

Working Group II

Working document 14

Working group II "Incorporation of the Charter/accession to the ECHR"

Subject : Note by Neil MacCormick "Clarifying Horizontal Articles"

Following the discussion on the morning of 22 July, I attach suggested modifications of Charter Articles 51.1 and 2, and 52.2.

I believe that adoption of these amendments would meet the principal points of difficulty raised by Baroness Scotland in relation to the 'horizontal' provisions of the Charter, and the relationship of the Charter to the rest of the constitution-treaty if it were incorporated therein, as in my opinion it ought to be.

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Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof *only* in accordance with *the (two words deleted)* powers *conferred on the bodies and institutions of the Union by or under other Chapters of this constitution-treaty*.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the *(one word deleted) other Chapters of this constitution-treaty*.

52 Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter *(thirteen words deleted) with a view to affirming the fundamental character of rights for which more detailed provision is made in another chapters of this constitution-treaty shall be exercised under the conditions and within the limits laid down in the relevant chapter. (fourteen words deleted)*

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Neil MacCormick

1 September 2002

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