

# *The National Interest*



**skeptika**

*By Dr Lee Rotherham  
Foreword Charles Crawford CMG*



# The National Interest

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# Foreword

## by Charles Crawford CMG

This brisk paper by Dr Lee Rotherham makes the cogent case for the United Kingdom leaving the European Union and negotiating a brand new relationship with EU institutions. It helpfully lists the significant range of options and precedents available, as the EU already has different arrangements of all shapes and sizes with countries in Europe and around the world. It turns out the vast majority of states represented at the United Nations are not in fact EU members. Yet for better or worse life goes on in them, as they take their own decisions about what's best for them.

Dr Rotherham argues (in some detail and not unconvincingly) that in key respects the United Kingdom would be better off in its internal and external economic performance if it were not subject to so many EU regulations and requirements. Perhaps his key point: only a decision to leave the EU will compel the tough thinking needed in London, Brussels and other EU capitals to renegotiate a new relationship so that decision-making 'competences' for issues affecting the UK (and perhaps for the EU too) sit where they sensibly should sit in today's complex policy environment.

The mind boggles at the prospect of the eventual ghastly national 'debate' about the UK's EU membership as and when the referendum looms. Bewildering statistics and examples will fly thick and fast as the Ins and Outs each try to frame the issues in a way that suits their case. But the arguments will boil down to simple human propositions.

The Ins will argue that 'steady as she goes' is the wise and above all safe course. Don't rock the boat, and especially don't let nasty nutty anti-internationalist xenophobes (mainly Right but some Left too) rock it. We are now so entwined with EU processes that breaking away will inevitably cause huge uncertainty and real disruption. Does anyone really need all that risk, given the instability in the Middle East and even in Europe's own Ukraine?

The Outs will insist that it makes a lot sense not only to rock the boat, but indeed to jump out of it when the boat is heading to disaster. EU Europe is no longer a 'safe space' but a complacent, declining and badly run area. Yes, there will be disruption and uncertainty. But what we have now is also increasingly disrupted and uncertain and simply incompetent. Much better to take back confident control of our own destiny, thereby freeing huge resources for ambitious new internal and external policies. You Ins are the pessimists – we Outs are the optimists!

Perhaps the hardest issue in any massive decision like this one is Time. Over what period is success measured? And what is 'success' anyway in this context? What if

we do leave the EU and end up worse off for (say) a decade but then bounce back very strongly for two or three decades? What if we end up rather worse off for the foreseeable future, but take our own decisions once again? Is less money but more freedom a deal worth having?

I recall an FCO Leadership Conference back in the mid-2000s addressed by Prime Minister Tony Blair. In the Q&A our then Ambassador in Paris warned the Prime Minister that current British policies were going down very badly in Paris. Tony Blair said something fascinating and perceptive in reply. Something to the effect of: “Well, at some point you have to make an almost aesthetic choice about what you’re trying to do and what you are.”

Dr Rotherham’s paper points out a key truth. Canada has achieved intense economic integration with the United States but stayed a free, separate sovereign state with its own voice in senior global counsels. This is the almost aesthetic choice we face in our UK referendum. To be Canada? Or Illinois?

### **Charles Crawford CMG**

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*Le choix devrait être facile, en effet, aussi bien pour le  
Coeur que pour la raison. Il suffira de penser un peu à  
la longue fidélité du passé et à toute la vigueur du  
present, et puis de songer aussi à ceux et celes qui nous  
suivront et don't l'avenir depend si grandement de ce  
moment-là.*

*Appeal from the Quebec Premier,  
La nouvelle entente Québec-Canada  
Proposition du gouvernement du Québec pour une  
entente égal à égal: la souveraineté-association  
Quebec Government, 1979*

# Introduction<sup>1</sup>

Supporters of the campaign to Remain in the EU suggest that their opponents lack a common concept of where Brexit will lead. This is a peculiar observation for three reasons. In the first instance, no one from Government has yet actually asked. Since Whitehall has not posed the question, and has instead focused on the technicalities of relatively minor points, it is impossible to judge how closely foreign governments will want a post-Brexit UK to sit in association with the EU's institutions<sup>2</sup>. Many bodies that govern European cooperation meanwhile include non-EU members, while others allow EEA states to participate.

Secondly, if the Leave side does win, those campaigning for Brexit will not be in charge of the negotiations that follow. Indeed, they will not then even be asked their opinion on the terms by the person who will: David Cameron. The question should be asked in the first instance of the negotiator – unless of course Mr Cameron is prepared to declare in advance whom he would appoint to act as his proxy during those subsequent talks.

The third point is rather more fundamental. The question on options is not Manichaean. There is no black or white, no straight in or out. There is not even a couple of shades in between. Precedent means that there are almost fifty shades of grey. To plump for one is an absurdity since a broadband occupied by several options could suit the national purpose. It is presumptuous for Downing Street to fixate on just knocking a Norway option when no one has even asked what the British Option could be.

But how does one decide what is actually in the national interest? It appears that the question has not been properly raised across Government, from first principles, for a good forty years. Having spent ten years overcoming two vetoes to get into the EEC, the Europeanists within the FCO seems to have so bought into the EEC programme that questioning its merits became unthinkable. The EEC became a sort of 'Brussels Nimrod'. The mistake if one had been made, once discovered, would prove too fundamental to easily back away from.

*1 This paper develops lines set out in the Annexes of Change or Go. See for the ultimate source material: <<http://themidnightgroup.blogspot.co.uk/2011/05/controversies-from-brussels-closer-to.html>>,*

*<<http://www.harriman-house.com/book/view/237/economics/lee-rotherham/the-eu-in-a-nutshell>>,*

*<<http://www.tfa.net/wp-content/uploads/2014/10/ManningThePumps.pdf>>, and*

*<<http://www.civitas.org.uk/europe/hardbargains>>.*

*2 Indeed, some supporters of Remain note the absence of any challenge to the status quo arising from the Balance of Competences Review, suggesting EU-27 negotiators could see it as a justification for not offering any substantive reforms*

As it happened, the mistake itself in large part was down to timing. Many of the reasons for seeking to join in the first place have since slipped away; British economic decline, the Soviet threat, high global tariffs, high European tariffs and other motivators have all disappeared over the decades. The UK joined right at the time that the Kennedy Round was starting to open up world trade, and just before the UK regained something of its loss of confidence of its place in the world (outside the Foreign Office at least). In contrast, the prospects of the hard-fought Single Market have not acted as the anticipated counterweight to the associated costs.

Strategically, the shift from EFTA turned out to be the wrong throw. Whether it can be fully redeemed is an open question. What does seem more certain is that were the UK outside of the EU today, it would not be seeking now to join the Brussels club.



# The Management of Decline

The UK's membership of the EEC is to some extent the product of aggravated pessimism. Indeed, the EEC itself is the consequence of a common negative experience variously applied. In the wake of the Suez Crisis, France threw its chips in with West Germany. The UK in contrast threw its in with the United States (at least initially).<sup>3</sup>

Suez malaise appears to have long been an underwriting element of modern Foreign Office attachment to the EU. Rather than abandoning all memory of its past superpower status, it has sought to aggregate something mimicking it. In doing so, it learned the wrong lesson for a new technological age, where a measure of adaptability, resourcefulness, speed and independence can suit an economy and a government more than forming part of a lumbering bloc – particularly if membership means chips have to be cashed on a regular basis on a defensive rather than a bartering basis.<sup>4</sup>

Dean Acheson infamously stated that the United Kingdom had lost an Empire but had yet to find a role.<sup>5</sup> The EEC for a while served as that surrogate. This at first appeared to suit a country faced with high global tariffs and seemingly trapped in terminal decline as the 'sick man of Europe'. In chasing that option though, the UK would in the event disastrously cast aside another role that would have served it far better. It could have become the leader of an EFTA tribe that could have expanded into a post-Soviet Eastern Europe without the red tape, sovereignty concerns, or indeed any of the crisis associated with shifting migrant workforces.

As it turned out, the UK from the 1980s was no longer in the business of managing absolute decline but rather dealing once more with relative decline. This was more familiar ground – it had been so with respect to the United States since the 1860s,

*3 In France's case, this constituted the final act after three attempts at defeating its competitor militarily, three attempts at occupying and carving off parts of the Rhineland, and two attempts at merging with the UK (offers being made by premiers in 1940 and 1956). The principle became one of 'If you can't beat them...'*

*4 Fighting to maintain opt outs burns chips that could otherwise be traded for relative advantage elsewhere.*

*5 "Our Atlantic alliance: the political and economic strands", speech at West Point, December 1962. The line was a throwaway one and specifically directed at London's ambivalent policy towards the Russians, a middle route distinct from the USA that it was incapable of fulfilling since the Commonwealth provided neither the necessary political nor military strength. Acheson's comments were hardly revelatory: this reality had begun to be visible as early as the Chanak (and Constantinople) Crisis of 1922. Equally evident were the inherent tensions running through the Sterling Zone given the UK's economic problems, while the hangovers of imperial preference, also referenced by Acheson, were also visibly anachronistic. Notably, his views on the "Special Relationship" appear to have been favourable but while recognising it as inherently an unequal one.*

and with Germany from the 1880s. Such a task generates fewer crises for a country that has today lost its imperial hang ups. Brits have, for better and for worse, lost their historic semi-mythical belief in their own effortless superiority, partly perhaps due to the demolition of stereotypes but also as they have witnessed with their own eyes how the world around them has transformed.<sup>6</sup>

If we accept that the UK's national interest can be to play a significant role, but not the dominant role, in the world as a force for good and a tipping weight in the scales, then psychologically as a nation we are open to a variety of options. Our national interest becomes aspirational rather than pessimistic.

This is not to say that the nation should reject the US alliance, since the United States is a superpower that very largely shares a common viewpoint and ideals. Nor should the UK place an unhealthy over-reliance upon it. The reality of the "Special Relationship" is that it is politically ephemeral, and more guaranteed by the nature of the occupant of the White House than a desk officer in the State Department. But it is also a quiet cultural undercurrent across parts of the United States government, and will be particularly felt as long as the United Kingdom considers itself to have something worthwhile to contribute globally.

That of course means in terms of pushing Anglo-Saxon agendas in terms of trade liberalisation, and democratic agendas in the face of a rising China. But it is also about continuing to have an expeditionary mentality with its armed forces, maintaining them at a reasonable and effective level, keeping them interoperable with US allies and prepared through robust rules of engagement to intervene where needed and in time. The greatest prize for all that is being part of the Five Eyes intelligence community, which of itself qualifies for the status of a special relationship for its participants.

The UK is a rare thing in the modern world. It is a cultural superpower. This is down to a variety of elements including media, film, literature, language, education (universities and public schools only, sadly), reputation, history, and even comedy. The influence of these has long been recognised, for instance explicitly by Cecil Rhodes in establishing his scholarships. Current levels of Trans-Atlantic ties and interests could thus be expected to survive, for at least the foreseeable future, if the UK makes the effort to market itself. A self-confident and independent FCO can achieve this; an FCO subordinate to the EEAS cannot.<sup>7</sup>

Perhaps the best litmus test in all this is to reflect on the choice of Canada. It has decided over the course of the past century to step away from the dominion of Westminster. But it has systematically rejected the route of union with its powerhouse

*6 Even if Carry on Abroad wasn't a documentary, it captured some of the spirit and industrial realities of the times.*

*7 European Geostrategy in its audit of relative influence places the UK second only to the US, in its own rank as a 'global power'. Notably this review partly downplays 'soft power' influence owing to the difficulty in applying it for national ends.*

to the south. Despite levels of economic integration that would make Benelux ministers proud, Canada remains an independent sovereign state today.

If Ottawa sees it in its national interest to follow such a route, so can London.

# Variable impact

Two fundamental facts need to be understood by anyone grappling with the form and content of the EU Treaties. The first should be quite obvious. The nature of the EU membership Treaties, which are identical for all member states (though there are opt-outs, considered temporary by most parties), suits different parties differently. The level of gain and of cost from association with the EU varies considerably.

This is only common sense if you consider the scale of the territories covered. Greenland's gain from being able to trade with the powerhouse German economy is rather less than, say, that of the Netherlands, owing to the relative level of their exports and proximity to the markets. The risks Greenland gets by signing up to the circus of regulations and rules, adding burdens rather than benefits, thus tend to outweigh those gains. Fisheries proved to be the cost too far. So having judged where its national interest lay, Greenland left, and it was right to do so.

The second point is that, even if there is basically one deal for EU members, there is in fact a surprising array of different types of treaty that non-EU countries reach with the EU to suit their mutual needs.

We cover the hard detail behind this aspect elsewhere. The point here is that national interest generates what we style a "Goldilocks Zone" for countries. A treaty deal with Brussels can be found whose terms are 'neither too hot, nor too cold, but just right'. That set of terms will not be identical across the continent of Europe and its varied economies and peoples, since different countries have different requirements, priorities and public concerns. Homogenisation through the medium of the European Commission can thus never be a solution, but a crisis amplifier.

Combined, these elements show that it is possible that EU membership may not be ideal; and that some other form of treaty allowing export access without political association might suit the UK's needs far more. If we look at the issues that drive access by countries to join the EU, we can confirm that this is clearly so.

Those driving the carriage of European integration *pêle-mêle* have forgotten, or chosen to ignore, this divergence. Indeed, reminding leaders of this reality may yet prove to be Britain's greatest destiny - to rescue Europe by its example.

# Doing the Maths

Reviewing these dynamics, it is possible for treaty analysts to review costs and benefits in the round, and arrive at a dispassionate reasoned perspective. We can attempt this by looking at the aspects cited as motivational and disincentives for states, and set them out in a formula. The five elements contrast the pros and cons of membership in five parts.

These are the financial; sovereignty; the strategic destination; peace and stability; and the alternative route. In some areas it might suit a state to join the EU; in others it may not. Taking them together it is possible to generate a net review.

The arithmetic is set out below.

$$5a = \frac{f1+f2+f3 \quad s1 \quad w \quad p1}{f4+f5+f6 \quad s2 \quad d+f7 \quad p2+t} \quad f8$$

a is the end calculation, consisting of five parts to be taken into consideration - hence 5a. The top side of the fraction (the numerator) supplies advantages of membership, the bottom side (or denominator) the negatives; so added together a figure larger than a baseline of 1 indicates membership is advantageous to a particular state.

The starting variable assesses the concept of trade gain versus cost. f1 represents the increased trade stimulated by membership of the trading bloc; f2 the production advantages gained due to standardisation; f3 the administrative benefits accruing from decreased red tape. However, against these have to be set f4, the net 'membership' cost of the UK-EU budget deficit; f5 or the combined red tape costs as well as the incidental costs of running individual policies, such as the damage inflicted upon coastal communities as well as the consumer by the Common Fisheries Policy; and f6, the benefits that would accrue in trade terms anyway from the World Trade Organization and other instruments that would make the EU gains redundant, since standardisation is already taking place here.

The second element relates to the more abstract concept of sovereignty. This sets s1 or the beneficial impact of 'pooled sovereignty' against s2, the negative impact of the sovereignty lost. This is an area for assessment rather than mathematics.

The third element is one of the strategic picture. w (more properly 'omega') represents the aspirational end status of the EU, and the end process of salami slicing. While this does carry with it substantial positives, there are also major negatives, represented as d and f7. The former is the very real loss of democratic accountability

that arises inherently from the process. The accompanying financial element,  $f_7$ , provides the shorthand for the fraud and waste that is encouraged by this distance.

Next, there is the element relating to 'Peace in Europe'.  $p_1$  represents the concept that the European 'process' has brought political and military stability to the continent, and adds value to a nation's security today. Against this is contrasted  $p_2$ , which postulates that peace has been achieved notwithstanding the EEC/EC/EU, but rather through NATO, a divided Germany, and the Soviet threat.  $t$  meanwhile represents the action of time cementing the habits of peace and as new democracies become secure.

Finally, there is the alternative element. Set against an underlying standard baseline of 1,  $f_8$  represents the departure costs for a state of leaving the EU, which will vary depending on the manner and good will surrounding withdrawal.

This then provides us with our five fractions: the financial; sovereignty; the strategic destination; peace and stability; and the alternative route. Combined, they provide one way of assessing whether any given state is better off in or out.

# Two Brief Case Studies

Let us take a couple of examples. Luxembourg is known as a strong supporter of European integration. There is good reason for this. It is a small country with an economy closely tied into its larger neighbours, generating a large export dependency, though this (as with the City of London) is increasingly under threat as its important banking sector faces EU regulation. As this comprises a key sector of the economy (especially with the decline of the steel industry) over the long term the wider gain will be eroded.

On a sovereignty front, Luxembourg has only recently emerged as an independent state, having variously been a Hapsburg fief, in personal union with the Netherlands (at cost of major territorial loss to Belgium), part of the German Customs Union, and only fully independent as of 1867. From its history it is more psychologically prepared for pooled sovereignty, and is more accepting of the end federal ambition as a result – particularly as this has led to landing plum jobs in the College of Commissioners (it has had three Presidents to date, more than any other country).

Its status as an occupied country during both world wars and with Germany as an immediate neighbour gives it an understandable direct interest (which its leaders readily declare) in politically anchoring a neighbour with a history of volatility and expansionism. Finally, given its geography, leaving the EU could generate significant administrative and technical difficulties.

Taken as a whole, the formula suggests Luxembourg's approach - supporting considerable EU integration and a federal model - is logical.

But compare that with the maths as it applies to Norway, whose voters have done the sums in two referenda now. In terms of trade, the gains are notable yet the country is physically a peripheral state. It has key oil and fish sectors that stand to lose if they fall into the Brussels pool. While it is a major welfare state, it is also aware of red tape risks arising across the large portion of its industry that does not export to the EU.

Norway has decided that trade gain can be met through the EEA while limiting the negatives – though it should be noted that 'Nei' campaigners object not just to EU membership but also seek to withdraw from the EEA, as they assess the costs of even this level of association as too great for the country.<sup>8</sup>

These same campaigners stress the global theatre in which an independent Norway (and even an EEA Norway) can freely operate. They assess it to be better to have an independent voice rather than act as just one vocal cord behind a louder common

*8 The Norwegian umbrella campaign, Nei til EU, opposes EEA membership on the grounds of democracy, sovereignty, fairness and equality in international trade, retention of natural resources, and an ambitious internationalist approach. Accessed 22/05/2015 at: <<http://www.neitileu.no>>.*

voice. They point to the need for consensus in trades standards bodies operating at a higher legal plane than the EU does – the very nature of the institutions that makes these annoying to the FCO also makes them ideal for sovereign states to fight their corner in (but not if the EU is sitting there for you).

These critics also oppose their country being absorbed into a European entity on sovereign and democratic grounds. To make a comparison with the Luxembourg example, while the country is a modern invention, Norway has had a strong national identity for much longer. Its occupation in the Second World War saw a national resistance movement based on cultural identity, and also like Luxembourg then saw it locked into NATO; but a variety of factors (not least its lack of a physical border with Germany) led to it rejecting European federation as means to securing its future independence from a powerful neighbour. As a secure democracy, a majority of its voters have concentrated on the trade, and have viewed being outside the EU as economically more advantageous – or at least less of an economic handicap and threat.

So for each of the 28 member states and for every potential applicant, the gains and losses will vary. Some will see as their priority the need to shore up recent democratic advances, just as Spain and Greece did on their accession. Some see themselves as emerging frontline states on migration routes and seek help. Others see themselves as actual frontline states next door to a resurgent Russia. Others are poor, but have low labour costs and want to attract inward investment. Others (like Italy on its accession) may seek to export their unemployed. The maths varies from state to state, and it is important to appreciate what a given state gains and what it risks losing from its membership of the EU.



# The UK Example

So what does the UK national interest consist of in these terms? Let's look at the five areas in turn.

There is a body of analysis that suggests that the starting element, covering financial aspects, will be either slightly or substantially in the negative (depending on your take of the variables). Covering that data merits a book in its own right. Indeed, it formed the basis of a large part of the 1,000 pages of *Change or Go*. On review, had the UK been outside of the EU in 2013, its exports both to the EU and other third countries covered by EU trade deals with third parties (a statistic often overlooked) would have been hampered by tariff costs of £7.4bn. The net costs of membership that year however ran at £11.3bn. In sum, "the UK is over-paying for the trade benefits of EU membership."<sup>9</sup>

We will turn to some critical elements exacerbating this in a short while. But in sum, the UK trades far less across the EU than most other EU states. In terms of EU red tape, as a low-regulation economy it faces higher burdens. So that means EU membership brings to a greater part of its economy a dead weight loss for less benefit. This is before we consider the cost of net membership costs, or start to audit some of the limited value-added nature of some of the grant funding the UK does receive. Some policies, particularly the CFP, have been disastrous to the UK's coastal communities, even if recovery itself can only be generational once national waters are restored.<sup>10</sup>

The second aspect covers sovereignty. The question arises in particular whether the UK gains from the Commission negotiating on its behalf in international trade bodies.

The Norway example as we have seen suggests this is less than obvious. The nature of international organisations is that they are based on consensus rather than on majority activity. This is certainly true in those that set the standards that subsequently get turned into EU regulations and directives. One might argue that in some of these meetings, particularly those relating to major talks to open up major trade obstacles, it is the larger economies that do the talking while the Micronesias of the world sit drinking coffee waiting for the side meetings to end. There is some truth in that. Yet in contrast to Norway, even if it is not the US, the UK is still one of the top ten global

<sup>9</sup> See Chapter 30.

<sup>10</sup> Even then of course, the recovery of the fisheries and associated industries is dependent upon sound management by any localist successor, which is not guaranteed. But it does provide a greater chance of success, as well as greater national share of what is a surrendered national resource. As with other areas, Brexit here provides an opportunity for good governance to follow; it is not an objective in itself.

economies, and could be the largest European economy in twenty or thirty years' time based on current trends.<sup>11</sup>

One also has to consider where its future interests lie. Were the Commission to be about to make a breakthrough and revolutionise world trade in Services, an argument might be made that UK engagement makes a difference. But it has taken twenty years of lobbying even to get this far with opening up the Single Market. Meanwhile, the share of the UK's economy that is made up of goods in terms of Gross Value Added (GVA) – whose exports benefit from Single Market access – have dropped from a quarter of UK GDP on accession, to a fifth in 1992, to around a tenth today.

Sovereignty is an abstract that also covers issues to do with democracy and accountability. The British public appears to be particularly sensitive to the changes affecting its democratic system. There is a strong sense of national pride in the continuity of its democratic systems, contrasting with the extremes of government (fascist, autocratic, communist, collaborationist, or junta) faced within living memory by most other European states. That has been dented by recent scandals, particularly over parliamentary expenses and also Chilcott, but not entirely swept away and certainly not replaced by a concept that the EU would operate as a satisfactory replacement.

The third variable relates to the long term direction of the EU. This has been partially redeemed by the Commission in recent years with a deliberate attempt to inject principles of good government into the Commission. But this is from a very low starting point, and many of the key concerns associated with the EU system of governance are inherent to it, since it can either listen to concerns and be responsive, or it can operate with the efficiency of a bulldozer. The former works better through intergovernmentalism rather than a freshly minted multinational state.

However, simple cooperation is not what “the Project” is about. Any audit of the EU has to put it into the context of its long term development and that involves a process of salami slicing of national powers. The central problem is the lack of strategic transparency accompanying this. The process could be defeated by an admission of the end state, a heavily integrated federal Europe.

That ambition, openly admitted by some supporters whose constituencies are more amenable to this variable, needs to be addressed by supporters of the Remain camp if they are to demonstrate that this element is not a huge negative in the equation. The problem there however is that even with a tweaking of the vocabulary of Brussels (such as removing the wording that “ever closer union” is sought), the institutions and framework remain constructed towards that end.<sup>12</sup>

*11 Two other questions arise. (i) Is the FCO capable of fighting the UK's corner in terms of skill sets? If not, then it can recruit a few Mark Carneys and retrieve staff from Brussels. (ii) Is the FCO/BIS congenitally incapable of closing its markets to dumping states, on the basis of rigid free trade principles? If so, it can learn from what happened lately to its steel industry.*

*12 As an example, the clause explicitly stating that the progressive framing of a Common Defence Policy may in time lead to a Common Defence, is expected to remain untouched. The treaties remain permissive.*

This is without even turning to the public distrust arising from issues relating to fraud and waste in EU public spending, a particular bugbear for a country like the UK which is a major contributor to the budget. The democratic deficit is perhaps best exemplified though by the much-vaunted Citizens' Initiative. This set a high threshold to trigger; a million signatures, with a set number from at least 7 member states. In the first three years since coming into force, 51 petitions reached the trigger threshold. None generated any legislative proposals from the Commission.<sup>13</sup>

Some states place a high premium on the concept of the EU as a peacemaker. This line is somewhat overstated, though makes psychological sense for a country bordering a state with a track record of occupying it. In the case of the United Kingdom however, EU membership is a nonsense in this regard. The UK is also one of only two European expeditionary powers whose assets are more likely to be tapped than expanded by EU military cooperation.

By contrast, the UK's position within NATO, and its privileged association with the United States, are actually under threat by the development of a countervailing alternative to US engagement, but which itself lacks many of the capabilities, resources or even public backing needed to succeed. This element generates a major negative impact in the UK's analysis.

The fifth and final aspect relates to the prospect of the state finding a better alternative to EU membership. As we explore later, our assessment is that there is a bandwidth of treaty types that are far more appropriate for the UK than the current format of EU membership. The question arises whether a transition to one of these can be achieved seamlessly. The responsible answer is that such a transition is extremely likely, based on mutual self-interest of all the parties concerned; but that it cannot be 100% guaranteed to occur effortlessly.

The treaties allow for a period of up to two years to transition, though this time frame is slightly deceptive. It is counted from the moment of notification, which might not be given instantly the day after a referendum though it would have to be given in practice within a 'reasonable' amount of time, perhaps a few weeks or at most a few months' later and simply allowing for initial feelers on post-Brexit treaty options. Any longer a delay than this is politically and diplomatically unreasonable. Secondly, the terms also allow for an extension of the two year timeframe, provided all parties are in agreement.

For context, both CETA and TTIP were initially estimated to require 18-24 months to negotiate. In the event they turned out to require considerably longer. Arguably, that was because of certain principles and terms that generated half-informed public backlashes from some EU states over risks to public sector monopolies. Many of the concerns generated by TTIP will simply not be present in any 'Channel Treaty'. However, as with anything in life, the timetable cannot be 100% guaranteed.

*13 Interview with Rapporteur György Schöpflin MEP, European Parliament News, 3 November 2015.*

One idea is to identify a transition spot in which the UK could be ‘parked’ to allow for continued trade along existing terms, while excess regulations start to be reviewed and stripped away in areas falling outside the remit of the Single Market. The EEA is an obvious parking zone in this regard. Once again, while it is extremely likely that all EU members and the EFTA-EEA members would be prepared to see the UK join the EEA, every state has a veto. While it is extremely unlikely one would get used, and it would be self-damaging to a state to apply it, it remains a technical possibility. As too does the car driving the vetoing president being held up by fog: the uncertain variable is the likelihood.<sup>14</sup>

Those elements of unanimity and that time frame mean that the fifth factor for the UK is one of probability rather than certainty. The concept of dealing in likelihoods is not a stranger to governments, having to estimate chances based on a lack of guarantees. This estimate falls at the top end of the scale that governments use. To use the official UK scale of analytical certainty, our analysis is that the overwhelming probability is that transition will be managed in a way that does not cause harm to the UK or to counterpart EU economies.<sup>15</sup>

So - economically, the UK would be marginally better off outside the EU; in sovereignty terms, it would significantly gain in most areas; in strategic terms, it makes major opportunity gains; in defence terms, it makes massive gains; and the alternative risk is considered transitionally very low and with significant benefits accruing. The UK’s lot is very different from Luxembourg’s and a lot closer to the sort of considerations that have kept a peripheral country like Norway out, even if certain of the specific dynamics are different. The national interest appears best served by the UK seeking an entirely different arrangement, since none of the five variables will be significantly addressed by the marginal changes apparently on offer from the renegotiation.

But let’s look a little more precisely at the economics variable and see where the underlying problems for the UK sit, compared with the advantages that some other EU member states may gain.

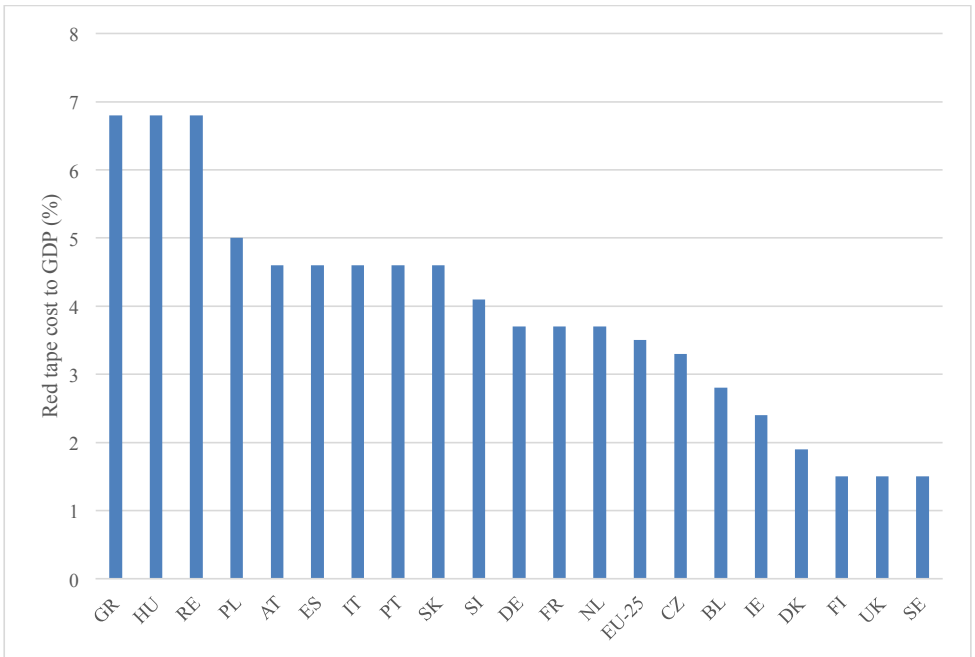
*14 We have seen Spain and France in particular go to the wire with accession states over access to fisheries. But this was impatiently tolerated at the time by Germany as its own direct interests were not significantly threatened.*

*15 In intelligence circles this is known as the Uncertainty Yardstick. Precise terms and the associated percentiles vary from country to country but in this case the author would classify continuity at the top rubric of “almost certain” – which is as good as it gets without holding an existing autographed guarantee from every EU and EEA head of government.*

# Variable Bureaucratic Costs to EU Members

Focusing on a key part of the cost helps explain why this formula is so important. Table A, below, compares the UK's traditional approach to regulatory burdens compared with other EU countries. It shows that adapting to a highly regulatory customs union (the EU) will mean added costs and a loss of competitiveness for a country like the UK.

Table A: National attitudes to red tape – the UK as a low-burden economy in a high-burden Customs Union<sup>16</sup>

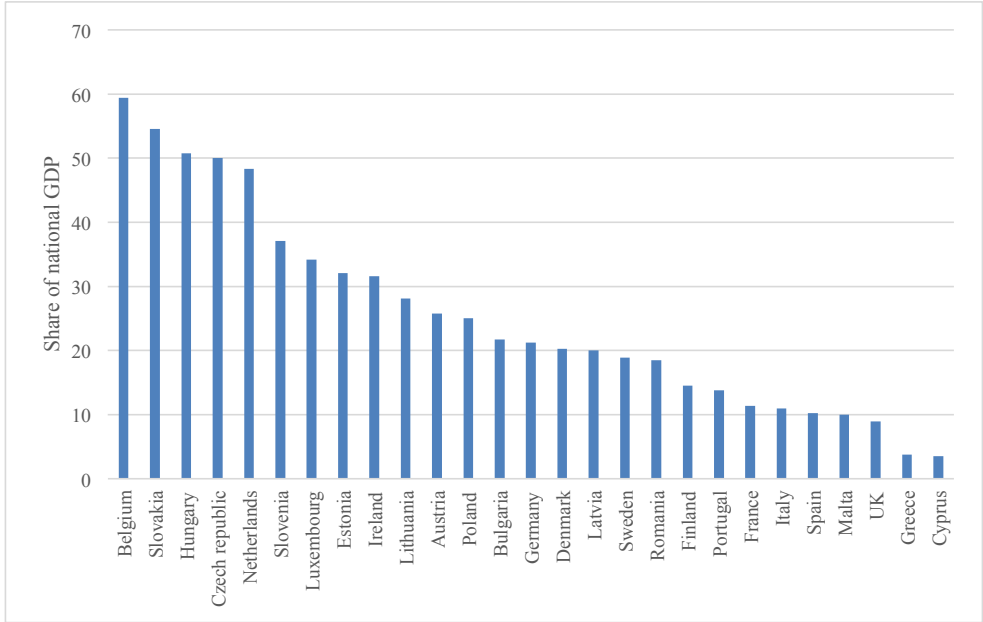


This table is particularly helpful as the question arises as to how much red tape is added inevitably because of international standardisation reached through global bodies; and also the extent to which a civil service, left to its own devices, might be inclined to deregulate after exiting the EU.

<sup>16</sup> Based on Kox: "Intra-EU differences in regulation-caused administrative burden for companies", CPB Memorandum 136, The Hague, 2005. It thus dates from before the Lisbon Treaty, so we can expect UK rates to have increased.

Table B, however, shows the reality is even worse. The UK, in comparison with other countries, relies far less on exports to the EU as a share of its GDP. That inversely means that it is having to apply EU rules – red tape – to parts of the economy that do not need to carry that burden to undertake that trade.

*Table B: Exports to EU as share of national GDP<sup>17</sup>*



The ratio in the UK’s case is among the worst. What this means taken together, therefore, is that the EU’s Single Market is carrying burdens across to business in the UK’s internal single market (i.e. the British domestic economy) by an astonishing factor of around 1:8, or higher if we include the impact on wider exports. Indeed, this is exacerbated because it tends to be a smaller number of the larger businesses that gain most from exporting to other EU states, while their counterparts facing the brunt of the costs with minimal or no gains are worse placed (largely due to business size ) to make efficiency savings to compensate for these extra burdens.

Clearly, some countries with a heavy dependence on EU export markets have a greater interest in heavily regulating their trade than others with higher collateral costs. The UK is very definitely one of the ‘others’. As we know from the debates around the Rebate, it does not even get net injections of EU cash to compensate.

*17 Source: Eurostat. The figures are skewed by the Rotterdam and Antwerp effect (masking external transit through these ports), the Amsterdam effect (masking headquartering of companies), and the Ireland effect (hiding UK exports and focus of trade), though the degree of this masking is open to interpretation. But they do demonstrate variable levels of overall economic integration with other EU states.*

The conclusion, therefore, is that the UK is subject to a higher level of red tape than it would be inclined to apply to itself if left to its own devices; and it is also having to apply it as dead weight costs far more widely than its competitors.

In other words, membership of the EU's Single Market carries disproportionate costs to the UK economy, though it may suit an already highly-regulated economy with low labour costs and a high dependency on exports, such as Hungary.

# The Pizza Treaty Principle

A considerable number of different forms of treaty exist to link states with the European Commission. We might summarise them as follows:

- EU membership;
- EEA membership;
- Customs Union membership;
- Small territory association;
- Customs access plus broad spectrum competences engagement;
- Customs access plus limited competences engagement;
- Bilateral developed free trade deal;
- Free (free-er) trade arrangement;
- Bilateral inter-trading bloc agreement;
- Advantageous trade access for a developing country;
- Non-economic treaty;
- WTO-level default.

Like an add-your-own topping pizza, even within similar brackets of treaty, different forms exist to answer the different needs and priorities of various trading states. Mexico's agreement with the EU had a section relating to mining; Morocco's had more emphasis on fruit.

An audit of the types of agreement that have previously been reached – a majority of which still operate today – reveals that there are even more potential models. There is not an obligation to 'take the EU or leave it'. There is not even an EU/EEA/Out trichotomy. The answer to the meaning of the EU, the universe and everything genuinely in this case does come to 42. Table C sets them out in something approaching a hierarchy of administrative complexity.

On the next page is Table C: Types of agreement



<b>Type of Agreement</b>	<b>Example</b>
EU membership	France
Subsumed political union/merger with nation state	East Germany
EU membership with opt-out	Denmark
European Economic Area (EEA)	Norway
Transitional Europe Agreement Establishing an Association	Pre-accession Bulgaria
Protocol 3 Association	Guernsey <sup>18</sup>
Outermost Region (OMR)	Guadeloupe <sup>19</sup>
Cooperation and Customs Union (CCU)	San Marino
Customs Union	Turkey
Deep and Comprehensive Free Trade Agreement (DCFTA)	Ukraine
Free Trade Agreement plus bilateral(s)	Switzerland, Faroes
Basic symmetric free trade agreement (eg CEFTA) Macedonia	Macedonia
Transatlantic Trade and Investment Partnership (TTIP, pending)	USA
Comprehensive Trade and Economic Agreement (CETA, ongoing)	Canada
Non-Member Member territory - EU exclave	Büdingen am Hochrhein <sup>20</sup>
EU-OCTA (OCT Association)	Falklands
Non-EU OCTA	South Georgia
New Generation Free Trade Agreement	Korea
Bilateral Stabilisation and Association Agreement: Non-reciprocal trade preference agreement with bolt-ons	Macedonia (formerly)
Free Trade Agreement	Malaysia (ongoing)
Agreement on Commercial and Economic Cooperation (ACEC)	Canada (previously)
Agreement on Trade and Commercial and Economic Cooperation (ATCEC)	USSR (previously)
Agreement on Trade and Economic Cooperation	Mongolia
Economic Partnership, Political Coordination and Cooperation Agreement (EPPCCA)	Mexico
Interim Agreement on Trade and Trade-related Matters	Bosnia
Informal backdoor legacy association	Algeria after independence

Trade Agreement	Colombia
Economic Partnership Agreement (EPA)	CARIFORUM (provisional)
Association Agreement and Additional Protocol	Chile
“Association Agreement with a strong trade component”	Central America
Euro-Mediterranean Agreement Establishing an Association (EMAA)	Israel
Interim Partnership Agreement	Madagascar
Comprehensive Partnership and Cooperation Agreement	Vietnam
Partnership and Cooperation Agreement (PCA)	Russia
Trade, Development and Cooperation Agreement (ATDC) - Asymmetric free trade agreement	South Africa
Most Favoured Nation (MFN) plus Joint Programming	Namibia
Generalized/Global System of Preferences Plus status (GSP+)	Honduras
Generalized/Global System of Preferences – WTO default with preferential rates for developing country	Iraq (formerly)
Partnership Agreement	ACP
Cooperation Agreement	Syria
WTO MFN default	China
WTO and Embargo	North Korea

18 This category covers treaty terms as applied for OCTs of an accession state. As they are tailor-made, each one in effect may be considered a distinct form of association, catering for existing historic local subsidiarity, but we group them together here for convenience. Examples include Ceuta, and Åland.

19 For simplicity, we also include in this bracket the quasi-OMR status held by Saint Martin over 2007-2010.

20 This community, along its Italian counterpart Campione d'Italia, belongs to an EU member state but is treated as part of the Swiss customs union. Each is separated from their main territory by about a mile of Swiss canton.

We explore these different options in another paper, and so do not intend to go over them in any depth here other than to demonstrate the immense variety.

This shows that the EU is used to operating in an environment of variable treaty geometry. There is no single-choice, like-it-or-leave-it 'Margarita deal'. Different countries have received their own distinct treaty toppings as a matter of standard Commission practice.

This is hardly surprising when they deal in different exports, have different systems of government and political traditions, have variably developed manufacturers and reliance on raw material exports, and different levels of trade with the EU. What is more surprising is that the Commission seeks by contrast to homogenise as a default among its own EU members as much as it does.

So Commission officials may not like it, and claim the Swiss model of pick-and-mix is unstable and messy, but this expression of treaty aesthetics is not borne out by the reality.

The UK would be quite capable of developing a type of association that best works for it. What broadly might that model be?

# Modelling Gains and Losses from Types of Treaty Association

An audit has been attempted to help answer this. This breaks down the list of treaty types into 15 main categories, ranging from WTO embargoed status to full EU. It takes a number of known case histories where studies have been released of assessed gains when a country moved or planned to move from one category to another.<sup>21</sup>

Collectively, these appear to indicate that major gains happen when shifting from limited trade access to significant trade access, and that the gains then level off or risk falling as a result of the costs associated with increased standardised assimilation into the Single Market.

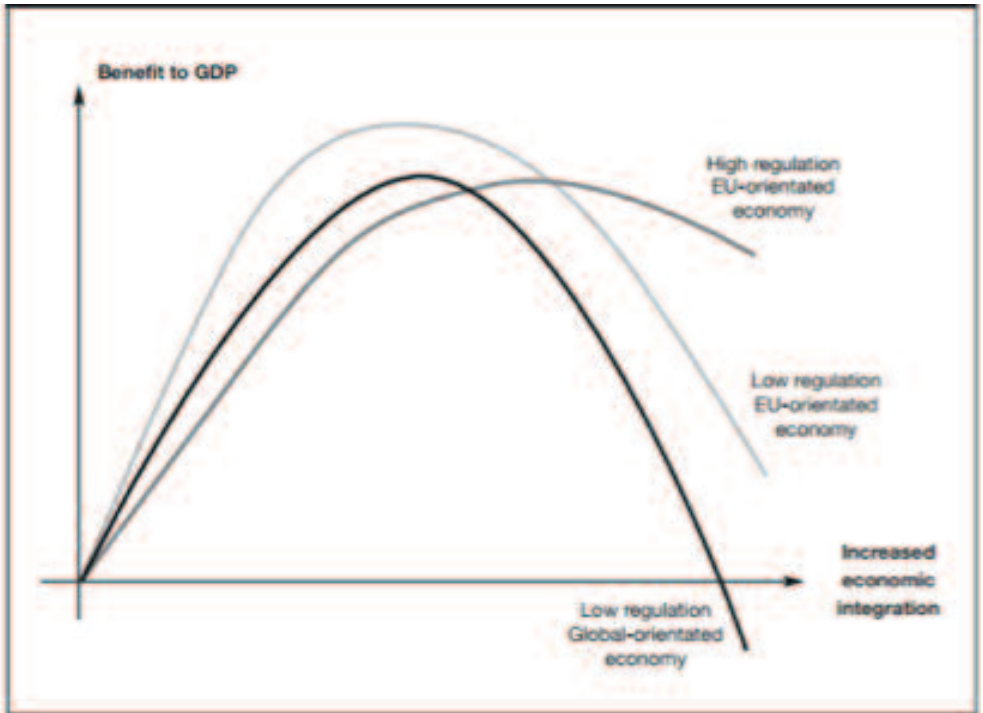
The analysis also suggests that this happens variably, and sets out what it calls the Freedom Curve (see below). This is a form of ‘sovereignty Laffer Curve’, and demonstrates the gains achievable from a variable level of economic-political integration together with introducing the concept of a tipping point beyond which integration becomes politically sought but economically less rewarding, and potentially an outright burden.

For certain types of states, after breaching the external tariff walls of the Single Market, increased integration soon brings extra costs. The impact varies depending on how much the exporting economy is already subjecting itself to the same level of regulation, and the share of the non-EU export market that is also being affected without seeing any gains. This takes us back to the formula we explored before: a nation that is economically dependent on selling to its EU neighbours and which is already attuned to red tape costs and social welfare regulations will fare better than one that is not. At some point, though, for many states and at variable tipping points, it may be that further integration into the EU causes more economic damage than it does good.

On the next page is Graph D: The Freedom Curve<sup>22</sup>

*21 Credible studies are demonstrably lacking for many cases of treaty change, and official audits are not necessarily published. The analysis therefore operates on and acknowledges a limited data set while inviting more to be made available and explored.*

*22 Civitas “Hard Bargains or Weak Compromises”, B. Binley and L. Rotherham (2015), accessed 22/05/2015 at: <<http://www.civitas.org.uk/pdf/HardBargains.pdf>>.*



As a lightly-regulated economy with only a small share of its exports going to the EU, the UK risks integrating beyond its self-interests. Were the EU a static entity, this might be manageable, but the process of ever close union elasticates the curve towards the right.

# The EU is a Bad Fit for the UK economy

The authors draw from this a conclusion that, in treaty terms, there is a ‘happy bandwidth’ in which the UK could operate. In terms of an analogy, it is the temperate range on a world, neither arctic nor desert but suited for life to flourish. Or it is the Goldilocks Zone – the range of planetary orbits in which life can thrive because the distance from the Sun is such that it is neither too hot nor too cold but ‘just right’.

Critically, that optimal range in the UK’s case excludes full membership of the EU.

Instead, the authors suggest that the ‘Goldilocks Zone’ for the UK’s EU association lie somewhere between CEFTA (that is to say some form of Deep and Comprehensive Free Trade Arrangement) and the EEA, but in the latter instance only if the UK was known to deploy its veto and thus the Commission would be required to properly consult it.

Taking the benefits formula, the variable trade costs and red tape practices, the Pizza Treaty Principle, and the Freedom Curve together, the conclusion from the audit is that the UK is economically better placed in a different treaty structure than full EU membership.

This draws us to a key conclusion about the renegotiation process and the small package on the table. The debate should not be over what amendments need to be made to the current EU Treaties to make UK participation less damaging, but rather over what new shape Britain’s treaty of association should take. An entirely separate set of talks needs to be happening, reassessing where entire competences sit and what is best achieved through management by London and by the devolved governments, and indeed lower still.

Since those discussions are not happening now and clearly never will, such a result is dependent on a vote to Leave the EU.

The onus is on the Remain side

"Joining the community does not entail a loss of national identity or an erosion of essential national sovereignty"

Sir Edward Heath, 24 May 1971

“It should be noted at the outset that the Plan for Economic and Monetary Union (EMU) has revolutionary long term implications, both economic and political. It could imply the ultimate creation of a

European federal state, with a single currency. All the basic instruments of national economic management (fiscal, monetary, incomes and regional policies) would ultimately be handed over to the central federal authorities. The Werner Report suggests that this radical transformation of the present Communities should be accomplished within a decade ... it will arouse strong feelings about 'sovereignty', and provoke vigorous discussion..."

"The long-term objectives of EMU ... go well beyond the full establishment of a Common Market and the formal provisions of the Treaty of Rome (which would require amendment). With no exchange control, uniform rates of tax on goods and companies, a unified currency ... and strong central direction of individual budgets, the economies of the members of the EMU would be as interlocked as those of the states of the USA. Indeed, it could be argued that the independence of the members would be less than that of the States, for the latter have more autonomy over their budgets...than would appear to be allowed to the constituent parts of the Community... State taxes are not harmonised in the USA..."

"At the ultimate stage economic sovereignty would to all intents and purposes disappear at the national level... The degree of freedom which would then be vested in national Government's [sic] might indeed be somewhat less than the autonomy enjoyed by the constituent States of the USA."

*Economic and Monetary Union, Foreign Office, 9 November 1970, FCO 30/789,*

*Files declassified under the Thirty Years' Rule, and cited by the European Journal (February 2001)*

While there is a measure of uncertainty attached to leaving the EU, the general concept, direction and achievable intent after Brexit is clear. What is far more of a leap into the dark is what happens to the EU in the future.

That becomes particularly important for a UK in the wake of a Remain vote. In that eventuality, supporters of the process of European integration will consider it a justification for the programme to continue and indeed accelerate.

True, the UK does now have encompassed in law a requirement for a further plebiscite over future acts of "significant" integration. This has some boundaries. It is unlikely that the UK will get a chance to vote in a referendum over any accession treaty for new EU states, even if that generates amendments to the treaties. It is also not foreseen that every use of the passerelle system, allowing go-ahead activity, will for its part generate a referendum either<sup>23</sup>. Certainly, decisions by the European courts, interpreting what powers sit where, will not be subject to popular audit. Additions to the treaties that are not expressly already covered, such as one might

expect with an ambitious new programme of integration, will be down to the Government to decide whether to hold a vote over<sup>24</sup>. It is also possible that the referendum lock might itself be weakened or revoked by a future government<sup>25</sup>. For all these reasons, while the lock was a gain for Eurosceptics, it is only as secure a safeguard as the Eurosceptic Government that is holding the key.<sup>26</sup>

The European Union was set up as “The Project”. Its long term goal is the creation of a political entity, into which all its component member states are subsumed. This is neither necessarily sinister nor Orwellian in its aspiration (though one might argue about individual policy effects from time to time) – but it is a fundamental that anyone assessing participation needs to acknowledge.

The murky part is that this aspiration is rarely acknowledged in public in those states which are most hostile to it. A trawl of Ted Heath’s speeches in particular reveals that he acknowledged the long term direction, but generally in speeches to more closed audiences or when speaking overseas<sup>27</sup>. A review of the ‘million words’ of the accession debates in Parliament also shows the Government’s spokesmen, such as a young Geoffrey Howe as Solicitor General, refusing to concede that integration was going to happen, on the basis that the UK had a veto and might elect to deploy it on a given day. Such a short termist defence is in significant contrast to the opinions being expressed more discreetly within Whitehall (see box insert) which took a more profound view of the types of change that were on offer from an extended policy direction pursued gradually over time.

For this reason, it is incumbent on the Remain campaign to set out where the EU will find itself generationally. It is also essential as part of the negotiations for that vision element to emerge as part of the UK Government’s moves to secure the removal of the reference to an “ever-closer union”.

If the clause is removed but the actual intent, mechanisms and processes behind that drive remain, then such a change constitutes no negotiation victory at all – rather it forms a defeat, as it masks the true road map.

*Private conversation, FCO, during the drafting of the UK referendum safeguard legislation.*

*This indeed even led to Ed Miliband’s proposal to replace the existing lock with a new catch-all one (albeit subject to greater interpretation).*

*This is unlikely, but it is possible. Yet just as a veto on the UK joining the EEA is extremely unlikely, the prospect needs to be conceded in turn by the Remain side as this safeguard cannot be guaranteed either. It hasn’t in particular been tested against a change in government.*

*The existence of an imperfect lock over the long term also risks generating a Peltzman Effect, accelerating widespread small scale integration on the assumption that large scale events will be caught.*

*27 Covered in an essay in Controversies, by this author.*



# ANNEXES: Alternative Prospects

During the Convention on the Future of Europe, a number of alternative models for European cooperation were set out. Some of these were subsequently collated and a handful of these are reprinted here<sup>28</sup>. They demonstrate that while ever-closer union possessed the drab majority, real alternatives were always on the table that could have generated entirely different directions for the EU.

That moment and opportunity has passed. Serious multilateral reform by the EU, which would see the return of competences to national control so they can be better run, is off the table thanks to the ongoing ratchet.

The only hope for reform for the rump EU is by the United Kingdom leaving it. That would generate a financial crisis as well as an existentialist one for many of its members.

A refrain during the Maastricht debate was that ‘if the United Kingdom did not exist, the EU would have to invent it’; the contemporary alternative would more likely see a number of other EU member states, and some future applicants, turning from the membership model to a series of bilateral DCFTA deals that suit the priorities of each state. The United Kingdom may yet make itself a role model that will save Europe from its integrationist folly by its example. Whether a given capital will choose to make use of the opportunity is a question for its statesmen and voters, not ours.

In any event, the following papers, formally submitted to the Convention on the Future of Europe, demonstrate that an appetite for change does exist more widely and that opportunities may indeed yet follow Brexit. The first – The Europe of Democracies – was the Minority Report generated by the Convention. It was included as part of the end text, and indeed formally submitted to the Heads of Government. It was not submitted to the voter and thus constitutes the one element of the process not rejected in the following referenda. Of course, none of the concerns it raises have been addressed in the renegotiation terms.

The second document is A Voice for Millions, notable for its broad review of the failures of the EU system but also for the status of its signatories, some of whom had held the highest offices.

The alert may spot a former Conservative Leader of the Opposition who would subsequently become British Foreign Secretary among their number. Those who suggest that William Hague will be a definite supporter of the Remain side in the referendum – notwithstanding his careful use of the vocabulary of probability in his Telegraph article of 22 December 2015 – might usefully reflect on a document to which he signed up to here.

Top Down is the Wrong Way Up involves a range of Conservative signatories seeking a far more ambitious programme than the Conservative leadership has latterly been testing.

The EU Convention, the Council of Europe and the Future of Europe meanwhile was a contribution from delegates to the Council of Europe, highlighting the advantages of pursuing an intergovernmental line rather than a supranational project. Tellingly, three Conservative delegates to the Parliamentary Assembly of the Council of Europe have latterly been reportedly being binned by Party whips, which hints at the body having some degree of relevance.

<sup>28</sup> *Plan B For Europe: Lost Opportunities in the EU Constitution Debate*, edited by this author. Online at <http://www.brugesgroup.com/Plan-B-For-Europe.pdf> with some hard copies available on request.

# Annex A: The Alternative Report

## The Europe of Democracies

### **Laeken's Lost Missions**

AS MEMBERS OF THE CONVENTION, we cannot endorse the draft European Constitution.

It does not meet the requirements of the Laeken Declaration of December 2001.

Laeken says “the Union must be brought closer to its citizens”.

The transfer of more decision making from member states to the Union, concerning criminal justice matters and new areas of domestic policy, will make the Union more remote.

Laeken adds that “the division of competences be made more transparent”.

But the new category of ‘shared competences’ gives no assurance about how power is to be shared, particularly as member states will be forbidden to legislate in these areas if the Union decides to act. The EU court in Luxembourg will decide on any doubt.

Laeken describes the Union as “behaving too bureaucratically”.

The draft Constitution fails to address the 97,000 accumulated pages of the *acquis communautaire*, and proposes a new legal instrument, the ‘Non Legislative Act’, whereby the non-elected Commission can pass binding laws.

Laeken calls for the “European institutions to be less unwieldy and rigid”.

But the Constitution gives more power to all the existing EU institutions and creates a Europe of Presidents, with more jobs for politicians and less influence for the people.

Laeken highlights the importance of national parliaments, and the Nice Treaty “stressed the need to examine their role in European integration”.

National Parliaments lose influence relative to the Commission, the European Parliament and the European Council. Their proposed new role in ‘ensuring’ compliance with the subsidiarity principle is in reality no more than a request which the Commission can ignore. Not one competence will be returned to member states.

Laeken calls for “more transparency and efficiency” in the Union.

The Constitution concentrates more executive and budgetary power in the very EU institutions which have been the subject of repeated and continuing scandals over mismanagement, waste and fraud.

Laeken suggests the possibility of a constitution: “The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text of the Union.”

The suggestion that the existing intergovernmental Treaties be transformed into a new European Constitution was rapidly seized upon, but without any study of either the alternatives on offer or the long-term consequences of such an act.

Lastly, Laeken's overriding aim was a Democratic Europe.

The draft Constitution creates a new centralised European state, more powerful, more remote, with more politicians, more bureaucracy, and a wider gap between the rulers and the ruled.

The EURATOM treaty was brought into the Constitution in the last moment without any working group having the time to revise it.

The draft EU constitution was never drafted through normal democratic methods

- The applicant countries were treated as observers in the Praesidium and had no

real say;

- Only 3 political families were represented in the powerful Praesidium which drafted the tunnel vision text;
- The members were refused the right to have their amendments translated, distributed, discussed and voted upon;
- The Convention had no Members for that half of the population, which rejected the Maastricht treaty in France or the Nice treaty in Ireland;
- Not one single Eurosceptic or Eurorealist person was allowed to observe or participate in the work in the Praesidium, nor any of its assisting secretariats;

Giscard did not allow democracy and normal voting in the Convention. The draft constitution runs counter to all democratic principles. We want a new draft from a much more representative convention, democratic in content and democratic in procedures.

We hereby submit the following 15 points to the consideration for our Prime Ministers and citizens.

**1 Europe of Democracies:** The European Union (EU) shall not have a constitution. Instead, Europe should be organised on an interparliamentary basis by means of a Treaty on European Cooperation. This will create a Europe of Democracies (ED) in place of the existing EU. If the EU should have a new name it should be Europe of Democracies.

**2 A Slimline Treaty:** The present 97,000 pages of the *acquis communautaire* covering the EU and EEA must be radically simplified. Instead, focus shall be placed on cross-frontier issues where national parliaments cannot effectively act by themselves. Decisions on subsidiarity shall be resolved by the national parliaments.

**3 Open to All Democracies:** Membership of the ED shall be open to any democratic European state which is a signatory of, and respects fully, the European Convention on Human Rights.

**4 Simplified Decision-Making:** The present 30 different ways of making decisions in the EU shall be reduced to two: laws and recommendations. Where qualified majority voting applies, the proposal in question shall require 75 % of the votes to be cast in favour, unless otherwise stated.

**5 A Veto on Vital Issues:** Laws shall be valid only if they have been passed by national parliaments. A national parliament shall have a veto on an issue it deems important.

**6 The Common Core Issues:** Laws shall deal with the rules for the Common Market and certain common minimum standards to protect employees, consumers, health, safety and the environment. In other areas the ED shall have the power to issue recommendations for Member States, which are always free to adopt higher standards.

**7 Flexible Cooperation:** The ED may unanimously approve flexible cooperation for those nations that want to take part in closer cooperation. The ED shall also recognise and support other pan-European organisations, such as the Council of Europe.

**8 Openness and Transparency:** The decision-making process and relevant documents shall be open and accessible, unless a reasonable cause for exception is confirmed by qualified majority.

**9 Straightforward Council Voting:** A simplified voting system shall operate in the Council, which may comprise each Member State possessing one vote in the ED Council. A decision by qualified majority shall require the support of countries with more than half the total ED population.

**10 National Parliaments Elect the Commission:** Every national parliament should elect its

own member of the Commission. The Commissioner shall attend the European Scrutiny Committees of the national parliament concerned. National parliaments shall have the power to dismiss their Commissioner. The President of the Commission shall be elected by the national parliaments. National parliaments shall decide on the annual legislative programme and the Commission shall correspondingly act as a secretariat for the Council and the national parliaments.

**11 No Legislation by the Court:** Legal activism by the European Court in Luxembourg shall be curbed, and the Court shall respect the European Convention on Human Rights.

**12 Partnership Agreements:** The Member States and the ED may enter into partnership agreements of mutual interest with states or groups of states. The ED shall respect the parliamentary democracy of its partners and may assist poorer ones with a financial aid, while fostering free trade agreements.

**13 Better Scrutiny:** The European Ombudsman, the Court of Auditors and the Budget Control Committees of the European and national parliaments shall have access to all documents and all financial accounts.

**14 Equality of Languages:** When legislating, all official ED languages shall be treated equally.

**15 United Nations:** The ED shall not have its own army. Peacekeeping and peacemaking should be mandated by the United Nations and the Organisation for Security and Cooperation in Europe. Member States shall decide themselves whether they opt for a common defence through NATO, independent defence, or follow a neutrality policy.

Contribution by Convention members:

William Abitbol • Jens-Peter Bonde • Per Dalggaard • John Gormley

David Heathcoat-Amory • Esko Seppanen • Peter Skaarup • Jan Zahradil

# Annex B: A Voice for Millions

## An Alternative Model for the Future of Europe

Submitted by Rt Hon David Heathcoat-Amory, MP (UK, National Parliaments) • Jan Zahradil, MP (CZ, National Parliaments) • Alexander Earl of Stockton, MEP (UK, European Parliament Alternate) • Francesco Speroni, MEP (Italy, National Governments Alternate) • Jens-Peter Bonde, MEP (Denmark, European Parliament) • William Abitbol, MEP (France, European Parliament Alternate) • Peter Skaarup, MP (Denmark, National Parliaments) and Algis Avizienis (Lithuania) • Professor Hans Aubauer (Austria) • Dr Karmenu Mifsud Bonnici (Malta) • Ib Christensen (Denmark) • Anthony Coughlan (Ireland) • Nicolas Dupont-Aignan, MP (France) • Margit Gennser, MP (Sweden) • Aslaug Haga, MP (Norway) • Rt Hon. William Hague, MP (United Kingdom) • Jan Lopuszanski, MP (Poland) • Professor Jozé Mencinger (Slovenia) • Dr Ivar Raig (Estonia)

### A Voice for Millions: An Alternative Route for the Convention

Thought is not, like physical strength, dependent upon the number of its agents; nor can authors be counted like the troops that compose an army. On the contrary, the authority of a principle is often increased by the small number of men by whom it is expressed.

Alexis de Tocqueville, *Democracy in America*

In a Single Market, the most precious commodity is freedom.

As contributors to the debate, we bear a precious diversity of views. One principle which we nevertheless share, is the recognition that Europe is made richer by variety.

The framework of opt-out ‘variable geometry’, though some curse it as the bane of uniformity and bureaucratic regularity, is in reality this continent’s greatest treasure. By allowing nations to choose their own paths, we create through free association a political construct in which all may feel at home: a Europe of Many Circles.

Sadly, this vision does not seem to have featured prominently on the agenda of the Convention. This is all the more surprising, as blind harmonisation is the root of so much of the public’s ill-ease towards Brussels.

Many ordinary people within the EU describe it as interfering, elitist, alien, imperial, distant, pretentious, haughty, and undemocratic. This very distance from the citizen was why the Convention was first established at Laeken. But the Laeken mandate is simply not being addressed. Indeed, that mandate is instead being used as an excuse to pursue more of the same.

Like a Dark Ages doctor floundering for a cure, we continue to apply ever more leeches to an ailing patient.

Indeed, the Convention – which has such potential for greatness – resonates with many of the echoes of the failed establishments themselves. On present trends, it will be little understood, indeed noticed, by the public until all key proposals have already been made. Those few who have scanned its activities are already complaining of ethereal politics, where questioners and critics are vastly underrepresented, and some talk of a delegation of the enthralled. Many agree that there is no real debate – certainly, there is no voting – and compare it unfavourably with an Afghan *loya jirga*. Like the inner workings of the EU, it has become a shadowy X-File.

Such criticisms are harsh, but what is clear is that the Laeken mandate has been twisted into a fair where the continent's future is being bartered rather than debated. Working Groups are established to justify the exchange of the unacceptable, where Qualified Majority Voting (QMV) is ceded by delegates in one domain, in return for a brief span of time where the pass is held in another. Such is merely a policy of scorched earth withdrawal.

This is precisely the way that the Community has evolved to date: an eternal shifting concession between integrationists (ever seeking more powers for the centre), and key national governments which would be thrown out of office by their people if ever seen to have delivered it. "Ever-closer union" has therefore become an occult treadmill.

The danger that results is that this Convention will deliver a krypto integrated entity, one which will destroy the nation state and the authority of national parliaments, without acknowledging the need for any replacement. At least open federalists have thought this through: their huge leap, albeit overwhelmingly contrary to public opinion, would restore some structure, even if it is that of a feudal regime of regions owing loyalty to a more distant capital.

Instead, and there is still time to achieve this, the Convention must turn from how to integrate the EU further, to how to make the citizen feel at home.

**Pyongyang Politics:** We have to move away from the system where the system itself is almost sacrosanct, where debate is stifled, and where a 'No' or a 'Nej' expressed clearly by the people is held in contempt by authority. The shadowy method of decision-making, like the Augean stables, needs a flood of waters to sweep them clean. Some advances have been made to open up voting at the Council of Ministers, but the opacity of the Commission, the culture of secrecy in working documents, and the over 500 hidden working groups all need revolutionary reform.

**A Culture of Lobbying:** Companies are already advertising their services as agencies to mobilise street protest in Brussels. Many others are being paid by the EU, to lobby the EU in return. The left hand is paying the right to militate. We need to return decision-making from the subsidised sofa to the national MPs.

**Fantasy Legislation:** Far too frequently, lawmakers legislate for an entire continent in wilful ignorance of the disastrous local application of the law. Whether it is banning safe warm water discharge from whisky distillers (thus expelling established marine life from cold Scottish streams), rules on chocolate, double decker buses, or instructions on how to hold ladders, Brussels is seen as either a joke or a menace. In the case of legislation such as Artists' Resale Rights (*droit de suite*), where a noble principle becomes a law designed to wreck an entire industry seemingly out of pique, the system becomes a tyrant. Either, the EU should not become involved in areas that are not transnational or do not affect the Single Market for another country, or if it does become involved, it should simply recommend. Uniformity is ridiculous across dozens of cultures and thirty degrees of latitude.

**Propaganda:** It is shameful that an entire Directorate General has long been established to sell this European ideal, and mirrored elsewhere within the Community's structures. As the Convention has been able to witness at first hand, taxpayers' monies fund material targeted at schools, pensioners, vulnerable groups, and universities. Considerable sums are already being sent to persuade the voters of Eastern Europe that one perception of the EU is more true than any other. Propaganda lines (which fall under the "B3" budget heading) must be shut down, and their projects transferred and supported through the Council of Europe. Debate is not fostered through indoctrination.

**Accountability:** Brussels is today a fossilised but brittle construct. Faced with the revelations by Bernard Connolly on how ERM rules have been casually twisted and broken; by Marta Andreasen and Paul van Buitenen on endemic fraud; and by Robert ‘Dougal’ Watt on organised crime and systematic cover up; the response has been to shoot the messenger rather than address the issues. Criticism of the institutions has even been compared by the ECJ as ‘akin to blasphemy’. Promised reforms have been stalled, and reformers within the system stifled. How can the public ever hope to have confidence in such a system? An external audit is long overdue, with the power to sack, and reform.

**Trappings of Statehood:** In many political corners, those who claim that the EU is gradually, through “ever-closer union”, accruing to itself the identity of statehood are derided. Some talk of a “federation of nation states”, as if such a dichotomy is physically possible. Politicians must be honest about their ambition for a form of federated structure, or wake up and realise what will come to pass through ever-increasing “pooling of powers”. Those who claim that no such aspirations exist might profitably review what the EU already possesses:

Passport; national identity; anthem; flag; taxes; police college; Supreme Court, and Court of First Instance; regional aid; universities; diplomats; Declaration of Human Rights (Charter); propaganda agency; Central Bank; diplomatic immunity; national holiday; R&D agency; patents office; patron saints (pending post-canonisation process of the Founding Fathers); designated army, navy and air force; police agency (Europol); external borders; president; military HQ; auditors; fraud agency; Cabinet; capital city (shared); development aid; Press training college; passport-free internal travel area; buildings with armed security (sniper rifles and SMGs); Fisheries waters; agriculture policy; budget; Parliament; Intelligence system (Schengen et al); independent civil service; Foreign Representative; currency; nuclear agency; constitution (presently, the Treaties); Ombudsman; libraries; embassies; viceroys; Zollverein; Oath of Allegiance; museum; classified document caveats; TV station; supremacy of Community law etc..

European Law is now paramount, and a majority of national laws are now conceived and gestated in Brussels. We are close to a complete federal system, and the Convention appears set to deliver the framework. We are reminded of the old joke about the lost man asking for directions in the fields who is told, “If I were you, I wouldn’t be starting from here.” But there is still time – barely – to create a model that does not accept this federal or kr ypto-federal path. A frank diagnosis now will save much pain later.

**Freedom to Leave, or to Join:** Our Europe would permit states who want a freer link to take that step, without let or hindrance, and for countries who want to join to some slight or greater degree to do so too. But states which elect to remain outside the Community must be permitted to do so in peace, in friendly accommodation and fair and free trade. EFTA is one model; there are others. A more cooperative form of membership should be in a partnership of the willing, for trade, travel, study, living and working for common gain, and not a form of indentured servitude where some trade privileges follow if states blindly photocopy the rules made by others. “No, thank you,” is an expression that allows friendships to continue.

**Restoration of Powers:** Many policies now run from Brussels have demonstrably failed when run as part of a collective. These must be repatriated. To this end, the Convention should debate which areas are best run by national or – where appropriate – regional assemblies.



Fisheries is a prime example, and both CAP and development aid stand little chance of meaningful reform while collectivised. As a rule of thumb, matters which do not cross borders or affect the single market for other countries should be left for the local authorities to deal with. Brussels must become less of a government, and more of an arbiter.

**Boost national parliaments:** MPs should become the alpha and the omega of legislation, providing the initial stimulus for debate, and granting final authorisation (with suitable local modifications for implementation). MEPs should concentrate on the nitty gritty of the Second Reading, closely liaising with their national parliamentarians.

**Cooperation not Coercion:** Most Convention delegates can think of instances where the Council, through QMV, has outvoted their delegation on an issue they held important, and can recall the outcry back home that followed. How much better to remember that a veto is a right, not a privilege or an impediment. If a state does not want to be a participant, there is typically a good democratic or practical reason. Throwing ever more QMV into the hat will only worsen this deficit. Likewise, we must not be duped into believing that the present mania for 'efficiency' means anything other than widening the gap in scrutiny, restraint and accountability. 'Efficiency' is a codeword for centralisation, and an increased democratic deficit.

**More Justice with the ECJ:** The Court of Justice is not better placed to arbitrate on matters of constitutional importance than bodies historically designated by national constitutions. To quote de Tocqueville, "It is still better to grant the power of changing the constitution of the peoples to men who represent (however imperfectly) the will of the people than to men who represent none but themselves."

These are basic principles which would provide for a good and much-needed debate in the Convention, to lead to a round-table Europe for participation by the willing, not the condemned.

To conclude, experience has taught us that EU harmonisation will destroy those very things which have so contributed to the continent's success over the centuries: personal freedom, and responsibility; accountability; variety; competition, independence; democracy; and cooperation by the willing for mutual benefit. In particular, it will wreck the potential competitiveness of the applicant states by forcing on them 40 years of bureaucracy without those four decades of growth to accommodate it. How many jobs have been created by those 97,000 pages of *acquis*? A truer basis for successful competition would be to let these economies simply get on with it, rather than introduce the germs of dependency. Eastern Europe has not thrown off the shackles of one ideological tyranny, to be encompassed now by paperclip chains.

More harmonisation of powers, more centralisation and more integration are not the answers the EU needs – nor are they even the answer to the question posed by Laeken. But the Convention yet holds within its palm the opportunity for real debate.

We applaud the work already undertaken by the Democracy Forum in pursuing this agenda, and we trust that its ultimate submission will find print in the Convention's final texts, but the Convention can do better yet, and hold a designated debate on *Where Powers Should Lie*. Subsequently, the people for whom this Convention has been set up – the ordinary men and women of Europe themselves – should be permitted to express their opinions on these two very different alternatives through a series of fair and free referenda.



The European Community is an enterprise forged from the wreck of war. Unless we debate these simple truths today, we face the stern inevitability of making of it a harbinger of grave disputes to come.

# Annex C: Top Down is the Wrong Way Up

The Earl of Onslow • The Earl of Liverpool • Rt Hon. the Lord Tebbit of Chingford, CH • Rt Hon. the Lord Hanson • Lord Blake • Lord Pearson of Rannoch • Rt Hon. John Redwood, MP • Sir Teddy Taylor, MP • Michael Fabricant, MP • Andrew Rosindell, MP • John Wilkinson, MP • Murdo Fraser, MSP • Alun Cairns, AM • David Davies, AM • David I. Jones, AM • Roger Helmer, MEP • Sir Richard Body • Christopher Gill (Chairman, Freedom Association) • Cllr Robert Oulds (Director, the Bruges Group) • Dr Lee Rotherham (Campaign Secretary, Conservatives Against a Federal Europe)

## **Top Down is the Wrong Way Up**

For many years, the EU's parliamentarians have been at the very end of the line in dealing with Communities legislation. We have been unable so much as to mould laws until such time as they have been effectively already finalised. National parliaments have, in point of truth, become little more than rubber stamping factories, capable only to shape a text insofar as it has been interpreted so as to conform with national law.

Our Select Committees (despite treaty obligations) complain regularly that they receive proposals too late to even discuss them, and not even necessarily in the correct language.

Our electorates first hear of laws when a handful of observant individuals read the arcana of the Official Journals and brief the Press about what has already fundamentally been agreed, producing often-ineffectual but widespread public outrage.

Our fellow members of the Houses of Parliament express their concerns in debates, only to be told that so-and-so an issue is already long decided, or that such an issue is the preserve of the Commission and not the responsibility of any Minister.

We need to totally rethink the system, to inject democracy into the Treaties.

Our Parliamentary colleague, David Heathcoat-Amory, MP – the Conservative delegate from the House of Commons – is set shortly to produce a contribution which will merit the closest attention. In the interim, as former Cabinet members, members of the European scrutiny committee, or politicians with an interest in the field, we wish to implore the Convention to step back and think big, so that the next IGC is obliged to tackle the crunch issues which risk destroying the ultimate harmony of this continent, and does not just play with what is on the plate.

## **A New Ethos for an Expanded EU**

A radical change of thinking is needed, just as much as a radical adjustment of the founding Treaties. Too often Brussels legislators are seen to interfere to further political Union, rather than because it is the right or logical thing to do. In fact such intervention is the European Union's very *raison d'être*. As stated in the very first recital, the objective is "ever-closer union", an objective which may have seemed distant fifty years ago but which now carries with it profound changes in governance.

This carries marked consequences today. The federalist drive is not only damaging our national constitutions, but as the EU's own opinion polls – as well as recent referenda – show, the federalist project so lacks popular legitimacy that it is a factor in the breakdown of popular faith in democracy.

Some suggest that the answer to this problem lies in transmitting more power to the

European Parliament, and establishing an elected EU Presidency and an EU constitution; in short more centralisation. We maintain, however, that this is an unobtainable and undesirable goal. There is no single demos across the EU to make this feasible, and integration means that government will be too remote.

The goal of the European Union should be to encourage co-operation, not to enforce regulations and attempt to transfer our democracy to the emerging EU Superstate. This is even more important if the EU is to accept new members. What is more, globalisation teaches us that what is needed is flexibility – a Europe of democratic, sovereign, free-trading nation states, that co-operate where necessary but follow their own course when and where appropriate. Europe's history proves that monolithic mega-states do not carry the same economic and social advantages of their smaller, more dynamic cousins where democracy and governance lie closer to the citizen.

The peoples of Europe should now close the book on the notion of ever-closer Union. This is out-dated and out-moded; it is the child of the conflicts of centuries and of a time when bureaucratic control and regulation were seen as a desirable check to the ambitions of demagogic politicians. But time has moved on.

### **Millennium Thinking**

We believe that the role of the Convention on the Future of Europe should be to think again about what course the EU takes, and not to play a part in the federalist's endgame. The ambitions of Monet and Spinelli, from their exiles in London and Ventotene, were noble and for the highest purpose. But their projects were for a federal structure that involved the reduction of national independence and the evolution of a definite, federal construct. We come now to a fork in our common road, where we can opt along either route, either towards this end that now lies in sight of a federal superstate all but in name, or for a style of association more in keeping with the wants and needs of the man on the street.

A new EU should be built, with five guiding principles in mind:

- The protection and enhancement of individual freedom,
- The encouragement of prosperity,
- The respect of the rule of national parliaments,
- The creation of a flexible European Association,
- The establishment of an EU open to the wider world.

Currently, EU law operates as a ratchet. Any area in which the EU has once legislated becomes known as an 'Occupied Field'. The consequence, of course, is that the Communities treaties steadily drift towards the creation of a single European government.

This might have been acceptable a half century ago, when the drift was far off, but the objective is now in sight. Key amendments to the Treaties are badly needed.

### **How this can be Achieved**

Our central proposal to the Convention is that the European Union should be flexible and diverse, not standardised. Power should flow up from the Community's member states, not down from its bureaucracy.

An end must be established to the practice where European law is supreme, resting above that of the nation state. If a parliament finds legislation so objectionable as to overturn it as contrary to the wishes of the electorate, it is far better to find a manner of conciliation than

seen to be forcing upon a democratic state the will of outsiders.

The *acquis communautaire* is a fearsome burden on applicants and existing members combined. A working group should be set up to examine ways to prune it significantly. It should also establish the groundwork for A Repatriation of Powers Conference. All legislation would require a sunset clause.

The sixth recital of the Treaty of the European Communities (TEC) establishes as one of the Community's objectives the progressive abolition of restrictions on international trade. The Johannesburg Conference has lately demonstrated that there the Communities have failed, indeed added to the burdens of third world economies by blocking free trade. The CAP and the whole tariff system needs to be scrapped and rethought, perhaps with national states authorised to pursue like policies individually until such time as each domestic electorate and each national Exchequer learns the costs involved. Likewise, authorisation should be granted for individual countries to agree trading rights with other blocs, such as NAFTA, except in areas where the re-export of produce within the Communities is involved.

It is hard to find any common policy that has so demonstrably failed as the CFP. It is a menace to marine ecology and coastal societies alike, and must be repatriated to national control for fundamental reform before stocks crash entirely, and before applicant fleets and waters accede. We are puzzled why this has not apparently appeared on any Convention agenda to date.

Decision-making in the European Union must fundamentally remain the preserve of its member states, which should make bilateral or collective agreements where they see fit, except in so far as there is a direct negative impact on the commercial rights of other Communities states.

The role of the European Commission would be as a research centre producing no more than proposals, suggesting arrangements, and not imposing regulations and directives. It would cease to be a centralising entity in its own right and become a civil service at the service of national parliaments.

The European Parliament should be abolished, as the only useful purpose that it can serve – the scrutinising of the EU budget – would be no more. With no EU budget, there would be consequently no more taxing of the citizens of the EU's member states.

The role of the Council of Ministers would be to hold regular summits where each member state's executive will agree or not to the proposals on the table. But agreements would only be ratified after full and proper scrutiny, and with the positive assent of each national parliament. Inter-Governmental Conferences would function to produce no more than proposals.

Let Europeans also not forget that the EU is not the only structure by which intergovernmental co-operation can be enhanced. We should cherish the role that the Council of Europe can play; some of the budget lines which are felt to have been EU successes could be passed on to this body.

Meanwhile NATO, the guarantor of peace in Europe for 50 years, must be confirmed in its role.

### **The Consequences of Failure**

The EU, as a concept, is failing us. It is breeding an electorate that feels divorced from its representatives, unable to change anything, and suspicious of its product. At the same time,

it is fatally creating a class of governance which deems it holds a divine right to establish a single European order, where all who disagree with the consensus need simply to be indoctrinated (for the uneducated) or destroyed (for the critical).

If history teaches us anything, it is that such an arrogant abrogation of responsibility can only lead to system shock. Recent elections and referenda have already provided the warning signs. Let us rather cure the ailments and create a community for Europe in which all can live. The alternative is too bleak to consider.

# Annex D: The EU Convention, the Council of Europe and the Future of Europe

*Submitted by Rt Hon. David Heathcoat-Amory, MP*

## **The Views of Five Delegates to the Council of Europe**

Five members of the Council of Europe have come together to remind us of some basic facts, and challenge the present autopilot mode of Convention thinking.

All of us should welcome the forthcoming enlargement of the European Union. But these delegates have a basic message to tell: when EU officials and MEPs say it will reunite Europe, they are wrong.

Europe has already been re-united – in the Common European Home that is their organisation, the Council of Europe.

We must avoid the creation of a second common home which would be at the expense of the Council.

These members, experienced in European politics, fear that the European Union, as it enlarges, will also expand its activities unto areas of their competence.

They fear that the European Union Charter of Fundamental Rights will compete with the European Convention of Human Rights;

They fear that the Luxembourg Court will clash with the Strasbourg Court;

They fear that the broad legal framework that already exists for Europe based on the Council of Europe's 185 conventions will compete with double standards imposed by the EU;

They fear that the work of their Congress of Local and Regional Authorities in promoting local democracy and transfrontier co-operation will be duplicated by the EU;

They fear that the EU Convention will make recommendations to the Inter-Governmental Conference that will threaten the primacy of the work of the Council of Europe, and undermine the assets they have been developing for over half a century.

This Paper appeals to the EU Convention not to re-invent the Europe we already have – the confederation that is the Council of Europe.

## **The EU Convention, the Council of Europe and the Future of Europe**

Paper prepared by: David Atkinson, MP • Baroness Hooper • Sir Sydney Chapman, MP • John Wilkinson, MP • Sir Teddy Taylor, MP

### **A. Introduction**

The EU Convention will pave the way for institutional reform and a possible constitutional framework. Its outcome will have consequences for all the institutions of Europe including the Council of Europe (COE).

The Council of Europe, not the Common Market – the present EU, was established in 1949 as the political forum for dialogue between governments (through the Committee of Ministers) and national parliaments (in its Parliamentary Assembly) to avoid and resolve disputes.

Today, with 44 member states, it is the only pan-European organisation to represent the entire continent. It can fairly claim the greatest expertise in the field of human rights, democratic

institutions, the rule of law, and cultural and educational cooperation.

The Council of Europe represents a confederation of European nation states which, through its conventions, provides a legal framework for the entire continent. Its European Convention on Human Rights, enforced by the Court in Strasbourg, upholds the highest standards of human rights anywhere in the world.

The EU Convention provides an opportunity to confirm the leading role of the COE in the future architecture of the continent. In particular its recommendations to the IGC should avoid competing with or duplicating the work of the Council of Europe.

#### B. Human Rights and a European Constitution

The European Convention on Human Rights, with its protocols, has been the standard setting 'charter' of human rights and fundamental freedoms in Europe for over 50 years. It is required to be ratified by all COE member states. This includes all EU and EU applicant states. It can be enhanced by the addition of further protocols.

The EU Charter of Fundamental Rights, adopted at the Nice European Council, defines the rights and freedoms of EU citizens. Its status will be considered by the IGC. It is anticipated to become legally binding under the European Court of Justice in Luxembourg and incorporated into an EU constitution.

The EU Charter of Fundamental Rights should not complicate or compete with the European Convention of Human Rights. The Luxembourg Court should not confuse the findings of the Strasbourg Court. This can be avoided if the EU were to apply for accession to the European Convention of Human Rights to create a single legal mechanism for the protection of human rights applied on an equal basis to all European states.

The European Convention of Human Rights would be an appropriate basis for any EU Constitution. The European Court in Strasbourg should be recognised as the principle judicial authority of Europe.

#### C. A Legal Framework for the Continent

The 185 Conventions of the Council of Europe, which member states are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, culture, educational and social cohesion, daily life and the media. They can be enhanced by additional Protocols, and incorporated into national laws.

There is no justification for a separate legal framework for the European Union.

#### D. The Role of National Parliaments in the EU

It is anticipated that the EU Convention will make proposals on a more precise delimitation of competence between the European Union and its member states, and the role of national parliaments in the European architecture.

These may lead to the EU Council concentrating on decision making, the EU Commission on its executive role, with legislative tasks performed by the European Parliament.

A role for national parliaments should be introduced into the European Parliament. This can be done by introducing an inter-parliamentary chamber to the European Parliament: a body of representatives of national parliaments to form, in due course, a second chamber.

This inter-parliamentary chamber could have responsibility for scrutinising policies that

continue to be intergovernmental and areas in which competence is complimentary or shared such as foreign affairs, security and defence, police and judiciary co-operation in criminal matters, and other matters concerning the entire continent.

The Parliamentary Assembly of the Council of Europe (PACE) is the only interparliamentary assembly exclusive to Europe, and soon to be representative of every European national parliament.

Members of the national delegations to the PACE are practical politicians representing local constituencies. This double mandate can be used to enhance the parliamentary dimension of the EU.

The PACE can form the basis of any new role for national parliaments that would make up the “democratic deficit” of the European Parliament. That it represents 44 states should be no impediment – rather an asset in being able to promote a constitutional ideal.

#### E. Local Government in Europe: the CLRAE

The Council of Europe’s Congress of Local Regional Authorities (CLRAE) is the only pan-European organisation for promoting local democracy structures and transfrontier co-operation.

The EU Convention should not seek to introduce duplication or parallel activities by the EU which would undermine the CLRAE.



# About the Author

**D**r Lee Rotherham has been an adviser to John Major's whipless rebels, Eurosceptic MEPs, three Shadow Foreign Secretaries, the Conservative delegate to the Convention on the Future of Europe, a delegate to the Council of Europe, and a government minister. Outside of Westminster he has worked in publishing, teaching, heritage, and in Defence.

He has been very extensively published in academia and across think tanks. His publications as author or co-author include *The EU in a Nutshell*; *Ten Years On - Britain Without the European Union*; *Change or Go*; *Plan B for Europe*; *Controversies from Brussels and Closer to Home*; *Manning the Pumps*; *Hard Bargains or Weak Compromises*; *The Hard Sell*; *Bloc Tory*; *Common Ground*; *A Spotter's Guide to Sound Government Policies*; together with the award-winning *Bumper Book of Government Waste and Brown's Wasted Billions*.

Returning to his academic roots, he has latterly dabbled in historical works. These include *A Fate Worse Than Debt - A History of Britain's National Debt from Boadicea to Cameron*; *The Sassenach's Escape Manual*; *The Discerning Barbarian's Guidebook to Roman Britain*; *The Discerning Gentleman's Guidebook to Britain's American Colonies*; and *The Discerning Mercenary's Guide to the Hundred Years War*.

Lee is a reservist in the British army, and has served on three overseas deployments.




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