

# Britain and the Convention on the Future of Europe

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The dust has finally settled on the Convention on the Future of Europe and its discussions concerning a new constitutional treaty for the European Union. Press reaction in the UK to the outcome of those debates has been heated, to say the least. The *Sun* printed a photo of Tony Blair in an undertaker's hat on the front page of its issue of 10 September 2003 beneath the headline 'Last rites: Blundertaker Blair is set to bury our nation'. The tone of the Conservative opposition was hardly more measured. Yet behind the hype and the hyperbole, the reality is, as this article will argue, that the British government proved remarkably successful in achieving its stated goals during the Convention. Despite having approached the whole exercise with trepidation and being isolated for long periods within the debates, the government has every reason to be satisfied with the outcome.

## Qualifying remarks

The notion of 'British Government success' is used in a highly restrictive sense. For one thing the words 'British Government' themselves must be emphasized. The Convention brought together representatives of national parliaments, governments and the European institutions. The British members were a mixed bag, ranging from the overtly federalist MEP Andrew Duff to the arch-euro-sceptic David Heathcoat-Amory. British government 'success', therefore, would probably be seen as such by only two of the British conventioners—Government representative Peter Hain, and loyalist backbencher Gisela Stuart. Second, 'success' is used to denote the fact that the government managed to a large extent to achieve the objectives it set itself. These, however, are themselves open to criticism on the grounds that they were both overly negative and hardly designed to bring about the kind of Europe that would best serve British interests.<sup>1</sup>

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<sup>1</sup> Space constraints preclude a discussion of these issues here. A lengthier discussion of Britain's role in the convention, which addresses them in some detail, can be found on the Notre Europe website: <http://www.notre-europe.asso.fr/>.

## The lead-up

In the period preceding the Laeken summit of December 2001 at which the idea of a constitutional Convention was formally adopted, the official British attitude was far from enthusiastic. There were several reasons for this. For one thing, London's one experience with this kind of exercise was hardly positive. The Convention that had drafted the Charter of Fundamental Rights had taken the Government by surprise with the way in which it had achieved consensus and produced a text that many in Whitehall and Westminster considered to be deeply flawed. For another, British officials were not in favour of participating in a process they could not control. Finally, of course, the UK has never felt particularly comfortable with EU treaty negotiations. While British officials are generally considered some of the best in Europe when it comes to dealing with day-to-day EU legislative activity, discussions of possible treaty amendments have traditionally proved far more problematic for them. The Convention threatened to be as painful as any previous such discussions. The prevalent mood had not changed a great deal since Ernest Bevin memorably remarked of the Council of Europe that 'If you open that Pandora's box, you never know what Trojan horses will jump out.'

Yet for all this the government made no formal effort to block the creation of the Convention. In part this was because it would have been politically difficult to come out publicly against an exercise intended (and one should stress the word) to make treaty revisions more transparent and democratic. Partly, too, acceptance of the idea of a convention was bound up with the larger picture of British relations with the European Union. The prime minister was of the opinion that, given his task of selling the euro to an overwhelmingly sceptical population, the Convention might serve a useful purpose in separating political discussions about the European Union from what he was keen to portray as the purely economic question of the single currency.<sup>2</sup>

Finally, and most importantly, British hesitancy was mollified by the text of the Laeken declaration, which, included as an annex to the presidency conclusions of the Laeken summit of December 2001, formally announced the creation of the Convention.<sup>3</sup> The shape of the final declaration owed a significant amount to British influence behind the scenes. David Miliband, MP for South Shields and a former head of the No. 10 Policy Unit, had been a member of the so-called Laeken group which had been responsible for drawing up the

<sup>2</sup> Peter Hain made this point after the Convention had finished its work. The 'outcome . . . as Tony Blair has always wanted, has put us in a good position to win the euro argument and creates the context for making the case for the euro.' *Financial Times*, 29 July 2003. A similar argument was put forward by Lord Owen on the BBC Radio 4 *Today* programme on 18 September 2003, when he seemed explicitly to link an outcome to the IGC that limited Europe's federalist ambitions with the possibility of his taking a more positive view towards British membership of the euro.

<sup>3</sup> Presidency conclusions, European Council Meeting, Laeken, 14–15 Dec. 2001, Sn 300/1/01 Rev. 1, Annex I, Laeken Declaration on the Future of the European Union.

declaration. He proved to be an influential member of that group, despite early scepticism in the British media.<sup>4</sup>

Reading the Laeken declaration, one cannot but be struck by the degree to which it reflected traditional British anxieties about European integration. What citizens expect, it declares, 'is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life'.<sup>5</sup> It would be hard to formulate a clearer acknowledgement of British concerns.

Moreover, when it came to the process of the Convention itself, the declaration failed to confirm the worst fears of the British Government. It consigned the drawing up of a constitution for the Union to a long-term future, and also limited the Convention to the task of producing a document which 'may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved'. Equally importantly, regardless of what the Convention was to produce, its findings were in no sense to be binding. The final document would provide merely a starting point for discussions in the Intergovernmental Conference, which was to take the ultimate decisions.<sup>6</sup>

At the Laeken European Council itself, British ministers and officials did not attempt to hide their delight. Jack Straw pointed out with relish that it had been his predecessor, Douglas Hurd, who had coined the phrase about the Union keeping out of the nooks and crannies of national life. Meanwhile the prime minister confidently asserted that the document chimed with his view that European countries should cooperate more closely, but 'as a group of nations together, not on the basis of a federal superstate'.<sup>7</sup>

However, two portents of potential trouble ahead were discernible. First, despite British satisfaction with the substance of the Laeken declaration, its stipulations concerning the composition of the Convention provided grounds for unease. The new body was to consist of two representatives of the national parliament and one of the government from each current and candidate state along with alternates who could speak whether or not the full members were present, plus representatives of the European Parliament and the Commission. Thus, in marked contrast to Intergovernmental Conferences, government representatives were to be in the minority. Moreover, as *The Economist* put it neatly: 'Mr Giscard's Convention is packed with enthusiastic Euro-centralisers and harmonisers'.<sup>8</sup> One-fifth of its members and nearly half of the presidium were either Convention staff (president and vice-presidents) or representatives of the EU institutions.

<sup>4</sup> The *FT*'s 'Observer' comment reported that his appointment was seen by other group members, who had dubbed him 'Miniband', as proof that London was endeavouring to minimize the significance of the declaration by failing to appoint a political heavyweight. *Financial Times*, 7 Aug. 2001.

<sup>5</sup> Presidency conclusions, Laeken Declaration, p. 21.

<sup>6</sup> *Ibid.*, pp. 24–5.

<sup>7</sup> *Herald*, 16 Dec. 2001.

<sup>8</sup> *The Economist*, 27 May 2003.

The second cause for concern for the British government was the reaction awaiting the prime minister on his return from the summit. Although it is hard to imagine a declaration that showed greater sensitivity to traditional British concerns about the development of the Union, his report to the House of Commons prompted allegations from Conservative Party leader Iain Duncan Smith that the government was leading Britain towards ‘deeper’ political integration with Europe.<sup>9</sup>

### From Laeken to the Convention

Once the idea of a Convention to discuss the Union’s future had been formally accepted, it remained to select the British representatives on that body. When, in January 2002, Peter Hain, Minister for Europe at the time, was announced as the British Government’s representative, this was widely seen as a recognition of the need for the UK representative to have real authority, not least as most other member states had signalled their intention to appoint ministerial-level representatives.<sup>10</sup>

Far more fractious were debates about opposition representation. Angry accusations were traded in the House of Commons as the Tories appointed David Heathcoat-Amory, an avowed opponent of the euro, who in 1996 had quit his Treasury post over John Major’s policies on Europe and who, during the Tory leadership campaign, had backed Iain Duncan Smith’s candidature, predicting he would ‘save Britain from a European superstate’. Labour MPs furiously accused the Tories of going back on a deal whereby the Foreign Affairs Select Committee was to select John Maples, a Conservative with a moderate stance on EU matters.<sup>11</sup>

Such setbacks for the government were more than made up for, however, by two unplanned and largely unexpected triumphs. In the face of tough opposition, Labour MP Gisela Stuart was elected to act as one of the representatives of national parliamentarians on the presidium of the Convention. Less public, though more significant, was the selection of Sir John Kerr, former British ambassador in Washington and to the EU, as secretary general of the Convention. One senior official beamed that the appointment ‘means Britain will be in the driving seat’.<sup>12</sup>

While the question of representation was being worked out, British policy-makers were attempting to seize the initiative in the battle of ideas. Peter Hain lost no time in insisting that independent nation-states ‘must remain the bed-rock’ of the European Union. In a speech to the European Policy Centre, he declared that what he wanted from the Convention was a list of principles stressing that ‘the EU is primarily a union of the member states.’<sup>13</sup> In an interview

<sup>9</sup> *Financial Times*, 18 Dec. 2001.

<sup>10</sup> *Financial Times*, 25 Jan. 2002.

<sup>11</sup> *Herald*, 24 Jan. 2002.

<sup>12</sup> *Financial Times*, 25 Jan. 2002.

<sup>13</sup> *Financial Times*, 30 Jan. 2002.

with the *Guardian*, he spelled out what would be the central British message: the 'Council of Ministers has got to take over the political leadership of the EU so that elected governments are the key driving force strategically, which has not been the case up until now. That is crucial.'<sup>14</sup>

At the same time, attempts were made to forge alliances with other member states. In February 2002 the prime minister, accompanied by Hain, made a trip to Rome to discuss the forthcoming constitutional debate. Just days before the official launch of the Convention, Blair and the German chancellor Gerhard Schröder, in a joint letter to the Spanish presidency, emphasized the need for the Council of Ministers to be reformed in order that it might work more effectively and transparently.<sup>15</sup> And, in a move that was the precursor of a strategy he was to maintain throughout the Convention, Hain began to cultivate links with the accession states; on the day of the formal launch of the Convention proceedings, he held a breakfast for the representatives of the then applicant countries.<sup>16</sup>

Government spokesmen were also keen to appear non-confrontational in their approach. According to officials at the Foreign Office, a prime ministerial 'edict' had urged this course on them. Once again, the spectre of the euro lay behind this tactic. As preparations for the Convention got under way in early 2002, there was still a feeling that the government might call a referendum on the euro as early as the autumn of 2003. This being the case, it was felt that the adoption of an excessively hostile or negative tone towards the negotiations in progress would serve to confirm, rather than challenge, the Euroscepticism of the British public. Consequently, while laying down the bare bones of their negotiating objectives, British officials also attempted to strike a conciliatory note.

Thus, although the prime minister himself, speaking in Warsaw in October 2000, had appeared to rule out the drafting of an EU constitution,<sup>17</sup> in a major speech immediately before the launch of the Convention, Foreign Secretary Jack Straw appeared far more relaxed about that prospect.<sup>18</sup> Meanwhile Peter Hain told BBC's *On the Record* programme that he was not opposed in principle to the Charter of Fundamental Rights being included in the new text as long as it was not enforceable by British courts.<sup>19</sup>

Certainly, this positive and proactive approach had its limits. Old habits, after all, die hard. Repeated protestations concerning Britain's centrality within the Union and its desire to be a constructive partner, coupled with equally regular efforts to disown London's past negotiating style (Hain declared, for instance, that 'the idea that you could just go into the Convention like Margaret Thatcher waving a handbag and splatting everyone is just fantasy'<sup>20</sup>), were invariably followed by outbursts reminiscent of the Iron Lady herself. Thus, confronted

<sup>14</sup> *Guardian*, 28 Feb. 2002.

<sup>15</sup> *Guardian*, 26 Feb. 2002.

<sup>16</sup> *Independent*, 28 Feb. 2002.

<sup>17</sup> Tony Blair, Speech to the Polish Stock Exchange, Warsaw, 6 Oct. 2000.

<sup>18</sup> Jack Straw, 'Reforming Europe: new era, new questions', speech delivered at The Hague, 21 Feb. 2002.

<sup>19</sup> *Financial Times*, 18 Feb. 2002.

<sup>20</sup> *Independent*, 31 Jan. 2003.

with rumours about possible plans for an elected EU president in January 2002, Hain brusquely rejected them as ‘barmy’ and insisted that Britain would use its veto at the subsequent IGC if necessary.<sup>21</sup> Moreover, British politicians remained keen to emphasize that the ultimate task of deciding on the future structures of the Union would fall to the forthcoming IGC. In his otherwise positive speech in The Hague in February 2002, Jack Straw portrayed the Convention as little more than a discussion forum which would precede the taking of the real decisions by the IGC.<sup>22</sup>

Yet, in the early stages at least, such defensiveness was the exception rather than the rule and, indeed, the British tone became increasingly confident and assertive. Newspaper reports stressed the positive mood in the Foreign Office, based on a belief that the tide was turning in Britain’s favour.<sup>23</sup> Hain insisted that Britain ‘is going into this with confidence and a constructive frame of mind ... We are now at the centre of gravity of European debate and our arguments get a wide resonance.’<sup>24</sup>

## The Convention

### *The first phase: February–December 2002*

The Convention proper was formally launched with a plenary session on 28 February, and finally got down to serious business at the meeting of 25 March. In his opening contributions, Hain was notably positive about the EU, and urged reform to create a stronger Council, a smaller Commission and a more effective monitoring of the principle of subsidiarity. He reinforced his positive message by claiming that he had ‘come to listen ... there is no British blueprint.’ London, however, was to become aware, during the first two working sessions, of what it was up against, as speaker after speaker came out in favour of, among other things: a European social model; EU involvement in criminal law; a EU border guard; the promotion of EU values abroad through a coherent common foreign and security policy; more economic coordination for the EU; and the possibility of EU-wide taxes.

Unlike many government representatives on the Convention—and particularly the foreign ministers appointed by some states later in the process to fulfil this function—Hain quickly made it clear that he intended to take his participation very seriously. He attended regularly and was both an active participant in debates and a tireless networker, bending the ears of colleagues incessantly in an attempt to put over the British position. He played a leading role at the plenary session of 11–12 July, which debated the CFSP, and was actually quizzed on the British position by several fellow members of the Convention.

<sup>21</sup> AFX Europe (Focus), 9 Jan. 2002.

<sup>22</sup> Straw, ‘Reforming Europe: new era, new questions’.

<sup>23</sup> *Independent*, 21 Feb. 2002.

<sup>24</sup> *Guardian*, 28 Feb. 2002.

Gradually, British ideas were clarified. Baroness Scotland, Hain's alternate on the Convention, gave warning that, although the UK favoured a common asylum policy, it wanted the focus in justice and home affairs matters to remain 'on cross-border crime, not policing the streets': thus she called for mutual recognition of national systems, careful monitoring of Europol and Eurojust, and a rejection of any ambition to create a single judicial system. Similarly, at the July plenary Peter Hain spelled out the strict limits Britain placed on development of the CFSP. During his lengthy intervention, he declared that the credibility of the CFSP relied entirely on consensus among national governments to pool their diplomatic, financial and military resources. Consequently, flexibility, pragmatism and common political will must be its defining features. All that the introduction of the greater use of qualified majority voting would achieve was a starker illustration of the divisions among the member states. Although Britain favoured the idea of a single 'face' to represent the Union in external affairs, its view of the appropriate role for that individual would be shaped by these considerations.

In terms of more positive ideas for the discussion, British thinking crystallized around two key issues. First, London pushed the idea that the European Council should have a fixed-term chair, a notion that had first been proposed by Jacques Chirac in a speech in Strasbourg on 6 March 2002. Britain's initial ideas for reform of the Council had focused on the possibility of replacing the rotating system with a system of 'team presidencies'.<sup>25</sup> By May 2002, however, the idea had developed into proposals for a former head of government to replace the rotating presidency for a five-year term. That month Hain explained that the Union needed a more permanent presidency because the 'current system causes a lack of strategic grip and doesn't give Europe political leadership and clout'. Under his scheme, the president would take on much of the work done by Xavier Solana, the EU's foreign policy representative, and would be the first point of call for a US secretary of state hoping to speak to 'Europe'.<sup>26</sup>

The British Government's other practical proposal related to the issue of subsidiarity. Blair had argued in Warsaw in 2000 that there was a need for a second chamber of national parliamentarians to oversee the application of the principle.<sup>27</sup> However, this proposal received short shrift from the other member states. As a consequence, by the time of the Convention the British were arguing for something far less ambitious. In a joint letter sent in June 2002 to the Convention, co-signed with the government representatives of four countries, Peter Glotz (Germany), Pierre Moscovici (France), Ray McSharry (Ireland) and Danuta Hübner (Poland), Hain proposed a watchdog which would provide a check and balance on EU proposals and help to improve democratic legitimacy. This was to be a political body, made up of MPs from national parliaments or

<sup>25</sup> Blair, Speech to the Polish Stock Exchange.

<sup>26</sup> *Financial Times*, 16 May 2002.

<sup>27</sup> Blair, Speech to the Polish Stock Exchange.

some body mandated by the European Council. It would advise whether or not proposals should be implemented at EU level, although a ruling could be made by the European Court of Justice.<sup>28</sup>

Hain subsequently went further. The problem, he declared, was that the Union had ‘no means of enforcing subsidiarity. It’s like passing a law and having no police force to enforce it.’ He proposed a ‘subsidiarity watchdog’ made up of one MP from each of the 15 EU member states. FCO officials had great fun with the idea, dubbing it ‘OfBrussels’ in a parody of domestic regulatory bodies.<sup>29</sup>

Indicative of the emphasis placed by the government on the issue of subsidiarity was the fact that while Gisela Stuart—who was not a government representative, but who collaborated closely with Whitehall—was a member of, and indeed chaired, the working group on national parliaments, Peter Hain joined that on subsidiarity. Despite this, however, the two groups (which reported to the plenary session of 3–4 October) agreed on final reports that were not as strong as either British participant had wished. Instead of a new institution implementing a ‘red card’ system—according to which national parliamentarians would have the power to force the Commission to reconsider a proposal—the final report of Working Group IV on the role of national parliaments rejected the idea of the creation of a new institution,<sup>30</sup> while that on subsidiarity proposed only a greatly watered-down version of the Hain plan, under which national parliaments would have the right to examine Commission legislative proposals, and produce reasoned opinions as to whether or not these breached the principle of subsidiarity. If a significant number of concerns were voiced, the Commission would be required to reassess the original proposal; but, unlike under the British plan, it would not be compelled to withdraw or amend it.<sup>31</sup>

London suffered a further blow during the same plenary meeting when a clear consensus emerged in favour of incorporation of the Charter of Fundamental Rights into the constitution. Equally striking, however, were the lengths to which participants were willing to go to address British concerns—a testimony to the hard work carried out by the British government’s representatives, particularly by Baroness Scotland, to convince members of the Convention of the genuine nature of these concerns. Thus the Commission suggested that the Charter apply to states only when they were implementing EU law. During the debate of 29 October there was an acceptance of the need for ‘explanatory notes’ to help courts ‘interpret’ the rights and/or ‘horizontal clauses’ to the charter, laying down exactly how far these would affect the laws of the member states. Peter Hain welcomed this compromise, and indeed praised the working group for accommodating British concerns.

The session of 29 October was dominated by a discussion of the first draft text produced by Giscard and his team. Peter Hain did not pull his punches in

<sup>28</sup> *Financial Times*, 14 June 2002.

<sup>29</sup> *Independent*, 22 July 2002.

<sup>30</sup> CONV 353/02.

<sup>31</sup> CONV 286/02.

reaction to the proposal that the Union could henceforth be called the United States of Europe, mockingly suggesting that 'Europe United' sounded more like a football team. A senior official asserted bluntly that there was 'not a cat in hell's chance of it being called the United States of Europe'.<sup>32</sup> The spat over nomenclature notwithstanding, there was a clear sense that it was the federalists who came away least happy from proceedings at this plenary. Their hostility was focused on the inclusion in the draft of provision for the institutionalization of the European Council, a move which, although it had not met with widespread approval during debates, was clearly a step in the direction of British proposals for a strengthening of that institution.

By October, Peter Hain was able to assert that 'we are winning the battle of ideas over the future of Europe.'<sup>33</sup> His confidence was boosted by the fact that, far from being isolated, London appeared to have rallied a number of allies behind its cause. Active as ever, Hain was still engaged in assiduously courting the representatives of the accession states. Britain, he declared, is 'seen as the best friend of the candidate countries', who were natural allies in the EU because most of them 'have only won independent nationhood in the last ten years; they are not about to subvert it into the nightmare of a federal superstate ... Enlargement will help build our kind of Europe rather than a superstate.'<sup>34</sup>

Moreover, Britain enjoyed French support in its opposition to an idea floated by the German foreign minister, Joschka Fischer, for the creation of an EU president who would be simultaneously president of the European Council and the Commission. At the December European Council meeting France and Britain both supported alternative proposals for the appointment of a new EU president to lead the European Council. The new Europe minister, Denis MacShane, even went so far as to criticize German plans for the creation of a 'European Kaiser', a 'Commission president who will tell all the other European institutions what to do'.<sup>35</sup>

### *The second phase: January–July 2003*

Despite certain setbacks, then—notably over the Charter of Fundamental Rights—the British participants in the Convention finished 2002 on a high. However, the dynamics of the Convention were to change significantly from the early part of 2003. During its early stages, neither Paris nor Berlin had appeared to take the Convention all that seriously. This changed in the autumn of 2002, however, when first the Germans and then the French decided to send their foreign ministers as government representatives.<sup>36</sup> This apparent change in attitude,

<sup>32</sup> *Guardian*, 29 Oct., 30 Oct. 2002.

<sup>33</sup> *Financial Times*, 16 Oct. 2002.

<sup>34</sup> *Independent*, 23 April 2002.

<sup>35</sup> *Financial Times*, 2 Jan. 2003.

<sup>36</sup> Brendan Donnelly claims that premature bragging by the British about their ability to shape the convention was part of the motivation for others to take the process more seriously: FT.com, 20 June 2003.

together with the escalating crisis over Iraq, which was beginning to divide EU member states, meant that by mid-January all attention was focused on Paris for the celebration of the fortieth anniversary of the Elysée Treaty, as observers waited to see if the Franco-German motor of European integration could be jump-started.

There were real concerns in London prior to the publication of the Franco-German proposals for the Convention that the pro-integrationist stance of the Germans, and especially of their foreign minister, Joschka Fisher, would push France away from its traditional intergovernmentalist position. A particular worry was that the French would be persuaded to accept the idea of a single EU president that MacShane had derided the previous December.

In the event, however, such fears proved to be largely unfounded, in that the proposals published by Paris and Berlin did not represent the direct challenge to British views that many had anticipated. The intergovernmentalist French, it would seem, prevailed upon their more federalist eastern neighbours. The 'common contribution to the Convention' agreed by Schröder and Chirac on 15 January 2003 steered clear of the 'Kaiser' idea, proposing, rather, the creation of a dual EU presidency consisting of a permanent European Council chair and a European Commission president elected by MEPs.<sup>37</sup>

Initial British reactions to the Franco-German proposals were broadly positive, with Peter Hain welcoming the continuity implied by a long-term chair for the European Council.<sup>38</sup> Moreover, although London was hostile to the idea of an elected Commission president, ministers declared that this would be a small price to pay to ensure a permanent position of president of the European Council.<sup>39</sup>

Substantive British concerns about the Franco-German initiative focused on the third institutional innovation it proposed—the creation of an EU 'foreign minister' who would be elected by the Council but also a member of the Commission—as well as on the proposal to extend qualified majority voting (QMV) to foreign policy. Peter Hain argued forcefully in a paper circulated to Convention members in January that there was no need for a merger between the posts of Commissioner for External Relations and High Representative for Foreign Policy in order to achieve consistency. Indeed, in an *Economist* article of the previous October, Jack Straw had argued that EU foreign policy could be made more effective simply by the reinforcement of the High Representative's status and position, and improvement of coordination between the holder of that post and the Commissioner for External Relations.<sup>40</sup>

Hain's paper also emphasized that ultimate authority over foreign policy should rest with the president of the European Council, while the foreign minister would play a more operational role, on the ground in the Balkans and

<sup>37</sup> See Franco-German Plan (15.2.2003), <http://www.bundestkanzler.de/www.bundestkanzler.de-.7698.459668/Deutsch-franzoesischer-Beitrag-zur-institutionel...htm>.

<sup>38</sup> Cited BBC News, 20 Jan. 2003.

<sup>39</sup> *Independent*, 16 Jan. 2003; *Guardian*, 21 Jan. 2003.

<sup>40</sup> *The Economist*, 11 Oct. 2002.

Middle East.<sup>41</sup> Differences between the British and Franco-German views highlighted in a joint paper by Spanish Foreign Minister Anna Palacio and Peter Hain submitted to the Convention on 28 February 2003.<sup>42</sup> Under these proposals, the EU foreign minister was to be a strengthened High Representative, who would enjoy the right to attend Commission meetings when foreign affairs were discussed, while the president of the European Council was to reinforce the Union's external representation.

The Iraq crisis added an extra urgency to discussions of the EU's international role. French Foreign Minister Dominique de Villepin encapsulated the feelings of many—if not the British—when he stated in front of the Convention that, in 'a world where war and peace are now at stake', Europe 'has to play its full role because the world needs Europe'.<sup>43</sup> Indeed, as the crisis dragged on, and bitterness between the two sides of the debate increased, the fallout from the Gulf impinged more and more on events in Brussels. Foreign Office officials pointed to the fact that it became increasingly difficult to work with the French within the Convention, even on issues—such as the primacy of the member states—on which Britain and France shared a virtually identical outlook. Some officials claimed that Britain suffered a backlash as a result of its staunch support for the United States, with ambitious proposals being put forward—such as that for an EU Security Council seat during the plenary of 21 May—purely in an effort to embarrass London and force it into wielding the threat of a veto.

Following the publication of the Franco-German proposals, events moved fast. On 30 January Blair met with Giscard and signalled his willingness to make concessions—even to the point of accepting some degree of QMV on foreign policy, as long as unanimous agreement could be reached on this. The prime minister also displayed flexibility on a host of other issues, ranging from the idea of an elected Commission president to the adoption of the EU's Charter of Fundamental Rights and even the creation of an embryonic EU diplomatic service, as tradeoffs designed to ensure the achievement of his key objective—the creation of a fixed-term chair for the European Council.<sup>44</sup>

The conciliatory tone quickly disappeared, however, when the rewritten draft treaty articles were published in early February. The draft drew an immediate hostile reaction from London, with Peter Hain commenting acidly that it 'didn't seem to reflect the consensus ... I am wondering whether the people who drew up this document have been going to a different Convention. It's a bit odd. The presidium has a lot of explaining to do. We'll be making clear that a lot of the material in the draft has got to change.'<sup>45</sup> Specific points criticized by

<sup>41</sup> *Guardian*, 30 Jan. 2003; *Independent*, 24 Jan. 2003. The irony is that in the Strasbourg speech in which he originally mooted the idea of a presidency for the European Council, Chirac had portrayed it largely as a way of ensuring effective external representation for the Union.

<sup>42</sup> CONV 591/03.

<sup>43</sup> *Guardian*, 30 Jan. 2003.

<sup>44</sup> *Financial Times*, 30 Jan. 2003.

<sup>45</sup> *Guardian*, 7 Feb. 2003. In his interview earlier in this issue, Mr Hain admits that the publication of the first draft marked the low point of the Convention for him, and that he was 'a bit bad-tempered' about it.

London included the apparent role of the Union in coordinating the economic policies of member states, the phrasing of the definition of common defence policy and the text on foreign policy. 'It seems to put the EU in charge of economic and foreign policy, when that was not what was agreed,' said Mr Hain, who also objected to the reference to the EU's Charter of Fundamental Rights as 'an integral part of the constitution'.<sup>46</sup> Indeed, the British stance on the Charter appeared to have hardened significantly, with Hain demanding further reassurances.

London in fact raised objections and proposed amendments to 15 of the 16 articles, and Hain became the only government representative to use the phrase 'my government will not accept this.'<sup>47</sup> Perhaps most worryingly from a British point of view, he appeared to be isolated. Neither Paris nor Berlin expressed any real concerns about the draft, while Denmark, traditionally a sceptical member state, said the articles were 'a rather good basis' for setting out the division of labour between member states and the EU.<sup>48</sup> The sense of British isolation was compounded as a flood of amendments—some 1,500 of them—to the initial text came in, depressingly few of them going in the direction of British objections; on the contrary, they ranged from calls to reinstate the goal of ever closer union—dropped at UK insistence—to demands for a reference to the 'European social model'.<sup>49</sup>

To compound London's problems still further, plans were unveiled in March for the creation of an EU public prosecutor. He or she would investigate serious crimes committed across EU borders as well as cases of fraud against the European taxpayer, pursuing them in the courts of the member states. Once again, Britain reacted angrily. While London had been in the forefront of attempts to strengthen the EU in the area of asylum and immigration, EU intrusion into the area of criminal law was beyond the pale. One British official argued that the 'job of pursuing cases through British courts is one that has to remain within, and accountable to, the British system. We will not support the idea of a European public prosecutor as proposed.'<sup>50</sup> Fortunately, on this issue at least, such concerns were shared by others. In May 2003 Britain, along with five other member states (Austria, Sweden, Ireland, Denmark and Estonia), signed a letter attacking the plan.<sup>51</sup>

Meanwhile, Hain continued his rearguard action against Franco-German proposals relating to the CFSP. During the plenary debates on the institutional architecture on 15 May, and despite almost unanimous support for the idea of a single EU foreign minister based in both the Council and the Commission, Peter Hain, backed by Sweden, argued that the post should come under control

<sup>46</sup> *Guardian*, 7 Feb. 2003.

<sup>47</sup> *European Voice*, 6 March 2003.

<sup>48</sup> *Financial Times*, 7 Feb. 2003.

<sup>49</sup> *Financial Times*, 20 Feb. 2003.

<sup>50</sup> *Independent*, 18 March 2003.

<sup>51</sup> FT.com, 21 May 2003.

of governments, and that its links to the Commission should be limited. Moreover, while France, the Netherlands and Belgium argued for more majority voting on foreign policy matters, Hain voiced strong, if somewhat disingenuous opposition, asserting that '[the] freedom to act is at the heart, our sovereignty.'<sup>52</sup>

The picture for British negotiators was complicated immensely in May as the British right-wing press—anticipating publication of the full draft at the end of that month—launched a furious assault against both the government and the Convention. The flexibility and willingness to compromise that were so apparent earlier in the proceedings had been facilitated by the complete absence of attention to the Convention on the part of either the press or the parliamentary opposition; Iain Duncan Smith had failed to raise it even once at Prime Minister's Questions. Now, however, the *Daily Mail* launched a campaign for a referendum on the constitution ('a Vote to Save our Country'). It dubbed Peter Hain the 'Minister for Arrogance' and declared on 19 May that our 'independence, sovereignty, indeed our very soul is under threat'. The *Sun*, true to form, referred to Giscard as an 'arrogant condescending French snob' who 'was planning to end Britain's freedom'. On 19 May Conrad Black, owner of the *Daily Telegraph* and the *Sunday Telegraph*, announced that his newspapers would campaign for a referendum on the constitution.<sup>53</sup>

Confronted with such pressures, it was hardly surprising that the tone of the British government to the Convention hardened. In a sharply worded letter, Hain warned the Convention chairman against claiming that Britain had agreed to the Charter of Fundamental Rights being included in the new treaty.<sup>54</sup> When, on 19 May, Giscard visited Downing Street and held talks with Hain, Straw and Blair, the prime minister threatened to wield a veto at the IGC if certain elements of the constitution were not dropped or amended.<sup>55</sup> In particular, he insisted that if the word 'federal' and references to QMV on tax fraud and social security rights were not removed, Britain would block them at the conference.<sup>56</sup> Reports indicated that, during the course of this meeting, Giscard agreed to remove references to 'federal' from the draft and to amend article 13 which, in its original form, had referred to the Union coordinating the economic policies of the member states.<sup>57</sup>

British concerns also increasingly focused on the posts of EU foreign minister and president of the European Council. On the former, London increasingly came to fear what officials referred to as a possible 'backdoor communitarisation' of the CFSP via the proposed foreign minister's links to the Commission. The UK government increasingly stressed the distinction between a 'common' policy and a 'single' one, as Straw made clear:

<sup>52</sup> *EU Observer*, 16 May 2003. Disingenuously in that it is hard to see how more majority voting on foreign policy matters would stop Britain acting as it saw fit.

<sup>53</sup> *Guardian*, 20 May 2003.

<sup>54</sup> *Guardian*, 15 May 2003.

<sup>55</sup> *Independent*, 20 May 2003.

<sup>56</sup> *Guardian*, 20 May 2003.

<sup>57</sup> *Financial Times*, 22 May 2003.

The UK firmly believes the process must remain intergovernmental, recognising that national governments have to be accountable for their decisions on foreign, security and defence policy. It is in our interests to arrive at a common policy with other member states wherever possible. But to attempt to manufacture a single policy on every issue would be absurd.<sup>58</sup>

Indeed, London even objected to the use of the term 'foreign minister'. The FCO's ten-point guide to the new constitution referred instead to the 'European foreign affairs representative'—a term hardly calculated to win plaudits among the non-EU European states.<sup>59</sup>

As for the Council presidency, London mounted a rearguard action against smaller member states that were keen to water down its powers as much as possible. Thus Hain commented on the 'smalls' that, if 'they think the full-time post can be purely decorative ... then a deal won't be made.'<sup>60</sup> It was, he insisted, essential that the president have the power to set the agenda in the EU's decision-making councils, such as those dealing with the internal market.<sup>61</sup>

Final debates in the Convention took place between the end of May and mid-June 2003. During a frantic fortnight of drafting and redrafting, certain key changes were made to the text, including the insertion of a new 'passarelle' clause to allow for the extension of the scope of QMV by unanimity. In addition, it was decided that the European Parliament's role in the appointment of the Commission president would be limited to confirmation of the candidate selected by the Council, and that the Commission and European Council presidents must be of different nationalities—confounding hopes on the part of the more federally inclined that the two posts could eventually be fused. Finally, a last-minute compromise on the explanatory notes for the Charter of Fundamental Rights secured UK support for its inclusion in the constitution.

The final plenary session on the published final draft of parts I and II, held on 13 June, saw broad support, in the end, for the text to be presented to the Council at Thessaloniki. The European Council accepted the final draft, and instructed the convention to make no more than technical amendments to part III. On 4, 9 and 10 July plenary sessions took place to discuss part III. On 18 July, the final text was presented to the Council in Rome.

### **Conclusion: assessing the outcome**

There is little need here to provide a detailed analysis of the British Government's assessment of the final constitutional treaty, as a far more informed opinion is provided by Mr Hain earlier in this issue of the journal. The government, as he says, is broadly satisfied with the outcome, declaring itself happy

<sup>58</sup> *Guardian*, 20 May 2003.

<sup>59</sup> Foreign and Commonwealth Office, 'Ten-point summary of European draft constitutional treaty', 7 June 2003.

<sup>60</sup> *Guardian*, 12 June 2003.

<sup>61</sup> *Independent*, 7 June 2003.

with '80 or 90 per cent' of the draft constitutional treaty. However, ministers were quick to underline the need for detailed and lengthy negotiations on the final text—Jack Straw declared that Giscard's text was 'a good starting point for the lengthy negotiations in the IGC'.<sup>62</sup>

British officials have expressed dissatisfaction with three main aspects of the treaty. First of these are the various provisions regarding the possibility of moving to take decisions by QMV. The specific areas of cross-border taxes, social security and criminal law have all been cited as 'red line' issues, on which the government will veto any move towards majority voting. London has also expressed its hostility towards the so-called 'passerelle' clause, under which the European Council acting by unanimity could decide on issues by QMV. Secondly, the provisions on defence, particularly those relating to the possibility of 'structured cooperation' within a subgroup of member states, and the opening of the prospect of a mutual defence pact within the Union, have aroused British hostility.

Finally, UK officials have continued to express their unhappiness with the post of EU foreign minister as currently configured; under the terms of the proposed constitution, the foreign minister would be a vice-president of the Commission. Hain admitted that he was 'uneasy' about the foreign minister's role and particularly about whether adequate control by the member states could be assured.<sup>63</sup> In particular, as he points out in his interview in this issue, London is anxious to ensure that the foreign minister is not bound by Commission collegiality.

Yet while there are genuine reservations about these specific aspects of the text, the overall outcome for the British Government must be seen as overwhelmingly positive. Government lawyers are satisfied that the Charter of Fundamental Rights has been effectively ring-fenced and will apply only to the application of EU law. A fixed-term chair of the European Council will be created—though admittedly the post does not have the authority that London had sought. Equally, the European Parliament will not elect the president of the European Commission, and the possibility of the two posts being merged has effectively been closed off. Even though original plans for a subsidiarity watchdog came to nothing, the provision whereby national parliaments can express their opinions on Commission legislative proposals is nonetheless a powerful tool, since it will be politically extremely difficult for the Commission to ignore a large number of negative opinions. In the area of 'freedom, security and justice', the largest single innovation is the abolition of the third pillar and the move to QMV on the majority of justice and home affairs (JHA) issues—an avowed aim of the British government. The creation of a public prosecutor is dependent on unanimous consent, and there is no mention of one of the pet projects of many plenary sessions: an EU border guard.

<sup>62</sup> *Independent*, 12 June 2003.

<sup>63</sup> *FT.com*, 6 April 2003.

Given the composition of the Convention, and Britain's increasing isolation within it—particularly from the start of 2003—a text has been produced which largely satisfies the Blair government. It is an outcome which, when talk of a Convention first surfaced in 2002, Whitehall would have seized upon gratefully. This assessment of 'British success' in the Convention is shared by foreign observers. Perhaps the most revealing assessment of the outcome is provided by French constitutional expert Robert Badinter: 'Chateaubriand ironically called the Constitution of 1814 "the Benjamin" in reference to Benjamin Constant. It would be appropriate to call the European constitutional project "the British" ... It is English pragmatism rather than French constitutionalism which is the hallmark of the constitution.'<sup>64</sup>

<sup>64</sup> *Nouvel Observateur*, 19 June 2003.