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A constitution for Europe

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What should Europe's constitution look like? As the Convention on the Future of Europe debates the matter, we invited Jack Straw, Britain's foreign secretary, to set out his ideas

THE constitution of the world's most complex international organisation—the United Nations—fits easily into my jacket pocket. The constitution of one of the world's oldest and most successful democracies—the United States—would fit neatly into the other pocket. I do not have a pocket big enough for what passes as the constitution—"the consolidated Treaties"—of the European Union.

Size is important. The smaller the better when it comes to constitutions. But size tells another, more important story—that of coherence. The UN charter is a genuinely good read for those interested. It sets out in logical form the purposes and principles of the organisation, its structure and its powers.

The US constitution is similarly clear. There's Article I setting out that "all legislative powers" are vested in the Senate and the House of Representatives, Article II setting out how the executive power is vested in the President, Article III vesting the judicial power in the Supreme Court. And there's Amendment X (1791), for the avoidance of doubt, asserting the principle of subsidiarity—that "powers not delegated to the United States by the...Constitution are reserved to the states...or to the people." The best bits in both constitutions are their preambles, in ringing declaratory prose. The UN's covers a small page: "We the people of the United Nations, determined to save succeeding generations from the scourge of war...and to

reaffirm faith in fundamental human rights...hereby establish...the United Nations."

The US constitution's preamble takes just four lines: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution."

Both of these constitutions meet the standards set by this newspaper's most famous editor, Walter Bagehot, that they should "excite and preserve the reverence of the population" and contain "the efficient parts—those by which it in fact works and rules".

While the practical achievements of the EU have been profound, the Union's treaties fail almost every test of clarity and brevity: 165 pages long, plus another 90 pages in the yet to be ratified Treaty of Nice. As for Bagehot's idea of excitement, forget it. There's no point reading the EU treaties in the hope of illumination. For a start, there is not one constitution, but two. One "on European union", the other "establishing the European community". What's the difference? Although "union" implies a more closely-knit organisation than "community", the union treaty deals mainly with inter-governmental matters—defence, foreign policy and home affairs, whilst the community treaty deals with the core economic business of the customs union and single market, and so on. But both have overlapping preambles with "objectives", "tasks" and "principles". As for the institutional arrangements, they are shared between the two treaties. These complex texts make the case for a single, coherent constitution for the EU. The Convention on the Future of Europe, meeting under the chairmanship of former French President Valéry Giscard d'Estaing, is currently debating the idea, with a view to making recommendations for a new draft treaty to be considered by an inter-governmental conference in 2004.

What should the new constitution look like? The minimal requirement is for the two current texts to be merged into one, and put in a logical order—purpose, principles, then organs and institutions—the "why" and the "how" first, then the "what" in terms of broad policies, after that. But there's a much bigger point here. The very complexity of EU constitutional law is not just a matter of drafting but is indicative of serious shortcomings in the way the Union works. As last year's Laeken declaration made clear, real reform is urgently needed.

Any new text should answer the basic questions about the Union which have characterised the debate in the UK for the past three decades. It should set out the EU's mission in simple language, clarify for befuddled voters the role and responsibilities of its institutions, and draw a clear distinction between supranational and national competencies. The constitution should start with just a few lines, setting out what the EU is—a union of sovereign states who have decided to pool some of that sovereignty, better to secure peace and prosperity in Europe and the wider world. It should confirm that the Union exercises only those powers which are explicitly and freely conferred on it by the member states, which remain the EU's primary source of democratic legitimacy. The treaty should celebrate the rights citizens enjoy and the core values they live by.

The text should then set out the roles of the EU's institutions. And here, the reality is that in an EU of 25 member states or more, each of the three main institutions—the council, the commission and the parliament—needs to be strengthened.

Let me begin with the councils which represent the national governments. The European Council should set the strategic agenda for the Union. But one of the problems with delivery has been that—unlike the commission which is appointed for five years—there are musical chairs every six months in the European Council and the Councils of Ministers. The presidency switches from one country to the next. This stop-go comes at the expense of consistency and efficiency. I therefore support Jacques Chirac's proposal for a full-time president of the European Council, chosen by and accountable to the heads of government. He or she would serve for several years, overseeing delivery of the Union's strategic agenda and communicating a sense of purpose to Europe's citizens.

For the functional councils, there should be "team presidencies" whereby a group of member states would each chair, say, two of the councils for two to three years. At the same time, the six-monthly rotation for countries to be "vice-presidents", hosting informal ministerial meetings—an important showcase for the EU—should continue.

Power to national parliaments

Alongside these reforms of the council, we need to define where the EU has exclusive power; where powers are shared between the Union and the member states; and where the EU should act only to support, encourage or benchmark national policies. And we need a mechanism to monitor this. National parliaments are the obvious choice.

National parliaments could quickly review each EU proposal, judging whether action is being taken at the right level and in the right way. This would not amount to a veto. But if a majority of national parliaments judged that a proposal infringed subsidiarity, the commission would be expected to re-examine its approach.

The commission too should evolve. As the guardian of the collective interest, it is a unique construct. When heads of government agree broad proposals for the single market such as state aids, the commission has to hold each member state to its commitments. I want to strengthen the commission's ability to protect the interests of the majority against the second thoughts of the few.

But I also want the commission properly held to account. It exercises substantial powers. There is a key role here for the European Parliament, which needs to be highlighted. The constitutional treaty should affirm the parliament's right to call commissioners to appear before it, confirm their right to remove the commission as a whole in serious circumstances, and give it further powers to ensure the impact of commission proposals is clear to European voters.

Stand and deliver

A constitutional treaty, which sets out the role and missions of the institutions, would be an important step towards giving Europe's citizens greater confidence in the Union's work. This is essential if the Union is to act strongly and extensively in those areas where the member governments have freely agreed that it should do so. And these areas must reflect voters' concerns to show that action at a European level can deliver results.

On the economy, the success of the single market is widely acknowledged. But we have more to do on competitiveness, labour market reform and job creation.

On home affairs, David Blunkett, Britain's home secretary, and I have already called for a common European asylum policy, which would ensure better protection across our continent for those genuinely fleeing tyranny and oppression, but provide for firm, collective action to deal with illegal immigration and the criminality which underlies it. We need to introduce qualified majority voting on asylum issues to drive this programme through.

We also need stronger action on cross-border crime. We need swifter and more effective co-operation between our respective police forces and judicial systems. Provided the treaty makes clear that mutual recognition of our different national systems is the basis for future action, I would like to see more effective decision-making procedures to enable the EU to reach agreement more quickly in this area.

On foreign policy, Europe is much stronger when the Union and member states act together. Foreign policy must remain a matter for national governments, co-operating freely. But we can make it more effective. We should therefore strengthen the role of Europe's foreign policy high

representative, currently Javier Solana, and improve co-ordination between him and the external relations commissioner, currently Chris Patten. The former should be given the formal right to make policy proposals, chair council discussions and be responsible for the Union's Common Foreign and Security Policy (CFSP) framework.

The very different arrangements on CFSP and justice and home affairs policy are currently set alongside the more integrated approach on economic and other policies in a complex and cumbersome three pillared structure in the treaties. Provided that we maintain the separate arrangements for CFSP, and some aspects of justice and home affairs, I would be content to see all of these provisions merged into a single treaty structure.

There are two main arguments raised against an EU constitution. First, if the UK has managed for so long without a single written constitution why can't the EU? This is profoundly to ignore Bagehot's lesson on the nature of our constitutional arrangements—that they are settled. Of course, there's been change, not least under this Labour government. But at the heart of the way we run things are the timeless national institutions which are pretty well understood.

The second fear is that a constitution could lead to an EU "superstate" submerging national identities. Not true. All sorts of organisations which are not states have constitutions—from golf clubs and political parties, to the UN. So I hope the debate on this issue will focus less on the label of a constitution, and more on its substance.

Two years ago this newspaper concluded that Europe's citizens deserved a written constitution which provided an "intelligible account...of the rules by which the future of the European Union will be shaped" (see [article](#)). I agree. It is time to set out what the Union is, what it does and how it does it; to define the role and powers of the Union's institutions, and their relationships with the member states; and to improve the Union's ability to deliver practical benefits to Europe's citizens. I think Bagehot would approve of this project—the more so if the end result were to fit into my other pocket.



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