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JOINT NATURE CONSERVATION COMMITTEE

INTER-GOVERNMENTAL CONFERENCE OF THE EUROPEAN UNION

Paper by Steve Gibson, JNCC Support Unit and David Morgan, UK Nature and Landscape Office, Brussels

1. Background

- 1.1 The European Union (EU) is currently established on the Treaty of Nice with some provisions of previous Treaties remaining extant. Signed in February 2001, the Treaty of Nice came into force on 1st February 2003. In December 2001 Heads of State at the European Council considered that there was a need to modernise, rationalise and simplify the arrangement and decision-making of the Union in the light of the forthcoming enlargement. The European Council established a “Convention on the Future of Europe”, with the European elder statesman Giscard d’Estaing in the Chair, in order to prepare a draft of a new Treaty. The Convention presented the European Council with a consensus text of a draft Treaty on 18 July 2003.
- 1.2 Using the text provided by the Convention on the Future of Europe, a new Treaty will now be negotiated in an Inter-Governmental Conference (IGC) between the Member States which will be launched on 4th October 2003. The intention is to conclude the negotiations before the European Parliamentary elections in June 2004.

2. Assessment of the draft Treaty

- 2.1 Previous Treaties have successively strengthened the environmental dimension of the EU. Early work in the Convention however paid little attention to this issue but focussed on the political balance of power within the EU institutions. At one stage it seemed that the Convention might propose that sustainable development should actually have a **lower** profile in future. However concerted action by environmental NGOs succeeded in re-establishing what is essentially the status quo – sustainable development will remain an over-arching objective of Union policy.
- 2.2 The main areas of interest to JNCC in the Nice Treaty are considered here, along with the proposed draft Treaty text, and an assessment of the changes.

1. Fundamental principles

Existing Treaty of Nice	Draft new Treaty
<p>The Union shall set itself the following objectives: — to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty, (Title 1, Article 2)</p>	<p>3. The Union shall work for the sustainable development of Europe based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.</p> <p>4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to the sustainable development of the earth. (Part I, Title I, Article 3)</p>

Commentary. No substantive change other than an extension of the Union’s values to its dealings with the wider world.

2. Environmental integration

Existing Treaty of Nice	Draft new Treaty
<p>Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development. (Article 6)</p>	<p>Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities referred to in this Part, in particular with a view to promoting sustainable development. (Part III, Title I, Article III-4)</p> <p>Also to some extent repeated in the Charter of Fundamental Rights section of the draft Treaty: A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. (Part II, Article II-37).</p>

Commentary. As a result of other changes, the principles of integration are extended to cover justice and home affairs and common foreign and security policy – these subjects were not previously subject to the methods of decision making used for other Community business.

3. Environmental policy

Existing Treaty of Nice	Draft new Treaty
<p>1. Community policy on the environment shall contribute to pursuit of the following objectives:</p> <ul style="list-style-type: none"> i. preserving, protecting and improving the quality of the environment, ii. protecting human health, iii. prudent and rational utilisation of natural resources, iv. promoting measures at international level to deal with regional or worldwide environmental problems. <p>2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.</p> <p>3. In preparing its policy on the environment, the Community shall take account of:</p> <ul style="list-style-type: none"> i. available scientific and technical data, ii. environmental conditions in the various regions of the Community, iii. the potential benefits and costs of action or lack of action, iv. the economic and social development of the Community as a whole and the balanced development of its regions. 	<p>1. Union policy on the environment shall contribute to pursuit of the following objectives:</p> <ul style="list-style-type: none"> a. preserving, protecting and improving the quality of the environment; b. protecting human health; c. prudent and rational utilisation of natural resources; d. promoting measures at international level to deal with regional or worldwide environmental problems. <p>2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.</p> <p>3. In preparing its policy on the environment, the Union shall take account of:</p> <ul style="list-style-type: none"> a. available scientific and technical data; b. environmental conditions in the various regions of the Union; c. the potential benefits and costs of action or lack of action; d. the economic and social development of the Union as a whole and the balanced development of its regions.
(Title XIX, Article 174)	(Part III, Chapter III, Section 5, Article III-129)

Commentary. No substantive change. Also, as at present, environment policy is an area of ‘shared competence’ between the Union and the Member States and even if European law exists on the subject matter, Member States may retain or establish national measures relating to the protection of the environment provided the Commission agrees that they are not a means of arbitrary discrimination, a disguised restriction on trade between Member States or an obstacle to the functioning of the internal market.

As regards other Union policies, the only sectoral policy where environmental considerations are boosted is that relating to energy policy. Here the draft new Treaty proposes:

1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:
 - a. ensure the functioning of the energy market,
 - b. ensure security of energy supply in the Union, and
 - c. promote energy efficiency and saving and the development of new and renewable forms of energy.

(Part III, Chapter III, Article III-157)

Regrettably therefore, little evolution of Union environmental policy as a whole is envisaged at this stage. In particular, many of the sector-specific policy sections still use old language, some of it 50 years old. There are few references to sustainable development within these. Some, such as agriculture, even fail to recognise the progress that has been made in the past few years on the environment.

3. Influencing negotiations

- 3.1 Attached to this paper is a draft letter from the Chairman on behalf of JNCC to the Secretary of State for Foreign and Commonwealth Affairs, setting out the position of Committee on the draft Treaty. The letter refers to five issues of concern. The rationale for inclusion of each of these is described here.
- 3.2 *Strengthening commitment to a Europe that is developing sustainably.* This continues the trend of previous Treaties that strengthened such provisions compared to their predecessor, and seeks to make sustainable development an integral part of policy achievement, not just of aspiration.
- 3.3 *Integrating sustainable development into EU policies.* As noted in the assessment of the draft Treaty, the wording of most of the policy areas does not integrate sustainable development into the policies, and often uses wording re-cycled from earlier Treaties.
- 3.4 *The EU as global leader.* The EU showed significant moral leadership at the World Summit on Sustainable Development and there is no evidence that any other State or grouping of States is attempting to fill that role. The continuation of this leadership role through its establishment in the Treaty would benefit the cohesiveness of EU outward-facing policies.
- 3.5 *The position of the Overseas Territories.* In much the same way that the policy wording does not reflect the intent of the early parts of the draft Treaty

on sustainable development, the section on Overseas Territories and Countries does not reflect the importance of sustainable development in these places.

- 3.6 *Implementation of the Aarhus Convention.* JNCC makes environmental information accessible. This is part of a process of environmental governance that has public participation at its core and access to justice as a fundamental right to underpin that participation. The draft Treaty does not, as worded, implement the EU's signature of *The Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters*, as it does not give civil society access to the highest legal authority of the Union, the European Court of Justice.
- 3.7 There may be pressure not to 'unpick' the work of the Convention and there will be many political perspectives influencing the negotiating position that the UK adopts. Nevertheless, this may be the only opportunity the JNCC will have to put down a marker over the importance of fully integrating environmental considerations into the Union's structure and provides advice on those matters over which JNCC has competence. Any Treaty that is finally agreed will set the shape and tone of environmental policies in the EU for many years to come.

ANNEX A

FROM CHAIRMAN ON BEHALF OF THE JOINT NATURE CONSERVATION COMMITTEE

For approval at Joint Committee on 18 September 2003

Rt Hon Jack Straw MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
London
SW1A 2AH

Dear Secretary of State,

Forthcoming EU Inter-Governmental Conference

I am taking this opportunity to write to you, on behalf of the Joint Nature Conservation Committee, as the Inter-Governmental Conference approaches.

The Committee believes that the IGC provides a great opportunity for advancing the environmental and the sustainability agendas of the Union, but we also see the risk of both a lost opportunity, and even an erosion of some existing Treaty provisions. With this in mind I hope that our advice, contained in this letter, will be of benefit to you when finalising the UK position for negotiation at the IGC.

Our advice uses the framework of the recommendations of the Convention on the Future of Europe. We have five issues we wish to highlight:

- the right of EU citizens to a Europe that is developing sustainably;
- integrating sustainable development into EU policies;
- the global leadership that the EU can and must show for a sustainable world;
- the position of Overseas Territories; and
- implementation of the Aarhus Convention.

Article I-3(2) of the draft Treaty offers EU citizens freedom, security, justice and a single market. We firmly believe that this should also include offering citizens a Europe that is developing sustainably, rather than using the weaker wording of “work for sustainable development” as is presently in the same draft Article.

We believe that the environmental pillar of sustainable development needs strengthening in the sectoral policies outlined in Part III of the draft Treaty. Whilst the

overarching objective in Article III-4 is welcome, we believe individual policies should also be contributing to sustainable development. The specific objectives of many of these policies were established many years ago under very different circumstances. All the policies should now have a specific objective to further sustainable development. This will of course complement the Cardiff Integration Process.

We very much welcome Article I-3(4) and the intent of Article III-193(2)(d), that recognise the role the Union can play in 'the sustainable development of the earth'. My predecessor wrote to the Prime Minister in June 2001, prior to the Göteborg Summit, urging a strong external dimension to the EU Sustainable Development Strategy. However, in this post-WSSD climate, we believe it is now necessary to go further, and that the EU has both the capability and responsibility to provide global leadership in this area. We hope the UK, with its many European allies, can lead the Union in this direction, and enshrine this in the Treaty.

You will also be aware of the special relationship of the various Overseas Countries and Territories (OCTs) of the UK and other Member States with the EU. These OCTs are also special in environmental terms, being hosts to unique but often threatened elements of the earth's biodiversity. We believe that Articles III-186 & 187 should be worded to recognise the importance of sustainable development in the OCTs such that their legitimate and necessary aspirations to social, cultural and economic development are also balanced by environmental gain.

We are sure you recognise, as did some of the UK representatives on the Convention, that Article III-266 on the European Court of Justice must be worded such that it meets the EU's obligations to the *Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters*. We believe that access to the European Court of Justice in this way would support the objective of ensuring that Europe develops sustainably.

In summary, we hope that the UK will be able to achieve a Treaty that: provides citizens with a Europe that is developing sustainably; integrates sustainable development into EU policies; places the EU in the leading role for achieving a sustainable earth; specifically values the precious environments of the UK's Overseas Territories; and implements the EU's obligations on environmental justice.

I hope our advice is valuable to you in your preparations. Please do not hesitate to contact me if you wish to discuss these matters further.

Copies go to
Sir Stephen Wall, Cabinet Office, European Secretariat, 70 Whitehall, London
Rt Hon Margaret Beckett, Secretary of State Department for Environment, Food & Rural Affairs