

THE PROPOSED TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

EILEEN REGAN (EDITOR), AILEEN MCLEOD, VAUGHNE MILLER,
AND BETHAN WILLIAMS

The Inter-Parliamentary Research Network (IPRN) comprises of researchers from the Research and Library Services of the legislatures in the United Kingdom (UK) and the Republic of Ireland (ROI). IPRN aims both to raise the standard of research in UK and ROI legislatures through the sharing of ideas and good practice, and to facilitate work on common issues. Briefings are produced as a collaborative effort, and are jointly published.

This briefing is intended for Members of the UK legislatures to facilitate their participation in the current debate about the proposed "draft Treaty Establishing a Constitution for Europe" (the draft Treaty), which was formulated by the Convention on the Future of Europe in 2002-03, and now forms the basis for negotiations at the on-going Inter-Governmental Conference (IGC). The briefing outlines a number of key EU and UK developments that helped shape the draft Treaty. From a national and/or regional perspective, these developments include: past EU Treaty developments; European Court of Justice (ECJ) decisions; past proposals of a constitutional nature; EU enlargement; the Future of Europe debate (including the Convention and its work); governmental action across the UK (executive and legislative); and the current IGC. It also addresses ratification of the draft Treaty, highlighting the different procedures in individual Member and Acceding States, and in particular, considers the possible issue of a UK referendum on the draft Treaty.

Subsequent briefings will follow in the coming months. Briefings 2-5 will provide comparative information in relation to various submissions made to the Convention, and specific draft Treaty proposals that concern: the division of competencies (Briefing 2); regional interests/concerns (Briefing 3); the exit clause and 'mutual solidarity' (Briefing 4); and the Charter of Fundamental Rights and references to God/religion (Briefing 5). Briefing 6 – the final briefing - will review the outcome of the IGC.

IPRN Briefings are compiled for the benefit of Members of the UK and ROI legislatures and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff who should contact Aileen McLeod (Scottish Parliament) on 0131-348-5374 e-mail aileen.mcleod@scottish.parliament.uk or Vaughne Miller (House of Commons Library) on 020-7219-4327 e-mail millerva@parliament.uk or Eileen Regan (Northern Ireland Assembly) on 028-9041-8324 e-mail eileen.regan@niassembly.gov.uk or Bethan Williams (National Assembly for Wales) on 029-2089-8993 e-mail bethan.williams@wales.gsi.gov.uk. Researchers are unable to enter into personal discussion with others in relation to IPRN Briefing papers.

Every effort is made to ensure that the information contained in IPRN briefings is correct at the time of publication. Readers should be aware, however, that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.



**Northern Ireland
Assembly**

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



**The Scottish
Parliament**

SUMMARY OF KEY POINTS

- The Convention on the Future of Europe (the Convention) formulated the proposed “draft Treaty Establishing a Constitution for Europe” (the draft Treaty) after a period of public consultation and consideration for 16 months over 2002-2003. In July 2003, the Convention concluded its work and submitted the draft Treaty to the Council of the European Union (the Council). This document now forms the basis of on-going negotiations between EU Member States and Acceding States at the Inter-Governmental Conference (IGC) that opened in October 2003, and is expected to continue for some time.
- The first part of the draft Treaty deals with matters such as the objectives and competences of the EU, as well as the institutions – an area in which it sets out a number of reforms. The second part incorporates the Charter of Fundamental Rights of the European Union, which sets out a range of rights, freedoms and principles for EU citizens along with provisions on its interpretation and application. The third part sets out policies and functioning of the Union. In the social policy field, it largely retains the current provisions of the Treaty of Rome, but with some modifications. (Further detail about the draft Treaty proposals can be found in subsequent briefings of this series.)
- A number of key EU and UK developments helped shape the draft Treaty and views on it. From a national and or regional perspective, these developments include: past EU Treaty developments; European Court of Justice (ECJ) decisions; past proposals of a constitutional nature; EU enlargement; the Future of Europe debate (the Convention and its work); governmental action across the UK (executive and legislative); and the current IGC.
- The issue of ratification of the draft Treaty presents interesting questions. It appears it will take different forms in individual Member and Acceding States. In the UK, ratification does not require a referendum. But there could be one in the UK, depending on governmental action. This issue is currently receiving considerable attention.
- This briefing paper outlines the above background information to facilitate the participation of Members of the UK legislatures in the on-going debate about the draft Treaty. It also includes potential discussion points arising from the current proposals from both a national and a regional perspective in the UK.
- Subsequent briefings will follow in the coming months. Briefings 2-5 will provide comparative information in relation to various submissions made to the Convention, and specific draft Treaty proposals that concern: the division of competences (Briefing 2); regional interests/concerns (Briefing 3); the exit clause and ‘mutual solidarity’ (Briefing 4); and the Charter of Fundamental Rights and references to God/religion (Briefing 5). Briefing 6 - the final paper - will review the outcome of the IGC.

CONTENTS

TABLE OF ABBREVIATIONS	5
INTRODUCTION.....	6
I. HISTORICAL BACKGROUND.....	6
A. TREATY DEVELOPMENTS	7
B. EUROPEAN COURT OF JUSTICE DEVELOPMENTS	10
C. PAST EU CONSTITUTIONAL PROPOSALS	11
II. THE CONVENTION ON THE FUTURE OF EUROPE.....	13
A. PRE-CONVENTION DEVELOPMENTS	13
1. <i>EU Enlargement</i>	13
2. <i>White Paper on European Governance</i>	14
3. <i>Laeken Declaration</i>	14
B. THE CONVENTION	15
1. <i>Remit of the Convention</i>	15
2. <i>Representation of the Convention</i>	15
3. <i>Structure of the Convention</i>	16
a. Praesidium	16
b. Working Groups	17
c. Discussion Circles	19
d. Civic Forum (and related Contact Groups).....	20
e. Youth Convention.....	21
4. <i>Time-table of the Convention</i>	21
5. <i>Submissions to the Convention</i>	21
a. Submissions of regional significance	22
b. Convention submissions compared to the draft Treaty	23
6. <i>UK governmental activity during the Convention</i>	28
7. <i>Areas of debate in the Convention</i>	28
8. <i>The draft Treaty</i>	32
C. POST-CONVENTION DEVELOPMENTS	33
1. <i>EU reaction to the draft Treaty</i>	33

2. UK reaction to the draft Treaty	34
3. UK central and regional governmental activity post-Convention	39
4. On-going IGC	39
a. Timetable of IGC	39
b. Key debate areas in the IGC	40
c. UK government's views on the draft Treaty and 'red lines'	41
d. Other Member States' and Acceding States' views on the draft Treaty	42
e. IGC positions	44
III. RATIFICATION OF THE DRAFT TREATY	47
A. UK RATIFICATION PROCEDURES	48
1. General ratification rule	48
2. The UK Parliament's role in ratification	48
3. The UK Parliament's role in calling a referendum	49
4. Referenda called to date in the UK	49
5. The UK Government's position on a UK draft Treaty referendum	49
6. European Parliamentary view	50
7. Anticipated Member State Referendum	51
B. RATIFICATION PROCEDURES IN OTHER MEMBER AND ACCEDING STATES	51
IV. POTENTIAL DISCUSSION POINTS	51
APPENDIX 1	53
APPENDIX 2	54
APPENDIX 3	56
APPENDIX 4	70
SELECTED BIBLIOGRAPHY	77

TABLE OF ABBREVIATIONS

CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
COR	Committee of the Regions
DCs	Discussion Circles
Draft EEP	Draft Treaty Establishing European Political Community
Draft TEU	Draft Treaty on the European Union
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EEAC	European and External Affairs Committee
EEC	European Economic Community
EESC	European Economic and Social Committee
EP	European Parliament
EPC	European Policy Centre
EPP	European People's Party (Christian Democrats)
EPP-ED	European People's Party and European Democrats
ESDP	European Security and Defence Policy
ETUC	European Trade Union Confederation
EU	European Union
FCO	Foreign and Commonwealth Office
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
Greens-EFA	The Green/European Free Alliance
ICL	International Constitutional Law
IGC	Inter-Governmental Conference
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organisation
NGOs	Non-governmental Organisations
OFMDFM	Office of First Minister and Deputy First Minister
PES	Party of European Socialists
QMV	Qualified Majority Voting
SEA	Single European Act
TA	Treaty of Amsterdam
Treaty of Paris	Treaty Establishing the European Coal and Steel Community
TEC/Treaty of Rome	Treaty Establishing the European Economic Community
TEU	Treaty on European Union
TN	Treaty of Nice
UK	United Kingdom
US	United States
WGs	Working Groups

INTRODUCTION

Following a period of public consultation and consideration over 2002-2003, the Convention on the Future of Europe (the Convention) formulated the proposed “draft Treaty Establishing a Constitution for Europe” (the draft Treaty). In July 2003, the Convention concluded its work and submitted the draft Treaty to the Council of the European Union (the Council). This document now forms the basis of on-going negotiations between EU Member States and Acceding States at the Inter-Governmental Conference (IGC) that opened in October 2003. Discussions are expected to continue for some time.

As IGC negotiations intensify, debate about the draft Treaty is gaining momentum in the UK. This briefing - the first in a six part series - aims to facilitate the participation of Members in the UK legislatures in the debate. It seeks to make key information about the draft Treaty easily accessible.

At the outset, it provides historical background that helps explain the genesis of the draft Treaty. This includes a brief overview of those EU Treaties and European Court of Justice (ECJ) decisions that appear constitutional in nature, as well as past EU constitutional proposals. Thereafter, the briefing highlights events that influenced the formation and operation of the Convention, (e.g. enlargement, the Laeken Declaration, the Convention and its work), and formed the basis of the IGC.

The briefing also outlines EU Treaty ratification procedures across Europe, including that in the UK, and discusses the issue of a UK referendum on the draft Treaty. In closing, it highlights potential discussion points arising in the UK from the draft Treaty from both national and regional perspectives. It also includes a list of on-line information sources to follow the on-going draft Treaty debate (see [Appendix 1](#)).

Subsequent briefings will follow in the coming months, providing comparative information in relation to various submissions made to the Convention, and specific draft Treaty proposals that concern: the division of competences (Briefing 2); regional interests/concerns (Briefing 3); the exit clause and ‘mutual solidarity’ (Briefing 4); and the Charter Of Fundamental Rights and references to God/religion (Briefing 5). Briefing 6 - the final paper in this series - will review the outcome of the IGC.

I. HISTORICAL BACKGROUND

Debate surrounding the draft Treaty will determine the future reform of the EU. Such debate is not new. Since the 1950s there have been discussions about the future direction and nature of the EC/ European Community (EC)/EU integration process. Discussions have centred on issues such as: the goal of European political integration; the limits of such integration; and, the means by which the institutions and any new powers could be made democratically accountable to the peoples of Europe, as well as popularly legitimated by them.

This section highlights key Treaty and European Court of Justice (ECJ) developments that appear constitutional in nature, as well as past constitutional

proposals, all of which appear to have helped shaped the draft Treaty to a lesser or greater extent.

A. TREATY DEVELOPMENTS

The EU is a treaty-based organisation.¹ This means all EU actions are based on treaties that were unanimously agreed between Member States. Similarly the current draft Treaty must be agreed before it can have any effect. Outlined below are a number of treaties that are relevant to the current draft Treaty debate.

[Treaty Establishing the European Coal and Steel Community \(Treaty of Paris\) \[1951\]](#)

Arguably the constitutional nature of the 'European project' was recognised at the signing of the Treaty of Paris. This established the European Coal and Steel Community in 1951, laying the foundation for the future European Community (EC)². Attached to the Treaty text was an official report of the German Government, wherein the system of organisation was described as 'a European model of a constitutional type'.

Draft Treaty Establishing European Political Community (draft EPC) [1953]

In 1953 an Ad Hoc Assembly was convened within the framework of the 1951 Treaty of Paris to draft EPC. It proposed a union of peoples and states by establishing a bi-cameral Parliament composed of a directly elected People's Chamber, and a Senate elected by a national parliament (to represent the states). However, the French National Assembly rejected the draft EPC in August 1954. Consequently the draft EPC was abandoned.

[Treaty Establishing the European Economic Community \(TEC/Treaty of Rome\) \[1957\]](#)

The 1957 TEC established the European Economic Community (EEC), but left the EEC's constitutional status unclear. The framers' original intention was to establish an international organisation in which Member States were to comply with a set of international obligations that sought to establish a common market with broad economic policies. However, the TEC extended beyond purely economic aspects, and included some social aspects, (such as equality between men and women in the workplace and worker's rights), and political objectives. The TEC created obligations that were greater than a normal multi-lateral treaty or free-trading agreement (such as the General Agreement on Tariffs and Trade (GATT)), and required a far greater degree of enforcement than was possible under international law.

Draft Treaty on the European Union (draft TEU) [1984]

In 1984, the European Parliament adopted the draft TEU, which aimed to replace the existing treaties with a single and comprehensive constitutional text. The draft TEU set out a blueprint for a new political entity: Proposals included a clear division of powers between the exclusive competences of the Union and those

¹ To view individual EU treaties, refer to the Europa web-site at <http://europa.eu.int> . For a detailed overview of EU treaties, refer to Clive H. Church and David Phinnemore. *The Penguin Guide to the European Treaties: From Maastricht, Amsterdam, Nice and Beyond*. Penguin Books. London: 2002.

² The ECSC Treaty expired on 23 July 2002.

shared with Member States, formally entrenching the principle of subsidiarity,³ Union citizenship, a bi-cameral parliament, new responsibilities to areas such as justice and home affairs and foreign and security policy and safeguarding fundamental rights.

The draft TEU was not enacted, but it did move the issue of institutional reform up the European agenda, and contributed to the decision to convene an IGC (Inter-Governmental Conference), where the Single European Act was negotiated and agreed⁴.

Single European Act (SEA) [1986]

The SEA was the first major revision of the TEC since it was first adopted in 1957. It launched the single market programme by providing for the free movement of goods, services, people and capital, extended EC competence into five new policy areas such as monetary co-operation, social policies, economic and social cohesion, research and technological development and the environment. The SEA increased QMV and enhanced the powers of the European Parliament, especially over single market legislation.

Since 1985 the pace of institutional reform has quickened. Europe's founding treaties have undergone four major revisions, each change has been preceded by an IGC as the main mechanism for negotiating treaties between the Member States.

Treaty on European Union (TEU/Maastricht Treaty) [1992]

The Maastricht Treaty was a constitutive treaty, as well as an amending one. It set up the EC's 'three pillar system' with the European Community (including the single market and the single currency) as the first pillar. It introduced two further pillars: a second pillar on Common Foreign and Security Policy (CFSP); and a third on inter-governmental co-operation between the Member States. The three pillars together constitute the EU.

Other key features of the Maastricht Treaty included:

- Extending the Union's competence to a number of new policy areas, including economic and monetary policy, social policy, education, vocational training and youth, culture, public health, consumer protection, Trans-European Networks, industry and development
- Introducing a European citizenship
- Introducing the co-decision procedure for the European Parliament and the Council to take joint decisions in a limited number of policy areas
- Extending or introducing QMV to 30 policy areas

³ 'Subsidiarity' is the principle that requires action to be taken at the European level only if such action can be more effective than individual Member States' action.

⁴ In an attempt to build public support in favour of the draft TEU, the European Parliament sought to involve the media, interest groups and non-governmental organisations in its campaign to encourage voter participation at the June 1984 European elections, when the draft Treaty was voted on. It was believed such an approach would give it added legitimacy when it was presented to the national governments and parliaments for their consideration. However, the draft TEU barely featured as a central issue in the 1984 elections, failing to ignite much public interest.

Treaty of Amsterdam (TA) [1997]

The TA was a rationalising treaty that amends pre-existing constitutive European Treaties. Amsterdam dealt with a number of issues that had been left over from negotiations on the Maastricht Treaty. A primary concern was to improve the effectiveness of EU institutions and procedures in preparation of EU enlargement. Its main features were:

- New provisions on social policy, employment and anti-discrimination
- A new objective for the EU to maintain and develop the Union as an “Area of Freedom, Security and Justice”
- Moving into the first or Community pillar⁵ Justice and Home Affairs (JHA) issues of visas, asylum, immigration, free movement of persons, the ‘Schengen’ agreement,⁶ judicial co-operation in civil matters
- Incorporation of the ‘Schengen’ agreement
- Endorsement of “the progressive framing of a common defence policy”
- Provision of closer co-operation between sub-groups of Member States (‘enhanced co-operation’/‘flexibility’), except foreign policy
- Simplification and extension of the co-decision procedure that allows joint decision-making between the European Parliament and the Council
- Extension of qualified majority voting (QMV)⁷ to 16 new and existing policy areas
- Introduction of separate protocols on the application of the principles of subsidiarity and proportionality and on the role of national parliaments in the EU

Treaty of Nice (Nice Treaty/TN) [2001]

The Nice Treaty was an amending treaty, which underpinned the move to enlargement. It rationalised alterations to institutional processes, whilst narrowly focusing on questions concerning representation and decision-making, as well as the need for other improvements concerning the Union’s operation.

In specific terms, it did the following:

- Adjusted the institutions in the light of the EU’s enlargement
- Re-weighted the system of Council voting and the number of seats in the European Parliament
- Streamlined the structure and functioning of the European Commission.
- Developed the provisions for enhanced co-operation
- Extended QMV to a further 31 seats

⁵ For a brief explanation of the pillar system, refer to the TEU/Maastricht Treaty listed above. For further information, see Church and Phinnemore. 2002, or the information note on the Europa web-site, at: <http://www.europa.eu.int>.

⁶ The Schengen project began in 1985 outside the EC/EU context. Under Schengen, participating countries (that is, all Member States except for the UK and Ireland, and two non-EU states of Norway and Iceland), agreed to dismantle their internal border controls and agreed common rules on visas, external border controls, law enforcement and judicial co-operation. It was agreed under the Amsterdam Treaty to insert all the various Schengen rules into the EC framework. However, special exceptions had to be devised for Ireland and the UK who had never participated in the project.

⁷ QMV is a system of voting in the Council of Ministers where Member States are allocated a certain number of votes, depending on their size.

B. EUROPEAN COURT OF JUSTICE DEVELOPMENTS

The [European Court of Justice](#) (ECJ) has the duty to ensure observance of EU law. To do so, it interprets and applies the law when rendering decisions. The Court therefore plays a role in laying down or defining the law in the Union. Outlined below are ECJ decisions that appear particularly relevant to the on-going draft Treaty debate.

Van Gend en Loos (NY Algemene Transporten Expeditie Onderneming) v Nederlandse Administratieder Belastingen (Case 26/62) [1963] ECR 1

The ECJ stated the Treaty of Rome (the EEC Treaty) was more than an agreement that merely created mutual obligations between the signatory states. Rather, it explained that the European Communities constituted:

...a new legal order for the benefit of which states have limited their sovereignty rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals...

Van Gend en Loos (NY Algemene Transporten Expeditie Onderneming) v Nederlandse Administratieder Belastingen (Case 26/62) [1963] ECR 1 and Costa (Flaminio) v ENEL (Case 6/64) [1964] ECR 585

To underpin the legal order of the Community, the ECJ established the following constitutional principle and doctrine, respectively:

- Direct effect of EC law - Community law may have direct effect, meaning individuals can enforce their rights under EC law in their national courts against the Member States.
- Supremacy of EC law - Community law has supremacy or primacy over Member States' national law, if it has direct effect. This is to ensure that the provisions of the EEC Treaty and secondary legislation adopted under that Treaty are binding.

Nold KG v Commission (Case 4/73) [1973] ECR 491

The ECJ asserted its commitment to uphold fundamental rights that are recognised and protected by Member States' constitutions and to safeguard them in the EC Treaty. (This decision marks the ECJ's first reference to the European Convention on Human Rights (ECHR).)

Parti Ecologiste Les Verts v Parliament (Case 294/83) [1986] ECR

The ECJ stated that the Treaty of Rome (the EEC Treaty) was "the Community's constitutional charter".

Opinion 1/91 [1991] ECR 6079

The ECJ reiterated the above view in its opinion on the draft Treaty on a European Economic Area, and stated:

...[a]lthough [the Treaty of Rome was] concluded in the form of an international agreement, [it] is nonetheless the constitutional document of a legal community.

Francovich and Bonifaci v Italy (Cases C-6&9/90) [1991] ECRI-5357

The ECJ established the principle of Member State liability for non-compliance or breach of EC law (including measures that lack direct effect). It extended individuals' rights by enabling them to claim compensation against a Member

State if he or she suffered damages as a result of a Member State's failure to implement EC law into its national law.

ECJ case-law and the Charter of Fundamental Rights

The ECJ relies on the Charter of Fundamental Rights in its judgements to reinforce social rights in Member States, despite the Charter's non-binding legal status. For example, the ECJ decision in the case of *R v City of Wakefield Metropolitan Council and the Home Secretary ex parte Robertson*. Therein, the Court partly relied on the Charter, specifically Article 8, the right to protection of personal data, and found unlawful the selling of electoral register copies without the named electors' consent.

C. PAST EU CONSTITUTIONAL PROPOSALS

To date there have been a number of constitutional proposals concerning institutional changes to the operation of the EC, which are outlined below.

Fouchet Plan [1961-62]

The Fouchet Plan (1961-62) proposed the creation of a European Political Union. Apparently it was an attempt (by the French President at that time, General Charles de Gaulle), to strengthen the 'intergovernmental' elements within the EC, i.e. the Council of Ministers and the European Council at the expense of the Commission and the European Parliament. The Plan envisaged a 'union of states' in areas such as foreign policy, defence and culture. And it would be a union within the existing Community: they would co-exist. The union would be governed by a political council of heads of government (or their foreign ministers), acting by unanimity (power of veto) and responsible to an assembly of national parliamentarians. If adopted, the European Commission would be bypassed by a new Paris-based 'political commission' of national civil servants. However, the plan was dropped due to fundamental disagreement among the Member States about the future structure and direction of the European project.

Tindemans' Report [1974]

On the request of the Paris Summit in December 1974, the former Belgian Prime Minister, Leo Tindemans, prepared a report that was published in 1976. Therein he proposed a number of changes to the EC institutions, such as reduced numbers of Commissioners, more QMV to replace unanimity, lengthening the six-month Council Presidency. He also advocated the extension of Community competence into the areas of foreign policy and security. He further proposed a "two-speed Europe", one that would enable more enthusiastic Member States to make further progress in the process of European integration, without other states holding them back. However, Member State governments did not support this idea, as it could be problematic in ensuring uniform application of Treaty provisions.

Andonnino Committee [1984]

In 1984, the European Council met in Fontainebleau to set up the Adonnino Committee (named after its Italian Chair), which would examine a 'People's Europe' and institutional changes.⁸ In its report, the Committee was largely in favour of: strengthening the Commission; enhancing the role of the European Parliament; limiting the use of unanimous voting in the Council; and regularising the role of the European Council.

⁸ Church and Phinnemore. 2002, p. 36.

European Parliament Institutional Affairs Committee Proposals [1994]

In 1994, the former Institutional Affairs Committee of the European Parliament proposed an EC constitution, largely based on a report drawn up by one of its Members, Fernand Herman. Herman's report was premised on the belief that a constitution would close the legitimacy gap between the EU and the people of Europe. Thus the Committee's report included proposals that sought, e.g., protection of fundamental rights, joint adoption of European legislation by the European Parliament and the Council, and recognition of the EU's legal personality. However, the European Parliament did not adopt the proposals.

Giscard d'Estaing Competency Proposals

The former French President and MEP, Valery Giscard d'Estaing, proposed a catalogue of competences in 1990 during the European Parliament's debate about the incorporation of subsidiarity into the European decision-making process. D'Estaing's proposal, entitled "Making the principle of subsidiarity more explicit within the existing powers arising from the Treaties", set out a division of competences and shared competences for the Community and the Member States.

Reflection Group in anticipation of 1996 IGC/1996 IGC Constitutional Proposals

A Reflection Group was set up in June 1995 to set out the various issues and options for discussion at the 1996-97 IGC. The Group was comprised of representatives of the foreign ministers, the European Parliament, the Commission and a number of senior or retired officials or professors. In its report, the Group suggested three aims for the 1996 IGC:

- (1) bringing the Union closer to its citizens
- (2) making it work better in the run-up to enlargement
- (3) giving it greater external capacity

There were a large number of submissions from the Member States and the EU institutions, which contained various proposals to amend the Maastricht Treaty. Despite this, the final report did not provide detail.

The final report was submitted to the Madrid European Council in December 1995. It included a number of constitutional proposals concerning the introduction of a flexibility clause, the hierarchy of Community acts, rationalising the decision-making processes in the Council of the EU and the composition of the European Commission and the European Parliament.

2000 IGC Proposals

The 2000 IGC put into place reforms for the strengthening of the powers of the Commission President and the Commission's overall political direction. With regard to the size of the Commission, many of the larger Member States demanded a limit to the number of Commissioners. Whereas the smaller countries insisted on the principle of one Commissioner per Member State, and rejected any limit to the Commission's size. The applicant states (the acceding states) agreed with the smaller countries, as they feared they would lose influence as soon as they joined. Other reforms concerned the voting arrangements in the Council of Ministers, relating the number of votes more

closely to the population size of the Member States and the extension of QMV to some new policy areas.⁹

Overall, Europe's founding treaties have undergone four major revisions since 1985. Each was preceded by an IGC, which has been used as the main method of negotiation between Member States. It appears treaty revision has quickened over the last 15 years. Together with the above ECJ decisions and constitutional proposals, IGCs have informed to a lesser or greater extent the formulation of the draft Treaty and the boundaries of the current debate on it.

II. THE CONVENTION ON THE FUTURE OF EUROPE

Europe has become far more relevant to people's everyday concerns than it was 20 years ago. Despite this, there is an apparent widening gap between the European institutions and the public. Many people are uncertain about how the EU works, what it is for and how they can take part in decisions that affect their daily lives. There also appears to be growing public disillusionment with the EU, potentially evidenced by low turn out rates at successive European elections. These two factors have caused the EU to question how it and its institutions can be brought closer to the citizens, making it more democratic, efficient and transparent, particularly in light of the imminent EU enlargement in May 2004.

The following paragraphs outline key developments that contributed to shaping the [Convention on the Future of Europe](#), both before and during the Convention. Also included are events subsequent to the Convention's submission of the draft Treaty to the European Council, leading up to the present IGC.

A. PRE-CONVENTION DEVELOPMENTS

Three events that helped to define the boundaries of the Convention were (i) the decision to enlarge EU membership pursuant to the Treaty of Nice, (ii) the White Paper on European Governance and (iii) the Convention's remit as prescribed under the Laeken Declaration.

1. *EU Enlargement*

The [EU's forthcoming enlargement](#) to include the countries of central, eastern and southern Europe arguably has been one of the key drivers in pushing the Member States to reform the Union's institutions and working methods prior to accession day on 1 May 2004. A key concern is that the EU's systems and procedures were built for six Member States in 1951. They were not meant to operate in an EU of 15 Member States or even 25 or more. At Nice, the Member States failed to amend the EU Treaties in such a way as to enable them to function in an enlarged union of 25 States.

Nevertheless, this enlargement is the biggest in the EU's history in terms of its scope and diversity. It will increase the EU's geographic area by 34%, and its population by 105 million.

⁹ House of Commons Library Research Paper 01/61. "The European Communities (Amendment) Bill: Implementing the Treaty of Nice Bill 3 of 2001-2003". 28 June 2001, at:

<http://www.parliament.uk/commons/lib/research/rp2001/rp01-061.pdf>.

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

[Appendix 2](#) provides further information about enlargement. Update information on the current enlargement can be found at:

http://europa.eu.int/comm/enlargement/index_en.html.

2. White Paper on European Governance

In July 2001, the European Commission published a [White Paper entitled "European Governance"](#), launching a debate on the governance of Europe.¹⁰ The White Paper analysed the problems faced by the EU with respect to its citizens and organisations. It suggested reform of European governance as a requisite part of the broader debate on the Future of Europe. The Paper promoted greater accountability, transparency, participation, effectiveness and subsidiarity as the basic principles of good governance. It proposed an opening up of the EU policy-making process to get more people and organisations involved in shaping and delivering EU policy. Key areas in this debate included decentralisation, implementation of Community rules, policy integration and the role of networks and civil society.

3. Laeken Declaration

The last IGC was held in Nice in December 2000. There EU leaders cited enlargement as one of the main reasons for developing and implementing major institutional and constitutional reform in the EU. In adopting the "Treaty of Nice: Declaration on the Future of Europe", they called for a deeper and wider debate about the future of the EU, which would be followed by an IGC in 2004.

The European Council marked its first decisive step in the Post-Nice Process when it adopted a more detailed "[Declaration on the Future of Europe](#)" (the [Laeken Declaration](#)) at its conference held in Laeken, Belgium in December 2001.¹¹ The Declaration elaborated on what was said in Nice, providing analysis of the EU's strengths and weaknesses.

It recognised the dual needs of reforming the EU's institutional structure in the run-up to enlargement and of reconnecting the EU with its citizens, and consequently called for the convening of a Convention on the Future of Europe. Laeken specified that the Convention was to provide a forum for the main parties to debate as openly and as broadly as possible "...the key issues arising for the Union's future development and try to identify the various possible responses", in preparation for the 2004 IGC. It also importantly emphasised the need to ensure in practice that due regard was given to the principle of subsidiarity.

The Declaration framed 64 questions that were to form the basis of the Convention's work, and the Convention's responses would broadly and openly pave the way for the 2004 IGC. The questions concerned four particular areas, i.e.:

¹⁰ European Governance: A White Paper, European Commission, COM (2001) 428 final, 25.7.2001, Luxembourg, at:

http://www.europa.eu.int/comm/governance/white_paper/index_en.htm.

¹¹ <http://european-convention.eu.int/pdf/LKNEN.pdf>. It has been noted that the Laeken Declaration broke new ground in that it marked the first time when the 15 Member States' Prime Ministers explicitly referred in one of their political agreements to the 'constitutional regions' and invited them 'to play their full part in the debate on the future of Europe.

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

- A better, clearer definition of the EU's competences
- Simplification of its legal instruments
- Greater democracy, transparency and efficiency
- The possible need for a constitution of the EU

It is important to note that under Laeken, the Convention was not mandated to draw up a constitution. Rather, one of the Declaration's questions asked whether simplification and re-organisation 'might not lead in the long run to the adoption of a constitutional text in the Union'?¹²

B. THE CONVENTION

1. Remit of the Convention

The [Convention](#) was the body responsible for drawing up proposals to reform the EU's institutions and working processes, which would be considered at the 2004 IGC. It marked the first time that a European constitution was the focus of a serious, wide-ranging debate involving the Member States, acceding countries and civil society.

2. Representation of the Convention

Representation of full Convention members came from the Member States and observers from European institutions and bodies, including:

- 15 representatives of the Heads of State or Government of the Member States
- 30 representatives of the national parliaments of the Member States (2 from each Member State)
- 16 Members of the European Parliament
- 2 representatives of the European Commission¹³
- 3 representatives of the Economic and Social Committee
- 6 representatives of the Committee of the Regions
- 3 representatives of the social partners
- the European Ombudsman

(Each full Convention member listed above had an alternate.)

In addition, the acceding candidate countries were permitted to take part in Convention proceedings, but they could not prevent consensus amongst the

¹² The Laeken Declaration states that 'The European Union currently has four Treaties. The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential.'

Explaining the complex nature of the treaties, Gattinara and Monsu (2002) note that:

The numerous revisions of the last fifty years have led to an impressive increase in treaty provisions, turning them into a tangle of regulations sometimes dating back to different historic periods and not always co-ordinated. Some articles contain references to concepts that are obsolete, such as the title on Economic and Monetary Union which still refers to the ecu, even now that the euro is already in circulation. Besides the treaties, there are also various protocols containing exemptions and reservations on countries' positions in certain matters, which undermine the unity of the system and, above all, the clarity of its rules.

¹³ Ibid.

Member States and observers. Representation from candidate countries included:

- 13 representatives of the accession and the candidate countries (1 from each)
- 26 representatives of the national parliaments of the accession and the candidate countries (2 from each)

3. Structure of the Convention

The Convention was structured as follows:

- The Praesidium
- Working Groups
- Discussion Circles
- Civic Forum (and related Contact Groups)
- Youth Convention

a. Praesidium

The Laeken Declaration defined the role of the Praesidium as "...lend[ing] impetus and ...provid[ing] the Convention with an initial working basis". It consisted of:

- the Chairman and 2 Vice-Chairmen¹⁴
- 2 representatives of the European Parliament
- 2 representatives of the European Commission
- 2 representatives of national parliaments
- representatives of the Governments of Spain, Denmark and Greece – holders of the Council Presidency during the Convention

The Praesidium was supported by a Secretariat, which was provided by the Council's General Secretariat, and was headed by Sir John Kerr. The Secretariat produced working documents and research briefings for the Praesidium and the Convention. These can be accessed from the [Convention's web-site](#).

While most Member States and acceding/candidate countries favoured a strengthening of subsidiarity and a delimitation of competences between the EU and the Member States, there was no consensus on the need for a European constitution. Despite this, the Convention's actual progress focused almost entirely upon producing a single text that would contain recommendations agreed by consensus. In March 2002 a majority of the Praesidium declared the Convention's objective, i.e. drafting a "constitutional treaty for Europe": some Convention members endorsed this position. It also was agreed that the document "...may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved".¹⁵ (One academic has commented that the Convention's single biggest achievement during the first half of its work was the consensus it forged around

¹⁴ The European Council appointed Mr Valéry Giscard d'Estaing as the Chairman of the Convention, and Mr Giuliano Amato and Mr Jean-Luc Dehaene as Vice-Chairmen. The Federal Trust, at: http://www.fedtrust.co.uk/constit_composition.htm.

¹⁵ The Federal Trust, at: <http://www.fedtrust.co.uk>.

the need to re-found the Union on the basis of a single comprehensive Constitutional Treaty.¹⁶⁾

In July 2002, 18 members and alternates of the Convention submitted a Motion for the preparation of a Constitutional Treaty that asked the European Commission to prepare a draft text of a possible EU constitution that would be discussed in the Praesidium's October plenary session. This subsequently led to the tabling of a draft proposal at the end of October 2002. The main points included in this text are outlined in the next sub-section of this briefing.

b. Working Groups

Pursuant to Article 15 of the Convention's Working Methods,¹⁷ Working Groups (WGs) were established. They were tasked with looking at the topics identified in the Laeken Declaration. Ultimately there was a total of 11 WGs.¹⁸ They were composed of Convention members and their remits were as follows:

WG 1 – Subsidiarity: How can compliance with the principle of subsidiarity be monitored in the most effective manner possible? Should a monitoring mechanism or procedure be established? Should this procedure be of a political and/or legal nature?

WG 2 - Charter of Fundamental Human Rights: If it is decided to incorporate the Charter of Fundamental Rights in the Treaty, how should this be done and what would be the consequences? What would be the implications of accession by the Community/Union to the European Convention on Human Rights?

WG 3 - Legal Personality: What would be the consequences of explicit recognition of the EU's legal personality and of a merger of the EU's legal personality with that of the European Community (EC)? Could these contribute to the simplification of the Treaties?

WG 4 – National Parliaments: How is the role of the National Parliaments exercised in the current architecture of the EU? What national arrangements function best? Is there a need to consider new mechanisms at national level or at European level?

WG 5 - Complementary Competences: How should 'complementary' competence be treated in future? Should Member States be accorded full competence for matters in which the Union currently has full competence, or should the limits of the Union's complementary competence be spelled out?

¹⁶ Crum, Ben. "Towards Finality? A preliminary assessment of the achievements of the European Convention. Working Paper 03 /4. Advance Research of the Europeanisation of the Nation-State (ARENA). Centre for European Policy Studies, at: http://www.arena.uio.no/publications/wp03_4.pdf.pdf.

¹⁷ CONV 9/02, 14 March 2002, at: <http://register.consilium.eu.int/pdf/en/02/cv00/00009en2.pdf>.

¹⁸ Initially, 6 WGs were set up. Following an announcement from Giscard d'Estaing in July 2002 and the Plenary session in September 2002, a further 4 WGs were established. The Praesidium also recommended the establishment of an 11th WG on 'Social Europe'.

WG 6 - Economic Governance: The introduction of the single currency implies more intensive and integrated economic and financial co-operation. What forms might such co-operation take?

WG 7 - External Action: How the Union's interests should be defined and formulated? How the Union can ensure coherence of its actions and co-ordinate all instruments at its disposal, such as financial assistance and development aid? How the decision-making process can be improved to allow the Union to act effectively on the international stage? How the 'Community method' can be extended to other fields of action, and what easing of the unanimity rule could be considered; what can be learned from the creation of the High Representative for CFSP (Common Foreign and Security Policy), and how to ensure that he has the right of initiative and the necessary resources at his disposal? What amendments to arrangements for external representation would increase the Union's influence at international level, including better synergy between the diplomatic activity of the Union and the Member States?

WG 8 – Defence: What defence remit could the Union have in addition to the Petersberg Tasks?¹⁹ How to ensure that Member States' military capabilities meet the requirements to ensure the credibility of the Union's defence policy? Should enhanced co-operation be extended to defence matters? Possibility of creating a European Arms Agency: how to ensure effective decision-making and coherent planning in crisis management operations and greater efficiency/economies of scale in arms procurement, research and development?

WG 9 – Simplification of legislative procedures and instruments: How can the number of legislative procedures be reduced? Could some procedures be simplified? How could there be a reduction in the number of legal instruments referred to in the Treaties? Could they be given names that indicate their effect more clearly?

WG 10 – Area of freedom, security and justice: What improvements would have to be made to the Treaties to promote genuine, full and comprehensive implementation or an area of freedom, security and justice? In particular, what improvements would have to be made to instruments and procedures? What can be done to identify more clearly those criminal law issues requiring action at Union level? How should judicial co-operation in criminal matters be stepped up? What adjustments could be made to the wording of the Treaty provisions defining Community competence, particularly in regard to immigration and asylum matters?

WG 11 – Social Europe: What basic values should be contained in the Treaty regarding the social field, taking into account those already present in the Charter of Fundamental Rights of the EU? To what extent and in what way should the Union's general objectives include social objectives? Should the present competences of the Union/Community in social matters be modified, and if so, what new competences should be conferred on the Union/Community in social matters? What role should be given to the Open Method of Co-ordination? What relationship can be established between the co-ordination of economic policies and the co-ordination of

¹⁹ The Petersberg Tasks concern peace-keeping and humanitarian operations.

social policies? To what extent should co-decision and QMV be extended to areas where unanimity is currently required, and finally, should the role of social partners appear in Title VI and what should this role be?

All the final reports of the original 10 WGs were submitted to the Convention by the end of 2003. WG 11 submitted its report on 4 February 2003.²⁰ All reports can be accessed from the Convention website²¹.

c. *Discussion Circles*

During the plenary discussions on 5-6 December 2002 and 20-21 January 2003, some Convention members felt there was a need to consider the implications of certain proposals on the operation of the ECJ. They also thought it was important that the Convention afforded the ECJ and the CFI an opportunity to express their views on matters concerning them that were under discussion by the Convention. Subsequently the Praesidium agreed to set up a discussion circle (DC) about the ECJ's operation.

At its meeting of the 17 and 18 March, the Praesidium set up a second DC about budgetary procedure questions. This was followed by its creation in April 2003 of a third DC to examine the EU's 'own resources system'.²²

DCs were composed of members who were in a position to contribute expertise in a specific area to ensure efficiency and swift results. They, however, contained only a small number of representatives from across the Convention, leaving them more restricted than the WGs. Moreover, they had a substantially shorter time (around 6 weeks) to meet and produce their reports. But they had a narrower mandate than the WGs. Their mandates were as follows:

- **The Court of Justice** - Should there be an alteration of the appointment procedure for ECJ Judges and Advocates-General and Court of First Instance (CFI) members? Would it be better to reconsider the titles ECJ and CFI, or leave them unchanged? Whether there should be an amendment to the wording of Article 230(4) TEC about direct individual appeals against general acts of the institutions? Should the wording about acts of agencies or bodies set up by the Union be amended? Should the penalty system for non-compliance with an ECJ judgement be made more effective; and if so, how, e.g., by empowering the Court to impose fines where a Member State fails to comply with an ECJ judgement within a set period? Whether the ECJ should have power to provide rulings on matters concerning the Common Foreign and Security Policy and to issue economic sanctions?

²⁰ This WG met six times by the end of January 2003 and its Final Report was debated at the second plenary session of the Praesidium on 6-7 February 2003.

²¹ Summaries of the Working Group reports are outlined in House of Commons Library Research Paper 03/16, at: <http://www.parliament.uk/commons/lib/research/rp2003/rp03-016.pdf>

²² This is an umbrella term that describes the revenue raising mechanism for the EU budget. Its main sources are the percentage of Member States' GNPs (gross national products) and of the base for VAT (value added tax). Smaller amounts come from external tariffs and general import levies.

- [Review of the budgetary procedure](#) – How should the financial perspective be incorporated into the Constitution and what procedure should be used to adopt the EU's multi-annual perspective (its projected spending patterns for a specified period)? What detailed arrangements should be included for the simplified budgetary procedure given the distinction between non-compulsory and compulsory expenditure and its consequences?
- [Examination of EU's 'own resources system'](#) - Key questions concerned the Council, i.e. whether it should continue to act unanimously (right of veto) when laying down provisions relating to the system of own resources for the Union? What role should be accorded to the European Parliament? Should ratification by national parliaments of the financial provisions continue to be a requirement?

The first and second DC reported separately in March and April 2003 respectively, and the third in May 2003. Copies of the DCs' full reports are available on the [Convention website](#).

d. Civic Forum (and related Contact Groups)

The Laeken European Council decided a Civic Forum was to be opened during the Convention, to link the Convention with public opinion. It marked the Convention's attempt to involve civil society in the debate, including citizens, organisations, social partners, businesses, NGOs, think tanks, academia, etc., to make it as broad as possible. The Forum was organised as a network of organisations, which received regular Convention information. Its web-site hosted [a permanent forum](#).

In addition to the Civic Forum, representatives of the major European sectoral NGOs (social, environmental, human rights and development), together with the European Trade Union Confederation (ETUC), set up a '[Civil Society Contact Group](#)'. This Group was divided into eight contact groups, namely:

1. Social Sector (e.g. Social Platform, European Women's Lobby, UNICE, Social Partners)
2. Environment (e.g. Environmental Bureau, Greenpeace, Friends of the Earth, the World Wildlife Fund, European Agricultural Convention, European Landowners Association, etc)
3. Academia (universities across the EU and accession countries as well as think tanks, e.g. European Policy Centre, Centre for European Policy Studies)
4. Citizens and Institutions (e.g. Federalist Voice, Young European Federalists, Active Citizenship Network, European Network against Racism, Polish NGO office in Brussels, etc)
5. Human Rights (e.g. Amnesty International, World Organisation against Torture, European Women Lawyers Association)
6. Development (e.g. Euro-step, Economic Development Foundation, etc)
7. Culture (e.g. European office for lesser known languages, Europa Nostra, Conference of European Churches, European Forum for the Arts)
8. Regions and Local Authorities (e.g. Assembly of European Regions, Eurocities) - After its first meeting, there were repeated calls for the establishment of a Working Group on Regions; one that would debate the role of devolved governance in EU decision-making.

Discussions of the Civic Forum Regional Contact Group (16 October 2002) focused on the need for greater regional involvement in preparing legislation if the EU was to be brought closer to its citizens. They specifically examined the region's role in monitoring subsidiarity and the possibility of regions with legislative powers referring breaches of subsidiarity to the ECJ.

The Group also published a paper entitled "[The Regional and Local Dimension in Europe](#)" on 29 January 2003,²³ which drew on submissions made by Convention members. Shortly thereafter (31 January), the Group made suggestions about [raising the profile of regional and local authorities](#).²⁴

e. *Youth Convention*

In parallel to the Civic Forum, the Convention organised a [European Youth Convention](#). It met in Brussels from 9 - 12 July 2002, and enabled young people from across the EU and the candidate countries to contribute. [The Youth Convention adopted a text](#) setting out young people's views, which was presented to the Convention in July 2002

On 20-21 May 2003, the Praesidium of the Youth Convention, along with the European Youth Forum, organised a follow-up meeting in the European Parliament in Brussels, to compare the draft Treaty to the Youth Convention's submission to the Convention.

4. Time-table of the Convention

The Convention was divided into 3 phases, i.e.:

1. **Listening Phase** - It began with the first Praesidium meeting on 27 February 2002. This consisted of "listening" to answers to the question: "What do Europeans expect of Europe at the beginning of the 21st century?"²⁵
2. **Debating Phase** - It started in June 2002. This involved discussion about the Laeken Declaration and other ideas about the future of Europe. This phase ended in December 2002.
3. **Proposing Phase** - It sought to draw together the various proposals and draft recommendations, which would provide a starting point for discussions in the 2004 IGC, where the ultimate decisions would be made. This third, and final phase began with meetings on 15-16 April. (It was during this phase that the Convention started to discuss the issue of competences.) Officially the set deadline for the Convention's submission of its proposals was firmly fixed at 20 June 2003; but it did not finally complete its work until 10 July 2003 when it adopted the current draft Treaty. Thereafter, the Convention submitted the draft Treaty to the Italian President at the EU Summit meeting held in Thessaloniki, Greece on 18 July 2003. (See below for an overview of the draft Treaty.)

5. Submissions to the Convention

The Convention received a total of approximately 385 submissions from various sources, including, e.g., European institutions (European Commission, European

²³ CONV 518/03

²⁴ CONV 523/03

²⁵ House of Commons Library Research Paper 03/16, at:
<http://www.parliament.uk/commons/lib/research/rp2003/rp03-016.pdf>

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

Parliament, the Committee on the Regions), Member and Acceding States, political parties, trade unions, think tanks, academics, universities, public organisations, non-governmental organisations (NGOs), voluntary and community sector groups, and individual citizens. [These Convention submissions](#) are varied; some propose entire texts for a EU constitution, others tailor their proposals to specific issues or themes. They reflect the full spectrum of opinion in the EU, ranging from the federalists to the 'eurosceptics', and all that lies in between the two.²⁶

[Suggested amendments](#), which were considered by the Convention to formulate the current draft Treaty, can be found on the Convention website.

Highlighted below are submissions that have regional significance generally or specifically to UK devolved governance. Also included are the eight submissions that are compared with the draft Treaty in subsequent briefings in this series.

a. Submissions of regional significance

Regional representations made to the Convention were varied.²⁷ They included collective representations from: Eurocities; the Assembly of European Regions; the Mediterranean regions; the Council of European Municipalities and Regions; the Conference of Peripheral Maritime Regions of Europe; and the more *ad hoc* groupings of constitutional regions of Bavaria, Catalonia, North Rhine-Westphalia, Salzburg, Scotland, Flanders and Wallonia.

Others made at a national level included: the Association of Finnish Local and Regional Authorities; the Association of Irish Regions; the Danish Local and Regional Government Associations, and the French Association of the Council of Local and Regional authorities of Europe.

Individual sub-national governmental units also made submissions, including: various German *Land* governments (e.g. Bavaria on public services) or their representatives (e.g. Wolfgang Schuster – Bavaria; Wolfgang Clement – North Rhine-Westphalia); and key regions (e.g. Catalonia).

[In its submission to the Convention in July 2002](#), the Committee of the Regions (COR) actively promoted sub-national government levels. This was followed by various COR resolutions and individual COR members' submissions, as well as a [COR](#) debate about the draft Treaty in November 2002.

Similarly, the European Parliament advanced regional interests. It adopted a [resolution](#) on the basis of an [own initiative report from the Constitutional Affairs Committee \('Napolitano Report'\) about the role of regional and local authorities in European integration](#). The resolution made a number of recommendations, including the right for COR to bring cases to the ECJ on breach of subsidiarity. It also called for greater regional consultation and involvement in EU decision-making.

²⁶ For an overview of competing EU visions, refer to Pinto-Duschinsky. "All in the translation: What the proposed European Constitution means for Britain". *TLS*. 13 June 2003, pp. 3-5.

²⁷ Murphy, Mary and David Phinnemore. "Northern Ireland and the European Convention: Devolution, Disinterest and Direct Rule". 2003, p. 2. (unpublished)

A submission of particular significance to devolved governance in the UK was a paper commissioned by the Joint Ministerial Committee on Europe,²⁸ which met on several occasions to consider issues arising out of the Convention. The paper entitled [“Europe and the Regions”](#) recognised the role of the regions in strengthening the EU’s democratic legitimacy. Peter Hain presented it to the Convention in February 2003. Amongst other proposals, it advocated more thorough consultation by the European Commission of regional and local authorities at the pre-legislative stage, as well as measures to enhance the effectiveness of the COR.

b. Convention submissions compared to the draft Treaty

Briefings 2-5, which will follow this briefing, compare eight individual Convention submissions, with specific draft Treaty proposals. These submissions include:

1. Penelope (European Commission)
2. Cambridge (academics/UK Government)
3. Elena Ornella Paciotti (MEP/European Parliament)
4. European Policy Centre (think-tank)
5. Bonde Group (‘eurosceptics’, including Convention members)
6. Robert Badinter (Socialist French Senator)
7. The Party of European Socialists (political party)
8. European Peoples Party and European Democrats (political parties)

From the hundreds of Convention submissions (approximately 385), this briefing series sought to look at contributions representing a broad range of opinion, including submissions from European institutions, UK-Member State, academics and think-tanks and ‘political’ groupings, as this would make for interesting comparisons of texts that are premised on a spectrum of visions for the future of the EU. For example, the amendments and constitutional proposals from the ‘eurosceptic’ group at the Convention, headed by Jens Peter Bonde, provide a marked contrast to some of the ‘Communautaire’ approaches, such as those proposed in the submissions from the European Policy Centre and the European Peoples Party-European Democrats.

Key points about each are highlighted below:

1. [‘Penelope’](#)

The European Commission commissioned a team of legal experts to draft a constitutional treaty in a project code-named ‘Penelope’, which was published as a working document on the Europa web-site on 2 December 2002. Although the document did not necessarily represent the views of the Commission, it largely drew on the two communications that the Commission submitted to the Convention in May (‘A Project for the European Union’) and December 2002 (‘For the European Union: Peace, Freedom, Solidarity’). It also draws on the Preliminary Draft Constitutional Treaty submitted by the Praesidium on 28 October 2002 and the initial recommendations of the Convention’s 10 WGs.

²⁸ The Joint Committee is chaired by the UK Foreign Secretary and a Minister from each devolved administration sits.

Penelope seems to have been the first document to provide "...a practical view of what the future Constitution might look like...".²⁹ It sought to replace the existing European treaties, removing the distinction between the different "...pillars of the existing EU treaty and integrating the Charter of Fundamental Rights into a single constitutional treaty."³⁰ Overall, Penelope proposed a significant shift in EU decision-making, from the inter-governmental method, (which mainly involves co-operation between the national governments), to one based on the community method, (where the Commission defines the common EU interest and initiates proposals; the Council decides by majority vote, together with the European Parliament in some areas). It reasserted the Commission's power by giving it a bigger role in key policy areas, such as foreign and security policy, justice and home affairs and economics.

2. 'Cambridge text'

The 'Cambridge text', as it became known, was the result of a study commissioned by the Foreign Office and drawn up by a group of constitutional experts from Cambridge University, headed by Professor Alan Dashwood.³¹ Presenting the text to the Convention, Peter Hain said that it was "...not a statement of Government policy, but it is a serious, imaginative and valuable contribution to all our endeavours".³²

Instead of a traditional preamble to a constitutional text, the authors of the Cambridge text opened with a separate "Proclamation of the Constitutional Treaty", setting out in "inspiring" language the achievements and aims of the Treaty. Part 2 contained the draft constitution, and Part 3 the draft amending treaty.

The constitutional treaty is divided into three parts: the first contains "constitutional" elements such as the definition and nature of the Union, citizenship, the limits of Union powers, the institutions and instruments by which the Union acts. The second part contains more detailed institutional, procedural and financial provisions, and the third part contains general principles on possible enhanced co-operation between Member States in certain matters. Only Part One is drafted in full in the document.

Some of the draft's important elements included:

- There is no distinction between the Union and the Community and the Union has legal personality
- Institutional and procedural arrangements for Third Pillar matters (Police and Judicial Co-operation in Criminal Matters) are assimilated into First Pillar arrangements
- Second Pillar arrangements (CFSP) remain differentiated.

²⁹ Penelope, p. 1.

³⁰ This incorporates the Charter of Fundamental Rights, with modifications to the horizontal articles in the Charter's General Provisions section in accordance with the conclusions of WG II on the Charter, and some additions.

³¹ The team comprises Alan Dashwood, Michael Dougan, Christophe Hillion, Angus Johnston and Eleanor Spaventa

³² CONV 345/1/02, REV1, Contribution 122, 16 October 2002, at:
<http://www.register.consilium.eu.int/pdf/en/02/cv00/00345-r1en2.pdf>.

- Both the Act concerning Economic and Social Policy and the Act concerning Foreign, Security and Defence Policy - the primary instruments of the Union order – are annexed to the it
- It established the Union as a “...constitutional order of sovereign States...”
- The Charter of Fundamental Rights is not incorporated in it, but the Charter is referred to in Article 2

3. [Elena Ornella Paciotti](#)

On 19 November 2002, Elena Ornella Paciotti, MEP and President of the Fondazione Basso, made a submission³³ to the Convention, in an attempt to translate into a consistent text the European Parliament deliberations on the Constitution of the EU and reform of the Treaties. It reflected a practical technical exercise to translate proposals of which the European Parliament already has adopted to a large majority. It was not intended as a proposal from one person or from one political group.

In its introduction, Paciotti explains the submission, stating:

...[It follows]... the indications from successive resolutions adopted by the European Parliament, trying to combine the regulations of a constitutional nature set down in the Treaties in force, into a single text with the innovations Parliament wishes to make.

The document is intended to represent the first part of a new Treaty of the Union – the Constitution of the [EU] – the second part of which should comprise all the other regulations, co-ordinated in the same way into a single consolidated text of the Treaties in force.

This text contains many new elements: the Charter of Fundamental Rights is incorporated into the text of the Constitution; the distinction between Community and Union has disappeared; the institutional system has been simplified and clarified; the procedures for revising the Constitution and the Treaty have been differentiated.

4. [The European Policy Centre: The Europe We Need](#)

On 17 September 2002, the European Policy Centre (EPC), an independent Brussels-based think-tank, made a submission to the Convention in the form of a draft Constitution that they thought could serve as the basis for a wide process of consultation and confrontation of different models. Its authors, Franklin Dehousse and Wouter Coussens of the Royal Institute of International Relations, with the support of the EPC and of the Collège Européen Miguel Servet, argued that their proposal was based on the assumption that the Nice Treaty did not provide an answer to the numerous challenges presented by enlargement, and their submission set out a complete package for the EU. Their submission was premised on the belief that citizens needed clearer answers to three questions, namely: What is the meaning of Europe? What are the powers of Europe? What are the institutions of Europe?.

³³CONV335/02

The draft was divided into five titles, dealing with the principles of the EU, the missions of the EU, institutions, instruments and final provisions. Therein it stated that revision of the 'revision clause' is necessary, that QMV should be simplified and generalised, and that the President of the European Commission should be elected. It also proposed in-depth reform of the foreign policy area and of the Council presidency system (without creating a new President of the European Council), and supported the reduction of the number of Commissioners and MEPs. While it agreed that a radical reform and simplification of EU institutions is required, the text also partially supported the idea of the creation of a Congress of Parliaments. The EPC further stated that a new constitution for Europe should not include a detailed outline of all the policies it encompasses.

5. **Bonde Group**

Two 'eurosceptic' proposals were associated with the Bonde group,³⁴ which is headed by Denmark's Jens-Peter Bonde and includes the UK's David Heathcoat-Amory, namely the "[Draft Proposal for a Common Alternative](#)",³⁵ which was written by Michael Strangholt (October 2002), and "[Amendments to the Constitution](#)", which was written by Peter Jonasson Pedersen (21 February 2003).

In essence, the Alternative Proposal, one page in total, proposed to the Convention the establishment of a 'Europe of Democracies' with a simplified and streamlined treaty that is designed to transform the EU into "...a treaty association of free and self-governing states and an open economic area". In specific terms, it sought to establish an inter-parliamentary basis for the organisation of the Union by means of a Treaty on European Co-operation. The *acquis communautaire*³⁶ would be simplified, national parliaments would have a veto on European laws and would also elect the Commission. The ECJ's jurisdiction would be curbed, but it would respect the European Convention on Human Rights.

Similarly the Amendment Proposal renamed the Union as the "Europe of Democracies". Many of its basic aims coincided with various Praesidium drafts, but subsidiarity, national decision-making and respect for the national identities of the component democracies received more emphasis throughout.

6. **[Robert Badinter: Ma Constitution Pour L'Europe](#)**

On 30 September 2002, Robert Badinter, a Socialist member of the French Senate, former President of the French Constitutional Council and alternate member on the Convention, made a submission to the Convention's Praesidium. When making his submission, he insisted it was not a proposal to set up a European federation.

³⁴ The Bonde group comprised: Irena Belohorska, Jan Zahradil, Jens-Peter Bonde (EP), David Heathcoat-Amory, Peter Skaarup (all Convention members), William Abitbol (EP), Per Dalggaard, Esko Seppänen (EP), John Gormley (all alternates).

³⁵ The signatories of the alternative, minority report were all of the above, except Irena Belohorska.

³⁶ This concept is explained in [Appendix 2](#).

The text provided a 'full proposal for a European Constitution in 84 paragraphs'. It was based upon the premise that "...the principal handicap from which the Union suffers is ambiguity...". (According to a recent review,³⁷ the text suggested a constitutional architecture focusing on striking a balance between the sovereignty of the Member State and the sovereignty of the European 'people'.)

In summary, Badinter proposed to build the future EU on the following four institutions: (i) the Summit, where EU heads of state take the most important decisions, with an elected president having mainly representative functions; (ii) a new Prime Minister, elected by the Heads of State and approved by the European Parliament, to replace the Commission President and head the Council meetings (thereby turning the Commission into a purely executive organisation); (iii) a new consultative body, consisting of four members from each national parliament, to advise the EU; and (iv) the ECJ.

7. The Party of European Socialists: Priorities for Europe

One third of the representation on the Convention (34 full members, 20 substitutes and three observers) was from the Party of European Socialists (PES). The PES therefore felt it had a 'special responsibility' for ensuring that the Convention's outcome was representative of its views. Its submission described a vision of Europe with a strong social dimension and enhanced democracy. Its idea was for two separate texts to be created, dealing with (i) the basic principles of the Union and its Constitution, and (ii) the policy detail. The submission was not in the form of a draft treaty. Rather, it was more a position paper, making it difficult to separate the proposals, that is, to separate the more vague ideas from the firmer ones.

The overriding aim of the PES proposals was to reform the existing 'complex' EU structures with a view to creating a simpler, more open and democratic Union, closer to and influenced by the peoples of Europe. The theme of 'participatory democracy' runs throughout. PES proposed that the 'three pillars'³⁸ should be abolished, and instead foundation structures should be put in place for an eventual single legal body. It emphasised the establishment of a framework for heightened integration of the EU, while maintaining the existing methods by which the EU exercises its powers. PES argued that the existing structures needed to be strengthened in order to make them work more effectively, but noted that the focus continued to be inter-governmental co-operation.

8. European Peoples Party-European Democrats

On 8 October 2002, the political parties - European Peoples Party and the European Democrats (EPP-ED) - made a submission to the Convention.³⁹ The EPP-ED called it an "informal discussion paper" and based it on the existing *acquis communautaire*⁴⁰ of the EU, the EPP document "A

³⁷ http://www.droitshumains.org/Europe/Conv_05badin.htm

³⁸ This concept is explained earlier under the Maastricht Treaty.

³⁹ CONV 325/02

⁴⁰ This concept is explained in [Appendix 2](#).

Constitution for a strong Europe”, on the European Parliament Report by Alain Lamassoure on the division of competences between the EU and the Member States, and on the outcome of the June 2002 EPP Convention Group meeting. It contained optional solutions and preliminary proposals that aimed to facilitate and promote discussion about a constitution for Europe. It specifically looked at, e.g., the inclusion of the Charter in a EU constitution, the objectives enshrined in such a constitution, the competences of the Union, particularly the division of power between the Union and the Member States, the institutions of the EU and their organisation.

The paper was submitted as a work in progress. In its introduction, the EPP-ED highlighted the need for streamlining the paper’s text after further reflection and consideration of Convention developments.

6. UK governmental activity during the Convention

Throughout the Convention in 2003-2003, there were varying levels of governmental activity at both central and regional levels across the UK. Information about such activity is listed in [Appendix 3](#), and where available electronic links are provided.

7. Areas of debate in the Convention

As could have been anticipated, there were some areas in the Convention where the Member States adopted a common approach; but there also were areas where there was significant lack of consensus among participants.

The following paragraphs outline examples of areas where there was agreement and dissension in the Convention:

- **External Relations, Defence, Common Foreign and Security Policy and the EU Minister for Foreign Affairs** - Since the EC, contentious issues have included external relations and the development and enhancement of the EU’s Common Foreign and Security Policy (CFSP). Unsurprisingly these issues caused extensive disagreement during the Convention. The UK claimed that the expression “the Union shall have competence” in relation to foreign policy was a step too far.

There was deep-seated concern that the creation of any new defence force would undermine NATO’s authority. It has been reported that the extent of the disagreement was such that it led to some debate as to whether the Convention really should try to integrate the views of the UK Government when trying to reach a consensus.⁴¹

An argument ran throughout the Convention that supported the idea that the EU is unable to make its voice heard in the rest of the world, and particularly in the United States (US) because it lacks an army, or at least a unified and united defence force. [In a meeting on 29 April 2003](#), (criticised for being a “mini-summit” and “anti-NATO” by some Convention members), the leaders of Germany, France, Belgium and Luxembourg discussed

⁴¹ European Policy Centre: Consensus in the Convention on the Future of Europe?, at: <http://www.theepc.be/europe>.

proposals already tabled in the Convention for enhanced co-operation in the defence field.

The issue of creating an EU Minister for Foreign Affairs⁴² was the cause of extensive disagreement during the Convention. The creation of such a ministerial office was perceived as increasing, if not making it a certainty that there would be an entirely integrated, common foreign and defence policy for the Union. Proponents of the Foreign Affairs Minister, however, argued that the creation of the ministership would not be such a radical departure from the existing structure, as it already exists in the form of the High Representative of the European Union, Mr Javier Solana. These items are included in the draft Treaty.

- **Tax and the budget** - [On 4 April 2003](#) the Convention was profoundly split on the issue of whether the Union should have its 'own resources' - an umbrella term for the EU's revenue raising mechanism, which includes, e.g., direct income tax.

There was heated debate about whether the Council, or the Parliament, should have the final say over the European budget.⁴³ The UK representative Peter Hain stated that the UK would accept co-decision⁴⁴ only in budgetary procedures, if it were for certain set amounts, and only if the Member State had the last say. Delegates from Austria and Germany, among others, strongly advocated a [European tax](#) on the grounds that it is useless to pretend to citizens are not already paying for the EU. [Proponents therefore believed](#) it would be more beneficial for citizens to know what and how they were paying for the EU, (which the proponents believe could be the case with one European tax).

The European Commission also was advocating the introduction of this tax, while the UK, Ireland, Denmark, Sweden and Finland remained strongly opposed. The issue formed the basis for a contentious debate during the plenary session on 4 April 2003.

The draft Treaty makes provision for corporation taxes to be harmonised by QMV, but only if countries first agreed unanimously to take such a vote. As several countries (UK, Spain, Ireland and Poland) remain opposed to tax harmonisation, this makes it unlikely to occur.

- **Co-ordinated economic policy** - The UK and Ireland have opposed the suggestion that the draft Treaty confer new EU competences on economic policy. They consider co-ordination of Member States' economic policy 'a

⁴² The draft Treaty proposes the creation of an EU Minister for Foreign Affairs. If enacted, the Minister would take up his/her post in 2006, and would be appointed by the European Council by qualified majority voting (QMV). He/she would lead the existing CFSP, and would contribute to the development of a Common Foreign Policy, and would chair the Foreign Affairs Council. The Minister also would become Vice-President of the European Commission, and would be bound by the Commission's procedures when conducting the EU's external relations.

⁴³ Currently the Council drafts the budget but the Parliament has the final say on non-compulsory expenditure. The Parliament also scrutinises the work of the Council.

⁴⁴ A complex decision-making process whereby the Parliament has the right to a third reading of all legislation, and a conciliation committee gives the Council and the Parliament the chance to reach agreement on draft legislation.

step too far'. However, a counter-argument was put forward by France, who reminded the Convention that Article 99 of the Treaty establishing the European Community (TEC) makes Member States' economic policies a matter of common concern.

- **Supremacy of EU law** - The UK voiced frequent opposition to the codification, or classification, of EU case law under Article 9.1 of the draft Treaty, on the basis that the risk of getting it wrong is too great. Ireland, as one of the countries that would require a referendum on such issues, expressed some support for Article 9.1. However, general opinion at the Convention was expressed by the Vice-President, who stated it was misleading for citizens if an impression was given that EU law is not supreme.
- **Referenda for the ratification of the draft Treaty** - Several Convention members drafted a provision for inclusion in the draft Treaty, which required approval of the draft Treaty by National Parliaments and the European Parliament, as well as the citizens of Europe. [Such citizen approval would take place by binding referenda](#), in compliance with Member States' existing constitutional provisions. 71 Convention members have supported the proposed text of this provision, including representatives from all of the largest countries on the Convention. Amongst them are 3 UK Convention representatives, including: David Heathcoate-Amory (Conservative, National Parliament); Alexander Earl of Stockton (EPP-ED, European Parliament); and, Neil MacCormick (Greens-EFA, European Parliament). Proponents argued it would clearly declare the peoples' support or lack of support for the draft Treaty.

Opponents of such a provision have included the UK. In a speech in Cardiff in July 2003, UK representative Peter Hain MP argued against a referendum for reasons of precedent.⁴⁵ He reminded the audience that there had been no referendum on the *European Communities Act 1972*, which laid the foundations for the UK joining the EC in 1973, and which surrendered more UK vetoes than any European treaty agreement has done since. In addition to this, it appears that less than half of the EU Member States are holding referenda on the Constitution. (For further discussion about ratification, see Section III.)

- **The conferral of power** - Conferral of power to the EU caused disagreement. The UK suggested the draft Treaty should make it very clear that power is derived from the Member States, and not from the draft Treaty itself. However, this was deemed unnecessary by other Convention members, who pointed out that the very first Article of the draft Treaty would state EU power emerged from the will of States and people.
- **The exit clause** - Concerns emerged that the current proposals would result in countries being forced to choose between leaving the EU and signing up to a more integrationist agenda. This gave rise to significant discussion in the [plenary debate on 25 April 2003](#). The suggestion was that a country could leave the EU, if it notified the Council, which would decide, by QMV, the [terms of an exit agreement](#). If no agreement could be

⁴⁵ Speech to the European Commission representation in Wales, 28 July 2003.

reached, the draft Treaty would automatically cease to apply in that country for the next two years.

- **An EU President** - 17 countries expressed opposition to the [plans for an EU President](#). The plans were put forward by the larger states of the EU, namely UK, France, Spain, Italy and Germany. Sweden, Poland and Denmark generally took the middle ground, while Austria, the Czech Republic, Portugal and Ireland were strongly against the creation of any “new permanent institutions”. Romano Prodi warned against the danger of creating a “double bureaucracy” by creating a second EU President, which he said could cause a power clash at the heart of the EU.

Advocates of an EU President believe it would give the EU one single voice and point of contact in international affairs, and thereby would boost the image of the EU among other world powers.

- **Reduced number of commissioners** - A reduction in commissioner numbers was proposed to ensure more efficiency in a 25-member EU. The UK supported the suggestion, as well as several of the larger countries. Such a reduction could leave some states with more than one commissioner. However, the smaller states supported the idea of having one commissioner per state.

In May 2003, the European Commission came out in favour of having a single commissioner for each Member State. However, it indicated that it could accept Member States choosing the Commission President, who would subsequently be elected by the European Parliament.

- **Increased use of majority voting** - The idea of having more QMV was put forward to prevent deadlock on decisions in an enlarged EU. QMV is a system of voting in the Council of Ministers where Member States are allocated a certain number of votes, depending on their size. Following the accession of the 10 new Member States in May 2004, large countries like the UK will have 29 votes, whereas Malta (the smallest Member State) will have 3. Out of a total of 345 votes, 258 votes will be required to pass legislation (by QMV), or 88 to block legislation. For an act to be passed, over half the Member States must vote in favour of the proposal, and they must represent at least 62 per cent of the population of the Union.

Most of the Member States on the Convention were in favour of this, although the UK has specifically requested that QMV should not be extended to foreign or defence policy. The draft Treaty now includes provision for the increased use of majority voting in at least some areas.⁴⁶

The draft Treaty also includes a shift to a more simplified definition of QMV, i.e. a majority must consist of 50% of Member States representing three-fifths of the EU’s population.

- **The inclusion of the Charter of Fundamental Human Rights** - The UK is keen to ensure that the Charter will not interfere with domestic law.

⁴⁶ EU Constitution Project Newsletter. July 2003, at:
http://www.fedtrust.co.uk/uploads/constitution/News07_03.pdf

However, almost all the other Members are in favour of its inclusion, and support its aim of guaranteeing citizens' rights.

- **The creation of a new President for the European Council** - A new President of the European Council was suggested to give the EU greater coherence and transparency. While the larger countries are supportive of this idea, the smaller states are in favour of maintaining the six-month rotation presidency. Many of the constitutional proposals submitted to the Convention are in favour of abandoning the current system.

8. The draft Treaty

The 105-member European Convention signed [the draft Treaty](#) on 10 July 2003, marking the conclusion of the Convention's 16 months of work.⁴⁷ The European Council subsequently met in [Thessaloniki, Greece on 19-20 June 2003](#), where the Convention President submitted to the Council's President his report with the attached draft Treaty. (Although it should be noted that some 'technical' work on drafting Part III was still required, and was finished by 15 July 2003.) The Council found the proposed text to be a good basis for starting the IGC, and encouraged the IGC to complete its work before the June 2004 elections.

A range of submissions and the viewpoints of Convention members informed the content of the draft Treaty. The proposed text seeks to simplify and reorganise the existing Treaties, as well as make a number of changes. In effect, it aims to clarify who does what inside the EU and to ready the institutions to deal with a much larger union once May 2004 enlargement occurs. It is a comprehensive document – a total of 265 pages in length with three distinct parts and multiple appendices.

The first part deals with matters such as the objectives and competences of the EU, as well as the institutions – an area in which it sets out a number of reforms. Under the heading "The democratic life of the Union", it includes the statement:

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

(Further detail about proposals contained in this part can be found in subsequent briefings of this series.)

The second part of the draft Treaty incorporates the [Charter of Fundamental Rights of the European Union](#),⁴⁸ which sets out a range of rights, freedoms and principles for EU citizens along with provisions on its interpretation and

⁴⁷ The Convention previously issued [two initial drafts](#), one in the winter 2002, which contained Articles 1-16, and another in the spring 2003, which contained subsequent articles.

⁴⁸ The Charter was signed and 'solemnly declared' by the Presidents of the EP, the Council and the Commission at the European Council meeting in Nice on 7 December 2000. It was not included in the European treaties, and was therefore not given legal status. The draft Constitution settles the dispute over the status of the EU Charter. By incorporating it into part two of the Constitution, it makes the EU Charter legally binding and gives it full constitutional status.

application. (Further detail about proposals contained in this part can be found in subsequent briefings.)

The third part of the draft Treaty sets out policies and functioning of the Union. In the social policy field, it largely retains the current provisions of the TEC, but with some modifications. (Further detail about proposals contained in this part can be found in subsequent briefings.)

The fate of the draft Treaty now rests with the on-going IGC. It is only when the Member States agree the new Treaty that it can be signed. Once signed, the Treaty then must be ratified according to the distinct constitutional arrangements of each of the Member States.

Many Member States hope that the draft Treaty will be signed just after the May 2004 enlargement, and before the June 2004 European Parliament elections. Thereafter there will be a period of ratification according to Member States' national constitutional requirements. (Section III discusses Member States' and Acceding States' ratification procedures, including the use of referenda, e.g. a UK draft Treaty referendum.)

C. POST-CONVENTION DEVELOPMENTS

Reaction to the draft Treaty varied. Outlined below are examples of responses at the EU level and both centrally and regionally in the UK, which helped inform discussions at the initial meeting of the IGC when it recently opened in early October.

1. EU reaction to the draft Treaty

In July 2003, European leaders indicated they considered the draft Treaty a good basis on which to start the IGC. Position papers were issued by each of the European institutions. These include:

- [the European Commission](#)⁴⁹
- [the European Parliament](#)⁵⁰
- [the Committee of the Regions\(COR\)](#)⁵¹

⁴⁹ European Commission – A Constitution for the Union - Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties. COM/2003/0548 final COM (2003) 548, 17 September 2003.

⁵⁰ EP Constitutional Affairs Committee Report on the draft treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC). Final A5-0299/2003. 10 September 2003.

⁵¹ At its plenary on 9 October 2003, the COR unanimously adopted its opinion for submission to the IGC. It called on the heads of state and government to accept the draft Treaty as a basis for negotiation at the IGC. The COR wishes to concentrate on those proposals that aim to consolidate the constitutional recognition of the regional and local authorities in the EU, without modifying the institutional balance achieved by the Convention members, namely: strengthening the COR's current advisory function and expansion of the fields for its mandatory consultation, recognition of the COR's role in the principles of representative democracy, guaranteeing of regional members' right to attend EU Council meetings, creation of a legal basis for cross-border and inter-regional co-operation and of a financial support framework for twinning arrangements between cities, and the achievement of consistency between the EU's objectives and some of its policies

- [the European Economic and Social Committee \(EESC\)](#)⁵²

On 23 September 2003 the European Parliament adopted [a resolution on the draft Treaty and its opinion on the convening of the IGC](#).

The resolution included criteria to evaluate the draft Treaty:

...the draft Treaty ... should be evaluated on the basis of the following criteria:

- [1]...respect for the preservation of peace, democracy, freedom, equality, linguistic and cultural diversity, the rule of law, social justice, solidarity, the rights of minorities and cohesion, all of which can never be deemed to have been definitely achieved but must be kept under constant review as to their meaning and must be fought for anew through historical developments and over generations;*
- [2] ...respect for the European Union as an entity united in its diversity; confirmation of the unique nature and of the dual legitimacy of the Union drawn from its Member States and citizens;*
- [3]...commitment to the preservation of the principle of equivalence between the Member States and the inter-institutional balance, which guarantees the Union's dual legitimacy;*
- [4]...efficiency in a Union composed of twenty five or more Member States while enhancing the democratic functioning of its Institutions;*
- [5]...development of a system of values with cultural, religious and humanist roots which, going beyond a common market and within the framework of a social market economy, aims at a better quality of life for Europe's citizens and society at large and seeks economic growth, stability and full employment, greater promotion of sustainable development and better implementation of citizenship of the Union;*
- [6]...strong political legitimacy in the eyes of the Union's citizens and through the European political parties;*
- [7]...an overall constitutional settlement which should enhance the Union's credibility and its role at home and abroad...*

2. UK reaction to the draft Treaty

The draft Treaty was laid before the UK Parliament in August 2003 (Cm 5897). A month later, the UK Government issued a White Paper on the Convention, entitled [“A Constitutional Treaty for the EU: The British Approach to the European Union Inter-Governmental Conference 2003”](#).⁵³

In the foreword, the Prime Minister specifically points out that the draft Treaty will be built on: it marks a starting point for negotiations. He states it is largely based on existing European treaties, with some important modifications, and reinforces the fact that the EU is a Union of nation States, and that it only has those powers, which Governments have chosen to confer on it. He assures that the Union is not and will not be a federal super-state.⁵⁴ Rather, he states that the text reaffirms the role of national Parliaments in the Union: they do not alter the fundamental constitutional relationship between Member States and the Union, and they

which were not reviewed at the European Convention. COR also asks EU leaders to guarantee the openness and transparency of the IGC's proceedings.

⁵² EESC, Sub-committee on the European Convention. “Opinion of the European Economic and Social Committee addressed to the 2003 Inter-Governmental Conference”. SECE 1171/2003. Brussels: 24 September 2003.

⁵³ Cm 5934. HMSO: September 2003.

⁵⁴ White Paper. September 2003, p. 3.

promise effectiveness. Thereafter the Government explains that the currently proposed draft Treaty meets important UK goals, namely:

- It replaces the Maastricht Treaty's three pillars with a single Treaty structure, consolidating the existing EU Treaties into a single logically ordered text, which sets out what the EU is, what its objectives are and how it will strive to achieve them. It effectively streamlines the number of EU legal instruments.
- It sets out a more transparent and accountable structure for the EU, including a definition of the Union's competences, which makes clear where the EU can and cannot act. It also strengthens the role of national Parliaments through a new procedure to reinforce subsidiarity.⁵⁵ National parliaments will have a mechanism to send back proposals for EU laws if they do not add value.
- It clarifies that the national governments of Member States remain in control. The Union's powers clearly derive from the Member States; and the draft Treaty preserves the principle that the most important decisions on EU issues are taken, by unanimity, by the Government of Member States.
- It provides for a more efficient EU in creating a full-time Chair of the Council of Ministers that will lead to greater continuity and coherence in the Union's actions, and ensure that the agenda decided upon by Member States is delivered. These improvements in decision-making will be essential to the success of the enlarged EU.

The White Paper emphasised that the UK Government does not support every proposal contained in the draft Treaty. It stated there are some areas of unfinished business, where the Convention has not worked through the detail of its proposals. Moreover, it advised there are some ideas that the Government disagrees with, and wants to examine in more detail, e.g. tax, defence and foreign policy should remain the province of the nation State, and other issues requiring further technical, including important legal, work.⁵⁶ (See below for discussion about the UK Government's 'red lines'.)

Setting out how the UK Government hoped to approach the IGC negotiations, the White Paper details the Government's position on the following:⁵⁷

- **Treaty structure** – It supports a single treaty structure, but only if it does not compromise special arrangements for the Common Foreign and Security Policy (CFSP) and some parts of Justice and Home Affairs (JHA).⁵⁸
- **Legal personality** – It recognises the advantages of clarity and simplicity that could come from the conferring of a single legal personality on the

⁵⁵ The principle whereby, in policy areas where competence is shared between the Union and Member states, the Union should act only when "the objectives of the intended action cannot be sufficiently achieved by the Member States" alone.

⁵⁶ White Paper. September 2003, p. 27.

⁵⁷ Ibid, pp. 27-41.

⁵⁸ Ibid, p. 28.

Union, both from the point of view of third countries, and from that of the EU's citizens. It argues that the Union could lead to simpler and quicker procedures for negotiating agreements through the EU, if it had a legal personality. But it further qualifies this, stating any move to confer a single legal personality on the Union must be on the basis of distinct arrangements for fully safeguarding CFSP, certain aspects of JHA and representation in international organisations.⁵⁹

- **Institutions** – The UK Government believes representatives of Member States, on the basis of equal rotation, should chair the EU's sectoral councils, which are co-ordinated by a full-time Council Chair. It further asserts these Councils should continue to legislate in their areas, creating greater coherence and consistency. It also recognises the value of better co-ordination of external policy at EU level; but notes there are some outstanding points in this area, most importantly, (i) how to ensure that the new post of Minister of Foreign Affairs is properly accountable to Member States in the Council, and (ii) its relationship with the Commission. It also questions how exactly the Union Minister for Foreign Affairs will be described. Finally, the Government notes the possibility of EU budget changes, but insists that the arrangements will ensure that revenues remain a matter for Member States. It also seeks to ensure revenue decisions continue to be subject to unanimity and national ratification. Moreover, it seeks to strengthen discipline and proper accountability in budget spending, to ensure value for money for UK taxpayers.⁶⁰
- **Competences** – It welcomes the division of power proposals (competence proposals), remarking that they clarify (for the most part), rather than alter the current arrangements. It also includes proposals to introduce some specific new competences, in areas including energy, intellectual property, sport and administrative co-operation. The Government further notes there already is some co-operation in these areas, so the creation of specific provisions should lead to greater transparency and legal certainty. It also remarks, however, there will be a need to consider on a case by case basis, whether the conferral of specific powers on the EU is the best way to allow the UK to pursue Union objectives; and if so, what the relevant new title should say.⁶¹
- **Subsidiarity and the role of national Parliaments and recognition of regional/local governments**– It supports the mechanism to ensure that the principle of subsidiarity is enforced. (The proposed mechanism would allow national parliaments to examine proposals for EU legislation right at the start of the legislative process, and if more than a third of them thought a proposal did not comply with the principle of subsidiarity, the Commission would be asked to review it.)⁶²
- **Greater use of QMV** – It welcomes the use of QMV as a general rule for legislative proposals, especially, e.g., in relation to asylum and illegal immigration, which require solutions at EU level. But the UK insists on the retention of unanimity for Treaty change; and in other areas of vital national

⁵⁹ White Paper. September 2003, pp. 28-29.

⁶⁰ Ibid, p. 29.

⁶¹ Ibid, p. 30.

⁶² Ibid, pp. 30-31.

interest such as tax, social security, CFSP, defence, key areas of criminal procedural law and the 'system of own resources' (the EU's revenue-raising mechanism).

- **Greater use of co-decision**⁶³ – It agrees greater use of co-decision is sensible as a general rule, but wants an examination of the pros and cons of co-decisions on a case by case basis, similar to QMV. In essence, the UK Government generally agrees with the principle if it is in the UK's interests, "...but not...where vital national interests dictate otherwise".⁶⁴
- **Internal market** – It aims to ensure that the four freedoms (free movement of goods, persons, services and capital) underpinning the internal market remain at the centre of all Union internal policies and their implementation; and exceptions should be kept to a minimum.⁶⁵
- **Trade** – It supports moves to reduce barriers to international trade, underscoring the proposals' call for the establishment of clear parameters for Union action to promote trade and development, and removing trade barriers, but argues that this should not lead to an increase in the Union's internal powers. The Government also states that voting arrangements for the negotiation and conclusion of international agreements should be similar to those required for the internal adoption of equivalent rules.⁶⁶
- **Economic governance** – It maintains that there should be no alteration to the terms of the UK's Economic and Monetary Union protocol, as this will enable the UK to decide whether to join the euro. The Government recognises the need to formally re-adopt this protocol, if the IGC finds such action appropriate.⁶⁷
- **Tax** – It believes the right of Member States to determine their own tax policies is fundamental, as tax matters are a key component of national sovereignty and vital to the social and economic well-being of the country. It therefore states the UK must retain its tax veto, and insists on that tax matters continue to be decided by unanimity.⁶⁸
- **Social policy and social security** – It believes social policy and social security should be retained in the IGC, particularly given the significant differences between social systems in the EU that reflect national traditions and choices. It highlights that the existing voting arrangements in the social field respect this diversity, but also facilitate freedom of movement, equality of treatment and fair working conditions within the EU.⁶⁹
- **Justice and Home Affairs (JHA)** – It insists on the UK's right to carry out frontier controls and the Protocols which safeguard the UK position, but it supports stronger action to tackle fraud against EU financial interests and

⁶³ The right of co-decision by the European Parliament to all legislative proposals subject to QMV, including, e.g., on structural funds, agriculture and fisheries.

⁶⁴ White Paper. September 2003, p. 32.

⁶⁵ *Ibid*, p. 34.

⁶⁶ *Id.*

⁶⁷ *Ibid*, p. 35.

⁶⁸ *Id.*

⁶⁹ *Ibid*, p. 35.

to strengthen the co-ordination role of Eurojust in such cases. However, it does not support the creation of a European Public Prosecutor who would have powers to decide at EU rather than national level how to investigate and prosecute serious fraud.

- **Common Foreign and Security Policy (CFSP)** – It welcomes the draft Treaty’s clarity about conducting the CFSP by the Member States, the European Council, and the Council of Ministers. It also supports the creation of a European Foreign Minister, which it believes will make the EU more effective in areas where Member States have a common foreign policy. Moreover, it welcomes the link between the CFSP and EU trade policy and development policy, which it thinks will improve the overall coherence of EU external action.⁷⁰
- **Development** – It is pleased with the development-related proposals, such as eradication of poverty as the primary objective of EU development policy, inclusion of a chapter on humanitarian aid as a clear basis for EU’s efforts in this field, and consideration of development objectives in other policies likely to affect developing countries, shared competence between the EU and Member States in relation to EU development policy. The UK also wants to ensure that the inter-governmental nature of the European Development Fund⁷¹ is maintained.⁷²
- **European Security and Defence Policy (ESDP)** – It welcomes a number of the ESDP proposals, for example, the updating of the ‘Petersberg Tasks’, which define the range of operations ESDP can undertake, including joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacekeeping, and post-conflict stabilisation.

The UK Government believes all these may contribute to the fight against terrorism in the EU and supporting the fight against terrorism in third countries’ territories, as proposed under Article III-210 of the draft Treaty. It further states that a new solidarity clause will help ensure a swift, co-ordinated response by Member States to deal with consequences of a disaster or terrorist attack. In this vein, it supports the proposed new inter-governmental agency that will support defence capability development.

However, the Government states that the UK will not support all the current proposals in this area. It thinks a flexible, inclusive approach and effective links with NATO are essential to the success of ESDP. It therefore will not agree to anything that is contradictory to or replaces the security guarantee established through NATO.⁷³

- **Sustainable development and the environment** – The UK Government supports these proposals as they currently appear.⁷⁴

⁷⁰ White Paper. September 2003, pp. 36-37.

⁷¹ This Fund is the basis for the Commission’s assistance to Africa, the Caribbean and the Pacific.

⁷² White Paper. September 2003, p. 37.

⁷³ Ibid, p. 38.

⁷⁴ Id.

- **Charter of Fundamental Rights** – It wants a clear statement of the rights, freedoms and principles that EU institutions should respect, but it further adds that the UK originally supported the Charter as a political declaration, not for legal use. It explains that the UK and others worked hard during the Convention to give the Charter more clarity and legal certainty. However, the Government reserves its final decision on the incorporation of the Charter into the draft Treaty until the IGC.⁷⁵

Overall, the White Paper promises that the UK Government will take a positive and constructive approach to the IGC, as it did in the Convention. However, it makes clear that the Government will not sign up to any treaty that does not, in its view, advance UK interests.⁷⁶

3. UK central and regional governmental activity post-Convention

Within the UK, there have been various levels of governmental activity at both central and regional levels since the Convention concluded its work in July 2003. Information about such activity is listed in [Appendix 3](#), and where available, provides electronic links.

4. On-going IGC

All Member State governments must agree if changes are to be made to the Treaties on which the EU is founded. This is the case with the currently proposed draft Treaty. The process of discussing and reaching agreement on such treaty change is known as an [Inter-governmental Conference](#) (IGC). An IGC is convened by the President of the European Council, on the recommendation of the Council and following consultation of the European Parliament, the Commission and, if appropriate, the European Central Bank.

On 29-30 September 2003, the European Council gave its support to the convening of an IGC, which was to open in Rome on 4 October, at a meeting of Heads of State or Government. It held the first meeting of the current IGC on 16-17 October 2003. There Heads of Member and Acceding States exchanged views on the main developments at Union and international level, which included the proposed draft Treaty. Foreign affairs ministers of the Member States also took part.

This IGC is different from others in that it was preceded by the Convention, which decided to submit its recommendations to the IGC in the form of the draft Treaty, which replaces and modifies the content of the existing EU Treaties. During the IGC, Member States will take final decisions on EU reform, in order to make its institutions more transparent, more accountable and more effective, and thereby better able to meet the challenges presented by enlargement and the 21st century.

a. [Timetable of IGC](#)

The IGC could go on for some time, despite the current EU Presidency – held by the Italians – hoping the draft Treaty will become a new Treaty of Rome before the end of their Presidency in December 2003. If this happens, and the work is

⁷⁵ White Paper. September 2003, p. 39.

⁷⁶ *Id.*

incomplete in December, then the draft Treaty will fall to the next Presidency, the Irish, and if not resolved in that Presidency, it could pass to the Dutch in July 2004.

b. Key debate areas in the IGC

The proposed draft Treaty is considered a good basis for negotiation and should not be 'unpacked' at the IGC, according to most national leaders and the EU institutions. However, some governments are not altogether happy with it and seek its amendment. Those who do not want the IGC to re-open and unravel the proposed draft include the UK, France, Germany, Italy and the Benelux states, whereas others are keen to amend aspects of it, including Spain, Poland and most of the small accession states.

Consequently there are a few major areas of disagreement, namely:

- **Votes in the Council of Ministers** – Under the proposed draft Treaty, decisions in most policy areas (excluding defence, foreign policy and taxation) would be adopted by a new form of QMV, replacing the present system of weighted voting, under which each Member State is allocated votes only roughly in proportion to the size of its population. Instead, the draft Treaty proposes adoption of a proposal if it is supported by at least half the Member States, representing at least 60% of the EU's total population.
- **The number of Commissioners** - The current draft Treaty decreases the number of Commissioners to 15 from the current 20 (which would rise to 25 after the accession of the ten new states in May 2004). Instead, it proposes the creation of up to 15 non-voting assistant Commissioners.
- **EU Foreign Minister** - The draft Treaty proposes the establishment of a new foreign minister who would conduct the EU's common foreign and defence policy (ESDP), merging the existing roles of the High Representative of the Common Foreign and Security Policy and the External Affairs Commissioner. It further proposes he or she would be a member of the Commission, with access to its resources, but would be accountable to Member States. (There are different views about this proposal.)
- **Council Presidency** - At present, the EU Presidency rotates on a six-monthly basis among Member States. Under the draft Treaty, the European Council would elect a president for a period of two-and-a-half years, extendable to five years. The foreign minister would chair the foreign affairs council. Teams of Member States would share the chairing of the sectoral councils, except for Ecofin, for which a longer-term chairperson would be appointed from among EU finance ministers under the draft Treaty.
- **References to God/religion** – The draft Treaty's preamble refers to the EU's "cultural and spiritual heritage", but does not mention God or Christianity specifically. Some governments would like an explicit mention of Europe's Judeo-Christian religious heritage. Others would prefer no mention, or mention of other religions as well.

- **Defence** – Under the draft Treaty’s general solidarity clause, mutual assistance would be available to Member States in the case of a terrorist attack. It also includes provisions allowing states that wish to, to subscribe to a collective defence clause.

c. *UK government’s views on the draft Treaty and ‘red lines’*

As noted earlier, the UK Government welcomed the draft Treaty when it set out its views in a [White Paper](#) published on 9 September 2003, but in the White Paper, the Government also concedes that, “Like most other Member States, the UK does not support every proposal put forward in the Convention”,⁷⁷ as there were some ideas with which it did not agree. It also insisted that foreign affairs, taxation, social security and defence matters should remain subject to national vetoes. These were its non-negotiable ‘red lines’. Other matters, it said, required “...further technical, including important legal, work...”.⁷⁸ The Government concluded stating “[would] not sign up to any treaty which does not, in its view, advance UK interests”.⁷⁹

The Shadow Foreign Secretary, Michael Ancram, stated that the White Paper was “another dossier with another prime ministerial foreword containing inaccurate statements,”⁸⁰ and “a timid attempt to soften us up for eventual acceptance of the draft text pretty well as it stands”.⁸¹ He continued:

The Foreign Secretary should insist on opposing the legally binding and enforceable charter of fundamental rights, as the Government promised to do last year, instead of suggesting, as the White Paper does, that it will be left until the end of the IGC to decide what the Government’s position will be. We all know what that means. He should insist on removing the explicit primacy of EU law enshrined in a constitution that fundamentally overrides our sovereignty. He should insist on deleting the proposed five-year presidency, which strikes at the heart of the whole concept of intergovernmentalism and marginalises smaller countries.

*The Foreign Secretary should insist on striking out the proposal for a European diplomatic service, which is by definition the tool of a state. He should insist on preventing creeping integration by way of the so-called escalator clauses. He should insist on the principle that subsidiarity and proportionality should be enforceable by national Parliaments. Above all, he should insist that a written constitution is not only, as the Prime Minister told us two years ago, unnecessary, but totally inimical to the interests of the United Kingdom and should be scrapped. Such insistences would be proof of the Government’s sincerity when they claim to be against the establishment of a European state, but none of them has been made.*⁸²

The Liberal Democrat spokesperson, Menzies Campbell, stated:

I agree about the areas that are sometimes described as red lines—for example, tax, social security, defence and own resources. I agree that they

⁷⁷ White Paper. September 2003, p. 27.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ HC Deb 9 September 2003 c 175, at::

<http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030909/debtext/30909-07.htm>.

⁸¹ *Id.*

⁸² *Ibid*, cc 175-76.

*should remain the exclusive responsibility of the House. They are a necessary part of the sovereignty of the Parliament to which we are elected.*⁸³

David Heathcoat-Amory, who was one of the UK's parliamentary representatives on the Convention, questioned the Government's objections and 'red lines', stating:

*Why are the Government spinning the fantastic distortion that they have achieved most of their aims already except for a handful of issues that are still to be decided? Will the Foreign Secretary confirm to the House that, in the European Convention, the Government tabled over 200 amendments to the draft constitution? I have the list here. Only 11 were accepted, so what has happened the other 189 issues which the Government opposed? Why has the White Paper downgraded or, in most cases, dropped entirely any reference to all those other issues to which the Government objected? Will the Government drop this absurd strategy of fastening on a handful of red line issues on which they think that they can claim victory, ignoring all the other objections that they made in the Convention and which they are now carefully forgetting?*⁸⁴

The Government replied to the above comments stating it would not forget the other changes. But it would raise further issues at the IGC, which ultimately would have the final word.

Baroness Scotland, the UK Government alternate on the Convention, has stated she could not agree to extension of QMV in social security matters, and instead of a European Public Prosecutor, she thought the Union ought to focus on making Eurojust work.

d. Other Member States' and Acceding States' views on the draft Treaty

Like the UK, Sweden has insisted that foreign policy and taxation policy should be excluded from QMV decision-making. The French Government maintains its opposition to the use of QMV for trade agreements on cultural and audio-visual services, education, health and social services. Culture is a particularly sensitive issue for the French Government, which intends to press for retention of unanimity in this area.⁸⁵

In the areas of foreign policy, defence and immigration the Dutch and Belgian members of the Convention led calls for more QMV decisions rather than unanimity. They were supported by the German Foreign Minister, Joschka Fischer, who also wanted QMV extended to tax policy, but unanimity retained for immigration matters.

Some governments adapted their positions on various principles and policies as the Convention progressed. The Italian leader and current EU President, Silvio

⁸³ HC Deb 9 September 2003, c 179, at: <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030909/debtext/30909-08.htm>.

⁸⁴ Ibid, cc 182-3, at: <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030909/debtext/30909-09.htm>.

⁸⁵ The Nice IGC in December 2000 had agreed to unanimity in this area, but under the draft Treaty it is to be decided by QMV.

Berlusconi, became less 'federalist' in his approach and the German Chancellor, Gerhard Schröder, came round to the idea of a President of the European Council, moving away from his earlier federalist stance towards a somewhat more inter-governmental approach.

The Luxembourg Prime Minister, Jean-Claude Juncker, expressed disapproval of the working methods of the Convention in general and the leadership of Valéry Giscard d'Estaing in particular, whom he accused of not taking seriously the concerns of small Member States. He thought the Convention lacked transparency, had drafted a 'totally unreadable' text and had failed to engage ordinary people.⁸⁶

The Spanish Foreign Minister, Ana Palacio, thought the draft text was an improvement on the existing Treaties but was also concerned about its lack of 'readability'. Austria and the foreign ministers from the Czech Republic, Slovakia, Poland, Hungary and Slovenia joined forces to try and bring about changes to the draft Treaty in areas where they believe larger Member States have power over smaller States.

The [Belgian position](#) supports some draft Treaty provisions, but not others. Belgium wants, e.g., to strengthen the Community method. (A fuller explanation of its position was set out in a contribution on 19 June 2003.)

When national parliamentarians met on 4 July 2003 to discuss the latest drafts, there was still some strong opposition to aspects of the Treaty. Hubert Haenel of the French Parliament argued in favour of including a reference to the 'cultural exception' in trade areas. He also supported the creation of a European Public Prosecutor, which the UK Government opposed.

The French Government alternate on the Convention, Pascale Andreani, thought the Convention had not gone far enough in strengthening decision-making within the euro-zone and had not been ambitious enough in its proposals on public health. She thought QMV should also be extended to all areas of the internal market, including taxation and social affairs.

Joschka Fischer thought progress had been made with regard to the extension of QMV for policy matters in Part III, but it was crucial to the internal market for it to be extended to tax policy. He also called for a provision for a European border police and a clear mandate for a European Public Prosecutor. He wanted equal powers for the European Parliament and Council with respect to the budget and suggested that legal personality should be granted to the European Atomic Energy Community. He believed the articles in the draft text dealing with nuclear energy should be deleted.

According to the Dutch Government representative, Gijs de Vries, his Government would focus on only three questions for the IGC: all Member States should have fair and equitable access to the post of European Council Chair; there should be no Legislative Council; there should not be QMV for a decision on the Union's financial perspectives. The Dutch Government thought the draft text had been improved by the latest (July) amendments, and that there was a real, but limited, role for QMV in the Common Foreign and Security Policy

⁸⁶ A recent *Eurobarometer* opinion poll found that only 39% of EU citizens knew what the Convention was doing.

(CFSP). They welcomed the extension of QMV to environmental and fiscal policy. Mr de Vries also favoured retaining the 'passerelle' clause in draft Article I-24.

The Finnish Government representative, Teija Tiilikainen, was surprised that a legal base on services of general interest had been included in the draft, as there had been no consensus on this issue in the Convention. She was also opposed to the creation of a European Public Prosecutor.

The Irish Government representative, Bobby McDonagh, thought that, while QMV was a good thing, it had its limitations, and the Irish Government wanted unanimity to be retained in tax matters. (He wanted to delete Articles III-59(2) and III-60 on taxation). The Irish Government thought Article III-166 on judicial co-operation in criminal matters went to "the heart of member states" and unanimity should therefore be retained. It did not support the proposal for a European Public Prosecutor, and wanted unanimity to be required for the Armaments Agency proposed under the CFSP provisions and endorsed the retention of unanimity on the EU's 'own resources'.

The Swedish Government representative, Sven-Olof Petersson, could not accept any move to QMV in taxation. The Belgian Government representative, Pierre Chevalier, called for QMV on certain aspects of social policy, and for the extension of enhanced co-operation in areas not yet covered by the current draft.

e. IGC positions

Since the opening of the IGC, participants have continued to 'firm up' their positions on various aspects of the draft Treaty. It seems clear that many countries want changes to improve the draft Treaty's contents. Issues have arisen in a number of areas, and they were not resolved at the October 2003 meeting in Rome:

- **Double majority voting** - The leaders of Spain and Poland have insisted on having equal voting rights in the Council of Ministers to the four 'large' Member States (the UK, France, Germany and Italy).⁸⁷ The Spanish and Polish Governments do not want to lose the advantage of the Treaty of Nice national votes calculation, which is disproportionately high for their populations: they therefore are not in favour of the revised calculation proposed under the draft Treaty, which would leave them with fewer votes. (The Nice Treaty established a complicated 'triple majority' system under which a measure can be adopted only if it has met three separate thresholds. The Convention feared this might slow down the EU's decision-making capacity, so it put forward the current proposal.)

Germany wants the IGC to agree to a re-distribution of votes to more closely reflect population figures, so the Government supports the proposal for a simplified system of 'double majority' voting. Under this new system, a measure would be adopted in the Council if it received the support of 50% of the Member States, and if those countries also represented at least 60% of the EU's total population. Germany believes this would be fairer and simpler than the Nice system. The double majority voting would reflect its

⁸⁷ Under the Treaty of Nice and the draft Treaty, Poland and Spain will have 27 votes, compared with the big four that will have 29 votes.

large population more accurately, whereas the Nice formula gives Germany almost the same number of votes as Spain and Poland, whose populations are half the size of Germany's.

Germany and France have threatened to link agreement by Spain and Poland to the double majority system to the allocation of regional aid in the discussions on the future of the EU's financial perspectives for after 2007, due to start in 2004. Poland and Spain are likely to be major recipients of regional aid, and will not want to jeopardise their chances. Although Chancellor Schröder believes these issues are "two sides of the same coin",⁸⁸ it is difficult to see how such a threat could legitimately be carried out.

- **Principles of equality** - Austria, Finland, Hungary, Slovenia, the Czech Republic, Malta and Lithuania want major revisions to make the constitution respect the principles of equality among large and small states, a 'Pandora's Box', which the Italian Presidency has rejected. In order to achieve equality these seven states seek to renegotiate the number of votes in the Council, weighted majority voting rules, the role of EU leaders in decision-making, the need to keep the EU presidency rotating among all Member States and the allocation of European Parliament seats. (All these issues have been on successive European Council agendas and were thrashed out at Nice, which reached a compromise agreement.)
- **Extension of qualified majority voting (QMV)** - The extension of QMV is another controversial area. Some states, headed by France and Germany would like to make issues related to combating tax fraud or to defining tax bases subject to QMV. Others, such as the UK, Ireland and Luxembourg are opposed to such an extension. Germany wants to retain unanimity for measures on social security, workers' rights and public services and is supported by the UK, some of the Nordic countries and most of the accession states.

Moreover, Germany, Italy and most of the small states would like more foreign policy decisions to be taken by QMV, while France and the UK are opposed.

There is also some opposition (primarily from the UK) to the proposed 'passerelle' clause, which would allow the EU to make any issue subject to QMV if all Member States agreed, without the need for a Treaty amending IGC and national ratification procedures.

- **Calculation of EU's 'own resources'** – The calculation of the EU's 'own resources' is currently decided by unanimity. This is retained in the proposed Article 53 of the draft Treaty (The Union's resources). However, there is a proposal to make own resources subject to QMV, which has been opposed by several states, including the UK. Although some would like to simplify the complex revenue formula; several states, especially the net contributors to the EU budget, do not want to give up their veto on own resources.

⁸⁸ Reuters, 6 October 2003.

- **Reductions in the number of voting Commissioners** - Several small Member States and accession states are opposed to the draft Treaty's proposed reduction of the number of voting Commissioners. The draft proposes that 15 commissioners (including the president and the new 'foreign minister') would constitute the voting college and there would be 10 non-voting Commissioners ('Phantom Commissioners', as the Commission President, Romano Prodi, has called them). The voting Commissioners would be appointed on a strict five-yearly rotation.

While France, Germany and others believe this is important to ensure that the Commission can function effectively after enlargement, the accession states, and some of the small Member States are concerned that they may lose influence within the Commission soon after joining. The Commission President, Romano Prodi, has supported the latter, stating in its Opinion on the draft:

The Commission feels that the specific response advocated by the Convention for this proposal is complicated, muddled and inoperable, and combines the disadvantages of the aforementioned two alternatives in that it may threaten the basis of collegiality, which is equality for all Members of the Commission.⁸⁹

(The proposal is to have a Commission made up of one Member from each Member State with different voting rights.)

- **President of the Council** - The small states are also wary of the proposed new post of president of the European Council. This figure would steer the EU's work programme and represent the EU externally. This post has been promoted by the UK and France, but the smaller states fear it would weaken the authority of the Commission and could allow the larger states to become too dominant.
- **Defence** - Defence is going to be one of the most controversial elements of the draft Treaty. France, Germany and some of the small states would like greater defence co-operation inside the EU. However, some 'Atlanticist' states, including the UK, the Netherlands and Poland, do not want the constitution to establish any structure that might rival or duplicate NATO. The neutral states, such as Ireland, Austria and Sweden, do not want a militarisation of the EU, so they support the 'Atlanticist' line.
- **References to God/religion** - Poland, Spain, Ireland, Italy, Slovakia and Lithuania want the constitution to refer to God and/or (Judeo-) Christian values as a vital part of European heritage, while France and other secular states want to keep such references out.
- **European Public Prosecutor** - Those Member States with a common law tradition (e.g. the UK, Ireland, Denmark and Sweden) oppose the creation of the office of a European Public Prosecutor to investigate the misuse of

⁸⁹ COM (2003) 548 final, Communication from the Commission: A Constitution for the Union, Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties, 17 September 2003, at:

http://europa.eu.int/futurum/documents/other/oth170903_2_en.pdf.

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

EU funds and serious cross border crime. These states fear that such a post would lead to the harmonisation of criminal law systems across the Union and impinge on decisions by domestic prosecution services and courts.

- **Inclusion of the Charter** - Some accession states support the UK in its concern about the inclusion of the Charter of Fundamental Rights in Part II of the draft Treaty. They are particularly worried about the inclusion of some social rights, such as workers' consultation rights, protection against unfair dismissal, the right to collective bargaining and the right to strike might give rise to multiple lawsuits against employers.

III. RATIFICATION OF THE DRAFT TREATY

As mentioned earlier, it is only when the Member States agree the new Treaty that it can be signed. Once signed, the Treaty then must be ratified according to the distinct constitutional arrangements of each Member State.⁹⁰ If a referendum is unsuccessful, there may be delays while a solution is found. One option may be to wait for the country to hold a repeat referendum in the hope of securing a 'yes' vote the second time around.

Once any amendments are approved and ratified by all Member States, the new provisions can enter into force.⁹¹

If a new Treaty, i.e. the draft Treaty as is or modified, or something entirely different, cannot be agreed or ratified, then the EU will carry on under the current arrangements. However, the failure to reform would undermine the existing institutional balance of the EU, as by next spring 10 new members will join the EU, and more will follow thereafter. If the new document is not ready by May 2004, the new and previously existing Member States will have to enter the Union on the basis of the existing rules and use voting systems drawn up some time ago, which could be messy.

The UK Government argues that the failure to agree a new Treaty will "...miss an opportunity to make the EU more efficient, simpler to understand, more accountable to the European and national Parliaments, and better prepared to function effectively with 25 and more members".⁹²

The following paragraphs discuss the ratification process in the UK for EU treaties such as the draft Treaty, which is constitutional in nature, as well as the possible issue of a referendum on it in the UK. They also outline other Member States' and Accession States' ratification procedures.

⁹⁰ White Paper. September 2003, p. 18.

⁹¹ Id.

⁹² Ibid, p. 16.

A. UK RATIFICATION PROCEDURES

1. General ratification rule

In the UK, the Foreign Secretary, or his or her representative, acting on behalf of the Crown, ratify treaties. This is modern constitutional practice whereby Government Ministers exercise Prerogative powers (the 'Royal Prerogative').⁹³

2. The UK Parliament's role in ratification

Parliament does not have a direct role in treaty ratification, but there can be parliamentary activity relevant to it. Starting in the 1920s, and continuously since the 1930s, there has been a constitutional practice (not a law) known as the 'Ponsonby Rule': it requires a treaty that is subject to ratification to be laid before Parliament for 21 sitting days before ratification. This is to provide Parliament with information about the proposed treaty and to afford Parliament an opportunity to debate it.

In relation to European Community treaties, this requirement has been covered by the formal submission of the treaty text to Parliament as a Command Paper, together with the debates on a *European Communities (Amendment) Bill*.

When the UK joined the Community in 1973, accession was preceded by the passing of an Act of Parliament that made the obligations under the Treaty and the law deriving from it applicable within the UK. This was the *European Communities Act 1972*. On all subsequent occasions when a new treaty has been agreed, including treaties of accession, there has been new legislation in the UK to amend the *European Communities Act*. Such legislation was to ensure that those parts of the new treaty that are intended to have domestic legal effect, also are made applicable within the UK.

[*A European Communities \(Amendment\) Bill*](#) was introduced on 21 June 2001⁹⁴ to amend the *European Communities Act 1972* (ECA)⁹⁵ by approving those parts of the new Treaty that give rise to Community rights and obligations, and therefore need to have legal effect in the UK. The Bill's purpose was to:

*...make provision consequential on the Treaty signed at Nice on 26 February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts...*⁹⁶

but there was no reference to ratification in the Bill because the ratification of treaties is a matter for the Crown.

Successive European Communities (Amendment) Bills have been designed to make all the legislative provisions necessary for the implementation of the new Treaty in question, clearing the way for the Government to deposit an instrument of ratification after the Bill has received the Royal Assent and become an Act of Parliament. A similar process will be followed for the adoption of the draft Treaty in its current or amended form in the UK.

⁹³ See, Walker, David M. *The Oxford Companion to Law*. Clarendon Press. Oxford: 1980, pp. 982-83.

⁹⁴ Bill 3 of 2001-02.

⁹⁵ See *Statutes in Force*, 1972 Chap. 68.

⁹⁶ See also, e.g., *European Communities (Amendment) Bill* to approve Treaty of Amsterdam in 1997, Bill 71 of 1997-98.

Consequently, similar legislation will be required to cover all parts of the draft Treaty, if it is agreed that it should be enacted as is or in its amended form, and will be intended to have direct legal effect within the Member States. The passage of the implementing legislation will not be formally part of ratification, but will be necessary if ratification is to proceed smoothly. Without legislation, the Government might be faced with a conflict between its obligations under the draft Treaty and the domestic legal order.

3. The UK Parliament's role in calling a referendum

There is no constitutional requirement to hold a referendum for any purpose in the UK, but the UK Parliament is free to legislate for a referendum on any question at any time. In certain circumstances, the Parliament has decided that particular laws should come into operation only after a referendum has been laid. In practice, a referendum may be laid where there is a wholly new constitutional structure proposed, but not otherwise.

The Parliament cannot be formally bound by the outcome of a referendum, but a referendum could be made to have other legal effects. For example, referendum legislation might stipulate that, depending on the outcome, a minister lays before Parliament an Order in Council that will either bring into force or repeal an Act of Parliament. Such a provision can, if Parliament so decides, be added to a European Communities (Amendment) Bill or a European Union Bill relating to the draft Treaty for a European constitution.

4. Referenda called to date in the UK

Referenda have been held in UK regions. Scotland, Wales and Northern Ireland each held a referendum for the people to decide whether they wanted a Parliament or an Assembly for their country, or whether they wanted to stick with existing arrangements. Moreover, local referenda have been held to allow people to decide in matters concerning, e.g., a Mayor.

Only one UK-wide referendum has ever been held. This was in 1975, when the question was whether the UK should stay in or withdraw from the EU. The result was a 2:1 majority in favour of staying in the EU. The present Government is similarly committed to holding a referendum on the Euro.

Referenda have never been held to approve changes to existing EU institutions. Thus, no referendum was held on any the Single European Act (SEA), Maastricht, Amsterdam or Nice Treaties.

5. The UK Government's position on a UK draft Treaty referendum

The Prime Minister maintains there is no need for a draft Treaty referendum because it will not alter the relationship between the UK and the EU. He states:

There will not be a referendum. The reason for this is that the constitution does not fundamentally change the relationship between the EU and the UK.⁹⁷

⁹⁷ *The Times*. 18 October 2003.

He believes parliamentary debate is preferable.

The UK Government further argues that European treaties such as the SEA and Maastricht involved changes within the operation of the EU greater than any likely to flow from this IGC. It therefore maintains that in line with the approach of previous administrations, there is not a case for a referendum on the draft Treaty in the UK. It states that the proposed changes, though important, do not involve any fundamental change in the relationship between the EU and Member States.⁹⁸

However, in October 2003, the Prime Minister is reported to have said there may be a case for a referendum if the IGC on the constitution tried to force unacceptable changes on foreign policy, tax and defence.⁹⁹ Moreover, on 17 October 2003, the Foreign Office is reported to have begun a debate about how to handle its response to demands for a referendum without appearing too hostile to the principle of giving the public a vote.¹⁰⁰

The referendum issue also has been raised in the Scottish Parliament by a [recent petition](#) (PE673), which calls the Parliament to take the necessary steps to hold a consultative referendum of the Scottish people on the finalised EU constitutional treaty prior to ratification by the UK Parliament.

Moreover, on 27 October 2003 the Scottish National Party (SNP) lodged a [proposal for a Member's Bill, calling on the Scottish Executive to hold a referendum on the draft Treaty prior to its ratification by the UK Government](#). Although the SNP is broadly supportive of the draft Treaty, it is concerned about its proposal to give the EU exclusive competence over the conservation of marine biological resources under the common fisheries policy. Members of the Scottish Green Party and the Scottish Socialists support this Member's Bill proposal.

This Bill followed an earlier motion tabled by the Scottish Green Party on 29 May 2003. The motion called on the Scottish Executive to hold a consultative public referendum on the stated issue in Scotland. (See relevant links in [Appendix 3](#) for detail concerning this Scottish Parliament activity.)

6. European Parliamentary view

In mid-September 2003, the European Parliament Constitutional Affairs Committee voted in favour of holding referenda on the draft Constitution in all 25 Member States at the same time as the European Parliament elections, which are scheduled for June 2004.

Moreover, on 23 September 2003 the [European Parliament adopted a resolution](#) on the draft Treaty and the IGC, wherein it stated that the "...Member States holding draft [Treaty] referenda should if possible hold such referenda or ratify the draft [Treaty] in accordance with their constitutional provisions..." on 9 May 2004, Europe Day, immediately after the accession of the new members to the Union.

⁹⁸ White Paper. September 2003.

⁹⁹ *The Times*. 17 October 2003.

¹⁰⁰ *Daily Telegraph*. 17 October 2003.

7. Anticipated Member State Referendum

It recently was reported that a draft Treaty referendum will be held in Denmark, Ireland, Sweden, Spain, Portugal, Belgium and Luxembourg; Italy is unlikely to hold a referendum.¹⁰¹ The Czech Republic may vote on the issue of a referendum.

B. RATIFICATION PROCEDURES IN OTHER MEMBER STATES AND ACCEDING STATES

The ratification procedures in other Member States and Acceding States are outlined in [Appendix 4](#).

IV. POTENTIAL DISCUSSION POINTS

Potential discussion points about the draft Treaty and related issues include:

1. Was the Convention an inclusive process? Did it effectively engage the public? Did it allow for meaningful and robust debate?
2. Were the UK regions fully represented at the Convention?
3. What are the areas of concern/interest under the draft Treaty for the UK generally and regionally, e.g. the division of competences, the role of national parliaments, the principles of subsidiarity and proportionality? How will these impact on the working practices of the parliaments and assemblies in the UK?
4. What status would the draft Treaty be afforded if ratified by the UK and passed by the European Parliament? Would it be like the Treaty of Amsterdam, as amended by the Treaty of Nice? Or would it be accorded different constitutional status in UK law? What implications could it have on national sovereignty?
5. Have the UK Parliament and the regions (including their legislative and executive branches of government) been afforded a full and fair opportunity to help formulate the UK's position on the Future of Europe, during the Convention and in the time leading up to the IGC?
6. Do the UK positions on the draft Treaty – as stated in the Government's White Paper on the draft Treaty and at the IGC – reflect the views of the UK Parliament and devolved legislatures in the UK?
7. The Convention engaged in extensive consultation to formulate the proposed draft Treaty. Did it succeed in making the issue of a draft Treaty accessible to EU citizens?
8. Does the UK Government's White Paper on the draft Treaty fully explain the UK's ratification procedure, specifically the Parliament's role with respect to referenda?

¹⁰¹ See White Paper. September 2003, p. 23.

9. Given the ratification procedure for EU Treaties in the UK, should there be a referendum on the draft Treaty, particularly in light of the petition recently laid in the Scottish Parliament?
10. To what extent does the draft Treaty achieve the objectives originally set out in the Laeken Declaration and under the Convention?
11. What effect will the procedures and powers prescribed in the draft Treaty have on devolved governance in the UK, and on the devolved government's relations with the UK Government?

APPENDIX 1

THE DRAFT TREATY DEBATE: UPDATE INFORMATION SOURCES

To keep abreast of developments in the draft Treaty debate, there are a number of useful internet sources, including the following:

- Inter-governmental Conference
<http://ue.eu.int/igc/index.asp?lang=EN>
- Europa
http://europa.eu.int/newsletter/index_en.htm
- The European Commission - Futurum
http://europa.eu.int/futurum/comm/index_en.htm
- The Council of the European Union
<http://ue.eu.int/en/main.htm>
- The Italian Presidency of the Council of the EU
<http://www.ueitalia2003.it/EN/ConferenzaIntergovernativa/>
- The European Parliament
http://www.europarl.eu.int/europe2004/actual_en.htm
- European Parliament's Delegation to the Convention
<http://www.europarl.eu.int/comparl/conv/default.htm>
- European Parliament Committee on Constitutional Affairs
http://www.europarl.eu.int/committees/afco_home.htm
- Committee of the Regions
<http://www.cor.eu.int/en/index.html>
- European Economic and Social Committee
<http://www.esc.eu.int/pages/en/home.asp>
- The Foreign and Commonwealth Office (FCO)
<http://www.fco.gov.uk/fco/communities/list?forumid=465>
- Constitution Convention
<http://www.constitutional-convention.net/>
- Civil Society Contact Group - IGC Toolkit
http://www.act4europe.org/code/en/news.asp?id_events=19

APPENDIX 2

EU ENLARGEMENT

The following paragraphs provide an overview on enlargement, explaining what it is, what it entails and how the process has been monitored.

What is enlargement?

The *first wave* of enlargement includes 10 countries that are scheduled to formally accede on 1 May 2004, namely: Czech Republic; Estonia; Hungary; Latvia; Lithuania; Poland; Slovakia; Slovenia; Cyprus and Malta.

When completed, this enlargement will increase the EU's geographic area by 34%, and its population by 105 million. Consequently the EU will become the largest single market in the world: it will have a combined market of over 500 million consumers.¹⁰²

The *second wave* should occur in 2007 and may include Bulgaria and Romania, which are both in accession negotiations that are anticipated to end in 2004. It also may include Turkey, but presently it has no set accession date, nor is it negotiating its EU membership.

Further enlargements are anticipated, e.g.:

- Croatia applied to join the EU in early 2003 and aims to join in 2007.
- Serbia-Montenegro and Macedonia individually hope to join by 2007.
- Bosnia and Herzegovina hope to join by 2009.
- Former Yugoslavia hopes to join the EU.
- Albania is moving closer to making an application.
- The Ukraine is committed to its long-term strategic goal of full EU integration.
- Norway and Switzerland may reactivate their applications: they currently meet all EU membership criteria, but they are not currently pursuing membership.

What does enlargement entail?

In basic terms, countries seeking to accede to the EU may be referred to as applicant, candidate or acceding countries. They do this by a process that includes accession negotiations, possibly a referendum in the applicant country and an accession treaty between the applicant country and the existing Union. (For the forthcoming first wave of enlargement, there was a successful referendum in each country.)

¹⁰² A list of key indicators for the new EU-25 (the proposed Union of 25 Member States), as well as aggregate figures for both the current EU-15 and the candidate countries, can be found on the official web-site of the European Union. This includes demographic information, GDP (Gross Domestic Product) figures, and labour market data. See <http://www.europa.eu.int/comm/enlargement/docs/pdf/eurostatapril2003.pdf>.

Applicant countries make their cases to the Union, demonstrating how they can satisfy the economic and political conditions known as the ‘Copenhagen criteria’, i.e. they must show they:

- are a stable democracy, respecting human rights, the rule of law and the protection of minorities
- have a functioning market economy
- are prepared to adopt the common rules, standards and policies that make up the body of EU law

In effect, the negotiations between the Union and the applicant country determine the specific conditions under which the country will join. Such negotiations focus on the terms under which the applicant will adopt, implement and enforce the ‘*access communautaire*’, (the phrase refers to the whole range of principles, policies, laws, practices, obligations and objectives that have been agreed within the EU, including the Treaties, EU legislation, ECJ decisions and joint actions taken in the fields of the Common Security and Foreign Policy (CSFP) and Justice and Home Affairs (JHA), which for negotiation purposes is divided into 31 chapters), and the granting of transitional arrangements that are limited in scope and duration. Hence, for a state joining the EU, changes are inevitable, particularly to national laws and in the establishment of administrative and or judicial bodies to oversee the legislation.

Throughout the enlargement process, the EU assists applicant countries in adopting EU laws and provides financial assistance to improve their infrastructure and economy.

How has the enlargement process been monitored?

Overall, enlargement is anticipated to add to the Union’s strength and influence, placing it in a better position to take up the challenge of globalisation and to defend and strengthen the European social model. In addition, it is expected to present challenges both economically and socially for both the Union and the acceding countries. It also will have significant implications for the decision-making and the institutional architecture of the Union.

During February 2003, the European Commission undertook a monitoring exercise of accession countries’ progress towards adopting the *acquis communautaire*. The exercise revealed [shortcomings in legislative areas](#) by many of the prospective EU entrants. For each acceding country, a final [comprehensive monitoring report](#) was published on 5 November 2003. If a candidate is found to be non-compliant with the *acquis* arrangements, it is possible that the EU will take action against it.

A further report entitled “[Big bang and aftershocks](#)”, outlined ‘teething problems’ expected from enlargement. It was compiled by Burson-Marsteller, and was issued in late September 2003.

APPENDIX 3

THE CONVENTION: UK LEGISLATIVE AND EXECUTIVE ACTIVITY

Over the last couple of years there have been varying levels of legislative and executive activity across the UK – all of which is relevant to the draft Treaty. Outlined below is activity that occurred during and after the Convention. Where possible, it includes electronic links to such information.

UK

UK PARLIAMENT - HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE

Minutes of Evidence, 10 September 2003, Jack Straw, Kim Darroch and Tom Drew, *The Intergovernmental Conference on the Draft Treaty on a Constitution for Europe*, HC 1078-I, 24 September 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmeuleg/1078/3091001.htm>

Minutes of Evidence, 16 July 2003, Peter Hain, Sarah Lyons, Tom Drew, *The Convention, the Draft Treaty and the IGC*, HC 1030-I, 29 July 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmeuleg/1030/3071601.htm>

26th Report, HC 63-xxvi-I, 3 July 2003, *The Convention's proposals on criminal justice Report*, at:
<http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmeuleg/63-xxvi/6302.htm>

24th Report, HC 63-xxiv, 16 June 2003, *The Convention on the Future of Europe and the Role of National Parliaments*, at:
<http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmeuleg/63-xxiv/6302.htm>

26th Report, 2002-03, *The Convention's proposals on criminal justice*, HC 63-xxxvi-I and II (incorporating HC 554-i, ii, iii and iv of Session 2002-03), 3 July 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmeuleg/63-xxvi/6302.htm>

Minutes of Evidence, 16 December 2002, HC 103, *Convention on the Future of Europe*, Peter Hain, Nick Baird, Sarah Lyons, 20 November 2002, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmeuleg/103-i/2112001.htm>

Minutes of Evidence, 11 October 2002, HC 1112-I, *The Seville Council and the Convention on the Future of Europe*, Peter Hain, Nick Baird, at:
<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/1112/2071601.htm>

Minutes of Evidence, 15 July 2002, HC 871-i *Convention on Future of Europe*, Gisela Stuart and David Heathcoat-Amory, at:
<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/871/2052101.htm>

33rd Report, 21 June 2002, *Democracy and Accountability in the EU and the Role of National parliaments*, at:
<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-xxxiii/15201.htm>

13th Report, 18 January 2002 *Appointment of Parliamentary Representative to the Convention on the Future of Europe*, HC 152-xiii, at:
<http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-xiii/15202.htm>

First Special Report, 17 December 2001, HC 457, at:
<http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmeuleg/457/45702.htm>

Fifth Report, 12 November 2001, HC 152-v, *Convention to Prepare for the 2004 Inter-Governmental Conference*, at:
<http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-v/15201.htm>

UK PARLIAMENT - HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE

31 July 2003, HC 607-I, Minutes of Evidence for Tuesday 1 April 2003, Denis MacShane, Kim Darroch *Developments in the European Union*, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcaff/607/3040101.htm>

Minutes of Evidence for Tuesday 1 April 2003, Peter Hain, Kim Darroch *The Inter-Governmental Conference 2004: The Convention on the Future of Europe*, at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcaff/606/3040101.htm>

17 December, 2002 HC 965-I, Minutes of Evidence for Tuesday 18 June 2002, David Heathcoat-Amory and Ms Gisela Stuart, *The Inter-Governmental Conference 2004: The Convention on the Future of Europe*, at:
<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmcaff/965/2061801.htm>

First Special Report on the *Appointment of Parliamentary Representatives to the Convention on the Future of Europe*, 14 January 2002, Report and Appendix, together with Proceedings of the Committee, at:
<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmcaff/509/50902.htm>

UK PARLIAMENT - HOUSE OF LORDS EUROPEAN UNION SELECT COMMITTEE¹⁰³

35th Report, 18 July 2003, *The Future of Europe: Progress Report on the Draft Constitutional Treaty and the IGC*, HL 150, at:
<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/150/15001.htm>

¹⁰³ See also links to reports on Foreign and Commonwealth Office web-site at:
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1060854416451>.

23rd Report, 15 May 2003, *The Future of Europe: Constitutional Treaty - Draft Articles on External Action*, HL 107, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/107/10701.htm>

22nd Report, 15 May 2003, *The Future of Europe: Constitutional Treaty - Articles 33-37 (The Democratic Life of the Union)*, HL 106, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/106/10601.htm>

21st Report, 15 May 2003, *The Future of Europe: Constitutional Treaty - Draft Articles on the Institutions*, HL 105, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/105/10501.htm>

18th Report, 10 April 2003, *The Future of Europe: Constitutional Treaty - Draft Articles 43-46 (Union Membership) and General and Final Provisions*, HL 93, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/93/9301.htm>

14th Report, 7 April 2003, *The Future of Europe: 'Social Europe'*, HL 79, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/79/7901.htm>

15th Report, 31 March 2003, *The Future of Europe - Convention Working Group Reports on Defence and External Action*, HL 80, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/80/8001.htm>

16th Report, 28 March 2003, *The Future of Europe: Constitutional Treaty - Draft Article 31 and Draft Articles from Part 2 (Freedom, Security and Justice)*, HL 81, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/81/8101.htm>

12th Report, 13 March 2003, *The Future of Europe: Constitutional Treaty - Draft Articles 24-33*, HL 71, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/71/7101.htm>

11th Report, 13 March 2003, *The Future of Europe: Parliaments and Subsidiarity - The Proposed Protocols*, HL 70, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/70/7001.htm>

9th Ninth Report, 27 February 2003, *The Future of Europe: Constitutional Treaty - Draft Articles 1-16*, HL 61, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/61/6101.htm>

6th Report, 4 February 2003, *The Future Status of the EU Charter of Fundamental Rights*, HL 48, at:

<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/48/4801.htm>

30th Report, 1 August 2002, *The Convention on the Future of Europe*, HL 163, at:
<http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/ldcom/163/16301.htm>

UK GOVERNMENT RESPONSE TO SELECT COMMITTEE REPORTS

Government Response to Lords Select Committee on the European Union, 16th Report, 2002-03, *The Future of Europe: Constitutional Treaty – Draft Article 31 and Draft Articles from Part 2 (Freedom, Security and Justice)*, at:
http://www.fco.gov.uk/Files/kfile/JHA_FinalGovernmentResponse.0.pdf

Government Response to the Sixth Report of the House of Lords Select Committee on the European Union, Session 2003-03, *The Future Status of the EU Charter of Fundamental Rights*, Appendix 2, Lords 27th Report, at:
<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/114/11404.htm>

Government response to the 26th Report of the Lords Committee, on the Convention's Defence and External Action Working Group, Appendix 4, letter from Jack Straw, at:
<http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldselect/ldcom/112/11206.htm>

Government Response to Commons Scrutiny Committee 33rd Report, 2001-2002, *Democracy and Accountability in the EU and the Role of National Parliaments*, October 2002, at:
http://www.fco.gov.uk/Files/kfile/EUDemocracyAccountability_FinalGovernmentResponse.0.pdf

UK PARLIAMENT - HOUSE OF COMMONS DEBATES

HC Deb 16 September 2003, debate on the EU Constitution, cc777-828, at:
http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030916/debtext/30916-20.htm#30916-20_head0

HC Deb 9 September 2003, debate on the EU-IGC, cc 171- 189, at:
http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030909/debtext/30909-06.htm#30909-06_head0

HC Deb 9 July 2003 cc 1201-80, Debate on a motion on the Convention on the Future of Europe and the Intergovernmental Conference. (Inc ref to HC 63-xxiv and HC 63-xxvi 2002/03). Amendment negated on division (205 to 315). Main question agreed on division (359 to 164), at:
http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/cm030709/debtext/30709-15.htm#30709-15_head0

HC Deb 18 June 2003, cc159-248, Debate on a motion for the adjournment on European affairs. (Inc ref to European Scrutiny Committee reports HC 152-xxxi and xxiii), at:
http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/cm030618/debtext/30618-14.htm#30618-14_head0

HC Deb 11 June 2003, cc705-57, European Treaty Referendum. Eighth opposition day debate (part 1). Motion negatived on division (155 to 293). Amendment agreed on division (283 to 178), at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/cm030611/debtext/30611-11.htm#30611-11_head0

HC Deb 20 March 2003, cc 303-48WH, Westminster Hall debate on a motion for the adjournment on the Convention on the Future of Europe, at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/cm030320/halltext/30320h01.htm#30320h01_head0

HC Deb 30 January 2003, cc 331-74 WH, Westminster Hall adjournment debate on democracy and accountability in the European Union. (Includes ref to HC 152-xxxiii 2001/02 and HC 103-i 2002/03), at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/cm030130/halltext/30130h01.htm#30130h01_head0

HC Deb 11 December 2003, cc 299-365, Debate on a motion for the adjournment on European affairs, at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/vo021211/debtext/21211-16.htm#21211-16_head0

HC Deb 2 December 2002, cc 673-723, Convention on the Future of Europe. Unallotted opposition day debate (part 2). Division deferred until 4 December. (Motion agreed by 282 votes to 12), at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/vo021202/debtext/21202-23.htm#21202-23_head0

HC Deb 27 November 2002, cc 90-113WH, Westminster Hall adjournment debate on the proposed European constitution, at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmhansrd/vo021127/halltext/21127h02.htm#21127h02_head0

UK PARLIAMENT - HOUSE OF LORDS DEBATES

HL Deb 9 September 2003, debate on the Convention on the Future of Europe, cc 151-277, at:

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds03/text/30909-04.htm#30909-04_head4

HL Deb 20 June 2003, cc 1096-119, Lords debate on motion to take note of the sixth report of the European Union Committee on 'The Future Status of the EU Charter of Fundamental Rights' (HL 48 2002/03). Agreed to on question, at:

http://pubs1.tso.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds03/text/30620-06.htm#30620-06_head0

HL Deb, 2 April 2003, cc 1319-93, Lords debate on motion to call attention to the proceedings of the Convention on the Future of Europe and the case for a referendum on any consequent constitutional treaty. Motion withdrawn, at:

http://pubs1.tso.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds03/text/30402-04.htm#30402-04_head3

HL Deb 7 January 2003, cc 897-986, Lords debate on motion to take note of the Convention on the Future of Europe. Agreed to on question, at:
http://pubs1.tso.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds03/text/30107-07.htm#30107-07_head0

UK PARLIAMENT - STANDING COMMITTEE ON THE CONVENTION

Report of Proceedings, 16 June 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030616/30616s01.htm>

Report of Proceedings, 7 May 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s01.htm>

Report of Proceedings, 19 March 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030319/30319s01.htm>

Report of Proceedings, 12 February 2003, at:
<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030212/30212s01.htm>

UK PARLIAMENTARY REPRESENTATIVES ON THE CONVENTION

The UK parliamentary representatives on the Convention published ten progress reports on the work of the Convention. These are not available on-line, but the references to the Unpublished Papers (UPs) are as follows:

June 2003, UP 1111 2002/03, Convention on the future of Europe: tenth progress report from the United Kingdom national Parliament representatives.

6 May 2003, UP 942 2002/03, Convention on the future of Europe: ninth progress report from the United Kingdom national Parliament representatives.

14 March 2003, UP 745 2002/03, Convention on the future of Europe: eighth progress report from the United Kingdom national Parliament representatives.

11 February 2003, UP 447 2002/03, Convention on the future of Europe: seventh progress report from the United Kingdom national Parliament representatives. (Vote)

29 January 2003, UP 383 2002/03, Convention on the future of Europe: sixth progress report from the United Kingdom national Parliament representatives. (Vote)

21 November 2002, UP 61 2002/03, Convention on the future of Europe: fifth progress report from the United Kingdom national Parliament representatives.

15 October 2002, UP 2125 2001/02, Convention on the future of Europe: fourth progress report from the United Kingdom national Parliament representatives. (Vote)

24 July 2002, UP 1886 2001/02, Convention on the future of Europe: third progress report from the United Kingdom national Parliament representatives. (Vote)

20 June 2002, UP 1676 2001/02, Convention on the future of Europe: second progress report from the United Kingdom national Parliament representatives (Gisela Stuart MP and David Heathcoat-Amory MP). 20 June 2002. (Contains annexes consisting of European Convention Secretariat Notes).

30 April 2002, UP 1505 2001/02, Convention on the Future of Europe. First progress report from the United Kingdom national parliament representatives (Gisela Stuart MP and David Heathcoat-Amory MP). 30 April 2002. (Contains annexes consisting of European Convention Secretariat Notes numbered from CONV 7/02-CONV 17/02 on the financing of the Convention of the Future of Europe).

UK GOVERNMENT WHITE PAPER

In September 2003 the Government published a White Paper, A Constitutional Treaty for the EU: The British Approach to the European Union Inter-Governmental Conference, Cm5934, at:

http://www.fco.gov.uk/Files/kfile/FoE_IGC_Paper_cm5934,0.pdf.

UK GOVERNMENT ON-LINE PUBLIC CONSULTION

The Government, together with the [Hansard Society](#), has introduced an on-line public consultation site to elicit public opinion on the draft constitution in preparation for the launch of the Intergovernmental Conference on 4 October 2003.¹⁰⁴ Information on the forum can be accessed at: <http://www.fco.gov.uk/fco/communities/list?forumid=465>.

UK GOVERNMENT MISCELLANEOUS ACTIVITY CONCERNING THE DRAFT TREATY

The Government's representative to the Convention, Peter Hain spoke with trade unions, businesses, academics, students and other members of the public about the Future of Europe. He also has participated in web-chats and produced video-clips. He also has undertaken a number of regional visits, including Edinburgh (November 2001), Northern Ireland (February 2002), South Yorkshire (March 2002), Birmingham (May 2002) and Manchester (June 2002).

The Foreign Secretary also visited Edinburgh and Belfast (August 2002).

The Minister of Europe Denis McShane also made a regional visit to Newcastle (November 2002). There have been other activities focusing on the future of Europe, including a Youth Convention and Europe Day.

A submission of particular significance to devolved governance in the UK was a paper commissioned by the Joint Ministerial Committee on Europe,¹⁰⁵ which met on several occasions to consider issues arising out of the Convention. The paper entitled "Europe and the Regions" recognised the role of the regions in strengthening the EU's

¹⁰⁴ In reply to a Parliamentary Question about the number of visits to the website, Mr. MacShane said: "The Government's online consultation on the draft EU Constitutional Treaty has received over 27,000 readings and 985 contributions so far. The consultation does not aim to measure support for the draft EU Constitutional Treaty but to enable discussion of the main policy issues we expect the forthcoming Intergovernmental Conference to address", HC Deb, 15 September 2003, cc 585-6W.

¹⁰⁵ The Joint Committee is chaired by the UK Foreign Secretary and a Minister from each devolved administration attends.

democratic legitimacy. Peter Hain presented it to the Convention in February 2003. Amongst other proposals, it advocated more thorough consultation by the European Commission of regional and local authorities at the pre-legislative stage, as well as measures to enhance the effectiveness of the Committee on the Regions (COR).

SCOTLAND

SCOTTISH PARLIAMENT - EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

The IGC is one of the current Committee's main priorities. It is undertaking an inquiry into the EU's draft Treaty, as well as the IGC and its implications for Scotland. The Committee has agreed to take evidence from both Scottish and UK Ministers to question them on the IGC.

The Committee also has agreed to consider how it could work with the House of Commons European Scrutiny Committee in the ratification process of the new EU constitution. There is no formal role for the Scottish Parliament within the UK constitutional requirements governing ratification of the EU treaties.

The Committee discussed proposals for informing the people of Scotland about the outcome of the IGC at its meetings on 23 September and 7 October 2003. It agreed to hold a series of informative events across Scotland, to let people know exactly what the new, agreed, EU Constitution says, and what its implications are for them, at: <http://www.scottish.parliament.uk/european/or/eu03-0401.htm>

At its 5th meeting on 7 October 2003, the European and External Relations Committee of the Scottish Parliament agreed to consider how it could work with the House of Commons European Scrutiny Committee in the ratification process of the new EU constitution. There is no formal role for the Scottish Parliament within the UK constitutional requirements governing ratification of the EU treaties, at: <http://www.scottish.parliament.uk/european/or/eu03-0502.htm#Col131>

Official Report of the 3rd meeting 2003, Session 2, 9 September. Committee's discussion with the Scottish Executive Minister for Finance and Public Services, Andy Kerr, MSP, on the Executive's views towards the UK White Paper on the draft EU Constitution Treaty, at: <http://www.scottish.parliament.uk/european/or/eu03-0302.htm>

The Executive's response to the Committee's report on the Future of Europe was discussed at a meeting of the Committee on 4 March 2003. The official report is available at: http://www.scottish.parliament.uk/S1/official_report/cttee/europe-03/eu03-0402.htm#Col1955

Official Report of the 10th meeting 2002, Session 1, 10 September 2002. Committee discussions on the Scottish Parliament Convention on the Future of Europe, at: http://www.scottish.parliament.uk/S1/official_report/cttee/europe-02/eu02-1002.htm#Col1600

Official Report of the 9th meeting 2002, Session 1, 18 June 2002. The Committee heard evidence from the Scottish Executive regarding its proposals in relation to the future of Europe, at:

http://www.scottish.parliament.uk/S1/official_report/cttee/europe-02/eu02-0902.htm#Col1568

Official Report of the 7th meeting 2002, Session 1, 7 May 2002. Committee's discussions about the hosting of a Scottish Parliamentary Convention on the Future of Europe, at:

http://www.scottish.parliament.uk/S1/official_report/cttee/europe-02/eu02-0701.htm

Official Report of the 5th meeting 2003, Session 2, 7 October, at:

<http://www.scottish.parliament.uk/european/or/eu03-0501.htm>

Official Report of the 4th meeting 2003, Session 2, 23 September 2003, at:

<http://www.scottish.parliament.uk/european/or/eu03-0401.htm>

Official Report of the 3rd meeting 2003, Session 2, 9 September. Committee's discussion with the Scottish Executive Minister for Finance and Public Services, Andy Kerr, MSP, on the Executive's views towards the UK White Paper on the draft EU Constitution Treaty, at:

<http://www.scottish.parliament.uk/european/or/eu03-0302.htm>

Recent developments - The IGC is one of the current Committee's main priorities, and it is undertaking an inquiry into the EU's draft Treaty, as well as the IGC and its implications for Scotland.

The Committee discussed proposals for informing the people of Scotland about the outcome of the IGC at its meetings on 23 September and 7 October 2003. It agreed to hold a series of informative events across Scotland, to let people know exactly what the new, agreed, EU Constitution says, and what its implications are for them.

At its 5th meeting on 7 October 2003 the European and External Relations Committee of the Scottish Parliament agreed to consider how it could work with the House of Commons European Scrutiny Committee in the ratification process of the new EU constitution. There is no formal role for the Scottish Parliament within the UK constitutional requirements governing ratification of the EU treaties, at:

<http://www.scottish.parliament.uk/european/or/eu03-0502.htm#Col131>

SCOTTISH PARLIAMENT ORAL AND WRITTEN QUESTIONS

First Minister's Question Time, 28 May 2003. Col .99 and 100, in response to a question raised by Roseanna Cunningham (Perth) (SNP), at:

<http://www.scottish.parliament.uk/plenary/or-03/sor0528-02.htm#Col81>

First Minister's Question Time, 29 May 2003. Col. 25, 0 and 251 in response to a question raised by John Swinney (North Tayside) (SNP), at:

<http://www.scottish.parliament.uk/plenary/or-03/sor0529-02.htm#Col250>

S2W-507 - Mrs Margaret Ewing (Moray) (SNP): To ask the Scottish Executive what contact it has with departments of Her Majesty's Government in respect of negotiations regarding the European Convention on the Future of Europe.

Answered by Mr Jack McConnell (10 June 2003): The Scottish Executive works closely with UK Government Departments to ensure that Scottish interests are taken into account in the negotiations on the European Convention on the Future of Europe. For example, the Scottish Executive, in conjunction with the Welsh Assembly Government, worked closely with the UK Government to produce a paper, *Europe and the Regions*, which Peter Hain, Secretary of State for Wales and the UK Government's representative on the Convention, submitted to the convention at its plenary on 7 February 2003.

S2W-506 - Mrs Margaret Ewing (Moray) (SNP) : To ask the Scottish Executive which of its ministers have attended meetings of the European Convention on the Future of Europe and whether any of its ministers will be attending the European Council in Thessaloniki in June 2003.

Answered by Mr Jack McConnell (10 June 2003): Although Scottish Executive ministers are not members of the convention, I attended a meeting of the convention on 6 June 2002 as an observer. Peter Peacock also participated in a meeting of the convention's Contact Group on Regional and Local Authorities on 16 October 2002. Scottish Executive ministers will not attend the Thessaloniki European Council.

S1O-6469 - Phil Gallie (South of Scotland) (Con) : To ask the Scottish Executive what reductions in decision-making powers it would experience if the current draft text of the new European constitution were adopted by the EU.

Answered by Mr Jim Wallace (20 February 2003): The functions of Scottish ministers are set out in the Scotland Act 1998 and subordinate legislation under that act. There is currently little draft treaty text available from the Praesidium of the Convention on the Future of Europe on the division of competences between member states - including devolved administrations - and the European Union. The Scottish Executive will, however, carefully assess any potential implications for the decision-making powers of Scottish ministers as soon as firm proposals for the division of competences come forward. Ministers will work with the UK Government as necessary to ensure that the proposals for treaty text coming out of the Convention are in the interests of Scotland and have proper regard for existing constitutional arrangements in the UK.

S1W-30264 - Ben Wallace (North-East Scotland) (Con): To ask the Scottish Executive what bodies were formally consulted by the First Minister in the preparation of his report to be submitted to the Committee of the Regions for the Convention on the Future of Europe.

Holding reply by Mr Jack McConnell (18 October 2002): I shall reply to the member as soon as possible.

Answered by Mr Jack McConnell (27 November 2002): The Opinion "More democracy, transparency and efficiency in the European Union" was drafted by me for the Committee of the Regions in a personal capacity. The Scottish Executive has consulted extensively on Future of Europe issues to inform an official submission to be sent to the Convention later in the year.

S1W-29552 - Ben Wallace (North-East Scotland) (Con): To ask the Scottish Executive how many (a) contributions and (b) responses it has received in respect of its national debate on the Future of Europe and, of these, how many have been posted on its website about the Future of Europe under (i) "noticeboard" and (ii) "contributions".

Holding reply by Mr Jim Wallace (2 October 2002): I shall reply to the member as soon as possible.

Answered by Mr Jim Wallace (23 October 2002): As at 11 October, 28 responses had been received. Three contributions have been posted on the "Noticeboard" on the Executive's Future of Europe web-site, and five have been posted under "Contributions". The remainder are either not available electronically or sought further clarification and were not final responses to the consultation. In addition, forty Non-Government Organisations (NGOs) were represented at three seminars organised on the Executive's behalf by the Scottish Civic Forum.

S1W-25990 - Colin Campbell (West of Scotland) (SNP) : To ask the Scottish Executive how it plans to promote the competition launched by the Foreign and Commonwealth Office, in conjunction with The Independent, to select three young people between the ages of 18 and 25 to take part in the European Youth Convention on the Future of Europe in Brussels from 9 to 14 July 2002.

Answered by Cathy Jamieson (30 May 2002): The Scottish Executive has asked YouthLink to publicise this competition and they have already done so through an electronic mailshot to their members and the Community Education Managers of all local authorities. Details of the competition have been placed on the Youth Portal. The portal is Scotland's first national interactive youth web-site designed by young people for young people, which was launched by the First Minister on 16 May 2002. It is supported by the Executive as part of the OpenScotland.gov initiative.

We have also encouraged the Scottish Youth Parliament to promote the competition and they have done so through their web-site and an electronic mail shot to all their members. In addition, the competition has been publicised by a press release from the Scotland Office, through the Foreign and Commonwealth Office Website and the Independent newspaper and web-site.

S1W-21995 - Irene Oldfather (Cunninghame South) (Lab) : To ask the Scottish Executive what contribution it will make to the Convention on the Future of Europe announced in the Laeken Declaration on the future of the European Union.

Holding reply by Mr Jim Wallace (30 January 2002): I shall reply to the member as soon as possible.

Answered by Mr Jim Wallace (11 February 2002): The Scottish Executive considers it very important that Scotland should contribute to EU thinking on major issues such as the Future of Europe debate and believes that Scotland and legislative regions can play an important part in helping to address the acknowledged gap which exists between individual citizens and the EU institutions. The Executive will therefore pursue all the avenues open to it to feed Scottish views into the work of the convention.

OTHER MOTIONS PROPOSED BY MEMBERS OF THE SCOTTISH PARLIAMENT

S2M-124 Nicola Sturgeon (Glasgow) (Scottish National Party): Europe— That the Parliament supports the European Union as a confederation that collectively exercises certain sovereign rights pooled by states, but in which each state retains its own sovereignty in respect of constitutional, fiscal and other matters of national importance; believes that decisions about pooled and retained sovereignty should always be taken in Scotland's national interest; therefore welcomes the development of a European constitution but opposes the conferral of exclusive European Union competence over

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

the conservation of marine biological resources under the common fisheries policy; considers that the terms of the final draft constitution should be subject to the approval of the Scottish people in a referendum prior to ratification; regrets that the decision by Her Majesty's Government to delay entry to the single currency does not take account of Scotland's economic interests, and believes that Scotland's interests would best be represented in the European Union as an independent member state.

S2M-381 Phil Gallie (South of Scotland) (Conservative): European Constitution— That the Parliament believes that any proposed major constitutional change affecting the governance of our country should be subject to a national referendum; believes that the proposed constitutional treaty for the European Union represents such a major change and accordingly should be the subject of such a referendum, and calls on the Scottish Executive to convey the Parliament's concerns on this issue to Her Majesty's Government.

S2M-86 Mark Ballard (Lothians) (Green) : Proposals for the Future of Europe— That the Parliament notes the proposals by the Convention on the Future of Europe for an EU constitution and believes that the Scottish Executive should conduct a consultative public referendum on such proposals.

SCOTTISH EXECUTIVE

Jack McConnell's paper entitled "The Future of Europe Debate – A Scottish Perspective". 6 June 2002, at:

http://www.europa.eu.int/futurum/forum_convention/documents/contrb/pol/

Scottish Executive Policy on the Future of Europe, at:

<http://www.scotland.gov.uk/about/FCSD/ExtRel1/00014768/>

[The Future of Europe Debate – Consultation of Scottish Civic Society: a summary of responses](#) 2003. The Scottish Executive contributed to the Peter Hain paper, which was commissioned by the Joint Ministerial Committee on Europe and submitted to the Convention in February 2003.

Committee of the Regions Opinion on "More Democracy, Transparency and Efficiency in the European Union". Rapporteur: the First Minister, Jack McConnell, MSP. Adopted by the COR on 4 October 2002.

NORTHERN IRELAND¹⁰⁶

NORTHERN IRELAND ASSEMBLY - COMMITTEE OF THE CENTRE

Committee of the Centre (A European Affairs Sub-committee supported the Committee from July to October 2002.) "Inquiry into the Approach of the Northern Ireland Assembly and the Devolved Government on European Union Issues". Second Report. 20 March 2002, at: <http://www.niassembly.gov.uk/centre/reports/report2-olr.htm>

¹⁰⁶ Since the suspension of devolved governance in October 2002, there has been direct rule in Northern Ireland.

NORTHERN IRELAND ASSEMBLY PLENARY

8 April 2002 plenary debate on the Committee of the Centre's March 2002 report on Europe, at: <http://www.ni-assembly.gov.uk/record/reports/020408.htm>

5 June 2002 plenary debate on the Committee of the Centre's March 2002 report on Europe, at: <http://www.ni-assembly.gov.uk/centre/record/reports/020605.htm>

NORTHERN IRELAND EXECUTIVE - Office of First Minister and Deputy First Minister (OFMDFM)

OFMDFM-sponsored conferences in June 2002 and September 2003 on the Future of Europe.

OFMDFM contributed to the Peter Hain paper, which was commissioned by the Joint Ministerial Committee on Europe and submitted to the Convention in February 2003. The contribution was in the form of a position paper.

OFMDFM, European Policy Co-ordination Unit prepared a draft submission to the Convention, which was never submitted due to suspension. The draft paper (dated September 2002) focused on gaining greater recognition for the collective roles of regions within EU decision-making processes and for them to be provided with appropriate opportunities for influencing EU decisions. It advocated a clearer delimitation of competences, greater transparency in decision-making, and the promotion of subsidiarity and proportionality.

OFMDFM Future of Europe web-site was launched to develop public debate on the issue, at: <http://www.ofmdfmi.gov.uk/futureofeuropa/home.htm>.

NATIONAL ASSEMBLY FOR WALES/WELSH ASSEMBLY GOVERNMENT

EUROPEAN AND EXTERNAL AFFAIRS COMMITTEE

First Minister response on behalf of the National Assembly for Wales to the European Commission White Paper on Governance, at: <http://www.wales.gov.uk/subieurope/content/govern-e.htm>

The European and External Affairs Committee considered the Convention at several meetings. In May 2002 the Committee received a background paper on the Future of Europe Debate, at:

http://www.wales.gov.uk/servlet/CentralServlet?area_code=37D6B0F100072F6F0000125D00000000&document_code=3CD26882000E443D000051AB00000000&month_year=5|2002&p_arch=pre&module=dynamicpages

In October 2002, the Committee received a visit from Gisela Stuart MP and Rt. Hon David Heathcoat-Amory MP, parliamentary representatives to the Convention, who provided an overview of developments so far, at:

http://www.wales.gov.uk/servlet/CentralServlet?area_code=37D6B0F100072F6F0000125D00000000&document_code=N000000000000000000000000009465&month_year=12|2002&p_arch=pre&module=dynamicpages

The Committee also received an update on the Convention in the Chair's report in October 2002.

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

Details of the results of the Convention's Working Groups were presented to the Committee in the Minister's report on 5 December 2002, at:

http://www.wales.gov.uk/servlet/CentralServlet?area_code=37D6B0F100072F6F0000125D00000000&document_code=N00000000000000000000000004808&month_year=12|2002&p_arch=pre&module=dynamicpages

At its meeting on 6 March 2003, the Committee received a paper summarising its consideration of the Convention to date, at:

http://www.wales.gov.uk/servlet/EuropeanAffairsCommittee?area_code=37D6B0F100072F6F0000125D00000000&document_code=N000000000000000000000000007637&p_arch=pre&module=dynamicpages&month_year=3|2003

The Committee again considered the Convention at its meeting on 26 June 2003, where it received updates on the Convention, a letter from the Secretary of State for Wales and a note of the informal meeting between the previous EEAC and the Secretary of State for Wales. The minutes of this meeting are below, at:

<http://www.wales.gov.uk/assemblydata/N000000000000000000000000000000011645.pdf>

The European and External Affairs Committee is meeting in Brussels on 13 November 2003, when the draft Treaty is on its agenda. Expected to attend are representatives of the European Commission Task Force on the Convention, the UK Permanent Representation to the European Union, and two European regions, at:

http://www.wales.gov.uk/servlet/CentralServlet?area_code=37D6B0F100072F6F0000125D00000000&document_code=N000000000000000000000000014171&month_year=&p_arch=post&module=dynamicpages

The Future of Europe Debate on Governance, 2002, at:

http://www.wales.gov.uk/servlet/EuropeanAffairsCommittee?area_code+37D6B0F100072F6F0000125D00000000&document_code=3CD26882000E443D000051AB00000000&module=dynamicpae

NATIONAL ASSEMBLY FOR WALES PLENARY

Oral and written questions on the Convention have been asked periodically, such as:

<http://assembly/rop/ROP/Plenary%20Session/2002%20Plenary%20Sessions/March%202002/rop020319qv.html> .

WELSH ASSEMBLY GOVERNMENT

The Welsh Assembly Government contributed to the Peter Hain paper, which was commissioned by the Joint Ministerial Committee on Europe and submitted to the Convention in February 2003.

Response from the First Minister on Behalf of the National Assembly for Wales on the European Commission White Paper on Governance, at:

<http://www.wales.gov.uk/subieurope/content/govern-e.htm>

The North Wales Forum on European Affairs, chaired by the First Minister, played a key part in Wales' contribution to the Future of Europe debate. It provided an opportunity for people to contribute to the Assembly's response to the EU Governance White Paper. Forum meetings were attended by Assembly Members and Members of Westminster and European Parliaments as well as Council leaders and other representatives from Local Government and the voluntary sector.

APPENDIX 4

RATIFICATION PROCEDURES IN MEMBER STATE OTHER MEMBER AND ACCEDING STATES

Highlighted in the following two tables are the treaty ratification procedures in other Member and Acceding States. (The main sources used to compile this appendix were individual country web-sites and the International Constitutional Law (ICL), at: <http://www.oefre.unibe.ch/law/icl/index.html>.)

TABLE 1 – EXISTING MEMBER STATES, apart for the UK

MEMBER STATE	RATIFICATION PROCEDURES
Austria	If a new Treaty can be termed an amendment to the Austrian Constitution as a whole, a vote in the National Council is necessary, for which a two-thirds majority is required.
Belgium	<p>EC/EU treaties are generally considered to be 'composite' treaties, that is to say, they do not deal exclusively with matters of either community, regional or federal competence as set out in the Belgian constitution. Arrangements for the ratification of such treaties are laid down in a co-operation agreement between the federal authorities and the regional and community authorities and are designed to strike a balance between the autonomous prerogatives of the different components of the state. All parties at national and sub-national government levels are involved on an equal footing at each stage of the ratification procedure. Treaties must be adopted by a simple majority in parliamentary votes at federal, community and regional levels (i.e. by the federal Senate and the Chamber, the Brussels, Walloon and Flemish regional legislatures and the French and German-speaking Communities). The whole process is co-ordinated by the federal Foreign Affairs Ministry. Under designation of the government of the regions and/or communities concerned, the federal minister for foreign affairs and the minister sign composite treaties.</p> <p>There is no constitutional provision for a referendum on treaties in the Belgian Constitution.</p>
Denmark	There are two possible routes for ratification according to the Danish Constitution. In order to ratify a treaty involving the transfer of powers to, e.g., the EC/EU, there must be either a five-sixths majority in the <i>Folketing</i> (the Danish Parliament), or, if there is a smaller majority in the <i>Folketing</i> , ratification can take place if the Bill is confirmed in a referendum. Should the Treaty be deemed to require a constitutional amendment, the procedure would be even more demanding. This would have to be passed by two successive Parliaments with

*Inter-Parliamentary Research Network (IPRN)
jointly providing research and information services*

	intervening elections and then confirmed by at least 40% of the electorate.
Finland	<p>Treaties entering into the domain of the legislative power of Parliament require approval by Parliament. Parliamentary approval is by a simple majority of the votes cast in the final, third reading of the Bill concerning the Treaty. However, if the provisions of the Treaty are at variance with the Constitution, the Bill has to be approved by a majority of two thirds of the votes cast in the third reading. The final decision on which procedure to apply is made by the Constitutional Law Committee of Parliament.</p> <p>Obligatory referendums do not exist under the Finnish Constitution. An optional referendum may be held for consultative purposes.</p>
France	The President of the Republic ratifies treaties, but parliamentary authorisation is necessary for treaties, which relate to international organisations. There is no obligation to hold a referendum, although a referendum was held on the <i>Treaty on European Union</i> .
Germany	<p>The <i>Bundestag</i> (Lower House) and the <i>Bundesrat</i> (Upper House) need to approve a new Treaty by a two-thirds majority vote. The President then signs the law.</p> <p>However, under Article 93(1) of the Constitution, the 'Basic Law', the German Constitutional Court may have to take a decision on the constitutional implications of the Treaty, a process that can take around six months.</p> <p>There is no constitutional provision for a referendum, unless the matter at issue relates to re-organisation of the federal <i>Länder</i>.</p>
Greece	According to the Greek Constitution, a new treaty requires parliamentary ratification by a simple majority. Article 44 of the Constitution allows the possibility, in the case of vital national interests, for the President of the Republic to call a referendum after a resolution supported by a majority in Parliament on a proposition from the Council of Ministers. ¹⁰⁷
Republic of Ireland	A referendum is certain if ratification requires changes to the Irish Constitution. The decision as to whether or not a referendum is required is made by the Government, acting on the advice of the Attorney General as to whether or not it would mean a change to the Constitution.
Italy	According to the Italian Constitution, both the Senate and the Chamber of Deputies must authorise the ratification of the Treaty, on a vote by simple majority. The Constitution does not provide a basis for a direct obligation to hold a referendum

¹⁰⁷ At the time of the ratification of the Treaty of Maastricht, some deputies (communists and ecologists) attempted unsuccessfully to have a referendum called.

	on the ratification of treaties.
Luxem-Bourg	<p>Under Article 37 of the Luxembourg Constitution, the Grand Duke concludes treaties, but they are not effective until the Chamber of Deputies has approved them.</p> <p>The Luxembourg Constitution does not make provision for referendums as an instrument of ratification of international treaties.</p>
The Netherlands	The ratification of treaties requires the vote of the national parliament by a simple majority of votes.
Portugal	<p>Ratification is completed by means of a decree adopted by the Assembly of the Republic, following a report by the competent Standing Committees.</p> <p>Under the new Constitution of October 1997, a referendum can be held on questions of relevant national interest that concern international conventions. The result of the referendum is legally binding when the number of votes is more than half the number of electors. Ratification by the Portuguese Parliament follows, having taken account of the result of the referendum.</p>
Spain	The ratification of treaties takes place according to the special procedure laid down in Article 93 of the Spanish Constitution, which requires an absolute majority in the Congress of Deputies. A referendum is theoretically possible, but Spain has not yet held a referendum on an amending EC Treaty.
Sweden	The approval of the <i>Riksdag</i> (the Swedish Parliament) by three-quarters of those voting is required if a treaty relates to a subject over which the Parliament has competence.

TABLE 2 – 10 ACCEDING STATES

ACCEDING STATE	RATIFICATION PROCEDURES
Cyprus	<p>Under Article 169 of the Constitution international agreements are concluded by a decision of the Council of Ministers, with non-commercial treaties requiring approval by the House of Representatives in the form of a law in order to become operative. Under Article 50 the President and/or Vice President has a final right of veto on any laws in the area of foreign affairs, including the conclusion of international treaties, conventions and agreements. There is no constitutional provision for referendums.</p>

<p>Czech Republic</p>	<p>A constitutional amendment of 18 October 2001 inserted a new Article 10a on the ratification of international treaties:</p> <p><i>International treaties may transfer some legal powers of organs of the Czech Republic to international organisations or institutions. For the ratification of an international treaty, referred to in Paragraph 1, the consent of Parliament is required, if the constitutional law does not stipulate, that for the consent a referendum is necessary.</i>¹⁰⁸</p>
<p>Estonia</p>	<p>Under Article 121 (3) of the Constitution, the Estonian Parliament (the <i>Riigikogu</i>) ratifies treaties “by which the Republic of Estonia joins international organisations or unions”.</p> <p>Under Article 105, Parliament has “the right to submit a bill or other national issue to a referendum”. In such cases,</p> <p><i>...[t]he decision of the people shall be made by a majority of the participants in the voting. A law which is passed by a referendum shall promptly be proclaimed by the President of the Republic. The decision of the referendum shall be binding on all state institutions. If a bill which is submitted to a referendum does not receive a majority of votes in favour, the President of the Republic shall declare extraordinary elections to the Riigikogu.</i>¹⁰⁹</p> <p>Article 106 states, however, that issues regarding “ratification and denunciation of international treaties” (and some other matters, including the budget, taxation and national defence) shall <u>not</u> be submitted to a referendum.</p>
<p>Hungary</p>	<p>Under Article 19 (3) (f) of the Constitution, Parliament shall</p> <p><i>...conclude international treaties of outstanding importance to the foreign relations of the Republic of Hungary.</i>¹¹⁰</p> <p>Under Article 19(5),</p> <p><i>[t]he Parliament shall have the right to call a national referendum. A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on national referenda.</i></p> <p>Article 28C sets out the conditions under which a national referendum may be held:</p> <p>1) <i>A national referendum may be held for reaching a decision or for an expression of opinion. Carrying out a national referendum may be mandatory or may be the result of the consideration of a matter.</i></p> <p>(2) <i>A national referendum shall be held if so initiated by at least 200,000 voting citizens.</i></p>

¹⁰⁸ http://www.oefre.unibe.ch/law/icl/ez00000_.html

¹⁰⁹ Ibid.

¹¹⁰ Id.

	<p><i>(3) If a national referendum is mandatory, the result of the successfully held national referendum shall be binding for the Parliament.</i></p> <p><i>(4) Based on its consideration, the Parliament may order a national referendum upon the initiative by the President of the Republic, the Government, by one-third of Members of the Parliament or by 100,000 voting citizens.</i></p> <p>However, under Article 28C(5)(b), a national referendum may <u>not</u> be held on “obligations set forth in valid international treaties and on the contents of laws prescribing such obligations”.</p>
<p>Latvia</p>	<p>Article 68 of the Constitution states that:</p> <p><i>All international agreements which settle matters that may be decided by the legislative process shall require ratification by the Parliament.</i></p> <p>Parliament makes decisions by an absolute majority of votes of the members present at the sitting, except in cases specifically set out in the Constitution. (Article 24). Under Article 41,</p> <p><i>The President shall implement the decisions of the Parliament concerning the ratification of international agreements.</i></p> <p>Matters excluded from referendum, under Article 73, include “agreements with other nations” (and certain other matters such as the budget, declaration and commencement of war, peace treaties).¹¹¹</p>
<p>Lithuania</p>	<p>Article 138 of the Constitution states that Parliament shall ratify or denounce international treaties, including those which concern “political co-operation with foreign countries, mutual assistance, or treaties related to national defence” or “the participation of Lithuania in universal or regional international organisations”.</p> <p>Article 9 makes provision for referendums. It states:</p> <p><i>(1) The most significant issues concerning the life of the State and the People shall be decided by referendum.</i></p> <p><i>(2) In the cases established by law, referendums shall be announced by the Parliament.</i></p> <p><i>(3) Referendums shall also be announced if no less than 300,000 of the electorate so request.</i></p> <p><i>(4) The procedure for the announcement and execution of a referendum shall be established by law.¹¹²</i></p> <p>Referendums under either Article 9(2) or 9(3) require a majority of voters to support the proposition and more than 50% of the electorate to vote.</p>

¹¹¹ <http://www.oefre.unibe.ch/law/icl/lq00000.html>

¹¹² http://www.oefre.unibe.ch/law/icl/lh01000_.html

Malta	The Maltese Constitution does not provide for referendums or the ratification of international treaties and there is no evidence of referendums being held in recent years.
Poland	<p>Article 90 of the Constitution sets out the procedure for approving the ratification of international agreements that delegate State authority to an international organisation or institution:</p> <ol style="list-style-type: none"> (1) <i>The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.</i> (2) <i>A statute, granting consent for ratification of an international agreement referred to in Paragraph (1), shall be passed by the House of Representatives (Sejm) by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.</i> (3) <i>Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article.</i> (4) <i>Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the House of Representatives (Sejm) by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.¹¹³</i>
Slovakia	<p>It is mandatory to hold a referendum on association with or separation from other states. Article 7 of the Constitution states:</p> <p><i>On the basis of its free decision, the Slovak Republic can enter into a state alliance with other states. The right to secession from this alliance must not be restricted. The decision on entering into a state alliance with other states or on secession from this alliance will be made by a constitutional law and a subsequent referendum.</i></p> <p>Article 93(1) confirms that:</p> <p><i>[a] referendum will be used to confirm a constitutional law on entering into an alliance with other states or on withdrawing from that alliance.¹¹⁴</i></p> <p>Under Article 98(1),</p> <p><i>[t]he results of the referendum are valid if more than 50 percent of eligible voters participated in it and if the decision was endorsed by more than 50 percent of the participants in the referendum,</i></p> <p>while Article 99 makes provision for the amendment or annulment of the result of a referendum:</p>

¹¹³ http://www.oefre.unibe.ch/law/icl/A125_#A125

¹¹⁴ http://www.oefre.unibe.ch/law/icl/lo00000_.html

	<p><i>(1) The National Council of the Slovak Republic can amend or annul the result of a referendum by means of a constitutional law, but it may not do so earlier than three years after the result of the referendum came into effect.</i></p> <p><i>(2) A referendum on the same issue can be repeated after three years at the earliest.</i></p>
<p>Slovenia</p>	<p>Article 3(a) of the Slovenian Constitution (on the European Union) states:</p> <p><i>(1) Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.</i></p> <p><i>(2) Before ratifying an international treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal shall pass at the referendum if a majority of voters who have cast valid votes vote in favour of such. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.</i></p> <p><i>(3) Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations.</i></p> <p><i>(4) In procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercise of part of its sovereign rights, the Government shall promptly inform the National Assembly of proposals for such acts and decisions as well as of its own activities. The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present.¹¹⁵</i></p>

¹¹⁵ http://www.oefre.unibe.ch/law/icl/si00000_.html

SELECTED BIBLIOGRAPHY

Chrysochoou, Dimitris N. et al. *Theory and Reform in the European Union*. (Second Edition). Manchester University Press. Manchester: 2003.

Clive H. Church and David Phinnemore. *The Penguin Guide to the European Treaties: From Maastricht, Amsterdam, Nice and Beyond*. Penguin Books. London: 2002.

Duff, Andrew. *The Treaty of Amsterdam: Text and Commentary*. Federal Trust. 1997.

Galloway, David. *The Treaty of Nice and Beyond. Realities and Illusions of power in the EU*. Continuum. 2001.

Horspool, Margot. *European Union Law*. (Second Edition). Butterworths. London: 2000.

House of Commons Library Research Paper 01/61, "The European Communities (Amendment) Bill: Implementing the Treaty of Nice Bill". 28 June 2001, at: <http://www.parliament.uk/commons/lib/research/rp2001/rp01-061.pdf>

House of Commons Library Research Paper 02/14, "The Laeken Declaration and the Convention on the Future of Europe", 8 March 2002, at: <http://hcl1.hclibrary.parliament.uk/rp2002/rp02-014.pdf>

House of Commons Library Research Paper 03/23, "The Convention on the Future of Europe: proposals for a European Constitution", 18 March 2003, at: <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-023.pdf>

House of Commons Library Research Paper 03/56, "The Convention on the Future of Europe: institutional reform", 12 June 2003, at: <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-056.pdf>

House of Commons Library Research Paper 03/58, "The draft Treaty establishing a European Constitution: Parts II and III", 7 July 2003, at: <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-058.pdf>

House of Commons Library Research Paper 03/60, "The draft Treaty establishing a European Constitution: technical and constitutional issues in Parts I and IV", 7 July 2003, at: <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-060.pdf>

House of Commons Library Research Paper 03/16, "The Convention on the Future of Europe: the deliberating phase", 14 February 2003, at: <http://www.parliament.uk/commons/lib/research/rp2003/rp03-016.pdf>

Murphy, Mary and David Phinnemore. "Northern Ireland and the European Convention: Devolution, Disinterest and Direct Rule". 2003. (unpublished)

Pryce, Roy (ed.). *The Dynamics of the European Union*. Beckenham. New York: 1987.

Rudden and Wyatt, (Ed.). *EU Treaties & Legislation*. Eighth Edition. 2002.

Sionaidh, Douglas-Scott. *Constitutional Law of the European Union*. Longman. 2002.

Scottish Parliament Research Briefing 02/87, "The Scottish Parliament and the Convention on the Future of Europe", 9 August 2002, at:
http://www.scottish.parliament.uk/51/whats_happening/research/pub-europ.html .

Scottish Parliament Research Briefing 02/20, "Scottish Participation in the Future of Europe Debate", 25 February 2002, at:
http://www.scottish.parliament.uk/51/whats_happening/research/pub-europ.html .

Universite Catholique de Louvain. "Positions of 10 Central and Eastern European Countries on EU Institutional Reform: Analytical Survey", June 2003, at:
http://www.tespa.be/html/CEECDebate_ConventionReport.pdf

Walker, David M. *The Oxford Companion to Law*. Clarendon Press. Oxford: 1980.