

CONV 741/03

NOTA DI TRASMISSIONE

del: Segretariato

alla: Convenzione

**Oggetto: Relazione della Commissione sull'Unione europea della Camera dei Lord,
presentata da Lord Tomlinson e Lord MacLennan
"Il futuro dell'Europa - Trattato costituzionale - Progetto di articoli
sull'azione esterna"**

Il Segretario generale della Convenzione ha ricevuto da Lord Tomlinson e Lord MacLennan, membri supplenti della Convenzione, l'allegata relazione della Commissione sull'Unione europea della Camera dei Lord, che presentano a suo nome quale contributo ai lavori della Convenzione.

HOUSE OF LORDS

SESSION 2002–03
23RD REPORT

**SELECT COMMITTEE ON
THE EUROPEAN UNION**

**THE FUTURE OF EUROPE:
CONSTITUTIONAL TREATY - DRAFT
ARTICLES ON EXTERNAL ACTION**

WITH EVIDENCE

Ordered to be printed

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON – THE STATIONERY OFFICE LIMITED

[price]

HL Paper

TWENTY-THIRD REPORT

13 MAY 2003

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—DRAFT ARTICLES ON EXTERNAL ACTION

Introduction

1. The Praesidium of the Convention on the Future of Europe has published Draft Articles on External Action in the Constitutional Treaty¹. Our Committee has been commenting on the Draft Articles as they have emerged from the Praesidium, with a view to making short reports to the House for information, where possible in advance of the Plenary debate in the Convention on the relevant Articles. This report falls into that sequence. The Committee will continue to keep the work of the Convention under review, and will in particular scrutinise the final output of the Convention in advance of the forthcoming IGC. This report has been prepared by Sub-Committee C² and follows our earlier report on the Convention's Working Groups on Defence and External Action³.

2. Given the timescale this report focuses on a few of the significant issues arising from the Draft Articles as published. These include:

- The proposal for an EU Foreign Minister (paragraphs 4–10).
- The proposed extension of Qualified Majority Voting (QMV) (paragraphs 11–18).
- The role of the EU in the United Nations Security Council (paragraphs 19–21).
- The extension of the Petersberg tasks (paragraphs 22 and 23).
- Defence co-operation (paragraphs 24 and 25).
- The Agency for Armaments and Strategic Research (paragraph 26).
- Solidarity (paragraphs 27 and 28).

3. The Chairman of the Select Committee⁴ has engaged in correspondence with Dr Denis MacShane MP, Minister for Europe, on the Franco-German proposals to the Convention. The correspondence is printed in Appendix 2.

PROPOSAL FOR A FOREIGN MINISTER

4. In a separate document⁵ the Praesidium has proposed the creation of a post of Foreign Minister of the European Union. The proposal is as follows:

¹ Document CONV 685/03, 23 April 2003, available on the Convention's website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

² Members of the Sub-Committee are listed in Appendix 1.

³ 15th Report, 31 March 2003, HL Paper 80.

⁴ Lord Grenfell.

⁵ Document CONV 691/03, 23 April 2003: Institutions—Draft Articles for Title IV of Part 1 of the Constitution, Article 19. See Box 1 below.

Box 1

Institutions—Draft Articles for Title IV of Part I of the Constitution Article 19:

The Foreign Minister

- (i) The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy.
- (ii) The Foreign Minister shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
- (iii) The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for co-ordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, he shall be bound by Commission procedures.

5. The Committee draws attention to the significant and powerful role of the proposed Foreign Minister. The Foreign Minister would conduct the European Union's Common Foreign and Security Policy; carry out ESDP; be responsible for the Commission's role in areas such as development aid and humanitarian aid and the treaties of association; and run the Commission's overseas delegations (which would become Union delegations). The Minister would bring together the roles of the High Representative and the Commissioner for External Relations and would have the power to initiate, prepare and implement policy decisions on foreign affairs. The Foreign Minister would also have power to present the Union's position at the UN Security Council.¹

6. The Government supports the merger of the roles of the High Representative and the External Affairs Commissioner.² The role of an EU Foreign Minister, however, 'will only mean anything if that person is the voice of the national governments and accountable to national governments and parliaments through the Council'. While there is a very 'strong case for greater co-ordination with the Commission' the foreign representative should not be bound by the college of Commissioners.³

7. The Minister for Europe⁴ put three questions on which the United Kingdom Government is continuing to press its partners, including in France and Germany:

- What status would the European Foreign Minister have in the Commission?
- To whom would the Minister be accountable?
- Who would mediate in the event of a dispute between the Council and the Commission?

8. The proposal for the Foreign Minister, and in particular the fact that the post has a relationship both with the Council and the Commission, prompts members of the Committee to raise a number of questions:

- Is the scope and level of power proposed for the Foreign Minister appropriate?
- Is it clearly stated that the Foreign Minister will not have the power to commit national armed forces?
- Will the Foreign Minister's responsibilities with regard to security be properly defined?

¹ See Box 3.

² The Committee commented in an earlier report that they are 'open-minded on the recommendation that a single representative be appointed to carry out both the functions of the High Representative and the External Commissioner' 15th Report 2002-03, HL Paper 80.

³ 21st Report, HL Paper 105, Session 2003-2003, Q35.

⁴ See correspondence in Appendix 2 below.

- The Foreign Minister will be sited in, and accountable to both, the Council and the Commission. Can this work in practice?
- Are the Foreign Minister's lines of accountability to the Council or the Member States sufficiently defined?
- Does the Foreign Minister's status within the Commission in effect mean that a particular Member State will gain a further Commissioner by the backdoor?
- How will the Foreign Minister relate to the proposed new President of the European Council (who appears to have an over-arching role in Common Foreign and Security Policy¹)?
- Has the Praesidium paid sufficient attention to the policy which the proposed new institution of Foreign Minister is supposed to handle before proposing the creation of that institution?

9. We consider that these are significant and serious questions which require to be answered satisfactorily. The Committee can understand that those who framed this proposal² might have been intending to make the European Union more effective in the Foreign Policy area by pulling together the various institutions involved and by giving the Council the power of impetus and direction. We note also that the proposed Foreign Minister's role in the Commission may be intended only to represent the Council and that this could in fact have the effect of strengthening the role of the Council (as opposed to the Commission) in the field of Foreign Policy. The Foreign Minister is, apparently, intended to derive his decision making power from the Council—the Foreign Minister's role is to implement the wishes of the Council. The Committee do not believe that Heads of State and Government would agree not to exercise a pre-emptive right to determine what the Union's policy might be. It will remain for the Council to set policy even if the text of these articles suggests otherwise. We note also that the Praesidium's further proposals to reduce the number of Commissioners, and do away with automatic Member State representation, would go some way to answering some of the concerns expressed above.

10. Nevertheless significant questions remain unanswered about the Foreign Minister and in particular where the right of initiative will lie; who will actually determine policy; the relationship between the Foreign Minister and the Commission; and, in particular, the impact on the Foreign Minister's role of proposals to extend qualified majority voting (on which we say more in paragraph 13 below). **We cannot give our full support to the proposed post of Foreign Minister of the European Union unless these questions are answered and unless the uncertainties that they indicate are satisfactorily resolved.**

¹ Article 16a of the Institutional Articles says of the European Council President "on issues concerning its Common Foreign and Security Policy he shall ensure that the Union at his level is effectively represented in the wider world" CONV 691/03, 23 April 2003.

² The idea originated in the Working Group on External Action on which a number of Government representatives served.

Box 2

Article 9

1. Decisions under this Chapter shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article X of the Constitution, the decision shall not be adopted.

2. By derogation from paragraph 1, the Council shall act by qualified majority:

- when adopting decisions on Union actions and positions on the basis of a European Council decision relating to the Union's strategic interests and objectives, as defined in Article 2(1) of this Title;
- when acting on the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, as defined in Article 2(2);
- when adopting any decision implementing a decision on Union action or position;
- when appointing a special representative in accordance with Article 11 of this Chapter.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

This paragraph shall not apply to decisions having military or defence implications.

3. The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 above.

11. Under the Draft Articles, the use of qualified majority voting would be significantly extended on issues related to CFSP, including on proposals submitted jointly by the Minister for Foreign Affairs and the Commission. Article 9¹ provides that the Council shall take decisions unanimously. Paragraphs 2 and 3, however, provide for exceptions which allow qualified majority in some cases.

¹ See Box 2 above. Document CONV 685/03, 23 April 2003, available on the Convention's website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

12. It is clear that the matters proposed to be subject to QMV are extremely significant. We note the statement from the Minister for Europe that “we welcome the recommendation from the External Action Working Group that any decision to move to more QMV on CFSP would be taken by unanimity in the European Council¹”. We comment on three elements of the proposals:

- The automatic presumption that a joint proposal by the Minister for Foreign Affairs and the Commission shall be subject to QMV.
- The variation on the Luxembourg compromise allowing Member States to cite reasons of national policy as a means of ensuring that a vote is not taken.
- The provision for the European Council to decide unanimously that matters in addition to those referred to in paragraph 2 of the new Article 9 shall be subject to qualified majority voting.

13. First, we are concerned about the apparent freedom of the Foreign Minister to make proposals which would then be subject to QMV. Our concerns about the accountability of the Foreign Minister to the Council (see paragraph 9 above) are particularly sharp here. Article 9(2) would accordingly be improved if it were made clear that the Minister for Foreign Affairs could only make a proposal jointly with the Commission if that proposal had first been cleared by the Council. Given the potential extension of the Commission’s influence, any proposal presented under this indent must be based on a policy decided by the Council. This would ensure greater accountability to the Council in areas where that is not already the case.

14. Concern would nevertheless remain were any such proposal automatically to be subject to QMV. In addition, the possibility of operating jointly with the Commission would significantly enhance the Commission’s power in this field. **It is accordingly our unanimous view that the second indent of proposed Article 9(2) raises significant new issues which require clarification.**

15. Our second comment is on the paragraph attached to the end of Article 9(2). This appears to be a version of the so called Luxembourg compromise², whereby one member of the Council may declare that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority and a vote shall then not be taken.³ Provision is made for the Council, acting by qualified majority, to refer the matter to the European Council for a unanimous decision. This provision is copied from the existing Treaty⁴. This is a welcome departure from the Franco-German proposal to the Convention which called for extended QMV in the European Council. We note that a greater use of qualified majority would make it more likely that such provisions would be exercised. This would provide a useful safeguard.

16. Article 9(3) allows the European Council to decide unanimously to act by qualified majority in other areas. We heard evidence from Mr Peter Hain MP, Mr Peter Ricketts and Sir Stephen Wall that the extension of QMV to foreign policy areas would be problematic⁵. This provision, by contrast, appears to provide for possible extension of QMV in the future. This gives rise to anxieties and the need for such a provision to be clarified. In addition, while such a clause may well be thought

¹ See Appendix 2.

² Bull. EC 3–1966, 9.

³ “It was agreed, in the case of decisions which were to be adopted by a qualified majority, but where very important interests of one or more Member States were at issue, that the members of the Council would attempt, within a reasonable period of time, to reach solutions capable of adoption by unanimity.” Jo Shaw “Law of the European Union” 2000, page 50.

⁴ Article 23 (2), TEU.

⁵ 15th Report 2002–2003, HL Paper 80, Mr Peter Ricketts Q14 “...I do not believe any country would be prepared to take decisions on committing its armed forces or policies that might lead up to that on the basis of majority voting where a country could be outvoted.”; Mr Peter Ricketts Q15 “...we do have a very strong principle of non-application of QMV to defence and security, and you rightly say that it is extremely difficult to draw any kind of arbitrary point along a continuum from foreign policy through to defence policy.”; Sir Stephen Wall Q93 “I do not myself believe that the Prime Minister or any British prime minister would want to be in a position where in the last analysis they cannot take the decisions they need to take in Britain’s national and foreign policy interest.” Peter Hain “The UK, like other member states, will not accept any shift from the intergovernmental nature of the CFSP; nor is there much sense in extending QMV to foreign policy.” (Westminster Hall debate, 20 March 03 Column 309WH)

necessary to simplify provisions in case of future amendment, the very fact that such the words appear in the Treaty will make it much harder to explain the Treaty's provisions to the general public.

17. We note that the Minister for Europe has expressed concerns about the Franco-German proposal for QMV and in particular about the difficulties in distinguishing between foreign policy and security issues. "From our point of view, it would be difficult to distinguish between what is a foreign policy issue and what is a security issue. So we do not see how this proposal could work in practical terms,..."¹. We also note that extending QMV might allow a Member State a role in committing or overseeing the operation of armed forces without themselves having committed any troops. The boundaries between foreign policy areas and military matters are too fluid for such problems never to arise. We are accordingly glad that the Praesidium's proposals do not replicate the original Franco-German text. **Nevertheless, the proposed Article gives rise to concerns that need to be addressed.**

18. We note that the Government continue to argue that any decisions for ESDP operations with defence or military implications should continue to be taken by unanimity; and that ESDP operations should be able to go ahead even if not all Member States wish to participate². We are grateful for this assurance.

UN SECURITY COUNCIL

Box 3

Article 14

1. Member States shall co-ordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union's Minister for Foreign Affairs shall organise this co-ordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. Without prejudice to paragraph 1 and Article 6(3) of this Title, Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Minister for Foreign Affairs be asked to present the Union's position.

19. Proposed Article 14³ is concerned with the co-ordination of Member States' actions in international organisations. Paragraph 2 makes provisions regarding the UN Security Council. We note that the Article largely replicates Article 19 (TEU), with the addition of a role for the Foreign

¹ See Appendix 2.

² See Appendix 2—we assume that when the Minister says "All Member States do not wish to participate" he means "not all Member States wish to participate."

³ See Box 3 above. Document CONV 685/03, 23 April 2003, available on the Convention's website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

Minister and altering the reference to Member States which are permanent members of the Security Council to include other Member States who happen to be members of the Security Council. The explanatory notes to this Article indicate that the new provision is “*aimed at raising the Union’s profile within the Security Council. This provision does not entail any consequences for the status or position of Member States in that forum*”.

20. We can see that the aim is to provide a single voice for the European Union in the United Nations, but there are serious questions about this Article. First, surely who appears before the UN Security Council is a matter for them and not for the European Union. Secondly, the requirement on Member States who are members of the Security Council to defend positions in the interests of the Union, albeit derived from an existing Treaty provision, seems to ignore the fact that discussion in the Security Council is organic. Members’ positions develop during the course of discussion and debate and it is inconceivable that one player would be expected to do no more than defend the pre-agreed position which they had no mechanism to adapt.

21. The Committee was under the impression that Member States who have dissented from decisions taken (perhaps by QMV) in the Council cannot be under an obligation to support and defend the Council’s position in the United Nations Security Council. The Committee considers that the proposal to give a special status to the proposed Foreign Minister within the UN Security Council would be impracticable in present circumstances. We are also concerned that there is insufficient regard to the need for positions to develop during debate in the Security Council. Member States, and in particular those who are permanent members of the Security Council, must be free to act independently within the Security Council. We seek clarification on this.

PETERSBERG TASKS

Box 4

Article 17

The tasks referred to in Article 30(1) of Part One of the Constitution, in the course of which the Union may deploy military and civilian means, shall include 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 peacemaking, support action in combating terrorism at the request of a third country, and post conflict stabilisation.

1. The Council, acting unanimously, shall adopt decisions relating to the tasks referred to in this Article, defining their objectives and scope and the general conditions for their implementation. The Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure co-ordination of the civilian and military aspects of such tasks.

22. Proposed new Article 17¹ intends to clarify the so called Petersberg Tasks by:

- inserting the tasks already set out in the Treaty, i.e.:
 - humanitarian and rescue tasks
 - peace-keeping tasks
 - tasks of combat forces in crisis management, including peacemaking, and
- adding tasks recommended by Convention Working Group VIII, i.e.:
 - joint disarmament operations
 -

¹ See Box 4 above. Document CONV 685/03, 23 April 2003, available on the Convention’s website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

- military advice and assistance tasks
- conflict prevention tasks
- support action in combating terrorism at the request of a third country
- post-conflict stabilisation.

23. The Committee draws attention to this provision. The extension to anti-terrorism and conflict prevention are significant and, as we have reported before¹ there are concerns about the adequacy of current levels of spending and capabilities. More generally, there are concerns about the how these extensions would affect defence capability.

DEFENCE CO-OPERATION

Box 5

Article 30(2)

The common security and defence policy shall include the progressive framing of a common defence policy for the Union. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

24. The Committee draws attention to the development in proposed Article 30(2)² which strengthens the existing provisions of Article 17 (1) TEU. Such a proposal would not only have profound implications for the role of NATO, but also appears to be wholly unrealistic in the foreseeable future. **The Committee can see a case for such an aspirational provision against the possibility that NATO might become ineffective and that the Member States might accordingly need an alternative mechanism. We assert our view that we would not wish any developments in European Union defence to weaken the role of NATO. We also believe that it is wholly unlikely that “the progressive framing of a common defence policy....will lead to a common defence”.**

25. Article 30 (7) establishes closer co-operation enabling those Member States who wish to do so to take up in the European Union framework the mutual assistance commitment made in Article 5 of the Brussels Treaty. We draw the attention of the House to this new development.

¹ 7th Report 2002–2003, HL Paper 53, paras 66–67, and para 74, and 15th Report 1999–2000, HL Paper 101, para 6.

² See Box 5 above. Document CONV 685/03, 23 April 2003, available on the Convention’s website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf

Box 6

Article 19

1. The European Armaments and Strategic Research Agency shall have as its task to:
 - contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
 - promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
 - propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure co-ordination of the programmes implemented by the Member States and management of specific co-operation programmes;
 - support defence technology research, and co-ordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
 - contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure;
2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. Such rules should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects.

26. Article 19¹ makes provision for a European Armaments and Strategic Research Agency. This too is a new proposal to which we draw the attention of the House. Such an Agency might well help to improve the capabilities of the armed forces of Member States, but care needs to be taken to ensure that it does not become a tool for protectionism or constrain the ability of Member States to order armaments independently.

¹ See Box 6 above. Document CONV 685/03, 23 April 2003, available on the Convention's website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

Box 7

Article X

Solidarity Clause

In application of the principle of solidarity, the Union shall mobilise all the instruments at its disposal, including military resources, to:

- prevent the terrorist threat;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack .

The detailed rules for implementing this provision appear in Article X of Part Two, Title B, of the Constitution.

27. Article X provides a Solidarity Clause.¹

28. **The Committee draws the attention of the House to this horizontal clause² which is a fundamental and constitutional provision giving the Union a capability in the case of a terrorist threat is indeed an extension of existing provisions. While the aspirations of this Clause may be valuable for political reasons, the defence implications must not be overlooked.**

CONCLUSION

29. **The Committee makes this short report to the House for information. We will revisit these issues later in the year in preparation for the IGC, at which point we will analyse in detail how the final proposals from the Convention represent developments or extensions from the existing Treaties of the European Union in so far as they affect matters of foreign policy, security and defence.**

¹ See Box 7 above. Document CONV 685/03, 23 April 2003, available on the Convention's website at www.european-convention.eu.int/docs/Treaty/cv00685.eu03.pdf.

² A 'horizontal clause' is a clause which has implications running laterally through all relevant institutions.

APPENDIX 1

Members of Sub-Committee C (Common Foreign and Security Policy)

Lord Bowness
Lord Harrison
Baroness Hilton of Eggardon
Lord Inge
Lord Jopling (Chairman)
Lord MacLennan of Rogart
Lord Morris of Aberavon
Baroness Park of Monmouth
Lord Powell of Bayswater
Lord Watson of Richmond
Lord Williams of Elvel
Lord Williamson of Horton

APPENDIX 2

Letter from The Minister for Europe

Thank you for your letter of 4 April about the Franco-German proposals to the Convention on the Future of Europe.

You asked what the Government thought of the Franco-German proposals, in particular the section on external activities of the Union. We welcome the Franco-German contribution to the debate on Europe's future and believe it contains some good ideas, for example, the creation of a full-time Chair of the European Council.

On the detail of the external activities section, we strongly support the idea of more coherence in EU external action, strengthening the High Representative, giving him formal right of initiative in Common Foreign and Security Policy and the right to chair the external part of the General Affairs and External Relations Council.

As the Committee are aware (from the various evidence sessions in which colleagues and I have taken part), we continue to have several key questions about how "doublehatting" the High Representative as both High Representative and External Relations Commissioner could work. We continue to ask partners (including Paris and Berlin) what status the "European Foreign Minister" would have in the Commission, to whom he/she would be accountable, and who would mediate in the event of a dispute between the Council and Commission. This will clearly be one of the key issues for the Plenary discussion of the draft external Treaty Articles on 15–16 May.

We share your interest in the exact nature of how the Franco-German proposal for more Qualified Majority Voting in foreign policy (but unanimity in defence and security issues) would work. From our point of view, it would be difficult to distinguish between what is a foreign policy issue and what is a security issue. So we do not see how this proposal could work in practical terms, as the oral evidence you quote from Sir Stephen Wall and Peter Ricketts indicates. We welcome the recommendation in the External Action Working Group report that any decision to move to more QMV in CFSP would be taken by unanimity in the European Council.

The Franco-German proposal for some Council Secretariat staff to work in the Commission delegation offices overseas was one of the recommendations of the External Action Working Group. It clearly makes sense, as part of our efforts to improve coherence, for council Secretariat and Commission staff to do more joint work. Likewise, we welcome the idea of more synergy between Commission, Council Secretariat and Member State staff in Brussels, although we think the title of an EU Diplomatic Service is misleading.

On the Franco-German proposal that ESDP operations should be able to go ahead even if all Member States do not wish to participate, there is already provision in the Treaty for Member States to choose not to participate in ESDP as a whole, as Denmark has done. The Treaty also provides for a Member State to choose to constructively abstain from a particular ESDP operation. The decision on whether or not to commit personnel to an operation remains for member States (although the decision to launch an operation is taken by unanimity). We want to see ESDP remain fully inclusive, and believe that any decision for operations with defence or military implications should continue to be taken by unanimity.

You asked whether there were other significant relevant submissions to the Convention on CFSP. Seventy two documents were submitted to the External Action Working Group. If the Committee are interested in the other contributions, they can be found at <http://european-convention.eu/int> (by clicking on proceedings, then Working Groups, then Working Documents Group VII).

I am copying this letter to Jimmy Hood MP, Chairman of the European Scrutiny Committee; Dorian Gerhold, Clerk to the Commons European Scrutiny Committee; Michael Carpenter, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); Philip Kendall (FCO) and Gareth Bayley (FCO).

APPENDIX 3
Glossary of Acronyms and Technical Terms

CFSP	Common Foreign and Security Policy
ESDP	European Security and Defence Policy
EU	European Union
IGC	Inter-Governmental Conference
NATO	North Atlantic Treaty Organisation
QMV	Qualified Majority Voting
TEU	Treaty on the European Union
UN	United Nations
