contribution to be sent to you in advance of your deadline.

*[John Kittmer, EU-E
7008 3998]*

THE PRIME MINISTER

RESTRICTED

PRIME MINISTER

From: Stephen Wall

Date: 25 April 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Katrina Williams

EUROPEAN CONVENTION: WEEKLY UPDATE

The most important week in the Convention so far, with the publication of the Praesidium's proposals for reforming the institutions.

The articles themselves are not radically different from the drafts you saw before Easter, but there are some important differences. These are the result of the heated two day debate in the Praesidium (summarised in Roger Liddle's attached note) where MEPs and the Commission tried desperately to claw something back from Giscard's original unashamedly intergovernmentalist vision.

The articles would:

- create a full-time Chair of the European Council, elected by qualified majority in the European Council, for a term of two and a half years, renewable once. In foreign policy terms, his role is described as ensuring that the Union is effectively represented in the wider world. In internal terms, it is driving

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forward the work of the European Council, ensuring proper preparation and continuity, as well as facilitating cohesion and consensus within the European Council;

- allow the possibility of the European Council deciding by consensus to create "a board" to support the Chair. This would consist of three serving members of the European Council (which could, by implication, include the President of the Commission), who would be chosen from the European Council on a rotating basis;
- provide for the European Council's choice of President of the Commission to be "elected" by the Parliament by simple majority. In a concession to the integrationists, the European Council are supposed to "take into account" the outcome of elections to the European Parliament in making their choice;
- cap the size of the Commission at 15, and allow the President of the Commission the right to choose his Commissioners from a slate of 75 provided by the Member States – i.e. 3 nominated by each – taking into account the need for political and geographical balance. No guarantee therefore of one Commissioner per Member State, although there is the possibility of a further 15 "Associate Commissioners" being appointed by the President. No guarantee either that Prime Ministers would get their first choice candidate selected;
- create a Single Legislative Council, whereby EU laws would be voted on by specially appointed Ministers, accompanied if necessary, by sectoral Ministers;

*what does
that mean in
practice?*

- create an EU Foreign Minister double-hatting the Solana and Patten roles, to carry out the EU's foreign policy "as mandated by the Council." Less helpfully, this figure would be subject to "Commission procedures" when exercising the responsibilities previously exercised by the Patten figure;
- attempt to re-open Nice, by reform of the Commission as above, a cap of the size of the European Parliament at 700, and a reform of the QMV system to ensure that all laws are passed by a majority of the Member States, representing at least three fifths of the population of the Union;
- allow for the possibility of the Congress of the Peoples of Europe, made up of MEPs and MPs, to debate the state of the Union once a year.

In presenting the articles, Giscard stressed the importance of a settled constitution for the "united Europe" for the next 50 years. He underlined that the proposals were intended to strengthen the institutional triangle as a whole and not benefit one institution at the expense of another.

Reactions in and around the Plenary varied: from quiet satisfaction from the French and, even more quietly, Peter Hain; to relief from MEPs that the articles were not as bad as they had feared; to acceptance that they were a realistic basis for negotiation from Fischer and Vitorino. However, most representatives from Governments (i.e. the Smalls) reacted with anger at what they saw as intergovernmentalist proposals which did not reflect the majority view in the Convention. The Irish, Portuguese, Austrians and Dutch were particularly

vociferous in their criticism of Giscard appearing to ignore their concerted approach at Athens last week.

Although the rhetoric smacked of the worst moments of Nice, in the margins the Smalls are not so intransigent. Much of their resentment is due to Giscard's handling and what they see (with some justification) as his arrogant and single-handed attempts to force his own agenda on the Convention – especially on re-opening Nice and, most blatantly, on the Congress. They are ready to do business – even if it must be behind the scenes for now.


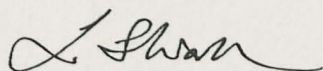
Where does this leave us? On the whole, we are well placed. The articles are not perfect for us by any means and we should expect that they will get worse, rather than better. We need to 'lose' the single legislative council and improve the description of the powers of the foreign minister. But the fact is that all our key objectives are on the table. The more fires the Smalls have to fight, the more they will struggle to put them all out. For example, I would guess that they will fight harder to keep their Commissioners than they will to oppose the Chair of the European Council. And we have a real opportunity to appear as the bridge builders and the conciliators, exploiting the genuine good will that Peter Hain and Patricia Scotland have built up across the Convention. Our proposals for combining the Chair of the European Council with Team Presidencies, do genuinely interest the Smalls as a possible way forward. ✓

There are still risks – not least that Giscard's approach provokes the Smalls into a policy of non-cooperation (there are whispers of wholesale alternative texts being produced). More likely is that governments now look for a deal between

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- 5 -

themselves. I have already had the Belgians on looking for a negotiation. That is not unhelpful.



STEPHEN WALL

RESTRICTED

From: Roger Liddle
Date: 24 April 2003

STEPHEN WALL

PRAESIDIUM PROPOSALS ON THE INSTITUTIONS

Amato gave a full report to the PES of yesterday's Praesidium. Against a background of protests about the way Giscard had leaked his institutional proposals without first consulting the Praesidium or Convention, Amato pointed out the ways in which Giscard's proposals had been amended by the Praesidium to make them more acceptable to the Convention (ie less attractive to us):

- The European Council has not been designated the highest authority of the Union. Its role is defined as it is now (setting guidelines for policy). Pride of place in the Constitution will go to the Parliament. (This sounds more presentational than substantive.)
- The Bureau supporting the 2½ year (renewable) President of the Council will be made up of the President, plus three rotating Prime Ministers. There would be no full time Vice-President (chairing the General Affairs Council) as Giscard had proposed. Nor would the Chairs of other sectoral Councils be members of the Bureau. The Bureau would not have an "executive" or "coordinating (across other Councils)" function, despite the fact that all Councils, apart from Foreign Affairs, will be chaired on a rotating basis. (Is this a recipe for muddle and confusion?)
- Preparations for the European Council will be jointly in the hands of the General Affairs Council and the Commission. (Is this any more than what in practice happens now?)
- The Commission President will be elected by a simple majority of the Parliament on the nomination of the Council 'taking into account the result of the EP elections'. (A political reality if the Council is to secure a majority for its nominee.)
- The Commission President's accountability will be solely to the European Parliament, not jointly to the European Council and Parliament, as Giscard originally proposed. (I think this change is unacceptable to us.)

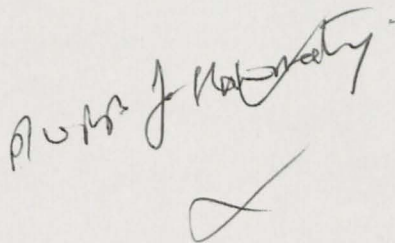
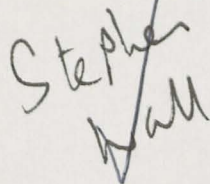
- The European Foreign Minister will be appointed by the European Council in common accord with the Commission President and the nomination would have to be approved specifically by the European Parliament. (My instinct is that this is inevitable if we go along with the concept of 'double hatting', because Chris Patten has all the accountabilities of a Commissioner. The key for us is to ensure that the European Foreign Minister is accountable to the Foreign Ministers' Council for the conduct of policy.)
- The Congress is presented for debate to the Convention as an unnumbered Article, in the expectation that it will be rejected. (So what!)

At the PES meeting, the smalls showed more signs of being agitated about the Praesidium's proposals for the Commission, than the Council. The proposal is that the President would select 12-13 full members with portfolios from a list of three names, including one woman, proposed by each Member State: in addition there would be 12-13 Commissioners "without portfolio". The smalls think they are the ones who will always end up without portfolios. I do not like the idea that the Prime Minister loses his right to nominate a single individual.

On the structure of the Council, the legislative Council is there as Amato proposed. My view is that if we really want to stop them, we should leave it to the IGC and not waste political capital on it in the Convention.

You might attach this to your weekly note to the Prime Minister on the Convention.

ROGER LIDDLE



From: Stephen Wall
Date: 25 April 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
David Manning
Roger Liddle
Matthew Rycroft
Steven Morris
Sir Andrew Turnbull
Sir Nigel Sheinwald
Katrina Williams

THE CONVENTION: ARTICLES ON FOREIGN AND DEFENCE POLICY

We have to comment by the end of next week on the draft Convention text on foreign and security policy. The Foreign Office are submitting to Jack Straw over the weekend but it would be helpful if I could have your view in parallel given the time constraints.

Broadly speaking, the texts are on the right lines ie they reaffirm the intergovernmental nature of common foreign and security policy and the fact that the main policy decisions should be taken by unanimity. But it would be helpful to have your view on the following articles in particular:

- (i) The new basic article on common security and defence policy would say:

“The common security and defence policy shall include the progressive framing of a common defence policy for the Union. This will lead to a

common defence, when the European Council, acting unanimously, so decides”.

This contrasts with the existing treaty text, which says:

“The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide”.

So the crucial change is from “which might lead to a common defence should the European Council so decide” to “this will lead to a common defence when the European Council, acting unanimously, so decides”.

The new text, like the present one, makes clear that “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 NATO, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework”.

Comment: Legally the new text is OK for us. But there is a political question of whether the change in language is more than you want. If it is, with a bit of luck, we can get others (notably the neutrals) to make more of the running against it than we do ourselves. Do you agree that we could

live with this language in the last analysis but should try to nudge it back, with the help of others, in the direction of the existing treaty text.

Yes. But it seems due time.

- (ii) You should look at Article 30, paragraphs 5, 6 and 7 (attached). Article 5 is fine. It basically says that the Council can unanimously task a group of member states who have the capacity to take action in a particular area. This is something we want.

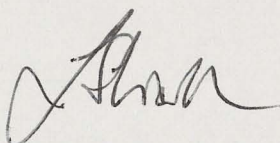
Paragraph 6 is more dodgy. It includes the concept that member states "which fulfil higher criteria for military capabilities" can establish structured cooperation between themselves but there is an additional criterion "and which have made more binding commitments to one another in this area". That, combined with paragraph 7, which basically allows a group of countries to devise their own mutual defence guarantee within the EU, makes paragraph 6 undesirable. Paragraph 7 is unacceptable. I recommend that we seek clarification of paragraph 6 ie it should refer only to capability and nothing else and that we make clear that paragraph 7 is not acceptable.



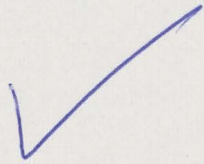
- (iii) Article 29(3). Voting procedure. Under the existing treaty the Council acts in foreign policy unanimously, save that it can act by majority voting:
- When adopting joint actions, common positions or taking any other decision on the basis of a common strategy.
 - When adopting any decision implementing a joint action or a common position.

- When appointing a special representative in accordance with Article 18(5).

The new treaty would preserve the basic unanimity requirement but would allow QMV for "decisions on Union actions and positions on the basis of a European Council decision" or "when acting on the basis of a joint proposal by the Minister for Foreign Affairs and the Commission". The language appears to be setting up a situation where primary foreign policy decisions are taken by the European Council unanimously but on the basis of recommendations by foreign ministers adopted by QMV and with a provision for QMV in any event when there is a joint proposal by "the Minister for Foreign Affairs" (the Solana figure) and the Commission. At present, this is obscure and self-contradictory. We need to get it clarified so that we are basically back to the present situation whereby policy decisions of the Union are taken by unanimity with implementation by QMV.



STEPHEN WALL



4. Decisions on the implementation of the common security and defence policy, including those initiating a task 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. The execution of such a task shall be governed by Article 18 in Part Two, Title B, of the Constitution.
6. Those Member States which fulfil higher criteria for military capabilities and which have made more binding commitments to one another in this area with a view to more demanding tasks shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article 20 of Part Two, Title B, 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 and other, in accordance with Article 51 of the United Nations Charter. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article 21 of Part Two, Title B, of the Constitution.
8. The European Parliament shall be consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it develops.

file.

From: Stephen Wall
Date: 25 April 2003

PRIME MINISTER

See letter to do

cc: Jonathan Powell
David Manning
Roger Liddle
Matthew Rycroft
Steven Morris
Sir Nigel Sheinwald

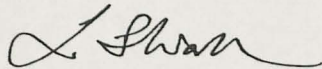
THE FUTURE OF EUROPE

My Belgian oppo has returned to the charge about a meeting between you and Verhofstadt. They say that, in the margins of the March European Council, you suggested to Verhofstadt that a meeting would be a good idea in order to compare notes on the Convention. Verhofstadt is very keen to meet, assuming (as he does), that he will win his election on 18 May. He is suggesting a meeting some time in June or at the beginning of July.

I recommend that you should have a meeting with Verhofstadt. Of the smalls, he is perhaps the most open to the idea of a permanent chair of the European Council and it would be good if we could wean him away from Juncker and Balkenende within the Benelux group and begin to dent Juncker's otherwise considerable ability to corral the smalls (as he showed last week in Athens).

Giscard will present the Convention outcome at the European Council on 20-21 June. The discussion then will be mostly procedural. You could offer a breakfast with Verhofstadt at that meeting, but he does also want to discuss European defence and transatlantic relations. So I suggest finding a date later in June or early July when he could come here would be better.

Why bother? Because, as Margaret Thatcher confided in Douglas Hurd when he asked her why she had supported John Major for the leadership if she thought so ill of him: "Because I can tell you, in confidence, that he was the best of a very poor bunch".

A handwritten signature in cursive script, appearing to read "S. Wall".

STEPHEN WALL

file.



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

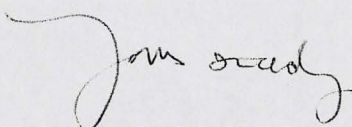
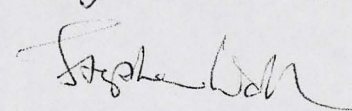
17 April 2003

Dear Archbishop,

EUROPEAN CONVENTION

Thank you for your letter of 11 April and your comments on Article 37 of the proposed Constitutional Treaty on the status of churches and non-confessional organisations.

I am happy to confirm that we do indeed agree with the language in the proposed Article 37 and will act in the Convention accordingly.

Yours sincerely,



J S WALL

His Excellency Archbishop Pablo Puente



10 DOWNING STREET
LONDON SW1A 2AA

16 April 2003

Dear Jacqui

INFORMAL EUROPEAN COUNCIL: CONVENTION: 16 APRIL

This letter covers the discussion on the Convention in Athens on 16 April in two parts: firstly the general comments made by Giscard d'Estaing and others and then the five questions posed by Giscard and the Presidency.

General Points

The discussion was opened by the President of the European Parliament, Pat Cox. He gave a moderate presentation of the Parliament's position. The most striking point was his assertion that foreign policy was, and would essentially remain, intergovernmental.

Simitis said that the Convention would finish in June with the presentation of the constitutional treaty at Thessaloniki on 20/21 June. Thessaloniki would thus be devoted to the draft Constitutional Treaty.

President Giscard d'Estaing said that if all the Convention had to do was to answer the four Nice questions then its work would already be completed. The Convention had effectively agreed:

- (i) the competences between the Union and the Member States in line with subsidiarity;
- (ii) the Charter, which would be integrated as a second part of the Constitution;
- (iii) simplification of the European Union's instruments from 12 to 5;
- (iv) subsidiarity and the role of national parliaments.

On the basis of the Laeken declaration, Giscard continued, legal possibility had been agreed; the existing treaties would be replaced with a new constitutional treaty and there would be a single institutional structure instead of three separate pillars. The issues that were left were CFSP and ESDP; the institutions necessary for enlargement and justice across frontiers.

Giscard d'Estaing said that ESDP was a paradox. It was the Foreign Ministers of the Union, not the Convention, that had the experience. It was they and Solana that knew the constraints of ESDP. So it was important for those members of the Convention who were foreign ministers to take a full part in the remaining discussions on CFSP and ESDP.

From listening to umpteen Convention speeches, Giscard had learnt one thing: the Member States did not have the same European project in mind. They agreed on the questions but not the answers. There were broadly three groups.

- (i) quite a lot of Member States wanted the status quo with improved efficiency;
- (ii) a second group wanted big changes towards a federal Europe based primarily on the Commission and the European Parliament;
- (iii) a central group was searching for a compromise between these two positions.

The remaining task was to reconcile the impossible with the necessary and to sail between Scylla and Charibdis.

Prodi: argued that the Convention in a special format, should be asked to complete work on Part II by the end of September.

Luxembourg (Juncker): set out the principles drawn from the paper of the "smalls": the equality of Member States; institutional balance; the strengthening of the Community method; one Commissioner for each member state and no slippage towards intergovernmentalism.

Latvia: the Union should remain an entity of member states: no federalism.

Finland (Lipponen): agreed with Juncker. He paid a (tearful) farewell to the European Council.

Germany (Fischer): agreed to stick to the Convention timetable followed by a short IGC.

Lithuania: agreed with Juncker.

Sweden (Persson): the Constitutional Treaty might include options, a point also made by Netherlands and Lithuania.

Czech Republic (Spidla): agreed with Juncker.

Chirac and Aznar: stick to the timetable.

Hungary (Medgyessy): warned that any inner groups must be open to all. The IGC outcome should not be signed until after accession.

Portugal (Duraõ Barroso): supported Juncker. The new treaty should be signed in Rome.

Austria (Schüssel): the IGC would be a different ballgame from the Convention. Options might be necessary. We should build on Juncker.

Ireland (Ahern): agreed with Juncker. In the absence of consensus, options might be desirable.

Belgium (Verhofstadt): supported Juncker. We should avoid new institutions and creating shadow structures which would be intergovernmental versions of the Commission.

Italy (Berlusconi): as future Presidency he would keep out of the details. Some had questioned the role of the European Council. He thought the European Council should meet every two weeks with individual members taking responsibility for individual areas of policy. [Sound of jaw bones being picked up off the floor.]

Malta (Adami): agreed with Juncker.

Estonia, Slovakia and Slovenia agreed with Juncker.

President Giscard d'Estaing, in winding up the discussion, had been struck by how little had been said about the citizens of Europe. But the Convention was addressed primarily to them. Some of the views expressed had been mutually incompatible. The Convention might have to come up

with options but that would only postpone the moment of choice. He accepted the consensus that the Constitutional Treaty should be presented on 21 June. But in that case it would be a question of quantity not quality.

Detailed issues

(i) The Presidency.

Prodi: each Council formation might have a President for one or two years (or ECOFIN, the General Affairs Council and the GAERC might have longer term chairs, combined with a single Legislative Council for the rest). A single president for the Union might be possible in the long term. Overlap with the Commission and its executive functions must be avoided.

Luxembourg: existing rotation could be adjusted but a permanent chair of the European Council risked intergovernmental slippage.

Denmark (Rasmussen): said he would speak only on this issue. He favoured strengthening the role of all institutions. An elected chair of the European Council was possible on three conditions:

- (a) clear definition of powers and functions;
- (b) no rival institutional mechanisms: the Council secretariat should be used;
- (c) equal treatment of large and small countries. This could be combined with the rotating six monthly presidency for sectoral councils.

PM: the key issue was making the Presidency effective. We needed to preserve equality and cohesion, with a full time European Council chair coordinating a rotating team Presidency.

Latvia: keep the rotating Presidency. No permanent European Council chair.

Poland: group presidencies (eg four for two years) possible. Chair of European Council could be nominated from among the group for confirmation by the Council. Individual Councils would be chaired by rotation but with the GAERC chaired by the "Foreign Minister".

Netherlands: European Councils should set strategy, not do routine business. An elected chair would pose problems of democratic legitimacy and possible conflict of interest.

Germany (Fischer): permanent chairs for the GAERC and probably ECOFIN and JHA. Otherwise some kind of rotation. Implicit acceptance of permanent chair of the European Council.

Sweden: all three institutions should be strengthened including the Council. Permanent chair an interesting idea, perhaps combined with continued rotation of the nine sectoral councils.

Czech Republic: keep the rotating presidency, maybe with group chairs. Against permanent chair of European Council.

France (Chirac): we had to decide whether we were serious about keeping the European Council, if so then Franco-German proposals should be considered.

Spain: the six monthly rotation was not working. Support for an elected chair of the European Council.

Hungary: rotation was not working so we needed a new rotation system. He was open to a permanent chair of the European Council if the relationship with the Commission could be redefined.

Poland: preferred the present system. Some adjustments were possible for the sake of continuity but the permanent chair of the European Council was too intergovernmentalist, would create conflict and would create a new bureaucracy. The European Council should not become an executive body.

Austria: moving to QMV should be general rule. No elected president which would anyway not be compatible with the role of the permanent Foreign Minister.

Ireland: favoured rotation but was willing to look at other reforms including team presidency. Would also look at the long-term presidency.

Belgium: no to long-term chair of European Council.

Estonia, Slovakia and Slovenia: ditto.

Size and Composition of the Commission

PM: stick to the Nice Treaty. We want to improve the strength and coherence of the Commission.

Latvia, Czech Republic, Ireland, Slovakia, Slovenia, Sweden: stick to Nice.

Netherlands: Commission should keep the exclusive right of initiative for legislation. Limited size over time but with an equal system of rotation.

Poland: one Commissioner per member state at the beginning; possibly smaller Commissions thereafter on basis of rotation.

France (Chirac): the size of the Commission should be determined by its functions so the ideal size was 10 or so. But he understood the negotiating reality and was open to compromise.

The nomination and powers of the President of the Commission

Prodi: if the Commission became more of an executive the European Parliament would have to become more involved in choosing its Presidency.

PM: the European Council should continue to nominate, for approval by the European Parliament.

Latvia, Poland, Netherlands, Austria, Belgium, Slovakia: election by European Parliament with confirmation by the European Council.

Germany (Fischer): European Parliament should nominate with confirmation by the European Council by QMV. The choice should reflect the Union's demographic equilibrium.

Sweden: maintain the status quo. If there was any change the European Council should still be the nominating body. A Commission President voted by half of the Parliament would become a party political figure.

France (Chirac): had been against an increased European Parliament role but would go along with it.

Spain: the Commission President should not be a partisan figure. The nomination should emerge from the European Council, taking account of the European Parliament's views.

Czech Republic: the European Council might put forward three nominees for final selection by the European Parliament.

Hungary: similar ie need for a diversified electorate to avoid politicisation.

Portugal: strengthen the legitimacy of the President through a vote in the Parliament. The Council also had to be involved in the appointment.

Ireland: open to change.

Nomination and Powers of a "Foreign Minister"

Prodi: agreed on a single double-hatted figure nominated by the European Council with the agreement of the President of the Commission. The Foreign Minister should be the Vice President of the Commission but should not be involved in Commission collegiality for ESDP/CFSP.

Luxembourg, Poland, Netherlands, Portugal, Austria, Belgium, Malta, Slovakia, Slovenia, Hungary: all in favour, without defining how double-hatting would work.

PM: we should strengthen the high representative but CFSP should remain intergovernmental.

Germany (Fischer): as per Franco-German proposal.

Sweden: if there was an elected chair of the European Commission that would lessen the pressure on the Foreign Minister. The development of the two roles should be discussed. He favoured more QMV in foreign policy. [Danielsson subsequently told us this was a mistake.]

Czech Republic: in favour. The FM should be a Vice President of the Commission with the right of initiative, and should chair the GAERC.

France: in favour. The development of European defence would force the pace.

Ireland: in favour. But the Foreign Minister should not chair the GAERC since that would involve too much concentration of power. Workloads should be lessened by creation of deputy ministers at political level.

Role of an eventual Congress

PM: open to the idea. We would need to be clear about its functions.

France: in favour.

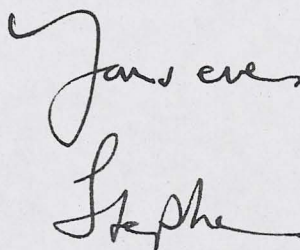
Spain: ready to consider.

Sweden: might be necessary if the IGC failed to resolve all issues. But otherwise unnecessary.

Prodi, Netherlands, Czech Republic, Portugal, Ireland, Belgium: against.

Luxembourg: against. Might be more favourable to using the Convention on a more permanent basis.

I am copying this letter to Private Secretaries of Members of EP Committee, to Sir Andrew Turnbull (Cabinet Office) and Sir Nigel Sheinwald (UKRep Brussels).

A handwritten signature in dark ink, appearing to read 'Stephen Wall', with a stylized, cursive script.

STEPHEN WALL

Jonathan Sinclair
FCO



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

FAXED
to UKRep Brussels
15/4

14 April 2003

Dear Jonathan,

EUROPEAN CONVENTION

- / I enclose a self-explanatory letter from the Papal Nuncio.
- / Unless anyone sees objection, I propose to reply in terms of the attached draft.

I am copying this letter to Sarah Lyons (Wales Office) and Sir Nigel Sheinwald (UKRep Brussels).

Yours ever,

J S WALL

Jonathan Sinclair
FCO

DRAFT



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

14 April 2003

EUROPEAN CONVENTION

Thank you for your letter of 11 April and your comments on Article 37 of the proposed Constitutional Treaty on the status of churches and non-confessional organisations.

I am happy to confirm that we do indeed agree with the language in the proposed Article 37, that we will support it during the plenary discussion on 24/25 April.

J S WALL

His Excellency Archbishop Pablo Puente



APOSTOLIC NUNCIATURE

SWc Kc (over)
MR
JPO
RL
54 PARKSIDE
LONDON, SW19 5NE
TEL.: 020-8946 1410
FAX.: 020-8947 2494

N. 8516/03

11th April 2003

Dear Sir Stephen,

European Convention

As you will be aware in recent months the Holy Father has frequently invited the Members of the European Convention, responsible for drafting the future European Constitutional Treaty, to accept the proposals jointly put forward by the Holy See and others Christian Churches of this continent. This same proposals were made to several political leaders, during their recent visits to the Vatican, or in contacts they have had with the Apostolic Nuncio to the European Community.

On the 4th April the President of the European Convention, Mr Valéry Giscard d'Estaing, presented the Members of the Convention with the draft of the articles in Title VI of the Treaty concerning the "democratic life of the Union". Article N. 37 is of particular importance and is set out below:

Article 37: Status of churches and non-confessional organisations

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 European Union equally respects the status of philosophical and non-confessional organisations.*
3. *The Union shall maintain a regular dialogue with these churches and organisations, recognising their identity and their specific contribution.*

In this regard I would like to draw your attention to the following points:

- The first two paragraphs of the above correspond exactly to the content of Declaration N. 11, annexed to the "Treaty of Amsterdam",
- The last paragraph is new,

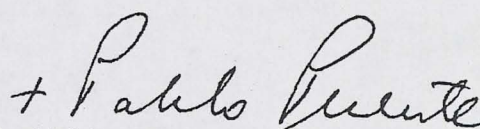
Sir Stephen WALL
Chief Advisor on European Union
10 Downing Street
LONDON SW1A 2AA

- If the text of this article is kept, religious communities will have obtained the inclusion of a binding norm that safeguards their status and independence with regard to the general norms of the Union.
- The recognition of the identity and the specific contribution of the Churches and religious communities should help the European Union not to confuse them with the organisations of civil society. The provision for a "regular" dialogue between the communities of believers and the Union gives the former the right to be heard in an appropriate way by the European institutions whenever decisions are to be made on matters affecting the life of these communities.
- What the third paragraph affirms with regard to the churches and religious communities is also assured to the philosophical and non-confessional organisations. Reading article 37 together with article 34 - in which the Union commits itself to maintain a "*regular, transparent and open dialogue with representative associations and with civil society*" - it seems that the Union makes a distinction not only between the Churches and civil society but also between the philosophical and non-confessional organisations and civil society.

I should be most grateful if you, in the way you retain the most appropriate, would kindly support the present wording of article 37. Knowing that the decisions of the Convention are adopted by consensus, it would also be very important that the British members of the Convention voice their support for this article during the debate to be held on 24th-25th April. If not article 37 might be modified in a negative way or even suppressed, as has been requested by some Convention members.

I thank you in advance for your interest for the future of the European Union.

Yours Sincerely,



Archbishop Pablo Puente
Apostolic Nuncio



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

FAXED

to UK Rep Amstel
15/4

14 April 2003

Dear Sarah,

EUROPEAN CONVENTION

In taking a preliminary look at the draft Praesidium articles on external action and defence, the Prime Minister has agreed that it would be unacceptable for the draft Treaty to delete (in the paragraph on the UN Security Council) the words "without prejudice to their responsibilities under the provisions of the UN Charter".

The Prime Minister has also agreed that we should ensure that the ECJ does not have a role in adjudicating on policy decisions taken under the CFSP articles.

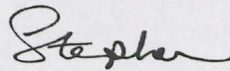
The Prime Minister has also noted that Giscard d'Estaing is likely to propose institutional arrangements (chair of the European Council; European external representative; appointment of the President of the Commission) on a basis close to our own thinking.

The Prime Minister also notes that Giscard d'Estaing may seek to reopen Nice in terms of the QMV threshold and the size of the European Parliament. He thinks it unlikely that proposals to reopen Nice will prosper and that we should leave others to make the running.

We are trying to fix a meeting with Giscard in early May.

I am copying this letter to the private secretaries to the members of EP Committee and to Sir Nigel Sheinwald (UKRep Brussels).

Yours ever,

A handwritten signature in dark ink, appearing to read 'Stephen' or 'Stephan', written in a cursive style.

J S WALL

Sarah Lyons
Wales Office

1) - *Joe Ruffi*
-1/ps *Ab*
14/4

PRIME MINISTER

From: Stephen Wall
Date: 11 April 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

EUROPEAN CONVENTION: WEEKLY UPDATE

We submitted comments today on the latest tranche of draft articles published by the Praesidium. These were largely uncontroversial, covering "the democratic life of the Union", "the Union and its immediate environment", "membership of the Union" and "General and Final Provisions."

There are perhaps two articles worth noting. One is the provision we have flagged up before, which would allow for a Member State voluntarily to leave the Union. We see no particular harm in allowing for this to happen: it is in any case allowed for under international law.

We will argue for the terms of a Member State's withdrawal to be agreed by Qualified Majority Voting – to prevent a departing Member State's cronies from holding up a reasonable deal.

The other is an attempt sensibly to address what will happen if one or more Member States failed to ratify the new Constitutional Treaty. The Praesidium

have recommended that, where a Member State had difficulties ratifying the Treaty after two or more years, the issue would be considered by the European Council. This is a sensible recognition that this would be a political problem, and that there is no room for manoeuvre in legal terms. Apart from anything else, a clause providing for any other solution (e.g. the Treaty coming into force once ratified by a certain number of Member States) would itself need to be ratified by all before it could have legal effect.

Elsewhere, the Praesidium has been locked into a two day session to discuss the crucial draft articles on External Action and Defence, the Institutions, and how to extend QMV and co-decision. These will be published on 24 April, and we will have just over a week to comment in writing, before debate at Plenary on 15 and 16 May.

The first draft of articles on External Action and Defence are a mixed bag:

Good

- recognition of the intergovernmental nature of CFSP and Defence;
- unanimity would remain the general rule for voting in CFSP, except where the Council decides by unanimity to extend QMV;

Dodgy

- presumption of a European Foreign Minister, double-hatting the portfolios of External Relations Commission and CFSP High Representative – and few

details, so no guarantees that he would essentially be the creature of the Council;

- an attempt to limit UK and France's room for manoeuvre on the UN Security Council, by amending the article which sets out their obligations to "ensure the defence of the positions and interests of the Union, without prejudice to their responsibilities under the provisions of the UN Charter - the Praesidium draft would remove this final underlined phrase;

a Herby manoeuvre.

Bad

- lack of clarity over the role of the ECJ in international agreements containing CFSP provisions, which could give the Court a foothold in CFSP;
- a proposal to provide for EU common defence via a sui generis enhanced co-operation provision;

- manoeuvre

These are preliminary drafts, which could change over the next three weeks.

Gisela Stuart has been briefed to secure changes which would improve them from our point of view. If we have to have a fight on these articles, so be it.

We have yet to see draft texts on the institutions - Giscard is waiting for a "political steer" from next week's European Council before putting pen to paper. But the Secretariat tell us that Giscard's instincts are very much the same as ours. He would like to propose:

- ✓ - A President of the European Council: elected by QMV in the European Council for two and a half or five years and confirmed by the Parliament. Responsibilities to be the preparation, management and direction of the European Council. There would also be a Vice-President of the European Council, who will chair the General Affairs Council. This would also enable a big/small split between the jobs;
- ✓ - A European "Foreign Minister" to chair the External Affairs Council;
- ✓ - Appointment of the President of the Commission by QMV in the European Council, confirmed by the European Parliament (ie as per Nice). The President would appoint up to 12 members of the College (no mention of nationality/rotation)
- ✓ - Re-opening Nice in two respects: a Qualified Majority in the Council to be defined as two thirds of the population represented by at least half of the Member States. A cap on the size of the Parliament at 700.

If these proposals emerged unamended from the Praesidium on 24 April it would be good news. In reality, I would be surprised if representatives of the Smalls and the Commission did not object (at least) to the formula of electing the President of the Commission, since it is the status quo. The detail on the Chair of the European Council is sufficiently vague for it to survive, not least given the real political momentum behind the idea. Any proposal to re-open Nice would be anathema to the Spanish and many of the Smalls, but the formula set out above would work quite well for us.

After the Easter break the pace of the Convention will really pick up, as we head towards the deadline of 30 June. We are trying to arrange for you to see Giscard again, if possible before the first full draft of the Treaty is completed (early ✓ May), and again before Giscard goes to press in June.

STEPHEN WALL

Stephen Giscard seems an OK
idea. I'd like to speak to him
again or see him early May.



CABINET OFFICE

Sir Stephen Wall KCMG LVO
European Secretariat

temporarily retained

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Note dated
09.04.2003



22:45

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NO. 210

Gisela Stuart MP



HOUSE OF COMMONS
LONDON SW1A 0AA

Mr. Glynne.
cc SSW
me

RL

Mb postponed (f)

1/SSW cc. SP
SSW

From Gisela Stuart
To Prime Minister

I'd be grateful if you
could draw the PM's attention
to this with regards Cabinet
on Thursday.

Yours Sd.

11 pages

Any problem 0207 219 5051

Labour Member of Parliament for Birmingham Edgbaston
Telephone: 0207 219 3000 or 0121 428 5011

Confidential

Prime Minister

**cc. Foreign Secretary
8th April, 2003**

From Gisela Stuart MP

The European Convention

Ahead of Thursday's Cabinet meeting I thought it would be useful to update you on my impression of the conclusions emerging from the Convention.

It is now accepted that there will be a constitutional treaty, involving significant changes in the workings of the union and the presumptions on competences. The completed drafts of all the articles have been prepared and discussed apart from those dealing with Common Security and Defense Policy and the institutional arrangements re: the Commission, the Council and the European Parliament.

The Convention and IGC are going to cause the government serious problems later in this year unless we get a firmer grip soon. So far the government's response seems unaware of the most basic history of the EU and where our partners are coming from. In formal terms, I represent the Parliament not the Government on the Presidium, but clearly the two are not entirely separate and reconciling them is only possible if a clear strategy is in place.

So far the British government has responded to a strategic problem with tactical answers. We have assumed that drawing up a set of specific single "red lines" set out in order of importance will assure success in terms of our interests. Armed with these sets of priorities we hoped to build up alliances with similarly minded other countries. These are important but will fail to protect our national interests.

- Many of our partners think long term. The strategic issue for us is as much about proposals, sometimes apparently innocuous and reasonable in tone, providing openings for more future integration, as they are frontal attacks on our defensive lines.
- The Convention method does not enable those who offer an alternative view to put forward their argument in a coherent fashion. The debate is too fragmented.
- The so-called debate between inter-governmentalism and federalism is largely a red herring. We continue to get the worst of both.
- Our strategy is to build alliances with like-minded countries. This ultimately fails because the alliances are based on single issues. [e.g. recent change of heart in the Presidium by the Spanish about support for the Open Method of Co-ordination, despite the recent joint Anglo-Spanish paper calling for greater use of the method.] No other country looks at it this way – it is a very British approach

If we wish to shape the European Union of the 21st century, which is economically competitive, democratically accountable and where Britain plays a significant positive role we need a clear strategy which goes beyond tactical listing of red lines.

1) Strategic vision of the EU 21st Century

To the public the outcome of the Convention will pass the "duck test", with many of the attributes of a state, combining the worst features of the Community Method and inter-governmentalism. Not a federal state, still less a unitary one, but a state nonetheless and one with a bureaucratic structure that ultimately makes democratic accountability and leadership by elected politicians almost impossible.

Smaller Member States will always conclude that it is better to go along with the flow and some are mere satellites of the bigger ones (eg Belgium and France). We are witnessing a very effective strategy by France (with a weakened Germany in tow) to retain dominance.

There has been no serious attempt to take a critical look at the EU as an effective institution designed to deliver for the people of Europe. If this had been the case I would have expected an analysis of:

- a) The core functions of the EU
- b) An analysis of what the EU should and what it should not do
- c) Following the identification of the core functions an analysis whether these are being efficiently performed or not
- d) An analysis of where there are shortcomings in the delivery and whether these are due to managerial shortcomings of the EU and how these could be overcome and an identification of institutional requirements which would make the Union more effective.

This is best illustrated in the total absence of any inclusions of the main themes of the "Lisbon Agenda" in the aims and objectives of the union and the total acceptance of the *acquis* in such areas as the Common Agricultural Policy. Not a single proposal to return competences to the nation states.

Peter Norman, (ex-FT) now writing a history of the convention summed it up rather accurately when he said "I thought at the beginning that this was a benign process, I now realized it is a deeply political process which you can not survive unless you are driven by a coherent ideology".

2 Constitution and Single Legal Personality

The Convention will establish a Treaty establishing a constitution. So far it has been agreed that this has to be established by the normal treaty ratification procedure i.e. all countries have to ratify before it comes into force. However, the debate how the newly created constitution will be amended in future has only just begun and may well lead to the creation of "soft treaty amendments" which will be decided on the level of the council of ministers and the European parliament without national scrutiny. This has huge domestic legal and political implications for Britain.

The Convention [in turn pushed by the European Parliament] had discussed the creation of "organic law". This would be a kind of constitutional law, enacted with a special majority based on decision by the Council and the EP. Ultimately this provides for a "competence to create competences" without involvement of national parliaments and not requiring the agreement of all member states. Whilst the fully-fledged version of "organic law" may not be an immediate threat the EP is maneuvering for an extension by the back door of its powers.

The concept of a single legal personality has been accepted. Lawyers have argued that this amounts to no more than stating what is a de facto reality. The explicit recognition is nevertheless significant in terms of enabling the EU in the future to become a signatory to international agreements, which may well go beyond what we regard as desirable. For example, the EU becoming a signatory in its own right to the Convention on Human Rights

3 Charter of Fundamental Rights

It is now accepted that this will be a part of the Constitution. The UK is expected to eventually agree – but we have not secured a position where this is credited as a concession. We are still working on drafting articles preventing it from creating new legal rights but there are significant dangers involved in the incorporation. We have no idea

how the European Court of Justice in years to come will interpret this. In the past 25 years the courts have been extremely active in extending the competencies of the Union. For example, the existence of the external trade commissioner is almost exclusively due to judgments by the ECJ and we are experiencing difficulties with judgments regarding health care, which are based on "internal market" decisions, even though health is quite explicitly not a union competence.

It is true that recently the ECJ has been less innovative, but this cannot be assumed for the future. In evidence to the Convention the judges said that they would regard changes in the constitution compared to wording of the existing treaty as significant

4 Justice and Home Affairs and Common Security and Defence Policy

Broadly speaking the practical effect of the "pillar" structure for decision making in the EU has been that in the areas of JHA and ESDP [2nd and 3rd pillar] gave member states the right of initiative and required unanimity.

The constitution does away with the pillar structure. The assumption is now that QMV applies and the Commissions right of initiative applies unless the constitution specifically spells out a different procedure. In every area where we think this is important we have to engage in an item-by-item fight to achieve this protection.

In the area of JHA we are also handicapped by the changes in the legal instruments available to the Union. [See later]

Most difficult for the UK is the creation of the office of a European Public Prosecutor. Whilst the constitution may only create the possibility for this office to be created it is significant that it is mentioned in the constitution at all. There is no need for this, as member states – if they all agree – can do this anyway. But the political argument for many in the convention is that it is important to signify to the citizens that this is an area where the Union has competence.

The European Public Prosecutor is dangerous in itself and a smokescreen to cover the EU's failure to deal with fraud in the EU. The answer to the problem lies in re-structuring the subsidies system and dealing with lax accounting systems in the Commission as well as ensuring better enforcement at national and local level, not a new supranational institution. What should be addressed is the inability to deal with fraud in the EU.

We have been quite clear that we do not want to communitise ESDP. At first sight it seems that this will be easier for us to achieve, as there are few legal instruments involved in this area. However I am not satisfied that the call for the creation of a European Border Police may not in time be interpreted by the Courts of giving competence to the Commission, thus creating a competence by the back door which we would regard as undesirable.

5 Simplification of Legal Instruments

Up to now the council of ministers could make decisions on the basis of 28 different methods. This evolved as the result of significant political compromises in sensitive areas. In the interest of simplification all this is now to be changed. This results in the loss of the political protections, which member states had thought they had achieved.

The creation of "delegated powers" extends the powers of the Commission, which we might only regard as desirable in a limited number of areas.

We also face a very practical problem: DTI wants legal instruments which are based on QMV and are sharp and effective to implement the single market, whilst for justice and home affairs we need more subtle and sensitive instruments. This differentiation is no longer possible.

6. Legislative Council

Included in the "simplified legal instruments" is a concept of "legislative and non-legislative" acts. This can only be understood in the context of Giuliano Amato's avowed determination to create a

legislative council. His vision is a permanent ministerial presence in this legislative council – reducing the Council of Ministers to a strategic body which takes decision based on a “second chamber of the states” or essentially the German Bundesrat model. Ultimately this will lead to a significant reduction in the role of the member states.

Member States may well reject the notion of a Legislative Council in this IGC, but we will nevertheless be left with a legal structure which will allow the idea to be resurrected in the future without requiring significant changes in the institutional architecture.

In the long term, this also has significant implications on the future role of a “President of the Council”

7. Majority voting

VGE and virtually all other members of the presidium repeatedly state that a Union of 25 can simply not operate with unanimity. They continue to push for variations of “super majorities”. VGE in particular favours a majority “of states and people”. Whilst the UK may feel that as one of the “larges” this is not a threat, it does have implications if it means that “national sovereignty” is overridden. For example, the ECB is working on vote weighting according to GDP [the latest version floated combines GDP and financial sector contributions which results in Luxembourg being classified as a “medium sized country”].

Super majorities also provide the framework for a “core Europe of the larges” to be created. We have much in common with a significant number of smaller countries [particularly the Scandinavian ones] and the model proposed may no longer allow us to build these effective alliances.

8 Budget

There is no support for an explicit EU tax, but there is clear support for giving the European Parliament greater powers in budgetary decisions. There is also a push for the inclusion in the constitution of

the concept of "necessary means". What this means in effect is a judiciable constitution which defines the things the Union should do and later a clause which states, "The Union must have the means to fulfill its functions". This would be a dangerous Trojan horse, extending competences by the back door. Ultimately we could be in a position that the ECJ decides how much money the Union needs – and not Member States by unanimity. The Treasury is already concerned about the impact of ECJ judgments on business taxation.

9. Qualified majority voting

As the presumption in the Constitution will now be QMV unless stated otherwise [a reversal of presumption] we will have a clause-by-clause battle on our hands in part 2 of the treaty to protect those areas where we want unanimity to stay. This will mean compromises – as I anticipate being opposed at every stage – and acceptance in areas we ideally would not want to move to QMV.

This also represents a significant increase in the power of the EP, as there is a presumption that QMV and co-decision are more closely related.

10 Subsidiarity and National Parliaments

One argument/safeguard for the grater use of QMV has been the acceptance of an early warning mechanism, which would allow national parliaments to ask the Commission to reconsider a proposal if 1/3, of national parliaments object to a proposal. On the face of it this is an attractive proposition. But we should be cautious.

John Major hailed the acceptance of the "protocol on subsidiarity" as a great success and he confidently anticipated that some 25% of EU competences would be returned to member states. We now know that not a single competence has been returned.

National Parliaments are mentioned in various parts of the constitution, but mainly as co-decision makers to enhance democratic legitimacy of European institutions. For example, the suggestion to involve national parliamentarians in the election of the President of the Commission appears attractive. But this provides the President of the Commission with a democratic mandate from national

parliamentarians, whilst still only being accountable to the European Parliament.

11 Competences

The currently proposed division of competences is not a re-statement of the status quo. Instead it uses a rather liberal interpretation and more significantly only allows for competences to move only to the center, not the other way and back to the member states. We should be prepared for considerable political difficulties once it is clear just how short is the list of competences over which member states have sole control.

12 Flexibility Clause

It has long been accepted that in the interests of implementing the internal market the Union has to be able to act beyond its stated competences on occasions. But the new clause is much wider and begs the question "if we now define competences, why do we still need this clause"? As it stands, this clause is a "back door" treaty amendment mechanism without the safeguards of scrutiny beyond the council.

CONCLUSION

This rather long list of areas of concern is by no means complete – it is merely illustrative of some key areas where changes are occurring. There is one common thread – in all of them we are expanding negotiating capital merely to maintain the status quo. We are continuously protecting our positions and giving ground without any obvious areas where our agenda of a competitive union, which delivers for its citizens, is achieved.

To each of my individual anxieties UK officials may seek to provide you with re-assurances; it will be alright on the night, the words of the text do not quite mean what they say, we have secured wording which protects our position, taken by itself we can live with the specific change propose. We can live with it.

I am less sanguine about these individual changes. But my point is a larger one. The whole is greater than the sums of the parts. Taking these changes together, this takes us into a position we do not want to be in. It is not a question of "being positive" – it is question of achieving an outcome that is in the interest the UK.

The Constitutional treaty amounts to a huge shift of power towards the Commission [as their right of initiative is vigorously protected by all] and the European Parliament [QMV and co-decision] without any gain for the member states or the Council of Ministers. This could cause us immediate political difficulties in the unlikely event that the Tories start to act coherently and in my view might prevent us from implementing the domestic policies that are in the UK's best interest.

This is best illustrated by the "compromise" suggested that we agree on unanimity for the European Public Prosecutor for the first five years and then move to QMV – but no acceptance of the fact that we should not even create a constitution article for such an office.

Similarly we can negotiate about language – but never question the concept e.g. whether it is a EU Foreign Minister or a High Representative is presentational, when the substance is a Commission based representative of the EU speaking on behalf of Member States on "political foreign policy".

Arguments for increasing the efficiency of institutions are dismissed as being "unimaginative", "lacking vision" or simply "not being appropriate for a constitutional text".

To my mind compromises are generally possible when we agree on the ultimate aim, but differ on how to achieve it. Compromises for most of the fellow members of the convention means – we negotiate an easier way for you to accept our aims, but never question the very basic assumption: Integration – good; member states – bad.

The danger for the UK is twofold:

- 1) Given all the components of the constitution it becomes very difficult to argue against the EU being a "super state". It has a constitution, its means of raising revenue, [its own currency], deals with criminal issues, a citizenship, a rights charter, a court, a parliament, a legal personality etc. To the every day citizen it does not have its own legal enforcement agency yet, but Europol and Eurojust are certainly words, which create that impression, as does a Common Foreign Security and Defence Policy. This matters, in substance and also because we have to take this Treaty through the House of Commons.
- 2) Much more significantly, this entrenches institutional models, which may prevent us from implementing our domestic policies. Do we really want to be bound into outdated social models – which affect our competitiveness – and no longer have the means to influence the Union as effectively.

By late May the first revised complete treaty will be discussed in the presidium in a special four-day meeting. At this point I need to have a clearer steer from you and from minister as to what we want to achieve which goes beyond the list of "things to avoid at all cost" and the single item of a "Chair of the Council". The steer is frankly not clear enough yet.

GS

Postponed

2

From: Stephen Wall
Date: 9 April 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

CABINET MEETING ON THE CONVENTION: 10 APRIL

Cabinet is due to discuss the Convention on Thursday morning, on the back of a presentation by Peter Hain. Peter Goldsmith will be present. I attach the tables I submitted on Friday, which set out the difficult issues for the UK and indicate where we have support and where we have none. We have distributed them today.

In introducing Peter Hain's presentation, you might note the good work that has been achieved on the Convention so far – much of it due to Peter's commitment. We have achieved some notable successes, particularly on a subsidiarity early warning mechanism involving national Parliaments, on the need for CFSP to be accorded special treatment, and on the institutional debate where the proposal for a Chair of the European Council is gaining momentum.

There are several other issues where we have made good progress. It is worth noting that these have often been in areas where we have been able to negotiate and engage with the issues. Examples include the Charter, where we are the leaders of a sizeable minority insisting on further changes to ensure legal clarity; on defence, though we have yet to see off completely proposals for an EU

territorial defence guarantee; and on CFSP, where we have been able to sow the seeds of doubt in partners' minds on double hatting the External Relations Commissioner and CFSP High Representative.

There is a third range of subjects where we have made clear our opposition to some of the changes proposed. These include communitisation of CFSP or Economic policy, QMV for tax or Own Resources. There is no question of movement here and our partners will expect us to stand our ground in the IGC.

Yet, as the brief suggests, there is a further category of issues, which are not matters of critical national self-interest, and where we have little or no support. These are summarised in the second attachment. Given that the Convention will present a text acclaimed by "consensus" (ie around 80%) it will be important for us to try to show some movement on these issues and to find more allies.

So we should be looking carefully at our arguments on:

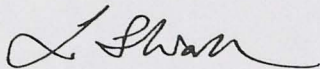
- Social security
- Equal treatment
- Co-decision for agriculture
- QMV for trade in services

/ The arguments are set out in the attached sheets.

You might sum up that the IGC will not start with a blank piece of paper. It will not be able to overturn the Convention except where there is a really vital interest for one member state or an issue shared by a number of member states.

If we are going to win the battle of hearts and minds on the future direction of the EU we need to be in alliance with the Spanish, Italians, Nordics, Irish and win over some of the other smalls like Portugal and Netherlands. So there is an endgame in May. The French and Germans would like nothing better than to make us look marginalised. That then discredits the whole of our agenda.

So ministers must not just accept the received 'wisdom' of officials handed down from previous governments: they have to challenge it against the government's political objectives in Europe and not just accept that what might happen in a worst case scenario is likely to happen in practice.

A handwritten signature in black ink, appearing to read 'S. Wall', with a stylized, flowing script.

STEPHEN WALL

HIGH PRIORITY ISSUES WHERE THE UK HAS SUPPORT

Issue	State of Play	UK Position in the Convention
1. <u>Communitisation of CFSP/ESDP</u> (e.g. QMV for any major foreign or defence policy issue, ECJ jurisdiction, extension of loyal co-operation, merging of CFSP into Community competence categories, greater role for the EP/ Commission, EU seat in international political organisations)	All to play for. Majority want some progress in this area (more QMV is the most popular), strong minority against. France now showing signs in private of going cold on more QMV, but is committed to it through Franco-German declaration on the institutions. Our allies include Spain, Italy and Denmark.	Oppose communitisation, especially on ECJ jurisdiction and the need for distinct instruments (only room for manoeuvre is some flexibility on voting which retains unanimity lock in last resort. Eg more QMV but European Council unanimity emergency brake.)
2. <u>Common defence guarantee</u> (incl multinational forces, standing EU HQs)	Working group steered off this, but it is likely to re-emerge as part of the Belgian/ French/ German reinforced defence co-operation initiative on 29 April. If so, there will be strong resistance eg from neutrals.	Oppose
3. <u>Communitisation of Economic Policy</u> (incl. Union competence, greater use of QMV, increased powers for Commission or EP, formalisation of Eurogroup, EU voice in IFIs)	Working group failed to reach agreement. Enough uneasiness in Ecofin about Commission inflexibility to suggest that most of this will not be pushed too hard. Biggest risks: formalisation of Eurogroup, EU voice in IFIs.	Oppose communisation
4. <u>QMV for tax</u>	UK in small minority (Ireland, Sweden, Denmark). Compromise ideas around eg, distinguishing between rates and substance of taxes, limiting QMV to areas where there is a serious risk of distortion of competition. But these do not provide adequate protection.	Oppose
5. <u>QMV for Own Resources</u> (incl. UK abatement, creation of an EU tax levied by EP)	Not yet clear – working group just established. Likely pressure from Germany, France and Commission.	Oppose.
6. <u>Frontiers Protocol</u>	Issue not yet raised in negotiation.	Oppose changes to frontiers protocol

HIGH PRIORITY ISSUES WHERE THE UK HAS NO OR LITTLE SUPPORT

Issue	State of Play	UK Position in the Convention
<u>1. QMV for Social Security</u>	Overwhelming majority in favour. UK arguments (link to tax) don't apply to others	Oppose
<u>2. QMV for Social Policy</u>	UK near isolated in opposing further extension (and QMV already applies in most of social chapter)	Oppose
<u>3. QMV for Equal Treatment</u>	UK isolated in opposing (already codecision)	Oppose
<u>4. QMV across the board for Trade in Services</u>	UK opposes with France. Commission strongly in favour. France fears essentially protectionist (e.g. on audiovisual)	Oppose
<u>5. Codecision for Agriculture</u>	UK opposes with France. Vast majority support (agriculture is already QMV). France fears codecision would promote CAP reform; DEFRA the opposite.	Oppose

OTHER DIFFICULT ISSUES

Issue	State of Play	UK Position in the Convention
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2. <u>JHA</u> (Problem areas: harmonisation of criminal procedural law, European Public Prosecutor)	Praesidium have recommended wide competence and QMV for procedural law; and a permissive provision plus unanimity for EPP. We are likely to have some support for our position of unanimity and wide competence on the former for cross-border cases. Our supporters are likely be bought off by unanimity lock on latter.	No Treaty reference at all to EPP, unanimity for procedural law (with competence narrowly defined)
3. <u>Double-hatting</u>	Large majority in favour, but no clear model provisions (ie is s/he ultimately responsible to Council or Commission)	Accept, provided that s/he is ultimately responsible to Council. Oppose label "EU Foreign Minister"
4. <u>EP election of Commission President</u>	Key German, some Smalls', EP and Commission objective (with reluctant French support). Muddled negotiating position: many other options on table e.g. electoral college.	Key principle is confidence of Council and EP, together with guarantee of political independence
5. <u>F-word</u>	Praesidium proposed use of 'federal' in Treaty. Word does not have same sensitivity for others. Some strong supporters and some others prepared to accept.	Oppose.
6. <u>Single Legislative Council</u>	Very little support in Convention or Praesidium. Amato still pushing hard, likely to be PES position.	Oppose.

QMV for Social Security

Issue:

Extending QMV to:

- approximation of social security benefits
- co-ordination of social security systems for EU citizens moving to another EU State
- co-ordination of social security systems for third country nationals legally resident in the EU

Arguments:

No-one is disputing that we should oppose QMV for harmonisation of social security benefits. This would allow Brussels to set rates of social security benefits and would lead to UK rates being ratcheted up to continental levels.

HMT and DWP argue that we should also oppose QMV for provisions to co-ordinate systems for dealing with benefits for migrants – both EU and non-EU nationals. They argue that this could be costly and that there might be a risk of these provisions being abused to introduce harmonisation of benefit levels by the back door.

Points to raise:

- Why are we alone in opposing QMV for co-ordinating benefit systems for migrants?
- Why do other Member States who share our position on tax not share our concerns on social security?
- Shouldn't we be looking at ring fencing tax but examining scope for QMV on benefits for migrants since there are benefits and costs for everyone. Is our situation so very different from Denmark or Sweden?

QMV for Equal Treatment

Issue:

QMV for non-workplace anti-discrimination measures on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Arguments:

DTI and DWP argue that this could introduce a raft of measures undermining areas where discrimination is permitted in the UK: e.g. tax, pensions, education, social security benefits or the Police Service of Northern Ireland. HMT warn that it could have considerable financial implications.

Points to raise:

- Very difficult politically to be perceived as opposing non discrimination.
- UK traditionally more advanced than our partners (e.g. on race discrimination legislation) on these issues. Would guarantee fair treatment for British nationals living on the continent.
- This article already subject to co-decision. Convention will strive to remove this anomaly ie the combination of unanimity and co-decision, given that co-decision usually goes with QMV.
- History shows we can build support for exemptions in sensitive areas (e.g. religion). We have never needed to threaten our veto.

Why should the UK continue to oppose this without allies?

Co-decision for Agriculture

Issue:

Extension of co-decision to the Common Agricultural Policy

Arguments:

European Parliament Agriculture Committee is dominated by producer interests who will push up CAP spending and block reform.

European Parliament procedures move too slowly for fast moving area like CAP.

Points to Raise:

- Current system has hardly delivered satisfactory agriculture policy;
- Why do only we and France oppose co-decision? If France opposes, it must be through fear that the European Parliament will advance, rather than block the reform cause. One of us must be wrong;
- Our proposals for budget reform, entrenching the spending ceilings in the Treaty, will prevent CAP spending rising to unacceptable levels automatically;
- Agree that there may be some difficulties with the need for fast moving decisions affecting markets. But the EP is now quite good at reaching speedy first reading deals and some aspects could be moved to secondary legislation. Nor is this a specifically British issue. Others need speed as much as we do;
- We will come under strong pressure to concede co-decision where QMV is the rule.

QMV for Trade in Services

Issue:

Extension of QMV to aspects of trade in services (i.e. where the Council authorises the Commission to open negotiations with third parties).

Nice IGC agreed that the Council should continue to act by unanimity for those areas that were subject to unanimity internally, and for cultural and audiovisual services, educational services, social and human health services and intellectual property

Arguments:

Removing the unanimity rule for those areas subject to unanimity internally could undermine our red line on tax.

Allowing the Commission to negotiate externally on issues governed by unanimity (or on the other areas carved out by Nice) could lead to them gaining greater internal competence in these areas.

Points to Raise:

- Take the point on tax.
- But on the other areas, the Commission (Lamy) has given assurances that they only want powers externally where they already exist internally;
- Should we accept the Commission guarantee?
- Failure to do so would leave us isolated with only the protectionist French for company. Is that where we want to be?


PRIME MINISTER

From: Stephen Wall

Date: 4 April 2003

**cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald**

CONVENTION: ROUND-UP

Representatives from 16 small Member States submitted a paper on the institutions to the Convention this week. It had been billed as a unified attempt by the Smalls to fight back against the proposal for a full-time Chair of the European Council, and, in particular, Giscard's attempts to push it through the Praesidium.

The paper is long on principles and short on specifics. With such stated ambitions as "preserving the institutional balance" and "the equality of Member States", I would guess that you could actually endorse most of it.

The concrete proposals that do exist include:

- extension of QMV "save in those limited areas where the particular sensitivities of Member States require the maintenance of unanimity";

- the creation of a double hatted foreign policy supremo, subject to certain conditions, including proper accountability;
- a stronger right of initiative for the Commission in the current second and third pillars (this is difficult for us);
- new arrangements for the election of the Commission President: possibly through election by the Parliament; possibly by election by an electoral college made up of MEPs and national MPs;
- retention of one Commissioner per Member State.

On the Chair of the European Council, the paper supports the retention of the rotation system, while calling for a series of management measures to improve continuity. But this hides a more complex picture. The paper explicitly notes that two of its co-sponsors (i.e. Denmark and Sweden) have expressed "their willingness to examine the idea for an elected Chair of the European Council." We have also learnt from conversations this week that the Dutch are likely to come on board in the endgame. I suspect the Belgians and Irish are in the same position. Assuming the new Member States do not hold out, this would leave Portugal, Finland and Austria prepared to go to the wire.

In this context, the key point of the paper should be seen as sending a message to Giscard that they cannot be ignored, rather than trying to "kill off" the Chair of the European Council. The co-sponsors say they will co-ordinate their interventions at the European Council on 16 April, but Giscard will be listening hard for differences of emphasis on the individual issues. What we need to

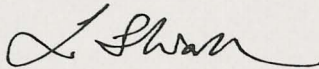
watch out for now is any attempt to weaken the job description of the Chair of the European Council (e.g. on the idea that he become a Secretary General figure, or concentrates only on legislative business). There are also rumours that Fischer and Villepin might attempt to revive the idea of a single President of the European Union (double-hatting the Presidents of the Commission and the Council), but I do not see Chirac or Schroeder wanting to reopen that.

The Plenary also met this week, to consider draft Treaty articles on JHA and on the budget. On JHA, an encouraging number of speakers shared our opposition to the establishment of a European Public Prosecutor. Our problem will be getting them to share David Blunkett's view that even an Article that only allowed for its creation by unanimity would be worth fighting until the end. We will have more difficulty fending off proposals for harmonising criminal procedural law (e.g. rules governing admissibility of evidence), where we have few allies.

On the budget, the rather technical discussion of reforming the relative roles of the Council and the Parliament in setting the EU budget went well for us. Our proposals for giving the Parliament greater powers in this area, while fixing the overall spending ceilings in the Treaty, were largely accepted. Less good were the several calls for an EU-wide tax to replace the current system of Own Resources. On this, and on the issue of our rebate (due to be discussed in a discussion group, where Lord Tomlinson will represent the UK), we will just have to continue to say no.

Finally, the Praesidium have presented us with the next set of Treaty articles. These include provisions for an explicit "Exit Clause" which would allow a Member State freely and independently to leave the Union.

The Praesidium also unveiled a new, accelerated work programme. This will involve debate on draft articles on the institutions and on CFSP in early May, followed by the publication of a full draft Treaty later that month. The final few weeks of the Convention are likely to involve a more or less permanent Plenary session, if the Convention is to meet its end of June deadline. Giscard is still angling for an extension. Member States are in favour of sticking to the June deadline.

A handwritten signature in cursive script, appearing to read 'S. Wall'.

STEPHEN WALL

Post noted (f)

From: Stephen Wall

Date: 4 April 2003

PRIME MINISTER

cc: Jonathan Powell
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CABINET MEETING ON THE CONVENTION: 10 APRIL

Cabinet is due to discuss the Convention on Thursday. Following your meeting with the Foreign Secretary and Peter Hain on 1 April, we have drawn up the attached grids which set out the key issues, the level of support we have on each, and our negotiating stance in the Convention. An annex sets out a series of possible action points from the Cabinet meeting, where we are likely to be isolated and where ministers need to think through our positions.

As you will see from the grids, we have support from other Member States on most of the important issues. These include most of the list of subjects about which you feel most strongly. There is, however, a clutch of issues, where we are either without support, or where we have only one or two allies. In two cases, our lone ally is France, who has settled on the same policy as us, despite having diametrically opposed interests (e.g. co-decision for agriculture). This suggests that we are allowing our innate caution on institutional issues to put us on the wrong side of the substantive argument.

We need to reflect on our policies and tactics for two reasons.

First, the Convention is not a process on which we have a veto. Giscard will present a text to the European Council in June that reflects the consensus view of the Convention. That is not the same as unanimity, and, unless we are prepared to disown the whole process (a non-starter) we will be stuck with certain unwelcome proposals. For example, whether we like it or not, the Convention will conclude that QMV and co-decision should be the norm for EU legislation, with a very short list of exceptions.

Of course, we can (and will) try to unpick the worst proposals in the IGC. And other Member States will have their own difficulties. But these will be, on the evidence available, far fewer than ours. So unless we can narrow down the list of issues that currently give us cause for concern, you will be faced with fighting, isolated, on too many fronts.

That is why it is important that you ask your Cabinet colleagues to reflect further on the areas highlighted in the attached annex, marked Action Plan. We need to establish those areas where we have credible support, or, alternatively, where we are isolated but would be uniquely damaged by the proposals on the table. Where neither applies, we should be considering flexibility.

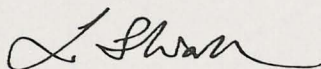
There will be quite a concerted attempt in the Convention to move to more advanced positions on European foreign policy and defence, especially by coalitions of the willing. The French and Germans risk detaching this from NATO and the Americans. We want to develop a coalition of like-minded Member States, who do not take the French view that the European Union should

be developed in opposition to the United States. Yet these countries – Netherlands, Italy, Portugal, Spain, Denmark and Ireland – will not feel able to come with us if we are seen to be the same old Brits.

Two procedural decisions:

- (i) Would you like Peter Hain to put round the tables at A in advance of Cabinet? They are designed simply to be descriptive rather than say what our position should be so I see no harm. ✓
- (ii) Would you like the Attorney General to be invited to Cabinet, especially for the Charter? *(as long as he will be helpful).* ✓

I also attach the more detailed note I sent you last weekend.



STEPHEN WALL

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6. <u>Single Legislative Council</u>	Very little support in Convention or Praesidium. Amato still pushing hard, likely to be PES position.	Oppose.

ANNEX: HIGH PRIORITY ISSUES WHERE THE UK HAS NO OR LITTLE SUPPORT: ACTION PLAN

Issue	Conclusion	Action
<u>QMV for Social Security</u>		
(i) Much of our social security is now delivered by tax credits so risk of breach of tax red line.	(i) Not an issue for other Member States	HMT explore scope for tax carve out. If tax carve out is possible, is the rest acceptable?
(ii) Could lead to harmonisation of social security systems across the EU (i.e. benefit rates being set by the Union).	(ii) We ought to have some support for opposing harmonisation of benefit rates.	DWP explore other MS' positions and scope for alliance, particularly with Denmark and Sweden who share our tax red lines but do not oppose QMV for social security.
(iii) Could lead to co-ordination of arrangements to ensure that EU nationals who migrate to another EU country are not disadvantaged by losing their rights to receive benefits	(iii) This could have budgetary implications, were an increasing number of British nationals to move to work on the continent. But general principle is in line with HMG Economic Reform objective of encouraging greater labour mobility in the EU. And exporting benefits mean that we do not have to pay benefits for other EU nationals working in UK.	HMT to assess whether potential costs of Britons working overseas outweighed by promotion of labour mobility.
<u>QMV for Social Policy</u>	QMV does not apply to social protection of workers, dismissals, representation of workers and employers, and conditions for employment of third country nationals. Risk of harmonising legislation undermining our labour laws.	DTI to explore others' positions, especially Denmark, Spain, Ireland and Germany. Do we need to maintain unanimity for all the items in Articles 137 where it now applies?
<u>QMV for Equal Treatment</u>	QMV does not apply to non-workplace anti-discrimination measures. Anti-sex discrimination legislation could impact on sensitive issues of tax, pensions, education and social security benefits. Likely to come under pressure, as co-decision already applies here even with unanimity (one of only 3 cases in the Treaty).	HMT explore scope for tax carve out. DTI/DWP to explore others' positions. Is there a specific UK interest in maintaining unanimity? Why are others more relaxed when we have traditionally had more <u>advanced</u> legislation than our partners?

ANNEX: HIGH PRIORITY ISSUES WHERE THE UK HAS NO OR LITTLE SUPPORT: ACTION PLAN

<p><u>QMV for Aspects of International Agreements</u></p> <p>Long-standing debate over voting procedure for trade in services. Compromise at Nice retained unanimity in certain areas.</p>	<p>Concern that conceding QMV across the board for trade in services could undermine unanimity for those areas where it applies internally (i.e. tax, intellectual property, and social policy)</p>	<p>DTI speaking to the Commission about establishing a general rule of maintaining unanimity for external agreements where it exists for internal policy, to replace these specific carve outs.</p>
<p><u>Codecision for Agriculture</u></p>	<p>Strong pressure to apply codecision where QMV is the rule (only 30 articles where this exists).</p> <p>Only France supports UK – for opposite reason to us: i.e. it fears EP involvement will promote CAP reform.</p> <p>Risk that producer interests in EP could push up costs of agriculture</p>	<p>DEFRA to explore with CAP reform allies why they do not share our fears. In other words, why does Germany (a liberaliser) support co-decision; yet France opposes it?</p> <p>HMT to explore whether reforms to EC budget (especially entrenching expenditure ceilings in the Treaty) would effectively prevent this.</p>

Griffin Joe - European Secretariat

From: Stephen.Cave@fco.x.gsi.gov.uk
Sent: 01 April 2003 15:01
To: Thomas.Drew@fco.gov.uk
Cc: Matthew.Taylor@rest.fco.gov.uk; joe.griffin@cabinet-office.x.gsi.gov.uk;
Nick.Baird@fco.gov.uk; Catherine.Royle@fco.gov.uk; Lucy.Hughes@fco.gov.uk;
Olivier.Evans@fco.gov.uk; Emma.Wade@fco.gov.uk
Subject: BMDF Convention meeting

Tom

1. I've just returned from a British Management Data Foundation meeting on the Convention, in which Gisela spoke to assorted worthies from industry and the City. I thought you and copy addressees might welcome a short read-out, if only for the insight it offers into Gisela's current thinking.

2. Gisela is deeply pessimistic about her ability to influence the Praesidium, and about the prospects of the Praesidium producing anything in line with the longer term interests of this country. Her main points were:

* On UK strategy: The British approach to the Convention is too reactive. We only look at the immediate questions, not the longer term. We have not grasped that after this, there will be no more Treaties. So we, unlike others, are not promoting a vision of Europe. Instead we (and she in the Praesidium) expend all our negotiating capital on preserving the status quo (e.g. on extension of QMV). Our only positive agenda is the full-time Council Chair - but this will make little real difference, yet to achieve it, we will have to sacrifice less headline issues (she cited organic law and the Charter) which could make a real difference.

* On the outcome of the Convention: Giscard will get his way. But Giscard is stuck in the debates of the '70s and trying to solve the problems of the '70s. The EU that will be embodied in the Constitution will be out of date ("the dreams of old men") and out of step with the liberal economic thinking of the UK (and even the Lisbon agenda). As Gisela is consistently out-voted in the Convention, there is nothing she can do about this. So we will end up with a social-Europe-model, federalist-though-the-back-door, dead-in-the-water Constitution.

3. Needless to say, this was grist to the mill of most present (e.g. Rodney Leach, the Chairman of Business for Sterling), who were opposed to the very idea of a Constitution (the most notable exception was Sir Samuel Brittan). Gisela clearly feels that she speaks as an MP, according to her conscience, and not as a representative of the Government. Unfortunately, few present were fully aware of this. They were not aware of the subtle implications of her representing 'national parliamentarians' rather than the Labour Party/Government. They therefore left with a rather bleak message, which many believe to be Government-endorsed.

Stephen

Stephen Wall.
Andre triumph.

Self Morgan a Tanya Parrell

I didn't choose her

Will 8/4

PM/03/027

PRIME MINISTER

Ms. G/SSS.
SSW
mr
RG
SG



file
SW
DM
JPO
MR
RL
EM
JR

Future of Europe: Justice and Home Affairs Priorities

Summary

1. The UK interest is in a proactive JHA agenda at EU level. But we also have some essential interests to defend. I agree with David's argument. We also have to appreciate that what is at stake here is the integrity of the nation state itself. Control over the criminal law and its enforcement are as central to that as is control over our armed forces. The federalists in the Convention are themselves only too well aware how high the stakes are too. So, we need to protect our distinct judicial system without sacrificing our interest in improving judicial standards in the new Member States. But we should not fall into the trap which argues that supra-national control of judicial systems is a pre-condition to reform. In my view it is not. Improving the standard of police and judicial services requires major domestic changes in culture and practice. New Member States are not the only ones whose systems are in need of repair. Some long-standing Member States have lamentable systems.

Detail

2. I am grateful for my copy of David Blunkett's minute of 19 March. I have also seen Sir Stephen Wall's letter of 25 March and Derry Irvine's minute of 26 March.

3. I agree with David's minute. We have a clear interest in common EU action on asylum and immigration, and in the fight against cross-border crime. I agree that QMV is right for those Treaty Articles whose scope is limited to where the EU can genuinely add value without unnecessarily constraining our national freedom of action.



4. I also agree that we have essential interests to defend such as the distinctiveness of the common law system and opposition to a European Public Prosecutor.

Common Law

5. We cannot accept QMV and wide EU competence in criminal procedural law, which would potentially allow us to be outvoted on distinctive aspects of our legal system, such as the right to silence and use of intercept material as evidence. But, if we are committed to bringing in mutual recognition arrangements with the new Member States such as the European Arrest Warrant, we have a clear interest in mechanisms to put pressure on them to raise their standards on defendant's rights.

6. I therefore believe that the right balance is to advocate EU minimum standards for defendants, with clear language protecting the diversity of legal traditions and a unanimity lock. In this way we could defend our position, while putting pressure (with a majority of others) on the new Member States.

European Public Prosecutor

7. We cannot accept a European Public Prosecutor. At the same time, we do not want situations to arise where eg Eurojust gathers compelling evidence against a suspect in a new Member State but its prosecuting authority fails to take action. David's ideas on strengthening Eurojust and tackling fraud are helpful, but do not address this fundamental problem.

8. I agree with you that the right way forward is to strengthen Eurojust. One possibility, as you say, is to give Eurojust a last resort power to compel Member States to prosecute for a limited list of cross-border crimes where there is clear evidence. Another is to enable Eurojust to oblige Member States either to prosecute or to extradite to another jurisdiction in the same circumstances.



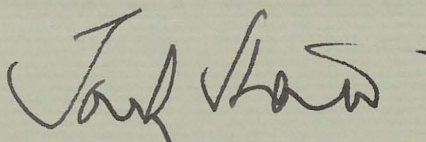
Asylum

9. I strongly agree with you and David that the future focus of EU activity on asylum should be practical, operational and cover our external agenda including new ideas on protection and processing in region. QMV is needed to drive this through. But we should not sign up to EU wide-harmonisation of legislation which would restrict our domestic flexibility to tackle abuses of the asylum system.

Negotiating Position

10. David is right that we have supporters for our basic position in these areas. But the Praesidium Articles are clearly drafted to buy these off (eg the permissive provision plus unanimity lock on the European Public Prosecutor). We need to continue to argue for positive alternatives rather than retreat into a defensive shell, if we are to keep our allies on board.

11. I am copying this minute to Derry Irvine, David Blunkett, Gordon Brown, Peter Hain, Patricia Scotland, Sir Stephen Wall and Sir Nigel Sheinwald.


(JACK STRAW)

Foreign and Commonwealth Office

31 March 2003

From: Roger Liddle
Date: 30 March 2003

PRIME MINISTER

cc: Jonathan Powell
Stephen Wall
Sally Morgan
Alastair Campbell
Jeremy Heywood
Andrew Adonis
Peter Hyman
Steve Morris
Matthew Rycroft
Francis Campbell
Rachel Cowburn

PES CONVENTION MEETING IN BUCHAREST

This Friday/Saturday I took part in a Convention Members' meeting in Bucharest, hosted by Nastase, where Amato and Klaus Hänsch signed up the PES for the institutional compromise the party will now advocate in the Praesidium and Convention. Gisela and I represented the UK. It is well understood that we retain national flexibility to differ, but we will gain credit and influence by narrowing any need for this flexibility.

Broadly the compromise follows the Franco-German paper and involves a permanent chair of the European Council combined with election of the Commission President by the European Parliament. But the precise terms in which both propositions are couched are designed to assure doubters on either side.

The functions envisaged for the chair of the European Council are aimed at minimising conflict with the Commission President:

- **consensus building within the European Council.** The European Council is to be formalised within the Constitution as a key institution of Europe with the functions Monnet originally envisaged for it – to provide the “necessary impetus for Europe’s development” and to set “clear guidelines for policy”.
- **exhortation/warnings to the executive machinery of the Union** so as to ensure delivery of key policy commitments.
- The European Council should *not* become a **super-executive** or continue to serve as an **appellate body**. To avoid the latter (no more discussion of milk quotas on the brink of war and economic recession!), it is proposed to reform the Council in other ways. **Council co-ordination and dispute resolution** is to be achieved through the new institutions of the **Legislative Council** and a **separate General Affairs Council**, where, in both cases, each Member State is represented by a **senior European Affairs Minister** of its own choice. These reforms are seen as essential to make political decision making by national Ministers transparent and to curb the influence of sectoral vested interests within the present Council structure.
- **representation in external relations** of the collectively agreed positions of the European Council. Amato argued strongly (and I believe persuasively) that Europe’s failure over Iraq has reflected not just a conflict of views between key Member States, but a **failure of European geopolitical vision**. The institutional weakness of the present European Council with the rotating Presidency has

contributed to this and proved inadequate to the historic task. This weakness can not be put right simply by strengthening the Solana role, as envisaged in the proposal for a European Foreign Minister chairing the Foreign Minister's Council, with a seat in the Commission and resourced by a unified foreign affairs staff drawn from the Commission, Council Secretariat and Member States.

"Strengthening Solana" is necessary but not sufficient: strong, more permanent European Council leadership is the key. The argument that "Iraq has changed everything and nothing will be the same again" proved powerful in persuading the doubters of the need for a European Council chair.

The European Council permanent chair would work with a **Bureau of representative Prime Ministers drawn from the European Council** (serving continuously for the same term as the Council chair – a kind of Troika but a little larger and without continuous rotation). This Bureau would serve as a sounding board and assist the process of consensus building.

The aim would not be to set up a parallel Executive alongside the Commission (a dig at the scheme we put forward for the Chair of the European Council to lead a team of the other Council chairs) but to provide a "bridge" to the Commission. However our ideas are accepted in all but name, by the proposal that it would aid simplicity if the chairs of the other Councils are drawn from member States represented in the Bureau. The Council would in effect be run by a mix of a "team Presidency" and some Councils with permanent

chairs, but there is no mention of the Commission chairing Councils except for the double-hatted Foreign Minister.

Apart from the European Council the number of **Council formations would be cut to five – Foreign Affairs, ECOFIN, JHA, General Affairs and Legislative**. Sectoral Ministers would continue to meet informally, but final decisions and legislation would have to be ratified through those Standing Councils on grounds of transparency and policy coherence. All Councils would be “accountable” in some way to the European Parliament.

On the Commission, the PES agreed:

- the role of the Commission should be reinforced both in its right of initiative and implementation powers over delegated legislation;
- the principle of **Commission collegiality should be maintained** (ie no right for the Parliament to censure individual members);
- **effectiveness, not number of Commissioners is what matters most**. So there is a clear choice between **sacrificing the principle of one Commissioner per Member State** (possibly compensated for by a place in the European Council Bureau or a key Council chair) and the establishment of a **hierarchy** of Commissioners with proper jobs, and those without proper jobs but who retain a vote in the College;

- the election of the Commission President by the Parliament. The concept of an "electoral college" involving national Parliamentarians was rejected with Gisela strongly against. However the **right of nomination** must remain clearly in the hands of the **European Council** choosing its nominees, or nominee, by QMV. This is accepted as essential to **preserve the dual accountability** of the Commission to the Council as well as Parliament. It is also seen as **an essential firewall against politicisation**. The Council would need to take into account the balance of the European Parliament in making its nomination, but its nomination would **not be pre-determined by the most successful Party nominee heading the Party lists in the European Parliament elections**. Amato and Hänsch clearly envisage that the Council should remain free to decide to make only one nomination to the European Parliament. But the EP should only have to approve that nominee by 50% plus 1 of its total membership. The Commission's proposal to throw open the election to the European Parliament but require a 60% or two thirds majority is seen as the worst of all worlds - with a lowest common denominator candidate bound to emerge. From our point of view, this compromise is pretty near to what you agreed at Nice: the Parliament already in practice has the power to veto the Council nomination.

This package is in line with what we know through John Kerr that Giscard is going to propose to the Praesidium. **What struck me in Bucharest was that Amato and Hänsch got it through without too much difficulty. The European Parliamentarians did not**

kick up a fuss, despite vigorous opposition at previous meetings to the Council Chair. The "smalls" and "new Members" are still unenthusiastic, but I detected signs of reluctant compliance.

- the **Romanians** have **switched** their government position to strong support for the Council Chair. (At the dinner, I had a good chat to the Foreign Minister and more briefly with Nastase. I now put them in the category of firm support, but we need to deliver some of the UK inward investment they want).
- the Finns and the Dutch struck me as more fluid in their views than in the past. Lipponen's likely departure as Prime Minister (the price of him keeping the job in their coalition negotiations would be too high for the Social Democrats, I was told) may soften their opposition. Also the **new Dutch coalition offers us an opportunity**. My friend, Frans Timmermans, who is close to Bos and is tipped to end up Europe Minister, recognises the case for rethinking traditional positions in the light of Iraq. He has one very good line: "Iraq shows that in Europe we are all 'smalls'".
- the **Portuguese struck me as the most "dug in" in opposition** to the European Council chair. (Might the creation of a Vice-President of the European Council get them off their hook, offering the possibility of an institutionalised big/small balance?).

In my view this package is not at all bad. We should present it positively,

not quibble too much over things we don't like (eg election of the Commission President by simple majority) and conserve our negotiating capital for other issues.

The PES Conference took place in the gross and ghastly Ceausescu palace. I left it feeling there is some hope in Europe yet!

Signed : Roger Liddle

30/03/2003

ROGER LIDDLE



10 DOWNING STREET

pm

Your domestic policy advisers
are more nervous than

Styken about conceding QRV
in a number of the areas,

esp: social policy
social security
agricultural spending
criminal procedures
asylum.

Obviously we do need to
limit our fighting. But some of
your Minister's defensiveness
is entirely reasonable.

9/2

From: Stephen Wall
Date: 28 March 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

THE CONVENTION

You have a meeting with Jack Straw and Peter Hain on Tuesday to work out our strategy for the Convention and for the discussion of it in Cabinet scheduled for 10 April.

The Foreign Office have prepared a draft note for Peter Hain and Jack Straw, which I attach. It provides a useful checklist of the issues. The crucial issue is our overall strategy.

Lots of activity and networking by Peter Hain in the early months of the Convention disguised the fact that we are more negative on more issues than about any other member state. In the present phase of the Convention, where we are commenting on Treaty articles, we are putting in ten amendments to everybody else's one. There are perfectly good reasons for this: the Constitution is a legal text and we want to get it right. Plus, every minister in Whitehall has their pen poised over the page to write a letter of complaint if Peter Hain departs by one iota from the purity of received doctrine.

But nor are we confining our comments to what we say in semi-private. We publicly rubbished the first Treaty articles in a way that delighted the eurosceptic press. David Blunkett has recently done the same on the JHA articles, in particular on the idea of a European Public Prosecutor, even though John Kerr had secured language in the Praesidium text that any decision on a European Public Prosecutor would be taken by unanimity. Kerr now fears that this unanimity provision may be withdrawn on the basis that nobody in the Praesidium likes it and why bother if the British are totally opposed to the whole article anyway. So, at the very least, the first lesson for our strategy must be to shut up in public rather than erect hurdles which we may, in the end, not be able to jump over. Peter himself is open to this message because he is finding his negotiating position increasingly uncomfortable and believes that he is being asked to fight on too many fronts.

There is a second strategic decision to take which relates both to our negotiations in the Convention and to our wider positioning in the European Union. As far as the Convention is concerned, it would be a disaster for us if Giscard concludes that there is a consensus (which in his terms means a large majority) and we are virtually the only member state challenging it. This means that we need Cabinet to agree to reduce the number of issues on which we fight to those which are either absolutely essential for the national interest or where we have allies.

There is a further reason for doing this. The French will try very hard over the coming months to get those of our partners who have sided with us back into their and the German camp on the basis that they represent good Europeans and that we are basically the same intergovernmentalist, free-trade-area-only Brits

that they know and hate. Most of what we have done in the Convention over the last few weeks will have confirmed them in that view. If we are going to have any hope of keeping the Dutch, the Portuguese, the Italians, the Spanish (and even the Danes and the Irish) with us we have got to change both our tone and the substance of our position. That way, too, will make it easier for the Germans to work with us rather than becoming locked in the French embrace.

Of the red line issues in the Foreign Office paper, I do not think we should get too exercised about communitisation of economic policy, QMV for own resources, the frontiers protocol or a common defence guarantee. These are issues where there is as much opposition as support for the difficult Praesidium texts. So we are in fair company.

And on some other difficult issues – the Charter, double-hatting the External Relations Commissioner and the CFSP High Representative – I would be reasonably confident of reaching an acceptable outcome.

That leaves a number of other issues which, for the relevant ministers, are red lines but where they are being unnecessarily negative.

(i) Justice and Home Affairs. The Home Secretary wants us to oppose absolutely:

- Wide-ranging EU competence over criminal procedures
- EU-wide harmonisation of asylum legislation.
- A European Public Prosecutor

We need to get it accepted that:

- Light minimum standards for defendants in cross-border cases are in UK interests and will underpin mutual recognition. We want to ensure that UK nationals tried in a Greek, Czech or Bulgarian court are subject to similar standards and procedures as in our own courts. We should try to limit - not decry - Community competence in this area.
- There are a great many proponents (including the UK, up until now) of a genuinely common European asylum system, with fully harmonised laws and procedures, under QMV. It may not be easy to turn our back on our erstwhile communautaire approach, particularly as we still have our opt-out. A lot depends on whether the Home Secretary wins allies with his alternative strategy, which focuses on action with third countries to tackle flows of migrants to the EU, rather than harmonisation of intra-EU standards.
- As regards a European Public Prosecutor, of course we do not want it but, in the last resort, a Treaty article which says that such a post may be created if the European Council so agrees by unanimity is as great a protection as the one we have on tax, with which we live perfectly happily.

- (ii) QMV for social security. We need to distinguish here between measures designed to harmonise social security systems across the EU (i.e. benefit rates being set by the EU) and co-ordination of arrangements to ensure that

I would be
very wary
of giving up
our absolute
right to
determine our
own asylum
laws

EU nationals who migrate to another EU country are not disadvantaged by losing their rights to receive benefits.

We should continue to oppose the former moving to QMV. We are likely to be in good company here.

On the latter there are two arguments against moving to QMV. One is that we might have to provide more social security cover for our own nationals living elsewhere in the EU than we would like. The other is that much of our social security is now delivered via tax credits and this could allow QMV for tax by the back door. The second point should be manageable via an amendment protecting anything to do with tax from QMV. The first is an issue for all member states. Why should we protect ourselves more than any of the other 14? And the whole point of greater social security co-ordination is to assist the free movement of labour within the EU - something we want to encourage as part of our economic reform agenda.

You might, at the meeting, give a remit to Andrew Smith and his ministers to go to Denmark and Sweden and find out (given that they basically share our position on tax) why they have concluded that they could live with QMV and why our position has to remain different from theirs. You should say that you are not satisfied that any serious work has been done on this issue by DWP and that you now expect it to be done.

- (iii) QMV for social articles. At the moment QMV applies for occupational health and safety, information and consultation of workers, integration of persons excluded from the labour market, equality between men and

women in the workplace and the combating of social exclusion. It does not apply to social protection of workers, dismissals, representation of workers and employers, and conditions for employment of third country nationals. The Chancellor and Patricia Hewitt will argue strongly against any extension of QMV given our general difficulties with social chapter legislation. We may have limited support from Denmark, Ireland and Germany. But all other member states would be prepared to consider a small move to QMV e.g. on social protection of workers or third country nationals. There is already provision in the Treaty for this to happen. We should be prepared to consider whether we too could make such a move.

CBI would
be
1-52) is 1
hostile to
this

- (iv) QMV for equal treatment. Patricia Hewitt will argue that we must retain unanimity for non-workplace anti-discrimination measures. The argument is that anti-sex discrimination legislation could impact on sensitive issues of taxation, pensions, education and social security benefits. Yet we will be hard pressed to defend the anomaly of unanimity applying with co-

This is
vital for
avoiding
more
social
regulation

- decision (one of only three cases in the Treaty), in an area (anti-discrimination legislation) where the UK can take a real lead. We could negotiate a carve out to mitigate the worst effects on tax.
- (v) Co-decision for agriculture. At the moment, agricultural decisions (other than those taken on health grounds) are decided by the Agriculture Council without co-decision with the European Parliament. Margaret Beckett opposes any move to co-decision though it would be very difficult to deny it given the strong pressure in the Convention to apply co-decision wherever there is QMV – targeting the 30 or so areas where this is not now the case. The arguments against are (a) delay and (b) that the

agricultural lobby dominates in the European Parliament and will push up the costs of agriculture. The first point has some validity but the European Parliament is getting increasingly good at doing rapid first reading deals with the Council. So it is not an insuperable problem and it is not a particularly British problem. So why should we object if others do not?

On the budget, the problem can be got round in the proposals which we have put to the Convention which would abolish the present distinctions between obligatory and non-obligatory expenditure but, in return, would give the Council the last word over the ceilings. So, even if the agricultural lobby were to prevail, there would still be a constraint on their ability to push up expenditure. Most of our reforming partners (including the Germans) believe that this change will actually push down agricultural expenditure. The French also believe that. So it is very peculiar that we are taking the same position as the French and not the same position as the Germans.

- (vi) EP election of the Commission President. The Chancellor will argue that having the European Parliament nominate the President of the Commission is too high a price to pay for having an elected chair of the European Council, that such a person will be totally beholden to the European Parliament and that the Commission's ability to be impartial on competition and state aids policy will be wiped out. This is a bogus argument designed to reinforce the long-standing Treasury view which is to take competition and state aid policy away from the Commission. The Chancellor argues for an independent European competition authority. But, outside the existing Treaties, such a competition policy would have to

be negotiated intergovernmentally by 25 member states. The prospects of ending up with anything workable and independent would be zero.

The notion that the entire Commission would be skewed unacceptably if the European Parliament effectively nominated the President of the Commission is also grossly exaggerated. The threshold would be sufficiently high for the EP not to be able to make the choice on partisan grounds. And under the present Treaties the President of the Commission is already chosen by the European Council in agreement with the European Parliament. While the proposed change is not ideal and we should go on proposing alternatives, it would not be the end of civilisation. For Schröder some form of election of the Commission President is an essential condition for agreement to the European Council Chair.

- (vii) Federation of nation states. Your preferred alternative of “ever-closer union of the nation states of Europe” would be seen by others as too intergovernmentalist. If we really cannot live with ‘federation of nation states’ (and no other member state, actual or future, will object) then we would do better to argue for the existing Treaty language, not least because it is proof against criticism from the Conservatives since it is in the original Treaty of Rome. That language was, incidentally, the basis on which Mrs Thatcher accepted the reference in the Single European Act to the Community’s becoming a Union ie because the Union was a union of peoples not of governments ie not a state.

Against this background, I suggest you seek to draw the following conclusions:

Our red lines should be:

- Communitisation of CFSP
- Communitisation of Economic Policy
- QMV for Tax
- QMV for Own Resources and an EU tax
- Frontiers Protocol
- Common Defence Guarantee
- The Goldsmith safeguards for incorporation of the Charter of Rights

We should be prepared to show flexibility now on:

- Light minimum standards for defendants in cross-border criminal cases.
- QMV for asylum, even for harmonising laws, given our opt out.
- An Enabling Clause for a European Public Prosecutor with a unanimity lock.
- Co-decision for agriculture.
- Retention of "ever closer Union" as a less bad alternative to "federation of Nation States".

On the issues of:

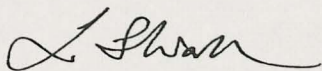
- Social Security
QMV for equal treatment

We need to test our assumptions given that we have no support.

- On the social articles, we should aim to keep in step with Germany, Denmark and Ireland.

On the election of the Commission President, we do not have to accept now the proposition that he should be nominated by the EP but we should continue on the line you agreed with Aznar (publicly) ie that the key principle should be democratic accountability combined with political independence.

If you and the FCS and Peter Hain agree this strategy we shall need to do some private briefing of ministers before Cabinet. Peter Hain is also keen to talk to the Chancellor.

A handwritten signature in dark ink, appearing to read 'S. Wall', with a stylized, cursive script.

STEPHEN WALL

CONVENTION ON THE FUTURE OF EUROPE: END GAME

1. The Convention is approaching its endgame. There is a key discussion of Heads of Government on 16 April. Giscard will table a first full draft of the new EU constitution in mid-May; the Convention will then sit in almost permanent session until mid June; and the final product will be presented to the European Council on 16 or 30 June. We need now to prioritise our objectives, focussing on defending our key red lines and advancing the key elements of our positive agenda.

2. Why prioritise? Because:

(a) Post-Iraq we will have our work cut out re-establishing our leading EU role. France will try to isolate us. If we retain too many red lines, we will do their job for them;

(b) we have a positive agenda (eg full-time Chair of the European Council, national parliaments' subsidiarity watchdog). If we are not prepared to trade at the appropriate time, we will lose it;

(c) Giscard is determined to present a single text, not options. If he feels he has a chance of getting broad UK approval, he will help us on key points. If not, he will see little point in trying to accommodate us;

(d) leaving a large number of unresolved UK issues to the IGC is dangerous. If Giscard does a good job, the overwhelming majority of Member States will want to push his text through largely unscathed.

3. What are our key red lines?

(a) Communitisation of CFSP/ESDP. We cannot accept an outcome under which the UK could be outvoted on a key foreign or defence policy issue. Nor can we accept a role for the ECJ, extension of loyal co-operation, merging of CFSP into Community competence categories/instruments, a greater role for the EP/Commission, or an EU seat in international political organisations.

Although many want to make progress on the agenda, we are reasonably well-placed to resist.

(b) Communitisation of Economic Policy. We should not accept extension of EU competence, greater use of QMV or increased powers for the Commission or EP. There is sufficient uneasiness around to suggest that this agenda will not be pushed too hard;

(c) QMV for tax. There are compromise ideas around (distinguishing between rates and substance of taxes, limiting QMV to areas where there is a serious risk of distortion of competition) but they do not provide adequate protection. We have few allies but in the end we will just have to say no;

(d) QMV for Own Resources. There are suggestions that France, Germany and the Commission will propose super-QMV to enable the UK to be outvoted on the abatement;

(e) Frontiers protocol. Unclear yet whether eg France, Germany will target this;

(f) EU tax. MEPs and others will press hard, but we should have sufficient support to see this off comfortably;

(g) Common defence guarantee. The Working group report steered off this, but it may re-emerge as part of the Belgian/French/German reinforced defence co-operation initiative, as may other elements opposed to the conception of ESDP agreed at Nice (and certain to be opposed by NATO, particularly the US) such as multinational forces or standing EU HQs. All are red line issues.

4. How should we deal with other difficult issues?

(a) Charter. The Attorney's advice provide a way forward. We should accept incorporation with the safeguards he identifies (many of which have been agreed by the Group, others remain to be secured). This should be achievable.

(b) Criminal Law. We must oppose anything that would oblige us to accept a European Public Prosecutor or QMV for wide-ranging competence on criminal procedural law. On the former, the best way of seeing this off will be strengthening Eurojust (in particular, giving it a last resort power to compel Member States to prosecute a limited amount of cross-border crimes). On the latter, we will need a unanimity lock. We have a fair amount of support for this kind of approach, which would fade away if we took a tougher line.

(c) Double-hatted. We should accept a double-hatted figure sitting on the Commission provided that s/he remains responsible to the Council (and therefore independent of the Commission) for CFSP matters. There are various models around, which would achieve this, and which are likely to have the necessary support.

(d) EP election of Commission President. Depending on how the wider institutional negotiation goes, we should be willing to accept EP election with a high threshold (two-thirds would be good enough) and approval by the European Council who should also have the power to dismiss him/her. But we may not need to concede this: other better alternatives are still on the table;

(e) QMV for social security. We need stronger arguments and a clearer understanding of the link to tax. Why can the Danes and Swedes (who support us on tax) accept QMV here? Perhaps Andrew Smith could go to Denmark and Sweden and seek to agree a common line. We have no support currently on this.

(f) QMV for social articles. We should generally oppose extension of QMV, but we should consider whether there are any very limited areas where we could concede; we have next to no support for outright opposition to QMV, and opposing QMV eg for equal treatment of workers is difficult presentationally.

(g) Codecision for Agriculture. We should accept this subject to the Council having the last word over the Financial Perspective ceilings (on the lines of a Treasury paper) and work with Pat Cox and others to establish a more powerful role for the EP budget committee over the big spending committees (including Agriculture). These changes should establish an incentive for downward pressure on agriculture spending in the EP, which should then become at least as effective in driving reform as an enlarged Council. We have almost no support for opposing codecision (except from the French, who see codecision as leading to more CAP reform!)

(h) f-word. We should not agree to "federal" on the face of the Treaty. We have no support for just saying "no" but returning to the current language on "an ever closer Union of the peoples of Europe ..." might do the trick.

6. Next Steps?

7. If Ministers are content:

(a) the Prime Minister should set out clearly to Giscard our red lines [in the margins of 16 April], while reiterating how positive we have become on much of the Convention agenda;

(b) Peter Hain should use the above as his negotiating mandate. We should not move too early to settle on the points in paragraph 5. But the judgement should be left to him as negotiator on how best to use them, case by case, to secure our positive agenda and ease defence of our key red lines.

RESTRICTED



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

to all
FAXED
25/3

25 March 2003

Dear Jonathan,

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

The Prime Minister was grateful to the Home Secretary for his minute of 19 March. The Prime Minister's views are as follows, taking each issue in turn.

European Public Prosecutor

The Prime Minister agrees that we should not accept a European Public Prosecutor with a power to initiate and pursue legal action within the UK. The unanimity provision in the draft is helpful, and we should take care not to lose it, but it is not sufficient.

The Prime Minister does want an effective mechanism to ensure that, in an enlarged European Union, we have the means to ensure that member states take action, not just against fraud, but against other crimes of a cross-border kind. He is not against the Home Secretary's proposal for a paper on tackling fraud against the Community budget provided that we can get other member states to join us. But he fears this may be a case of "the dogs bark but the caravan moves on" ie our proposals will not tackle the whole of the problem and may not be where a majority of member states are at. The Prime Minister believes that we should, therefore, continue to look at ways of bolstering Eurojust by giving it a last resort power to compel member states to prosecute particular categories of crime, but leaving the method of fulfilling that obligation up to the member states. In other words, as with other areas of EU law, there would be a mechanism to compel recalcitrant member states to live up to their obligations but the obligation would be an obligation to act and would leave open the precise way in which this would be done in each member state. This will clearly require further work.

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Criminal Procedure

The Prime minister agrees that the Praesidium's proposals on criminal procedure go too far. He is not prepared to consider an opt out. He regards opt outs as a throwback to the previous government and does not believe that they should be a negotiating option for us. But we should continue to oppose wide ranging competence in this area and should instead consider two alternative options. The first would be to propose EU-wide minimum standards for defendants in an extremely limited area of criminal procedure eg access to legal advice and interpretation under QMV. The second option would be to propose a wider base for EU minimum standards for defendants in cross-border cases only, but governed by a unanimity lock. This second option is closer to the findings of the Convention Working Group report and has more chance of getting support.

The Prime Minister agrees that strengthening the Treaty provisions on mutual recognition remains the preferred route.

Serious Cross-Border Crimes

The Prime Minister agrees with the Home Secretary's recommendation that we can accept common minimum definitions of serious cross-border crimes provided certain conditions are met. He agrees that if we can satisfy those conditions then we can agree to QMV.

The Prime Minister endorses the Home Secretary's view that the EU should not act either to set minimum sentences or to prohibit member states from criminalising behaviour. His view was that the safeguards the Home Secretary seeks are implicit in the texts of the draft articles which reflect the approach agreed at Tampere. He agrees with the Home Secretary that the UK should argue for a clear list of policy areas where the EU could set criminal penalties. Voting procedures should be tied to those of the relevant policy area.

Asylum

The Prime Minister agrees with the Home Secretary that the UK should not sign up to EU-wide harmonisation of asylum legislation which might restrict our domestic flexibility to tackle abuses of the asylum system. He would like the UK to propose a more general Treaty base, governed by general principles rather than harmonised laws. He agrees with the Home Secretary that the new Treaty should signal a shift in the focus of EU action on asylum, away from how we

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- 3 -

deal with asylum seekers once they have entered the EU, and towards greater action with third countries to manage migration flows into the EU. His view is that we should continue to endorse QMV for this area. At the end of the day we cannot both have our existing option to opt out and prevent action by others.

ECJ

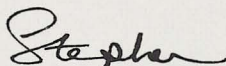
The Prime Minister agrees with the Home Secretary that we should seek to maintain the current arrangements on ECJ preliminary rulings in asylum cases. He would like to see a flexible approach whereby Member States could decide on a chapter-by-chapter basis whether any court could refer a case to the ECJ, or just the highest Court in the land.

UK Protocols

The Prime Minister agrees that our frontiers protocol is not up for negotiation, and that we should argue to retain the status quo vis a vis our other Title IV protocols. However, he would like the UK to work up options which would allow us to participate in a wider list of Schengen immigration measures, including action at the EU's external border, whilst maintaining control of our internal frontiers.

I am copying this letter to Sarah Albon and Paul Zimmerman (Lord Chancellor's Department), Simon McDonald (FCO), Mark Bowman (HM Treasury), Sarah Lyons (Wales Office), Cathy Adams (Attorney General's Office) and Sir Nigel Sheinwald (UKRep Brussels).

Yours ever,



J S WALL

Jonathan Sedgwick
Home Office

RESTRICTED

~~PRIME MINISTER~~

From: Stephen Wall
Date: 21 March 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Justin Russell
Emily Miles
Steven Morris
Sir Andrew Turnbull
Sir Nigel Sheinwald

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

The Home Secretary has minuted you with his reactions to the draft JHA articles for the new EU Constitutional Treaty which emerged from the Convention on Monday. I am sorry to bother you with this now. But we have to comment, in the Convention, next week and the issues are important.

As David Blunkett said at Cabinet yesterday, he is worried by proposals on a **European Public Prosecutor, procedural law and asylum**. His view is that we will come under heavy fire domestically for allowing the EU control over aspects of our legal system, and that signing up to EU common rules on asylum risks tying our hands unacceptably in the future. But opposing Treaty change in these areas risks making us look backmarkers in the effort to tackle problems which will grow on enlargement and can only be tackled collectively.

The draft text would allow the Council, by unanimity, to establish a European Public Prosecutor (EPP) responsible 'for investigating, prosecuting and bringing

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to justice the perpetrators of serious crimes affecting several member states and of offences against the Union's financial interests'. The Home Secretary opposes this: his view is that an EPP would be incompatible with UK law (as it could require the UK to prosecute specific cases, overriding the decisions of the Crown Prosecution Service), and that it would be unaccountable. The UK resisted an EPP at Tampere and at Nice. It is extremely unlikely that the draft Constitution will emerge without a reference to an EPP.

The Home Secretary suggests that he can win allies with alternative proposals to strengthen the Court of Auditors, in order to tackle fraud against the Community budget. My view is that his proposals will not fend off an EPP, as the majority of Member States are now signed up to the idea of a mechanism to ensure the prosecution not just of fraud but also of other serious crimes. This is particularly important to the Schengen members in a new enlarged Europe. The Court of Auditors do a good job but are regularly ignored.

Some of our potential allies on the EPP (Ireland, Denmark, Austria) may be bought off by the unanimity lock in the draft text, which permits rather than obliges the establishment of an EPP and requires unanimity to do so.

An alternative option would be to bolster Eurojust (the college of senior prosecutors from each Member State established at Nice to facilitate prosecution of cross-border crime) by giving it a last resort power to compel Member States to prosecute particular categories of crime, but leaving the method of fulfilling this obligation up to the Member State. The Home Secretary is not keen on this approach which he views as an EPP in all but name. The Attorney General and the Director of Public Prosecution have not yet been consulted but we expect that

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they would resist moves which fettered their discretion. But this idea is closer to the standard EU model ie we accept obligations while having discretion as to how to implement them.

I recommend that you agree with the Home Secretary that we should continue to oppose an EPP. But between now and the IGC we should work up realistic fall-back options based on giving Eurojust a last-resort power to require Member States to prosecute certain categories of crime. It would be very hard to argue in the IGC that we do not support a mechanism which compels recalcitrant new member states to live up to their obligations to prosecute serious crime and fraud against the Community budget. This power of compulsion would obviously apply to the UK too, but it is far less likely that we would be the back-markers in this area. ✓

Criminal Procedure

The draft Constitution text would enable the Council to pass laws under QMV which would require the UK to change aspects of its criminal procedure, e.g. bail, rules on evidence (where most other Member States accept intercept evidence and evidence based on hearsay – whereas UK courts do not). This might also have implications for our ability to detain terrorist suspects without trial. The Home Secretary opposes ceding competence in this area. He says that if the article remains in its present form he would want to negotiate a protocol at the IGC, giving the UK an opt-out.

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I recommend that we rule out an opt out. They are a throw back to the previous government and symbolise a Britain out of step with its partners. A new opt out would give a very damaging signal.

But we should continue to oppose unlimited competence in this area. Two alternative options present themselves. The first would be to propose EU-wide minimum standards for defendants in an extremely limited area of criminal procedure (access to legal advice and interpretation), under QMV. The second option would be to propose a wider base for EU minimum standards for defendants in cross border cases only, but governed by a unanimity lock. This is closer to the findings of the Convention Working Group report and has more chance of getting support. **I recommend that you agree that we should oppose wide-ranging competence in this area, restricting it to cross-border cases only, but giving ourselves the flexibility outlined above.** ✓

The Home Secretary is prepared to see QMV to agree common definitions for a short-list of serious and cross-border crime (including terrorism, human trafficking, money laundering). This could require the UK to criminalise behaviour which was not hitherto an offence under national law – e.g. definitions of trafficking. But the short-list approach limits the chance of us having to change our laws in unwelcome areas. This is consistent with the approach in the draft Treaty article. We should accept the Home Secretary's advice on this point.

The Home Secretary is also seeking a provision stating that the EU must never prohibit a Member State from criminalising behaviour. This too is already implicit in the draft Treaty language and is the consensus amongst Member States.

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On sentencing, at Tampere we negotiated an approach whereby the EU could stipulate that the maximum sentence for certain serious and cross border crimes should be above a certain threshold. For example, under the Terrorism Framework Directive the maximum sentence across the EU for orchestrating a terrorist crime must be at least 15 years. Member States are free to set higher tariffs if they wish. The Home Secretary wants explicit Treaty guarantees that the EU will not set minimum sentences, arguing that this would override judicial discretion over sentencing (notwithstanding the fact that this is exactly what we are seeking to do domestically, e.g. over gun crime). The idea of the EU setting minimum tariffs is not on the table in the Convention, nor would it gain support from other Member States.

The safeguards the Home Secretary seeks on criminal law are already implicit in the draft text. Making these references explicit would give him certainty – but would be very difficult to negotiate. **I recommend that you agree with the Home Secretary that the EU should not be allowed to act in these areas, but point out that the safeguards he needs are in the text itself.**

Based on the JHA Working Group report, the draft text proposes QMV for EU-wide criminal penalties in other areas of Community policy – e.g. environmental crime, maritime safety. This would be open ended in terms of the areas covered. The Home Secretary wants instead to argue for a discrete list of policy areas where the EU could set penalties. He also argues that the voting rules for deciding the criminal penalty should be the same as for the policy area they apply to. This is important for him because of Racism and Xenophobia, where if we accepted QMV we might be required to criminalise holocaust denial

and incitement to religious hatred. We dropped provisions in the 2001 Anti-Terrorism Bill to create an offence of incitement to religious hatred because of stiff opposition in the Lords. **I recommend that you agree that we push for a list-based approach and voting procedures tied to those of the relevant policy area.**

The draft Treaty provisions on police co-operation are good. The Home Secretary has welcomed them, in particular provisions prohibiting Europol officers from exercising coercive powers, and ensuring that unanimity will govern joint operations taking place on another Member State's territory.

The draft text proposes common rules on asylum, governed by QMV, in place of the loose minimum standards we have been negotiating under unanimity since Tampere. The Home Secretary will not sign up to harmonised EU rules on asylum, wanting instead to retain domestic flexibility. This may be perceived as major back-peddalling by the UK, as we have repeatedly called for QMV to speed up decision making on asylum, believing that tougher harmonised rules would bring other Member States up to our standards and so reducing asylum shopping. Now that we are trying to change our standards, he wants greater flexibility.

The Home Secretary, therefore, wants to propose an alternative, much more general, article which would not refer to harmonisation of asylum rules but would hold us to minimum standards for the processing and protection of asylum seekers. He is also proposing an 'emergency safeguard clause' whereby, in the event of a mass influx of refugees, a Member State could act contrary to EU asylum law for a given period of time. In addition, the Home Secretary wants to shift the focus of EU action on asylum away from how we tackle asylum seekers

once they have arrived in the EU and onto action with third countries in tackling asylum flows into the EU.

Others may support us on this approach: we know the Germans, Dutch and Danes are not fans of restrictive EU asylum legislation. But we could be accused of reneging on the commitment made at Tampere and again at Seville to develop a common European asylum system. It will also be very difficult for us to oppose QMV for this article, as the Home Secretary has suggested he might. Given our asylum and immigration opt-in we cannot stop others from doing what they want if we can cherry-pick what suits us. **I recommend that you agree that the UK should propose a different approach, governed by general principles rather than harmonised laws, as outlined above. But I do recommend that given our opt-out in this area we should not oppose QMV. This was the position you took at Nice. Nor should we box ourselves in on this. It would not be clever to court attack for rowing backwards from where we have been until now.**

At present, only the House of Lords can refer asylum and immigration cases to the ECJ. The draft treaty text would allow other domestic Courts (e.g. the Immigration Appeals Tribunal) to refer cases: the Home Secretary opposes this, arguing that it would lead to further delays in the asylum system. He wants to retain the status quo on asylum and immigration, but to propose a flexibility mechanism whereby Member States could decide on a chapter-by-chapter basis whether any court could refer a case to the ECJ, or just the court of last instance. He remains opposed to individual access (e.g. by asylum seekers) to the ECJ. **I recommend that you agree with the Home Secretary's proposals for flexible arrangements.**

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The Home Secretary reiterates that our frontiers protocol is not negotiable. Overall, we plan to argue to retain the status quo regarding the UK's protocols. But the Home Office are privately working up options which would allow the UK to participate in a wider list of Schengen immigration measures (on visa security, external border control, etc), whilst retaining control of our domestic frontiers. This is important: the Commission and the Council Legal Service are trying to smoke out our long-term position on Schengen by refusing to allow us to participate in asylum and immigration measures which they classify as being part of the Schengen acquis. If they persist in this we could be squeezed out of important initiatives, such as those you proposed at Seville to better manage the EU's external frontiers. **Do you agree that we should seek to retain our current frontiers/asylum protocols, whilst developing a back-pocket option of greater involvement in Schengen and maintaining our internal frontiers?** ✓

The Agencies have been consulted on these proposals and we will ensure that the new Treaty does not constrain their abilities.

Peter Hain agrees with my recommendations. He is concerned that if we simply follow the Home Secretary's line unchanged we will not be able to prevail. He thinks, and I agree, that even on the basis I have recommended we may have to review our position before the end of the Convention.

If you are content with these recommendations I will minute out accordingly.



STEPHEN WALL

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Prime Minister

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

Priorities in response to the JHA articles which have just been published. We must be clear and robust in our opposition to a European Public Prosecutor, and not sign up to anything which looks or sounds like one. It would also be deeply damaging to agree to articles which would allow European legislation to impact on our domestic criminal procedures. Other criminal law proposals from the Convention are better. We must continue to promote mutual recognition rather than harmonisation, and can agree to QMV in this area. The proposals on approximation of substantive law are acceptable and we could accept QMV provided the scope remains restricted to a short list of cross border crimes. We need a similar list-based approach to defining the areas of European Union policy where common rules on criminal offences can be set. On asylum, the Treaty needs to reflect our ambitious external agenda at Seville and on zones of protection. We do not want a further round of harmonisation of the EU's internal asylum rules on procedures and reception conditions. Common rules decided by QMV could jeopardise the progress we are making domestically.

2. The JHA articles include one under which the Council could decide unanimously to establish a European Public Prosecutor's office within Eurojust. We should not agree to this, even if we would retain the ability to veto any subsequent proposal to set up an EPP. To accept Treaty language on the EPP when we remain fundamentally opposed as a matter of principle sends out a misleading and wrong signal. A European Public Prosecutor would be incompatible with our legal system, and would also be unaccountable.

3. There are other ways of tackling fraud against the Community budget. My officials are working with Treasury officials to strengthen proposals in this area. We should invite Ireland, Finland, Sweden, Denmark and Austria to join with us in putting these forward in the Convention. This will demonstrate that a significant block of Member States is firmly opposed to an EPP, while at the same time being as committed as any other Member State to tackling budget fraud. We recognise that some proponents of the European Public Prosecutor are concerned, as we are, about judicial weaknesses in the new Member States. We must rigorously monitor judicial standards in the new Member States and if

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necessary invoke the safeguard clause in the Accession Treaties. In this context, I have considered proposals worked up by officials for strengthening Eurojust, but concluded that giving it a last resort power to direct that an investigation or prosecution be carried out would make it a European Public Prosecutor in all but name.

4. The Praesidium's proposals on criminal procedure are unacceptable. They do not adhere to the Convention JHA working group's conclusion that anything in this area should be limited to cross-border cases and facilitating mutual recognition. They would allow the Council and Parliament to adopt legislation by majority voting which could touch on almost any aspect of our domestic criminal procedures and rules on evidence. Any legislation would inevitably reflect the civil codes which apply in most Member States, and fail to take account of our common law system. This is a risk we cannot take. If these proposals remain in the Treaty, we would need to negotiate in the IGC for a protocol allowing us to opt out of measures on criminal procedures.

5. We should therefore make it clear that we will accept only very limited EU competence in this area. While it may be possible to accept basic minimum requirements in a few clearly defined areas such as consular access and interpretation of proceedings, our basic approach on criminal procedures should be to seek Treaty provisions promoting equal treatment. These would ensure that if EU nationals were facing trial abroad, they would not be disadvantaged by comparison with nationals of the Member State in question. On evidence, we could accept measures designed to promote the collection of evidence in ways which promote its admissibility in other Member States, but we should resist common rules.

6. We should support and seek to strengthen the Treaty provisions on mutual recognition. We must get across the message that we will be much more successful at fighting international and cross border crime if we accept and respect the differences in or legal systems, but work to ensure that criminals cannot exploit them to escape justice, rather than engage in an unnecessary, undesirable and unproductive debate on creating common EU criminal procedures. We should accept QMV for mutual recognition to give impetus to this approach.

7. We can accept common minimum definitions of certain serious cross border crimes, provided certain conditions are met. First, we need to limit this work to a short list of crimes which are clearly international. Second, we need to ensure that if there are to be EU rules on racism and xenophobia, they are decided unanimously. Third, we need Treaty language which makes it quite clear that, while EU rules can require all Member States to make something a criminal offence, they can never prevent a Member State criminalizing anything. Fourth, we need to exclude the possibility of EU rules requiring mandatory minimum sentences. Provided we can satisfy these conditions, we can accept majority voting in this area.

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8. We should not sign up to the proposal that the EU should be able to lay down criminal rules in any EU policy area. Here too, we should argue instead for a clear list in the Treaty of the areas where the EU would have the power to set minimum criminal rules.

9. I intend to write to fellow EU Justice Ministers in advance of a discussion on the Convention at the Informal JHA Council in Veria on 29 March, setting out my concerns in particular on procedural law.

10. The risks from the proposals on police co-operation are lower than those in the criminal law area. We must make sure we retain the safeguards we won in the JHA working group, which are reflected in the draft articles: Europol officers must never have coercive powers and we need to retain unanimity for operational matters such as the conditions under which foreign officers could operate on UK soil. We should seek Treaty provisions which emphasise the need for effective practical co-operation rather than legislation, and which assist our effort to reform the management of Europol.

11. On asylum, it is disappointing that the draft Treaty articles do not provide a basis for addressing external issues such as protection in the region of origin or processing in transit countries. The assumption that the next step is to establish common rules in all the areas where we have been negotiating minimum standards is equally disappointing. Such measures may have a marginal impact on the distribution of asylum seekers within the EU, but will do nothing to reduce the total number of people claiming asylum in the EU in order to circumvent immigration controls. We also need to retain some domestic flexibility in areas such as social provision, detention and appeals. We will therefore need to propose amendments promoting our external agenda. Although it will not be universally popular, and may be perceived by some as a major change in the UK position, we will also have to seek amendments to the Treaty provisions on common EU asylum rules. Our position will require careful presentation.

12. I believe that the European Union should now look forward to the 21st Century rather than pursuing solutions, and tried and often failed initiatives of the 20th Century. The Convention should address a framework for this century rather than looking backwards; its propositions should provide us with the opportunity for future-looking solutions.

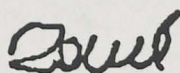
13. We will also need to resist proposed change to the current limitation on the level at which our domestic courts can refer asylum and immigration cases to the European Court of Justice for preliminary rulings. We need to keep this limited to the House of Lords. It would be potentially very damaging if immigration adjudicators or the Immigration Appeals Tribunal could refer cases; this would almost certainly lead to significantly more referrals and delays in the system.

14. Our frontiers protocol is of course not negotiable. At the same time, we want arrangements which allow us to participate in areas of immigration policy

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where it is in our interest to do so and where we can make a positive contribution. We are continuing to work privately on fallback options which would allow us to combine the effective control of our own frontiers with closer engagement with Schengen.

15. I am copying this minute to Derry Irvine, Jack Straw, Gordon Brown, Peter Hain, Patricia Scotland, Sir Stephen Wall and Sir Nigel Sheinwald.



DAVID BLUNKETT

19 March 2003

Rachel
Cousburn

x 968
3201

x Thw's

2) Oliver Parker, CEO

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From: Thomas Drew, EUD(I)
Date: 20 March 2003

cc: Nick Baird
Catherine Royle
Matthew Taylor, UKRep
Joe Griffin, Cabinet Office
Sarah Lyons, PS/Mr Hain

Kim Darroch

CONVENTION ON THE FUTURE OF EUROPE: YOUR MEETING WITH ED BALLS

1. You met Ed Balls on 17 March for a discussion of the Convention. Melanie Dawes, Rebecca Lawrence, Daniel Thornton and James Parker were also present. The purpose was to follow up elements of the discussion at the PM's last Convention meeting. You held a lengthy discussion on ways of selecting the President of the Commission and on our proposals for a full-time, longer term Chair of the European Council. The Chancellor recently sent a personal note to the Foreign Secretary expressing his concern at the prospect of a Commission President being elected by the European Parliament.
2. Main points as follows.
 - **President of the Commission elected by the EP:** Balls was not convinced that this was a price worth paying for our full-time President of the European Council. Were not the PM and the Foreign Secretary on the record as opposing it? The threat to the Commission's independence was problematic (including for competition policy), but the biggest problem was the "democratic legitimacy" that the Commission President would gain. This would strengthen the Commission and EP at the expense of the Council. Rebecca Lawrence recalled how Commissioner de Silguy, for example, had only paid lip service to the EP; he knew that it was Finance Ministers who counted; this would change. The legitimacy problem would not be solved by high voting thresholds and enhanced accountability to the Council (although these would help).
 - **A full-time elected President of the European Council:** Balls questioned whether this was really as much to our advantage as we claimed. How would he be chosen? Wasn't he likely to be from a small? Would he not be weak by comparison with the Commission?

This was followed by long and inconclusive debate. You argued that the EP-elected Commission President was not an ideal outcome; there were other options (such as the Italian or Danish models) which went beyond the status quo, which might be preferable,

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but were not necessarily negotiable. This was not something we would consider conceding until the endgame, and then only with the appropriate safeguards, and in order to achieve our other goals on the Presidency (the merits of which you argued). An elected Council Chair was a priority for the Prime Minister. The Franco-German proposal might be the only possible compromise. The status quo (which held some appeal to HMT) was not politically negotiable. Melanie Dawes argued that an extra safeguard to limit the extent to which the Commission President felt bound by the EP might be to limit his office to a single term.

- Cope*
- **An independent Commission authority:** Balls asked whether we should not be following the UK's lead by setting up an independent Commission authority for the EU. You questioned whether it would really be independent; and was it really in our interests? (Comment: there seemed no strong HMT support for the idea. Dawes acknowledged it was more in our interests for the authority to have a "UK-type approach".)
 - **Chairmanship of sectoral Councils:** Balls said that the Chancellor's opposition was not so much fear that, eg, Eichel would get the chair, but that the Chair felt he had a greater mandate to push through his own agenda. He might even feel that it was his job to "sort out the UK". Balls added that we had been most effective when the Chair had been weak (but smart) and we had been able to help out. You predicted that the sectoral Councils would not end up with elected Chairs. It was unnegotiable with the smalls.
 - **Charter:** Balls asked whether we should be worried. You said we were waiting for the Attorney General's advice, but believed he would say that if there were adequate ringfencing provisions, we would be all right.
 - **Process:** Balls asked for your predictions. He believed we had in the past expended too much effort on arguments over process (eg should there be a Convention); we should stick to substance. You said we favoured a short IGC, but it was more important to get it right. Balls said that Chancellor would strongly agree.
3. Picking up his overall concern that we may be giving away too much, Balls said we needed now to focus on our red lines. Whereas HMT had seen its role in the Convention process to date as to ask difficult questions, it now wanted to agree on the answers. Balls said we now needed high level agreement on these. We perhaps needed an EP paper or a less formal meeting with Stephen Wall and Jeremy Heywood. (Comment: perhaps now overtaken by the preparations for Peter Hain's presentation to the Cabinet.)

Thomas Drew

Tel: 020 7270 3768



10 DOWNING STREET

LONDON SW1A 2AA

020 7930 4433

20 March 2003

Dear Jonathan

THE CONVENTION: EUROPEAN PUBLIC PROSECUTOR

John Kerr, who is the Secretary General of the Convention, telephoned me this morning. Among other things, he asked why we had so comprehensively rubbished the Praesidium's draft treaty article on a European Public Prosecutor. In particular, John argued that there was a double lock in that it referred to "a European law creating a European Public Prosecutor's Office within Eurojust" and that any decision would be by unanimity.

I explained that we would not be able to accept the idea of a European Public Prosecutor, even with a unanimity lock, because once the idea was enshrined in the constitutional treaty we would be under pressure to agree it.

John Kerr accepted that but thought that the publicity we had given to the issue simply made his own job more difficult. He had managed to persuade Giscard d'Estaing to accept unanimity, even though this did not have support from others on the Praesidium. Our public reaction would make it much harder for him successfully to argue such a case in future.

As it happens, because of Iraq, Giscard d'Estaing's appearance at the European Council later today has been cancelled. Had he been there, I expect he would have raised this issue with the Prime Minister. I would have had no problem explaining the substance of our line to the Prime Minister. He would agree with it. But I think John Kerr does have a point on the tactics.

I am copying this letter to Simon McDonald (FCO), Sarah Lyons (Wales Office) and Nigel Sheinwald (UKRep Brussels).

Yours ever

J S WALL

Jonathan Sedgwick
HO

1/2 SW / OS / 1.11 pass this early after the summer

1/12

[Signature]
24/3

PRIME MINISTER

From: Stephen Wall
Date: 20 March 2003

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

EUROPEAN CONVENTION: WEEKLY UPDATE

The Convention Plenary met this week on Monday and Tuesday. Apart from one or two rogue interventions from MEPs on Iraq, Convention members managed to focus on the job in hand. Day One was devoted to Amato's proposals for reducing the number of legislative instruments, and re-naming Regulations and Directives "European Laws" and "European Framework Laws" respectively. The Convention largely bought into his scheme for delegating much more of the details of EU legislation to a secondary level of "delegated acts." Dry stuff, but not unhelpful. Baroness Scotland's interventions were broadly supportive (which was much appreciated by Amato et al), but with a warning that CFSP should be treated differently.

Day Two debated the Protocols on Subsidiarity and National Parliaments. Gisela Stuart led calls to strengthen the subsidiarity early warning mechanism proposed by the Praesidium, to ensure that where one third of national Parliaments objected to a legislative proposal on the grounds of subsidiarity and proportionality, the Commission would be obliged to withdraw or amend it, and

not simply carry on regardless. As we expected, a majority opposed this as an attack on the Commission's right of initiative, and several opposed the idea that Parliaments should judge on grounds of proportionality (i.e. not using a legislative sledgehammer to crack a nut). But there was some support for both issues, particularly from national Parliamentarians, thanks to active advance lobbying by Gisela. Our views are at least still on the table, if clearly not supported by the majority in the Convention. *Keep pushing.*

Also at Plenary, Amato announced that the Praesidium would soon be bringing forward a list of policy areas which will not be subject to the general rule of QMV and co-decision. This is likely to be difficult for us. We are working on your ideas for off-setting the worst effects of widening QMV, and will submit proposals. ✓

The Convention has begun to look at the EU's budget. For the time being, one group has been set up to look at the procedures for fixing the EU's budget. This ought to be comfortable for us: we have some good and constructive ideas for increasing European Parliament involvement, while fixing the overall ceilings for expenditure more firmly in the Treaty. These have already attracted considerable support. But there are rumours of a second group, to look at Own Resources. This could be much more damaging, with proposals for an EU-wide tax and QMV for Own Resources (i.e. our budget abatement up for discussion). It is not yet clear whether this will happen. If it does, John Tomlinson (already doing sterling work on the budget group) will represent the UK. He will simply say that unanimity on Own Resources and therefore the abatement, is a red line at the Convention. ✓

The next Plenary session is on Wednesday and will take a second look at draft Articles 1-7. Our priorities here will be to show that competences flow from the Member States to the Union and not vice versa, and ask for more work to be done on the Charter (as was promised by the working group report) before there is general agreement to incorporate it into the Treaty. We will also need to address the inclusion of the "f" word - Giscard's proposal that certain common competences be described as being organised on a federal basis. My preference would be to stick with the current language on "ever closer Union" rather than introduce new language on "federal" or "federation." We may well end up with a "federation of nation states".

L. Shaw

STEPHEN WALL

*I don't like this
on reflection.
Ever closer union of
sovereign
independent nation states
will be better. The words
unfortunately do matter*



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

Sir Stephen Wall
EU Adviser to the Prime Minister and
Head of the European Secretariat, Cabinet Office

20 March 2003

Dear Sir,

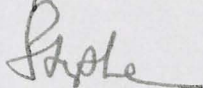
Thank you for your letter of 14 February to the Prime Minister, and for your paper on the issues arising from the Convention on the Future of Europe.

As you say, it is essential for the work of the Convention to be debated fully in the UK, both in Parliament and by the wider public. Parliament has already conducted a number of debates on developments in the Convention and will continue to examine the proposals it puts forward.

The Prime Minister sees the Convention as an opportunity to discuss a broad range of options to prepare the Union for enlargement. Along with other member states, the UK is committed to seeking ways to make the EU more efficient and effective, and better able to deliver practical benefits to its citizens.

You asked whether the Prime Minister would wish to hold a referendum on a Constitutional Treaty. He explained the position in the House of Commons on 5 March when he said: "The principle is the same as that which led, for example, to there not being a referendum on the Maastricht treaty". A new treaty would need to be ratified according to the individual constitutional arrangements in each of the member states. All other previous EU Treaties amending the original treaty structure have had to stand up to rigorous scrutiny by Parliament before the UK ratified them. The same would be true for any treaty arising from the Intergovernmental Conference which will follow the

Convention. In other words, the Treaty would have to have the unanimous agreement of all governments and would be ratified following Parliamentary approval.

Yours ever,


J S WALL

The Lord Blackwell



By [signature]

Prime Minister

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

Priorities in response to the JHA articles which have just been published. We must be clear and robust in our opposition to a European Public Prosecutor, and not sign up to anything which looks or sounds like one. It would also be deeply damaging to agree to articles which would allow European legislation to impact on our domestic criminal procedures. Other criminal law proposals from the Convention are better. We must continue to promote mutual recognition rather than harmonisation, and can agree to QMV in this area. The proposals on approximation of substantive law are acceptable and we could accept QMV provided the scope remains restricted to a short list of cross border crimes. We need a similar list-based approach to defining the areas of European Union policy where common rules on criminal offences can be set. On asylum, the Treaty needs to reflect our ambitious external agenda at Seville and on zones of protection. We do not want a further round of harmonisation of the EU's internal asylum rules on procedures and reception conditions. Common rules decided by QMV could jeopardise the progress we are making domestically.

2. The JHA articles include one under which the Council could decide unanimously to establish a European Public Prosecutor's office within Eurojust. We should not agree to this, even if we would retain the ability to veto any subsequent proposal to set up an EPP. To accept Treaty language on the EPP when we remain fundamentally opposed as a matter of principle sends out a misleading and wrong signal. A European Public Prosecutor would be incompatible with our legal system, and would also be unaccountable.

3. There are other ways of tackling fraud against the Community budget. My officials are working with Treasury officials to strengthen proposals in this area. We should invite Ireland, Finland, Sweden, Denmark and Austria to join with us in putting these forward in the Convention. This will demonstrate that a significant block of Member States is firmly opposed to an EPP, while at the same time being as committed as any other Member State to tackling budget fraud. We recognise that some proponents of the European Public Prosecutor are concerned, as we are, about judicial weaknesses in the new Member States. We must rigorously monitor judicial standards in the new Member States and if

necessary invoke the safeguard clause in the Accession Treaties. In this context, I have considered proposals worked up by officials for strengthening Eurojust, but concluded that giving it a last resort power to direct that an investigation or prosecution be carried out would make it a European Public Prosecutor in all but name.

4. The Praesidium's proposals on criminal procedure are unacceptable. They do not adhere to the Convention JHA working group's conclusion that anything in this area should be limited to cross-border cases and facilitating mutual recognition. They would allow the Council and Parliament to adopt legislation by majority voting which could touch on almost any aspect of our domestic criminal procedures and rules on evidence. Any legislation would inevitably reflect the civil codes which apply in most Member States, and fail to take account of our common law system. This is a risk we cannot take. If these proposals remain in the Treaty, we would need to negotiate in the IGC for a protocol allowing us to opt out of measures on criminal procedures.

5. We should therefore make it clear that we will accept only very limited EU competence in this area. While it may be possible to accept basic minimum requirements in a few clearly defined areas such as consular access and interpretation of proceedings, our basic approach on criminal procedures should be to seek Treaty provisions promoting equal treatment. These would ensure that if EU nationals were facing trial abroad, they would not be disadvantaged by comparison with nationals of the Member State in question. On evidence, we could accept measures designed to promote the collection of evidence in ways which promote its admissibility in other Member States, but we should resist common rules.

6. We should support and seek to strengthen the Treaty provisions on mutual recognition. We must get across the message that we will be much more successful at fighting international and cross border crime if we accept and respect the differences in or legal systems, but work to ensure that criminals cannot exploit them to escape justice, rather than engage in an unnecessary, undesirable and unproductive debate on creating common EU criminal procedures. We should accept QMV for mutual recognition to give impetus to this approach.

7. We can accept common minimum definitions of certain serious cross border crimes, provided certain conditions are met. First, we need to limit this work to a short list of crimes which are clearly international. Second, we need to ensure that if there are to be EU rules on racism and xenophobia, they are decided unanimously. Third, we need Treaty language which makes it quite clear that, while EU rules can require all Member States to make something a criminal offence, they can never prevent a Member State criminalizing anything. Fourth, we need to exclude the possibility of EU rules requiring mandatory minimum sentences. Provided we can satisfy these conditions, we can accept majority voting in this area.

8. We should not sign up to the proposal that the EU should be able to lay down criminal rules in any EU policy area. Here too, we should argue instead for a clear list in the Treaty of the areas where the EU would have the power to set minimum criminal rules.

9. I intend to write to fellow EU Justice Ministers in advance of a discussion on the Convention at the Informal JHA Council in Veria on 29 March, setting out my concerns in particular on procedural law.

10. The risks from the proposals on police co-operation are lower than those in the criminal law area. We must make sure we retain the safeguards we won in the JHA working group, which are reflected in the draft articles: Europol officers must never have coercive powers and we need to retain unanimity for operational matters such as the conditions under which foreign officers could operate on UK soil. We should seek Treaty provisions which emphasise the need for effective practical co-operation rather than legislation, and which assist our effort to reform the management of Europol.

11. On asylum, it is disappointing that the draft Treaty articles do not provide a basis for addressing external issues such as protection in the region of origin or processing in transit countries. The assumption that the next step is to establish common rules in all the areas where we have been negotiating minimum standards is equally disappointing. Such measures may have a marginal impact on the distribution of asylum seekers within the EU, but will do nothing to reduce the total number of people claiming asylum in the EU in order to circumvent immigration controls. We also need to retain some domestic flexibility in areas such as social provision, detention and appeals. We will therefore need to propose amendments promoting our external agenda. Although it will not be universally popular, and may be perceived by some as a major change in the UK position, we will also have to seek amendments to the Treaty provisions on common EU asylum rules. Our position will require careful presentation.

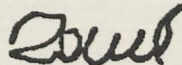
12. I believe that the European Union should now look forward to the 21st Century rather than pursuing solutions, and tried and often failed initiatives of the 20th Century. The Convention should address a framework for this century rather than looking backwards; its propositions should provide us with the opportunity for future-looking solutions.

13. We will also need to resist proposed change to the current limitation on the level at which our domestic courts can refer asylum and immigration cases to the European Court of Justice for preliminary rulings. We need to keep this limited to the House of Lords. It would be potentially very damaging if immigration adjudicators or the Immigration Appeals Tribunal could refer cases; this would almost certainly lead to significantly more referrals and delays in the system.

14. Our frontiers protocol is of course not negotiable. At the same time, we want arrangements which allow us to participate in areas of immigration policy

where it is in our interest to do so and where we can make a positive contribution. We are continuing to work privately on fallback options which would allow us to combine the effective control of our own frontiers with closer engagement with Schengen.

15. I am copying this minute to Derry Irvine, Jack Straw, Gordon Brown, Peter Hain, Patricia Scotland, Sir Stephen Wall and Sir Nigel Sheinwald.



DAVID BLUNKETT

19 March 2003

18 March 2003



Foreign &
Commonwealth
Office

London SW1A 2AH

Dear Jan,

Convention: Paper from the Centre for Policy Studies

... I enclose a draft PS/No 10 reply to a letter from Lord Blackwell accompanying his paper '*A Defining Moment?*' on the Convention on the Future of Europe (published by the Centre for Policy Studies).

In the paper, Lord Blackwell argues that the Convention could result in the UK losing its status as a self-governing democratic country and calls for a wider debate on its work. In his covering letter he also asks the Prime Minister's view on holding a referendum on a new EU Constitutional Treaty. The draft reply responds to both these points but not to all the detailed points made in the paper.

Yours ever,

Jonathan

(Jonathan Sinclair)
Private Secretary

Ms Jan Taylor
10 Downing Street





10 DOWNING STREET
LONDON SW1A 2AA

Date: 5/2/03

To: Ann Herrigan

Dept: FCO

From: Aemer

No.10 Direct Communications Unit

Cc:

GTN 3580 Ext. 3243

REMEMBER IF YOU ARE RESPONSIBLE FOR A REPLY TO CO-ORDINATE WITH OTHER DEPARTMENTS.

Please deal with the enclosed correspondence as:-

- ☐ PM reply
- ☒ No. 10 PS reply
- ☐ Dept. SoS reply
- ☐ Dept. Minister reply
- ☐ Dept. PS reply
- ☐ Suitable reply

PLEASE ENSURE YOU CHECK THE BACKGROUND, IS IT APPROPRIATE FOR THE PM, ONE OF HIS PSs OR EVEN YOUR OWN MINISTER TO REPLY?

- ☒ Return draft by email to xgsicorres@no10.gsi.net or by disc, before 19/3/03
- ☐ We do not need to see reply

Special instructions:

- ☒ Advice - Advice on handling.
- ☐ Message
- ☐ Note date

Thank you

Aemer
JAN TAYLOR



CENTRE FOR POLICY STUDIES

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Founded by Rt Hon Baroness Thatcher LG OM FRS · Rt Hon Lord Joseph CH PC

The Rt. Hon. Tony Blair MP
Prime Minister
10 Downing Street
London SW1

14th February 2003

Dear Prime Minister

I thought you might like to see a copy of a paper the Centre for Policy Studies published this week on the issues around the European Constitutional Convention.

As promised in the Laeken declaration, the outcome of this Convention does seem likely to produce a 'defining moment' for Europe – with a substantive movement towards shared sovereignty under a new legal entity. The purpose of this pamphlet is to help raise the level of debate in the UK by setting out some of the questions that would need to be addressed before we agreed to any new Treaty, and laying out the range of alternatives we might face if we concluded that signing up to the proposed Constitution was not in Britain's interest. I have also included your important Cardiff speech on this topic as an Appendix

Given the importance of the issues I hope you will support the need for wider awareness and debate – and, in particular would like to ask you if you would agree to the proposal put forward in the paper for a commitment to a referendum on any new Treaty incorporating the new Constitution? I am sure that this will have wide cross-party (and non-party) support.

Barry
Lord Blackwell

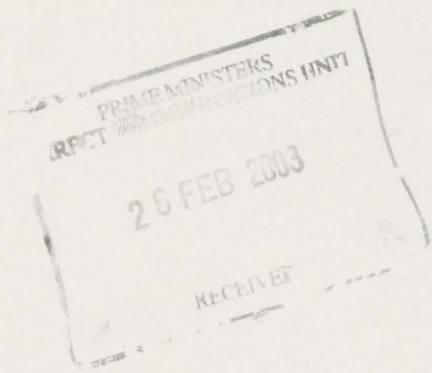
Lord Blackwell

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1/c JS ✓
1/R
✓

From: Stephen Wall
Date: 14 March 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

EUROPEAN CONVENTION: WEEKLY UPDATE

At the Praesidium this week, Giscard began by speaking at length against war in Iraq, saying that if war began on Monday the Plenary should be cancelled. This proposal, along with another idea of his to dedicate a three hour debate to the war, was squashed by the rest of the Praesidium.

Giscard then went on to set out his vision of a federal Europe dominated by the large Member States. He underlined that Europe would only be truly democratic when the institutions reflected the demographic make up of the Member States, and that we had to accept that not all Member States were equal. This meant re-opening the Nice deal, e.g. on the size of the Commission and double majority voting. The Spanish representative told Giscard that re-opening Nice was a non-starter.

The Praesidium approved a new batch of draft Treaty articles which will be published on Monday. The most difficult issues for us will be on Justice and Home Affairs, where the drafts raise the possibility of creating a European Public

Prosecutor (EPP) and harmonising criminal procedural law by QMV (e.g. rules governing handling of evidence). The Home Secretary feels very strongly that both of these proposals are absolute red lines and will be minuting you in the coming days. They are right on harmonising criminal procedural law. But the EPP idea could be turned with something less difficult for us. I will let you have advice.

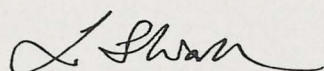
/ Giscard also published an interesting article in Le Monde yesterday (summary attached). Questioned about his attitude to the British, he says that he is trying to accommodate the pro-European factions in the UK, who must "not be left isolated" and wants the constitution to be compatible with their position. He accepts that some mistakes have been made, for example on not making it clearer in the draft Treaty articles that the EU's competences flow from the Member States. At the same time, he takes issue (justifiably) with our flawed efforts to clarify language in the draft constitution on the primacy of EU law. On foreign policy, he helpfully concludes that the Convention cannot change European leaders' political instincts, but would hope to improve the situation in Europe to encourage them to give their foreign policy a "European reflex."

I held talks with my French opposite number earlier this week. We remain close on most of the major Convention issues. The French are concerned that the smalls are continuing to dig in against our ideas on the Chair of the European Council. A group of small Member States are meeting in Luxembourg on 19 March to concert their positions for the Brussels European Council. Elsewhere, the French have not moved much on the big institutional issue, and continue to agree with us on the need to anchor a double hatted CFSP

Representative in the Council, and avoid having the President of the Commission beholden to any one political grouping in the European Parliament.

These issues will come up at the European Council on Thursday evening, where the Presidency have allotted two and a half hours for an exchange on the Convention. Giscard hopes to get a "political steer" on the Convention from Heads, as, in theory, this will be the last European Council before it concludes. There are still some mutterings about an additional European Council in April to give further guidance to Giscard. I will give you some more thoughts on handling the Convention discussion at the European Council next week.

Finally, you might just note that the Attorney's legal advice on incorporation of the Charter has issued. As you might expect, the issues are complex, but the Attorney has been able to give us reassurance on a number, if not all, of our concerns. We will continue to work on the areas that the Attorney highlights as outstanding problems and will submit further on this in due course.

A handwritten signature in cursive script, appearing to read 'Stephen Wall'.

STEPHEN WALL

Giscard's interview in Le Monde, 14 March

"The EU needs a progressive project, carried out in stages, like EMU"

Key points:

1. Iraq: Not much affected the Convention's work. Divisions among Europeans are old, but declining, fractures rather than something new.
2. Question: you have tried to help out the British since the start of the Convention. Was it a good strategy, seeing as they are now strengthening their position ?

Answer: as of a year ago, the Blair Government had gone for a clear European option. It had decided to organise, in spring 2003, a referendum on the Euro which, if successful, would have created a new situation. Unfortunately the Iraq crisis has shuffled the cards. I am making an effort for our Constitution text to be compatible with the demands of those British who want to participate in the life of Europe. I don't want to put the pro-European British into an untenable situation. In our draft Constitution, we have probably made some drafting mistakes. For example, in British eyes all EU competences are delegated by Member States, whereas we wrote that they derived from the Constitution. On other issues, like the primacy of Community law, which they are calling into question, they can't make their case. At the same time, in the enlarged Europe, some of their traditional arguments become more valid. Complete uniformity is not envisageable, and so a clearer division between EU and national competences is a demand that we will have to satisfy.

3. EU/US.

- Germany is now more ready to identify itself with Europe than in the past, when it gave priority to its US relationship. The UK is on its traditional line, hesitating between its privileged tie with the US and its "intuition" that its future is in Europe. Spain has changed most. But the law of gravity brings Europeans back to Europe.

- European and US cultures have the same origin but are diverging, for understandable reasons. The US thinks it is responsible for making Good triumph over Evil, and has the means to organise international order in the way it wants. In Europe, we have succeeded in eradicating systematic recourse to military action. Europe has weakened – probably too much – its external security, and is aware it's now dependent. The central idea for Europeans is now to build an international system with instruments to avoid major conflict. But we still have the conviction that war is not a natural instrument for Good, whether you win or lose.

4. CFSP: We can't yet carry out effective common diplomatic action, and we suffer for it. European leaders need to change their behaviour, giving priority to a "European reflex". The Convention can't decide this for them, but can improve the situation to encourage them to go down this road.

5. Effect of enlargement: The EU needs a progressive project, carried out in stages, like EMU. The final phase will have to be decided, within 10 years, by unanimity. Over time, we will probably note that some MS don't want to go this way. So we will need non-participation or even exit clauses. In Brussels they underestimate the difficulties of working at 25. Without reform: paralysis and weakness. The institutions have to focus on their real role: for the Commission, expressing and representing the European common good; for the Council, translating into decisions the European commitment of MS. All those MS who want to contribute to the emergence, long desired, of a "Europe-puissance" must be able to do so.



10 DOWNING STREET
LONDON SW1A 2AA
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fixed UKESP
13/3

13 March 2003

Dear Kim,

CONVENTION: CONVERSATION WITH JOHN KERR

John Kerr telephoned last night.

He is still fighting what he now regards as a losing battle to prevent discussion of the Convention at the European Council next week. There are some mutterings about a special European Council in April to give Giscard his political steer, but I think this is unlikely.

John also said that Giscard is in contact with the Presidency on a possible extraordinary European Council to take receipt of the Convention final product. The two dates in play are 18 June and 30 June. Kerr himself hopes that the Prime Minister and others will have difficulty with this timing, thus pushing any special European Council (and the end of the Convention) into July.

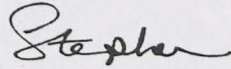
On next week's discussion of the Convention at the European Council, Kerr gave me details of the Presidency questionnaire intended to focus the debate (Andreani gave the impression yesterday they had seen this too - have we?). He said the key questions were on the role of the Council (the Presidency role, the future for rotating Chairs of sectoral Councils); the Commission (role and election of the President, including the EP role, collegiality); whether there should be a Congress; and external affairs (double hatting, and what role this might play).

John said - and I agree - that the way for us tactically to present our institutional thoughts would be to lead with strengthening the Commission's role. We could then present our proposals for the Council in that light - a strengthened Council more able to deliver as an effective partner for the Commission.

We will have a first stab at a note for the Prime Minister on the European Council, which we will show you early next week.

am copying this letter to Nigel Sheinwald (UKRep Brussels).

Yours ever,

A handwritten signature in cursive script, appearing to read "Stephen".

J S WALL

Kim Darroch CMG
FCO

NOT FOR MATRIX

From: Stephen Wall
Date: 10 March 2003

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Jeremy Heywood

THE FUTURE OF EUROPE

Temporarily retained

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We are at the most divisive stage of the Iraq enterprise. Once war happens, and barring some catastrophe, Europe will emerge divided, but not on the lines the French hope.

They may take one or two countries with them – Belgium, Austria. I doubt whether Schröder will want to remain hog-tied to Chirac, though

We have to maintain a close and friendly relationship with Schröder but with our eyes wide open.

I do not believe that the rest of Europe will rally to France. Italy, Spain, Netherlands, Denmark and Portugal, as well as the new members, have all stood up to be counted. Ireland, Finland, Sweden have no instinctive affinity to France, and no desire to see Europe split from the United States. When Saddam has gone, France and Germany will be seen more as appeasers than peacemakers.

But what has happened highlights one huge paradox, made even starker by what we know of Chirac's attitude to you: most of our EU policies are directed towards the two member states whose fundamental world view, at least under present leadership, is diametrically opposed to ours.

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Minute dated
10.03.2003

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- 2 -
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OF THE PUBLIC RECORDS ACT

Throughout our EU membership we have espoused policies which alienate the countries who most wanted us to join in the first place and who still hope to see us as a counterweight to France and Germany.

So the question in my mind is, if Chirac remains hell bent on destroying you, and where and how do we look for our friends?

Spain, obviously. And Spain, rather than Aznar. He will be gone in 2004 and, as like as not, replaced by Zapatero in the 2004 elections. Time to cultivate the Spanish socialists a bit more.

Berlusconi: I think the spoon with which we sup with him is now about the right length.

We have enough economic interests to keep on side with Spain and Italy. But, institutionally, they are much less cautious than us. With the possible exception of the Danes and the Irish all our other friends: Netherlands, Sweden, Finland, Portugal, and even the candidates, are a long way from us in their view of the future of Europe. In the Convention, we are again becoming the anchor to windward because, unique among all member states, we want the EU to be fundamentally an intergovernmental organisation. You put it more subtly than Gordon Brown does, but the basic message is much the same. Our rhetoric about how European we are compared with previous governments, makes us feel good but has worn pretty thin with our partners. Setting aside the extremes of people like Thatcher and Lamont, the views of your ministers on Europe are almost

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10.03.2003

indistinguishable to me from those of their Conservative predecessors, and the briefs to which they speak in EP Committee are the same as those Civil Servants have been writing for 25 years. Because, with occasional exceptions like Charles Clarke, no minister tells them to do it differently.

Two things could change that. The first is the euro. If Jeremy's two stage approach is the only way to get there, so be it. But the risk is that it is more designed to paper over the cracks between you and the Chancellor than to buy us the time to win the argument. We can only win the euro referendum if there is no 'crack'. We cannot have another year of Treasury sniping and of organisational paralysis. And come 2004, with an election approaching, you will be strongly advised by the pundits not to risk a bloody nose from the electorate who will be all too ready to give you one safe in the knowledge that they can punish you without incurring Duncan Smith. So we should either still consider going for it in 2003 or saying that the tests are met and call the referendum for a year's time. Rerunning the tests may be necessary to keep Gordon on board. But the tests are as met as they will ever be and, however we dress it up, rerunning them will be seen for what it is: an acknowledgement that we cannot win the referendum now and have given ourselves an excuse for postponement. If we do postpone, I remain in favour of a clear statement (like the Swedes) that we propose to join on 1 June 2006 ie so that you are seen to start the countdown to joining, not putting off the hard choice. That would give a signal to our partners that would eliminate the damage of further delay. Our stance on the euro will be central to our fight back against Chirac.

The second change is more difficult: rethinking our institutional stance. We do not need to abandon our espousal of the chair of the European Council: it has

enough momentum to succeed in the end. But it is not going to change the institutional balance because it will come at a price: greater democratic authority for the Commission and a job description for the Chair of the European Council which is pretty constrained. What I am arguing for is that we should stop fighting on all fronts, decide now what are the two or three things we really care about and concentrate on them.

Thus, I would:

- (i) go now for QMV and codecision for everything except CFSP, tax and revenue and the police/criminal justice bits of the JHA;
- (ii) stop worrying about how the President of the Commission is chosen. Whether the EP have the first or last word is not going to make that much difference;
- (iii) back off from our detailed commentary on every aspect of the Praesidium proposals.

You would need to get ministers to buy into this strategy. I suspect most would follow your lead.

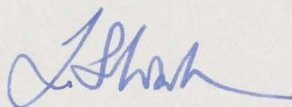
We should signal the change in an intensive series of discussions with partners. The message would be "we've seen who our friends are, and are responding to your concerns". By doing so, we would put ourselves pretty much in the same place as Spain and Italy and somewhere between the French and Germans. This would help us in detaching the Germans from the French. It would make it

- 5 -

easier for the candidates to retain their strong atlanticism, because we, the champions of atlanticism, would be occupying the centre ground on the institutional issues where the candidates feel nervous.

It would put Chirac on the back foot. It would make it harder for the Germans and French to make common cause against us on the abatement. Though here too I remain in favour of setting out, at an early stage, some principles of equitable financing which would put us on the front foot without in reality offering up the abatement. A proposal which divides the member states is frankly better than one which unites them: and the one which unites them, with the French in the lead, is that the abatement should be abolished.

I realise the domestic handling difficulties of all this. It is quite high risk. But a Britain that was seen as respectable on institutional issues, would more easily win the battle for a Europe which is Atlanticist, not Gaullist. That in turn could be turned to positive effect in the campaign for the euro. And we would position ourselves better for the very touch financial negotiations of 2004/2005 where we will otherwise be on the ropes.



STEPHEN WALL

✓ I agree with
this. The question is:
how do we put it together?

From: Stephen Wall
Date: 7 March 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald

EUROPEAN CONVENTION: WEEKLY UPDATE

The Convention Plenary met again on 5 March, the first of several additional sessions to enable the Convention to get through its workload.

The debate centred on the Praesidium's draft articles 8 to 16, which deal with how the Constitution should set out the respective competences of the Union and the Member States. On the underlying principles, the debate was mixed:

Good

- it will be made clearer that the Union's powers are conferred on it by the Member States;
- the text will have fewer references to the Member States' duty of loyal co-operation;

Bad

- strong opposition (led by Commissioner Vitorino) to the idea that the early warning mechanism should look at proportionality as well as subsidiarity.

The debate on how to describe competences was similarly indecisive. Most agree that the constitution should not set out exhaustive lists (a "catalogue of competences") showing where the EU has exclusive competence, where it is shared with the Member States, or where the EU can only take measures to support Member State action. But there is no consensus on how to avoid this. Our proposal that policies of shared competence should be a residual list (i.e. if a policy is not listed as an exclusive competence nor as an area for supporting measures then it is shared) is not widely backed.

One key question is whether we should list the (limited) number of policies that are the primary responsibility of the Member States. Our instinct so far has been not to run with this, as such a list would be short and indicative, rather than comprehensive. But there might be some political attractions. We are doing more work on this, and will submit.

Today, we are submitting the Government's comments on the second batch of draft Treaty articles. These deal with the EU's legal instruments and procedures, subsidiarity and the role of national Parliaments. The section on legal instruments and procedures is largely technical, and intended to simplify and reduce the number of different EU procedures. Our amendments attempt to improve the Praesidium draft. The draft protocol on national Parliaments is a dull but worthy attempt to ensure minimum standards of scrutiny across the EU and encourage better links between the European Parliament and national assemblies.

On subsidiarity, we are submitting an amendment to ensure that, where one third of national Parliaments consider that a Commission proposal is in conflict with subsidiarity and proportionality, the Commission shall be obliged to amend or withdraw it. This will not be a popular view in the Convention, where a majority will regard it as an attack on the Commission's prerogatives. But the Praesidium draft, reflecting Commission and EP views, allows the Commission to ignore the national parliaments. So we have to keep up the pressure on this point.

Finally, two developments which are problematic.

Commissioner Vitorino has proposed that the mandate of his discussion group on the ECJ be extended to look at widening jurisdiction in CFSP and JHA. He has promised a paper on this just ahead of the final meeting of his group on 17 March (Patricia Scotland represents the UK). We will try to head this off.

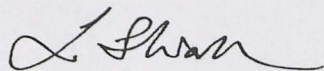
The French, Germans and Belgians have submitted a paper on incorporation of the Charter, which applauds the "emerging consensus" on the integration of the Charter as a bill of rights for the citizen, to balance the powers of the Union in the constitution. The document calls for the text of the Charter to be fully integrated into the constitution, but without creating any new competences for the Union. We have to use this last point to build in the protections we need, which remain controversial.

Process

John Kerr is trying to persuade Giscard to forego discussion of the Convention at the Brussels European Council on the basis that the atmosphere will not be

conducive to balanced discussion. I doubt if Giscard will buy this: this is his last chance to have such a discussion before his report is done, although he may yet try for an extension (not in our interest).

/ I attach a note from Peter Hain, which missed you last week.

A handwritten signature in cursive script, appearing to read 'S. Wall'.

STEPHEN WALL



Wales Office | Swyddfa Cymru

Top: ELPS

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FAIRPS (MA)
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27 February 2003

PRIME MINISTER

CONVENTION ON THE FUTURE OF EUROPE - DRAFT TREATY
ARTICLES 1-16: ANALYSIS OF COMMENTS BY CONVENTION MEMBERS

Summary

We shouldn't give too much credence to the press reporting that the debate is swinging against us in the drafting of the new Constitutional Treaty. We are comfortably placed in the middle of the pack on many issues and we have no shortage of partners on individual Articles. But equally, we shouldn't be too complacent.

Detail

1. Over a thousand amendments to the draft Treaty articles produced by the Praesidium have been tabled so far. The Foreign Office Convention team has produced a lobbying matrix looking at the amendments submitted by the key players. This has thrown up some interesting emerging themes which I thought you might be interested in:

- (i) **The totems of European integration:** the list of those who join us in proposing deletion of the reference to a "federal basis" is long: Italy, Estonia, Poland, Greece, Portugal, Ireland, Slovakia, Austria, Slovenia, Voggenhuber (EP), Wuermeling (EP) and Kiljunen (Finnish Parliament). France and Germany propose the old compromise of "federation of nation states". Of course, balancing this is an equally solid group proposing re-insertion of the existing text of "ever closer Union": Italy, France, Germany, Poland, Portugal, Belgium, Van Lancker (EP), Lequiller (French Parliament) and Meyer (German Parliament). We will need to reflect on whether it is worth spending negotiating capital on fighting "ever closer Union".
- (ii) **The Charter of Fundamental Rights:** we are in for a tough fight. Spain, France, Belgium, Poland and many PES members want it in Part II of the Treaty. Germany, the ELDR and EPP want it in Part I. But we are far from isolated in our position. Italy thinks the Charter should only be applicable if it does not give rise to new rights. The Netherlands, expressing concern about direct claims on national exchequers. Denmark wants to delete the reference to the Charter being an "integral part" of the constitution. Ireland, Finland, Sweden, Latvia and Denmark all propose that the Charter be placed in a Protocol. So we are not by any means in the middle of the pack, but we have a solid break-away peloton around us.
- (iii) **Subsidiarity:** Italy joins us in asking for proportionality to be added to the mechanism's mandate. Only Belgium proposes deleting the reference to the mechanism, although a number of MEPs want to get the European Parliament in on the action. Unfortunately, Gisela has not been successful in securing agreement to a subsidiarity



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mechanism with "teeth" in the Praesidium. As you know, securing a substantive role for national parliaments would be a serious gain from the Convention. We will have to return to the charge in the plenary and in subsequent negotiations. This is a big number.

- (iv) **Loyal Co-operation:** Ireland, Portugal and Austria have all spotted the proliferation of references to the principle. All are proposing some form of rationalisation. We have specific concerns on CFSP.
- (v) **Exclusive Competences:** like us, Sweden, Ireland, Netherlands and Finland have proposed amendments to clarify the uncertainty caused by including the four freedoms in the list of exclusive competence.
- (vi) **Shared competences:** France, Finland, Portugal, Belgium, Bulgaria and Poland all take a similar position to the UK, proposing deletion of the indicative list. Portugal has attacked the competence articles with some fury.
- (vii) **Economic competence:** like us, Germany, France, Sweden and Estonia have all proposed reverting to language similar to that in the current treaties, making clear that it is the Member States' job to co-ordinate economic policies, not the Union's.
- (viii) **CFSP:** A number of countries are, like us, proposing language from the current Art 11 TEU, rather than the current loyal co-operation reference: France, Portugal, Ireland, Bulgaria and Lequiller (French Parliament).

3. One or two more tricky issues strike me:

- (i) **The relationship of the Union and the Member States:** Giscard may have accepted our point that the current draft has this the wrong way round, but few Convention members seem to have done the same (with the exception of the Irish).
- (ii) **Competences:** the detail of the indicative list of shared competences is bound to be tricky. For example, Spain proposes adding CAP; the Czech Republic wants nuclear energy in the list.
- (iii) **Case Law:** few seem to be convinced by our argument that the primacy of EC law and exclusive external competence implied by internal competence are principles better left to case law.

4. So what should we conclude at this point? I suspect we are exactly where we should expect to be after the first set of amendments are tabled to the first set of Treaty articles: we have some battles almost won; some left to fight; and in some we are on the ropes. No cause for jubilation, but nor is it a cause to be downhearted. There is a long way yet to go and we intend to get there.

5. I am copying this letter to Jack Straw, Patricia Scotland, Sally Morgan, Roger Liddle and to Sir Stephen Wall and Sir Nigel Sheinwald.

Peter Hain



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5 March 2003

Dear Archbishop,

At the Prime Minister's recent audience with the Holy Father, his Holiness raised the issue of the Convention on the future of Europe. I understand that His Holiness expressed the hope for an explicit recognition in the future Constitutional Treaty of the Churches and their communities of believers, as well as a commitment on behalf of the EU to maintain a structured dialogue with them.

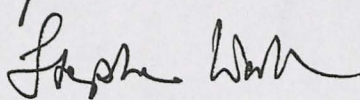
Cardinal Sodano has also written to the Prime Minister (on 22 February) enclosing three proposals for the future EU constitutional Treaty made jointly by the European Bishops and various Christian churches. I hope that this reply will pick up the main points made in that letter.

We have read your proposals with great interest. As you know, several other proposals have been made in the Convention for the inclusion of a reference to religion in the new constitutional Treaty. The UK Government is sympathetic to the idea of including a reference to the role of Churches, philosophical and non-confessional organisations and to the spiritual heritage of Europe in the new Constitutional Treaty, perhaps in the preamble. Such a reference should build upon the existing Treaty provisions dealing with religion, which were introduced by the Treaty of Amsterdam.

We feel that it is important to recognise that religion, and its structure and organisation in the Member States, is an area of national, not Union activity. Declaration 11 to the Amsterdam Treaty specifies that the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. As the European Bishops' contribution notes, this view was confirmed by the Convention Working Group V, which dealt with complementary competences.

In addition, as you will be aware, freedom of thought, conscience and religion is guaranteed by Article 9 of the European Convention on Human Rights. Article 10 of the Union's Charter of Fundamental Rights makes similar provision. The Union is obliged to respect fundamental rights, in particular the rights guaranteed by the Convention. This will remain the case under any new treaty structure.

I am happy to talk again on this issue. We are keen to find an agreed outcome.

Yours ever,

J S WALL

His Excellency Archbishop Pablo Puente

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