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FILE TITLE:

FUTURE OF EUROPE

SERIES

EUROPEAN POLICY

PART

12

PART BEGINS

PART ENDS

CAB ONE

14 May 2003

07/10/03.

Labour Administration

PART CLOSED

PREM 49/3038

CONFIDENTIAL

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PART CLOSED

DATE CLOSED	07/10/03
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Series : **EUROPEAN POLICY**

File Title : **FUTURE OF EUROPE**

Part : **12**

Date	From	To	Subject	Class	Secret
19/05/2003	FCO	FA/APS	Future of Europe Convention & the IGC: Consulting Parliament	U	
19/05/2003	PRESS	Ch.Staff	Convention - other European Referendums	U	
20/05/2003	FA/APS	FCO	(M) Convention of the Future of Europe: Prime Minister's dinner with	C	
22/05/2003	EU/PS	PM	Commission Reform; Letter to Neil Kinnock	R	
27/05/2003	EU/PS	FCO	Convention on the Future of Europe	R	
28/05/2003	EU/PS	FCO	Future of Europe Convention and the IGC : Consulting Parliament	U	
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03/06/2003	EU/PS	FCO	Convention: The Founding Six	R	
03/06/2003	HS	PM	Future of Europe : Justice and Home Affairs Priorities	R	
06/06/2003	EU/PS	PM	Future of Europe: Justice and Home Affairs Priorities	R	
06/06/2003	FA/APS	PM	Three Days at Giscard's Convention	C	
06/06/2003	EU/PS	PM	Convention Endgame	R	
09/06/2003		EU/PS	Convention: CFP	U	
09/06/2003		EU/PS	Convention:CFP	U	
11/06/2003	EU/PS	MS/FCO	European Convention	U	
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13/06/2003	FA/APS	PM	Convention Finale	C	
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13/06/2003	FCS	PM	The Convention on the future of Europe and Parliament	R	
13/06/2003	EU/PS	PM	The Convention	U	
13/06/2003	Telegram/IN		Tel no 208: convention A german referendum?	C	
16/06/2003	PM	LP	(PM) - Work on the Convention	C	
16/06/2003	PM	MS/HO	(PM) - Work on the Convention	C	
17/06/2003	Ch.Staff	PM	Re-launching Britain in Europe	C	
18/06/2003	EU/PS	PM	Convention	U	
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30/06/2003	EU/PS	HO	Future of Europe : Justice and Home Affairs Priorities	C	
30/06/2003		PM	International Bertelsmann Forum - European convention	U	
01/07/2003	Ch.Staff	PM	Britain in Europe	C	
07/07/2003	EU/PS	PM	Future of Europe : Justice amd Home Affairs Priorities	R	
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17/07/2003	France/HME	EU/PS	Michel Barnier	U	
04/09/2003	FA/APS	PM	Future of Britain in Europe	C	
30/09/2003	EU/PS	FCO	Sites of Institutions	U	
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PERSONAL AND CONFIDENTIAL



United Kingdom
Permanent Representative
on the North Atlantic Council

7 October 2003

Sir Stephen Wall, KCMG
No 10 Downing Street
LONDON SW1A 2AA

① PR
② F.

NATO/OTAN
Avenue de la Liberté 23
1110 Brussels

Tel: 00 32 (0) 2 707 7526
Fax: 00 32 (0) 2 707 7236

Dear Stephen,

EDSP

CC NS
JPO
MR

Many thanks for copying to me your letter of 6 October to Geoffrey Adams. In haste before leaving for the NATO Defence Ministers meeting in Colorado, here are some thoughts from where I sit.

Our ideas on expanding the role of the EU military staff look good to me. They offer the French and Germans a genuine step forward, while keeping operational planning where it should be - organically linked to the Operational Commander in each case.

What strikes me most about the current exchanges is the ruthless determination of the Elysee and the Chancellery to force us into conceding a separate EU capability for planning and conducting operations. Everything else we offer is pocketed and politely ignored. They are using every element of leverage against us, including our interest in trilateralism, to separate us off from the large majority in the EU who, like us, have seen separate EU operational planning as damagingly duplicative. They have created an essentially artificial linkage with the work on IGC/Defence as another form of pressure on us to concede.

Why?

My answer would be that those around Chirac and Schroeder have identified - correctly - the capability to plan and conduct operations as the missing element needed to complete an entirely separate EU military structure. We should not see their drive to secure this missing link as benign, certainly not on the part of the French. The Prime Minister emphasises that we should do nothing to undermine NATO. But the successful creation of a completely separate EU defence structure will, in time, do precisely that. Not immediately of course. But if/when there is an entirely separate EU autonomous military option, everything I've seen of the French approach over the last four years suggests that they will work relentlessly to make this the default setting for European military operations. As it is, they fight a continuing guerrilla war to minimise the NATO role wherever possible. Add to that the present US Administration's preference for doing high-intensity military actions with coalitions of the willing, then it is quite easy to see the vitality of NATO being drained away pretty fast.

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So I think the stakes are high in the efforts you and Nigel are rightly making to find an approach which claws the French and Germans into cooperation while preserving our essential interests. I continue to believe that we are right to draw a line against a separate EU operational headquarters; and that is a line which is widely supported around the EU outside Paris, Berlin and Brussels, as well as universally among non-EU members of NATO.

Against that background, I had a couple of comments on the specific points in your letter.

On NATO's right of first refusal, that has underlain our approach. But as you know, we have never succeeded in pinning it down in a text. The best we have done is the phrase which started in St Malo and which we fought tooth and nail to include in a series of European Council Declarations since then up to Nice "in order for the European Union to take decisions and approve military action where the Alliance as a whole is not engaged ...". This is the high water-mark of French willingness to concede NATO's role, and I am certain that we will never get plainer text than that. This reflects the fact that the French simply don't agree that the default setting should be a NATO operation or one using NATO assets and capabilities.

To answer the Prime Minister's specific question in your fourth paragraph, we have since St Malo agreed that the EU must have the capacity to plan and execute autonomous operations. We have now agreed (Laeken) that ESDP is operational. So the question is how the necessary planning will be provided. As set out above, I believe it is important for the future vitality of NATO that we should stick to the position that this can best be provided through Berlin Plus by using NATO's capabilities; or if not, using the existing national operational HQs, together with the more muscular EU MS as set out in the UK proposal.

That is why we put so much effort, from the Prime Minister down, into securing Berlin Plus over several years. It offers the EU a remarkable deal. Guaranteed access, no quibbles, to the Operational Planning Centre which has now had a decade of experience of military operations in Europe and has in Deputy SACEUR a senior European Commander with his own European staff. If it was not for the French hang-ups about the NATO integrated military structure, this deal would surely be seen around the EU as removing the need for a separate EU-only capability. And it has the huge advantage of tying ESDP and NATO together in their future development.

All this to say that, on the point in the fifth paragraph in your letter, if at this stage we settle for a deal which leaves the door open to the EU having its own operational headquarters, all my experience of the last few years convinces me that the French will move on immediately to ensure that this possibility becomes a reality. On your sixth paragraph, the French are in practice telling us that if we want to be in structured cooperation, then we must agree not to veto all EU operational headquarters. I don't think that's such a great deal.

I am copying my letter to Peter Watkins (MOD), John Grant (UKRep Brussels), David Manning (Washington), Geoffrey Adams (FCO) and to Nigel Sheinwald.

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Yours Ever

Peter Ricketts

p.p. Peter Ricketts

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PERSONAL AND CONFIDENTIAL

File



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

30 September 2003

Dear Kim,

SITES OF INSTITUTIONS

/ I enclose a letter from Gianni Castellaneta, my Italian opposite number, announcing the intention of the Presidency to have a go at the sites package.

I propose to tell Gianni that you and I stand ready to speak to Mr Fabbri on Saturday. In the meantime, could the FCO kindly dust off the dossier? In particular, I imagine we should say something about the 'Lamfalussy' sites, but I think that was covered in our earlier lines when this was last current.

I am copying this letter to ESG colleagues and to Sir Ivor Roberts (Rome).

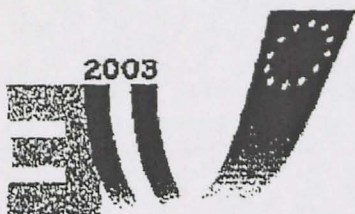
Yours ever,

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

J S WALL

Kim Darroch CMG
FCO

0039066784462



Presidenza Italiana
del Consiglio dell'Unione Europea

SW
CMR
JPO
DP

EU/84
130 SET. 2003

Dear Colleagues,

Within the framework of the semester of EU presidency, Italy is following up on the issue of the headquarters for community agencies already standing as well as future ones.

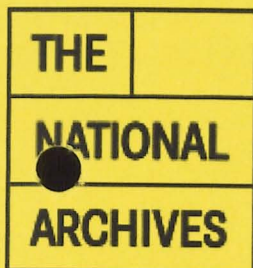
Mr. Fabio Fabbri of the Foreign Ministry has been given the dossier.

I would like to inform you that, in so far as it might be possible, at the margins of the IGC in Rome on the 4th of October (and in any case in Brussels on the 16 – 17 October during the European Council), Mr Fabbri will contact the member states' delegations to probe their orientation and explore the possibilities of reaching an agreement within the semester.

I am therefore asking you to make it possible for an appropriate member of your delegation to examine the issue with Mr. Fabbri.

Best regards,

Man
Luigi Costa



DEPARTMENT/SERIES <i>Em 49</i>	Date and sign
PIECE/ITEM <i>3038</i> (one piece/item number)	
Extract details: <i>Minute dated 4th of September 2003</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
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(16)

cc Jb/san

M. Barnier

assume this is
a 10?



**British Embassy
Paris**

From the Ambassador

By e-mail

17 July 2003

Sir Stephen Wall KCMG LVO
Head of European Secretariat
10 Downing Street
LONDON SW1A 2AA

Theresa May

copied to Jb. Le shall

read to reply

OK

22/7

→ MR

NO

Fully

Dear Stephen,

MICHEL BARNIER

1. I went to a recent seminar on Europe after the Convention where Michel Barnier was one of the speakers. He collared me afterwards to say that he had suggested to the PM in Thessaloniki that he might come to Paris on Saturday 22 November to give the opening or closing speech at a major event being organised by his new bipartisan "Club de Réflexion" called Nouvelle Republique. The subject was transatlantic relations, and the audience would be a high level one of 900-1000. This would be the club's second colloque, the first a few weeks ago having had Hungarian PM Medgyessy as its main speaker.
2. Barnier said that the PM had shown interest in doing this, but it had of course been a brief conversation – hence his raising it with me. I said I would investigate but could of course make no promises. Could you let me have some kind of reaction, if not now then in early September, to pass on to Barnier. I guess the PM will not be keen to give up part of a weekend, unless it can be combined with other business, but it goes without saying that he would be a



big draw – and if he were thinking of a major interview with French TV, it could perhaps be recorded at the same time, together with calls on Chirac/Raffarin.

3. All this is incidentally part of a major effort by Barnier to raise his profile here, no doubt with an eye to a serious government job when his time is up in Brussels. He is said still to dream of being PM, although few here see this as a real possibility.

A handwritten signature in black ink that reads "John Holmes". The signature is written in a cursive, slightly stylized font.

John Holmes

cc by e-mail

Sir Nigel Sheinwald KCMG, UKRep BRUSSELS
Kim Darroch, DG – Europe, FCO

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DEPARTMENT/SERIES <i>prem 49</i> PIECE/ITEM <i>3038</i> (one piece/item number)	Date and sign
Extract details: <i>Minute dated 11th of July 2003</i>	
CLOSED UNDER FOI EXEMPTION	
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Free

From: Joe Griffin, European Secretariat

Date: 11 July 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
Sir Stephen Wall
Katrina Williams

THE CONVENTION: FINAL PLENARY SESSION

Stephen Wall asked me to submit a note on the final session of the Convention on the Future of Europe, which I attended yesterday with Baroness Scotland.

As you know, the Thessaloniki European Council granted Giscard a further two weeks to address "purely technical" changes to Part III of the draft constitutional Treaty. As this part of the Treaty contains all the beef (it is a consolidation and re-ordering of all the existing Treaties), it was always unlikely that the Convention would respect this restricted mandate.

Instead, the members of the Convention saw the final two Plenary sessions as their final chance to amend the text to their satisfaction. This meant different things for different people. For the MEPs and, increasingly under their spell, the national Parliamentarians, this meant more QMV across the board, particularly in social affairs, tax and CFSP, and a "lighter" procedure for amending the Treaty in future.

For Member States, it meant a final chance to remove outstanding problems before going into the IGC.

The MEPs got some, but not all of what they wanted. Giscard and the Praesidium agreed to:

- QMV for “the principles underlying” EU projects on non-discrimination – this re-defines (rather than extends) the scope of QMV where it already exists (*probably OK*);
- the European Foreign Minister having the right to mediate before a Member State can pull the Emergency Brake in CFSP (*OK*);
- new language allowing Member States who had formed an inner group under the enhanced co-operation provisions to decide among themselves to move to QMV in areas normally dealt with by unanimity among the EU 25 (*bad*);
- a limited role for the ECJ in overseeing the impact of CFSP decisions involving restrictive measures (*bad*).

They also agreed to the idea that, from now, the Member States would need the agreement of the European Parliament to convene an IGC without a prior Convention.

Member States adopted varying approaches to the rump Plenaries. Several Government representatives – Ireland, Sweden, Greece – simply stayed **away** for one or both meetings. France and Germany however, made one last, concerted push

to remove the few outstanding problems each has with the text. In this, they were given significant and dubious support from Giscard.

The Germans' chief priority was to restore the veto for immigration policy. They had been told by the Laender that, without this, the Treaty would not be ratified. So, in a break from the usual talk about the general European interest, Joschka Fischer's interventions focused for once, somewhat bashfully, on the need for this "national" interest to be taken into account. The Praesidium tried to take this on board, without conceding on QMV. The end result is that the immigration article now clarifies that national Governments will retain the right to set limits on the numbers of immigrants entering their country. This is not unhelpful (for the most part we do not opt into most immigration measures) but it may partially let the Germans off the hook.

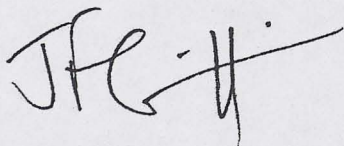
The French priority was to maintain unanimity for trade agreements on cultural and audio-visual services (the position agreed at Nice). In an impressive display of unity, every French speaker (Government, MPs and MEPs) at the Plenary backed this position, supported by Germany and Poland. Unfortunately for us, this included Giscard, who used a variety of methods (including procedural wheezes and blackmail), to force this through an incredulous Praesidium. The text now says that unanimity will apply for trade agreements on culture and audio-visual services "where such agreements have implications for the cultural and linguistic diversity of the Union."

Clearly, it is not helpful for us to see France and Germany emerge from the Convention with their major problems largely resolved. But we should not entirely believe their rhetoric about the need now to leave the text as it is. The concession to the French on trade is fragile and will be both resented and attacked by many,

including the Commission. They still have problems on co-decision for agriculture, will be anxious to preserve the new legal base for Services of General Economic Interest and share our concerns on foreign policy. The Germans will be more sanguine, but nervous about immigration, where they have already hinted at a deal with us, whereby we support them in return for their backing us on tax.

The final session of the Convention was as you would expect. After 16 months' work, there was satisfaction, emotion and rhetoric about "history" in equal measure. Unlike the session before Thessaloniki there was no Ode to Joy and no cheap fizz, but pride that, following one of Giscard's final decisions, the symbols of the Union – flag, anthem, currency and motto ("United in Diversity") – would now be enshrined in the constitution. Selected speakers paid tribute to the Convention's work, acclaimed Giscard's chairmanship, and urged the IGC not to tamper with their text. Giscard also called on Convention members to put pressure on the national Governments to change the text as little as possible. He noted that he, Amato and Dehaene, would be available throughout the autumn (indeed on a monthly basis) to explain the text to the IGC if necessary.

Members of the Convention then signed a document to accompany the final version of the draft Treaty to be presented to the Italian Presidency by Giscard on 18 July. This stated their hope that the work of the Convention would be "the foundation for the future constitutional Treaty of the European Union." The Convention concluded with group photos, autographs and lunch.

A handwritten signature in dark ink, appearing to read 'JFG' followed by a stylized flourish.

JOE GRIFFIN
EUROPEAN SECRETARIAT

11 July 2003

*1.11
Z. R. L.*



Foreign &
Commonwealth
Office

London SW1A 2AH

EU/PS

cc MR

RL

JPo

DP(Pres)

Dear David,

European Convention - Press Lines and Useful Quotes

... At a recent Cabinet meeting, the Foreign Secretary undertook to circulate to colleagues briefing on the Convention. I enclose such material, including rebuttals for tabloid myths and selected useful quotes from the European press.

I am copying this letter to Private Secretaries to Cabinet Ministers.

Yours ever,

Jonathan

(Jonathan Sinclair)
Private Secretary

David Prout Esq
PS/Deputy Prime Minister

THE EUROPEAN CONVENTION

KEY MESSAGES AND QUESTION AND ANSWER BRIEFING

July 03

Key Messages

Q&A

- **Detailed Proposals**
- **Referendum**
- **Other Countries' positions on holding a referendum (subject to change)**

KEY MESSAGES

Overall view of the Convention?

- As Peter Hain, the UK Government representative on the Convention, said:

"The Convention has done a good job. The outcome is a foundation for a modern, more democratic Europe, better anchored to its nation states and more accountable to its citizens. The Constitutional treaty will be simpler and clearer for everyone. It will help us run a more efficient, effective Union after ten more countries join next year. It should provide legal certainty and stability for a period of many years. And it establishes for the first time a long term Chair of the European Council, to make sure that the Union's strategy reflects the views of national Governments. This was Britain's priority reform and we have secured it."

The Convention / IGC is about making enlargement work

- This Convention is a product of enlargement. Europe is expanding from 15 countries today to 25 next year, and more to follow.
- Enlargement is a huge opportunity for Britain and Europe: peace, security, jobs, prosperity. Britain has championed this vision since end of the Cold War. Will transform the EU.
- But common sense that Europe must modernise. The system which worked in the 1950s with 6 members won't work with 25. PM Warsaw: "At 25, then 27, possibly 30, the present system would produce paralysis, rather than progress."

This government is positively engaged, not anti-European

- We do not view everything European as a threat. We do not approach Europe as 'them against us'. We are not defeatist. We are positively engaged: pro-Europe, pro-reform in Europe.
- PM Warsaw (May 03) "The belief that Europe is something done to us, that everyone else spends their time ganging up on us, to do us down, is a belief fit for a nation with a inferiority complex not a proud

nation that knows it can win and has proven its courage and its confidence by its record in history."

- The opponents are the same old anti-Europeans. This is their latest attempt to pull Britain out of Europe. They are re-fighting the battle they lost over Maastricht.
- Just as new countries queue up to join, sceptics want Britain to leave. It is madness. Britain should welcome the new Europe being created. We should play a full part and help shape the new Europe.

Europe needs change, and we support change:

- We need to **modernise** Europe's internal workings. The system designed in the 1950s for a Europe of 6 cannot work with 25.
- It's time to **consolidate** the 4 European Treaties that have evolved over years. We need **clarity**: a single, coherent rulebook for EU.
- We need **stability** for the new Europe, a **settlement** to last for the foreseeable future, rather than the constant change of recent years.
- We want to make a larger Europe more **effective**, better able to deal with Europe-wide issues affecting us all – challenges like jobs, the environment, crime, drugs, asylum and immigration.
- This is **not** about a federal superstate or a blueprint for tyranny. Countries would hardly be queuing up to join if that were the case.

**We are working for a result that makes the new Europe better.
We are confident we will get one.**

- The Convention has been a broad debate – 25 countries, 105 members. All sorts of proposals have been made – some good, some bad. We dealt with them calmly. We can listen to others, without having to accept all their ideas. We can disagree without being hysterical.
- There's still a long way still to go. The final text can only be passed with our agreement at the IGC. We won't accept anything

that is not in Britain's interests. Neither will Parliament, which will ratify this treaty.

- Confident that the end result will be good for Britain and good for the kind of Europe we want. As the Foreign Secretary said on 17 June:

"The Convention's text settles the balance between the nations and the union where it should be, with the nations as the anchor of the Union. It makes clearer than at any other point in the past half-century that the nation state provides the Union's key source of democratic legitimacy."

QUESTION AND ANSWER BRIEFING

DETAILED PROPOSALS

Britain's rebate threatened?

We have made it very clear that the budget must be subject to unanimity: we will not accept anything else. We will not sign up to a text that threatens our rebate.

(Background: Article I - 53 deals with the Union's budget. It proposes that the maximum size of the budget and the way it is paid is subject to unanimity and national ratification as is the case now. However, it proposes that who pays what should be subject to QMV.

Britain picking up the bill for Europe's pension black hole? (Daily Mail, Sun)

Nonsense. Pensions are and will remain a matter for national governments - there is no question of a European pension pot. Our EU membership does mean, however, that pensioners are able to live in any country within Europe and still receive a pension from their home country.

'Co-ordination' on social security, working conditions, union membership and collective bargaining will mean harmonisation, unravelling our labour laws?

Member countries already co-ordinate national social security systems. This means that citizens can claim the benefits they are entitled to from their home countries when they cross borders. Co-ordinating policies makes practical sense - it doesn't mean that policies across Europe have to be standardised.

2 million jobs to be destroyed? EU to hijack our economy (Sun 27 May)

Wrong. This Constitutional treaty will lay the foundations for reforming the Union's institutions - no question that it will cost jobs. Currently, over 3 million UK jobs are tied to our trade with Europe.

Foreign workers could win right to British handouts? (Mail 27 May)

This Constitutional treaty will not affect how foreign workers are treated in the UK. All social security issues are decided by unanimity and we will oppose any suggestion that removes this veto. Its essential that the huge diversity of social security systems are respected - especially following Enlargement.

(If pressed) Foreign workers *will* be entitled to benefits after enlargement, but only if they pass a rigorous habitual residence test. Just like British people they must build up an entitlement to benefits: that means paying national insurance and contributing to the economy.

We're the only EU country to allow them in?

Wrong. Every existing member state must allow free movement of people after 1 May 2004. We are one of six countries allowing free movement of workers. That means workers from the 10 accession countries will have the right to work in the UK. Of course we are in favour of this. Better that people come to the UK and work legally, paying national insurance and tax, than work illegally and contribute nothing.

But if, contrary to all previous experience and all evidence, immigration threatens the economy, we can reintroduce restrictions.

EU plan to grab our oil: Secret clause would mean Britain surrendering control of North Sea oil (Sun 29 May)

This is pure scare-mongering. There is no question of Brussels stealing British oil, taking control of British oil stocks or snatching oil revenues.

There are no secret clauses in the draft Treaty – the whole document is public. And in any case there is no clause which would enable the EU to ‘grab British oil’. The clauses in the draft Treaty which do refer to security of energy supplies would make no difference to the status of North Sea Oil.

Many EU countries have their own energy supplies. Britain actually imports energy from France. The days when countries fought over natural resources have gone – largely thanks to the EU. The idea that

other Europeans could now gang up against Britain, outvote us and grab our oil is absurd.

Any response to disruption of global oil supplies would continue to be co-ordinated on a global, not European, basis by the International Energy Agency as happened this year - the current proposals do not affect that.

A dramatic reduction in our power to veto EU decisions in areas such as asylum? (Daily Mail)

We have been calling for majority voting on asylum since the Convention started. Only a Europe-wide system can **stop the problems of asylum shopping and prevent another Sangatte**. Keeping **unanimity** would make it more difficult for us to push through these essential measures.

Equally there are some areas where **unanimity remains essential**. For example, we will insist that the framework for any joint police operations must be decided by unanimity.

But we have absolutely no intention of surrendering control of our borders. We will not give up the Frontiers Protocol, which we secured at Amsterdam in 1997. We

Proposals for QMV on social security/pensions?

We've repeatedly made clear our position on QMV for social security. We'll continue to approach these negotiations positively but we will not accept any proposals that are not in Britain's interests. Important work still to be done on the constitution text - let's wait for the final outcome at the end of the IGC.

Tax harmonisation?

No question of an EU tax, QMV on tax issues or any change to the UK rebate without the agreement of the UK Government and Parliament.

Economic policy?

We already coordinate some aspects of economic policy with EU partners e.g. the Broad Economic Policy Guidelines.

But we have made absolutely clear that the Government will retain control over our economy. No question of having our economy dictated to us by Brussels.

Britain bound to obey a European foreign policy 'unreservedly' (Mail, Sun etc.)

Foreign policy will remain in the hands of member states, just as it has since a common foreign policy was set up ten years ago by the Maastricht Treaty.

Nothing new in language like "unreservedly", "loyal cooperation" and "solidarity". Britain signed up to that at Maastricht and it hasn't prevented us pursuing our own foreign policy when we needed to.

Common foreign policy is something we should welcome. Look at what it's helped achieve with the Roadmap in the Middle East. Of course we won't agree on everything – Iraq showed that – but where we can agree Britain's voice is stronger as part of the EU than is alone.

New principle of "loyal co-operation" will force Britain to obey Brussels?

Once again, nothing new about this concept. Simply spells out what was already agreed in Maastricht or even Treaty of Rome, and which works perfectly well. Means Member States work together when we agree – very sensible. Does not mean we are forced to obey, cannot act alone, need Brussels permission to go to war, or any other distortions applied to it.

NEW: Praesidium draft Article 145

"Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness".

OLD: Treaty of Maastricht, Article 11(2)

"The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations".

Single European Foreign Minister?

We think better co-ordination on foreign policy with Europe is a good idea, but we can see potential practical difficulties. We won't accept a formula which communitises CFSP. That means we need to get the relationship to the Commission right. The Prime Minister said at Cardiff: "Double hatting cannot be a way, through the back door, of communitising the CFSP."

What about the title European Foreign Minister?

EFM title risk-creating confusion. Not elected or answerable to one Government. So prefer the European External Representative formula used in External Action WG report.

Fischer a candidate for EU Foreign Minister?

Not going to speculate on candidates for a job that doesn't exist yet.

Charter of fundamental rights?

We welcome a declaration of basic rights common to all European citizens. Find it strange that some parts of the media are opposed to e.g. protection against discrimination or equal pay for women.

But we cannot support a form of treaty incorporation that would enlarge EU competence.

We have long said the Charter as proclaimed at Nice is unsuitable for legal status. Unless amended, it would risk creating legal uncertainty for both the European citizen and Governments of the Member States.

We cannot support incorporation if it would widen or change the EU's powers.

Provisions in the Charter will harm UK business?

We will not support incorporation if it extends the power of the EU. So there will be no threat to UK business.

A President of Europe?

We prefer Chair of the Council. Its important that the European Council, which comprises the Members States of the Union, has

effective leadership and strategic direction after enlargement. The existing "musical chairs" rotating Presidency just won't work.

President directly elected by the people?

No. Draft constitution proposes election by QMV at the European Council. Right that the Chair of the European Council is appointed by and accountable to governments.

As Giscard said "This man or woman cannot be elected at the beginning by popular vote. Perhaps in 50 years, we don't know what will happen".

A European Public Prosecutor to strip power away from UK courts?

We oppose a European Public Prosecutor. It would be unaccountable, expensive and unnecessary. We wouldn't accept any idea that undermined the power of UK courts. An important debate ongoing about improving co-operation, tackling fraud against EU budget, dealing with cross-border crime. It is in Britain's interests for crime-fighters across Europe to work closely together.

We support strengthened co-operation between national prosecuting authorities through Eurojust. Eurojust was created in 1999, its president is British, and we have always supported it. Anxious to see that system is allowed to bed-down.

QMV on asylum and immigration?

Asylum and immigration are issues that affect all European States. We can't tackle them alone, so it's right and sensible that we develop a common policy.

Legal personality?

Not a new idea. The European Community already has legal personality. The Convention proposes giving the new Union a single legal personality when the Union and Community treaties are merged to produce a single treaty.

We would support this if it made the EU simpler to understand and more efficient, but would not accept it unless the special arrangements

for CFSP and some aspects of JHA are preserved and we maintain the existing system of representation in international organisations.

More QMV?

An enlarged Europe will need more QMV so that progress in a Europe of 25 or more is not constantly blocked by veto, and to provide a set of rules that are understandable to ordinary members of the public.” But some areas remain off limits. We have made it clear that introducing QMV in core areas of national sovereignty such as tax or defence, or extending to CFSP, is unacceptable.

EU law to have Primacy over national law?

It already does, and has since 1973. It prevents the rules which Member States have agreed from being undermined, e.g. French Beef Ban. We have called for a strengthened European Commission and European Court of Justice to ensure that EU laws are fairly and evenly applied.

Union re-named United States of Europe?

No. The new draft calls it the European Union. As Giscard d'Estaing said on the Today programme 16th April:

“We had a debate on that. We proposed different names: the old name ‘the European Community’, the present name ‘the European Union’, the name ‘United States of Europe’, and the name ‘United Europe’... My favourite would be ‘United Europe’... Majority support now (laughs) is to have the existing formula, which is ‘the European Union’ ”.

Constitution will ban Page 3? Men Behaving Badly? Sitcoms? Soaps? (Mail, Sun, 24 June)

Nothing to do with the convention or the constitution. Commission proposed a separate anti-discrimination directive, which has now been withdrawn.

We support the principle of combating discrimination, but we will examine very carefully, as with all legislation, the potential impact on UK people and business.

This Constitution will make us all European Citizens

- We are already citizens of the EU – have been since Maastricht. Being EU citizens gives us lots of rights and benefits – eg. to travel, live, study or work anywhere in the EU, or free emergency healthcare. European citizenship is a good thing, but nothing new.

Referendum

Daily Mail referendum?

Happened weeks before the Convention even presented the draft, months before the IGC agrees a Treaty, and they already want to vote no. Jumping the gun is an understatement. Hysterical, premature, gimmickry.

But this is a fork in the road: Britain must choose between a future as a province of a European Superstate, or continued existence as an independent nation?

- Lurid claims – a “Blueprint for Tyranny”, “the end of 1000 years of independence”, “Britain’s political death warrant” etc. – are absolute rubbish. We need a serious reality check.
- Many of the claims made about this Treaty are simply untrue. And many others are actually objections to the *status quo*. Some people are still fighting the Maastricht Treaty, or even the Treaty of Rome.
- In fact, the next Treaty will not be revolutionary. Indeed, it is unlikely to affect Britain’s relationship with the EU to as great an extent as the Single European Act 1986 or Maastricht 1992.
- Use of the word “constitutional” does not mean the creation of a European superstate, or any revolution in the nature of the EU. Britain will remain a sovereign independent nation.
- Same people made exaggerated claims about Maastricht 10 years ago. Wrong then and wrong now.

Why is the British government not prepared to put the constitutional treaty to a referendum?

- In Britain, Parliament scrutinises Treaties before ratification. That's what has happened with all European Treaties since we joined the EEC.
- That includes most significant ones by far – the Single European Act and the Maastricht Treaty. Also included Treaties of Amsterdam and Nice under this govt. And it will include the next Treaty expected next year. So no change.
- The supremacy of Parliament and the democratically-elected House of Commons are at the heart of our system – not referendums.
- In Britain, a national referendum is only for exceptional changes to our system of govt. Joining the EEC was such an occasion, hence the 1975 referendum. Joining the euro would be another, hence we have promised a referendum on that issue. No suggestion that the next European Treaty will mean changes of that scale.

Other Europeans are getting a vote on this – referendums in France, Italy, Denmark, Ireland... Why not Britain?

- As it happens, less than half the 25 countries concerned are currently planning referendums. No referendum plans at present in Germany, Belgium, Sweden, Greece, or most new member states.
***** See annex for current provisional list *****
- Traditions vary: Denmark and Ireland must have referendums on all European Treaties (and did on the Single Act, Maastricht, Amsterdam and Nice). France held one on Maastricht, but not on the other three. Germany's constitution does not provide for a referendum.
- It depends on political and constitutional traditions. No bearing on what Britain does. We will stick with our system.

But we had referendums on devolution in Scotland and Wales, even referendums for elected Mayors in Watford and Hackney

- Devolution in Scotland and Wales was a major change in their systems of government. Likewise creating an elected Mayor for cities. Hence regional or local referendums.
- But the UK's only ever national referendum was on membership of the EEC in 1975.

But Convention President Valerie Giscard d'Estaing himself has called for referendums in all EU countries

- Giscard agreed that it is for every country to ratify this Treaty according to its own practice. Some will have referendums, many will not.
- The draft Treaty itself recognises this: *"The Constitutional Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements"*. [draft General and Final Provisions – Article G, Paragraph 1]
- Everyone now accepts there will not be referendums in all countries.

But this is a Constitution, so there should be a referendum.

- This will not be a constitution for Britain. Nor for a new country called 'Europe'.
- This is a constitution for a club we are a member of – a club which is essential to our prosperity.
- It will be a Constitutional Treaty, which has to be agreed by every EU country, signed and ratified by their sovereign governments.
- The EU effectively has a constitution already – in the form of the four existing European Treaties.
- A constitution is simply a clear set of rules. Political parties, rugby clubs and student unions all have them. Nothing sinister.

Just a "tidying up exercise"?

- What Peter Hain actually said is this is more of a tidying up exercise than Maastricht or the Single Act. True. Those were mainly or entirely new proposals expanding European powers.
- A large part of the draft Constitution is a consolidation of the existing four separate Treaties, re-written and re-ordered into a single, readable text. 75% of the new Treaty is language from previous treaties. In most areas there will be no change to the substance.
- We never said it was only tidying up. Some measures to change the *status quo* are essential for a Europe of 25 work efficiently. We support them. But they will be far less dramatic and extensive than often reported.

So there will be changes of substance?

- We want some changes; we need some change - that's the point. Not the nightmare vision peddled by the Daily Mail, but sensible steps to make the Europe of 25 work better. In Britain's national interests.
- We want a Chairman of the European Council chosen by national governments, to replace the existing system which sees the Council President change every six months by rotation.
- We want a greater role for national Parliaments in the workings of the EU.
- We want some expansion of majority voting (QMV), for example on asylum policy. It is patently in Britain's national interest to have more majority voting to tackle a pan-European problem. But we are not "surrendering our borders".
- Our ministers will be involved every step of the way, but we cannot solve our asylum problems on our own. We need to work with others. Only by getting each country to share the burden will we stop playing 'pass the parcel' with asylum seekers.

- And we have made clear that the introduction of QMV in core areas of national sovereignty – such as tax and defence or its extension foreign affairs is not acceptable.

But it proposes vast increases in power for Brussels?

- Need a reality check on what is – and is not – at stake here.
- Many recent claims about this Treaty are totally untrue, or wildly exaggerated: the end of our nationhood, forced to adopt the euro, forced to drive on the right, unable to go to war without EU permission, etc. etc. Lots of total nonsense has been written.
- And many objections are not really about future proposals. Actually, they are about today's *status quo*. Hardline eurosceptics want to unpick the existing EU Treaties and take us back in time. That is not what most people want, and not in Britain's national interests
- Most of the provisions in the draft text have been part of the EEC / EU since we joined, or have been introduced since with the UK's full participation. If they were NOT included in the next Treaty, it would be a reversal of British foreign policy, under successive governments, going back 30 years.

Under what circumstances would the British government veto the constitutional treaty?

- As always, the Government will only approve the final Treaty at the IGC if we consider it to be in Britain's national interests. Then the elected British Parliament will have its say.
- We will decide on the final text. Not early drafts or media myths.

ANNEX 1: REFERENDUMS IN OTHER EUROPEAN COUNTRIES

Best information on intentions as of 1 July 2003

**THIS IS SUBJECT TO CHANGE:
DO NOT USE WITHOUT CONSULTING FCO FOR UPDATE**

NO

- 1 Germany
- 2 Sweden
- 3 Greece
- 4 Malta
- 5 Hungary
- 6 Lithuania
- 7 Slovakia
- 8 Slovenia
- 9 Finland
- 10 UK
- 11 Cyprus
- 12 Latvia

YES

- 13 Luxembourg
- 14 Spain
- 15 Ireland
- 16 Denmark

Not announced, but Likely

- 17 Italy
- 18 France
- 19 Portugal

Not announced, but unlikely

- 20 Netherlands
- 21 Austria
- 22 Belgium
- 23 Poland
- 24 Czech Republic
- 25 Estonia

European Reaction to the Constitution Draft

"I want to kill myself", Giuliano Amato, Vice-President of the Convention and leading federalist (reported in The Telegraph, 24 May 2003)

France

"The British government is pleased with the Convention and has every right to be so. The text meets virtually all its expectations and allays most of its fears". (Le Monde, 29 May 2003)

"Has Giscard d'Estaing fulfilled his contract or not? He has been brilliant, audacious, imperious – which was no surprise – and sometimes he has been skillful. He has created a great British Europe (*une formidable Europe britannique*)" (Alain Duhamel, RTL Radio, 16 June 2003)

"Since Giscard D'Estaing managed to suppress federalist-type action on economic and budgetary policy ... it has managed to win over the eurosceptics." (La Tribune 16 June)

"Throughout the Convention, UK representatives have shown a skill and consistency in keeping with the great British diplomatic tradition. Furthermore, the search for consensus allowed the side showing the firmest will to take definitive control of the game, artfully trading concessions on the inessential to make sure of winning the essential ... to the extent that we should dub this constitution for the Europe of 25 "la britannique". Nouvel Observateur, 18 June 2003

Spain

"Draft European Constitution trimmed down to meet Blair's demands (headline). ...The text includes concessions imposed by London in the areas of foreign policy and defence against Franco-German wishes. The British view that decisions in this area should be taken, as a general rule, unanimously, as now, and not by qualified majority, has won through." (El País, Tuesday 27 May 2003)

"....the main demands of Tony Blair's government have been picked up in the draft. Hence it was decided to drop the word "federal", as well as maintaining unanimity on tax and foreign policy". (El Mundo, Friday 30 May 2003)

Germany

"Giving way to pressure from Britain, France and other smaller Member States, the Convention Præsidium have removed the possibility of QMV [for External Policy] in the revised draft it submitted on Tuesday." (Frankfurter Allgemeine, 28 May 2003)

"[The constitution is] an extraordinary disappointment"
Elmar Brok, German MEP and leading federalist, Economist, 31 May 2003

"Following pressure from the UK Government, the draft future EU constitution no longer speaks of the Union developing its policies in a Federal Manner."
(Sueddeutsche Zeitung 24 May 2003)

From: Stephen Wall

Date: 7 July 2003

PRIME MINISTER

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

Lord Falconer has minuted you in response to the Home Secretary's note on Justice and Home Affairs priorities in the Convention. The Department for Constitutional Affairs leads on civil judicial co-operation.

Lord Falconer's concerns are linked to the Home Secretary's views on proposals to harmonise criminal procedural law across the EU. Lord Falconer argues that the new draft article (attached) goes too far and threatens the UK's distinct legal system. He acknowledges that civil law does not have the same profile as criminal law: but argues that it attracts significant amounts of inward investment into the City and facilitates trade with other countries who share our common law system. He argues that the scope of the article plus QMV (which we agreed at Nice) could threaten the UK's common law system in the future.

There are two key issues we need to watch out for in the draft article. We have submitted amendments on these, and Officials will need to try and get the

technical detail sorted in the IGC. But ultimately, given that we agreed to QMV at Nice, and we still have a protocol allowing us to opt out of these areas, we should not allow this to become a deal-breaker. These concerns are not in the same league as our problems on tax, CFSP, or the provisions on criminal procedural law:

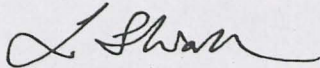
- (i) The draft article in the Convention text slightly widens the scope of EU competence in civil judicial co-operation, compared to the previous Treaty. The new draft provides for the approximation of laws in civil matters having cross-border implications and gives a non-exhaustive short list of areas where the Council should adopt legislation. Crucially, competence is clearly limited to matters with cross-border implications – this is the key limitation which helped us restrict last year's legal aid directive to cross-border cases. The draft article makes mutual recognition (rather than the harmonisation of different legal systems) the basis for co-operation.

But the draft article loses the additional safeguard in the current Treaties, which limits competence to measures necessary for '*the proper functioning of the internal market*'. I agree with Lord Falconer that we should continue to try to reinstate this safeguard.

- (ii) Of the specific measures in the short-list, most are covered under the previous Treaties. I agree with Lord Falconer that the only problematic provision is that which states that the EU should adopt laws which ensure '*a high level of access to justice*'. This could have implications for the provision of legal aid which might be extremely expensive for the UK.

We should continue trying to limit provisions on access to justice to cases with cross-border implications.

Do you agree?

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

STEPHEN WALL

SECTION 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article III-165 (ex Article 14)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. To this end, a law or framework law shall lay down measures aimed *inter alia* at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) a high level of access to justice;
- (f) the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be laid down in a European framework law by the Council of Ministers. It shall act unanimously after consulting the European Parliament.

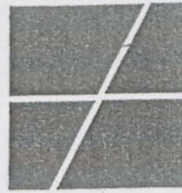
The Council of Ministers, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be adopted by the ordinary legislative procedure. The Council of Ministers shall act unanimously after consulting the European Parliament.

THE	
NATIONAL	
ARCHIVES	

DEPARTMENT/SERIES <i>Crem 49</i> PIECE/ITEM <i>3038</i> (one piece/item number)	Date and sign
Extract details: <i>Minute dated 11th of July 2003</i>	
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DOCUMENT PUT IN PLACE (TNA USE ONLY)	

*Delivered to Jonathan
Stephen
Matthew
David H*

International
Bertelsmann
Forum



Future of Europe

IBF

Mr Prime Minister
Tony Blair
10 Downing Street

LONDON SW1A 1AL
GROBBRITANNIEN

*Or file
Paper passed to me today by Simon (amb)
Serious foundation with serious
resources - and a top cast
list. Wants Mr. to give Keynesian
speech on Europe. Could be a
valuable platform, not least
in trilateral context, and transatlantic
Jan '16*

June 30, 2003

Dear Mr Prime Minister,
dear Mr Blair,

At the end of this year, far-reaching decisions are expected in European politics. Firstly, the European Convention will construct a new constitution for Europe. The Intergovernmental Conference, under Italian presidency, has to debate the results and further steps of integration for Europe in the 21st century. Decisions to be made will reach the dimensions of the Treaties of Rome! Our forum will be the first occasion to discuss the results and consequences within a circle of high-ranking decision-makers.

Even in the past the International Bertelsmann Forum (IBF) took place at the interface of strategic decisions. I would like to take the IBF as an opportunity to discuss answers to the question "What kind of strategies of a wider, more differentiated integration will the European Union have to develop after Eastern Enlargement in order to improve the interaction of all actors in the greater Europe in the future?" with high-ranking representatives of international politics, economy and media. The IBF, initiated by the Bertelsmann Foundation, has long since served as a platform for a changing circle of high-ranking discussants to debate the current challenges for the European Union in a confidential dialogue.

The next IBF will be held in Berlin, January 09 – 10, 2004. I am honoured that Federal Chancellor Schröder has accepted our invitation to participate and speak. The German Minister of Foreign Affairs, Mr Joschka Fischer, has again offered the Weltsaal of the Federal Foreign Office to host the event.

In this context, your participation is of particular importance for us. I may kindly ask you to take part in the discussion about the constitutional draft of the Convention and the concluding summit of Rome.

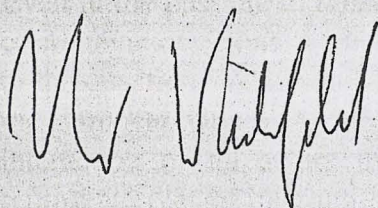
Attached you will find a preliminary agenda. May I, in particular, ask you to give the dinner speech 'Europe as a Strategic Partner' on Friday, January 09?

A strategy paper prepared by our academic partner, the Bertelsmann Group for Policy Research at the Center for Applied Policy Research of Munich University, will be the basis for the discussions. It will define the main questions to be dealt with in Berlin.

Due to the special character of the conference, discussions will be treated with the utmost confidentiality. The media are allowed to report on the conference, however, without quoting the names of the speakers.

Enclosed please find the publication on the latest International Bertelsmann Forum. In my view, the strategy paper shows how future-oriented the discussions on this occasion were. The high level of participants who will be invited to the IBF 2004 to Berlin will certainly guarantee another interesting event.

Hoping for a positive response I look forward to hearing from you soon and remain,



Prof. Dr. Werner Weidenfeld



International Bertelsmann Forum

Europe – Moving towards a new Era

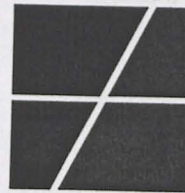
Program

as per: June 30, 2003

January 9-10, 2004

**Weltsaal
Auswärtiges Amt
Werderscher Markt 1
10117 Berlin**

Conference Languages: English, German



Friday, January 9, 2004

01:00-02:00 p.m.

Reception and Luncheon

02:00 p.m.

Europe's new Constitution

*Welcome,
Introduction and
Presentation of the
Strategy Paper*

Werner Weidenfeld

*Member of the Executive Board, Bertelsmann Foundation,
Guetersloh; Director, Center for Applied Policy Research, Ludwig-
Maximilians-University, Munich*

Gerhard Schröder

Chancellor of the Federal Republic of Germany, Berlin

Jacques Chirac

President of the Republic of France, Paris

José Maria Aznar López

Prime Minister of the Kingdom of Spain, Madrid

04:00-04:30 p.m.

Coffee Break

04:30-06:00 p.m.

**The Greater Europe -
Strategies of differentiated Integration**

*Chair &
Introduction*

Wolfgang Schäussel

Chancellor of the Federal Republic of Austria, Vienna

Joschka Fischer

*Minister of Foreign Affairs and Vice-Chancellor
of the Federal Republic of Germany, Berlin*

Aleksander Kwaśniewski

President of the Republic of Poland, Warsaw

Leonid D. Kuchma

President of Ukraine, Kyiv

Recep Tayyip Erdoğan

Prime Minister of the Republic of Turkey, Ankara

08:00 p.m.

Reception and Dinner

Dinner Speech

Europe as a Strategic Partner

Tony Blair

Prime Minister of the United Kingdom, London

Saturday, January 10, 2004

09:30 a.m. -
12:00 noon

*Chair &
Introduction*

The New Global Order

Werner Weidenfeld

*Member of the Executive Board, Bertelsmann Foundation,
Guetersloh; Director, Center for Applied Policy Research, Ludwig-
Maximilians-University, Munich*

Javier Solana

*High Representative for the Common Foreign and Security Policy of
the European Union ; Secretary-General of the Western European
Union (WEU), Brussels*

Jack Straw

Minister of Foreign Affairs of the United Kingdom, London

Michèle Alliot-Marie

Minister of Defence of the Republic of France, Paris

Peter Struck

Minister of Defence of the Federal Republic of Germany, Berlin

Condoleezza Rice

*National Security Adviser to the President of the United States of
America, Security Council, Washington, D.C.*

12:00 noon

Informal Luncheon

02:00 p.m.

End of Conference

CONFIDENTIAL



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

to posts
30/6
FAKED
30 June 2003

Dear Jonathan,

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

The Prime Minister was grateful to the Home Secretary for his note of 3 June and for his subsequent minute of 16 June (not copied). The Prime Minister has also seen the Foreign Secretary's minute of 26 June.

The Prime Minister's comments are as follows:

- (i) QMV for minimum standards in criminal procedural law. The Prime Minister agrees with the Home Secretary and the Foreign Secretary that we need unanimity for minimum standards in this area.
- (ii) European Public Prosecutor. The Prime Minister agrees that if we can negotiate out the provision for a European Public Prosecutor in the Intergovernmental Conference that will be for the good. But we have to acknowledge that we may have limited support. If we can build up the alternative of strengthening Eurojust, including (as the Foreign Secretary suggests) an obligation on member states to prosecute (or extradite) in certain circumstances, then the Prime Minister would favour that.

The Prime Minister is not as convinced as the Home Secretary that the existing language in Part I of the Constitutional Treaty on the EPP is bad for us. On the contrary, we have made quite a lot of headway with pointing out that nothing can happen on this issue without our agreement, because of the unanimity lock.

- (iii) National Security. The Prime Minister agrees that we need to try to improve the language of the Treaties. This will require work by the Agencies themselves so that their opposite numbers bring the relevant issues to the attention of their own governments. The Prime Minister is grateful to the Home Secretary and Foreign Secretary for their continuing lead on this issue.

CONFIDENTIAL

CONFIDENTIAL

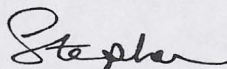
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- (iv) Europol. The Prime Minister agrees with the Home Secretary and Foreign Secretary that any Europol operations must be subject to the consent of the member state where they will take place.
- (v) Cooperation with the United States to fight terrorism. The Prime Minister agrees with the Home Secretary that we want to protect our ability to maintain and conclude bilateral and multilateral agreements which go further than EU agreements. But he also accepts the negotiating reality described by the Foreign Secretary that we are unlikely to get our partners to agree to rewrite the general rule of Community law that, once the EU has put in place common rules, member states cannot assume obligations which might affect those rules or alter their scope.
- (vi) Asylum. The Prime Minister would like to discuss this issue further with the Home Secretary and Foreign Secretary. The issue is how to reconcile our objectives with our public commitment to QMV in this area, from which we do not wish to resile.

In general, the Prime Minister is keen to deal with the important issues which the Home Secretary has identified without adding publicly to the list of our red lines. The Prime Minister has set these out publicly ("Issues to do with taxation, foreign policy, defence policy and our British borders will remain the prerogative of our national government and Parliament"). Beyond these issues, while we must make a judgement at the end of the day, the Prime Minister believes we have to recognise that we are in a negotiation and that means building alliances so that ministers and officials secure our objectives on these issues before they become battle lines at the last European Council of the IGC.

I am copying this letter to Sarah Albon (Dept for Constitutional Affairs), Simon McDonald (FCO), Mark Bowman (HM Treasury), Glynne Jones (Office of Leader of House), Tom Walker (Home Office) and Sir Nigel Sheinwald (UKRep Brussels).

Yours ever,



J S WALL

Jonathan Sedgwick
Home Office

CONFIDENTIAL

From the Secretary of State and Lord Chancellor
The Right Honourable Lord Falconer of Thoroton



The Department for Constitutional Affairs
Selborne House
54-60 Victoria Street
London SW1E 6QW

DX 117000
Telephone: 020 7210 8380
Fax 020 7210 8597

file
SW
ce MR
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PRIME MINISTER

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

I have read with interest David Blunkett's minute of 3 June setting out his Justice and Home Affairs priorities in the context of the Convention on the Future of Europe.

I share many of David's concerns but wanted to highlight one in particular which parallels concerns in the field for which my Department is responsible.

My view is that the provisions of the draft Constitution which propose approximation of laws, not only in the field of criminal procedure, which David mentions, but also civil law and procedure, are the most far-reaching and potentially harmful in the JHA chapter. I completely share David's view that such a wide-ranging competence goes to the heart of Member States' legal systems and that we will find it difficult to defend fundamental aspects of our common law system.

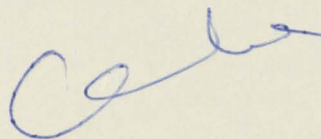
I am especially concerned about the civil law aspects because civil judicial co-operation became subject to QMV in the Nice Treaty and there is no prospect of a return to unanimity. This raises the prospect of our law being effectively re-written against our will. The scope of the relevant draft Article is so wide as to be practically unlimited.

This is highly undesirable. The common law represents an important asset for the UK, and among other things it attracts significant amounts of inward investment into the City of London and facilitates our trade in the wider world where common law traditions are more widely shared than European ones. The civil law does not have the high political profile of criminal law but in terms of damage to our legal system as a whole the potential is in my view even greater.

As David says it is essential that we get the Treaty provisions right, and I fully share his concern that all of these questions be given equal footing with our strong positions on common foreign and security policy, tax and social security.

I am also concerned about the provision concerning access to justice which, as drafted, is clearly intended to extend Community competence in the field of civil legal aid. Last year we were faced with a proposal in that field which, if adopted in its original form, could have cost my Department in the region of £500 million per year to implement. It was only the limitation of existing competence and the unanimity requirement that enabled us to mitigate the effect, and I am very concerned about the possibility that these issues could be re-opened under QMV and the co-decision procedure.

I am sending copies of this minute to David Blunkett, Jack Straw, Gordon Brown, Peter Hain, Patricia Scotland, Sir Stephen Wall and Sir Nigel Sheinwald.

A handwritten signature in blue ink, appearing to be 'C. Falconer', is written above the typed name.

LORD FALCONER

26 June 2003

From: Stephen Wall

Date: 27 June 2003

PRIME MINISTER

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 minuted to you on 3 June (see my submission to you of
/ 6 June attached). He wrote again on 16 June on the same subject and Jack Straw
/ has now commented on that letter. Rather than wade through the whole lot, I
suggest that you concentrate on the Home Secretary's minute of 16 June and the
Foreign Secretary's reply. Both encapsulate the key issues we have to address in
the IGC. These are:

- (i) QMV for minimum standards and criminal procedural law. The Home Secretary and Foreign Secretary both argue that we need unanimity for minimum standards in criminal procedural law. In my view, both are right. Do you agree?
- (ii) European Public Prosecutor. The Home Secretary will not put up with it, at any cost, even with the unanimity lock that is written in. The Foreign Secretary (rightly) thinks that the unanimity lock may be as good as we can

get. But he suggests that we should look at the alternative approach of strengthening Eurojust, including (as I have been pressing on the Home Office, unsuccessfully, for months) an obligation on member states to prosecute in certain circumstances.

✓ Jack Straw's approach is sensible. If we can get rid of the EPP provision altogether in the IGC, all well and good. But we have limited support. And I think David Blunkett's assertion that "we would [not] be forgiven for conceding the principle of a European Public Prosecutor. And it would be very difficult for us ... to get this through Parliament in the run up to the next election" is exaggerated. The fact that we have the unanimity lock has already taken quite a lot of the sting out of this.

- (iii) Asylum. The Home Secretary's minute is right to suggest that we want to concentrate on outcomes more than on common minimum standards. But he fails to mention the important point which the Foreign Secretary covers namely that he (as Home Secretary) and David Blunkett have both publicly called for a common European asylum policy governed by QMV. Do you agree with Jack Straw's suggestion, therefore, that, while we should try and tilt the direction of policy in a different direction, we cannot renege on our existing public commitments?

Veg
Diff. it is
overrule
DB on
asylum.

Let me speak to DB.

- (iv) National security. Both the Home Secretary and Foreign Secretary agree that it is crucial to protect our national security interests from the scope of the Treaty. I agree. But this will not be easy. The present Treaty protects member states from the scope of the Treaties where "internal" security is concerned. Virtually all our partners oppose extending this

definition because they believe that we are the only member state that has the capacity to mount intelligence surveillance operations on their territory and they do not, therefore, want to give us a licence to do so. So I agree with the objective. And we are working closely with the Agencies. But getting what we want will not be simple.

- (v) Europol. Both the Home Secretary and Foreign Secretary agree that operations must be subject to the consent of the member states where they will take place. This must be right.
- (vi) Cooperation with the United States to fight terrorism. The Home Secretary wants a right to go on making bilateral deals, even where EU agreements are in place. The Foreign Secretary points out the limitations: we are unlikely to get our partners to agree to re-write the general rule of Community law that once the EU has put in place common rules, member states cannot assume obligations which might affect those rules or alter their scope. If they could, what is the point of having the common rules in the first place? So I agree with Jack Straw that this has to be a matter that we try to negotiate in the IGC. We will get some of what we want, not necessarily all.

If you agree, I will minute out saying that you agree that our preoccupations in the IGC need to be those identified by the Home Secretary, that our objectives are clear but that this will be a negotiation and that we must, therefore, take account of the negotiating realities identified by Jack Straw and build alliances, not draw new red lines where we will be isolated. You have identified our red lines publicly and clearly ("Issues to do with taxation, foreign policy, defence

CONFIDENTIAL

- 4 -

policy and our own British borders will remain the prerogative of our national government and Parliament"). We should stick with that list.


STEPHEN WALL

Yes but be careful we have
good men in the
rest.

CONFIDENTIAL



PM/03/049

PRIME MINISTER

faxed?

MS Gregg
JSW
Kw
MR
JG

SW

✓ Se MR

JR

EM

Future of Europe: Justice and Home Affairs PrioritiesSummary

1. I agree with many of David's concerns as set out in his minute of 3 June to you.
2. Peter Hain has reserved our position for the IGC on the remaining serious policy issues, and we will certainly need to pick up many of David's points there. The only areas where I have qualifications to David's position are on asylum policy, where we must avoid compromising our hitherto forward-looking position, and on Eurojust, where I believe there is a case for expanding its role.

Criminal procedural law

3. We cannot support QMV for criminal procedural law. This could challenge the key tenets of our common law system such as habeas corpus, pre-trial detention and admissibility of evidence. I agree with David that we should press for light procedural guarantees to make mutual recognition work, and to ensure that foreign nationals are not discriminated against in a case abroad. The right balance must be in advocating EU minimum standards for defendants, with clear language to protect the diversity of legal traditions. But this should be governed by unanimity to enable us to preserve our common law system. This is clearly difficult territory. We have little



support at EU level. Only the Irish fully share our concerns, given they too have a distinct common law system. We should develop further our arguments and pursue at the IGC.

European Public Prosecutor and Eurojust

4. I agree with David that we should continue to oppose a European Public Prosecutor (EPP). Prosecution decisions must remain at national – not EU – level. But given the strength of support from France and Germany, we are likely to face pressure to accept the unanimity lock in the IGC. And whilst we have allies on this, the Praesidium article is clearly drafted to buy off supporters.

5. We do need to be alert to the possibility of Eurojust becoming an EPP ‘by the back door’. But I believe there is a case for strengthening Eurojust, and allowing for it to be accorded new powers, under unanimity. We do not want situations to arise where Eurojust gathers compelling evidence against a suspect in a Member State but its prosecuting authority fails to take action. I think David’s suggestion to give national members of Eurojust the power to initiate an investigation while leaving the final decision as to prosecution to the national prosecutor would work. Another possibility, which I have suggested previously, is to enable Eurojust to oblige Member States either to prosecute or to extradite to another jurisdiction in the same circumstances.

Asylum

6. David is right that we should seek to tighten up the wording of the asylum article so as to retain our domestic flexibility to tackle abuses of the asylum system. In doing so, of course, we will need to take into account the



fact that both David and I have publicly called for a common European asylum policy governed by QMV which would ensure better protection for those genuinely in need of asylum, but provide for firm, collective action to deal with illegal immigration and the criminality which underlies it. (You also accepted at Amsterdam, with my support, the principle of moving to QMV for asylum, albeit by unanimity.) This is one of the areas in which we have again highlighted our readiness to move to QMV, and we should obviously not give the impression we are rowing back on this now, if only because doing so might risk compromising others' support for our efforts to work more closely with source countries and to write appropriate permissive language into the Treaty (as Vitorino has been ready to do).

National security

7. We must protect our national security interests. We have made progress in the Convention. We should take our remaining concerns to the IGC.

Europol

8. I agree that operations must be subject to the consent of Member States where they will take place.

Horizontal issues

9. David is right that we must be able to continue to make bilateral and multilateral agreements on law enforcement issues. I agree that we should press for explicit language, but there are limits on what we can achieve given the general rule of Community law that, once the EC, or in the future the EU,



has put in place common rules, the Member States cannot assume obligations which might affect those rules or alter their scope. I suggest that we should continue to press for this at the IGC.

10. I agree that we should be willing to consider preliminary rulings jurisdiction for JHA but that these should be limited to ensure that Member States can restrict the courts or tribunals competent to refer a case to the ECJ.

Negotiating tactics

11. We have tabled amendments in these areas in the Convention, but we do not realistically expect the Convention text to change significantly in the technical exercise that remains for Part Three. We will need to pursue these issues at the IGC. Although we have some support for our basic positions, we will come under pressure. So we will need to work up a clear strategy, including positive alternative drafting so as to be constructive at the IGC.

12. I am copying this minute to David Blunkett, Gordon Brown, Charlie Falconer, Peter Hain, Patricia Scotland, Sir Stephen Wall and Sir Nigel Sheinwald.

(JACK STRAW)

Foreign and Commonwealth Office

26 June 2003



JPo.

FCS/03/132HOME SECRETARY

OK

for summary

FAXED

Convention on the Future of Europe: UK Team

1. As you will know, we have been fortunate enough to have Patricia Scotland as a member of the UK team on the Convention on the Future of Europe. That team has been very successful, and Patricia has played a key role. Without her skilled participation, and her willingness to devote time and energy to the Convention, we would have been hard pressed to achieve as much as we have.
2. Peter Hain's new responsibilities mean he will be unable to attend the last two sessions of the Convention on 4 July and 9-10 July. I would therefore be grateful for confirmation that you are able to release Patricia for the final Convention meetings in order to ensure that the UK is as well represented in the debate on Part III as it has been for the previous 15 months.
3. I am copying this minute to Peter Hain, Baroness Scotland, Jonathan Powell and Sir Stephen Wall.

(JACK STRAW)

From: Stephen Wall

Date: 18 June 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**

CONVENTION

In my minute of 13 June, I suggested that the Convention outcome is pretty good for us. In what was a Giscard-engineered truce, rather than a genuine compromise, we have been able to secure a full-time Chair of the European Council, a mechanism to enforce subsidiarity, a smaller Commission after 2009, and good language making it clear that the EU's powers flow from the Member States.

There is, however, a number of outstanding problems, which will require varying degrees of effort to address. This will need careful handling: the Convention outcome does carry a certain amount of moral authority (particularly in the eyes of those most pleased with its outcome, in Paris and Berlin), and it will not be easy to unpick – or necessarily to our advantage to do so.

The outstanding difficulties in Part One include:

- the inaccurate summary of the doctrine of the supremacy of EU law in Article 10: "*The Constitution, and law adopted by the Union's institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.*" This will not be easy to change. We are suspected of having a hidden agenda and disputing the principle (not true);
- the inaccurate statement in Article 11(3) that "*the Union shall have competence to promote and coordinate the economic and employment policies of the Member States.*" We have been trying to push ECOFIN agreed language that more accurately summarises the situation. This may stand more chance in the IGC. The same applies for Article 14, which attempts to set out the Union's role in economic policy in more detail;
- the job description of the Chair of the European Council in Article 21, which does not give him/her an explicit role vis a vis the other Council formations, and does not close off the theoretical possibility of the job being merged with that of the President of the Commission. This will be an issue for the IGC. The opposition, led by the Benelux, will seek to weaken the European Council Chair, while we may already have achieved as much as the market will bear;
- the miraculous survival of the Legislative Council, albeit merged with the General Affairs Council, in Article 23. The IGC, freed from Amato's influence, ought to be able to apply the coup de grace;
- Article 24(4): the so-called *passarelle*, which would allow the European Council to change any article in the Treaty from unanimity to QMV, without a full IGC. I do not think that this is necessarily disastrous, especially if we

could win amendments elsewhere – e.g. you could use it to try to prevent another IGC for a significant period of time – but we should try to remove it for now. And you will want to think carefully about the politics of this;

- The title of and detailed position of the “Foreign Minister” in Article 27(3). The current draft places him in the Commission as a Vice-President and leaves him “*bound by Commission procedures*” (i.e. collegiality) for first pillar issues. The FCO (and the French) want the Foreign Representative to be entirely exempt from collegiality, as this would lead to him taking the Commission side in a Commission/Council disagreement on a policy which mixed Community and CFSP elements (e.g. trade and human rights). Although we need to get the hard wiring of the job right, I doubt whether this maximalist line is negotiable. We should instead be ensuring that the Council has the final word on conflicts with the Commission on external relations (which may mean that the Foreign Representative cannot chair the Foreign Affairs Council). In other words, we need to make sure that the double hatter is the creature of the Council, without attacking the existing prerogatives of the Commission;
- Procedures obliging Member States to consult one another extensively “*before undertaking any action on the international scene*” (Article 39(5)). You have said that we should try to delete – no success so far. We do not have much support for our position, but will try again in the IGC;
- Enhanced co-operation provisions in Article 40(6) and 40(7). Both provisions – one for “*more demanding missions*” for those Member States who have “*made more binding commitments to one another*”; the other for a mutual

territorial defence pact – would undermine ESDP and NATO and are unacceptable. Again, a battle for the IGC;

- QMV for the detailed arrangements for Own Resources (Article 53). We just have to say “no”;
- The deal on the Charter (Part II of the Treaty), where we have secured almost all the package the Attorney General had asked for, including a reference to the Charter being “*interpreted by the Courts of the Union and the Member States with due regard*” to Commentary. Unfortunately this is in the preamble to Part II, rather than the text of the Treaty itself. We are reflecting on this: although we have already secured a pretty remarkable result which has annoyed the MEPs no end. It will still not be enough for the Attorney. The Dutch and Irish remain with us.

There may be a push at Thessaloniki by the French and Germans to get an agreement that we should not re-open the Convention deal on the institutions at the IGC. This is because (a) Chirac and Schroeder are broadly happy with what they have and do not think it will get any better in the IGC; and (b) the Germans at least want a short, sharp IGC conducted at a political level “without bureaucrats”, as Fischer puts it.

Should we support them? There could be advantages:

- the deal is not bad for us. We get most of what we want, in particular a full-time Chair of the European Council, which seemed a long way off six months ago. The Benelux and others would not be able to weaken it. We also get a

smaller Commission and the status quo on the method for selecting the President of the Commission;

- we would show the French and Germans, at the first time of asking, that we were serious about a trilateral leadership relationship;
- we would isolate the ultra-Small (Finland, Portugal, Austria). And as they would then veto the idea, we would actually be taking few risks on the substance.

The downsides would be:

- The deal is not perfect. We would like the Chair to have an even more explicit role in chairing the GAC and co-ordinating the work of the other Councils (although the final Giscard text is more or less OK and as much as the market will bear). We would be lumbered with a Single Legislative Council. We would be left with "a Foreign Minister" without the safeguards we want;
- We would be reneging on Peter Hain's rash deal with the Spanish to support them opposing a move to dual majority voting, in return for them opposing QMV on tax and social security;
- We would have some explaining to do domestically, in particular on why our line about "no decisions until the IGC" had suddenly changed;

- We may get calls for the IGC to leave other aspects of the Convention final product alone (e.g. CFSP, defence), where we are much less comfortable.

On balance, I think our position in policy terms should be that we could agree not to re-open the institutions package if everyone else could. But it should be clear that we could not do a similar deal on any other part of the Convention outcome. And the politics of saying 'yes' now would be difficult. Provided you came in late enough in the discussion, I think it should be clear that Part One is not capable of acceptance as a package and so should not therefore be called to make the difficult choice.

On Part III of the Treaty, you will be asked to grant Giscard some extra time to finalise the text by the middle of July. This is alright for us.

In the IGC, the changes to the current draft we still need to make are:

- On extensions of QMV/Co-decision. These fall into several categories:
 - Tax/Social Security for migrant workers: Giscard proposes QMV for ex-Article 42 (Social Security), and a case by case passarelle for ex Article 93 (Tax). We have good alliances on both issues (including, thanks to our deal, with the Spanish) and ought to be able to see off any renewed pressure for "full" QMV on tax and on social security;
 - Social: QMV for ex-Article 137 (nearly all aspects of social policy, including termination of contracts). The Germans now oppose (Schroeder

wrote to Giscard), and the proposal now is to retain unanimity. We want to keep it that way;

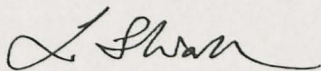
- Economic/Monetary: co-decision for the EP in several aspects of monetary policy, including on the ECB's statute. ECOFIN and the ECB both oppose – we should be reasonable company;
 - Structural Funds: we should let the Spanish lead the opposition to co-decision, and should not re-open the Nice deal to introduce QMV from 2007 (all ex Article 161);
 - CAP: we should let the French take the heat on opposing co-decision (ex Article 37);
 - JHA: we need to oppose QMV in criminal procedural law and for new powers for Eurojust (both ex TEU Article 31);
 - Commercial Policy: we should let the French take the heat on moves to QMV for trade in services on cultural and audiovisual matters. Which they will.
- Economic and Monetary Policy: the Treasury want us to continue to oppose the Giscard proposals which would give the Commission the power to make “proposals” rather than “recommendations” on the excessive deficits procedure. This choice would mean that unanimity would be required to amend Commission texts in this area. The French and Germans will continue to support Giscard's proposals, even though ECOFIN as a whole back us;

- New Treaty bases: sport, energy, space, administrative co-operation, civil protection. We need to look carefully at each on a case by case basis. The language on sport is too wide ranging. It calls for the Union to promote “European sporting issues” and “develop the European dimension in sport, by promoting fairness in competitions...and protecting the physical and moral integrity of sportsmen and women.” We want a more limited article, that would allow the Union only to support Member States’ policies (as with education policy) and which would ask the Union to recognise the specificity of sport when framing other policies (e.g. competition policy). The article on space may have cost implications. There is a potentially difficult part of the article on energy which, in rather dirigiste terms, calls for the Union to “ensure security of energy supply”;
- JHA: other than opposing moves to QMV on criminal procedural law and new tasks for Eurojust, we should ensure that the creation of a European Public Prosecutor can only be made by unanimity. We also need to ensure that Europol can only operate on a Member State’s territory with their explicit consent. The Home Secretary will want you to continue to resist moves to harmonise Member States’ asylum systems, although, given that this would be a policy U turn, it will be difficult;
- Agency concerns. These include the need for a general carve out for Member States from Union rules when dealing with “national security.” Helpfully, the idea is already in the draft Treaty, but only in terms of “internal security”, which is the wrong terminology: it is the same language as the competence the

Union already has in the JHA field. We also need to ensure that Union rules on data protection include a carve out on these grounds;

- CFSP: the big issue for the last weeks of the Convention. The Germans and the EP will be pushing hard for more QMV and the removal of the Emergency Brake. We do need to discuss these issues with the French and Germans: I hope to be able to prepare a trilateral with my opposite numbers soon. In particular, we need to reflect on whether we could live with a small extension of QMV, provided we keep the Emergency Brake provision – Article 196(2). This allows a member of the Council to declare that “for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be taken by qualified majority.” This then allows the Council by Qualified Majority to refer the issue to the European Council for vote by unanimity. Without engaging with the French and Germans we may find that the position in the Convention shifts despite us. We have little support;
- Defence: we need to get rid of the detailed provisions for implementing the enhanced co-operation provisions in Part I, which would allow small groups of Member States to undertake operations with an EU flag, or enter into a mutual defence guarantee. We are looking at the language on the latter point carefully. My own reading of it is that implies that the territorial defence pact could not apply to members of NATO - “These provisions shall not affect the rights and obligations resulting, for those concerned, from the North Atlantic Treaty.” That would in legal terms rule out pretty much anyone that would actually want to do it. The Germans argue that this makes it acceptable. We argue that it makes a dangerous dog’s breakfast. For, in practice, since there

is no means of enforcing CFSP legally, the political implications would be more important than the legal constraints.

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

STEPHEN WALL



PRIME MINISTER

From: Jonathan Powell

Date: 17 June 2003

cc: Alastair Campbell
Sally Morgan
Peter Hyman
Stephen Wall
Jeremy Heywood
Pat McFadden
Steven Morris

RE-LAUNCHING BRITAIN IN EUROPE

We met Ed Balls and his gang last night. It became clear from the meeting that they have no interest in re-launching Britain in Europe. Instead they want to let it die and replace it with a multi-year government campaign making the case for Britain in Europe and a partisan campaigning attacking the Tories. They see the main problem with Britain in Europe so far as having been the attacks on the Government and more particularly on the Chancellor. They clearly do not think a referendum next year likely – they were talking about how this new campaign could be helpful in setting dividing lines for the General Election. They certainly don't want a "Yes" campaign.

As agreed at the meeting I have drawn up a paper that looks at the two options – letting BiE collapse and replacing it with a government/Labour campaign or re-launching BiE, although I have no doubt that the only sensible option is the latter. We fear however that the Treasury will refuse to co-operate with any re-launched BiE that does not follow the government line to the letter and completely accept the five tests. And there is not much point in re-launching it if HMT won't work with it. You will need to try to pin down GB. I am worried that we are going to run out of time, and that BiE will collapse regardless. **Do you want me to send this paper to the Treasury?**

Yes. We need as well from them and

We also have the usual problem of a lack of good names, or at least only being able to find good names that will almost certainly be vetoed by the Treasury. And even if we can find good people, persuading Colin Marshall et al to ride off into the sunset quietly will not be straightforward.

On the money, I think we can persuade David Sainsbury to carry on funding it. But he will need to meet you and GB before agreeing and he will press you hard



on the probability of having a referendum next year. Shall I fix a meeting with both of you?

yes.

J-P

JONATHAN POWELL



OPTIONS FOR BRITAIN IN EUROPE

Britain in Europe has not really worked from its inception.

It was set up as a pro-Euro campaign but was then torn between wanting to campaign for the Euro and wanting to support the government line. In an attempt to keep the Tories and Liberals on board it went to great lengths to build consensus and as a result was able to do very little; for example it was not ready to attack the Tory Party as anti-European. In short it was hamstrung as much as anything by the government's position on the issue and not knowing whether it was a government support organisation or a campaigning organisation attacking the government.

But Britain in Europe also has a number of structural failings.

The board is too slanted towards big business. There is no persuasive talking head to go up on TV. The media operation is weak and not taken seriously by the media. Its decision-making processes are cumbersome and time consuming. Unlike the "No" campaign it cannot operate as a guerrilla operation. Its morale is low.

If nothing is done it will go bankrupt next week and close.

We have two choices:

A: Let BiE close, replace it with a government campaign and a Labour Party campaign.

If what we need is a government centred campaign making the case for Britain in Europe and painting the Tories as determined to take Britain out of Europe, and our aim is not to establish an embryo "Yes" campaign, then the best course may be to let BiE collapse.

At the same time we could announce the launch of a government pro-Europe campaign. We would try to make the dividing line in or out. The campaign could be funded by the government, with a unit in the Cabinet Office, Ministers taking the debate out into the country and paid advertising. Building on the Chancellor's recent speeches we could try to give the government a new pro-European slant. In addition we could set up a Labour in Europe campaign headed by a recently retired Minister to make the partisan attack on the Tories that could not be

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Minute dated
17. 06. 2003



organised by the government. This would involve relatively limited funds and could operate as a guerrilla operation.

If a "Yes" Campaign sprang up, it would do so independently of government and without our support.

The advantage with this approach is that we can conflate the debate on the Convention and the Euro over the next year so that the dividing line is in or out of Europe. The government would have a united approach and the operation would be completely under our control.

There are however clear problems with this option. The collapse of BiE would be seen as a major setback for the prospect of a referendum next year. We would be attacked for using government funds for a pro-campaign when the antis were denied funding. And it would not look much like an attempt to build a pro-European consensus if our first step was to throw the Tories and Liberals off the organisation and begin a series of partisan attacks on the Tory party in general.

B. Re-launch Britain in Europe

If letting BiE fail sends the wrong signal, the alternative would be to rescue and re-launch it.

We would need to draw up a clear campaign for them. Its aim would be to make the case for Britain in Europe in support of the government, and against those in favour of pulling out – whether Tory or Labour. And it would out-flank the government by campaigning for an early referendum on the Euro, stressing the advantages of membership and the costs of staying out. It would be an embryo "Yes" campaign. They would rally round the argument "We thought the economics were already good enough, but we will defer to GB's judgement that the time is not yet right. Now we and all pro-Europeans should rally, with TB and GB, to build a pro-European consensus, and when the time is right, saying Yes to the Euro". The tent would be big enough to include people who want to join now, although quite a few of them would desert.

We would need to appoint new leadership – both chairman and CEO. Colin Marshall is retiring from most of his jobs so we could lever him out of this one too. There is a case for Chris Gent as chairman because he wants to do it and because he would inject dynamism. But he could not be used as a talking head for the organisation. If we wanted that sort of chairman we should look for a Trevor



Macdonald/Richard Branson type figure. But it is not clear that any such person would want to risk their personal brand by putting their head above the parapet in the current climate.

For the CEO we should go for a political figure. Most of the obvious ones are ruled out for one reason or another. There may be a case for going for a lower key but effective political operative like Shaun Woodward. But we would need to find someone acceptable to No 10 and HMT so that they could work with both.

We need a new board, which diversifies away from big business. Steve Morris will come up with names of people who can be approached including sportsmen, small businessmen, trade unions, politicians, academics, professionals, journalists etc.

Alastair, Peter and Pat will draw up a plan for a new media operation and will find a new head for it who the lobby will listen to. Nearly half the headquarters staff should be laid off and replaced by a slimmed down organisation of say 15, while keeping the regional operations intact. The No campaign is far more effective with a much smaller staff.

We would establish a new fundraising arm to put the organisation on a long-term sustainable basis. In the meantime we would need to find money from David Sainsbury and elsewhere to prevent it collapsing in the next few weeks.

The new organisation would need to work much more closely with government. There should be a committee with No 10 and HMT representation meeting weekly with the chair and CEO. The Chancellor and PM should also meet periodically with the board.

This could be coupled with the sort of government campaign on Europe described above.

Re-launch

The Prime Minister and Chancellor need to discuss these two options and come to a rapid conclusion so we can announce a decision next week. Changing the members of the board and the organisation while keeping the Tories and Liberals on side would not be easy. A re-launch itself would need careful planning between No 10 and HMT and the new leaders of the organisation.

SUBJECT
MASTER
Filed:



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

Personal Minute

THE RIGHT HONOURABLE BARONESS SCOTLAND OF ASTHAL QC

I have written separately to Peter, but wanted to place on record my thanks to you for everything you have done on the Convention so far.

I know it has been a real chore, along with everything else you have to do, and I am most grateful to you for the whole-hearted way in which you have committed yourself to it and for the very considerable skill with which you have negotiated our way through, especially on the Charter.

I know you have been very ably supported by your officials and my thanks go to them as well.

Tony

16 June 2003



10 DOWNING STREET
LONDON SW1A 2AA

SUBJECT
MASTER
Filed:

THE PRIME MINISTER

Personal Minute

**LEADER OF THE HOUSE OF COMMONS, LORD PRIVY SEAL AND
SECRETARY OF STATE FOR WALES**

You have done a tremendous job on the Convention and I want to thank you most warmly for it.

We always knew it would be a huge task, but I think it turned out to be even bigger than we anticipated. I know that it required real leadership, intellectual input and sustained negotiation on your part to achieve the good outcome we have so far secured. So thank you very much for giving it your all over the past months.

I am writing separately to Patricia Scotland but I want to place on record here my thanks to all of your team, both London and Brussels based, for the advice and support they gave you. It has been a really coherent, professional team effort.

After this, Leader of the House can hold no terrors for you.

I am copying this minute to Jack Straw.

16 June 2003

Tony

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MDDPAN 2509

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INFO PRIORITY EU POSTS, WHIRL

CABINET OFFICE PLEASE PASS TO NO 10 FOR WALL
CABINET OFFICE FOR HEARDMAN, GRIFFIN

SUBJECT: CONVENTION: A GERMAN REFERENDUM?

Summary

1. Kanzleramt repeat their concern about a possible referendum in Germany on the Convention.

Detail

2. When I saw him this morning Schroeder's EU Adviser Silberberg raised the possibility of a referendum on the outcome of the Convention. Did we plan to hold one? I said that we did not and very much hoped the Germans would not do so either.

3. Silberberg said that the Chancellor and Foreign Minister were firmly against. But there was a majority in each party in the Bundestag in favour. He hoped that the Government could hold the line. But he could not rule out the possibility of the Government being forced down the referendum route by the Bundestag. This could come to a head in the autumn.

4. I noted that a referendum would require Constitutional amendment. Was this realistic? Silberberg said that - if those in favour could muster a two-thirds majority in both houses - the proposal could be pushed through within a couple of months. He asked that we use our contacts with the CDU/CSU and the other opposition parties to argue the case against a referendum. I told him I had already made this clear to Angela Merkel, who had said the CDU were opposed.

TORRY

YYYY

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PAGE 1

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Jacob Powell

Clement said the German

Government would stand firm

v. a Constitutional change.

I'm not so sure. Worth exploring to

Guinevere - XH 16/6

RESTRICTED

MDDPAN 2509

EUROPEAN POLITICAL

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PM/03/047

PRIME MINISTER

Prime Minister

Jonathan Powell

Sally Morgan

Pat Mullen

Pete Hume

Lord Alton of Liverpool

Lord Sumner

*This looks on. Are you content?
We need to decide whether you are going to
be involved in the 2 July debate*

Will

16/6

The Convention on the Future of Europe and Parliament

1. To sustain the strong arguments against a referendum on the Treaty outcome of the Convention and IGC, we have to ensure that Parliament, and especially the Commons, is actively involved in scrutinising the results of the Convention and in considering the positions the Government should take at the IGC.
2. The Convention will be discussed in this Wednesday's (routine) debate on the Thessaloniki Council, in your statement on Monday week and in a full day's debate in government time on the Convention itself, which Business Managers have already agreed should take place before the recess (and which I announced to the House during this week's opposition debate).
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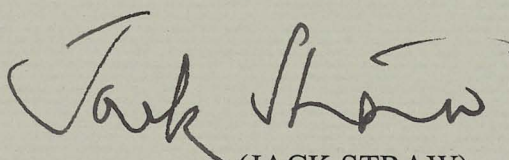
variety of Parliamentary Committees (FAC, European Scrutiny, etc).

We may as well do this to the House as a whole;

- (ii) consult with Business Managers and the relevant Parliamentary Committees on the best approach for scrutinising the draft Treaties, by which a wider range of MPs and Peers can be involved;
- (iii) consider whether we should have a substantive Motion before the House for our July debate rather than having a debate dribble away on a Motion for the Adjournment. This approach worked successfully on Iraq, as you will recall;
- (iv) consult with the Devolved Administrations and local authority associations on how we involve them.

4. I would be grateful for your agreement to this approach. I should like to announce the preparation of the White Paper during this Wednesday's debate.

5. I am copying this minute to John Prescott, Gordon Brown, Hilary Armstrong, Alistair Darling, Peter Hain, Charlie Falconer, Sir Stephen Wall and Sir Nigel Sheinwald.


(JACK STRAW)

Foreign and Commonwealth Office

13 June 2003

From: Stephen Wall
Date: 13 June 2002

PRIME MINISTER

cc: Jonathan Powell
 Jeremy Heywood
 David Manning
 Roger Liddle
 Matthew Rycroft
 Sir Andrew Turnbull
 Sir Nigel Sheinwald
 Katrina Williams

EU UPDATE

The Convention has finished its immediate work (see separate note). Quite a lot has been going on in other parts of the EU forest:

Agency Workers directive

Our alliance held firm at the 3 June Employment Council, enabling us to block agreement. The Italians have said that it will not be a high priority for their Presidencies. Nevertheless, it will almost certainly return to the Council in the autumn. We need to continue efforts to ensure the Danes, Irish and especially the Germans remain with us, possibly beyond the point at which agreement on the Takeovers Directive is reached.

Tax Package

An Italian stitch-up on the unrelated issue of milk quotas allowed Ecofin on 3 June finally to agree the tax package following 14 years of negotiation. This provides for exchange of information on savings income between 12 of the 15 Member States plus the accession countries. There is

also a requirement for a sufficiently high rate of withholding tax in the others as well as in Switzerland. This fully protects the City's position.

CAP reform

The Agriculture Council broke up after two days this week in what was little more than a preliminary skirmish on CAP reform. Fischler has so far stood firm on the need for substantial reform with no unpicking of the principles of his package. The real business of agreeing a deal will start when the Council reconvenes on 17 June to discuss a Presidency compromise. This timing is potentially risky: the Council will be meeting at the same time as the European Council and Chirac may well be tempted to interfere, regardless of what he said to Schroeder last week.

EU/US Aviation

Transport Ministers have agreed a mandate for the Commission to negotiate a liberalising air transport agreement with the US. This will take the place of the separate bilateral agreements we and other partners have with the US now. It could bring big benefits for UK airlines and passengers through greater access to the US market; the mandate was welcomed by BA and in the press. Negotiations will be launched at the EU/US Summit on 25 June, but will take years to conclude, because the Americans, typically, want unfettered access to our market without offering anything in return.

MEPs' Statute

MEPs last week agreed new rules linking their travel expenses to actual costs. But they tied this to the Council's approval of a Statute setting out new terms for their pay, pensions and immunities, in the knowledge that several aspects (eg no scope for national top-up tax, over-generous pension arrangements) were unacceptable to member states. The Presidency are writing to Cox spelling out the Council unanimous position, but signalling that member states are still open to dialogue. Don't hold your breath.

European Political Parties Statute

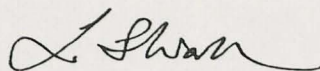
New rules on EU funding for European political parties look set to be agreed next week. These are likely to mean that parties active in at least 5 member states will qualify. The rules are sufficiently flexible to permit the Conservatives to qualify (something they were promised by ministers) despite not being fully signed up members of the European People's Party. Denis MacShane will write to Party Chairs.

Environmental liability directive

Environment Ministers are today considering a directive on environmental liability designed to enforce the 'polluter pays' principle. Margaret Beckett is trying to kick this ill-considered and potentially expensive directive into the long grass. But the Greeks are hell bent on getting an agreement. At the time of writing, they are doing everything possible to buy us (and the similarly-placed French) off. We will strive to keep a blocking minority unless our requirements are met.

Alison Brimelow

Despite Alison Brimelow being the preferred candidate, last week's elections for a President of the European Patent Office resulted in stalemate again, thanks to French bullying on behalf of Pompidou Jr. There will be a further round of voting in October. There may be a need for new candidates if there is to be a result. Alison is currently considering her position. Should Pompidou insist on running again, she will (rightly) want to follow.

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

STEPHEN WALL

File

From: Stephen Wall
Date: 13 June 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

THE CONVENTION

The work of the Convention on Part I of the Constitutional Treaty (the institutional framework) and Part II (the Charter of Rights) ended today. Consensus was declared on a disagreed text and argument (mostly between large and small member states; and between member governments and members of the European Parliament/the Commission continued until the last minute). Peter Hain managed, rather cleverly, to appeal to the warring parties to rally round Giscard while, at the same time, making clear that we continue to have disagreements with parts of the text that will need to be carried through to the Intergovernmental Conference.

We will do you a full analysis of the outstanding difficulties before Thessaloniki next week. Broadly speaking, the text remains very good on its clear statement that the powers of the Union are those that the member states choose to give it. We have the chair of the European Council elected for 2½ years (renewable). We have a reasonable subsidiarity mechanism. Unanimity is maintained for tax

(via a clause that allows for QMV if everybody so agrees) and for foreign policy (via the emergency brake procedure).

There is provision for a smaller Commission (13 European Commissioners, selected on the basis of a system of equal rotation between the member states, starting in November 2009).

Less good are the maintenance of the following:

- (i) "The Union shall have competence to promote and coordinate the economic and employment policies of the member states."
- (ii) A role for the President of the European Council which is not as comprehensive as we would like and which keeps open the theoretical possibility of somebody other than an existing or previous head of government being chosen as the chair.
- (iii) A general provision (in addition to all the specific moves to QMV proposed in Part III) which would allow the Council by unanimity to move individual articles to QMV ie without treaty change. We had argued that such a move was only acceptable if the individual shifts to QMV were deleted.
- (iv) Continuing provision on defence cooperation which would allow small groups effectively to set up territorial defence arrangements inconsistent with article 5 of the NATO Treaty.

As you know, in the last phase of the Convention we came under a lot of pressure from Joschka Fischer to agree to a general rule allowing super QMV in foreign policy. In the end, Jack Straw had to tell him fairly firmly that this was simply not acceptable. We will need to try and come to an agreement with the Germans and the French on this but we should not attempt to do so in the few days before Thessaloniki. If we make a move now it will be pocketed and become the baseline for the negotiation over the next few months. Once Thessaloniki is over, I propose to explore these issues with the French and Germans (hopefully *à trois*) as a basis for future discussion between you, Schröder and Chirac.

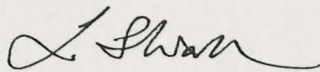
The Presidency's present plans for Thessaloniki are to have the European Council decide that the text of the draft Constitutional Treaty "should be [the starting point] [a broad basis] for the Intergovernmental Conference". The European Council will ask the Italians to convene the IGC in October, with a view to its finishing by the end of March 2004. This is sensible.

The Germans, supported by the Italians, may fight a rearguard action to cram the whole thing into a very few weeks so that it is over by the end of the year. I see no possibility of this. The small member states are very dissatisfied with the outcome and I cannot see the Portuguese, or the Finns, or the Austrians allowing this to happen. So it should be a battle that we do not have to fight.

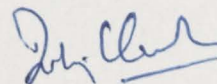
The Convention will meet again for a few days in July to consider Part III of the Treaty. In many ways, this is the most important part because it has all the legislative detail, including objectionable provisions on QMV in foreign policy. The task on Part III is too great for a short Convention meeting to do much about

and pouring over that text will be the main work of the IGC and will take up most of the time between now and next March.

/ So far, so good. And a great deal of credit to Peter Hain, who has really given his all to this negotiation. I attach minutes of thanks to him and to Patricia Scotland as well as thank you letters to John Tomlinson and Gisela Stuart.

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

STEPHEN WALL

**From: Roger Liddle****Date: 13 June 2003****PRIME MINISTER****Cc: Jonathan Powell
Stephen Wall
Sally Morgan
Alastair Campbell
Peter Hyman
Steve Morris
Matthew Rycroft
Joe Griffin, CO****CONVENTION FINALE**

I left Brussels on Friday as the champagne was being uncorked. Peter Hain was giving interviews to every camera in sight – “big step forward for Europe..
...Convention has done a good job...the outcome a strong foundation for the negotiations to come”, though his press statement made clear that there are key issues where there are still serious disagreements. Nevertheless it was good to see us on the front foot on Europe, though doubtless the Tories and the Daily Mail will be spinning into outer space with the European Constitution marking the end of Britain, along with the abolition of the Lord Chancellorship!

The outcome is actually a triumph for us. **We have come from nowhere to secure within two years a permanent chair for the European Council.** The proposal wasn't in your first Warsaw speech, because none of us at the time had thought of it. I remember first discussing the idea with Chirac's advisers just before our 2001 election – but they were reluctant to be bold because of Jospin. Jonathan got very keen. Most of our diplomats thought it unnegotiable. The fact that we have got so far is an unsung tribute to British-French partnership. It also reflects the fact that we have flogged it endlessly round every capital and we

shaped the Convention around our agenda from the start. It shows how Britain can lead in Europe as long as we have a clear position that we can argue in pro-European terms.

We could not have done it without Giscard, and also Amato. Your instinct at Laeken not to go for Wim Kok has been proved absolutely sound.

Of course we have not won yet. **The IGC could still unravel it all.**

- **At the final meeting of government representatives, the Austrians, Portuguese, Lithuanians and Finns made clear their continuing opposition.** However, working in our favour, the previously solid phalanx of 'smalls' opposed to the Chair has been broken. The Dutch, Irish and Estonians publicly accept it as a part of a package. Others are quiescent.
- **If we are seen to be leaders in 'unpicking' the bits of the Convention we don't like in the IGC, we will open the Convention's institutional compromise which I believe is stacked in our favour.**

So if you accept this line of argument:

- **At Thessaloniki, we should be supporters of forward language on the Convention. It should be more than a 'starting point' for negotiations.** On the key issue it is where we want the negotiations to finish!
- You will have to sit hard on Foreign Office tendencies to propose a British amendment to every paragraph, desirable though some of these amendments may be. By all means at a technical level, try to improve the text, but in terms of issues we push politically, my advice is to stick to very few.

Stephen's report will have catalogued the progress we have made and the areas that still cause us real concern.

- (i) defining the 'special status' in the Commission of the **double-hatted European Foreign Minister**. No doubt the wording on the Foreign Minister's ultimate accountability to the Council could be strengthened. But I am in absolutely no doubt that **if we press for the post to be taken out of the Commission, then the more federalist countries will regard the institutional deal as "off" and we will lose the European Council Chair.**
- (ii) pressure from the Germans, with the French, Spanish and Italians pretty acquiescent, to **widen majority voting in the implementation of CFSP**. Everyone accepts that Europe's common policy should be set by unanimity in the European Council. As Joschka Fischer told us (he was hyperactive in the closing phase), there can be no quick fix to a common policy over issues like Iraq through QMV. The argument for more QMV is a different one. For example, we all agree on bringing Russia closer to the EU and on the main lines of progress: but what happens when Lithuania blocks proposals on border management because of some special problem relating to Kaliningrad. The issue is not one of peace or war. It is often trivial as far as the rest of us are concerned. But under the proposals in the existing Convention text, Lithuania could claim the issue concerned its vital national interests and apply the "emergency brake". The German solution is that **we should swallow 'super qualified majority' as a way round these blockages** – so that two 'big's' can block anything, but an 'isolated

tho. we cannot do that

small' can't. Personally I think it is in the British national interest to agree to something on these lines: if we are ever to establish a pro-European consensus in Britain, we have to confront the mentality that 'Britain Stands Alone'. But it may be all too difficult;

- (iii) **enhanced cooperation in defence.** You oppose the Convention provision for the possibility of a mutual defence guarantee among an EU inner core. MOD oppose any form of enhanced cooperation in defence except possibly on procurement. It seems to me self-evident that if European Defence is to develop, then enhanced cooperation is both inevitable and a good idea. You are seeking to strengthen the European pillar of the transatlantic partnership through the institutions of the EU, in a way compatible with NATO. How else can the limited number of countries who are serious about defence take matters forward, except by enhanced cooperation? So we need to clarify our thinking before the IGC. Ideally I would hope that from your dinner with Chirac has come the idea of **a new initiative with the French to take forward European defence.** If as part of this we can agree principles for enhanced cooperation **on NATO compatible terms,** we can then incorporate these in the Treaty.

On QMV, **we should stand our ground where we must** – for example on criminal procedure and probably, social security (though the Dutch Minister de Vries made a strong case to me as to why lack of harmonisation is a big obstacle to cross border labour market flexibility between the Netherlands and Germany). Effectively we have already **won on tax with the support of 9 of the EU of 25.** And a big achievement of the closing days of the Convention is the Praesidium's decision to **keep the whole of the old Article 137 on industrial relations and**

employment law at unanimity. This will sugar the bitter pill of the Charter for the CBI, though on that we won nearly everything we were asking for.

All the Tories can focus on is the so-called 'passarelle' clause. They will condemn it as the federalist slippery slope. But **the clause permits a long period for debate and approval by national Parliaments before the European Council can agree by unanimity to move an article to QMV.** This balances the rights of national Parliaments with the necessary flexibility for Europe to adapt without full Treaty change, thereby reinforcing the permanence of the Convention settlement.

You need to have a strategy meeting on the IGC before positions get too entrenched and we make commitments to Parliament.

Signed electronically
Roger Liddle
13.6.03

ROGER LIDDLE

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PM/03/047

PRIME MINISTER

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The Convention on the Future of Europe and Parliament

1. To sustain the strong arguments against a referendum on the Treaty outcome of the Convention and IGC, we have to ensure that Parliament, and especially the Commons, is actively involved in scrutinising the results of the Convention and in considering the positions the Government should take at the IGC.
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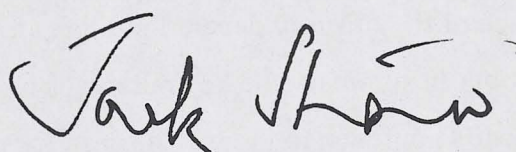
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We may as well do this to the House as a whole;

- (ii) consult with Business Managers and the relevant Parliamentary Committees on the best approach for scrutinising the draft Treaties, by which a wider range of MPs and Peers can be involved;
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(JACK STRAW)

Foreign and Commonwealth Office

13 June 2003

FAXED -11/6-25.

From: Stephen Wall

Date: 11 June 2003

PETER HAIN

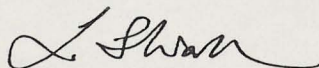
cc: Nigel Sheinwald
Alastair Campbell
Roger Liddle
Joe Griffin
Steve Morris
Katrina Williams
Paul McGrade
Kim Darroch

EUROPEAN CONVENTION

This is a draft of the kind of statement that I think you need to make on, say, Thursday of this week so that our position is put on record in a way that we can quote publicly, but which also means that you do not have to voice dissent at the moment when the Bulgarian bubbly is poured.

“The Convention has done a good job. The Constitutional Treaty will be simpler, clearer. It will help us run a more efficient, effective Union after enlargement and provide legal certainty and stability for a period of many years.

Over the past weeks, I have tabled a number of amendments. Some of them raise serious policy issues – on foreign policy and defence; tax harmonisation and criminal law, for example. Others are to help achieve clarity in what will become a legally binding document. These unresolved issues will be discussed in the Intergovernmental Conference that will build on our work. But I believe the wide agreement we have been able to reach here will provide a good basis for the remainder of the Union’s work over the coming months.”



STEPHEN WALL

CONFIDENTIAL

From: Jonathan Powell
Date: 11 June 2003

PRIME MINISTER

cc: Stephen Wall
Jeremy Heywood
Alastair Campbell
Sally Morgan
Pat McFadden
Peter Hyman

EURO: CHANGING GEAR

We need to establish some sense of forward momentum on the Euro in the next couple of weeks or the issue will be dead in the water.

We will fix the first of a regular series of meetings with Gus O'Donnell, Ed Balls and Douglas Alexander in the next couple of weeks. In the meantime I have commissioned the following pieces of work:

- 26.6.03
10.6.03
- a) Cabinet Committee: you need to square GB on the TOR and membership today or tomorrow. We can announce it as part of the reshuffle. We will arrange the first meeting next week. We will set up a new secretariat in the Cabinet Office including a press unit. **Stephen Wall and Andrew Turnbull will take this forward.**
- b) Timeline: it will be very difficult to manage a referendum next June unless we make firm decisions in November and have a very early budget. **Stephen's secretariat will draw up a time line** that shows all the things that need to be done if we are to get to referendum at the same time as the European and local elections next year.
- c) Britain in Europe is completely broke and will need to close next week unless something is done to help it. We think it needs a complete overhaul and new leadership (see attached papers). **Peter and Pat will work up ideas on how this can be done, and how we shift it to a "yes campaign" from the autumn. We will involve HMT in this - at the moment their contacts are better with the No campaign, although GB had a good meeting**
- note attached

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- 2 -

with BiE this morning and has agreed to set up a working group with them.

- see my
minutes*
- d) Substantive measures: Jeremy has drawn up a first list of measures that need to be taken on housing, planning, wage flexibility etc to be discussed in the Cabinet Committee. The first meeting needs to pin down what targets we are setting ourselves by the PBR and by the Budget next year.
 - e) Referendum Bill: we need your response to Hayden's note on the Referendum Bill (attached). We will leave this bill with LCD but we may need to raise discussions with the Electoral Commission to a political level if we are going to overcome difficulties like the EC opposition to holding the referendum at the same time as local elections.
 - f) Campaigning: **Peter and Pat will draw up proposals for a proper campaign** over the next year with polling, war-book, message, scripts, campaigning groups of Ministers and MPs that you will kick off. We need to get a serious debate going - e.g. encouraging BBC and ITV to organise proper debates with Ministers and audience participation. We will discuss all this with HMT and Douglas.
 - ✓ g) SGP/ECB: the European secretariat will draw up a paper on how we influence the negotiations so that we have real reform within a year.
 - h) Europe Speech: we think you should make a Europe speech next week to fit in with GB's Mansion House speech. **Do you agree?** If so we will find a slot.

JP

CONFIDENTIAL

htep18

FROM: John BOURNE
DATE: 9 June 2003

STEPHEN WALL

*Monty as
tpe*

cc: Katrina Williams
Michael Roberts
Joe Griffin
Joanna Key

CONVENTION: CFP

- A Article I-12 & I-13
- B Angus Robertson Early Day Motion
- C Draft DEFRA response to EDM
- D Two PQs from Austin Mitchell
- E Neil MacCormick letter to Peter Hain of 3 June
- F Joanna Key's suggested draft for the response to the EDM

1. Jack McConnell~~y~~ unwisely said last week in the Scottish Parliament that the listing in the draft Treaty (I-12) of 'the conservation of marine biological resources under the CFP' as an exclusive competence was an extension of competence. He also said that he had written to HMG at the time to complain and that HMG had taken it up in Europe.

2. He did indeed write to Peter Hain, but HMG did not take it up in Europe. The result is a several PQs (**Flag D** contains examples) from Austin Mitchell. We have also had an Early Day Motion that is due for discussion on Thursday (**Flag B & C**), and Neil MacCormick MEP has written to Peter Hain (**Flag E**).

3. The FCO judgement at the time (and I recall COLA agreeing) was that I-12 was a statement of the status quo. This judgement has not changed. But the basis of this judgement is ECJ jurisprudence rather than current Treaty text – which treats the CFP as part of the CAP under Title II TEC.

4. DEFRA and FCO have taken the sensible approach of answering these questions factually (**Flag D**), explaining the origins of I-12. There seems little advantage in taking a more adversarial approach. DEFRA have taken a similar approach to the EDM (**Flag B**), although Jo has suggesting adding a bit of politics (**Flag F**) – only again it slightly begs the question I ask in the next paragraph.

5. I have asked FCO and DEFRA lawyers to explain why it is that the Commission's competence for the CFP differs from that in the CAP given that the current Treaty treats the two in the same manner. It seems to me that if the answer is that there is no difference then it is very unhelpful to have the CFP singled out in the way it is in I-12. If there is a real difference then it might be helpful to have that explained in the answer to the PQ. I have yet to receive a response.

6. If we can show that the CFP is different then we can justify not challenging I-12. But if we cannot then, while not an issue of competence, it is one of language and presentation. The PM will I am sure be very unwilling to open up another front on an issue like this which is not substantive. The answer is presumably to sit it out and watch the focus move onto more substantive issues. But it could be uncomfortable at times.

John BOURNE
European Secretariat
Room 338 70W
☎ 7276 0011

If it has been an exclusive competence since we joined then we shall get nowhere by arguing that it is not: this is fact, not 'language'.

But I agree we shall have to lead back to those who negotiated it in the first place, provided we have our facts right.

Dut
10/6

(hile pls)

FROM: John BOURNE
DATE: 9 June 2003

STEPHEN WALL

cc: Katrina Williams
Michael Roberts
Joe Griffin
Joanna Key

CONVENTION: CFP

- A Article I-12 & I-13
- B Angus Robertson Early Day Motion
- C Draft DEFRA response to EDM
- D Two PQs from Austin Mitchell
- E Neil MacCormick letter to Peter Hain of 3 June
- F Joanna Key's suggested draft for the response to the EDM

1. Jack McConnell unwisely said last week in the Scottish Parliament that the listing in the draft Treaty (I-12) of 'the conservation of marine biological resources under the CFP' as an exclusive competence was an extension of competence. He also said that he had written to HMG at the time to complain and that HMG had taken it up in Europe.

2. He did indeed write to Peter Hain, but HMG did not take it up in Europe. The result is a several PQs (**Flag D** contains examples) from Austin Mitchell. We have also had an Early Day Motion that is due for discussion on Thursday (**Flag B & C**), and Neil MacCormick MEP has written to Peter Hain (**Flag E**).

3. The FCO judgement at the time (and I recall COLA agreeing) was that I-12 was a statement of the status quo. This judgement has not changed. But the basis of this judgement is ECJ jurisprudence rather than current Treaty text – which treats the CFP as part of the CAP under Title II TEC.

4. DEFRA and FCO have taken the sensible approach of answering these questions factually (**Flag D**), explaining the origins of I-12. There seems little advantage in taking a more adversarial approach. DEFRA have taken a similar approach to the EDM (**Flag B**), although Jo has suggesting adding a bit of politics (**Flag F**) – only again it slightly begs the question I ask in the next paragraph.

5. I have asked FCO and DEFRA lawyers to explain why it is that the Commission's competence for the CFP differs from that in the CAP given that the current Treaty treats the two in the same manner. It seems to me that if the answer is that there is no difference then it is very unhelpful to have the CFP singled out in the way it is in I-12. If there is a real difference then it might be helpful to have that explained in the answer to the PQ. I have yet to receive a response.

6. If we can show that the CFP is different then we can justify not challenging I-12. But if we cannot then, while not an issue of competence, it is one of language and presentation. The PM will I am sure be very unwilling to open up another front on an issue like this which is not substantive. The answer is presumably to sit it out and watch the focus move onto more substantive issues. But it could be uncomfortable at times.

John BOURNE
European Secretariat
Room 338 70W
☎7276 0011

2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.
3. The Union shall have competence to coordinate the economic and employment policies of the Member States.
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.
6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part Three of the Constitution.

Article I-12: Exclusive competence

1. The Union shall have exclusive competence to establish competition rules within the internal market, and in the following areas:
 - monetary policy, for the Member States which have adopted the euro,
 - common commercial policy,
 - customs union,
 - the conservation of marine biological resources under the common fisheries policy.

2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

Article I-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.
2. Shared competence applies in the following principal areas:
 - internal market,
 - area of freedom, security and justice,
 - agriculture and fisheries, excluding the conservation of marine biological resources,
 - transport and trans-European networks,
 - energy,
 - social policy, for aspects defined in Part Three,
 - economic and social cohesion,
 - environment,
 - consumer protection,
 - common safety concerns in public health matters.
3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

Bourne John - European Secretariat -

From: Steve.Conlon@fco.x.gsi.gov.uk
Sent: 09 June 2003 12:09
To: john.bourne@cabinet-office.x.gsi.gov.uk
Subject: FW: Angus Robertson EDM: EU Constitution/fisheries

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged



earlydaymotionangus
robertson....



FW: Press Release -
ROBERTSON ...

-----Original Message-----

From: Dyson, Edward (FISH) [mailto:Edward.Dyson@defra.gsi.gov.uk]
Sent: 06 June 2003 17:41
To: Stuart, Lachlan (SERAD); Carmichael, Donald (SERAD)
Cc: Ryder, Chris (FISH) (Official); Szot, Christine (FISH); Krmadjian, Greg (Secretariat); Emma.Wade@fco.gov.uk; 'Steve.Conlon@fco.gsi.gov.uk'; 'Daniel.Kleinberg@scotland.gsi.gov.uk'
Subject: Angus Robertson EDM: EU Constitution/fisheries
Importance: High

Dear all,

Angus Robertson has tabled the Early Day Motion below. We expect it to be discussed next Thursday, when the Leader of the House will read the Government statement opposing the motion. Attached (word doc) is Defra's EDM brief, which is to be cleared with colleagues in FCO and No10 on Monday.

The message attached contains the press release from Angus Robertson. We have had enquiries from journalists on this, our response to which is that the press release is inaccurate, and that Ministers in Scotland, with the UK Government, are of the same view: that the draft constitution does no more than clarify the status quo with regard to EU competencies over fisheries.

Please could fisheries colleagues in Scotland keep us apprised as to Jack McConnell's handling of the situation.

<<earlydaymotionangus robertson.doc>> <<FW: Press Release - ROBERTSON WRITES TO UK GOVERNMENT ON FISHING>>

1354 FUTURE OF THE FISHING INDUSTRY AND THE DRAFT CONSTITUTION OF THE EUROPEAN UNION 5:6:03

Angus Robertson

That this House notes with concern that the draft constitution of the European Union lists amongst exclusive competences the conservation of marine biological resources under the Common Fisheries Policy; further notes the clarification of First Minister Jack McConnell to the Scottish Parliament on 29th May where he said that, 'Not only have we made representations on that matter, but we have written to the UK Government and asked it to oppose the proposal; not only has the UK Government made representations, but it has written to the EU to make it clear that it is also opposed to the proposal; not only is this Administration opposed to it, but the UK Government is opposed to it'; and calls for the UK Government to act on this in the Convention on the Future of Europe and Intergovernmental Conference of the European Union.

Ed Dyson

EARLY DAY MOTION No 1354

FUTURE OF THE OF THE FISHING INDUSTRY AND THE DRAFT CONSTITUTION OF THE EUROPEAN UNION

Government Position

Opposed

Points to make

In the amendments to the draft EU Constitutional Treaty that the Government has submitted to the Convention, we have stressed that the competences exercise should largely clarify existing competences rather than extend Union competence.

The Government believes that the inclusion of the conservation of marine biological resources under the common fisheries policy at draft Article 12 of Part 1 of the draft Constitutional Treaty, as an area of exclusive Union competence, represents an accurate reflection of the current position with regards to the Common Fisheries Policy (CFP), and we have not made any representations to the European Union for this reference to be changed.

In the Government's understanding this conclusion is supported by the latest analysis within the Scottish Executive.

Background

The European Court of Justice held, in Case 804/79 (Commission v UK) that, "since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the [UK's] Act of Accession, power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Community." That said, Council Regulation 2371/2002 gives Member States the right to introduce non-discriminatory conservation measures, up to twelve miles from the shore line. Such measures must conform with the CFP and must be cleared with the Commission in advance.

The reference in the Constitutional Treaty to the conservation of marine resources under the CFP as being a matter of exclusive EU competence is therefore acceptable as a statement of an existing competence. The statement from the First Minister which is quoted in the Motion reflects earlier Scottish Executive concerns which the Executive has since concluded are groundless.

PARLIAMENTARY QUESTION

Head of: EUROPEAN UNION (INTERNAL)
Question No: 117725
Type: House of Commons - Commons Written Answer
Date Tabled: 03 June 2003
Please submit draft answer and background to PRDD
(e-mail address pq@fco.gov.uk)
Before: 06 June 2003 10:00
For Answer On: 09 June 2003

Question From: Austin Mitchell Esq, MP (LABOUR) (GREAT GRIMSBY)

To ask the Secretary of State for Foreign and Commonwealth Affairs,

what representations he intends to make on the draft EU constitution's provision for an exclusive EU competence over the marine resources of the sea.

For PRDD use only:

Minister responsible:	Approval By:
Minister answering: MR MACSHANE	Approval By:
Copy to: Private Secretary, Parliamentary Clerk, Press Office	

Draft

In the amendments to the draft EU Constitutional Treaty that the Government has submitted to the Convention, we have stressed that the competences exercise should largely clarify existing competences rather than extend Union competence.

The Government believes that the inclusion of the conservation of marine biological resources under the common fisheries policy at draft Article 12 of Part 1 of the draft Constitutional Treaty, as an area of exclusive Union competence, represents an accurate reflection of the current position with regards to the Common Fisheries Policy (CFP).

The European Court of Justice held, in Case 804/79 (Commission v UK) that, "since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the [UK's] Act of Accession, power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Community." That said, Council Regulation 2371/2002 gives Member States the right to introduce non-discriminatory conservation measures, up to twelve miles from the shore line. Such measures must conform with the CFP and must be cleared with the Commission in advance.

Drafted by: Emma Wade, EU-I Tel: 7008 1549

Authorised by: (Head of Department)

PARLIAMENTARY QUESTION

Head of: EUROPEAN UNION (INTERNAL)
Question No: 117998
Type: House of Commons - Commons Written Answer
Date Tabled: 04 June 2003
Please submit draft answer and background to PRDD
(e-mail address pq@fco.gov.uk)
Before: 09 June 2003 10:00
For Answer On: 10 June 2003

Question From: Austin Mitchell Esq, MP (LABOUR) (GREAT GRIMSBY)

To ask the Secretary of State for Foreign and Commonwealth Affairs,

if he will list the provisions in existing treaties that claims to exclusion competence over the marine produce of the sea in the draft EU treaty is based.

For PRDD use only:

Minister responsible:	Approval By:
Minister answering: MR MACSHANE	Approval By:
Copy to: Private Secretary, Parliamentary Clerk, Press Office	

Draft

The Union's exclusive competence is not new. It derives from EC Treaty Articles dealing with agriculture, Regulations adopted establishing the common fisheries policy (The current regulation is Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy), and Article 102 of the Act concerning the conditions of Accession and the Adjustments of the Treaties annexed to the UK's Act of Accession. The European Court held in Cases 3, 4, and 6/76 *Kramer and others* [1976] ECR 1279 that Member States' powers to introduce systems of fishing quotas and to enter into international agreements relating to the preservation of fishing stocks only cease to exist when the Council adopts measures pursuant to Article 5 of Regulation 2141/70 (the previous Common Fisheries Policy) and Article 102 of Act of Accession.

Edy Dy Rato
Angus Robb
FR

Drafted by:

Tel:

Authorized by: (Head of Department)

3 June 2003

Rt Hon Peter Hain MP
Secretary of State for Wales
UK Representative of HM Government to
the Convention of the Future of Europe

I am most concerned about the proposal to entrench part of the current Common Fisheries Policy (CFP) in the EU Constitution (I refer, of course, to Article I-12, fourth indent).

I was glad therefore to hear of the First Minister's assurance to the Scottish Parliament last week. Mr McConnell said:

"Not only have we made representations on that matter, but we have written to the UK Government and asked it to oppose the proposal. Not only has the UK Government made representations, but it has written to the EU to make it clear that it is also opposed to the proposal. Not only is this Administration opposed to it, but the UK Government is opposed to it. We will ensure that that view is put across."

I raised this with Gisela Stuart at the UK liaison meeting during last Friday's Convention Meeting (30 May), and am copying this letter to her. In her capacity as a Praesidium member, she urged me to take this matter up with Mr Henning Christofferson, former Danish Prime Minister, on the ground that he would set my mind at rest. I did speak to Mr Christofferson, but my mind was not set at rest.

At the moment the whole substance of the CFP is determined by Council Regulation. Thus any part can be amended by the ordinary legislative process. If the current draft takes effect, that will change. Marine biological resource conservation under the current CFP will be entrenched into the Constitution.

Present discussions about reforming the CFP include powerful proposals to decentralise control to interested Member States and/or their internal nations or regions, either on their own or in groups concerned with particular fisheries and areas.

As more and more landlocked and Mediterranean states enter the Union, the case for this grows more powerful. Otherwise, agriculture ministers from countries like Slovakia with no coastline and no relevant expertise will acquire standing over fisheries superior to that of Scotland's fisheries minister.

I therefore take this opportunity to urge you and Gisela Stuart to use strongly the particular parts you play in the Convention to make good Mr McConnell's assurance to the Scottish Parliament. People in Scotland are deeply concerned about the future of our fishing industry. A Constitution that entrenches the present CFP would be unacceptable to the great majority. It would alienate public opinion from the excellent project of creating a Constitution-Treaty for the European Union.

This is a matter of great public concern. I shall therefore release this letter to the press once I am sure you and Gisela Stuart have had the opportunity to read and reflect on it.

Yours sincerely,

Neil MacCormick

Copy: Gisela Stuart, MP

EARLY DAY MOTION No 1354

FUTURE OF THE OF THE FISHING INDUSTRY AND THE DRAFT CONSTITUTION OF THE EUROPEAN UNION

Government Position

Opposed

Points to make

-In the amendments to the draft EU Constitutional Treaty that the Government has submitted to the Convention, we have stressed that the competences exercise should largely clarify existing competences rather than extend Union competence.

The Common Fisheries Policy has been an area of exclusive Community competence since 1979 – and this was agreed in the UK's Act of Accession [which was negotiated by the Party Opposite].

So the draft Constitutional Treaty

~~The Government believes that the inclusion of the conservation of marine biological resources under the common fisheries policy at draft Article 12 of Part 1 of the draft Constitutional Treaty, as an area of exclusive Union competence, represents an accurate reflection of the current position with regards to the Common Fisheries Policy (CFP), and we have not therefore made any representations to the European Union for this reference to be changed.~~

In the Government's understanding this conclusion is supported by the latest analysis within the Scottish Executive.

Background

The European Court of Justice held, in Case 804/79 (Commission v UK) that, "since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the [UK's] Act of Accession, power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Community." That said, Council Regulation 2371/2002 gives Member States the right to introduce non-discriminatory conservation measures, up to twelve miles from the shore line. Such measures must conform with the CFP and must be cleared with the Commission in advance.

The reference in the Constitutional Treaty to the conservation of marine resources under the CFP as being a matter of exclusive EU competence is therefore acceptable as a statement of an existing competence. The statement from the First Minister which is quoted in the Motion reflects earlier Scottish Executive concerns which the Executive has since concluded are groundless.

RESTRICTED

From: Stephen Wall**Date: 6 June 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****CONVENTION ENDGAME**

The Convention has eight days left to run.

In Brussels, representatives of the Member States are sticking to their established scripts. A meeting with Giscard on Wednesday, intended to give him a steer on what Governments wanted out of the endgame, turned into a sterile, set piece tour de table which will have told him nothing. Peter Hain was one of the few who signalled that he was ready to do business: a reflection of the fact that very few of the assorted academics, officials or ex-Ministers really have the political authority of their Governments to do deals.

In capitals, the picture is rather different. The six founding members of the Union – France, Germany, Italy and the Benelux – have been active in looking for a compromise on the institutions. Despite failure to agree so far, they are meeting again on Monday. A deal could be announced on Tuesday which could prove decisive in the Convention endgame.

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- 2 -

We have a rough idea of what the parameters of such a deal could be. Crudely, the Benelux are now prepared to live with a stable Chair of the European Council, but want to limit its powers and want a quid pro quo elsewhere. There has been no agreement so far on what the quid pro quo might be. Suggestions have included allowing the President of the Commission to chair the General Affairs Council (unacceptable for us and the Germans. The French are wobbly.); a deal on the Foreign Minister, and his precise relationship with the Commission; or removing the stipulation that the Chair of the European Council could not hold a post in another EU institution (holding out the possibility of one day merging the President of the Commission and the European Council; also unacceptable to us.) The Benelux also want the Chair of the European Council to be able to continue to be a national head of government. This would make a nonsense of the job. They have also suggested that they could agree to the European Council chair provided the rest of the six monthly Presidency continued as before. This too would be unacceptable: you would have all the serious business of the EU under one country (albeit every six months) with the Chair of the European Council out on a limb.

Aznar himself will be in combative mode. Despite rallying a number of the Smalls, he is fighting a losing battle against the Praesidium not re-opening the Nice provisions on the weighting of votes in the Council. Giscard cleverly picked off the Smalls one by one, by reassuring them on the other aspects of Nice: conceding that each Member State should retain the right to nominate one Commissioner (albeit with a de facto system of full and associate Commissioners), and not revisiting the size of the European Parliament. This left the Spanish isolated on the one issue they really care about – i.e. not unpicking the proportionately good deal they won on vote weighting at Nice. Aznar will go to the wire on this and it will strengthen his resolve to get a strong European Council Chair.

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- 3 -

On the other remaining issues for the endgame, we are still lumbered with a Legislative Council, despite the fact that only one Member State really supports it (Italy). It is a key demand of the EP and the Commission (which tells you all you need to know about the merit of the idea). The latest wheeze seems to be a "compromise" whereby the General Affairs Council has some sort of role to approve legislation, meeting in public in a clear "legislative formation." It is a bad idea, and we will have plenty of support to get rid of it in the IGC.

There will be pressure for a statement of principle in the final report that QMV and co-decision should be greatly extended. This is a key demand of several (including the Benelux) who claim to need it for their domestic opinion. This would not be helpful in presentational terms, and we are under real pressure in some areas, including CFSP. The truth though is that the IGC will, as usual, go over the ground article by article, and each Member State will find something to object to. Interestingly (and helpfully), Schroeder has written to Giscard ruling out any changes to voting rules on social policy. We are also in good company on our opposition to any move on tax.

Finally, we seem to have got a good result on language. There has been no concerted push to re-insert the word "federal" into the draft, nor to unpick the clear language about Member States conferring competence on the Union.

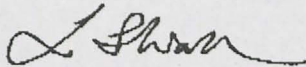
It would be useful to have confirmation of our bottom lines for the final week of

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- 4 -

/ the Convention (see the attached note). Peter Hain has been right, tactically, to suggest we are working for a consensus in the Convention. But that should be a tactic, not an objective which puts our interests at risk.



STEPHEN WALL

RESTRICTED

CONVENTION: BOTTOM LINES

- A Chair of the European Council chosen by Qualified Majority in the European Council for a term of at least two years, renewable. The Chair should be neither a serving Prime Minister, nor a member of another EU institution. It must be acknowledged that he will have some role in co-ordinating Councils, as well as chairing and preparing European Councils;
- No Legislative Council, in any form;
- No arrangement to allow the Commission to chair the GAC;
- Agreement to a double-hatted Foreign Representative in principle, as long as he is answerable to the Council and the precise nature of his relationship with the Commission is left for the IGC, and it is not presumed that he will be subject to Commission collegiality;
- Commitment to a smaller Commission after (at the latest) 2009;
- No provisions for enhanced co-operation in defence, other than where the European Council has conferred a specific mission on a small group of Member States;
- No extension of QMV in CFSP;
- No extension of QMV to Own Resources, tax, social security, criminal procedural law or social policy;
- No general QMV passarelle: i.e. a Treaty provision which would allow movement to QMV in any given area should the European Council so decide;
- No incorporation of the Charter in a way that would fall short of the Attorney General's legal requirements.

(7)

PRIME MINISTER

From: Stephen Wall

Date: 6 June 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 Treaty published last week. He touched on them at the start of Cabinet yesterday. His chief concerns remain the same: European Public Prosecutor; criminal procedural law; asylum; national security carve-outs and freedom for the UK to continue to make bilateral agreements (e.g. with the US) on law enforcement issues. He wants reassurance that his concerns will be treated on a par with tax, CFSP and social security.

We need to decide what we should be prepared to accept now, what we should continue to oppose in the remainder of the Convention, and what we should leave for the IGC.

The Home Secretary will not sign up to the draft article on Criminal Procedural Law. The draft article, which will be governed by QMV, provides for a short-list of areas where the EU could establish minimum rules for defendants in cross-

RESTRICTED - POLICY

- 2 -

border cases, including admissibility of evidence and rights of defendants and victims in criminal trials. The Council will also be able to decide unanimously on additional areas where the EU should set minimum rules. This is all new to this Treaty.

The Home Secretary argues that the current draft article could result in the UK having to change its procedures on bail, pre-trial detention, habeas corpus, and the admissibility of evidence: key tenets of the common law system. He argues that the whole article must remain under unanimity. He also wants to reduce the scope of the article so that it can only be used to set minimum rules for defendants in cross border cases who might otherwise be disadvantaged because they were non-nationals. He proposes a short list of areas: access to legal advice, translation services, and consular and diplomatic advice.

The Home Secretary's concerns are valid. The article is wide-ranging and could have implications for our criminal procedures in the future. But it is very hard to argue against setting minimum standards for defendants being tried abroad. The UK shares an interest in ensuring that pre-trial conditions in the new member states are adequate. From 1st Jan 2004, under the European Arrest Warrant, more UK nationals will probably end up in other Member States for trial. Some assurance that judicial systems in Poland or Greece are on a par with those in the UK is no bad thing.

Support for our position in the Convention is limited: only the Irish will treat this as a deal breaker. The crucial point is to keep unanimity. Then, the scope is less important.

RESTRICTED - POLICY

Given that we are unlikely to get very far on this during the Convention, do you agree that this is of sufficient importance to take to the IGC, with the goal of limiting the article to unanimity?

On the European Public Prosecutor (EPP), you said that you saw attractions in the idea in principle, and could live with the article, governed by a unanimity lock.

The Home Secretary is adamant that the UK should not sign up to any article which writes an EPP on to the face of the Treaty, even with a unanimity lock. Alongside Finland, Ireland, Austria, Estonia, Sweden and Denmark, the UK tabled a paper in the Convention to counter proposals for an EPP. This anti-EPP coalition will hold firm for the rest of the Convention. But it is unlikely, given the strength of support from France and Germany, that the draft Treaty will go forward without an article on a EPP.

The Home Secretary is also unwilling to sign up to the draft Eurojust article, which would enable Eurojust to initiate prosecutions in Member States, arguing that it is an EPP by the back door. He is prepared to accept the Attorney's suggestion that Eurojust should be able to initiate an investigation in a Member State whilst leaving the final decision on prosecution to the national prosecution authority. But this may not be enough for those (e.g. France, Germany) who want to give Eurojust coercive powers and provide for the creation of an EPP under the new Treaty. Rather than block the article altogether, we should continue to argue for unanimity for new powers for Eurojust. This is adequate protection against having to strengthen Eurojust in ways which are unacceptable to the UK.

Do you agree that we should live with the existing EPP article under a unanimity lock? Alongside this, do you agree that we should continue to argue for unanimity for new powers for Eurojust?

On asylum, the Home Secretary is not prepared to sign up to the draft article which calls for common rules and procedures for the reception and processing of asylum seekers, and a uniform status for those granted asylum and subsidiary protection, governed by QMV. The Home Secretary says that if he does not get the language he wants he may have to opt out of future asylum measures. He wants to retain maximum domestic flexibility over the UK asylum system. He wants to argue in the Convention and the IGC for the article to contain a less specific set of 'guiding principles'. He is prepared to accept QMV in these circumstances.

There are two problems here. One is "perfidious Albion". We have been one of the EU's strongest advocates of a common asylum system, and made a big show of our willingness to move to QMV to help get it. Now, we are saying minimum standards by QMV would be too generous for our liking so we have changed our mind.

Minimum standards are a necessary part of a common asylum system. So we should not get ourselves into a position of arguing that they are not desirable.

Vitorino has helpfully included language which will allow us to take forward work with third countries to manage asylum flows – i.e. our zones of protection initiative.

Are you content that we agree that the Home Secretary should try and tighten up the wording of the article but that we must not lose the prize of a common asylum system, probably only possible if we have QMV?

On national security issues, we have successfully rolled-over the protection found in the existing Treaties into the new draft. Part I includes a new reference to internal security being an 'essential state function'. The JHA chapter includes a carve out reprising that in the previous Treaty: *"This chapter shall not affect the exercise of the responsibilities incumbent on Member States with regard to maintaining public order and safeguarding internal security"*.

The Agencies have argued that this is insufficient protection for our national security interests. They want to replace the term 'internal' security with 'national' security throughout the Treaty. There is some ground for their concerns that lack of clarity could be a problem if eg intelligence cooperation with the United States was challenged before the Courts.

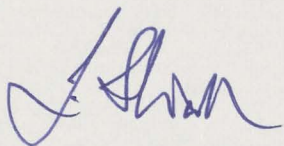
The Home Secretary rightly says that there is little more to achieve on this during the Convention, and that we may have more joy in the IGC. **Do you agree that we should pursue this issue for the IGC?**

The Home Secretary argues that he must be able to continue to make bilateral and multilateral agreements on law enforcement issues which go further than EU agreements. There is nothing in the draft Treaty which would prohibit us from doing this, but the Home Secretary is looking for explicit language to set this out on the face of the Treaty. His objective is sensible. There are limits on what we can achieve given the agreed rule that, once the EU has negotiated, that replaces

national arrangements. **But do you agree that we should continue to argue for this when we get to the IGC?**

The Home Secretary agrees with you that we must preserve the draft Treaty language which would only allow Europol to act on the territory of a Member State with the consent of that Member State.

These are (mostly) serious issues. We will not win all of them at the IGC (or on the equivalent lists in every other Whitehall department). And we have more of such points than most other member states. But the Convention endgame is proving less of a real negotiation on some of these questions than I feared, partly because there has been little focus on Part 3 of the Treaty where most of the detail lies and partly because governments are turning their eyes already to the IGC. So, with the one or two provisos above, we can go with the Home Secretary's list.



STEPHEN WALL

(1)

PRIME MINISTER

From: Roger Liddle

Date: 6 June 2003

**cc: Jonathan Powell
Stephen Wall
Sally Morgan
Peter Hyman
Steve Morris
Matthew Rycroft
Joe Griffin, CO
Sarah Lyons, Wales Office**

THREE DAYS AT GISCARD'S CONVENTION

The Convention has always been more like a party conference than an orderly negotiation. As we enter the last week, it feels more like chaos of a pre-86 Labour Conference, though with less rancour (which makes it more like the Lib Dems!).

Lots of pieces of paper are flying around from the various 'components' of the Convention – political groups, European and national Parliamentarians: the frenetic drafting processes generate heat, but not much light. The Praesidium is in virtual constant session, with late night tetchy meetings producing some ill thought out compromises, where no one is quite sure precisely what has been agreed. The eventual outcome will almost certainly bear out Lenin's dictum about 'all power to the Secretariat' – though John Kerr will have Giscard, Amato and Dehaene looking over his shoulder in the closing hours.

The good news for Europe is that the deadlock has been broken on the key institutional issues that appeared to threaten the success of the Convention at the start of the week. At the Government Reps' meeting on Wednesday, a

seemingly solid phalanx of smalls opposed losing their Commissioner and the creation of a European Council Chair. The sacred principles of 'rotation' and 'equality' were inscribed across their banners held aloft. It was a pretty united front when Giscard met them. By Friday, the mood had changed dramatically. The Praesidium's overnight compromise proposals were being praised as a basis for consensus:

- **From 2009 a Commission of 15, including the President, to constitute the College and have votes.** Up to 14 assistant Commissioners without votes. The Member States who have a voting Commissioner for one period of five years will have an assistant Commissioner without a vote for the next.

Equality of member States is guaranteed. Efficiency is improved by limiting the Commission to fourteen portfolios plus the President. All Member States continue however to have 'ready access' to the Commission.

True, the big states have paid a high price for this gain in efficiency. Three Commissioners from the six 'big' in a Commission of 15 from 2009, as opposed to 10 Commissioners from the 'big' in a Commission of 20 at present. But it is a significant step forward from all that the "discredited IGC method" was able to achieve at Nice, and a lot better than the Commission of 25 we will have to put up with from 2004-2009.

- **A European Council Chair** who *'shall chair and drive forward its work, ensuring proper preparations and continuity' and shall 'in that capacity ensure at his level, the external representation of the Union without prejudice to the responsibilities of President of the Commission and the*

Minister for Foreign Affairs'. The Dutch are moving towards accepting this. So are the Irish. Even the Portuguese who with the Austrians have been the most difficult, were showing a bit of flexibility. The new members care much more about equality within the Commission.

From our perspective **the definition of the powers of the European Council Chair is not what we aimed for, but not at all bad.** The creation of the European Council Chair will be the **biggest institutional innovation in the EU since the Monnet initiative to set up the European Council in the 1970s.** It falls short of our ideal in that we would like the Chair's role in coordinating the work of all the other Councils to be sanctified in tablets of stone, ideally by making the European Council Chair also the Chair of the General Affairs Council. We are not going to get that in the Convention. The political shorthand for what we are being offered is **"no more and no less' than the present functions of the 6 monthly President of the European Council:** this sounds ok to me.

The federalists are pushing, unacceptably, for the Commission President to chair the GAC. In my judgement we can see that off as a "step too far", but not get much more. There will still be much to play for in determining the eventual role that the European Council Chair will play. To the greatest extent, it depends on the individual qualities of the appointee, relative to the Commission President. **But also the Praesidium proposes to leave the details of the reform of the rest of the existing Presidency system to the European Council itself.** Should chairs be appointed for 6 months or 1 year? Should there be 'team Presidencies' or a rotating Presidency consisting of a single Member State? The 'smalls' are coming round to 'team Presidencies'. If we can hook them on that in the months

after the Convention, then the right European Council Chair will be able to seize a strong coordinating role.

We must at the minimum ensure in the coming week this possibility is not deliberately excluded. Whatever is agreed, the 'federalists' will try to say that our Chair idea has been 'castrated'. But we shouldn't fall into the trap of believing that ourselves.

Giscard has not however broken the deadlock with the Spanish who insist on sticking with (in my view, the chronically obscure and indefensible) Nice weighted majority system. Aznar is really ramping up his opposition to the 'double majority' proposal. The Nice formula was the symbol that Spain is one of the "biggs" and even the federalist PSOE has now turned round to take a "defence of national interest" position. Everywhere I went in the EP building one of the Spanish representatives appeared to be briefing the media on their self-generated crisis. This morning the Spanish said that if Giscard persists in pushing the double majority, they would insist on 'options' going to Thessaloniki - that is, no consensus on the Convention outcome.

The question for you is whether you back Aznar, as Peter has so far done (to secure their support for us on tax) or urge him to compromise. I suspect he may ring before Thessaloniki. **The Praesidium's latest offer is the Nice system until 2009, then a move to double majority *unless the European Council votes by QMV to keep Nice.*** In the final days this could be changed round - so that a qualified majority is needed to move to a double majority. Spain is not isolated on this. The Poles agree. The Czechs told me that double majority raises the spectre of the old Europe of 15 outvoting the new Europe of 12. However

Giscard will be very upset with us, and possibly less accommodating on other issues, if we back the Spanish without reserve.

The Spanish issue is a serious fight. However, there are **plenty of other sillinesses** which we should be able to sort.

- **The Praesidium has removed the ban on 'members of another European institution' being elected European Council Chair.** My own view is that there is as much likelihood of the European Council electing The Queen as its chair, as of them electing the President of the Commission. But the theoretical possibility of a future 'single President' excites some. We got into this mess because we abandoned our previous rubric for the post of a 'serving Prime Minister when appointed, or former head of government'. My view is that we should try to reinstate that.
- **The Praesidium has merged its proposed Legislative Council with the (coordinating and executive) General Affairs Council.** This is a bizarre marriage proposal even for believers in the Legislative Council, but it is more likely to end in the Legislative Council's total disappearance than a messy divorce. The fact that the proposal has not completely died shows however that there is a lot of feeling among **politicians** that there is some kind of need for a cross cutting European Minister in the Brussels system.

There are of course lots of other issues that are difficult for us, but I hope in the next week we can get ourselves into a **position where we can present the Convention outcome as positive for our pro-European strategy.**

- We are not making any progress as yet on recognising 'the special status' of the European Foreign Minister within the Commission College. France and Spain are with us, but in the Praesidium, Dehaene brutally brushes aside our concerns about 'double hatting'. My concern is that we don't get too theological about this. **Your strategic aim is for the EU to have a strong voice in the world, but for that to be determined intergovernmentally.** To be realisable, we have to make workable a 'hybrid' solution that allows European foreign policy makers to have access to the EU's budget and Commission's resources. The EFM will be appointed and sackable by the European Council. Policy will be determined by the Council. If the Commission tried to impose on the EFM a conflicting mandate, surely the EFM will know on which side his bread is buttered! If the Commission persisted, he would resign as a Vice President but stay as Chair of the Foreign Ministers' Council. Embarrassing for the Commission, but so what!
- Much more difficult for us politically is QMV in tax, foreign policy and social policy.

Peter and I have been playing hard the argument that we can't win the Euro referendum you want to hold, if QMV is seriously threatened in these areas. That line is making quite a lot of impact, hopefully more after Monday. My judgement is that we will win on tax but we will face extreme pressure in the final days to extend QMV on proposals from the Foreign Minister within the framework of an overall policy agreed by unanimity. Most members of the Convention regard the present Praesidium text as far too restrictive, I think we could show a bit more flexibility on issues that do not relate to core questions of security. The example was

given to me of how ludicrously difficult the Lithuanians have been in the preparations for the latest EU-Russia Summit. **Could you accept a little more QMV in these areas as long as the so-called 'unanimity brake' on anything to do with defence, national security or the potential deployment of troops (and possibly sanctions) was robust?**

- On social policy, HMT is resistant on social security because of the linkage to tax and understandably you don't want to create any more difficulty for ourselves with the CBI over threats to labour market flexibility. In the Convention, a worthwhile gesture would be for us to **move in the Convention endgame to QMV on the old Article 13 anti-discrimination provisions**. Departments don't like it. But it would give us some QMV 'cred' as against all our other negativity.
- **The Praesidium is now proposing a general clause in the Constitution that would allow the European Council by unanimity to move to QMV whenever it so decided in any area.** I know the objections to acceptance of QMV as a general rule. On the other hand you have been bold in asserting that enlargement requires more QMV to make it work. The virtue of an enabling clause is that we lose nothing now and gain flexibility for later without the need for yet another IGC. After all, the Giscard Constitution is supposed to last for a generation, even if people are already talking about the next IGC coming in five years! But doubtless this attempt to forestall that awful prospect will be seen as a concession too far down the federalist slippery slope.


ROGER LIDDLE

Rec'd by
N/T faxPrime Minister

FUTURE OF EUROPE: JUSTICE AND HOME AFFAIRS PRIORITIES

SW
✓ MR
JR
EM

It is in our national interest to be constructive and forward-looking at EU level in the JHA area. I have been ready to accept, for example, a move from unanimity to QMV in almost all justice and home affairs areas, including police and judicial issues which were previously subject to inter-governmental co-operation. But we must get the Treaty provisions right so that they help rather than hinder us in tackling terrorism, serious crime and asylum. We have reached the point at which my remaining concerns on some of the revised JHA articles should be placed on an equal footing with our strong positions on common foreign and security policy, tax and social security.

2. My key concerns include the following:

- the proposed wide-ranging EU competence to approximate individual rights in domestic criminal procedure under QMV. This would result in us being unable to prevent fundamental aspects of our common law system being rewritten by the EU. It would also limit our flexibility to take tough action domestically (e.g. detention periods for terrorist suspects).
- a European Public Prosecutor is envisaged who would prosecute serious crime and terrorism at EU level in accordance with a harmonised EU criminal procedural law for this purpose. That is unacceptable and must not be included on the face of the EU Constitutional Treaty. Many other countries support us.
- the asylum article must focus on outcomes. A further round of harmonisation of internal asylum rules on procedures and reception conditions under QMV would jeopardise the progress we are making domestically.
- we must remain free to maintain and conclude bilateral and multilateral agreements with third countries which go further than EU agreements. This is necessary to protect our close relationships with non-EU partners such as the US.

3. In essence we need to ask "what is the purpose" and does the solution provide answers to question of relevance to the protection and benefit of our public. Is there, where justified, an alternative to the proposition dreamt up by those not engaged on a daily basis with these issues.

Progress so far

4. My minute of 23 October 2002 set out a forward-looking and imaginative way forward for EU action on the justice and home affairs. We recognised early in this process that it is in our interests to ensure effective EU action in this area. In fact, the EU Constitutional Treaty will result

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greater changes in the JHA area than in any other policy area (with the possible exception of foreign policy).

5. In particular, I have accepted the following key changes:

- a move from inter-governmental co-operation on police and judicial issues to incorporation within Community structures and procedures;
- a move from unanimity to QMV in almost all areas of justice and home affairs;
- a move from consultation with the European Parliament to co-decision in almost all areas;
- ECJ jurisdiction over police and judicial co-operation measures (subject to some special arrangements for JHA issues).

6. My minute of 19 March 2003 set out our priorities for the Justice and Home Affairs articles in the draft EU Constitutional Treaty. I was grateful for Stephen Wall's response and those of colleagues. In general, I believe there was strong support for the approach I am taking.

7. We have now received the revised, consolidated Treaty. I have seen Sir Stephen Wall's letter of 27 May setting out the Prime Minister's initial reaction. My officials are still studying the details of the JHA Article in Part III, but I thought it would be helpful to provide an early view on the essential points for the coming weeks. The consequences of these concerns not being resolved - either in the Convention or the IGC - are potentially very serious for our ability to fight crime and terrorism and to tackle asylum and illegal immigration. I trust that these concerns will be placed on an equal footing in the closing stages of the Convention and in the IGC with our strong position on common foreign and security policy, tax and social security.

Criminal procedural law

8. The draft Constitution still provides for wide-ranging approximation of criminal procedural law subject to QMV. This article goes to the heart of Member States' criminal justice systems.

9. Unanimity is essential. QMV would result in fundamental aspects of our criminal law being rewritten by the EU. It would be very difficult to preserve the UK's common law traditions faced by a majority of countries with fundamentally different traditions. Moreover, it could result in harmonisation of key elements of Scottish traditions in criminal procedural law with those of the rest of the UK. The result of trying to combine all these different traditions would be a mess for everyone. That is unacceptable. Subsidiarity must apply to EU action in this area.

10. The scope of the article is also very wide. In particular, it is difficult to think of areas of criminal procedural law which do not involve the "rights of individuals". This could include coercive measures such as search and seizure; arrest, interview, detention and bail procedures; disclosure rules on evidence; and procedures for trial and sentencing. Inflexible EU rules would hamper our fight against crime and terrorism (for example, by imposing limits on detention periods for terrorist suspects) and could inhibit reform of the criminal justice system. This is unacceptable even subject to unanimity. We must continue to press for a much more limited scope in line with the approach set out in the UK's amendment. Nevertheless, we are looking again at our UK amendment with the revised text and the ideas set out in Sir Stephen Wall's letter of 25 March in mind.

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11. I should also flag up a related danger in the article on police co-operation. A new provision has appeared which would allow the EU to take measures to approximate criminal law on a range of investigative techniques by QMV. We must return to the previous text or the existing language in Article 30(d) of the Treaty on European Union.

European Public Prosecutor and Eurojust

12. The UK is not alone in recognising the serious threat posed by the European Public Prosecutor. Seven countries co-sponsored our paper in the Convention arguing against the creation of a European Public Prosecutor. We need to get other countries - in particular Spain, Italy and Poland - to support us on this. Only the Commission, France and Germany are advocates of the EPP.

13. Debate on the European Public Prosecutor (EPP) initially focused on the need for it to combat fraud against the Union's financial interests. In fact, this issue is now almost more prominent in the new article on Eurojust than in the article on the EPP.

14. The ambition of the EPP article is clear: serious crime (which would include terrorism) should be prosecuted at EU level in accordance with EU rules rather than under national law. The article includes provision for EU rules on admissibility of evidence and judicial review of procedural measures taken by the EPP (such as obtaining evidence). In effect, this is a prototype federal prosecutor operating according to federal criminal procedural laws. An explicit provision in the new Treaty would mean that it would be a question of when - not whether - an EPP should be established. We cannot allow such a provision on the face of the EU Constitutional Treaty.

15. I am also not convinced that the pressure for the EPP is so overwhelming that we must concede fundamental principles, such as control over prosecution decisions, in the Eurojust article. I agree with Sir Stephen Wall's letter of 25 March about the importance of bolstering Eurojust to counter the pressure for the EPP. But Eurojust must not become an EPP under a different name. Prosecution decisions should remain under national rather than EU control.

16. I am therefore concerned that it is still foreseen that Eurojust should have the power to initiate criminal prosecutions. This is very much an EPP-type power. Nevertheless, in the context of fighting against fraud, we are looking seriously at the proposal made by the Attorney General in his letter of 30 March that national members of Eurojust should have the power to initiate an investigation while leaving the final decision as to prosecution to the relevant national prosecutor. Further development of Eurojust's powers must be subject to unanimity.

Asylum

17. I welcome the inclusion of an external dimension to the revised article on asylum. Although the wording could be improved, this provision will help us take forward our policies on protection in the region of origin or processing in transit countries.

18. However, I still have serious concerns that the common EU asylum system is being seen only in terms of harmonising procedures and reception conditions. As I have said previously, harmonisation for its own sake will do nothing to reduce the total number of people claiming asylum to circumvent immigration controls and will reduce our domestic flexibility in areas such as social provision, detention and appeals. Instead, we need to establish a general legal base focused on outcomes such as preventing secondary movements of asylum seekers within the EU, and

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...looking abuse of asylum systems by those who are migrating for other reasons, to steer future action in this area.

19. In order to make progress in this area, we will look again at the drafting of the UK amendment while retaining its substance. But it is essential that we are prepared to fight for the language we need in the closing stages of the Convention and in the IGC. If we do not achieve an asylum article that helps rather than hinders our domestic objectives, I would have to reconsider, under the new Treaty, our current policy of opting into EU asylum measures.

National security

20. The revised text does not yet adequately protect our national security interests. Although it contains most of the basic elements we need, the language on internal security is too narrow and there are other problems elsewhere in the text. I recognise that we must be realistic about what can be achieved in the Convention on this. There is probably little more to be gained in the Convention process on national security, though we must protect what we have already achieved. Further action on this will be required in the IGC.

Europol

21. We must avoid any suggestion of an operational Europol acting without the consent of a Member State. In particular, we need to make clear in the revised article on Europol that it should act in support of Member States' competent authorities. This is the existing language of Article 30(2) of the Treaty on European Union and should be retained in the new Treaty.

Horizontal issues

22. We must remain free to maintain and conclude bilateral and multilateral agreements in the JHA area which go further than EU agreements. There are numerous situations in which our own bilateral arrangements for police and judicial co-operation (for example co-operation with the US on terrorism) involve less restrictive safeguards than in an equivalent EU agreement. We need to ensure that our ability to maintain and develop close bilateral relationships with our non-EU partners is protected during the closing stages of the Convention and in the IGC itself.

23. As for ECJ jurisdiction over the JHA articles, we need to maintain our position that Member States should have flexibility to decide which arrangements for preliminary rulings fit best with their national judicial systems. We should also avoid any weakening of our position on individual recourse to the ECJ in this area, particularly given the potentially serious implications for immigration, asylum and law enforcement work.

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

David

3 June 2003

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10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

3 June 2003

Dear Kim,

CONVENTION: THE FOUNDING SIX

I have had accounts from Silberberg and Andréani (please protect) of yesterday's meeting of the founding six. I believe there is to be a further meeting tomorrow.

In summary, the original six seem to be close to an agreement between themselves on the "foreign minister" pretty much on the lines of the Praesidium text.

They are also negotiating on the size of the Commission on the lines of the Benelux paper, though the French are very keen to have an equitable rather than an equal distribution. I told Pascale Andréani that we had been a bit ambivalent about this but I was pretty clear that the Prime Minister would want equitable not equal.

The Benelux had pressed for a restricted term of office for the chair of the European Council and the eventual compromise had been two years, renewable. Comment: I guess we could live with this since it coincides with the terms of the Parliament and the Commission. The Germans and French had resisted strong Benelux pressure to enable the chair of the European Council to continue as a national Head of Government. This is because Juncker wants the job. Silberberg had put forward the (ingenious) compromise that the person should be chosen by QM. If anyone wanted to have the job of chair while remaining a national Head of Government, then the voting rule would be unanimity. Not surprisingly, the Luxembourgers had rejected this. I encouraged both the Germans and French to hang tough on this point.

The main difficulty from our perspective is the Benelux insistence on the Commission President chairing the GAC. Silberberg is firm on this point

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arguing, correctly, that, although the GAC does not legislate, it does negotiate on the financial perspectives and inter-institutional agreements.

Pascale Andréani told me that the French were looking at a possible division whereby the Council would be chaired by a member state for anything that was legislative or financial or about negotiation but could be chaired by the Commission President for anything that was coordination. I said that I thought that we would prefer not to have a chair of European Council if that was the price. Politically, it was impossible. And it was also very dangerous institutionally in the long term. Pascale said that was her instinct also.

I am copying this letter to Sir Nigel Sheinwald and Matthew Taylor (UKRep Brussels), Sir John Holmes Paris, Sir Peter Torry (Berlin) and Catherine Royle FCO).

Yours ever,

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

J S WALL

Kim Darroch CMG
FCO

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10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

THE PRIME MINISTER

29 May 2003

Dear Neil,

Congratulations on securing your Commission reform package.

I doubt if anyone who had not had extensive experience of cajoling, haranguing and outmanoeuvring in a previous life could have pulled it off. You really did lead from the front. You must occasionally have felt more like St Sebastian than St George. But it is a real success. And all down to you.

Well done!

Yours ever
Tony

The Rt Hon Neil Kinnock



10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

28 May 2003

Dear Simon,

**FUTURE OF EUROPE CONVENTION AND THE IGC:
CONSULTING PARLIAMENT**

The Prime Minister has seen your letter to Matthew Rycroft of 19 May about consulting Parliament on the European Convention and the IGC.

The Prime Minister agrees that, in addition to the usual debate before the European Council there should be a debate before the summer recess. Given the prominence of the Convention and the euro at present, and the need to make the debate one in which the government can set out its policy of engaging with Europe as against the Opposition's policy of withdrawing from it, the Prime Minister wants to think about the exact nature and timing of the debate and his own possible participation in it.

I imagine that, normally, a debate would take place on a motion for the adjournment. In this instance, we might want to have a substantive motion. The Prime Minister is keen to have the argument and to expose the implications of the Opposition's policy.

I am copying this letter to the Private Secretaries of EP members, Sir Nigel Sheinwald (UKRep Brussels) and Matthew Rycroft here.

Yours ever,

J S WALL

Simon McDonald
FCO

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10 DOWNING STREET
LONDON SW1A 2AA

27 May 2003

John Taylor

CONVENTION ON THE FUTURE OF EUROPE

The Prime Minister has read the Convention's draft constitutional Treaty, published on 26 May. On the whole, the Prime Minister feels that the text has improved from previous drafts. He believes that it is important that the Convention delivers as good an outcome from our perspective as possible. There will be issues which, in practice, can only be settled in the Intergovernmental Conference. But we should keep them to as few as possible.

He has commented on the following key issues:

- Article I-1 is much improved. The Prime Minister believes that it is now consistent with our position, particularly the removal of the word "federal." The sentence "The Union shall co-ordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it" is particularly important;
- The Prime Minister is uneasy with the phrasing of Article I-10 on the primacy of EU law, less on the legal substance than on the point that the wording ('the Constitution shall have primacy') implies that the Constitution has a power other than that which member states have conferred on it. He would like to follow up the Foreign Secretary's suggestion of looking at the wording of Section 2 II of the European Communities Act as a possible model;
- The Prime Minister believes that Article I-14 on Economic and Employment Policy is an improvement. But Article 11, para 3 remains

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bad and should, at the least, be made consistent with Article 14, which itself may be capable of further improvement;

- On Article I-18, listing the EU's institutions, the Prime Minister feels that we should try to remove the European Council from the list, but should not make this a headline issue for us. We should let others make the running;
- The Prime Minister wants to keep the existing Treaty provisions on European Council attendance. He feels that the requirement for the Chair to have been a member of the European Council for at least two years is too restrictive. He would like to see a fuller and bolder description of the Chair's role in Article I-21(2) ie we should not give up our view of the Chair's role in coordinating the work of other Councils;
- On Article I-23, the Prime Minister has commented that the Single Legislative Council is a classic issue for the IGC to knock out. We should continue to oppose in the Convention as it is not a practical, or desirable, proposal;
- The Prime Minister believes that we must "keep in play" the proposal to reduce the size of the Commission (Article I-25). So, we should not knock the proposal even though it is written in a pretty unworkable form;
- On selecting the President of the Commission, the Prime Minister feels that the Giscard formula in Article I-26 is the right one;
- On CFSP, the Prime Minister agrees with the Foreign Secretary that we should try to change the title of the "Foreign Minister." He would like us to stay close to our allies on double hatting, e.g. the Swedes. He thinks that the language in Article I-39 (extending the duty of consultation) is politically constraining and we should seek to get it changed;
- On ESDP, the Prime Minister does not want to expend much negotiating capital in Article I-40 (and Article I-15) on "will" versus "might" lead to a common defence. He feels that provided the European Council acts by unanimity, the difference is semantic (i.e. "will" is a mere statement of fact if the European Council has so decided). He is opposed to proposals on enhanced co-operation in ESDP in Article I-40(6) and (7);

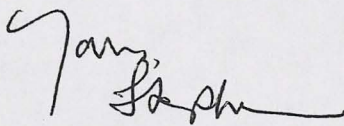
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- 3 -

- On voting in CFSP, the Prime Minister believes that unanimity should continue to be the rule. He does not agree with the proposal to introduce QMV in Article III-200(a). He has commented on Article III-192 that nothing should change the existing ability of the UK to speak in a national capacity at the United Nations;
- The Prime Minister thinks that introducing QMV for Own Resources (Article I-53) is unacceptable;
- On the European Public Prosecutor (EPP) - Article III-168 - , the Prime Minister sympathises with the goal of dealing with fraud against the Community budget and more effective judicial co-operation, but recognises the political difficulty of introducing an EPP. He believes that retaining unanimity for the enabling clause is key;
- The Prime Minister believes that introducing QMV for social security, for ex-Article 137 and ex-Article 42 would create difficulties. He feels that any seepage from ex-Article 42 to our tax system would be unacceptable;
- On Europol (Article III-172), the Prime Minister feels that it must be clear that operations are subject to the consent of the Member States;

I am copying this letter to the Private Secretaries of members of EP Committee, Sir Andrew Turnbull and Sir Nigel Sheinwald.


STEPHEN WALL

Jonathan Sinclair
Foreign and Commonwealth Office

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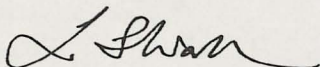
From: Stephen Wall
Date: 22 May 2003

PRIME MINISTER

cc: Jonathan Powell
Sally Morgan
Roger Liddle
Steven Morris
Danny Puce
Sir Nigel Sheinwald
Katrina Williams

COMMISSION REFORM: LETTER TO NEIL KINNOCK

Agreement was reached in Monday's General Affairs Council on the Commission reform package. This is a good deal. We have achieved real savings and substantial improvements to Commission personnel policy. Now would be a good time to send a short note of congratulations to Neil Kinnock
/ for his role in driving forward reform. Draft attached.



STEPHEN WALL

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forward to Post



(F)

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

20 May 2003

Dear Jonathan,

SUBJECT
MASTER
Filed:

**CONVENTION ON THE FUTURE OF EUROPE:
PRIME MINISTER'S DINNER WITH GISCARD, 19 MAY**

The Prime Minister, Foreign Secretary and Peter Hain had a working dinner with Giscard last night. John Kerr, Jonathan Powell, Stephen Wall, Roger Liddle and I were also present.

Giscard made an opening presentation. We were nearing the end of the concept phase of the Convention. He had only an approximate idea of what the Prime Minister, Chirac and Schröder wanted. In addition to making the Single Market more effective, what did we expect from the Convention? Would the constitutional treaty allow the EU to develop over time within a common framework? There were three broad groups within the Convention: (a) the do nothing group, mainly the small old countries plus the new countries who feared change; (b) the Brussels lobby, who were active, mainly the Commission Civil Service plus the EP; and (c) the "sensible, realistic people" who thought we must keep national structures plus some collective action with a balance between the two, mainly the big states (big in historical, not size, terms). So the landscape was confused.

Giscard continued that there were different outcomes possible: failure, or a set of options, or a common formula. The last was obviously the best. But to achieve it would require agreement between the UK, France, Germany and Italy. The rest would then follow. (Spain wanted to gain advantages through the Convention, but had no concept. The Benelux were in the Brussels lobby but were trying to compromise.) To give definition, would the Prime Minister be able to meet Chirac and Schröder and the "Italian establishment" (he appeared not to be able to bring himself to take Berlusconi seriously)?

Overall the approach could be: to improve the Single Market structure, with some changes including on taxation; to agree on competences, subsidiarity etc; and to resolve the fight between communitising and intergovernmental action for the rest. If we were to go down the intergovernmental route, the Council

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would need to be modernised and improved. A stable Presidency and European "Foreign Secretary" (he used this term throughout) was required, cooperating closely with the Commission. On this, the Convention wanted to propose something more communautaire, but if there were a joint position of UK/France/Germany/Italy, Giscard would be able to express it and, after some agitation, it would lead to agreement.

In response the Prime Minister congratulated Giscard warmly for the role he had played so far and underlined the importance of the task ahead. We had to avoid a stand-off between the large member states, but equally the bigs must not look as if they were ganging up on the rest. The UK wanted a Europe that was stronger, more effective and more democratic. This required:

- (a) The right relationship between the Council and Commission, including a full time Chair of the Council. The Council should set the agenda, and the Commission drive it through. We must avoid the Chair becoming neutered.
- (b) More QMV in some areas, but the UK had real red lines on tax, social security and CFSP. To yield any of these would be difficult. Outside these areas we would be as constructive as possible.
- (c) A democratic anchor in the nation states. Hence the importance of subsidiarity. Brussels must act as an instrument for Europe not a self-standing power.

In discussion, the following were the main issues:

Process. Giscard said the IGC would require high level involvement.

Language. The Prime Minister explained the disproportionate impact it would make here if Giscard could take account of our sensitivities, for instance over the word "federal". It would also help if he used the concept of "nation states" instead of "states" at least once. Giscard floated the idea of changing "federal" in Article 1 to "communautaire" or "Community". The Prime Minister welcomed this.

Charter. Giscard hoped that the substance of his proposal was acceptable to us. It was still under debate where to include the Charter. The Foreign Secretary and Peter Hain underlined the importance of the horizontal articles, and argued for the Charter to be included in a protocol rather than the treaty proper. Giscard

said it would be impossible to put it in a protocol, but it could be hidden away towards the end of the treaty. Kerr agreed on the horizontal articles, and thought that Vitorino would stick to the deal he had done with Baroness Scotland.

Definition of QMV. Giscard defended his formula of a majority of states and 60% of population, and hoped that HMG experts had tested this. He thought that all except Spain could agree.

QMV for social security. Giscard hoped that his text did not go beyond social security for workers moving from one member state to another. Stephen Wall set out our concerns over the fiscal implications of some decisions taken on equality grounds. We could not defend this before Parliament. Giscard suggested sticking with Nice for Articles 42 and 137. The Prime Minister said we would look at specific practical examples.

QMV for tax. Giscard said our position may be politically justified but it was not intellectually defensible, since the text only applied to taxation that distorted competition in the market. The Foreign Secretary set out our concerns. Any unfair tax competition issues should be dealt with as the Savings Tax was. The Prime Minister said we had been scarred by our previous experience over health and safety legislation. A vote in parliament would be very difficult if it included QMV for tax. The issue of unfair taxation should be dealt with through subsidies policy. Stephen Wall added that British businesses were now hostile because of their experience on social issues. Giscard concluded that he hoped the UK would not make too much of this, and that he would look at our concerns.

CFSP. Giscard said the UK was absolutely right. He was dismissive of the lectures on foreign policy which the Convention had heard from some of the small and new member states. Dehaene's position was absurd. Further decisions by QMV were impossible. The Foreign Secretary commended the present system. The double-hatted Solana/Patten figure must be clearly responsible to the Council, even if he sat in the Commission. Giscard said that his own proposal had been defeated, but he hoped it would be addressed in the IGC. The Prime Minister hoped Giscard would make his own views clear where he disagreed with the Convention outcome. Giscard agreed. He supported the UK red line. He would try to accommodate it. If he could not, he would make his views known.

Legislative Affairs Council. Giscard defended his proposal at length, arguing that the UK was isolated in opposition. The Foreign Secretary set out our

arguments against, including that the proposed Council would duplicate sectoral Councils.

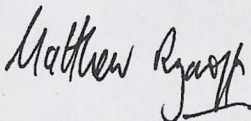
Subsidiarity. The Prime Minister said it was important that if a third of national parliaments objected to a proposal, there would have to be a real change, not just a further look at it by the Commission. Giscard thought that in practice if a third of national parliaments objected the proposal would be dead, but we could not say this formally. Stephen Wall said the Convention had to make a reality of subsidiarity, and not allow the bureaucracy to lord it over democracy. Kerr proposed that if a third of national parliaments objected, the Council would not pursue the proposal. Peter Hain said we would consider this, and if we liked it we might propose it ourselves.

Size of Commission. The Prime Minister made the case for a smaller Commission. This should be part of the final negotiation. Giscard agreed and hoped that the UK would again make this case within the Convention. He sounded exasperated that the 2007 financing process would be led by a Commission heavily skewed towards the small member states. He floated an idea for the formation of the 2009 Commission: there could be five Commissioners from the six largest member states, four from the middle eight member states, and four from the smallest eleven member states. The countries providing the President and "Foreign Secretary" would not have a Commissioner. The Prime Minister expressed interest in this.

In a one-to-one at the end of the dinner, the Prime Minister stressed again the importance of language, and discussed UK/French relations with Giscard.

I am copying this letter to Mark Bowman (HMT), Sarah Lyons (Welsh Office), Ian Fletcher (Cabinet Office), Sir Nigel Sheinwald (UKRep Brussels), Sir John Holmes (Paris), Jeremy Cresswell (Berlin), Sir Ivor Roberts (Rome) and Stephen Wright (Madrid).

Yours,



MATTHEW RYCROFT

Jonathan Sinclair
FCO

From: Steve Morris
Sent: 19 May 2003 14:32
To: Jonathan Powell
Cc: Alastair Campbell; Peter Hyman; Roger Liddle; Sally Morgan; PMOS Prime Minister's Official Spokesman; Matthew Rycroft; Stephen Wall
Subject: Convention - other European referendums

The best line to take is:

- Some countries will, some won't. Depends on their political and constitutional traditions. No bearing on Britain.
- As it happens, less than half the 25 countries concerned are likely to have a referendum.
- No plans for referendum in Germany, Belgium, Sweden, Greece, Luxembourg, or most of the accession states.

Full list compiled by Joe Griffin attached

Steve



Referendums in Europe 19.5.03....

-----Original Message-----

From: Jonathan Powell
Sent: 19 May 2003 10:26
To: Steve Morris
Cc: Alastair Campbell; Peter Hyman; Roger Liddle; Sally Morgan; PMOS Prime Minister's Official Spokesman; Matthew Rycroft; Stephen Wall
Subject: RE: Convention

he just wants to say at the press conference that Germany, x, y and z are not having a referendum. Can he have such a list.

-----Original Message-----

From: Steve Morris
Sent: 19 May 2003 09:42
To: Jonathan Powell
Cc: Alastair Campbell; Peter Hyman; Roger Liddle; Sally Morgan; PMOS Prime Minister's Official Spokesman; Matthew Rycroft; Stephen Wall
Subject: RE: Convention

I have a list of which countries are having a referendum. Key point is that we ratify treaties according to our own practice - not affected by what others do. But happily, as it happens, it looks like less than half the 25 countries concerned will have a referendum.

Will circulate a robust set of new lines to take on Convention later today.

-----Original Message-----

From: Jonathan Powell
Sent: 19 May 2003 09:33
To: Stephen Wall
Cc: Alastair Campbell; Steve Morris; Peter Hyman; Roger Liddle; Sally Morgan; PMOS Prime Minister's Official Spokesman; Matthew Rycroft
Subject: Convention

Alastair will work with you to draw up a media strategy for the Convention. TB thinks he should do a brief presser with Giscard tonight at 1930. Main message to get over is why the Convention is important to us. TB has asked for a list of those countries that will not have a referendum on the outcome. I know this is complicated by countries that have not yet made up their minds but can you produce the best thing we can.

EUROPEAN CONSTITUTIONAL TREATY:
REFERENDUMS IN OTHER EUROPEAN COUNTRIES

Intentions announced as of 19.5.03

NO

- 1 Germany
- 2 Belgium
- 3 Luxembourg
- 4 Sweden
- 5 Greece
- 6 Malta
- 7 Turkey
- 8 Estonia
- 9 Hungary
- 10 Lithuania
- 11 Romania
- 12 Slovakia
- 13 Slovenia

YES

- 14 Ireland
- 15 Denmark
- 16 Portugal

UNCLEAR - LIKELY

- 17 Italy
- 18 France
- 19 Spain
- 20 Czech Republic
- 21 Latvia

UNCLEAR - UNLIKELY

- 22 Finland
- 23 Netherlands
- 24 Austria
- 25 Poland
- 26 Bulgaria
- 27 Cyprus

PROPOSED STRUCTURE

- a) 1999 – not met tests
- b) Since 1999 convergence, but not yet sustained
- c) On tests
 - 1 – not met)
 - 2 – met)
 - 3 – met) as in TB draft
 - 4 – met)
 - 5 – met)
- d) So not yet a clear and unambiguous case, not least because of global uncertainties. Not sensible at the moment.
- e) But committed to joining, so will take following steps to make the case clear and unambiguous
 - housing
 - flexibility
- f) Return next year to 5 tests. Nearly there.

19 May 2003



Foreign &
Commonwealth
Office

London SW1A 2AH

~~MR~~
JPO
~~SW~~
RL
FL
JHM
CS
Press

Dear Matthew

Future of Europe Convention and the IGC: Consulting Parliament

There is growing Parliamentary interest in the Convention on the Future of Europe. In particular, Ministers are being asked with increasing frequency when Parliament will have an opportunity to debate the issues. The Foreign Secretary thinks that we have to provide this. He also thinks we need to consider whether to do a White Paper on the IGC.

On Parliamentary debate, there is no need for a separate special debate before the Thessaloniki European Council on 20/21 June. In any event there is the usual pre-European Council debate on 18 June. This is bound to be dominated by Convention issues. (There have already been many opportunities to discuss Convention issues – debates on the floors of both Houses, oral evidence sessions, Westminster Hall debates and the Standing Committee on the Convention.)

But there is a good case for a special debate on the Convention outcome, in both Houses, after Thessaloniki. This would be in addition to the Prime Minister's usual post-European Council statement. This is the Foreign Secretary's preferred option. He thinks we should squeeze it in as soon as possible after the European Council, and certainly before the House goes into Summer recess on 17 July. The Opposition will no doubt be heavily engaged in misrepresenting the Convention outcome. A debate would be an important opportunity to put on the record both our interpretation of the Convention's results, and our approach to the IGC. These are important issues and there is considerable parliamentary and public interest in them.

As to whether there should be a White Paper before the IGC, given that these were produced before both Nice and Amsterdam, the Foreign Secretary doesn't think we can duck this. He concludes that we should aim for a publication date around late September. It will of course need careful drafting, so that it sets out clearly the general parameters and objectives of the Government's approach to the IGC, while not tying our hands unduly.



I am copying this to the Private Secretaries of EP members, Sir Stephen Wall and Sir Nigel Sheinwald.

Yours ever
Simon

(Simon McDonald)
Principal Private Secretary

Matthew Rycroft Esq
10 Downing Street

19 May 2003

Prime Minister

✓ Jack Straw mentioned this
to Cabinet yesterday
I think he's right to offer a
debate before the House.



Foreign &
Commonwealth
Office

London SW1A 2AH

Dear Mr. Matthew

Do you agree?

Julian 23/5

Future of Europe Convention and the IGC: Consulting Parliament

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Yours ever
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(Simon McDonald)
Principal Private Secretary

Matthew Rycroft Esq
10 Downing Street

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