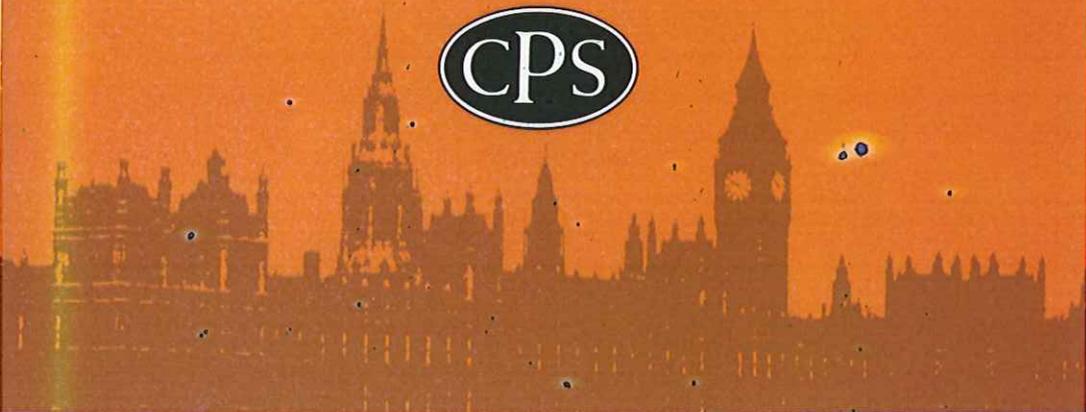


CENTRE FOR POLICY STUDIES

From Maastricht to Amsterdam

MARTIN HOWE QC





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INTRODUCTION

THE TREATY OF AMSTERDAM may be upon us within weeks. This Treaty could be of critical importance for the future of the United Kingdom as an independent nation state. The obscure but important workings which have led up to it have escaped public attention because of the General Election. They deserve now to become centre stage.

The process leading up to Amsterdam started with the Maastricht Treaty itself. That Treaty was, quite explicitly, just a staging post on a longer road. It laid down that there would be a Maastricht II: Article N(2) laid down that an Intergovernmental Conference (IGC) should convene in 1996 to revise the Maastricht Treaty, in accordance with the aims set out in Articles A and B of the Maastricht Treaty. There was never any chance that the new Treaty would not set out steps for further integration and centralisation of power at the expense of the independence of the nation states of Europe. The overall shape of the IGC was pre-ordained by Article B of the Maastricht Treaty, which said that the European Union would 'maintain in full the *acquis communautaire* and build on it' and that the new Treaty revision would play its part in that process.

After a year's low-key discussion of texts between diplomats, the Dutch Government, which currently holds the Presidency, symbolically handed out its revised text for the Treaty amendments at Maastricht, on Friday 16 May 1997. It hopes that these will be adopted at Amsterdam and become a new constitutional treaty for Europe: the Treaty of Amsterdam.

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The political debate in Britain is wholly out of line with the reality of what is happening in Europe. Apparently, both Labour and Conservatives share the objective of keeping Europe as a 'Europe of Nation States'. Both parties oppose the creation of a European superstate.

International law lays down a number of requirements for recognising the existence of a state. It is worth considering how many of those requirements are already met by the European Union, and how many more would be met if the Maastricht II text is adopted at Amsterdam. The European Union has what is in effect a federal system of law, Community law, which extends into the legal systems of the member states and overrides national laws. It has a Citizenship of the European Union. The Union has a clearly defined external frontier, with free movement of citizens inside that frontier.

The European Union has an executive (the Commission), a legislature (the Council of Ministers in conjunction with the European Parliament), and a judicial system with the European Court acting as the supreme court, and a lower Court of First Instance. The Union has a common economic policy, with legally binding guidelines on the member states' conduct of macro-economic policy and on budget deficits. It is likely that it will sooner or later have its own currency, used by most members if not all, administered by a single Central Bank for Europe.

The Maastricht II text would add a number of features to that, including:

- a formal legal personality for the European Union so that it could conclude Treaties in its own name;
- total abolition of all passport controls at the Channel ports and other 'internal' borders. Control by the European Union of the external immigration and asylum policies of the member states;

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- increasing control over their civil and criminal justice systems; and an operational role for 'Europol';¹
- a commitment to a common defence policy.

The European Union already possesses many of the most important features which international law recognises as being possessed by a state. It must be regarded as in transition towards becoming fully a State in international law, even if it has not reached that stage. The Treaty of Amsterdam would take it a giant stride further.

¹ Europol was established as a community-wide organisation intended to facilitate co-operation between the police forces of member states. However, it has met problems including the individual's right to privacy; accountability of national police forces; different national laws; and the diversity of national police structures.

CHAPTER ONE

THE RIGHT TO CONTROL BORDERS

TRADITIONALLY, ONE OF THE RIGHTS of a sovereign, self-governing nation has been the ability to control the entry of foreign nationals to its territory. This generally involves the exercise of control over the length of stay of foreign visitors and the purposes of their visit (for example, whether as a temporary or a long-term resident, and whether they enter for tourism, study or gainful employment) and the enforcement of that control through the exercise of checks at borders, international airports and other points of entry of visitors.

The draft Treaty, under the newspeak of providing an 'area of freedom, security and justice', in fact contains a far-reaching and comprehensive attack on the role of the nation state in this field. Although attention has been focused on the loss of the right to exercise controls on travellers at 'internal' borders between member states, there are far wider implications: because 'internal' borders would become barrier-free, the consequence is that the EU would effectively take over control from member states their 'external' border checks and immigration policies. In addition, since criminals can freely travel around a border-free Europe, a major intrusion of European measures into policing, the criminal justice system and criminal law is proposed. These so-called 'flanking measures' represent a far more serious curtailment of the functions of a sovereign nation state than the mere loss of the right to exercise controls at the Channel ports.

THE RIGHT TO CONTROL BORDERS

The area of 'freedom, security and justice' would be created by giving the Council of Ministers extensive powers to direct member states in the control of external borders, asylum and immigration,² 'judicial co-operation' in civil matters,³ and police and judicial co-operation in criminal matters.⁴ With some limited exceptions,⁵ all these measures could be imposed by Qualified Majority Vote (QMV) after three years have elapsed. This means that if the United Kingdom adheres to this new Treaty, it will not be able to prevent the later imposition of such measures on itself.

It is proposed to 'approximate, where necessary, rules on criminal matters'⁶ and 'promote the compatibility of the rules on civil procedure applicable in the Member States.'⁷ This opens the door to the progressive destruction of our distinctive common law legal procedures in favour of 'harmonising' with continental legal procedures, which are generally far less rigorous as regards fact-finding procedures and contain fewer safeguards in criminal matters.

'Europol' would begin to turn into a kind of European FBI, being entitled, in the same way as the FBI started its life, to take part in 'operational actions of joint teams...in a support capacity.'⁸

In parallel with the ability to impose 'flanking measures' by majority vote, draft Treaty Article B **mandates** the Council of Ministers to take measures within five years 'with a view to

² See Appendix B, "New Title at the beginning of Part Three of the Treaty of Rome", Draft Article A, pages 19-20.

³ Ibid., Draft Article A(c), page 19.

⁴ Ibid., Draft Article A(e) page 20.

⁵ The limited exceptions where unanimity will still be required are, firstly: on 'border sharing' of refugees (that is, measures requiring member states to take in quotas of external refugees) – see Appendix B, Draft Article C(2b) page 21; and second, measures defining the rights in other member states of non-EU nationals who are resident in a member state – see Draft Article C(4) page 21. In all other cases QMV will apply after three years – see Draft Article G(2), pages 21-22.

⁶ Draft Article K.1 3rd indent (not in appendices).

⁷ Draft Article E(c) (not in appendices).

⁸ See Appendix B, "Europol", Draft Article K.2(2)a, page 23.

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ensuring...the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders.⁹

There is no opt-out for the United Kingdom from any of these proposals. The only place where the Dutch Presidency appears to have made any acknowledgement of the Government's demand for an opt-out is in excepting the United Kingdom from a provision which would apply the Schengen agreement and the rules and procedures adopted under it (the *Schengen acquis*) to all member states.¹⁰ Since the United Kingdom is not at present bound by the Schengen agreement in any way at all, this represents no concession whatsoever. Instead of making any concession to the Foreign Secretary's request for an opt-out, the Dutch Presidency has presented a text which would mandate the United Kingdom to abandon its border controls within five years.

Acceptance of the *Schengen acquis* would be made a condition of admittance of new member states to the European Union,¹¹ so that the EU could not be enlarged eastwards unless and until the new states were willing and able to form part of a single border control zone, and the Western states were willing to accept them as such.

Far from making concessions in return for Labour's new 'constructive' attitude to Europe, it is clear that the Dutch Presidency has simply exploited its gullibility. The Maastricht II text absorbs the Government's concession of accepting the integration of the Social Chapter into the Treaty of Rome itself, and gives absolutely nothing of substance in return.

The only workable negotiating position, if the Government means what it says about maintaining Britain's position on this issue, is to insist on an opt-out for the United Kingdom from the whole section on the area of 'freedom, security and justice.' The

⁹ See Appendix B, "New Title at the beginning of Part Three of the Treaty of Rome", Draft Article B(1), page 20.

¹⁰ See Appendix B, "Draft Protocol on the *Schengen Acquis*", Draft Article C, page s 22-23.

¹¹ *Ibid.*, Declaration to the Final Act, page 23.

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United Kingdom should be allowed to retain its own 'internal' border controls (that is, its external controls at the Channel ports); in consequence, there is no logical reason why its external border or immigration policy should be regulated by Europe at all. A failure to insist on a full opt-out of this kind will be a breach of the promises made by the Labour Party in its General Election campaign and will undermine the credibility of the Government.

The problem over Britain's ability to retain border controls goes back to Article 7a of the Treaty of Rome, inserted by the Single European Act (originally and confusingly numbered 8a but since renumbered):

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992...The internal market shall comprise an area *without internal frontiers* in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty. [Emphasis added.]

The main purpose of the Single European Act was to convert a 'common market' into a 'single market'. Under the single market, the formalities of customs checks at borders were dispensed with. Similarly, this provision of the Single European Act was, on the face of it, designed to end immigration checks at borders between member states.

The British Foreign Office was aware at the time of negotiating the Single European Act of the danger of this interpretation being given to Article 7a (then Article 8a). In consequence, a 'Declaration' was negotiated at the time of signature of the Single European Act (February 1986) as follows:

Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third

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countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.

If this Declaration was intended to preserve the right of Britain to maintain border checks on persons entering the country from other member states, then it suffers from two defects: its status as a 'Declaration', and its content. A Declaration is not part of a Treaty and does not have the same legal status. The content of the Declaration does not explicitly refer to frontier controls at all. Member states could take other measures (for example, internal checks on residents and employees) for the purpose of preventing illegal immigration; and it could be that such internal measures are all that this Declaration is contemplating.

Ultimately, Article 7a may have to be interpreted by the European Court – unless it is superseded by Treaty amendments to be made at Amsterdam. The overwhelming consensus of legal opinion (including an opinion of the Law Officers leaked to the *Sunday Times* on 19 February 1995) is that the European Court will interpret Article 7a as requiring that border checks between member states should be abolished. All other member states and the European Commission adopt the view that the single market entails, at least eventually, the abolition of border checks between member states.

It may be that Article 7a is not 'directly applicable': it may not (at least as yet) be relied upon directly before the Courts of member states in actions against the British Government. However, it does give rise to obligations at the international level. Arguments over its direct applicability merely relate to the timing of its eventual enforcement. It is essential that the British Government should negotiate at Amsterdam for an explicit and positive opt-out for Britain from the abolition of 'internal' frontiers controls, together with an opt-out from the 'flanking measures'. Whether or not this can be achieved will be a touchstone of whether Labour's new approach to European negotiations will yield any worthwhile results.

CHAPTER TWO

HUMAN RIGHTS

WHO COULD BE OPPOSED TO HUMAN RIGHTS? Who could be opposed to the principle that the European Union and its institutions should protect those rights? What, therefore, could be the objection to draft Treaty articles whose stated aim is to strength the protection of human rights?

The problem is that while everyone is in favour of the principles of the protection of human rights, there is almost limitless room for disagreement about the detailed application of those principles. The practical implications can be seen by studying the role of the Supreme Court of the United States of America: its control over the interpretation and application of basic laws purporting to protect individual rights has been used as a powerful mechanism for the imposition of a centralised system of laws. After the American Civil War, the Fourteenth Amendment to the US Constitution imposed on the individual States the obligation not to 'deny to any person within its jurisdiction the equal protection of the law'.

The Equal Protection amendment proved to be the single most powerful engine enabling the US Supreme Court to impose its interpretation of individual rights on the States – previously it had been largely limited to controlling the organs of the Federal government and legislature. Thus, the criminal justice systems of the States became subject to detailed control by the Federal courts on the basis of ensuring 'due process'. The Fourteenth Amendment represented a conscious decision to enshrine the view of the nature of the United States as being truly federal – a view which had

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effectively come into being as a result of the Civil War. It would be strange indeed if a government proclaiming its attachment to a Europe of nation states were to embark on this road.

The draft Treaty proposes to amend Article F¹² of the Maastricht Treaty to demote the requirement that the Union shall respect the national identities of member states from first to third place. In the first place, it would insert a new ringing declaration that the Union 'is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are upheld by the Member States.' The last phrase is the twist in the tail which will be deployed in due course in order to argue that not only the institutions of the European Union, but the member states themselves in all their activities, are subject to those principles; or more accurately, subject to what the organs of the European Union may choose to interpret those principles as meaning.

Coupled with those amendments, it is proposed to make Article F(2),¹³ which provides for respect for fundamental rights as set out in the European Human Rights Convention and for 'constitutional traditions common to the member states', fully justiciable before the European Court of Justice (ECJ).¹⁴ It is important to appreciate that not only the institutions of the European Union but also the member states when they are operating in a field covered by Community law, would be subject to the judicially enforceable Article F(2). This would have the effect of subjecting the member states to a greatly-widened jurisdiction of the European Court. The European Court would be able both to curtail the actions of member states and overturn laws on the basis of their conception of human rights considerations. It should be noted that the vague reference to 'constitutional traditions common to the member

¹² See Appendix C, Amended Article F of the Maastricht Treaty, page 24.

¹³ Ibid.

¹⁴ It is proposed to amend Article L of the Maastricht Treaty so that the exclusion of Article F from justiciability is removed.

HUMAN RIGHTS

states' means that the Court, in expanding its jurisprudence and its jurisdiction, would not be pinned down to the already vague clauses of the Human Rights Convention.

The 'lynch-mob' clause

In addition to making Article F(2) judicially enforceable, a further mechanism is proposed – purportedly in aid of human rights. Draft new Article Fa¹⁵ can only be described as a 'lynch-mob' clause. It would allow a four-fifths majority of member states (the accused state not being allowed to vote in this process), to suspend the voting rights of a state in the Council of Ministers if the majority contend that it is in breach of the principles in Article F(1). Judicial control of this process is specifically excluded.

The problem with this new Article is that it is so widely drawn that it could be deployed as a weapon in a future political dispute in which the United Kingdom (or any other member state) was using a veto to block a measure which the majority wanted to push through. A pretext could be used – for example, differences of view over the detailed application of the principle of sex equality in the workplace – which could be said to be a breach of the vaguely defined fundamental principles of human rights. The voting rights of the 'defaulting' state would be suspended by the majority, without any possibility of appeal to the ECJ; the measures which the 'defaulting' state had been vetoing could then be pushed through while its voting rights were suspended.

For a sovereign state to subject itself to the possibility of deprivation of its Treaty rights on a basis such as this is incompatible with its continued status as a sovereign independent nation. It would truly reduce itself to a province or subordinate unit in a greater State, whose continued rights depend not on its status as a High Contracting Party to a Treaty, but upon the continued indulgence of the other components of the European superstate.

¹⁵ See Appendix C, "New Article Fa", page 24.

CHAPTER THREE

FURTHER TRANSFER OF POWERS

THE TREATY OF AMSTERDAM will create a legal identity for the EU; it will transfer control over border and immigration policies from member states to the EU; and it will enable the ECJ to interfere in the domestic policies of member states through its wide-ranging interpretation of 'human rights'.

In addition, the draft Treaty proposes to continue the process of transferring powers from national governments to the EU, particularly in the fields of employment and social policy and foreign and defence policy.

In addition the continuing extension of QMV (as opposed to unanimity) in the Council of Ministers and the further undermining of the already weak principle of subsidiarity represent further substantial steps towards a European State.

Employment and Social Policy

The draft Treaty contains a new Employment Chapter, providing for the co-ordination of employment policies of member states. This would allow member states to be directed in their employment policies by 'guidelines' laid down QMV.¹⁶ This could in practice lead to a more extensive curtailment of the rights of the nation states in this field than the Social Chapter.

¹⁶ Draft Article 4(2) (not in Appendices).

FURTHER TRANSFER OF POWERS

As expected, the Maastricht II draft proposes to integrate the Social Chapter¹⁷ fully into the Treaty of Rome. In general, this permits measures to be imposed under QMV, but contains exceptions on certain specified matters where a unanimous vote is required.¹⁸

The problem with the Social Chapter is not what it contains. The problem lies in the measures which may be adopted in future under it – whether by QMV or by unanimous vote. Throughout 18 years of Conservative government, the freedom of Parliament to pursue employment policies in accordance with its democratic mandate was severely curtailed by a series of ‘social’ Directives which had been agreed to on behalf of the United Kingdom by the Labour Government of the late 1970s.¹⁹ The scope of these Directives was expanded by a progressive interpretation of the Directives by the ECJ. If further significant social measures are agreed to by the current Labour Government, and should a future electorate return a Conservative majority, such measures would represent a further curtailment of the ability of Parliament to follow the democratic mandate of the British people.

Foreign and Defence Policy

The Maastricht II text proposes a series of changes in the basis of the EU's common foreign policy, which would undermine and effectively destroy the so-called ‘inter-governmental’ nature of the policy which was claimed to be a British negotiating success at Maastricht. A change which is of great symbolic importance and also of substantive effect is to give legal personality, under both

¹⁷ Technically, ‘The Agreement on Social Policy’ which was concluded at Maastricht in 1992 between all member states except the United Kingdom. See Appendix D for the main relevant clauses, pages 26-27.

¹⁸ The Agreement on Social Policy, Article 3. To become the new Article 118 (3). See Appendix D, pages 26-27.

¹⁹ These included Directives on social security, on the protection of employees’ acquired rights and on the transfer of undertakings.

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international and domestic law,²⁰ to the European Union, which would succeed the European Community (EC).²¹ This means that in the foreign policy field, the EU would conclude treaties in its own name in the same way as the EC presently does in the trade field. The grant of legal personality is, of course, an important step in conferring on the European Union all the necessary attributes to be recognised as a State under international law.

There is also to be a greater role for the European Commission.²² A new procedure is provided for the adoption of a 'common strategy',²³ which, once adopted, would lead to taking of implementing decisions by QMV rather than by unanimity.²⁴ As more and more 'common strategies' come to adopted, Britain's autonomy in the conduct of its foreign policy would be progressively eroded.

On defence, the Maastricht II text provides for the 'gradual integration' of the Western European Union into the EU,²⁵ and refers to the 'progressive framing of a common defence policy'.²⁶

²⁰ See Appendix A, "New Article A in Maastricht", page 18.

²¹ At present, under the so-called 'three pillared' structure of the Maastricht Treaty, the European Community (which has legal personality) is not directly involved in the Common Foreign and Security Policy or in Justice and Home Affairs Co-ordination. These areas of policy are under the control of the governments of the member states acting through the Council of Ministers. The European Union is an umbrella which covers both the EC itself and these two other 'pillars'. Since the European Union does not, at least explicitly, at present enjoy legal personality, treaties in the foreign policy field need to be concluded in the name of the member states rather than in the name of the European Union. In the trade field, the European Community concludes treaties in its own name.

²² Draft new Article J.4(4) (not in appendices).

²³ Draft new Article J.3(1) (not in appendices).

²⁴ Draft new Article J.13(2) (not in appendices).

²⁵ Draft amended Article J.7(2) (not in appendices).

²⁶ Draft Article J.7(4) (not in appendices).

FURTHER TRANSFER OF POWERS

The extension of Qualified Majority Voting

The draft Treaty text proposes that the role of national governments in the Community legislative process in a number of ways is diluted. Firstly, the powers of the European Parliament will be increased by changing most legislative powers which at present come under the 'co-operation' procedure to the 'co-decision' procedure. Under the latter procedure, the Parliament has a right to block legislation or impose amendments which cannot be overridden by the Council of Ministers.

Second, the 'co-decision' procedure, which involves QMV by the Council of Ministers rather than unanimity, will replace unanimous votes in a number of areas as well as being applicable to a number of new Treaty powers.²⁷

An important example of an existing Treaty provision where unanimity (and therefore the possibility of veto) would be abolished is the creation of implementing measures to allow European citizens to move and reside freely within other member states under Article 8a(2) of the Treaty of Rome. This could mean, for example, that social security harmonisation could be imposed by QMV. It is also proposed (as a bracketed option) to extend QMV to so-called framework measures in the field of police and judicial co-operation,²⁸ in addition to making these justiciable before the ECJ.²⁹

Subsidiarity

The word 'subsidiarity' makes a return to the stage. It is proposed that a Protocol is added to the Treaty of Rome to define further the concept of subsidiarity which was first introduced by Article 3b, inserted by the Maastricht Treaty into the Treaty of Rome. Unfortunately, the draft Protocol weakens, if anything, such

²⁷ "List of New and Existing Treaty Provisions to which Article 189b (co-decision) is to be applied" (not in Appendix)

²⁸ Draft new Article K.6(2) (not in appendices).

²⁹ Draft new Article K.7(1) (not in appendices).

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limited effect as the Treaty Article on subsidiarity might otherwise have had.

The Protocol requires that the application of the principle 'shall respect...the maintaining in full of *the acquis communautaire* ...; it shall not affect the primacy of Community law.'³⁰ Subsidiarity 'does not call into question the powers conferred on the European Community by the Treaty.'³¹ It is clear that 'subsidiarity' will continue to be an ineffective check on the growth of the European Union. It is to be feared that the presence of this ineffective protocol will be used as a selling point in favour of the adoption of the new Treaty.

³⁰ Draft Protocol on Subsidiarity, Article 1(not in appendices).

³¹ *Ibid.*, Article 2.

CONCLUSIONS

THE LABOUR GOVERNMENT has come to office with the naïve expectation that a show of goodwill and co-operation towards Europe will be rewarded with concessions in return. It risks following the long and bitter road trodden by John Major on his long retreat from the 'heart of Europe'. It has made a major concession in the direction of European integration – acceptance in full of the Social Chapter, placing British industry at the same competitive disadvantage with the rest of the world as our European competitors.

Our negotiators must have hoped that they would receive some goodwill in return – in particular over their strongly-stated demand for a British opt-out from the abolition of border controls between member states. The Dutch response to this demand was the Maastricht II text. It contains an opt-out for Britain merely from adherence to the Schengen agreement. It contains no opt-out for Britain from the abolition of border controls or from so-called 'flanking measures' which would subject external border controls and immigration policy to EU control. On the contrary, it contains a mandatory provision which would require Britain to abolish border controls within five years.

The Maastricht II text represents a slap in the face by Europe for the new Labour government. It demonstrates the futility of their naïve hope of achieving results for Britain's national interest by making concessions to European integration. Concessions made will be pocketed, and nothing of substance will be offered in return. If Labour are as serious as they say they are about preserving Britain as an independent nation, they will need to fight for British interests. Soft soap will achieve nothing.

APPENDIX A

LEGAL PERSONALITY FOR THE EUROPEAN UNION

AMENDED ARTICLE A IN THE MAASTRICHT TREATY

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall replace and succeed to the European Community.* Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

*Note: * amended sentence in bold.*

New Additional Article

1. The Union shall have legal personality.
2. In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission.
3. In international relations, the Union shall enjoy legal capacity to the extent necessary for the exercise of its functions and the fulfilment of its purposes.

Where this Treaty provides for the conclusion of agreements between the Union and one or more States or international organisations in areas falling under [parts] [Titles]...[p.m. EC], the provisions of Article 228 shall apply.

Where agreements need to be concluded between the Union and one or more States or international organizations for the implementation of a joint action adopted by the Council in accordance with...[p.m. CFSP, JHA], the provisions of Articles [J.X and K.x] shall apply.

APPENDIX B

DRAFT TREATY PROPOSALS ON BORDER CONTROLS

OVER-ARCHING OBJECTIVES OF TREATY PROVISIONS ON FREEDOM, SECURITY AND JUSTICE

Amend Article B, fourth indent, of the Maastricht Treaty

'to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external borders controls, immigration, asylum and the prevention and combating of crime.'

NEW TITLE AT THE BEGINNING OF PART THREE OF THE TREATY OF ROME

FREE MOVEMENT OF PERSONS, ASYLUM AND IMMIGRATION

Article A

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- a) within a period of five years after the entry into force of this Treaty, measures aimed at ensuring the free movement of persons in accordance with Article 7a, in conjunction with directly related flanking measures with respect to external borders control, asylum and immigration, in accordance with the provisions of Article B(2) and (3), C(1)(a) and (2)(a), and measure to prevent and combat crime in accordance with the provisions of Article K.3(e) of the Treaty on European Union;
- b) other measures in the fields of asylum, immigration and safeguarding the rights of third country nationals, in accordance with the provisions of Article C;
- c) measures in the field of judicial co-operation in civil matters as provided for in Article E;
- d) appropriate measures to encourage and strengthen administrative co-operation, as provided for in Article F;

APPENDIX B

- e) measures in the field of police and judicial co-operation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

Article B

The Council, acting in accordance with the procedure referred to in Article G, shall, within a period of five years after the entry into force of this Treaty, adopt:

1. Measures with a view to ensuring, in compliance with Article 7a, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders.
2. Measures on the crossing of the external borders of the Member States which shall establish:
 - a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
 - b) rules on visas for intended stays of no more than three months, including:
 - i. the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - ii. the procedures and conditions for issuing visas by Member States;
 - iii. a uniform format for visas;
 - iv. rules on a uniform visa.
3. Measures setting out the conditions under which the nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article C

The Council, acting in accordance with the procedure referred to in Article G, shall, within a period of five years after the entry into force of this Treaty adopt:

1. Measures on asylum, in accordance with the Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees, within the following areas:
 - a) criteria and mechanisms for determining which Member State is responsible for considering an application for

CLAUSES ON BORDER CONTROL

- asylum submitted by a third country national in one of the Member States;
- b) minimum standards on the reception of asylum seekers in Member States;
 - c) minimum standards with respect to the qualification of third country nationals as refugees;
 - d) minimum standards on procedures in Member States for granting or withdrawing refugee status.
2. Measures on refugees and displaced persons within the following areas:
- a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and to persons who otherwise need international protection;
 - b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.
3. Approximation measures on immigration policy within the following areas:
- a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion;
 - b) illegal immigration and illegal residence.
4. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside and have access to employment in other Member States.

Article G

1. During a period of three years following the entry into force of this Treaty, the Council shall act unanimously on a proposal from the Commission or any Member State and after consulting the European Parliament.
Measures referred to in Article B(2)(b) (i) and (iii) shall, from the entry into force of this Treaty be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.
2. After a period of three years following the entry into force of this Treaty, the Council shall adopt the measures referred to in this Title, [acting by a qualified majority on a proposal from the Commission and after consulting the European

APPENDIX B

Parliament] [acting in accordance with the procedure referred to in Article 189b.*

The Council shall act unanimously, after consulting the European Parliament, on the measures referred to in Article C(2)(b) and (4).

*Note: * Both the alternative procedures here involve a qualified majority, not unanimity, on the Council of Ministers.*

DRAFT PROTOCOL ON THE *SCHENGEN ACQUIS*

Article A

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen Agreements, are authorized to establish closer co-operation among themselves in the domains covered by those Agreements and connected provisions, as they are listed in the annex to this Protocol, hereinafter referred to as the *Schengen acquis*. This co-operation shall be conducted within the institutional and legal framework of the European Union and of the Treaty establishing the European Community.

Article B

1. From the date of entry into force of this Protocol, the *Schengen acquis*, including the decisions of the Executive Committee established by the Schengen Agreement which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article A.

Article C

Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the *Schengen acquis*, may, at any time, accept some or all of the provisions of this *acquis*. In that case, these provisions shall apply to each of those States from the dates decided by the Council, acting with the unanimity of its

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Members mentioned in Article A and of the representative of the Government of the State concerned.

DECLARATIONS TO THE FINAL ACT

The High Contracting Parties to the Treaty of Amsterdam undertake to make all efforts in order to make action among all Member States possible in the domains of the *Schengen acquis*, in particular whenever Ireland and the United Kingdom of Great Britain and Northern Ireland have accepted some or all of the provisions of that *acquis* in accordance with Article C.

For the purposes of the negotiations for the admission of new Member States into the European Union, the *Schengen acquis* shall be regarded as an *acquis* which must be accepted in full by all States candidates to the admission.

EUROPOL

New Article K.2 in the Maastricht Treaty

2. The Council shall promote co-operation through the European Police Office (Europol) and shall in particular, within a period of five years after the date of entry into force of this Treaty:
 - a) enable Europol to facilitate and support the preparation, co-ordination and carrying out of specific investigative actions by the judicial, police and customs authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
 - b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organized crime;
 - c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organized crime in close co-operation with Europol;
 - d) establish a research, documentation and statistical network on cross-border crime.

APPENDIX C

DRAFT TREATY PROPOSALS ON HUMAN RIGHTS

AMENDED ARTICLE F OF THE MAASTRICHT TREATY

1. **The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are upheld by the Member States.***
2. The Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.†
3. The Union shall respect the national identities of its Member States.
4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

*Notes: * This amendment inserts a new paragraph F(1) (in bold) and renumbers existing F(1), (2) and (3) as F(2), (3), and (4).*

† Article L of the Maastricht Treaty is to be amended to make Article F(2) justiciable before the European Court of Justice.

ACTION IN THE EVENT OF A BREACH BY A MEMBER STATE OF THE PRINCIPLES ON WHICH THE UNION IS FOUNDED

New Article Fa

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the continuing existence of a breach by a Member State of principles mentioned in Article F(1), after inviting the government of the Member State concerned to submit its

CLAUSES ON HUMAN RIGHTS

- observations. The Council shall act without taking into account the vote of the representative of the Member State concerned.
2. Where a determination has been made, in conformity with paragraph 1, of the continuing existence of a breach by a Member State of principles mentioned in Article F(1), the Council, acting by a majority of four fifths of its Members, may decide to suspend the voting rights of the representative of the Government of that Member State in the Council.
In the event of voting rights being so suspended, a qualified majority shall be defined as two thirds of the votes of the other Members of the Council weighted in accordance with Article 148(2) of the Treaty establishing the European Community, and unanimity of those Members shall be required for a decision requiring unanimity.

CONSEQUENTIAL AMENDMENT TO THE TREATY OF ROME:

New Article

1. Where a decision has been taken to suspend voting rights of a Member State in accordance with Article Fa(2) of the TEU, these voting rights shall also be suspended with regard to the present Treaty.
In the event of voting rights being so suspended and by way of derogation from Articles 148 and 189a(1), a qualified majority shall be defined as two thirds of the votes of the other Members of the Council weighted in accordance with Article 148(2), and unanimity of those Members shall be required for a decision requiring unanimity.
2. The provisions of this Treaty concerning the powers of the Court of Justice and the exercise of those powers shall not apply within the framework of this Article.

NON-DISCRIMINATION

New Article 6a in the Treaty of Rome

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion and belief, disability, age or sexual orientation.

APPENDIX D

DRAFT TREATY PROPOSALS ON THE SOCIAL CHAPTER

INCORPORATION OF THE 'SOCIAL CHAPTER' INTO THE TREATY OF ROME

Article 118

1. With a view to achieving the objectives of Article 117, the Community shall support and complement the activities of the Member States in the following fields:
 - improvement in particular of the working environment to protect workers' health and safety;
 - working conditions;
 - the information and consultation of workers;
 - the social integration of excluded persons in particular those excluded from the labour market, without prejudice to Article 127;
 - equality between men and women with regard to labour market opportunities and treatment at work.
2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 189b after consulting the Economic and Social Committee.
3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, in the following areas:
 - social security and social protection of workers;
 - protection of workers where their employment contract is terminated;

CLAUSES ON THE SOCIAL CHAPTER

- representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- conditions of employment for third country nationals legally residing in Community territory;
- financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund.

Article 119

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:
 - a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - b) that pay for work at time rates shall be the same for the same job.
3. The Council, acting in accordance with the procedure referred to in Article 189b, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
4. With a view to ensuring full equality in practice in working life, this Article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

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