

THURSDAY 6 DECEMBER 2007

Present

Cohen of Pimlico, B
Dykes, L
Grenfell, L (Chairman)
Jopling, L
MacLennan of Rogart, L
Mance, L
Powell of Bayswater, L
Tomlinson, L

Witness: **Professor Helen Wallace CMG FBA**, Centennial Professor, European Institute, London School of Economics and Political Science, examined.

Q160 Chairman: My first words are always to note that members' interests have been distributed. Professor Wallace, what a pleasure to see you here. Thank you very much indeed for finding the time to come. I am afraid we are a little thin on the ground because, as you will see from the monitor, there is a debate going on in the Chamber on one of our reports which is a highly contentious issue and therefore, I am afraid, some of our Members are in the Chamber rather than here. We are of course on the record and we will send you the transcript. This is part of our ongoing inquiry into the Reform Treaty and we are planning to provide the House with a detailed impact assessment of the impact of this Treaty on the European Union and by extension on the United Kingdom in time for the arrival of the ratification Bill in the House. The timing of that we do not know but it will be some time in the early part of the year. Would you like to make an opening statement? You are welcome to do so.

Professor Wallace: May I make just a few very brief remarks? I thank you for inviting me and I apologise for not being able to send you anything in writing first because I have been away. I just want to make three very quick points. The first is that, as I read the history of the European Union, what happens depends tremendously on evolution and not only on the way

the formal rules are stated. Trying to speculate about the outcome of this Treaty, as with previous ones, means guessing about practice as well as about the application of new rules. In my book, and this will no doubt come up later, there are many areas in which the Reform Treaty does not actually dot all the i's and cross all the t's, so there is a great deal of room for practice. The second point to make, as I have just been involved in doing some work on it, is that it is interesting that the Union's institutions have coped much better than many people expected with the arrival of new Member States. If you simply track output productivity, activity and so on from the main institutions, they are pretty much as the institutions were before. Part of that is because, within the institutions, various non-treaty reforms have been introduced to smooth practice. The third point I want to make is that my view of the experience of the past is that the institutional rules which bed down best are the ones which have clear policy drivers behind them. This Treaty is not terribly clear on policy drivers, although I suppose maybe one would expect most impact of policy-shaping institutional practice in the justice and home affairs and the foreign policy provisions.

Q161 Chairman: Thank you very much; that is very helpful. May we begin by drawing you out a little bit on how the Treaties have been restructured by this new Reform Treaty? Questions have been raised about the relative importance now of the objectives as they appear in TEU and what would appear to be the subjection of TFEU to TEU or do you feel that they both have equal value?

Professor Wallace: You have just been listening to a very distinguished lawyer and I cannot second-guess your previous witness on any of those things. We have ended up with a slightly muddled outcome because of the circumstances in which this Reform Treaty has been born. This is one way of carving up the different items between different branches of the Treaties and a lot will depend on practice and the kinds of cases that are brought, whether legal cases or institutional pressures, to try to figure out how those things work out in practice. I myself

was very concerned at the way in which the framing of the words about competition were shifted from the preamble. Lawyers seem to say that probably it does not really make a great deal of difference to the likely substance in that in litigation members of the Court will read across the various provisions. I would have preferred it if, on that particular point, the competition reference had stayed more firmly in the preamble.

Chairman: Thank you. We may come to that again a little bit later.

Q162 Lord Tomlinson: Professor Wallace, last night I had the benefit of listening in our own House to a debate during which I heard a tremendous diversity of view about what the express conference of legal personality on the Union would actually mean. What practical effect do you think this actually has, if any?

Professor Wallace: Again I am not a lawyer.

Q163 Lord Tomlinson: That is why I am asking you about the practical effect.

Professor Wallace: I agree with the British Government's view on this, namely that the provision is much more about clarification and simplification than about introducing major new points of principle and I can see there is a welcome point to doing that. If one is thinking about the practical relevance of it, then there are many areas of the world, including many troubled areas of the world, where the Union is working, often with other international agencies, to try to bring remedies to bear in troubled places and where it would be useful not to have to argue about the legal personality of the Union when you are trying to get inter-agency cooperation. For it to be clear that both the Commission and the Member States can directly engage without silliness seems to me a benefit. However, that is a very, very down to earth view of it.

Q164 Lord Tomlinson: If I may just move on to the next area, the Treaties contain the statement about the respective competences of the Union and the Member States. Are these listings of competence mere codification of the existing position as reflected in the European Court of Justice case law? Do you believe the statements of competences are helpful and, if so, in what particular context?

Professor Wallace: The attempt to try to codify different kinds of competences is an old story, is it not? We know from the history of the Union that whatever kind of categorisation and listing we do, the interesting issues are always about the grey areas. This particular way of doing it in this new Treaty does not remove the potential for grey areas at all. It is probably nonetheless important to have the phrasing that is there because it is a kind of reassurance and it is a particular reassurance for people who have nervousness about subsidiarity and related questions. On the grey areas, my speculation would be that if we were starting to draft this Treaty now and looking at the issues of policy competences, one of the areas many of us would want to look at would be the appropriate policy competences one would want to attribute to the Union for dealing with the climate change related issues. It might be an area in which it would not be too difficult to get agreement for stronger policy competences there. It is just an example of something which comes somewhere around the grey areas and it may be that the Treaty revision procedure that is envisaged in the future might be used or people may try to use it in this context. I suppose the other thing to say, which I actually quite welcome, is that in various places in the new Treaty, there are references to the possibility of proposals to reduce the competences of the Union also being legitimate ideas to put on the table. That used to be regarded as blasphemy. It is not at all a bad thing that one should put into the Treaties that it is a perfectly reasonable thing from time to time to suggest, for X or Y, maybe one wants less at a Union level because there are other,

better, different ways of dealing with a particular problem and in this way to see the issues of assignment of competences as a two-way street and not a one-way street.

Q165 Lord Tomlinson: Just one brief supplementary on that. A significant number of Members of our House seem to be greatly exercised by what they consider to be the fact that the list of shared competences actually makes the interest of the Member State subservient to those of the European institutions. Do you see that? Do you think there is a change caused by the codification of shared competences or do you think it still remains completely a community of conferred competences and they only get the competences that Member States, through the Council, have voted for?

Professor Wallace: The Union has conferred competences and the arrangements for conferring can vary over time. The two-way street point is that they might vary in either direction as more or fewer, in the same way that the competences of the United Kingdom Government have been reduced to the extent that some of those competences have been devolved to other parts of the UK.

Q166 Lord Powell of Bayswater: I just wanted to interject a thought. I was very interested in what you said that policies ought to be the main drivers of the European Union instead of arcane discussions about competences and shared competences which are meaningless to 99.5 per cent of the population. Do you think this Treaty will actually draw a line under the constant obsession with institutional issues or is that a vain hope? Do you think it will go on being the main preoccupation of most European governments forever?

Professor Wallace: I would be very happy if it were, because I have always taken the view that the most appropriate and effective way of trying to reform the Union is in relation to policy things that you either do want it to do or do not want it to do. If the policy objectives – the single market is a very good example - seem to require some different instruments or

some different mix of instruments, then put those instruments in place to achieve this; hence my point about climate change. We have had three bad experiences in a row, have we not, with the Treaty of Nice, the Constitutional Treaty and this one in some sense not doing that? I guess there is a certain amount of fatigue. How long the fatigue lasts into the future, I cannot guess better than you.

Q167 Chairman: One last quick question on competences. I still do not quite understand why the Czechs insisted on Protocol 8 on defining the scope of competences. It appears that they wanted it there so that it would say the following, that when the EU carries out an action in a certain area, the scope of its competence covers only the elements governed by the Act in question and does not therefore cover the whole domain. I understood that was already within the definition of competences or is this something new? If it is new, what is the significance of it?

Professor Wallace: I do not have a very clear read-out on that. It would not be the first time that a protocol or declaration had made a statement of the obvious. It is frequently the case that Member States wish to be attached to documents of this kind - protocols or declarations - that are there mainly for domestic purposes. It has even been known for the United Kingdom Government so to do.

Q168 Chairman: In other words, for the Czechs to have something called a Czech Protocol is a score.

Professor Wallace: In the last round of discussions there was rather a queue of governments trying to put their flags on particular things.

Q169 Chairman: What impact might the extensions of legislative competence have on the institutions of the Union? What about the introduction, for example, of sport as a new competence?

Professor Wallace: The extensions of legislative competence are a very mixed bag of different kinds of issues and I am much more persuaded by some than others. I would broadly welcome those in the field of justice and home affairs in the sense that so much of justice and home affairs is now put into a normal legislative process. There are some areas, such as arrangements to deal with humanitarian aid and so on, aspects of energy policy, where it may also be welcomed for those to be part of a normal legislative process. There is a bunch that I would like to take out and sport would be one, except the trouble is there is Court jurisprudence, so it is quite hard completely to cross sport out. I would cross tourism out as well. It would not be difficult to find a slightly longer list of things that might similarly be removed. Incidentally, I would cross space policy out as well.

Q170 Lord Mance: May I ask you questions about the European Court of Justice? Do you see any significant changes with regard to its jurisdiction?

Professor Wallace: The fact that the Court is now going to be able to receive litigation in justice and home affairs is hugely important and it is something which I personally welcome. I appreciate there are limitations about which parts of justice and home affairs would and would not be subject to the Court, but there are areas of justice and home affairs where the right of the individual to have access to litigation seems to me critically important. It is not an unreasonable speculation that we can expect the Court to get quite busy in that area over the passage of time.

Q171 Lord Mance: Do you think any changes might need to be made in respect of the way the Court operates or is constituted for that purpose?

Professor Wallace: I am not an expert on the Court of Justice. What is interesting to note is that the Court of Justice, less so the Court of First Instance, has been through really quite an extensive renovation of its operating procedures and that is one of the better things that came out of the Nice Treaty. They have done that partly to cope with backlogs and the amount of time taken to resolve cases, but also in anticipation of a greater workload with enlargement. I do not know how far the Court would need to do more changes in addition to those that it has recently done which seem to be bearing rather good fruit.

Q172 Lord Mance: If you are not an expert on it, I will not pursue it very much further but I had in mind also the greatly expanded nature of the jurisdiction. Is there anything you want to say about that? Does the Court need any adaptation of capabilities in that regard?

Professor Wallace: I presume it would be to produce staff support that will enable it better to deal with those areas.

Q173 Lord Mance: May I just ask then about the UK Protocol on the Charter of Fundamental Rights? What do you make of the position in relation to the Charter and the UK?

Professor Wallace: I gather David Edward has just been talking to you about that and I do not have any more to say than he did on the substance of the law. I personally regret the Protocol, because I regret the complexity that it produces and what may be a lack of clarity as to how the Charter, to the extent that it is justiciable, which is in itself a question, might bear on British citizens. Maybe one other point is that to the extent that the Charter is justiciable and issues are raised, for example, about employment rights in other Member States, then it may well be that companies will start to introduce also in the United Kingdom any consequential changes as a result of litigation elsewhere. This is what happened with the Social Protocol previously.

Q174 Chairman: May I just follow up on one thing? It would seem that the Court will, over time, develop jurisprudence in the field of fundamental rights by reference to the Charter. Does this not already then undermine the UK Protocol and maybe it is not as watertight as the Government would like it to be?

Professor Wallace: Much remains to be tested here and it may well be that things are not as watertight, just as it may well be that the fact that the Court was already making reference to the Charter, even without it being specified that it would have the force of law, means that there is a certain amount of jurisprudential drift here.

Q175 Lord MacLennan of Rogart: I wonder whether I could ask you a little about the impact of the Reform Treaty on the Council of Ministers. There have been a number of changes to the presidency and the transparency of its legislative role. There are also the more distant prospects of changes in the qualified majority voting system and the effect of the declaration on blocking minorities. I wonder whether you can see how this may impact upon the effectiveness and accountability of the Council.

Professor Wallace: There are lots of different issues here. First on the voting part, let me just go backwards for a moment, if you will bear with me. We do not have a very good analytical toolkit for telling us how the existing majority voting provisions work in practice. Even in areas where the Council may, and indeed does, take decisions on a qualified majority legal base, mostly governments prefer to take decisions by consensus. Explicit voting occurs on only really quite a small minority of issues and such explicit voting as we have recorded is not very interesting in telling us about the way the voting system operates. To the extent that it really bites, it bites in a much more implicit way, long before decisions are formally adopted. We have to try to figure out what is going on inside the Council, both at ministerial level and in its committees and working groups. It has always been my sense that the numerical notion of voting was really not as important for that as the public debate would

suggest and that, in any such negotiations, there is concern to try to assess the weight of the pros and the cons on any given issue and, very importantly, try to take into account reservations that this or that Member State has by incorporating them into the proposed legislation itself by amendment. That is really much more the way it operates. If that is right, then the shift to the different majority voting would probably have a very small impact on the way things happen, although we know it has been extremely important for Germany symbolically for those changes to be made. I do not expect the voting as such to make a terribly big difference. On the revised version of Ioannina, I reread this morning Douglas Hurd's account of the negotiations over the Ioannina decision which troubled him a good deal at the time. What he says in his book and what the experience of practice is, is that the Ioannina decision is useless in practice. In practice it is not very interesting because the cases in which this particular notion of constituting a blocking minority arises turn out not to arise in an important way. Such issues as have arisen and been pleaded on have been pretty trivial issues. I would guess the same is likely to be true with the version that we now have there at the insistence of the Poles. So it has a symbolic importance, but is probably a nuisance in practice and not very important. My starting point on the European Council part of it is that it probably makes good sense at this moment in the history of the Union for the role and purposes of the European Council to be laid down in a more specific way in the Treaty. It seems to me quite logical and in this sense for it to be embedded into the institutional system: it recognises practice; it is not a huge innovation given the way the European Council actually operates within the process in a slightly less formal way. As for the election of a full-time President, it is a proposal I have always been against and always thought ill-conceived. Why have I always thought it ill-conceived? For some maybe not entirely glamorous reasons. I have always been more inclined to prefer the risk of rotation in the hope that rotation would now and again bring a very good President of the European Council and that if it brought us

less good Presidents of the European Council it would only be for six months. Actually I thought it was rather a good thing and we were all very lucky that Angela Merkel had that particular period of six months in the Presidency of the European Council and, in my view, did a rather fine job and a better job than most had expected. I rather like the rotation, but rotation has gone out of fashion. In the European Council, with its own elected President, we will be left with a very large number of coordination issues and I am quite bothered about the coordination issues. There is a set of coordination issues between the European Council President and the High Representative. There is another set between the European Council President and the other parts of the Council presidency which will be on a team basis. If I were President of the Commission I would say – indeed I heard him say it the day before yesterday – that it would take a great deal of talented effort by those involved to overcome the coordination question between the President of the European Council and the President of the European Commission.

Chairman: I am sorry, I left Lord Powell of Bayswater out of this particular part of our discussion. Are there any points you would like to raise in light of what Professor Wallace has now told us?

Lord Powell of Bayswater: Only to comment that I rather agree with her. It seems to me a recipe for confusion with a full-time President of the Council and these team presidencies, apart from the High Representative. I think a great deal of time in the European Union will now be spent on squabbling as to who is supposed to be doing what, everyone trying to do the same thing and causing considerable confusion for the rest of the world when they try to understand who actually speaks for the European Union and under what circumstances. I think it is a pretty disastrous muddle. It has reflected for me the inability of the European Union ever to abolish anything; it creates new things but it never abolishes the old ones and both just go along in harness.

Q176 Chairman: One of the coordination problems is the fact that you have a permanent President and you will also have a President of a six-monthly presidency at the same time who may be someone of greater stature than the President.

Professor Wallace: One can speculate about lists of stronger and less strong candidates for these posts.

Q177 Chairman: It is presumably not going to make life very simple for either of them.

Professor Wallace: No.

Q178 Chairman: Do you think it could undermine the position of the President of the Commission as well?

Professor Wallace: It is a source of confusion. If one of the things that we will probably all value is that the European Union should be better at coordinating the right hand and the left hand in whatever policy areas it might be and in relation to whatever external interlocutors, then it might be that we are not doing better in that direction. One of the tasks of the Commission is also to try to secure some coordination between different policy sectors, so there are some grounds for the confusion which I agree is a problem.

Q179 Lord Maclellan of Rogart: Could you give us your views about what the importance of the changes is in respect of the European Parliament's new legislative and other powers generally? In particular perhaps tell us whether you think it might have an impact on particular policy areas like agriculture and fisheries and the amendment to the budgetary procedure.

Professor Wallace: It is interesting, is it not, that each successive Treaty reform has produced an expansion of the European Parliament's legislative powers in a very incremental way? Even though in other areas of reform the patterns have been much more zigzag, in

relation to the European Parliament they have been pretty linear. It is as true of this Treaty as is it of its predecessors. I always thought it was a pity that in the past agriculture and fisheries were subjected to such weak consultative discussions with the Parliament and I never bought the argument that was made for a long while very fiercely by many Member State governments that the Parliament should be kept completely out of agriculture and fisheries. I would have found it a more plausible argument or a more acceptable argument if I had been happier with the substantive content outcome of policy in the case of the Common Agricultural Policy and the Common Fisheries Policy. I cannot see that the discussion on agriculture and fisheries will be impeded by the Parliament having more say; indeed it might be very healthy for the Parliament to be much more involved, both on the co-decision side for agriculture and fisheries and as regards expenditure. This distinction between obligatory and non-obligatory expenditure was always somewhat curious and was a way of creating protected fiefdoms in the budget. I welcome the changes.

Q180 Lord MacLennan of Rogart: It has been suggested to us that there might be an upward pressure on the budget as a result of these changes with regard to budgetary procedure. Do you think that is a fair concern?

Professor Wallace: I presume the budget will still be subject to the limits about the margins and manoeuvre and the room for growth, will they not? I see the pressures for growth in the budget in quite other areas. It seems to me that the logical pressures of growth in the budget are much more in the fields, broadly speaking, of those that relate to justice and home affairs and, broadly speaking, those that relate to Common Foreign and Security Policy. Whether or not it is a good thing that there is now a legal base in the new Treaty for some of the budgetary resources which may be allocated for foreign and security policy to be outside the EU budget and subject to a different procedure is not entirely clear to me. I am more concerned about getting to grips with that and less concerned on the agriculture side.

Q181 Baroness Cohen of Pimlico: I am responsible for the EU Sub-Committee here which deals with finance and we were disposed to see two things as enormously important: first, the distinction between compulsory and non-compulsory expenditure had been abolished; second, agriculture and fisheries now came within the ambit of the European Parliament. We hoped for all sorts of wonderful downward effects on the Common Agricultural Policy. Are we being much too optimistic?

Professor Wallace: I hope you are being realistic.

Q182 Baroness Cohen of Pimlico: It seemed to us enormously important.

Professor Wallace: I agree with you and I always thought it was perverse and unhelpful that in the past they were protected from it, particularly because what that meant was that ministers of agriculture have been able to operate as a collusive club with rather little external scrutiny and in a way which was not very easy for national parliaments to get any handles on either. The members of the European Parliament need to be encouraged to be vigorous.

Q183 Chairman: Could you talk to us a little bit about the impact of the Treaty on the functioning and powers of the Commission? In particular, is the Presidency of the Commission moving towards a more presidential style?

Professor Wallace: I find it very hard to read the likely outcomes for the Commission of the new provisions in the Treaty. I say that in a context where, if you are taking a long view, there has been something of a secular decline of the Commission in the system generally and part of the embedding of the European Council is an illustration of that in this new Treaty. I do not see this Treaty as having lots of obvious prizes for the Commission in the way it operates in the institutional system with perhaps two exceptions. One is that it has a clearer role now in justice and home affairs which it has worked very hard for and, depending on how it develops in the External Action Service and how far the Commission itself is astute in

helping to develop that. The general outcomes are quite difficult to read. There is also a kind of fudge in the Treaty about the eventual membership of the College. Although it says that the membership of the College shall be reduced to two thirds of the number of Member States, it is not clear and there is an opportunity to rescind that. We know very well that most Member States are very reluctant to lose the notion of a Commissioner of their nationality. We are not out of the woods on the membership of the College is what I am saying. I would always have preferred a drastically smaller College which was more like the governing body of the European Central Bank, for example. However, I understand that is not a negotiable proposition. On the President of the Commission himself or herself, history tells us that quite a lot depends on the individual. If you look over time, irrespective of the formal powers of the President of the Commission, there have been huge variations in effectiveness and outcomes. People say already in the larger College, where you now have 27 Commissioners, many of whom now have quite small portfolios, that in practice the President is becoming much more important or has the scope for operating in a more presidential way. It seems to be the case already now that fewer things go to the full College for full debate in oral sessions; it is a bit like the Court of Justice in that much more is done in smaller chambers and groupings. Obviously a President who is skilful is in a position to exploit that. There is a lot to be worked out because the relationship between the President and the High Representative is going to be quite testing, just as the relationship of the High Representative with the rest of the Council is going to be difficult. As I mentioned earlier, the relationship with the full-time President of the European Council is also going to be tricky. It could go a number of ways and the bit I find really hard to read is how, under the proposed new arrangements for selecting and electing the President of the Commission, the dynamics of the relationship with the Parliament may also have some impact. It may be that we shall see Presidents in the

future under the new system having to be vigilant towards the Parliament in a slightly different way from that in the past.

Q184 Chairman: I am sure that danger must exist. It is quite likely, during European Parliamentary elections, that the parties will come forward perhaps with their particular standard-bearers for the Presidency and that the one who gets elected will feel beholden to a particular party or group.

Professor Wallace: Yes; absolutely.

Chairman: It sounds to me a very unsatisfactory situation.

Q185 Baroness Cohen of Pimlico: I want to ask about the High Representative. I wondered how you saw the new double-hatted post of High Representative working. Is his or her status as a member of the Commission going to be problematic? How are they going to get on with the President? Generally it seemed to us a bit unworked out.

Professor Wallace: It is a very experimental proposal. I am not a huge fan of the proposal myself. It is really quite difficult to tell how it will work in practice. I do not think that it is going to be the critical breakthrough in the foreign policy field for achieving more efficiency and more effectiveness. In a way I kind of prefer a situation in which there is a visible and audible ping-pong between the Council and the Commission because they are there to do different things in the system, in this sense, for the Commission to represent what it believes to be a collective interest and the Council, however it reaches its views, to reach its views on the basis of the preferences of Member States. It is hard to see how the different triangles are going to work - High Representative, President of the European Council and President of the Commission - both internally and externally. We talked about this earlier in relation to the President of the European Council. I am quite nervous about how that will work in practice, at the level of individuals and personalities and at the level of secretariat, the different

working groups and so on. How the European External Action Service develops is obviously one important element there and we can see a proliferation of propositions and positioning going on at the moment about how that will develop. If I may add, there is another thing I am also nervous about: the way this is all set out into the new Treaty. It starts by saying external action then it slips straightaway into foreign policy and security policy. A lot of the strengths of the Union lie in other areas of external action, that is to say trade, development policy, humanitarian aid, a whole bundle of things which are quite important. It is not at all obvious either how the FOREIGN POLICY, in capital letters, part is going to be tied in within the Commission or the Council to those other instruments of external policy. I am quite nervous about that.

Q186 Lord Powell of Bayswater: Would I be right in interpreting you as being rather disappointed that an opportunity has been missed to give greater coherence to the various external aspects of how Europe relates to the rest of the world? It seems to me that you are saying that there is too big a superstructure, there is too much confusion and the various instruments are not pulled together. We may even be worse off than we were before.

Professor Wallace: I do not know whether we will be worse off or better off. My hope is that we would find a way of becoming better off. Since we live in a rather troublesome time in which there is a rather troubled world there is a demand for interventions and actions of various kinds from the European Union, both in the foreign and security policy area, but also in putting together the different dimensions of policy, for example in dealing with Russia, China and so on and so forth. I said right at the beginning, and I believe it to be true, that sometimes things get worked out by practice and if we were going back and now looking at the original Rome Treaty there are many things with which we might be uncomfortable and uncertain about how they would work in practice. We would not speculate correctly about which were going to be the successes and the weaknesses necessarily. Maybe we have to be a

bit cautious before leaping to conclusions, but I am concerned that there should be pressure on those who will have to take forward these not entirely coherent arrangements that they will move in a direction of achieving more effectively.

Q187 Chairman: One of the issues which is exercising us quite a lot is the simplified revision procedure and the other *passerelles* included in the Reform Treaty. Could you tell us how you feel about this? I might just add that last night in the debate on the Treaty in our Chamber the Lord President of the Council confirmed to us – and it was the first time I had heard it – that as far as the *passerelles* were concerned the original idea that only the House of Commons would wield the veto and that the House of Lords would simply have 20 days in which to offer an opinion on it has been abandoned and, in effect, a decision on whether or not to veto is a matter for both Houses. It came as a welcome surprise to me that they had changed their minds on that. That is just an aside. Let us go back, if we may, to the simplified revision procedure and see what you think about it.

Professor Wallace: We seem to be facing two rather extreme variations for changing the Treaties in the future, that is to say either the very elaborate convention mode for macro changes or something much more pragmatic for simplified changes. I am quite attracted to the simplified revision procedure in the sense that recent experience has perhaps said that one can get into very deep water when you go into big Treaty reforming processes. It is quite easy in big Treaty reforming processes for the Christmas tree to be over-decorated, whether in terms of the substantive content or in terms of the protocols and declarations that Member States want to put there. There are areas, and it may be these points we have just been talking about on managing the external relations of the EU, where one could imagine that in five years' time there might emerge a consensus that this or that way of handling the role of the High Representative might make more sense than the one which is currently in the Treaty and that a simplified way of addressing that in a tidying up sense might be quite attractive, just as

I would argue, to keep my same case of climate change, that if we decided collectively in the Union that some other way of dealing with carbon emissions required some institutional anchoring - I am not now talking about big competence issues but implementing, management issues - to be able to do that would be quite helpful. I am quite relaxed about that. On the *passerelles* side, which is obviously a very related point, I was a little bit sceptical as to how that would work in relation to justice and home affairs. I am quite relaxed about the outcome in justice and home affairs, not least the fact that the activation of it in the past was done in a rather prudent and thoughtful way. I am open-minded on this.

Q188 Chairman: Some questions have been raised in some quarters as to whether the Government here would in fact give time for the two Chambers to play their role, that it could be in their interest not to.

Professor Wallace: Absolutely; similarly in other countries as well of course.

Q189 Chairman: We have mentioned the EU's external action and the contribution to improving coherence of those actions that the Reform Treaty may bring. Unless you have anything further to say on that we can leave that. Could we just hear your views on the role given to national parliaments generally? Do you feel that this is a step forward or is it all cosmetic?

Professor Wallace: I am not sure whether it is a role being given or, perhaps better, a window of opportunity being opened either by the new yellow card procedure or other ways of engaging with the regular scrutiny of business. It may well be, like the previous point you were making, that a lot depends on what happens country by country and chamber by chamber. I would expect there to be very large variations between countries as to how the yellow card procedure might work. The Dutch, when they talk in their terms about orange cards, seem to be very persuaded that this is going to be a real opportunity that both chambers

will seize in The Hague. Maybe, if some chambers in one or other Member State start to be very assiduous, that can create a climate of expectation which has some impact on expectations in other countries. To the extent that there is an opportunity, this House is well placed to exploit it, because this House has such an array of expertise and experience in dealing with both regular policy scrutiny and issues of principle and subsidiarity. Maybe the House of Lords should be aiming to set the benchmark here.

Q190 Chairman: You are probably familiar with what we sometimes refer to as the Barroso initiative, which was the undertaking that he gave following the June Council 2006 that national parliaments could address the Commission on issues which were not necessarily related to subsidiarity and proportionality to get a reaction and a response. I should like to know whether you feel this would fall into the category of a good window of opportunity. I might add that our experience so far has been rather good. We have written to the Commission on a number of occasions pointing out recommendations made in some of our reports that relate to Commission action and we have indeed received reaction from them not just saying thank you for our letter but going point by point through it and saying that they will be taken into account by the Commission. This seems to us to be very valuable and in a certain sense could be more valuable to national parliaments than what is in the Treaty, which this is not, relating to subsidiarity and proportionality.

Professor Wallace: The point about subsidiarity and proportionality was a very important red line for some Member States, especially the Netherlands, so it is there. I think this President of the Commission, President Barroso, is committed to the kind of approach you have just described and that it is not cosmetic on his side; it is very much to do with his understanding of the relationship that he would prefer between the Commission and parliaments in the Member States. Obviously one cannot guarantee that all such presidents or teams of people in the future will be so sensitive to that, although bedding down the practice now is obviously

something which might help to create precedents for the future. Of course this House has a huge advantage because it is the House whose reports on European policy matters have for a very long time actually been read quite carefully.

Q191 Chairman: Which of the institutional changes in your view are the most significant for the UK? It is a tough question and we put it to all our witnesses. They usually look desperate when we ask it. If you have any off-the-top-of-your-head views or maybe from deep within your head, we should very much like to hear them.

Professor Wallace: It is the exam question you hope not to have to answer. I would give a different answer, if I may, just so that I can say it. I am sorry that the British Government have resiled in this Treaty from things they were in favour of at earlier stages. I am particularly sorry about the extent to which the British Government are now committed to opt-outs, opt-ins and so on and about their greater nervousness than in my view was merited as regards the provisions on the Common Foreign and Security Policy. As a consequence of that they have made the Treaty much more complicated in the foreign policy and security field in ways that will not help British voices to be heard as clearly and loudly as one might want and certainly as I would wish. Similarly in justice and home affairs we risk having a good deal of legal complexity and confusion, which is not necessarily in the interests of British citizens and residents. The way the Treaty has come out in this sense is something I regret.

Q192 Lord Powell of Bayswater: So you share the Government's view that in effect our red lines have neutered the Treaty in its effect on the UK and therefore it is absurd for anyone to be worried about it because frankly nothing much is going to change as far as the UK is concerned. Or do you think there are still institutional changes which will have a significant, indeed major impact on us?

Professor Wallace: I think it is the case, but we have to see how the jurisprudence works out and how real events occur, that the impact of the Treaty on the UK in justice and home affairs and foreign policy is less extensive than would otherwise have been the case with the version to which the Government also agreed previously in the wording of the Constitutional Treaty. There are costs to this, we pay a price for that and this is a price which I personally regret, because it means the British voice in the foreign policy field will be heard less clearly than might otherwise have been the case. The risk is that when we find ourselves dealing with real issues that will be a handicap to the British. There are other parts of the Treaties which of course will have probably quite important impacts in the UK.

Chairman: Thank you very, very much indeed for that. We really appreciate your participation and your very clear answers to our questions. As a footnote I should mention that I understand that you were virtually in at the creation of the European Scrutiny Committee and if not its first that you were one of the first ever witnesses. We congratulate you on your long record of cooperation with this Committee and hope we will see you many more times in future. Thank you very, very much indeed.