

THE EU CONSTITUTION: WHAT NEXT?
OCTOBER 11TH 2005
THE LORD SLYNN OF HADLEY EUROPEAN LAW FOUNDATION

*William Wallace**

I want to start with five opening propositions, to set the context for a discussion of where we go from here.

1. First, the gradual development of European institutions has been marked by a long succession of crises, several of which looked at the time to threaten the future of the entire structure, though in retrospect they can be seen as the mechanisms which forced reluctant governments to accept change. European integration first collapsed in 1953, with the French National Assembly's rejection of the treaty to establish the European Defence Community. It seemed close to collapse again, also as a result of French intransigence, in the Luxembourg 'Empty Chair' crisis of 1965-6. At the depth of the budgetary crisis in 1981-3, American observers were writing off European integration as a failure – before Margaret Thatcher and Francois Mitterand came to a compromise in Fontainebleau in 1984. The Danes voted down the Maastricht treaty, and the French only narrowly approved it. So we should not be too rattled by the latest crisis; though we need to consider whether this crisis is more severe than its predecessors, and in what ways.

2. Second, institutions exist to make and implement policies, not for themselves. Jean Monnet, who had a decisive influence over the original design of the European Coal and Steel Community in 1950-52, and then over Euratom and the European Economic Community in 1956-57, believed that institutions were key in encouraging those who worked through them to seek common solutions; but he was also quite clear that the institutions were only justified if they *did* successfully promote common solutions, satisfactory for all the participants.

3. Third, the institutional structures and policy *acquis* of the European Union still reflect the assumptions and priorities of 50 years ago – before the majority of today's European citizens were born. They reflect, furthermore, the priorities of the six original members, above all of France and Germany. The European Parliament, for example, still holds its plenary sessions in

* Lord Wallace of Saltaire.

THE EU CONSTITUTION: WHAT NEXT?

Strasbourg, a city which symbolises the century-long struggle between France and Germany and the post-1945 effort to reconcile these two former enemies. The Council of Ministers still meets in Luxembourg three months out of 12, the outcome of a compromise negotiated among the six member states when the three original communities were merged 40 years ago, to compensate Luxembourg for the loss of the Coal and Steel Community headquarters. But the EU now has 25 member states, likely to extend to 27 within the next 2-3 years, and past 30 within the next decade, as the states of south-east Europe follow each other into full membership. Reluctant adjustment of the original model to accommodate some of the interests of the new members may not be enough; institutional change should arguably have started from a recognition of how fundamentally the end of the cold war, the unification of Germany and the re-emergence of the states of central and eastern Europe from behind the Iron Curtain had transformed the context for European integration.

4. Fourth, it was a huge and vainglorious mistake to label this relatively modest adjustment to the existing treaties a ‘Constitution’. It was, after all, the fifth adjustment to Europe’s institutional arrangements in less than 20 years – following the Single European Act of 1986, the Maastricht treaty of European Union of 1992, the Treaty of Amsterdam of 1997, and the Treaty of Nice of 2002. It was in many ways less innovative than the Maastricht Treaty in institutional and policy reforms. The flummery of the Convention promised much more than it could ever deliver. This long, detailed, three-part treaty was not what the EU Heads of Government had asked for in the Laeken declaration of December 2002; they had called for a short, easily-understood document, which Europe’s citizens could read and grasp. The gap between the high-flown title and rhetoric, and the lengthy, almost unreadable document that the Convention produced, contributed to the confused responses of the European electorate.

5. Fifth, the Convention did not deliver a Constitutional Treaty that addressed the needs of the EU-25, or today’s policy priorities – or the tasks set out for it by the European Council that set it up. I share the view of Gisela Stuart, MP (one of the British representatives on the Convention and a member of its Presidium), that the Convention was captured by those who see the EU from Brussels out rather than from member states in; that these ‘Old Believers’ saw their task as defending the established institutions, and the established *acquis*, pursuing the old ‘European Project’ rather than defining a new one. Their failure to produce a short document was symptomatic of this; Part Three was included to entrench the existing *acquis*, rather than accepting that much of its contents were legislative rather than constitutional and therefore open to continuing adjustment. They failed to address the size, and

ineffectiveness, of the college of Commissioners. They resisted a stronger subsidiarity clause, and watered down proposals to give national parliaments a stronger role in policing new proposals on subsidiarity grounds. This was, at best, a curate's egg of a treaty.

Most responsible people, even in Brussels, now accept that the Constitutional Treaty as it stands is dead. The French Government has effectively pronounced it dead, by stating that it can see no way of resubmitting to the French people in a referendum. The questions we need to address, therefore, include: can we manage without a further treaty change for the foreseeable future; how much can we rescue from this failed attempt, or do we have to start again, with yet another Inter-governmental Conference, perhaps preceded by another Convention?

HOW SEVERE A SETBACK IS THIS?

I spent three days in Brussels last week. The European Parliament is still meeting, with Commission officials giving evidence to committees and national officials from the permanent representations keeping watch. The Chemicals Directive is under active negotiation, with lobbyists swarming in the corridors; the Services Directive is still vigorously debated. The 'European Quarter' of Brussels, which I remember from 40 years ago as a pleasant jumble of streets and 19th century houses, is still expanding, with building workers erecting yet more grandiose buildings. The British Presidency is busily preparing for an informal European Council, to discuss broader issues of European priorities, at Hampton Court at the end of this month, with officials travelling around European capitals for preparatory consultations. At the formal European Council in December there will no doubt be a major Franco-British row, at least one late-night session, and eventual agreement on some limited steps forward – perhaps even on the next EU budget package.

We should never underestimate the degree of *inertia* in the system. However, while some commentators have talked about institutional paralysis, cooperation continues to move forward in many fields. While the Stability and Growth Pact, written on German insistence into the 1992 Maastricht treaty, has been shaken by the delinquent behaviour of the Italian, French and German governments, other fields of European integration have moved forward remarkably, and often almost unobserved. Because the institutions are there, with recognised procedures for convening meetings and implementing their conclusions, governments tend to turn to them when new problems arise that cannot be dealt with without close cooperation. Six years ago, for example, the European Union had nothing to do with defence. Today the Political and Security Committee, the EU Military Committee, and their

THE EU CONSTITUTION: WHAT NEXT?

staff within the Council Secretariat are responsible for the political stabilization and reconstruction of Bosnia, for related operations in Macedonia and Kosovo, and for various support operations in Africa. Relations between this strengthened EU and a weakened NATO¹ are a matter for active concern in Brussels and in national capitals.

You will all be familiar with the even more remarkable transformation of cooperation in the field of ‘Justice and Home Affairs’² – cooperation among law-enforcement agencies, prosecuting authorities, and courts – since the end of the cold war demolished Western Europe’s well-guarded eastern wall. Even as the Convention has been meeting, the European Arrest Warrant³ has been carried forward; Europol’s⁴ powers and staffing has grown; and Eurojust⁵ has got under way. It was the perceived threats of transnational terrorism and organised crime that first pushed West European governments into cooperation in these fields, 25-30 years ago; the sharpening of these threats, evident to all in the past 4 years, has overridden national hesitations about legal integration, even about retaining and sharing personal data, with the British government in the lead in pushing others to abandon concerns about sovereignty and accept common rules.

We might therefore argue that the EU is moving in the right direction, on a new agenda, without waiting for treaty reform. Yes, agreement is still blocked on reform of the EU’s budgetary arrangements, and the gradual transformation of the Common Agricultural Policy is painfully slow in reducing its costs; but European governments are now developing common policies on fields which were completely taboo to those who negotiated the original treaties, and which are much more appropriate to the loose confederation that the EU has in effect become than the detailed regulations that the Commission continues to propose. These more appropriate common policies, I repeat, are foreign policy, including security and defence, common management of external borders and of the rules covering those who cross them, confederal police arrangements, and gradual integration of legal procedures. This *does* represent real progress, we should all recognise. It is typical of the British press that a Commission proposal to criminalise environmental misbehaviour by companies received front-page treatment a few weeks ago, while the rapid return to Britain of a suspected terrorist arrested in Italy was in no way attributed to EU legislation; but you all know how significant the steps forward in extradition have been in recent years. All of this suggests that the EU is not going to disintegrate; it’s a solid structure,

¹ North Atlantic Treaty Organisation – www.nato.int/

² www.mjha.gov.mt/departments/departments.html

³ 13th June 2002 - www.eurowarrant.net/

⁴ European Policy Office – www.europol.europa.eu/

⁵ Fight against serious organised crime – www.eurojust.europa.eu/

that serves the interests of its member governments well in an expanding number of fields.

THE CHARACTER OF THIS POLITICAL CRISIS

Alongside this, however, there are some worrying aspects of the current crisis that do suggest that we may face a more severe situation than in previous crisis years. First, the crisis in confidence in the EU institutions, and the willingness to implement EU decisions, is deepest in what used to be described as ‘core Europe’: the major states of the original EEC-6, Italy, France and Germany. In some ways the crisis within Italy may, indeed, present a more fundamental challenge to the EU than the failure of the Constitutional Treaty. Here is a state which is part of the Eurozone, whose labour costs have worsened by 20% against Germany in the past 4-5 years; with a government that appears incapable of addressing necessary economic reforms; with strong elements of patronage and corruption, compounded by government attacks on the judiciary when these are investigated; which has resisted the implementation of EU rules in many fields, over many years; with a weak opposition, which seems unlikely to transform the situation if it wins the next election. The EU has operated for nearly 50 years on the basis that member governments accepted and implemented Community law, even if under protest. What happens if one major member state ceases to give priority to common rules and common interests in key areas of national economic policy? How would the EU collectively, and the Eurozone in particular, respond to a structural political-economic crisis in Italy?

The situation in France is much less severe; though it *is* fair to say that there is a crisis of confidence within the French political class. One of my friends in Paris told me, in the wake of the Referendum result and the award of the Olympics to London, that he now understood what the mood in Paris must have been like in June 1940, in terms of lost direction and hopelessness about future alternatives – an exaggeration, I hope, but an indication of how badly the Parisian elite had misjudged their public. French politics is blocked for another two years, until President Chirac, the dinosaur of European politics, retires. Given the widespread mood of resistance to globalization, however, both within the public and the official elite, and the increasing identification of the EU-25 and its supposed ‘Anglo-Saxon’ majority with the threat of globalization, it’s not clear that President Chirac’s successor will be able to transform French policy. But at least the French economy is fundamentally stronger than Italy’s, and the generation who believed that Europe could only be Europe if France led it is getting older.

There was a hope that the blocked processes of socio-economic reform within Germany would be unblocked by a decisive outcome to last month’s

THE EU CONSTITUTION: WHAT NEXT?

federal elections. That has not happened. It was too simple, in any event, to hope that a change of government could transform a political mood that has much deeper roots, let alone sweep away the complicated obstacles to change within Germany's federal and corporatist structure. The German public, like the French, are deeply ambivalent about globalization as a free market project – as it seems to them. Their social market model is not a complete failure, in spite of what Anglo-Saxon economists are tempted to argue; the German economy has maintained a far higher level of advanced manufacturing than Britain, Germany is the world's third largest exporter, and exports far more to China in particular than does Britain. But a declining and ageing population, compounded by continuing long-term unemployment in the former east Germany, a rising federal budget deficit, and deep unease about eastern enlargement, have left German political leaders with little sympathy for a new European agenda. Joschka Fischer⁶ summed up his country's mood of uncertainty in a speech in London last July: 'in 1989', he said, 'Europe's back wall fell off, and we still do not know what to put in its place.'

The disregard that all three of these governments have displayed towards the rules of the Stability and Growth Pact also presents a worrying challenge to the supremacy of Community law. Large states, like small, must obey common rules; otherwise the system begins to disintegrate. The argument that the Dutch had to follow the rules, but that their larger neighbours could trample over them, was wielded by opponents of ratification in the Dutch Referendum.

More widely than this, however, the negative votes in these two referendums have exposed the loss of confidence of European publics in their political elites. European integration, after all, was, from the outset, an elite project. Governments assigned authority to technocrats in Brussels, with committees of national officials to monitor them; so long as their negotiations delivered faster economic growth, the promoters of the EEC believed, Europe's citizens would grant their 'passive consent' to what had been agreed. Such a model could work in the 1950s and 1960s, in European societies where mass parties, churches, trade unions and professional associations provided legitimising links between mass publics and political elites. But it does not work in the anxious and ageing European societies of today, where challenges to national identity are posed by rapid economic change, the impact of globalization and multinational companies, and rising immigration. This was the clearest lesson of the Dutch referendum, the first to be held there since 1815. An uncertain political class presented the old arguments for European

⁶ German foreign minister and vice chancellor in the Government of Gerhard Schröder 1998 – 2005.

integration to their electorate, and received a resounding vote of no confidence, as strongly from the younger generation as from the old.

Across the whole of Western Europe, there is a mistrust of political leaders of the conventional type, a decline in party loyalty and membership, even a degree of disillusion with democratic politics. The Convention, with an ex-President of France who was 76 when it started, and former prime ministers from Belgium and Italy as its vice-chairs, looked like a conspiracy of elites to distrustful publics, rather than a gathering of the wise. That disillusionment with conventional styles of leadership makes the task of setting a new agenda for the EU much more difficult. The Commission, the ultimate technocratic elite institution, no longer has the legitimacy to define a common agenda; but the political systems of the major member countries no longer recruit and promote the sort of leaders who are willing to take short-term risks to attain long-term gains, and who can persuade their electorates to follow them.

THE OPPORTUNITIES THIS CRISIS OFFERS

So far I have said very little about the Constitutional Treaty and what we should do next about treaty reform. That is, I repeat, because I believe that constitutional structures can only go some way to correct underlying political, social and economic weaknesses, and that institutions should be designed to promote preferred policy outcomes, not – as in effect happened within the Convention – with only passing reference to the policies they serve. It's also because I consider part of the problem with the Convention and the text that it produced requires more fundamental criticism. The Convention failed to question the underlying assumptions of the original model of West European integration: a model which, as Giandomenico Majone has argued in his excellent new book, *Dilemmas of European Integration*, was built to promote 'Integration by stealth', with a European federation as the eventual (but undeclared) objective, and the European Commission – and the European Court of Justice – as its driving forces. Little by little, authority over fields of domestic policy would be transferred to Brussels, in a gradual but one-way process, slowly transforming the Commission into the effective European government, to which national governments would have to defer.

The refusal of European publics to support this transfer of authority has been evident for the past 20 years or more; but the dream has lingered on within Brussels, with wider support from some in Luxembourg, Rome, Paris and even Berlin. President Giscard's comparisons of the Convention's task with that of the Philadelphia Convention of 1787 suggested that he and others believed that the time was now ripe to transform the EU into a full federation

THE EU CONSTITUTION: WHAT NEXT?

– even though what they produced was only the equivalent of a revision of the Articles of Confederation.

It's important to underline how liberating the failure of the Constitutional Treaty has been for those of us who believe in the necessity of closer European cooperation, within a clear legal framework, but who wished to criticise the structure and operation of our current institutions and the policy *Acquis* that has accumulated over the past 50 years. There were intense pressures not to criticise the Commission, for example, for those of us who regularly dealt with Brussels; to query the Commission's role, or the *Acquis*, or even the balance of the common budget, was to risk dismissal as an Anglo-Saxon, even a Eurosceptic. The debate about supporting or opposing 'Europe' was conducted, in Brussels as well as in many national media, in black and white terms, rather than in the shades of grey that ought to characterise democratic debate. Many, like me, who were preparing to campaign for a 'Yes' vote in a British referendum, in support of a document about which we felt deeply ambivalent, now feel freed to debate the absurdities of the common budget, the failings of the established institutions, and the need to return some regulatory powers to national and sub-national governments. The shock of the Referendum results has broken the old taboos.

The rhetoric of pursuing the 'European Project', of calling for 'ever closer union' negotiated through successive revisions of the treaty has given rise to the reasonable suspicion that the aim for some players within the EU system is still to move, little by little, towards a European federation, without admitting that hidden objective. I think that political elites would do much to regain the confidence of their publics if they stated clearly that a European federation is not a practical or desirable objective within the foreseeable future; but that what we have created over the past 50 years, and particularly over the past 20 years – since the Single European Act – is a Confederation, which has served the wishes of its member governments and publics to strike a balance between autonomy and integration relatively well. We have an established system of federal law, and a widening range of common policies, negotiated among member governments. This is not a unique political entity, as enthusiasts for the 'Community Method' have described it: it's a recognisable Confederation. The issue at stake then becomes how to make our confederation work more effectively, rather than how to erect a grand new edifice on top of it.

A PAUSE FOR REFLECTION?

Heads of Government agreed after the French and Dutch referendum results that they would now promote a 'Period of Reflection' before returning to discuss the future of the Constitutional Treaty. So far, few of them have

reflected any of their thoughts in public. What, then, should they be reflecting on?

One focus, as I have just suggested, should be on improving the effectiveness of the EU's current institutions and their output. One of the many factors in the mood of disillusion about the European Union, even among those who deal directly with these institutions, is that their performance and output is in many areas below the level we ought to expect. Of course, any multi-national institution suffers from structural inefficiencies compared to national administrations; there is a lower level of mutual trust, an unavoidable concern for national balance in appointments, promotions and policy decisions. But the quality of the service that the EU Commission provides to many of its customers is unacceptably low. As an academic I am conscious that DG Research,⁷ for example, has a settled tendency to send out requests for contracts with short deadlines, most often in July with a deadline for completion of a complex proposal by the end of August – a convenient timescale for Commission holidays, but the most unhelpful timescale for the academic community throughout the EU. And I could cite similar examples from other Directorates-General.

The Commission has imposed stringent standards on applicant countries, in terms of quality of administration, opportunities for women and ethnic minorities, and so on; but it does not fully observe all these standards itself. It is stuck with a 1960s template of staff consultations and unions; internal morale is poor. It needs the respect of national administrations, multinational companies and other clients; the quality of its economic analysis, the timeliness of its proposals and reports, all need improvement. More than this, the Commission needs a cultural change. Its staff should not see itself as building Europe's future government; they are providing an essential service for the European confederation. They should not be working against national governments, in competition with the Council Secretariat; they are working with them in a collective exercise. Bureaucratic rivalry between different directorates-general belies the self-image of the Commission as a coherent body; it might be more efficient to hive some of the Commission's functions off into separate Agencies, performing specific regulatory tasks.

Implementation of EU policies and decisions has always been one of the weakest points of the EU policy process: neglected not only by the Commission and the European Parliament, but also by many national governments. As you all know, the final sanction for non-implementation has been to take national governments to the ECJ⁸ – but that is a long and slow

⁷ Directorate General responsible for science, research and development – European Commission – ec.europa.eu/research/

⁸ European Court of Justice – curia.europa.eu/

THE EU CONSTITUTION: WHAT NEXT?

process – undesirably slow. There are some classic examples of non-implementation: the French Government, for example, has never enforced the Common Fisheries Policy on its own fishermen, according to a French study; the Belgian Government is incapable of applying the Waste Water Directive to the mosaic of Flemish and French-speaking communes that constitute greater Brussels – which means that new member countries are now struggling to meet environmental standards that do not operate in Europe's institutional capital.

I have been glad to hear Members of the European Parliament say, since the Referendums, that they intend to pay more attention in future to scrutiny of implementation. The Commission ought to pay more attention to this, too; it has pursued fraud within the Common Agricultural Policy with increasing vigour, and the Internal Market Directorate-General has published league tables of national incorporation of directives, but the monitoring of implementation on the ground is beyond its legal competences. I would like to suggest that we should spread across the entire field of common policies the innovation adopted within the inter-governmental Third Pillar, where mutual inspection of border controls and court procedures has developed through multinational teams from several member states inspecting national practice. [I once met a happy British policeman who had just returned from several weeks inspecting Greek border controls, visiting one island after another.] A confederation should make more use of such procedures, with far more exchange of officials between national and EU levels of administration and between different national administrations, on secondment.

Lawyers contributing to this period of reflection might also like to offer proposals on how to improve the delivery of Community law. As you all know, the caseloads of the ECJ and the Court of First Instance have mushroomed in recent years; by 40% for the ECJ in the 1990s, with the recent enlargement likely to increase the flow further. Delays have grown with the caseloads. The average wait for a preliminary reference to the Court of Justice in 2004 was 23.5 months, with 840 cases still pending at the end of the year. The legal profession across the EU might usefully consider collectively how best to handle this bottleneck.

The Convention was deeply ambivalent about the issue of subsidiarity – another important focus for reflection now that the referendums have blocked the treaty they proposed. The recent proposals by Commission President Barroso and Commissioner Verheugen to withdraw some 70 legislative proposals is an important signal that the Commission understands that piling regulation on regulation is not the way forward – nor the way to regain the consent of European electorates. But, I suggest, the Commission, and member governments, need to go further, in reversing the flow of detailed regulations upwards. Of course it is extremely difficult to agree on what

fields of policy should be dealt with at what level: battles over state's rights and federal pre-emption are staples of federal politics within the USA, as well as in the weaker federations of Canada and Australia. The United Kingdom has been no better than others in pressing its particular concerns on the EU; the antis in the Dutch referendum campaign made great play with the Zoo Directive, a piece of legislation pressed forward by the British animal welfare lobby. I recall a Lords enquiry on a Commission proposal to standardise permitted alcohol levels in blood for drivers throughout the EU – for a Community which has remarkably diverse attitudes to driving and to the enforcement of driving regulations. One simple test of appropriateness might be that any regulation and directive that has transferred authority to Brussels that within the federal United States remains with the component states should be open to challenge.

The Constitutional Treaty did offer national parliaments a slightly stronger role in policing new proposals for their appropriateness in our diverse EU-25. But there's no need to wait for treaty change before national parliaments change their habits, and improve their cooperation. Almost all national parliaments now have liaison offices in Brussels – a major development, almost unobserved, within the past five years; better-organised scrutiny committees, working more closely together, would establish the political influence to block unnecessary proposals that the Treaty has offered.

We also need a public debate – not just an occasional reflection among heads of government – about policy priorities for a European Union which now has 25 members, and will shortly expand further to 27-8. Here the British government is as badly at fault as any of its partners. Our Prime Minister has been virtually silent on EU priorities since his excellent speech to the European Parliament in June. British ministers find it hard to resist the temptation to preach at their continental colleagues, thus feeding harmful stereotypes about Anglo-Saxon liberalism destroying Europe's social model. We need political leaders to discuss constructively the difficult compromises we are all attempting to strike between economic innovation and social solidarity, between ageing populations and resistance to immigration, between rising pressures on public expenditure and popular resistance to high taxation. The Lisbon Agenda on European economic reform has run into the sand partly because those who promoted this new agenda – the British among the leaders – have failed to make their case persuasively to the publics of other states.

We have a similar problem with public debate over common foreign policy – an area in which there is clear added value in member states working more closely together. It was the British government, together with the French, that launched the proposal for European cooperation in defence, in

THE EU CONSTITUTION: WHAT NEXT?

1998; now that the process is moving ahead, British ministers are silent, apparently for fear of attack in our Eurosceptic domestic press.

A focus on developing policies in fields where there is a clear advantage to be won from common action – and funding policies where there is a clear European public good – would lead the EU to a stronger emphasis on foreign policy, and on relations with its eastern and southern neighbours. It would also strengthen awareness of the value of common policies on policing, immigration, and justice, areas largely unreported or recognised in the media. And it would focus more, I suggest, on environmental issues, and on the whole sustainability agenda, which is likely to become a more and more central issue in domestic and international politics in future years. This is also an area which would help the distant institutions of the EU to reconnect with the younger generation of European citizens.

And, of course, political leaders must address the thorny issue of further EU enlargement, which is another area in which national publics suspect governments of failing to take their preferences into account. This is a subject for another lecture – though an immensely important and complex issue. I will just say here that the British Government has throughout been one of the main sponsors of Turkish accession, but – again – has done little to make the strategic and cultural case for that accession to publics either within Britain or elsewhere within the EU.

BUT WHAT ABOUT THE TREATY?

If governments press ahead with the non-treaty reforms I have suggested, and engage in the debate about policy priorities which was absent from the Convention and its procedures, can we then manage without further treaty reform? The case that was argued for the Convention and Constitutional Treaty was, in part, that EU decision-making would break down under the strain of 25 member states. So far, however, the EU has continued to operate at 25 without breakdown, although suffering the unavoidable lengthening of meetings in which 25 representatives in succession wish to have their say.

I want to suggest that there remains a limited, but necessary, agenda for constitutional reform, which can be accommodated by the resubmission for ratification of Part 1 of the Constitutional Treaty, most probably – here I bow to more expert legal opinion – with Part 2, the Charter of Fundamental Rights, also attached. Thankfully, even members of the Convention now accept that it was a mistake to incorporate Part 3, almost unexamined, into the Treaty. The most important elements should include the adjustment to the voting rules that the Nice treaty failed to agree; the strengthening of the EU's external policy capacities provided for in the creation of the post of EU foreign minister and of a joint EU External Action Service; and changes in the

Council, including moving from the current rotating presidency to longer-term team presidencies. I have mixed views about the desirability of a new President of the European Council, which risks building competition among senior appointees into the structure of the EU. I regret that the Convention only took such a small step towards limiting the size of the Commission – now 25 Commissioners, one from each member state. I strongly support the French proposal for a College of 11-13 members, chosen from a short list submitted by member governments: that would produce a far more effective body. But the tensions and suspicions between the larger and smaller states blocked agreement on this so far. We should note, in passing, that the balance between large and small component states is a structural issue in any federation or confederation, and that the Constitutional Treaty as it stood did not address the underlying balance to be struck.

If political leaders within the EU recover their confidence and their ability to address issues in Europe-wide terms, we may anticipate that such a more limited revision of the treaties may prove acceptable to our suspicious electorates. But it will require an honest and open debate, beforehand, about the EU's strategic purposes and priorities, to prepare opinion for these desirable changes. Constitutions, after all, exist to serve agreed political objectives, within defined territories. They do not exist for themselves.