

WEDNESDAY 19 DECEMBER 2007-1

Present

Dykes, L
Grenfell, L (Chairman)
Harrison, L
Howarth of Breckland, B
Jopling, L
Kerr of Kinlochard, L
Maclennan of Rogart, L
Powell of Bayswater, L
Plumb, L
Roper, L
Sewel, L
Wright of Richmond, L

Witnesses: **Mr Jim Murphy**, a Member of the House of Commons, Minister for Europe, **Ms Shan Morgan**, Director, EU, **Mr Paul Berman**, Legal Adviser, and **Mr Martin Shearman**, Head, Common Foreign Security Policy Group, Foreign and Commonwealth Office, examined.

Q239 Chairman: Minister, welcome once again to this Committee. We appreciate your giving of your valuable time to meet with us. You have the declaration of interests of Members of the Committee. Firstly, I would like very much indeed to welcome Shan Morgan, Paul Berman and Martin Shearman. Would you like to make an opening statement, Minister?

Mr Murphy: I am just delighted to be here. I have been looking forward to today's evidence session as my last event before I head back north for the festive break, so that is all I would say, that I have been looking forward to it.

Q240 Chairman: Then, if we could go straight into questions, the first thing we wanted to get your feelings on is the extension of Union competence made by the Reform Treaty, what

your feelings are about this, what is the effect on the institutions and who is likely to gain the most from it.

Mr Murphy: There are formally, as I think your Lordships are aware, five extensions, the five Articles which extend competence, and they are on space policy, energy policy, tourism, civil protection and administrative co-operation, so those are the five formal extensions of Union competence. However, Lord Grenfell, within your question of course there is the underlying point about which of the institutions in the complex dynamic of all the different institutions could be perceived or anticipated to gain most and, to some extent, it depends on one's perspective on the impact of the Reform Treaty and one's view of the European Union more generally. In terms of the European Parliament, we strongly welcome the extension of co-decision for the European Parliament, we think it is the right thing, so it is clearly an extension of power and influence for the European Parliament which is the correct balance. There is the introduction of the full-time President of the European Council. Now, ultimately, if one was to take a purely arithmetic measurement of which sort of institution gained most on the basis that that is a new post going from no influence in terms of being a full-time President, then that is of course an extension of influence, but of course, when it is compared against the part-time rotating Presidency situation, maybe that extension of power and influence is less significant. Perhaps then the only other two I would mention would be on the Commission itself and part of the increased influence of the Commission may come from the more effective operation by being smaller and more effective. The truth is, as we all know, the current arrangement in the Commission of having one Commissioner per Member State is not only unwieldy, it is unnecessary. There are not 27 jobs to do and, quite frankly, without being disrespectful to any one individual, the truth is, to some extent, you would be scratching around looking for substantial jobs for 27 people to do, so a smaller Commission which is more effective could have a significantly increased informal influence, but I think

the jury would be out on that. Finally, national parliaments, and it is pretty clear in terms of the powers of national parliaments, the yellow and orange cards, and then the arrangement by the Prime Minister this week in the post-European Council statement which of course Baroness Ashton would have repeated, I think, in your Lordships' House about an affirmative vote of both Houses before agreeing to transfer further power. To some extent, my Lord, that is a response to the question because, ultimately, it is a Treaty proposing new interactions and new relationships, and that is my assessment of the expansion of powers and influence of the various institutions.

Q241 Chairman: There are many who say that there is very little expansion of the power of the European Union institutions compared to where we have been before, that there has been a certain amount of extra power given to them, but not dramatically so. On the other hand, the Campaign against Euro-federalism argues that the Lisbon Treaty gives the EU the constitutional form of a state, and they cite provisions regarding citizenship, legal personality, the formalised European Council and the permanent President of the European Council. You can probably give us a fairly short answer to that, but do you agree with any of that?

Mr Murphy: Firstly, Lord Grenfell, the final point you made regarding the earlier question, I think by any accurate, objective assessment about a formal extension of European Union competence, it would lead you to the conclusion that, in comparison with other treaties, like Maastricht or the Single European Act, the extended competence within the Lisbon Treaty is considerably less than in any of those previous treaties. In terms of the point about the campaign against a federal Europe, if that was what was on offer, I would be a member of that campaign because I am against a federal Europe, so, if there were some campaign to have a federal Europe, I would be on the opposite side of this debate, but there is not a campaign to have a federal Europe. We have said pretty clearly that it is our belief that a combination of the Lisbon Treaty and the political commitment that goes alongside it means, and I do not

wish to be critical of anyone, but for those who believe in a federal Europe, I think that dream is dashed for the foreseeable future. In terms of the point about citizenship and the European Council, EU citizenship has been recognised since the Maastricht Treaty. The European Council has been governed by Treaties since Maastricht, so my sense, and I said this in the Commons on maybe Monday evening, is that the opposition to this Treaty is often driven by opposition to proposals that are not contained within it, and it is about a general feeling rather than specifics about the Treaty. For example, one of the criticisms of the official opposition is that this permanent Presidency of the Council is a power-grab, it is moving away from a system of 26 weeks. As I have reflected before, the European Union is the single biggest rules-based market in human history and yet we have tolerated a system where there is a rotating leadership every 26 weeks. You would not run a bowling club, with no disrespect to bowling clubs, on a rotating presidency of 26 weeks, so I do not see why you should do it in the European Union.

Chairman: Thank you very much indeed.

Q242 Lord Dykes: The Government, I recollect, were previously very much opposed to the conferral of the legal personality. Why did that position change?

Mr Murphy: Largely because we were able to secure the distinct treaty status for CFSP, foreign and security policy. The concern had been that a combination of the sort of single legal personality to the Union alongside treaty collapse around CFSP would allow the potential for a blurring of responsibility on CFSP. Now that that fantastically phrased Pillar 2 has not collapsed in that sense, that concern has been overcome, as far as the Government is concerned. I think it is also important just to acknowledge that of course, the European Community had its legal personality and the European Union has had in recent years operational legal personality with over 70 or 80 separate agreements, so with the retention in a separate Treaty of CFSP, what this single legal personality does to the Union, the Government

feels, is confirm the existing practice as recognised by very many international institutions regarding the European Union.

Q243 Lord Dykes: So effectively there is very little, or no, change at all, would you say?

Mr Murphy: I think in the operational sense, there is very little change. It confirms what has become an evolving practice for the European Union, having signed these dozens of agreements with other countries and international organisations.

Q244 Chairman: You are happy that the legal personality will enable the EU to accede to the Convention on Human Rights?

Mr Murphy: Yes, we are content with that.

Q245 Lord Powell of Bayswater: Minister, you referred just now to the full-time President of the European Council, suggesting that this was a significant step forward, but what is he actually going to do? The original intention, I think, was that it would be a substantial role and might even tilt the balance a bit towards intergovernmental co-operation, but actually his powers seem to be marginal. What power he has, he has to share with the term presidencies and, when it comes to his external role, he is going to be trumped by the High Representative who is going to be present in the Commission and in the Council. So is he really going to be a full-time President or is he just going to be a fifth wheel?

Mr Murphy: Most vehicles need a fifth wheel, if only for a spare, but I accept the point of the President of the Council. The President of the Council will have, I think, an important role primarily about maintaining continuity. We are in a situation at the moment where of course we are just coming to the end of the Portuguese Presidency and about to start the Slovenian Presidency and there is an enormous amount of work going on to try to ensure a degree of continuity and some of the issues, by their very nature, will be maintained because

there is a national dynamic around, for example, Kosovo. However, where there are issues where, if you like, the European Union is responsible for creating and then maintaining the momentum, I think having this full-time Presidency of the Council is a significant and important step forward not only for handling those external matters which have their own dynamic, but, more importantly I feel, when it is the energy within the European Union that drives the agenda forward, so whether it is on labour market reform or whether it is on the review of the Lisbon Strategy on jobs, those sorts of things, that full-time Presidency, I think, is the important improvement there.

Q246 Lord Powell of Bayswater: I can see it brings in an element of continuity in the sense that he/she will physically be there continuously unlike the term presidencies. But you tried to describe the role and I still do not really get it. On Kosovo, the High Representative will be dealing with that and he/she will be dealing with it continuously and will be there throughout. The European Council itself is a pretty intermittent organisation, it sort of pops in and out three times a year or whatever, so how is he really going to exert influence compared to the Commission President with his extensive legal powers, the term presidencies and the High Representative? I feel he is just going to be another panjandrum in the European Union hierarchy.

Mr Murphy: Ultimately, it is a new way of doing things. I could sit here today and say to your Lordship that this will be a panacea, but that would be naïve because it is not going to be. There are other institutional weaknesses in the European Union and, more substantially, there are delivery weaknesses in the European Union which this person in and of himself will not resolve, but I think moving from the position of 26 weeks to two and a half years gives us the potential. Now, as I understand it, in the Treaty I think there are four specific roles about sharing the Council meetings, co-ordinating the work, providing reports and then seeking consensus within the European Council. I think in that job description, it gives us the

opportunity, it does not give us the guarantee, but it gives us the opportunity for such work to have a momentum, for an initiative not to be lost in the passing of this diplomatic baton that currently occurs, and I think that is an important step forward, but the proof of it will be in the actual delivery. Talking to fellow ministers across Europe, there is real determination to make this work because everyone accepts it and almost everyone accepts that the status quo leads to a degree of inefficiency, it just does. The truth is that, in the 26-week period, one can speculate as to how much of that 26 weeks one country actually owns because, for the last three or four weeks, in truth, everyone is looking towards the next Presidency and, for the first three or four weeks, the new Presidency is finding its own feet, so, of that 26 weeks, it is possibly only 16 or 18 weeks when one is actually operating at full speed.

Q247 Lord Roper: Do you see the President of the Council having a role in terms of bilateral summits with other major partners?

Mr Murphy: I think there is a role there, yes.

Q248 Lord Roper: He would lead, would he?

Mr Murphy: I do not know if he would lead. He would certainly attend. I think there would be a role for the President of the Commission, depending of course on what the summit would be, but there would be potentially a role for the President of the Commission, there is potentially a role for the High Representative, depending on whether it is an international issue relating to security or foreign policy, and then there is potentially a role for the President of the European Council. I think a relatively small part of the President of the European Council's job will be about foreign and security policy and much of that will be of course with the High Representative's role, but the anticipation is that there certainly is a role for the President of the European Council to attend such gatherings.

Q249 Lord Kerr of Kinlochard: On the internal role of the President of the European Council, do you think, Minister, that the European Council will be better prepared? I take Lord Powell's point, but, when he was a great panjandrum in the European Union, there only were 12 Member States and there was a tradition, I remember, that the President of the European Council would visit all the other Member State capitals in the two or three weeks before a European Council, preparing the agenda, finding out what they wanted, trying to sell them the possible outcome, but that has lapsed with 27 Member States, and with all the Presidents of the European Council having full-time jobs as the Prime Ministers of their various countries. I wonder if you think it will work better when that sort of tradition can be revived again, when there is a full-time President of the European Council?

Mr Murphy: Over the period of two and a half years, I would say it is unlikely that the full-time President of the European Council would not seek to visit all Member States. I think it would be poor form, bad politics and it would be open to all sorts of accusations and insinuations. However, it is unconditionally unrealistic to expect, as I think has been acknowledged in the question, in this rotating Presidency for the outgoing rotating Presidency to come anywhere close to meeting all 26 other Member States. One could try at international gatherings, but, even there, to have a substantial conversation bilaterally with 26 other Heads of Government would be extraordinarily difficult. It is also worth reflecting that, if we continue with the current system, which we have no intention of doing, of this rotating Presidency, each Member State would have a turn every 13½ years to offer some sort of direct leadership and momentum. As has been suggested by your Lordship, I think that is an important improvement, that someone, perhaps not in advance of taking up their post, but certainly in the period of carrying out their post, would be expected to visit the vast majority, if indeed not all, of the Member States.

Q250 Chairman: So, in a sense, in the role of the President, he or she is going to be more of the internal fixer rather than the external face of the European Union?

Mr Murphy: I think, my Lord, he would attend external gatherings and would, on occasion, speak on behalf of the European Council, when of course there is agreement and unanimity, but I would anticipate, certainly at the earlier part of this process, for the substantial part of the job to be an internal job. The Treaty has set out, and I have scribbled it here because I knew I would not remember it, but in section 9C(6)(a) are set out four specific roles and it is about sharing, co-ordinating, reporting and endeavouring to create consensus within the European Council, so I think all four of those have a clear internal responsibility and that is important, I think, for us all to acknowledge at the start of this process.

Q251 Lord Powell of Bayswater: Would you agree that he is likely to have a large additional staff?

Mr Murphy: There would certainly be a need for ministerial support and staff support, but what we have got to get absolutely correct is the relationship between whatever staff would support the full-time President of the European Council and the staff that are going to support the High Representative, which then is about getting absolutely right the External Action Service. For example, there has been no decision taken on the External Action Service, but, for example, it clearly will largely be about supporting the High Representative in the carrying out of his duties, but where the President of the European Council, in his responsibility, takes on any role on security and foreign policy perhaps at a European Council gathering, it is important that there are not two sets of staff, recreating some of the unnecessary silos that have been all too common, not just in the European Union, but common in most major organisations, so yes, there needs a staff level that has its roles and responsibilities with the External Action Service properly worked out.

Chairman: Let us look at some of the influences on the President of the Council.

Q252 Baroness Howarth of Breckland: Before I move on to my question, it is a long way from welfare reform which is where we met last, I think. One of the issues that we are really trying to tease out is this comparative power role and relationship between the individuals who will be working. Whereas I can see the short-termism of the previous arrangement, which is what you have been referring to very clearly, and in managerial terms it makes more sense in terms of continuity of work, the real difficulty is whether there is clear definition between the High Representative and the President of the European Council, and there are job descriptions, but in terms of clear definition, I am interested in that. I am also interested in whether or not he or she, because the President will not have the same authority as sitting Heads of Government, is likely to be beholden to the larger groupings of governments and how will we ensure that there will be that measure of independence in hearing what needs to be heard through the Council?

Mr Murphy: When I had left welfare reform, I thought I was into a nice, easy job, after taking the Welfare Reform Bill through Parliament, but it was not to be the case! The point is, I think, that the President of the European Council will derive their authority from the Prime Ministers and Presidents of the 27 Member States, so ultimately that will be the source of their authority, elected of course, I am sure I am right in saying, by QMV, so I understand the concern which is a traditional concern in Europe which is that, if one were to get the UK, France and Germany, colloquially put, to one side, then that would create a diplomatic dynamic that would lead to uncertainty, but things are changing. They have not yet changed, but I think we are in the process of changing, and I think that is a good thing, that, with 27 Member States, there is a breakdown of that system whereby one or two States can call all the shots, if you like, in terms of picking someone to perform any of these roles, so I think it is important, and all Member States, quite rightly, wish to become deeply involved in making sure that whoever gets these jobs is the right person for that role. In terms of the managerial

point, it is absolutely essential before this starts, after the Treaty is ratified across, if the Treaty is ratified across, all 27 Member States, before this is agreed, the exact roles, responsibilities and relationships have to be ironed out in precise detail. Now, on the President of the Council, some of these details are still to be worked out by the European Council, but it is important again also to state that that will be by unanimity, but the UK Government is very alive to the issue that we cannot allow the enactment of the Treaty across the European Union and then work out the detail; it has to be nailed down in advance of the commencement of the operation of the Treaty. It has been agreed that this would happen through unanimity of the European Council and that is the way we are going to progress with it.

Q253 Baroness Howarth of Breckland: Just to follow up the first bit again, in terms of the institutions, the first part of your answer about the institutions, what in that reassures us that those things will be worked through before there are difficulties in terms of those relationships?

Mr Murphy: We have agreed, as 27 Member States in the European Union, that this has to be worked through before commencement and that we will do it through the European Council through a process of consensus, as we seek to do in all of these things in the European Council of course, although we do not always succeed, but we seek to do it. There is agreement by all governments that this has to be worked through and that the details will be put in place, so there is a pretty clear understanding across Europe that that has to happen.

Q254 Baroness Howarth of Breckland: I suppose finally, is there a timetable for that?

Mr Murphy: The aim for the Treaty ratification across the 27 Member States, we would like to be, is no sooner than 1 January 2009 with an expectation to have done so in advance of the European elections in 2009 which I believe are in June, so that would be the timescale.

Chairman: Let us move on to the next institutional question.

Q255 Lord Roper: Another area where things presumably also have to be worked out between now and the time the Treaty comes into force is what is sometimes referred to as a 'double-hatted', but is perhaps a treble-hatted, role of the High Representative, not only with his current functions enlarged, but also his role as the Vice President of the Commission and his function as chairing the Foreign Affairs Council. How is that going to be worked out, including the question of how is the current business of the General Affairs and External Relations Council to be disentangled? What will still be done by the High Representative chairing the Foreign Affairs Council and what will be done by the rotating President chairing the General Affairs Council? Will he be taking the business which comes up from COREPER as distinct from FAC?

Mr Murphy: First of all, on the double-hatting or treble-hatting, as you have said, that the High Representative is the Vice President of the Commission and also is the Chair of the Foreign Affairs Council, first of all, the first two posts in terms of the Vice President of the Commission and the High Representative, most people acknowledge that is a sensible reform. It helps align the external priorities of the European Union with the budgeting process and with the right support mechanisms, ie staff, the right support where it has perhaps in the past, without being too critical, been well acknowledged that there has, on occasion, been a divergence of priorities and budgets, so that role being double-hatted, I think, is a sensible and meaningful reform. As to which issues come out of which gathering, I do not know whether Shan Morgan wishes to comment because Shan of course has been one of the sherpas or focal points in the past on the detail of some of this. As for the High Representative, I am reflecting on my experience at the General Affairs Council where we have discussed Pakistan, Iran, Burma, Kosovo and, on the margins, Russia, and I think all of those issues would still be

within the locus of the High Representative. In terms of COREPER, I do not know whether, Shan, you wish to say anything.

Ms Morgan: As the Minister said, a lot of this is still to be worked out and we will be doing that over the course of the next year. I would just flag up really, to underline what the Minister has already said, Article 9C, para 6, which sets out the role of the General Affairs Council rather clearly, “ensuring consistency in the work of the different Council configurations, preparing and ensuring the follow-up to meetings of the European Council in liaison with the President of the European Council and the Commission”. In fact, if you look at the agendas of what is currently called the ‘GAERC’, there is a general affairs segment followed by a foreign affairs segment, and that description of what the new General Affairs Council will do is very much consistent with what happens at the moment. At the moment, the general affairs segment of the GAERC will look, for example, at preparations for the European Council conclusions that will come through COREPER, so the role of COREPER, as the Minister was suggesting, will not change in that process, but the General Affairs Council will continue its horizontal co-ordination role across all the sectoral councils, as it does at the moment.

Q256 Lord Roper: Perhaps, in terms of being the Vice President of the Commission, it would be really interesting to know which of the work of the present Commissioners would become subject to the Vice President, for instance, the Development Commissioner, the Enlargement Commissioner, but what other external action would come under the overall supervision of the Vice President?

Mr Murphy: It is primarily the current role of the Commissioner for External Affairs because of course the High Representative is a merger of both of those positions, so certainly that would be the main Commissioner responsibility that the High Representative would have, in addition to the Vice Presidency.

Q257 Lord Roper: So other areas of external action which are at present the responsibilities of the Commissioners of, for instance, development, aid, humanitarian aid and enlargement, would not come under his co-ordinating function?

Mr Murphy: Part of this would be resolved, or the frank, direct answer is that part of this is dependent on where we settle as to what the two-thirds of EU membership Commissioners will be. If one looks at it on the basis that we are 27 Member States and we are expecting a Commission of two-thirds the size, so 18 Commissioners, as to exactly which residual functions and job titles are in this streamlined Commission, at that point we would then determine which parts of the formal responsibilities of previous Commissioners, but the one that lends itself immediately, and this is stated very clearly, is the External Affairs Commissioner, but it is reasonable to expect that there would be a role on international development, debt relief and perhaps on issues of expansion and human rights, but part of this will be resolved as a wider reconfiguration of the Commission as well.

Q258 Lord Roper: But there will of course be a period between the establishment of the double-hatted Commissioner and the Vice President while there still are 27 Commissioners.

Mr Murphy: Yes, that is right, so in that period the major role will be the External Affairs Commissioner.

Q259 Chairman: But the question of trade negotiations, that remains entirely separate, does it?

Mr Murphy: Yes.

Q260 Lord Jopling: Minister, under the new rules that we are faced with, if a country wishes to join with others in getting a blocking minority in order to block something, under the new rules on qualified majority voting, is that not going to be a good deal more difficult

and is the Government unhappy about the effect of these changed rules on the ability of the UK to block things it does not like?

Mr Murphy: No, that is not the case at all. We are really pretty content with the new system of moving away from qualified majority voting to double majority voting. I have been asked about this before in various gatherings which has led to me having to wade through all the analysis and it is another one of those points where, not your good self, my Lord, of course, but others, they substitute fact for assertion and I have had debates in the Commons about this where it has been suggested that this would be much more difficult and it weakens the UK position. The fact is that, in terms of the UK's share of a blocking minority, it has gone up from the current situation of 32 per cent, so in any blocking minority it wished to be involved in, whereas the UK is currently 32 per cent of that, that would go up to 35 per cent under the new system. It may be helpful for your Lordships if I just reflect on what these changes are about. With the system currently of qualified majority voting, in order for a proposal to gain assent, it requires the agreement of a majority of the Member States, as you know, plus, I think it is, 255 of the 345 votes for a proposal to be agreed to. Under the new system, instead of a majority of Member States, it is 55 per cent of Member States and, instead of 255 of 345, we are moving to a system based on populations where the UK will be one of the main beneficiaries because we are moving towards a system of votes based on population, so I think at the moment we have 29 of the 345 and we are going to a situation where our population of 60.6 million means that, instead of having an eight per cent share of the vote in the Council, we go to a 12 per cent share. The new system of double majority voting is based on 55 per cent of Member States, instead of a simple majority, and, instead of the figure of 255, it is based on the agreement of the Member States representing 65 per cent of the EU population, so you would have to have both, 55 per cent of the States plus 65 per cent of the population of the EU, being within that 55 per cent of Member States. Therefore, in fact it

enhances our share of the vote and it increases our proportion of a blocking minority, so based on all the science, all the facts, all the figures and all the analysis, we are really pretty content with the deal that we have here.

Q261 Lord Jopling: Can I turn to another side of this and ask you what you think will be the position in the future of a country which very, very strongly objects to what is proposed and what, in the old days, used to be described as a ‘vital national interest’, and that brings me to what used to be called the ‘Luxembourg compromise’. I think that you perhaps agree that there was a lot of misunderstanding about what was meant by the Luxembourg compromise and a lot of people, particularly in this building, thought that a country just had to say, “Veto” and that was that. Of course, it was not like that at all. If you had a vital national interest and you declared it, in order to apply that ‘veto’, one had to get a blocking minority to support you and, forgive me, but you are probably too young to remember that in 1984 Peter Walker used the Luxembourg compromise and was rolled over because he could not get a blocking minority to support him, so the veto in fact never used to work, unless you could get other people to join in with you and sympathise with you. In fact, in my time, a number of delegations were under a standing instruction that, if any delegation declared a vital national interest, they were, regardless of the facts, to support that delegation to encourage the so-called Luxembourg compromise to work. Now, my question is this: how will it still be possible for a country with a vital national interest which says it is so and it needs to get a blocking minority to support it, which I imagine would still delay agreement if you got the blocking minority? Surely that, as I understand it, will still operate and the so-called veto, which we used to call the ‘Luxembourg compromise’, would still operate if a country declared a vital national interest and could get enough countries to support it. For instance, is the British delegation, at the various facets of the Council, still under a standing instruction, as they were in my time, that, if anybody did declare a vital national interest, they were willy-

nilly to support it, and do you know of other delegations which are also under an equal instruction, which I could name, but I will not, which, in my time, were always in that position?

Mr Murphy: You are right, my Lord, that I cannot recall 1984 and the case of Peter Walker. I think at the time I was living in South Africa which is my excuse for not reading the detail at the time. First of all, there are two ways to respond to this. Firstly, on the system of double majority voting, which I accept is not the general point you have made, it is our view that this new system will give us a greater opportunity, where we so wish, to gather a blocking minority, not only because our own share of the vote on a blocking minority is up, but also, in our assessment of the previous occasions on which we have sought to achieve a blocking minority, our retrospective analysis makes us comfortable with this new system in terms of what we wish to achieve. In terms of the Luxembourg compromise, it is my understanding, and your Lordship did not suggest that this was the case, but it has never been a Treaty agreement, it has been a political agreement and that still stands. Now, what we have to do in each instance of course is to ensure that we examine the detail of the suggestion that it is a vital national interest, but, where we are convinced that that is the case, we have still a great deal of sympathy from the United Kingdom and other Member States for the spirit and the logic of the Luxembourg compromise and it is not affected by the Treaty.

Q262 Lord Jopling: Is the British delegation under an instruction to support a country that declares a vital national interest?

Mr Murphy: Well, under an arrangement, if someone declares it, we examine it to come to a view as to whether it is a legitimate claim and, when it is a legitimate claim, we would work with others to respect that vital national interest, but I am sure your Lordship would accept that we do not, nor should we ever, take as unconditional, superficial and at face value the claim by another about it being a vital national interest, but, where it is proven to be the case,

the United Kingdom Government is sympathetic to that political arrangement that has been in place for many years, yes.

Chairman: There is a blocking minority at this end of the table that wants to move on to the next question, but I will take two quick ones on this and then we will move on.

Q263 Lord Sewel: Why is it that this question on the changes to the rules of qualified majority voting is always sort of discussed and couched in a very sort of defensive, negative way? Surely the real benefit to the United Kingdom Government is that the changes in the rules mean that it will be easier for the UK Government to get its proposals adopted and not be blocked by a totally unrepresentative minority.

Mr Murphy: I think your Lordship is absolutely correct, but unfortunately, and I do not know if I have reflected on this before, the fact is that sometimes the conversation about Europe is trapped in a dialogue about a double negative, that, “Europe is a real threat, but don’t worry, we’re protecting you from it”. Now that we have the Treaty, we have the formal text and we have achieved our red lines, protocols, opt-ins and opt-outs, there is an opportunity now in the new year, as we seek to ratify the Lisbon Treaty through Parliament, to be positive about the impact of the Treaty and, more widely, positive about the importance of Europe in our foreign policy. I think, without drawing your Lordships into a wider debate, for those who say that the Reform Treaty is not necessary, I am not aware of their considered alternative in terms of how a Europe of 27 countries can change its rules to be effective, and those who oppose our membership of the European Union more generally, I cannot conceive of a coherent British national interest foreign policy assessment which it does not have as an active member of the European Union. A world without the European Union, I think, would be a less prosperous and less fair place and the European Union, as the Foreign Secretary has said recently, has the opportunity to be a model power in the world and that is part of the argument we seek to make as we ratify the Reform Treaty. Unfortunately, and perhaps inevitably, my Lord, I have

to set out the statistics and the facts for the record and I think the opportunity for rhetoric and high-minded politics, if I ever reach that, is for another time, perhaps at the second reading of the EU Amendment Bill, but we are certainly determined to make the positive case for the Treaty and, more widely, the positive case for the European Union.

Q264 Lord Kerr of Kinlochard: I admire your self-restraint, Minister. Also, in your answer to Lord Jopling's question, I suppose you could have said that the Luxembourg compromise was always opposed as a matter of theology by some Member States, like the Germans, who were under instructions always to vote against a Member State who was invoking the Luxembourg compromise. It mutated in the 1990s into the Ioannina compromise, which became a Union text which everybody accepted, negotiated by Solana and Lord Hurd. Now, thanks to your diplomacy and maybe a little more to Polish diplomacy, it has mutated into the Treaty and there it is now, in the form, as I understand it, of a version which allows for further time for discussion if a Member State is in serious trouble and concerned about a national interest. Is that correct?

Mr Murphy: That is correct. The proposal in the Reform Treaty is to move to this new system by transition from 2007 to 2014. In the interim, a Member State has the opportunity to request a vote by the old system, so we try it on the DMV and, if a Member State still requests it, they can say, "Well, let's try it under the old rules, under QMV", and, if we cannot work it out that way in this transitional period under an Ioannina compromise, the idea would be that there would then be responsibility on, I think it is, the Council to find a commonsense way forward that meets everyone's concerns, but that is a protection that is now in there. It is partly driven by the Poles of course, but that is now in there and I think it is a pretty important kind of staging post to move towards this new system in 2014, and thank you for your comment about my self-restraint. Really what I have decided to do is to take a self-denying ordinance and I would enjoy it if all politicians of other Member State did the same over the

next six months. I do not see the attraction for our position by defining us against another Member State and that is my general approach.

Q265 Lord Jopling: Can I just point out that in my presence, although the Germans opposed the Luxembourg Compromise, Mr Keichle actually used it.

Mr Murphy: Perhaps it would be important also to say, and I am not sure if everyone in the country will be following the detail of this sentence, but the Ioannina arrangements and the Luxembourg Compromise will operate in tandem for this period as well, so that is an important, perhaps double, protection.

Q266 Lord Maclennan of Rogart: I wonder if we might move on to the authority of the Commission and, in particular, of its President and I wonder if you think that the elevation in, for example, the role of the High Representative and the strengthening of the position of the President of the Council have, together with the provisions for the election of the President of the Commission by the Parliament on the commendation of the Council taking account of the results in an election, affected the role and authority of the President of the Commission.

Mr Murphy: This phrase about taking account of the results of the European elections was another one of those phrases that a number of people have made enquiries about and made all sorts of suggestions about, that it guarantees that the predominant political grouping that wins the elections has greater powers as a consequence. If one reflects on the current situation, it is that a nominee is put to the Parliament and the European Parliament either assents or disagrees to the proposal and that will still be the case under the Lisbon Treaty. What is different is that phrase, “taking account of the election results of the European Parliament”. Now, in truth, it is a statement of the political reality because, even though that phrase does not exist at the moment in the Treaty, the fact is that a candidate proposed to the European Parliament that did not command the support of the majority of the European Parliament

would not be elected by the European Parliament, so, in an operational sense, a practical sense and even a political sense, that changed phraseology has no impact; it simply codifies the Treaty, the current arrangements as they stand. In terms of whether the Commission has more power or less, the powers have not increased for the President of the Commission and those are established in the Treaty of Nice, but my sense, and I tangentially referred to this earlier, of the increased influence of the President of the Commission will come about by the Commission itself being more effective and, therefore, gaining greater respect and consent, and I think that is the prize that would lead to greater influence, but in itself the formal powers have not changed.

Q267 Lord Maclellan of Rogart: You earlier suggested, Minister, that the reduction in size of the Commission might actually enhance its effectiveness and I suppose it follows from that that you think the President may be more effective as a consequence of that, but why, and I am sorry to revert to this phrase, was this phrase inserted if, as you suggest, it had no meaning in an operative sense?

Mr Murphy: Well, I am happy to seek to find the genesis of the phrase, but the consequence of the phrase simply, in a pretty clear sense, reflects current practice. Your Lordship will be aware that it is about taking account of the results of the European elections. A nominee to the European Parliament that did not in any way command the support of the Members of the European Parliament, as elected at the European elections, would not be successful in any case, but I will, if your Lordships wish me to, happily seek the origin of the exact phrase.

Q268 Lord Maclellan of Rogart: I have some recollection of it, as a matter of fact, with respect, but now there is another issue. Supposing a political party or a political family which emerged after the election had announced prior to the election that it would propose to

nominate a particular individual as President of the Commission if it were successful in the election, would it not be somewhat strengthened by the formulation that is included now?

Mr Murphy: I am not sure it would, my Lord, on the basis that it is the European Council that considers, and makes, the nomination.

Q269 Lord MacLennan of Rogart: But, if the European People's Party were the largest party there and had said, "We propose to support so-and-so", would that not be a factor that might be taken into account?

Mr Murphy: It may be, but, without wandering into the internal disagreements and dynamics of the European People's Party, I think it would be an achievement if they were to agree on one nominee in advance of an election. I do not want to get involved in the party politics of it, but the internal dynamic of that grouping, as of any European political family, as you well know, are multi-dimensional and personally I would be surprised if, one, they were able to, two, they chose to and, three, I think it would seem in many capitals to be extraordinarily presumptuous. Ultimately, the relationship and accountability is from the European Council to the European Parliament and, therefore, even if they were to make a declaration, if they were to arrive at a declaration, they would have no formal influence, but of course informally, you are right, it would send a signal to say, "If you don't nominate one of our family, then we're not interested", but there is no sense that that is what is currently being considered at all.

Q270 Chairman: This is a question which I think we will probably continue to look at very carefully because the fact remains that nobody is going to be elected President of the Commission who does not have the support of the majority in the European Parliament and it is not very hard to identify what that majority is once the elections have taken place. That is not going to change in effect from what we have had before and I would assume that no

nominee for the Commission President who does not have the support of the largest political group is likely to be elected, unless it is such an outstanding candidate that the EPP will be happy to vote for somebody who was clearly the standard-bearer of a different group.

Mr Murphy: Of course, that is what already happens in terms of a proposal is made to the Parliament and the Parliament votes for or against that nominee. That will be the situation if indeed the Treaty is ratified across Europe as well.

Chairman: Thank you very much indeed. Let us now move on to the European Parliament.

Q271 Lord Sewel: This is a question which starts at the general level and then gets particular. Generally, what will be the impact of the Reform Treaty on the European Parliament? How extensive are the Parliament's new legislative and other powers? Then we get more particular and ask you the impact of those powers on the EU and the UK, with particular reference to (a) the move to co-decision making in agriculture and fisheries, and there the lurking question is does it make agricultural reform more or less likely if we move to co-decision making, and (b) the amendment to the budgetary process.

Mr Murphy: You would not thank me, your Lordship, but we could spend the whole of this afternoon just on that one relatively short question. Our response would be the likely impact first of all would be that we will have slower legislation. Inevitably there will be a delay on occasion in the process as others seek to debate, as entirely entitled to do so as part of the agreement. I think I am right in saying there are 40 moves to co-decision envisaged here. In terms of agriculture and fishing, it will probably be slower but it is important to mention that when there is need for urgent action there is still a route to take urgent action where human or animal wellbeing and health is going to be affected. In terms of the budget, it is a pretty technical response. The European Parliament currently has co-decision over the annual budget, not the seven year Financial Perspective of course. The Parliament has co-decision now over the non-compulsory expenditure; everything except Common Agricultural Policy.

Under the proposals on co-decision it gets co-decision over compulsory expenditure, including CAP; it does not get co-decision at all over the seven year Financial Perspective, that is still an issue for Member States to be decided by unanimity. Finally, on the wider point about agriculture and fishing, I believe that Sub-Committee D is looking at this in some detail and Defra are in the process of responding.

Chairman: Lord Sewel is the Chairman of that Sub-Committee.

Q272 Lord Sewel: That is why I am asking the question you see.

Mr Murphy: I need to shoot my researcher! I was not aware of that.

Q273 Lord Sewel: This is an interesting one, is it not? All UK governments have put a pretty high priority on reform of the CAP, we get co-decision bringing the Parliament in in a much stronger way. Is it your instinctive view that that will help or hinder the process of reform?

Mr Murphy: There is party political leadership at prime ministerial and presidential level. The Foreign Office reading is that there is an emerging consensus that the reform not only should take place but will take place. We are about to enter into the process of just what exactly that means. President Sarkozy has spoken about the need for radical reform of the Common Agricultural Policy. There are different definitions and analyses of what “radical reform” means in practice. Our view is that amongst the Members of the European Parliament there is a real determination in principle amongst the majority to reform the agricultural policy. Not unanimity but the majority. We think that can be a useful lever in the process of change.

Q274 Lord Plumb: Minister, I am one of Lord Sewel’s boys on his Committee and we are about to come to a conclusion on the CAP reform which may interest you. You did not

mention agriculture and fisheries or budgetary procedure under the five formal extensions of power and influence, but it does change the power, not so much as budget is concerned although, as you say, the compulsory expenditure is outwith the responsibility of the Parliament, and agriculture, of course, has never been within it in any case. It is sometimes said that the European Parliament does give way on budgets but I can tell you when I was President of the Parliament I refused to accept it twice, so it has had some responsibility and it did hold up the budget for quite a long period of time, quite rightly at that time. On agriculture and fisheries, what effect do you think this is really going to have? You have said already that it may hold up procedure but I would not be too sure about that because I think there is an attitude there which recognises the need for reform and a lot of people are beginning to believe that the sooner we get on with it the better and that goes throughout the whole of Europe from the evidence we have received already in Sub-Committee D.

Mr Murphy: On the specific point about slowing up procedures, I was talking about specific legislative proposals rather than agricultural reform whereby the opportunity for Members of the European Parliament to become involved in the debate and deliberate through the relevant committees and perhaps in plenary session as well will inevitably lead, at least initially, to some delay in the process of specific proposals. I cannot recall whether the REACH Directive was delayed. It was certainly improved but I think it was also delayed as a consequence of deliberation. It is that type of thing, the assessment that would delay but potentially improve. In terms of wider agricultural reform, there is not an assessment that says co-decision of that sort would slow that wider process. There is a growing political consensus left, right and centre amongst Member States and political families in the European Parliament that this should now take place. What I did not mention earlier in answer to the first question from my Lord Chairman on the extensions of the competence, and there were five specifics in these articles and I think there are 12 existing competences that were

extended, was the other 12 because the first five I mentioned were extensions of new competences extended through the five articles that I mentioned, starting with space policy.

Q275 Lord Plumb: Do I take it that you would generally agree with the co-decision procedure?

Mr Murphy: Yes, I think it is an important reform.

Q276 Lord Kerr of Kinlochard: I am not a member of Lord Sewel's gumboot gang but I was struck by his mention of the changes to the budgetary procedure. As Lord Plumb says, that is quite a big change and perhaps bigger than the co-decision change. As I understand it, up to now the Parliament has been no allowed say on *dépenses obligatoires* which includes two-thirds, three-quarters of the agriculture budget, none at all. As I understand it, there is a large urban majority in the European Parliament, there are many more urban constituencies than rural constituencies, and agriculture provides about four per cent of European GDP. It seems to me unthinkable that, when the Parliament is allowed an equal say on agriculture as on all other bits of the budget, agriculture will go on getting the paramount share of the budget. It seems to me that the Parliament's influence is bound to be to reduce the amount of agricultural support as a proportion of the European budget. Is that wrong?

Mr Murphy: First of all, good luck in your aspirations to join the noble Lord's Committee. I do not know if that was a hustings speech or not! The general analysis is an entirely fair one. I do not want to second-guess it but the general assessment is that involving the politics and the energy of the European Parliament can be an additional driver of this momentum. The rural/urban split is a commonsense analysis of where populations lie and where the parliamentary seats are divided, but primarily in the European Parliament's set-up and internal relationships it is not that straightforward, and probably nor should it be, because quite fairly there is a good number of urban Members of the European Parliament who

emotionally and practically for all sorts of different reasons have a real affection for agriculture, fishing, farming, and that is entirely right and proper. In general terms the co-decision role of the European Parliament on Common Agricultural Policy is a positive and it can help the process.

Chairman: Let us move on to the fourth of the institutions we are discussing, the European Court.

Q277 Lord Harrison: Minister, do you agree that the most significant change to the jurisdiction of the European Court of Justice is its extension to matters relating to Freedom, Security and Justice? In the light of that, are you confident that the Court will be able to cope with an increased workload following from, first of all, the Commission's power to bring infringement proceedings in relation to criminal law and policing measures and, secondly, the extended preliminary reference jurisdiction in both existing Title IV, referring to visas, asylum and immigration, and Title VI, police and judicial co-operation in criminal matters? Given the importance of the ECJ and the necessity for having it sufficiently staffed but also staffed by those of the highest quality, are you confident that can and should happen?

Mr Murphy: First of all it should happen. We are certain it should happen because the role of the ECJ is absolutely essential, which partly means that it has to have both the quality and quantity of people necessary for it to perform its role. It is also important to acknowledge that we should not overstate the extension of ECJ competence in terms of Justice and Home Affairs. It is not a year one, day one extension on these transitional measures in particular, there is a five year transitional period. There will be a gradual build-up which will give the ECJ the opportunity to build capacity as each of these specific defined areas move from Pillar 3 to Pillar 1 over that five year period. So there is an opportunity to participate and learn from the experience of that transition, but it is important that we do get it right. In terms of the second wider point about the infringement and preliminary references, there is a proposal now

to put in place fast-track mechanisms which generally are welcomed across the European Union. The analysis at the moment is that the backlog on ECJ referrals is reducing, so there are some positive signs. Also, the expansion of the European Union has brought a new group of judges and expanded the capacity of the judges in terms of numbers and, despite some reports, it has expanded the quality of the judges. There is a supply of good quality, high calibre judges. What I would say is do not overstate the scale of the change. Of course there will be a change but it will be a gradual change and we think mechanisms are being put in place to deal with those changes.

Q278 Lord Harrison: I very much accept that answer but, given the nature of Freedom, Security and Justice matters, there is the element of a Pandora's Box that in that five year period when those areas are brought into play things could not spin out of control but there could be more references than otherwise might be expected.

Mr Murphy: The number of references has stabilised at about 250 per annum at the moment and that is a relatively stable figure. As I say, there is a period of gradual change. If the transition was over a month or three months then those concerns would have added validity, but that transitional period of five years does give space to anticipate workload and adjust the transition accordingly.

Q279 Lord Wright of Richmond: Minister, I think possibly you have just answered my next question. We have had conflicting evidence from witnesses as to whether the Court is likely to become flooded with asylum cases. Do you have a view on that?

Mr Murphy: I do not believe that it will on the basis that, rather than me believing it, the evidence suggests strongly to the contrary, the number of cases having been stabilised. The worry is about delay in processes which comes back to the question posed earlier. We have to

continue with the stabilised number of 250 and with the backlog reducing the evidence strongly points to the contrary.

Q280 Lord Dykes: Following the second part of Lord Harrison's question, are you content with the actual text in the Treaty as laid down about the expansion of the Court's functions or will HMG make further structural suggestions, like sub-panels of judges, court of second instance, which are the examples that have been mooted in other circles in Europe?

Mr Murphy: In general, in the Treaty and the text we are content with the powers, remit and competence of ECJ. The significant areas we were keenest on was the relationship between ECJ and CFSP and that is clear, and it perhaps could be argued that it just confirms what happens at the moment but it confirms in Treaty text that there is no role for the ECJ in terms of Common Foreign and Security Policy, and that was important for us. The other was on the Charter of Fundamental Rights and ECJ competence. Those were the really significant in principle protections that we were looking for. In terms of further changes to Treaty text or the 52 declarations attached to the Treaty, we are not looking to change any of those at the moment.

Q281 Lord Roper: Minister, obviously the number of references have stabilised with the present jurisdiction but clearly the enlargement of the jurisdiction will almost inevitably increase the number of references. One particular group of references is those dealing with people who are in custody, of which there have only been relatively few so far but of whom there might be significantly more with the expansion to what is at present Pillar 3. Is there a problem given the time which the Court tends to take over a case in dealing sufficiently quickly with people who are in custody?

Mr Murphy: As I referred to earlier, there is the combination of the five year transitional period, the currently stable number of references and the fact that the backlog is being

reduced. Without in any way being complacent about it, structurally things are in place that are driving improvements. That five year transition gives an opportunity to look ahead and manage any additional caseload. An additional reform that is being introduced is about specialist tribunals. The impact of specialist tribunals, which we strongly supported and was why we supported the extension of QMV on specialist tribunals, there is one currently on civil service tribunals and the evidence thus far seems to be pretty positive. There is a whole set of important reforms being put in place to ensure that the ECJ is able to deal with the types of concerns that have been raised.

Q282 Chairman: Thank you very much indeed. Maybe we had better move on to the next issue. I want to raise with you, Minister, a couple of questions relating to the Charter of Fundamental Rights. In particular, what, if anything, does the Protocol add to the horizontal clauses in the Charter? Secondly, would you accept as inevitable the ECJ over the course of time developing jurisprudence in the field of fundamental rights by reference to the Charter and that this might in the long run undermine the Government's "red lines"?

Mr Murphy: My Lord Chairman, this is now an increasingly well-rehearsed argument and is one of the issues that will attract considerable attention as we proceed with the deliberations on the Bill giving effect to the Treaty. We are very clear indeed both politically and legally as to where we are. There is an acknowledgement, or perhaps acceptance may be a fairer way of putting it, across Europe that the Charter in and of itself does not create any additional new rights, it records in one place existing rights, but the important effect is for the first time institutions are bound by the specific rights gathered together within the Charter. There were specific concerns in the UK that also existed in Poland and we sought to address those concerns, with apologies to your Lordships who have asked about the negative language of some of these deliberations in the past, about future competence creep of the ECJ in developing jurisdiction through case law elsewhere relying on the Charter. We wished to put

it beyond any doubt whatsoever and that is the purpose of the UK and probably the Polish Protocol on the Charter of Fundamental Rights. Your Lordships have got copies of this. It refers to both the United Kingdom and Poland in Article 1 but it applies to all Titles of the Charter of Fundamental Rights. The horizontal articles do confirm that the Charter cannot expand any of the EU's powers at all. If you like, more colloquially put, it is a belt and braces approach. We are very clear, and all other countries are very clear, that the Charter does not create new rights, that is the belt, and the braces is we have got a Protocol for the avoidance of any doubt.

Chairman: Does anybody want to follow up on that?

Q283 Lord Powell of Bayswater: I suppose the real point is if it does not create any more rights, with which I agree, it does not diminish them or restrict them or restrain them from the present position in any sense. Given that the Court is a dynamic institution which is constantly fulfilling its mandate, which is advancing the purpose of the Union, then we must look to the fact that it is likely to steadily extend the scope of the rights that are in that Charter, not because they are in the Charter but simply because it decides that in the interests of the Union they should be extended, so we are as undefended as we were in the past, put it like that. There are no extra rights in the Charter, we have no additional blocking power or defences against further extension of the ECJ's judgments on these matters.

Mr Murphy: I will offer a comment and then invite Mr Berman to comment. First of all, I would like to say to your Lordships what I have said in the Commons already, which is that we do not have an opt-out from the Charter. Some of my colleagues, the trade union movement in particular, had a concern that we did and we have made it very clear that we do not have an opt-out but that the Charter does not create rights in the Protocol. The fact is the Protocol, Article 1, is about ensuring that this protection of the Protocol has the full weight of European law because it is contained, as you know, in the way that it is and that is a legally

binding Protocol. I will invite Mr Berman to comment more specifically about the legal point.

Mr Berman: My Lord, you are right, the Charter Protocol is concerned with the Charter itself and the concerns that were raised in the Charter. Clearly fundamental rights have been part of Community law since 1970, so we have lived with them for getting on for 40 years, and there has been an evolution of those rights in accordance with developments in broader case law, the Treaties in which Member States participate and in practices in national constitutions, and that will continue. There has never been an acceleration, the floodgates have not opened, it has been there to protect the individual, particularly in relation to the conduct of institutions, and that will continue to evolve organically as it has done since before we joined the European Community and we have lived through it for nigh on four decades without a problem. What we are concerned to make clear is that the Charter itself does not create a source of new rights, and that is pinned down principally in the Treaty itself to go with the explanations, but guaranteed in the belt and braces way, as the Minister says, by our Protocol.

Lord Powell of Bayswater: I think my point is that the Protocol defends us against a red herring, which is not a very terrifying animal to be defended against.

Q284 Chairman: I agree with that. Before I ask Lord Kerr, I want to re-emphasise this point. We had a former judge of the European Court before us here giving evidence and he rather charmingly said that they do not do propensity in the European Court, which is to say that there was not a propensity to get more and more proactive, but at the same time we were left with the clear impression that the Court will develop considerable jurisprudence in the years to come and that one of the sources of that jurisprudence will be the Charter. Therefore, even though the Charter itself will not be creating any new rights, the European Court's jurisprudence will in fact be leaning very heavily in some instances on Charter rights.

Mr Murphy: On that basis, of course, my Lord Chairman, the UK Protocol in that scenario, contrary to what has been suggested, would be significant on the basis that the Protocol is clear that no right can be derived from reliance upon a text of the Charter or the rights contained within the Charter, no new EU rights can be extended as a consequence. That is the purpose of the Protocol.

Chairman: We will see if that turns out to be the case and time will tell.

Lord Kerr of Kinlochard: I am sure you are right, my Lord Chairman, that the Court will develop jurisprudence based on its reading of the Charter, but there is a difference. It will now be reading, if this Treaty is ratified, the version of the Charter in the Treaty which contains the horizontal clauses which are not in the Charter which the Court reads now, the one that was promulgated at the Nice European Council. I agree with those who say that the Protocol is completely unnecessary because the horizontal articles at the end do the job. They are very precise and deal with precisely the threat that worries Lord Powell about the existing situation, the potential for constructive interpretation by a dynamic Court. It seems to me that this threat was very well dealt with by Baroness Scotland when she negotiated the horizontal articles into the Charter. I think the belt is very good, therefore I cannot quite understand the need for braces as well. I am sure the belt deals with the problem that Lord Powell raised.

Chairman: Shall we move on.

Q285 Lord Dykes: This is another area where seemingly a separate stance was going to be maintained by HMG. It was not the only more colourful comics, I suppose, that masquerade as newspapers in Britain, but actually quite serious commentators in the serious newspapers who referred to the concern that the changes brought about the Treaty would affect the basic independent of the UK's foreign and defence policy formation in the future. The Government described this matter as a "red line" issue, I believe. Are these concerns well-founded?

Mr Murphy: No. It may be bad manners to suspect your Lordships will leave it at that. The concerns are not well-founded. They are not well-founded on any objective analysis of the text of the Treaty, the text of declarations, the text of Article 11, nor any of the agreements by the heads of government. The fact is that CFSP has been in place since Maastricht. I rightly will be chastised if I even gently tread on the politics of that, but many of those who are now apparently so angry about what we are seeking to achieve here in a Common Foreign and Security Policy were amongst those who voted so enthusiastically and energetically for the Maastricht Treaty. As I say, we have had CFSP since Maastricht, and that was the right thing to have had incidentally, it is not a criticism, just an observation about apparently facing two different ways. The EU's operations in Bosnia and Afghanistan, the common approach on Burma, sanctions on Iran, there is a plethora of important ways in which the European Union's Common Foreign and Security Policy has helped or is helping. There are two new declarations, one about the capacity of those Member States who are members of the United Nations Security Council who continue to operate independently, and secondly about our own foreign policy. In Article 11, I think it is on page 29 of the Treaty, there is a text there which is pretty clear about the Common Foreign and Security Policy. There is much more we could say about this and this debate on foreign and security policy will continue over the months ahead. Foreign policy has been in place since Maastricht and it has not stopped us, on occasion very controversially, going outside of what would be considered the mainstream of European opinion and, more importantly, outside the consensus in Europe in terms of military action.

Q286 Lord Dykes: You are thinking of Iraq?

Mr Murphy: I am thinking particularly of Iraq. This approach was in place pre-Iraq, and we will continue to have disagreements within parties and across parties about the merits of the case in terms of Iraq, but the fact is the United Kingdom, working with other allies, was able

to embark on its own foreign policy and will continue to be able to do that and it is not affected by the Lisbon Treaty. It is an agreement at a political level in terms of unanimous declarations but also in Treaty text that makes that beyond doubt whatsoever.

Chairman: We will continue on foreign affairs with Lord Roper.

Q287 Lord Roper: Article 13a of subsection 3 on page 31 talks about the way in which the European External Action Service will be set up. I wonder if we can get some sort of idea as to the timetable as to when there is likely to be the decision of the Council which is going to determine the organisation and functioning of the Council and what sort of role the British Government feels it is going to play in this process? What efforts will the Government make to ensure that the External Action Service is given the resources and political support it needs to be effective? In particular, there is a reference in that Article and subsection to staff seconded from national diplomatic services of Member States. I believe that it would be to the advantage of the United Kingdom to ensure that we are able to second able and competent people and play an important part in developing that External Service in the right direction. Does the Minister agree?

Mr Murphy: I strongly agree. The role of the High Representative is an important one but it is not a job exclusively for one person, that person would need logistical support of the type that we can all envisage. The details of the External Action Service have not been debated yet and certainly have not been agreed yet. When ultimately it is decided upon, it will be decided upon by unanimity, which is important. There are some quite fair concerns about how we come to the decisions on the External Action Service and it will be by unanimity. It will be our intention to play our part in terms of UK secondees to that service. We currently have secondees to a variety of European institutions and bodies and it would be the correct and proper thing to do for the United Kingdom, along with others, to play our part and provide secondees to that service.

Q288 Lord Roper: Perhaps I can pursue one point which goes back to something we were discussing earlier. Obviously bringing together what you referred to as the two silos of the work done in the Council Secretariat and the work done in the external relations part of the Commission, also presumably the present representations of the Commission in the field which will, of course, become Union representations in future, they will presumably be double-hatted to that extent. On the other hand, in the external representations of the Commission at the moment there are quite a lot of people dealing with things like development aid who are coming from parts of the Commission which are not going to be under the direct responsibility of a High Representative. Do you think that they will become part of the External Action Service or will they continue to be directly coming from their own Directorate-General?

Mr Murphy: We have not considered the detail of how this will operate and I think it would be inappropriate for me this evening to make it up on the hoof, colloquially speaking. These are things that within the UK Government we will come to a settled position on as to what we think will be the most effective way for this to operate, and then by unanimity of the other 26 to come to what will be operationally sensible, what does not repeat some of the mistakes of the past.

Q289 Lord Roper: The decision on the functioning and operation of the External Action Service which is referred to will presumably not have to be made before the Treaty is ratified but some time after, so it could come in 2009 once the High Representative is appointed, so it will be possible for this Committee or one of the Sub-Committees to return to that question during that period.

Mr Murphy: It will be for your Lordships to make that decision. It is not for me to dictate the work of this Committee or to anticipate an opportunity to appear before you again, but the timescale for any decision on this is such that there will be ample opportunity for your

Lordships to consider the detail of this. In fact the truth, as I have said already, is that the UK Government has not worked through the detail of our position so there will be limited validity in questioning us about a position we do not yet have. Perhaps it will be sensible as we develop our view and thinking on the External Action Service for me to notify the Committee and then for the Committee at a time of its choosing to perhaps seek the appropriate minister to provide evidence to you.

Chairman: That is fine. We might raise this with you when we meet you again. We have a date fixed for you to come and talk to us about the European Council, so we could raise it on that occasion.

Q290 Lord Wright of Richmond: Minister, I think you have told us that you are not really in a position yet to talk about things like secondments to the External Action Service, but to what extent does the Diplomatic Service already second people to the Commission representation abroad?

Mr Murphy: We do second people to the Commission. I do not have the figures with me today but it may be helpful if I provide those figures to your Lordships.

Q291 Lord Wright of Richmond: I would be very interested.

Mr Murphy: I will happily do that.

Q292 Lord Roper: If they could show both the numbers seconded to work in the Commission in Brussels and those seconded to work in Commission representations outside Brussels.

Mr Murphy: I will happily provide the details to you, of course.

Chairman: That is an interesting point. We recall the interesting article in *The Economist* quite recently about the number of UK nationals working in positions in the Commission and

elsewhere which seemed at least to alarm *The Economist* and I must say it somewhat alarmed me too. I think we have an interest in this.

Baroness Howarth of Breckland: I do not know whether I am permitted this question really. At the beginning you talked about the need for reform because you would not run a bowls club with the present structures, with which I agree with you. One of the issues that we have not talked to you about, and one that we may want to ask about later, is how you explain this complexity to the ordinary consumer, the ordinary bowls club member. I was interested listening as you went through and you talked about the ambiguities that still exist in the detail and, of course, the general population find ambiguity very difficult to deal with. Some of the issues about quality, quantity and speed that you have talked about, people might understand better if they thought it was a speedier reaction they were going to get but the multiple voting means it may be slower, how does the general population understand that? I just wondered what you would say in a sentence if you were going to say three things about this debate to your bowls club to really win them over, because this is the real crunch about the complexities of these issues. I am Sub-Committee G and we deal with consumers and those sorts of affairs. How do you get ordinary consumers to really grasp those sorts of issues, quality, quantity, ambiguity and change, when you do not have the kind of detail people do understand?

Q293 Chairman: You get equal time with the Baroness if you wish to.

Mr Murphy: I was only given three sentences. First of all, I think there are some excellent bowling clubs throughout the United Kingdom.

Q294 Lord Wright of Richmond: Some of your best friends.

Mr Murphy: Some of my voters, which are of course the same thing.

Q295 Baroness Howarth of Breckland: It is rather better than the Clapham omnibus, is it not?

Mr Murphy: The Clapham omnibus you have to spend less time on than you do in a bowling club. How would I describe it? That Europe has been a great force for change in the past. Its rules are outdated. There were six countries in membership - I do not know how many sentences this is now - when we joined and we should celebrate there are now 27. Those countries freed from Communism are now full members of our club. Like every organisation, the rules have to take account of those changes. If we do not change and improve the way we work the great things that we all believe in will not be achieved through Europe. That would be my approach in trying to justify and argue the general thrust of the Treaty.

Baroness Howarth of Breckland: You have got a lot of work to do.

Chairman: I think that was a pretty good stab at it, if I may say so, Minister.

Baroness Howarth of Breckland: It was a good stab.

Chairman: This leads us on to what Lord Sewel and Lord MacLennan may wish to put to you in the final moments of our meeting.

Q296 Lord MacLennan of Rogart: We have heard statements, not only from our Prime Minister but also from other heads of government, that these constitutional reforms embodied in the Treaty of Lisbon mark the end of the road for institutional reform. Are we expected to believe that if in practice they turn out to be less than optimal the Union is setting its face against any more IGCs to improve the situation, or is it anticipated that any necessary changes would be achieved by evolution of the constitutional developments comparable to those in Britain or, per contra, is it lack of imagination that suggests there cannot be any improvements made?

Mr Murphy: The pure structural organisational answer first and, if you will permit me, a political comment. The conclusions of the European Council are pretty clear, no more change

in the foreseeable future. The quote is that, “In the foreseeable future we should concentrate on concrete challenges including globalisation and climate change”. Domestically our own Prime Minister has ruled out any future Treaties for this or the next Parliament. On the basis that these Treaty changes are by unanimity there is just no appetite any longer for another IGC process and further Treaty change. This process has been going on now for seven or eight years. That is the straight structural response. My more political response would be that if Europe was to go through another period of near a decade of having a conversation with itself, the detail of which only a thousand people across the continent have followed the precise twists and turns of every move from QMV to DMV, to Protocols, Charters, “red lines”, opt-ins, opt-outs and legally binding protocols, we risk our collective ability to do the things that we wish to do because we erode contemporary political consent for Europe, the European project and what we believe it can achieve. My sense about this disconnection between European populations and Europe as an institution and as a force for good is driven by the fact that a Treaty in itself will not change that and a clever speech by a politician or business leader will not change that. Until such time as people’s lives reflect the reality of our argument they are right to feel sceptical that Europe has yet to deliver the improvements that we all believe it should, can and has done in the past. It is about delivery. The importance of the Treaty for me is that it gives us an opportunity to help deliver much of that. If I could finally sum it up. Many more people, myself included, are much more interested in the Lisbon Agenda and changes and growth than in the important detail of the Lisbon Treaty. Once we have come to the conclusion of the deliberations of ratification of the Lisbon Treaty we should put as much energy into the Lisbon Agenda when there are 92 million people across the European Union economically inactive. That is a massive challenge for us and the test will be will we collectively put as much energy into that as we have into this. If we do not then I think we run the risk of just talking to ourselves and undermining future consent.

Lord Sewel: I cannot add anything to Lord Maclellan's question and I am totally content with the Minister's answer. I think we are all a little bit exhausted. Thank you.

Chairman: That is the Chairman of Sub-Committee D. I think the long inquiry into the wine regime has got him down.

Lord Plumb: It has not, my Lord Chairman, it has built him up, I think!

Chairman: Minister, thank you very, very much indeed for giving very generously of your time and answering all of our questions in your customary very precise and informative way. We look forward to seeing you on 15 January when we will have a chance to discuss the outcome of the recent European Council. Thank you very much to Shan Morgan, Paul Berman and Martin Shearman. Thank you.