Reform of the existing European Treaties

Europhiles and Eurosceptics Agree

21 December 2005
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FOREWORD

THE EUROPEAN REFORM FORUM, under the chairmanship of Lord Waddington GCVO, DL, QC has been taking seminal evidence from both sides of the European debate on the workings of the existing European Treaties since the rejection of the European Constitution in France and Holland.

The members of the Forum are set out in the Appendix to this Report, as are the distinguished witnesses who kindly gave evidence to the Forum. We take this opportunity to thank them for the time and effort they have provided and their endorsement of our efforts to let the arguments in which they have participated speak for themselves.

The European debate is at a critical watershed. We have taken the view that for far too long there has been too little attempt made to give both sides of the arguments about the future of Europe and the European Union equal time and opportunity in parallel public discussion.

The format we have generally adopted is to ask the witnesses on both sides the same or similar open-ended questions in each plenary session and give them the opportunity to make their own statements. Furthermore, we have sought to ask the right questions, and in particular questions which are often omitted from the public debate. There have been eight plenary sessions in total, the transcripts of which are contained in this Report. These plenary sessions have been conducted under the chairmanship of Lord Waddington along the lines of a Select Committee.

In order to avoid any bias, we have decided that the evidence should speak for itself. However, we have highlighted certain extracts from individual contributors where they have been particularly original or unexpected and which therefore convey especial interest. What we have discovered is that by applying the technique of transparency and objectivity in public by our method of questioning, we have reduced the atmosphere of ideological confrontation, which has so often permeated European debate. We have learnt that the issue is now regarded by pre-eminent commentators from all sides of the debate as so important as to demand this kind of treatment. The consequence is a calm and reasoned analysis which emerges from the discussions on all sides. With this analysis comes a powerful conclusion that all is patently not well in the European Union and with the existing Treaties. Many of the EU’s foremost advocates recognise the need for urgent deep-rooted reform. We hope that the model we have followed will encourage the media and the BBC to adopt a similar approach of asking difficult but well-informed questions and avoiding the culture of assuming that the very existence of the Treaties presupposes that they are, or should be, set in concrete.

We would hope that the compilation of evidence by the Forum, both oral and written, will serve as a continuing resource for interactive debate via our website and those for example of the European Commission, universities (including the Open University), the BBC, think tanks, and professional and trade associations and others. Written evidence submitted to the Forum will be available on our website in the New Year.

Clearly we would not expect everyone to agree with all the questions asked or conclusions reached, but we are convinced from the evidence we have received that a balanced exchange of views and reformulation of the existing Treaties is not only obtainable but is necessary in the public interest.

We therefore invite further contributions from others from all walks of life and political, commercial and professional interests who wish to participate in this evolving process. We would suggest that they engage with us in asking other questions or making their own statements and thereby enlarging this dialogue about the existing Treaties, making proposals for reform, however radical. We make this invitation to those in the United Kingdom, elsewhere throughout Europe and the wider world. We will sustain this dialogue through our website over the coming months.

Rt Hon. Lord Waddington, GCVO, DL, QC
Chairman
Evidence to the European Reform Forum
Universal Call from Both Sides of the European Debate
For Amendment of the Existing Treaties
And for Reform of the European Union

Witness Quotations

Democracy and Accountability in the European Union

Lord Wallace of Saltaire
Professor of International Relations at the London School of Economics

Reform of the Commission and European Parliament

I am a strong believer in the need to reform the Commission. We have the problem that the ethos of some sections of the Commission – I could name names, but will not – believe that they see the interests of Europe much more clearly than everyone else and think that it is their job to regulate Europe. The whole idea that there was a single European social model, for example, is part of that. There is not a single European social model; there are lots of different diverse things. However, there are those in the Commission who think that there is and that they need to impose it.

One has to say, however, that efforts, such as strengthening the European Parliament to bring in democracy at that level, have not been immensely successful. From my own observations I can say, although some people in my party in the European Parliament would be deeply upset with me, that the European Parliament is not part of the solution. (Page 17)

The Rt Hon the Lord Howell of Guildford
Conservative Spokesman on Foreign Affairs in the House of Lords

The Stakes are Enormous – need for anchor of National Parliaments

I make a preliminary observation that this is the most important matter that I have ever been engaged in well over 40 years in politics and in five political careers, some of which were of more dubious worth than others. The stakes are enormous and the need for clarity and a right way forward is immense, and the penalties for getting it wrong are vast.

To take up one of the last questions I heard on entering the room, my whole view is built on the prospect that the governance of Europe must be anchored in national parliaments. (Page 18)

Frederick Forsyth
Author

Radical reform of the EU and the CAP

I want us to be given a chance to vote for root-and-branch reform of the European Union, as it is presently constituted, or at least our relationship with it. If the other 24 nations in Europe wish to dance on a head of a pin, I am a tolerant fellow…

We do not have such a person in office in this country, but we need our Alexander. I think that the Gordian knot is, in fact, the Common Agricultural Policy. If you decide not to proceed to fund the Common Agricultural Policy, within six months the entire European Union will go back to first principles and must renegotiate with you and, indeed, with itself. (Pages 12, 13)
Witness Quotations

**CHARLES GRANT**
Director of the Centre for European Reform

**Variable geometry for enlargement instead of democracy**

The way forward has to be variable geometry…

I did not say that the solution to the democratic deficit was variable geometry. That was my possible solution to the problem of enlargement. The democrat deficit involves a different set of issues, although there is, of course, a connection. (Pages 26, 27)

**Objects to federalist model, but prefers status quo**

I am happy for lawmaking to be done by directly elected MEPs and by Ministers elected by their national systems. I do not see an alternative. Such a system is possibly not ideal, but I am unsure whether anyone has thought of anything better, except the more federalist model that both you and I would not like. (Page 29)

**LINDSAY JENKINS**
Author and journalist

**Regional policy based on bribes**

While we were still negotiating to join the EEC in the 1960s, it fleshed out its regional policy which is skeletal only in the Treaty of Rome in 1957. Regions were further defined. Regional economic assessments became mandatory and led to EEC grants, which are bribes in all but name. In the UK, that was reflected in Royal Commissions, which, in the words of Lord Redcliffe-Maud, would cause “a holocaust of local authorities … the primrose way to the everlasting bonfire.” (Page 49)

**The Rt Hon John Redwood, MP**
Former Shadow Secretary of State for Deregulation

**Insistence on use of veto**

One simple device, which I want Britain to reclaim through negotiation, is the veto over all proposals. If the EU is an association of states that find things that they can do best in common, we should not fear the restoration of the veto. If it is a unitary state in the making, with a strong central Government who wish to discipline Member States, the veto has to disappear. (Page 52)

**The Rt Hon Denis MacShane, MP**
Former Minister for Europe

**Calls for “a lot of reform”**

If I felt that the European Union was a negative force, I would be the first to say that we should pull out of it, but I can genuinely report to you that, with all its failings and faults – I have catalogued them well enough – the European Union we have today is a force for good and, if a lot of reform goes through it, will be a force for a lot more good, but that is another debate. (Page 58)

**Keith Vaz, MP**
Former Minister for Europe

**Calls for a “new course for the Union”**

However, now is the time for us to chart a new course for the Union, following the defeat in France of the referendum on the Constitution. We now have an opportunity for a real engagement with the British on what Europe means to them, so I am happy to be here and to answer your questions. (Page 58)
**Economic, Commercial and Trade Policy and Competitiveness**

**Ronald Stewart-Brown**  
Director of the Trade Policy Research Centre

**EU Trade Policy discriminates against Anglosphere nations**

It is astonishing that the EU has negotiated or is negotiating some form of preferential trade arrangement with all but 10 countries throughout the world, of which six are the English-speaking countries to which I referred. There is serious discrimination in Brussels' trade policy against our natural English-speaking links…

I have calculated some striking figures, which is why I believe that Brussels is effectively discriminating against this country's relationships with its English-speaking friends. *(Pages 35-36)*

**Concern about the European Union is growing in accession countries**

My impression is that Eurosceptic thinking is far more advanced in this country than in any Member State of the European Union. I suspect that in some of the newer European countries, such as Poland and the Czech Republic, there may be growing concern about the way in which the EU is developing at present and, thus, a growing interest in possible alternatives. *(Page 35)*

**Rodney Leach**  
Director of Jardine Matheson

**Inherent contradictions of economic philosophy between Member States**

The central problem facing EU trade policy is the incompatibility of rival Member States’ economic philosophies. An extreme example is that of France and Britain. France believes in protection against what it sees as a threat to European industry from those two giant new entrants to the global trading world, China and India, which will soon be joined by Russia and Brazil. Britain, however, believes in free trade, to give consumers the benefit of inexpensive goods and to open up the Asian markets, to make them wealthier by trading with them – opening them up to high value-added Western services and technology – like the City, for example. France believes in national champions. We believe in open competition. France believes in regulation. *(Page 36)*

**Professor Iain Begg**  
Professor at the European Institute, London School of Economics

**EU is political and economic**

To me, the EU goes well beyond just the economic. It encompasses a range of political ambitions that reinforce, rather than contradict, the economic case. I further stress that I am fairly relaxed about where the decision-making powers should lie. It does not bother me whether that is in Edinburgh, Carlisle, Brussels or anywhere else, as long as the right decisions are made. I do not think that we should always and everywhere insist on sovereignty at all costs. *(Page 39)*
Witness Quotations

**Will Hutton**
Chief Executive of the Work Foundation

Europe's shortcomings on progress towards Lisbon

I do not know whether everyone is aware of this, but I was the rapporteur of the Kok Group – a task force put together by the EU heads of state – reported last November under the chairmanship of Wim Kok, the former Dutch Prime Minister, on why, halfway through the Lisbon process, progress has been so disappointing. As rapporteur, I wrote the Kok Group reports, so you may want to ask me a few questions about that. It was quite an aggressive analysis of the shortcomings of Europe's progress towards Lisbon and of the governance and procedure by which it is trying to implement it…

The presumption embedded in the heart of the European Treaties is that the purpose of the whole exercise is openness. The competencies of the Commission and the *acquis communautaire* are largely about ensuring that those freedoms hold. *(Page 14)*

Criticism of the CAP

I share the criticisms on agriculture, and I note that spending on the CAP in 2013 will be about two-fifths of the EU budget against about two-thirds 25 years ago. There is some progress, but it is too slow. That should be noted. *(Page 14)*

Business regulation is counter-productive

On business regulation, I wrote the section in the Kok Report that said that we had reached a tipping point. Business regulation in Europe has probably become counterproductive, and the presumption should be that regulation ought to be used as a last resort. *(Page 14)*

Gordon Brown's Treasury paper on reform of the EU

I thought that Gordon Brown's paper was a powerful piece of analysis. *(Page 15)*

Rejection of customs union

You have the remnants of a customs union in many areas, but it is so porous that it no longer makes sense as a customs union. *(Page 15)*

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**Reform of the CAP and CFP**

**Professor Allan Buckwell**
Chief Economist and Head of Land Use at the Country Land and Business Association

Criticism of the CAP

Given that the CAP was a necessity, it has not especially been a successful set of arrangements for farmers or consumers. *(Page 65)*

The CAP has not helped consumers much in the sense that food security and reliability are better served through trade than by (the common agricultural) policy. The CAP has produced a high-price regime. Not many parts of the world have higher food prices than Europe; Norway, Switzerland and Japan have, but we would struggle to name any more countries. *(Page 65)*

CAP and the Rebate

I think that the rebate has been an obstacle to sensible reforms of the CAP. For example, the fact of the rebate has made the United Kingdom extremely reluctant to use what we now call the Pillar Two measures, the rural development measures, of the CAP. *(Page 67)*
CAP has created a single European market
To reiterate, the achievement of the CAP and its purpose was to create a single European market, a tariff-free area. It has not been sufficiently recognised that that is a unique arrangement in the world. There is not another area that has free trade in agricultural goods. The CAP has not been resistant to change. It has reformed recently. (Page 69)

Farmers support CAP and EU
…if Britain were left to its own devices, I am sure that it would take a more liberal position, the impact of which on farming – in the short term, certainly – would be negative. I have no doubt about that. That is why farmers are generally supportive of the CAP and the European Union. They perceive Europe as being more concerned about agriculture than British Governments of whatever colour. (Page 69)

Common Fisheries is a disaster and unreformable
The Common Fisheries Policy is a biological, environmental, economic and, above all, social disaster, and is quite unreformable. (Page 70)

The answer is bilateral agreements between competent fishing nations. (Page 71)

Abolish Quotas
… quotas are a disaster. They lead immediately to the disgusting practice of discards. At the moment, the European Union puts back more fish dead as pollution into the sea than we land for human consumption. (Page 71)

Yes, leave the Common Fisheries Policy and have a system based on my model, which is that of no quotas. It is based on days at sea and absolute compulsory landing of everything that is brought back. The European Union flies blind. It does not know what is going on. That is why there is complete lack of trust between the fishermen and those who impose the law. (Page 71)

The EU is a laughing stock for its fisheries management
I spent a year studying the world’s fisheries and I found unsustainable trends in fish eating, combined with the gallop of modern technology; it is not just a creep; it is a gallop. That compounds the ancient pattern of mining out the seam and moving on. I found that the EU was a laughing stock throughout the world for its fisheries management and that the problem was worse than I thought it was. (Page 72)

Fisheries policy “must stop”
The system must be taken offline and an institution must be set up to do that because the Commission proposes and the Fisheries Minister's dispose like irresponsible children. That is unacceptable to any citizen. It must stop. We have to get rid of that system. It is fundamental for the European system. (Page 74)
FOREIGN POLICY, INTERNATIONAL RELATIONS AND DEFENCE

Dr Richard North
Political analyst and author

Bypassing the existing Treaties
The Member States – the primary drivers – are using intergovernmental agreements within the loose framework of the consolidated Treaties, but the key executive instruments have been separate intergovernmental agreements, which have not rested primarily on the existing Treaties. (Page 80)

Galileo underwrites European security defence policy
We must step sideways and read the Commission’s defence White Paper, which says boldly and clearly that Galileo is intended to underwrite the European security defence policy. (Page 81)

The Rt Hon. the Lord Owen
Co-founder and former leader of the Social Democratic Party

Stop remorseless movement toward foreign and security policy
It is also essential that the pretence that the CFSP is now moving remorselessly towards a single foreign and security policy is nipped in the bud by refusing to allow the title of the High Representative for the CFSP to become the EU Minister for Foreign Affairs. (Page 83)

Absolute national independence needed for conduct of external relations
There can be no compromise on the international legal position or the rules of international law that national independence in the conduct of external relations is a criterion of sovereign statehood. There must be no uncertainty about primacy in the conduct of foreign affairs lying with the Member State or about the nature of European Union competence in the conduct of foreign and security policy. There was considerable uncertainty on both matters in the proposed Constitution. If we allow uncertainty over whether Member States have the power of independent action in foreign affairs, we call into question the separate nation status of Member States. (Page 83)

Stop institutional creep in Europe
We must be vigilant and stop the institutional creep. That is the way in which Europe has built itself, sometimes rather successfully, but the alienation from its public and the mismatch between what it is allowed to do and what it does has grown to be a source of intense irritation, hence the rejection of the Constitution. (Page 86)

“Only complete fools would refuse to re-examine their position” on the euro and EU Constitution
My view, which might be complacent, is that having been defeated hands down on the euro and the Constitution, only complete fools would refuse to re-examine their position. I cannot find a single prominent person who was in favour of the euro who now tries to advocate euro membership. Indeed, most of them pretend that their position was different. I am beginning to find a similar situation regarding the Constitution. (Page 86)

The Rt Hon. the Lord Anderson of Swansea
Former Chairman of the Foreign Affairs Select Committee

Gordon Brown “less blind and more sceptical about the EU” than Tony Blair
It might well be that Maastricht will be judged to be the high-water mark of integration, contrary to the pressures that you see every day in the European Parliament. I am fortified in saying that, not only by the current problems but in looking two or three years ahead, when – this is not a partisan point – Gordon Brown will be the leader of the UK. Both the Prime Minister and Gordon Brown are Atlanticists, but Gordon Brown gives every impression of being less blind and more sceptical about the EU. (Page 90)

“European mix will be messy”
Inevitably, our European mix will be messy, because there are clearly great conflicts within Europe. Understandably, there will be those who emphasise diversity, others who seek centralisation, those who look to the open seas, and those who are more protectionist in their background. (Page 90)
GENERAL THE LORD GUTHRIE OF CRAIGIEBANK

Sceptical about European defence

In 1998, at St Malo, although I was sceptical about European defence, I understood that the Government considered that it was part of European policy which they could lead on, because we had stronger, better and more experienced forces than almost any other country in Europe. I hoped that if the Europeans got their act together, they would spend more money on defence.” (Page 88)

At the time, I viewed that as barely necessary because I supported the idea of Europeans being separable from NATO for certain things, but not being separate. I was worried that British Forces could – unless great care was taken – be brought down to the standard of the other Europeans. (Page 89)

European defence initiative not a success

The European defence initiative has not been a success: it has not fulfilled the promises that we thought it would. I see few indications that it will get better. (Page 89)

Drifting in the wrong direction

… we are drifting in the wrong direction. As I said, there is a danger that we will be dragged down and that something in which we rightly have pride – the defence forces of this country – could be damaged if we lose sight of what forces are really for. They are not for gesturing; they are for hard military capability. (Page 90)

HUMAN RIGHTS

DR ERIC METCALFE
Director of Human Rights Policy at JUSTICE

Parliament and the Human Rights Act

I am not asserting that having made the Human Rights Act as a matter of constitutional settlement, that binds Parliament completely and forever from repealing it as a matter of technical law. I am saying that it would be profoundly dangerous for the protection of fundamental rights for Parliament to do so, unless it had some superior mechanism by which fundamental rights should be protected. (Page 99)

Parliament and the European Communities Act 1972

If Parliament is deeply unhappy with the judgment of the ECJ on fundamental rights and sees no opportunity to assert its own view under the Treaty, it has what one might describe as the nuclear option: it can repeal the European Communities Act. I am not suggesting for a moment that it should, but, as a matter of constitutional law, that would be an option open to it if it really wanted to make it clear that it fundamentally disagrees with an ECJ ruling or some other European Union matter. (Page 99)

28 days may be incompatible with the Human Rights Act

I would go further than that. If someone were held for 28 days under the proposals, a British court might make a declaration under the Human Rights Act of incapability. It really comes down to the extent of judicial control. Another European jurisdiction might have much more judicial control at an early stage, but some jurisdictions do not have the distinctions of charge that we have. In France and Spain, for example, the judge will take control of the police investigation at an early stage – within 48 or 72 hours. That is a form of judicial control that can be put in place to allow for longer periods of detention. The question is whether we really want judges in this country to be actively engaged in police investigations. It is different in France and Spain because the judges are given training; that can be done following on from university. I am sceptical whether British judges would consider that they had the qualifications to tell the police how to conduct investigations. Nor am I sure that we would want such a development. (Page 101)
GARETH CROSSMAN  
Policy Director at Liberty

The Human Rights Act embody many of the UK’s common law traditions
When we talk about human rights, it is easy to be blinded by the European concept, but the European Convention and, indeed, the Human Rights Act embody many of the United Kingdom’s common law traditions. (Page 95)
I like to think of human rights as a culture of rights rather than just a series of convention articles. (Page 95)
I would not say that there are adverse consequences, but the perception that the Human Rights Act is accessible only to certain people is somewhat unfortunate. (Page 96)

Parliament is supreme
… Parliament is supreme.
… Parliament should, of course, have the final say, because it is sovereign. (Page 97)

RICHARD PLENDER, QC  
Barrister and Specialist in European Community law

Reservations about European adjudication on civil rights
My interest is in European law. One of my current concerns is with the Charter of Fundamental Rights. Mr Heathcoat-Amory referred a few moments ago to the distinction between hard and soft law. I prefer to see the Charter as a marriage between civil rights and so-called social rights. It is an unequal and uneasy marriage. I have reservations about the suitability of international or European adjudication, even on civil rights – on all civil rights. (Page 102)

Social term unsuitable for judicial determination
A text that includes social terms – or reference to a Charter containing social terms – inevitably presents the court with the necessity of applying standards, which are unsuitable for judicial determination. (Page 102)

Danger of ‘social provisions’
I do not object to it saying that it has had the Charter in mind, although I see great danger in the social provisions. (Page 104)

The problem of the supremacy of Community law
That is only one example of a number of ways in which we could fashion our law so that we are inconsistent with what the Court of Justice says is Community law. We still have the problem of the supremacy of Community law, as declared by the Court of Justice in the case of Costa v. ENEL. (Page 105)
The Existing EU Treaties

Derek Scott
Former Economic Advisor to Tony Blair

Economic reform impeded within EMU

… economic reform is impeded within EMU, not only by the lack of political will to implement reforms, but by the economics of the single currency. In essence, economic reform is concerned with structural changes to improve the function of labour, product and capital markets.” (Page 110)

EU probably heading crisis

Bad economics makes for bad politics and the EU is probably heading for the biggest economic and political crisis in its history. (Page 110)

Economic policies must be returned to Member States

… it is doubtful whether a country can combine economic dynamism with overall stability if it cannot run its own monetary policy. Given that we have got it, the least we can do is to make certain that economies within EMU have as much wriggle room as possible. To that extent, those areas of policy that affect countries’ economies, particularly labour markets, should be handed back to Member States. (Page 110)

Reorganise allocation of powers

I am arguing that before the crisis, which may or may not happen, it is important to do what we can – for economic and political reasons, and because there are more Member States – and do what the Laeken summit asked people to do, which is to consider the allocation of powers between the centre and Member States. (Page 111)

… the clear lesson of the two referendums is that more powers have to be handed back to Member States. (Page 112)

Danger of implosion

The problem is that if we do not put in place an alternative mechanism, everything may implode to everyone’s disadvantage. (Page 112)

Professor Len Shackleton
Dean at the Westminster Business School

Amsterdam Treaty and labour market legislation

One of the problems is that, under our ratification of the Amsterdam Treaty, European directives have powerful force in determining domestic labour market legislation. (Page 113)

EU over-regulation leads to 20 millions unemployed

My feeling is that it is not so much Britain that is losing out, but the 20 million unemployed workers across the European Union who are over-regulated in labour market matters. We ought to stay in there fighting to move towards subsidiarity that gives greater possibilities for experimentation and keeps the regulatory impulses of the European Commission under some control. (Page 113)

Need to change the nature of EU

We need to change the nature of European Union. It has changed over time and it can change in the future. I do not take the negative view that absolutely everything is determined and the only way to resolve the problem is to pull us out. (Page 113)

Lord Pearson
Co-founder of Global Britain

Need for withdrawal

We see no realistic alternative to withdrawal because of the requirement for unanimity in the Treaties before the acquis can be reduced. (Page 115)
**Lord Stoddart**
Chairman of the Campaign for an Independent Britain

EU = further integration

We must also understand that remaining in the European Union means that we accept further integration. It is going on every day. *(Page 115)*

**Ian Milne**
Director of Global Britain

EU is not reformable

I confirm what my colleagues have said. I do not think that the European Union is reformable in any sense, apart from in trivial, cosmetic aspects. The fundamental thing is that there is no general will on the continent – this applies well beyond France and Germany – to do anything, but proceed along the path that has been more or less set in concrete for the past 50 years. *(Page 115)*

**Lord Dahrendorf**
Former European Commissioner

Anything parliamentary in the EU is an afterthought

It has always been my impression that anything parliamentary in the European Union construction is an afterthought and has never had a proper place in the scheme of things. *(Page 129)*

Serious questions need to be asked

The constitutional arrangements of the European Union have worked about as well as could be expected for a long time, but there are now some serious questions to be asked. *(Page 130)*

The failure of Lisbon built into the whole project

Lisbon was essentially an attempt to ask the less-willing members of the EU, notably France and Germany, to modernise and open up for global markets and the modern economy in a global environment. There is not the substance in the Treaties to enable anyone to translate it into EU decisions. The failure of Lisbon is, in a sense, built into the whole project. It is a project of things that are desirable but not part of the EU as it exists today. *(Page 130)*

No such thing as a ‘European people’

I believe that there is no such thing as a European people, and I am puzzled by the extensive debates about European identity that go on all over the place. My view of Europe has long been different from the sentimental or romantic ambitions that you discover in some speeches by European politicians. To me, the European Union is a step in the direction of government beyond the nation state wherever it is necessary, almost with a view to creating worldwide arrangements, which would be more appropriate than regional arrangements at this time. Despite all the protestations, I regard the attempts to create the notion of a United States of Europe as vain and misleading. *(Page 130)*
JAMES WALSH
Head of European and Regulatory Affairs at the Institute of Directors Policy Unit

Too much constitutional reform; not enough economic reform

Our view [Institute of Directors] is that the EU's top priority should be economic reform to help Europe respond better to the challenges of global competitiveness. As you will know, for many years Europe has concentrated less on economic reform and more on constitutional reform, and on building new constitutional structures at EU level. We feel that that has held Europe's economy back. (Page 132)

Real reform of the CAP and real economic reforms needed

We recently set out proposals for reform… They included strengthening the internal market and the principle of subsidiarity; real reform of the CAP – or perhaps abandoning it altogether, which would be even better – the removal of all external tariffs as a real step towards global free trade, which would represent real economic reform; and crucially, accepting that individual Member States have no mutual responsibility for unfunded pension fund liabilities. That could be written into the Treaties, if the Member States wished it. (Page 134)

PROFESSOR THE LORD NORTON OF LOUTH
Former Chairman of the House of Lords Select Committee on the Constitution

Importance of national Parliaments

There is recognition of the importance of national Parliaments in protocols to Treaties, but that is recognition of the need of national Parliaments to be kept informed. They remain excluded from the decision-making process, the formal process, within the institutions of the Union. The existing Treaties are weak in how they address the issue of national Parliaments. (Page 135)

There is a need to extend the involvement of national Parliaments in the process. If such a process is to be worthwhile, we need to move more in the direction of, say, a red card procedure than a yellow card procedure, which has little substance. It is a little like legislation requiring a body to 'have regard to' something. All that means is that it must ensure that it has read it and then the body can ignore it. (Page 136)

There is no European demos

That fundamental accountability is denied within the EU, partly because there is no European demos. It has no party that transcends national boundaries and can have that accountability. Anyway, the institutional structure militates against that because of the nature of the Commission. That institutional aspect is an inherent problem as presently structured. (Page 137)

DAN HANNAH, MEP
Member of the European Parliament for southeast England

Success of EFTA

According to the OECD, members of EFTA have a per capita GDP of slightly more than twice on average than the members of the European Union. Their unemployment is lower; their inflation is lower and, surprisingly, their interest rates are lower. Bizarrely, their trade rate and exchange rate are more stable than that of the EU. (Page 138)

EU is beyond reform

I am not a reformer at all. I think that 40 years of British policy of getting in and changing the thing have failed. It must be clear to the meanest intelligence that the policy that we have pursued right back to Macmillan's first application of creating an Atlanticist free market Europe of nations has resulted in a dispensation further than ever from those objectives. It has plainly not worked. I am not advocating that chimera of changing the thing. Like the late institutions of the Eastern bloc, they are beyond reform. They are incapable of self-regeneration. (Page 139)
The Plenary Session commenced at 11:00 am.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary)²: Good morning, ladies and gentlemen. This is our first Plenary Session. We have received a big response from people from all sides of the debate who are willing to give evidence. We hope to hear four witnesses today on the theme ‘Democracy and Accountability in the European Union’. We shall, of course, break at 12 noon for the two minutes’ silence.

We are fortunate to have Frederick Forsyth with us today. I welcome him and thank him so much for being here. It is entirely up to you, Mr Forsyth, but I suggest that you make a short opening statement, after which I shall ask members of the team to put questions to you.

Frederick Forsyth, CBE (Witness)³: In essence, I take the view that democracy is but a word. It is an overused word, a misused word, a word that applies, for example, to the People’s Democratic Republic of Korea – which is North, not South – the Democratic Republic of the Congo, which is a charnel house, and my own bailiwick, the German Democratic Republic, which is a Soviet satellite. In other words, if democracy is to be anything more than a debauched word in our language – and, indeed, in almost every other language on the planet – there are certain criteria that must be fulfilled. Certain preconditions have to be met and, if they are not met, we are just using an empty and meaningless word.

First, in the paper that I have submitted, I have divided our requirements into five. There is an attitude between governors and the governed. If the governors were treating the governed with an element of respect and if the governed were treating their governors with an element of trust, we would have a healthy society. In my view, Europe is heading down the reverse direction, with mutual antagonism, thinly veiled dislike and from the street towards the palace there is deep distrust and the conviction that those who govern are mendacious and tricky.

My second requirement is that of aim. What is the aim of democratic, good government? It is the maximisation of the security, prosperity, freedom and contentment of the people – neither more nor less. Such matters are diminishing within the apparently about-to-be-born nation state called the Republic of Europe. Those things are not increasing as the years go by.

For democratic government to truly exist, those within it must be elected by fair election, universal adult suffrage. There must be equal funding between competing parties, a level playing field and the election must be supervised rule by all parties. During the period of government, there must be constant scrutiny. There is talk of opposition and accountability, but neither will be volunteered. That is too much to ask. Those in opposition really wish their doings to be gone over, so scrutiny is vital. Scrutiny comes from opposition and consensus politics cannot lead eventually to a functioning democratic state. It can lead only to what I call a carve-up.

The last requirement is the sanction of removal from office. Short of impeachment, the ultimate sanction in office is the removal from office and that, too, must be a democratic process carried out in a free and fair manner so that those dissatisfied with the performance of those who rule over them may require them to depart. In each of these – democratic election, constant scrutiny and required departure for those who fail, and fail badly – the generic word ‘Brussels’, meaning not the capital of the Belgians, but the governmental construct that has been erected for 47 years, is failing in all areas.

Rt Hon. Lord Waddington: Thank you very much indeed. It would be appropriate for Lord Weatherill to ask the first question, having been one of our most important guardians in parliamentary democracy as a former Speaker.

Rt Hon. Lord Weatherill, DL (Former Speaker of the House of Commons): Frederick Forsyth answered a set of questions in his statement. I am concerned with sovereignty. I was dubious about that in 1973, but Ted Heath then said that, if we do not join Europe, we would be about as important in years to come as Portugal. Was that true or false?

Frederick Forsyth: I think that the noble Lord misunderstands the meaning of power. In a non-war situation, real power comes only from two sources: political power, which essentially is influence, and economic power. Political power will derive from two sources. If a country were immensely prosperous and wealthy, it would have influence. It matters not whether a country is in the European Union, the European Free Trade Area, the North American free trade area or the Association of South East Asian Nations; if it is economically powerful, it will have influence that no one could take away.

As for the military aspect, if a country has a formidable armed force at its disposal, it will have influence. That power will become the influence that it can then use in debate in conclave with others throughout the world.

However, let us suppose that a country were economically weak and failing and five or six million of its people were out of work. If its economy were diminishing each year, its growth was a negative factor and its armed forces could not knock the skin off a rice pudding, it could be in every league or club that it wished to be in, it would still be not only Portugal, but the Algarve.

Rt Hon. Lord Weatherill: You are saying that Ted Heath was right in 1973, but not now.

Frederick Forsyth: No. Ted Heath was wrong then because he presumed that, although we were then the sick man of Europe economically – a title that we received in this country – there
would never be any improvement and amelioration was beyond us. In a sense, we were finished. He took the view that this country was finished. We know now that it is not a finished country. It was not then a finished country; it was a country with considerable problems, which over the 1980s brought great pain and suffering to many people, nevertheless that was assuaged and nearly abolished. He underestimated the power of our armed forces and the respect that they generate in various parts of the world.

As one who travels the world, I have heard many times about the respect that is given to our armed forces by the armed forces of other countries, as well as by politicians in other countries. I think that Ted Heath underestimated his own country and felt that anything less than absorption in what he thought would be the future would leave us looking, as he said, like Portugal. In fact, he was entirely wrong. It is the entity based on the capital city of Brussels that is now the sick man of Europe. We are the Olympic champions of Europe, as we have just proved.

Ruth Lea (Director of the Centre for Policy Studies): I wish to continue with the theme of sovereignty and how it should be allocated between the European Union, on the one hand, and the Member States, on the other. I ask you to indulge in a little blue skies thinking. I have a feeling where your answer will come from, nevertheless I shall be delighted to hear it from your own lips.

What should be the allocation of powers or sovereignty – however you want to describe it – between the Member States and the European Union and its institutions? Do you consider that there is a case for looking forward and saying that some countries might want to go for further integration into a centralised European Union, while other countries might validly say, “We don’t want that sort of relationship with Europe. We want to retain or repatriate more powers back to the Member States”?

Frederick Forsyth: Again, I refer to the concept of democracy and accountability. As Ruth Lea put the question in terms of sovereignty, I am in favour of the creation, not of a supreme court – as our present government wish – but of a constitutional court. I wrote a paper on the subject once and suggested that of, say, 15 Law Lords, five should be drawn by lot for a constitutional court, which would have the task – and one task only – of considering petitions. Petitions would come on one basis and one basis only: Is the measure presently before the House a constitution-changing measure or not? If it is not, it is bread-and-butter politics and it goes through in the usual manner. If it is, it would need a higher level of scrutiny, as indeed would a change in the American Constitution. It would need two-thirds of each House to agree it before it became law.

If we had such a procedure, it would be impossible for a youthful and ruthless Prime Minister with a large majority in the House to use that majority to drive a coach-and-horses through the finest Constitution in Europe. Had it not been possible to do that, I do not believe that those competences that have given away – I mean ‘given away’, because there has been no quid pro quo – would never have been given away because the people might have said, “No, we are not giving our competences away. We will control our economics; we will control our fisheries and we will not permit anyone to tell us how our laws should be administered in this country. We have courts and judges for that purpose and we do not need to bow to a rather motley amalgam of gentlemen in red cloaks in Luxembourg.” Had we had that chance, we would have made that choice. We did not have that chance, simply because the parliamentary system as it presently operates gives to any Prime Minister with a commanding majority the right virtually to destroy the country.

Ruth Lea: I get the impression that you are saying that, by choice, you would like to see the United Kingdom, in particular – and some other countries in the European Union – have a great deal more control over its powers than it does now.

Frederick Forsyth: If we have a situation in which each and every member of the Union – 25 of them – can cherry pick what it wants to abide by and what it does not want to abide by, we should be honest with our people and say that we are going back to what we thought we joined, which was a free trade area. I am not against a free trade area. The United Kingdom Independence Party also has no trouble with a free trade area. However, that is not what we are now involved in, so if we are ever to exercise the free will of the British people, we must assist them to be permitted to express themselves. We have just been denied a chance of voting. I think that the vote would have been 80 per cent to 20 per cent against in respect of the Constitution. I think that we would have voted 70 per cent to 30 per cent against the abolition of the pound. We will probably never have a chance to vote. I want us to be given a chance to vote for root-and-branch reform of the European Union, as it is presently constituted, or at least our relationship with it. If the other 24 nations in Europe wish to dance on a head of a pin, I am a tolerant fellow.

Ruth Lea: It is live and let live.

Frederick Forsyth: We should be given as a people – the British people – a choice. We have not been given that choice for 35 years and we were duped when apparently we were given it in 1975.

Ruth Lea: So it is live and let live.

Frederick Forsyth: It is live and let live across the Channel. In our case, I want to see substantial repatriation of national competences to national government. If the Irish would like that, fine let them say so. If the French do not want it, let them say so. People should be entitled to say so. We have reached a point in respect of bifurcation and we cannot go much down the present road without reaching a collision point.

Rt Hon. Lord Waddington: As Chairman, I wish to exercise my privilege. What do you have in mind in respect of root-and-branch reform? Where would you start? When you said that democracy implies scrutiny, you seemed to be raising the whole question whether we can have proper scrutiny if we have an absolutely appalling volume coming out of the Commission. An enormous amount of stuff – good and bad – comes out of the Commission because it is the sole initiator of legislation. Only the Commission can initiate legislation to repeal legislation. Well, if that were not a recipe for an endless stream of useless legislation, I cannot think of one. What sort of root-and-branch reform do you have in mind? Would you start with the Constitution of the Commission, which pretend to be the
government of Europe, without having a democratic mandate?

Frederick Forsyth: That is true. That was the way in which it was devised. That was the way – certainly back in 1972 – when the then Prime Minister, Mr Edward Heath, agreed to concede all the powers that were necessary. I do not think that he revealed to us quite what he was conceding. I do not believe that that happened in 1975 either.

I draw my inspiration from Alexander the Great. People may remember that he was confronted by a knot so complex that it could not be undone. It had defeated centuries of sages and monarchs, so he asked for a sword and, in one cut, he swept through the whole damn thing and then walked away. We do not have such a person in office in this country, but we need our Alexander. I think that the Gordian knot is, in fact, the Common Agricultural Policy. If you decide not to proceed to fund the Common Agricultural Policy, within six months the entire European Union will go back to first principles and must renegotiate with you and, indeed, with itself.

Roger Brooke (Former Chairman of the Audit Commission): I am curious. We have often felt in the United Kingdom that we have the strongest, most vigorous and articulate Eurosceptic group in the European Union. You travel a lot throughout Western Europe, he would probably get a winnable constituency, but if the person were not party line true, he would not.

If a referendum were held in Germany, people would be stunned. Even the obedient Germans are sick and tired of how they are being treated. Such matters are dealt with in the vox pop, public opinion polls. The most famous poll – it has nothing to do with me – is FORSY, which says that 60 per cent of Germans want their Deutschmark back. By contrast, 0 per cent of the MPs want the deutschmark back. Something has gone wrong somewhere, and they know it. It is called a democracy gap and it is becoming wider and wider.

The Hon. Bernard Jenkin, MP (Shadow Minister for Energy and former Shadow Defence Secretary): What should be the role of national parliaments? Should the ultimate sovereignty lie with the nation states or with the EU, or where?

Frederick Forsyth: I have never wavered. The day of the nation state is not done. I therefore disagree fundamentally with the post-modernist deconstructionists in Brussels that the day of the nation state has passed, that there is no need for it and that we now need regional groupings. That is nonsense. The nation state is the home and guarantor of parliamentary democracy. It has not reached the stage where we wish to participate in pan-European presidential or parliamentary elections.

The state has a place. Within its own borders, it must be supreme. Elected people have the right to govern the people in all material matters to their benefit, within the borders. Outside the borders, of course there will be foreign policy, treaties, alliances, collaborations and co-operations and there may even be quarrels. Inside the borders, parliament – if elected properly – should be supreme and the courts should be the supreme jurisprudential authority within the nation state. That has been given away without our consent.

Bernard Jenkin, MP: Even people who regard themselves as Eurosceptic say that matters such as environmental pollution and global trade know no national boundaries and therefore need to be dealt with on a supranational basis.

Frederick Forsyth: It is a matter of volition or coercion. It is sometimes said that we cannot co-operate with people unless we are forced to. That is rubbish. I remember the new nations, Britain and France, got together and built Concorde – one of the greatest engineering miracles of the age. Other nations got together and built the Airbus. Others got together and built Tornados and Jaguars. In other words, international co-operation on a four, five or six-nation mutual basis is not only perfectly normal, it is desirable, and we have rarely been found wanting.

Why do we need coercion? Why do we need to be forced? Why do we need to be told, “You will co-operate. You will do this”? If anyone said to us, “Please don’t create acid rain because it is destroying our forests in Sweden”, we would say, “You are absolutely right. Of course, we will do everything that we can to stop acid rain.” We do not need to be flogged.

Sir Oliver Wright, GCMG, GCVO, DSC (Former Ambassador to the United States of America and Germany): I wish to clarify one point. I agree with you entirely about the motivation for our joining the Community. When it happened there was despair about our poor economic performance. It is not quite true, however, that, when the matter was put to the referendum, the
British people thought that they were voting only for a Common Market. They may have thought that, but the referendum asked them to approve the results of the renegotiation and, alas, that included the Common Agricultural Policy, and sneaked through at the last moment was a Common Fisheries Policy.

To go back to basics, we must find a way to return to a common market. What do we do about the Common Agricultural Policy and the Common Fisheries Policy, both of which have been disastrous for Britain, but for which our people voted in the referendum?

Frederick Forsyth: With due respect to yourself, Sir Oliver, and your enormous erudition and experience, I wish to say that the Fisheries Policy was Stalinist. It was negotiated or conceded by Mr Heath with a 15-year retard. Mr William Waldegrave, who was then Agriculture Secretary, went to negotiate, as he thought, but he was given a fait accompli. It was signed 15 years ago and it becomes operative next January. He came back ashen. I do not think that Mr Harold Wilson negotiated the agricultural policy. That was in the original. I recall Sir Con O'Neill–

Sir Oliver Wright: He just renegotiated what Ted Heath had negotiated: swallow the lot and swallow it now.

Frederick Forsyth: I think that that was Sir Con O'Neill's report of what he was told by Heath – "Swallow the lot and swallow it now." I have another anecdote: Couve de Murville went to Georges Pompidou, who was then the first post-Gaullean President, and said, "How do you want Britain?" The reply was, "Je la veux nue" – I want her naked – and that is how he got us. We have been naked ever since.

The crux of the European Union is the Common Agricultural Policy, and that cannot have been excluded from Mr Wilson's negotiations with Couve de Murville. In fact, it was very much part and parcel of it. It thought that the so-called renegotiations by Mr Wilson were a bit of a fig leaf. They involved, for example, tinned Australian rabbit. A major concession was accorded to us in that form, but I do not think that he really changed the basic structure that we conceded in 1972.

The Lord Rees-Mogg (Former Editor of The Times): I agree with that, having been there. I wish to go back to root-and-branch reform. There seem to be several ways in which to achieve that. One would be a new constitution; another would be a renegotiation of the existing Treaties; a third would be a free trade area either in the whole of Europe or in those parts of Europe that only want it back and the fourth way in which to achieve it would be a dissolution of the present European system. Which of those four ways comes nearer to the approach that you consider desirable?

Frederick Forsyth: The fourth approach. However, such an objective would not happen spontaneously, whatever Mr Blair says about his six-month presidency, the budget and so on. There are too many vested interests to stop the juggernaut rolling. The only way in which to knock it off the road is what could be called the nuclear option. One of the nation states must take action that is so traumatic that the others will be forced to go back to first principles and ask, "What are we here for? What are we doing here?" I do not believe that, of the five possible nations, Britain would consider doing that. France and Germany would not do it. By nuclear option, I mean the repudiation of the Common Agricultural Policy. That is the crux.

It is ludicrous, given that nearly 500 million people are in the Union today, presumably pursuing some 500 professions, that 40 per cent of the entire budget goes to 4 per cent of people who practise one profession. Why not engineering? Why not nuclear research? Why not a whole range of different professions? The answer is because the CAP was written at France's dictation in the mid-1950s for a specific purpose: to ensure that that grossly inefficient voting force in France should be permanently subsidised, but not by the French taxpayer. That is what it amounts to this day; £700 billion of other people's money goes to keep them quiet so they do not storm the vestibule of Mr Chirac or his successor at the Elysée.

If such a situation were contested by a major power, it would collapse. If it collapsed, the Union would not so much collapse, but would have to go back to first principles and discuss again what are we doing here. What are we going for? What is our aim? What do we wish to achieve? How will we achieve that? If the bulk of the people in Europe decide that the way in which things are happening is not where we want to go, there will be no question of fast lanes, short lanes, little lanes and slow lanes. If you are travelling on a motorway in the wrong direction, you will have an accident.

Rt Hon. Lord Weatherill: I refer to practical politics. How do we get out of this? When I was Mr Speaker, Nigel Spearing said to me, "Mr Speaker, you must stop Maastricht. You must tell the Prime Minister that we are signing away our freedoms." I explained that I could not do so, but I arranged for him to see the Prime Minister and Margaret Thatcher said that she would not allow it to happen. The truth is that we have signed the Treaty. How do we get out of a treaty? Can that be done by a parliamentary decision, or would it be better to push for a referendum?

Frederick Forsyth: There are three ways in which to take such action. We can unilaterally decide to cease funding; we can unilaterally repeal the Treaty of Accession to the Treaty of Rome; or we can tell the rest of our partners that, in exactly 12 months, we will offer our people a referendum on continued membership or we can tell the rest of our partners that, in exactly 12 months, we will offer our people a referendum on continued membership and we will be unable to recommend unless, by that time, there is a renegotiation of the existing Treaties; a third would be a free trade area either in the whole of Europe or in those parts of Europe that only want it back and the fourth way in which to achieve it would be a dissolution of the present European system.

Rt Hon. Lord Waddington: I must keep to the timetable. We are very grateful to you, Mr Forsyth, for having come along this morning and for giving us your views on this important subject. Thank you very much.

Lord Wallace, we are very grateful to you for coming along this morning. We have had a gratifying response to our requests for witnesses to come forward. You will be as pleased as we are that we have people with every sort of view on such issues. We are most anxious to hear your views. If you wish, you can make a short opening statement after which we shall put some questions to you and then develop the argument that way.
The original European Communities were designed in a different period of democracy and accountability. In the 1940s and 1950s in all countries, including our own, officials, such as Lord Ploven and other characters, were regarded with deep respect as servants of the state. Democracy was a matter of mass parties that voted as a matter of class identification, at least expecting to hold the government to account. We talked about officials as technocrats. We talk about the same people today as bureaucrats, which means something very different.

The original European Communities were designed as technical bodies to be run by those dignified and respected experts on behalf of the peoples of Europe who, of course, would not understand the details. It was assumed and hoped that the enlightened self-interests that those people would represent would produce results that would lead to what people used to call ‘a permissive consensus’ – passive acceptance of what they had done.

That was fine for that period. But we are now at a time when mass parties have disappeared and with them have gone mass politics. The popular mood in most democratic countries is deep suspicion of all elites. The European Union catches that, as does the United Nations. Let us consider attitudes to Washington in the United States. In recent years, each successful candidate for the presidency has run with the idea that officials in Washington are betraying popular trust. So we have a common problem.

In the 1940s, 1950s and 1960s, there were autonomous national economies and countries traded with each other. At the time, a small number of people moved across national borders. We have now gone through a communications revolution and an economic transformation, and we now live in what can be called a globalised world. That has led to a demand for a much higher degree of international regulation and entirely new developments such as police co-operation, intelligence co-operation and co-operation in respect of border controls across boundaries. That happens not only in Europe, although the European Union is the most intensive such development, but across the Atlantic and on a global level.

So we have a demand for more remote governance, regulation above the level of the nation state, in a situation in which, by and large, the public want politics to be even more local than they did two generations ago. They mistrust national governments, especially when those governments are negotiating matters, as they see it, behind closed doors with international organisations. The European Union is in real difficulty, but that applies to all international organisations. We are discussing one of the most difficult issues for democracy, because there are pressures in different directions.

The European Union and its member governments recognised the problem from the middle-1970s onwards and have tried to bridge the gap in what they called the democracy deficit – the agreement on the direct election of the European Parliament, for example.

The original European Consultative Assembly had not been thought of as very important. It tried to bridge the gap between ordinary citizens and Europe by producing symbols, by giving people who were resident in other countries the right to vote in local elections, and by pushing the agenda of making people more secure by having common border controls and police cooperation. That, of course, appeals most to people who have houses in other countries and have careers that work across national boundaries, who are the minority of successful people. Such an approach does not appeal to the majority of those who live their lives within a country, a region or a city. So these measures do not bridge the gap.

I hope that the Forum will investigate whether we can do more through national parliaments. So far, the evidence is not good. At the time of the Maastricht Treaty and the European Union on the French initiative, there was an assize of members of national parliaments who met in Rome. I have talked to one or two people who took part in that and they regarded it has having been quite disastrous.

Bill Cash, MP (Former Shadow Attorney General and Shadow Secretary of State for Constitutional Affairs): I was there!

Professor The Lord Wallace: I have attended several meetings of COSAC, the Conference of National Scrutiny Committees of National Parliaments, and I must say that one eats extremely well, but the quality of the discussions is not up to the quality of the meals. We may have forgotten, but if a person is elected to a national parliament, the voters do not really want that person to spend time attending international conferences. The local radio station or newspaper will start to attack that person if he or she is seen to be spending too much time in Brussels, Lausanne or wherever. There are all sorts of inhibitions about national parliaments becoming more engaged.

Some useful things can be done. For example, the Council Secretariat has begun to invite the Chairs of national Foreign Affairs Committees and national Defence Committees to briefings. Bringing together members of Committees that deal with specific subjects at national parliaments may be a helpful way forward, but we should not kid ourselves that there is an easy answer to linking national parliaments more into international regulation because, as I hope the Members of Parliament who are present today would agree, voters want them to talk about the local hospitals and schools, not about the European Services Directive or regulation.

Rt Hon. Lord Waddington: Yes, but in Europe, they try to do too much, which makes everything so much more difficult. How can we have proper scrutiny, if the volume of legislation is so enormous? Perhaps we are over-complicating matters. If we could just cut down the scale of the operation, many of the problems that you have identified would begin to melt away, would they not? If subsidiarity became a reality, so that the Union dealt only with important matters that everyone recognises as having a supranational flavour, we would get somewhere, wouldn’t we?

Professor The Lord Wallace: Yes, we would. I regret that the European Convention did not go far enough into the whole subsidiarity issue and did not open the box that it was supposed to open, which was marked ‘returning some competences from the Union back to national governments’.

An extremely good test that was not used was to discover which things in the developed federation of the United States are left to state level or below – in which case it is clearly idiotic to
suggest that they should be regulated in Brussels. Members of the Forum may remember the attempted regulation on harmonising the level of alcohol in the bloodstream before a person’s driving licence was withdrawn. For all I know, South Carolina and North Carolina might have different views on that, so I do not see why Belgium and Luxembourg should not have different views on it either.

I agree with Lord Waddington that we need a different agenda. Whether or not we will find it easier to explain to the public that Europe really needs a shared police database and a common budget with more spent on foreign policy and defence – a more logical basis for arguing, “These are things that we cannot do on our own” – and whether we will still discover that there are pockets of resistance to that, we ought to try.

Martin Howe, QC (European lawyer and author): You have raised an interesting thesis of the pull between a demand for more regulation at supranational – indeed, global – level on one hand and the democratic desire to have more local control, and the tension between those things.

Certain matters are regulated at global level, and that happens by consensus. The World Trade Organisation and the general agreement on tariffs and trade rounds, and so on, have achieved effectively global free-trading rules by a process of consensus and negotiation. The European Union is different to this global process, because it does not operate by consensus but by majority voting over most of its areas of control, and has a system of law that penetrates inside the Member States. In that respect it differs from other, more global, systems of regulation. Can we square the circle or resolve the tension in democracy while we have a system of majority voting and penetrative law, or is that incompatible with a solution in the dilemma that you have identified?

Professor The Lord Wallace: I am not sure that I accept that the decision-making process within the WTO is superior to that within the European Union. Pretty odd things go on in the WTO, even though its dispute procedure is supposed to have the backing of international law.

We have to be aware of what we see happening in the United States at the present moment, which is a groundswell of revolt against international law as such and the idea that international law could, under any circumstances, override domestic law. Actually, international law, including WTO dispute settlement procedures, is intended to override domestic law; in this sense the European Union is not totally different from some other forms of regulation – it is just more immediate and goes into greater details.

The revolt within the United States against the UN and international law as such is driven by the view that says, “We expect others to obey the rules, but we are different.” This is part of the problem that we all face. If the public is asked what they want at international level, they will say that they want the right to travel freely themselves but have other people stopped at national frontiers. That is roughly the same as the other dilemma with which we are all familiar: all voters want better public services, but want their taxes to be cut. These are incompatible demands, but it is difficult to explain why you cannot have one without the other.

Bill Cash, MP: A great welcome to you, Professor Wallace.

I am interested in question No. 4: what limits, if any, would you impose on EU competencies legislation in the Court of Justice? You have just mentioned the relationship between international law and public choice in the constituency of a Member State, by implication. An interesting development on the food supplements directive has happened in the past 48 hours. We know that there is a million-name petition, which probably represents an even greater number of people and we know that the political parties in the House of Commons are all deeply concerned about it in varying degrees. The Prime Minister said on 26 May that he was against it. I suspect that he was advised that if the Advocate-General gave a ruling he would be on safe ground. In fact, it has turned out that the opposite is the case.

You may or may not be familiar with the Sovereignty of Parliament (European Communities) Bill, something I produced a year ago, in which I said that it was essential that we did not pass legislation – notwithstanding the European Communities Act 1972 – and then, under doctrines that are still applicable, find that it would be obligatory upon our judges to give effect to the latest inconsistent law.

Alan Dashwood, among others, giving evidence to the European Scrutiny Committee, endorsed the principle that that was good law. The reason why I am now saying that there is such an immediate problem is that I introduced a Bill yesterday, which is on the Order Paper today, that will prescribe matters in relation to the Food Supplements Directive, notwithstanding the provisions of the 1972 Act. By doing so I present the House of Commons with a question, which I should like you to answer from the House of Lords. Do you agree that we should be able to disallow and disapply European law and the ruling of the Court of Justice, for example, in that instance, and do you agree that that can or should be done in general?

Professor The Lord Wallace: I used to say, when I was involved in transatlantic conferences 30 years ago and Americans would dismiss the relevance of the European Community, that EC law in the middle 1960s ran as effectively throughout the European Community as federal law did in Alabama and Mississippi. Federal law was not applied in full in a number of states within your and my lifetime. We all lived in ambiguous circumstances.

On the Food Supplements Directive, I encourage you to look at the subsidiarity issue. Clearly, part of the structural problem with the European Union is that we have a Commission that believes in micro-regulation and has a nostalgia for a small core European community in which micro-regulation can be conducted. That does not fit the European Union of 25 Member States with very diverse national practices and differences. However, on something like food supplements, or whatever, that you want to be sold throughout the EU, you want a labelling scheme that is acceptable throughout the EU and some assurance on safety, which also carries throughout the EU. That is the same problem as the one within the United States with the Interstate Commerce Clause, which was originally a small item in the Constitution and grew because as people got involved in much larger interstate commerce there were knock-on effects. That is one of the central problems for the EU in the Single Market: we want incompatible things from it; we want to buy safe
Bill Cash, MP: But we can legislate ourselves here in the UK to achieve those objectives, can’t we?

**Professor The Lord Wallace:** Not if you want to have an open Single Market; if you have that you must have a degree of common rules. That is part of the contradiction with which we are stuck.

**Geoffrey Van Orden, MBE, MEP (Vice-Chairman of Foreign Affairs Committee of the European Parliament):** I want to get back to the broader theme of democracy, particularly the relationship between civil servants and elected politicians and how we might express democratic representation.

I am struck by the fact that people like Monnet were essentially technocrats and their vision of the European project was one that would be technocratically driven. I think that many of those people were slightly contentious about the democratic process and what they saw as its failures. They also built a Commission, which was a gold-plated technocratic institution.

I am also struck by the observations made by the late Hugo Young, although I drew conclusions from his work that are entirely opposite to the ones that he drew himself. He paid tribute to the work of officials in driving forward the European project. So often it almost stalled because of Ministers, or whatever, yet officials were always driving the process forward.

What is your view on that relationship? Do you think that it has been an official-driven project that has continuity and, therefore, that the effort to introduce democratic aspects is inevitably going to meet with failure, or be overcome by other means?

**Professor The Lord Wallace:** Certainly, Monnet was not a great fan of parliaments. He was deeply scarred by having watched the French National Assembly, which he strongly felt was a collection of people all defending their separate constituency interests, and he thought that someone was needed to look after the national – the state – interest. He had a very strong sense of the value of the Fonctionnaire and he carried that on to the European level.

I am a strong believer in the need to reform the Commission. We have the problem that the ethos of some sections of the Commission – I could name names, but will not – believe that they see the interests of Europe much more clearly than everyone else and think that it is their job to regulate Europe. The whole idea that there was a single European social model, for example, is part of that. There is not a single European social model; there are lots of different diverse things. However, there are those in the Commission who think that there is and that they need to impose it.

One has to say, however, that efforts, such as strengthening the European Parliament to bring in democracy at that level, have not been immensely successful. From my own observations I can say, although some people in my party in the European Parliament would be deeply upset with me, that the European Parliament is not part of the solution.

**Geoffrey Van Orden, MEP** indicated assent.

**Professor The Lord Wallace:** It has not built deep roots in national democratic life and has become very much a part of the Brussels elite and the Brussels institutions. That is part of the problem that you as a European parliamentarian also need to address. I do not know the answer to that. I wish more people in the European Parliament were actively concerned about how we build bridges between European parliamentarians and national parliaments, and between national parties and local democracy, because that is part of how we could try to narrow this gap.

**Geoffrey Van Orden, MEP:** My proposition is that in spite of whatever efforts any parliamentarians might make, there is an inevitable momentum to the project that is driven not just by the Commission; national civil servants are complicit to some extent and the whole thing is taken forward with a weight of its own.

This week many Ministers arrived in Brussels and they will sign up to all sorts of things that were just put on the table in front of them, which were essentially the preparations of officials, either from the Commission or national bureaucracies.

**Professor The Lord Wallace:** That is the way all government works at all levels. The tensions between chief executives of local councils and council leaders are much the same. Chief executives think that they could run local councils much better if only the councillors would not get in the way. It is the job of elected politicians and Ministers to say “Stop” when they think they are going in the wrong direction, or at least to set the agenda. The Council of Ministers and the European Council do set the agenda. I do not think that we have had enough open debate on what we mean by subsidiarity, what powers should be returned from the centre to national government in a much larger and more diverse European community than we have, and what the real priorities are.

Although I do not belong to his party, I thought that our Prime Minister’s speech to the European Parliament was not a bad shot at talking about what different agenda we should be moving to.
seriously than they have in the past. Members of the House of Commons know all the reasons why the European Scrutiny Committee, so far, has not been one of the most prestigious or powerful Committees in the House of Commons. Again, that is part of what you should be discussing. The party links across Europe are also fora in which national politicians should be discussing what we want Europe to do and not to do, and building coalitions that way.

The last time that I was in Brussels, I spent some time talking to people from different countries in the European People’s Party, who see themselves at least as much as part of the Brussels scene as links between the national scene and national parties and Europe. Stronger collaboration among people within the same party family across the European is part of the way to raise the level of debate.

Rt Hon. Lord Waddington: May I just remind people about the clock? We must be prepared for the two-minute silence. Could you just put a quick question, Bernard Jenkin?

Bernard Jenkin, MP: Forgive me for being short and abrupt, but you seem to have talked yourself into something of a cul de sac. On one hand, the Monnet-style functionalism, which is official-driven, seems to have lost its legitimacy – the regulation of minute details like vitamins has no legitimacy and is bringing the whole exercise into disrepute – but then you say that we should be doing defence and foreign policy. However, if the European Union cannot get consent on the tiny, incidental things, how can it possibly have authority on a basis of qualified majority voting and enforced co-operation and co-ordination on the big things? Surely, you have talked yourself into a system of national democratic co-operation, rather than the supranational model that we have at the moment.

Professor The Lord Wallace: If you think that national co-operation is sufficient in dealing with global terrorism rather than more effectively integrated common databases in respect of anti-terrorism, that is fine. However, that is not the only problem; that is the gap that we are facing. I do not have an answer to that; I just raise it.

Rt Hon. Lord Waddington: Thank you very much indeed for coming. I hope that you do not feel that we have tied you down to too short a period. We have got a lot out of half an hour and we are extremely grateful to you.

It is 12 o’clock, we will all stand.

Plenary Session suspended for the national two-minute silence.

Rt Hon. Lord Waddington: Thank you again, Professor The Lord Wallace.

Lord Howell of Guildford, you probably know that we invited a lot of people to appear as witnesses and we are gratified by the response. We have heard from people with all sorts of different views on this important issue and we are most anxious to hear from you. Will it be convenient to make a short opening statement, after which people put questions?

Rt Hon. Lord Howell of Guildford (Witness): I shall certainly do that. If my short statement is not short enough, please interrupt me and tell me to shut up!

I make a preliminary observation that this is the most important matter that I have ever been engaged in well over 40 years in politics and in five political careers, some of which were of more dubious worth than others. The stakes are enormous and the need for clarity and a right way forward is immense, and the penalties for getting it wrong are vast.

To take up one of the last questions I heard on entering the room, my whole view is built on the prospect that the governance of Europe must be anchored in national parliaments.

I shall make another slightly incidental remark. I read in the papers that my own party – which I have been in and out of, but mostly in and connected closely with for the past 40 years – has not really thought about these matters and is saying, “Why don’t we just say this and that?” That is quite untrue. For many years – certainly the past five or six – there has been immensely detailed work on how Europe might be moved in a better direction. I find my filing cabinets full of carefully worked out, detailed and broader points, on how to change the direction of Europe. Of course, the only thing that is lacking is the confidence and will of the British political establishment to take up these views and start negotiating with the kind of zest that we sometimes see from the Quai d’Orsay, for example. The work is there – a lot of it has been done – but it is just a question of upgrading it and carrying it forward with proper vigour and vim.

I want to say briefly – and hopefully on the theme on which you are concentrating – that, if we are talking about that large word ‘democracy’ and the European Parliament, there is an easy case to be made about the absence of democracy from the European Union and a much more defined case. I suspect that you have heard from many witnesses that the easy case is that the European Parliament is distant, remote, has a slim popular mandate, is largely unaccountable for its decisions, and so on. Yet, of course, it has real powers to make regulations and pass laws that affect us all.

More generally, but still sticking to the easy case, it is perfectly obvious that it is too big. The European demos, as we know, does not exist; in fact, not only does it not exist, it is being actively rejected by the modern world. The whole spirit of the dotcom age and the network age is to move away from these lump concepts of the demos of this block, or this or that region. The block mentality is completely out of date and belongs to the last century. The thread of intimacy between people and everyday life and this remote institution – the European Parliament – does not exist. The thread does not reach that point.

There are many additional points to be made about how people come to be elected, the sorts of things that they debate, the fact that people do not elect a government themselves and that the European Parliament spends money, but does not raise taxation. You have probably heard all those points. However, my summary of the easy case is that the idea of trying to impose ‘democratic’ structures on Europe at a supranational level belongs to and derives from outdated principles of hierarchy and centralism that are no longer relevant in the network age. That applies not only to the domestic policies of the nation states of Europe, but equally strongly to the foreign policies and postures that the European Union tends to take up, which are discussed in the European Parliament.

I have another theme that I will not wear you down with today, which is that the entire slant of British foreign policy that we
work through our European partners, which has dominated Foreign Office thinking for 25 or 30 years, is wrong. It is not the European partners who will look after and promote our interests in the changing world. I love America, but I am not blindly pro-American. I think that some of the rhetoric from Washington is ghastly, but we need a dialogue with the great American Republic – a really good one – and there needs to be listening on both sides between candid, honest friends.

The European Union is not regarded in Washington as a candid and honest friend; it is regarded as rather hostile and no dialogue takes place, with the result that even if we want to place a restraining hand, as a friend, on Washington policy, as I do in some cases, we get no voice or opportunity to do so because our European partners have no impact. We are with the wrong partners. Please ask me later who I think the right partners are: America's best friends who can speak as good friends candidly and sometimes critically, but constructively.

That is a broader observation about democracy and the European Parliament – it does not really satisfy any of the criteria. Perhaps we should get to the deeper observations in conversation. I shall sum up.

Armahtya Sen, whom I see from time to time, wrote in the Financial Times the other day that democracy is, “the opportunity of participatory reasoning and public decision making – as ‘government by discussion’”.

I think that he was addressing the issue of whether you can impose something called democracy, whatever that may be, on the Arab paternalist states. Of course, even by that definition, the EU goes the other way round – there is very little of that kind of public decision making and participatory reasoning – but we need to look deeper still. Votes, elections and political parties are only part of the much larger story of democracy. The institutions do not work unless democracy has a spirit as well. If there is an obvious spirit of restraint – universal restraint – in dealing with views and imposing a degree of self-policing and self-regulation, not just by majorities and minorities in the political parish, but by all public and professional organisations, the democratic spirit can live, otherwise the institutions are completely empty. People may label that ‘constitutional democracy’, which is a very different thing from the bogus democracies that scatter the globe, and that can only occur in nation states.

The proposition that there is a higher democracy – or even a higher democratic deficit to be filled so that there would be a higher democracy – is unsound. There is no such thing. This is an illusion, a chimera. Efforts directed at saying, “Oh, it is all right, we will give the European Parliament a lot more power and that will solve the democratic deficit” is travelling down the wrong track.

I think that I have said enough in general to stimulate one or two thoughts; I hope that I have. But there are all sorts of things to discuss about the Constitution, now capsized and, I hope, sunk and the powers of the European Court of Justice, on which considerable, detailed work has been done in the House of Lords, demonstrating how dangerous the higher legal order, which the Constitution promised, would be and what power it would place in the judge's hands. Then there is the central issue of the primacy of EU law, on which many of you are ten times more expert than I. That is a start.

Rt Hon. Lord Waddington: Would not it be a blow to democracy to take away from the Commission the sole right to initiate legislation? If that were to happen, the blizzard of regulations would almost certainly abate to some degree, and unless that blizzard is abated to some degree, there is no hope ever of having proper parliamentary scrutiny of what goes on in the EU, because too much goes on. Would not that be one thing for which we should aim, to increase democracy?

Rt Hon. Lord Howell: The volume of activity in the central institutions, particularly in the Commission, is at far too high a level. It is curious that it starts by being driven by admirable desires for free markets, level playing fields, equal opportunities and all the rest, but it is carried far too far and becomes an absurd bucket and broom operation to even out and tie up every single aspect of national life in every nation state and harmonise it, which produces the flood that you describe that completely overwhelms national parliaments.

How to stop that? One of the purposes would be to remove the monopoly right of legislative initiation from the Commission. I do not think that that need be done in a vindictive spirit of smashing up all the original institutions of Jean Monnet, but in the modern world that would greatly ease the role of the Commission in trying to be a good civil service for a European Union that should be doing a great deal less and should be less ambitious in many fields, particularly in foreign policy. The idea of a European Union common – let alone single – foreign policy is such an anathema that I should like to see the Commission retreat from it radically, which means, perhaps, retreating even from common trade policy, which is reckoned to be about 70 or 80 per cent of all foreign policy. However, that is another matter.

That is the long answer to your short and apposite question.

Rt Hon. David Heathcoat-Amory, MP: With the failure of the European Constitution, there is a danger that Europe will struggle on with the existing Treaties, amending them slightly. However, the Laeken Declaration identified real problems with the existing Treaties: the lack of democracy, centralisation, bureaucracy and the constant interference. Would you agree that radical surgery is needed on the existing Treaties – the Treaty of Rome, as amended? If we are to create a democracy, it must be by putting national parliaments in charge not only of the subsidiarity test, but in initiating all legislation and agreeing to a European dimension only on an exceptional basis, with the Commission acting as a secretariat.

This is a profound change that may not resonate with the official class in Europe, but do you agree that we need to advance it?

Rt Hon. Lord Howell: Yes, I do. I mentioned earlier that some of us have been working on the detail of this long before the Constitution collapsed and long before Laeken, although Laeken struck some good notes in trying to insist that the system in Europe be brought closer to the citizenry and the people, and so on. Yet, as you will know, Mr Heathcoat-Amory and Bill – frankly, all of us will know – when it got to the Constitution, somehow it mutated and metamorphosed into a great constitutional conference with illusions of Philadelphia and the United States, but forgetting, perhaps, that the US Constitution was formed for a nation of 4 million people and that we were contemplating some 480 or 500 million people. That was a
complete disaster and set off on the wrong track, the thing with which you were so deeply and intimately involved – alas, unsuccessfully – despite all your marvellous efforts.

Yes, the existing Treaties have needed changing for a long time and they need some radical change of direction, because this Europe, about which Monnet, Spaak and Schuman dreamed, was designed for purposes that have been fulfilled or are no longer relevant. It was structured in an age before the information revolution, to which I attach enormous political significance, and before the structures of the modern world and the fabric of modern international relations that are curiously much less between governments than between non-governmental and professional and trans-national organisations.

A whole new world of international relations has emerged and the old Treaties, structures and institutions cannot really deliver and cannot perform. We are seeing that breakdown now. Is there a danger that none of what I have said will be accepted and things will drift on while people hope that the French or the Dutch will have second thoughts? Yes, there is an extreme danger.

I have listened to some distinguished people who do not think very differently from me, but nevertheless say that we must have a good pause for reflection. I am nervous that this pause for reflection will turn out to be a pause for inertia while everything congeals and settles back into the old mould and allows those who were pushing in the wrong directions before to go on pushing. There is a real danger.

If this sounds impatient, I do not apologise. I should have liked us not to be where we are now; I should have liked all the work that some of us tried to do to have penetrated the Foreign Office and Government policy four or five years ago, long before Laeken; and I should like British officials, who are vastly able if pointed in the right direction, to be ready and alert to move in with a mass of new ideas and begin changing the whole direction of Europe. These are high hopes, and I am old enough and have been in politics long enough to think that they are highly unlikely to be satisfied. But one keeps trying. Perhaps we will succeed.

**Bernard Jenkin, MP:** You say that you want to anchor the legitimacy of the European Union in national parliaments. Some who are in favour of integration still argue that ultimately the national parliaments have the whip hand, and I think that you dismissed that. You want to change the direction of the EU with an avalanche of new ideas and new thinking, but will that be enough? If you were Foreign Secretary now and you produced all these new ideas, people would say that you would instantly isolate the United Kingdom and we would be one among 25, with little prospect of support.

Is there any possibility of building a coalition of governments that would support these radical changes, including, for example, the repatriation of trade policy, which I agree with, or will the UK have to do something dramatic and unilateral that would unblock the system, as suggested by a previous witness?

**Bill Cash, MP:** You mentioned primacy.

**Bernard Jenkin, MP:** You mentioned primacy.
Rt Hon. The Lord Howell: No new constitution. A new treaty, yes. My approach is obviously a step-by-step one and I hope that it is a matter of practicality. We must establish what the European region really needs in this day and age when the centre of economic gravity, as Lord Rees Mogg would say, is graphically moving eastwards. All sorts of new challenges are being addressed to our Europe. Europe is full of the most fabulous lifestyles, values, attitudes and histories, and the kindness and goodness that are necessary for world stability. It is all under attack.

We have to find out what this enlarged Europe really needs. We must also decide what size it is – where it stops. If our Turkish friends are coming, will Ukraine and Belarus be next, and then Georgia, Azerbaijan and so on? All of that must be decided. On the basis of clear decisions, we must form a new treaty about how it should all be run – what the rules are. We do not have to call it a constitution; we can use ‘rules’. I do not understand this concept of a free trade area that people talk about. If one examines the nature of modern trade, it is not free. A lot of it is governed by trade between affiliates. Half of all international trade is said to be between affiliates and subordinates of single companies.

People might think I am being over the top here, but I do not even understand the issue of tariffs. I ask myself how it is that the Japanese and the Americans, with a few arguments here and there, sweep into the European market facing the tariffs. What is the great advantage for those of us said to be inside the tariff barrier? People might come back to me to say, “Motor cars, quotas and so on.” There is something in that, but it is not half as massive and great as people make out.

An area of common, intimate and intense co-operation at a number of levels in the European region, with some institutions, although much less ambitious ones than we have today. We have already talked about a modified Commission. There should be a different European Parliament. I do not like this directly elected one. People secretly go round everywhere saying, “It is a grave mistake. What a pity,” but in public they never say that. Possibly, there should be some different procedures and formulations for the Council of Ministers, which should probably be a much more public body. That is one of the few things with which I agree in the new Constitution. We must work towards the new treaty. First, we must dig the garden up. We must turn over the soil and show that we can produce a better garden than the one they are all toiling at the moment.

Geoffrey Van Orden, MEP: You describe yourself as a Europhile, Lord Howell. You are enthusiastic about Europe, but I am not clear about something. You mentioned Europe and the European Union, but are you thinking about some other concept of Europe? I shall elaborate. Would you see any particular dangers for the United Kingdom if some of the major countries in Europe were to decide to go ahead with a more integrated core and the United Kingdom were to be part of some other sort of assemblage that was not part of that core?

Rt Hon. The Lord Howell: My love of Europe relates to something much more than the European Union can offer. A union has a role to play. They have tried to be very ambitious and that is wrecking even the good objectives of the European Union. I am talking about a love of a broader Europe than is at present embraced by the European Union, although, who knows, it may come to be like that. Do I worry about other countries moving? I cannot even get your word ‘ahead’ down my throat; if they moved, it would probably be backwards.

Forcing people together in the hope that they will somehow bind together is a backward move. If the governments of some of our continental neighbours – against the wishes of the people – wanted to force themselves into an even deeper political integration, that would take them back to the 20th Century, or even before. It would not be moving ahead, but back. It would certainly be moving back economically. People sometimes talk about the outer rim of Europe – the périphérique. When it is not jammed, using the périphérique is the quicker way to get round Paris than going through the centre.

The core is the slower bit. The outer nations of the European Union today are the dynamos. Our friends in central Europe – the accession states – are the real dynamos. They have shown what can be done amazingly. They started from far behind and they are going to be far ahead of the big stagnant area – the sort of black hole – which sadly Germany and possibly France are threatening to become. I feel very sad about that. As a student, Ludwig Erhard was my ideal and my hero. I used to go to interview him for the Daily Telegraph frequently. I thought that the German social market economy, as I understood it, was the real goal for the British people. We were then living under a sort of consensual corporatist socialist state. None of that has turned out. Things have gone the other way. West Germany has been sunk by the eager unifying with East Germany on the wrong terms. There were understandable, but disastrous errors. Now Germany is not a model to follow. If it wants to get together and not be a model to follow, that is its decision.

Rt Hon. The Lord Waddington: I am most grateful to you, Lord Howell. We have had a most productive session, although it has been short. I hope that you do not feel that you have been too constrained so far as time is concerned. We are more than satisfied, and very grateful. Thank you very much indeed.

I welcome you, Mr Grant. Thank you very much for coming along. The others have made a short opening statement and I have then invited colleagues to put questions. Would that suit you?

Charles Grant (Witness): That would be fine. I apologise for the fact that I was not able to be here for the rest of this morning’s evidence; I would love to have heard it. I am glad that it will all be transcribed.

As some of you know, I generally regard myself as pro-European. I think that European integration is desirable in many respects, although I would not have the EU doing all the things it does today in the way that it does them. Nevertheless, it was interesting that when Geoffrey Van Orden and some of his colleagues from the European Parliament Foreign Affairs Committee recently visited our think tank and I described what I thought was the way forward for Europe, it turned out that most of the Conservatives on the Committee agreed, at least in some ways. We are in an interesting time. Those of us who come at the European issue from different angles and perspectives can agree on some things. My basic view is that we now need much more variable geometry.
My reason for saying that is because I passionately believe in EU enlargement, which is the best thing that the EU has ever done. It has spread democracy, stability, security and prosperity across most of the continent. I want that to continue. The truth is that now it is not likely to continue. Whatever people think about the merits of the Constitution Treaty that is one consequence of its defeat. Deepening and widening have always gone together. Political elites in much of continental Europe never really liked the British enthusiasm for widening, but they accepted it with some reluctance because deepening took place at the same time. We have had 20 years of deepening in one Treaty after another and 20 years of widening at the same time.

Now that the deepening has stopped we would probably all agree that there are not going to be any more major Nice, Maastricht, or Amsterdam Treaties for the foreseeable future – the widening has also stopped. That is partly because the political elites think that if there is widening without deepening, we end up with the so-called British vision of a Thatcherite free trade area with weak political institutions and partly because public opinion does not see why it should be supported and nobody has bothered to explain to the public the benefits of enlargements. That is my background.

The way forward has to be variable geometry – in two respects. First, if the core countries want to have little enhanced co-operation in particular areas, such as harmonising tax bases, or having a European public prosecutor or stricter fiscal rules for the euro, let them. Good luck to them. It may or may not work, but why not? If they feel good about having political integration role, let them do it. Secondly, some of the countries that are due to join the European Union could possibly be given membership minus, as opposed to full membership. We recently had a seminar in Berlin with Turkish people on Turkish accession. Many of the Turks present said, “We don’t actually want to be in the CAP. If we were in the CAP, it would prevent our agriculture from restructuring; it would fossilise it. We need people off the land, so we don’t want to be in the CAP.”

Therefore, possibly Turkey should not join the CAP. I think that that possibility is more or less recognised in the Commission’s previous avis on Turkey. Maybe it should not have free movement of labour until its per capita GDP is, for example, 70 per cent of the EU average. Maybe Turkey would never want to join some aspects of the Schengen arrangements.

I will give a second example. I was recently talking to the excellent Georgian Foreign Minister, Salome Zurabashvili, who is also a French diplomat. She said, “Of course we cannot join the EU. Our economy would not be able to stand it. We would not want your 80,000 pages of acquis communautaire. However, we do want to be involved in your foreign policy, because we are frightened of Russia. Please let us join your foreign policy.” From that I draw the following conclusion: we could think about offering some countries membership, but not with the whole works.

The core countries could go ahead and have deeper union in certain areas, if they want. In that way, enlargement is made less frightening to the people who are now against it: political elites and public opinion in France, Germany and elsewhere. If we can get people to understand that they can move forward in smaller groups and have their political union, they would become less frightened of enlargement because they would know enlargement cannot weaken and dilute their political ambitions. That is more or less how I view things.

**Roger Brooke:** Does what you have just said mean that you think that the existing members should be allowed to review how much of the Treaties they should have and how much they should opt out of? If they do not like the fisheries policy or the cultural policy, just as the new states only have to accept parts, should existing members be able to opt out? What sort of organisational structure could ever be put in place to enable that to happen?

**Charles Grant:** That is a very interesting question. My own view is no, because if every Member State were allowed to choose from a menu of options, the institutional complexity would be quite horrific. Most countries should be part of most policies because, for example in terms of the common trade policy, a single market and an EU foreign policy do not work if three or four members can have a different policy. The bits that I am talking about opting out of are the optional extras: the euro; the Schengen agreement; defence, because Denmark is not taking part in the new defence policy; and agriculture should be one, but we will take some time to get there.

I have contemplated the new idea for would-be members and I would not turn back to existing members and say to the Spanish, “Do you want to opt out of the common trade policy?” Things would get too complicated if we were to do that. The obvious riposte would be that what I am proposing would make things pretty complicated. Indeed, I have just bounced my thesis off some noble Lords who were eminent former EU ambassadors – British ambassadors to the EU – and they were horrified by what I said. They thought it was horribly complex and wondered about the democratic accountability. It would be difficult to go further than what I have already said.

**Bill Cash, MP:** As you know, Charles, I have battled against the concept of variable geometry for many years and I know a certain amount about it. It is otherwise known as flexibility. The European Commission described monetary union as the best form of flexibility yet devised. That raises in another shape the point made by Roger Brooke. We can now accept that in terms of low growth and high unemployment in France and Germany, for example, monetary union has been a failure. We could go down the route of variable geometry. You said that you thought that the euro would be an example of something that could be left out of the equation. Where does the looking glass take you?

If the euro could be left out for the purposes of those countries where it is being unsuccessful, where would variable geometry leave you? It would leave you with nothing at all, because currently the project as a whole needs to be revised, which is why we are examining the existing Treaties as a whole. Where would you draw the line? You said that you thought that most countries should be following the same policies. How would you be able to run an institutional arrangement of variable geometry where a country like the United Kingdom was absorbed into the legal framework of the whole but was, as it were, a flywheel on the outer rim. It would be inside the framework, affected by everybody else, and yet not part of it?

**Charles Grant:** I do not want to digress too much, but I do not
regard the euro necessarily as a failure. I have recently been in Finland, Ireland and Spain. People there are doing quite nicely economically. Clearly, some of the core countries in the euro are doing very badly. I think that your question was which bits would everybody have to do and which bits could be optional. I think that I already said that trade policy, the Single Market, fisheries policy, foreign policy.

It is hard to work out how there can be an effective European Union unless all members are taking part. For me, the optional extras are agriculture, the euro, defence, free movement of labour, and much of the Schengen 

Charles Grant: It is a matter of what weight we bring to world trade negotiations. Some of my Norwegian friends have complained to me that nobody listens to them in WTO negoti- ations. Well, because the EU is one of the two big elephants in the room people listen to what it says. Being part of the EU means that a country can get its interest represented by the EU. Whatever the merits of the relative positions of Norway and Switzerland vis-à-vis the EU, they have a problem in that respect.

There could conceivably be a country not taking part in EU trade policy, but I would have thought that the benefits of pooling weight in trade negotiations is self-evidently beneficial to all the members. One might argue about whether an EU foreign policy – EU diplomatic co-ordination – is a good idea, but it is hard to imagine how any Member State would do better in trade talks without the collected weight that the EU brings.

Rt Hon. David Heathcoat-Amory, MP: Your solution to the democratic deficit seems to be variable geometry – or whatever phrase one uses – but we already have it. Countries opt in and out of the euro, Schengen and aspects of defence, but it has not cured the problem. People still feel that the decision-making is remote and alien, and it is getting worse. That is why they voted no in the referendum. It was an accumulated resentment about the entire project.

You are moving the furniture around, but how will you address the problem unless you re-found it on a different basis? I hope democracy will reside at the national level, otherwise, you will invent wonderful new geometry for Europe, but the public will remain unmoved. It does not matter to them whether the Common Agricultural Policy is or is not temporarily within the EU’s remit. They worry about everything else. Where is the solution to the Laeken Declaration malaise, which was so clearly identified in 2001?

Charles Grant: I did not say that the solution to the democratic deficit was variable geometry. That was my possible solution to the problem of enlargement. The democrat deficit involves a different set of issues, although there is, of course, a connection. Part of a solution to the disconnect between citizens and the EU institutions is a much greater role for national parliaments in EU decision making. One of the sad things about losing the Constitution Treaty is that it would have, as you know David, done something, perhaps modestly, in that direction. I hope that we can do something anyway. This is one bit of the dead Treaty that could be cherry picked and implemented anyway.

I guess that a lot of Conservatives would not oppose the provisions that would have forced the Commission to communicate its legislative proposals to national parliaments earlier than happens today and would have allowed those parliaments to have a kind of yellow card procedures by which they could say, “This measure breaches subsidiarity, please stop.” I would have liked a red card procedure, not a yellow card procedure, and stronger procedures that are more involved with national parliaments. The trouble with the EU system is that it is in a kind of bubble: it floats in space in a bubble and it does not touch planet Earth very often because EU and national political systems do not communicate very much. That is as much a criticism of the national systems and the EU system, because it is true that the EU system – the MEPs, journalists and the Commission officials – lives in its little cloud cuckoo land and perhaps does not talk to real people in the real world, but equally I find national parliamentarians in Britain and in other countries are astonishingly ignorant of how the EU works. Very few of them take up their free train trip to Brussels and go to learn about what is happening in the EU.

I would like to solve the disconnect problem by bringing together the two systems. They need to bump into each other more often. One way would be to involve national parliaments more, another would be for European Commissioners to come to answer questions in national parliaments. Perhaps the British Commissioner should appear in parliament once a month, for example, to answer questions and to explain what is going on.

One idea that I liked was the so-called congress, which, as a former member of the Convention, I am sure David is an expert on. I think that it was a Giscard plan to bring together national MPs and Euro-MPs in a grand assembly once a year to listen to the work programme of the European Union. It could have had a role in appointing the EU President. I was sad that the British government did not really support that idea. I am in favour of anything that brings together people working in national politics and those working in European politics.

Bill Cash, MP: The assize was a dreadful example. It was a nightmare when it took place.

Sir Oliver Wright: I sit here among a great number of politicians as a former official. I understand their preoccupations. A major flaw in the way Europe organises itself at the moment is that, quite uniquely, the Commission is given the sole power of initiative. In other words, we are handing over to a vast conglomeration of people suffering from a sort of déformation professionelle the sole task of initiating the progress of the union.

One may wonder why there is no progress on subsidiarity; it is because none of the many thousands of people who work in
Brussels have the slightest interest in putting forward an initiative on it. Their interest has grown over the years – a formidable body of official interest in the Commission – and any change is wholly against it. Without removing from the Commission the sole power of initiative, reform will come to very little.

Charles Grant: I would be against that change for a number of reasons. If the sole power of initiative lies with the Commission, there is less legislation. We would all agree that less legislation is a good thing. Mr Barroso is doing an excellent job in squashing draft proposals from his loony social affairs directorate, for example. We recently saw an example of what happens if we allow Member States the right of initiative with the justice and home affairs provisions of the Amsterdam Treaty until very recently allowing any Member State to propose laws. As a result, too many laws were proposed, and they were uncoordinated and incoherent.

The Commission, by having the sole right of proposal, makes sure that there are not too many proposals and that there is some coherence to them. That does not mean that every proposal is good. If a proposal is bad, national governments can vote it down in the Council of Ministers. The Commission believes, in my view rightly, that the source of its strength is that sole right of initiative, which is the main power that it has. Unlike some people present here, I want a strong Commission. A weak Commission would mean national governments, particularly those of France and Germany, getting away with blue murder when it comes to state aid and other matters.

One of the sad things about the Commission’s weakness – it has got weaker and weaker over the past 10 years – is that France, Germany and other large countries are more likely to cheat, bend the rules and keep illegal state aids to their airlines and so on. When the Commission is stronger that does not happen. Therefore, I favour a strong Commission, but a wise one that does not legislate too often. I believe that President Barroso is making serious efforts to cut down the number of proposals coming out of the Commission. I do not know the figures off the top of my head, but if one studies them, one will see that that is the case.

Rt Hon. The Lord Waddington: How on earth do we get rid of redundant legislation if the sole power of initiative is left with the Commission? The sole power of initiative is not just to initiate legislation but to repeal it as well. Consequently, if the law remains as it is now, no legislation will ever be repealed. That follows just as night follows day.

Charles Grant: You should try to talk to Mr Verheugen, who is the Commissioner now responsible for the Single Market and economic reform generally. He is compiling a list of outmoded laws that will be repealed. It is a long list, so I am not au fait with the latest details, but something is happening.

Bill Cash, MP: On the question of what is outmoded, the wording in the most recent communiqué from the presidency talks about improving legislation. As the Right. Hon. Lord Waddington has said, the real question is, how does one repeal it? As Sir Oliver Wright suggested, that cannot be got from the Commission, which is not interested in the reduction. Mr Verheugen might reduce the volume but will he reduce the impact? The problem is the acquis communautaire as it now stands. The food supplements directive is just one small example of the problem.

Charles Grant: I cannot speak for Mr Verheugen. My understanding is that there will be repeals of directives and less legislation on the book after the process is finished. However, whether it makes less impact is not for me to judge.

Geoffrey Van Orden, MEP: It is nice to see you again, Charles. You are a man who likes to explore new ideas, thinking and ways. Yet, you seem to be prepared to accept the great body, almost the whole acquis, that we have today and just want to tinker at the edges to bring us little efficiencies and things. Leaving aside your point about enlargement, because that is a separate issue, would you not be prepared – here we are, 50 years on – to contemplate looking afresh at how one might co-operate between European nations more effectively to meet the needs of the 21st Century rather than those of the latter part of the 19th or the 20th Century, when things were rather different?

Charles Grant: Maybe I am more conservative than some of you, in that I want to hold on to more of what is there at the moment. Perhaps I am less radical. In my thinking, decades ahead, I would certainly have no CAP. I would probably have social legislation at EU level. I would have more coordination of foreign policy and more co-operation in the fight against crime, terrorism and so on. The EU must respond to real problems in the real world.

The arc of instability that surrounds the European Union from Belarus, through Ukraine, Moldova, the western Balkans, the Middle East and North Africa is a dangerous one. The countries in it – I talked to someone in the Ukrainian government this morning – look to the EU as an organisation that can spread stability to it. They will not all join and they know that, but we need common policies to deal with those countries. We have done so with some success in the Balkans, having started unsuccessfully there. To deal with terrorism, crime and proliferation – the problems around us – we need stronger foreign policies. That, is why several decades ahead, I would hope to see an EU with stronger foreign policies than it has today.

Bernard Jenkin, MP: We will deal with foreign and defence policy on another occasion, and perhaps Charles will come to talk to us again. I submit that the Americans had more to do with our success in the Balkans than any single European country.

I am delighted that you are here, but I am rather disappointed about something. We entititled this session ‘Democracy and accountability in the European Union since 1945’. Variable geometry seems to remain something of a ratchet – some of us have already stuck in a ratchet – and a little genuflection towards the national parliaments to prompt them to talk a bit more to their European counterparts in the European Parliament.

You mentioned communication between national parliaments and the European Parliament. Communication is not democracy. Democracy is about who controls the law. Do you honestly believe that the European Union is, or can be, a democratic institution, seeing as the lawmaking function, when it occurs, is so far removed from what one might regard as the traditional idea of a democracy with a separation of powers and direct
elections to a polity that feels to be a single demos? That word was used earlier this morning. Can it be a democracy, based on the current Treaties?

Charles Grant: That is exactly what my federalist friends say, Bernard. I do not want Europe to be a state or to have a government directly elected or elected by the Parliament. I do not want the Commission to become an executive responsible to the parliament. I do not want the Council of Ministers to become a senate. The EU should not be a state, partly because it would not be very efficient if too much were centralised and partly because people do not want it. The EU is certainly much more than an inter-governmental organisation, such as the IMF or the United Nations. It is something between those two ideas.

I do not regard the EU as undemocratic, given that decisions are mainly taken by the Council of Ministers – by democratically elected governments. The Commission has some power, but the Commissioners are appointed by democratically elected governments. The European Parliament has some power, but it is directly elected. Therefore, I do not regard the EU as undemocratic. But I would not want it to be democratic in the way that you imply. It there were direct elections for an EU President, that figure would be very powerful. I do not want that much power to go to Brussels. Remember that de Gaulle changed the French Constitution in 1962, the initial Fifth Republic did not have direct elections for President. As soon as de Gaulle introduced them, the big consequence was that he was much more powerful. I would not want the guys in Brussels to have as much power as you imply they should have by your question.

Bernard Jenkin, MP: I, of course, do not want it to be a state either. What you have said is very important. You would be happy for a lot of legislative power to be taken out of the hands of national parliaments and placed in the hands of Ministers, officials and a remote European Parliament, which is not really a democratic institution in the sense that a national democratic institution is. You would be happy with that arrangement. I am not.

Charles Grant: I am happy for lawmaking to be done by directly elected MEPs and by Ministers elected by their national systems. I do not see an alternative. Such a system is possibly not ideal, but I am unsure whether anyone has thought of anything better, except the more federalist model that both you and I would not like.

Rt Hon. David Heathcoat-Amory, MP: It follows from what you said that the EU, if it is not a federal government, does not need to be fully democratic in the sense that a national government does. Surely, that is what people want of a lawmaking body. You can transfer various decisions backwards and forwards, but you cannot endow it with a democratic spirit, because it lacks a demos. People do not feel a sense of ownership; there is no loyalty or allegiance to it. This is a structural problem, which nothing you have said seems to solve. You are now reduced to saying that it does not really matter. If it does not matter, we will just have a series of no votes in referendums and further crises. Unless we either retrieve powers or make those institutions fully democratic, we have not solved the problem.

Charles Grant: I think you are implying that many people want some sort of federal Europe. Outside Belgium, Germany and a few bits of France and Italy, that is not the case anymore. The EU has changed dramatically with enlargement. Most of the countries in the EU now do not want it to be the federal thing that we have been talking about. They are happier for it to be as it is today: a compromise between certain federal principles, with majority voting in some things but strong intergovernmental principles, with governments being in charge of most of the big decisions most of the time.

That may be a rather messy compromise, but the progress towards federalism, such as it was, stopped long ago and we have a more interesting – perhaps more complicated system – that we are stuck with. I do not see it changing; we will not get more Treaties to change the way it works. We will have to learn to live with the EU the way it is now, within those parameters, and try to find ways to make it better, within the Treaties that we have.

Rt Hon. Lord Waddington: I am afraid that we will have to draw matters to a close.

Thank you very much indeed for coming. I am sure that you will realise from the questions that were asked the interest that you evoked. We were glad to have you and are most grateful for your contribution.

The Plenary Session finished at 1:02 p.m.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org

2 Frederick Forsyth is a best-selling author and commentator and former radio and television journalist. He is perhaps best known for his book The Day of the Jackal which was an international bestseller and was later made into a film of the same name. When in his youth, he became one of the youngest pilots in the RAF at the age of 19.

3 Lord Wallace has been a professor of International Relations at the LSE since 1995, before that he was the Walter Hallstein Senior Research Fellow at St. Anthony’s College, Oxford. During the 1970s and 80s he fought 5 General Election campaigns for the Liberal Party and co-wrote the party’s election manifesto in 1979 and 1997. Elevated to the peerage in 1995, he has served on the Select Committee on the European Communities and was Chairman of the Sub-Committee on Justice and Home Affairs.

4 Lord Howell is a former Secretary of State for Energy (1979-1981) and Transport (1981-1983). Between 1987 and 1997 he was the Chairman of the House of Commons Foreign Affairs Select Committee and is currently the Conservative Spokesman on Foreign Affairs in the House of Lords. Earlier in his career Lord Howell worked closely with both Edward Heath and Margaret Thatcher, and is credited by several authorities as having invented the idea of privatisation in the late 1960s.

5 Charles Grant is the Director of the Centre for European Reform and a former Defence and European Community Editor for The Economist. He has written widely on matters involving Europe and has been a trustee of the British Council. In 2004 he was awarded the Chevalier de l’Ordre National du Mérite by the French Ambassador to London.
Witness to Support the Oral Evidence Given to the European Reform Forum on 14 July 2005
(Note: Briefs were not provided in all cases.)

Witness Brief: Frederick Forsyth

Democracy – The Dying Creed

Democracy is only a word. Like any other word, it can be debauched by over-use or misuse. There are several other words in a similar state at the present time.

Tyrants throw the adjective in front of the name of their apology for a country and fool no one but themselves. We have heard of the Democratic Republic of Korea (North), the Democratic Republic of the Congo (a charnel house), and my former bailiwick the German Democratic Republic (a Soviet satellite). Mere repetition does not create the democratic reality.

There are certain criteria that have to be met, certain preconditions that have to be fulfilled. It is the burden of this paper that within the European Union, and by osmosis within the United Kingdom, these criteria have been for long under assault and actually disappear in direct proportion to the frequency of the claim of British and European parliamentary democracy.

Shortly after coming to office, Mr Peter Mandelson reportedly told a German audience at a private dinner, and received a sitting ovation for saying: “There is good reason to believe that in my country representative government is coming to an end.” He was right. Many years earlier another man wrote:

“Europe’s nations should be guided towards the superstate without their people understanding what is happening. This can be accomplished by successive steps, each disguised as having an economic purpose, but which will eventually and irreversibly lead to federation.”

The writer was referring to government by deception, a necessary precursor of the end of representative government, aka democracy. He was Jean Monnet, founder of the European Union and inheritor of the centuries-old dream of the complete unification of Europe under one (but not necessarily democratic) government.

The sage remarked that wisdom’s house had seven pillars, but five will suffice to support the house of democracy. These are:

1. **Attitude**

   In any state, save the anarchic state which is not a state anyway, there will be a government. There will thus be the governors and the governed, and there will be a relationship between them. If the governments regard the governed with considerable respect, and if the governed regard their governors with a goodly portion of trust, that will be healthy society. If the reverse if the case, it will be a thoroughly unhealthy state, based on mutual dislike. This paper proposes that the present governors of the European Union regard the populace with considerable dislike and are themselves viewed as self-serving and mendacious; and that these attitudes are rapidly spreading to Britain.

2. **Aim**

   What is the point of good government? It is occasionally salutary to ask such a simple question. The answer need be neither lengthy nor complicated. The point of good government is fourfold. It is:

   To Maximise the Security, the Prosperity, the Freedom and the Contentment of the People.

   There is nothing that need be added or taken away. The four desiderata adequately cover the ideal human condition within the ambit of government.

   A government that can increase the safety of its people from threat at home and abroad; that can increase their prosperity; that can increase their freedom within the framework of humane law; and which can increase their contentment, is a good government. And if the reverse, then the reverse. It is the view of this paper that all four aspirations are in decline within the European Union and increasingly so within Britain.

3. **Election**

   Those holding the offices of the governors should have arrived at this eminence by scrupulously fair election on the basis of universal adult suffrage. But there is more. The people’s tribunes must be chosen at two levels. The fundament of the truly democratic parliamentary state is the constituency. The people of the constituency must be allowed to choose their several candidates, and then their successful member of parliament. The head-office selection of party-line-toeing candidates, and their allocation to winnable constituencies along with the closed-list system are aberrations from democracy and reminiscent of East Germany. They are spreading.

4. **Scrutiny**

   The election of a government is not enough. There must be constant public scrutiny, not on a once-ever-four-years basis, but daily and weekly. No member of the governing body will willingly be subjected to scrutiny. No public servant, unelected but benefiting from legitimacy by appointment under a democratic government, will welcome scrutiny. It asks too much to suggest it should be so. Scrutiny therefore comes from a principled and loyal but vigorous opposition. Consensus government, so beloved within the EU, cannot exercise scrutiny and does not. It is the view of this paper that, starting with the so-called European Parliament, there is no feasible, viable or permitted opposition as a British parliamentarian would understand the word, and thus democracy has already died in Brussels. It is moribund in some member states and the canker is spreading to the UK.

5. **Sanction**

   In the democratic state, departure from office, the ultimate sanction short of impeachment while in office, must also be the free choice of the people by secret ballot, in fair elections under observed rules.

   The European practises of closed-list candidates, proportional representation with a top-up list for the really big Pooh-Bahs, consensus politics and backbenchers chosen only for their blind obedience means that corruption flourishes, the displeasure of the electorate becomes meaningless, the political extremes rise
on the back of proletarian anger, and even if voted out of office Tweedledum will either re-appear wearing another hat or be replaced by his twin Tweedledee.

This is the manner in which great organs of Brussels are constituted and run. It may be many things, but it is not democracy. It is in fact the triumph of oligarchy. But anything that is not democracy is in truth but a variant of totalitarianism.

This paper takes the view that in all five areas of attitude, aim, election, scrutiny and sanction the EU is failing badly and the cancer has entered the bones of Albion.

**Witness Brief: Lord Wallace Of Saltaire**

1 Democracy was a fragile plant in Western Europe after 1945. Mass parties of the right and left emerged from the chaos of the war and the depression of the 1930s, based on class (or church) solidarity and trust in (their) elites. Turnouts were high, voting more an affirmation of group solidarity than a conscious attempt to hold governments to account. Professional elites set out to plan economic and social reconstruction, as servants of the state, on behalf of uninformed voters. Those who we now derisively call 'bureaucrats' then proudly called themselves 'technocrats' – expert officials, pursuing the enlightened interests of the unenlightened public.

2 The model for the three original European Communities grew out of this context. They were given Commissions of technical experts, counterbalanced by inter-governmental Councils; the consultative Parliamentary Assemblies were not given central roles.

3 Since then, the limited policy competences of these Communities have expanded exponentially. This has been partly in response to the 'spill-over' effect of opening markets, partly to technological change, partly to rising affluence and its knock-on effects in terms of cross-border travel, careers and house ownership, partly to the emergence of multi-national companies and integrated production and marketing. 'Europeanization' – economic and social activities across a wider European space – is part of 'globalization'; both have led to a requirement for regulation at levels more remote from the public, above the nation state level.

4 Economic and social changes have also swept away the conditions that made for mass democracy, led by trusted elites. Membership of political parties has shrunk across Europe (and North America); trust in politicians and officials has declined; turnout has fallen. Politics has become more local, in terms of popular interests and expectations, even as government has had to become in many areas more international.

5 In the 1970s and 1980s member governments within the European Communities attempted to bridge the gap they now recognised between Brussels policy-making and national publics. They agreed that the European Parliament should be directly elected; they developed a number of 'symbols' of Europe, including the EU flag; and they agreed some policies that would appeal to EU citizens, including the right to vote in local elections in states where people are resident, and new measures on cross-border police cooperation. These have appealed more to those who live mobile lives across frontiers – the most successful – rather than to those whose lives still operate within national (or sub-national) borders.

6 We are therefore left with a structural gap, which is hard to bridge – which, I would argue, is one of the most difficult issues for democratic politics in an increasingly globalised – open markets, half-open borders – world. Popular resistance to European institutions is part of a wider phenomenon. In the USA suspicion of remote government takes the forms of attacks on the UN and on international law, as well as popular suspicion of Washington across the different states. In France it is 'globalisation' itself which is seen as the enemy.

7 Efforts to bridge the gap by involving national parliaments more closely have so far not been very successful. The Parliamentary 'Assizes' that accompanied the negotiations that led to the Maastricht Treaty on European Union were vacuous. COSAC (the 6-monthly meeting of national parliamentary scrutiny committees) is cumbersome; and achieves little. Meetings of specific committees, or of their national chairs, are reported to have been more useful. There are strong disincentives for national parliamentarians to devote themselves to international meetings; this is not what their voters elected them to do, or what their local media will support.
Witness Brief: The Rt Hon. the Lord Howell of Guildford

There’s an easy case to be made about the absence of democracy from the European Union and a much more profound case.

The easy case is simply to point out that the European Parliament is a hopelessly distant and remote body, largely unaccountable for its decisions and with only a slim popular mandate, and yet with real powers to make laws and regulations and to spend public funds.

In terms of human scale it is just too big. The longed-for European demos not only does not exist but is actively rejected by a modern world that seeks greater localism, intimacy between rulers and ruled. The thread of intimacy and knowledge that must connect democratic assemblies to the grass roots just does not reach the EP, quite aside from the fact that it elects no government and raises no taxes itself.

The entire idea of trying to impose ‘democratic’ structures on Europe at a supranational level derives from old principles of hierarchy and centralism which are no longer relevant in the network age.

The deeper case is about the real nature of democracy, which of course is a much larger story – of which votes and elections and political parties are just part.

Amartya Sen tells us that democracy is ‘the opportunity of participatory reasoning and public decision-making – government by discussion.’ The EU goes about its decisions the other way round.

But we need to look deeper still. Democracy requires a universal degree of self-restraint, and not just between the majorities and the minorities but inside all groupings and all sources of power and influence – public, professional – in a plural and genuinely democratic society. This is the democratic spirit, which has to go with democratic institutions and procedures, otherwise they are empty and dead.

This demands both strong self-policing and strong media and parliamentary policing (and the media itself must be practitioners as well – where they are not, that is anti-democratic).

This kind of democracy, labelled by some constitutional democracy, can only occur in nation states.
Second Plenary Session

Oral Evidence on Economic, Commercial & Trade Policy and Competitiveness:
“Stability, Growth and Employment?”

Thursday, 20 October 2005

Committee Room 6, House of Commons, Westminster

The Plenary Session commenced at 11:00 a.m.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary): Good morning, everybody. We shall now start. The full team is not here. Various people have been caught up in security, but I do not want to waste a moment because Lord Tebbit and Lord Weatherill have to leave at about 11.40 am.

Mr Stewart-Brown, thank you very much for coming along this morning. We are honoured by your presence. We are most grateful to you for attending. You are aware of the purpose of this exercise and we are sure that, with your expertise, you can give us considerable help and guidance.

Our witnesses usually make short statements and then answer questions. Is that satisfactory?

Ronald Stewart-Brown (Witness): Certainly. Thank you for inviting me to appear as a witness today. I applaud your decision to establish the European Reform Forum, following the French and Dutch ‘No’ votes last summer. No longer can the European Union honestly claim that the road to ever closer union is democratically sanctioned. The time is right for new thinking about the future of Europe. However Europe evolves, we will have to live with the consequences. The financial and demographic problems that leading continental Member States face are worrying enough, but if the European Union continues to compound them with the declining international competitiveness that is certain to result from its European social model philosophy and from its ‘man from Brussels knows best’ approach to regulation, the prognosis will indeed be bleak.

It must therefore now be right to seek to devise the basis for a new and lasting equilibrium within Europe that is based on genuine democracy and limited state power. I am confident that this Forum and other bodies, such as the new Open Europe think tank that will be launched later today, can together develop a plan to rival any of this country’s past initiatives in European statesmanship. But I am not confident that any future British Prime Minister, however eloquent, could persuade our continental friends to follow our vision, unless we can state credibly and unambiguously what we would do if they did not. The power conferred by our 9 per cent of the votes on the Council of Ministers would be hopelessly inadequate for the task.

We need a fully worked through plan B, and we are a long way from that today. Since the existing Treaty structures leave us little room for manoeuvre, we need to look at some form of new associate relationship outside them that we can pursue uni-laterally, if necessary. The difficulty is that that would mean being outside the main body of the European Union and therefore outside its internal market, or what we call the ‘Single Market’. But at present, Single Market membership is virtually an article of belief for most of the political, civil service, business, media and academic establishments in this country. Many mistake it for a glorified free trade area rather than what it actually is: the internal market of an emerging continent-wide unitary state.

The challenge of overturning such deeply entrenched conventional wisdom is formidable. People can see the United States of America trade successfully with the EU, even without the benefit of a free trade agreement. But they have no concept of how we could achieve a similar position without acrimony and unacceptable business disruption. Nor do people have any idea of how we could reach the even better position of an intergovernmental free trade agreement with the rest of the EU. This is not surprising. Few people in this country have any serious grasp of how the World Trade Organisation multilateral trading system or comprehensive free trade agreements work. We are the world’s fourth largest trading nation, yet we now have no practical or general legal expertise in trade policy matters. No university or other organisation has a budget for financing research in such areas. And anyhow, there is no precedent for any country leaving a mature customs union in modern times.

But as I see it, the problem is not insuperable. Business can be educated about the mechanics of a new, free trade basis of trade with the EU. For most businesses, the transition process should be perfectly manageable and I see no reason why we should not be able to build a broad business consensus for moving to a future of unregulated free trade with Europe. For sure, we need to consider the issues sector by sector. Rules of origin would require close attention for most merchandise categories of trade. Public procurement would be a big issue for sectors such as pharmaceuticals. Rights of commercial presence would probably be the key focus for service businesses. Certain large processed food companies have vested interests in current EU support regimes that would need to be addressed.

No one should imagine that the process would be simple. Free trade agreements are tough and complex to negotiate. We could, however, feel confident that once the negotiation process had started, mutual interest and reciprocity would generally prevail over posturing animosity.

So how could we get the process started if we needed to? We could seize the initiative by announcing that, following the repeal of Section 2(1) of the European Communities Act 1972, we would opt to remain in de facto customs union with the EU by temporarily retaining the EU’s existing tariff and subsidy arrangements. That would give breathing space for negotiation, while minimising business disruption.
The idea could prove catching. One possibility that I hope the Forum will consider is Europe itself evolving into a broad free trade area of which every Member State would have the option to become a direct and independent member as an alternative to staying in the residual core European Union that would become its largest member.

Rt Hon. Lord Waddington: Thank you very much indeed. We are grateful to you, Mr Stewart-Brown. May I exercise the Chairman's privilege by asking the first, perhaps rather obvious, question? What chance can there possibly be of the Commission playing a useful role in the way of deregulation, when it is the sole initiator of legislation? Given that it has initiated all the legislation that has created such a great burden of regulations, how on earth can we expect that same body to produce repealing legislation?

Ronald Stewart-Brown: I sympathise with that view, Lord Waddington. The EU is systemically incapable of deregulating to a significant extent because, when a directive or regulation has been issued, the process of retracting it is complicated by the fact that it has to be done either by qualified majority voting or, perhaps, unanimity voting. There may often be vested interests that may work together to block deregulation. Of course, we must remember that, with the EU, a major problem is the lack of a formal system of parliamentary opposition to challenge and embarrass the Commission over its errors. I think that we should try, but it may be very difficult.

Rt Hon. Lord Tebbit, CH (Former Chairman of the Conservative Party): There is an in-built tendency towards state regulation among the leading continental powers, so they are temperamentally unlikely to agree to a process of deregulation. Can you conceive of any way in which that can be broken when either qualified majority or even unanimity is required to undo things?

Ronald Stewart-Brown: That is an extremely good question. The leading continental European Governments, especially the French Government, and therefore the Brussels system, have a dirigiste approach to markets, which distracts the operation of the free economy. It will be difficult to overturn that culture. We must make the case for deregulating and liberalising Europe, but there are some strong barriers against our being successful in doing so.

Rt Hon. Lord Tebbit: In the meantime, that is all a bit frightening to many people in business in this country who look for certainty in some areas. For example, let us consider the construction industry. Enormous efforts have been made recently to agree a common standard in all sorts of areas of the construction industry. To whom would that industry look for its standards in the event that we were able to escape from the Brussels standard-making system?

Ronald Stewart-Brown: If we were able to escape from the Brussels standard-making system for the construction industry the primary responsibility would surely revert to Westminster. For any individual standard the choice before Parliament would be whether to retain it or abolish it or to delegate the decision to the relevant ministry by statutory instrument. A first question with any standard should always be why government needs to be involved at all.

Rt Hon. Lord Tebbit: From Elizabethan days until recently, a house brick was 9x4x3 inches. It is now a similar size, but with metric measurements. Someone must decide that that will be the size of a house brick. If we are out of the system, many people in the construction industry will ask who will make such decisions. Are we almost to accept the standard that is agreed by our competitors on the continent?

Ronald Stewart-Brown: If we are talking about house building within the United Kingdom, could we not revert to our long-standing standard of 9x4x3 inches?

Rt Hon. Lord Tebbit: We could indeed, but it is more complex than that when dealing with standards for double-glazing units and so on, which are traded across frontiers.

Ronald Stewart-Brown: For European business the British construction industry would have to comply with EU standards. For the domestic construction industry, as I said earlier, it would be for Westminster to set the rules, and European companies would have to comply with them when doing business here.

Rt Hon. Lord Weatherill, DL (Former Speaker of the House of Commons): My background is in small and medium-sized enterprises. I see from the briefing paper that there is a Better Regulation Task Force, which is making recommendations. Commissioner Verheugen is involved. I do not suppose that anything has really come of it, but given that the majority of businesses in the European Community are small, is not the setting up of the task force a welcome start? Surely, small businesses will be very much on our side for deregulation.

Ronald Stewart-Brown: I am sure that it is a welcome start, but we need to see how effective the task force is. If it is successful, it will go against the general trend of past regulation from Brussels.

Rt Hon. Lord Weatherill: Could we not mobilise the strong voice of small or medium-sized businesses in support of major deregulation?

Ronald Stewart-Brown: I am all for doing that. I believe that organisations, such as the Confederation of British Industry and the Institute of Directors do their best, but they have to work from Brussels through UNICE in Brussels and we have to question how efficacious that process is.
Ronald Stewart-Brown: If we can't achieve an acceptable solution within the present EU Treaty framework then we would have no alternative to negotiating a new relationship with the EU outside it. Yes, I think that would involve repealing the European Communities Act, and I am confident we could negotiate our own perfectly satisfactory new free trade relationship with the EU. If we wish to put the best interests of the people and businesses of this country first that may in the end be only way forward.

Roger Brooke (Former Chairman of the Audit Commission): We sometimes get the impression that Britain is the only country that has a serious, concerted and considered debate about how we might reduce the regulations or free ourselves from them. Is that right, or do other countries have a real, strong body of opinion that thinks that way? Have you come across another country that is willing to consider the extreme step of threatening to get them to throw us out if we go ahead on our own against the will of the majority? Are we really on our own, or not?

Ronald Stewart-Brown: My impression is that Eurosceptic thinking is far more advanced in this country than in any Member State of the European Union. I suspect that in some of the newer European countries, such as Poland and the Czech Republic, there may be growing concern about the way in which the EU is developing at present and, thus, a growing interest in possible alternatives. However, there is a classic case for Britain to take the lead in Europe as it has done so often in the past.

Roger Brooke: I have just been to Bulgaria, Hungary and Romania. It is interesting that, on the whole, they are enthusiastic about having joined the European Union. They have escaped from communism; they now plan to do something that is more friendly. They are now trying to compete and they would be horrified at the idea of breaking it up. I am not sure you are right that there is yet any popular support for any such matters, even in the new countries.

Ronald Stewart-Brown: I take your point. The revulsion from the Yalta settlement that so much of Eastern Europe felt was the main motivation why those countries were so keen to join the new Europe that was being created. I can completely understand that. Fear of Russia and what those countries had to live with for so long dictated their actions. However, they may yet come to consider that what they did was perhaps not very wise because they had returned to democratic self-government. They had the protection of NATO so far as defence was concerned. They had free trade arrangements with the EU already, so what actually were they gaining – let us take Poland, for example – through joining the EU, apart from a sense of security that might be an illusion?

Sir Oliver Wright, GCMG, GCVO, DSC (Former Ambassador to United States of America and Germany): I apologise to you, Mr Chairman, and to Ronald Stewart-Brown for being late and missing his presentation. I hope that he will forgive me if I ask a question that he has already answered. I wish to return to the number of free trade areas that the EU seems to have negotiated around the world. The notable exceptions, to which attention has
been drawn, are the Anglophone countries, in which we clearly have not only a major political, but a major economic, interest. Do you have any views about why they have been omitted? For example, a couple of decades ago Mr Leon Brittan, who was then Trade Commissioner, suggested a free trade area between the European Union and the North Atlantic Free Trade Area. That suggestion was shot down in flames by France and no one has heard any more about it. Do you have a view on why the Anglophone countries are prejudiced in that way?

Ronald Stewart-Brown: It is interesting that Gordon Brown’s new pamphlet argues for a stronger transatlantic economic partnership. Why does he not talk about a free trade agreement rather than use such a vague term? I don’t think we’ll ever see any serious EU proposal for a proper free trade agreement with the USA.

I have calculated some striking figures, which is why I believe that Brussels is effectively discriminating against this country’s relationships with its English-speaking friends. The proportion of EU goods exports, excluding Britain, which go to America, Canada, Australia, Singapore, Hong Kong and New Zealand is about 10 per cent. For this country, it is 21 per cent. The proportion of this country’s service exports that go to those six countries is about 31 per cent. We are more much focused on those English-speaking countries than the rest of Europe. We are suffering a severe competitive disadvantage through being unable to negotiate our own trading relationships with those six countries.

Rt Hon. Lord Waddington: We are short of time and we must thank you for being so generous with your time, Mr Stewart-Brown. Thank you very much indeed for coming along. You have been most helpful.

I welcome you, Mr Leach. It is kind of you to come along and we are grateful to you for having done so. We asked Mr Stewart-Brown if he would make an introductory statement. Will it be convenient if we asked you to do the same and for you then to answer a few questions?

Rodney Leach (Witness): Yes, that would be convenient. I shall make my statement as brief as possible. I know that you are short of time and I should rather leave the rest of the time to questions.

The central problem facing EU trade policy is the incompatibility of rival Member States’ economic philosophies. An extreme example is that of France and Britain. France believes in protection against what it sees as a threat to European industry from those two giant new entrants to the global trading world, China and India, which will soon be joined by Russia and Brazil. Britain, however, believes in free trade, to give consumers the benefit of inexpensive goods and to open up the Asian markets, to make them wealthier by trading with them – opening them up to high value-added Western services and technology – like the City, for example. France believes in national champions. We believe in open competition. France believes in regulation. Chirac once confided to a journalist – rather unnecessarily – that he wanted Europe to be the regulatory capital of the world. We, at least, pay lip service to deregulation.

In responding to these divergent political pressures the Commission is obliged to face simultaneously in opposite directions, the Treaty of Rome authorises a free-trading policy. However, the Commission, impelled by elements in the EU, has just launched an absurd trade war against China, which it promptly lost within weeks of starting it, and it is the main source today of anti-dumping cases of the WTO, on which Ronald Stewart-Brown is a great expert. Even this morning, we learned that the EU is blocking comprehensive reform in the Doha round of trade talks. The Commission is forced to be the mouthpiece of those elements. It faces both ways, but probably more in the anti-freedom way than in the pro-freedom way.

That is a potential disaster for the European Union. There is no question that it is looking down the barrel of a gun. The French Institute of International Affairs said that it was heading for the exit ramp of history. Recently, Goldman Sachs forecast that Europe’s share of world GDP would fall to one-third of its present level during the lifetime of my children. We are looking at a slow meltdown – nothing dramatic year by year, but cumulatively a very dangerous situation for Europe.

Britain’s trade policy is far too passive because, as was mentioned earlier, we sub-contracted it when we joined the European Union as it now is. We contracted it out to the Commission. Who knows where we stand in the present trade talks? We read or hear on the Today Programme that the EU is sabotaging the talks by being anti-liberal, yet we know that Britain is the principal voice of liberal free trade in the world. It is all happening behind closed doors. It is a profoundly anti-democratic process and it goes against the fundamental trading culture of Britain. But unravelling it becomes a type of Kremlinology rather than a democratic process.

I do not believe that either Britain or France – I am using France as a password for anti-competitive thinking – should seek to impose its worldview on the other. We will not succeed; the French will not succeed. France might have a better chance than us, because it is easier to assemble a blocking minority than a reformist vote, although that is not absolutely clear. In the absence of mutual agreement, we cannot condone joining the disastrous future that is forecast for trade in Europe. A way must be found for both approaches to co-exist, with the market and history being the final judge as to whether an open society or a protectionist one is the way forward.

That, of course, has profound political implications, which have been a taboo subject over the past 10 or 20 years, except among the few people who oversimplify a complex situation. I see from today’s brief that those deeper political implications are not on the agenda. Perhaps they should be left for another day, although we should never forget that they exist.

Rt Hon. Lord Waddington: Thank you very much indeed. My asking Lord Tebbit and Lord Weatherill first whether they wish to ask any questions is not unfair discrimination. They have to leave shortly.

Rt Hon. Lord Tebbit: Was it the original Treaty of Rome that dictated that Europe should have a highly regulated and protectionist system, or was it that the Commission and the Ministers who developed the policy chosen within the framework of that Treaty to create such a system? Secondly, have the amendments to the Treaty in recent years changed its nature
so much that it is now a protectionist and regulatory Treaty?

**Rodney Leach:** You have embraced about 50 years of history in that question, Lord Tebbit. It is a good question. Sitting round this table I see at least three people – possibly more – who would be better equipped to answer it than me.

I do not think that the original Treaty of Rome carried within it the implication of massive future regulation. I think that that was essentially a discovery in the Delors period – we are delving into history – that the Single European Act could be used to hang a great deal of regulation on. I do not think that it was regulation just for the sake of it, but those who were concerned with such matters well understood that the way in which Germany had been unified under Bismarck was by standardisation and that adopting the same principle, which they called approximation or harmonisation – or whatever word came to hand – would be a good way of achieving the same result in Europe.

As Britain was taking the lead in promoting the Single Market, the Europeanists sandbagged Britain by saying, “You want free trade. It is all being held up by barriers at the frontier. We will have a Single European Act that sweeps away all those barriers.” Not surprisingly, a lot of people here – virtually everyone – felt for it. The reality was that we were giving Brussels an instrument to speed the centralisation process. They had difficulty integrating by direct methods, because, on the whole, people did not want to be integrated, so they proceeded – I will not call it by stealth because anyone with eyes to see could see what was happening – in the way Bismarck had done; by regulation.

**Rt Hon. Lord Weatherill:** I want to return to the theme of small and medium-sized enterprises. The great British public really do not know, or have any appreciation of, how many regulations are imposed on small businesses and bigger businesses. If people in France do not like the regulations, they do not take any notice of them. We take notice of such matters and impose regulations on our companies. Would it not bring matters to a head if we took a leaf out of the French book, took no notice and let the European Union charge us with everything? The public would perhaps then have some appreciation and we would have some support.

**Rodney Leach:** It would be a bit counter-cultural for Britain – although many parliamentarians would have a better view than me – just to ignore or break the law in that way. We do a lot of gold plating of regulations and make the situation slightly worse, and our resistance to the process has been pretty flimsy. However, I do not recommend a process of massive lawbreaking.

**Rt Hon. Lord Waddington:** The British Government say that they attach a great deal of importance to urging others to deregulate. What are the realistic chances of the Commission ever being an engine for deregulation? After all, the deregulation that we are talking about is the scrapping of all the regulations it has produced. What are the chances of anything happening as a result of any initiative on the part of the Commission?

**Rodney Leach:** They are, of course, extremely slight, but we do not want to over-demonise the Commission. It is Janus-faced: it faces in both directions. It is a civil service, but it is also an initiator of legislation. It is an engine of what the Member States tell it to do, but as soon as there is a vacuum, it fills it with more integration. Therefore, it does both things at the same time. If there were a united European view among all Member States that there had to be serious deregulation, I would be surprised if the Commission could not be coerced into going down that path.

I think that reference was made to such matters in the previous evidence. All states – I am not just talking about Europe, although it applies to Europe, in particular – are given to centralised regulation. Reversing that process would be difficult, but not impossible. I shall return to what I was saying about trade policy.

The problem with giving up control over one’s own destiny is that one loses the will, as a minority partner, to fight for that destiny. We delude ourselves that nudging and tweaking things in the right direction – cancelling the odd regulation here and dropping some trade-diversionary aspect of the Common Agricultural Policy there – is a great achievement, although nothing significant has happened at all other than a headline in the papers the next day.

The situation is very serious, unless we wish to join what the French call the exit ramp of history. I work for an Asian company that does a lot of business in Asia. If we go up the Pearl River delta, we see acre after acre of dormitory towns, fed by highly intelligent, hard-working people. There is minimal deregulation and access to massive Western capital, technology and finance. One would not want to be a blue-collar worker in Stuttgart, Detroit or Birmingham.

We have to drive ourselves upmarket and continue that process, of which regulation is a big part. Europe is blind to it because it is extremely introspective. It is obsessed with internal governance and its own arrangements. It thinks that the solution to every problem is more Europe. It is not. We need to be far more proactive in promoting trade policy and liberalism. By ‘proactive’, I mean we have to get rough. We have to say, “We aren’t approving the budget, unless this happens,” not “We’d like it to happen.” We should not just make speeches and construct initiatives and ambitious targets to which we attach city names – the ‘Lacken’ this and the ‘Lisbon’ Agenda. It is all nonsense. We have to say, “You ain’t getting your budget unless there is real reform.”

**Rt Hon. Lord Waddington:** Mr Jenkins, you did not have an opportunity to question the other witness so it is your turn now if you wish to ask something.

**The Hon. Bernard Jenkin, MP (Shadow Minister for Energy and Former Shadow Defence Minister):** I hope that Mr Leach will forgive me for missing the opening paragraphs of his statement. The premise of the discussion so far is that deregulation and competitiveness of Europe must be a collective effort of the whole of Europe. I agree. We should try to help save the whole of Europe, but it will not happen that way. Different countries have
different politics and political agendas and, in particular, France, Italy and Germany, which are virtually politically paralysed and are incapable of sustaining such reform, even if they were free to pursue it. They will certainly not lobby for it. Does there not come a point where we have to take some kind of legalised unilateral action – action that does not necessarily have to be lawbreaking in our own legal terms – to break the logjam? What would such action be?

Rodney Leach: I agree with the thrust of the question; we do these things with others, if possible, but, if necessary, we do them alone. No British statesman in this place can condone just watching Britain sink with Europe to the sort of levels that are forecast for it on its present path. The way in which this happens must be quite specific to the problem at hand.

One element that has not been mentioned, and which is not much seen in media, is that Brussels has discovered the City. The City makes up more than 20 per cent of British gross domestic product. It is the most vital part of the entire British economy. So far, the City has been largely out of the reach of Brussels, which casts envious eyes on it, either as a pot of gold or as something that is far too successful and fundamentally unregulated by the EU. It is of course highly regulated; it perhaps has the highest standards in the world, but not by Brussels, which is now beginning, under the so-called Lamfalussy Process, to get its teeth into financial services.

The City is not only the most vibrant part of the British economy, but the most vulnerable and the most mobile. Goldman Sachs and Morgan Stanley do not have to have every-thing here. They can up sticks and move to Wall Street, Hong Kong or somewhere else. The surest way to destroy the City and Wall Street act, in some ways, as a back-up system for industry, which has huge links, above all, with Wall Street.

Looking at the matter closely, believe that we are perhaps heading to a point where we might find others who would go along with it. We do not know. Many people, who are good judges and who have looked at the matter closely, believe that we are perhaps heading towards a European Securities and Exchange Commission. We can imagine what effect that would have.

It is sector-specific. The City has to get together and say, "Well, this is unacceptable. We have a massive and very successful industry, which has huge links, above all, with Wall Street." The City and Wall Street act, in some ways, as a back-up system for each other, as we saw when the Twin Towers went down. Nothing happened to the world economic system. Why was that? Because the trade that was destroyed by the attacks on Wall Street was transferred instantly to the City of London. We are talking about trillions – so closely linked, so easy is the understanding between the two centres.

That was another story that the press never picked up. It was almost too big to pick up. It could not conceivably have been replicated within the EU. Imagine if we had that sort of relationship with Paris or Frankfurt; the whole system would have been brought to a halt for three months.

Rt Hon. Lord Waddington: Thank you very much, Mr Leach. I think that we have time for one further quick question and then we will have to stop.

Bill Cash, MP: You will have seen Gordon Brown’s pamphlet, Global Europe: full-employment Europe, Mr Leach. Of course, it is predicated on the basis that everything will continue within a framework that is already established. Gordon Brown makes a number of suggestive noises in rejecting aspects of the model that has been developed since 1972. I was talking to one of his close colleagues the day before yesterday. He said, “Bill, this is not Eurorealism; this is realism.” And he meant it.

Is it really possible to tinker any more, with occasional efforts to make the system work better? I do not want to tie you down too specifically, but, at the bottom line, have we more or less moved to the point at which we are trying our best, by various examinations of the problem, to find the answer, but on balance – having looked at the quagmire that has been created, such as low growth, high unemployment, what is at risk and all the things that you have rightly outlined – we realise that we should seize the nettle and deal with this serious problem? It could be done with both the economic muscle that you have suggested, in terms of the withdrawal of payments, and on the political side, by saying, “We have had enough and we are now going to start legislating in terms that enable us to run our own country in our own fashion.”

Rodney Leach: I have not yet read the Gordon Brown pamphlet, although I have naturally heard a lot about it and have seen the summaries of it. He obviously knows the music, but I am unsure whether, as Horace said, he knows the words. Perhaps he does.

We have to use every single element to hand. We must use muscle and diplomatic effort, and cultivate like-minded spirits in Europe, of which there are many – the previous witness referred to that. However, they are not organised into the sort of lobby groups or vocal focal points that we have in this country, both in this House and outside.

I do not believe in springing great surprises on people. The battle for free trade is one that many people here have been warming up to for eight or nine years. It started with the campaign against joining the euro and voters could get their teeth into. It would be a terrific shock to start talking about unilaterally pulling out of various parts of the legal system. We must first till the ground by trying our utmost by legal, diplomatic and negotiating means, to move the thing forward. It is only if we fail that we should have to resort to unilateralism. It might not be unilateralism, but partial multilateralism, as we might find others who would go along with it. We do not know.

I am a great believer in example. We were all told that it would be a disaster if we were not in the euro. I think that Mr Kenneth Clarke said that the people who were against it could be fitted into the back of a taxi and that if we did not enter, our currency would soon fall to the level of the Romanian lei. That was the popular wisdom at the time, but now that we are not in it, Sweden has been emboldened to vote against it, with no treaty authority to reject it, and is doing very well.

The example of being successful outside the euro is a far more powerful argument to those who are struggling inside it than reformist talk within the bosom of the Community. The argument for unilateralism that lies behind your well-asked question, Mr Cash, is that a state that is unilateralist is only unilateralist for a short time, because if it is successful with that approach others will say, “Well, that was a damn good idea, I think I’ll do the same. There is a lot to learn from it.” I am a believer in awkward elbows.
Rt Hon. Lord Waddington: Thank you very much indeed. I am afraid that I will have to draw the questioning to a close, because we must leave enough time for our other witnesses. We are most grateful to you, Mr Leach, for having joined us. It was a fascinating discussion.

Good morning, Professor Begg, and thank you very much for coming. Do not make me hurry you. The other witnesses have made a statement and then answered questions. Do you find that satisfactory?

Professor Iain Begg (Witness): Yes.

Rt Hon. Lord Waddington: That will be very well received, so fire ahead when you are ready.

Professor Iain Begg: My starting point is that I regard the EU as an economic project, which is, and will remain, vital to the UK’s national interests. I understand that a few people around this table will probably disagree, but I might as well get it on the record first.

To me, the EU goes well beyond just the economic. It encompasses a range of political ambitions that reinforce, rather than contradict, the economic case. I further stress that I am fairly relaxed about where the decision-making powers should lie. It does not bother me whether that is in Edinburgh, Carlisle, Brussels or anywhere else, as long as the right decisions are made. I do not think that we should always and everywhere insist on sovereignty at all costs.

That said, it is evident that the core economies of Europe, especially Germany and Italy, are going through a difficult phase. They suffer from different ills. There is a reluctance to push through reforms in the labour market in Germany. The social protection – or welfare – system also possibly has an effect. Low productivity and poor quality of service in public administration are at the root of most of Italy’s difficulties. That emerges in the failure of entrepreneurship and in other areas. Perhaps a common thread between both those countries – and one or two others – is that neither has quite reached the tipping point where in Germany they would say genug or in Italy they would say basta – or, “You must change.”

The rhetorical question that then arises is whether the EU is, in some sense, to blame because of excessive regulation, a bad macro-economic policy framework and bad policy choices. In my view, the answer is no. In Italy’s case especially, the reverse has been true insofar as the fiscal framework and the pressures from Brussels to liberalise markets and to adopt a stability-orientated macro-economic policy have been beneficial to Italy in trying to find what we might call a political-economy means of arriving at reform. The Italian interests resist, and it is the pressure – the vincolo esterno, to use a lovely Italian expression – that acts as a device to press them to change.

Why do I dwell on those countries? The principal reason is my argument that slow growth in the euro area can be seen as a reason for the United Kingdom to be against being in the European Union. I believe that that is a false logic; it confuses a problem of transition – the sort of problem that we have seen in other countries – with one of long-term direction.

It is worth noting that for those that we are now supposed to call the ‘recently acceded Member States’ – RAMS – the lure of joining the EU was not just political stability, but that it offered a market of opportunity. Their transitions were compressed because they have had to move from the Communist era of the late 1980s to joining the EU now. The tens of thousands of pages of acquis communautaire can seem like a bureaucratic burden, but they are also, ultimately, about liberalising markets.

I do not want to claim that I am starry-eyed about the EU. I am sure that we could all identify silly, needlessly intrusive regulations that somehow make it on to the Brussels carousel. I want regulations to do the right sorts of things. Some start with good intentions and end up being traduced or having unintended consequences that nobody thought about. I want a regulation that tells me that the wine I pay for is appellation contrôlée rather than vin ordinaire. I do not want to be told where, when or how much of it I can drink. We should attack the inane, by all means, but we should regulate where it improves quality.

I gather that one of the things that the Forum wants to cover in this inquiry is what the Treasury has been saying in the past week or so. I refer to Gordon’s paper and the initial publication of the Lisbon Strategy for Jobs and Growth: UK National Reform Programme.

The Financial Times captured it effectively last Friday in its second editorial, which some present might have seen. The editorial took the form of a spoof letter from other Finance Ministers to Gordon Brown. They state:

“Imagine our relief when you set out a plan to save Europe: greater flexibility in product markets, labour markets and capital markets…”

and

“… a framework for macroeconomic stability that supports stability and growth.”

“We had no idea that Europe now has to compete in global markets. Not even the Germans, with their $157 bn … surplus.”

Taking the mickey is perhaps the best response to Gordon’s pamphlet.

In the same vein, the UK’s National Reform Programme, which came out last week, is little more than a restatement of previous economic reform papers put out by the Treasury in the past four or five years. It tells others what the UK already does. There is nothing particularly novel in it. It does not identify the areas in which the UK lags behind, where manifestly some action is needed.

In that context, we could think about why our research performance is below par. We spend only 1.9 per cent of GDP on research; the target is 3 per cent and the Finns and Swedes spend nearer 4 per cent. We are behind. Why is there nothing in the Reform Programme about how to remedy that position? If not a Eurosceptic, I am becoming a Lisbon-sceptic. We bang on too much about the Lisbon strategy. In the way that it is unfolding, it is unlikely to achieve the results that were signalled with such rhetorical flourish in so many documents.

Rt Hon. Lord Waddington: Thank you very much indeed. Mr Brooke, would you like to put the first question?

Roger Brooke: Earlier, a Frenchman was quoted as saying that Europe is on the exit ramp of history. The Treasury report shows that everything is moving in the wrong way as far as Europe is
Professor Iain Begg: I hope that I spelled out that there are significant problems in two or three Member States, the most extreme examples being in Germany and Italy. However, domestically, they have not woken up to the fact that they have to change. That is not because of the EU and what it is doing. It is trying to open markets and to liberalise. That is the agenda that has been set out. What it does not have is the means to do it. We are almost in the ironic situation of Brussels not being able to enforce those ideas on the Member States. This suggests that a solution is to give Brussels more power, though I am sure that you all agree that there is a problem with governance. No one seems to be able to offer incentives to the Germans or Italians that would transform their economic position. Is the EU on exit ramp? No; we must not think about that. Many people think that the only way that we will ever challenge it is by threatening the sort of unilateral action that the French have done in the past when they have walked out of NATO. Do you think that I am being fair in saying that you sound a bit complacent about the problems?

Professor Iain Begg: I hope that I spelled out that there are significant problems in two or three Member States, the most extreme examples being in Germany and Italy. However, domestically, they have not woken up to the fact that they have to change. That is not because of the EU and what it is doing. It is trying to open markets and to liberalise. That is the agenda that has been set out. What it does not have is the means to do it. We are almost in the ironic situation of Brussels not being able to enforce those ideas on the Member States. This suggests that a solution is to give Brussels more power, though I am sure that your side of the table would disagree.

There is a problem with governance. No one seems to be able to offer incentives to the Germans or Italians that would transform their economic position. Is the EU on exit ramp? No; we could go through decades of gentle, relative decline – a somewhat slower growth than in other parts of the world – without being calamitously affected.

Rt Hon. David Heathcoat-Amory, MP: Professor, I wish to press you on your statement that the regulations are about opening up Europe for business. You will be familiar with the artists’ resale right directive that comes into force in January, which will put a compulsory levy on the resale of contemporary art. It will drive important works to the United States; that has been demonstrated beyond doubt. The British Government voted against the directive, but it is being imposed on the London art market. How, in any sense, is that good for business?

Professor Iain Begg: It is not good for business if you are the art house. But if you are the artist –

Rt Hon. David Heathcoat-Amory, MP: But it was brought forward under Article 95, which is a Single Market article.

Professor Iain Begg: Yes, but I was referring to the artist – the interest that has been promoted by the levy. The art houses would lose. How do you mediate between them?

Rt Hon. David Heathcoat-Amory, MP: I am puzzled by how helping the American art market can be good for European trade, when it was brought forward by majority voting under an article to promote the Single Market. Is not that an abuse of regulation rather than a pro-business free-market measure?

Professor Iain Begg: I am trying to explain that targeting is improving the lot of the artist. Do you accept that?

The Hon. Bernard Jenkin, MP: No.

Rt Hon. David Heathcoat-Amory, MP: Oh no, because it will be sold in New York. That is the point. If you were David Hockney and your work went to New York to be sold, you would not receive a penny of the levy. It just means that your dealer would be paying in London. How can that be good for anyone?

Professor Iain Begg: That is assuming that every sale moves to the US, which is implausible. If some sales remain in the European Union, there will be a transfer of some income to artists, which was presumably the reason why it was it elaborated in the first place. That seems to be a trivial example.

Rt Hon. David Heathcoat-Amory, MP: Not for the 50,000 people who work in the British art market. You said at the start that you did not mind where the regulations were made, whether in Brussels or here, provided that they were the right ones. But is not a democratic issue involved? The British Government have a duty to protect and preserve what we are good at in this country. If directives and regulations are promulgated by majority voting against the expressed wishes of the British Government, does not that lead to a breakdown in trust between the people of this country and the European Union?

Professor Iain Begg: It can do, yes. I agree. However, when we are in the majority, other regulations in our interests – financial services, for example – are imposed on other countries.

The Hon. Bernard Jenkin, MP: I am encouraged that we share quite a lot. Most people around the table want to remain in the European Union in a constructive way. We share a concern about the competitiveness of Europe. The discussion that has just taken place shows that Europe and the EU think that they are regulating their internal markets in isolation, and that heavy regulation will result in a lot of displacement of economic activity outside the European Union. I shall cite the example of the emissions trading scheme. I am sure that it will reduce carbon emissions in the European Union, but it will displace carbon-producing industries from the European Union to other parts of the world, where they do not have an emissions trading scheme. Do you accept that?

Professor Iain Begg: It is a risk, yes.

The Hon. Bernard Jenkin, MP: Well, it is more than a risk. It will happen. It is a certainty, is it not?

Professor Iain Begg: We now have to pose the question: why have the emission trading scheme, the whole sustainable development agenda and the Kyoto Protocol evolved? We can be against all such matters because businesses should be allowed to let rip, but there are quality of life aspects that cannot be ignored.

The Hon. Bernard Jenkin, MP: What does “business being allowed to let rip” mean?

Professor Iain Begg: To produce as many emissions as it wishes.

The Hon. Bernard Jenkin, MP: I think that you mean that individual nations cannot be allowed to decide such matters on
their own. That is what you are saying. For some reason, you do not trust the British Government. Do you think that the British Government would let business rip? Is that it?

Professor Iain Begg: Well, you just said that if there are any controls on emissions –

The Hon. Bernard Jenkin, MP: There will have to be controls on emissions –

Professor Iain Begg: Things will then move to countries where there are less controls on emissions. That was your assertion.

The Hon. Bernard Jenkin, MP: No; my assertion is that such issues have to be looked at in a global context. There must be some global agreement. For instance, the Kyoto Treaty was falling to pieces – even the Prime Minister accepts that – because not enough countries have signed up to it, particularly India and China, let alone America. If they do not sign up to it, it is all rather meaningless. Do we not have to deal with these things on a global basis rather than pretending that we can isolate ourselves and impose all those costs and obligations on ourselves in isolation? That will just move the business elsewhere.

Professor Iain Begg: Yes, but that is a head-in-the-sand approach to environmental standards. If the Kyoto Treaty was conceived as a means of getting a global response, the fact that the Americans will not support it means that it is not working as well as it could. If one country or one part of the world unilaterally tries to do something about it, then at least it would get to where the blockage is coming from.

The Hon. Bernard Jenkin, MP: It may or it may not. I wish to raise another aspect. Presumably we are in favour of free trade. But the European Union does not seem to be a good influence in this. For example, in the bra wars. The Indian Government, the Pakistani Government and even African Governments would dearly love to have free trade agreements with Britain, but we are not allowed to do that. Would not such agreements be good for Africa, good for British trade and good for British consumers?

Professor Iain Begg: I quite agree, but you said it was the European Union that was stopping us. It is not; it is Portugal, Italy and the other countries affected that are blocking it.

The Hon. Bernard Jenkin, MP: Yes, but that is the point. This collective arrangement is anti-free trade; it is pro-protectionism; it is making people in Africa and Pakistan poorer.

Professor Iain Begg: We do not disagree on that. I am trying to get to where the blockage is coming from.

The Hon. Bernard Jenkin, MP: The blockage is that it requires unanimity, or we are bound by majority voting. If we had competition in Europe – if we were able to compete more freely with our European competitors by having different trading arrangements – would it not unblock the system?

Professor Iain Begg: That is the argument that you made about emissions in reverse. If the Portuguese and other Governments had protection and we did not, we would unilaterally have no protection and we would be discriminated against. Our bra manufacturers would be up in arms.

The Hon. Bernard Jenkin, MP: We would be discriminating?

Professor Iain Begg: Against. We would be discriminated against.

The Hon. Bernard Jenkin, MP: By whom?

Professor Iain Begg: We would be discriminated against by the others. If they imposed protection and we did not, our manufacturers would object.

The Hon. Bernard Jenkin, MP: Is not the key point here about where the balance of our trading interests lie? We already earn more of our overseas earnings from outside the Europe Union than within it. If we have the opportunity, we should open our markets, particularly to the growing markets. This is the point about the Europe Union growing, or not growing, because we are bound by a trading policy that is protecting itself and declining; instead, we should open our markets with countries that are expanding more quickly than we are. Is that not in our national interest?

Professor Iain Begg: Yes, but what is the European Union doing about it? It is trying to break down those barriers; it is some countries that are resisting it. That point has been made again and again.

Bill Cash, MP: You referred to the Lisbon Report, and Gordon Brown’s Global Europe report. You also indicated that you thought that it would not be the fault of the EU if we end up with low growth and high unemployment. That puzzles me a great deal, because of the framework within which those policies are being driven. Perhaps I am being a little cynical about this, but Gordon Brown is suggesting that we can go forward to change everything in Europe, though the evidence is not good, based on the Lisbon Report. Do you sustain and maintain the argument that there is nothing really wrong with the framework of the European Union, or do you believe that somehow or other it will just sort itself out?

Professor Iain Begg: We need to take that point-by-point. Does the EU have the wrong macro-economic policy? It does not. Apart from the European Central Bank, it is the Member States that have the policies. The European Central Bank repo rate is 2 per cent, which is half the rate of the Bank of England. I do not think that is an explanation for low demand in Europe. Although there can be quibbles about the Stability and Growth Pact not being as well conceived as the British fiscal rules, I think that the reforms now being introduced bring it pretty close to a sensible macro-economic policy.

There are still problems about market access. Here again, the European Commission is trying very hard to open up markets. I am sure that you are aware of the Financial Services Agency’s action plan or the proposals open up network industries. The obstacles – this goes back to what I said in answer to Bernard Jenkin – are the Member States and certain interests within those Member States, particularly the bogeyman of the French trade unions, that strongly oppose the setting up of markets.

Rt Hon. Lord Waddington: Thank you very much. We could
have carried on for much longer – it was fascinating – but we have to draw to a close with our warm thanks to you for talking to us.

Professor Iain Begg: I am pleased to have been of service.

Bill Cash, MP: Thank you very much.

Rt Hon. Lord Waddington: Welcome, Mr Hutton. Thank you very much for coming along. The other witnesses made a statement and then submitted themselves to a few questions. Does that suit you?

Will Hutton (Witness): That would be super. I have an apology to make. The office in which I work is afflicted with a power-cut, which is the reason for my late arrival. Also, although I have written a couple of pages of submission to you, it is trapped in a powerless office, for which I apologise. I shall just say a few words.

Rt Hon. Lord Waddington: Fire away.

Will Hutton: In my submission, I tried to answer your three questions, as I guess the other witnesses did. I do not know whether everyone is aware of this, but I was the rapporteur of the Kok Group – a task force put together by the EU heads of state – reported last November under the chairmanship of Mr Kok, the former Dutch Prime Minister, on why, halfway through the Lisbon process, progress has been so disappointing. As rapporteur, I wrote the Kok Group reports, so you may want to ask me a few questions about that. It was quite an aggressive analysis of the shortcomings of Europe’s progress towards Lisbon and of the governance and procedure by which it is trying to implement it.

First, it is worth going back to basics. The EU is committed to four freedoms on the economic front: trade in goods; trade in services; the free movement of capital; and the free movement of labour. The presumption embedded in the heart of the European Treaties is that the purpose of the whole exercise is openness. The competencies of the Commission and the acquis communautaire are largely about ensuring that those freedoms hold. Much of the acquis communautaire is about product standards, safety standards in food, and regulatory standards on the minimum hygiene level of food that can be traded between Member States of the EU. Regulations are the same for the whole of the EU.

That makes eminent sense if the objective is to expand liberal capitalism eastward on our continent.

I shall not talk about the ECB and the euro unless members want me to, but I have written extensively about the fact that there are many design faults in the way in which institutions and processes work – for example, the lack of symmetry in relation to the inflation target – which would need to change before I would think about Britain’s membership of the single currency area, but some of the strengths of the single currency area are neglected in British debate.

The Forum will be aware of the extraordinary restructuring that has taken place in the past five years in German industry. In 2004, the country emerged once again as the world’s leading exporter. The productivity growth in German manufacturing has been astonishing, and the Germans have been using the high euro to restructure its industry in the same way as they used to use the high Deutschmark. The French have done the same. Business France, Business Euro and Business Germany are in a much healthier state than their labour markets or their welfare systems. That is often neglected in the British debate.

On business regulation, I wrote the section in the Kok Report that said that we had reached a tipping point. Business regulation in Europe has probably become counterproductive, and the presumption should be that regulation ought to be used as a last resort. However, the debate is greatly distorted in Britain. For example, the building that I occupy as chief executive of The Work Foundation had to be closed because of British health and safety regulations – it was nothing to do with European rules. Some members of staff may think it was a slightly draconian response to a power failure, but it was a British rule and not a European one.

An awful lot of regulation is made in Member States rather than at EU level. The Commission in Brussels probably feels powerlessness rather than powerful. There is a question to be asked about why the debate in each Member State is so risk-averse that its collective response to risk produces regulation. That is probably a more fertile area for people to explore who are concerned. What is happening in Brussels is of second order in the debate. I am not even certain that business regulation is the central reason why businesses are underperforming in some Member States. Regulations are the same for the whole of the EU. However, there is a wide spectrum of outcomes; in the Nordic countries, Ireland and the UK outcomes are very good, but they are much worse in Italy, France and Germany. That suggests that other factors apart from business regulation may be drivers of economic performance.
On Lisbon, it would be great if there was some progress. The spillover effects are important if one believes in a knowledge economy, although that is a slightly trendy name that has thereby come to be slightly meaningless. Whether or not we are in the EU, given its economic structures, globalisation and the rise of China and India – on which I am writing a book – our economic response has to be a development of high-value-added presence in a whole gamut of industries including financial services, professional services, cultural and creative industries, research, universities and high-tech manufacturing.

The future surely lies with an accompanying service sector. Lisbon, in trying to advance Europe in that direction, is surely right, especially as there is a lot of evidence that spillover effects are very powerful. The best progress towards a knowledge economy in Britain would be making progress with our principal trading partners – they remain not just the US, but France, Germany and mainland Europe.

I thought that Gordon Brown's paper was a powerful piece of analysis. However, one of the things that is often neglected in debates on Europe, and neglected also in objections to regulation and the social model of Europe, is the fact that the social model produces very good outcomes. I am happy to produce evidence, but social mobility in the EU is significantly better than in the United States, although it has been falling in all Western countries. The income of your parent is a better determinant of where you will end up in 25 years' time in the United States than almost anywhere in Europe and exit rates in the bottom quintile income distribution are better in the EU than in the USA. Infant mortality, life expectancy and survival rates from killer diseases are all better in the EU than in the United States. Social Europe may be expensive, and it can be objected to because it may impose regulation at the margin – and sometimes not only at the margin – but there are outcomes to be traded off against those costs, and they are not often talked about.

Rt Hon. Lord Waddington: Thank you very much.

Bill Cash MP: Thank you, Mr Hutton, for coming here and for giving us that pretty comprehensive analysis. I very much hope that the minutes give us the opportunity to see it in black and white.

I was particularly interested in the fact that you were the rapporteur for the Kok Report, which I followed with some interest, and the criticisms that it contained of how Lisbon was being implemented – or not implemented. What you are saying is almost a triumph of hope over experience. We see the Lisbon system faltering, as you admitted in your report. Now, rather than grappling with those problems in a realistic fashion, it seems that we are getting more and more of the statist approach.

For example, the Commission is apparently supposed to answer the problem by proposing a €4.2 billion competitiveness and innovation programme. It is not relying on the market to produce the answers; the Commission turns to itself and Member States and says, "Let's spend €4.2 billion." That sort of socialism is disturbing in light of the failure of the Kok Report. Even the Commission speaks about the failures, and about the evaluation being patchy at best.

On deregulation, if the acquis continues to be as concrete as it is, the idea that we can resolve the regulatory problems by hoping that people will unravel their qualified majority commitments to the existing acquis would seem to be another example of hope over experience. Will you comment on the Commission's €4.2 billion?

Will Hutton: My understanding is that it is €4.2 billion.

Bill Cash MP: I am sorry, I said pounds, but in my notes it is written down as euros.

Will Hutton: I know that when scribbled down quickly, the two can look the same.

What can I say about this? I understand that it is to support economic adjustment in those regions that are particularly hard hit by globalisation. It is worth noting the scale of that. Chinese exports will reach $750 billion this year. The OECD predicts that, by 2010, Chinese exports will have doubled to $1.5 trillion. If that growth continues at more than 20 per cent per annum, that figure will double again to $3 trillion by 2015. That will be $2.25 trillion in Chinese exports over a 10-year period. About a third of that – about $750 billion – will come to Western Europe, and the displacement impact of that on some regions and industries in Europe will arguably be the biggest adjustment that the EU and Member States will have to face since American agriculture came on the scene at the end of the 19th Century. So to propose a €4.2 billion, or €3 billion, plan, with matched funding from Member States, to try to transition people from areas that will be hard hit by this one country's exports – we have not mentioned India or the impact of other Asian exports – is not a silly idea, particularly in those accession states where, without something like that, there will be no adjustment process in place.

It is difficult. The ideological difference between you and me, Bill, is that I do not see skills acquisition or programmes that transition unemployed workers into new forms of employment as socialist. I regard things as socialist when people talk about public ownership or planning, or state direction. That is where I have problems. But that sort of initiative is an adjustment, and if it is well organised and planned, it could be very beneficial – or, if it is poorly organised, it might not.

The Hon. Bernard Jenkin, MP: Thank you for that opening statement. I believe in the four freedoms for our continent, but can you make a case for the customs union? Why is it necessary to be in a customs union in order to deliver the four freedoms?

Will Hutton: Again, people approach such issues from different parts of the political and economic forest, with all the different prisms through which we see things. I think we all know that there are interest groups that are difficult to navigate around, even Tory, Labour or Lib Dem. In a national context, it is often bloody difficult. If you are trying to open up the EU to scale production, to intensify competition and break down barriers in order to sow the four freedoms, you have to do so in the name of something and have a story to tell to the French trade unions, the Italian Bank or even the British Post Office about why you are doing what you are doing.

It seems that the first step was to get things happening on our continent. By the way, the tariffs against the rest of the world are in many areas – only those permitted by the WTO or lower – so it...
is a pretty ineffective customs union these days. It might have been effective in 1957, but in 2005 the story is different. You have the remnants of a customs union in many areas, but it is so porous that it no longer makes sense as a customs union. Originally, it was to have been a sort of rallying call – saying that the reason why we have to do this painful thing is because we have this European project, which will happen at European level.

Personally, I think opening should happen globally – but, bloody hell, it is tough enough to do it among the 25 states of the EU let alone more than 180 states worldwide.

**Rt Hon. Lord Waddington:** Now, Mr Heathcoat-Amory; we are almost on borrowed time.

**Rt Hon. David Heathcoat-Amory, MP:** This has been the year of Africa; we have all tried to alleviate the plight of poor countries there. Would it not be immeasurably to everybody's benefit if we had the autonomous trade policy, so that we could simply, immediately and unconditionally import goods and products from poor countries? That would enable us to do the triple: we could do the people in poor countries good; we would help our consumers by reducing prices here; and it would not disadvantage our own agriculture, because we do not grow or produce many of the products concerned.

Your criticism of the CAP, Will, which I listened to with interest, is surely a criticism of the EU trade monopoly over negotiations? Will you join us – or me, at least – in criticising the export of our trade policy to the Commission? It tries to carry out trade policy on our behalf, but fails because it must reach uneasy and unsuccessful compromises with other Member States?

**Will Hutton:** Well, this is about trade-offs. They occur not only within trade policy but between it and in other areas. Your argument would be strong, David, if there were no offsetting benefits of having a common trade position. The ability of the EU to fight a common position, for example at the Doha round, is likely to mean that we will have a freer trade environment than if every Member State in the EU had negotiated independently there. Again, that must be offset against the loss which you describe.

It is a judgment call, David, and one that is affected by the prism through which one looks at it. People could either say that the hourglass is half full and likely to fill, which is where I sit or that it is half empty and likely to empty, which, I suspect, is where most people in the European Reform Forum are at. You make a forceful point. My reply is that it is about trade-offs and that there are other benefits to having a common trade position.

The EU has managed to do some things for Africa, such as aid transfers, which are worthwhile thinking about. There are also the soft economic issues that I talked about in my first submission – where the EU is in a much stronger position to support African states that need to build institutions. It might also be listened to more than the United States is. We must consider the picture in the round, but David made a forceful point.

**Rt Hon. Lord Waddington:** I am afraid that the clock has beaten us. You have been generous with your time, Mr Hutton, and I thank you very much for coming in and giving us such a fascinating view.

**Will Hutton:** Thank you, Lord Waddington. I am looking forward to the report.

The Plenary Session finished at 12:34 pm.

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1. A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2. Ronald Stewart-Brown is Director of the Trade Policy Research Centre, which is examining the trade policy options that would be open to the UK outside the Common Commercial Policy-Single Market framework. His work in this field has been widely published in publications such as Economic Affairs and Global Britain.

3. Rodney Leach is a Director of Jardine Matheson and other companies. He has been widely involved in European issues, as Chairman of Business for Sterling and currently Chairman of Open Europe. His *Europe: a concise encyclopaedia of the European Union* is in its fourth edition.

4. Iain Begg is currently a Visiting Professor in the European Institute at the London School of Economics and is affiliated with the College of Europe. His research interests focus on the political economy of European integration and its consequences for economic policy-making, public finances, regulation, cohesion and policy assignment between tiers of government in the EU. From 1998-2003 Professor Begg co-edited *The Journal of Common Market Studies* and has written extensively on EU economic policy.

5. Will Hutton is Chief Executive of The Work Foundation, an independent not for dividend research based consultancy. Prior to this Mr Hutton enjoyed a career as a highly successful journalist working at the BBC and *The Observer*, and won the Political Journalist of the Year award in 1993 for his coverage of the 1992 ERM crisis. He has written several best-selling economic books including *The World We’re In, The State We’re In, The State to Come, The Stakeholding Society* and *On The Edge* with Anthony Giddens.
Thank you for inviting me to appear as a witness today. I applaud your decision to establish the European Reform Forum following the French and Dutch ‘No’ votes last summer. No longer can the European Union honestly claim the road to ‘ever closer union’ is democratically sanctioned. The time is ripe for new thinking about the future of Europe.

However Europe evolves we will have to live with the consequences. The financial and demographic problems its leading continental Member States face are worrying enough. But if the EU continues to compound them with the declining international competitiveness that is certain to result from their European social model philosophy and from their ‘man from Brussels knows best’ approach to regulation the prognosis will indeed be bleak.

It must now be right to seek to devise the basis for a new and lasting equilibrium within Europe based on genuine democracy and limited state power. I am confident that this Forum and other bodies like the new Open Europe think tank being launched later today can together develop a plan to rival any of this country’s past initiatives in European statesmanship.

But I am not confident that any future British Prime Minister, however eloquent, could persuade our continental friends to follow our vision unless we can also state credibly and unambiguously what we would do if they didn’t. The power conferred by our 9 per cent of the votes on the Council of Ministers would be hopelessly inadequate for the task.

We need a fully worked through Plan B, and we are a long way from that today. Since the existing Treaty structures leave us little room for manoeuvre we need to be looking at some form of new associate relationship outside them that we could pursue unilaterally if necessary.

The difficulty here is that that would mean being outside the main body of the EU and therefore outside its internal market, or what we call the Single Market. But at present Single Market membership is virtually an article of belief for most of the political, civil service, business, media and academic establishment in this country. Many mistake it for a glorified free trade area rather than what it actually is, the internal market of an emerging continent wide unitary state.

The challenge of overturning this deeply entrenched conventional wisdom is formidable. People can see the USA trades successfully with the EU, even without the benefit of a free trade agreement. But they have no concept of how we could get to a similar position without acrimony and unacceptable business disruption. They have no idea how we could go about getting to the even better position of an inter-governmental free trade agreement with the rest of the EU.

This isn’t surprising. Few people have any serious grasp of how the World Trade Organisation multilateral trading system or comprehensive free trade agreements work. In this, the world’s fourth largest trading nation, we now have no practical or general legal expertise in trade policy matters. No university or other organisation has any budget for financing research in this area. And anyhow there is no precedent for any country leaving a mature customs union in modern times.

But I see the problem as not insuperable. Business can be educated about the mechanics of a new free trade basis of trade with the EU. For most businesses the transition process should be perfectly manageable. I see no reason why we should not be able to build a broad business consensus for moving to a future of unregulated free trade with Europe.

For sure, we need to look at the issues sector by sector. Rules of origin would require close attention for most merchandise categories. Public procurement would be a prime concern in areas such as pharmaceuticals. Rights of commercial presence would probably be the key focus for service businesses. Certain large processed food companies have vested interests in current EU support régimes that would need to be addressed.

No one should imagine the process would be simple. Free trade agreements are tough and complex to negotiate. But we could feel confident that once the negotiation process had started mutual interest and reciprocity would generally prevail over posturing animosity.

So how could we get the process started if we needed to? I believe we could seize the initiative by announcing that following repeal of Section 2(1) of the European Communities Act we would opt to remain in de facto customs union with the EU by temporarily retaining the EU’s existing tariff and subsidy arrangements. That would give breathing space for negotiation whilst minimising business disruption.

The idea could prove catching. One possibility I hope this Forum will consider is Europe itself evolving into a broad free trade area of which every Member State would have the option to become a direct and independent member as an alternative to staying in the residual core European Union that would become its largest member.

Thank you.
The central problem facing EU trade policy is the incompatibility of rival Member State economic philosophies.

France, for example, believes in protection against the threat to high-cost European industry from those two giant new entrants to global trade, China and India. Britain, by contrast, believes in free trade, to reap the benefit to consumers of inexpensive goods and open up Asian markets to high value-added Western services and technology.

France believes in national champions, Britain in open competition. France in regulation, Britain in de-regulation.

Responding to such divergent political pressures, the Commission faces simultaneously in opposite directions. The Treaty of Rome inclines it to free trade. On the other hand, it has launched a futile EU trade war against China and has become the main source of anti-dumping cases at the WTO. A farm caucus in the EU delegation to the WTO has blocked acceptance of a US offer to eliminate tariffs, because this would include agricultural subsidies.

Without radical change, the EU is headed for 'the exit ramp of history' (the words of an authoritative French think tank), with its share of world trade declining to one-third of the present level.

British trade policy – currently far too passive – should be directed towards vigorously averting that catastrophe.

Neither Britain nor France should seek to impose its worldview on the other. In the absence of mutual agreement, a way must be found for both approaches to co-exist, with history and the market being the final judge.

This, of course, has political implications, which for many years have been a taboo subject except among over-simplifiers. But this is for another day.

My starting point is that the EU as an economic project, is and will remain, vital to the UK’s national interest. However, the EU plainly goes well beyond the economic to encompass a range of political ambitions that, to me, reinforce the economic case.

I should also stress that I am relaxed about where decision-making powers should lie, and take the view that what matters is to obtain the right decisions, not to insist on sovereignty at all costs.

That said, it is evident that the core economies of Europe, especially Germany and Italy, are going through a difficult phase. They suffer from different ills – a reluctance to push through reforms of the labour market and the social protection system in Germany; low productivity and poor service in Italian public administration – though perhaps the common thread is that neither country has quite reached the tipping-point at which a consensus forms to say genug or basta.

Is the EU to blame because of excessive regulation, an ill-conceived macroeconomic policy framework or bad policy choices? In my view, the answer is no and that – certainly in Italy’s case – the reverse has been true insofar as the fiscal framework or the pressures from Brussels to liberalise markets and to adopt stability orientated macroeconomic policies has stimulated change and can ultimately be beneficial.

In the same vein, I would argue that Germany is in trouble, not because of EMU, but despite it. Germany suffers from a lack of demand, not because the European Central Bank’s repo rate is too high (2 per cent by any standards is a very low rate), but because German consumers have been loath to spend. Germany, in fact, is the odd position that it is very competitive as judged by its success in exporting, a feat that has been assisted by holding down labour costs rather successfully in recent years, yet that same success has deterred the consumer who has less to spend. While there is manifestly a need for Germany to go further in reforming the supply-side of its economy, we all know that growth is an essential lubricant of structural change. Germany, in short, faces a sort of macroeconomic Catch-22 in which the more it becomes competitive by holding down labour costs, the less scope there is for the economy to recover.

The reason for dwelling on these other countries is that today’s slow growth in the euro area can be seen as a reason to argue against being in the EU or the single currency, or questioning the character of the EU’s policies. But that would be to confuse a problem of transition (for countries that are facing economic challenges) with one of long-term direction. It is noteworthy that for the ten countries which joined the EU in 2004, the lure was not just political stability, but also the perception of a considerable economic opportunity from the open EU market.

It is true that as an institution of governance, the EU is primarily a regulatory body, since it has very little capacity for public spending (it accounts for just 2.5 per cent of aggregate public expenditure in the Union, with the remaining 97.5 per cent split between national governments and regional or local tiers). But most of the regulatory (in the widest sense of the term) activity of the EU is orientated towards opening of markets, not attempts to impose protection. Above all, the many directives and regulations that underpin the single market are genuinely about increasing competition and dismantling protection.

Some EU regulations are, however, aimed at what might loosely be called ‘quality of life’ targets, some of which may be at odds with raw capitalism. Such regulations are intended to reflect the shared values encapsulated in that amorphous term, ‘the European social model’. It can be argued that, at its best, this latter sort of EU regulation attempts to redress the balance of power between different interests, though it inevitably also means that there will be losers as well as winners.

I do not aim to be starry-eyed. We can all point to silly or needlessly intrusive regulations that somehow make it on to the Brussels carousel. No doubt most regulation starts with good intentions, but ends up being traduced or having unintended
consequences, though in some cases, it may be that individual Member States try to push regulations that are thinly disguised attempts to protect their own interests. But for the most part, the regulatory activity of the EU (and we should remember that the EU is its Member States first and foremost, with the Commission as mediator and executive) can be considered benign.

I want regulations that assure me that the wine I pay for is appellation contrôlée rather than vin ordinaire, but not to be told when or where I can drink it. So, by all means, attack the inane, but regulate where it improves the quality of life.

The pamphlet issued by Gordon Brown on the 13 of October is an attempt to highlight the challenges confronting the countries of Europe from the rise of new competitor countries and to exhort them to action. I question whether it will have much impact since it echoes the message aimed at other Member States that has been coming out of numbers 10 and 11 for several years. The likely reaction was, I suggest, well captured in a Financial Times leader published the day after the pamphlet was published. It purported to be a letter of reply from the other EU finance ministers and this spoof included the following statements:

“We had no idea that Europe now has to compete in global markets. Not even the Germans, with their $157bn (£131bn) trade surplus”

“Imagine our relief when you set out a plan to save Europe: ‘greater flexibility in product markets, labour markets and capital markets’ and ‘a framework for macroeconomic stability that supports stability and growth’.”

The other document issued by the Treasury on the 13 of October was the UK’s National Reform Programme (NRP), entitled Lisbon Strategy for Jobs and Growth, a document which all Member States were asked to produce following the March 2005 re-launch of the Lisbon Strategy. In principle, these programmes are supposed to be blueprints for the reforms that countries will undertake to make progress towards the goals of the Lisbon Strategy.

In my view, the UK NRP is little more than a restatement of previous economic reform papers that set out what the UK is already doing. I see little about concrete new measures to improve performance in the areas in which the UK lags behind, such as its relatively low level of investment in R&D (1.9 per cent of GDP, which is well below the target of 3 per cent and has shown little propensity to rise).

If others follow suit, I have reservations about how much good even the re-launched Lisbon Strategy will do. In this regard, I have become something of a ‘Lisbon-sceptic’ in the sense that although the overall thrust of the Lisbon Agenda generally makes sense, it is much less clear whether having a ‘procedure’ at EU level helps. I strongly suspect that the Germans, the Italians and others know perfectly well what their economies need, but lack the political will or support to implement reforms.

Ironically, therefore it is the weakness of EU institutions (in the sense that they possess neither the means to offer incentives nor to impose sanctions for Member States that fail to fulfil their commitments), especially in Lisbon-related policy areas, that is the problem, not excessive regulatory powers. In practice most of the obstacles to progress are within the Member States, rather than in Brussels.
The Plenary Session commenced at 11:00 am.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary)⁴: It is now 11 o'clock. Thank you very much for coming, Ms Jenkins. You were kind enough to let us have a statement. We normally ask witnesses to make a statement and then answer questions. So, we can either go with the statement you provided or you may amplify it as you wish. Afterwards, we will take questions.

Lindsey Jenkins (Witness)³: Thank you for inviting me to be a witness on the crucial issue of "who governs and how?"

Afterwards, we will take questions.

A previous witness, Mr Frederick Forsyth, characterised the European Union as an oligarchy. I agree with that. Unelected Commissioners and civil servants owing their allegiance not to their own nations, but to the European Union and a Parliament with extremely limited powers, which is elected by proportional representation and controlled by European Union-wide parties, exemplify the EU's aim. That aim was updated in the preamble to the Treaty of Nice as the process of ever closer union, which ends with one country and one state.

The how of EU government can be illustrated by the takeover of local government, both in this country and throughout the whole of the European Union. When the UK acceded to the Treaty of Rome in 1973, we agreed to adopt the EEC's system of local government. That is a little-known fact. In our case it is a process which ends with one country and one state.

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While we were still negotiating to join the EEC in the 1960s, it fleshed out its regional policy which is skeletal only in the Treaty of Rome in 1957. Regions were further defined. Regional economic assessments became mandatory and led to EEC grants, which are bribes in all but name. In the UK, that was reflected in Royal Commissions, which, in the words of Lord Redcliffe-Maud, would cause "a holocaust of local authorities … the primrose way to the everlasting bonfire."

Two dissenters to the Kilbrandon Commission on the Constitution in 1973 listed ways in which our membership of the EEC might affect governance adversely. They said that it would both strengthen the case for devolution and seriously constrain the form and extent of that devolution. The dissenters have proved to be right.

It is only in the past decade or so that the EU's local government system has been successfully rolled out in this country. John Major's Government created the all-important government offices in the new regions, and Tony Blair's Government are finishing the job with the division of the UK into 12 parts, the creation of the EU's sub-regions, which are the old counties and local authorities, and the sub-sub-regions – the parishes – are now called neighbourhood councils.

London is changing into a regional capital; it is no longer to be the focus of the nation and nationhood. Just as in Brussels, local government is turning into oligarchies with power centralised in one person and a cabinet, many of whom are appointed rather than elected, aided by hundreds of quangos, stakeholders, partnerships, vested interests and lobby groups. The Labour Government admit in their White Paper, Your Region, Your Choice: "Influence within the EU … operates through many more channels than the formal EU."

Inevitably, two of the more advanced regions, Scotland and Wales, are seeking to take more power from the UK, as the former MP Tam Dalyell predicted. Every national government function, from defence to police, tax and justice is being regionalised. Regions have offices in Brussels – that is compulsory – but they do not have offices in London; they have embassies and offices abroad. The northeast region has eight offices in the Far East and the United States alone, and they are now encouraged, under the Madrid Convention, to develop their own foreign policies.

Nationhood apart, what is missing in all this is democracy. We have, as it is called in Brussels, a post-democratic society. As the tide of stakeholders, quangos and centralised power has risen, so too electoral turnout has fallen. Voters sense that they are becoming redundant.

Lord Denning, the great, but late, upholder of English common law argued that, "we are coming under another sovereignty – that of Europe … the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back."

I wrote to him and questioned the phrase "cannot be held back". He replied that if you cannot stop the tide, you have to make the best of it. I argue that with political will that tide can be reversed.

Rt Hon. Lord Waddington: Thank you very much indeed. May I exercise my privilege as Chairman by starting the questioning? This is not one of the questions of which you have been given notice, but this is all a part of things. I am becoming more and more disillusioned with the European Parliament. Most MEPs do not look upon themselves as guardians of the rights of Member States or even the rights of their citizens. They seem to look upon themselves as all parts of this great engine driving the
project of ever closer union. That is encouraged by having the pan-European parties. Have you any suggestions as to how we can put that right? That is all a part of bringing democracy into the European Union, is it not?

Lindsay Jenkins: If the question is whether we can bring democracy into the European Union, I think the answer is no. It is set up in such a way as to exclude democracy and make it the equivalent of wallpaper. I do not think that there is any way in which we can do that; the whole of the Treaty of Rome would have to be rewritten. When reading for my recent book on local government, I noted that nearly every clause in the 1957 Treaty has something about regions in it. It is very cleverly written. The Spaak Report of 1956, which was the draft Treaty of Rome, had only two references to regions, which can be interpreted loosely and do not really mean anything. If we are trying to disentangle things and restructure, we literally have to rewrite the whole Treaty of Rome and then gain the agreement of all other Member States. We either have the Union as a democratic organisation, or we do not. I do not see how the situation can be just tweaked.

Rt Hon. Lord Waddington: Thank you very much.

Lord Blackwell (Chairman of the Centre for Policy Studies): I was aware of the move from a Europe of nations to a Europe of regions. However, until Ms Jenkins gave her very interesting address, I was not aware that it was spelt out in the Treaty of Rome. For me, and others who are not familiar with it, will she say that that was the subject of great discussion. There was a definition in the regions. I have talked to people who were young

Lord Blackwell: You mentioned that the accession states have had to adopt matters.

Lindsay Jenkins: Yes.

Lord Blackwell: Have the EU’s desirable qualities of a region been defined?

Lindsay Jenkins: A region is defined by population. It is quite clear. In 2003, an EU regulation set out the population size for regions, sub-regions and sub-sub-regions. Within the next year or so, it will go down further, to ward level called local administrative units (LAU), and define those, too. It begins to get very interesting. We look around the European Union and see countries that are too small to be regions or even sub-regions, such as Monaco and Luxembourg. What will be done with them? It is a debatable question. For example, will Cyprus be part of a Greek region or a Turkish region?

Martin Howe, QC (European author and lawyer): I have never investigated or analysed the legal basis or the legal obligations that the European Union places on Member States regarding setting up regional structures. I should be very interested to know what those obligations are, where they have come from and who in our Government has been agreeing to such matters at the Council of Ministers.

Lindsay Jenkins: In a discussion about regions in the House of Commons, Tony Blair said, “regions have to be”. He never explained why. Nobody has ever done so. When people in this country have become concerned about regional assemblies and said, “Surely they are something to do with the EU?” a story has gone round that they are to do with the commissions that were set up for civil defence during the war, which continued after the war, and that they are British. The truth is that the commissions have nothing to do with the present regions and they were for civil defence only, set up in case we were invaded in 1940 when it was essential to have units that could be administratively self-sufficient. When challenged, that is what European Union office here puts out in London. It is bizarre.

As for where regions really come from, the answer is from the Treaty of Rome and from later Commission communications.

Martin Howe QC: So, they are Commission decisions and not Council of Ministers’ decisions?

Lindsay Jenkins: I believe so, but I will have to check. We will come back to that.

Martin Howe, QC: Do you know what the Treaty base for them is?

Lindsay Jenkins: The Commission relied on the preamble that I have already read out plus many clauses on issues like agriculture, transport and so on. Regions are cited all the way through the Treaty of Rome.

Martin Howe, QC: Do you know what the Treaty base is for those Commission decisions? It does not matter if you do not have the information here.

Lindsay Jenkins: Well, the Commission cites those two clauses from the preamble, which I have just read out. It then cites about a dozen other clauses, which define agriculture, transport and so
Lindsay Jenkins: I am no more than a fly on the wall. It is very difficult. It is equivalent to my being right down in the back door.

Martin Howe, QC: Obviously, a lot of detail cannot be explored in this session.

Lindsay Jenkins: There is huge detail.

Martin Howe, QC: I would be very interested to see the detail.

Lindsay Jenkins: I was surprised, but I could not get the Commission communications in this country. I sent off to Brussels for them and several hundred pages of French turned up. That goes a bit beyond the scope of this morning's session. (I discuss this with references in Chapter 2 of my book, Disappearing Britain: The EU and the Death of Local Government, ISBN 0965781232, Orange State Press, 2005.)

Bill Cash, MP (Former Shadow Attorney General and Shadow Secretary of State for Constitutional Affairs): I had a big planning problem in my constituency to do with assisted area status. The Minister responsible told me unequivocally that there was no point in talking to him about it because such decisions were being taken on a regional basis through the local West Midlands regional development authority. The grants and the allocation of assisted area status were a matter for Brussels and not for him.

Lindsay Jenkins: That is right.

Bill Cash, MP: The issue I am interested in is the relationship between the important analysis that you gave and how power is exercised – the ‘who governs?’ at the centre question. Perhaps I could leave it to you to explain how you see the interaction involving where the power lies. You mentioned foreign policy. What is your assessment of where the power will lie at upper and regional levels?

Lindsay Jenkins: I am no more than a fly on the wall. It is very difficult. It is equivalent to my being right down in the corner trying to look at something huge over there and not being inside it.

I have heard reports from people in regional assemblies. In the book Disappearing Britain: The EU and the Death of Local Government, I quote from one such person’s letter in which he say that the members turn up to assembly meetings and they have no idea what is going on. They are sent huge quantities of documents only hours beforehand that they cannot possibly assimilate. At the centre of the regional assemblies are, of course, the civil servants; they know what is going on and obviously have links with Government offices and the regional development agencies. All these three groups are interlinked.

I was shown a letter from one person who was running part of a regional assembly. He also put his titles from the Government office and the regional development agency on the same letterhead, and you could not work out what role he really had. I have been trying to do exactly what you are trying to do: work out who is pushing the buttons. It looks as though these organisations operate almost as a single unit. How they interrelate with Brussels I do not know, but as one example I have been told that the person running the south east regional assembly is not British. I forget her nationality, but she has done a number of jobs in Brussels and has now come over here and is effectively running that assembly.

Then we have the exchanges. We have seen the same thing over many years with civil servants and now members of assemblies visiting their opposite numbers in other regions within other countries. They are encouraged to form links, all of which seems to be perfectly low-key and straightforward. But exactly who is pushing the buttons in Brussels, I do not know. It is frustrating. It is like crouching in one corner trying to see exactly how this huge machine works.

The Hon. Bernard Jenkin, MP (Shadow Minister for Energy and Former Shadow Defence Minister): I want to challenge you on that. You are right to draw our attention to the early impetus in the European Union towards a Europe of regions. In the late 1980s, or early 1990s perhaps, the European Union produced a map showing a Europe of the regions, which completely de-emphasised the nation states. That was clearly a desire, but it was quickly discovered that that idea was not popular idea among ordinary people.

I spent 18 months as shadow Secretary of State for the Regions, and I looked in vain – I even took legal advice – for the legal obligation in the Treaties for a Government Office of the Regions. There is none. Where is the obligation to set up regional assemblies? There is none. There is certainly no legal obligation to have an elected regional assembly.

To have based the campaign regarding the European issue in the north-east, which we won, in any shape or form would have been completely counter-productive, because we are dealing with a dysfunctional United Kingdom Government. They might have some emotional affinity with a European regional ideal that wants to centralise – the regions are very centralising institutions in this country – but I challenge you to produce chapter and verse. It would be useful if you produced a small supplementary paper showing where there is a legal obligation on Member States to implement regional structures and regional government.

Lindsay Jenkins: I have. Yes.

The Hon. Bernard Jenkin, MP: Even the assisted area status could have been done through the counties if the Government had wished to do so. We could have made the counties our regions.

Lindsay Jenkins: Much of what we are talking about is probably being brought in through the grants system. I devote a chapter in my recent book to different sorts of grants, even down to the Market Towns Initiative and to Beacon status. Even the local golf club can have Beacon status. When the EU gives grants under these schemes it is likely that a set of obligations comes with those grants. I suspect that that is where some of it comes from, but I cannot answer all your questions.

The Hon. Bernard Jenkin, MP: Forgive me, but I think it is important that you answer our questions, or your arguments will be weaker than we would like.
I come back to assisted area status. We could receive assisted area status grants from the European Union without regional government, regional structures or regional development agencies. The Government could make the whole of England a single region. It is up to us. The regions are an indication of this Labour Government, and of John Gummer, who set up the Government Office of the Regions. It may prove their European leanings, but there is not a legal obligation.

**Lindsay Jenkins:** Well, there is a legal obligation to have regional economic government and to divide the country into regions as defined by EU regulation. I agree with you about regional assemblies. ‘Progress’ toward regions has not only happened under this Government. It started in a big way under John Major. The proof of the pudding is that Mrs Thatcher did not bring in regional assemblies during her three terms. So we can stand up and say no to regional assemblies.

**The Hon. Bernard Jenkin, MP:** Are you saying that the constitutional atmosphere of supra-nationalism in Europe militates in favour of breaking down the national structures? I would certainly accept that; that is why devolution was a safer option in the eyes of the Scots, with the advent of Europe and the idea of a Europe of the regions.

**Lindsay Jenkins:** We tend to forget that our own people are involved in a huge number of organisations and quangos, such as the Committee of the Regions, and have effectively become mouthpieces for the Brussels. That is a big issue.

I did not respond to an earlier question about whether regionalisation is happening in the UK only. It is not; it is happening across the whole of the European Union. The same sort of dislike that we have of regions has manifested itself in France. There are enormous battles in France because France is the most centralised country in the EU. If France breaks up into regional governments, it will destroy the French system of government, which has existed since the French Revolution. There are enormous battles going on in France.

**Bill Cash, MP:** When we had the Gibraltar question on the right to vote – I shall not go all the way down that route – Gibraltar was assimilated with the southwest for electoral reasons, because it wanted to be a region. There is no doubt that something is lurking in there, and I think that reading your book may help to illuminate it a good deal more.

**Rt Hon. Lord Waddington:** We are very grateful, Ms Jenkins. You have been very generous with your time, and you have given us a fascinating view on the subject. Thank you very much for coming.

**Lindsay Jenkins:** Thank you.

**Rt Hon. Lord Waddington:** Thank you for coming, Mr Redwood. You circulated what you called answers to the questions. Perhaps you would like to speak for a little while on your paper, and then members of the Forum could ask you questions. You can do it exactly as you please.

**Rt Hon. John Redwood, MP (Witness):** I was sent the questions on 24 October, and received a fax from my office this morning asking for written answers, so that I could be a scholarship pupil and submit the questions with the written answers to you. I shall not read them out or rehearse them at great length, because they are for the record, and an email version has gone to your staff.

Do I think that the EU has become more – or less – democratic and accountable since 1945? I shall answer a slightly different question. I am interested in whether Britain is becoming more democratic or less so, because I believe that the correct unit of democratic accountability has to be the nation state. My answer is that Britain has clearly become less democratically accountable as a result of its membership of the European Union. Advocates of greater integration would argue that the European Union itself has become more democratic. They would cite the creation of an indirectly elected Parliament, followed by the conversion of that Parliament to direct elections on a proportional representation model, and they would claim that we now have some European demos, some trans-national party political activity. I think that they are dreaming about both of those latter assertions.

The reason why individual Member States have become less democratic is simple. Although there have been rudimentary and ineffective attempts to introduce representative democracy at EU level, there has been a massive transfer of power from the individual Member States to the European Union. In many areas in which Britain used to have direct control and strong democratic accountability through Westminster, we now have tenuous and indirect accountability through the institutions of the Union.

How should transparency and scrutiny be increased in the EU? Those who want a more integrated Europe would be wise to tackle the democratic deficit problem first. The answer would be to make the European Parliament more like a proper Parliament. I certainly do not want that, because I want the EU to exercise far less power. My way of reducing the democratic deficit would be to transfer powers back to the United Kingdom Parliament, where they can be exercised in a proper and accountable way.

The European Parliament lacks strong democratic activities for a variety of reasons. Members of the European Parliament cannot propose or draw up legislation. They can only react to drafts from the Commission and the Council of Ministers. They have no powers of independent taxation; and their power to hold account the Government of the European Union – the European Commission – is a blunderbuss power; they can only remove the whole lot of them. To my enormous surprise and pleasure, they once did that. I thought that that might help strengthen democratic accountability, but the members were so shocked at having done that once that they have no immediate intention of doing so again. The Commission trades on that, and does not take them seriously; it does not believe that is an immediate threat.

What would I like the role of national Parliaments to be, and where should ultimate sovereignty rest? In my world, sovereignty would rest with the nation state, which could be accountable. How would I do that? One simple device, which I want Britain to reclaim through negotiation, is the veto over all proposals. If the EU is an association of states that find things that they can do best in common, we should not fear the restoration of the veto. If it is a unitary state in the making, with a strong central
Government who wish to discipline Member States, the veto has to disappear.

The argument against that position from those who want more integration is that the restoration of the veto would hold up the Union. It would certainly hold up more legislation, which would be a thoroughly good thing, because the European Union over-legislates and over-regulates. However, it would still be possible to put through benign and helpful legislation when each Member State thinks it a good idea. I am prepared to go further and say that all I want is the restoration of the veto for Britain. If other Member States think that they do not need the veto, I would not want to impose it on them. I would be very happy for those other Member States to carry on legislating themselves into a lack of competitiveness as much as they wish, although I would be friendly enough to urge them not to do so. My view is that my country should not have to go along with all those silly schemes.

What limits would I impose on EU legislation and the European Court of Justice? My scheme would impose substantial limits on it. I would amend the European Communities Act 1972 to make the sovereignty of Britain and the British Parliament crystal clear, and restore the veto in statute as well as in practice. We would then invite the European Court of Justice to deal with our affairs only when we had decided to go along with something in the European Union. By giving our consent, the ECJ would have competence in that area. However, it would be a conscious decision of the British Parliament; and whatever the British Parliament decided, it could always change its mind later.

I have also tabled the conclusions that I came to after giving a late seminar series last Michaelmas at Oxford University. I think that is relevant because, although some say that the EU Constitution is dead following the outbreak of democracy in France and the Netherlands on that subject, I do not believe that for one moment. The intention is to carry on with many of the proposals of the EU Constitution by stealth or by other means, without needing the consent of the people, given the 10 or more Member States that were to have referendums, including our own.

I tell you this because I think it might help in your consideration of these matters, because the EU Constitution itself would represent another substantial shift in the direction of there being far more power at European Union level. That would greatly exacerbate the problems of democratic accountability in the Union.

I deal next with the cricket club argument, and whether the EU Constitution is no more a constitution than the legal document that guides a cricket club. That is an exaggerated comparison from the point of view of the cricket club. For example, I do not know many cricket clubs that have their own currency or sign international treaties. The quotes from the Constitution show how Europe is building a federal state with many of the attributes of a statehood, and the quotes from the Constitution grind that message home.

Is the EU becoming the United States of Europe? In each case, I offer the consensus majority view on the continent of friendly Euro-integrationists. I offer the UK Government’s view and I offer a British Eurosceptic view. The fascinating thing when contrasting those views – I have done my best to construct them from actual quotes – is how often the integrationist view on the continent is similar to the view held by Eurosceptics here. The odd man out is always the British Government, who allege that nothing is going on and that it is just a tidying up exercise for a rather big cricket club.

I look at the common foreign policy and say, yes, it is centralised around the Foreign Affairs Minister. I look at the implications of the EU’s military pretensions, at the EU taking control of our borders and at how the EU wishes to strengthen its control over a single economy of Europe. I look at its threat to our criminal justice system, where the EU is beginning to do to criminal justice what it did so successfully to economic and market regulation. It starts off by mutual recognition and uses that to create powers over the whole criminal justice system. I look at whether the Constitution increases the powers of the EU or Member States and conclude that, of course, it increases the EU’s powers substantially. I then look at what EU enthusiasts and Eurosceptics like about the Constitution and see that there are some marked differences in the likes and dislikes.

I should like to see a solution to the British problem. No democratically elected British Government, even a Euro-friendly one such as this, can implement all of that because of the views of the British people. We need an honest negotiation between us and the EU to establish a relationship that we are happy with, which falls far short of joining the superstate.

Rt Hon Lord Waddington: Far less drastic than some of the proposals you make would be just to take away from the Commission the right to initiate legislation. Would that do any good, particularly in the way of encouraging deregulation?

Rt Hon John Redwood, MP: It would do a lot of good if nobody else gained the right. The danger is that the right might be given to somebody else. If the right to initiate legislation were given to Member States’ Governments – a case could be made for that – we might end up with even more legislation. I am not sure that that would necessarily be the answer.

Bill Cash, MP: We can strip away everything that you so thoroughly examined on the debit and credit basis, because we know more or less where the centre of gravity of the establishment in Europe will continue to want to go. Based on the existing Treaties and using them to the maximum, even if they cannot get through the Constitution – I do not want to be too specific given your responsibilities in the Shadow Cabinet – would you tend towards the view that, if they are simply not prepared to accept the very good analysis that you have produced, with which I agree, we would be better off looking at what alternative models we could live with, coming back to EFTA in particular? You may have seen an article today by Daniel Hannan in The Daily Telegraph. What was your view on it as a matter of analysis and practical politics?

Rt Hon John Redwood, MP: Let me begin by stressing that I am not representing Shadow Cabinet policy today. I am taking advantage of the current desirable period of dispensation given mainly to leadership candidates. As a non-leadership candidate, however, I do not see why I should not have the same advantage to develop ideas. I should rather go forward than backwards, so I shall not couch my argument in quite the way you outlined it,
although I have much sympathy with what you are trying to achieve.

I want to sketch a different view of the world from that which is held among the integrationists on the continent. On the EU’s own figures, the European economy will fall from being 18 per cent of world output in 2000 to being only 10 per cent of world output in 2050. Those were the EU’s forecasts made in 2002, I think that they are wildly optimistic. There is no way that the fall will be that small. The power of India and China is so colossal, the weight of numbers is so important and the rigor mortis in the European economy from over-taxation and regulation is so severe that China would be able to do what it recently did to the European textile industry to the engineering and motor vehicle industry, which is so important especially to Germany, which is at the core of the euroland area.

There were many good ideas in the 2000 Lisbon Agenda, but there is no way that this European Union could ever deliver the Agenda. Therefore, we in Britain would negotiate with an agenda of less government, lower taxes and less regulation. If others really wanted to join us, that would be wonderful, but what we insist on as our bottom line in the negotiations is our ability to deliver that for ourselves. We want to have relationships with our partners in Europe that develop common policies that are in both our interests. It might be in our interests to have some common policies on the environment, for example, where we share air space and seas with our neighbours on the continent or to have some regulatory support for a common trading area. We do not want to lose trade.

I want to look to the future. Having sketched how competitive the world will become, I shall set out how Britain could do what it recently did to the European textile industry to the engineering and motor vehicle industry, which is so important especially to Germany, which is at the core of the euroland area.

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I want to look to the future. Having sketched how competitive the world will become, I shall set out how Britain could have a more deregulated modern economy and, if others wanted to join us, whether they were EU members or countries that have stayed out of the EU, which could include the two richest countries in Europe – Norway and Switzerland – that would be good news.

Lord Blackwell: One of the bulwarks of the creation of Europe as a greater political and legal entity is the weight that it puts on direct representation of people through the European Parliament. If I remember rightly, the draft Constitution uses a phase such as “Legitimacy comes from both the direct representation of people in the European Parliament and the consent of nation states.” In your model of a Europe of nation states with power restored to national Parliaments, what do you see as the role of the European Parliament, if any? Should we be doing anything practical to adjust the position?

Rt Hon. John Redwood, MP: My view is one of Britain having a different relationship with a core group of countries on the continent that might wish to go on to ultimate union. I would leave that for them to decide. The European Parliament could be a worthwhile institution if it defined its task as holding the Commission to account. If it were able to do a decent job of cross-examining the Commission on all its programmes and expenditure plans, to hold it to account for the fraud, waste and corruption that is regularly identified each year by the auditors and get the power to dismiss individual Commissioners who did not take such problems seriously and tackle them vigorously, that would be useful.

It would also be useful if Member States, when they assemble to decide on legislation on the recommendation of the Commission, were to scrutinise and cross-examine that legislation as much as their powers permit. Given the world that I want to create for Britain, it is not for me to suggest that we should have more wide-ranging powers to propose and create legislation or to impose taxes. I want us to concentrate on scrutinising expenditure and moneys, the execution of programmes and the detail of law that others have decided on.

The Hon. Bernard Jenkin, MP: I liked your presentation very much. Is not the implication of a clause to allow us to secede from the European Union, which you described as the only part of the Constitution that Eurosceptics like, that instead of being a unilateral action, it will become a process that, presumably, requires the permission of the European Union, and is therefore a retrograde step?

Rt Hon. John Redwood, MP: I am sure that you are right and that some Eurosceptics do not like even that – my little joke.

The Hon. Bernard Jenkin, MP: You placed emphasis on the veto in your paper and in your the relatively short answer to question 4. What you did not say in your answer, but which you mentioned in your commentary is that we would amend the 1972 Act unilaterally. Is not that the only means of forcing a renegotiation along the lines that you propose or any other lines? Is not some sort of parliamentary supremacy Act the only weapon at our disposal?

Rt Hon. John Redwood, MP: I mentioned in the written text in answer to an earlier question that I would amend the European Communities Act 1972. That is the clear legal way in which to strengthen our view that the powers of the European Union in this country rest on an Act of Parliament. If we once surrender that position, we have to go through an act of rebellion to modify the relationship or change it without the consent of the other members, which is not pleasant to contemplate.

I should like to amend the European Communities Act 1972 by agreement, so I would not do it before negotiating with our partners in Europe. The fact that we would be able to do that, on our legal view, would greatly strengthen our hand in the negotiations. The biggest difficulty that we always have in explaining our policy of renegotiation is that people say that they would not accept any of the things that we want. That is curious, because we are told that this is a democratic group of nations that wants the betterment of the citizenry of each country, and that it is not a superstate in the making. However, as soon as we try to write into the Treaties and other documents safeguards to prove that it is not, we are told that they are not negotiable and that is tantamount to saying that we wish to leave. That makes one a little worried and sceptical about what is going on.

However, the question is much easier to answer than our critics would lead the public to believe. We have an extremely strong hand for a variety of good reasons. We can bring to bear many pressures and powers that fall short of withdrawal from the European Union or threatened withdrawal to achieve most or all of what we wish. Saying that we would legislate independently is a severe threat, which the European Union would go a long way to avoid. Our saying that we are no longer willing to contribute to the waste and fraud in the European
Union and that we will abate our contributions accordingly is something that clearly would not be welcome. Our saying that we will block everything in the European Union that we can block by normal means under the current rules until it saw the virtue of our case would be extremely vexatious. Short of saying we are withdrawing, there are many things that we could do. I would go into the negotiations in good spirit. It has more to lose than we have. I do not believe that Germany wants to lose the right to sell with normal means under the current rules until it saw the virtue that we will block everything in the European Union that we can block something that clearly would not be welcome. Our saying that we are

The Plenary Session was resumed at 12:00 pm.

The Plenary Session was suspended at 11:45 am.

Rt Hon. Lord Waddington: Thank you so much for being generous with your time and for giving us such an interesting account of your views.

The Plenary Session was resumed at 12:00 pm.

Rt Hon. Lord Waddington: Mr MacShane, thank you very much for coming. You are very kind to have done so despite your other commitments. We asked the other witnesses if they would like to make a statement and then answer a few questions. You can deal with it exactly as you like. Would you like to make an introductory statement?

Rt Hon. Denis MacShane, MP: I agree with a lot of that analysis. I start from a slightly different perspective because in my 11 years as an MP, I have battled an incredibly powerful elite in this country that is opposed to the European Union, and denigrates it, lies about it, and twists all the truth about Europe. That elite is incredibly powerful in the Palace, the press, sections of business and parts of Whitehall. Those of us outside the elite, who simply think that 25 nation states are co-operating and growing together, have had a hard time making our case. I understand the problem about elites.

On the Convention, I thought that as it would have to be an intergovernmental conference that would produce a treaty, it would involve 25 sovereign nation states. I felt that the Convention did not have due regard to the involvement of national Parliaments, but I was struck when, for the first time in British history, the Foreign Secretary set up a Standing Committee to which the negotiations on the intergovernmental treaty would be reported. Never before has Britain, as a sovereign state under a Queen or King, negotiated a treaty and in the process of doing so, reported the proceedings to the House of Commons. Before, the sovereign negotiated and then reported. The impression that she got was that the whole thing was being driven by an elite. The whole thing came to the surface in the press when Gisela Stuart talked about last-minute changes to the draft being thrust upon Members with little notice, with the bait that a statute might eventually be built to celebrate their work towards European Union and all the rest of it.

The impression was that a sort of elite was driving this thing forward regardless of any attempt to connect the people of Europe with what was going on. I think that what concerns many of us more than anything is how we can bring more democracy into the show, otherwise we will run into more and more disillusionment. How do you see it?

Rt Hon. Denis MacShane, MP: I agree with a lot of that analysis. I start from a slightly different perspective because in my 11 years as an MP, I have battled an incredibly powerful elite in this country that is opposed to the European Union, and denigrates it, lies about it, and twists all the truth about Europe. That elite is incredibly powerful in the Palace, the press, sections of business and parts of Whitehall. Those of us outside the elite, who simply think that 25 nation states are co-operating and growing together, have had a hard time making our case. I understand the problem about elites.

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Bill Cash, MP: I did.

Rt Hon. Denis MacShane, MP: The hon. Member for Stone did, but not the Shadow Foreign Affairs spokesman. There was a change during that three months, when, like all the greatest Members of Parliament, some were surprised to find themselves back on the backbenches, but we have to live with that. The hon. Member for Birmingham, Edgbaston – Gisela Stuart – a dear friend, found herself exposed to what I call the dark side of the federalist moon. I have always assumed it was there, but I have never taken much notice of it.

Whenever I am in Paris, Germany, Warsaw, Sweden, Madrid or Ireland, let alone in my own country, I find people who are passionately proud of their country, who are not prepared to be absorbed into a European superstate, and for whom federalism in that sense is a dirty word. Devolving to lower regions decisions over people’s lives is how some define European federalism, but you are right that in the writing of the final Convention report, an awful lot of material was put in that the Commission and the Brussels elite opposed.

If you read the articles by Lord Patten and Lord Kinnoch, you will find that they opposed having a standing chair of the European Council. Why? Because it was exactly the opposite of saying that the Commission should take all the decisions. They did not like one bit the nation states of Europe having their man or woman working permanently in Europe, saying, “Hey, we are in charge.” So the Commission lost. It was very unhappy with the outcome of the intergovernmental Treaty and tried to stop a lot of material that finally went into it. But that is Europe; it is about compromise.

Bill Cash, MP: One of the questions before us asks what limits, if any, would you impose on EU legislation and the Court of Justice? May I add to that, in the context of what you said, at what point, if any, do you think that, in the context of the integrationist process, a country could become less than a nation state? In other words, to your mind, is there a point where a mixture of regionalisation, centralisation, the creation of powers with an increase in the legislative capacity by the centre could lead the nation state – any one of them, not just the United Kingdom – ceasing to have the attributes of a nation state?

Rt Hon. Denis MacShane, MP: That is the old argument, with which everyone is familiar, about Robinson Crusoe, being absolute sovereign on his own island but having no power, authority or ability to do anything. I have confidence in the peoples of the nation states of Europe and in their elected representatives ensuring that any sharing of sovereignty will add value to the nation state.

I come from partly Polish and partly Irish backgrounds. For the first time in their histories, Ireland and Poland are much more profoundly nation states in the full sense of that term than ever they were allowed to be under the 700 years of English rule in Ireland or the different rules of other empires in Poland. It is the European Union that has allowed that to happen. Could that have happened without the EU? Yes, it could, but what surprises me when I go to Germany, France or Spain is how much more confidence I see: how much more French is with its French culture and French food. Germany is producing more breads and beers than ever, and, Spain, for heaven’s sake, did not have the kind of autonomy, excitement, independence and economic maturity that it has today as a result of its membership of the EU. It is now an incredibly strong and successful country whose economic growth outperforms ours. I am confident that all the nation states of Europe have hitherto seen membership of the EU as adding massively to their national identity, their national powers and their national sovereignty.

Lord Blackwell: May I ask if you see Europe maintaining its harmony as nation states sharing powers? Where in your mind ultimately is the role of national Parliaments – between the European Parliament on the one hand and regional entities on the other?

Rt Hon. Denis MacShane, MP: All states are sovereign. They are sovereign over their people. The European Union is a treaty construction. I refused as a Minister to sign an answer or sign off a letter that referred to the Constitution. I insisted that it was described as what it is – a Constitutional Treaty. It does not start, “We the people”. It starts, “The King of the Belgians, the President of the Czech Republic” and so on, “in their full powers”, and it then goes into the normal language of every treaty in world history.

We have signed more treaties since 1945 than we did in the previous 400 or 500 years of British history. Margaret Thatcher signed far more treaties than the present Prime Minister has. Treaties, by definition, represent some derogation of sovereignty. They show some acceptance of a supranational authority over the nation state. Some treaties are not respected, but that is another matter. I have always believed that Britain is a profound believer in the rule of law, but the rule of law cannot stop at the water’s edge, so you have a treaty organisation in the European Union.

An awful lot of rubbish is published saying that 80 per cent of all our legislation comes from Europe, so I asked the House of Commons to identify the correct amount. In recent years, it has been less than 10 per cent – it is 8 or 9 per cent year on year. It is true that about 50 per cent of national legislation, directives and rules stem from Single Market legislation, but if we want easyjet and Ryanair to land where they will, and if we want to drive motor cars through Europe’s frontiers without being checked to ensure that their exhaust pipes do not emit too much gas, we need common rules and regulations.

I do not know a single businessman – and we are, perforce, the greatest trading nation in Europe – who does not want to see those rules imposed and enforced so that British products and services can be traded as freely as possible, without let or hindrance, across a total of 450 million people, because, believe me, the place is crawling with protectionists who would love to find all sorts of little, national reasons why their particular part of the economy should be protected from competition from British goods. It is the European Union that stops that protectionism from happening.

The Hon. Bernard Jenkin, MP: The focus of our session this morning is very much about who governs and how. One of the questions we are asking all our witnesses is whether the European Union has become more or less democratic since it was
formed in the 1950s. I submit, if I may, that the Member States of the Union are recognisable democracies and function as such, and that it is hard to regard the European Union itself as a democracy in any shape or form. The more power we give to the EU, the more we take away from democracies; we are giving it to a kind of bureaucratic structure, which cannot function as a recognisable democracy. Is that a problem?

Rt Hon. Denis MacShane, MP: I think that it is a straw man, in the sense that people need to know who has authority over decisions that affect their lives. The definition of democracy is that, where possible, decisions can be changed by electing different people. I can only report that, when I was a Minister, there were continuing difficult and problematic debates conducted by national elected representatives. That was the European Union that I witnessed. When a decision is made by the nation states of Europe and a directive suddenly pitches up, and people are told daft things like they cannot put their prices in pounds, shillings and pence—

The Hon. Bernard Jenkin, MP: Bent bananas.

Rt Hon. Denis MacShane, MP: The first regulation on the curvature of cucumbers came from Britain in 1926. At a very early age, the British authorities understood that if we wanted to have a good market in cucumbers, we could not put any twisted, wrinkly, curved old bit of rubbish on the market. The Ministry of Agriculture—always ahead of its time—introduced the first regulations. We have always had that nationally, and if we want British cucumbers to be on sale across Europe, I fear that we will need regulations. Because regulations are not explained, because the scrutiny of the House is so appalling, and because we do not engage politically—I do not mean ministerially—in discussions in Europe, when certain decisions appear people say, "Blimey, I never voted for that." I shall give an anecdote.

In the summer of 2004, I was on holiday in a small town in the Dordogne. I walked out early to get the papers and passed a fruit and veg shop—I was not ear-wigging, their voices were loud—and I heard two chaps saying "l’Europe, c’est le Gestapo." I remember telling President Chirac that he might not get the Constitution through.

Bill Cash, MP: He did not say "Vichy"?

Rt Hon. Denis MacShane, MP: No, no; be careful! I am sorry, I should not say that to a member of the Forum.

I do not know what their problem was. Perhaps it was that they had to accept easyJet landing at Bergerac, when their children work for Air France. Perhaps they thought that Bergerac should be the private reserve of Air France. I do not know. If we want an open-trading Europe, there must be rules and we must explain. I will not bore the Forum with the endless Euro-myths that are the delight of the British elite that is so fanatically hostile to the European Union.

Martin Howe, QC: Your reference to the Treaty Establishing a Constitution for Europe as a constitutional treaty merely incited me to continue the discussion that we had on a previous occasion. However, instead of going down that route, I have a slightly different question.

You cited the instance of distribution of powers and authority between the Commission and the Council of Ministers in the sense of a full-time President of the Council, springing from the Council vis-à-vis the Commission, and described that as something that strengthens the power of nation states. However, is it not right that there is a difference between the nation states having powers as individual states to make their own laws, and a collective power that is exercised in Brussels? Do you agree that the distribution of powers between individual nation states and Brussels collectively is more important than the distribution of powers between the institutions in Brussels?

Rt Hon. Denis MacShane, MP: Well, in as much as the Council of Ministers represents the nation states—I do not see how you can make that distinction. I freely admit that, in the World Trade Organisation, we have surrendered sovereignty over one of the most important attributes of Britain's independent existence—control over our commercial relations—but so have other countries. There are other treaty-based organisations under which we have surrendered powers, the International Criminal Court being a good example. Other countries take different positions. General de Gaulle refused to pay France's subscriptions to the United Nations for a number of years in the 1960s and protested at the UN decision to send soldiers and a military force into the Congo, which he thought was way beyond the UN's powers. As a result, France, a sovereign state, withdrew its financial support for the UN. Now, the French—correctly, I think—take a different position and believe that it is useful to have the UN and to work with other countries inside the UN. At each stage, it must be an appropriate decision.

Someone asked me earlier whether the EU was more democratic 30 or 40 years ago. It was smaller, but it was authoritative, as our fishing community quickly found out after we entered in 1973. Has the EU extended its powers unreasonably? Again, that is a question for each national Parliament to decide. I welcome the idea of a strong EU position on avian flu. I welcome the fact that we now have an arrest warrant so that one of the gentlemen wanted in connection with the events on 7/7 can be rapidly removed from Italy. Without that arrest warrant, he would still be meeting his lawyer every day for an earnest discussion over a cappuccino in a Rome jail. Those decisions were resisted. Italy strongly resisted the idea of a European arrest warrant because she feared that it might be applied to other people in Italy who preferred not to leave their country to answer charges elsewhere in Europe.

Such matters are debated and voted on. For heaven's sake, the one thing we can all agree on is that the British people have had a constant negative impression of the European Union put to them through their press in recent years. Yet in the last three elections they have voted into office a party of Government and an Opposition party—the Liberal Democrats—that reject completely the position that the majority of readers of the British press get from their newspapers.

Lord Blackwell: You have assured us that your view of Europe is that it operates on the basis of treaties between sovereign states. Suggestions have been made that, to reinforce that, there would be value in amending the 1972 Act or some other part of British law to reassure people here that the UK Parliament is sovereign and that nothing that is enacted in Europe could be law here if the UK Parliament chose to turn it down or repeal it. You may
feel that that is unnecessary, but presumably you would have no objection.

Rt Hon. Denis MacShane, MP: We can do that by leaving the Treaty. We are sovereign here. Of course we are. We could leave the European Union tomorrow. We could tear up the Treaty, although we would have to accept some consequences.

I have read all the debates on Europe since 1950 and, again and again, Lord Hailsham, Winston Churchill and Edward Heath spelled out in pitless detail – the same happened in the big debates in 1972, when I was certainly not around – the fact that joining the European Community, as it then was, would involve sharing sovereignty. That was never hidden from anyone, as can be seen if you read the debates in the Commons or the Lords. Reading them now, 30 or 40 years past their time, they are very vivid. If I close my eyes, I can hear the voices, the anger and the concern on both sides. Both Houses, over a number of years, described bluntly the implications of joining the European Union.

We want British goods and services to be traded freely in Europe and I would not welcome a right for the Government of France or Poland, if they do not like what has been agreed by Brussels under existing Treaties, suddenly to pass a national law to stop this British product or that British service being traded in their communities. That is the road that we would go down if we followed the path that Lord Blackwell is suggesting. I know full well that this Parliament has absolute sovereignty over its nation’s destiny, as does every Parliament in the European Union. If I felt that the European Union was a negative force, I would be the first to say that we should pull out of it, but I can genuinely report to you that, with all its failings and faults – I have catalogued them well enough – the European Union we have today is a force for good and, if a lot of reform goes through it, will be a force for a lot more good, but that is another debate.

Rt Hon. Lord Waddington: I think we must draw this discussion to a close, if only in fairness to our next witness. We are very grateful to you for coming, particularly when you had other duties.

Rt Hon. Denis MacShane, MP: Thank you for your courtesy in waiting for me.

Bill Cash, MP: Thanks very much.

Rt Hon. Denis MacShane, MP: Good Luck.

Rt Hon. Lord Waddington: Mr Vaz, first of all we must apologise for keeping you waiting a little while. Mr MacShane was caught on the Floor of the House and that delayed the start of his evidence. We are very happy to see you here today and it was kind of you to come.

Other witnesses either made a short introductory statement and then answered questions, or said that they were happy for questions to be put to them straightaway. It is entirely up to you. Would you like to make a short statement to begin with?

Keith Vaz, MP (Witness): A very brief statement. Please do not apologise for keeping me waiting. It is always a pleasure to listen to Denis MacShane when he talks about Europe. I have done that for the past 10 years, so another 20 minutes really did not make much difference.

I am pleased to be here and I welcome the fact that you are having this inquiry. I am amazed at the number of people giving evidence and the quality of that evidence.

Europe is at a crossroads. It is timely that you should be holding this inquiry because, of course, we still have the presidency of the European Union. At this very moment the leaders are meeting in Hampton Court, which I remember fondly as the place where I first stood for Parliament many years ago. I am sure that their discussions and deliberations will be helpful. However, now is the time for us to chart a new course for the Union, following the defeat in France of the referendum on the Constitution. We now have an opportunity for a real engagement with the British on what Europe means to them, so I am happy to be here and to answer your questions.

Rt Hon. Lord Waddington: That is very kind of you. I will throw the debate open to my colleagues.

The Hon. Bernard Jenkin, MP: The title of the session is ‘Who governs and how?’ Our first question is: has the European Union, and its predecessors, become more or less democratic and accountable since 1945, and why? In particular, I emphasise the widespread feeling that the nation states are definitely democracies, but that the European Union is not recognisable as a democracy. Can it function as a democracy? Can it become a democracy? Every time we give power to the European Union we are actually taking power away from democracy and giving it to something different – more a bureaucracy than a democracy?

Keith Vaz, MP: It is not a country, so it cannot be a democracy. The question is posed as if it can somehow take on some of the characteristics of nation states. When the Constitution was published, some people felt that the European Union had become a country. I do not think it is, so it can never, as an institution, be seen to be a democracy in which people vote equally to influence decisions.

It must be up to the nation states, through the Council of Ministers, to have real influence over the way in which the Union operates. If we look generally at how it has developed over the past few decades, there will be a perception that it has become less accountable and that as it has become bigger, the structures have not kept up with the changes. As a result, people feel much less engaged with what is happening in Brussels and the European Union. That is where we have a problem. We have a problem in trying to explain to the British people in particular – we are British parliamentarians – what the European Union is all about, and making them feel that, through their Government and Parliament, they can influence the decision-making process. To that extent, it has become less accountable and it will continue to become less accountable until we change the structures and make it much more engaged with what the people want.

Rt Hon. Lord Waddington: Can I ask a question about the European Parliament? If there were a true European Government – I certainly do not want that – the European Parliament would be the body that held that European Government to account. However, we are, thank goodness, a long way from having that full European Government. I am not sure that the European Parliament is performing any useful function at all. It is certainly not looking after the interests of the nation state or
being the guardian of the rights of the individual nation states and seeing that those rights are not unduly infringed by the Commission or other institutions of the European Union. Nor does it seem to perform any useful function in safeguarding the rights of the individual citizens of the individual Member States. In fact, it is extraordinarily difficult to get at any of the MEPs today. If one tries to have an interview with an MEP – my wife tried to do so – he or she will say, “You had better come to Brussels because I am far too busy to come to see you in Lancashire or Somerset.”

How can we get more democracy into the outfit? Are there any changes in the way in which the European Parliament works that might bring some democracy into the outfit? To me, it seems that there is an awful democratic deficit, which contributes to disillusionment with the European Union.

Keith Vaz, MP: Our expectations of the European Parliament are too high. We expect that it can do more than it can. Sovereignty rests with the British Parliament. As British parliamentarians we want to ensure that, when we discuss Europe, what we have to say has an effect on what the Government do and how we are represented.

Structurally, I think that there should be three changes. First, the European portfolio should be taken out of the Foreign Office. There should be a separate Department of European Affairs, and the Minister for Europe, who sits in the Cabinet – he does so now partly because we have the presidency – would be able to take to Cabinet the decisions that are made in Brussels and express to the Commission the feelings of the British Cabinet at that level.

The Minister would then be able to come back on a regular basis – say, once a week – to report back to a body, reconstructed from our Scrutiny Committees, and be held to account as to what he or she is doing and what the Government are doing on behalf of the British Parliament and the British people in the European Union.

The second structural change would be for us to look to ourselves. Sometimes we complain after the event; it is very important that Parliament should get its act together regarding the way in which it scrutinises EU legislation. We get to know about the decision-making process and decisions long after they are taken. I remember attending Scrutiny Committees as Minister for Europe to find that my officials had given the Committee the papers only the day before. It is impossible for Members of Parliament to digest them – Mr Cash will know that better than me because he was a member of a Scrutiny Committee. Members have to digest huge amounts of paper and be able to cross-examine Ministers, but the latter have the support and backing of hundreds of officials on what is happening. The second structural change that I would like is change and improvement to our scrutiny system.

The third way forward is that, where there is going to be a change to European law – Denis alluded to this – we need to know about it at the outset. The proposal needs to come to us at the same time as it goes to Government, which means that there can be no surprises as to how things operate.

If we were able to make those structural changes, we would feel more in control of the situation. I do not think that we can alter the Constitution or the functioning of the European Parliament. It is past that. The Prime Minister, in his speech in Warsaw in 2000, spoke about a second Chamber elected directly from the British Parliament. I do not think that that would work, and I think that the idea has been dropped. We should use our structures, change them, fundamentally reform them, and provide a better system.

Bill Cash, MP: Can you envisage circumstances in which the British Government and the Cabinet might decide that laws or provisions in treaties are not in the British national interest because they have been overtaken by events or have been found to be contrary to our vital national interest? Against that background, the need to change the law may be apparent but there is no wish or desire on the part of the other Member States to accede to our wish to change the law. In those circumstances, can you envisage our passing a law by amending the European Communities Act 1972 so that we could then legislate on our own account?

Keith Vaz, MP: I would not know the circumstances. I imagine that there is a possibility, but I cannot immediately think of an example. However, there must always be that possibility.

Bill Cash, MP: But, in principle, you have no concrete objection to what is effectively the supremacy of Parliament being reaffirmed?

Keith Vaz, MP: No, I have no objection. But we have signed treaties and we are bound by agreements. The point of being in the European Union is that we are part of a collection of nation states that have decided to take a particular course of action. So long as what we are doing is not in breach of our Treaty obligations, I see no reason why we should not do that.

Martin Howe, QC: You referred to the interesting question of what attributes of the European Union are the attributes of a nation state. That is quite a broad point, but one specific power that the European Union has is that it can create rules that are binding throughout its territory. That is normally a state function. One then has to address the question of the democratic mechanisms by which that legislation is made accountable to the people.

You put forward some helpful proposals that we could implement internally to strengthen the ability of Parliament to control the way Ministers make their input into that process through the Council of Ministers. I want to carry that a little further. Do you have any ideas for allowing the people to have a bigger input? To put it bluntly, if I do not like the process in the directive on vitamins or whatever, how, as an elector, do I vote for or against it? What mechanism exists to allow me to make my point? If the mechanisms are not there, is there any way they can be provided?

Keith Vaz, MP: That is a very interesting point. I do not know how it would work under our unwritten Constitution, because Britain is not a referendum nation. We do not go off every five minutes and put key issues to the British people – first, on the ground of cost; and, secondly, because there would be no point in having MPs if every single decision, including what vitamins you should take, is put to the British people in a referendum.
There is a complete lack of engagement by the British people as far as the EU is concerned. I felt that when I was Minister for Europe, and it has been a source of frustration for the Government over the past eight years. We have had a very pro-Europe Government over that time. I do not know how many past Ministers for Europe you have seen – about five or six, I think – but all of us were charged with the task of reminding the British people how important the EU is to their lives and how important they are to the EU. But we have not been able to do that.

It is not all to do with a Eurosceptic media, although I certainly thought so at the time. I remember sitting at my desk in the Foreign Office and thinking that the whole country was being run by the Daily Mail, The Sun and The Daily Telegraph. However, they are probably reflective of a deep mood among the British people that decisions are being taken without their being involved. That is why the opinion polls consistently showed that we would lose a referendum on the Constitution. If, of all the countries in the world, France votes against it, what hope is there of the British people supporting something like that? In my view, that is a reflection of the failure to communicate. We need to communicate more often. I do not think that having a referendum on every single issue is necessarily the way.

Martin Howe, QC: That was not quite what I was suggesting. I was asking how things can be achieved.

Keith Vaz, MP: I do not know. I have talked about structures, but I think that one way, as the Chairman has pointed out, may be for the Members of the European Parliament to be a little more vocal and active in our country, so that people know what they do. I know who one of my Members of the European Parliament for the East Midlands is, that is the Labour Member – and, of course, another is Mr Kilroy-Silk. I cannot immediately think of the others, although I shall remember them as soon as I leave here. In order to make the European Parliament relevant to the British people, it has to do much more work to convince people that it is doing its job.

Lord Blackwell: I am sympathetic to your analysis that Europe is not a state and is not, and cannot be, a democracy, and that the democracies are the nation states. Nevertheless, there were a number of features of the draft Constitution that many people interpreted as a sign that some in Europe saw it moving in that direction – for example, the reference to its legitimacy in law-making resting on the direct representation of the citizens of Europe through the European Parliament alongside the nation states.

We are accosted all the time with quotes from various European leaders – the Belgian Prime Minister, for example, talking about the Constitution, or the draft of it, being the capstone of a federal state. I would be very interested to hear about your experiences in that forum as Minister for Europe. Do you think there is a genuine difference of view among many of the leaders and the Commission, and that, despite your and my views, they see Europe as heading towards a state and are seeking to make it a democracy – or do we misunderstand the way that they talk about it?

Keith Vaz, MP: I am sure that there was a mood for change before 1 May 2004, but the enlargement of the European Union has changed all that with the new members’ expectations and aspirations. The last thing that they want to be in is a great melting pot that will somehow mean the removal of their national identity. That has never been the case for British Ministers.

It sometimes irritates me when I listen to Foreign Office questions in the House, and hear Members criticising British Ministers, saying that they are going to Europe to give up our sovereignty. The position that I took and that Denis or Geoff Hoon took was exactly the same as that taken by David Heathcoat-Amory and David Davis when they had the job. We sat in our seats defending Britain’s interests, and we fought hard to ensure that that happened. Such an approach applied to other countries as well.

When I left the job in 2001 the mood and expectations had changed. The arrival of the new Member States and the possibility of Turkey and Croatia coming in – they will come in at some stage and that will change Europe even more – alter things. The European Union is not going to be deeper. It was a case of Britain wanting it to be deeper, wider and stronger. It could be stronger on trade and a number of bilateral issues; it can certainly be wider, and we are looking at Turkey and possibly Ukraine making it even bigger. But a wider European Union cannot become deeper. That is where it ends. Enlargement has been the key to that change. We cannot continue along the road that we were travelling before. It has all changed; the story has changed.

Lord Blackwell: Do you think that that is recognised by the Commission and the European Court, or do we still have to be vigilant that they are not taking us down that road?

Keith Vaz, MP: British Ministers are always vigilant. There are no people in the Foreign Office who keep the EU flag and symbols in their cupboards who, when we walk out, open their cupboards and out they all come. That is not the case. Every British Minister who has gone to a Council of Ministers meeting, whether it was David Davis, Geoff Hoon, Douglas Alexander or myself, was there to fight for Britain. Anyone who believes otherwise does not understand what is happening.

Rt Hon. Lord Waddington: Can you bear another question? I mean, can you spare the time?

Keith Vaz, MP: Absolutely.

The Hon. Bernard Jenkin, MP: I am most grateful. I wanted to follow on from Mr Cash’s question and try a specific example. We have seen the Home Secretary in front of the European Parliament pleading to be allowed to pass anti-terrorist legislation that he thinks is vital to the national interest – legislation that I guess he fears might fall foul of provisions on asylum and immigration, which are subject to majority voting and to the European Court of Justice. It is possible that we may want to exclude people from our country, who perhaps come from the madrassahs in Pakistan, who could be responsible for infiltrating our communities and causing terrorist atrocities. We know that that is a serious risk. Are those not circumstances in which it might be in the national interest for us to say to our European partners that we are going to legislate to take powers to exclude people for reasons of national security?

As a supplementary question, I point out that the European
Court of Justice does not recognise the concept of national security. Whenever items of national security are brought before it, it talks of public security, recognising only some European dimension and refusing to recognise national security. What are we going to do about that?

Keith Vaz, MP: It is an important point. That is why we need to be careful in how we approach such issues. On qualified majority voting, all the research indicates that when we have QMV, we are on the winning side. It is other countries that are always on the losing side. It is always in our interests, although Mr Cash will probably come up with a statistic showing that I am wrong.

The Hon. Bernard Jenkin, MP: We never vote against a qualified majority vote to lose it, because you would want to be able to say, ‘We have never lost a QMV.’ It is a self-fulfilling prophecy.

Keith Vaz, MP: We have voted and lost occasionally. Nothing prevents us from following the national security agenda that you mentioned because we have control over immigration rules. We can change them and we have control of our entry clearance operation – as a former Home Secretary, the Right Hon. Lord Waddington would know all about that. We can tell our entry clearance officers by way of policy changes that they are to exclude anyone we want and the people in Islamabad, Karachi and Lahore will do exactly what we want. They do not have to wait for the EU. We have the power to do that.

We have made progress in the Justice and Home Affairs agenda in developing the Tampere Agenda and the Hague Programme, which mean that there can be a European arrest warrant, so people who go abroad to evade capture, such as the man who fled to Italy, are returned quickly. We have to act in the national interest and we can exclude people without reference to the EU by changes in our immigration rules.

Rt. Hon. Lord Waddington: It is kind of you to have come to see us. We apologise again for having kept you waiting. You have given us a most interesting discourse on your views and we are very grateful.

The Plenary Session finished at 12:48 pm.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2 Lindsay Jenkins is an investigative author and journalist specialising in the history and current operations of the European Union. She recently released the third book in her series on Britain’s relationship with the EU entitled, Disappearing Britain: the EU and the death of local government. Ms Jenkins formerly worked as an investment banker in London and New York and was also a senior civil servant in the Ministry of Defence.

3 The Rt Hon. John Redwood has been Member of Parliament for Wokingham since 1987. Mr Redwood was Minister of State from 1990-1992 and Secretary of State for Wales from 1993-1995. Mr Redwood contested the leadership of the Conservative Party in 1995 and 1997, and was Shadow Secretary of State for Deregulation from 2004 to 2005. Mr Redwood has also written a number of books including Our Currency Our Country and Just Say No: 100 arguments against the euro.

4 The Rt Hon. Denis MacShane has been Member of Parliament for Rotherham since May 1994. He was named a Minister at the Foreign Office in 2001 and was deputy to the Foreign Secretary, Jack Straw and Minister for Europe from 2002-2005. In June 2005 he was sworn as a Privy Councillor. Prior to entering Parliament, Mr MacShane worked in international and European political affairs and wrote extensively on the British and European steel industry. Consequently he set up and became first chairman of the Steel Group of MPs in the House of Commons.

5 Keith Vaz has been the Member of Parliament for Leicester East since 1987. Mr Vaz received a law degree from Cambridge and was a senior solicitor for the London Borough of Islington from 1982 to 1985. Mr Vaz was Opposition Front Bench Spokesman for the Environment from 1992-1997, and in 1999 he was made Minister for Europe where he remained until 2001. Mr Vaz is currently vice-chair of the All-Party Bangladesh Group.
Witness briefs to support the oral evidence given to the European Reform Forum on 27 October 2005
(Note: Briefs were not provided in all cases.)

Witness Brief: Lindsay Jenkins

Thank you for inviting me to be a witness on the crucial issue of who governs and how.

A previous witness, Frederick Forsyth, has characterised the European Union as an oligarchy. I agree. Unelected commissioners and civil servants owing their allegiance not to their own nations but to the EU and a parliament of limited powers elected by PR and controlled by EU-wide parties exemplify the EU’s aim, an aim which was updated in the preamble to the Treaty of Nice as the process of ever closer union – that process which ends with one state, one country.

The how of EU government can be illustrated by the takeover of local government both in this country and across the EU.

When the UK acceded to the Treaty of Rome in 1973, we agreed to adopt the EEC’s system of local government. In our case it is a process; in the case of recent members changes to their local government had to be made before accession. This process is part of the erosion of all our sovereignty.

While we were still negotiating in the 1960s the EEC fleshed out its regional policy, which in the Treaty of Rome had been skeletal only. Regions were defined; regional assessments became mandatory and would lead to EEC grants, bribes in all but name.

In the UK this was reflected in Royal Commissions, which in the words of Lord Redcliffe-Maud would cause “a holocaust of local authorities … the primrose way to the everlasting bonfire.”

Two dissenters to the Kilbrandon Commission on the Constitution in 1973 listed ways in which our membership of the EEC might affect governance adversely. They said it would both strengthen the case for devolution while at the same time seriously constrain the form and extent of that devolution. They have proved to be right.

It is only in the last decade or so that the EU’s local government has been rolled out here. John Major’s Government created all important government offices in the new regions, and Tony Blair’s Government is finishing the job with the division of the UK into 12, the creation of the EU’s sub-regions (the old counties and local councils) and sub-sub-regions (the parishes now called Neighbourhood Councils).

London for example is changing into a regional capital, no longer to be the focus of the nation and of nationhood.

Just as in Brussels, local government is turning into oligarchies with power centralised in one person and a cabinet, aided by quangos, hundreds of them, by stakeholders, partnerships, vested interests and lobby groups. The Labour Government has admitted that, “Influence within the EU … operates through many more channels than the formal EU.”

Inevitably two of the more advanced regions, Scotland and Wales, are seeking to take more power from the UK. Every national government function from defence, to police to tax to justice is in the process of regionalisation. Regions have offices in Brussels but not in London; they have embassies and offices abroad – the Northeast region has 8 in the Far East and the US alone, and they are encouraged to develop their own ‘foreign’ policy.

Nationhood apart, what is missing here is democracy. This is indeed the post-democratic society. As this tide of stakeholders, quangos and centralised power has risen, so too electoral turnout has fallen. Voters sense they are becoming redundant.

Lord Denning, that great but late upholder of English common law argued that, “that we are coming under another sovereignty – that of Europe … the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back.” I questioned the “cannot be held back”; Lord Denning replied by letter that if you cannot stop the tide then you have to make the best of it.

I argue that with political will that tide can be reversed.
Witness Brief: Rt Hon John Redwood, MP

(In response to the guidance questions put to each witness in writing before the Plenary Session)

Question One

Has the European Union (and its predecessors) become more, or less, democratic and accountable since 1945 and why?

The EEC introduced a Parliament. More recently the Community moved to a system of directly elected MEPs based on a system of proportional representation. Each successive Treaty strengthening the powers of the Union has claimed to strengthen the democratic involvement of the Parliament in the life of the Union. Laws are made by collaboration between the elected Ministers representing the Member States and the European Parliament.

This gives a very misleading view of the development of democratic accountability in the overall governing arrangements in any Member State. In practice, as the powers of the EEC, now the EU, have expanded so democratic accountability in any given country has reduced. The unelected Commission has the sole power to draft and propose new laws.

The European Parliament is not a proper Parliament on the Westminster model. MEPs cannot launch their own proposals for legislation or taxation. The senior figures of the European Government are not members of the Parliament and are not made to answer to the Parliament in the same way as UK Ministers of the Crown have to at Westminster. Those of us who do not want more European government are pleased the Parliament does not have these powers. Anyone seeking a strong government for Europe should want first to give the European Parliament more normal parliamentary roles so that the EU government can be democratically accountable.

The European Parliament has only one main power over the executive, the right to reject a whole Commission. They once used this power, which led some of us to hope that we might see a more accountable government as a result. There is no evidence that this has happened. Subsequent Commissions have probably taken the view that the Parliament is unlikely to rush to do the same again. It is difficult for the Parliament to be effective because there is no unified European demos, no pan European parties, and some in the Parliament are against the Parliament and the EU exercising much power anyway.

Question Two

How should transparency and scrutiny be increased in the European Union?

Transparency and scrutiny can be increased in the EU in two different ways. For those who want a federal state it would be sensible to propose greater powers for the European Parliament to choose and hold Minister/Commissioners to account, with a larger role for MEPs as legislators.

For those of us who want a Europe of nations, with a far less intrusive EU, we need to propose a very different model. We should insist on a restoration of the veto for the UK over all new laws and regulations. This gives power back to UK Ministers and the UK Parliament. UK Ministers should be expected to hold a debate in the House setting out the plans for new laws coming before them at Council of Ministers meetings before they negotiate an agreement on any proposal. This would be more valuable than scrutiny of the new EU law after it has been agreed.

Question Three

What should be the role of national parliaments and should the ultimate sovereignty lie with the nation states or the EU and how?

The UK needs to establish that its national Government and Parliament can make all the decisions they need to make to govern Britain well, unencumbered by EU decisions with which we disagree. The powers of the EU in the UK rest on the European Communities Act. We should, through negotiation with our partners, restore the British veto and should amend the 1972 Act following such a renegotiation to make the position of parliamentary supremacy clear. We will also need to negotiate over the current range of EU powers, which is too great. Proponents of more European integration claim that a restoration of the veto would impede the progress of the EU. If we were able to opt out of anything we did not like – as we have done with the currency and did for a long time with the borders and employment law policies – we need not slow other Member States down wishing to legislate more for themselves together. The whole point is we do not want more European laws: restoring the veto would be the way to achieve that aim for us. Critics also argue we could not negotiate such a settlement. A UK Government determined to do so would have a very good prospect of negotiating it. The EU accommodated us over the social policy, borders and currency. We now need an accommodation over the hectic progress of over regulation and legislation we see across the board in the modern EU.

Question Four

What limits, if any, would you impose on EU legislation and the Court of Justice?

The limits on EU legislation and the powers of the Court of Justice would be settled issue by issue by the UK Government and Parliament. Armed with a veto we would only apply what we judged to be right, and the ECJ would only have jurisdiction where we accepted a common policy.
Dear Mr Cash,

Thank you very much for forwarding the overview of the regulations about EU Structural Funding produced by the House of Commons’ library.

While this is of course of great interest it is not the issue that I tried to elucidate in my evidence to the European Reform Forum.

The central issue of my evidence, reflected in the well-known words “a Europe of the Regions and the Cities”, is regional government. The early EEC references are to regional economic government but as time has passed the economic has, as we all know, turned into the political.

There are two critical EEC Communications of 1965 and 1969, available only in French as far as I know, which elaborate. The EEC via the Committee of the Regions itself highlighted these in publications which interestingly are no longer produced.

The 1965 Communication refers to a 1961 conference held in Brussels on regional economies set up by the Commission. The Commission expressly took its authority to have this conference from the Treaty of Rome, as I explained to the Forum, and also from resolutions of ECOSOC and the European Parliament, both as you know appointed bodies.

The Commission set up three committees in 1964 to investigate existing regional government in the then six member countries. That led to the 1965 Communication with the reports from the three committees attached as appendices.

A second much fuller Commission Communication in 1969 (240 pages long) gives immense detail about how the EEC is to be organised by regions.

I have explained all this, its further development and how it fits into local government changes in the UK and across Europe in my new book Disappearing Britain: The EU and the Death of Local Government, ISBN 0965781232, 228 pages including references.

Among the interesting questions still outstanding is who put the regions into the Treaty of Rome. As I said in my evidence to the Forum, the Spaak Report, the draft of the Treaty, has only two references to regions written in such a way that they could just be casual references without any specific governmental connotation.

Yet the final Treaty is laced with references to regions including the preamble. Someone, or more than one person, specifically created the legal basis for a later regional policy, which as time has passed is taking over from national governments.

Whether or not that person or persons, at that time, intended ultimately to replace national governments with regional bodies reporting to Brussels is another fascinating mystery.

But that is exactly what is happening today.

I should be most grateful if you would pass this information to the other members of the European Reform Forum.

Lindsay Jenkins
The Plenary Session commenced at 11:01 am.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary): It is my privilege to thank you very much for coming, Professor Buckwell. We are grateful that you have spared your time to come to give us your views. We normally ask the witness whether he or she would like to make an introductory statement and then we put a few questions. Does that suit you?

Professor Allan Buckwell (Witness): Thank you for the chance to engage in this debate. I approach the issue having had 29 years as an academic. I have made a career out of the Common Agricultural Policy. For the past six years, I have worked in a representative organisation, the Country Land and Business Association.

I want to make three points. The CAP was a necessity if there was to be a European Economic Community. Having created a CAP, it is hard to change it, because of the complexity of agricultural markets and the devices used to protect them, and because of the structure of the European institutions. Despite those difficulties, it has at last, in the past decade, started to change, but that is happening slowly.

I will now elaborate slightly on those three points. The CAP was a necessity because the six founder members of the European Union had extremely different and complicated protectionist arrangements for their own agricultural markets. If that was to be combined with a common market, there had to be a common set of measures for agriculture. Having created them, which was a compromise, mostly to favour the French, there was a complex system of agricultural protectionism, which, at the time, was a necessity to create the European Community, as it then was. Add to that market and currency developments, technical developments, successive enlargements, the common budget, and the institutional decision-making apparatus – agricultural policy is decided by an Agricultural Council – and it is clear that progress to reform it was always going to be slow.

The policy was constantly trying to survive the buffeting of those events, which therefore slowed the change. In a sense, it is a miracle that the CAP changed at all, but that is now happening. The succession of the MacSharry Reforms in the mid-1990s, Agenda 2000 and the Fischler Reforms, which we are only just implementing in the past decade, give us a different set of support arrangements for domestic agriculture in Europe. In my view, the change is in the right direction. It is moving away from supporting agricultural markets, and seeking to arrange the private supply of public environmental goods. The key to the future is a justified, sustainable CAP. On top of that is the complexity that agricultural policy is decided by the Agricultural Council, yet the border protection is part of the common external tariff of the Union, which is decided by the External Affairs Council. There is another institutional complexity to changing that set of arrangements. Clearly, border protection is under discussion at the World Trade Organisation and will undoubtedly reduce.

Rt Hon. Lord Waddington: Thank you very much indeed. Would you like to start the questioning, Mr Cash?

Bill Cash, MP (Former Shadow Attorney General and Shadow Minister for Constitutional Affairs): Do you consider that the Common Agricultural Policy has been a success, both for the consumer and for farmers? If not, why not?

Professor Buckwell: Given that the CAP was a necessity, it has not especially been a successful set of arrangements for farmers or consumers. I will expand on that. For farmers, it has provided some market stability. There is no doubt that arrangements within European agricultural markets have been more stable under the CAP than they would have been for farmers outside those arrangements. However, the market stability was bought at a cost of political instability. We do not know how it will change from one period to the next. Essentially, it has turned farmers’ eyes away from the customers. Decoupling has now reversed that, thankfully. The benefits of the CAP have been shared throughout the chain, not especially or specifically by farmers in their incomes. The input suppliers get their share, the processors and the downstream retailers, who are extremely concentrated, have had their share, and a share of the benefits accrues to those who own the least-elasticity supplied input: land. If we wanted a set of arrangements to distribute benefits in that way, the CAP has done it, but not particularly to farmers’ incomes.

The CAP has not helped consumers much in the sense that food security and reliability are better served through trade than by (the common agricultural) policy. The CAP has produced a high-price regime. Not many parts of the world have higher food prices than Europe; Norway, Switzerland and Japan have, but we would struggle to name any more countries. Although it is a high-price regime, funnily enough in this country we hear talk about cheap food rather than high-priced food. That is a paradox to be explained, but I do not have time to do so now. The CAP has not benefited either group you mentioned greatly.

Rt Hon. David Heathcoat-Amory, MP (Former Minister for Europe and the UK Representative on the Convention on the Future of Europe): You mentioned higher prices for consumers. There is also a cost to the Exchequer. In crude national accounting terms, I believe that we pay into the EU budget as a whole about £2 for every £1 we get back. Presumably, that imbalance is largely caused by the dominance of the CAP and the fact that we have quite a small agricultural sector in the United Kingdom. Can you give us a rough idea of how the UK does out of the policy, purely from the point of view of the British Exchequer?

Professor Buckwell: Yes. I did not mention taxpayers, because I was not asked about them.
You are right that because of the UK’s relatively small farming sector, the structure of its farming and the commodity mix that we produce – we obviously do not benefit from the regimes for commodities that we do not produce – we benefit less than some other Member States. That is true. Because Europe has chosen to have a very detailed policy on agriculture, but not on any other of the big spending sectors of public services, the budget is distorted, although I am not sure that that is the right word. The outcome is that the pattern of budget expenditure reflects what Europe has chosen to do; a lot is spent on agriculture, a bit is spent on development, much is spent on structural funds and there is nothing else. In that sense, things seem distorted. You are right that, because the UK was a net importer with a small agricultural sector, we were going to do budgetarly poorly out of that set of arrangements. We did – hence the rebate and the arguments.

Rt Hon. David Heathcoat-Amory, MP: Am I right that the CAP protects markets and products that we do not grow or produce in this country? If we were to run a UK agricultural policy, could we import tariff-free a good many products from tropical parts of the world to the benefit of our consumers and the countries concerned?

Professor Buckwell: I do not carry in my head the precise tariff for all the commodity lines. I assume that Europe does not protect coffee and the tropical beverages that are not produced anywhere in Europe. In that sense, there would be no particular gain to the UK. I might be missing a trick somewhere, but it is inconceivable to talk about the UK being outside the CAP and yet still within the common external tariff. Europe’s tariff is a European tariff and not a British one. We are either in Europe as far as the external tariff is concerned or we are not. It is for your Forum to decide what policy mix is feasible.

Coming out of the CAP would change the financial flows and arrangements of domestic support for agriculture. As those payments are now decoupled, they pay mainly for public services. We can debate what they are and whether we are paying the right price and quantum for them, but that is a debate that we would have in or out of Europe. As long as we are part of the European Union, we are subject to the European common external tariff. We must bear in mind the tariffs on sensitive products – the ones that we produce in Europe, including Britain. The most highly protected sectors are sugar, cereals and livestock products: dairy and beef. Our farmers would make similar arguments to those in the rest of Europe on that issue.

Rt Hon. Lord Waddington: Can you refresh our memories about the position way back at the beginning of the 1970s? We can well understand that the six countries had everything to gain from a Common Agricultural Policy because they were either growing their own food or importing it from their near neighbours. So far as we were concerned, one of the problems that we had to face was how to disentangle our arrangements with the Commonwealth. How much food were we buying from the six back in 1972 or 1973, and how much were we exporting to them?

Professor Buckwell: The short answer is that I do not recall. Doubtless, there would have been some trade. You are right that our grains and meats were coming from the Commonwealth. Our policy prior to joining Europe and the CAP was a deficiency-payments approach. Since the Agriculture Act 1947, we have supported our agriculture through high producer prices, but in a way that did not impose the costs on consumers so that there was at least a smaller economic distortion. Joining the CAP, where support is arranged through border protection and domestic purchasing arrangements, meant imposing costs on consumers as well as their having a taxpayer cost. That was the change in policy.

Of course, because the CAP was more protective, that was a stimulus to British agriculture and we reduced our imports. We became an exporter in cereals under that high and stable price regime. If you ask me specific questions about intra-EU trade versus general trade, I do not have the relevant data.

Rt Hon. Lord Weatherill, DL (Former Speaker of the House of Commons): I do not know whether you listened to the Today Programme this morning, Professor. You might have been on your way here.

Professor Buckwell: I heard bits of it.

Rt Hon. Lord Weatherill: It was about people from Warsaw. Given that 42 per cent of the CAP goes to French farmers and that they will not budge, we have offered to do something about our rebate if they do something. Will there not be an impasse until we can do something about the French? How will we achieve that?

Professor Buckwell: There are 23 other Member States as well as ourselves and the French, which all have views and votes. There is an impasse. It is understandable because of the institutional process of how we negotiate CAP reforms. The answer is through the Council of Agricultural Ministers. It takes a couple of years to make the proposals, agree them and implement them. That process is now underway. It is not surprising, when the biggest change ever in the CAP has just been agreed – that is what has been said, although I think it is an exaggeration – that there is not a huge appetite this year to discuss the next changes, given that we have not implemented the ones that we have just agreed.

If we talk about five years down the road and what is conditional on the outcome of the WTO Doha round, there will be a further discussion about the next reforms. Once the support to agriculture has been decoupled, the payments to farmers will no longer be to do with production of agricultural commodities. There is a simple question: what are they to do with? If we do not have a good answer to that, I do not imagine that the money will stay for very much longer. The only question will be: at what rate is it gradually reduced?

I come from a land management organisation. We feel that there is a substantial answer to why and for what purpose the taxpayer should contribute funds to land management. The answer is that they supply an array of landscape, biodiversity and environmental services. What is more, they could supply more in the way of renewable energy, carbon sequestration, water filtration, flood protection and other such services for our protection if society so wants. If we want owners of private property to behave in a certain way, we have to incentivise them. They have the property rights on how those services are used and we are asking them to compete in relatively more open international
trade for their trading commodities. The debate is there to be had. It will be had, but it is too much to expect it to happen in the middle of 2005.

**Rt Hon. Lord Weatherill:** Should we forego some of our rebate? Do you think that that would be an encouragement? It would certainly help the new countries that are coming in. It will not make the French change their mind. After all, they are rioting now. What about the farmers rioting?

**Professor Buckwell:** This is a personal opinion, rather than a Country Land and Business Association view. I think that the rebate has been an obstacle to sensible reforms of the CAP. For example, the fact of the rebate has made the United Kingdom extremely reluctant to use what we now call the Pillar Two measures, the rural development measures, of the CAP. During the 1990s, it made budgetary sense for us not to make use of those funds. As a result, we did not use them, but we are now complaining that we have a small share of the funds. In a sense, that is what we call good CAP, which is trying to deliver public services, yet we have a miserable 3.5 per cent share of it. I believe that is what we call good CAP, which is trying to deliver public services, yet we have a miserable 3.5 per cent share of it. I believe that that is mainly the result of the unintended consequences of having a rebate and the budgetary implications that flow from that.

**Bill Cash, MP:** I wish to ask about the Doha round and agricultural liberalisation. The French have criticised the Commission for its alleged overuse of the mandate – in other words, it has gone too far. Apparently, that has now been rejected, but what do you see in the Doha round and all that goes with it in terms of the effect on the developing world and those countries that, for one reason or another, have food dumped on them?

**Professor Buckwell:** The World Trade Organisation is a difficult forum for the European Union because of its institutional structure. It is a supranational organisation. It must agree its mandate in advance of the international negotiation. Obviously, that is not an ideal way in which to go into negotiations because everyone knows its starting point is also its bottom line. Clearly, Mandelson cannot offer changes in the CAP because it is not in his jurisdiction to do that. That is the duty of the Council of Agricultural Ministers and it has just made changes. In a sense, the Council has dictated the bottom line beyond which the EU cannot go.

The mandate includes a discussion of the elimination of export subsidies, provided that that is done in an even-handed way and the Americans, Australians, Canadians – with their single-desk trading boards and so on – and the misuse of food aid are all treated in the same way. That is the bargain that we would collectively agree. It hurts farmers’ interests in that prices will be depressed compared with the position with the subsidies. That is part of the bargain still to be struck. The fact that Europe has decoupled its domestic support arrangements, so that it cannot be accused of distorting production and trade in future – or it can be accused of doing so much less than it was previously – is our biggest contribution to the round. The matter that we are now being pressed on is market access. There is scope to reduce tariffs from the bound levels to their applied levels. That does not have any economic impact, but when we go beyond that, it has an economic impact and obviously farmers will resist it – and are resisting it. I am not privy to how that part of the mandate is defined.

**Bill Cash, MP:** Are you worried about the impact that it has on the developing world, in Africa and so on?

**Professor Buckwell:** That argument is hugely over-simplified and distorted in the press. To say that trade liberalisation equals benefits to all developing countries is plainly wrong. Subsidised exports and over-production in parts of the world such as North America, the United States and Europe, depresses world prices. Many of the poorest countries are food importers because they have such hopeless Governments who tend to tax agriculture. Therefore, those countries that are importing grain actually benefit from lower world prices. To the extent that liberalising trade raises world prices, we penalise those net importing countries. Likewise, we penalise those countries that have signed preferential arrangements with the Union, such as our previous Commonwealth partners and the corresponding territories for other Member States. That is complicated, too. The African, Caribbean and Pacific countries are fiercely resisting the sugar reforms because they hurt their immediate short-term interests. The impact on the developing world is mixed. The main beneficiaries of trade liberalisation will be countries such as Brazil and Argentina.

**Rt Hon. David Heathcoat-Amory, MP:** Have you or has anyone else tried to quantify the tariff barriers and the cost therefore faced by developing countries in exporting to the EU? Can you refer us to such work? On the face of it, if we could get those barriers down it would not only help them, but help our consumers. To the extent that the products are not grown or produced here, they would not disadvantage anyone, so we could do the treble of satisfying pretty well everyone. We need to get a feel for what sort of sums we are talking about.

**Professor Buckwell:** There is a lot of work on that by, for example, World Bank, OECD and IFPRI – International Food Policy Research Institute (Washington). Yesterday, *The Financial Times* printed a long and detailed letter refuting some of the claims – and making some of the points that I have just made – about the complexity of those tariffs and the impacts of their reduction on developing countries. There is certainly a lot of literature on the size of the tariffs and measurements of the benefits.

The whole thrust of the Doha development round is that, on balance, trade liberalisation will assist developing countries. I do not doubt that. Those analyses exist. I can point you to them. I suspect that there are examples to be had of the win-win-win situation that you described, but they are not very great because of the products that we do not compete on; there is no need to protect our domestic market if we do not produce it.

**Rt Hon. Lord Waddington:** I must draw the questioning to a close if we want to stick to our timetable. We are extremely grateful to you for coming, Professor Buckwell. Thank you very much for enlightening us.

Mr Haworth, it is very kind of you to come to the session. You heard what I said to Professor Buckwell. Will you start with an opening statement?
Martin Haworth (Witness): I shall make a brief statement. I have provided a written statement and most of the points that I would have made were made by Allan Buckwell. To reiterate, the achievement of the CAP and its purpose was to create a single European market, a tariff-free area. It has not been sufficiently recognised that that is a unique arrangement in the world. There is not another area that has free trade in agricultural goods. The CAP has not been resistant to change. It has reformed recently.

There is a stark contrast between what we have done and what the Americans have done. We have made our support systems less trade distorting, or even non-trade distorting, while the Americans have gone the other way and have made their support systems more trade distorting. We have reduced the amount of money going to agriculture; they have increased it. There is a huge ideological debate about the purpose of the European Union. There are two camps: one thinks that the purpose of the European Union is to defend traditional European values and European models. The other camp believes that the purpose of the European Union is to enable its members to be more competitive in the world. It thinks that it is a way in which to become more competitive and compete in a more liberalised world. The CAP is at the heart of that dispute, which, at the moment, is pretty virulent.

As usual, such disputes take place at a time when one side is clearly winning. The fact is that the traditional CAP relies on high-price support and Community preferences, which is more or less impossible to maintain in future because of our world trade obligations. Much of the virulence of the debate stems from the fact that one side knows that it is losing.

Rt Hon. Lord Weatherill: My recollection from many years ago was that the idea behind the CAP was to get mainly small French farmers, but also other European farmers, with medieval types of smallholdings, off the land and into factories. That patently has not happened because we have been so generous that some go into factories and farm part-time. We seem to have played the game, but our small farmers have been forced out of business. I do not see any end to it, except to say, “Let us get out of it.”

Martin Haworth: As Professor Buckwell said, the reason for having a common policy was that we were bringing together six countries that each had their own different policy and that we had to have a common policy if we were to have free trade. It was in the French interests to have a lower level of protection and a lower level of price support because France was the most competitive producing country in Europe. It was the Germans who insisted on the higher price because they had an uncompetitive industry and they wanted to protect their small farmers.

The French, against their better instincts, were driven down the wrong road. We still face the consequences of that and it is far from true that the whole of French agriculture is based on small-scale farming. Parts of French agriculture are very efficient, large-scale and very competitive, but the small-scale, inefficient farmers have tended to capture political debate in France. The fact that the current French President comes from an area of small-scale beef production has meant that that point of view has tended to dominate as the French view, but it is far from being a monolithic view.

Bill Cash, MP: I asked earlier about the success for consumers and farmers. Three or four days ago, I met my local National Farmers’ Union branch. We had a good two and a half hour discussion, but there is no doubt that farmers are seriously worried. They are watching businesses collapse. I forget the precise figures, but the number involved has fallen from more than 30,000 to 14,000. That is not a success for the CAP in respect of the British farmer, is it?

Martin Haworth: We are in the process of restructuring agriculture; it is taking place throughout Europe. It is happening in this country, too. That is an inevitable consequence of opening up agriculture more to market forces than in the past. We may regret that and there may well be reasons for regretting it, but it is an inevitable consequence of the fact that agriculture is under enormous and growing competitive pressure. The number of dairy farmers has dropped from 100,000 to 14,000 or 15,000 in the past 20 or 30 years, yet dairy production has remained the same.

Bill Cash, MP: But the milk price they receive is dreadful, and supermarkets seem to be putting an enormous stranglehold over them. I am deeply worried about that.

Martin Haworth: Yes, there are reasons to be worried, but that is nothing to do with the CAP. You asked what the impact on consumers was. It is probably much less than you think, as it is generally exaggerated. One reason why it is exaggerated is because the price of food reflects less and less the price of the raw materials in it. That is partly because we have more processed food, and partly because people eat out more; the price of raw
materials in a restaurant bill is obviously an insignificant proportion of the total. The total consumer expenditure on food and drink in this country is about £100 billion a year, yet the amount that farmers receive at the farm gate is about £14 billion or £15 billion.

I am sorry that Patrick Minford is not here. He recently wrote a book in which he said that the price of food in New Zealand is half of that in the UK, and that if we left the CAP, food prices could half – at least that is how the press interpreted it. The figures that I have given show that even if farmers gave food away the impact on the total price level would not be more than about 15 per cent.

All these things are exaggerated. Another reason for the increases in end prices to consumers – you made this point – is that supermarkets have used their power to increase their margins. That is nothing to do with the CAP; that is the eternal competition issue.

Rt Hon. David Heathcoat-Amory, MP: The note you gave us refers to an ideological divide in Europe on the future of agriculture, which is surely right. Mr Mandelson had to try to find a compromise between the French and British positions in the world trade talks, but it looks as though they might fail or break down. Has the NFU done any work on what the British position might be if we were free to put it forward in world trade talks – one that might be more friendly to certain developing countries, reduce prices for our consumers and protect essential British agricultural interests, about which I am very aware because of the way in which my constituency is affected – or are you simply hoping that the French will do it for you, because they are, by and large, the most protectionist?

Martin Haworth: Neither; if Britain were left to its own devices, I am sure that it would take a more liberal position, the impact of which on farming – in the short term, certainly – would be negative. I have no doubt about that. That is why farmers are generally supportive of the CAP and the European Union. They perceive Europe as being more concerned about agriculture than British Governments of whatever colour.

The French position seems to be more protectionist. They claim that they are protecting the European preference and European price level, but they must know that it is not possible to do that if there is to be a successful World Trade round: you cannot have a successful World Trade round and not have an impact on farming tariffs and agricultural prices. They know that. Also, parts of French agriculture will benefit from that process. Things are not always what they seem on the surface.

Clearly, there must be some compromise between those who want to go down the liberal road and those who want to go down the protectionist road. A compromise is justified because agriculture is being forced into a more liberal world environment at a much faster pace than industry was. It took industry 60 years to reach the current position, whereas agriculture came very late to the liberalisation process, so the impact was concertinaed into a short time. It is reasonable and right that there should be some period of transition and that things should not go at a helter-skelter pace.

Geoffrey Van Orden, MBE, MEP (Vice-Chairman of Foreign Affairs Committee of the European Parliament): Good morning. The EU sugar regime is currently being reformed. I represent an area in which there are 4,000 sugar beet farmers, in the east of England; the matter is one of both local and wider concern.

We in the UK produce about half of our sugar requirement domestically and import the other half. We have an efficient sector in that regard. The reform seems to benefit everyone except British sugar beet farmers. French farmers will continue to produce a surplus, which they will export, but the main beneficiaries of the changes seem to be the sugar barons in Brazil who produce sugar on an industrial basis, clearing vast areas of equatorial rainforest in the process. What are your views on the reform of the sugar regime? Do you think that the arrangements benefit British farmers? Do you see a way forward that would benefit them more?

Martin Haworth: I do not entirely agree with your analysis. Currently, the sugar sector is unrefomed. The current arrangements, in which high prices are protected by a quota system, are no longer tenable because we have lost cases in the WTO that would allow us to export on to the world market, and because we face an increase of imports, having signed up to an agreement that we will have duty-free imports from all less developed countries in 2008.

There are two possible responses. We have to protect the higher-price system by reducing the quota so that everyone has to produce less, which would allow us to keep sugar production in all European regions. The other, more liberal, approach is to say, “We have to cut the price, and the most efficient regions will be the ones that survive.” As you said, we are an efficient region. It is therefore in our interests to have a price cut and see other regions go out of production, although that is brutal. That is the Commission’s proposal. It is also the proposal that the French support, because they too are efficient producers and want sugar production to be concentrated in the areas of Europe in which it is best suited, not maintained in regions that are wildly unsuited to it by arbitrary political decisions. The Commission’s proposal is pretty much suited to the British condition.

Your point about Brazil is inevitable. If there were trade liberalisation and we have to reduce our barriers, the countries with the most efficient regions in the world, such as Brazil, will ultimately benefit. As Professor Buckwell rightly said, the benefit will not go to LDCs because, mostly, they are not the most efficient or least-cost producers.

Geoffrey Van Orden, MEP: As a consequence of the changes under way, how do you see that sector of British agriculture in 10 or 15 years’ time?

Martin Haworth: I see the volume of production being the same as it is now, whereas that will not be the case in many parts of Europe: some countries will cease sugar production. I do not think that that will happen here. We should be able to maintain our volume of production because we are efficient and have an efficient processing sector. Of course, many individual growers will not be able to compete at that price level and will go out of business and move into other sectors, whereas the most efficient sugar growers will expand their production. That is what the market will produce.
Bill Cash, MP: Does not that carry with it some suggestion that bigger sugar beet farmers will stay in and smaller ones will go out of business? The former Chairman of the Staffordshire NFU was at the meeting of which I spoke; he told me that the price collapse is so dramatic that nobody can reasonably be expected to stay in business producing sugar beet. How does that work to the advantage of anyone in the UK, particularly the bigger farmers? Are they not going to face the same price reductions?

Martin Haworth: Yes, but they will be able to continue producing. It is inevitable that there will be bigger farms, because if farmers are to produce efficiently at that price level they will have to do so on a larger scale; that is where the economies come. The alternative – we are talking about a complete ideological split – is a protectionist system in which we maintain a sugar quota system that allows each individual farmer currently in business to continue producing at a higher price but lower volume. I know that that idea is attractive to some people, but we cannot hold it out to people as the way to a secure and viable long-term future, because it is not.

Bill Cash, MP: I have another question about the developing world, which is relevant to the issue of sugar and our commitments to the Caribbean countries. To put it generally, how do you envisage – in relation to sugar or anything else – the effects of the Doha round and the CAP reforms impacting on countries that are virtually at destitute level?

Martin Haworth: As Professor Buckwell said, the benefits of trade liberalisation will not tend to go to the least developed countries because they are not the most efficient or lowest cost producers. At the moment, in many cases, they have preferences: they have been guaranteed access into the European market at a guaranteed higher price, but that will be at best eroded, and, in some cases, removed entirely. In purely agricultural terms, they will not benefit. We will have to find a way of giving some compensation to those countries to encourage them to diversify their economies into areas in which they might be more competitive.

Rt Hon. Lord Waddington: Thank you. We have time for just one more question.

Rt Hon. Lord Weatherill: I have a general question. I am concerned that we cannot be absolutely certain, although we are in a global situation, that we will not leave British farmers in an emergency. In the Second World War, we were very nearly brought to our knees by that. Not too many people know that when the Russian grain harvest failed in 1970 – were you a Minister then, Lord Waddington? – we provided grain to them. I remember – I was a Whip at the time – that people were saying, "Now we’ve got them; screw them in," but the concern was that if we did not give it to them they would take it. We cannot say that that will never happen again. I am concerned that British farming is being run down to the extent that we might be put in jeopardy.

Martin Haworth: That is being over-optimistic. British agriculture is not being run down; its self-sufficiency level is enormously higher than it was early in the last century, for a much greater population.

Food security is a legitimate worry, and will, I suspect, become more of a concern with climate change, which might stop production in some regions. We know that the world population is increasing. For all those reasons, there is legitimate concern about food security in the future. One answer might be to artificially maintain production in this country, but that would not be sensible because it means that we are not producing for a market, but are taking a command economy response. The only conceivable outcome from that would be that prices would fall again, because we would be producing where there is no market.

It is important that we keep the potential for production in this country and that we do not lose the potential to expand production rapidly. I do not think that we have lost that potential. By and large, we have kept land with the potential to increase agricultural production if necessary. That is the right response.

Rt Hon. Lord Waddington: We are very grateful to you for having attended the session. Thank you.

I now call Mr Paterson. You have given us a copy of your statement explaining the Green Paper that was published in January. Do you want to make an introductory statement or tell us about any developments since the publication of the Green Paper that make it more or less relevant? Say what you wish and we shall then put some questions.

Owen Paterson, MP: Good morning. Thank you for asking me here. Do you want me to stick to fish or do you want me to talk about the CAP, too?

Bill Cash, MP: Perhaps it would better if you spoke about fish. We have not heard anyone talk about fish.

Rt Hon. Lord Waddington: Yes, you can talk about fish or anything you like.

Owen Paterson, MP: Two years ago, Michael Howard invited me to become the Shadow Minister with responsibility for fish. Coming from north Shropshire, I knew nothing whatever about fish, but, under two of our leaders – William Hague and Iain Duncan Smith – we have had a policy that was, in effect, a slogan to repatriate fisheries policy. I made it my job to learn about fishing, visit the fishing communities in Great Britain and, more importantly, to visit countries that had successful fisheries policies. I had already been to the Falklands, so I visited Norway, the Faroes, Iceland, Newfoundland – where I learnt lessons in what not to do – and New England, before devising the Green Paper that was published in January. The Green Paper is a compilation of best practice, which contains not a single original idea from me, but all the successful ideas that have worked in other fisheries.

The Common Fisheries Policy is a biological, environmental, economic and, above all, social disaster, and is quite unenforceable. We should adopt the clearly outlined policies in my paper, which give control to local people and those involved in every aspect of exploiting the marine environment. That policy was endorsed – I have brought along various exhibits that I would like to read out. We have an absolutely emphatic, clear policy, which was confirmed in a letter that John Whittingdale received from Michael Howard in June 2004, during the European elections. It states:
“We are determined that the next Conservative Government will establish national and local control over fishing. We intend to raise this in the Council of Ministers at the first opportunity and I believe we can achieve this by negotiation. However, should negotiation not succeed, it remains the case, as I said in Plymouth, that the British Parliament is supreme and we would introduce the necessary legislation to bring about full national and local control.”

It was on that basis that we fought the election in May.

Rt Hon. David Heathcoat-Amory, MP: Your idea seems to be to replace the approach of everyone trying to get the maximum return from a common resource, with one of stewardship in which people look after what is theirs for their own future benefit. We see that in action in Iceland, a country that I know well, and it is successful: they look after their rivers and seas beautifully. But does not that approach break down for certain migratory species, such as salmon? I am thinking particularly of the Irish intercepting the migrating salmon going down the west coast to the English Channel and the southwest of England. The Irish rape that resource. I am not clear how that could be prevented if there were only national and local controls. Surely there must be an overall policy to penalise or at least try to dissuade countries from taking what is not theirs.

Owen Paterson, MP: That is right. The phrase trotted out by people who oppose me is that fish do not respect borders; of course, they do not. Some 80 per cent of Norwegian fish are caught in areas that straddle the borders with Russia – there is a vast area of the Atlantic around the Jan Mayen Island, the Faroes, and coming down to touch on us. The Norwegians have successful bilateral arrangements.

I ended up acting as a missionary for the European Union in Norway, the Faroes and Iceland, which was a surprising development. They said, “If you can resolve it and get out of the fisheries policy, we would want to work with you as a confederation of professional, competent maritime nations that understand the industry and work closely together.” The Minister in Iceland said that the country would join the EU if there were not such a blockage on fish. We know that fisheries policy is decided in an arbitrary manner with decisions made by agricultural nations that do trade-offs. We have swashbuckling, buccaneering nations such as Hungary and Austria deciding fishing policy. That is nonsense.

In March, 887 pages of documents came for European Standing Committee A following the December round of three days’ negotiations. That is not the way in which to run a fishery. Iceland will change its fisheries policy within hours if necessary. If they find a lot of juveniles it is compulsory to ring in and announcements are made on radio programmes for all fishermen. Iceland will change its fisheries policy within hours if necessary. The Norwegians have successful bilateral arrangements.

Geoffrey Van Orden, MEP: You described the various fishing nations that you visited when you were making your explorations. Did you also visit fishing nations in the European Union? Why does Spain, for example, and to some extent France and Belgium, seem to have a successful fishing industry, whereas the United Kingdom’s has gone into disastrous decline?

Owen Paterson, MP: They would not say that they had successful fishing industries. I have met politicians who represent the northwest of France. They said, “We unite with our British brethren campaigning against euthanasia from Brussels.” The French fishermen have not prospered much. The Spanish have received heavy subsidies. Charles Clover described Vigo Bay as the capital of the world’s illegal fishing. The Spanish are notorious throughout the nations of the world for depredation. An interesting point about the Spanish in relation to the Falklands – where there was mayhem with the Taiwanese, Koreans and the Spanish behaving badly until they established national control – is that the Spanish are now the largest investors and license purchasers, Vigo Bay is the largest market for Falkland Islands squid, and they work in the most constructive, fruitful manner with the Falklands authorities. Controlled and managed, there is no reason why people should not prosper.

To pick up on the prosperity side, I visited Manomet in Massachusetts last year and talked to senior scientists who were working on selective gear. They were appalled at the state of the industry, particularly the run-down nature of the industry in Spain, compared with the prosperity that was built up in America with a system – on which mine is closely modelled – with which 20 fish stocks have been taken off the endangered list.

Owen Paterson, MP: Yes, quotas are a disaster. They lead immediately to the disgusting practice of discards. At the moment, the European Union puts back more fish dead as pollution into the sea than we land for human consumption. We also have the phenomenon of black fish – illegal landings. The quota system is the heart of the evil, which is why successful fisheries such as the Faroes do not have quotas.

Bill Cash, MP: If we followed your policy, would there be a restoration of the fishing industry in this country? Assuming for the sake of argument that it will not be possible to reach the agreement for which Michael Howard was looking in the letter to which you referred, what mechanism would you apply to make sure that we did not get into the situation of judiciary, as happened in the Factortame case when the British Parliament was told where to get off?

Owen Paterson, MP: As the previous speakers said, there is a divide about what sort of government we have. We either have supranational government where the activities of this building are reduced to those of a county council and we do as we are told, or we believe that we live in a sovereign nation state, which
collaborates with its partners in the European Union. On the basis that we still live in a sovereign nation state and we can pass laws, we could pass a law in Parliament. I came 16th in the private Members’ ballot and have presented a Bill, which I happen to have brought along. Its short title is the European Communities Act 1972 (Disapplication) Bill. That would enable us to pass laws in Parliament, which, if they stated that the law should go ahead notwithstanding clauses in the 1972 Act, it would be incumbent on our judges to uphold that new law. That is the basis on which Michael Howard wrote to John Whittingdale and the basis on which we fought the election.

Bill Cash, MP: Did you notice that your Bill bore a similar relationship to a Bill that I introduced last year?

Owen Paterson, MP: It very much had its roots in that Bill, and I am indebted to you for your help in drafting it.

Geoffrey Van Orden, MEP: I wish to pick up on Mr Cash’s point about regeneration of the British fishing industry. If we had greater control over our sovereign seas and what our fishermen do, would our fishing industry take advantage of that? What steps do we need to take to regenerate the industry?

Owen Paterson, MP: That is a good question. The industry is now so run down that it is depressing to go to what were once prosperous fishing ports because there is little left. From the evidence of America, if we maintain the marine environment in a sensible manner, according to what I wrote in the document, we would receive the collaboration of the fishermen. We should not become too hung up about commercial fishermen. There is a huge sector out there of recreational fishermen – sea anglers. There are a million of them. They spend a billion a year.

In Florida alone, the turnover of sea anglers is $5 billion. They land literally hundreds of thousands of tonnes of fish in America. All those involved in the tourist industry, such as diving, surfing, the bed-and-breakfast sector, have an interest in the prosperous management of the marine environment. The lesson that we must learn is that things happen if we give people ownership. The law of the commons is well explained in Charles Clover’s book. Under the current system, those who are rapacious receive all the gains, but they share the damage. Under the system that I have outlined where commercial fishermen and recreational fishermen buy into the activity, they would have a share in it. The lesson that I have seen very clearly, particularly in New England, is that it is the fisherman who are pushing for bigger conservation measures. In New England, areas larger than Massachusetts are closed off. I met fishermen who were pushing for mesh sizes to be increased from 6.5 inches, so that next year there will be bigger fish. Hundred pound cod are not rare in the western gulf of Maine.

Let us compare that with my experiences on disastrous trips round the UK, particularly to Fleetwood. I went on a trawler. Under European regulations, the fishermen are forced to use 80 mm mesh. I saw discards of 90 to 95 per cent of tiny baby plaice. When they put 100 mm nets down, which would cost them five days’ fishing a month and make things unviable, the discard rate was quite small and there was a 60 per cent catch of viable commercial fish. That is just obscene. It is utterly stupid. That is why there is simply no solution but to bring control back here and to give the management of it not to men in suits in London, but to new locally-accountable fisheries management authorities that I devised. They are based heavily on the model in America, which has worked spectacularly well.

 Rt Hon. Lord Waddington: Thank you very much indeed for coming here, Mr Paterson. We are very grateful.

Thank you very much for coming here, Mr Clover. We invited the other witnesses to make an opening statement and we then put some questions. Does that suit you?

Charles Clover (Witness): I have some thoughts on the matter. I set them out earlier this year in a speech, which I hope will be copied for you. I am an all-round journalist and I tend to get rusty on the detail. Something that came directly from the press when I wrote it might be slightly better, but I have tried to summarise what I thought might be useful to you.

When talking about the sea we ought to start by asking who owns it. We should first define the problem, which is who is being affected by what is going on. In a modern democracy, the citizen should own the sea. The reality is that most of the common benefits of the sea should provide – a renewable, economic and recreational resource for future generations and the present one – are being stolen from the citizen by the fishermen and by the gallop of fishing technology.

It is important to get the narrative right. If we are all talking about the same narrative, the right things happen. This is the same narrative that we saw in the destruction of the countryside by mechanised farming. People called that the theft of the countryside. That was the title of a famous book, by Marion Shoard, which I believe was written in 1979. I call what is happening the theft of the sea. I spent a year studying the world’s fisheries and I found unsustainable trends in fish eating, combined with the gallop of modern technology; it is not just a creep; it is a gallop. That compounds the ancient pattern of mining out the sea and moving on. I found that the EU was a laughing stock throughout the world for its fisheries management and that the problem was worse than I thought it was.

We need a common set of baselines. We have scandalously not progressed such thinking in the UK or in ISIS. In trying to estimate the pre-industrial exploitation of cod stocks in the North Sea, we have lost somewhere upwards of 95 per cent of it. And for a renewable resource, that is an extraordinary scandal.

I was struck, like Owen, that the only happy fishermen I met were the only happy conservationists: the ones who effectively owned their resource and were able to manage it themselves. I am thinking of Alaskan trawler skippers catching pollock very slowly. They knew that there was no race to fish. I am thinking of lobster fishermen plucking a scale out of the tails of lobsters and putting them back into the water off Newfoundland. That was the only good thing in Newfoundland as far as I could see. It was a landscape of devastation. I am thinking of the conservationists who preside over New Zealand’s excellent marine reserves. We have to consider the whole thing, such as closed areas, protecting nature for itself and protecting large areas of the sea. Such control areas should not be fished just to see what comes back. Will things return to the state that existed before? That will allow us to see what benefits nature could provide if we just left it alone.
We need to think about all those things, not just fishing and the fishing industry.

One of the few things on which I do not quite agree with Owen is that people do not necessarily have to believe that repatriating the CFP would be an answer to the questions that I have posed. It could be done within the European system. The problem with the European Common Fisheries Policy is that it is common, not that it is European. I support the Strategy Unit's excellent analysis in the Net Benefits Report with one exception: we need fundamental reform at EU level. The report identified many things that we could do now, which have been obscured by the debate in preceding years about repatriating the CFP. We can do a lot within the six-mile limit and there is a lot we can do as a sovereign nation now.

Rt Hon. Lord Waddington: Thank you very much. Would you like to start the questioning, Mr Cash?

Bill Cash, MP: Yes, I would like to follow up your points that it would be possible to improve the situation within the European dimension. We heard some pretty compelling evidence from Owen Paterson, much of which seems to be in common with yours. That is why I would like to explore the point a bit. Let us consider the coastline and the fishing industry. It is not located in the middle of Staffordshire. None the less, there appears to have been a complete decline. Yet, your view is that there is a common resource and a law of the commons – I think that that term is used. If we were to try to get that done through the European Union, would we be able to bring back fishing for the British people? The European Union seems to be very resistant.

Charles Clover: If I may say so, you are confusing a number of things. I go into this matter at some length in my book. I recommend that you read it, because I might not be able crisply to summarise the matter as well as I did in the book. The problem in Europe is that the Council of Fisheries Ministers was set up to deal exclusively with fish, not the marine environment. The marine environment is dealt with by the environment directorate and has little purchase on the dealings of fisheries Ministers. In fact, the only joint meeting of those Ministers took place in 1997 in Bergen. It was totally marred by a turf dispute about who had precedence.

Citizens' interests could be reasserted by making the environment side more powerful, because, after all, that represents millions more people with economic and recreational interests and the rights of recreational fishermen, a concept that the CFP does not recognise exists. Why the majority of people are in the minority when it comes to the dealings of the European Union is a mystery to me. I am trying to go with the art of the possible. If we are to remain within Europe, it can be done through Europe. It is a much more long-winded process, but it can be done. The way that it can be done is by empowering the DG environment marine strategy, which, at the moment, is a meaningless bunch of platitudes. Eventually, people will note, that the DG environment has pretty much set its sights on encroaching on to other people's areas. It has done that successfully in relation to farming.

That is the way in which the rights of the common man would begin to be asserted over those resources. We can get terribly confused about commons. There is a large explanation in my book about managed commons and unmanaged commons. An unmanaged common is a disaster, as we all know. A managed common can work, but, in my opinion, there can only be a limited number of commoners. I share Owen's view: we need to make the law of the sea much like the law of the land. We need a new granting of rights and responsibilities.

Bill Cash, MP: I used to act for the Verderers of the Royal Forests. I also had interests from a legal point of view in Epping Forest. I think that I understand where you are coming from on that. It is an interesting analogy.

Geoffrey Van Orden, MEP: Mr Clover, you said that they had a reluctance to want to escape from the Common Fisheries Policy. Is that because of the practical difficulties of doing so and the time that would perhaps be lost in trying to do so?

Charles Clover: That is my worry – I recognise the political realities.

Geoffrey Van Orden, MEP: Or, is it because you see positive benefits in the CFP?

Charles Clover: The problem with leaving the CFP is that we would have to do two things. It would mean that we would have the power to do what we wanted with our own waters, wherever they are – if that is not an endlessly disputed fact; I think it might be. We would also have to set up something very like the Common Fisheries Policy to protect ourselves against other people who have rights over the same ecosystem. We might find that our cod or our haddock are going off to spawn in somebody else's area. We would have to reinvent the wheel.

The thing that we have to accept is that what is wrong about the CFP is that it is common, not that it is European. We will need European laws to cover the ecosystem. The national boundaries are irrelevant to the ecosystem. We need to ensure that the ecosystem, primarily, works. We would need laws to do that, whether they are within the EU or outwith.

Geoffrey Van Orden, MEP: Our important fishing neighbours are countries that are not in the European Union, albeit they are in the European Economic Area; I am obviously thinking of Iceland and Norway. It has been suggested that there are arrangements that one might come to with those nations. We would be getting back to the status quo ante.

Charles Clover: Read the book. Honestly, there is the most catastrophic example of what is currently going on in negotiations between the EU, Norway, Iceland and the Faroes on the management of blue whiting. We have already completely busted the North Sea sand eel fleet. It has gone bust. Esbjerg is now bust. It is astonishing. Some 15 years after I first discovered the dangers of burning sand eel oil in power stations, because they had so much of it. The Commission has closed down the sand eel fisheries because there were so few sand eels. Norway is perhaps in the same condition. The only feedstock left for the salmon farming industry is blue whiting, whose population is in free fall because those nations that I mentioned cannot agree. If people think that is a good example of co-operation, I would have to disagree. I am sure that you do not think that it is. There is a catastrophic diplomatic impasse, to which insufficient political
time and will is being devoted at present. I wonder whether that is the way to go.

I also recommend that members of the Forum read the history of what happened after the war. There was a London conference and such matters were set up and they failed; the London Commission never worked and eventually led to the cod wars.

** Rt Hon. Lord Weatherill:** I will add a final word on your excellent presentation. You said that there is much we could be doing. If I had had the first question, I would have asked, “Like what?”

There was a splendid article in *The Daily Telegraph* on 29 October entitled ‘EU schizophrenia’. I do not know whether you saw it. It says in effect that everybody knows that the Constitution is dead, but that the Commission is going on as though nothing has happened. We hear about thousands of directives that will be reviewed or abolished but we have heard nothing about which ones. It goes on passing new ones – the article mentions one about circuses. What will we do about all of this? The Commission goes on as though nothing has happened.

**Charles Clover:** There are things that we can do. I will mention two sovereign nation things and one European thing. The fundamental European thing that I wanted to say was that not only do we have to equalise the balance between DG Fish and DG Environment – I see no other way of doing things – but we must negotiate about how we set the system up offline. At the moment, we are renegotiating how we do the system every year. That is ridiculous and it is absolute folly. We should negotiate the parameters on which the regulators will regulate and then let them get on with it. We could review that every two years or every five years. It could be reviewed in however many years the legislators will want to do it. We should not muck about with it and allow political calculations to come into the negotiation of the system. The system is negotiated so that it does not work, so that the fishing nations which do not believe in conservation may go on catching what they wish within the rules, because the rules do not apply.

The system must be taken offline and an institution must be set up to do that because the Commission proposes and the Fisheries Minister’s dispose like irresponsible children. That is unacceptable to any citizen. It must stop. We have to get rid of that system. It is fundamental for the European system. I virtually agree with Owen: if we want the system to work, that is what we have to do. We cannot get away from that.

I suspect that I am agreeing with Owen again on this next point. We can do things that the Net Benefits Report says we can (such as introducing property rights, or ITQs for fishermen) and, as I say, many things can be done within the six-mile limit. They would make things infinitely better for inshore fisherman, for nature and for recreational fishermen. Yet, the Government do not seem to be doing them. The first is that we could reform the sea fisheries committees. I will give one example of why we need to do that. Mr Bradshaw thinks that he has begun to do that by trying to help the bass fishermen, who are the most vociferous, but who have the best case. There are a load of bass around the coast, so why can we not let them get a bit bigger and then there would be a recreational resource. That would be worth infinitely more than the commercial resource. Why can that not happen?

The majority of people want it to happen. It is held back only by a minority of small fisheries’ interests who could be accommodated elsewhere if they behaved responsibly. The reason that does not happen is because of the sea fisheries committees. The one in my area is the Stour and Orwell committee. In fact, there are two: there is the eastern and the southeastern. However, I am talking about the eastern, which has the principal responsibility, because the Orwell is wholly in the eastern area. It considered the first proposal in Britain for a recreational fishery for sea bass in its area. It refused to consider it any further. It was then reconstituted with two of Mr Bradshaw’s appointees from the recreational fishing lobby on the board to advocate that those proposals should at least be heard. The chairman refused to consider it and said that the two DEFRA representatives were not entitled to vote because they had to declare an interest: they were recreational fishermen.

We cannot resolve the different interests of the coast by allowing the commercial fishing interest to dominate the common interest when it represents a fraction of people earning money part-time. Citizens’ interests must not be as steamrollered as that.

**Geoffrey Van Orden, MEP:** May I ask an entirely different question? It relates not to fishing, but to the dairy industry. About a week ago, you wrote that the anguish of the British dairy industry began when the European Union instructed the United Kingdom to abolish the milk marketing boards. Given your enthusiasm for the involvement of the European Union in so many practices, what do you feel about that? Where should we go from here in relation to the dairy industry?

**Charles Clover:** I am neutral: I am not necessarily an advocate of the European Union, but a realist about the fact that we have got it. I am not a legislator, so I do not have much power in the matter. I have to figure out how we can make things better for British people within the system. The only position I have is that the power of the retailers and middlemen over the farmers has changed dramatically in the past 15 years. That is what must be dealt with. I have not focussed on how that should be done, apart from in terms of the Office of Fair Trading process. The OFT seems to have been powerless to deal with the flagrant anti-competitive and monopolistic practices of the retailers. We can deal with that in this country. The historical debate about the milk marketing boards and whether or not that EU pressure was changed dramatically in the past 15 years. That is what must be dealt with. I have not focussed on how that should be done, apart from in terms of the Office of Fair Trading process. The OFT seems to have been powerless to deal with the flagrant anti-competitive and monopolistic practices of the retailers. We can deal with that in this country. The historical debate about the milk marketing boards and whether or not that EU pressure was legally justified and whether there was a monopoly is not something that I would like to offer an opinion on without a great deal of thought. I have put that level of thought into the issue of fish, but not into that particular aspect of the dairy industry.

**Bill Cash, MP:** I asked Mr Haworth what benefit could be gained by British farmers and by anyone in the United Kingdom by being part of the Common Agricultural Policy. I represent farmers in my constituency. Prices are collapsing on a scale that I think you identified in an article about a week ago. A number of people are leaving the dairy farming industry, which is important in Staffordshire.

Mr Haworth put forward an extremely positive view. I did not quite match it up with what I was told by my farmers in a meeting
that I attended about three days ago. They seemed to want to stay in the CAP, but they also say that, whether we are talking about sugar beet, beef, cereal or whatever, it does not work for them. They are going out of business and their incomes are collapsing. The National Farmers Union says that the CAP works pretty well. I ask it how and for whom. I am told that the answer is, “The bigger farmers.”

I am puzzled by the difference between the attitude that is taken by the hierarchy in the NFU and the experience on the ground. What is your view on that?

Charles Clover: My experience of the NFU is that it is always wrong.

Bill Cash, MP: That is interesting.

Rt Hon. Lord Waddington: I think that that brings matters to a close on a positive note. Thank you for coming.

The Plenary Session finished at 12:34 pm.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2 Professor Allan Buckwell joined the CLA in 2000 and is Chief Economist and Head of Land Use at the Country Land and Business Association (CLA). Prior to joining the CLA, he was Professor of Agricultural Economics at Imperial College at Wye from 1984. In 1995-1996 he was seconded to the think tank within the Agricultural Directorate of the European Commission. From 1993-1996 he was President of the European Association of Agricultural Economists, and is President elect of the UK Agricultural Economics Society 2004/05. Professor Buckwell also chairs the Policy Group of the European Landowners Association.

3 Martin Haworth has been Director of Policy at the National Farmers’ Union (NFU) since 1999. Mr Haworth began his career in 1973 at the European Commission, where he worked for the External Relations and Information Department. In 1980 he joined the NFU’s Economics Department and from 1983-86 he directed the NFU’s Brussels office. Mr Haworth was made Head of International Affairs at the NFU in 1989, and in 1996 he assumed responsibility for policy strategy over the Economics Department and Brussels office. In 1995 he was awarded the Chevalier du Merite Agricole by the French Government.

4 Owen Paterson has been Member of Parliament for North Shropshire since May 1997. Mr Paterson is currently Shadow Minister for Transport. Prior to this, he was Shadow Minister for Environment, Food and Rural Affairs 2003-05. Mr Paterson has also sat on a number of Commons Select Committees, including the European Scrutiny Committee from 1999-2000. Before entering politics, Mr Paterson was in the tanning industry and was President of COTANCE, the European Tanners’ Confederation, from 1996-98.

5 Charles Clover has been Environmental Editor at The Telegraph for over 15 years. In 2004, Mr Clover wrote The End of the Line, which discusses the effects of over-fishing the world’s oceans. His book won a number of awards, including the André Simon Memorial Fund Book Award and The Derek Cooper Award for Investigative or Campaigning Food Writing 2005. Mr Clover is also a three-time winner of the national journalist category of the British Environment and Media Awards.
Effort control based on the following principles:
- Tailored to suit the specific requirements of the UK.
- It is based on extensive discussions with scientists, experts, fishermen, and environmentalists.
- From that experience, we have devised a policy framework backed by successful fisheries in Norway, the Faeroes, Iceland, Canada, and the USA.
- Tipping points built on an earlier visit to the Falklands, visiting numerous fishing ports and successful fisheries.
- It’s to produce it, we have consulted with stakeholders from across the industry, with compulsory scrapping of modern vessels and has had a profound impact on British fishing ports and successful fisheries.

Fisheries cannot be managed successfully on a continental scale; they need local control. That is the reason why Michael Howard has stated that the Conservatives will return our fisheries to national and local control. This accords completely with our instinct for small government. Issues should be tackled when appropriate and otherwise locally.

The purpose of this Green Paper is to outline our views on how our fisheries policy would work. To produce it, we have built on an earlier visit to the Falklands, visiting numerous British fishing ports and successful fisheries in Norway, the Faeroes, Iceland, Canada, and the USA. From that experience, backed by extensive discussions with scientists, experts, fishermen, and environmentalists, we have devised a policy framework tailored to suit the specific requirements of the UK. It is based on the following principles:
- Effort control based on ‘days at sea’ instead of fixed quotas
- A ban on discarding commercial species
- Permanent closed areas for conservation
- Provision for temporary closures of fisheries

The Common Fisheries Policy is a biological, environmental, economic and social disaster; it is beyond reform. It is a system that forces fishermen to throw back more fish dead into the sea than they land, it has caused substantial degradation of the marine environment, it has destroyed much of the fishing industry, with compulsory scrapping of modern vessels and has devastated fishing communities.

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WITNESS BRIEF: MARTIN HAWORTH

1 It has become commonplace to condemn the CAP out of hand as a political and economic disaster. Although it certainly has its failings and negative consequences, this reflex fails to put the CAP in its proper context and ignores its positive features.

2 The great purpose and achievement of the CAP – often overlooked – was to allow free trade in agricultural goods within a common market. This now extends to 25 countries, and is a unique arrangement. There is no other example in the world of a free trade zone including all agricultural products. The European Economic Area (EU plus Switzerland, Norway etc) specifically excludes agriculture. A topical example of its scope: in a few months British beef will again have free access to the EU market following a decade of BSE restrictions. Almost every other country in the world maintains an absolute ban.

3 The CAP has not been resistant to change. The latest Reform (2003) was extraordinarily radical, and will mean that the great bulk of spending will be classified by the WTO as ‘non-trade distorting’. The contrast with the USA, whose most recent Farm Bill (2002) increased spending, and made many of its programs more trade distorting, is stark.

4 Of course free trade in Europe was constructed on the basis of an internal price level protected by tariffs and export subsidies; and the foundations of this construction are now being dismantled through trade liberalization. This is an ineluctable external force that is bound to have a profound impact on European agriculture and agricultural policy.

5 The debate about the future of the CAP is currently at the centre of an ideological divide in Europe. On the one hand are those who see the purpose of the European Union as a defence of ‘European values’ and the ‘European model’; on the other are those who see the European Union as an essential mechanism to improve the competitiveness of the European economy and allow us to face global challenges.

6 Given that international obligations will make the first option untenable, the real discussion is about the pace, not the direction, of change.

WITNESS BRIEF: OWEN PATTERSON, MP

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- Effort control based on ‘days at sea’ instead of fixed quotas
- A ban on discarding commercial species
- Permanent closed areas for conservation
- Provision for temporary closures of fisheries
- Promotion of selective gear and technical controls
- Rigorous definition of minimum commercial sizes
- A ban on industrial fishing
- A prohibition of production subsidies
- Zoning of fisheries
- Registration of fishing vessels, skippers and senior crew members
- Measures to promote profitability rather than volume
- Effective and fair enforcement

However, simply exchanging a bureaucratic system run from Brussels for one run by the bureaucrats in London and national centres is no panacea. It must be accompanied by a local management system, which has the confidence and trust of the nation and the fishermen who work within it.

The essence of our policy, therefore, is national and local control. National government will set the strategic framework, which has the confidence and trust of the nation and the fishermen who work within it.

The essence of our policy, therefore, is national and local control. National government will set the strategic framework in which the priorities will be the restoration of the marine environment and rebuilding the fishing industry; new local bodies will take day-to-day responsibility for managing their fisheries.

Based on the Conservative Party Green Paper, Consultation on National Policy on Fisheries Management in UK Waters (January 2005), produced by Owen Paterson, MP.
I called this talk “who owns the sea?” But I realise I should have called it who should own the sea. For the owner in a modern democracy should be us, the citizens. But the law, such as it is, really only protects the rights of a number of vested interests.

I spent much of last year travelling what we used to call the seven seas, researching The End of the Line, my book about the global problem of over-fishing. It was a pretty depressing experience, with a few inspiring exceptions.

I went to the once-great flatfish port of Lowestoft, where the biggest employer is the fisheries lab which was meant to ensure there were always plenty of fish to catch.

I went to the port of Bonavista, Newfoundland, where catching a single cod now attracts a $500 fine.

I spoke to people in Spain responsible for the tuna ‘farms’ for which the last bluefin tuna of the Mediterranean are being rounded up by purse seiners and spottter aircraft.

And I went to the port of Dakar, Senegal, where one of the world’s most productive marine ecosystems is being mined out by subsidised European fleets to the detriment of the indigenous population.

It is a story everywhere of decline in once-great natural resources. It fills one with trepidation about the human future by subsidised European fleets to the detriment of the indigenous world.

It is a story of how our technological ability to exploit the sea has far outstripped our ability to manage them.

Looking back over my trip around the world’s fisheries, I was struck that the only happy fishermen were those who owned, or effectively owned, their resource. They were also the fishermen who seemed to be looking after that resource wisely. Whether it was the captain of a huge Alaskan trawler catching pollock very slowly, to maintain its quality, or a lobster fisherman in Newfoundland marking the tail of a young lobster before putting it back, expecting others to do likewise. The only happy conservationists were those who also held exclusive control of their resource — albeit on behalf of the public.

I came back believing that the time had come to confer a new generation of rights and responsibilities on people who use the sea and to change the law of the sea so it is more like the law of the land. For what is happening, because of the gallop of fishing technology, is that many of the common goods the sea once provided for all of us — such as a reliable supply of food — are being effectively stolen by fishermen.

And my anxiety from listening to Elliott Morley yesterday is that DEFRA is focusing on what it does best, setting up a giant bureaucracy, a planning system and a marine agency without getting the fundamentals right. And that involves creating new rights and responsibilities that presently don’t exist.

So who owns the sea, at present? The short answer is everyone and no one. At present, as you move outward from the shoreline to the high seas, you move from property ownership, rights and responsibilities to the vaguest kinds of regulation which merely endorse the kind of hunter-gathering that goes on there. The sea from the low watermark down is a common subject to what Garrett Hardin called ‘the Tragedy of the Commons’.

The status of a common was decided a long time ago. Roman law held that what no man controlled, no man could own. Justinian who put together a concordance of Roman law in the 6th Century said that the air, flowing water, the sea and the sea shore were open to all. That principle of common ownership was re-affirmed by the Dutch jurist, Hugo Grotius in the 17th Century, in Mare Liberum.

But we often forget there was an opposite point of view. John Selden, an English jurist, asserted in Mare Clausum the right of the crown to claim sovereignty over sea closest to its territory. This argument, essentially that English might was right, crystallised into the three mile limit, the distance a shore battery could shoot a cannon ball, which was taken to be three miles.

I am not a lawyer, so you will have to excuse me if I am not as exact in my terminology as a lawyer. But the interesting paradox it seems to me is this. The reasons why the law of the sea was established as it is, as a common, have vanished. The very same satellite technology, radar and sonar which has made it possible for fishermen to see and catch fish wherever they want and to map every wrinkle on the seabed makes it possible for us to control those who exploit it.

Now, a single state, properly equipped, can control extraction of fish or minerals on vast swaths of ocean. Look at how well Britain does it around South Georgia. It is possible to practice almost total surveillance over human beings’ comings and goings even on the high seas.

The curious thing is that we have this VMS monitoring system in the EU. But it is not used: to date a prosecution has never been brought using satellite data.

The present law of the sea says that the sea is a common, open to all, and seas within countries 200-mile limit are commons open to some. The problem with commons is that the advantage to the individual of grazing another cow always outweighs the loss of grass, which is shared. So commoners go on buying cows until the common is bare and all the cows starve.

Many mediaeval commons did work, as Garrett Hardin was forced to admit after writing his famous essay. With managed commons, ruin is averted by stining. With unmanaged ones – like the high seas, where tuna and toothfish live – ruin is inevitable.

Of course, managed commons have the ability to break down into unmanaged commons. Just such a common, I submit, is the EU’s Common Fisheries Policy, where stining has seldom been taken very seriously. My friend Tom Appleby, a lawyer, calls it a super common – where sovereignty has almost evaporated.

But I am less interested, for the moment, in grand concepts like sovereignty; in fact I think it is theoretically possible to get the rights and responsibilities right on the seabed and the water column whether or not we are inside the CFP.

One of the problems of the CFP is that it largely only recognises the rights of commercial fishermen. As George Orwell wrote about another commune system, some animals are more...
equal than others. Some commoners have been getting less out of the common than they had every right to expect. Take anglers for example. Let us think for a moment about the English Common – that word again – Law, under which commercial fishermen and anglers enjoy a right of passage through territorial waters over the freehold owned by the Crown estate.

So if the oceans are a common who owns fish?

Under UK Common Law, fish are wild and so belong to no one all until they are dead and become possessions. The only exceptions are royal fish, such as sturgeon and whales, and the right to take salmon and oysters, which belong to the Crown. There is also a Common Law right of passage which anglers and commercial fishermen exercise over the freehold the Crown Estate owns in territorial waters. My friend Tom Appleby, the lawyer, thinks the law deserves to be tested over certain practices. He is not certain that beam trawlers or scallop dredgers can claim to be operating under those rights because their principle activity is destructive. The right to pick berries does not extend to felling hedges to find them.

In the age of the GPS chart plotter, the Gloria trawl, and seabed mapping, fishing has become something it was not when the right to fish evolved.

So it seems to me that in legal terms the time is ripe for an intervention by the freeholder. At least in territorial waters and where such a person currently exists. This was once the Crown, but in the days of a modern democracy it us, the citizens. Citizens are seeing the trashing of fish stocks that they may see as their birthright – and have been rebuffed when they have sought to assert their claim to protect significant ecological features just off their shores in reserves. Sea fisheries committees or the Scottish Executive point out that they must have the agreement of the fishermen.

I am worried that the drafters of a future Marine Bill may not be asking themselves the fundamental question, do we really want the sea to go on being a common?

It seems to me that commons are a perfectly good arrangement when it comes to non-extractive areas, such as no-take zones. That is why state owned national parks have such currency in the United States. We just need some very big ones everywhere and not the experimental network of reserves the Government is talking about.

It is when we come to extractive uses – such as fishing – that I find the solutions on offer for tackling overfishing unsatisfactory. The Strategy Unit wants to give fishermen tradeable rights, as in Iceland or New Zealand. The Tories (suspecting the cult of illegal fishing is too engrained) want effort controls or days at sea. Effort controls or days at sea have a lot to be said for them. They are a first base in controlling modern fishing. But they are still essentially part of the commoning system. Their weakness is that there is always an aspect of effort – sonar; net technology; the latest computer programme – that you cannot control. This leads to what is called technological creep. You may not have a problem for a year or two, but with effort control, you are headed for crisis in a few years time.

On land we do not live in communes any more. We have property and, by and large, we respect it. If somebody interferes with our rights we take them to court. I believe there has to be the same scope for the citizen and citizens groups in the law of the sea. The fishermen with the most respect for fish I met on my travels were those with legally defined exclusive rights to fish. For them the race to fish was over.

Individual transferable quotas – or whatever Alaska, New Zealand and Iceland choose to call them – meant they could catch 6 tons of Pollock of top quality and sell it at the height of the market rather than catch 60 tons of mangled, low-quality fish because otherwise there would be none left to catch.

Rights based systems are controversial, because they tend to concentrate ownership in a few hands and because of the potential of high grading. I believe those problems can be overcome. The supreme advantage is that you link the health of the stocks with the health of the company’s share price. If the stocks go down, so does the value of the company. The fisherman has, for the first time, a financial interest in conservation.

I know many greens have yet to get their minds round this. To them I ask, what did a common ever do for you?

We need to fence the range. I personally shall not weep over the death of the cowboy

(Taken from a talk given by Charles Clover to the Coastal Futures Conference, SOAS, 20 January 2005)
Dr North: Experience says exactly the opposite. Multinational projects, particularly European projects, tend to be more expensive, take longer to produce and the result is often inferior. Sometimes, no result materialises. For example, the Government attempted to produce a medium-range anti-tank missile. They joined up with France, Germany, Belgium and Holland on a project called TRIGAT, which was fronted by an artificial coalition consortium called Euromissile, which was to replace the Milan.

After £103 million expenditure by the United Kingdom – I do not know what the other partners paid – Euromissile failed to deliver and we ended up having to buy an off-the-shelf American missile that had been available since 1996, which only came into service with the armed forces this year and which was, from the start of the collaborative project, a better missile anyway. Had we pursued TRIGAT and brought it into service, we would have paid more for an inferior missile.

Geoffrey Van Orden, MEP: Is there not a distinction to be made between joining a collaborative project – they have been going on for many years, and we all have our views about such projects – and a deliberate political intention to go the EU route rather than another? That is the implication of your writing.

Dr North: Yes. To an extent, the F-35 joint strike fighter is a good example of a collaborative project in which a primary manufacturer – based nationally as in the US – invites partners to join it, as opposed to a more committee-type structure when everyone sits down and says that they want something, which is vaguely defined. There is then a political agreement for a piece of defence equipment that ends up being a compromise that suits no one. A classic example of that is the Horizon frigate project, in which multinational groups, particularly the Italians, French and British, ended up designing by committee a frigate, which ended up with a hull shape that was optimised for Mediterranean operations, but which was entirely unsuitable for operations in the north Atlantic, where we would have used it. Eventually, we pulled out of the project at enormous cost in terms of both the amount we spent on the research project and the fact that we had to upgrade our Type 23s to accommodate the delay in bringing new ships on line.

Bill Cash, MP (Former Shadow Attorney General and Shadow Minister for Constitutional Affairs): I am extremely glad to see you, Dr North. I was fascinated by your being able to reduce a complicated subject to such a short compass in your memorandum. We are here to consider the existing Treaties. The burden of your argument is that the way things are going, in exercising the competencies under the existing Treaties, plus
some extension of their ability to stretch the wording quite a lot, is putting a strain on our relationship with the United States. At bottom, you are saying that our fulfilling the tasks set out in the consolidated Treaties, up to and including the Nice Treaty, and all the talk about Member States working together to enhance and develop their mutual political solidarity and about them being under an obligation to support the Union’s external and security policy and so on, means that we are getting to a situation in which the EU is really the base line at which British defence policy and foreign policy is being directed.

Do you agree that the most important thing in the time of reflection following the defeat of the Constitution is to reform the existing Treaties and change the basis upon which those commitments have accumulated? In particular, do you think we should ensure that the primacy in the conduct of foreign affairs and defence lies with national Member States and not the overarching solidarity set out in the Treaties?

Dr North: That is a fascinating point. What is emerging is that most of the recent developments have been outwith the framework of the existing Treaties. Furthermore, there is an impression, certainly within the Eurosceptic community, that European integration is something done to us by Brussels – those ghastly foreigners making us do things. However, much of the initiative for defence and foreign policy integration is coming voluntarily from our Government, who have been prime movers. The bilateral agreement in 1998 at St Malo between Blair and Chirac was outwith the Treaty. It was a defence agreement between France and Britain, which was then transmuted by the European Council at Helsinki into the European Rapid Reaction Force.

What gave clothes to that was the 2000 framework agreement, which was signed by Hoon in July 2000 at the Farnborough Air Show. Although it is called a framework agreement on industrial co-operation, it is a formal treaty. When one reads through it to Article 46, which is way at the back, one finds that it commits six partners – EU members accounting for 96 per cent of arms production within the EU25 – to come to a joint programme of determining military needs. They are committed by treaty to the common development of military capabilities, mutual recognition of security clearance and free exchange of secret material between partners.

That separate Treaty, which was entirely outwith the EU and was, in many ways, given a false name because it was called a framework agreement even though it was a treaty, was put through the House and ratified under the Ponsonby rule. It was No. 6 of an item after an annual report by the probation service, so it was tucked in and went through on the nod, barely noticed, with no debate at all.

Effect was given to the framework agreement with the establishment of the European Defence Agency, which was supposedly authorised by the Constitution, which we never had – an abstruse article on general defence co-operation in Maastricht was used. The EDA was, in fact, established by intergovernmental agreement.

Some of the tangible defence assets that are coming through, such as the GMES surveillance satellite system and the Galileo system, show that multibillion programmes are being sneaked – to use an emotive word – through the European Space Agency, which is an intergovernmental agreement, with funding coming from the Commission research framework and Trans-European Network funding. All of that is totally outside the existing Treaty framework, but linked through abstruse articles that were mainly decided at Maastricht and which were never meant to be used for the purposes for which they are being used.

Bill Cash, MP: I gather that you would repudiate the idea of structured co-operation within the framework of enhanced cooperation, all of which is very technical stuff. You are describing something that is given very little publicity.

Dr North: Yes.

Bill Cash, MP: Would you repudiate the notion of structured co-operation within the framework of enhanced co-operation in matters having military and defence implications, which is the present position under the Nice Treaty?

Dr North: I would not repudiate it. I simply say that that is not the mechanism being used. The Member States – the primary drivers – are using intergovernmental agreements within the loose framework of the consolidated Treaties, but the key executive instruments have been separate intergovernmental agreements, which have not rested primarily on the existing Treaties. I made a passing reference to the Ponsonby rule. It is far too easy for the Government to write up abstruse, vague-sounding treaties that pursue and promote European integration, which go below the horizon because everyone is watching the Treaties and the European Council. Those things slide up. The framework agreement was signed at an air show, for heavens’ sake.

As Europe watchers, we are used to watching the plenary sessions at Parliament, to reviewing the Commission’s literature and looking at the communiqués from the European Council. The last place that I would look for a major European Treaty would be an incidental signing ceremony at an air show that was attended by six Defence Ministers. That is the way in which things are happening; it is terribly important to realise that so much is being done outside the normal framework and that we are not picking it up.

The Hon. Bernard Jenkin, MP (Shadow Minister for Energy and former Shadow Defence Secretary): You are distilling an extremely important point, which is that intergovernmentalism is often presented to us as an assurance that integration is not taking place. We are told that intergovernmentalism was the great victory that John Major scored in the Maastricht Treaty, which demonstrated that integration could not, and would not, happen. However, you are saying precisely the opposite: that alongside the integrationist framework of the Treaties, intergovernmentalism is extremely dangerous because it can be used to disguise the real attempts of integrationist policies. You used the framework agreement as an example.

You are right about the difficulty of getting coverage on such issues. I was the shadow Defence Secretary for two years, and found it difficult to obtain coverage for such issues, although they were taken up by the Opposition.

I return to procurement, which is at the heart of what you are talking about. This country has a terrible problem. Perhaps we
should spend much more on defence, as we do not spend anything like enough on it to maintain our own coherent, autonomous procurement programmes. We have to co-operate with other countries. The difficulty that we have with the Americans is that, even though we have a special relationship with them, they share little with us. As a former director of defence procurement said to me, "You can buy from the Americans and you will get something that works and that is cheaper, but you won't know what is inside the box, and when it goes wrong you won't be able to fix it. If you co-operate with the Europeans, it will be more expensive, but you will get the jobs and own the technology, although it might not be quite as good. That is the dilemma of defence procurement." What is your answer to that?

Dr North: The American situation has taken a turn for the worse with our relationship with the European Union and, through that, our relationship with China. Earlier this year, under the European presidency, Blair announced formally – that was, again, almost entirely unreported – that the EU was a strategic partner of China. He also endorsed, under the EU banner, the 'One China' policy and further endorsed the formal cooperation on the Galileo space programme.

Having good independent evidence, the Americans are concerned about technology leakage. We have close associations. We must not forget that some of our major defence contracts, such as Thales, are French-owned. They see that secret technology that comes to us ends up – via France or Germany—

The Hon. Bernard Jenkin MP: I shall interrupt for the sake of brevity. I agree with your point, but we have those problems with the Americans anyway. We do not have design authority over the Hercules C-130 jet aircraft. We will not be able to change the software codes on the joint strike fighter nor will we not be able to fly the joint strike fighter unless we update the software codes after every mission.

Dr North: Yes.

The Hon. Bernard Jenkin, MP: So by buying an American aircraft, albeit with lots of British technology and jobs attached to it, we are almost giving the Americans an operational veto over the use of the kit. That problem predates all the difficulties in Europe. What is the answer to that?

Dr North: The Americans are withholding that technology because of the China problem. Yes, the problem predates that, and that has always been the case. Unless we have total design autonomy, which we cannot afford, that is the price that we have to pay.

Let us look at the matter from the other point of view and consider the air-to-air missile that we buying. The Meteor, which is partly built in the UK, is costing us £1.4 billion, whereas the American missile was offered to us as a complete package for £500 million. The seeker, which is the heart of the missile, is made by the French, who have total design authority and complete intellectual rights to it. The radar and logic system is also made by the French. The motor, which is a unique design, is made by the Germans, who have total design control over it. So, we are in exactly the same situation with the Meteor. Unless we are prepared to put money into making our own kit, which is phenomenally expensive, we are making a choice between either the Americans having design control over it or the Europeans.

In the first Gulf War, when we wanted ammunition from the Belgians, they withheld it. In contrast, during the Falklands War, when we desperately needed AIM9s to make our Harriers more operationally effective, the Americans stripped out their air force and provided us with AIM9s – the top rate air-to-air missile. If we are to become dependent on outside agencies for armaments, we should consider the fact that history shows the US to be a more reliable partner that is more likely to support us when we have problems than European agencies, which will almost certainly withhold materials at key points.

The Hon. Bernard Jenkin, MP: That is very clear. Thank you.

Rt Hon. David Heathcoat-Amory, MP (Former Minister for Europe and the UK Representative on the Convention on the Future of Europe): You mentioned the Galileo satellite positioning system that is being developed in Europe as a rival to the American system. What evidence do you have that it is being developed for military purposes? The European Scrutiny Committee, of which Bill Cash and I are members, is repeatedly assured by British Ministers that the system does not have a military aspect.

Dr North: To start with, it is inescapably obvious. Galileo is an inert system, which provides a signal. It is for the user to define whether to use the signal for a military or civil application. If you are driving around in a bright red truck with sirens on and are using it for location, that is a civilian application. But if you have exactly the same kit in a green truck and men with guns in the back, that is a military application. The provider cannot define the usage; it is for the user to define the usage.

We must step sideways and read the Commission's defence White Paper, which says boldly and clearly that Galileo is intended to underwrite the European security defence policy. We then have an open statement from Alliot-Marie, the French Defence Minister who says that they intend to use Galileo for military purposes. We must then put two and two together and ask: why would China spend €400 million on the system when it is free to use the American Navstar system if it did not intend it to have a military application?

I understand why those possible applications might be keenly denied. The problem is that Galileo is funded and managed primarily by the European Space Agency, the Constitution of which specifically prohibits it from undertaking any applications of military use in space. If it formally acknowledged that Galileo was a military application, it would be in breach of its Constitution. The European Space Agency site fronts up that it is a civilian application controlled by civilians, but it then makes a slur on the Americans by saying that it is a military application controlled by the military. Clinton set up a management board that is totally independent of the military, which has among its partners the US Forestry Commission. It is an inert system in the sense that it is neither military nor civilian – its use is defined by the user. On that basis, it has exactly the same status as the US Navstar system.

Geoffrey Van Orden, MEP: Dr North, I am sure that we would all like to ask you many more questions, but time has run out. I
thank you on behalf of the Forum for your contribution. We look forward to reading more of what you have to say.

I invite Lord Owen to join us. Good morning, Lord Waddington sends his apologies, as he cannot be with us today. Thank you very much for giving up your time and being with us this morning. You might like to make an initial statement, before we ask you questions.

Rt Hon. Lord Owen, CH (Witness): I have already circulated a statement, but if you would like me to read it, I will. The essential design for the European Union well into the 21st Century is to hold fast to the principle that the Common Foreign and Security Policy [CFSP] must remain intergovernmental. It must be kept outside the jurisdiction of the European Court of Justice. That means that, if there were to be a legal personality for the Union, it must be designed so that it does not open the way for ECJ jurisdiction in CFSP matters, so that Member States retain their current rights of representation on international bodies.

It is also essential that the pretence that the CFSP is now moving remorsefully towards a single foreign and security policy is nipped in the bud by refusing to allow the title of the High Representative for the CFSP to become the EU Minister for Foreign Affairs. If the roles of High Representative and external Commissioner are, at some time in the future, to be exercised by one person, that role must be firmly based in the Council, not the Commission.

The existing position in the Nice Treaty on defence should be maintained, with its wording that the emergence of a common European defence policy might occur, but is not something that will occur, and put into the new Constitution. It should depend on reaching an inclusive definition of common defence over time, something which is hard to do, not on an exclusive definition in which NATO does not play a central part and in which there is insufficient joint planning of the sort agreed recently in the Berlin Plus arrangement. It is also vital that we do not establish structured co-operation within the framework of enhanced co-operation in “matters having military or defence implications”.

That is the present position under the Nice Treaty, which was advocated in the new Constitution.

It is also inappropriate to mandate a Member State on the Security Council, whether as a permanent member or on rotation, let alone tell a Member State that it should request the High Representative to speak on behalf of the EU. The Security Council has its own procedure for determining who to call to speak, and it must be left to the Member States on the Security Council at any one time to judge how to ensure that agreed EU policy is brought to the Council.

There can be no compromise on the international legal position or the rules of international law that national independence in the conduct of external relations is a criterion of sovereign statehood. There must be no uncertainty about primacy in the conduct of foreign affairs lying with the Member State or about the nature of European Union competence in the conduct of foreign and security policy. There was considerable uncertainty on both matters in the proposed Constitution. If we allow uncertainty over whether Member States have the power of independent action in foreign affairs, we call into question the separate nation status of Member States.

The Hon. Bernard Jenkin, MP: Thank you, Lord Owen, for that exposition. You are clear about the importance of maintaining the primacy of the nation states over their foreign and security policies. However, is not the arrangement that you endorse, which was inherited from the existing Treaties – you referred specifically to the Nice Treaty – in a delicate balance? You endorsed the Berlin Plus arrangements, but the real dynamic of having the CFSP and the ESDP – European Security and Defence Policy – alongside the NATO arrangements is that it has given enormous leverage for there to be an alternative forum to NATO from which to conduct multinational operations. That is proving extremely destructive to the coherence of European security policy and the way in which it relates to American security policy.

In the Balkans, there was a successful NATO operation, which France threatened to veto in order to obtain NATO agreement that NATO would eventually use its so-called right of first refusal to allow the European Union to flag an operation in the Balkans, which nevertheless had to be underwritten by the Americans for the safety of the people of the Balkans. Surely, we have set up the wrong structure – an inherently unstable structure with which anti-NATO elements in Europe can disrupt established security apparatus.

Rt Hon. Lord Owen: I do not agree. The Nice Treaty was not a bad balance. It is a delicate and difficult question. We must have a European contribution within NATO, and we already have that. I broadly agree with the view that when the EU goes into a country to administer it, as we are in Bosnia, it makes a lot of sense to have an EU peacekeeping force. If a hard peacekeeping role is being used when really a soft peacekeeping role is required and the UN does not want to take that on, it is reasonable that it should be done by the EU. That is accepted by many NATO Generals, both European and American.

America does not wish to stay in the soft peacekeeping role. That was highlighted by Condoleezza Rice when she said that the 82nd Airborne is not in the business of escorting grandmothers across the road. However, as the Americans have discovered in Iraq, that is a difficult definition to make. It is worthwhile having a hard role in peacekeeping operations, for which combat-trained troops are needed, and then a phase in which matters can be passed on to an organisation that will no longer face armed conflict, when a less effective peacekeeping force can be in operation, whether it be from a regional military organisation in Africa, or from the EU or UN.

There is recognition within NATO that there is a role for Europe. Generals – both American and British – are not so frightened of that: they are rightly frightened that there will be an attempt to downgrade NATO and reduce its capacity, capability and political leadership to such an extent that the Americans will no longer want to be associated with it. After the St Malo Agreement between Jacques Chirac and Tony Blair in December 1998, that was a real danger. We then rowed back a bit, but then lost ground with the EU Constitution.

Tony Blair came out of the Nice Treaty drawing Parliament’s attention to the fact that it was a key Government achievement.
He described it as "another key British objective" on 11 December 2000, and said that in the Nice negotiations they had been able to exclude defence from enhanced co-operation. Then, on 20 September 2003, he went to Berlin and suddenly conceded structured defence co-operation, which, in terms of the EU Constitution, was enhanced co-operation. We objected to that in Nice because we thought that it had not been worked out, and that it was premature to have defence as the key element in enhanced co-operation. I do not rule out that happening in the future, but the evidence that we are seeing from the situation in Afghanistan – with the argument among the Europeans about how hard a peacekeeping role NATO should perform, with France, Germany and Italy not ready to do that – shows that we are a long way from having the unity that can create within the EU anything like as effective an organisation as NATO. We should not weaken it, but neither should we have a completely black and white view about these matters. There are European roles to which NATO and American Generals do not always want to contribute.

Geoffrey Van Orden, MEP: In recent years, most of the troop contributions in southeast Europe have come from European countries, albeit under NATO command. We have to ask, therefore, what additional contribution is being made by putting them under EU command. Some would say that that is the EU trying to find a role and trying to justify its launching out into the area of defence. Surely it is questionable whether another international organisation should be engaged in military matters when NATO is there and could continue its role there. In Bosnia, at the moment, although EUFOR is there, NATO is also still operational in that theatre, albeit in a slightly different role. It is not as though NATO has disappeared. I find it difficult to see why the EU has got itself into this military role when there is already an organisation that is perfectly competent to perform that role, using European troops for the most part.

Rt Hon. Lord Owen: The reason why is that some EU countries are not members of NATO, and one prominent European country – France – does not like using it. There is a division of opinion, which the current circumstances reflect. On the other side, the US is reluctant to be involved in peacekeeping that it regards as tying down well-trained and well-equipped troops indefinitely. It felt that about going into Bosnia; it was reluctant to go in there anyhow, and it wanted to see an exit.

You are right about the current situation in Bosnia, but the NATO unit is small, and is kept mainly because it wants to play a role in trying to track down Karadic and Maladic and bring them to trial at the international court at The Hague, which it has not done very successfully.

I do not agree that NATO has done a good peacekeeping job in Kosovo. It has done a rather bad job. We did not give confidence to the Serbs, partly because the Kosovo peacekeeping role was seen as being too soft, and it was in consequence that NATO was not as effective as it should have been. That is the danger of eliding the two roles. I prefer to see NATO as a serious force that handles conflict. In Kosovo, it should have stamped out the attacks on the Serbs. It should have demonstrated to the Serb nation that NATO was even-handed. NATO did a good job in Bosnia, with few problems in the early part.

I do want the EU to have a peacekeeping role, but we live with the organisation and the European Union has to consider different views. There is a wish for a soft role and I can live with that, as long as it does not damage NATO, but the present structures are perilously close to damaging NATO. If we had gone for the EU Constitution, we would have moved right across to damage to NATO. Apart from anything else, it is not a minor change to say that there will be common defence. To say that there might be, as in the present Treaties, is to leave the question open. Successive Governments have accepted that. It is a major threshold to cross to say will, and we should certainly not cross that threshold.

Rt Hon. David Heathcoat-Amory, MP: Do you agree then that all semi-federal systems accumulate more powers to the centre? We see that happening in Europe. It is a remorseless, practically irresistible process. Even the present Government have seen several of their policies overwhelmed and have had to give way to the dynamic for unitary structures and centralisation in Europe. What checks and safeguards can we erect against that? Given the failure of the European Constitution, which resolved the issue by granting practically everything that the centralisers wanted, do you think that some Treaty revision, change to British law or declaration is required? Have you given any thought to how your highly desirable aim to check the process could be implemented? Otherwise, those are just pious aspirations that have to give way in the face of what you talked about – the fact that those things are happening anyway in Europe and we have to make the best of it.

Rt Hon. Lord Owen: I agree with the dilemma that you described, which is serious. One of the best ways in which to put a high threshold on that movement is to hold referendums. It is understandable that in the early days of constructing Europe, which was a massive task, there could not be endless referendums, but that structure is now widely seen by the citizens of Europe to be pushing right out against the limits. There is clear feeling among many people of unease – we saw that in the French and Dutch referendums, although, naturally, people vote the way they do for different reasons – about the relentless movement towards greater integration. I have no doubt that that is a big factor.

Therefore, we almost have a rule of thumb now that any new constitutional changes should go to a referendum, because we are so close to the edge. We had to live through the farce, in the early arguments with this Government, of people saying that the Constitution was completely without significance. The situation gathered momentum, but it was pretty obvious from the moment that the decision was taken to have a constitution and to collapse the intergovernmental structures of the Maastricht Treaty—

Rt Hon. David Heathcoat-Amory, MP: Of course, they are now proceeding without treaty change and without a constitution. We cannot bring them to battle on a Constitution requiring a referendum.

Rt Hon. Lord Owen: I agree that we have to be vigilant on this question. Let us see how they go on that. They may well have to be challenged in law, but it is difficult to do that through the European Court of Justice, because it has traditionally made
judgments that have been the despair of many people, that it is an independent court. Some people say that the ECJ has also been affected by the rejection of the Constitution and is conscious of the fact that it cannot go on making interpretative legislation. I do not know whether that will happen. I have no great confidence in it.

There are other safeguards that we should use. The best political safeguard in the UK is not to accept that any new treaty is just a tidying-up arrangement: if it is, it will sail through a referendum. We need there to be some constraint to prevent the Government from making those deals at 3 o’clock or 4 o’clock in the morning in European Council.

Bill Cash, MP: I was particularly taken by what you said about the European Court of Justice and the Constitution. The existing Treaties are being stretched quite significantly. For example, Mr Solana seems to be acting as if he were the Foreign Minister for Europe, despite the fact that the Constitution has been effectively shelved.

We must consider what mechanism should be employed. You mentioned referendums and the question of whether we can rely on the ECJ. On a governmental level, when actions of this kind take place and there is a stretching of the Treaties, and when there is a new intergovernmental treaty, or treaty of another kind, Parliament needs to insist that such matters are debated in Parliament in order to bring them out into the open. It is rather like an amoeba: the existing structure of the Treaties is constantly re-dividing, and then there is an expansion into a new zone of activity. I share your concern about the importance of maintaining the independence of Member States in the field that we are discussing today, but there is an increasing tendency for that to be overridden when it comes to practical actions. What do you think about that?

Rt Hon. Lord Owen: There is no question that there has been the historic pattern, which might well resume – people might try to do that – but we have allies on this issue in Europe. The Dutch Government do not want to have to go back to the Dutch people on any form of new treaty in the next few years, so I think that there will be considerable resistance from the Dutch Government. I suspect that the French situation is much worse than at the time of the referendum in terms of the political divisions there are in France. So any French Government would be extremely unlikely to agree to a new, quick treaty that can easily be pushed through. Therefore, I am not convinced that we will face quite so much pressure.

Many Governments were never happy about the idea of merging the posts of the external Commissioner and the High Representative for the CSFP – the present external Commissioner is insisting on their rights – so it will not be as easy as all that.

Also, we are now out of the absurdity regarding the presidency of the European Council. The British Government paid a heavy price by insisting on having the new institutional job of permanent President of the European Council, which was a flawed suggestion. Initially, of course, the integrationists feared that, but they soon decided that it could be a way of getting integration in one fell swoop. We have had a long argument about the double-hatting of the President of the Commission and the new President of the European Council. The British Government have never been able to deny the Dutch Government’s legal judgment – whatever Holland is or is not, it is an expert in international law – that the way in which the clause was amended in the Constitution would have allowed that double-hatting. Britain could have appealed to the International Court of Justice but a fine lot of good it would have done.

If a qualified majority vote in the European Council could, in one fell swoop, bring about the double-hatting of the President of the Commission and this new role of the President of the Council, there would a President of Europe – of a single state. I battled on, trying to get people to see the significance of that, but now it is dead, and, hopefully, will not come back. I have never been convinced of the case for it, and still see the advantages of rotation. Obviously, with 25 countries – there will soon be 27, and more – we need a different way of handling the presidency. I believe that the key lies with grouped countries holding the presidency. The groups would then be rotated, and jobs split within the groups.

Geoffrey Van Orden, MEP: Once upon a time, the President of the Council was quite a powerful figure in terms of foreign relations. Now, it seems that the High Representative has assumed that role and is operating, more or less, as a Foreign Minister of the European Union. More and more powers and capabilities have accrued to Mr Solana. I am thinking of the Situation Centre, where he now has intelligence assessment capability provided to him by Member States, but, nevertheless, serving him. That puts him in a powerful position. What do you think about the way in which Mr Solana’s powers have increased in recent years?

Rt Hon. Lord Owen: Again, we come to the dilemma of a European Union that has Member States of very different sizes. A small country that is unable to have a large diplomatic service and cannot have a representative in anywhere near all the 190 countries of the United Nations would be rather keen on having a fairly active High Representative. A country such as the UK, which still has representation in all the key countries and almost all the UN countries, although that is still less than I would like, has to be understanding of the role that smaller countries want the High Representative to play.

If we believe, as I do, that it is valuable to have, by consensus, agreement among our 25 neighbouring countries in foreign and defence policy, we should be prepared to pay for that with a bit of irritation at seeing somebody in that position. Mr Solana is an experienced man. He was the most successful NATO Secretary-General, and I think that he realises that now that the Constitution is not going ahead, he must revert back to gathering consensus behind him.

The issue is about the European diplomatic service. I am not a sufficient expert to know, but it is argued that it can be created without a treaty, but it would be extremely unwise to do that. There needs to be much more questioning and examining of what a European diplomatic service should be. Mr Solana does need the staff, but this should not be a career post but a temporary one in a European diplomatic staff. It should not be a permanent career; people should be seconded. They could be seconded for a reasonable period of time. We would get a better
understanding of how to develop a common foreign policy if people were to come having worked in national foreign offices and had a prospect of going back to those offices.

We need to examine the whole area carefully, but we have allies. More and more people are querying the way that the situation is developing. We must be vigilant and stop the institutional creep. That is the way in which Europe has built itself, sometimes rather successfully, but the alienation from its public and the mismatch between what it is allowed to do and what it does has grown to be a source of intense irritation, hence the rejection of the Constitution.

We should not underestimate the psychological impact of that rejection. There is a hardly a European Union country that could pass that Constitution now. Luxembourg only just got away with it, but would probably have difficulty getting it through now. That would be the case in many other countries. The Austrian presidency is meant to be putting the constitutional issue back on the agenda. Let us see how far it gets. I hope that the British Government will take the view that it is ridiculous to make any move until a new French President is in office, when they can have a fresh look at the whole situation, so we should not contemplate any changes to the Nice Treaty for two years.

Geoffrey Van Orden, MEP: The concern is that the Austrians might seek to reintroduce some form of constitution and get whoever wants to sign up and ratify it to do so and to have it in operation on that basis.

Bill Cash, MP: May I ask a question pertinent to your previous role as Foreign Secretary, Lord Owen? That might seem some time ago, but listening to you today it is clear that you continue to give a vast amount of thought to this issue. However, there is a difference of emphasis between the degree of political alignment and political will, and the principles on which you are insisting, on very clear evidence, and the tendency that has grown in the past few years to move further down the route towards a Constitution. We must not forget that that was passed on Second Reading by this Government, and included all ingredients such as the common defence provisions, to which you referred. Therefore, there is a necessity to try to get them to row back from that. Do you think that people such as yourself can get them to address those questions and achieve a change in policy? Things are all wrapped up in the amoebic legal structure, but a policy question lies behind it. How successful do you think you could be, with others, in getting them to reconsider?

Rt Hon. Lord Owen: I am no longer an active political figure. I no longer consider myself to be a politician. I am a normal citizen who is interested in international affairs, although I will speak in the House of Lords on this question from time to time. My view, which might be complacent, is that having been defeated hands down on the euro and the Constitution, only complete fools would refuse to re-examine their position. I cannot find a single prominent person who was in favour of the euro who now tries to advocate euro membership. Indeed, most of them pretend that their position was different. I am beginning to find a similar situation regarding the Constitution.

There will be pressures in Europe from Member States that wanted the Constitution. We should not deny the fact that the new coalition Government in Germany may well reconsider the issue. There is no sign that the new German Government are any less committed to forming some form of constitution, but they have enough practical problems in other areas to ensure that that will not be a high priority for them unless France advocates it, but I do not think that France will. So, Germany is not likely to take a big position on the whole issue. I do not believe that the Swedish and Danish Governments, both of whom were ready to back the Constitution, have any enthusiasm for it any longer.

A more serious question is whether people who, like me, believe in the European Union are ready to rethink their relationship with the public. We cannot go on with such a massive gap between what the EU says and does and what its public think about the whole thing. There is not yet much real sign of that, but I notice that some people are attacking the Government for their ineffective presidency, but I would be careful about that. It has always been complete rubbish to believe that, in a six-month presidency, things can be moved massively. I do not want them to move things massively. They have done very well to start Turkish membership negotiations. That was a serious diplomatic hurdle, and the British Foreign Office did well. If that is all that comes out of the six months, it is perfectly adequate.

Let us stop the nonsense of pretending every six months that the world will change when the presidency is taken over by the United Kingdom or Luxembourg. A period of consolidation is needed. Most businesses, if they had a failed merger or poor economic results, would buckle down and start to make what is there work. That is what should happen with the European Union.

Geoffrey Van Orden, MEP: Thank you very much for your time, Lord Owen. It was fascinating.

Lord Anderson, Lord Waddington sends his apologies that he cannot be here. Thank you very much for giving us your time. Do you want to make an opening statement before we ask you questions?

LORD ANDERSON OF SWANSEA (Witness): Yes. I will make two comments before I come to my disclaimers. First, I agree with what David said about the six-month presidency and the absurdity of suggesting that so much can be done within six months. Obviously, it is a seamless development. What must be borne in mind more and more is what happens before and after the presidency. In any event, the six months, with Europe going to sleep in August and September, particularly with the problems with the WTO, meant that that was unrealistic. The Turkish decision, which was of great importance, will certainly be attributed to the presidency.

Secondly, I disagree with David's interpretation of the rejection of the Constitution as a sudden, new sign of alienation on the part of previously enthusiastic electorates. I spoke on a platform to French politicians in favour of the 'Yes' vote on Maastricht – the French referendum on that, in 1992, I believe, passed by a wafer thin margin. One thing that struck me about the campaigning in that referendum was that the Maastricht Treaty hardly figured at all in all the discussions. Mitterrand said that the French always answer the wrong question in a referendum; the question that they answered then was whether they liked Mitter-
rand and whether they were concerned about immigration. For example, farmers were kicking against agricultural policy, which was not necessarily directly relevant to Maastricht. Therefore, I do not think that David's suggestion that the outcomes in France and the Netherlands on the proposed Constitution were a direct result of the alienation of people who were previously enthusiastic necessarily holds water.

I come quickly to my disclaimers. I call Bill as my first witness on this: I only heard about the invitation on Monday afternoon.

Bill Cash, MP: That is right.

Lord Anderson: I have been extremely busy speaking about all sorts of other matters since then. When I say that my thoughts are on the back of an envelope, I mean it literally – I produce my exhibit!

Bill's European Scrutiny Committee did far more work on the CFSP and the ESDP in terms of the Constitution than the Foreign Affairs Committee did. We majored on broader foreign affairs matters, such as the fight against terrorism, and only came across the CFSP in particular cases. For example, our most recent inquiry was in relation to North Africa, where there is a major EU dimension with the 10th anniversary of the Barcelona Process and EuroMed this November. For North Africa, the Caucasus and the countries of east and central Europe, we could see the magnetism of the EU whereas there is some scepticism with existing members; certainly newer members, with the exception of the Czech Republic, and those just beyond are more enthusiastic. I am thinking of the Orange Revolution in the Ukraine, where there is still a magnetic pull. In addition, the EU has played a positive role, not least in Turkey.

Those are the disclaimers. I shall now outline a few observations before I throw myself to the lions. I understand that my role is to pose thoughts on EU and foreign policy. What is foreign policy? If we define it as the totality of our relations with countries outside our borders, the EU clearly has a major role to play – through the Treaties – on foreign trade, for example. Let us consider the World Trade Organisation; trade liberalisation expectations in respect of Hong Kong have been lowered considerably. Peter Mandelson seeks to achieve the impossible in which the EU has a major role to play – being prepared for Brussels, to being prepared for the EU. That is partly because of US overstretch, it has now changed its tune substantially. I had the privilege of talking both to the outgoing US Head of SFOR, General Schook, and the incoming head of the EU, Mr Solana used to argue that when he went to the States it was like going naked abroad because he did not have any staff there to assist him. That was part of the proposed integration co-ordination process in the Constitution.

All British posts overseas at ambassadorial and first secretary level would have regular co-ordinating meetings with their EU partners. That is very proper, as it helps us and them. The EU representative would be there. In our experience, no British ambassador complained that that impinged on their work. Indeed, to the contrary: it gave a new dimension to their work. In my judgment, much of the criticism of the burgeoning EU diplomatic service is misplaced.

It is clear that the EU has certain instruments of both hard and soft power, which other organisations do not have or are reluctant to use. For example, on 3 December last year in the western Balkans, SFOR became EUFOR. For the first time there was a crisis management group under the control of the EU. There were earlier examples of ESDP in Macedonia and the Democratic Republic of Congo, which were small, but that was a more major one, with 7,000 to 8,000 ESDP forces involved. Obviously, much of that was cosmetic – changing the cap badges and so on – but it gave Lord Ashdown, as both High Representative and Special Representative of the EU, a range of important hard and soft power instruments.

The US was extremely wary of EU intervention in Bosnia but, partly because of US overstretch, it has now changed its tune substantially. I had the privilege of talking both to the outgoing US Head of SFOR, General Schook, and the incoming head of EUFOR, Major General Leakey. It is very proper that a British General should have taken over that post. Because of the range of instruments available to the EU, it is highly relevant to us to ensure that Bosnia moves on – from its position post-Dayton, to being prepared for Brussels, to being prepared for the EU. That is a major task for the EU, which is now accepted by the United States.

Let us consider Iran, in which other countries or other groups were reluctant to intervene or were unable to do so for other reasons, but the US – the great Satan – could not play the sort of role that the EU3 played. You know, Geoffrey, that there were complaints by other countries at the initiative of the EU3. It was at least worth trying. I confess that I was sceptical about the possibility. In the event, Iran proceeded along the same road regarding its military nuclear capability, but it was at least worth the effort to attempt to lure it from that path. Only the EU was capable of doing that, because the US would not intervene.

There is a question of parliamentary accountability with whatever EU structures are in place – Geoffrey, you and I were involved at different stages in various attempts following the
demise of the Western European Union – to find some way of linking what are the proper roles of the European Parliament and various national Parliaments. There was an attempt, whether or not it was well founded, within the Constitution to do that. The problem still remains. National Committees, such as my own former Foreign Affairs Committee, have their role. The European Parliament has its role, but there is an area of overlap that we have not properly tackled. That is a problem that we, as parliamentarians, need to examine.

That is all I have to say, save for something about how historians will view the current stage of the integration process. It might well be that Maastricht will be judged to be the high-water mark of integration, contrary to the pressures that you see every day in the European Parliament. I am fortified in saying that, not only by the current problems but in looking two or three years ahead, when – this is not a partisan point – Gordon Brown will be the leader of the UK. Both the Prime Minister and Gordon Brown are Atlanticists, but Gordon Brown gives every impression of being less blind and more sceptical about the EU.

In Germany, Angela Merkel will rely, in part, on the Bavarian Christian Social Union party. Given her background, she will be more ready to look at the Lander rights and will be somewhat weaker. I think that she is not in the mould of a traditional Christian Democratic Union politician, given the contacts that I have had with her. Sarkozy in France, for example, on whom the good money is at present, is more Atlanticist. Equally, by that time, it is likely that in the Czech Republic, Klaus’s Party will be in Government.

Bill is the expert on constitutions. I am in the pragmatic philosophic mould; I look at what has been and what is likely to happen in terms of the current diplomatic developments in Europe. There might well be an acceptance that there will be as much integration as is necessary.

Geoffrey Van Orden, MEP: Thank you for those initial observations. I would like to explore one aspect of what you so eloquently described. To what extent do you think that when we give foreign policy to the European Union it is a zero sum game – it diminishes our own capabilities? We choose to empower the European Union in a way that we do not empower other organisations.

One reason why the European Union is attractive to some countries – you mentioned third countries – is because it has money. We have given it money. I am thinking of the “European Neighbourhood Policy” for example, where €3 billion is available. That is naturally attractive to its recipients. NATO does not have those sorts of resources to buy credit in parts of the world in which it might wish to operate. How far do you think that process should go? Do you support increasing EU power in foreign policy or do you think that it has gone far enough?

Lord Anderson: In some areas there should be increases. Smaller countries clearly welcome the greater policy role because it makes them walk taller. Who would listen to Luxembourg if they did not play that role within the EU? It is clearly in all our interests to deal with the problems that are likely to come to the western Balkans. If we as Europeans do not go to them, they will continue to come to us in terrorist and crime networks, corruption and instability. Therefore, it is not a zero sum game. There is a mutual interest in our engaging, as Europeans, with the western Balkans, otherwise all sorts of unpleasant things will continue to happen to us.

Bill Cash, MP: The EU, as you rightly pointed out, has an overarching engagement by virtue of the Treaties. As Geoffrey just said, those powers have been conferred, somewhat to our dismay in certain instances, by successive Conservative and Labour Governments. The question is whether that has worked.

Let us consider the question of substituting what is effectively a legal framework, even though it is not within the ECJ in that field for pragmatic policy making. Given the divisions in the EU between the Member States and its aggregate in relation to policy on the developing world, Iraq, the role of NATO, agriculture and protectionism, are those powers being exercised in a beneficial way? If we treat the whole of Europe as one place, there is a case for making it clear that the powers that are being conferred can work, but, in practice, the situation is no more than a halfway house. At the moment, the evidence is that it does not work. What do you say to that?

Lord Anderson: Inevitably, our European mix will be messy, because there are clearly great conflicts within Europe. Understandably, there will be those who emphasise diversity, others who seek centralisation, those who look to the open seas, and those who are more protectionist in their background. As to whether it works, I will give you an example. About 10 or 12 years ago, our Scotch whisky manufacturers were complaining about access to the Japanese market. We were not able to make progress as a country because we did not have the clout, so the whisky manufacturers were happy when our EU head in Tokyo – I think it was Leslie Fielding – was able to say, “Well, we are negotiating as the EU.” A result was therefore achieved that would not have been achieved had we been on our own. We achieved it because we were working together.

Bill Cash, MP: That is a lower case issue.

Lord Anderson: It was very important for the Scotch whisky manufacturers.

Bill Cash, MP: That may well be true, but let us consider the broad strategic position that you set out in your opening statement. The question remains in relation to irreconcilable differences on fundamental questions on the big world stage. Is it beneficial to work on this broader landscape that you describe and then drive things through? It remains a serious worry for me.

Lord Anderson: David appropriately used the word ‘vigilant’. There will be areas in which the zealots seek to move us in certain directions that are not justifiable. However, there will be other parts of the world in which we can work together in policy terms, because there are no serious conflicts in the EU. There is also the diplomatic logistical side to consider. In Central America, where we have, alas, withdrawn a number of our UK embassies, we work increasingly on an EU basis. One might argue that there are vestigial and fairly minimal trade rivalries between EU countries, but that it is important that we work together there.

Elsewhere, in parts of the former Soviet Union, leaving aside the petroleum trade, there are quite large areas on which it makes
sense to work together. On African policy, the EU will rely on countries with expertise, largely the UK and France. You might argue in riposte, "Can’t the UK and France do things bilaterally?" They can, but there is also an EU dimension. In South and Central America, we will rely on the expertise of the Spanish and Portuguese. That is part of the diversity that is our Europe. In many cases, we can impact more successfully – or all of us – by working together.

Roger Brooke: I agree with that, and with the point that you made about Eastern Europe, where people’s enthusiasm for the EU is quite interesting. They think that they are coming back into the fold of civilised nations – in a funny sort of way – having escaped from the Soviet Union. There are strong forces in favour.

Two things worry a lot of people. The first is the inexorable anti-American trend in so much of what goes on, particularly in the French, German and Belgian discussions; it is also present in other countries. Everything seems to be coloured all the time by nasty little cracks about the Americans and the Anglo-Saxons, which filter out into policy. The second thing is a major disagreement, such as we have had about Iraq. There is genuine concern among those of us who wanted a sort of European Union that these things might some day blow up and the Americans will turn round and walk away, or that we will get so angry with some of our partners in Europe that the thing will fall apart.

There are also doubts about the euro. Although it seems to be pretty well established in Europe, there are fundamental economic doubts about it. Are you concerned that pushing all the time for more integration might mean that a blow-up is more likely to happen?

Lord Anderson: Only if the zealots are given their head. There are many contrary forces. I share your distaste of what Mr Rumsfeld rather unkindly called the “chocolate soldiers”. The Quai d’Orsay and the Tervuren Proposal was not really aware of what Chirac was doing in their name at that time.

Anti-Americanism has quite a long history in France. I remember that in the late 1960s Servan-Schreiber wrote, “The le defi americain”. We are not exempt from it in the UK. Against that fairly traditional mistrust, most of the new countries, such as the Baltic states, a number of whose leaders appear to have come out of exile in Canada, the US, or Poland, which is extremely pro-American, or the balance has changed. There is much greater warmth for America as part of the new mix in Europe. Yes I agree, but there is hostility to the US but there are enough forces – growing forces – within our Europe to counter that anti-American tradition.

Geoffrey Van Orden, MEP: Some might argue that some of those objectives have, in fact, been achieved.

Rt Hon. David Heathcoat-Amory, MP: You referred at the start to the magnetic pull of the European Union on new Member States. All European countries feel European, at least by geography, but do you think that, for our country, there is perhaps an even stronger magnetic pull outwards to the wider world – the Atlantic field – by reason of history and trade? It is bizarre that we are being invited to throw in our lot exclusively with a European foreign and defence policy, when it defies that longstanding tradition, particularly as there is realistically no European foreign policy, as matters such as Iraq have shown.

In all conscience, can you support the European draft Constitution – now dead, but not buried – which tried to force us into an arranged marriage, with matters such as a European Foreign Minister and our place taken at the UN on request by that Foreign Minister? In other words, our multilateral foreign policy will be replaced by this exclusive marriage. Do you not consider that to be a terrible defiance of everything that we understood was foreign policy up to now?

Lord Anderson: British foreign policy in the past only intervened on the continent to preserve the balance of power, against a Napoleon or a Hitler. Those positions have gone. Europe is no longer foreign policy. In many ways, it is domestic policy. In the UK, we have to adjust. There are tendencies and there is the question of anti-Americanism. Of course, we are not less British; the French are not less French. We have our geography and we have our history. We will resist an attempt to put us into an isolationist, exclusive European mould. Clearly, we all come with our historic and geographic baggage. It is part of the joy of Europe that we can make our own special contribution, but when we try to stop the erection of barriers against Atlanticism and deal with the US, will we have many allies? Part of our national definition is to look to the outer world. We share that with many other countries.

Geoffrey Van Orden, MEP: Thank you so much, Lord Anderson. Your time has been extremely valuable.

General the Lord Guthrie of Craigiebank GCB, GVO, OBE (Witness): Good to see you again.

Geoffrey Van Orden, MEP: Welcome to the European Reform Forum. After you say a few words, perhaps we can ask you some questions.

Lord Guthrie: I shall be delighted to do that. As you know, I have come at short notice so I am not as well prepared as I should be.

In 1998, I was at St Malo with the Prime Minister, but for most of my service I was brought up at NATO. I retired more than four years ago, so I am not completely up to date with its latest moves, but I have views about the situation. In NATO, we had United States leadership, which, for most of the time I was serving, we desperately needed and appreciated. The nations of Europe really were, for much of that time, frightened about their national survival and they were delighted to have American leadership – although people rather pooh-pooh the idea. That is not so now. People have the luxury of going their own way and not even having to make their case frightfully well. They follow a national agenda within Europe.

In 1998, at St Malo, although I was sceptical about European defence, I understood that the Government considered that it was part of European policy which they could lead on, because we had stronger, better and more experienced forces than almost any other country in Europe. I hoped that if the Europeans got their act together, they would spend more money on defence. I could see that there were times when the Americans would not want to do things that the Europeans could do, perhaps because they were in other parts of the world. For example, if the Balkans situation had blown up at the same time as going to war in Iraq,
I wonder if the Americans would have gone to the Balkans. The Europeans would have had to; I understood that.

It seemed that they could be of great benefit, but I was extremely against forming new headquarters that would inevitably compete with NATO for resources. None of the European countries was spending enough on defence. All the countries complained about how expensive it was, yet they were setting up headquarters. At the time, I viewed that as barely necessary because I supported the idea of Europeans being separable from NATO for certain things, but not being separate. I was worried that British Forces could – unless great care was taken – be brought down to the standard of the other Europeans. That might sound an extremely chauvinistic thing to say, but I thought that we were the only serious defence forces in Europe who were able to fight. We should remember the purpose of armies, navies, and air forces. They are used to defend a country and to support foreign policy when times are really bad. They are not great youth movements that can take part only in benign operations, something that I fear most European nations are only capable of at that moment.

The French have some good parts in their army, such as the Foreign Legion. Their parachute regiment is good, as are one or two other parts of the army. I am not sure whether Germany has anyone whom I would want on my side in a hard battle. So many nations are risk averse. They hate the idea of casualties. We hate it, too, but we realise that sometimes that has to happen. The British were probably the only people capable of being embedded within an American force in the first Gulf War. We can just about do it now, but it is becoming harder and harder because the gap between the Americans and the Europeans is becoming greater because of their weapons systems and procurement.

Disappointingly, a communiqué was issued at St Malo that could be interpreted by the French in one way and by the British in another way. The French have milked it for all that they are worth and are keen on independent forces from NATO. Unfortunately, we have been dragged down that path. The armies in continental Europe are different from us. They have different tactics, different attitudes, different doctrines and different concepts, as a result of which we are in some trouble.

As for procurement, I want our country to be free to buy the best available equipment for the army that we can afford; the problem is that some – I would not say most – of the best comes of the United States and some comes from Europe. The Europeans have a problem: the lowest common denominator. Everyone decides what weapons they want – I am obviously simplifying matters – but the Europeans will end up buying a weapon that is said to suit everybody, but which probably suits few people because it is a mongrel. We also know that joint production is extraordinarily difficult. Work sharing means that we are stuck with things that we do not really want and which we cannot get out of. It is much easier, and cheaper in the long run, for us to buy something off a shelf. The great advantage of buying American equipment is that they have spent money on research and development than the Europeans. We are still buying weapons that will be used for fighting, and I sometimes wonder whether the Europeans look at matters in the same way.

It would be difficult to have a common defence and security policy. We are a long way off having an alliance of like-minded people in Europe. We are a long way off having national Governments who are prepared to let their sons and daughters die for Europe. The chance of getting the people together on the day we want would be slim. The idea of integration because we cannot afford to act by ourselves seems to have been proved to be complete nonsense. It is an excuse for some nations to do absolutely nothing and to hide behind nations that will do better. I have seen no evidence so far that we are better equipped with the Europeans because of what has been going on.

I still travel a great deal. The idea of having a separate European defence policy can, on occasion, be thoroughly unhelpful. In the case of Israel or Palestine, what do Europeans really bring to the table? They bring mixed messages that confuse the participants in the controversy. Some months ago – probably just over a year ago now – I spoke in the House of Lords about the attitude to Syria. I knew, as we all know – that Syria had camps where people were being trained to kill British and American soldiers in Iraq. Yet what were the Europeans doing? They were sending the Foreign Ministers of Britain, France and Germany to Damascus to talk about giving Syria associated status of the European Union. At the same time, the Americans were discussing putting sanctions on Syria.

What about Iran? Are the Europeans helpful about Iran or are they just sending mixed messages and confusing things? If we had a common defence policy, it would be difficult for European leaders not to try to be helpful – they might think that they were being helpful. Quite often they make things worse. The European defence initiative has not been a success: it has not fulfilled the promises that we thought it would. I see few indications that it will get better. There are large lists of soldiers, sailors and airmen who are said to be now available, but most things will stay on a list. Political gesturing is no good. We really want to tighten up the military capability of the Europeans. European nations want to sit at the top table but don't want to pay for the privilege.

Geoffrey Van Orden, MEP: Thank you. That was extremely useful. Mixed messages were an important factor in the lead-up to the Gulf War. You referred to St Malo. That was a crucial event. The British Government reversed the position of all previous British Governments and gave the green light to EU involvement in defence. Have particular developments since then have alarmed or surprised you in the way that European defence policy has taken off? From the perspective of St Malo, I can imagine that people looked ahead and thought that it would have a limited impact. In fact, it has gone far further. Do you have any observations on that?

Lord Guthrie: The Europeans have done well in benign situations. In the Balkans they did pretty well. Afghanistan will be much harder for the Europeans. It is interesting how countries want to maintain political and military control over the soldiers they assign to a mission. It is difficult for commanders on the ground now, because there are so many caveats. For example, they might be told, "You can have my national contingent, provided that it does not cross a certain road, is not committed and it stays in barracks. You can have it, as long as it does not expose itself to danger." A commander has the hugely difficult problem of getting the orchestra playing from the same score; it is not just
getting them to play from the same score, but getting them to play the instruments.

There has been a success in Bosnia, but it has been easy and it is easy at the moment. They have not really been tested yet, but I am deeply suspicious.

**Lord Guthrie:** With all headquarters, everybody starts with good intentions. They say, "We will keep a small, tight, headquarters." Before one knows where one is, it starts growing. That is not just true in the military; it is the same elsewhere and we have to be careful about that. One serious issue relates to the number of staff officers in the British army. They have to staff a lot of other things, but here is another headquarters. The ethos of this headquarters is bound to be a bit different.

Many people in Europe have become very anti-American. They do not talk about a partnership so much as a counter-balance. If one did that at military headquarters, one might slip into trouble. Everybody would deny that if you asked them. They would say that that is impossible. Yet, in my view, there are signs that it happens now. Inevitably, the Europeans will want to have exercises and NATO will want to have exercises. They say that it can all be done and that everybody understands everybody else now, but life is not like that. These things have made life much more complicated.

**The Hon. Bernard Jenkin, MP:** Thank you for your introductory comments. I recall Madeleine Albright responding to St Malo. She warned about decoupling from American security policy, discrimination against non-NATO members, and duplication of NATO assets. You have given a good account of that. What do you say to those who say, "Look, Europe is much more complicated that we might want it to be. We just have to live with the fact that the French don’t like NATO and won’t work in it. Other countries can be encouraged to participate more in a European structure rather than in a NATO one. The Americans are not really interested in the so-called soft security tasks and European forces can do the soft security tasks and NATO can do the harder security tasks. Life is just complicated and we have to live with it." What do you say to such people? Do you envisage a new future for NATO?

**Lord Guthrie:** NATO must operate outside its old traditional boundaries and it has already started to do so. It has a headquarters, and we would be mad not to use the NATO structures on certain things.

I worry. France is important. We have always found that Belgium and Luxembourg want to do what the French want to do. If, to our amazement, the Germans wanted to do what the French did – I suspect that it is a bit of an aberration – matters would be extraordinarily serious. You put forward the ideas that we could not go to war, that it would be so expensive and that the British could do a certain type of warfare and the French could do a certain type. When we go to war, who will be with us? We have seen that it is now about a coalition of the willing. I still feel bruised by the Belgians, who would not give us any ammunition to go the Falklands. Such a situation could happen again, but it could become worse if certain people have jobs given to them.

Do some leaders really understand what defence is about? It is not a youth movement; it is about fighting when things are really nasty. People have to be prepared to do that. I am sure some people will be curious when I start naming nations, but here goes: look at the Canadians, who have opted out of all fighting except for peacekeeping. People have to train for the difficult bit in order to do the easy bit. If people train just for the easy things, when they are really needed they will be found wanting.

**The Hon. Bernard Jenkin, MP:** But that is a problem in NATO, just as much as it is in the EU.

**Lord Guthrie:** Canada is not in the EU, but I am also talking about European nations who are in NATO. NATO has a much stronger direction than the EU, for obvious reasons.

**Bill Cash, MP:** I wish to examine the issue in the context of military history. What you have said is fundamental: we do not necessarily want to go to war, but we can in situations where we cannot avoid it. War is nasty, brutish and sometimes not that short and we have to get the job done. In the Second World War, alliances and structures had to be put in place between ourselves, the Americans and others. That worked because there was a cohesive political will, combined with bravery and courage.

**Lord Guthrie:** Perpetual interests, as Lord Palmerston would have put it.

**Bill Cash, MP:** Perpetual interests were exactly what I was thinking of. The existing Treaties, which we are examining, provide for a progressive common foreign policy. The Constitution, as Lord Owen just reminded us, was going to turn that into a common defence policy, all of which, at its heart, raises the problem and the contradiction between the words, and the commitment and will. Would you go so far as to say that in order to try to get this right, however much some people hoped that St Malo – I am happy to say that I was not enthusiastic about it at the time – was regarded as a sort of midway point, we have now moved to a situation where we have seriously to set out a stall for renegotiating these Treaties to preserve those perpetual interests? We are drifting into a dangerous situation. What is your view on that?

**Lord Guthrie:** I am not an expert on which Treaties we have signed and what they mean, but we are drifting in the wrong direction. As I said, there is a danger that we will be dragged down and that something in which we rightly have pride – the defence forces of this country – could be damaged if we lose sight of what forces are really for. They are not for gesturing; they are for hard military capability.
On procurement, I would not want to be totally dependent on the United States – of course I would not; some things that the Europeans make are better. We must be careful and we must be tough about the Americans’ attitude to some of their sales – I am talking about Committees on the Hill who do not like software, in particular, going to allies. Usually, we are all right, but there is a danger. The Americans are not always easy allies, but I would still prefer to have them on my side than anyone else.

Geoffrey Van Orden, MEP: Those of us who have not been that enthusiastic about European Security and Defence Policy – we have fought against it for many years – now find that our position is sometimes undermined because NATO or its spokesmen seem to be enthusiastic about ESDP. We have even heard the US administration expressing enthusiasm for European Union involvement in defence. How do you explain that?

Lord Guthrie: If it worked, or if it was going to work, we would all be a bit more enthusiastic about it. I imagine that all of you are keen on having a properly defended country and on having forces that can make a difference when we need them to make a difference. The trouble is that my experience is that the Europeans are not doing it and I doubt that they ever will. We must think enormously hard before we turn away from our traditional partners and come into competition with them. Turning away for something that might happen well into the future would leave us awfully exposed until it does happen. I would be nervous about doing that.

Roger Brooke: We were listening earlier to Dr Richard North talking about procurement and he listed a range of major projects where we have chosen to go the European route even though a better and probably cheaper American alternative was available. They were major things, not minor ones. He told us we would probably already be unable to integrate our forces in a major campaign with the Americans because our equipment was wrong. Are you hearing concern about that from your former military colleagues or is that statement going over the top?

Lord Guthrie: As I said, in the first Gulf War, we were able to embed the first division with US Forces without trouble. If you remember, the French could not even do that, and they had to operate on the left flank. They were given a bit of empty desert to motor across. In the second Gulf War, we were able to operate with US Forces, but we were more separate. It has become much harder. Their technology is so advanced compared with that of Europe. For us to spend money on different satellites – the Galileo system – when we could perfectly well get something from the United States if we were wise is a crazy waste of very scarce resources. Why do we need to go it alone? The French would say, “Well, we must be independent.” Then the Americans will listen to – bug – us if we use their equipment. It is inconceivable that we will go to war with America. I know that the Americans were able to interfere with our actions at Suez, but I would far prefer to see properly balanced forces in Europe and spending money where it was absolutely necessary than doing what we are doing now.

Geoffrey Van Orden, MEP: Thank you very much. That was a very valuable contribution and we thank you so much for giving us your time.

The Plenary Session finished at 1:02 pm.
Witness briefs to support the oral evidence given to the European Reform Forum on 17 November 2005
(Note: Briefs were not provided in all cases.)

Witness Brief: Dr Richard North

One of the most significant – yet largely unreported – political developments of recent years is the move being made by the United Kingdom to integrate its armed forces with those of the European Union.

• The nature of this new military relationship with our EU partners will make it increasingly hard for the UK either to fight independently or to co-operate militarily with the US. The ‘special relationship’ which has been the cornerstone of British defence policy from the time of the Second World War will be at an end.

• What is even more alarming is the extend to which the British Government has been at pains to conceal and even deny its true military and political agenda in this respect, by insisting that its new relationship with its EU partners does not prejudice its continued participation in NATO.

• However, the key to appreciating how rapidly the UK and the US are moving apart lies in the pattern of the procurement policy now being followed by the UK’s Minister of Defence (MoD).

• The political cue for this parting of the ways was Tony Blair’s agreement at St Malo in 1998 that Britain’s armed forces should be integrated with those of the EU as part of an autonomous EU defence effort, capable of operating outside NATO. This led the following year to the EU’s decision to establish a multi-national ‘European Rapid Reaction Force’ (ERRF) as the centrepiece of its new military ambitions.

• The repercussions of this decision are made infinitely great by the fact that both the US and the EU stand today on the edge of a technical revolution in warfare, centered on satellites, electronics and a new generation of vehicles, unmanned aircraft and weapons systems (‘net-centric warfare’). So closely co-ordinated will the forces of the future need to be through their technology that it will be virtually impossible for forces working under different systems to work alongside one another.

• Until recently the UK and the US were still working in close partnership in developing the technology required to achieve this revolution in the nature of warfare. Most notably they were equal partners in what was known as the Future Scout and Cavalry System project (FSCS), until Britain withdrew, leaving the US to carry on to develop its more advanced Future Combat System (FCS).

• In the past year or two, the MoD’s procurement policy has shown a similar shift away from co-operation with the US towards closer dependence on Britain’s EU partners. Almost across the board, the MoD is now turning its back on joint defence projects with the US, even where these involve British firms. Instead the MoD is purchasing equipment supplied or developed by firms in France, Germany, Italy and Sweden. The pattern of this dependence implies a state of technical and doctrinal integration with the EU’s defence effort so complete that collaboration with the US will eventually not be feasible.

• The key to co-ordinating future warfare will lie in satellite systems, such as the US GPS/Navstar system on which NATO currently depends. The cornerstone of the EU’s autonomous defence effort lies in its plans to establish three, largely French-built systems, led by Galileo, set up as a direct rival to the GPS system and due to be in place by 2008, and directed from the EU’s satellite control centre in Spain.

• From there, almost every aspect of Britain’s future defence planning would rely on equipment supplied or being developed by her EU partners. British troops will no longer be transported by US-built C-130 and C-17 aircraft, but by the A400M ‘Euro-lifter’. The UK’s successor to FSCS will rely on armoured fighting vehicles supplied by Sweden, with French guns and ammunition.

• Joint US-British bids to supply £1.1 billion-worth of sophisticated trucks were in 2004 rejected in favour of trucks built by the German firm MAN Nutzfahrzeuge, adding the name of a former British firm, ERF, to imply some British contribution.

• US and other non-EU reconnaissance vehicles were rejected in favour of an obsolescent and much more expensive version made by the Italian firm Iveco, although their origin is again to be disguised behind the name of the British firm BAE Land Systems.

• A joint project with the US to develop a 155mm Howitzer has been abandoned in favour of a French gun firing German-designed shells. Battlefield radar systems are being built in Germany and Sweden. Development of unmanned aircraft is being led by France, while the RAF’s main strike aircraft will be the Eurofighter, firing French-made missiles.

• Three aircraft carriers are to be shared between the Royal Navy and France, with the French firm Thales playing a central part in their design and construction. The UK has even abandoned its capacity to manufacture small arms, so that the British army’s future rifles are likely to be supplied by Belgium.

• The one consistent pattern in recent MoD procurement policy has been that, wherever possible, US firms are now being excluded, even where this means excluding British firms associated with them.

• As a result, the MoD is often buying inferior or more costly equipment than that which Anglo-US contractors could supply. The potential cost is estimated at £14 billion.

• The nature of the equipment now being bought for the UK’s armed forces, and the ‘European’ or ‘non-NATO’ standards now being laid down by the new European Defence Agency in Brussels, imply not just a growing technical divergence between the ERF and NATO but also a doctrinal conflict with the establish-
ed US and NATO practice. This will make it increasingly difficult for forces on each side of this divide to work together, or even to share the same battlezones.

- Almost the most startling feature of this immense political and military transformation is the extent to which it is moving ahead behind the scenes without being publicly explained or acknowledged, not least by the British Government. Nor has it yet been effectively challenged by the Opposition.
- The situation is compounded by the EU’s formal co-operation with China, a strategic rival of the US. This includes the Galileo satellite global positioning system, in which the UK is an equal partner. Because of potential technology leakage from the EU to China, the US is increasingly reluctant to share its technology with Britain. The problems of UK-US cooperation are therefore being exacerbated further.
- It will shortly be too late to reverse this trend. The Commission is now also proposing to control intra-EU movements of military products, thereby making the actions of the British Army dependent on her EU partners’ consent. The UK would no longer be able to operate alongside the US as a military ally. It would be irreversibly committed to operating within a framework defined by European Union interests. The ‘special relationship’ would be over.

Witness Brief: The Rt Hon. Lord Owen, CH

The essential design for the European Union well into the 21st Century is to hold fast to the principle that the Common Foreign and Security Policy (CFSP) must remain intergovernmental. The CFSP must be kept outside the jurisdiction of the European Court of Justice (ECJ). That means that if there is to be a legal personality for the Union it must be so designed that it does not open the way for ECJ jurisdiction in CFSP matters and that Member States retain their current rights in terms of representation on international bodies.

It is also essential that the pretence that CFSP is now moving remorselessly towards a single foreign and security policy is nipped in the bud by refusing to allow the title of the High Representative for CFSP to become the Union Minister for Foreign Affairs.

If the roles of High Representative and External Commissioner are to be exercised by one person then that role must be firmly based in the Council not in the Commission.

The existing position in the Nice Treaty on defence must be maintained with its wording that the emergence of a common European Union defence policy might occur but is not something that will occur. It should depend on reaching an inclusive definition of common defence over time and not on an exclusive definition in which NATO does not play a central part and where there is insufficient joint planning of the sort agreed in Berlin Plus. It is also vital that we do not establish structured cooperation within the framework of enhanced cooperation “in matters having military and defence implications” which is the present position in the Nice Treaty.

It is also totally inappropriate to mandate a Member State who is on the Security Council, let alone tell the Member State, that they should request the High Representative to speak on behalf of the EU. The Security Council has its own procedure for determining who to call to speak and it must be left to the judgement of the individual European Member States on the Security Council how to ensure agreed EU policy is brought to the Council.

There can be no compromise with the international legal position and the rules of international law that national independence in the conduct of external relations is a criterion of sovereign statehood. There must be no uncertainty over primacy in the conduct of foreign affairs lying with the Member State and over the nature of European Union competence in the conduct of foreign and security policy. If we allow any uncertainty over whether Member States have the power of independent action in foreign affairs then we call into question the separate nation status of the Member States.
The Plenary Session commenced at 11:04 a.m.

The Hon. Bernard Jenkin, MP (Shadow Minister for Energy) (Acting Chairman): Good morning, Gareth. Thank you for joining us. As is our usual practice, you have been sent three questions on which we should like you to comment. Perhaps you would give an opening statement.

Gareth Crossman (Witness): I apologise for not providing a briefing statement in advance. The Government’s terrorism and ID card programmes have been keeping me busy. I shall make three brief comments, which I am sure that members of the Forum will come back to me about if they wish to do so.

It is with some trepidation that I approach the Forum to discuss issues such as the European Convention or the Human Rights Act 1998. When we talk about human rights, it is easy to be blinded by the European concept, but the European Convention and, indeed, the Human Rights Act embody many of the United Kingdom’s common law traditions. There were many British advocates of the Convention after the Second World War – Winston Churchill being one of the primary advocates. There is a tendency when people see the word ‘European’ to think of related matters in the same terms as the Common Agricultural Policy or the Maastricht Treaty.

There has been considerable criticism about the concept of human rights, some of which is justifiable. Part of the reason for that is the tendency to consider human rights as being the domain of courts and lawyers. When we talk about human rights, we often seem to be talking about the rights of criminal defendants as opposed to the rights of elderly people in care homes to be treated with respect and not demeaned by having to eat their lunch or dinner on the toilet – of which there has been some evidence. I like to think of human rights as a culture of rights rather than just a series of convention articles.

At the heart of human rights considerations is the concept of proportionality. That runs through many of the Convention’s articles, although some are absolute articles while some have only limited exceptions. In times such as these, that human rights framework of proportionality means the state being entitled to take steps that might otherwise be considered to infringe on what we think of as being right, if it considers them to be proportionate, appropriate and necessary. That is what the human rights framework means in a time of terrorist attacks: that we can balance security, liberty, freedoms and human rights.

Bill Cash, MP (Former Shadow Attorney General and Shadow Minister for Constitutional Affairs): You say that there is a tendency for people to think of such matters in European terms, but, of course, there is a reason for that in relation to the existing Treaties, because there is a legal framework. There is not only the European Convention on Human Rights to consider in the context of the Human Rights Act – separate, of course, from the European Court of Justice – but the proposal for the Charter of Fundamental Rights to be incorporated in all future legislation as a starting point for the European Court of Justice to then become the ultimate judicial arbiter of human rights matters. I do not know whether that would leave the Strasbourg court swinging in the wind.

To try to exclude the European dimension when considering human rights is to avoid the issue of the legal problems that will arise and the legal imperatives that will have to be followed if that becomes part of our legislation, either through the Human Rights Act or – if the Charter of Fundamental Rights becomes the gravamen – through the European Court of Justice. You are, perhaps, being a little disingenuous in suggesting that we might exclude the European dimension.

Gareth Crossman: Let me clarify my point. I was not talking about excluding the European Convention. We are signatories to any number of conventions within Europe, some of which are binding on domestic courts and some of which are not. My point is that there is a tendency to see the word ‘European’ and assume that something is part of the entity of Europe and is being enforced upon the UK.

Liberty specialises on the European Convention on Human Rights; that is where our expertise lies. We have not particularly studied the Charter of Fundamental Rights or other conventions. The point that I was trying to make is that some of the articles of the Human Rights Convention concern longstanding British common law traditions. Article 6 concerns the presumption of innocence and other binding common law traditions. Article 5 concerns habeas corpus and the right not to be locked up by the state for a long time.

The Hon. Bernard Jenkin, MP: May I press the point? It is a question of legitimacy. Rights may exist in our minds as absolute, but different cultures have different ideas of rights. Are we, as a British democratic polity, defining those rights through our common law traditions or are different values being imposed on us by a binding legal structure through the European Union, with the word ‘European’ very much attached to those rights? I think that that is what Bill is getting at.

Gareth Crossman: Certainly, there will be rights on which there is a common consensus across Europe, which are enforceable – the Human Rights Act is directly enforceable in UK courts – but most of those rights, such as the right to privacy, are broadly worded and are applied by individual Member States however they apply their laws. Within that framework, there is a lot of
scope for individual countries to apply the margin of appreciation: how that state will define its own interpretation of the laws. The European Court of Human Rights sometimes finds that a Member State is in breach of those basic standards, but to regard the European Convention on Human Rights as being overly binding on the way in which British courts can determine domestic legislation is wrong.

Rt Hon. David Heathcoat-Amory, MP (Former Minister for Europe and the UK Representative on the Convention on the Future of Europe): I want to tease out the distinction between various conventions. Am I right to say that the British Government, and Parliament, can derogate freely from the European Convention on Human Rights, which is judged in Strasbourg, and that it is therefore ultimately under the control of British Parliament and the British courts? Am I also right to say that there is a clear distinction between that and the EU Charter of Fundamental Rights, which is embedded in the draft European Constitution that was signed by the Prime Minister, and that if that had gone through, the EU Charter would have been fully binding and would ultimately have been judged not by our courts but the court in Luxembourg, and that the British Parliament would have been completely powerless to derogate from its provisions? Is that a fair distinction?

Gareth Crossman: Yes. However, I should re-emphasise that Liberty has not dealt particularly with the EU Charter of Fundamental Rights. I am not aware of any power of derogation under the Charter in the same way that Article 15 of the Convention allows derogation from the Convention, but I take your position to be right.

Rt Hon. David Heathcoat-Amory, MP: This seems to be an important matter, because we are exporting the judicability of the rights from our jurisdiction to another one. Are you happy to see that happen? Do you see no validity in the concept of self-government and us enforcing our own rights according to our own traditions, which you mentioned? That would not be the case under the Charter and the European Constitution. Does that not bother you?

Gareth Crossman: I find myself in a slightly difficult position, given that I do not have a background in the European Charter of Fundamental Rights. My knowledge, expertise and experience are on the European Convention on Human Rights. It may well become necessary for Liberty and other organisations to spend more time on the Charter, but I should not like to offer more of an opinion that I have already.

Lord Blackwell (Chairman of the Centre for Policy Studies): Given that your expertise is on the Convention, I should be interested to know to what extent you are able to make use of provisions in the Convention that would not otherwise have been available through UK common law.

Gareth Crossman: A perfect example is Article 8, which concerns the right to privacy. There was no domestic right to privacy until the Human Rights Act was incorporated. One way in which the Human Rights Act and the Convention have applied indirectly is to provide a counterbalance to a Government who were tending to use secondary legislation as a major policy tool more and more, especially when they had a large majority. They would use primary legislation as a framework on which they would then make a policy decision through secondary legislation – sometimes by affirmative resolution, but that is not really parliamentary accountability as we like to think of it.

The Human Rights Act dictates that secondary legislation can be superseded by the Act in the way that primary legislation cannot. Therefore, if secondary legislation were to fall foul of any Convention right, the Human Rights Act would put a stop to that happening. We will not see that on the front pages of the newspapers or happening in the courts, but at least there is some restriction on what I regard to be excessive or inappropriate use of executive powers regarding secondary legislation.

Lord Blackwell: Do you think that there are any adverse consequences with the Human Rights Act?

Gareth Crossman: I would not say that there are adverse consequences, but the perception that the Human Rights Act is accessible only to certain people is somewhat unfortunate. That is a consequence of it being something that is used in courts. I should like there to be a greater understanding and concept of human rights being a set of common standards that apply to all people, but that has not really happened yet. Perhaps that will change when the Commission for Equality and Human Rights comes into being, given its duty to protect and promote human rights. Apart from that, I do not have any regrets about the Convention.

Martin Howe, QC (European Lawyer and Author): I want to pursue the issue of the common law origin of the rights in the Convention. It is historically well known that many of the rights written into the original Convention were based on our common law traditions, but over time, through the jurisprudence of the Strasbourg court and other developments, the original meaning of many of the provisions seems to have changed. Article 8 on privacy may be a classic example of that. As it was originally framed, you can trace it back to Entick v. Carrington: the good common law tradition that agents of the state are not allowed to burst into your house and search through your private papers without a warrant from a judge. It has now been transformed, by a process of jurisprudence over which we as a country have no control, into a much broader right to privacy.

A right to privacy is not just a right; it is a restriction on the freedoms of others. In the form into which it has developed, it allows us to prevent the press and others from publishing things that they would otherwise be free to publish. Our courts and judges, on the basis of the Convention, are developing a right to privacy of such vagueness that would never have got through Parliament. The issue is not so much the common law origin of the Convention, but the way in which it has developed over time. It is not so much about whether we should have a mechanism with which to restrain the executive from trampling over fundamental rights, in secondary legislation, for example, but whether we need a European mechanism for that or whether we should look at something that is more home-grown and based more on our common law traditions.

Gareth Crossman: That is a fair point. I am slightly concerned by the way in which domestic courts have tended to interpret
privacy as being accessible to the likes of Naomi Campbell and Catherine Zeta-Jones but not really by the rest of the population. There is a tension between Article 8 and Article 10 – the right to free expression – which often goes to the heart of many decisions. If there is one area in which I think that there has possibly been an excessive interpretation of privacy that might not otherwise be appropriate, particularly in relation to press privacy, that is it.

However, the right to privacy in other areas is absolutely central to some of the moves that we have seen in recent times by the Government. The huge scope that was envisaged for information sharing regarding familial privacy under the Children Act 2004 went well beyond the scope of legitimate child protection interests. That is an example of how the Government have played fast and loose with the idea of individual and familial privacy. Whether or not such matters will stand up to Article 8 examination I do not know, because we have not got that far yet, but, as a concept, Article 8 is particularly important, given the Government’s attitude to privacy in recent years.

Bill Cash, MP: I want to ask you about the relationship between the Human Rights Act and the Terrorism Bill that is currently going through Parliament. I do not know whether you agree, but it strikes me that the 90 day provision would have fallen foul of the Human Rights Act, and that there might have been a declaration of incapability. That poses a problem: Parliament legislates, but the Human Rights Act then kicks in and the Law Lords declare an incapability, as in the Belmarsh case.

Do you think that the 28 day provision could fall foul of the Human Rights Act? To avoid doubt and reflect the undoubted sovereignty and supremacy of Parliament over the Human Rights Act, would it not be more convenient and sensible to exclude the Human Rights Act, which is already provided for in principle, when there is a conflict between what Parliament wants and what the Human Rights Act states?

Gareth Crossman: As for the 28 day provision, I shall simply state my approach regarding the Terrorism Bill, which will, I hope, answer your question. While writing a response to it, I did not try to pin the tail on the donkey as to exactly what length of days might be compatible with Article 5. I do not think that that is the right approach, whether the proposal is for 21 days, 28 days or 90 days, although I suspect that 90 days would have been incompatible. My approach fits in with human rights principles. That is why I think that the Human Rights Act and its interpretation are appropriate. If the police – and security services, but mainly the police – have legitimate concerns about their ability to bring cases to court because the time of 14 days that they are currently allowed is insufficient before allowing a longer period of time, the Government should consider more proportionate ways of solving the problem. That is what I tried to do in my briefings: I came out with a package of suggestions that I believed would help the Government to solve those problems. I do not know whether we have time to discuss them in any detail here, or whether that is appropriate. The principle is this: before justifying an extension, more proportionate solutions should be considered. If none of those measures are appropriate an extension might be justified, but the matter must be approached more proportionately first.

As for excluding the Human Rights Act, it would be dangerous, especially with terrorism legislation, to say that the Human Rights Act does not stand in respect of anything that conflicts with Parliament, as there are frequent conflicts between Government legislation and the Act. In fact, that is the basis of most challenges under the Act.

There are serious human rights concerns about the current Terrorism Bill, especially about free expression and some of the new offences. I hope that they will be subject to challenges on human rights grounds, because they will be counter-productive. Having a speech crime without intent is counter-productive, as is the extension of prescription to non-terrorist organisations. I hope that the human rights framework will provide sufficient challenge to those measures.

Bill Cash, MP: Do you therefore believe that the final arbiter in relation to the question I asked about detention and terrorism should be the judiciary, not Parliament?

Gareth Crossman: No, Parliament is supreme.

Bill Cash, MP: In that case, to avoid the difficulty that is likely to arise, given that Parliament has the right to exclude the application of Clauses 23 and 24 of the Human Rights Act, is there not a strong case for making it clear that Parliament is supreme in such matters?

Gareth Crossman: They are two separate issues. Parliament should, of course, have the final say, because it is sovereign. I appreciate that the Government have a smaller majority now, but when there is a large Government majority, there is a tendency for laws passed by Parliament to go beyond what should be permissible under the human rights standards set by the Convention.

If a court decides either that a derogation is unlawful, as happened last year, or that a law is incompatible, it does not strike it down but leaves the way open for petition in Strasbourg. If you believe that petition in Strasbourg is an appropriate course of action to take, as I do, you will support that, but if you believe that the final arbiter should be a domestic court, not Strasbourg, you will not. It is an issue of principle with which you might or might not agree, but you know that the arguments will be the same.

The Hon. Bernard Jenkin, MP: I am not a lawyer, I am just a jobbing politician, but I was brought up in the tradition that Parliament is sovereign. I find it alien to our parliamentary tradition that Parliament should be involved in some manoeuvring to make the case and lobby the court that proportional measures have been tried and tested and found wanting, and that it is not available to it, under the Convention, simply to make a judgment. I also find alien your suggestion that when making the case for changes that might fall foul of certain provisions of the ECHR, we must prove that they are not counter-productive – that is the word you used. You believe that some of the restrictions under the Terrorism Bill are counter-productive and that that strengthens the case for judicial intervention.

You say that a large Government majority is, of itself, evidence that the judiciary should interfere with the decisions taken by Parliament, as though a Parliament in which there is a large Government majority is somehow incapable of making a ration-
al and balanced judgment. Surely, that falls foul of the notion to which you say you subscribe: the sovereignty of Parliament.

**Gareth Crossman:** I shall deal with your last argument first. That is a good point. In recent years, the Government have simply allowed insufficient time for Parliament to debate Bills.

**The Hon. Bernard Jenkin, MP:** That is a matter for Parliament.

**Gareth Crossman:** As far as I am aware, many people in both Houses were extremely concerned about that. For example, the Lords Committee consideration of the Serious Organised Crime and Police Bill was given one day, but that was 250 pages long.

**The Hon. Bernard Jenkin, MP:** I totally agree, but that is a matter for Parliament.

**Gareth Crossman:** Indeed. Another point, which I made earlier, is that there is a tendency to use secondary legislation as a policymaking tool. I would like to say that the laws passed by Parliament should not be subject to challenge, but that is the purpose of having an executive legislature and a judiciary. It is a balance of power, so that the judiciary has some say in the legislation that is being passed. If we had a different constitution, in which the judiciary was not entitled to pass judgment on the legislature or the executive, that would be the system, but if the judiciary feels that that is not the case, as has happened on numerous occasions in recent years, it is entitled to do so.

I was making the point about things being counter-productive not as an argument that people could stand up in court and say, “This measure breaches human rights laws because it is counter-productive.” That is not a valid argument. I am saying that certain measures, particularly some that may be passed in the Terrorism Bill, will be counter-productive. That is why we put the human rights laws in place: to try to ensure that the laws that are passed are fair and proportionate and that if they were not fair and proportionate they would be counter-productive. I hope that that makes sense. I must apologise for not having made a note of the first question that you asked.

**The Hon. Bernard Jenkin, MP:** It was about your suggestion that we needed to go through some manoeuvres to demonstrate proportionality: that to go straight to 40 days without demonstrating that we have tried other measures would leave us in a weaker position to convince the court that 40 days is compatible with the Human Rights Act.

**Gareth Crossman:** Whether you put it in a human rights framework or any other framework, if we are talking about laws that will mean that British citizens can be removed for a long period of time – however long that might be – under arrest without charge, Parliament should consider all available options. My concern is that I do not believe that it has. I said that I would not go into this further, but there is a continued refusal to allow intercept material and a number of other measures that would, in a lot of cases, allow the difference between the arrest standard and the charging standard – which is what is needed in that period of time in order to bring charges – to be met.

The human rights framework necessitates consideration by Parliament, but it should be doing that anyway. It should seek the most appropriate and proportionate measures available. That seems to have been the approach taken by the House of Commons when it made the reduction from 90 days to 28 days. I am pleased that that approach was taken. One of the main arguments is that the police and Government have not made their case as to why they need the provisions. Therefore, the shorter period is right.

I am not saying that everyone must think only about human rights principles and the Human Rights Act when they are making those decisions. I am saying that the proper process is utterly compatible with the human rights considerations. That was a rather rambling answer, for which I apologise.

**Roger Brooke (Former Chairman of the Audit Commission):** I am not a politician or a lawyer, but I follow these matters. The past has already been sold, whether on human rights or on anything else. The range of the European court’s ability to make judgments that override the Parliaments of the various Member States has gone so far that that it will not now be stopped.

Let us consider the simple example of the Terrorism Bill. At some future date, somebody might appeal to the European court because they have been held for 28 days – or whatever length of time we end up with – and the court might say, “Yes, that is unreasonable” and overrule Parliament. Is that not bound to happen on one issue or another? Today, the papers are full of a whole range of new crimes that the Commission says will be subject to the European court, including racial discrimination, which comes under human rights. If someone eventually goes to the European court and it rules contrary to the wishes of Parliament, there is nothing that Parliament can do about it. Is that not already the case?

**Gareth Crossman:** That is an interesting constitutional point: what the Government have to do in response to a ruling of the European Court of Human Rights. They are not obliged to take any action, but they usually do because convention dictates that they should.

On the 28 days issue, the European Court might or might not make a ruling on that in future. In reaching any such a decision, it would consider whether there was a legitimate purpose for detention – national security and the prevention and detection of crime is likely to be considered as such – whether it was in accordance with the law and, most importantly, whether it was a necessary and proportionate response to the situation in which the country finds itself.

Given the terrorist attacks a few months ago, there is no doubt that what is thought to be necessary and proportionate will be considered far more generously than might have been the case before the July bombings. Any decision that might be reached will be an appropriate one taking into account the situation in the UK.

**Lord Blackwell:** I return to the point about the UK not necessarily having to apply what the Strasbourg court ruled. If someone were held over a period of time and an appeal was made on the basis that the law under which they were held contravened human rights laws and Strasbourg ruled that the action contravened the Convention, could that individual apply to a court in the UK to get himself released or would the UK courts say, “We do not have the power to do that.”

**Gareth Crossman:** I am trying to think of a situation in which...
they have not enacted a decision of the European Court of Human Rights. I do not know what would happen if somebody applied to a court to be released while they were being held in custody. If the Government were determined to keep the provision of 28 days—or whatever the length of time—and a court determined that the person should be released immediately, that would be an interesting constitutional situation. I imagine that the person would be released.

I made that point simply to say that while a decision of the European court is not binding, it is, as far as I am aware, almost unheard of for the UK courts not to take its decisions into account.

The Hon. Bernard Jenkin, MP: Thank you for your most helpful contribution. You have been very clear.

Dr Metcalfe, thank you for appearing before us. We are grateful that you have given up your time. Witnesses usually give a short opening statement and then we ask questions.

Dr Eric Metcalfe (Witness): Justice is a human rights and law reform organisation, which is the British section of the International Commission of Jurists—an international organisation of lawyers and judges worldwide who are dedicated to the protection of human rights.

As I understand it, I am to address you on the role of human rights in the United Kingdom and the constitutional settlement. Our organisation regards the Human Rights Act as a profoundly important constitutional document that protects fundamental rights in this country. Before the European Convention on Human Rights was incorporated, we thought that there was a gap in the protection of fundamental rights. Although there were common law powers to protect certain rights, they were inadequate to protect an individual where an Act of Parliament had overridden fundamental liberties.

The basic point that I want to stress is that the incorporation was an Act of Parliament. Therefore, whatever happens subsequently, under all the courts’ rulings and the appeals to Strasbourg, it is something that Parliament has decided, and is a matter that should be determined by the courts. I do not accept the proposition that there is a tension between the courts and Parliament. The courts’ power to review the compatibility of Acts of Parliament was given to them by Parliament. It is therefore perfectly consistent for the courts to take up that role when they are reviewing the compatibility of legislation, and to say to Parliament that, in certain areas of its legislation, it might not have considered fundamental rights properly.

Bill Cash, MP: I am fascinated by what you have said. The situation really is like a Russian doll, is it not? You are saying that Parliament has agreed that it will step back and allow the judiciary to make its stand, it should not re-enter the scene.

Dr Metcalfe: There is a distinction between what Parliament can do as a matter of the doctrine of parliamentary sovereignty and what it ought to do.

Bill Cash, MP: That is the difference.

Dr Metcalfe: I am not asserting that having made the Human Rights Act as a matter of constitutional settlement, that binds Parliament completely and forever from repealing it as a matter of technical law. I am saying that it would be profoundly dangerous for the protection of fundamental rights for Parliament to do so, unless it had some superior mechanism by which fundamental rights should be protected.

Bill Cash, MP: Would the question arise if the Charter of Fundamental Rights was introduced into all future European Commission legislation as is proposed? The effect of that would be that that legislation would then be adjudicated by the European court. At that point, you get into much more difficult territory, because there is no express reservation regarding whether Parliament can re-enter the scene and take back its powers, because of the European Communities Act 1972. What is your response to that?

Dr Metcalfe: We are talking about the European Charter of Fundamental Rights, so any case would first be a matter for the European Court of Justice in Luxembourg, not the European court in Strasbourg. If Parliament is deeply unhappy with the judgment of the ECJ on fundamental rights and sees no opportunity to assert its own view under the Treaty, it has what one might describe as the nuclear option: it can repeal the European Communities Act. I am not suggesting for a moment that it should, but, as a matter of constitutional law, that would be an option open to it if it really wanted to make it clear that it fundamentally disagrees with an ECJ ruling or some other European Union matter. It remains open to Parliament to say, “We withdraw from the European Union.” I cannot see why it would want to do that, but I understand that, as a matter of constitutional law, that option is still open to the UK Parliament.

The Hon. Bernard Jenkin, MP: Is it really a question of all or nothing?

Dr Metcalfe: To a certain degree, we are talking about a hypothetical situation, because we have not yet reached the point where the European Charter of Fundamental Rights is directly effective in UK law. Currently, it applies only in directives and matters that have the European aspect. It does not really bite, in the main, on UK matters. People cannot go to the High Court and the county court, and rely on the Charter; one can plead the Charter, but it would have only a persuasive effect. The courts have had regard to it in one or two judgments, but they have done so in reference to its interpretive value, not in the sense of striking down any inconsistent legislation. If that point were reached and nothing in the framework was then developed—it if simply allowed Parliament to reassert the particular UK rule that it felt was important—it might be a matter of all or nothing. That is a matter of political judgment: whether you would want to go down the incredibly convoluted route of completely withdrawing from the Union for the sake—
I was interested in Dr Metcalfe's opening remark that no tension is generated by the Human Rights Act between the judiciary and Parliament. Last night, I attended a lecture given by Lord Lloyd of Berwick, a retired Law Lord, on the relationship between the executive and the judiciary. He said that there is such a tension, and that it is necessary. He made the valid point, as did Dr Metcalfe, that Parliament has entrusted – indeed required – judges to interpret the European Convention on Human Rights and to apply it under the Human Rights Act, and that the Government and Parliament cannot therefore legitimately turn round and whinge because, having been entrusted with that task, judges reach decisions that the executive do not like. Dr Metcalfe's point is perfectly valid: the mechanism was decreed by Parliament, and the tension created between the judiciary, the executive and Parliament is largely a consequence of what Parliament decided.

Dr Metcalfe is obviously very much in favour of having a system under which Acts of Parliament and subordinate legislation are subject to a mechanism under which their compatibility is judged, so that even if Parliament has a final right to override under the Human Rights Act, at least it is made to think twice. I want to probe him on whether he believes the European Convention to be the best or most appropriate mechanism with which to conduct such a review. Commonwealth countries have homegrown Bills of Rights; they do not lock into a regional system of human rights. What are your thoughts, Dr Metcalfe, on the advantages and disadvantages of a homegrown Bill of Rights based more on common law traditions?

Dr Metcalfe: I am grateful that you raised that point. Members of the Forum may be aware – you can tell from my accent – that I did my original legal training in New Zealand, which has the New Zealand Bill of Rights Act 1990. I also studied in Canada, which has the Canadian Charter of Rights and Freedoms. Nonetheless, both of those homegrown constitutional documents were largely modelled on the European Convention, because it was regarded as an important human rights document. Similarly, there was a great deal of borrowing at international level when South Africa was formulating a Bill of Rights under its Constitution. It had regard to other Commonwealth countries as well as the European Convention. When the United Nations' drafters were drafting the International Covenant on Civil and Political Rights, they had regard to the European Convention. You would not find a great deal of disagreement in Canada or New Zealand regarding the role of the European Convention on Human Rights. It was simply advantageous for the UK to use the European Convention, rather than draw up its own Bill of Rights.

Writers have talked about the strengths and weaknesses of the Convention compared with other Bills of Rights, but I believe it to be the best framework available. For 30 years, there was a movement in this country to establish a homegrown Bill of Rights, but there simply was not political support for that. That was slightly before my arrival in the UK, but I understand that the adoption of the European Convention was seen as the most straightforward route whereby the kind of judicial role that we are talking about could be secured. It is the best mechanism available. Perhaps, in an ideal world, as well as being signatories to the European Convention on Human Rights, we would have our own Bill of Rights, as some countries do. Germany has its own constitutional rights as well as the European rights, as does Ireland.

Dr Metcalfe: When I was at law school in the early 1990s in New Zealand, our highest decisions were subject to review by judges in another country.

Dr Metcalfe: I am comfortable with the idea of a particular decision being assessed by those who have the experience to assess it. One of the strongest arguments in favour of Privy Council review is that it involves people who are wholly independent of the domestic political scene, rather than people who are seen as being responsive to it. The ideal for judges is that they should be wholly independent from the parties, and what is more independent than a judge on the other side of the planet? I do not stress that point, as I do not consider it to be a necessary feature. There can be perfectly effective judicial review by domestic judges; I do not regard it as a factor either way.

I am comfortable with the court in Strasbourg having the final say in the interpretation of the European Convention because that is its role under the Convention that we signed. The final role of judges in interpreting human rights legislation does not, under the Human Rights Act, take away from the final role of the Government in deciding what to do when the court has made its judgment. That is a perfectly acceptable framework.
Dr Metcalfe: I am not sure that I agree with the distinction. You set up various oppositions: civil and political rights on one hand, and economic, social and cultural rights on the other. You also make an opposition between positive rights – matters on which Governments are obliged to act – and negative rights, which involve constraints: the Government not torturing people, for example. Hard rights and soft rights is another distinction.

If you consider some of the rights that we characterise as hard rights or civil and political rights, you tend to find not only that they require the Government not to do things, such as torture people, but that, generally, they involve positive obligations. A good example is the right to a fair trial. We tend to think of that as a classic hard or civil and political right, but it obliges the Government to do a great deal. They are obliged to set up a court system and tribunals, fund a court service and pay judges. Providing a right to a fair trial in the United Kingdom is as resource-intensive as many other things.

I agree that economic, social and cultural rights can sometimes become more closely involved in policy that may, on the face of it, seem better suited to legislatures. That is also recognised in the structure of the Conventions. The United Nations has both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. They were formed at the same time, but the Covenant on Economic, Social and Cultural Rights imposes different obligations than the civil and political rights covenant. They are regarded as progressive.

In countries in which such rights are actively enforced, the best examples of which are South Africa and India, the Governments are given more latitude in relation to those rights and to how they give them effect. Nonetheless, the rights are still in the background. They act as a check to prevent the Government from overriding them entirely. A good example is the right to health care. It is for the Government to decide how they want to provide health care, whether through insurance or a national system, but if they endeavour to adopt a policy that deprives someone absolutely of any entitlement or access to health care, one can see that the right to health care is having some purchase at that point.

Generally, I am not really troubled by what might be characterised as soft rights. A number of the rights that we have under the European Convention, such as the right to family and private life, have as many soft elements as hard, enforceable ones. Similarly, the right to education is relatively clear-cut in that it is enforceable under the current framework. Nonetheless, there has not been a great deal of chaos in our educational system, nor have Westminster or Whitehall been overruled by the European Court of Human Rights, despite the fact that there is a right to education. Similarly, the right to enjoyment of property might be characterised as a soft right and a less classic civil and political right. A recent judgment at Strasbourg dealt with the relationship between the right to enjoy property and the common law doctrine of adverse possession. My answer has been long-winded, but I am not so worried about the distinctions that have been drawn.

Bill Cash, MP: As for 90 days and 28 days, do you think that the European court is likely to strike down or declare 28 days as incompatible, given Brannigan and McBride v. UK, Brogan v. UK and other cases?

Dr Metcalfe: I would go further than that. If someone were held for 28 days under the proposals, a British court might make a declaration under the Human Rights Act of incapability. It really comes down to the extent of judicial control. Another European jurisdiction might have much more judicial control at an early stage, but some jurisdictions do not have the distinctions of charge that we have. In France and Spain, for example, the judge will take control of the police investigation at an early stage – within 48 or 72 hours. That is a form of judicial control that can be put in place to allow for longer periods of detention. The question is whether we really want judges in this country to be actively engaged in police investigations. It is different in France and Spain because the judges are given training that can be done following on from university. I am sceptical whether British judges would consider that they had the qualifications to tell the police how to conduct investigations. Nor am I sure that we would want such a development.

The Hon. Bernard Jenkin, MP: Is that not the nub of the problem? There are different judicial traditions and different traditions of the investigation and prosecutions of crimes in each country. Should we try to force all the different systems under one legal straightjacket under the European Convention? After all, it was only conceived by Winston Churchill as a broad political declaration; it was necessarily trying to conceive a bold consensus, but rather a vague one.

Have you not just touched on the fundamental problem? If uniform applications of the Convention rights were enforced by all the different judicial systems in Europe, we would require a convergence of all the legal traditions. That is fundamentally undemocratic, given that Europe is not a single democratic polity. Whether such a system is to be carried out through the Convention or indirectly through the European Union, it potentially represents great friction.

I will give you an example. In the Death on the Rock case, we in the United Kingdom felt a grievous sense of our national interest being undermined by the ruling against the soldiers. We thought they were carrying out their orders and fulfilling their duties to Her Majesty’s armed forces and to the country. There was a Spanish judge, who would have a completely different political outlook on the conflict in Northern Ireland from us. Such a situation creates the tensions that will eventually blow the system apart.

Dr Metcalfe: The opposite is the problem: the European Convention framework is so generous to the different systems. Because it presides over so many different kinds of jurisdictions and procedural matters, it allows a great deal of latitude to individual countries to set up their own procedures as they please.

The Hon. Bernard Jenkin, MP: May I interrupt for brevity’s sake? The problem is that, under the European Constitution, the European Convention rights were explicitly to be incorporated into European Community law. Even though the European Constitution is now dead and buried as a document, its principles are nascent within the existing Treaties and will carry that uniform-
ity of application that we expect in European Community law. The problem of the generosity to which you refer may apply to the Human Rights Act as it is currently drafted, but it will not apply if the rights were applied through the European Communities Act as it has been amended over the years.

Dr Metcalfe: I do not accept that analysis of the way in which the European Union is seeking to incorporate the principles of the European Convention into European Union law. I will explain that briefly. The European Convention on Human Rights allows to each individual state – or high-contracting party – a great deal of latitude. For example, it does not lay down rules on evidence, how court structures are involved, how police investigations are run, or on who has control of pre-charge detention.

This country has clear procedures – laid down over centuries – that establish the relative roles of the prosecutor and the judge, and the role of the police in the investigation. It is frustrating that there is nothing to stop this Government from greatly enhancing the role of the courts in relation to pre-charge detention, even at the expense of the safeguards that they should have. The Government’s proposal to extend greatly pre-charge detention is not compatible with the European Convention. I do not think that the proposal to introduce judges into the system, as they are in some other countries, will be workable.

The problem with the European Convention, such as it is, is that the Government have that latitude. The European Court of Human Rights will not say, “You have an adversarial system and you are turning it into an inquisitorial system”. It is completely impartial to whether we have an adversarial system or an inquisitorial one. All the ECHR is concerned about is that whichever system a country has elected to use, it must ensure that it brings someone before a court in a reasonable time and that that court has sufficient power to review the lawfulness of the detention. I do not see that any transposition into European Union law will change the inherent latitude given to each high-contracting party – each state – to determine its own procedures for itself.

The Hon. Bernard Jenkin, MP: Thank you for your time. You have been extremely generous and very helpful.

Thank you for joining us today, Mr Plender. We usually ask witnesses to make a few opening comments to help start us off, and then we will ask a few questions.

Richard Plender, QC (Witness): Mr Jenkin, I must thank you for taking my evidence out of order.

The Hon. Bernard Jenkin, MP: Please do not worry about that.

Richard Plender, QC: It was a problem of my own creation, but it is very good of you to adjust the order.

My interest is in European law. One of my current concerns is with the Charter of Fundamental Rights. Mr Heathcoat-Amory referred a few moments ago to the distinction between hard and soft law. I prefer to see the Charter as a marriage between civil rights and so-called social rights. It is an unequal and uneasy marriage. I have reservations about the suitability of international or European adjudication, even on civil rights – on all civil rights. However, we have grown accustomed to it. A court is, in principle, well placed to determine whether a trial is or is not fair. There are judicial or manageable standards for engaging in that exercise.

Entirely different considerations apply in the case of the social rights, such as determining whether a wage is fair or whether adequate provision has been made for education. The reasons for the inclusion of social rights in the Charter are easily visible in the political process that has led to the enlargement of the Community and in the desire of some states to protect against the dilution of the Community by establishing common standards of a social nature, particularly in matters that entail substantial public expenditure.

The Charter was proclaimed simply as a political statement, with the anticipation that it would be incorporated into the Constitution. The Constitution, as you remarked, Mr Jenkin, is now dead, but the Charter is not. It is the practice of the European Commission to refer to its terms in the preamble to legislation. I see nothing wrong with that in principle; it is right that those who are adopting legislation should say in the preamble what they have borne in mind. It is also right that courts should then see whether the text responds to the objectives.

A text that includes social terms – or reference to a charter containing social terms – inevitably presents the court with the necessity of applying standards, which are unsuitable for judicial determination. We have not yet come to the crux, but we shall do so. A case will arise in which the European court, when asked to determine a question such as the legality of legislation governing hush-kits on aircraft, inquires whether the licensing of the use of such hush-kits is or is not compatible with the preservation of the environment. Those are matters about which many people, some technically trained, others members of the public, have strong opinions. They are matters not easily tested by opposing evidence determining which is to be credited and which carries more weight.

What can we do about it? At this stage, not very much. The Charter would have carried that defect had it been carried forward to the Constitution. Had it been carried forward to the Constitution, there would have been the danger, against which the Government claimed to have guarded, that it would be applied only to Community legislation and to acts done in reliance upon Community legislation. As it is, the Charter will be applied only to community legislation and to acts done in reliance upon Community legislation. In that respect, it is better than the Constitution.

We are left with the problem, which will certainly arise, of the judicial determination of social rights. I hope that we can persuade the court, in Mr Heathcoat-Amory’s terms, to regard that as soft law, not real law. It will be a serious job to succeed.

Lord Blackwell: Would you just explain something? As you say, the Charter has never been approved by the UK Parliament for adoption into UK law. We were told initially, when it was published by the Government, that it had no legal effect. You explained that, nevertheless, it is being incorporated into European law and into judgments by the UK courts.

The previous witness, Dr Metcalfe, suggested that the Charter would be pleaded in UK court hearings; in cases being heard in UK courts, reference had been made to the Charter of Fundamental Rights and that it would be taken into account in
judgments. If that were to happen, effectively it is becoming part of UK law. How can that happen? Can you explain that to someone who is not a legal brain?

Richard Plender, QC: I heard Dr Metcalfe say that. The case for an English court applying the Charter in any manner must be very much weaker than the case for the Court of Justice applying it when testing the validity or meaning of Community legislation.

The way it happens is that counsel – sometimes rather desperate counsel – refers to the terms of the Charter as a political statement common to the Constitutions of the Member States, solemnly proclaimed by the heads of Government of the states as a standard of which the court must take account. Counsel then says, “We must take account of that standard when construing national legislation, because it cannot have been Parliament’s intention to adopt legislation inconsistent with a Charter solemnly proclaimed by heads of government or states, to which we have all, in that sense, subscribed.” The domestic court is still construing national legislation, but it is doing so against the proposition that Parliament cannot have intended to do something contrary to the Charter.

Martin Howe, QC: Exactly the same argument was accepted by the courts, to some degree, prior to the Human Rights Act, and resulted in a certain amount of creeping incorporation of the European Convention into domestic law before Parliament had taken that decision.

Richard Plender, QC: It is, but the important difference is that the fact that the Convention on Human Rights had been ratified by Member States gave rise to binding legal obligations on Member States. I have no difficulty in saying that Parliament cannot intend to adopt legislation that is incompatible with our international obligations. I am more sceptical about the proposition that Parliament cannot have intended to adopt legislation that was incompatible with a statement proclaimed by heads of government and state. The best guide to the meaning of Parliament’s legislation is what Parliament has said.

Martin Howe, QC: On a different point, have you considered whether it would be compatible with our continued membership of the European Union for this country to denounce the European Convention on Human Rights? Articles 6 and 7 of the Treaty of the European Union have a bearing on that. As I read them, they require Member States to respect the broad principles contained in the European Convention on Human Rights, but they do not oblige the Member States to adhere to the Convention. Do you have any views about that?

Richard Plender, QC: It is not a subject that I have studied. However, it would nowadays be regarded as incompatible with membership of the Union to denounce the Convention on Human Rights. It has become so accepted a part of the acquis communautaire that the denunciation of the Convention would be regarded by our partners as a serious departure from the common standards to be applied.

Martin Howe, QC: Is that a legal or political obligation?

Richard Plender, QC: I suspect that it is a political consensus, which would find expression in a legal obligation.

The Hon. Bernard Jenkin, MP: What you are saying is important. Let us suppose that a part of United Kingdom law is declared incompatible with the European Convention by one of our courts and we wilfully refuse or decide to re-enact that law with a declaration that it is incompatible. If Parliament expressly wishes to have law that is incompatible with the European Convention, we would in effect be falling foul of our Treaty obligations under the European Union.

Richard Plender, QC: That is pressing the matter a little further. I was asked what would happen if we denounced the Convention. That would be a larger step than failing to abide by international obligations in a particular regard.

The Hon. Bernard Jenkin, MP: If we withdrew from the Convention in order to reapply with derogations, would we be incompatible with European Community law?

Martin Howe, QC: Reservations not derogations.

Hon. Bernard Jenkin MP: I beg your pardon. I am not a lawyer, I am a jobbing politician.

Richard Plender, QC: I guess that the answer is no. By the Treaty of the European Union, the Member States have reaffirmed their commitment to the European Convention on Human Rights. In those circumstances and looking at it legally, I suppose that the United Kingdom has maintained its commitment to the European Convention on Human Rights.

When I said that a political consensus would find expression in legal principles, I meant that a denunciation of the Convention would be seen by our partners as a departure from the affirmation of commitment to the Convention that appears in the Treaty of the European Union.

Rt Hon. Lord Weatherill, DL (Former Speaker of the House of Commons): How nice to see you again, not on the Sevenoaks train! Thank you very much for putting the case so clearly – at least, to me. One of the penalties about being in the House of Commons is waiting to make a speech, and hearing your questions and your points made better by others.

You are saying that, if someone who was to be held for 28 days appealed to the European court and it upheld that appeal, our hands would be tied and there would be nothing that we could do about it.

Richard Plender, QC: I need to go back a step or two. We are now wholly in the sphere of civil rights. Let us suppose that there is an appeal to a national court and the appeal fails. An application would then be made to the European Court of Human Rights seeking a declaration that the United Kingdom had failed to comply with its obligations. That declaration is made and the United Kingdom would be in exactly the same position in which we were following the Gibraltar case, to which Mr Jenkin referred. Our obligation is to make reparation to the individual concerned. Reparation is usually small. In respect of the European Court of Human Rights, it is principally costs. The Government may or may not comply. If they do not comply, the matter goes to the Committee of Ministers to seek a resolution. If no resolution can be achieved, it is open to a Member State to call
on the Council to expel the defaulting member. All those processes seem unlikely in the case to which Lord Weatherill referred. I doubt if it would reach that far.

However, let us suppose that it does and that the real contest is whether the United Kingdom will maintain in force any longer the provisions of the Terrorism Bill – let us assume that it is enacted in its present form. The United Kingdom must either denounce the relevant articles of the Convention or withdraw from the Convention and ratify again. If it takes either of those steps, I doubt that it could be said that the United Kingdom is no longer affirming its commitment to the European Convention on Human Rights.

Bill Cash, MP: Mr Plender, nice to see you. Two parallel courses are being followed at the moment: the Convention – with the European court at Strasbourg – and the Charter. They seem to be in parallel, but there is an increasing convergence or overlap. The European Commission communication that was issued about three weeks ago states that all future legislation that comes from its initiation procedure will be compliant with the Charter. What follows is that we can anticipate that the European court will be the final arbiter of legislation that falls into that category of activity, which emanates from Commission-initiated legislation that is compliant with the Charter. There will then be two competing jurisdictions, but as for the implementation in the United Kingdom and the role of the Law Lords, for example, where the Human Rights Act kicks in, Parliament has a clear right to be able to exclude the Human Rights Act or any part of it, as and when it wishes. In the case of the Charter, despite the overlap in subject matter and the apparent desire to achieve comparable methods of interpretation, it is not so easy: Which way do you think that that will go?

Richard Plender, QC: I was, of course, referring to the Commission’s communication. I have discussed it with Mr Cash informally. We must remember the effect of the Commission’s communication – if confined to Community legislation, together with the application by national courts of Community legislation. What the Commission now announces as its regular practice is the practice that it has followed from time to time over the past couple of years, which is to include in the preamble of Community legislation the statement, “This legislation conforms to the Charter”. I do not object to it saying that it has had the Charter in mind, although I see great danger in the social provisions.

Where there is likely to be a contest between the two courts is in relation to the civil provisions, which are mainly but not entirely identical. For example, some civil provisions in the Charter are wholly lacking from the Convention on Human Rights, such as Article 1 on the right to human dignity. Let us suppose that a person wants to travel from this country to the Netherlands for the purpose of assisted dying. The Government’s position on the proposed Constitution was that the Constitution would have no bearing on the subject and that it would be wholly internal. I doubt that. The example that I have cited is similar to the real case of Mrs Blood, who wanted to give birth to the child of her deceased husband, which precisely engages Community law, so I am confident that Community law would be engaged.

My example would give rise to a conflict between two concepts of human dignity. Those who maintain firmly that the right to assist in one's death assists one's dignity and those who maintain with equal firmness and passion that it is profoundly contrary to human dignity to assist in or hasten a person’s death. In that acute area, we may find not only strongly opposed views, but a conflict between the courts at Strasbourg and at Luxembourg. I am sure that the two courts would do everything that they could formally and informally to avoid a conflict, but as a matter of law both would be equally competent: Strasbourg would be concerned with the right to life, while Luxembourg would be concerned with the right to human dignity and, thus, a possible collision of those rights would be unavoidable.

Rt Hon. David Heathcoat-Amory, MP: I find what you say about the EU Charter absolutely fascinating. I worry because we were told that, if the European Constitution were turned down, that would be the end of making the Charter judiciable. However, as you explained, the tide is still coming in on the back of European Commission proposals. Because it has a monopoly of initiative, it holds the key to the matter. Because many of the legislative instruments are now based on majority voting, it is difficult to know what we can do about it. You mentioned the Government’s supposed defence: that it bites only on EU instruments, when those bodies are legislating, not on domestic law. However, they are legislating on such a broad front now that there is little that is not subjected to EU legislation in some way.

What domestic defence can we erect against such matters? This country does not have a constitutional court. Is that a weakness? Have you given thought to what else Parliament can do, such as amending the European Communities Act 1972 or trying to entrench security against the creeping judicial tide that seeks to import into our system a Charter that we have not agreed and which should have been rejected along with the Constitution?

Richard Plender, QC: The short answer is that there is no such defence of the sort to which you referred. I reiterate that the position in which we now find ourselves is better than the position that we would have been in had the Constitutional Treaty been adopted. Had it been adopted, the Charter of Rights would have applied to cases such as that I described, which has an inter-state element. The effect of the inclusion in Community legislation of a reference to the Charter does not bring about that situation. All that it does is to control the specific items of Community legislation in question, together with acts done in implementation of that legislation.

As I said at the outset, I am concerned about making the social provisions justiciable. If we want to guard against a Commission practice or a court interpretation, all that we can do is to argue vigorously against it. I do not see that any national legislation can be adopted to protect one against it.

Bill Cash MP: Do you therefore rule out an Act of Parliament that would require the judges to give effect to the latest inconsistent legislation – inconsistent with the European Communities Act 1972 – if sufficiently unambiguous? You just said that you did not think there was a defence. That raises the question of whether we have so crossed the Rubicon.
There are those, of whom I would be one, who believe that we must have a supremacy of Parliament enactment to reaffirm the principle, which is well established in English law at the moment – there have been several cases, such as the Metric Martyrs, the Denning case and so on – that judges are under an obligation to give effect to the latest inconsistent, clearly expressed enactment, irrespective of the European Communities Act 1972. In evidence to the European Scrutiny Committee, Alan Dashwood said as much – as did one or two other witnesses, although they were not advocating it.

Richard Plender, QC: What Mr Cash says is correct. It is also correct that, as long ago as 1964, the European court established as a proposition of the European Community law that Community law prevails over national law.

Bill Cash, MP: That is the Costa case.

Richard Plender, QC: That is Costa v. ENEL.

The answer to the difficulty is not to be found in national law, whether it be made by Parliament or by courts. It has to be found in a reconciliation of the European principle of supremacy of Community law and the national principle expressed very well by Sir John Laws in the Metric Martyrs case.

Martin Howe, QC: May I just invite you to consider a specific possible amendment to deal with the Charter: amending Section 3(1) of the European Communities Act 1972? At the moment, it requires our domestic courts to interpret Community obligations in accordance with the principles laid down by the European Court of Justice and to exclude from the principles – that our domestic courts may follow – the Charter or any decision or case based on the Charter. We could do that as a matter of domestic law and that would stop the Charter infecting our own courts, even if it plays a part in the decisions of the Court of the Justice.

Richard Plender, QC: That is only one example of a number of ways in which we could fashion our law so that we are inconsistent with what the Court of Justice says is Community law. We still have the problem of the supremacy of Community law, as declared by the Court of Justice in the case of Costa v. ENEL.

The Hon. Bernard Jenkin, MP: If conflict between Community law and domestic law was deliberately enacted by Parliament, is that not a political matter rather than a legal one?

Richard Plender, QC: I think that it is both. As a legal matter, the court in Luxembourg will say that Community law prevails.

Lord Blackwell: I want to make a variant of that point. I understand that, if European law is enacted through the Commission that takes the Charter of Fundamental Rights in its preamble, it obviously has to be interpreted and we are subject to that law. As you said, there are a lot of social rights in the Charter of Fundamental Rights, which may not be directly referred to by EU legislation. However, I can imagine that the continental domestic courts might be more willing than our courts to start taking account of what has been written in the Charter in their judgments. Similarly, in the way that you explained earlier – both through people pleading the Charter and through referencing European judgments – we can imagine that it would start to feed into UK law.

As a variant on what Martin Howe was saying, I wonder whether we could not envisage a short Act that simply says, “Other than where it is as a consequence of European law, the Charter of Fundamental Rights had no position in UK law and was not able to be pleaded in UK courts.”

Richard Plender, QC: I understand the objective but I wonder whether the answer is not the same as the one I have given.

I should welcome a more authoritative judicial statement, which can be made here, along the terms that I used in the opening. The best guide to the intention of Parliament is what Parliament said. A statement proclaimed by heads of government and state, which is not ratified by the Member States, is a poor guide to the meaning of Parliament in legislation adopted thereafter.

The Hon. Bernard Jenkin, MP: You have been extremely helpful and a fascinating witness. Thank you very much indeed for your time.

The Plenary Session finished at 12:38 p.m.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2 Gareth Crossman is Director of Policy at Liberty (the National Council for Civil Liberties). Prior to joining Liberty’s legal department, he worked as a solicitor specialising in criminal defence litigation and as a journalist. Mr Crossman has written for Parliamentary and wider audiences on a wide range of issues. He has particular expertise in UK Government anti-terrorism policy and regularly gives evidence to a number of committees including the Home Affairs Select Committee; the Constitutional Affairs Select Committee; the Joint Committee on Human Rights and the United Nations Committee against Torture.

3 Dr Eric Metcalfe is Director of Human Rights Policy at JUSTICE. Prior to completing his doctorate in law, Dr Metcalfe taught comparative constitutional law at New College and Trinity College, Oxford. He was called to the Bar in 1999 and undertook pupillage at 39 Essex Street. Dr Metcalfe subsequently worked in the Public Law Group of the Treasury Solicitor’s Department before joining JUSTICE in 2003. In addition to writing and speaking regularly on human rights law, he also manages JUSTICE’s third-party interventions including A and others (House of Lords, pending) and Ramzy v The Netherlands (European Court of Human Rights, pending).

4 Richard Plender is a specialist in European Community law and has over 25 years’ experience of litigation before the Court of Justice of the European Communities. Richard was called to the Bar in 1972 and took silk in 1989. Since then his roles have included being legal advisor to the United Nations High Commissioner for Refugees; Consultant to the Council of Europe’s Directorate of Human Rights and to the European Assembly and Référendaire at the Court of Justice of the European Communities. He was elected Bencher of the Inner Temple in 1997. Mr Plender has also written extensively on legal matters.
The Plenary Session commenced at 11:00 a.m.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary): I am grateful to you for coming, Mr Paterson. You have given us a lengthy brief. We usually ask witnesses whether they want to make a short statement and then answer some questions. Is it convenient for you to pick a few salient points from your brief to get the discussion going?

Owen Paterson, MP (Witness): Thank you very much for calling me back to the Forum. I thank Mr Scott for swapping places with me so that I can get to business questions on time.

I shall begin by picking up on the comments of National Farmers’ Union and Country Land and Business Association representatives, who showed a real lack of understanding of how the Common Agricultural Policy began. European policy became an extension of French domestic farming policy since 1961, when agriculture represented 25 per cent of French employment compared with 4 per cent of United Kingdom employment. Production was growing at about 20 per cent a year because of massive subsidies after the war. One glorious figure is that 11 million of the 24 million cows in the six at that time were French, with productivity of 25 per cent below the Dutch. Such a position was unsustainable, but for French political reasons, they had to find new markets for agricultural produce and new sources of funds.

The whole history of the CAP has been an exercise in ensuring that French agriculture kept markets open, and found new markets and new sources of funds. The delay in Britain being allowed to enter the European Community was because of agriculture. De Gaulle would not allow us in until he had excluded Commonwealth imports, which were Britain’s major source of food, and until he had ensured that there were duties on those food imports with which to pay for the CAP. After the 1970 Luxembourg Treaty, revenue from a percentage of VAT was guaranteed; only then was Britain allowed into the Community. That fundamental distortion has carried on ever since.

Many incorrect statements have been made about the 1984 Fontainebleau Agreement. Mitterrand was absolutely up against the cosh then, because he had to get an increase in VAT contribution to 1.6 per cent to pay for the unsustainable production of the CAP. That has carried on — even into this week. France produces 3 million tonnes more sugar than it eats and Europe has to find export markets for the surpluses, and that has got the Commission into trouble with the World Trade Organisation.

We have since had the Fischler reforms, about which we supported the Government, but the reforms do not go far enough. The days of producing large amounts of unwanted food that is dumped and paid for with public funds have ended. There is a large hole in agricultural policy: food production is being left to the market, but the payments are continuing and the public have not been given a satisfactory explanation about where the money is going. The poor old usual knocking targets, such as the Duke of Westminster, are trotted out as people who receive large sums of money for nothing. What the public are not being told is that there is a clear public good in the environmental and amenity benefits of farming, the output of which is approximately £13 billion, compared with about £12 billion in food production. I speak as a low-tax, small-government Thatcherite, but I see a justification for public funds being spent on that public good in a transparent manner.

Currently, we have a hideously complex system of cross-compliance. I was a member of the totally obscure Standing Committee A, which debates European proposals sent down from the European Scrutiny Committee. We had to consider documentation comprising of 446 pages, explaining three axes with 34 themes. That is not the way to run a simple, transparent system with which to compensate people for the amenity benefit that they provide to the environment. That is why there is, effectively, no longer a Common Agricultural Policy. Many elements of policy have reverted to national Governments, and I contend that it should all revert to national Governments, because the conditions necessary to run what is effectively an environmental policy in the UK are completely different from what is right for Finland and a wrecked, ex-Soviet rural economy such as Slovakia.

There are other elements in my statement such as how we are being held back from advancing into energy crops. Biofuel would be a major new outlet for what used to be food products in this country. Biomass is a whole area in which we have not even begun. It would allow farmers to produce not only a new commodity in the fuel, but a new finished product in electricity. We would probably save 10 per cent on transmission and 10 per cent transport costs with biomass products. All that requires domestic decision-making, much of which is hindered by the arrangements that are the fag end of the old CAP.

Rt Hon. Lord Waddington: You boldly say in your statement: “Agricultural policy, in its entirety, should be returned to the UK,” but how can that be achieved? Is there any possibility of it being achieved by negotiation? If not, are you really saying that, as the CAP is such a key part of the whole set-up, it is tantamount to recognising that we will have to withdraw from the EU?

Owen Paterson, MP: I recognise the reality that there is no longer a CAP. We now have a system of support payments for farmers that are politically unsustainable and which the European public will not put up with. Very large areas of policy have been handed back to national Governments: how the single farm payment was paid was left very much to national Governments. There are anomalies here: in Osweysty market, in my constituency, farmers carry out exactly the same activity under four different types of state support. That is just within the UK. There are totally different systems of payments in England, Scotland and Wales from those in France and Germany. Large
elements of policy have gone back to national Governments. The logical conclusion is that we are now in the game of paying people for the amenity and environmental benefit for which there is no obvious market mechanism, and that such matters should therefore be undertaken by national Governments.

The Hon Bernard Jenkin, MP (Shadow Minister for Energy): You started your speech with some criticism of the evidence presented by the NFU and others who represent farming interests. Are you confident that what you suggest would be in the interests of our farmers? Obviously, they are very suspicious of free trade, tariff cuts, and the removal of the guarantee that the European Union provides for support for landowners that a domestic Government would not be obliged to provide. Surely, support for landowners would be much more vulnerable to attack under a Labour Government than it is at the moment when guaranteed by the European Union.

Owen Paterson, MP: I did not mean to be too critical of the NFU and the CLA representatives. They reflect a common misunderstanding of how the CAP began. As I tried to explain, it was an extension of French domestic policy. You are right to say that there are fears that it is better to hang on to nurse for fear of finding something worse in that the European Union will carry on the payments. The problem is the fact that the current system is so hopelessly complicated that it is putting farmers off going down the environmental route. Getting at the funds is extraordinarily complex. We must sell the environmental story and get the non-governmental organisations on side, and say that we would improve our domestic environment and making life easier for farmers with a greatly simplified system if it were brought back here. You are right to say that there is a major public selling job to be done to the consumers of the funds – the farmers and the landowners – and the public. If we do not do that, there will be a huge row. The general public will not tolerate large cheques going to people when they no longer have to produce food and when, in some cases, they will literally be producing weeds.

Bill Cash, MP (Former Shadow Attorney General and Shadow Minister for Constitutional Affairs): When you consider the extent to which people have to obtain food in order to eat and live, is your view based on the extent to which it can be provided from global sources or do you look primarily at the national scene? If you aggregated in a completely free market throughout the world all the food that could be brought in to different countries according to their needs, is there a point at which you would say, "We only need to produce so much," or would you go for the maximum of national production and work on the principle that the surplus would be sold elsewhere on a free market basis? Do you have a philosophical attitude towards food production?

Owen Paterson, MP: Yes; as I said, the first role of farming is to provide food for the nation. We should remember that there is a global issue of food security. Two years ago, human beings ate more grain than they produced. The Chinese economy is on fire; it is not only consuming more food, but burning up agricultural land. In the five years before 2000, agricultural land in China dropped from 98 million hectares to 76 million. That process is continuing, but the standard of living is increasing, so there will be more pressure on food production. The Government are grossly misguided in their belief that there is unlimited, safe, palatable food that can easily be transported to this country. Our self-sufficiency keeps dropping.

As a Conservative, I do not believe in targets, but I believe in being prudent. There is a strong case for saying that the first role of farmers should be to grow food, and for that the state should get out of their hair. There have been extraordinary interventions by the state. The Office of Fair Trading will not allow dairy farmers to get into large enough groupings to be competitive. Milk Marque was smashed up by Stephen Byers, with 38 per cent of the domestic market in-country and Arla having 98 per cent of its domestic market in-country. Food production should be the priority.

If we were to go for energy crops, we would create a national land reserve that could be converted instantly to food production. Sugar beet can be eaten as sugar or boiled for biofuel, but once John Prescott has concreted over a field, there will be no food production there. The Government are unwise to be driven by inflation. We know that we could buy huge amounts of food from abroad. Brazil could supply most of Europe's sugar needs for less than we pay at the moment, but there must be a strategic view. If we consider the history of the two World Wars, the one volume of the Official History on the First World War that was never issued in the 1920s was that on the blockade by the submarines, because it was of such fundamental strategic importance. The Nazis picked that up: they knew what had happened. We should be wary of allowing domestic food production to reduce too much. It is better to put public funds into the amenity benefit. If public funds are spent on renewables instead of ridiculous wind farms, which work for only 30 per cent of the time, it would be better to rebalance that support into renewable energy crops. That would give us strategic reserve.

Bill Cash, MP: Some of us will remember Barbara Castle's Food from our own Resources in the dim and distant past. Are you saying that there should be a minimum bottom line for production or should we disregard the artificial lines that were drawn in relation to Europe and the WTO that prescribe international standards of food production by way of market forces? Is your policy, at bottom, something of a protectionist policy?

Owen Paterson, MP: No. I have faith in our producers to provide what the market wants if the state would get out of the way. We have seen that with the meat hygiene regulations, which have closed down large numbers of perfectly adequate abattoirs that could have supplied meat efficiently and cheaply locally. They have gone. We have also seen it happen with regulation in food production across the board. Those costs are not borne by our competitors.

We must wake up to what is happening in Eastern Europe: there are 50 million acres of cultivatable land in Poland. It used to have 119 employees per 1000 acres; given American efficiency, that number will be down to below four. That is rapidly approaching. Food production is increasing everywhere, but I am confident that there are advantages in producing locally. In my patch, Müller has gone from producing zero to 2,000 million pots of yoghurt in 13 years. It cannot make a quality product if the milk is transported too far, so there are advantages in having...
efficient local production. For that to happen, the state must get out of the way. I am not talking just about the UK state but European government, which imposes so much cost and regulation.

The Hon. Bernard Jenkin, MP: Would you mind if I moved on to discuss the environment? The case for the European Union regulating the environment is about fairness and ensuring that countries that have high environmental standards are not attacked unfairly by cheap products coming from a country that has little or no environmental protection. Would you address your analysis to that point?

Owen Paterson, MP: Yes; we must give the consumer information. Three times the Labour Government have knocked down Conservative backbench food labelling Bills. In one glorious case, the Minister Joyce Quinn talked it out. She said it was an abuse of Parliament because it was a contravention of European law. I have advocated clear labelling.

Let us consider a product such as eggs. In this country there has been a huge, successful and expensive campaign by the industry to clean up its act – we have virtually eradicated salmonella. I am currently talking to the industry about a traffic light system. In such a system, the UK would have green lights for animal welfare, food hygiene and food miles. We are talking about Rolls-Royce eggs being on our supermarket shelves. Currently, eggs are just anonymous. People can buy Spanish eggs. I believe in free trade: buy Spanish eggs by all means, but they will be produced in inferior animal welfare conditions, which would get a red light, inferior hygiene conditions, because salmonella is present in Spanish hens – that would get another red light – and they would not score on food miles either. We need to give the consumer information, but we are not allowed to do that under European law.

Martin Howe, QC (European Lawyer and Author): My apologies, Lord Waddington, for my late arrival. I am sorry for missing your talk, Mr Paterson, although I have read your brief. I want to follow up on the issue of the Treaty reforms that would follow from the policy proposals in your paper. The agriculture and fisheries policies are fairly clear: you advocate a return to national control of those policy fields, and their excision from the current arrangements in the Treaty of Rome. Is your proposal on the environment similar – that things would return to national control, subject to global intergovernmental agreements, and be excluded from the present Treaty of Rome?

Owen Paterson, MP: You were not at the previous session. My fishing policy is unequivocal: the return of control of our waters – either to the median line or to 200 miles – to national and local control, preferably by negotiation but, if necessary, by legislation in our sovereign Parliament. We are quite clear about that. In the paper, I do not go into the mechanics of how to return decision-making on agriculture, because that brings us into the whole sphere of environmental law.

I make a broad, clear statement that what we have is not working. I propose an extension of an ineluctable process that is happening as we speak. Large areas of competences have been handed back to national Governments. The logical conclusion is that the whole thing should be brought back, as we are not in the game of distributing large amounts of public money to produce food surpluses and then trying to get rid of them. We are in the game of spending public money managing the amenity and environmental benefit of the countryside. That can be done partly by negotiation, but ultimately we must always retain the belief that this building contains not just a county council, but a sovereign Parliament that can re-establish powers if necessary.

Martin Howe, QC: What about the international trade consequences? The European Economic Area agreement excludes agriculture from the scope of the free trade area between Norway and the EU. If there were a return to complete national control of agricultural policy, would the consequence be continued free trade in food products between Member States of the European Union or would there be a return to our coming under global WTO rules? What would be the follow-through?

Owen Paterson, MP: That could happen in stages. The most logical next step is to have a sort of local WTO, thus it becomes a clearinghouse. The eventual conclusion is that it becomes part of a WTO agreement worldwide.

We are seen to be the bad guys. What the EU is up to with tariffs is appalling. Five days after the tsunami, it whacked a £2,430 ton duty on cumarin – a herbal extract produced in Thailand – because there is one producer in France. From outside the EU, we are seen as the bad guys.

Martin Howe, QC: Following on from that, I am concerned that if there were a return to national control of agricultural support policies, the consequence – or perceived consequences, from France's point of view, for example – might be that the naughty British are subsidising various sectors of their farming industry in a way that allows them to compete unfairly with their agricultural sector within the Single Market, ergo the French might feel, therefore, that they need to treat the French-British border as an international border for the purpose of tariffs and other controls on agricultural products. Do you foresee that as a consequence? If so, how would it be overcome?

Owen Paterson, MP: Well, it is happening now. Some of the greatest dairy companies in the world began as farmers' cooperatives in France, because the French do not pay corporation tax. Huge hidden assistance is given to the agricultural sectors in France, Germany, Italy and all over the place. That is happening now. We must be realistic. Ultimately, the WTO should become a clearinghouse, but we should not pretend that everything is level at the moment, because it is not. Right outside the European funds, major domestic funds go to our competitors on the continent.

Bill Cash, MP: Will you comment on the role of supermarkets in relation to British farmers, and the extent to which they should brought under more control?

Owen Paterson, MP: It is easy to knock the supermarkets, but if the whole market is rigged in their favour, they will take advantage of that. To return to the yogurt manufacturer I mentioned, I went to see the company in Germany and it said that it could never have grown the business in the UK without the extraordinary efficiency of the distribution system of our supermarkets. If one has a good product that is well branded and
marketed, people will buy it. We should tell farmers to use the supermarkets, but we should tell the Government to give the farmers a chance to create large enough operations to add value, put research in and increase productivity.

As we were held up for many years by the soviet Milk Marketing Board, our dairy processing is four times less efficient than that of most continental producers. I mentioned Stephen Byers and Milk Marque, but only last week a takeover bid in Scotland was turned down by the OFT. It is like the ghastly level playing field quote we had about Bosnia – level killing field. If we create a situation in which all the weapons are in the supermarkets’ hands, they are bound to exploit that. We should allow much larger units to grow and to have the funds to do the research and to produce efficiently. Then, the balance of power will switch more to the hands of the producers.

Rt Hon. Lord Waddington: Thank you very much, Mr Paterson. We will have to draw matters to a close now. It has been fascinating.

Thank you for coming, Mr Scott. The other witnesses have submitted briefs and we have invited them to make a short opening statement, after which they answer a few questions. Is that suitable?

Derek Scott (Witness): Yes, I am in your hands.

In the past few years, the performance of the economies within the Economic and Monetary Union has varied, but it is important to recognise that the poor performance of the core economies is not new: France had three years of strong growth between 1998 and 2000, but that followed a decade in which growth was below 2 per cent every year. Even that short and belated spurt of growth came to an abrupt end in 2001 with only anaemic recovery since. Germany has enormous strengths and huge potential, but with the exception of a few years around unification, the rate of gross domestic product growth has averaged at less than 2 per cent a year for more than 30 years. Italy has been close to recession, and although the record of the peripheral economies is mixed, the benefits of catch-up have waned and several are in serious trouble, as others may be soon.

Another point to note is the growing divergence between economies. Recently, the European Central Bank expressed surprise and concern about that. It should be concerned, but not surprised: economic divergence is inherent in EMU. Today, the only convergence in euroland is towards slower growth and bigger budget deficits. Everyone agrees that budget deficits need to be addressed and public finances put in order, and most people at least pay lip service to the need for economic reform.

If budget deficits are to be reduced and debt put on the right track, taxes have to rise and/or expenditure has to be cut, but that becomes self-defeating if there is no economic growth or at least the prospect of growth, and it is possible only if monetary policy – the combination of interest rates and exchange rates – is appropriate for the economy of the country taking the measures to put its public finances in order. In EMU, that cannot happen, or at least it can happen only by accident, and it can easily become impossible for individual countries to escape the continued deterioration of their public finances.

Likewise, economic reform is impeded within EMU, not only by the lack of political will to implement reforms, but by the economics of the single currency. In essence, economic reform is concerned with structural changes to improve the function of labour, product and capital markets. It can take many forms and its implementation is bound to reflect the differing political and cultural traditions in Europe. Such reform does not have to mirror all the aspects of what is sometimes called Anglo-Saxon capitalism in either its American or its British guise, but whatever form it takes and whatever else it does, it must result in a rise in rates of return on investment. Without that, reform has no economic meaning; the more radical the reform, the bigger the impact.

Inside EMU, countries genuinely undertaking reform risk boom and bust. Appropriate monetary policy is the only way of combining a dynamic economy with overall economic stability. Bad economics makes for bad politics and the EU is probably heading for the biggest economic and political crisis in its history.

Rt Hon. Lord Waddington: Do you think that institutional reform is a prerequisite of economic reform? In other words, if some of the Commission’s powers were taken, such as its powers to initiate legislation and initiate approvals for repeal of legislation – I am thinking of deregulation – would that help, or make possible, economic reform?

Derek Scott: There is a problem within the countries of Europe: there is a limited support for what I would regard as liberal capitalism. You are right. That was one of the lessons of the votes in France and Holland: that on the political front – the lack of contact between politicians and their domestic constituencies – and on the economic front, it is doubtful whether a country can combine economic dynamism with overall stability if it cannot run its own monetary policy. Given that we have got it, the least we can do is to make certain that economies within EMU have as much wriggle room as possible. To that extent, those areas of policy that affect countries’ economies, particularly labour markets, should be handed back to Member States.

The Hon. Bernard Jenkin, MP: It is said that monetary union provides the kind of discipline that governments need in order to persuade them to make the structural reforms that they have otherwise avoided by devaluation and inflation in the past. It is also said that countries in EMU, there is a new Scandinavian model of European capitalism with high welfare payments and high regulation, but extremely positive economic performance – the new archetype is Finland. Should countries such as France and Britain emulate that model?

Derek Scott: I am not sure that there is any one model. The Scandinavian model suits Scandinavia, but the recent performance of the Swedish economy is a reflection of decisions that were taken some years ago when it cut its budget significantly. On the discipline front, I do not really buy that. The importance of a monetary framework should be that if those who are managing an economy do the right thing, they reap the benefits, but if they get into difficulties, there should be a way out. Even if it wanted to undertake reforms, if a country gets into difficulties so that its public finances are in disarray it needs the appropriate monetary policy to reap the benefit.

When Britain was in the Exchange Rate Mechanism,
Chancellor Lamont could only take the measures that he wanted when interest rates could be set at an appropriate level for Britain. We have seen the difficulty with the current set-up in countries such as France, Germany and now Italy. The French used the discipline of the ERM to squeeze its economy, as did Germany recently, and Italy is now squeezing its economy because the only way in which countries can restore their competitiveness inside the monetary union is by deflating. If its monetary policy is inappropriate, a country can reach a stage at which it ends up like Argentina and has a choice of defaulting or firing public sector workers. That seems to me to be a bit of a non-choice for politicians. That is a real danger.

The Hon. Bernard Jenkin, MP: To clarify, your argument is that countries such as Ireland and Finland that have done well under monetary union are the accidents. They happen to have a population of Ireland.

Derek Scott: That is not my argument. Both those economies are interesting in that they are more dependent than other countries in the single currency on trade with countries outside the single currency. In recent years, the Irish economy has been helped enormously by the strength of the British and American economies. The take-off in Ireland started in 1992 with the collapse of the ERM, when it took measures to make its economy more dynamic. For a long period, its monetary policy was appropriate, but its prospects would have been better if it had been able to run its own monetary policy. Indeed, three or four years ago, the Irish Central Bank clearly thought that interest rates were too low. Even the European Community recognises that. Ireland has performed well, partly because it was catching up and partly because it took the right measures through the 1990s, but by the end of the 1990s monetary policy was inappropriate, even for Ireland. Therefore, I do not think that what happened there was an accident exactly, but it would have been as well off, and probably better off, had been able to run its own monetary policy.

An interesting example is France. Perhaps it is how the world always operates, but monetary policy has possibly been more appropriate for France than for any other country in the single currency since its formation. However, it, too, is now getting into difficulties. Monetary policy is inappropriate in several areas, such as Spain, Ireland and one or two other countries, in which there are serious property bubbles. The difficulty when they go pop is that, if the country does not have the right monetary policy, the downturn is much more severe. I am not predicting that that will happen in Ireland, but even with its success, if it had been able to run its monetary policy it would have a much more strongly-based recovery and better economic prospects than it has at the moment, although that is not how things are seen by the population of Ireland.

Martin Howe, QC: Mr Scott, your economic analysis is that monetary union is bad for Member States that are members of the monetary union. You predict the biggest political and economic crisis in the history of the European Union arising.

Derek Scott: That was a deliberately provocative conclusion.

Martin Howe, QC: What is the solution? If you advocate unscrambling the omelette of monetary union, that has considerable complications. For example, the conversion of debts that are denominated in euros into replacement currency would have to depend on the location of the debt or the location of the creditor. Presumably, the Italians would want their euro-dominated government bonds converted into new Italian currency rather than old euros. What would be the implications of an attempt to unscramble the omelette for Europe's financial systems?

Derek Scott: I am not sure that I am arguing that it should be unscrambled. No one is suggesting that things will be easy for a country that is forced out of the single currency. The problem is that it could reach a stage when the cost and pain of staying in are greater. You are right to say that if that happens, much would depend on how the country reacted to being 'forced out'. Paradoxically, the one country that could probably leave the single currency successfully would be Germany, as we can assume that the new deutschmark would ultimately be valued higher than the euro, and to that extent the debt problem would unwind. But that probably is not the most likely scenario.

I am arguing that before the crisis, which may or may not happen, it is important to do what we can – for economic and political reasons, and because there are more Member States – and do what the Laeken summit asked people to do, which is to consider the allocation of powers between the centre and Member States. If it were sufficiently radical, that would enable the Union to continue in a more viable way, which would improve the economic prospects of some countries. I still believe, however, that we are at a stage when some of the periphery countries are unlikely to remain in the single currency. To that extent, the most likely outlook, especially if we could achieve a real reallocation of the powers held in the Member States and those held in the centre, is that we might end up with a single currency that would have been viable for economic reasons and because of political commitment, that is the old deutschmark zone plus France. If there were a major crisis, matters could implode, but that will not happen early. The immediate threat is that one or two small countries will be forced out. The extraordinary thing at present is that the bond markets have not registered any danger of that happening.

Bill Cash, MP: Mr Scott, you spoke about wriggle room. You mentioned pretty obvious problems such as deregulation – you did not mention the Stability and Growth Pact, but I shall throw that into the pot – and you referred to the disaster of the Exchange Rate Mechanism. There is also the whole business of the Maastricht criteria, which has been revealed in full only once in the Red Book, immediately after Gordon Brown took over. It has not been referred to since. Basically, a legal framework applies to all the Member States, even those that are outside the eurozone, so there is a legal framework that is enforceable by the Court of Justice, although it has not applied the sanctions regarding the failure of the Stability and Growth Pact.

There is a conflict between the legal framework, which, given your analysis, is not working because there is low growth and high unemployment in large sections of the European Union, and the gross domestic product per capita that is running, for the average of the Member States, at about $22,000 – half that of
those in the European Free Trade Association and the EEA areas. We have something that is not working and alternatives that could work, but which are constrained – I refer to the entirety of the European Union – by a legal framework that is enforceable, theoretically, by the Court of Justice. Is that not a prescription for social tensions with low growth and high unemployment? Is it not extremely dangerous to continue with that? Would you recommend to the Prime Minister that he should think hard and clearly about the necessity to prevent such matters from imploding before circumstances overtake Europe as a whole?

Derek Scott: I am not sure that the Prime Minister would take too much advice from me at the moment.

Bill Cash, MP: He used to!

Derek Scott: In the circumstances of a major political economic crisis, the wrong decisions are often made. I am not sure that you think along similar lines, but I want people to consider the kind of economic and political framework that would enable individual Member States and Member States collectively to reap an advantage of co-operation in Europe – more than an EFTA, but less than an EU. The problem is that if we do not put in place an alternative mechanism, everything may implode to everyone’s disadvantage. That is politically and economically dangerous. On the economic front, part of the problem of trying to harmonise everything stems from a different view about what is meant by a single market. From my point of view, if you allow competition, then gradually, over time, different standards tend to level out. On the continent, however, there is a view that we should set a level playing field beforehand and that in practice will prevent markets from working. That is damaging economically. It is clear that many electorates throughout the European Union consider that their politicians are no longer responsible for anything that matters, and that they have lost touch. We are beginning to see the political institutions that define political nationalism being undermined, hence nationalism will start creeping out in other ways through ethnicity and not being members of the tribe. We are beginning to see signs of that major political danger in Holland and Belgium.

Bill Cash, MP: So you think that matters are moving towards an undemocratic, unaccountable arrangement?

Derek Scott: Not moving: we are there. The problem is that, whatever the rights and wrongs, the model that was formed in the 1950s is no longer applicable. In terms of what is happening domestically in Germany, and considering what Europe needs, we could do worse than pay attention to what Ludwig Erhard said in the 1950s. He had a much clearer idea of what was meant by the so-called social market economy, which was different from what is now regarded as the social market economy. Erhard made it clear that he was against big welfare states. He took the view that markets were social, not that they needed to be made social. A lot of people who are talking about the European social model within continental Europe have forgotten what lay behind it and have built up a political and economic framework that is the antithesis of what Erhard introduced.

Bill Cash, MP: You may have seen Jack Straw on Panorama last weekend arguing against the European social model. You will no doubt have read Gordon Brown’s pamphlet, which was issued by the Treasury about a month ago, in which he seems to take much the same line. Why are those noises-off coming from the Chancellor of the Exchequer and the Foreign Secretary, but apparently not being followed through in any of the initiatives taken by the Prime Minister?

Derek Scott: There is not much point in lecturing other people about how they run their economies. It can be counter-productive. The Constitution was interpreted in some quarters as an Anglo-Saxon Constitution. If it is regarded as such, we really do have a problem. It is clear from the French referendum and possibly others, that there is no economic model that will be accepted by every country. It is important to recognise that countries will do things differently, but there has to be a stage at which, at a minimum, certain markets are working efficiently. Beyond that, a myriad of other things that affect people’s lives in different countries can be left to how Member States want to operate them. That reinforces the point that the clear lesson of the two referendums is that more powers have to be handed back to Member States.

If France and Germany want to do things in certain ways, it is up to them. It is counter-productive for Gordon Brown or anyone else to lecture them, which is perhaps why we can drag up Mr Erhard. It probably suits people better to have an example of a German rather than an Anglo-Saxon lecturing them. Whether it be economics or politics, the crucial factor in making it work at all is for powers to be handed back. Theoretically, individual Member States collectively could benefit from co-operation in a range of areas. However, within those broad areas the details of policy that need to be common or co-ordinated is small.

Bill Cash, MP: Are you calling for an EEA of some kind?

Derek Scott: It sounds like the kiss of death, but I am saying that a serious effort should be made along the lines of the terms of reference of the Laeken summit that called for an examination of the sharing of competence. I know that the Labour and Conservative representatives on the Convention raised the matter and Giscard D’Estaing simply refused to discuss it. That was when the British Government should have vetoed the whole thing.

Martin Howe, QC: You put your finger on something by arguing for a different approach in different national economies, for example towards labour market regulation. Is there not a fundamental problem? The argument that national economies should be allowed a different approach to labour market regulation runs into flat conflict with the continental view of the linkage between a single market and labour market regulation. The argument is that if other Member States are allowed, within the Single Market, not to have generous social security benefits for their workers, allowed to hire and fire at will and to exceed working hours, our industries that comply with the norms of social benefits will be subject to ‘unfair competition’ if other economies within the single market are not subject to such constraints.

Derek Scott: There is a different view about what is meant by a single market. The point I was making was that the model that is being worked on was developed in a period immediately after the Second World War when a set of peculiar circumstances
allowed high levels of public expenditure to be combined with fast rates of economic growth. The world has moved on in different ways and that is no longer compatible.

I also emphasise that that argument for 'level playing field' sounds fine and dandy, but it reminds me of the arguments used by American unions when multinationals set up here in the 1950s and 1960s. It is a way of protecting the highest cost areas. There is a difference. If power can be given back to Member States and if a country decides that it will go that way, there will be penalties and markets will adjust.

Rt Hon. Lord Waddington: Thank you very much indeed. We have run out of time, but I am most grateful to you for coming. It has been a fascinating exchange.

Thank you very much for coming Professor Shackleton. We normally ask witnesses whether they would like to make a brief opening statement and then answer any questions. Is that satisfactory?

Professor Len Shackleton (Witness)†: That is fine.

It is interesting that the tail end of the discussion with the previous speaker touched on labour market regulation, which is what I want to focus on. It has the potential to price employers out of business and to discourage job creation. One of the problems is that, under our ratification of the Amsterdam Treaty, European directives have powerful force in determining domestic labour market legislation. Since 1998, there have been directives on part-time work, fixed-term work, parental leave, burden of proof and discrimination, and so on. It is clear that the proposed European Constitution would increase the range of EU intervention in domestic labour markets. Problems may well arise from that.

I want to say a word or two about how European competence impacts on the UK labour market. The first way is through the directives, where there is an instruction to a domestic Parliament to legislate. The second way is through legal judgments, which extend the scope of European law. The third way is through the process that the Chancellor of the Exchequer this week described as 'gold-plating', whereby domestic legislators and civil servants add to the requirement from Europe.

Another concept which I have coined is 'platinum plating', whereby once a legal requirement comes in, domestic trade unions try to push even more on to it. I understand that well from personal experience in the higher education sector, where the requirement to give more permanent tenure to hourly paid members of staff has led to much more generous contracts than were required by law.

What can we do about this? The nuclear option, which many around this table might be interested in, is to leave the European Union. That is not a route that I would want to go down. Where do we go otherwise? David Cameron recently suggested that we might be able to revoke the UK's acceptance of the Social Charter. It is unlikely that we could do that. Even if we did do so, it would not necessarily resolve the problem, because many of the things that crept into UK law from Europe have not been under social policy legislation, but under matters such as health and safety. That would presumably continue.

My feeling is that it is not so much Britain that is losing out, but the 20 million unemployed workers across the European Union who are over-regulated in labour market matters. We ought to stay in there fighting to move towards subsidiarity that gives greater possibilities for experimentation and keeps the regulatory impulses of the European Commission under some control. One semi-serious suggestion that I put forward at the end of my written submission was that we ought to have a regulatory budget in the European Union; just as the proportion of taxation that can be raised is fixed as one and a bit per cent of GDP, we could consider quantifying the costs of regulation on labour markets – or on whatever – and have a regulatory budget. We could say, "These costs can rise no further than X per cent of European GDP. If you want to increase in some areas, you have to reduce in others." We do that with more formal types of taxation. I would apply that to stealth taxation, which is what I believe regulation to be.

Rt Hon. Lord Waddington: Thank you very much.

Bill Cash, MP: I am interested in your suggestion that there might be different regulatory regimes in different countries. That would raise the question of unfair competition between different countries. It would also undermine the fundamental tenet of the rule of law on a one-size-fits-all policy that is governed by the European Court of Justice. I am attracted to greater diversity, but do you not accept that you would be driving a stake into the heart of the integrated rule of law for the whole of Europe? In effect, therefore, you would be seeking to change the nature of the European Union.

Professor Shackleton: There is a spectrum of change that we might want to consider. While keeping the fundamental European competence in that area, we might have a procedure whereby, under specified conditions, a country could choose to opt out of something under agreed terms. For example, a country that has a high level of youth unemployment might be able to make a case for derogation for a limited period and for a limited area, to allow other forms of regulation to be in place. That would be one way of doing it.

Martin Howe, QC: I want to follow up on that point. I was interested in your remarks about the significance of the so-called Social Charter – or agreement on social policy. Although it is a Treaty base on which several recent measures have been founded, the problem of labour market over-regulation from Europe predates it. The Working Time directive was based on a flagrant abuse by the Commission of the health and safety majority voting powers in the Treaty. That abuse was upheld by the European Court of Justice.

Any system that seeks to work within the existing European Union legal structure and prevent over-regulation will be undermined by the umpire – the Court – and the prime mover – the Commission – not playing by whatever rules are laid down. Where does your logic lead? You make a powerful case for a return to national control of many powers over the labour market in order to allow the exploitation of different models, but is it realistic to suppose that that can be negotiated within anything like the existing legal framework of the Treaty of Rome? Is it not more likely that the only way to achieve that would be to operate, at least, the nuclear option and say, "Unless you agree to revoke the Treaty provisions covering this area, we will..."
leave? Is there any other way in which that could be achieved?

Professor Shackleton: The European Union and its predecessor have always been a coalition of particular interests. The shape that the Union took owed a lot to the link between France and Germany. There are different possibilities of coalitions within the extended European Union. Britain can make a case, has allies and could push for significant reform. Somebody picked up on the point earlier that the Prime Minister’s current approach to that has been purely rhetorical. Whether there could be a more organised attempt to build a coalition for change is within the realms of politics. It is not simply something that will be determined once and for all by some legal order.

The Hon. Bernard Jenkin, MP: As defined in the Treaties, subsidiarity is a justiciable concept that leaves all the institutions of the European Union in charge of its interpretation and application. It is, in fact, used as a centralising concept as much as a decentralising one. Why should we place any faith in subsidiarity?

Professor Shackleton: If we start from the position that all of those things are unchangeable, we will be led up a blind alley of, “Either we are in or we are out.” We need to change the nature of European Union. It has changed over time and it can change in the future. I do not take the negative view that absolutely everything is determined and the only way to resolve the problem is to pull us out.

The Hon. Bernard Jenkin, MP: The question that advocates of change have to answer is – as you rightly point out, the changes you proposed are very much in our national interest – what happens if agreement cannot be reached? Where is the leverage that we can use to create change? If there is no leverage, we will not create change. What if they will not agree?

Professor Shackleton: Well, that is something for the British public to decide. It should not be something that governments determine in isolation. We have opportunities for referendums in the future if the position turns out to be non-negotiable. I do not believe that it is. The European Union is on a cusp when it needs to redefining the boundaries, the evidence so far has been that the failure to act is to give Britain, as a nation, further and deeper independence, national sovereignty.

The Hon. Bernard Jenkin, MP: So your advice to Mr Cameron who might be taking over the leadership of my party is that if he wants to revoke the Social Charter – a political term for damaging regulations – and cannot make progress with that, he would have to have recourse to a form of referendum and to seek a mandate from the British people to be able to demand what he wants.

Professor Shackleton: That is a choice for politicians.

The Hon. Bernard Jenkin, MP: You suggested it.

Professor Shackleton: My point about the Social Charter was not to say whether it should or should not be revoked, but that such action would resolve in itself the problem that people have identified. Martin Howe has taken that point further. Reference has been made to the approach of the European Union in respect of harmonisation and the level playing field – a peculiar analogy; I always think. I do not believe that there is an economic requirement for there to be regulation on the same basis throughout Europe.

The Hon. Bernard Jenkin, MP: I agree, as does, I think, Mr Cameron. What happens if progress cannot be made? It is not just a matter of despairing about it. Presumably, he must do something. You raised the issue of a mandate from the British people, but then you seemed to retreat from it. Is it because once you go down the unilateral route, you feel that you would become more Eurosceptic than you really want to be?

Professor Shackleton: No, it is not that. I want to stand back from my personal opinion of where matters should go, and to offer advice on what I think would be the consequences of certain proposals that have been made. What I personally feel is not particularly exciting.

Martin Howe, QC: In fairness to you, you refer not only in your paper to subsidiarity, but the more fundamental concept of a redefinition of the boundaries of European domestic legislative competence. In essence, you are arguing that as an abstract or academic matter, it would be preferable to redefine the boundaries to allow national control of labour market regulation. You are standing aside from the political question of how we achieve that change.

Professor Shackleton: You gentlemen are in politics, not me!

Bill Cash, MP: To go to what Bernard Jenkin said about redefining the boundaries, the evidence so far has been that the other Member States, generally speaking, and the European Union and the European Commission in relation to the acquis, are not interested in getting into serious deregulation. They talk about better regulation, but for practical purposes that has not added up to a row of beans. If the Prime Minister or a future Prime Minister is faced with the fact that continuance of the failure to act is to give Britain, as a nation, further and deeper problems and that such matters will also have a similar impact on Europe as a whole, is there not an absolute responsibility to seize the nettle and to say, “They are not prepared to talk, so we shall have to do something. We have the power to legislate as individual nations and we shall seize the nettle, legislate on our own terms and face them down”? Do you think that that is the logical conclusion to which people ought to be drawn? In other words, it is a matter of vital national interest.

Professor Shackleton: I really do not believe that the European Union is incapable of reform. There are divergent interests within the European Union, which we could organise better than we have done in the past. A country such as Poland, with 17 per cent of its work force unemployed, does not have the same perspective on labour market regulation as France or Germany. We should be working especially with the new Member States to build coalitions for serious reform of the European Union.

Mr Cash, I know your views on such matters. That option is always open to us, but it is a political option. I am talking about a range of options from which people might like to select rather than saying, “Yes, the only answer is withdrawal and the assertion of independent, national sovereignty.” I am concerned about the 20 million people throughout Europe who are unemployed. We
could be doing more for them by pushing a common approach to deregulation across Europe than we are doing.

**Rt Hon. Lord Waddington:** Thank you very much indeed for coming. We are grateful to you for giving us your time. We have had an interesting exchange.

We are most grateful to Ian Milne, Lord Pearson and Lord Stoddart for coming along. We invited the other witnesses to make a short statement, after which we ask questions. I am not sure how you wish to arrange matters as you are sitting as a panel. Perhaps Mr Milne could fire off, after which the others can join and make statements if they wish.

**Ian Milne (Witness)**: I have nothing to add to my opening statement. If people have read it, I am happy to take questions.

**Lord Pearson of Rannoch (Witness)**: If people have read our opening statements and if they are to be published, I see no point in repeating them now. However, we are in your hands.

**Bill Cash, MP:** I shall ask a question of all three guests. Do you think that there is no option but withdrawal from the European Union? Do you see any point in negotiation? What do you think the outcome of withdrawal would be for the United Kingdom? By withdrawal, I mean a radical change being made to our relationship with Europe that would take us back to the European Economic Area or EFTA or something along those lines such as associate status.

**Lord Pearson:** I think that I speak for all three of us when I say that we see no realistic alternative to withdrawal because of the requirement for unanimity in the Treaties before the acquis can be reduced. That is so unlikely as to be entirely unrealistic. We could say that we want to renegotiate the whole of our relationship with the European Union, and that we want to reduce it to one of free trade with the Single Market. Were that to be agreed in a treaty amendment, it would in effect amount to leaving the European Union. It would achieve the same aim. I suppose that we could go along with that proposal.

On the whole business of renegotiation, we are told that it could be possible that the others would agree. Mention has been made that slightly

**Lord Stoddart of Swindon (Witness):** I was one of those who was never in favour of joining the Common Market. I still believe that it is in Britain's best interests to leave it now. It is utterly impossible to negotiate our way out to what we originally thought we had joined, which was a common market, without leaving the whole institution altogether.

We must also understand that remaining in the European Union means that we accept further integration. It is going on every day. Only a couple of days ago, we heard proposals for a European evidence directive, which would mean that evidence of a crime committed in another EU country that was not a crime in this country could result in our police being ordered to search premises and confiscate documents and equipment at the behest of another country. That is where we are going. Unless people accept that the end destination is a European superpower, a country called Europe – as many describe it – they will end up being part of a European superstate.

People say that that is nonsense and that it will not happen. It is happening all the time. The new German Chancellor has already said that she intends to resuscitate the European Constitution. Only a couple of days ago, the French Foreign Minister said that what we want is a political Europe that can stand up to the United States. That is where we are going. If there were huge economic benefits to such a proposal, we might consider it a teeny bit. But, as I pointed out in my paper and no doubt others have done the same, there are no real economic benefits to be had from the European Union. It is costly in terms of trade. It is costly to the Chancellor of the Exchequer and it is costly to shoppers in this country. It also constrains our ability to have our own trading arrangements with other countries. Increasingly, because of the common foreign policy, it is affecting our diplomatic relationships and, indeed, our political relationships with other countries.

We now hear not about British foreign policy, but a European Union foreign policy. It has, in fact, been negotiating over the Palestinian-Israeli situation. The British Government have not, and they have the advantage of a long history in the Middle East. A European Foreign Minister has been putting forward a European common foreign policy. We have to make up minds about where we are going: whether we want to go into a unified Europe and they have the advantage of a long history in the Middle East. A European Foreign Minister has been putting forward a European common foreign policy. We have to make up minds about where we are going: whether we want to go into a unified superstate or whether we wish to retain our independence as a democratically controlled nation with our own interests being paramount and which we can carry out.

**Rt Hon. Lord Waddington:** Do you wish to come in on the first question, Mr Milne?

**Ian Milne:** I confirm what my colleagues have said. I do not think that the European Union is reformable in any sense, apart from in trivial, cosmetic aspects. The fundamental thing is that there is no general will on the continent – this applies well beyond France and Germany – to do anything, but proceed along the path that has been more or less set in concrete for the past 50 years. There are no economic benefits. There are beginning to be serious defence disbenefits, as we have seen in the decision a few days ago by the Americans not to release the codes to the British in case they were leaked to the French, who would then leak them to the Chinese. On defence, on the economy and on other matters – I have been looking at this, as most people in this room have been for many years – I cannot see any prospect of there ever being serious reform.

**Rt Hon. Lord Waddington:** We may feel strongly that the chances of reform and changes taking place that will meet the
needs of this country are negligible, but surely the politics of the matter demand that we first have to go with a programme of proposals for change and have them rejected before we can say, "This is no good for us. We have to leave." Surely you must have in your mind some changes that the public would recognise are sensible, reasonable and moderate? It is after such changes have been turned down by the others that we go to the next stage of saying, "Well, the game is up".

Lord Stoddart: All public opinion polls show that the public want to go back to where they started: having a free trade area. That is what they were told they were joining in 1975. The people I speak to, and all the opinion polls, say that that is what the British people want. If we want to negotiate on the basis that we want to go back to where they started: having a free trade area, there is something in it. If we want anything more than that, we shall not get it.

Lord Pearson: Renegotiation could be going along to the EU and saying, "We will be good enough to continue our trade with you on the existing basis. You are our largest client. You trade in a massive surplus with us. We trade in a massive and growing deficit with you. You have many more jobs dependent on your trade with us than we have jobs dependent on our trade with you." If renegotiation is establishing and continuing our relationships with the Single Market, we will be good enough to allow them that.

We should make it perfectly clear, however, that on the rest of it we are revoking the European Communities Act 1972, particularly Sections 2 and 3 and Schedule 2 thereto. That would set us free, from then on, of all future political control, the edicts of the Luxembourg Court and the rest of it. It would still leave us with the problem that our existing legislation contains an awful lot of stuff from Brussels that we would never have introduced on our own. No doubt we could revoke any of that when we wanted – I am advised by the Clerks that that is possible.

If renegotiation means our saying, "Yes, we want to go back to EFTA; we want to go back to a simple free trade arrangement and, for the rest of it, we want the United Kingdom to stand entirely independent as the world's fourth largest economy and a major military power", we are behind that. But the tanks have got to be on their lawn. As Mrs Thatcher showed, we must say, "If you don't give it to us, we'll take it anyway."

Rt Hon. Lord Waddington: Before I ask Mr Jenkin to put another question, do any of you want to say anything more on that?

Ian Milne: I wish to come back on your point that we would have to try to renegotiate first. I do not necessarily think that that is the case. What is wrong with a British Prime Minister saying to his colleagues in the European Union, "Look, we know that for the past 30 years that there have been awful strains and stresses between our country and your various countries and that that is getting worse. Public opinion in my country, Britain, is hostile to the whole concept of the European Union, as well as to many of its separate individual policies. We have decided that for the next 50 years we want to pursue a different route from the one that you are pursuing. We propose, perhaps with a two-year notice period, to leave the European Union"?

What is rude, offensive or disturbing about that? I will go further. The one thing that would shake the European Union from its current torpor is for a big country such as ours to say, "We have had enough. We are getting out." That would force a huge rethink on the continent, would perhaps begin to get their economies moving again and make the unemployment problem on the continent far less bad than it is at the moment.

I see no problem with going to our friends and saying, "It is not a matter of no longer co-operating with you in defence, economy or anything else. We just think that we want to go down this route. If you wish to go down another route, that is perfectly all right." What is wrong with that?

The Hon. Bernard Jenkin, MP: Forgive me for having had to slip out earlier. I hope that I did not miss anything relevant to the question that I am about to ask. I detect some differences among the three of you on the question of whether it is possible to negotiate. On the one hand, you are saying that in principle we have no option but to leave but, on the other, you are saying that if we revoke the European Communities Act, all sorts of possibilities will emerge and we still want to co-operate with our European allies and we still want to trade with them. That is rather a confused prospectus.

Lord Pearson: Only because we are falling over backwards to try to go along with your idea of this great renegotiation, to which we know the Conservative Party is unfortunately committed. We are saying that if you want to call renegotiation going to Europe and saying, "We are only continuing with free trade. We are taking the rest of it back by the revocation of the 1972 Act," we will go along with you. We do not call it renegotiation. There is no confusion between the three of us. We are simply saying that we should take things back. We should go to them with that line and they are likely to agree with us because it is in their interests to do so. However, our tanks must be on their lawn. We either have to take things back or say, "If you don't give us everything that returns us to a simple free trade agreement, we are taking it back." There is no confusion in that.

The Hon. Bernard Jenkin, MP: Such a view is terribly helpful for Mr Blair and Mr Mandelson, because they say the same thing as you, do they not? They say, "Any attempt to renegotiate means that you have to leave".

Lord Pearson: Well, they are right. God bless them.

Lord Stoddart: They are absolutely right.

Lord Pearson: We agree with them.

Lord Stoddart: Because the Europeans simply will not negotiate on our basis. They will negotiate only on the basis of their ambition for the European Union, which, as I have said, is to create a powerful political organisation that will be a superstate and a counter to the United States. A lot of them have been saying such things for a long time.

The Hon. Bernard Jenkin, MP: Forgive me for cutting you short. On the one hand, you say that we have no option, but to leave and, on the other, you say that that opens up all sorts of possibilities. I put it to you that there is a simple principle attached to the sovereignty of Parliament: if we have the power to leave, we have the power to amend. The unilateral power to amend opens up all those opportunities for renegotiation that
you would throw away by being in favour of leaving in principle.

Lord Stoddart: We have the power to amend—

The Hon. Bernard Jenkin, MP: You were saying that we have no power to amend.

Lord Stoddart: We have the power to amend our own legislation and we have the power to repeal the 1972 Act. We do not have the power to negotiate in Europe except on its terms and within the institutions that have been created. Only in 30 areas can we use the unanimity clause. In everything else and in every other negotiation, we would be faced with qualified majority provisions. We do not have the opportunity to negotiate as you say that we would have.

We are talking about decency: we decide that we will withdraw, but we will negotiate with them about the way in which we withdraw and, perhaps, about the time scale for withdrawal. That is what we mean by negotiation. It would be different, of course, if they were to say in the first place, "We have had enough of all this. We think that we ought to revert to a free trade area, then we could get agreement."

The Hon. Bernard Jenkin, MP: We have moved from a position of 'leave' to one of something called 'negotiated withdrawal'. What are you going to negotiate about?

Ian Milne indicated dissent—

Lord Pearson: I have said it before and I will say it again, we do not wish to intrude into the private grief of the Conservative Party, which is clearly hooked on the idea of renegotiation because it sounds less brutal than leaving. It thinks wrongly that the British people are frightened of leaving.

When William Hague was Leader of the Opposition, I think it was Patrick Nicholls who first said in the House of Commons that the Conservative Party was going to leave the Common Fisheries Policy. There was a bit of a misunderstanding about that, but the next day the Prime Minister said to the Leader of the Opposition, "Ho, ho, you want to leave the fisheries policy, which means leaving the EU altogether." Of course, in effect, it does. Mr Blair and the others are right that taking back all the things we want back – social and labour policy, economic policy, fishing policy, agriculture and so on – would mean leaving the European Union.

We welcome that. We are only paying lip service to your idea of renegotiation, because we know that you are stuck with it. We would not bother with it. We would not even go for a referendum. At the next general election, we would say in our manifesto that we will come out of Europe if you vote for us. I would not bother with a referendum.

Bill Cash, MP: I would love to know who the ‘we’ are.

Lord Stoddart: The three of us. We are your witnesses, Mr Cash.

Bill Cash, MP: The three musketeers.

Lord Pearson: And millions of the British people: almost certainly a majority.

Rt Hon. Lord Waddington: I will have to ask for order for the first time in our deliberations. I ask Mr Howe to put a question.

Martin Howe, QC: I would like to move away from politics and the word 'renegotiation' and the word 'withdrawal'. We could have a lot of fun and games with that, but let us move on to the substance of the three witnesses' evidence. All three have a clear position. As I understand it, there are three basic steps in the argument. One is that belonging to the European Union nowadays – whatever the situation might have been in the past – produces a net economic disbenefit to this country. In that, our witnesses seem to be in line with what seems to be the consensus view of the economists who have looked at this question in recent years.

The second step is that there are large political costs of belonging in terms of loss of self-government – the right for us to make our own laws and to conduct our international affairs in an independent way and in our own interests. The third point in the argument, and a key one – where there is a difference between our witnesses’ view and that of others – is that the European Union is essentially not reformable into the kind of body to which it would be in our interests to belong. So far, the argument is clear. Others might disagree with it, but the steps are clear.

We then come to the question of what the consequence is and the way forward. There is a range of solutions that our witnesses would characterise as withdrawal – others might wish to characterise them as renegotiation of the United Kingdom's relationship with the European Union. Let us leave aside the semantic question and move on to what kind of relationship would be best as a matter of substance, whether we choose to call it withdrawal or renegotiation. One end of the spectrum is having no special relationship with the European Union, but simply trading with it under general WTO rules. The other end might be a much closer relationship such as that modelled on the current European Economic Area agreement that Norway, Iceland and Liechtenstein have with the European Union. Someplace in between would be a more modest free trade agreement.

There are several implications for all those potential options. Personally, I consider that a European Economic Area-type relationship would be severely disadvantageous because it would oblige us in practice to continue to assume the regulatory burden of a single market. Therefore, a looser relationship would be better if we are choosing between those solutions. Mr Milne, do you have any particular views on that range of options?

Ian Milne: I agree that it might be politically easier to achieve the EEA solution than something more radical, but I would withdraw totally from the European Union and then pick and choose those areas in which I wished to co-operate with the rump European Union – if I may call it that. The Swiss model might be worth looking at. It simply involves negotiating sectoral bilateral treaties with the European Union on trade-in-good, research, freedom of movement of capital and goods, for example. That would give both negotiating parties – not only the United Kingdom, but the remaining European Union – a lot of flexibility.

It probably would mean that we could put something into place relatively quickly. Free trade agreements set up in other parts of the world usually take three, four or five years to put into place. A single market structure or a customs union structure can take decades to set up. We have seen in successive negotiation rounds in the World Trade Organisation and before that, in
the General Agreement on Tariffs and Trade, that it is not unusual for a round to take about 10 years.

In 10 years' time, continental Europe especially – hopefully, not us – will have gone further down hill. We have not talked about the demographics or the economic decline of the continent, but the situation is serious. We do not have the luxury of spending 10 years negotiating a satisfactory arrangement with the remainder of the EU. We need something that is operational within, say, two years. The Swiss method or model is one that could be explored.

A more radical suggestion and the best yet, and the one that I think is gradually coming up in people's mental agenda in this country, is to withdraw from the European Union on day one, but on day two we declare unilateral free trade with the whole of the world under the World Trade Organisation arrangements. That way, we will not need to plough through all the tedious bilateral or sectoral free trade agreements. We would have declared unilaterally that this country will not impose any tariffs or quotas on anything. In parallel, we would need to make arrangements over perhaps 10 years to subsidise the British agricultural industry – the farming sector. Other industries might need some domestic subsidy for a limited time, but once we had declared unilateral free trade – no quotas, no tariffs, nothing – we would have the world knocking at our door and we would not need to go through the negotiating hassle of putting in place free trade agreements.

**Rt Hon. Lord Waddington:** Do other members of the team wish to say anything in addition to what has already been said in answer to Mr Howe's question?

**Lord Stoddart:** Basically, I agree with Ian Milne. We must remember that we traded happily with Europe before we joined the Common Market in 1973 and that other countries, including the great countries of the world, such as the United States, trade quite happily with them at the present time without all the regulations and the ambitions to form a superstate. Indeed, we manage to trade with the countries outside the EU without any problem.

There is no reason why we should not trade, as we have always traded and, as Ian Milne said, why we should not drop tariffs and restrictions on trade ourselves. That would make us popular throughout the world, particularly in the Third World. At the same time, our great benefit is that we are members, if not the leader, of the Commonwealth, which represents nearly one third of the world's population. I am sure that many Commonwealth countries would accept and welcome an attempt by Britain to rejuvenate the Commonwealth itself.

The costs of belonging to the EU are increasing each year and will rise considerably in the future, particularly if we lose our rebate. Freed of the restrictions, the costs and the impositions of the Common Agricultural Policy, this country could thrive and prosper throughout the world. It could use its long experience of world affairs, without the constraints of the European Union, to help countries.

**Rt Hon. Lord Waddington:** Do you want to ask a question, Lord Pearson?

**Lord Pearson:** Only 10 per cent of the British economy is involved in trade with the Single Market. Another roughly 10 per cent trades with the rest of the world; 80 per cent of our economy lies in the domestic economy. At present, the EU has free trade agreements with 22 countries, including Mexico and Switzerland. It is negotiating free trade agreements with a further 69 countries. Given our trading relationship, there is no doubt that we could have free trade without the political construct of the European Union.

To answer Mr Howe's specific point, we certainly would not go into a European Economic Area-type relationship. That is always being thrown at us: that they have to obey all of the rules without taking part in their manufacture. We would not go for much in between, probably not even EFTA. Why would we need it? We would simply have free trade under the world trade agreement.

**The Hon. Bernard Jenkin, MP:** My colleague, Mr Howe, has started a more fruitful discussion that we have had before although, in light of a new relationship with our European partners, we are talking about something that is much more like a negotiation. Mr Milne wisely drew our attention to the complexities of negotiating a free trade agreement with the European Union if we were to leave it. However, even a two-year negotiation could be disruptive to certain sectors of our economy. For example, processed foods are subject to high import tariffs. Let us consider steel, cars, trucks and vans. We are one of the largest car manufacturers in the European Union. Are we to suffer the disadvantage of tariff barriers against our car exports to the European Union for two years until a trade deal is in place? Is it necessary to negotiate such matters while we are members of the European Union, whatever backstop we might have of unilateral action at the end of that negotiation?

**Ian Milne:** I think not. As you said, cars bear a tariff on imports from outside the EU of 10 per cent; for trucks, it is about 20 per cent. It is true that we have a big car manufacturing industry, but most of it is owned by the French, the Germans and the Americans.

**The Hon. Bernard Jenkin, MP:** The Japanese.

**Ian Milne:** Yes. The Japanese also have plants in France, Germany, Spain and elsewhere.

**The Hon. Bernard Jenkin, MP:** Exactly.

**Ian Milne:** Can you imagine a German Chancellor telephoning Volkswagen or BMW, or a French President getting on the phone to Peugeot and saying, "We have decided to penalise our British friends and we shall now impose a tariff of 10 per cent on all Peugeot cars exported from Britain back to France or the continent"? It just would not happen.

As Lord Pearson said, the balance of trade in the continent's favour is so massive and, by the way, it has quadrupled on trade-in-goods since 2000. It is swelling. It is now running at the rate of about £35 billion a year. All the cards are now in Britain's hands. Once we are outside, we can negotiate what we like. If we say, 'free trade', that is what we will get.

**Lord Pearson:** By revoking the 1972 Act, we will not tear up trade agreements. We revoke the 1972 Act and say, "We are prepared to leave things exactly as they are. No trade barriers will
change. No tariffs will be imposed until we settle down. We will leave things as they are.” At the moment, Norway, Iceland, Liechtenstein and Switzerland all export more per capita to the Single Market than the members of the EU. Being outside it is an advantage from every way we look at it.

**Lord Stoddart:** I agree with everything that has been said. All the cards are in our hands. It is not as though we are a small, weak nation. We are a country of 60 million people and we have the fourth largest economy in the world. We are huge importers of goods. If people put up barriers against our goods, they take the chance of having barriers put up by this country against their goods. That is not what this country has ever wanted. We are a free trade country, so any barriers to trade would be created by the people who do best out of exporting to this country. That is an unrealistic situation. It simply would not happen.

**Martin Howe, QC:** Your answers have been directed mainly to the trade in goods. Do you envisage special arrangements in respect of trade in services? Our financial services industry is perceived as being very important and it should continue to be able to offer its services into a single market.

**Lord Stoddart:** May I continue? I was speaking last. Our financial services industry is successful because it is good; it is not successful because we are in the EU or any other bloc. It is because the financial services of this country out rate virtually every other country perhaps barring the United States, although I am not at all sure about that, in the world. That is why we are successful. That is why even in the European Union, we have a surplus on invisibles, but a vast deficit in trade in goods.

I want to take us back to the time when this country was under pressure to join the euro. Does everyone remember what was said at that time? We were told by the proponents of joining the euro that if we did not do so, the City would suffer badly. As it happens, because we did not join the euro, the City has thrived like never before. We become tied up in slogans, such as ‘we will be sidelined’ or ‘we will come off the rails’. The fact is that this country has the ability to thrive in the world on its own merits and it does not need to be in the European Union; indeed, it is constrained by it. That is why people such as I wish to get out and wish that we had never joined the damned thing in the first place.

**Rt Hon. Lord Waddington:** Time is running out so please be brief, Mr Milne. I will then ask Mr Cash to put the last question.

**Ian Milne:** If I may just respond to Mr Howe on the financial services point. Because we are in the European Union, we are all obsessed with intra-European flows of trade, income, services and so on. As I say in my statement, continental Europe accounts for 6 per cent of the world population. Its share of the world markets in goods, services, income and so on is on a long-term decline. Historically, before we joined the European Union – and we have now – and if we leave the European Union, we will have the opportunity to sell our financial services to the European Union and to the 93 per cent of the world’s population that does not live in the European Union – which, on the whole, is a growing population and becoming more prosperous by the day.

Of course, there would be turbulence for a week or a month, or a year or two, after we withdrew from the European Union both for financial services and no doubt for the car industry. However, the market would quickly iron out the turbulence. Let us consider what might happen in the car industry. We might lose a Peugeot plant in Coventry; if there were one left. We might lose the Mini plant in Oxford, but I bet the Japanese, the Koreans or the Chinese would be there on the next day taking over those plants and building their own cars there. This is about a mindset. We must be outward looking, optimistic and have confidence in the cards in our hands to do the best for our country.

**Lord Stoddart:** In the inside, we have had turbulence for the past 33 years – not just two years.

**Bill Cash, MP:** Why do you think that the arguments for associate status or EFTA or whatever else – which, you know, I tried strongly to advocate over a period of time – are so strongly resisted? What do you think the United States’ position would be if we were to adopt the sorts of arguments that we have just heard? Why do you think UKIP has been unsuccessful?

**Lord Pearson:** On the first question, we do not go for the European Economic Area solution because of the responsibility to obey more legislation from Brussels than we would want. EFTA is probably the nearest position in the past that we might return to, but we do not see the need for any of those things. Why cannot we stand entirely alone, as nearly every country in the world does – apart from the people who are bound up in this absurd project in Europe – and trade freely with the rest of the world?

You will be aware, Mr Cash, that the International Trade Commission in Washington in August 2000 produced a report which examined what the situation would be with the United Kingdom in the North American Free Trade Agreement. It concluded that it would be beneficial for the US economy and for our economy. We could consider that.

We would not become the 51st state of the United States of America. We would not have to join EFTA. We would not do anything. We would just leave it exactly as it is and we go on trading exactly as we did the day before we revoked the 1972 Act. If we and the others want to, we would then settle down and negotiate at arms’ length any changes that we wanted to make for the future. Such changes would all, with the continent of Europe, be to our advantage because we are their major client. We have the whip hand.

**Bill Cash, MP:** What about UKIP?

**Lord Pearson:** What was your question about UKIP?

**Bill Cash MP:** Why do you think that it has been unsuccessful?

**Lord Pearson:** You say that it has been unsuccessful. In the last European elections, it was not all that unsuccessful. Then there was the Kilroy-Silk saga, the withdrawal by Mr Paul Sykes of his financial support, under blandishments from the Conservative Party, and UKIP went into the last General Election in a tremendous muddle. Incidentally, none of us are members of UKIP. Mr Milne and I are Independent Conservatives and Lord Stoddart is Independent Labour.

You say that UKIP has not been successful, but it cost the Conservative Party 26 seats on the votes which were cast in the
previous general election. Those who study these matters opine that some 600,000 votes were not cast, because the people who did not cast them could not be bothered to vote for the Conservative Party because it was not going to come out of Europe and could not be bothered to vote for UKIP because it was a waste of a vote, being a single issue party – a pressure group type of thing. I would not call that unsuccessful. It is a warning bell to which the Conservative Party should listen, together with the votes in France, Holland and elsewhere. The Conservative Party should wake up and give itself a policy which renders UKIP redundant before the next general election.

Rt Hon. Lord Waddington: We must draw matters to a close. Would Lord Stoddart or Milne like to say anything on that particular point?

Ian Milne: Lord Pearson has summed up what I feel about UKIP. As Gerry Adams said in another context, it has not gone away. It can only grow in influence and in a seat-gaining capacity for so long as either of the two main parties does not become more robust on Europe.

Lord Stoddart: All I would say about UKIP is that it was created by the Conservative Party. If the Conservative Party had had the country's interests as a priority, rather than dealing with problems in the Conservative Party, it would have taken a more robust line on Europe and UKIP would never have been formed. It simply would not have been necessary. If the Conservative Party really went to town and said, "If we cannot get the renegotiation we want, we are prepared to leave", it would find a great resuscitation of interest in the party and probably much more support as well.

Rt Hon. Lord Waddington: I think that that is a convenient moment to conclude our session. I thank all three of you for coming along and helping us with this inquiry. We are very grateful.

The Plenary Session finished at 12:53 p.m.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2 Owen Paterson has been Member of Parliament for North Shropshire since May 1997. Mr Paterson is currently Shadow Minister for Environment, Food and Rural Affairs. Prior to this, he was Shadow Minister for Environment and Transport from 2003 to 2005. Mr Paterson has also sat on a number of Commons Select Committees, including the European Scrutiny Committee from 1999 to 2000. Before entering politics, Mr Paterson was in the tanning industry and was President of COTANCE, the European Tanners’ Confederation, from 1996 to 1998.

3 Derek Scott is Chief Economic Advisor at KPMG. He was Economic Advisor to Tony Blair from 1997 to 2003, and was special advisor to Denis Healey and James Callaghan during the 1970s. Mr Scott was Director of European Economies at Barclays de Zoete Wedd from 1986 to 1997, International Policy Advisor at Shell International in 1984 and Chief Economist at Shell UK from 1981 to 1984. He is Deputy Chairman of Open Europe and a member of the Advisory Board of Reform. In 2004, Mr Scott wrote Off Whitehall, which examines EU politics and economics.

4 Professor Shackleton has been Dean of Westminster Business School since 1997. Prior to this, he was a lecturer at Queen Mary and Westfield College and an Economic Advisor at the Department of Social Security. He has written widely on a range of issues including the history of economic thought, industrial economics, social security and retailing, and has published reports for a number of policy think tanks, including his most recent study for the Institute for Economic Affairs on European employment regulation.

5 Ian Milne has been the Director of Global Britain since 1999. In 1995 he co-founded and was editor of eurofacts and in 1993 he was the founder-editor of The European Journal. Mr Milne is the author of numerous pamphlets, articles and book reviews which look at the relationship between the UK and the European Union; his most recent publications are A Cost Too Far? and Backing the Wrong Horse. He is chairman of companies involved in publishing and book distribution and also has a forty-year career in industry and merchant banking in the UK, France and Belgium.

6 Lord Pearson of Rannoch is Founder and Chairman of the PWS group of international insurance brokers. From 1984-90 he worked with and helped to finance various dissident groups to promote freedom in the Soviet Union. Created a Conservative life peer in 1990, he sat on the Lords’ European Select Committee from 1992-96 and in 1997 he co-founded Global Britain. In 2004 he lost the Conservative Whip for suggesting that voters should lend their support to UKIP in the European elections that year. Lord Pearson now sits as an Independent Conservative.

7 Lord Stoddart of Swindon is an Independent Labour Peer and Chairman of the Campaign for an Independent Britain. He was Labour Member of Parliament for Swindon from 1970 to 1983, during which time he was PPS to the Minister for Housing and Construction from 1974 to 1975; Assistant Government Whip from 1975 to 1977; and Lord Commissioner of the Treasury from 1976 to 1977. Lord Stoddart is a co-founder of Global Britain and chaired the Anti-Maastricht Alliance from 1991 to 2004.
Environment

Pursuit of environmental protection or improvement has become a grand-scale exercise in socialism, where the State is the ultimate arbiter of the common good and exercises draconian powers in imposing its vision of what the environment should be. While in general terms it is self-evidently true that ‘protecting’ and ‘improving’ the environment is a ‘good thing’ – this can only be regarded as a generality. The term environment begs several questions, not least of which is, “what do you understand by the environment?”

The ‘environment’, as we know it, is what surrounds us. It is varied and encompasses everything from houses, gardens, roads, and factory sites to farmland and virgin wilderness – together with air and water. By far the bulk of that environment is private property. It is maintained by its owners, often at considerable cost, and its impact – especially any adverse impact - on the wider environment is often determined by the ability of the owner to bear the economic costs of maintaining particular standards.

Regulating the environment, therefore, is effectively a matter of deciding what is to be protected and improved, to what standard and at what cost? What is the mix to be and what are the priorities? This destroys the argument for a ‘common vision’. In each nation, state, region, district, town and village, we have different problems, different priorities, different needs, different standards, different expectations, and – crucially – different priorities for the expenditure of limited resources. Reconciling the problems, the spending priorities and the standards is a matter for individuals and communities and only then local and central governments.

Crucially, the standards maintained are invariably related to economic prosperity in that only where there is significant disposable income, above subsistence level, is wealth expended on environmental standards and then because people with higher incomes have higher expectations of the environment.

Thus, far from being an issue that demands excessive State intervention, pressure for environmental improvement depends on the wealth of individuals and communities. The role of the State, therefore, is best devoted to minimising barriers to prosperity – which arise most often from its own activities – and fostering a good level of economic management that will enable the economy to prosper.

However, under the European Treaties, this has largely ceased to be an option in that environmental policy has become an exclusive Community competence to the extent that Nation States within the European Union no longer have independent environmental policies.

The question is whether a supra-national government should dictate those priorities. Should the EU be able to decide to elevate, say, a requirement for ultra-purity in drinking water over and above the need to repair leaky water pipes and the renewal of ageing sewers?

Against this, there is the mantra that “countries must work together”, as “pollution knows no frontiers”. This in some specific respects is true but the lie creeps in with the inference that the only way countries can work together is through the supranational construct of the EU. Yet, one of the most immediate trans-national pollution controversies affecting the EU was acid rain and the supposed effect of British power station emissions on Norwegian forests. Crucially, Norway was not a member of the EU yet mechanisms for dealing with the problem still existed.

Intergovernmental agreements were concluded under the auspices of the United Nations Economic Commission for Europe (UNECE), starting with the 1979 Geneva Convention on Long-range Transboundary Air Pollution, which Britain ratified in 1982. This convention, which was legally binding, was further extended by no less than eight additional protocols.

In order for countries to work together, therefore, not only is the EU not essential but, inasmuch as “pollution knows no frontiers”, pollution has no more respect for the borders of the EU than any other artificial political construct. The borders of EU Member States are too restrictive. Dealing with the wider problem needs larger and different groupings of countries than merely EU members. International progress on the environment can be maintained through trans-boundary agreements and we believe that this is the way forward.

As to more general issues, although the EU claims to be playing a ‘dynamic role’ in protecting and improving the environment, long before the EU was in being, individual nation states had their own environmental programmes. In the case of the UK, we had strong legislation and programmes stemming from the Public Health Act of 1875, before some member states of the EU were even nations. In that respect, the EU is simply ‘hijacking’ Member State activities and taking the credit for them. We should revert to tried and tested legal mechanisms, such as the statutory nuisance legislation as the core of our regulatory system. This would return power to individuals, who would no longer have to rely on unaccountable Quangos, whose numbers could then be reduced.

On the issue of recycling, we believe the regulatory route chosen by the EU has failed. For instance, one of the earlier examples of environmental action is the ‘batteries directive’ 91/157/EEC, aimed at promoting the recovery and recycling of lead-acid batteries used in motorcars. Prior to that directive, in the UK we had an excellent system which accounted for 95 per cent of all batteries disposed of, comprising a profitable business for a number of scrap merchants. The EU scheme, however, imposed a costly, rigid bureaucracy that destroyed the profitability of the collection system, as a result of which costs to end users increased and the percentage of batteries recovered fell to less than 60 per cent.

Then we have the famous ‘fridge mountain’ created by EU regulation 2000/2037 which turned old fridges into ‘hazardous waste’, prohibiting their recycling and turning a perfectly
adequate – self-funding – collection and disposal into absolute chaos, ending up with thousands of fridges in huge dumps, costing the taxpayer hundreds of thousands of pounds to dispose of them. This is on the back of the infamous ‘landfill directive’, which is causing no end of problems, not least a rash of fly-tipping, massively increased costs and a network of expensive incinerators which few want, at a cost to the UK estimated at £6.9 billion.

So incoherent is the EU waste policy that even the experts have trouble making sense of it, with great confusion between what is waste disposal and what is recycling. This has led to the absurd situation where it has become virtually impossible to recycle waste oil and where Scottish Power are no longer allowed to use processed sewage to make electricity.

Soon we will have to deal with the End of Life Vehicle Directive, the introductory phase of which is already causing our streets to be littered with car wrecks, while the Waste Electronic and Electrical Equipment Directive will do for personal computers, vacuum cleaners and washing machines exactly what the EU did for fridges.

Currently, EU environmental legislation, at a very rough estimate, looks like costing the British economy something like £40-50 billion over the next ten years or so, all to create more problems than are solved.

We would therefore abolish much of this regulation and allow market mechanisms to predominate, especially in terms of promoting recycling. Where necessary, we would consider tax exemptions to kick-start new recycling industries, so that the process is demand rather than producer-led, at the same time reducing the overweaning bureaucracy and petty regulation that erodes the profitability of such enterprises.

Then there is the ‘REACH’ directive on chemical testing which will create so many obstacles to the production and use of a wide range of chemicals that it will drive businesses abroad, where there are fewer controls of pollution than there are now. The net effect may well be to increase rather than reduce global pollution. Therefore, we will rely on common law provisions of ‘duty of care’ allowing manufacturers to make their own judgements as to what is required to market products safely but at the same time affording recompense to those who are adversely affected.

According to the environmentalist Bjorn Lomborg, the Kyoto Agreement, if fully implemented, could cost between $150 and $300 billion a year without having any long-term effect on global warming, massively retarding developed economies and limiting their ability to assist developing countries. Even if the emission targets are met – and there is no chance that they will be – the best case scenario is that predicted warming is delayed by six years.

Nevertheless, this has not stopped the EU spawning the ultimate bureaucratic dream, the Emissions Trading Scheme which adds a further £25 billion a year to the costs of the productive economy. This is the EU’s idea of a ‘greener future’. For any normal person it is a vision of chaos and disaster.

We believe that a rational approach to the reduction of emissions to atmosphere – which is a public good in its own right – should be by means of market-driven enhanced technology. The Toyota Prius was developed for the market with private funds and is selling well. Assessing the two major areas, transport and electricity production, in the former, low-emission engines, pollution limiters such as catalytic converters and hybrid motors have considerable potential to improve air quality standards.

For electricity generation, advances in nuclear technology have made nuclear power a safer and more reliable option. Such means as ‘pebble bed’ generators have the potential to meet all known requirements and they can also be used to produce hydrogen via high temperature, high pressure hydrolysis, allowing the full exploitation of fuel cell technology. We believe that these technologies should be adopted, rather than seeking to cover the land with expensive, wasteful, intrusive and unreliable wind farms.

On a smaller scale, we believe the potential for agricultural production of biofuels should be exploited by rebalancing support for renewables. Set-aside land and the area devoted to the inefficient production of sugar beet in Europe used for crops such as miscanthus could produce the energy equivalent of 100 million barrels of oil. Even at a modest $60 a barrel, this would equate to a saving of $6 billion on imported energy. Britain could make a substantial contribution to this.

In conclusion, one mantra of environmentalists is that we should “think globally and act locally”. With this we agree. The UK should develop its own solutions, to benefit the nation and as a good citizen of the world, benefit the community of nations as well.

**An Agriculture and Fisheries Policy for the UK**

One of the first ambitions of Commissioner Sicco Mansholt, the creator of the Common Agricultural Policy, was to reform the very policy he had delivered. In fact, so far was it from his free-market ideal that, at one point, he considered committing suicide. Since then, virtually every European politician of substance has called for its reform and, despite multiple attempts to improve it, it remains wholly unsatisfactory.

The current reforms arising from the ‘mid-term review’ have gone a long way but they still fail to address the underlying and inherent failures in the policy and it is time to call it a day. Agricultural policy, in its entirety, should be returned to the UK.

The central tenet of our new ‘repatriated’ policy is that keeping farming healthy is important to the nation. We also believe that the first and primary task of farming is to grow food. Freed from the central direction of the EU, however, we would expect farmers to reduce their dependency on commodities and look to producing more high-quality finished food for the market.

To assist in this process, we would make the market more ‘transparent’ by ensuring that there was clear and unambiguous ‘point of origin’ food labelling. We would also reduce or simplify much of the burdensome regulation, which stifles enterprise. By this means, we would encourage farmers to focus on ‘added value’ such as meat processing and cheese-making. This would lead to a restoration of the support infrastructure and processing industries, and a network of small slaughterhouses.

The abolition of food production subsidies will encourage the move towards finished food production by eliminating market distortions. We accept that there is no case for subsidising food production; nevertheless, there are valid reasons for continuing taxpayer support to farming and rural enterprises.

The essential reason for this is that it makes economic sense to do so, as farming in the UK produces much more than food.
There are other 'products' which farming produces or could produce: scenery and facilities for countryside activities; a sound environment; energy crops and electricity.

As to the scenery, although the farm-gate value of food produced is in the order of £12 billion annually, the value of rural tourism and countryside activities, which is reliant on the scenery that farmers produce, is in the order of £13 billion. In other words, the amenity produced by farmers as a by-product of producing food is worth more than the food produced.

Yet, while farmers are paid by consumers for producing food, there is no mechanism for rewarding them specifically for maintaining or improving the scenery. Thus, we will have a simple system of 'amenity payments'. These would be based on contributions made to the beauty of the countryside.

As for the environment – the second 'product' – we recognise that much of the flora and fauna, which we value has relied on the action of farmers. While we expect farmers to maintain their land in a responsible way, there are good precedents for additional 'environmental payments' where they suffer losses or incur direct costs in providing 'added value' to the environment.

The current reality of environmental schemes is that farmers face a nightmare of complex regulation, especially under the new regime of 'cross compliance'; the essence of our policy would be to minimise the bureaucracy and maximise the value.

Energy crops provide the third exciting product. Technology improvements now enable farming to make significant contributions to the UK energy demand. Yet, while some environmentalists are critical of farming support, they are happy to see huge subsidies given to wind farms (one 2.2 MW turbine attracts nearly £500,000 in subsidy, annually). Re-balancing support to encourage farmers to grow energy-producing crops could yield higher net gains without the visual and other damage caused by wind farms, at less overall cost.

One key crop is biomass such as the environmentally friendly miscanthus. However, biomass need not be just another commodity crop. With the construction of small generators on-farm, this gives farmers the opportunity to produce electricity as a brand new finished product on their own land – the fourth of our 'non-food' products.

Devoting land to energy production would have an important side effect. Currently there is a world surplus of food but in the year before last the world consumed more grain that it produced. As demand from China increases, there is a real danger of a period of global food deficit. Land planted for energy, while not necessarily strictly economic as an energy producer, could be quickly returned to food production should the need arise, effectively giving the nation a strategic food reserve. Given global uncertainties, energy crop subsidies are, we believe, a price worth paying to keep land in production when there is no demand for the food that could otherwise be produced.

If farmland is allowed to decay or be covered by concrete, we could be storing up serious trouble. We should never rely entirely on the rest of the world continuing to supply us with cheap, plentiful and healthy food.

We would take seriously the needs of the wider rural economy, the benefits of farm diversification and the reintegration of farming with local economies. In addition to emphasising local food production and marketing, we will permit sensitive relaxation of the planning regime for on-farm diversification, to encompass such activities as non-intrusive light manufacturing, warehousing, office parks, activity centres and transport businesses.

When drawing up our national policies, we will also take into account the issues of rural infrastructure and the problems of delivering public services in thinly populated areas.

Given the devastating impact of animal and foodborne diseases on the health and prosperity of agriculture, we will upgrade disease surveillance and port security. We will also improve the management and elimination of disease in animals, in close co-operation with industry bodies. We will consider proposals for delegating control functions, either to industry or delegated authorities, under the supervision of central government.

We will not be cowed by urban activists when determining priorities for disease control. We also recognise the economic, employment and environmental benefits of country sports. We will stop further encroachment on these pursuits and repeal the hunting ban.

**Witness Brief: Derek Scott**

In the past few years the performance of the economies within Economic and Monetary Union (EMU) has varied, but it is important to recognise that the poor performance of the “core” economies is not new: France had three years of strong growth between 1998 and 2000, but that followed a decade in which growth was below 2 per cent every year and even this short and belated spurt of growth came to an abrupt end in 2001 with only anaemic recovery since. Germany has enormous strengths and huge potential, but with the exception of a few years around unification, the rate of GDP growth has averaged less than 2 per cent a year for over thirty years. Italy has been close to recession and although the record of the peripheral economies is mixed, the benefits of “catch-up” have waned and several are in serious trouble, and others may be soon.

Another point to note is the growing divergence between economies. Recently, the European Central Bank (ECB) expressed surprise and concern about this. It should be concerned, but not surprised: economic divergence is inherent in EMU.

Today, the only convergence in euroland is towards slower growth and bigger budget deficits. Everyone agrees that budget deficits need to be addressed and public finances put in order, and most people at least pay lip service to the need for “economic reform”.

However, if budget deficits are to be reduced and debt put on the right track, taxes have to rise and/or expenditure cut.
However, this becomes self-defeating if there is no economic growth or at least the prospects of growth, and this is only possible if monetary policy – the combination of interest rates and exchange rate – is appropriate for the economy of the country taking the measures to put its public finances in order. In EMU this can’t happen, or at least only by accident and it can easily become impossible for individual countries to escape continued deterioration of their public finances.

Likewise economic reform is impeded within EMU, not only by the lack of political will to implement reforms, but by the economics of the single currency. In essence economic reform is concerned with structural changes to improve the functioning of labour, product and capital markets. It can take many forms and its implementation is bound to reflect the differing cultural and political traditions in Europe. It does not have to mirror all aspects of what is called Anglo-Saxon capitalism, in either its American or British guise. But whatever form it takes and whatever else it does, economic reform must result in a rise in rates of return on investment, without that it has no economic meaning at all, and the more radical the reform the bigger the impact. Inside EMU, countries genuinely undertaking reform risk boom bust. Appropriate monetary policy is the only way of combining a dynamic economy with overall economic stability.

Bad economics make for bad politics and the EU is probably heading for the biggest economic and political crisis in its history.

**Witness Brief: Professor Len Shackleton**

**European Labour Market Regulation and Treaty Reform**

Labour market regulation – in areas such as employment protection, union recognition, the scope of collective bargaining, working hours, anti-discrimination legislation, mandated benefits such as holidays and parental leave, minimum wages and so forth – has considerable potential to price employers out of business and to discourage new job creation.

Many analysts would argue that high unemployment and slow growth in many continental European countries are in large part the consequence of excessive labour market regulation. Such regulation, if confined to national economies, would be an issue for the countries concerned alone. However, the European Union now has the power to impose a great deal of employment regulation across Member States.

How did this happen? The Single Market initiative of the 1980s was intended to increase competition in the European Union. This was presented by some as a concession to business, and (using the common continental rhetoric of ‘social partnership’) it was argued that there should be offsetting gains to employees through the creation of a ‘Social Charter’, published in 1989.

This became an ‘Agreement on Social Policy’ from which Britain stood aloof. It then morphed into a proposed ‘Chapter’ of the Maastricht Treaty. This was not accepted, so it was tackled on to that Treaty as a ‘Protocol’ from which John Major’s government opted out. In 1997 the Agreement on Social Policy was incorporated into the main body of the Treaty of Amsterdam, to which the new Labour Government signed up. The earlier opt-out was thus abandoned and the UK thus became subject to majority voting on a range of employment-related issues.

Since the Amsterdam Treaty’s ratification in 1998, several European Directives have led to employment legislation being enacted in the UK; in some estimates 40-50% of recent labour market legislation originated in Brussels. Relevant Directives include those on part-time work, fixed-term work, parental leave, burden of proof in discrimination cases, information and consultation, and European works councils.

The proposed European Constitution would be likely to increase the range of EU intervention in domestic labour markets. The Charter of Fundamental Rights, for example, might be used to justify extension of the right to strike (which is more circumscribed in the UK than in many continental countries). Although ministers have scoffed at this, the problem is that intervention may not come through Commission Directives, but rather through legal judgments: this is another way in which, in the past, European involvement in UK domestic matters has increased. A not unrelated matter, to which Gordon Brown has this week drawn attention, is the ‘gold-plating’ of European Directives by domestic civil servants and legislators. Relatively modest Directive requirements may turn out to be more irksome when domestic elaboration occurs as a result of trade union or special interest lobbying activity or bureaucratic aggrandisement.

Mr Brown’s belated acknowledgement of the damage potential of European regulation, together with his long-term reluctance to commit to European Monetary Union, may perhaps be a sign that a Brown administration could be more Eurosceptic than those of Tony Blair. However it is fair to point out that the government has already shown some resistance to Brussels, for instance in maintaining the UK’s limited exemption from the 48 hours limit under the Working Time Directive, and its opposition to the draft Agency Workers Directive.

David Cameron has recently said that a Conservative Party under his leadership would revoke the UK’s acceptance of the Social Charter. This is likely to be very difficult to do, but even if possible might not remedy the problem. Even before the UK abandoned its opt-out, the Commission had been able to push forward with some labour market regulation under other banners. For example the Working Time Directive was originally launched as a health and safety directive, while earlier employment protection had been extended and the requirement for a written contract had been created under existing European powers. Without a more fundamental change of thinking within the EU things are unlikely to change. And, as this change is needed for the sake of the twenty million unemployed across the EU, it would be wrong just to concentrate on Britain’s position rather than seek wider change.

The instinct of many in continental Europe is to seek harmonisation of social policy almost as an end in itself. But rather than trying to push all countries into a common straitjacket, EU decision-makers need to reflect on the failure of the Lisbon
agenda, that hubristic target of becoming "the most dynamic and competitive knowledge-based economy in the world" by 2010.

Fundamental rethinking would require a more radical approach to 'subsidiarity', and a redefinition of the boundaries of European and domestic legislative competence. It would accept that there is no real 'public good' case for common employment regulation across the EU, and that there are benefits from regulatory competition. Countries with poor employment records should be allowed to experiment with more permissive regimes. If devolution of political power to the European regions also permitted some relaxation of employment laws, we could imagine interesting experiments. Some regions might relax rules for small and emerging enterprises, perhaps with a gradual phasing in of regulations as a company matured, as recently argued in a report from Accenture and the Lisbon Council. Others might experiment with different rules on working hours. Bolder ideas, such as 'free employment zones', modelled on tax-free ports, might permit controlled areas to dispense with large swathes of regulation. Or individuals might be allowed to 'sell off' mandatory benefit entitlements to employers; for example, allowing them to commute employment protection rights for an upfront lump-sum payment.

The point is that blanket regulation denies us knowledge of what works and what does not work. And European regulation is at present a one-way process. The concept of the *acquis* suggests that the laws of regulation arithmetic only permit addition and never subtraction.

Continental Europe, accounting for 6 per cent of world population, is in long-term structural decline, partly because of economic and social rigidities hard-wired into its system of governance, partly because of its demographics. Its global influence has peaked. Eastward enlargement, far from solving the EU’s problems, will exacerbate them. No other region on the planet has copied the EU model. Its destiny, as a would-be Continental EU. The balance of the costs and benefits of UK membership of the EU is comprehensively negative.

The claim that the EU has "kept the peace in Europe" is equally worthless. In the absence of the EU, no European country – especially not Germany, still militarily occupied – would ever have waged war on another.

The 93 per cent of the world’s population that lives outside the EU manages its affairs on the basis of sovereign nations cooperating inter-governmentally. The benefits, such as they are, that EU member states get through participation in the EU structure, could instead equally well be got through bilateral and multilateral inter-governmentalism.

Even if the present EU were capable of reform – which is extremely doubtful – it is not worth saving. The UK should withdraw completely from the EU and rejoin the 93 per cent of the planet where tomorrow’s world is being shaped.

**Witness Brief: Ian Milne**

My own view is that a large part of contemporary employment regulation is unnecessary, and often costly and harmful. But I may well be wrong in many cases. The point is that by failing to permit experimentation, and having no real mechanism for deregulation, the EU is gradually reducing our knowledge of what works in policy terms. One great virtue of the US labour market, by contrast, is that there is very little federal intervention, with most labour regulation and employment policy determined at the state or even local level. So it is possible to see what does and does not work. Defenders of EU-wide rules argue that regulatory competition leads to a race to the bottom, with each country settling at the lowest possible level of regulation. This, however, is unlikely: it hasn’t happened with the analogous case of taxation. Barriers of distance and language, and social and cultural ties, limit the degree to which employees can be perfect substitutes.

Finally, having touched on one analogy with taxation, let me suggest another. Labour market regulation has been described as a ‘stealth tax’ and this is a fair point. To take some examples, employment protection, parental leave and other mandated benefits, impose costs on employers (most of which are passed on to employees in the form of lower pay and reduced employment opportunities). These costs can in principle be quantified. They ought to be, and, just as EU direct spending is limited to a given proportion of GDP, so we ought to require the indirect costs of regulation to be controlled within a given percentage. Even just to do the sums would be an instructive exercise in itself.
Witness Brief: Lord Pearson of Rannoch

European integration was an honourable idea when it was conceived, but it has gone wrong, and should be abandoned. For a detailed history of this process see Christopher Booker’s The Great Deception (Continuum Books).

The basic idea was that nation states were responsible for the carnage of two world wars. They must therefore be emasculated, and diluted into a new supra-national government run by a Commission of wise technocrats. Hence the unelected Commission’s monopoly to propose legislation. Hence also the EU’s unfounded claim that it has brought peace to Europe since 1945, for which NATO was entirely responsible, and that it is essential to maintain it in future, which is also clearly untrue. If anything the EU is a model for discord, not peace, since it is a top-down amalgamation of different peoples, put together without their informed consent (e.g. Yugoslavia, the Transcaucasus, Kashmir and much of Africa). Democracy is the guarantor of peace, not the emerging undemocratic and corrupt EU megastate.

The other main justification for the EU project is that it brings prosperity, that it is good for trade. Yet EU membership costs the UK a minimum of 4 per cent of GDP, and probably very much more. We would be much richer if we left the political construct of the EU and continued to trade freely with the Single Market. As the EU’s largest client, we could certainly do this, and collaborate with our European friends on other matters. The claim that 3 million jobs might be lost if we followed this path is absurd; leaving would create jobs.

The fundamental principle of our democracy is that the British people should elect and dismiss those who make their laws. Yet Germany estimates that 80 per cent of its laws since 1998 have been made in Brussels, and it is safe to assume that a majority of our law now originates there. The House of Commons is powerless to stop any of this, and so has become largely redundant.

There is much talk of reforming the EU, but any reform would require Treaty change and unanimous agreement among the Member States, which is not realistic. The only way out is the door.

The Giscard Constitution was supposed to be just such a reform, ‘bringing Europe closer to the people’, but instead it went in precisely the opposite direction, and in spades. Even after the French and Dutch ‘No’ votes, the Eurocrats continue to put the Constitution in place piecemeal, relying on generous interpretation of the existing Treaties, sanctioned by the Luxembourg Court. There is no appeal against this system. They are also relying on Article 308 which allows them to do anything they want “in the course of the operation of the common market… to attain one of the objectives of the community and this Treaty has not provided the necessary powers…” I have a Written Answer from the Government on 6th July this year which confirms that they are using this clause as the legal basis for their new Fundamental Rights Agency in Vienna, which will give the right to strike to our police and armed forces.

They are also pursuing several worrying military initiatives into which we are being sucked, such as their independent command centre in Brussels, and their space programme, including the Galileo satellite system in which China has taken a 20 per cent share, with the clear aim of undermining NATO, the US, and our special relationship with the latter.

The EU project cannot now be stopped or reformed. Far too many bloated lifestyles, corrupt practices and second-rate political careers depend on it. It may take many years to collapse. We should leave it now, and continue in friendly intergovernmental collaboration and free trade with our European friends, linked through NATO.
All too often, those who believe that Britain's membership of the European Union is inimical to her best interests are criticised for being little Englanders, or even worse. Yet there is much evidence which points to the desirability of Britain withdrawing from the EU altogether unless the organisation reverts to a simple free trade area – which the British people were led to believe they were joining in the first place.

During the referendum in 1975 improved trade was cited as the great benefit which would be derived by joining the then Common Market and that same argument persists to the present day. However, when the trading figures with the EEC/EU are examined we find that in the period 1973 to 2000 the total adverse balance of trade exceeded £90 billion. Last year alone the adverse balance was some £20 billion.

Such large deficits are, in quite large measure, financed by inward direct investment, of which Britain, until now, has been a substantial recipient. However, such good fortune is unlikely to continue and could turn negative as British industry becomes further engulfed in EU regulations and taxation approaches the same proportion of GDP as in other EU countries including France and Germany, leading investors to switch their funds to the tiger economies of Asia and the Americas.

Added to this adverse trading position suffered by Britain are the baleful consequences of the Common Agricultural Policy (CAP) and the annual contributions to the EU budget. Since joining the CAP, farm incomes have fallen and the number of people engaged in farming is considerably lower. Furthermore, according to Treasury figures, the CAP adds some £18 per week to the family shopping basket and this is bound to put pressure on wage costs with adverse consequences for competitiveness. In spite of this and the damage it does to world trade, it is unlikely to be reformed in the face of bitter opposition from France and other EU countries.

Turning to Britain's budget contributions, recent figures from Open Europe show that Britain's net contributions to the EEC/EU between 1973 and 2003 amounted to £75 billion and over the next fifteen years, on present trends, will grow to some £115 billion – even if the rebate is retained. This is money which, if spent in Britain for the improvement and modernisation of the infrastructure and moderating tax demands, would assist industrial and commercial expansion and might even help to solve the pensions crisis which appears to face Britain at present.

In the light of these facts, it can hardly be claimed that there is any real economic or financial gain for Britain from continued membership of the European Union. Indeed, as the tiger economies of Asia – China, India and the rest – continue to grow and prosper at a phenomenal rate and the USA retains its economic pre-eminence, there is a danger that Britain, trapped in a protectionist, economically sclerotic Europe Union run by a centralised, remote bureaucratic cabal, could go into permanent economic decline.

The real opportunities for Britain to flourish as a thrusting, forward looking, prosperous self governing democratic nation lie outside the European Union. Freed from the political, economic, regulatory and bureaucratic constraints and the pervading ambition to create a European superstate, Britain could defend her own national interest, develop her own relationships with other nations, rejuvenate the Commonwealth and give the world that unique leadership which comes from her great history, experience and achievement.
Eighth Plenary Session

Oral Evidence on the Existing EU Treaties

Thursday, 8 December 2005

Committee Room 15, House of Commons, Westminster

The Plenary Session commenced at 11:00 a.m.

Rt Hon. Lord Waddington, GCVO, DL, QC (Chairman) (Former Home Secretary): Well, it is 11 o’clock so I think that we should start. We will be joined by two other members of the Forum. We are very grateful to you for coming, Lord Dahrendorf. I have had the pleasure of sitting under your chairmanship; I never thought that I would be in the Chair asking you to give evidence. Given your experience and the fact that you are a former Commissioner, it is a great honour that you have done so.

Other witnesses have made a brief opening statement, after which we have asked them questions. I should like you to deal with matters in any way that you want, bearing in mind that we have asked them questions. I should like you to deal with the matter as you wish.

Lord Dahrendorf (Witness): I had not really intended to do that. I am happy to answer questions. I do not want to waste the Forum’s time. I was slightly discouraged when I received the letter saying that, if I wanted to make a statement, I would have to submit it in writing first. Since I could not do that, I have no statement to make, but I am wide open to any questions.

Rt Hon. Lord Waddington: Many of us have put questions to witnesses along the lines that it seems wrong that the Commission alone should be able to initiate legislation, and it seems unlikely that we will ever get rid of the burden of unnecessary regulation if the Commission alone can initiate changes in the other direction. Assuming that you think that any reform is necessary, what possibilities of reform of the institutions are there?

Lord Dahrendorf: It is true that, in the original construction, there were essentially two elements of decisions: the so-called European interest – embodied in the Commission, as the initiator of legislation – and the collective national interest, embodied in the Council, as the decision-making body. I have often observed that in the original construction – I am now talking about the pre-1957 debates – there was no real place for a parliamentary institution. It has always been my impression that anything parliamentary in the European Union construction is an afterthought and has never had a proper place in the scheme of things. Essentially, the notion was that the Commission would initiate and the Council would decide.

In my time, we had a visit from the Committee on Ways and Means of the United States House of Representatives, which looked at the Treaties and decided that it did not want to see representatives of the Assembly because their equivalent was us – the Commission. Like the US Congress, the Commission had the monopoly right to initiate legislation. That was the original construction, but even in my time, that situation changed fundamentally. The Commission has long lost any semblance of having a monopoly on introducing and initiating legislation.

When I became a Commissioner in 1970, there were still stories about the President of the Commission interrupting Council meetings and saying, “We can’t go on until there is a new proposal by the Commission,” and letting Ministers wait for four hours, six hours or a whole day before they continued. That would be unthinkable today, and has been for a long time. The initiation of legislation has become a slightly obscure process in which input from the Commission, Council members and the presidency of the Council are mixed up in complicated ways. We can therefore work on the assumption that it is possible nowadays for decisions, including decisions with the force of law, being initiated in a variety of ways, not least by members of the Council.

As for your third point, which is of a slightly different order, I am not too sure that Member States are more likely to introduce proposals for deregulation than the Commission. I do not know how a Commission of 25 or 27 members works, but I should have thought that there is as much of a vested interest – perhaps more – for not deregulating among Member States, as there is in the Commission. While I wholly agree with the sentiment behind your question, I am not sure that the Commission is the main obstacle.

Bill Cash, MP (Former Shadow Attorney General and Shadow Minister for Constitutional Affairs): I wish a sincere welcome to you, Lord Dahrendorf. I suppose that many would agree that no constitution is permanently fixed in concrete. The United States Constitution, for example, has numerous amendments. I am interested in the problem, as I see it, of the entrenched acquis and the rulings of the Court of Justice in that context, not to mention the incorporation of all the existing Treaties in the proposed new Constitution, which was a fundamental change within the framework that had been created.

Taking into account the existing Treaties, the problems that have emerged from the Lisbon process, and the problems with the rebate and the difficulties of no growth and high unemployment in some aspects of enlargement, which I happen to favour as a matter of principle, but how do you resolve all this in the present context? To what extent do you think that the existing Treaties need to be amended to be brought up to date and to be relevant to the problems of the new environment of the 21st Century, including China, India and the rest? Do you have a view about that? How would any amendments be best achieved?

Lord Dahrendorf: That is quite a set of questions, every part of which is quite interesting. I do not want to make a long statement, but if I miss out certain important aspects, please remind...
me of them. The constitutional arrangements of the European Union have worked about as well as could be expected for a long time, but there are now some serious questions to be asked. Like you, I am strongly in favour of enlargement and, indeed, of what I call an open Europe. I have no difficulty with conducting negotiations with Turkey with a view to full membership, and I see a major responsibility for the European Union in the Western Balkans. There are issues of enlargement that undoubtedly have consequences for the institutions.

I shall make a comment that may seem unhelpful, but which we might return to, at which point I shall turn it into a helpful one. Much of the European reality today is based on what Andrew Shonfield called "the habit of co-operation", rather than the formal process: Commission initiative, Council decision. Much of it, of course, is at the margin of the Treaties and is in areas in which there is no clear power for the European Union to act.

The habit of co-operation was one of the great strengths of the EU. I use the past tense because that is precisely where enlargement will have an effect. What that is, as yet, is not wholly known. It is difficult for 25, 27 or 30 countries to develop the same intensity of contact at all levels of government and of non-governmental organisations – as it was for a Community of 15. That is an area in which the Union is bound to become a little more formal, a little less intimate and perhaps a little less capable of developing new lines of policy. I shall be interested to see how that works out. That is the deeper problem of enlargement; you have only to look at the huge table around which they sit now to know that it is something quite different from the after-dinner conversations in the older, smaller Union.

I do not know how to begin to tackle the important questions that you asked. The Lisbon Agenda was always outside the EU remit. It was something new. I therefore thought from the beginning that nothing much would happen as a result of it. I shall illustrate why. When Jacques Delors developed his idea of a single market, he was fortunate to have next to him our colleague, Cockfield, who translated the intention into the famous – sometimes laughed about, but really quite serious – 272 decisions to be taken by the EU. There was, therefore, a clear programme of how we would achieve the objective that had been set by the Council of Ministers. Lisbon was quite different: not only was there no Cockfield to translate the intentions of the agenda into a series of decisions to be taken by the EU, there could not have been one because most bits of it were strictly outside EU powers, so one would not know how to start.

Lisbon was essentially an attempt to ask the less-willing members of the EU, notably France and Germany, to modernise and open up for global markets and the modern economy in a global environment. There is not the substance in the Treaties to enable anyone to translate it into EU decisions. The failure of Lisbon is, in a sense, built into the whole project. It is a project of things that are desirable but not part of the EU as it exists today.

Rt Hon. David Heathcoat-Amory, MP (Former Minister for Europe and the UK Representative on the Convention on the Future of Europe): Lord Dahrendorf, it has been said that Europe faces a crisis of legitimacy because the people of Europe do not feel that the decisions made in Brussels have anything to do with them. They have not mandated them, they do not understand them, and they do not feel any ownership of them. Therefore, attempts have been made to democratise the institutions. Do you consider that that is a fruitless endeavour because Europe does not have an identity that makes democracy possible at the continental level? Would it not be better to recognise that and return to the surer foundations of national self-government and try to build something of top of that? That would be less ambitious, but more secure. Do you have any observations about whether there is a European identity, a European people and European public opinion? If not, does anything flow from that?

Lord Dahrendorf: I believe that there is no such thing as a European people, and I am puzzled by the extensive debates about European identity that go on all over the place. My view of Europe has long been different from the sentimental or romantic ambitions that you discover in some speeches by European politicians. To me, the European Union is a step in the direction of government beyond the nation state wherever it is necessary, almost with a view to creating worldwide arrangements, which would be more appropriate than regional arrangements at this time. Despite all the protestations, I regard the attempts to create the notion of a United States of Europe as vain and misleading.

The trouble is, and has been for a long time, that there is an enormous contrast and contradiction between the great claims in major speeches and the realities of day-to-day Europe, which have never been anywhere near the great claims. That is one reason why people in European countries have become more and more suspicious of what is going on there. On the one hand, they are told that they have to hold their own vis-à-vis the United States or that they are living in a multi-polar world, in which one of the poles is Europe, but, on the other hand, they see that what comes out of Brussels is mainly about the noise that building equipment makes, or whatever, and is not even faintly related to the great claims. That is a big problem and a big issue.

In my Europe, it is not only not real, but probably not possible to have institutions that one could call truly democratic. Therefore, I have been thinking about methods of checks and balances for European decisions, and decisions of a similar kind, that we would not call democratic in any strict sense, but which would at least give some opportunity to make sure that arbitrary decision-making is prevented. It is a big subject, but I do not think that the word "democracy" can, in any strict sense, be applied now, or in future, to what happens in Europe. We must have another way of ensuring that there is, at least, indirect accountability, or some degree of accountability.

Martin Howe, QC (European Lawyer and Author): Lord Dahrendorf, may I take up a point that you made in answer to Lord Waddington's question about the acquis, or the existing body of regulations? There are many regulations, but I am thinking of those on the Single Market, the environment and social employment. You said that the Commission's right of initiative is not the only or, indeed, main barrier to that body of regulations being wound back, because there are vested interests in the Member States retaining the regulations. Of course, under the current legislative system, in most cases it would be necessary to obtain a qualified majority to secure repeal.
One economic model that was suggested by one of our witnesses involved not so much changing the regulations on a Europe-wide basis, but allowing competing national models of regulation. That raises the question: what changes would be necessary to the Treaties in order to permit a return to national control of regulatory powers? One issue, in particular, can be described as a sacred cow – it was, at least, fundamental when the Treaty of Rome was established. It is the perceived link between the Single Market, and admission to it, and having equal regulation on everyone, so that no one is perceived to be playing off the level playing field. Do you have any views on the feasibility of de-linking freedom of market from the issue of having exactly equal regulatory burdens on businesses in different Member States?

**Lord Dahrendorf:** The Single Market is an enormous achievement. It is much more than the common market that we had before. It sets an example that I would like to see applied worldwide. It certainly leads me to favour further enlargement.

Clearly, the Single Market is a complex issue. It requires a level playing field in a few respects. It is no accident that perhaps the two most important Commissioners are those who are concerned with the Single Market and monopolies. I have no doubt that it requires common rules in important areas, as, indeed, does a domestic or any other market. The question is: common rules up to what point? We still have considerable freedom in taxation, which is clearly relevant to the rules of any market, and I am glad that we do. In a sense, there is an example of the kind of competition that you are talking about: Slovakia was capable of one or two other countries, such as Slovenia, might follow suit in the introducing a flat tax, and we can see the effect of that. One or two other countries, such as Slovenia, might follow suit in the near future. I like the fact that there is a possibility of competition – if you want to call it that – of trying different routes to the same objective. However, if we went into such matters in depth, there would still be a range of issues to consider. A so-called level playing field would require common rules.

My worry about the *acusis* is slightly different. It is piling up and up. As you might know, I am the Chairman of the House of Lords Select Committee on Delegated Powers and Regulatory Reform and have the opportunity to think about rules, especially secondary legislation. Much of what happens in Brussels is in the nature of secondary legislation. When people say that 80 per cent of our laws are made in Brussels, what they are really talking about is not anti-terrorism laws or immigration and asylum laws, but secondary legislation.

I have come to feel that what we should look at – even more in Brussels than in the case of secondary legislation at home – are sunset clauses. There must be a way in which to limit the time for which legislation is made or, to put it differently, people must be forced to reconsider whether they still want to keep certain rules in force. That is the direction in which I would look, as much as at competition in the rule area. You will notice that I am slightly reluctant to go along with the full thrust of your statement, much as I believe that competition is healthy not only in economic terms, but in legal and political terms.

**Rt Hon. Lord Weatherill, DL:** (Former Speaker of the House of Commons): I apologise for missing your opening remarks, Lord Dahrendorf. You talked about the regulations piling up and up. Is there anything that we can do about that? I get on the train at Hurst Green, and there is quite a lively debating society on that train going to Victoria. Earlier this week, I read the article in the *Spectator* entitled “Brussels bites back”. I do not know whether you have read it; if not, I should like to hand it to you. It illustrates the degree to which regulations are piling up. This morning, I was astonished to hear that the British ships have to fly the European Union flag. Is that true?

**Lord Dahrendorf:** It seems unlikely to me.

**Lord Weatherill:** Comment!

**Lord Dahrendorf:** It seems unlikely to me, but I really do not know. I have no inside knowledge, so it is probably wrong to talk about it. I gather that the Commission has started to reconsider rules and regulations to see which ones can be dispensed with, and has come up with a fairly small number – I think that I heard the figure of 80 or thereabouts – of not terribly important bits of regulations that might be dispelled. A much more massive process is possible. On the question about the European flag, I do not know; I doubt it.

**The Hon. Bernard Jenkin, MP (Shadow Minister for Energy):** I, too, apologise for missing your opening remarks, Lord Dahrendorf.

**Lord Dahrendorf:** I did not make any.

**The Hon. Bernard Jenkin, MP:** Oh, right. You disclaimed the vanity of invoking the European identity, and you seem to accept that there is a crisis – I shall put it as strongly as that – of legitimacy in terms of the authority of decision-making. You also said that you would like to see a degree of accountability, or indirect accountability, and some checks and balances in the system.

I put it to you that your concerns are fundamental, and that the European Union has become a supreme authority in the continent of Europe that can bolster and reinforce itself, and enforce itself legally. Short of colliding with the domestic legal systems of the Member States, its authority is absolute. How do you square that principle, which is enshrined in the Treaties – certainly, the Treaty organisations recognise no other sovereignty within the European Union – with the fact that legitimacy, democracy and accountability are essentially national? Does that not suggest that the fundamental construct of the Treaties is based on a fundamentally unsound and undemocratic principle? Do we not need to address that in principle, rather than pretend that we can persuade the Commission to cut back a little bit here, or persuade other Member States to agree to sunset clauses? All that is just fiddling at the edges, is it not?

**Lord Dahrendorf:** The powers of the European Union are severely limited. First, you can argue that there is hardly any truly important and controversial issue in the national politics of Member States in which the Union enters the picture. All the great debates are on subjects that are not of EU competence – that is the word that was, unfortunately, used in the draft Constitutional Treaty. Secondly, even the draft Constitutional Treaty was not made in the name of the people of Europe. Mr Heathcoat-Amory was part of the process and knows much
more about it, but I think that it would have used the term the high contracting parties, or something like that. They are the ones who made the treaty, and who could have changed it. Therefore, there are severe limitations to the powers of the EU.

I shall now make a point that betrays my continental background. I am well aware of, and in many ways sympathetic to, the strongly-held views in this country, but it must be said that, in many ways, the European Union is taken more seriously here than it is in all the major continental countries: just look at the German public debt in relation to the stability pact and the common currency. No one would dream of actually applying the pact if the German Government said that they did not want it. That is an extreme, but telling, example of how the Union is essentially understood to be an additional instrument of national policy in many continental countries, rather than as a new authority that overrides national policy, as it technically can. When it does, as has been shown in recent judgments by the European Court in Luxembourg, there is an outcry that is as audible as many of the noises made in this country.

Someone used the words ‘continental Europe’ a moment ago. It just does not look that way to most continental countries, although I am not sure about some of the smaller countries. A simple statement, of which you are well aware, is that this country, fortunately, is, in a sense, more law-abiding than most continental countries, and therefore takes the issue of the EU much more seriously than it is taken in France, Germany, Italy and Spain. For that, we even have statistical evidence in compliance with European Union regulations.

Rt Hon. Lord Waddington: Thank you very much indeed. You have been very generous with your time; we have slightly gone over the allotted time. We thank you most warmly for having come here and for having been so forthcoming. Thank you again.

Lord Dahrendorf: Thank you.

Rt Hon. Lord Waddington: Thank you so much for coming, Mr Walsh. I am so sorry for having kept you waiting for a few minutes. We usually say to witness that if they want to make an opening statement, that is very satisfactory from our point of view and we shall then put a few questions. However, if you want to go straight into questioning, we can do that. It is a matter for you entirely. Would you like to make an opening statement?

James Walsh (Witness): I will, my Lord. I thought that it might be useful to set in context how the Institute of Directors sees the European situation. Our view is that the EU’s top priority should be economic reform to help Europe respond better to the challenges of global competitiveness. As you will know, for many years Europe has concentrated less on economic reform and more on constitutional reform, and on building new constitutional structures at EU level. We feel that that has held Europe’s economy back.

There are, perhaps, two encouraging developments that we could pick on: one is the collapse of the Constitution, which seems to have put the Constitution process on hold for the moment at least. The second is the refreshing and new tone that we are seeing from the relatively new team of Commissioners, who seem to be making a genuine effort to concentrate much more on economic priorities, strengthening the internal market, better regulation and so on. We find that encouraging.

When we consider the issue that I believe the Forum is considering, which is how the Treaties should develop in future, there is an interesting question for those of us who would concentrate on economic matters: would paying attention now to matters of constitutional reform – even helpful constitutional reform that pulls back some of the existing constitutional arrangements – distract attention and energy from the more important task of economic reform? You can, of course, argue that without constitutional changes, we will not get economic changes. I can see that there is a tension there; perhaps we can discuss that further.

Bill Cash, MP: I am interested in your opening statement. If you wanted to deregulate European regulations or directives – it is fair to say that there has been a limited movement in that direction that is probably more quantitative than qualitative – you would have to ask yourself how would you do it. The short answer with the acquis is that you cannot unless you get a qualified majority vote, or an initiative from the Commission that is agreed by all parties.

Alternatively, you can take the view that individual Member States have vital national interests at stake. David Arculus has suggested that over-regulation, much of it European, is costing the British economy £100 billion a year. What is the remedy? Presumably, constitutional reform has to lead the economic reform if there is no political will to make the changes to enable economic reform to take place. What is your answer? It is a sort of Russian doll problem, is it not?

James Walsh: Yes, it is. That is partly why I raised the issue, and it is difficult to get to the bottom of it. First, there has to be the political will. If that does not exist, we could talk about economic reform or constitutional reform all day, and we would not get there. That is why we are encouraged by the degree of political will that now seems to exist among the team of Commissioners, but I do not think that that is shared across the whole Commission. It certainly is not shared across all EU Governments, but we are considerably further forward in that respect than we were some years ago, which is encouraging.

The Commission has launched a better regulation programme, but it is early days. One could be sceptical about how far we will get in paring back the acquis. Commissioner Verheugen has set out a list of 70-odd items that he wants to simplify and reform, and has appealed for more submissions but, as you know, changing EU law is time consuming. It requires agreement, not only at EU level: national law has to be rewritten in all Member States. From start to finish, the process can easily take five or six years, or more. It might be difficult to pare back the acquis. We might be more optimistic about the prospect of fewer new laws coming forward.

Bill Cash, MP: As a supplementary question, is there not a point at which a national Parliament – let us say the UK Parliament – must reassert its right to be able to pass legislation, unilaterally, if the other Member States are unwilling to do so, having no political will, and are causing damage not only to the UK but the EU in the global marketplace?
James Walsh: You can make that argument. It requires pretty radical change of existing Treaties, particularly for internal market legislation. You could soon end up with a situation in which you do not have the so-called level playing field across Europe. You might have an uneven playing field that works to the benefit of this country, of course, which might be an attractive prospect, but you would certainly need to change the Treaties to reach the outcome that you are suggesting.

Rt Hon. David Heathcoat-Amory, MP: You referred to a new spirit of deregulation in the new Commission. On the European Scrutiny Committee, on which I serve, we have noticed that certain directorates in the European Union have, if not applied the brake, at least put down the clutch, but the running is then taken up by other directorates in other policy areas, such as criminal justice, security, immigration, information-sharing and so on, some of which must have costs for your members. Money-laundering directives, for example, are clumsy, costly and have led to a number of complaints from banks.

Despite the good intentions, do you consider that the regulatory dynamic is still there and that the engine is still spinning? Institutions make their living out of legislation. Has the Institute of Directors done any work on a completely different model with which things are considered nationally and only after that is it considered whether a European-wide instrument is appropriate?

James Walsh: I agree that the regulatory machine is still spinning, although it is spinning a great deal more slowly in certain directorates-general than in others across the Commission. There is a point that is not widely appreciated by the UK electorate – the Commission should not be seen as a homogenous body. We find that certain parts of it, such as the directorates-general for enterprise and for the internal market, have very much our way of thinking: pro-business, pro-enterprise and pro-better regulation. However, down the road at the directorates-general for the environment, health and consumer protection, there is still a much more damaging mentality.

I suppose that you could ask to what extent is leadership from the top of the Commission trying to tackle the problem. President Barroso is slowly making progress on pulling the slowest reformers up to pace, but there is a long, long way to go on that. There has recently been an interesting reshuffle of senior Commission mandarins, putting reformers in the most influential positions and sideling some of those perhaps from the Delors Commission. However, the processes of cultural change within the machine necessarily take a long time.

As for whether we at the Institute have done any work on an alternative model, the short answer is no. We tend to concentrate most of our EU work more on day-to-day lobbying on specific doxsters that are, or are about to be, on the table. We concentrate more on the nitty-gritty daily issues than on the broader constitutional picture.

Rt Hon. Lord Weatherill: My question is based broadly on what you have just been saying. There are similar organisations in Europe to the Institute of Directors. Is there a forum at which you all get together? You must have the same problems as France and Germany. I should have thought that you would have a powerful voice if you spoke with one voice about the regulations. Something might then be done about matters.

James Walsh: You have fastened on an issue that we have been working on in the past 18 months or so. The IoD has historically been very much a British organisation with small numbers of members elsewhere. One thing that has held us back in terms of influence at EU level is that we have not had a ready-made pan-European structure into which we can neatly slot. The CBI has UNICE, and our friends at the Chambers of Commerce have Eurochambres. We have not had that sort of European network, but we are now starting to work on creating it. There are some quite new and, as yet, small, directors’ organisations in other Member States, which are all constructed on slightly different models. Some specifically represent non-executive directors and some concentrate on a much narrower set of issues that the IoD would examine – perhaps just corporate governance issues. None the less, they have similar interests and we are teaming up with them.

Earlier this year, we launched a new organisation, the European Confederation of Directors Associations, which has focused specifically on corporate governance and company law issues, which are important for our members. Perhaps we will broaden its scope in future. Its current members are ourselves, and the French, Belgian, Luxembourg and Finnish organisations. The Spanish institute will be joining in January and we hope that more will follow. We are already finding that to be an effective vehicle for getting our case across to the Commission and to MEPs. We hope that it will grow in influence.

The Hon. Bernard Jenkin, MP: What you describe is positive: to engage with the process as it exists. As you said, the regulatory machinery is still spinning, particularly in certain directorates. Is there any realistic prospect of being able to undo some of the most damaging, interfering legislation, such as the directive on the Information and Consultation of Employees, the Works Council directive and the Working Time directive? That is very interventionist and interfering stuff. Is not the problem the fact that there are all these subject committees on which employers organisations and lobbying groups work hard, but in the end it comes down to a horse-trading of interests, rather than an approach guided by a clear economic philosophy? The way in which the institutions and Treaties operate means that they do not do economic reform. It is all about invocation; there is no mechanism for economic reform. In fact, economic policies are still largely the province of the Member States.

What I am getting at is this. Do not we need to change the architecture if we want to change the outcome? Is not the acquis, and the constant adding to it, fundamental to the nature of the Treaties, the way they are constructed and the way in which they are enforced? No amount of lobbying will ever change that. If we want to change the economic fortunes of Europe, we need to change fundamentally the Treaties that have locked us into this regulatory system, which is producing low growth and high unemployment across the whole continent.

James Walsh: I have a lot of sympathy with that view. On your first question – whether we can undo some of the most burdensome directives such as the Working Time directive and the information and consultation directives – the short, honest answer is no. A debate is going on at the moment about revision of the Working Time directive, and it is a classic case study. The
The UK Government is putting the business case reasonably robustly, but it is a matter of horse-trading. Undoubtedly, the outcome will be a compromise that will be better than the proposal of a year or so ago, but worse than the original directive of ten years ago. That process of compromise means that there is something of a ratchet effect, where, despite our resistance, there is a slow creep of the regulatory machine.

You rightly observed that there is no mechanism for driving economic reform, because the Commission has the sole right of initiative. If it proposes legislation, the chances are that that will mean more intervention and more regulation. We might well need to change the process – perhaps giving more power to the Council of Ministers or back to Member States. We should appreciate that, because the European law-making process is so slow and time-consuming, all the items that are currently on the table, such as the working time proposals, were put there by the previous Commission. There is a great time lag. The current Commission is more enterprise-minded and its work programme – its equivalent of the Queen’s Speech – is less than half the size of the work programmes over the past three or four years. It seems to be reining back its instinct to legislate, but I rather doubt that that will be enough to get us to the ultra-competitive, lean Europe that we want.

The Hon. Bernard Jenkin, MP: Why has the IoD retreated from those issues of principle?

James Walsh: We have not retreated from the issues of principle, but we concentrate our efforts on the day-to-day lobbying on issues that are on the table rather than make the overarching high-level case for European economic reform, as some think tanks would do. We are working a little more as a directors’ trade association or representative group than as a blue-skies think-tank.

Martin Howe, QC: May I just follow up those points? You explained the role of the Institute. The problem now being faced is that, although the regulatory machine may have slowed down a bit under the present political complexion of the Commission, it is not likely to go into reverse. Who knows what will happen in five or 10 years’ time, when a different political complexion emerges in the Commission? Perhaps a different view will prevail yet again.

May I cast you back to considering the Treaties from a business perspective? Can you say what in the Treaties British business needs and benefits from? If we were to pare the Treaties down to just a free market, what in them do British business need to keep for its own interests?

James Walsh: The obvious item is the internal market. The key success of the EU is that we have a pretty successful internal market for the trading of goods. That has been an asset for our members. You will know that we do not yet have a fully functioning internal market in services, which account for a much bigger slice of the economy. There is a directive on the table at the moment to put that in place. It is very controversial, but it looks as though it will go through, not entirely unscathed, but in something pretty close to its original form. Crucially, the country-of-origin principle will be at the heart of it. We do not know how effective it will be, but it will be a step in the right direction. So the key thing that we would certainly want to retain is the internal market.

Bill Cash, MP: I am interested in Gordon Brown’s recent Treasury pamphlet, which was backed on Panaroma by Jack Straw. There is a clear indication that the thinking in the Treasury and, probably, the Foreign Office is moving towards rejecting, or casting serious doubt upon, the European social model and, therefore, the regulatory burden that goes with it. A call for open markets and competitiveness is not a very socialist agenda, one might think.

The process has to start somewhere. Would the IoD contemplate putting forward a programme of reform to test the water on this newfound belief in open markets? Would it consider, for example, giving evidence to the European Scrutiny Committee, on which David Heathcoat-Amory and I sit, with a view to putting forward proposals for the reform process as an initiative? Digby Jones came to the Committee about six months ago, and I think I can say that David and I were not entirely happy that, when we asked the CBI why it did not give evidence to the European Scrutiny Committee spontaneously asking for changes in regulations, we got a pretty negative response. We have had nothing back from the CBI since. Would the IoD consider trying to initiate a serious programme of reform, so that we could then feed that through our Committee and into the process? We could then deal with things such as the Working Time directive. If the process does not start somewhere, nothing will ever happen.

James Walsh: We recently set out proposals for reform. I have with me a paper that we did in June last year, which I am happy to leave with your clerk, if you wish, in which we commented on the Constitution. In the paper, we made several proposals about what we would have liked to see in the Constitution, which would have made it much better. They included strengthening the internal market and the principle of subsidiarity; real reform of the CAP – or perhaps abandoning it altogether, which would be even better – the removal of all external tariffs as a real step towards global free trade, which would represent real economic reform; and crucially, accepting that individual Member States have no mutual responsibility for unfunded pension fund liabilities. That could be written into the Treaties, if the Member States wished it.

Bill Cash, MP: I hope that that is without prejudice to your rejecting the notion of a Constitution in principle, because the principle of primacy is part of the Russian doll to which I was referring – namely that we will not get changes unless constitutional changes are made as well.

James Walsh: These are constitutional changes – that is appreciated. We set them out in brief terms. It would be possible to put some evidence before the European Scrutiny Committee or to discuss the proposals in some more detail with it. I do not see why not.

Rt Hon. David Heathcoat-Amory, MP: It is sometimes said that regulations are big business friendly and small business un-
friendly: big corporations can lobby, they get consulted, they have offices in Brussels and are members of the IoD, whereas the small people simply do not have the time or the money and are often unaware of a regulation until it hits them, when it is all too late. Does the institute try to get over that problem by examining the micro-economy, rather than simply talking to its bigger members? Are you conscious of that danger? Do you aim to avoid it by covering the whole spectrum?

James Walsh: I see it slightly differently. The point to appreciate is that most of our members – 70 to 75 per cent – are from a small and medium enterprise background. The IoD members who are directors of large companies in the FTSE 100 are the exception to the rule. Our focus, and the picture that we have in mind when we talk to policy makers of any kind is very much that we are representing small and medium sized enterprises. The typical IoD member, if there is such a thing, runs a company of 50, 100 or 200 employees.

Such companies do not have large human resources or compliance departments and the burden of keeping up to speed with the latest legislative developments, which is the first task, falls on the shoulders of one person, or two or three people, who are the entrepreneurs and who should spend their time growing the business. That is our approach.

It is a constant battle to help members to keep abreast of the latest developments. To some extent, we have a responsibility to help them with that, through our newsletters, training courses and so on, but I would not pretend for a moment that we are successful. It is difficult because such a large volume of legislation comes forward at domestic and EU level. We find that we can lobby only on certain big-ticket items that affect large numbers of our members. There will always be a directive on a particular niche market that slips through our net. I am well aware of that.

The Hon. Bernard Jenkin, MP: I am grateful for a second shot. I was interested in your statement that business most values the internal market. How do you evaluate the benefits that we derive from it? Could you table a paper for us?

James Walsh: Yes, certainly.

The Hon. Bernard Jenkin, MP: We have heard evidence to the contrary on this issue. We have heard claims, for example, that 60 per cent of our trade is with Europe, when, in fact, trade with the internal market really only accounts for about 12 per cent of our GDP. There are many aspects to our economy. For example, tourism and the City are our two biggest export earners, which very much derive their benefit from outside the internal market. Countries such as Norway, the United States and Japan have increased their trade with Europe faster than we have during our period of membership of the European Union.

The rules of the internal market prevent us from having free trade agreements with other countries, which would be very much to our benefit. I should be grateful if you would give a brief answer now and perhaps table a lengthier paper that would help us to evaluate to what extent we must accept the existing Treaties because there is such an overwhelming national interest attached to the present shape of the internal market.

James Walsh: We did some research on members’ views of the
require the Council to think again but, having thought again, it could just proceed with the original proposal. The procedure was not at all like a yellow card. It was the equivalent of saying that a yellow card is just an advisory paper. It is like saying to a footballer, “Well, here is a yellow card. You can decide whether to discard it or not. If there is a repeat offence, it won’t have any consequence.” The terminology was misleading. In any event, it elevates the process to a status that it does not deserve.

An alternative procedure that was advocated, but not incorporated, was a red card procedure, which would give national Parliaments a far greater role in the process. There is a need to extend the involvement of national Parliaments in the process. If such a process is to be worthwhile, we need to move more in the direction of, say, a red card procedure than a yellow card one, which has little substance. It is a little like legislation requiring a body to ‘have regard to’ something. All that means is that it must ensure that it has read it and then the body can ignore it.

There is a need to move forward, but that might require collective effort on the part of national Parliaments, not only in relation to existing Treaty provisions; it might also require greater individual effort in relation to their national Governments. There is a danger of saying that national Parliaments ought to play a greater role and almost isolating them from their domestic constitutional and political environment. There is a collective role, but there is also an individual role in relation to national Governments. That must not be ignored. Among the obstacles to achieving change are not only institutions in the EU, but national Governments.

There is a related debate about whether, under the existing Treaties, the EU constitutes a unicameral or a bicameral legislature. Is the Council of Ministers a second Chamber, as the European Parliament tends to see it, or is it primarily an Executive body? There is some dispute about the very nature of the process itself and the status of the Council of Ministers under the existing Treaties. I just mentioned that because such a debate is taking place at present. I have tried to give some context to my interest, to help shape discussion.

**Rt Hon. Lord Waddington:** I suspect that, in Britain, the call to strengthen the role of the national Parliament is pretty popular, but is that so elsewhere? Perhaps we are alone. What is your view on that?

**Lord Norton:** We are not alone, but you are right in that it is not a universal view among Member States. There are divisions. To some extent, I suspect that it is a north-south division. That is why the proposal that we are talking about has relevance. We can embody something in the Treaties because we need only a certain number of national Parliaments to combine to impose the yellow card, the red card or whatever the procedure is. We do not need all national Parliaments to come together.

Progress can be made independent of the Treaties. To pick up on your point, I have advocated for some time that we need like-minded national Parliaments that feel that there is a role for them and that they should engage in critical scrutiny to come together and to co-operate. That can then link in with any formal changes to the Treaties so it can be utilised. In other words, there would not be dependence on the weakest link or on Parliaments that do not see that they have a particular role and say, “That is the role of the European Parliament, not ours.” One can move ahead without relying on them. After a while, they might feel that they are being left out of the process and they ought to get involved. There is a bottom-up as well as a top-down approach.

The top-down approach is making Treaty provisions; the bottom-up approach is letting like-minded national Parliaments come together to engage in co-operation. That is increasingly feasible because the electronic means of doing that exist. Information can be shared. Parliaments can be far more aware of what is happening in the other national Parliaments. That is a tremendous step forward, because what has held national Parliaments back in the past is that they have knowledge, but it is knowledge that is specific to them. They have not always been aware of what has been happening in other countries.

There is one instance that I cite variously. A matter was being considered in the EU and a national Parliament took it up with the national Government and said, “We are not too happy about this.” The national Government said that they shared that view, but that they would be outvoted because no one else takes that view. The national Parliament said, “Okay, We shall not pursue it.”

It was only after the event that the national Parliament checked with other national Parliaments and found that exactly the same thing had been happening elsewhere. Each national Government was saying, “No, no. There is no point pursuing it. We would be on our own.” However, when the national Parliament checked matters, it realised that several Parliaments were taking that view. If the Parliament had had that knowledge initially, it would have been able to pursue matters in relation to the national Government. In that sense, information is power. The more national Parliaments are aware of what other national Parliaments are doing, they will be strengthened collectively. That is the way forward. Parliaments will not then have to depend on those that do not want to be involved. They can move forward on the basis of those national Parliaments that believe that they should have a role.

A bottom-up approach and a top-down approach are not mutually exclusive. I do not see why we should not be cooperating with other national Parliaments that take the same view and share knowledge. If there are Treaty provisions that strengthen the role of national Parliaments, they must be exploited. I very much take your point. I am keen to avoid being held back by national Parliaments that do not consider that they have a role to play in the process.

**Rt Hon. David Heathcoat-Amory, MP:** Your observations about the so-called yellow card system accord exactly with my experience on the European Convention: it was a gesture, without real substance. It certainly did not match the enormous increased powers that went to the other European institutions under the draft Constitution. I was also fascinated by your sketch of an alternative model, whereby national Parliaments get together. Surely, however, that would entail big consequential changes to, for instance, the role of the European Parliament, which resents any intrusion by national Parliaments, as well as to the role of the Commission, which must therefore be reduced to the role of a secretariat servicing the wishes of national Parliaments. None of that was discussed at the European Convention. Have you any worked-out proposals for a draft Treaty along the
lines that you have proposed? It would be a radical change from what we have, but it is important because, as you said, it builds from the bottom upwards. It puts national Parliaments in the driving seat to initiate the ideas, which then become European proposals if international co-operation is essential. Such a change is so radical that I would be interested to receive something in writing that you may well have already done.

Lord Norton: No, I have not done so. But having been prompted by your remarks, I shall certainly now think about how to incorporate what I have said. What you touched on prompts two roles for national Parliaments: one being an initiator, coming up with ideas to feed into the process. Should that be done through national Governments or should there be some other mechanism?

The other role is more reactive. It would require Treaty provision and be much stronger than the yellow card. We should be thinking – de minimus – of the red card procedure for the reason you mentioned. If we have to try to keep pace with the strengthening of the institutions – the power enlargement that is taking place – we must think about the role of national Parliaments. I agree with your point that what was being given to national Parliaments was really a sop, relative to the much broader changes that were taking place.

There are two aims. One is how national Parliaments initiate something, and feed something in. That may have to be on an advisory basis, a prompting to the institutions. There is then a more formal reactive situation, when national Parliaments may be in a position to say no. How do you conceptualise that? The current debate is about whether we should see the legislative arrangements within the EU at present as having a bicameral nature. Is the Council of Ministers a second Chamber? If so, what would be the collective role of national Parliaments? How would you conceptualise their role? It is more analogous to a constitutional court, which checks what is coming from the two chambers to see whether it conforms to the principle of subsidiarity. It should have some involvement and be able to say, "Sorry, it does not comply." The role collectively could be more akin to that or even a tricameral arrangement. We should think of how we could make sense of it and how we would conceptualise it in the process. That is the more formal constitutional side of it.

The other problem that you identified is political in relation to extant institutions. That is always the problem when trying to reform processes and bodies that are already in place. In others words, there will always be a vested interest that will wish to resist. We would not be starting from a clean sheet and we would have to overcome the political opposition. I would have thought that one can overcome the position of the Commission as there is no democratic legitimacy to that. It is then a matter of taking on the European Parliament and using persuasion. It would be more than persuasion; the pressure would have to be external to get the European Parliament to accept that there should be another body that performs a distinct role from that which it performs. Its role is more of day-to-day scrutiny. It has a full-time membership for that purpose, whereas national Parliaments are not in the same position to carry out matters in quite the same way. Nonetheless, they should have some involvement at some stage. If we conceptualise things in a certain way, that may reduce the fears of the European Parliament, but we shall not overcome them because it will continue to regard such action as a threat. It is a case of persuading the European Parliament that it is a non-zero sum game.

The Hon. Bernard Jenkin, MP: We have heard a lot of evidence about trying to address the democratic deficit. Your idea is intriguing but, apart from the political difficulty of getting to the point when all the other Member States agree to put it in the Treaty, I can see other difficulties with it. As Mr. Heathcoat-Amory said, the other European institutions would be screaming abuse at that dilution of their responsibility. We have a European Parliament. It does not operate as a Parliament because it does not represent a polity. Therefore, it is a Parliament that curiously, although it is directly elected, lacks legitimacy.

Your idea is an attempt to create a different kind of European Parliament: a Parliament of the Parliaments, which is what the European Parliament used to be. Is not this another bolt-on to a fundamentally flawed, anti-democratic system? Whatever the European Union is, it is not a democracy. This proposal will not make it a democracy. Each time that we take a power away from the Member States and give it to the European Union we are taking a power away from democracy and giving it to a bureaucracy. Worse than that, let us consider the way in which it interfaces with our Constitution. We already have an overbearing Executive in our legislature. The European Union turns our Ministers into legislators who legislate in the Council of Ministers and then present their legislation fait accompli to the national Parliaments. That system will remain fundamentally unchanged, even under your proposals. How do we address that fundamental problem rather than just ameliorating it without upsetting too many people who still believe in it?

Lord Norton: I shall deal with your points in order. Let me reinforce your opening point. You are right. It is one of the problems with the whole exercise. There is no European demos. Therefore, that affects what we would regard as fundamental to a political system, particularly ours, which is accountability. The way in which the institution of the EU operates is sui generis and if we combine that with the fact that there is no European demos, we deny fundamental accountability within the system. Within our national system, we are used to political arrangements that provide us with one body – the party in Government – that is responsible for public policy. That body can be held accountable at the next election. It is elected on a political platform, but it can then be held to account by electors. One body stands on a platform and is responsible for public policy.

That fundamental accountability is denied within the EU, partly because there is no European demos. It has no party that transcends national boundaries and can have that accountability. Anyway, the institutional structure militates against that because of the nature of the Commission. That institutional aspect is an inherent problem as presently structured. You are right: I am suggesting something that would ameliorate the problem. You could say that it is a bolt-on, but as has already been identified, there are political obstacles to achieving that. As for your point about how we address that, fundamentally it is difficult to do that because the political problems will then be writ large in trying to deal with it.
Do we go down the direction of developing the democratic demos and restructure the institutions so that we have fundamental accountability or do we go to the other extremes of trying to undo it and perhaps start over again? How do we achieve that? Do we work within the political reality? Looking at it from a Conservative point of view, we are dealing not with the ideal, but the real. It is the old joke of, “If I was going there, I wouldn’t start from here”. We are where we are, so how do we cope with the current arrangements. I am dealing with what I think is within the realms of political achievability, not necessarily the ideal state that one would be trying to achieve.

Rt Hon. Lord Waddington: Thank you very much indeed. You have certainly given us a most interesting insight into all the problems.

We are in great difficulty with our time. It is good of you to come, Mr. Hannan. We usually ask the witness whether he would like to make an opening statement, but if you want, we can go straight into questioning. What would suit you?

Dan Hannan, MEP (Witness): I am happy to play it either way, my Lord Chairman.

Rt. Hon. Lord Waddington: Questions straight away. Who would like to start?

Bill Cash, MP: During the past 15 years, we have travelled a fairly long road on the European issue. You recently wrote an extremely good pamphlet on our going back to EFTA or something near as damn it to that. Will you explain why you consider that to be necessary? What will be the implications both for the European and the United Kingdom domestic constitutional position?

Dan Hannan, MEP: My starting point is that taken by the Prime Minister and most of the other advocates of the existing European dispensation. They pitched their argument in terms of economic necessity. We hear, particularly from the Prime Minister, the argument about 3 million jobs being at stake because of our exports and so on. Let us explore the prosperity angle. A reasonably good place to start is to ask which countries have the wealthiest people in Europe, who are doing the best on the normal measure of such matters. By some measure, they are the members of the European Free Trade Area.

According to the OECD, members of EFTA have a per capita GDP of slightly more than twice on average than the members of the European Union. Their unemployment is lower; their inflation is lower and, surprisingly, their interest rates are lower. Bizarrely, their trade rate and exchange rate are more stable than that of the EU. They run a healthier budget surplus. On almost every indicator, those countries are in a happier position than full members of the EU. We cannot divorce that fact from the deal that they have struck with Brussels. It is not the same in the case of the four EFTA members. Norway, Iceland and Liechtenstein are members of the European Economic Area, which has some supranational structures. Switzerland prefers to mediate its relations with the EU through a serious of bilateral, sectoral Treaties.

None the less, some things can be said in common of the four of them. They are all fully part of the free market. They enjoy the so-called fourth regions: free movement of goods, services, people and capital. But they are outside the Common Agricultural Policy. They are outside the Common Fisheries Policy. They control their own energy reserves. They patrol their own frontiers and determine who can settle in their territory. They decide their own human rights questions rather than contracting them out to European courts. They pay only a token contribution to the EU budget and they are free to negotiate commercial accords with third countries, which go beyond those that the EU has done.

That is a settlement not so far from that which your organisation, Bill, and others represented around the table as well as probably the British people as a whole have been pushing for since we joined in 1973: free trade and intergovernmental co-operation, without political union. We do not need to reinvent the wheel. It is already there.

Rt Hon. Lord Weatherill: Well, that is music to my ears. I have not seen your pamphlet. I would very much like a copy of it.

Dan Hannan, MEP: With pleasure.

Rt Hon. Lord Weatherill: I am grateful. What contact do you have with British Members of Parliament? I am rather out of touch. I was last in the Commons in 1992, so I do not know whether you have contact with them. Can you come in and out of this place? Do you meet them at the dining tables?

Dan Hannan, MEP: Yes, I am the proud possessor of a little pass that lets me come in and out of the building. I have closer relations with some Members of Parliament than with others, as you can imagine. It is probably fair to say that British Conservative MEPs are more integrated into party structures than they have been for a while. It is also probably fair to say that the generational shift in the Conservative delegation to the European Parliament has brought it overall more into line with thinking here at Westminster, although there is still some distance to go.

Rt Hon. Lord Waddington: To what extent are you a lone voice among British MEPs? To what extent are your views unique among the body of MEPs outside the British MEPs?

Dan Hannan, MEP: As far as I am aware, I am the only British Conservative Member of the European Parliament to have called for us to leave the European Union and replace that relationship with a different one. Of course, all of our views are unique at one level but, on that particular criterion, I think that I am the only one.

One of the problems with the European Parliament is how bad it is at reflecting public opinion. There are 732 Members and those who could be described as sceptical on some level, ranging from the UK Independence Party through to those who are in favour of the thing in theory, but have problems with it, probably number no more than 70. That is not a fair representation of public opinion in Europe. Having overheard briefly the previous witness, it seems that there is a real problem in that the supposedly representative bit of the EU institutions does an extremely poor job of articulating the views of its constituents. Rather than performing the primary function of a legislature, which is to hold the Executive to account, we see again and again on issues such as budgetary fraud and corrupt Commissioners...
the legislature ganging up with the Executive – the European Commission – against its own people.

The Hon. Bernard Jenkin, MP: You authored an earlier pamphlet that promulgated the solution to the European Union as flexibility. What should we understand by 'flexibility' when it is used by different people in different contexts? What opportunities does it offer? What dangers does it pose? Why have you now gone beyond flexibility to the ultimate flexibility, which is to have our own relationship?

Dan Hannan, MEP: Because the word has become meaningless through overse. It is like modernisation. It means a different thing, depending on whose mouth you find it in. Therefore, you must define your terms more precisely to make clear what it is you are advocating. I had always understood by flexibility was that international bodies should confine their jurisdiction to identify cross-border questions and not interfere in what we might call “behind border” questions – policies of an essentially domestic nature. You might allow in a flexible Europe a degree of supranational authority on the reduction of tariffs, possibly on some elements of aviation and cross-border environmental pollution, but the vast bulk of matters within the purview of Brussels would be devolved to a lower level.

In order to make that more clear, it is useful to point at a system that already operates on that premise. We have that in the European Free Trade Area. That can be inferred from the institutions of EFTA. The EFTA surveillance authority is analogous to the European Commission. It employs 1,200 people, as opposed to the 18,000 employed by the European Commission because it need only concern itself with trade issues. It does not need to meddle in internal affairs. The EFTA court is equivalent to the European Court of Justice. It employs 18 people rather than 1,500 employed by the European Court of Justice. That is what I mean by flexibility. Within the constant nexus of a free market, countries should be able to integrate in such combinations and on such issues as they please.

Rt Hon. David Heathcoat-Amory, MP: Reform can be added to the word flexibility, as being completely meaningless in the European context. As I discovered, European reform means giving more powers to Europe. My sad conclusion is that reform will not really happen, even though everyone talks about it. You sketched a relationship between European countries, which has enormous appeal to people like me. Realistically, however, that will not happen. Therefore, do you have a plan B to change our relationship with an unreformed European Union, which we can describe as disengagement or leaving, but something that is different from what we have at the moment?

Dan Hannan, MEP: Indeed. I am sorry if I was not clear. I am not a reformer at all. I think that 40 years of British policy of getting in and changing the thing have failed. It must be clear to the meanest intelligence that the policy that we have pursued right back to Macmillan's first application of creating an Atlanticist free market Europe of nations has resulted in a dispensation further than ever from those objectives. It has plainly not worked. I am not advocating that chimera of changing the thing. Like the late institutions of the Eastern bloc, they are beyond reform. They are incapable of self-regeneration.

To pursue briefly that parallel, what brought that system tumbling down was when some of the peripheral countries began to peel off, such as when Hungary began to allow its borders to be open, when the East German regime stopped enforcing the rules and so on. The one thing that is in our gift is our relationship with it. We should be honest. This is an occasional difference of opinion that I have had with some members of the Forum. It seems that, when British Eurosceptics – for want of a better summary of them – hold out the idea that, yes, we want to be part of the European Union, but a different sort of European Union, they practice a deceit on their electorate. It is a dangerous deceit because it postpones the moment when the people of this country have to face the real question, which is not, on the one hand, do they want a European super state or, on the other, a Europe of nations. However much we might like it, that second option is not on the menu.

The real question is that, given that we are dealing with a European polity on our doorstep, what kind of relationship will this country have with it? I have sketched a way in which we can keep the bits that we like, such as free trade, without the other bits. We do not like the regulation and the political union.

Martin Howe, QC: You may have just answered the question that I was about to ask. If we consider, say, the Swiss-type free trade agreement as something that in theory could be adopted as an irreducible core of membership of the European Union with states free to add on further bits and pieces, how many states would be interested in that relationship? You put it more clearly as it being in the United Kingdom's gift to alter its own relationship through its trading power as a net importer from the European Union in a big way. Do you think that, if the United Kingdom took that step, other European states would see it as being in their interests to follow us into a similar relationship?

Dan Hannan, MEP: Yes, I do. They would generally be the more Atlantic and peripheral countries, who never really bought into the notion of political union and who always saw the thing in terms of economic belonging, as the British electorate did. It would depend on which parties were in power in those countries and so on, but I would expect us to be followed by some of the Baltic and Scandinavian countries, and possibly some of the countries of the Atlantic seaboard.

Equally, there is little prospect of our being followed by the core, founder Carolingian countries, who have invested an entire political and economic way of thinking into the project and whose parameters are far removed from our own. That is not a bad thing. It is compatible with our interests that there should be a core European state and around that a wider nimbus of a European free trade area, linked through markets, military alliance and diplomatic support, but on the basis of the peripheral countries being self-governing.

Bill Cash, MP: I want to ask you about the European People's Party. There was a report in yesterday's Financial Times about your attempts – I know a certain amount about them in other contexts – to achieve new relationships outside the Conservative Party in the European Parliament. We know what our new leader has to say on the subject. How do you see that? What prospect do you hold out for it? What progress is being made?
Dan Hannan, MEP: As you say, our new leader has been unequivocal on this issue. The only pledge that he gave when he was a candidate for the leadership was that we would leave the European People’s Party. He repeated it at the press conference immediately following his election and has done so since. It is a pledge that could be delivered tomorrow.

Bill Cash, MP: You do have the numbers and parties?

Dan Hannan, MEP: Yes.

Bill Cash, MP: We are not talking about right-wing fascists?

Dan Hannan, MEP: No. The threshold is very low under the rules of the European Parliament. You need a total of 19 MEPs, who represent, among them, five different nationalities. That could be delivered tomorrow. If it is not delivered within the next couple of weeks, it is because our leadership has decided not to implement the one commitment that was given during the leadership election. If that happens, I hold out little prospect of our ever having credibility as a party on anything. If we do not do the one thing that is within our gift in Opposition, why should anyone believe any of our pledges about what we would do in Government?

Rt Hon. Lord Waddington: Thank you very much for coming along. I said that I would try to release you by 12:50 p.m. and we have just made it.

The Plenary Session finished at 12:50 p.m.

1 A full list of European Reform Forum Members, including their biographies, can be found at www.european-reform.org.

2 Lord Dahrendorf is a German-British sociologist, philosopher, political scientist and politician. From 1947 to 1956 Lord Dahrendorf received an extensive and varied education at German and British universities and later became a professor of sociology at various German universities from 1957 to 1969. In 1969 Lord Dahrendorf became a member of the German Parliament for the Free Democratic Party and a Parliamentary Secretary of State in the Ministry of Foreign Affairs. In 1970 he became a Commissioner in the European Commission. From 1974 to 1984 Lord Dahrendorf was Director of the London School of Economics (LSE). From 1987 to 1997 he was Warden of St. Antony’s College in Oxford. He was appointed to the House of Lords in 1993. He has written numerous publications over the past 20 years, including most famously The Modern and Social Conflict, and LSE: a History of the London School of Economics and Political Science.

3 James Walsh is Head of European and Regulatory Affairs at the Institute of Directors Policy Unit. He works closely with other organisations to ensure that the British voice is heard at EU level and also leads the Institute of Directors’ work on deregulation. Mr Walsh has written for a number of newspapers and has submitted written evidence on behalf of the Institute of Directors to a House of Commons Select Committee on Work and Pensions. Prior to joining the Institute of Directors in 2002, Mr Walsh worked on policy issues for the Royal Academy of Engineering. He has also been Deputy Director and Head of the Economic Section at the Conservative Party Research Department and has worked with political leaders in Sri Lanka and Namibia.

4 Lord Norton is an academic and an author, specialising in comparative legislatures and the British Parliament. He is currently head of the department of Politics and International Studies at the University of Hull. When Lord Norton first became Professor of Government in 1986 – at the age of 36 – he was the youngest professor of politics in the country. In 1992 Lord Norton was made Director of the Centre of Legislative Studies and in 2001 was appointed Chairman of the House of Lords Select Committee on the Constitution. Lord Norton has written or edited over 26 books, 62 book chapters and 104 articles, including Parliaments in Western Europe; National Parliaments and the European Union; The New Parliaments of Central and Eastern Europe; and Parliament in British Politics.

5 Dan Hannan has been Conservative Member of the European Parliament for South East England since 1999. He has been a member of the Justice and Home Affairs Committee and the Budgets Committee and currently sits on the European Parliament’s Constitutional Affairs Committee. He is also a leader writer for The Daily Telegraph as well as a columnist for The Sunday Telegraph and Die Welt. Mr Hannan was Director of the European Research Group from 1994 to 1999 and Special Adviser to Michael Howard from 1997 to 1998. He has written a number of publications including The Euro: Bad for Business; A Guide to the Amsterdam Treaty; What if Britain Votes No? Most recently he co-authored Direct Democracy: An Agenda for a New Model Party and has written the Bruges Group pamphlet, The Case for EFTA.
Appendix 1
Members of the European Reform Forum

Chairman
The Rt Hon Lord Waddington, GCVO, DL, QC
Member of Parliament for Nelson and Colne from 1968 to 1974; Clitheroe from 1979 to 1983; and Ribble Valley from 1983 to 1990
Home Secretary from 1989 to 1990
Life Peer in 1990
Lord Privy Seal and leader of the House of Lords from 1990 to 1992
Governor and Commander-in-Chief of Bermuda from 1992 to 1997
Called to the Bar in 1951 and appointed as QC in 1971

Lord Blackwell
Chairman of Smartstream Technology Ltd since 2001
Director of Standard Life Assurance since 2003
Director of Dixons Group from 2000 to 2003
Director of The Corporate Services Group since 2000
Chairman of the Centre for Policy Studies since 2000
Special Adviser at KPMG Corporate Finance since 2000
Director of Slough Estates since 2001
Life Peer in 1999
Director of Group Development at the NatWest Group from 1997 to 2000
Special Adviser at the Prime Minister’s Policy Unit from 1986 to 1987; Head of Unit from 1995 to 1997
McKinsey & Co from 1978 to 1995; Partner in 1984

Roger Brooke, Esq
Former Chairman of The Audit Commission
Founder and former Chairman of Candover Investments and Chairman of the Innisfree Group
Former Director of the Pearson Group and former Managing Director of EMI
Former diplomat, industrialist and financier

William Cash, MP
Member of Parliament for Stafford from 1984 to 1997 and for Stone since 1997
Shadow Secretary of State for Constitutional Affairs 2003
Shadow Attorney General from 2001 to 2003
Member of the House of Commons European Select Committee; member of the European Scrutiny Committee since 1985
Leader of the backbench revolt against the Maastricht Treaty
Founder and Chairman of the European Foundation

Professor Tim Congdon, CBE
Visiting Professor at Cardiff Business School
Founder and Chief Economist of Lombard Street Research Ltd
Director of Invesco Recovery and Highland Timber
CBE for services to economic debate in 1997
Former advisor to Chancellor of the Exchequer, Kenneth Clarke (HM Treasury Panel of Independent Forecasters) from 1992 to 1997

Janet Daley
Broadcaster and journalist
Former lecturer in philosophy
Leader writer at The Daily Telegraph
Regular panellist on The Moral Maze on Radio 4

The Rt Hon. David Heathcoat-Amory, MP
Member of Parliament for Wells since 1983
Member of the European Scrutiny Committee since 2003
Parliamentary representative at the European Union Convention on the Future of Europe from 2002 to 2003
Member of the 1922 Committee since 2001
Shadow Chief Secretary for the Treasury from 1997 to 2000; Secretary of State for Trade and Industry from 2000 to 2001
Minister of State at the Foreign and Commonwealth Office from 1993 to 1994
Parliamentary Under-Secretary of State at the Department of Energy from 1990 to 1992; Department of Environment from 1989 to 1990
PPS to Norman Lamont as Financial Secretary to the Treasury from 1985 to 87; Douglas Hurd as Home Secretary from 1987 to 1988
Member of the European Reform Group

Martin Howe, QC
Practising Queen's Counsel specialising in European law and intellectual property law
Appointed QC in 1996
Called to the Bar in 1978
Former Chairman of the Research Committee of the Society of Conservative Lawyers
Publications include Monetary Policy after Maastricht (1992) and The Constitution After Maastricht (1993)

The Hon. Bernard Jenkin, MP
Member of Parliament for Colchester North from 1992 to 1997 and for Essex North since 1997
Deputy Chairman of the Conservative Party since 2005
PPS to Michael Forsyth as Secretary of State for Scotland from 1995 to 1997
Member of the House of Commons Social Security Select Committee from 1993 to 1997
RUTH LEA
Director of the Centre for Policy Studies since 2004
Head of the Institute of Directors’ Policy Unit from 1995 to 2003
Former Chief Economist at Mitsubishi Bank
Former Chief UK Economist at Lehman Bros
Former Economics Editor of ITN
Former civil servant at the Treasury, Department of Trade and Industry and Central Statistical Office

PROFESSOR PATRICK MINFORD, CBE
Professor at Cardiff Business School since 1997
Edward Gonner Professor of Applied Economics at the University of Liverpool from 1976 to 1997
Editor of National Institute Economic Review from 1975 to 1976
Awarded CBE in 1996 for his services to economics
Director of Merseyside Development Corporation from 1988 to 1989; Member of Monopolies and Mergers Commission from 1990 to 1996; Member of HM Treasury Panel of Independent Economic Forecasters from 1993 to 1996
Member of Editorial Board at Journal of International Monetary Finance; Applied Economics; Applied Financial Economics; Open Economics Review; Bulletin of Economic Research

LORD REES-MOGG
Editor of *The Times* from 1967 to 1981
City Editor of *The Sunday Times* from 1960 to 1961; Political and Economic Editor from 1961 to 1963; Deputy Editor from 1964 to 1967
Chief leader writer at the *Financial Times* from 1955 to 1960; Assistant Editor from 1957 to 1960
Life Peer in 1988
Chairman of Broadcasting Standards Council from 1988 to 1993
Director of M & G from 1988 to 1992
Chairman of Sidgwick and Jackson Ltd from 1985 to 1988
Chairman of Arts Council of Great Britain from 1982 to 1989
Member of Executive Board at *The Times* Newspapers from 1968 to 1981
Vice-Chairman Board of Governors BBC from 1981 to 1986
Director of “The Times” Ltd from 1978 to 1981

ANDREW ROBERTS, ESQ
Historian, broadcaster and writer for *The Daily Telegraph; The Sunday Telegraph; The Spectator; The Literary Review; The Mail on Sunday*
Fellow of the Royal Society of Literature and the Royal Society of Arts
Former Chairman of the Conservative Party Advisory Committee on the Teaching of History in Schools
Currently writing *A History of the English-Speaking Peoples Since 1900.*

THE RT HON. LORD TEBBIT, CH
Member of Parliament for Epping from 1970 to 1974 and Chingford from 1974 to 1992
Life Peer in 1992
Chairman of the Conservative Party and Chancellor of the Duchy of Lancaster from 1985 to 1987
President of the Board of Trade from 1983 to 1985
Employment Secretary from 1981 to 1983
Under Secretary at the Ministry of Trade from 1979 to 1981
Vice-President of the Conservative Way Forward group.

GEOFFREY VAN ORDEN, MBE, MEP
Member of the European Parliament for the Eastern Region since 1999
Vice-Chairman of the Foreign Affairs Committee of the European Parliament
Senior official in the European Commission for foreign and security policy matters
Member of the Regional Policy and Transport Committee
Conservative Spokesman on Defence and Security Policy and Human Rights.
Former British Army Brigadier with wide international and operational experience particularly in the field of counter-terrorism.

THE RT HON. LORD WEATHERILL, DL
Member of Parliament for Croydon North East from 1964 to 1992
Convenor of the Cross-Bench Peers from 1995 to 1999
Life Peer in 1992
Speaker of the House of Commons from 1983 to 1982
Deputy Speaker of the House of Commons from 1979 to 1983
Chairman of Ways and Means from 1979 to 1983

SIR OLIVER WRIGHT, GCMG, GCVO, DSC
British Ambassador to Denmark from 1966 to 1969; Germany from 1975 to 1981; and the USA from 1982 to 1986
Private Secretary to Prime Ministers Sir Alec Douglas-Home and Harold Wilson
Former Master of Christ’s College, Cambridge
APPENDIX B: WITNESSES

THE Rt Hon. the Lord Anderson of Swansea

Lord Anderson was the Labour Member of Parliament for Monmouth from 1966 to 1970 and MP for Swansea East from 1974 to 2005. He held a number of roles in Parliament including Chairman of the Foreign Affairs Select Committee from 1997 to 2005; Shadow Environment and Transport Secretary in 2001; and was a member of the Liaison Committee from 1997 to 2005. Lord Anderson has had a varied career as a diplomat, politician, lecturer and most recently as a barrister on the South Eastern Circuit. He was Director of the Campaign for a Political Europe from 1966 to 1967.

PROFESSOR IAIN BEGG

Iain Begg is currently a Visiting Professor at the European Institute of the London School of Economics and is affiliated with the College of Europe. His research interests focus on the political economy of European integration and its consequences for economic policy-making; public finances; regulation; cohesion; and policy assignment between tiers of government in the EU. From 1998 to 2003 Professor Begg co-edited The Journal of Common Market Studies and has written extensively on EU economic policy.

PROFESSOR ALLAN BUCKWELL

Professor Allan Buckwell is Chief Economist and Head of Land Use at the Country Land and Business Association (CLA). Prior to joining the CLA, he was Professor of Agricultural Economics at Imperial College at Wye. In 1995 to 1996 he was seconded to the think tank within the Agricultural Directorate of the European Commission. From 1993 to 1996 he was President of the European Association of Agricultural Economists, and is President elect of the UK Agricultural Economics Society 2004/05. Professor Buckwell also chairs the Policy Group of the European Landowners Association.

CHARLES CLOVER

Charles Clover has been Environmental Editor at The Telegraph for over 15 years. In 2004, Mr Clover wrote The End of the Line, which discusses the effects of over-fishing the world's oceans. His book won a number of awards, including the André Simon Memorial Fund Book Award and The Derek Cooper Award for Investigative or Campaigning Food Writing 2005. Mr Clover is also a three-time winner of the national journalist category of the British Environment and Media Awards.

GARETH CROSSMAN

Gareth Crossman is Director of Policy at Liberty (the National Council for Civil Liberties). Prior to joining Liberty’s legal department, he worked as a solicitor specialising in criminal defence litigation and as a journalist. Mr Crossman has written for Parliamentary and wider audiences on a range of issues. He has particular expertise in UK Government anti-terrorism policy and regularly gives evidence to a number of committees including the Home Affairs Select Committee; the Constitutional Affairs Select Committee; the Joint Committee on Human Rights and the United Nations Committee against Torture.

LORD DAHRENDORF

Lord Dahrendorf is a German-British sociologist, philosopher, political scientist and politician. From 1947 to 1956 Lord Dahrendorf received an extensive and varied education at German and British universities and later became a professor of sociology at various German universities from 1957 to 1969. In 1969 Lord Dahrendorf became a member of the German Parliament for the Free Democratic Party and a Parliamentary Secretary of State in the Ministry of Foreign Affairs. In 1970 he became a Commissioner in the European Commission. From 1974 to 1984 Lord Dahrendorf was Director of the London School of Economics (LSE). From 1987 to 1997 he was Warden of St. Antony's College in Oxford. He was appointed to the House of Lords in 1993. He has written numerous publications over the past 20 years, including most famously The Modern and Social Conflict, and LSE: a History of the London School of Economics and Political Science.

FREDERICK FORSYTH, CBE

Frederick Forsyth is a best-selling author and commentator and former radio and television journalist. He is best known for his book The Day of the Jackal which was an international bestseller and was later made into a film. Mr Forsyth joined Reuters in 1961 and in 1965 he joined the BBC as assistant diplomatic correspondent. From July to September 1967, he covered the Biafran War between Biafra and Nigeria. At the age of 19 he became one of the youngest pilots in the RAF.

CHARLES GRANT

Charles Grant is the Director of the Centre for European Reform and a former Defence and European Community Editor for The Economist. He has written widely on matters involving Europe and has been a trustee of the British Council. In 2004 he was awarded the Chevalier de l'Ordre National du Mérite by the French Ambassador to London.

THE General the Lord Guthrie of Craigiebank, GCB, LVO, OBE

Lord Guthrie was Chief of the Defence Staff between 1997 and 2001 and Chief of the General Staff between 1994 and 1997. Following his retirement Lord Guthrie was made a life peer at the House of Lords, where he sits as a cross bench member. He is currently President of the Army Benevolent Fund; The Federation of London Youth Clubs and Action Research; Chairman of the Trustees of the Liddle Hart Archive and is a Visiting Professor in the Department of War Studies. Lord Guthrie's current business interests include a non-executive directorship at Rothschild and a directorship at Advanced Interactive Systems Inc.
**Dan Hannan, MEP**

Dan Hannan has been Conservative Member of the European Parliament for South East England since 1999. He has been a member of the Justice and Home Affairs Committee and the Budgets Committee and currently sits on the European Parliament’s Constitutional Affairs Committee. He is also a leader writer for *The Daily Telegraph* as well as a columnist for *The Sunday Telegraph* and *Die Welt*. Mr Hannan was Director of the European Research Group from 1994 to 1999 and Special Adviser to Michael Howard from 1997 to 1998. He has written a number of publications including *The Euro: Bad for Business; A Guide to the Amsterdam Treaty; What if Britain Votes No?* Most recently he co-authored *Direct Democracy: An Agenda for a New Model Party* and has written the Bruges Group pamphlet, *The Case for EFTA*.

**Martin Haworth**

Martin Haworth has been Director of Policy at the National Farmers’ Union (NFU) since 1999. Mr Haworth began his career in 1973 at the European Commission, where he worked for the External Relations and Information Department. In 1980 he joined the NFU’s Economics Department and from 1983 to 1986 he directed the NFU’s Brussels office. Mr Haworth was made Head of International Affairs at the NFU in 1989, and in 1996 he assumed responsibility for policy strategy over the Economics Department and Brussels office. In 1995 he was awarded the Chevalier du Merite Agricole by the French Government.

**The Rt Hon. the Lord Howell of Guildford**

Lord Howell is currently the Conservative Spokesman on Foreign Affairs in the House of Lords. Prior to this he was Secretary of State for Energy from 1979 to 1981 and Transport from 1981 to 1983. Between 1987 and 1997 he was the Chairman of the House of Commons Foreign Affairs Select Committee. Earlier in his career Lord Howell worked closely with both Edward Heath and Margaret Thatcher, and is credited by several authorities as having invented the idea of privatisation in the late 1960s.

**Will Hutton**

Will Hutton is Chief Executive of The Work Foundation, an independent not for dividend research-based consultancy. Prior to this Mr Hutton enjoyed a career as a highly successful journalist working at the BBC and *The Observer*, and won the Political Journalist of the Year award in 1993 for his coverage of the 1992 ERM crisis. He has written several best-selling economic books including *The World We’re In; The State We’re In; The State to Come; The Stakeholding Society; and On The Edge* with Anthony Giddens.

**Lindsay Jenkins**

Lindsay Jenkins is an investigative author and journalist specialising in the history and current operations of the European Union. She recently released the third book in her series on Britain’s relationship with the EU entitled, *Disappearing Britain: the EU and the death of local government*. Ms Jenkins formerly worked as an investment banker in London and New York and was also a senior civil servant in the Ministry of Defence.

**Rodney Leach**

Rodney Leach is a Director of Jardine Matheson and other companies. He has been widely involved in European issues, as Chairman of Business for Sterling and currently Chairman of Open Europe. His *Europe: a concise encyclopaedia of the European Union* is in its fourth edition.

**The Rt Hon. Denis MacShane, MP**

Denis MacShane has been Member of Parliament for Rotherham since May 1994. He was named a Minister at the Foreign Office in 2001 and was deputy to the Foreign Secretary, Jack Straw and Minister for Europe from 2002 to 2005. In June 2005 he was sworn as a Privy Councillor. Prior to entering Parliament, Mr MacShane worked in international and European political affairs and wrote extensively on the British and European steel industry. Consequently he set up and became first chairman of the Steel Group of MPs in the House of Commons.

**Dr Eric Metcalfe**

Dr Eric Metcalfe is Director of Human Rights Policy at JUSTICE. Prior to completing his doctorate in law, Dr Metcalfe taught comparative constitutional law at New College and Trinity College, Oxford. He was called to the Bar in 1999 and undertook a pupillage at 39 Essex Street. Dr Metcalfe subsequently worked in the Public Law Group of the Treasury Solicitor’s Department before joining JUSTICE in 2003. In addition to writing and speaking regularly on human rights law, he also manages JUSTICE’s third-party interventions including A and others (House of Lords, pending) and Ramzy v The Netherlands (European Court of Human Rights, pending).

**Ian Milne**

Ian Milne has been the Director of Global Britain since 1999. In 1995 he co-founded and was editor of *eurofacts* and in 1993 he was the founder-editor of *The European Journal*. Mr Milne is the author of numerous pamphlets, articles and book reviews which look at the relationship between the UK and the European Union; his most recent publications are *A Cost Too Far?* and *Backing the Wrong Horse*. He is chairman of companies involved in publishing and book distribution and also has a forty-year career in industry and merchant banking in the UK, France and Belgium.

**Dr Richard North**

Richard North has been actively engaged in EU politics for over 20 years, firstly through trade issues as a technical representative for food and farming groups and subsequently as director of research of the EDD Group in the European Parliament. He has written many books and articles on the subject with *Sunday Telegraph* journalist Christopher Booker, including *The Mad Officials, The Castle of Lies and The Great Deception*. He is currently a free-lance political analyst and co-editor, with Dr Helen Szamuely, of the EU Referendum “blog” on European affairs.
**Professor the Lord Norton of Louth**

Lord Norton is an academic and an author, specialising in comparative legislatures and the British Parliament. He is currently head of the department of Politics and International Studies at the University of Hull. When Lord Norton first became Professor of Government in 1986 – at the age of 36 – he was the youngest professor of politics in the country. In 1992 Lord Norton was made Director of the Centre of Legislative Studies and in 2001 was appointed Chairman of the House of Lords Select Committee on the Constitution. Lord Norton has written or edited over 26 books, 62 book chapters and 104 articles, including *Parliaments in Western Europe; National Parliaments and the European Union; The New Parliaments of Central and Eastern Europe; and Parliament in British Politics.*

**The Rt Hon. the Lord Owen, ch**

Lord Owen was a Member of Parliament for the Labour Party from 1966 to 1979 and held office as an independent MP from 1979 to 1992. During this time he was Navy Minister from 1968 to 1970, Health Minister from 1974 to 1976 and Foreign Secretary from 1977 to 1979. Lord Owen was a co-founder of the Social Democratic Party (SDP) and led the SDP from 1983 to 1990. He later was appointed EU peace negotiator in the former Yugoslavia from 1992 to 1995. He is currently a Director of the Centre for International Health and Cooperation and Chancellor of the University of Liverpool. His business interests include being Chairman of Global Natural Energy; Deputy Chairman of Europe Steel and a Director of Abbott Laboratories.

**Owen Paterson, mp**

Owen Paterson has been Member of Parliament for North Shropshire since May 1997. Mr Paterson is currently Shadow Minister for Transport. Prior to this he was Shadow Minister for Environment, Food and Rural Affairs from 2003 to 2005. Mr Paterson has also sat on a number of Commons Select Committees, including the European Scrutiny Committee from 1999 to 2000. Before entering politics, Mr Paterson was in the tanning industry and was President of COTANCE, the European Tanners' Confederation, from 1996 to 1998.

**Lord Pearson of Rannoch**

Lord Pearson of Rannoch is Founder and Chairman of the PWS group of international insurance brokers. From 1984 to 1990 he worked with and helped to finance various dissident groups to promote freedom in the Soviet Union. Created a Conservative life peer in 1990, he sat on the Lords' European Select Committee from 1992 to 1996 and in 1997 he co-founded Global Britain. In 2004 he lost the Conservative Whip for suggesting that voters should lend their support to UKIP in the European elections that year. Lord Pearson now sits as an Independent Conservative.

**Richard Plender, qc**

Richard Plender is a specialist in European Community law and has over 25 years’ experience of litigation before the Court of Justice of the European Communities. Richard was called to the Bar in 1972 and took silk in 1989. Since then his roles have included being legal advisor to the United Nations High Commissioner for Refugees; Consultant to the Council of Europe's Directorate of Human Rights and to the European Assembly and Référendaire at the Court of Justice of the European Communities. He was elected Bencher of the Inner Temple in 1997. Mr Plender has also written extensively on legal matters.

**The Rt Hon. John Redwood, mp**

John Redwood has been Member of Parliament for Wokingham since 1987. Mr Redwood was Minister of State from 1990 to 1992 and Secretary of State for Wales from 1993 to 1995. Mr Redwood contested the leadership of the Conservative Party in 1995 and 1997, and was Shadow Secretary of State for Deregulation from 2004 to 2005. He has also written a number of books including *Our Currency Our Country and Just Say No: 100 arguments against the euro.*

**Derek Scott**

Derek Scott is Chief Economic Advisor at KPMG. He was Economic Advisor to Tony Blair from 1997 to 2003, and was special advisor to Denis Healey and James Callaghan during the 1970s. Mr Scott was Director of European Economies at Barclays de Zoete Wedd from 1986 to 1997; International Policy Advisor at Shell International in 1984; and Chief Economist at Shell UK from 1981 to 1984. He is Deputy Chairman of Open Europe and a member of the Advisory Board of Reform. In 2004, Mr Scott wrote *Off Whitehall,* which examines EU politics and economics.

**Professor Len Shackleton**

Professor Shackleton has been Dean of Westminster Business School since 1997. Prior to this, he was a lecturer at Queen Mary and Westfield College and an Economic Advisor at the Department of Social Security. He has written widely on a range of issues including the history of economic thought; industrial economics; social security and retailing, and has published reports for a number of policy think tanks, including his most recent study for the Institute for Economic Affairs on European employment regulation.

**Ronald Stewart-Brown**

Ronald Stewart-Brown is Director of the Trade Policy Research Centre, which is examining the trade policy options that would be open to the UK outside the Common Commercial Policy-Single Market framework. His work in this field has been widely published in publications such as *Economic Affairs* and *Global Britain.*
Lord Stoddart of Swindon is an Independent Labour Peer and Chairman of the Campaign for an Independent Britain. He was Labour Member of Parliament for Swindon from 1970 to 1983, during which time he was PPS to the Minister for Housing and Construction from 1974 to 1975; Assistant Government Whip from 1975 to 1977; and Lord Commissioner of the Treasury from 1976 to 1977. Lord Stoddart is a co-founder of Global Britain and chaired the Anti-Maastricht Alliance from 1991 to 2004.

Keith Vaz, MP

Keith Vaz has been the Member of Parliament for Leicester East since 1987. Mr Vaz received a law degree from Cambridge and was a senior solicitor for the London Borough of Islington from 1982 to 1985. Mr Vaz was Opposition Front Bench Spokesman for the Environment from 1992 to 1997, and in 1999 he was made Minister for Europe where he remained until 2001. Mr Vaz is currently Vice-chair of the All-Party Bangladesh Group.

Professor the Lord Wallace of Saltaire

Lord Wallace has been a Professor of International Relations at the LSE since 1995, prior to this he was the Walter Hallstein Senior Research Fellow at St. Anthony’s College, Oxford. During the 1970s and 1980s he fought five General Election campaigns for the Liberal Party and co-wrote the party’s election manifesto in 1979 and 1997. Elevated to the peerage in 1995, he has served on the Select Committee on the European Communities and was Chairman of the Sub-Committee on Justice and Home Affairs.

James Walsh

James Walsh is Head of European and Regulatory Affairs at the Institute of Directors Policy Unit. He works closely with other organisations to ensure that the British voice is heard at EU level and also leads the Institute of Directors’ work on deregulation. Mr Walsh has written for a number of newspapers and has submitted written evidence on behalf of the Institute of Directors to a House of Commons Select Committee on Work and Pensions. Prior to joining the Institute of Directors in 2002, Mr Walsh worked on policy issues for the Royal Academy of Engineering. He has also been Deputy Director and Head of the Economic Section at the Conservative Party Research Department and has worked with political leaders in Sri Lanka and Namibia.

Appendix C: Bibliography


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Dr Richard North, *The Wrong Side of the Hill; The Secret Realignment of UK Defence Policy with the EU*, (Centre for Policy Studies, 2005)


Owen Paterson, *The European Communities Act 1972 (Disapplication) Bill*, (House of Commons, 2005)

John Redwood, *EU Constitution; Conclusions*, (Oxford University, 2004)

Marion Shoard, *The Theft of the Countryside*, (Temple Smith, 1982)


James Walsh, *The Internal Market: IoD Member Questionnaire*, (Institute of Directors, 2003)

Daniel Hannan, *The Case for EFTA*, (The Bruges Group, 2005)
I make a preliminary observation that this is the most important matter that I have ever been engaged in well over 40 years in politics and in five political careers, some of which were of more dubious worth than others. The stakes are enormous and the need for clarity and a right way forward is immense, and the penalties for getting it wrong are vast.

Rt Hon Lord Howell of Guildford
Conservative Spokesman on Foreign Affairs in the House of Lords

I am pleased to be here and I welcome the fact that you are having this inquiry. I am amazed at the number of people giving evidence and the quality of that evidence.

Keith Vaz, MP
Former Minister for Europe

I apologise for the fact that I was not able to be here for the rest of this morning’s evidence; I would love to have heard it. I am glad that it will all be transcribed.

Charles Grant
Director of the Centre for European Reform