

FOCUS ON
GIBRALTAR

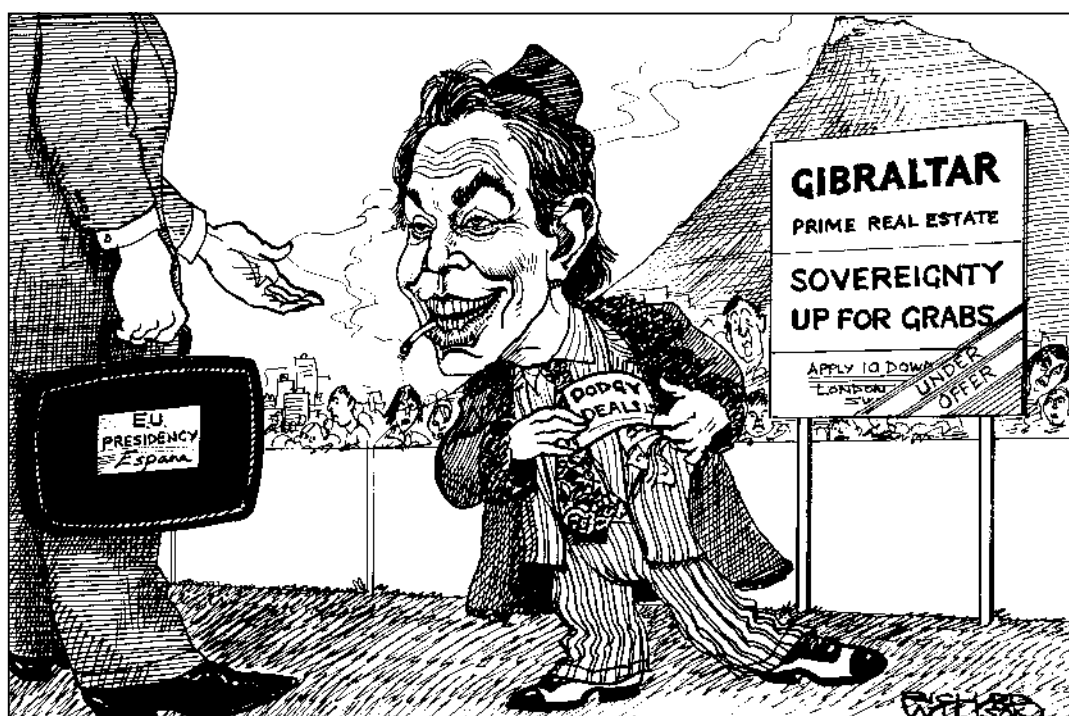
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DANIEL HANNAN, MEP

WHAT MAKES US WANT TO BETRAY GIBRALTAR?



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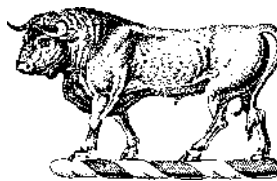
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Devil in the Detail in Barcelona

THERE WAS more to the Barcelona European Council on 15 and 16 March 2002 than first meets the eye. Although Tony Blair's frustration at France's continuing failure properly to deregulate its electricity markets was widely reported, the Summit's rather more important discussions, in areas including macroeconomic policy harmonisation, hardly received any coverage. The Presidency Conclusions called specifically for the reinforcement of existing fiscal policy co-ordination in time for the 2003 Spring European Council. The ministers also endorsed the launch of new Broad Economic Policy Guidelines, focal points of which would include *"the quality and sustainability of public finances, pursuing further necessary reforms in product, capital and labour markets and ensuring coherence with the policies established in each domain"*.

Barcelona was the second annual spring meeting on the *"economic, social and environmental situation"* in the EU. Those who believe that the EU has now embraced a dynamic market economy should read the Presidency Conclusion's section on *Reinforcing social cohesion*. Despite the EU's awful record on economic growth and job creation, the Council saw fit to claim that the European 'social model' *"is based on good economic performance, a high level of social protection and education and social dialogue."* Notwithstanding its oft-repeated claim that it wishes to encourage entrepreneurship and the

persistent denials from the British government that no harmonisation of direct taxation is on the cards, the Conclusions stipulate that *"where member states pursue tax cuts, priority should be given to reducing the tax burden on low-wage earners"*.

Evidently, the Irish 'No' to Nice has fallen on death ears. The Irish Prime Minister was forced to outline how he would ensure victory in a new referendum to be held later in 2002. The Council apparently liked what it heard and emphasised that it was willing to support the Irish government and *"contribute in every possible way"* to a 'Yes'. The courageous and underfunded 'No' campaign in Ireland certainly has its work cut out. The ministers decided to hold further talks on the matter in the forthcoming Council in Seville.

The EU's move into health and education, two areas supposedly to be left to national governments, continues apace. The Council agreed to launch a European Health Insurance Card by the end of 2003, allegedly to promote intra-EU labour mobility. Far worse is the decision to authorise a 'feasibility study' into web-based twinnings between schools across the EU. And once again, the Council called openly for yet more EU propaganda in schools: further action *"to promote the European dimension in education and its integration into pupils' basic skills by 2004"*.

JUST AS INTERESTING was the discourse emanating from Europe's governing elites in the days immediately prior to the Council. Romano Prodi, the President of the European Commission said the European Union needed new common rules on how to handle budgets and tax policies in boom times. Addressing a news conference on 13 March 2002, two days before the Barcelona summit, Prodi said the EU's Stability and Growth Pact has a short-term horizon to prevent member states running excessive deficits. But, he claimed, this is not enough to manage their growing economic interdependence and avoid repeating what he called the 'mistakes' of the 1980s. *"Experience has shown that mistaken policies are usually conducted in good times, when the economy is expanding. We find that at that time, member states fritter away the leeway that they need to cater for leaner times when there is either reduced growth or actually recession,"* he said. *"Secondly, we could also think in*

terms of common rules for tax policy, again when the economy is booming and when tax revenues are higher than expected," Prodi added. In recent months he has repeatedly demanded the introduction of a code of conduct for economic and fiscal policy. The French Prime Minister and Presidential Candidate Lionel Jospin has called for a *"political Europe"* centred upon a European constitution and including the Charter of Fundamental Rights drafted in the run-up to the Nice Treaty. Jospin's openly stated goal is the creation of what he calls a *"European federation of nation states"*. Echoing the mission statement of the 2004 IGC, Jospin wants to 'clarify' the respective competences of the EU and of the member states. He also supports the creation of a permanent Council of Ministers of Europe (which would include a British Minister for Europe). The new permanent council would report back to national governments and co-ordinate European policy with Brussels.

Allister Heath, Editor of the *European Journal* and Head of Research at the European Foundation will be stepping down in early April 2002 to go and work for a national newspaper. His first article for the *European Journal* was published in January 1999, and he served as Executive Editor and then Editor. The staff of the *European Journal* would like to take the opportunity to thank him for the effort that he has put in to the *Journal* and to wish him well in his new job.

Focus on Gibraltar

by Allister Heath

BRITAIN IS PREPARING TO BETRAY the people of Gibraltar in a desperate bid by Tony Blair to boost his flagging influence in the European Union. Although the Rock's population is staunchly opposed to incorporation into Spain, the British government is determined to strip the territory of its colonial status. Talks are currently under way between Britain and Spain which will almost certainly lead to a 'new constitutional settlement' – including some form of joint Anglo-Spanish sovereignty – being presented to the people of Gibraltar as a 'done deal'. Fortunately, the agreement is bound to be rejected in a referendum in Gibraltar, but the proposals will remain on the table. Just as the Danish rejection of the Maastricht Treaty and the Irish rejection of the Nice Treaty were angrily dismissed, Europe's governing elites will not take Gibraltar's 'No' for an answer. We can safely predict that a tidal wave of propaganda will be unleashed and that another referendum will be called when the time is deemed right.

The European dimension is at the heart of the Gibraltar question. The territory's opt-outs from some of the more damaging EU policies, including Value Added Tax, the Common Agricultural Policy and the customs union, help explain why the European political establishment is so keen to cut the Rock down to size. The territory's relatively low tax rates, which have helped attract numerous financial institutions, have repeatedly been targeted by fiscal harmonisers at the Organisation for Economic Co-operation and Development (OECD) and in Brussels. It thus seems appropriate to devote much of this issue of the *European Journal* to the Gibraltar question. Our contributors – an unprecedented group of journalists, politicians, lawyers, policy makers and businesspeople – analyse recent developments in virtually every conceivable way.

FOR MICHAEL GOVE, one of Britain's foremost political commentators, Britain's sell-out is just the latest in a long series of Foreign Office betrayals. According to Gove, there is a tradition in British foreign policy "which regards one constitutional destiny as an illegitimate choice for anyone. Being British." The Foreign Office's brand of anti-Britishness is now being comple-

mented by the 'New Left's' anti-historical project to abolish Britain. **Daniel Hannan**, MEP's contribution complements that of Gove. The government's attitude to Gibraltar "tells us a great deal about Labour's whole attitude to Britishness." Ministers and much of our 'left-wing' establishment obviously despise everything Britain stands for, from the common law to lower taxes. They hate the fact that Gibraltar is so self-consciously British and patriotic; that Gibraltarians refer to the UK as the 'mother country'. The Blairite project consists in 'modernising' everything we do differently from the rest of the European Union. Obviously there can be no room for a British Gibraltar in such a Brave New World.

Maurice Xiberras, a socialist and a former Leader of the Opposition in Gibraltar, is the last remaining Gibraltarian to have taken part in the convention which drafted the territory's 1969 constitution. He reminds us that the constitution's preamble states specifically that "Her Majesty's Government will never enter into arrangements under which the people of Gibraltar will pass under the sovereignty of another state." **Peter Carter-Ruck**, the leading libel lawyer of the last few decades, demonstrates that under the terms of the Utrecht Treaty – Article X of which handed over Gibraltar to the UK – it is only if Britain were to surrender its ownership of Gibraltar to a third party that the Rock would revert to Spain. Of course, the world has moved on since 1713. The right to self-determination is now widely accepted and the Gibraltarians should have the right to choose their own destiny democratically. In a related contribution, **Daniel Feetham**, a Gibraltar-based barrister, makes the case that the right to self-determination for colonial people, as enshrined in the UN charter, also applies to Gibraltar. He argues that Spain's claim and the validity of the Utrecht Treaty should be tested in the International Court of Justice.

MARK FRANCOIS, a young Tory MP from the 2001 intake, argues that the betrayal of Gibraltar during Spain's turn as President of the EU's rotating presidency is hardly a coincidence. "The whole process of negotiation is now being undertaken not for the benefit of the Gibraltarians but rather for reasons of gaining Spanish support for Foreign Office objectives within the EU, not

just in the Council of Ministers but potentially at future European summits, including the next Intergovernmental Conference itself," he writes. The **Marques de Lendinez**, a prominent UK-based pro-Gibraltar activist, provides a wide-ranging and lucid introduction to the Gibraltar question. **Hon. Peter Caruana**, QC, the territory's combative and highly articulate First Minister, outlines the Gibraltar government's official view on the matter. He sees little point in taking part in the Anglo-Spanish talks because they are obviously rigged. A major problem is that even following a rejection in a referendum of the 'done deal', "this agreement will remain on the table for all time as the agreed UK/Spain political position."

HON. JOE BOSSANO, the charismatic former Socialist Labour Party First Minister and currently Leader of the Opposition, explains how recent events show once and for all that the EU cannot be trusted.

Lindsay Hoyle, MP, the Labour Chairman of the All Party Parliamentary Group for Gibraltar, sets out how and why he will be stepping up his campaign on behalf of the territory in the House of Commons.

Peter Isola, Jr., and **Marie Lou Guerrero**, two leading representatives of the business world, show how trade is being impacted by Spain's illegal blockade. **Andrew Rosindell**, MP, the European Foundation's International Director, and **John Tate**, a former Head of Research at the Foundation, argue that Gibraltar should be decolonised via incorporation into the UK. It should have its own Westminster MP, they believe. **Tony Lodge**, a former Editor of the *European Journal*, writes that diplomatic expediency should not be allowed to get in the way of fundamental human rights. **William Serfaty** of the Self-Determination for Gibraltar Group recounts how his organisation successfully took the UK to the European Court of Human Rights and how the Gibraltar Parliament now favours the adoption of a new constitution.

Enjoy.

Allister Heath is Head of Research at the European Foundation and Editor of the *European Journal*. He can be contacted at allister_heath@yahoo.co.uk

Another Foreign Office Sell-Out

by Michael Gove

FEW CONDITIONS are as disfiguring as diplomat's tongue. Like legionnaires' disease it spreads quickly within one, often sick, building. But so far, in Britain, it has been isolated within a singular establishment – the Foreign and Commonwealth Office.

The condition's victims first tend to develop a thick brown coating on their oral muscle – often most conspicuous after a visit to the Arab nations of the Middle East but now also visible after even the briefest European tour. After this discoloration a more striking alteration occurs, as the tongue forks, the consequence of saying different things out of each corner of the mouth. The latest high-profile victim to fall prey to the deformity is not a professional diplomat but a relatively recent arrival at the breeding-ground for infection, our Minister for Europe, Peter Hain, MP. Over the last few months, Mr Hain has shown not only that his tongue has acquired a lustrous Iberian coating, and that it is as forked as one could wish when offering guarantees to Gibraltarians, but also that it has developed a capacity to issue venom.

After all, what could be more toxic than telling 30,000 people who deeply value their Britishness that their passionate attachment to this country risks leaving them “*stuck in the past*”?

Mr Hain has been making ever more explicit one of the most shaming initiatives that has ever emanated from the Blair Foreign Office – the planned abandonment of a solemn guarantee that British citizens be allowed the free exercise of self-determination.

The Minister for Europe has been seeking, in suitably fork-tongued fashion, to wriggle out of the binding assurance Britain gave Gibraltar in 1969 that the British sovereignty of the Rock would never be transferred contrary to the wishes of the people of Gibraltar. Even though they have been as flinty as their home in their determination to stay as Crown subjects, Mr Hain is seeking, slowly but surely, to deny them that right.

Europe, he has emphasised in his statements, has changed since 1969, with Germany unifying and Northern Ireland's constitutional position slipping, and so, he argues, Gibraltar too must alter. The implication is clear – the Foreign Office sees

Gibraltar partly as some sort of artificially partitioned German Democratic Republic whose detachment from the rest of the Iberian Peninsula is an anachronistic ideological nonsense, and partly as another Ulster from whom every connection with the Crown is to be slowly stripped.

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THERE IS A PARTICULAR IRONY amounting to shame in a British minister seeking to deny 30,000 people the right to decide the fate of their territory. The most elevated tradition within British foreign policy – from Canning, through Palmerston, Gladstone and Asquith to the Eden of the Thirties and even the Cook of Kosovo – is that this nation will exert itself to uphold the principle of self-determination.

There is, however, another tradition within UK foreign policy which regards one constitutional destiny as an illegitimate choice for anyone. Being British. For the past 30 years the Foreign Office has found it almost impossible to uphold the right of anyone to remain a subject of the Crown whose Britishness is at risk from another sovereign nation.

The Foreign Office sent signals to Argentina over the future of the Falkland Islands which encouraged the Argentinians to believe that a Britain indifferent to the islanders' Britishness would not contest their invasion. In Northern Ireland, a form of government was devised for British people, primarily in negotiation with Dublin, which deprived them of the right to

vote for British parties and vote any party out of government. And, most shamefully, in Hong Kong millions who had grown up in liberty under British protection were handed over to a tyranny without being given the chance to speak for themselves.

Now it is the turn of Gibraltar's citizens to find that the Mother of Parliaments is not a fit parent, and they are to be abandoned to the custody of another. The imminent British betrayal fits the already established Foreign Office pattern, but it contains another, distinctly contemporary and quintessentially Blairite, component.

The Government's desire to relinquish British sovereignty over Gibraltar is designed simultaneously to further the process of European integration and efface anything which is distinctive about our national story.

The casual fashion in which Gibraltarians can find their ability to decide how they should be governed taken from them by Foreign Office ministers, with their British citizenship formally preserved but its distinctive substance, and their sovereignty, slowly dissolved, is entirely characteristic of the new EU.

And the manner in which British history, the attachments it fosters and the guarantees it has provided are considered to be part of a past in which no sane person would wish to be ‘stuck’ is entirely characteristic of the ‘New Left’.

IN A WORLD grown more dangerous, the right of people to cleave to the trusted and familiar should be respected, not dismissed. In a world where a retreat from obligations encourages the advance of enemies we should stand by those who have always looked to us. And in a world rendered more unstable because people are denied the right to self-determination that principle must be defended. So much is so obvious it hardly needs stating. But it is still too much to swallow for those in the grip of diplomat's tongue.

Michael Gove is Assistant Editor of The Times.

What Makes Us Want To Betray Gibraltar?

by Daniel Hannan, MEP



“**H**OW WOULD YOU FEEL,” my Galician barber asked me the other day, “if we had occupied, say, Plymouth, filled it with colonists, and then hung on to it?”

“To be honest, Pepe,” I told him, “I think most British people would treat it as an exotic holiday destination. We would go there for the flamenco and the sangria, and enjoy the fact that we had a little bit of Spain on our doorstep. What I do not understand is why you chaps are still so edgy about these things after three hundred years.”

Pepe shrugged. “No tengo puta idea,” he replied, in his coarse, cheerful, Spanish, and we turned the conversation, as we often do, to our favourite bull-fighters.

The Gibraltar issue tells us as much about ourselves as about the Spanish. After all, you cannot really blame Madrid for pushing at a door that we have so ostentatiously unlocked. The world is full of disputed territories. What makes this case special is the unique pusillanimity of the British Government which, despite having both international law and democratic self-determination on its side, seems determined to turn a non-issue into an issue.

When we huff and puff about Spain’s hypocrisy in pressing its claim while refusing to discuss the status of its North African enclaves, Ceuta and Melilla, we are missing the point. The reason the Spanish have become so exercised about Gibraltar is because they believe that their pressure will

eventually yield results. And, for that, our own Government is to blame.

Gibraltar does not fit easily into Labour’s conception of a modern, European Britain. It is too shrill, too patriotic, too red-white-and-blue. The stance which this administration has assumed over the Rock tells us a great deal about Labour’s whole attitude to Britishness.

At his very first conference as Labour leader, Tony Blair told his party: “I will never allow Britain to be isolated or left behind in Europe.” At one level, of course, he simply meant that he wanted to sign up to whole swathes of EU policy which the Conservatives had eschewed, such as the euro and the social chapter. But he also meant something much deeper. When Labour modernisers speak of “the Project” they have in mind a complete overhaul of Britain: an ironing out of the things that make us different from the rest of the EU. This includes the continentalisation of our economy, through higher taxes and more state intervention; the continentalisation of our constitution, through the introduction of regionalism and proportional representation, and the abolition of such British anomalies as the House of Lords; and the continentalisation of our legal system through the incorporation of European human rights codes.

Part of becoming a modern European country means shedding the encumbrances

of Empire, so as to sit in Brussels on the same terms as everyone else (except the French, who have somehow managed to hang on to their own outposts without anyone thinking the worse of them). In such a scheme, Gibraltar is a positive embarrassment. Gibraltarians, like Ulster Unionists, represent everything that Mr Blair finds disturbing in his country. They are loyal – visibly, painfully loyal – to the kind of Britain that he is trying to consign to history.

AFTER ALL, in a world where national identity is not meant to matter, Gibraltar’s politicians speak of little else. European integration is founded on a belief that national loyalties are temporary and transient, quickly to be discarded in favour of the benefits of living in a bigger state. Simply by existing, Gibraltarians make a mockery of this entire philosophy. Through decades of bullying and harassment by their larger neighbour, they have clung steadfastly to their British identity. Neither threats nor enticements have served to make them think differently about who they are. In the final analysis, they would choose to be poor but free.

To New Labour modernisers, as to our *bien pensant* diplomats, such thinking is anathema. It is hard to avoid the suspicion that, even if Spain did not claim the territory, they would be keen to get rid of it. With its fish-and-chip shops, its Union Jack

hats, its provincial inhabitants, it represents everything they hate about their own country. To have 30,000 members of the forces of conservatism under their jurisdiction is bad enough. The idea that these people might actually impede a deal with one of our European partners over agricultural prices or whatever is simply horrifying to them.

In February 2002, I participated in a debate in Oxford against a very senior British eurocrat. As we lingered over our port after dinner, he leaned back in his chair and asked, theatrically, *"why is it that everyone seems to want a solution to the Gibraltar problem except the Gibraltarians?"*

"What do you mean 'problem'?"

"You know: the Gibraltar problem. We cannot let one issue like this hold up our other interests in Europe."

Note the interesting use of the word 'problem'. If Britain chose to make a unilateral claim on, say, Sicily, would this create a 'Sicily problem', with consequent pressure on the Italian Government to meet us half way? If I took a fancy to my

neighbour's car, would he be expected to let me use it on certain days of the week in the interests of 'reaching a solution'? For Britain's legal claim is guaranteed in a watertight Treaty, and bolstered by the near unanimous support of the population who, in 1967, voted by 12,138 to 44 to remain British.

EVEN ON ITS OWN TERMS, the argument that Britain stands to gain from a 'solution' is spurious. After all, we were members of the EU for a full 13 years before Spain was admitted. Spain, consequently, was not able to join without Britain's permission. One of the issues on the table during the accession talks was the status of Gibraltar, which Spain was obliged to accept as an EU member with full rights. Are we really to believe that, at a time when we held all the negotiating cards, we deliberately betrayed Gibraltar's interests? If so, what does this tell us about the Foreign Office? And, if not, what is it that Spain is meant to be offering us now? For the extraordinary thing about the appeasers' argument is that

they are unable to name any specific, concrete advantages that would come to Britain if we gave in to Madrid. We are being asked to betray our Gibraltarian countrymen in return for that most nebulous of europhile concepts, 'influence'.

The truth is that, for many in this administration, jettisoning Gibraltar is an end in itself. If Madrid happens to put something on the table in return, fine. But one feels that Labour would still seek to withdraw from the Rock, even if they had to pay Madrid to take it. The only thing that stands in their way is the stubborn loyalty of the Gibraltarians themselves. Our countrymen on the Rock are displaying a steadfastness and a belief in freedom that we in the UK seem to be in danger of forgetting. It may be out of place in Labour's Britain. It may be awkward. But it is the last defence they have.

Daniel Hannan is a Conservative Member of the European parliament for South East England and a columnist for the Sunday Telegraph.

Defending the Gibraltar Constitution

by Maurice Xiberras

THE ARTICLES IN THIS SPECIAL ISSUE of the *European Journal* express the sentiments of the whole of Gibraltar with regard to the 'done deal' the British Government has declared it will sign before any proposals arrived at by the two Governments are put to the people of Gibraltar in a referendum.

Michael Ancram, MP, the Shadow Foreign Secretary, has repeatedly stated the opposition of the Conservative Party to this 'done deal'. Having already been forced to accept by Parliamentary and public pressure that any change to British sovereignty over the territory and not just the nationality of the people should be subject to their wishes, the British Government continues to 'duck and dive' to have its way regardless.

The 'Principles of Agreement' it proposes to make public, before any Gibraltarian vote is taken, is a disreputable device designed at worst to by-pass Parliament, which more likely than not will be in recess. At best, it will present Parliament with a *fait accompli*, a statement of British Government policy not even debated in Parliament before it is made.

Since the Agreement will be concerned with sovereignty, it will also be a betrayal of

the spirit and even the letter of the Preamble to the 1969 Gibraltar Constitution, to the drafting of which I was privileged to contribute:

"Her Majesty's Government will never enter into arrangements, under which the people of Gibraltar will pass under the sovereignty of another state."

In signifying by an Agreement with the Government of Spain, which will be reached against the known wishes of all Gibraltar's elected representatives and in anticipation of a referendum, its intention to work with Spain towards a transfer of sovereignty, Her Majesty's Government would effectively be entering into an 'arrangement', under which the people of Gibraltar would *"pass under the sovereignty of another state"*. The Agreement will be in breach of the Preamble.

Nor would any provision made for the people of Gibraltar to keep their British nationality, or for the transfer of sovereignty to be merely nominal or partial, or for the implementation of a Declaration to be *ad referendum*, alter the reality that the British Government would for the first time ever be committing to a transfer of British sovereignty against the Gibraltarians' wishes.

This commitment will not be rescinded by a contrary result in the referendum.

LITTLE WONDER that many in Gibraltar are beginning to campaign against any referendum, the result of which will be so shamefully pre-judged and de-valued.

If it has any regard for constitutional propriety and obligations formally entered into, the British Government should desist. The proposed Joint Declaration will only heighten and perpetuate Spanish expectations, which can only be fulfilled with the consent of the people of Gibraltar. It is the people of Gibraltar who will suffer the consequences of this crass policy.

Maurice Xiberras is a former Leader of the Opposition in Gibraltar and of the Integration with Britain Party. He accompanied Sir Joshua Hassan, the then Chief Minister, to talks as part of the British delegation, between the Spanish and British foreign ministers at Strasbourg and Paris. Maurice Xiberras is the only living Gibraltarian who took part in the Constitutional Conference of 1968.

Gibraltar: a Lawyer's Analysis

by Peter F. Carter-Ruck

THE DRAMATIC HEADLINE in the *Daily Telegraph* on 12 January 2002, "*Britain to share Gibraltar with Spain*", caused me, as it must have caused the majority of our fellow citizens, the deepest concern, most of all for all those who put justice before surrender. Our country has already suffered so much and so many lives have been lost as a result of the weakness of our Foreign Office and of the government during the past 60 years.

Firstly, the prevarication and surrender to the forces of the Nazi dictatorship. Secondly, initially over the Falklands, when we were already aware of the attitude of the Argentinians and yet withdrew the Endurance from the Antarctic waters, which led to the Falklands war and loss of life. Fortunately, owing to the determination of the then British government under Lady Thatcher, we took immediate action after the start of the conflict and secured freedom, and with it freedom of choice, for the 5,000 citizens of the Falkland Islands. But it seems that the lessons of the past have not been learnt and we are now, once more, vacillating over the rights of Gibraltar, a community not of 5,000 but of 30,000 British citizens.

The actions, so far, of the Foreign Office and of Minister Peter Hain, MP, have been rightly described by the Shadow Foreign Secretary Michael Ancram, MP, as 'despicable' and, by Lindsay Hoyle, MP, as 'appeasement' and as a betrayal of the people of Gibraltar.

My concern is increased by what appears to be the duplicity on the part of Peter Hain (or that he has now succumbed to the vacillation and weakness of the Foreign Office). When recently he was challenged on a BBC *Question Time* programme as to how he could support cricket in Zimbabwe when, at the time of apartheid, he was a vigorous protester against being a party to sport in South Africa, he said it was then racial discrimination and that did not apply today. The murder, mutilation, humiliation and obscene violence against the white farmers in Zimbabwe was not, in his view, racial discrimination. In short, it appears that if the events serve the force of the strong against the weak, we are prepared to sacrifice the weak. This failure to support our own countrymen, it seems, is also to be a feature of our attitude towards Spain over Gibraltar.

When for many years I had a property in Spain, I suffered from the harassment imposed by the then Spanish government by the long hold-ups at the frontier, the closing first at 11.30 at night and then, for years, the total closure of the frontier gates between Gibraltar and Spain, followed by the closing of the ferry from Gibraltar into

**As Lord Bethell made
clear, there is no
conceivable justification
for Gibraltar having to
concede any of its rights
to another country**

Spain (so that we had to travel to Tangier and back to be able to get from Gibraltar to Spain and *vice versa*). I must make clear that this was not the attitude of the Spanish citizens, who were always very friendly and who complained of the fact that they were no longer able to fraternise in La Linea with their friends from Gibraltar. In spite of this discrimination, it appears we are now seriously considering 'sharing' Gibraltar with Spain and, whilst being prepared, rightly, to defend the 5,000 citizens of the Falklands, we are willing to sacrifice the 30,000 Gibraltarians as well as both their legal and moral rights.

AS LORD BETHELL MADE CLEAR, there is no conceivable justification for Gibraltar having to concede any of its rights to another country, when considered either on historical grounds or in the context of contemporary society.

I have examined this carefully, as a lawyer, despite the difficulties I endured in attempting to obtain a copy of the relevant treaty – the Treaty of Utrecht of 1713. I first checked my own copies of the first editions of *Halsbury's Laws of England* and *Halsbury's Statutes*, and the *Oxford History of England*, in none of which could I find any reference to the details of the Treaty. I also checked at the Law Society, the British Library and the Stationery Office. None had a copy of the Treaty. I finally discovered that the Public Records Office had a copy but it would cost me £54 to have a copy of the Treaty, which binds this country, Spain and Gibraltar.

THE TREATY OF UTRECHT provides, *inter alia*, that the thrones of Spain and France should never be united and that England should retain control of Gibraltar. This has been the situation for nearly 300 years (as opposed to 170 years in the case of the Falklands). It was only if we surrendered our sovereignty that Gibraltar should be returned to Spain. We have not surrendered our sovereignty, nor do the Gibraltarians wish this.

It might be contended that the Treaty was signed at a time when the world, in the main, was ruled by autocracies and that therefore we should not now revert, in considering what is just, to long past eras. If that is so, the case for the return to Spain is even weaker because we now live in a world of democracies, where self-determination is the main feature of determining citizens' rights and the Gibraltarians, by an overwhelming majority, wish to remain British.

I contend strongly that if Peter Hain or the Foreign Office wish to go to Madrid, it should be solely to protest vehemently against the way in which the Gibraltarians have been unjustly harassed.

I had thought that, over the years, Peter Hain had matured into a leading politician and that Jack Straw, as Foreign Secretary, would be a minister who would support what is right and just, both legally and morally. It is a matter of considerable surprise that they should not wholeheartedly support the independence of Gibraltar, when this already has the overwhelming support of many Conservatives, Liberal Democrats and Labour Members of Parliament, and of the House of Lords.

As Mandy Martinez said in her letter to the *Daily Telegraph* on 24 November 2001, we should take a moment's pause to think of the pride of three centuries of people who have lived, worked and died under the British flag of Gibraltar; people who are facing an end to their culture and identity.

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Gibraltar and the 2004 Intergovernmental Conference

by Mark Francois, MP

ON 31 JANUARY 2002 a debate took place in Westminster Hall (the new second debating chamber of the House of Commons) on the British Government's ongoing negotiations with the Spanish Government over the future of Gibraltar. I took part in that debate which, even by Westminster standards, became quite a heated affair and during which the Minister for Europe at the Foreign Office, Rt Hon. Peter Hain, MP, came under fire from MPs on all sides of the chamber.

The three-hour debate was televised and broadcast to Gibraltar, where, apparently, demonstrations began while the debate was still in progress, as a number of Gibraltarians reacted to what the British Government were proposing, supposedly in their name.

Clearly the British Government are not pushing ahead with this process on behalf of the people of Gibraltar, who are bitterly opposed to any suggestion of weakening their link with the United Kingdom in favour of Spain. So the question has to be asked, why is the Foreign Office pursuing this negotiating process so actively, when the people of the Rock are so obviously against it?

To find the answer it is necessary to look back to the first term of the current Labour Government, which came into office in 1997 promising to increase Britain's influence within the EU. As part of this objective Prime Minister Tony Blair commissioned a review of Britain's relationship with other European countries and EU institutions. The review identified several areas in which the UK might seek to exert 'leadership' in Europe, most notably in the field of European defence (an issue which has since been debated extensively, not least in the pages of the *European Journal*).

However, the review also sought to identify how Britain might seek to win the support of other European nations, outside the traditional Franco-German core of the EU, in countries such as Italy and Spain. One of the sticking points in relations with the latter was clearly identified as the issue of Gibraltar and Spain's ongoing claim to the sovereignty of the Rock, in defiance of the long-standing Treaty of Utrecht. The extent of this impediment to Anglo-

Spanish relations was admitted by Mr Hain in the recent Westminster Hall debate:

*"The strong relationship that Britain now enjoys with Spain cannot reach its full potential until we resolve the Gibraltar issue. Gibraltar matters to us. It has mattered for many hundreds of years. It will continue to matter to us but so does our relationship with Spain. Spain is a big country. It is increasingly prosperous; soon it will be a net contributor to the EU. It is increasingly powerful inside and beyond Europe."*¹

Following on from this review, the British Foreign Office re-instituted negotiations with the Spanish Government under the auspices of the so-called 'Brussels Process', first initiated in 1984 under the Conservative Government of Margaret (now Baroness) Thatcher.

HOWEVER, these negotiations proceeded much further than had ever been realistically suggested in the 1980s. They now include the prospect of some form of joint sovereignty over the Rock, which is anathema to the fiercely pro-British Gibraltarians. The issue came to light in the Autumn of 2001 following a series of leaks in the press, which revealed the 'progress' which both Governments had been making in the talks but which provoked a sense of anger, even betrayal, on the Rock. As the present Chief Minister of Gibraltar, Hon. Peter Caruana, QC, argued in the *Sunday Telegraph*:

*"I could give you a long politician's speech about why we feel so angry about this, but if you want a gut response, it is that for 297 years we have been unswervingly loyal to Britain in good times and bad and we have always believed, naively perhaps, that loyalty was a two way street."*²

Nevertheless, rather than acknowledge the genuine concerns of the people of Gibraltar – and delay, or even abandon, the negotiations – the Foreign Office has continued to press ahead with them. On 4 February 2002, shortly after the Westminster Hall debate, a further Brussels Process meeting took place between British and Spanish Ministers to discuss the Gibraltar issue. The joint communiqué issued subsequent to that meeting stated that: *"Our common aim remains to conclude a*

comprehensive agreement before the summer, covering all outstanding issues, including co-operation and sovereignty."

This "comprehensive agreement" between the two Governments is then likely to be put to the people of Gibraltar in a referendum, probably in 2002, or perhaps 2003, when it will probably be overwhelmingly defeated by the people of the Rock. Nevertheless, in diplomatic terms this would still serve an important purpose.

By putting the agreement 'on the record' it will become a reference document in its own right and will no doubt be cited by Spanish Governments in any subsequent negotiations, thus, in effect, giving Spain a diplomatic toehold on the Rock. British support for an agreement would thus be of material value to the Spanish Government in seeking to pursue its long-term aim of reasserting Spanish sovereignty over Gibraltar, even if it did not lead to achievement of this objective overnight.

Conversely, from Labour's perspective, Gibraltar represents an obvious bargaining chip for seeking future Spanish support in the Council of Ministers. However, the issues are no longer just about that great intangible quality of 'influence' within the European Union.

The EU has recently established a convention to help formulate what would amount to a 'constitution' for the European Union, to be ratified in theory by the next European Intergovernmental Conference (IGC) scheduled for 2004.

Even leaving aside the argument about the dubious need for a European constitution, it remains likely that in the negotiations leading up to the IGC the UK will be looking to win the support of other sizeable European nations, including Spain, for a form of document that it would prefer. In this context, a joint declaration over Gibraltar which materially pleases the Spanish Government could have a bearing not just on future votes in the Council of Ministers but potentially at the IGC itself. This is reinforced by the Government's own admission that any changes to the status of Gibraltar might in turn involve changes to European Union treaties, which could be effected at the IGC. I raised this point directly with Mr Hain during the debate in

Westminster Hall and solicited the following response:

Mr Francois: *"The Minister has referred several times to the European Union and the relationship with it. Will he confirm that changes to the status of Gibraltar may require subsequent change to European Union treaties, to which we are party?"*

Peter Hain: *"Any change of that magnitude would have to be endorsed in a referendum by the people of Gibraltar. However, there could be changes to the treaties required, which would require the approval of the European Council at the intergovernmental conference in 2004."*³

So it is not fanciful to link the Gibraltar issue with the 2004 IGC, as the Foreign Office itself now admits that a potential link

already exists. Moreover, if the people of Gibraltar could somehow be browbeaten into accepting the outcome of the putative 'comprehensive settlement' the linkage would become all the stronger, as the changes might actually have to be ratified at the IGC.

THE British Government's initiative over Gibraltar is being undertaken over the heads of the people who live on the Rock and without their consent. Indeed it is being pursued *despite* their intense opposition to any form of joint sovereignty with Spain. In short, this process is being conducted in their name but not for their sake.

It is difficult to escape the conclusion that the whole process of negotiation is now

being undertaken not for the benefit of the Gibraltarians but rather for reasons of gaining Spanish support for Foreign Office objectives within the European Union, not just in the Council of Ministers but potentially at future European summits, including the next Intergovernmental Conference itself.

1 *Hansard*, 31 January 2001, col 136WH.

2 "Sell-out fear turns Gibraltar anti-British", *Sunday Telegraph*, 25 November 2001.

3 *Hansard*, 31 January 2002, Col 176WH.

Mark Francois is Conservative Member of Parliament for Rayleigh.

The Inalienable Right to Genuine Self-Determination

by the Marques de Lendinez

THE GIBRALTAR GOVERNMENT is leading all Gibraltarians, of whatever political persuasion, in an intense campaign to persuade the Prime Minister that it is not in the interests of the Gibraltarians for the Labour Government to sign a joint Agreement of Principles with the Spanish Government.

For those readers who are not familiar with the intricacies of the Gibraltar problem I will explain the background.

Gibraltar was captured on 4 August 1704 by Admiral Sir George Rooke on behalf of Queen Anne in the name of the Hapsburg claimant to the Spanish throne. Gibraltar passed under British sovereignty under Article X of the Treaty of Utrecht of 1713. It also provides that Spain will have the first option of ownership of Gibraltar if *"it shall hereafter seem meet to the Crown of Great Britain to grant, sell, or by any other means alienate therefrom the propriety of the said town of Gibraltar"*.

IN 1954, following a visit by the Queen, the Franco dictatorship imposed border restrictions which were gradually increased until there was a total unilateral closure of the frontier in 1969. This followed the introduction of the 1969 Constitution and its oft-repeated Preamble, which promised that *"HMG will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes"*.

As a point of interest the frontier was always kept open during daylight hours on the Gibraltar side whilst General Franco would not even allow Holy Communion wine and oxygen cylinders into Gibraltar. The ferry service to Algeciras was also cancelled by the dictatorship.

Despite the introduction of democracy to Spain and its membership of the European Union and NATO, the attitude of the Spanish Government to the Gibraltarians has not altered one jot. Any aircraft whose flight plan includes Gibraltar is not allowed to land in Spain whatever the emergency. When bad weather closes down Gibraltar airport then the plane has to fly to Tangier and not Malaga. A new flight plan has to be filed – Tangier, Malaga, London. On arrival at Malaga the passengers and their luggage can leave the plane and be bussed to Gibraltar. But cargo has to remain on board and there are no exceptions to this regulation. In February 2002, the body of a Gibraltarian was being flown from London to Gibraltar for burial on the Rock with the family waiting to conduct the funeral. The Spanish officials were adamant that the body could not be taken off the plane. Instead the body was flown back to London and then on to Gibraltar the next day. Imagine the extra anguish felt by that family.

1975 saw the death of General Franco and the gradual restoration of democracy to Spain.

In April 1980 Lord Carrington met with Marcelino Oreja and they issued the Lisbon

Statement, which according to the late General Sir William Jackson almost succeeded in laying down a framework to resolve the problem. Alas when the Spanish Foreign Minister returned to Madrid, the 'right wing' elements in the cabinet forced him effectively to abrogate the Statement.

Now the British Government had the upper hand as the Spanish Government decided that they wished to join both NATO and the EC. Gibraltarians will argue that the Conservative Government failed to use this window of opportunity to use its considerable bargaining power to resolve the problem. Instead Sir Geoffrey Howe in 1984 signed the Brussels Process which on the plus side resulted in the opening of the border and the promise to restore the ferry service and a host of other aviation and maritime matters (none to this day have been implemented) but on the debit side agreed that issues of sovereignty would be discussed.

In 1987 Sir Geoffrey Howe signed the Airport Agreement which was subsequently unanimously rejected by the House of Assembly (Parliament). Fernando Moran, when he was Foreign Minister, tabled sovereignty proposals which were not rejected until 8 years later by Douglas Hurd. It was Douglas Hurd who persuaded the Spanish Foreign Minister to agree to a 'two flags, three voices' formula to enable Gibraltar's Chief Minister to attend Brussels Process talks. Upon Javier Solana's return to Madrid the 'right wing' of the cabinet

ensured that this was rescinded and it was not until last month that this formula was reinstated. By then the Foreign Office had ensured that the Chief Minister's seat had in effect been booby trapped.

In 1997, with a Labour Government in power, a Brussels Process meeting was held in London under the chairmanship of Robin Cook. Abel Matutes tabled new proposals which in effect gave Gibraltar political and administrative autonomy within the Spanish State. He offered Gibraltarians Spanish citizenship, but allowed them to retain dual nationality and an indefinite transitional period of joint sovereignty which would eventually lead to a total retrocession of sovereignty.

Although the Matutes' proposals have been rejected unanimously by the House of Assembly, the UK Government will not reject them but has 'laid them aside.' To be fair to Robin Cook, enough was enough and no more Brussels Process meetings were held under his stewardship.

EARLIER THIS YEAR the Prime Minister decided that his Government was going to yield on virtually all matters within the European Union as on each occasion the Spanish Government would demand concessions or impose vetoes unless progress was made on the retrocession of Gibraltar's sovereignty. Tony Blair is understood to have instructed his new Foreign Secretary that the 30,000 inhabitants of Gibraltar were not going to be allowed to block his vision of a new 'Europe' and stand in the way of his growing friendship with the Spanish Prime Minister, and so Jack Straw must find a solution before the end of the Spanish Presidency of the EU on the 30 June 2002.

Jack Straw immediately called for a Brussels Process meeting which was held in Barcelona and delegated the South African born Peter Hain to visit Gibraltar and tell the Gibraltarians what would happen to them if they did not agree to Blair's solution which was for them to sign up to the Agreement of Principles. As Jack Straw has yet to fly down to the Rock, it appears that, because of the weakness of his case, he is frightened to face the Gibraltarians.

The campaign to force the British Government has started and is having considerable success. The Chief Minister, a quick witted and articulate QC, has been interviewed on countless television and radio programmes both in the Mother Country and in Spain. He has also given

many interviews and without exception all the national quality newspapers have published articles setting out the Gibraltarians' case which is simply for the Rock to remain British and for them to remain British citizens with absolutely no Spanish Government involvement in their affairs. The late Lord Boyd-Carpenter was firmly of the opinion that it would be disastrous to allow the Spanish Government a toe-hold on the Rock; he was totally against the implementation of the 1987 Airport Agreement and was delighted when told that it had been unanimously rejected by the Gibraltarians.

The Leader of the Opposition, who has eight years experience as Chief Minister, has also given countless media interviews and has been to London to lobby Parliamentarians. As leader of the Gibraltar Labour and Socialist Party he has concentrated his fire on members of old Labour.

Gibraltarian speakers, led by Albert Poggio, the Gibraltar Government's representative in London, travel the length and breadth of the United Kingdom addressing audiences about the problem. The former leader of the Opposition, the staunch socialist Maurice Xiberras, even addressed the Christmas dinner of the Petersfield Conservative Club; the first time he had ever ventured into such a bastion of capitalism. The warmth and support shown by the members almost moved him to switch to the Conservative Party.

In 1970, Manuel Fraga Iribarne, the former Spanish Ambassador to the Court of St James and present President of Galicia, in an attempt to be elected Prime Minister of Spain, published his manifesto. In it he declared that whilst it would remain Government policy to demand the retrocession of Gibraltar's sovereignty into the Spanish state he must point out that whatever progress is made on this front, a similar status eventually will have to apply to Ceuta and Melilla. This stark political truth remains even more valid today. In March 2002 Ali Bajijoub, the distinguished executive director of the Maghreb Arab Press, said that there is one certain political fact and that is whatever is decided between the British and Spanish Governments over Gibraltar will have a direct bearing on the future of Melilla and Ceuta.

Similarly the Portuguese Government is demanding the same arrangement to be made in respect of the Olivenza, 200 square kilometres of Portuguese territory that has been appropriated many centuries ago by

the Spanish Government. Furthermore many of Spain's autonomous regions are insisting that the exact measure of self-government given to the Gibraltarians will also apply to their governments. At present Gibraltar enjoys considerably more self government than any autonomous region in Spain.

THE SPANISH GOVERNMENT belatedly woke up to the size of the can of worms that was being opened and, during the last round of Brussels process talks held in London on 4 February 2002 this year the Foreign Minister said that even if an agreement was reached to share the sovereignty of Gibraltar the Spanish Government would never follow the Irish Government's example in renouncing its claim to total sovereignty. The claim for total retrocession of sovereignty would always remain on the table. Furthermore the Spanish Government would never agree that the Gibraltarians have an inalienable right to self determination.

This threw Jack Straw, Peter Hain and their senior officials Sir Emyr Jones-Perry and James Bevan into a flat spin with the result that the talks overran by an hour. Jack Straw, during the Press Conference, tried and failed to spin himself out of trouble.

Even Tony Blair is beginning to appreciate that neither Parliament nor the British people will accept the Spanish Government's position on sovereignty. It came as no surprise to Gibraltarians who have known all along that the Spanish Government will never give up its claim to Gibraltar. This is based on the Treaty of Utrecht which gives the Spanish Government the right of refusal in the event of the British Government wishing to leave Gibraltar. Even if the Labour Government wished to hand Gibraltar to Spain it cannot do so without the consent of the majority of Gibraltarians.

There is also the problem of the growing importance of the base. In the mid sixties the late Major Patrick Wall, in a speech on the Rock, said that the greatest threat to peace and stability in Europe would come via the southern flank of the Iberian peninsula, or as he called it 'Europe's soft underbelly.' This was long before the advent of Islamic fundamentalism.

Because the base is scattered round the Rock it is not possible, as in Cyprus, to have one area as the sovereign base. The intelligence gathering facilities and the storage area for weapons are to be found

underneath and inside the Rock. The Americans have no wish for the intelligence gathered in Gibraltar to be passed onto other NATO allies – in particular to the Spanish Government.

Gibraltar is also an important base for communications, training and submarines. During the last three years no less than 300 training exercises have been carried out by British forces in and around the Rock. Surprisingly the number of servicemen stationed on the Rock has shown a dramatic increase, as has MOD expenditure.

On 25 March 2002 the biggest demonstration ever held on the Rock took place with some 25,000 out of a population of 30,000 taking part. This was to show the world that the Gibraltarians will never agree to the Tony Blair proposal to hand over half of British sovereignty to the Spanish Government. The Chief Minister told the crowd: *"Today we have spoken as a people with one voice. Our rights, our aspirations as a people are not for bilateral negotiations between the British and Spanish Governments. It is neither Britain's to give away nor Spain's to claim."*

Peter Hain, in an attempt to bribe the Gibraltarians, offered a £37 million EU package for economic development, provided they voted for the Blair proposal. This was immediately turned down by the Gibraltar Government. What Hain did not appreciate was that Fraga Iribarne had offered, in around 1968, a considerably larger bribe when he proposed that every Gibraltarian family who left the Rock would be given a luxury villa in Spain and an inflation proofed pension for life. This was rejected by the Gibraltarians even before it had been vetoed by the Spanish Treasury.

THE BIGGEST BOOST to the Gibraltarians' morale is the decision by the Rt Hon. Michael Ancram, QC, MP, Shadow Foreign Secretary, that the next Conservative Government will abrogate any Agreement of Principles signed by the British and Spanish Government if it is rejected by the Gibraltarians in a referendum. He said that the Conservative Party cannot be bound by an agreement come to between the two governments with which we have openly and clearly disagreed.

So if the Agreement of Principles is signed later this year then each and every Gibraltarian knows that it will not be long before it will be abrogated by the next Conservative Government.

The Marques de Lendinez is a Gibraltarian who has studied the Gibraltar problem since leaving Cambridge University. As a result of his articles published at the start of Gibraltar's 15th siege (economic) he was placed on the persona non grata list by the then Prime Minister Admiral Luis Carrero Blanco and was not allowed into Spain until the death of General Franco. Under the byline M.R.B. he has interviewed 100 British politicians about the Gibraltar 'problem'; these have been published in the Gibraltar Chronicle. He is also the editor of The Friends of Gibraltar Heritage Society newsletter. If any reader wishes to be sent a complimentary copy of this 32 page newsletter please contact him by e-mail: lendinez@aol.com

The View of the Gibraltar Government

by Hon. Peter R. Caruana, QC

IT IS THE LONGSTANDING POSITION of the Government of Gibraltar that it is willing, indeed that it seeks, to take part in dialogue with Spain on an open agenda basis. Regretably, the politically unrealistic and diplomatically self-serving intentions of both the UK and Spain as to the methodology of this dialogue has made it impossible for us to participate in it.

The Gibraltar Government's position has been, and remains, that dialogue should be safe and viable for all sides. This means, for Gibraltar, having our own separate voice and being safe from damaging agreements being reached over our heads and which pre-determine the outcome of the dialogue.

We have made good progress with London on the separate voice issue, through the two flags, three voices formula which has, at last, been seriously and realistically dealt with.

But we have not succeeded in persuading the British Government to make the talks safe for Gibraltar by being protected from damaging agreements being struck over our heads. The Gibraltar Government will not participate in dialogue from the unwanted political consequences of which neither the

Government nor the people of Gibraltar can protect Gibraltar.

Readers may be asking what the problem is if everything will be put to the people of Gibraltar in a referendum and not implemented if we reject it. The short answer is that although nothing will be actually *implemented* unless approved in referendum, Britain and Spain do not intend to put everything to referendum before *formally* agreeing to it between themselves in principle.

SOMETIME BEFORE SUMMER 2002, the UK and Spain intend to sign an agreement, declaration or agreed framework of principles applicable to the settlement of the Gibraltar issue. The detail of what this document will contain is unknown. We do all know, however, that it will have four pillars: respect for our way of life, respect for our EU rights, maximum self-government and sovereignty. The Government believes that in relation to sovereignty, the content will be such as to amount to extensive 'in principle' concessions to Spain, probably some sort of model based on some form of joint or shared sovereignty.

Once this framework or declaration has been agreed and entered into between the UK and Spain, containing we do not know what, there will then be further dialogue to work out detailed proposals based on the principles already agreed between the UK and Spain.

THE PROPOSALS based on the agreed principles – but not the principles themselves – will then be put to the people of Gibraltar in referendum. If we reject them none of the proposals will be implemented, but the Anglo-Spanish declaration, agreement or framework of principles that they entered into as phase 1 will survive our referendum rejection of the proposals based on those principles. This agreement on principles will remain on the table for all time as the agreed UK/Spain political position on Gibraltar. This will defraud our wishes.

This will, for all time, set the parameters for and limit our future rights, options and aspirations. It will for all time politically, diplomatically, and possibly even legally, legitimise Spain's sovereignty claim and will betray our right to self determination, even

to the curtailed extent that the Foreign Office admits that we enjoy the right to self determination.

In this respect I note that Sr Piqué said in the European parliament that not even the UK recognises Gibraltar's right to self-determination. This is not correct. I would refer Sr Piqué to the Parliamentary answer given by Peter Hain, MP, on 6 November 2001 in which he said that HMG's position is that Gibraltar's right of self-determination is not constrained by the Treaty of Utrecht except that independence is not an option without Spanish consent.

THE REFERENDUM will therefore be only about whether the proposals are implemented. It will not be about whether the UK adopts formal positions in principle on the issue of sovereignty contrary to our wishes. This will not represent full respect for our wishes since the UK would be entering into arrangements in principle (albeit unimplemented) and would be adopting positions on sovereignty, and other issues affecting us, regardless of and contrary to our wishes, as we may subsequently express them in a referendum.

They will have entered into a bilateral 'done deal' on applicable principles above the head of the Gibraltar Government. The political, diplomatic and possibly even legal effect of this deal will survive a referendum rejection of proposals based on those principles. We will not be able to protect ourselves from these consequences in a referendum, although we will be able to prevent their actual implementation.

THE GIBRALTAR GOVERNMENT rejects such 'done deals'. It is wholly unreasonable and unrealistic to expect the Gibraltar Government to take part in a dialogue the outcome of which is predetermined by this done deal on principles, the contents of which we are not aware of, and cannot therefore even assess before committing ourselves to the process.

Mr Straw says that, once proposals are made he cannot "airbrush" them away, or he cannot make them "evaporate" or "shred them". This is a complete red herring. Of course he cannot "expunge" the fact that proposals were made even if they are rejected. We have no problem with that, provided that rejected proposals will have no damaging, lingering, political or diplomatic effect on Gibraltar. They will not become our political magna carta for all time. Just as the rejected Moran and

Matutes proposals have not had that status or effect.

What Mr Straw cannot airbrush away, evaporate or shred, but is nevertheless problematic for us, is the bilateral declaration, agreement and framework of principles and their subsequent, post referendum political effect on Gibraltar and our rights and aspirations. The point is that there is no reason or need why he should enter into such a framework of declarations of principle in the first place, and thus the problem of shredding would not arise. It is therefore not a case of being unable to make the principles evaporate, but rather that he chooses, unnecessarily, to do a done deal on applicable principles, precisely so that those principles will not evaporate.

This is why London and Madrid will not agree to my reasonable terms for participation in talks. This is why they will not agree not to reach agreements over the Government's head, precisely because that is what they want and intend to do, ie the declaration or framework agreement on principles (including sovereignty) that will predetermine all subsequent dialogue if it contains adverse in principle sovereignty concessions to Spain.

The proof of this is that Mr Straw says that once they do their done deal on principles I can then, after that, take part in dialogue about the details, on an equal basis with the UK and Spain. Why then can we not take part on an equal basis before the declaration of principles? Obviously because they do not want the Gibraltar Government to be able to decide on the content of the declaration of principles that they want to enter into.

We have during the last few months worked patiently and intensely to try to persuade the Foreign Office to abandon the intention to enter into a 'done deal' on applicable principles, containing damaging sovereignty concessions, the political currency and effect of which will survive a referendum rejection of proposals. The time has come to accept that, despite our efforts the Foreign Office has refused to convert this dialogue into a reasonable process in which we could safely participate, as would be our wish. I recently wrote to Mr Straw asking him for an assurance that he would not do a done deal on principles with Spain affecting sovereignty.

In his reply Mr Straw fails to give that assurance. Indeed the letter has the opposite effect. He says that he will enter into a joint UK/Spanish declaration which will

establish a framework for what he thinks will be a durable solution. He confirms that this Anglo/Spanish declaration would survive the referendum as a statement of the British Governments view of 'the best way forward'.

IN THE GIBRALTAR GOVERNMENT'S judgement this means that the political, diplomatic and possible legal effects of any in principle concessions that may be made to Spain on the question of sovereignty will survive the referendum to our future prejudice.

I have replied to Mr Straw that his apparent refusal to alter course from this unnecessary and damaging intended course of action condemns the Gibraltar Government to not participating in the dialogue. I have also informed the Foreign Secretary that the Gibraltar Government is committed to actively opposing this with all means at its disposal.

The position is not that we are practising the politics of the empty safe chair, but rather that the Foreign Office has booby-trapped the chair itself and then complains to the world that we won't sit in it.

Finally, I have repeated that the Gibraltar Government would take part in open agenda dialogue resulting in proposals which will not be implemented if rejected in referendum. Such proposals must not be survived by an Anglo-Spanish framework containing damaging in principle sovereignty concessions to Spain for all time.

FOR DIALOGUE TO BE FAIR, the price of failure must be the same for all participants i.e. the *status quo* prior to the dialogue. What is actually intended is a dialogue from which Spain will derive massive progress, at our expense, even if the talks fail to produce proposals acceptable to the people of Gibraltar. Spain has understandably described failure to obtain Gibraltarian consent to the proposals as nevertheless representing "a historic milestone" for her because of the Declaration of Principles. Spain's "historic milestone" will be at the expense of a historic *millstone* around our necks.

Hon. Peter R. Caruana, QC, is Chief Minister of Gibraltar.

Westminster, Self-Determination and the Rock

by Lindsay Hoyle, MP

IT IS WIDELY ACCEPTED that an agreement between the British and Spanish Governments will be reached by the summer of 2002. We are therefore entering one of the most important periods for the Rock in its 300 year history as a British overseas territory.

Despite the fact that sovereignty over Gibraltar was ceded to the British in perpetuity by Spain under the Treaty of Utrecht in 1713, the Spanish maintain that Gibraltar should come under Spanish rule and have refused to drop their claim over Gibraltar.

Spain's bitterness over this matter is clear to see today. As part of everyday life, Gibraltarians face border delays, a shortage of new telephone numbers which hinders business growth, restrictions on mobile telephone roaming rights, restrictions on air space and exclusion from the EU Single Skies Policy. They are unable to participate in UEFA competitions. These are just some of the ways in which the Spanish Government continues to bully the people of Gibraltar.

The UK Government has made it clear that Spain is a useful ally in the European Union. With the presidency of the EU currently in Spanish hands, it is important that we are seen to be 'solving the problem that has dogged relations over the years'. Ministers argue that the *status quo* is not an option. They are therefore holding talks to solve both 'the difficulties being faced by Gibraltarians', and to address the lack of progress that is being made in the EU with Spain.

HOWEVER, whether the *status quo* is an option or not depends on one factor – the opinion of the people of Gibraltar. The citizens of Gibraltar have to have the right to determine their own future. If the people of Gibraltar are happy to maintain the present situation, then so be it. If they want to stop Spain in its constant petty-minded bullying, then so be it. This should not, however, come at the price of joint sovereignty unless the Gibraltarians agree to it.

It is on this basis that I do not support the Government's present talks with Spain. We are being led to believe that an agreement will be reached on joint sovereignty and that a new framework will be drafted. All this is happening without the presence of

the Chief Minister of Gibraltar and without the consent of the Gibraltar people.

The last time public opinion was tested was in the 1969 referendum. Over 12,000 citizens of Gibraltar voted to remain with the UK and only 44 voted against. If and when a referendum is held following any agreement, it is certain that the result will be an overwhelming rejection of any joint

Gibraltarians can be sure that members of the All Party Parliamentary Group will be stepping up the campaign on their behalf in Parliament

sovereignty deal. Indeed, people in the UK are opposed to an agreement on sovereignty. I have received letters from all over the country opposing the Government's position.

Yet, despite a rejection of a joint sovereignty deal in a referendum, this will not be the end of the matter. The Spanish Foreign Minister, Josep Piqué, has already made clear that he does not recognise the right of Gibraltarians to determine their own future. I find it difficult to believe that a young democracy such as Spain can reject the democratic rights of the people of Gibraltar. How can Spain maintain the moral high ground in this case, when they themselves have a number of territories in northern Morocco, namely Ceuta and Melilla?

Indeed, one of the arguments presented to Government Ministers is that, if a new form of rule is to be established in Gibraltar, perhaps we should consider the models used in Ceuta and Melilla given that the Spanish seem to believe they work well.

Given the present view of the Spanish Government, it is worrying that a deal will be struck over joint sovereignty. While specific proposals will be rejected in a referendum, a framework argument, as we witnessed in Northern Ireland, will remain in place.

This is one area in which members of the All Party Parliamentary Gibraltar Group are currently pressuring Government Min-

isters. It appears that a joint agreement will be reached and a framework established as a basis for future discussions. We strongly oppose this, particularly as Spain remains intransigent. Until Gibraltar is given the respect she deserves and the Spanish Government acknowledges the rights of Gibraltarians to determine their own future, no such framework should be established.

I believe that a whole range of options should be discussed regarding the future status of the Rock. Further integration with the UK has been rejected by British Government Ministers, yet this is a serious option which should be considered. Indeed, if we look at Spanish overseas territories, they are classed as part of the Spanish mainland. Gibraltar is no longer dependent on the military for its economic viability. The economy is going from strength to strength and is based on finance, tourism, shipping and bunkering, as well as on the Ministry of Defence. The economy is self-sufficient, the number of visitors continues to rise, and full independence is a matter which requires more attention.

IF WE DO BELIEVE IN DEMOCRACY and the right to self-determination, then the people of Gibraltar should be given as many options as possible. Only with their consent should any change to the *status quo* be made. They are the people who have to live there and work under any new arrangements. It is only right that they have the right to decide.

The one fact that Gibraltarians can be sure of is that members of the All Party Parliamentary Group will be stepping up the campaign on their behalf in Parliament. Already a number of debates have been held and the officers of the group have met on a number of occasions with the Foreign Secretary. As the talks come to a head in the summer, we shall continue to work closely with Albert Poggio, UK Representative for Gibraltar, and the Government of Gibraltar to represent the views of the 35,000 Gibraltar citizens. We will seek to pressure Government Ministers as much as possible to get the best deal for the citizens of Gibraltar and maintain their right to self-determination.

Lindsay Hoyle, MP, is Chair of the All Party Parliamentary Group for Gibraltar.

Gibraltar: is Legal Action the Answer?

by Daniel Feetham

TWENTY-SIX YEARS AGO, between May and October 1966, the then Labour Government held talks with Spain on the future of Gibraltar for the first time. On 10 October 1966, after argument and counter-argument, the British Delegation wrote to their Spanish counterparts that *"in the light of their study of the Spanish statements and, of course, these negotiations to date, Her Majesty's Government have come to the conclusion that several legal issues lie at the root of the differences between the two Governments and that these legal issues cannot be resolved by further discussion between them. They will, therefore, propose to the Spanish Delegation that the legal issues in dispute should be referred to the International Court of Justice. The acceptance of this proposal ... would, in the view of Her Majesty's Government, constitute real progress towards a just solution of the problem of Gibraltar."*¹ I believe that these conclusions are as sound today as they were all those years ago.

Although I do not intend to rehearse all the legal issues relating to this problem, there is one issue in particular which I believe is central. Do the people of Gibraltar enjoy the right to self-determination? Is this right constrained in any way by the proviso to Article X of the Treaty of Utrecht which provides that *"if the British Crown would desire to ... in any way alienate ... Gibraltar ... the preference would be given to the Crown of Spain excluding any other party."* Spain believes that *"any other party"* for these purposes includes the people of Gibraltar. Any alteration of Gibraltar's colonial status would constitute an alienation of Gibraltar triggering this right of pre-emption. The position of the British Government is that the people of Gibraltar enjoy the right to self-determination and that it is limited only provided that it is exercised in accordance with Article X of the Treaty of Utrecht.² This position amounts to nothing more than a political sleight of hand where the British Government pays lip service to the existence of the right to self-determination, whilst its interpretation of the scope of Article X has the effect of preventing its exercise in any meaningful way without Spanish consent.³

The reason for this is that in practice the British Government is the ultimate arbiter of whether the practical exercise of the right

to self-determination in any given situation contravenes Article X of the Treaty. An astonishing example of this was one of Peter Hain's answers to a question posed by a member of the Foreign Affairs Committee. Mr Hain was asked about integration of Gibraltar into the UK. His reply was that integration would contravene the Treaty of Utrecht. That of course is a complete nonsense in that Britain would not be disposing of Gibraltar and thus the pre-emption clause in Article X of the Treaty of Utrecht would not be triggered. The reality is that unless the British Government approaches the matter in good faith or the scope and effect of Article X is tested in an international tribunal, Gibraltar will remain boxed into a constitutional alleyway with only one exit. And that exit points to Spain.⁴ The Labour Government knows this. That is why Messrs Straw and Hain are at pains to emphasise that the *status quo* for Gibraltar is not sustainable. If the *status quo* is not sustainable and further devolution through constitutional reform would contravene the Treaty of Utrecht, then the only alternative is, of course, the alternative that the Labour Government is currently pursuing.

THE RIGHT TO SELF-DETERMINATION is merely the right to determine your own future and should not be constrained by a strait-jacket imposed by treaty.

The right to self-determination for colonial peoples is enshrined in the UN Charter and lies at that heart of Chapter XI on the Declaration Regarding Non-Self Governing Territories (see Article 73 and also Article 1 of the Charter). Gibraltar is a non-self governing territory (i.e. a colony) and is listed as such at the UN. Article 103 of the Charter provides that in the event of conflict between the obligations of members under the Charter and their obligations under any other international agreement, their obligations under the Charter prevail (see also UN Resolution 2734 (XXV) of 16 December 1970). The right to self-determination is also a fundamental human right enshrined in two International Covenants on Human Rights adopted by the UN General Assembly and of which the United Kingdom is a signatory. Article 1 of both the International Covenant on Economic, Social and Cultural Rights 1976 and the International Covenant on Political and

Civil Rights 1976 provide that *"all peoples have the right to self-determination, by virtue of that right they freely determine their political status and pursue their economic, social and cultural development"*.⁵ The obligations contained in the Covenants have been extended to Gibraltar without qualification. The right is also recognised in annual statements on decolonisation by the European Union Presidency before the UN Fourth Committee which explicitly state that colonial people have the right to self-determination irrespective of population size or geographic location.

The fact is that the right to self-determination is a peremptory norm of public international law that has emerged since the signing of the Treaty of Utrecht in 1713. A peremptory norm is one accepted by the International Community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of General International Law having the same character. In other words the right to self-determination takes precedence over the proviso to Article X of the Treaty of Utrecht from which the Spanish claim is derived. A simple reference to the International Court of Justice would undoubtedly confirm this analysis. Unfortunately, Gibraltar has no *locus standi* to make a reference and the UK and Spain both now refuse to refer the issue. On 5 November 2001, in response to a statement by Mr Piqué that *"self-determination for Gibraltar would breach international law"* the Chief Minister of Gibraltar responded by saying *"if Sr Piqué truly believed that, he would accept Gibraltar's invitation to refer that very question to the International Court of Justice for an advisory opinion. Whilst Spain refuses to do so it cannot pretend that its views constitute international law, and expect Gibraltar simply to accept that position."*

THE PROBLEM FOR GIBRALTAR has always been finding a tribunal where our right to self-determination could be established and the reversionary clause in Article X of the Treaty of Utrecht challenged. In a debate in Gibraltar's House of Assembly in November 1999 which led to a consensus motion asking the UK to refer the issue to the International Court of Justice, the Chief Minister announced that

he had obtained a very positive legal opinion from a leading public international jurist stating, *inter alia*, that the Treaty of Utrecht did not limit the rights of the people of Gibraltar to self-determination but that the problem lay in finding an international tribunal where Gibraltar had sufficient standing to ventilate the issue without the assistance of the UK.

I believe that the current crisis in Gibraltar offers the opportunity to test these issues in the United Kingdom in judicial review proceedings. Judicial review is the means by which the High Court exercises supervisory jurisdiction over, *inter alia*, public bodies, including the decisions of Ministers of State. There is no doubt that the British Government through the Secretary of State for Foreign Affairs is taking decisions that are affecting Gibraltar and the rights of the people of Gibraltar directly. One such decision is the decision to accept or reject our proposals for Constitutional Reform. Gibraltar wants a modern constitutional relationship with Britain that is non-colonial in nature and similar to that which the Channel Islands enjoy. On 27 February 2002 the House of Assembly in Gibraltar approved proposals for constitutional reform from the all-party Select Committee for Constitutional Reform. These proposals will now be put to the Foreign Secretary. The Chapter on Fundamental Freedoms in the draft constitution enshrines the right to self-determination as set out in Article 1 of the 1976 Covenants. The existing preamble is retained and there is a second preamble inserted which states that the acceptance of the draft Constitution by the people of Gibraltar in a referendum constitutes the exercise of our right to self-determination. Having examined the proposals, I do not believe that they trigger the pre-emption clause because there is no alienation of Gibraltar by the British Crown in any event. However even if it were otherwise, it makes no difference to the analysis in this article.

There is no doubt that Constitutional Reform is the practical exercise of the right to self-determination. The rejection of our proposals for Constitutional Reform is therefore a denial of that right. There is no doubt that our proposals will be rejected sooner rather than later. The Foreign Secretary has already intimated in an interview with the *Gibraltar Chronicle* (5 February 2002) that there is not the slightest chance of the British Government accepting the proposals or using them as a basis for

bilateral negotiations with the Gibraltar Government. Instead, he has said the proposals will be discussed within the current bilateral negotiations with the Spanish Government under the Brussels Agreement. That process is itself incompatible with the right of the people of Gibraltar to self-

The right to self-determination takes precedence over the proviso to Article X of the Treaty of Utrecht from which the Spanish claim is derived. A simple reference to the International Court of Justice would undoubtedly confirm this analysis.

determination. It is a process where the British Government, by its own admission, agrees with Spain to plough ahead with deals done over the heads of the people of Gibraltar and their elected government and which would also survive any referendum rejecting it. The fact that the UK and Spain have not been able to accommodate the Gibraltar Government's terms for participation is proof of this. Indeed, our proposals could not survive the process. On the crucial issue of sovereignty it must by necessity mean driving a coach and horses through the type of relationship Gibraltar wants with Britain and above all our wish to retain *full* British sovereignty over Gibraltar. Otherwise the Labour Government would not be able to come to an agreement with Spain and accommodate her bottom line of joint sovereignty.

THE ONLY POSSIBLE BASIS upon which the British Government could reject our proposals is on the basis of its interpretation of Article X of the Treaty of Utrecht. No other basis exists. If this is the basis for any rejection and it is possible to prove this through numerous Ministerial statements even if it were denied, then it is wholly misconceived as a matter of public international law. Firstly there is no alienation of Gibraltar such that would trigger the pre-emption clause. Indeed, the very essence of the proposals is that

Gibraltar wants to remain British. Secondly even if it were otherwise, the right to self-determination cannot be curtailed in this way. Indeed, even if that right is not a right specifically enforceable under the common law of England and Wales, a Minister of State cannot just simply make decisions based on a misconceived idea of its obligations under an outdated bilateral Treaty, its interpretation of that Treaty, or its obligations to non-self governing territory under public international law. At the very least, the decision would be challengeable on grounds that the decision to reject it is wholly unreasonable. Individuals in dependent territories have successfully challenged decisions of the FCO in recent years (see *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* [2001] 2 WLR 1219 and *R (Quark Limited) v. Secretary of State for Foreign and Commonwealth Affairs* (unreported 5 December 2001)). Gibraltar has nothing to lose by undertaking this course of action. Even if we were to lose we would be no worse off than the position we find ourselves in today.

¹ Gibraltar Talks with Spain, May – October 1996, Miscellaneous No. 13 (1966) page 115

² Answer by Peter Hain, MP, to a question by the Honourable Member for Bolton North East, Mr Crausby, MP, on 6 November 2001; and more recently in a written answer to Geraldine Smith, MP, on the 5 March 2002.

³ It is noteworthy that the position of the British Delegation in submissions to the United Nations during the 1960s was that the right of the people of Gibraltar to self-determination was not curtailed by Article X.

⁴ A former Labour Government had in a memorandum dated the 26th June 1976 already stated that "there is no scope for further devolution ... the British Government cannot accept that there is a need for constitutional change."

⁵ This is enshrined in the preamble to the Falkland Islands Constitution.

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An Appeal to Britain

by Marie Lou Guerrero

DURING THE PERIOD 1969–1982 the land frontier between Spain and Gibraltar was permanently closed. Following Franco's death, the 'new' Spanish democracy continued to prevent the free movement of people and the gates remained locked. In the early 1980s Spain had a desire to become a member of the EU, a position that Gibraltar had held since 1973 as an affiliated member to the United Kingdom, and prove to the world that her aspirations of European democracy and leadership were well founded and sincere.

The people of Gibraltar, who had suffered problems since Queen Elizabeth II visited the Rock in 1953, against the wishes of Spain, believed that there was the possibility of 'light at the end of the tunnel'. A new era was beginning and a normalisation of the relationship with Spain could be considered.

The support for Spain's admission to the EU grew and shortly afterwards the land frontier was opened to all in early 1985. Our 'light', however, became dimmer. Having gained access to the EU, Spain systematically began her renewed campaign for sovereignty over the land and the people of Gibraltar.

There were no subtle tactics, just political aggression and persecution of the Gibraltarians. Innuendoes, half-truths and downright lies began to appear in the press and, *inter alia*, at international conferences and within Brussels.

In 1987 Britain and Spain, negotiated an agreement whereby the latter would gain joint control over the Gibraltar airport. The representatives from Gibraltar, who had initially been invited to attend the negotiations, but were later moved to an ante-room, were only informed of the terms of the agreement at the joint press conference afterwards. They had no say in the discussions and were not a party to the agreement but were now expected to support and to promote it to the people of Gibraltar upon their return home. Needless to say, this promotion did not occur and a mass demonstration culminated with the rejection of this agreement by the people. However, that agreement is still in existence and is repeatedly mentioned by Spain and Britain as the way forward despite the overwhelming feeling of the people of Gibraltar that a foreign country should have any say in the running of their own airport.

As part of the overall strategy of Spain to cause whatever harm they possibly can to Gibraltar they have, with their British Government allies, managed to ensure that all airport related measures specifically exclude Gibraltar, despite our being a British territory within the EU. We have been excluded from the Air Liberalisation package, the Open Skies regulations and more recently the serious Anti-Terrorism Security Regulations which followed the 11 September disaster.

ONE HAS TO QUESTION the logical reason for two democratic countries with populations of 60 and 35 millions respectively to try to impose their joint wishes on a country of only 30,000 people. What possible difference can it make to those nations to have joint control of an airport that serves fewer than 150,000 passengers per year?

Spanish persecution and aggression continues. Despite agreement to do so when it joined the EU and opened the gates to Gibraltar, Spain continues to refuse to allow direct access by air or by ferry. When bad weather forces the closure of Gibraltar airport, the airlines are forced by the Spanish air traffic control to take their passengers to Tangier in North Africa. After landing they can file a flight request to move the same passengers to Malaga in Spain, some 70 miles away. On arrival in Malaga those same passengers are nearly always subjected to baggage delays and security checks even though they commenced their journey from another EU territory. Most sane people would question the necessity to place passengers at risk by insisting on a visit to North Africa when the flight path to Gibraltar is directly over Malaga airport which by air is less than ten minutes away!

Contrary to EU law, the Spanish Government has chosen to limit international telephone links with Gibraltar. They have refused to accept the international telephone code granted to Gibraltar of 350 and have amended their telephone system to prevent the roaming facilities of Gibraltar mobile phones. This not only curtails the expansion of Gibraltar telephonically but causes delays for overseas callers when modern computers link our system through Spain. This is another form of economic blockade and whilst it has been taken up at

'high levels' according to the British Government, it is not of such a priority that it would cause sufficient concern to provoke an international incident. The Gibraltar community is expected to suffer the consequences in silence.

SPAIN CONTINUES to veto any international event that Gibraltar enters whether it is a dog show or a sporting event. Within the EU it continues to veto all legislation unless Gibraltar is excluded, unless Gibraltar's inclusion causes extra work or hardship to the Rock's population. Gibraltar has implemented more EU legislation than Spain. During a recent check it was revealed that the number of directives still to be implemented in Spain was considerably higher than those pending in Gibraltar.

Spain does not recognise Gibraltarian institutions or authorities. Numerous examples exist where our Courts have been abused, our driving licences refused and our passports rejected. All these measures are contrary to EU legislation and go against all Human Rights objectives. Spain apparently continues with her actions knowing full well that they are contrary to these objectives but also knowing that it is unlikely that anybody will go to the expense and hassle of taking matters further. Usually, with the intervention of our government offices or the police, fines that have been imposed are refunded. But the antagonism continues.

Britain was taken to the Court of Human Rights when the people of Gibraltar were refused permission to vote in the European parliament. The Court ruled that Britain should enfranchise Gibraltarians to enable them to vote. This has, of course, not been carried out and we still remain the only Europeans who have no representation in the European parliament.

The European parliament, despite its protestations, prefers to ignore the democratic and human rights of the people of Gibraltar. Spain and Britain, who proclaim devout belief in democracy and freedom of choice, are attempting to dictate and organise a people that are prevented from speaking for themselves. The question remains the same, in a 'European democracy', where are the democratic rights of Gibraltar and its people?

ALTHOUGH SMALL, we are a people; a British people. We believe that we have the right to determine our own future in the same way that other colonies have done. We will not have our democratic, political and human rights trampled upon because Spain makes these into a 'problem' for the smooth running of the EU.

We are told that Spain now has a different attitude towards Gibraltar. Where is it? There have been no changes whatsoever. We have suffered much more harassment at Spain's hand than most people realise. Sadly, we have always implicitly trusted the British Government to stand by us. Can we continue to do so?

We learn from both Spanish and British Foreign Office Ministers that a joint Declaration of Principles will be issued before June 2002. The people of Gibraltar can accept or reject the 'implementation' of this agreement at a referendum.

To quote Minister for Europe, Peter Hain, *"If we do not accept we will be left behind and the status quo is not sustainable."*

This is the 'free, democratic choice' available to the people of Gibraltar: either we go down the road of Spanish Sovereignty or else...? There seems to be no other choice.

We believe that the British Government should not enter into any form of

agreement containing any concessions to Spain that, if the people of Gibraltar reject through a referendum, would nevertheless remain on the table.

We can not trust the British Foreign Office to support our interests. We do, however, believe that we can trust the British people and the majority of the Members of the Houses of Parliament to support us and respect our democratically expressed wishes.

It is to them that we turn for support.

Marie Lou Guerrero is Chairman of the Gibraltar Federation of Small Businesses.

Gibraltar Cannot Trust the EU

by Hon. Joe Bossano

IF ANYONE NEEDED CONVINCING of the case against European federalism, the EU's treatment of Gibraltar and the current attempted sell-out by the British Government provides all the evidence one could wish for.

In 1972 Gibraltar negotiated through the UK Government its terms of accession to the then EEC as a European territory for whose external relations the UK had responsibility. Gibraltar became subject to all EEC laws except for those pertaining to the free movement of goods. It stayed out of the Customs Union, the Common Agricultural Policy and Value Added Tax. This reflected the fact that Gibraltar has no manufacturing industry or agriculture; its economy is based on free trade on world markets.

Spain has maintained a blockade of Gibraltar by land, sea and air since 1968 because the Gibraltarians have refused to give up British sovereignty (which they have enjoyed since 1704) and come under Spanish rule. A Referendum in 1967 rejected Spain's 'offer' by 12,138 votes against and 44 in favour.

In 1984 Spain agreed to lift the blockade in exchange for an agreement, the 'Brussels Declaration', under which the UK would agree to discuss co-operation with Spain and the issue of sovereignty whilst making clear (unilaterally) that no change of sovereignty could take place unless it enjoyed majority support in Gibraltar.

At the time Gibraltarians were told that although Spain had to lift its blockade in order to join the EEC – Madrid breached the fundamental principles of free move-

ment at the heart of the Treaty of Rome – the joint declaration was, in fact, a face-saver designed to avoid humiliating Spain and to help sell to Spanish public opinion the lifting of restrictions. To sweeten the pill

Spain adopted the strategy of using its veto to block the application of Community law

Spanish nationals were granted Community rights in Gibraltar in February 1985, eleven months before they were accorded the same rights in the remainder of the EEC. Spain relaxed its land blockade but retains its sea and air blockades to this day.

From the date it joined the EEC in January 1986 Spain adopted the strategy of using its veto to block the application of Community law to Gibraltar. It used this to put pressure on other EU states, and through them on the UK, to solve the 'Gibraltar problem'. Until December 2000 this unsatisfactory state of affairs meant that Gibraltarians were being denied rights as citizens of the EU simply because it was easier to appease Spain than to uphold the rule of law for 30,000 people.

In January 2001 however things took a turn for the worse. Spain put the UK on notice that unless concrete results were produced on the sovereignty claim and unless the Brussels negotiating process were revived, it would turn up the pressure on the UK within the EU.

As a result, in June 2001, in the margins of the Gothenburg summit, Blair and Aznar agreed to re-launch the negotiations (these had been dormant since 1988 following a boycott of the Brussels process initiated by my Gibraltar Socialist Labour Party (GSLP) Government immediately it came into office). The re-launch took place in July 2001 and it became clear immediately that a deal over Gibraltar's future was about to be done.

The events of the last eight months have been widely reported. The UK has clearly indicated that it is willing to concede in principle British sovereignty and instead establish an Anglo-Spanish condominium. In exchange Spain would promise to respect the way of life of the Gibraltarians, their EU rights and an increased level of self-government.

But to almost everyone in Gibraltar it seems unbelievable that we should be expected to give up 50% of our sovereignty to our powerful and hostile neighbour to obtain respect for rights to which we are entitled by law, simply because the enforcement of the law is something that neither the UK nor the European Commission are prepared to undertake on our behalf.

THE LATEST TWIST in this sorry saga is that Peter Hain, MP, Britain's Minister for Europe, writing on behalf of Jack Straw, MP, the Foreign Secretary, recently told Gibraltar's Parliament that the British Government is willing to consider changing our terms of membership of the EU, agreed with us in 1972, if this would facilitate reaching an overall agreement with Spain.

This came in reply to a unanimous resolution of the House of Assembly moved from the Opposition benches seeking an assurance from the Foreign Secretary that Gibraltar's terms of membership will not be re-negotiated other than at the request of the Gibraltar Government after consultation with Gibraltar's Parliament.

The UK's failure to give an assurance –

and its indication that the very opposite is true – makes a complete mockery of Gibraltar's membership of the EU and of the UK's responsibility to protect and defend its EU status as the member state responsible for its external affairs. The British Government seems determined to pursue this indefensible course of action and we are equally determined to derail the process.

Hon. Joe Bossano was Chief Minister of Gibraltar from 1988 to 1996 and has served as Leader of the Opposition since 1996. He is the longest serving member of Gibraltar's Parliament, the House of Assembly, to which he was elected in 1972. He has been Leader of Gibraltar's Socialist Labour Party since 1976. If you want to know how you can help, please e-mail the author at gslp02@hotmail.com.

Defending the Rock: the Case for Integration

by Andrew Rosindell, MP, & John Tate

THE BRITISH GOVERNMENT'S POLICY ON Gibraltar is obsequious and wrong. Rather than force Madrid by all available means to abandon its unfounded claim, the Government has put the future of the territory up for negotiation – believing it to be, as Peter Hain put it, an 'anachronism'.

Madrid's stance betrays the many occasions on which Gibraltar aided Spain. When British forces liberated Spain from Napoleon, those forces came through Gibraltar. During the anti-Fascist campaign against Franco, Gibraltar gave Spanish refugees food and shelter. Franco never forgave the territory for the succour it lent his enemies. For all of its democratic reform, modern Spain maintains Franco's line.

Messrs Hain and Straw try to justify their negotiations with the claim that, "*short of gunboats, what else can we do?*" The answer is that Gibraltarians must be given equal status to mainland British citizens, with their own Member of Parliament. Integrating Gibraltar in this way would end Madrid's perception of a half-open door upon which she can continue to push. France and, indeed, Spain herself provide models for this policy, having integrated most of their overseas territories with the result that they are now celebrated and constitutionally stable, and not subject to repeated referendums on their future.

Alleged obstacles to integrating Gibraltar vanish upon examination. One alleged obstacle is the territory's special tax status. Yet Spain secured the duty-free status of its Moroccan territories, Ceuta and Melilla, despite their being inside the European Union. Spain holds her sovereignty over these territories, wisely, to be 'non-negotiable' despite Morocco's claim to them. The Treaty of Utrecht is also no obstacle to integrating Gibraltar, as Harold Wilson discovered when he investigated the matter. Wilson offered to integrate Gibraltar, but the then Chief Minister, Sir Joshua Hassan,

rejected the idea. An opinion poll by the Gibraltar Broadcasting Corporation found that a plurality of Gibraltarians now support integration, lesser numbers supporting other options including free association with the UK; independence; shared sovereignty; and Spanish control, respectively.

MADRID, MEANWHILE, clings to her dictatorial claim that the Gibraltarians' views are irrelevant. By holding talks, the Spanish Foreign Minister claims, the UK and Spain are "*building a house*". Gibraltarians, he adds, "*may be allowed to choose the colour of the rooms*". Unfortunately, under the Treaty of Utrecht, he has a point. Gibraltar must be in either British or Spanish hands, without regard for her inhabitants' opinions. Times and opinions change, however. The Treaty of Utrecht was written in an age when monarchs signed over territories with little regard for their inhabitants, and when Gibraltar had little civilian population anyway.

The legal and political standards of the twenty-first century leave the Treaty of Utrecht in tatters. Amongst the many ways in which the Treaty has been broken include the existence of Jewish and Moorish populations upon the Rock. Spain's many sieges of the territory also breached the Treaty. As well as being broken, the Treaty has been superseded both by the Treaty of Rome, in 1957, and by the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, in 1960. It is time that all sides acknowledged that the Treaty of Utrecht – broken, superseded, and incongruent with the democratic age as it is – is not worth the parchment that it is written on. It is the Treaty that is the anachronism, not Gibraltar.

Gibraltar must, for reasons of constitutional stability and democracy, be

decolonised, and the most popular, permanent, and sensible way of doing this is through integration. The Government of Gibraltar would remain as a devolved authority and the territory would be awarded long-overdue representation in Parliament, whilst the governorship could be scrapped. With sufficient political will, the territory's special VAT status could be preserved. Greater awareness of Gibraltar within the UK would boost the territory's tourist revenue. Driving licences and vehicle registrations could be incorporated into the UK system, ending Spain's ability to discriminate against Gibraltarian drivers and their vehicles.

Whilst we must end the crude and illegal pressure placed upon Gibraltar by Spain, the way to do this is not through negotiation. Spain is in direct breach of international law and lacks any support in Gibraltar, yet for years London has squandered opportunities to force the matter – failing, for example, to block Spain's accession to the EU or, more recently, to Nato until she dropped her claim. Rewarding Spain for her intransigence would be a betrayal of the loyal Gibraltarian people and of their right to self-determination. We should be proud that the Gibraltarians wish to remain British and not treat them as a colonial anachronism.

Andrew Rosindell is Member of Parliament for Romford and Secretary of the All-Party Parliamentary Group on Gibraltar. He is also International Director of the European Foundation.

John Tate is a Senior Associate with McKinsey & Company. He is a member of the European Foundation's UK Advisory Board; Chairman of Associates' Club; and a frequent contributor to this and other publications. He writes here in a personal capacity.

Gibraltar – The Business View

by Peter A. Isola

THE GIBRALTAR Chamber of Commerce was founded in 1882. It is headed by a Board of 12 elected directors who promote the interest of commerce in Gibraltar. Its members are drawn from all business sectors – from the small retailer, wholesaler, importer and exporter, to the largest finance centre players.

The Chamber produces information through surveys and advises the government on issues such as the restructuring or reducing of import duties on certain goods or the reduction of rates in certain circumstances. We sit on many Boards and Committees, including Trade Licensing, Health and Safety, Heritage, City Centre Beautification, the Labour Advisory Board, the Economic Advisory Council, and the Conditions of Employment Board among others.

The Board believes that its role is to focus on commercial matters. It leaves sensitive political issues such as the question of sovereignty to the members of the House of Assembly (our Parliament which includes the Chief Minister, his Ministers, the Leader of the Opposition and other Honourable Members). Ultimately, under our 1969 Constitution, it is for the people of Gibraltar to decide on any issue pertaining to sovereignty.

Commerce and politics do overlap at times. Over the last few months the Chamber has met His Excellency, David Durie, Governor of Gibraltar, Ed Owen, the special adviser to the Foreign Secretary, Jack Straw, and Emyr Jones Parry, the Chief Negotiator at the Anglo-Spanish talks under the Brussels Agreement.

On each occasion we have reiterated the importance to all Gibraltarians of our British Sovereignty which we treasure and wish to retain. In 1969 we were led to believe (my father, Hon. Peter J. Isola, was the Chairman of the Constitutional Committee at the time) that our Constitution would be permanent. So to many Gibraltarians it is something of a surprise to find that the *status quo* is apparently deemed not sustainable. This is a message which we are constantly receiving from the UK Government. Yet Gibraltar enjoys a prosperous economy, despite Spain's constant harassment which subjects Gibraltar commerce and its people to long, tedious, and totally unnecessary and unjustifiable frontier

queues. These vary in length and time depending on the whim of Madrid. Spain also imposes other sanctions intended to hurt Gibraltarians and their economy. This constant harassment is of course damaging to all sectors of trade and is an issue upon which the Chamber has particularly strong views. We are, however, a proud people. We are proud that despite this harassment we remain relatively successful for a city of our size.

We also remain successful despite our being unable to enjoy many of our EU rights. It is somewhat ironic when you consider that these are 'rights' to which we are entitled. The reality is that a small territory like Gibraltar, unless it has the support of the mother territory, in our case Britain, is unable to successfully challenge matters within the EU.

We remain staunchly British despite the fact that at times we feel that Britain is not fulfilling either its EU obligations to Gibraltar or its obligations under our 1969 Constitution. This is a matter of deep regret to us.

OUR FINANCE CENTRE is also constantly harassed. Quite apart from the difficulty we have in taking advantage of the EU rights to which we are entitled, we are subjected to malicious and inaccurate articles on money laundering. This is particularly annoying as since 1990 we have had a highly regulated and respected finance centre. Even company managers and professional trustees are regulated (no other EU territory, including the UK, regulates such businesses) with the Commissioner being appointed by the UK. The regulatory and supervisory regimes are at least equivalent to UK standards and in many cases exceed EU standards.

With only £3bn in deposits and relatively small amounts of cash transactions moving on a daily basis it is difficult to see how Gibraltar could be a centre for money laundering. Moreover, as Gibraltar's high street banks include the Royal Bank of Scotland, Barclays, Natwest, and SG Hambros, these allegations are simply insulting to the UK and its financial institutions. Unfortunately we have come to accept that the Foreign Office is more concerned with maintaining good relations with Spain rather than protecting the UK's

own good name and reputation. This is something which does not go unnoticed in Madrid, encouraging the Spanish to be ever more forceful on the issue.

Britain, in the view of the Chamber, should have been negotiating first with Gibraltar to see what long-term economy it believes is sustainable without tackling the sovereignty issue directly at this stage. Commercially, we find it difficult to understand why it is that our continued and increasingly successful economy is deemed no longer sustainable and our future lies in shared sovereignty with Spain.

The Minister for Europe, Peter Hain, MP, talks of our Chief Minister leaving "*an empty chair*" at the Brussels talks. As a Chamber of Commerce we are always in favour of dialogue. However, we find it difficult to encourage the Chief Minister to attend talks when he would not be there on an equal footing. We are prepared to take a realistic and commercial view of the matter but our reading of the situation is that the dialogue to which the Chief Minister is being invited is not what we would consider safe dialogue. No sane Chief Minister could expect to negotiate in such a pre-judged situation. It is unfortunate that the Foreign Office is unable to see or understand this.

The business view is that the way forward is in safe dialogue. We are concerned that the Foreign Office seems unable to create a safe environment, one in which real negotiation is possible, which would enable our Chief Minister to attend talks. We wonder whether the UK Government is really fighting for positive commercial aspects to be considered in the talks. In a sense, we feel somewhat patronized as we are told the talks will lead to a long-term sustainable economy within the Campo de Gibraltar area. But what exactly does this mean? Are we to accept the economic levels presently enjoyed at the Port of Algeciras or those of our neighbouring town La Linea de la Concepcion? There are diverse sustainable economies within the Campo area, some of which are considerably less attractive than others. We want to know that our present level of economic success will not be jeopardised. We want to know that we will be able to continue employing our entrepreneurial skills to develop business.

We are told that our British way of life will be secured and that we will have greater self

government. But the devil is in the detail. What the UK and Spain may consider important is not necessarily what we ourselves would consider important.

We are told that we should join the EU customs union and introduce VAT to put an end to frontier queues. But we are happy to continue living with the frontier queues if that is the only way that we can maintain our present economy and our present way of life.

We are told that, on joining the customs union, Gibraltar will be better off. However, we are concerned this may not, in fact, be

the case. We have written to the Foreign Office sending them a Report on VAT but to date we have received no response. We need to know whether, for example, VAT revenue raised in Gibraltar would be retained in its entirety by the territory (I believe such an arrangement exists in the Isle of Man) or whether the VAT will be transferred elsewhere and a voluntary payment made to the Gibraltar Government, as occurs with the voluntary VAT (re-)payment made by France to Monaco. Obviously, whilst the former may be acceptable, the latter, in which Madrid is making a voluntary

payment to the Gibraltar Government, would be totally unacceptable.

The problem here seems to be that we are being told what is good for us rather than being asked what it is that we need.

After decades of harassment, Gibraltarians are not going to 'buy' into anything unless the full details and advantages are explained to them. To date not even the outline is appetising.

Peter A. Isola is President of the Gibraltar Chamber of Commerce.

The Case for a New Gibraltar Constitution

by William Serfaty

IT MAY BE HARD for modern European readers to understand that there is a corner of the European Union where European citizens are still struggling to obtain a number of fundamental rights which other EU citizens have taken for granted for decades.

Gibraltar is that corner of the EU. This small country entered the EEC, as it then was, *at the insistence of our own government and people*, and against the desire of the UK, on 1 January 1973 under article 227(4) of the Treaty of Rome as *"a European Territory for whose External Affairs a member state is responsible"*. At that time a gulf lay between our small country and the rest of the EEC, the Iberian peninsula, the nature of whose regime at the time excluded it from membership. Even in 1973 Gibraltar suffered from an insidious external irritant, the idea in Spain that the territory our citizens have occupied for three centuries should be transferred to Spanish sovereignty, and our traditional loyalties, values, and way of life should come to an end.

Gibraltarians were conscious at that time that our insistence on EEC membership, albeit a subsidiary one, was a surrender of sovereignty. There was little argument against joining in Gibraltar, perhaps because, although our culture is 'British-Universal', the roots of the many Gibraltarians are in eminently European places such as the ancient, and relatively recently vanished Republic of Genoa and in the Duchy of the Savoy. Our hostile neighbour had at the time (1973) already cut off all land and sea communication for four years in a 'siege'. Little did we think that this would continue for a further 12 years, that Spain would join the EU and then use its

position of strength there to attempt to undermine our culture, our economy, and our aspirations.

As readers know, Spain entered the EU on 1 January 1986. In the run-up to entry it negotiated a bilateral agreement with the UK designed to remove the Spanish-Gibraltar relationship from the EU context, and set it on a path of confrontation with Gibraltar. That action, which is still harming Gibraltar today, is known as the 'Brussels Process', not because it is related to Spanish entry into the EU, but merely because the last act of signature of a bilateral UK-Spanish agreement took place in Brussels.

Year after year, more people realised how bad this process was for Gibraltar. By 1992 a number of citizens from varied walks of life formed the Self Determination for Gibraltar Group (SDGG) to oppose the 'Brussels Process' and to put Hispano-Gibraltarian relations into the European context. At the same time Gibraltar addressed its relationship with the UK, attempting to upgrade its status from that of a British Colony to a more modern relationship. It now found it was debating its status with the Spanish and the British Foreign Offices, both of whom were hostile. It is not surprising, that, having mutual interests, the Governments of Spain and the UK should end up on the same side.

The SDGG was founded to campaign for the recognition of the right of the Gibraltarians to self-determination, i.e. to decide our constitutional status for ourselves. Ten years on, this campaign is still necessary because Gibraltar is a Crown Colony and because the Foreign and Commonwealth Office (FCO) still believes that this right is limited by a provision of the Treaty of

Utrecht between the Crowns of England and Spain.

The Group devised the Gibraltar National Day as a celebration of Gibraltarian national identity. It organises an annual political rally on that day to which politicians from outside Gibraltar are traditionally invited.

IN 1996 the Group put up the daughter of the Spokesman at the time Denise Matthews, who would have been eligible to vote for the first time in 1994, to be the Plaintiff in a case before the European Court of Human Rights. The United Kingdom was the defendant. The complaint was that the United Kingdom was depriving her and all European citizens resident in Gibraltar of our human rights by not arranging for us to be able to vote in elections to the European parliament. Scandalously, the UK defended itself vigorously, causing the case to run for four and a half years. Denise Matthews won her case for the SDGG, and the court ruled in 1998 that the UK must arrange for European elections to be held in Gibraltar. (Judgement 88 of 1998 in a judgement delivered in Strasbourg on 18 January 1999 in the case of *Matthews v. the United Kingdom*, the European Court of Human Rights held by 17 votes to 2 that there had been a violation of Article 3 of Protocol No. 1 – right to participate in elections to choose the legislature – to the European Convention on Human Rights.) This is a landmark case in the annals of Human Rights in Europe, and is frequently referred to as a precedent.

The UK argued in 1997 that there was insufficient time to organise the ballot for the 1999 election, and undertook to make

arrangement in time for the next election, but there is no sign yet of any preparation. The Group continues to pressure for the arrangements to be put into place, and questions in the UK Parliament on this subject are now becoming more frequent. The Group intends to step up action as it becomes clearer to Gibraltar that the FCO appears to have no intention of complying with the judgement.

In 1997 the Spanish Ministry of Foreign Affairs made proposals to the UK in a document which has come to be known by the name of the then Spanish Foreign Minister: *"The Matutes Proposals"*. These contain, in essence, a proposal for joint UK/Spanish sovereignty for a period of adjustment, to be followed by full Spanish sovereignty. The Group set about collecting signatures against these proposals and on 10 December 1998, 50 years to the day after the Universal Declaration of Human Rights, it

presented 10 Downing Street with 12,499 signatures – about the same number as vote a typical general election in Gibraltar.

In 1999, at the United Nations Committee for Decolonisation, the Group added its voice to that of the Government of Gibraltar, which had been attending its meetings since 1992. It was the first Gibraltarian Non-Governmental Organisation to take this step.

IN OCTOBER 2001 the Group was responsible for devising a 'Declaration of Unity' on Gibraltar's stand on Foreign Affairs. It obtained the signatures in support from Government, Opposition, and most of the people who had ever been elected to the Gibraltar Parliament. In co-operation with another pressure group it organised a march, led by all the elected representatives, to hand this declaration to a representative of the Foreign and Commonwealth Office

in Gibraltar to be handed to Tony Blair. The Declaration was also sent to the UN and the EU.

The Group is now pursuing the implementation of the New Gibraltar Constitution agreed by a Select Committee of the Parliament of Gibraltar (the House of Assembly) whose deliberations started in 1999 and were completed on the 10 December 2001. The New Constitution was ratified by the Gibraltar Parliament on 27 February 2002. It embodies a status for Gibraltar as a 'Continental Territory of a European Member State' and provides a decolonised relationship with the UK which falls well within the standard territorial practice of the European Union.

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Gibraltar's Rights must be Recognised

by Tony Lodge

LONDON AND MADRID have resumed talks on the future status and sovereignty of the 'Rock'. Fears of a sell-out are rife. Gibraltar's Chief Minister, Hon. Peter Caruana, has refused to attend, in protest at the *"dialogue which requires us to forfeit our own position and our right to self determination"*.

The last time Gibraltar voted on this issue in 1967, 12,138 were in favour of the *status quo* and 44 were against. This vote prompted a new Constitution for Gibraltar which embodied the principle of consent before any future change in sovereignty could take place. This Constitution still stands and has been consistently referred to by Foreign Secretary, Jack Straw, as a benchmark from which negotiations with Spain are taking place. Sr Josep Piqué, Spain's Foreign Minister, disagrees. He insisted *"The people of Gibraltar cannot have the right of veto over matters being discussed by two sovereign states."*

Despite nearly 300 years of British rule, the people of Gibraltar continue to face Spanish claims to the Rock's sovereignty. The Spanish continue to show complete disregard for the wishes of the people who live there and regularly seek to block traffic at the frontier, cause unnecessary delays to shipping and interrupt telecommunications. Their determination to prevent Gibraltar from maximising its status as a major

financial and air transport hub for the southern Iberian peninsula entered a new chapter when General Franco closed the border in 1969 for 15 years. Gibraltarians are understandably wary of talks with Spain.

It can be strongly argued that if this debate is about anything, then it is about Europe. Spain continues to block some EU legislation because of its impact on Gibraltar – an irritation to the powers that be in Brussels. The plans, which followed the November 2001 meeting between Josep Piqué and the Foreign Secretary, will give Gibraltar 100,000 extra phone lines and allow access to health services in Spain. However, that is cosmetic, as Gibraltarians are entitled to those anyway. Once again, Spain is contravening EU legislation.

The Spanish daily, *El País*, has recently reported that there is to be an unlimited period of co-sovereignty. That flies in the face of what the Government have said and of what the Foreign Secretary has been telling the House of Commons as recently as 14 January 2002.

On 5 February 2002, the Foreign Secretary told the Commons that in the event of the people of Gibraltar rejecting the Anglo-Spanish proposals in a future referendum, *"then the proposals will not be implemented."* The next question which must be put to the Foreign Secretary is what exactly now happens to the Straw/Piqué

proposals on a 'No' vote? Do these proposals remain on the table awaiting another referendum in a few years time?

The Foreign Office should undoubtedly be in discussion with the Spanish. But this should be on a platform of demanding that the Spanish recognise and respond positively to the needs of Gibraltar, rather than tightening restrictions and breaking EU law.

Peter Caruana, QC, Gibraltar's fearless Chief Minister, vigorously promotes the view that under United Nations resolutions and past decisions of the International Court of Justice, self-determination must prevail over any pre-existing Treaty obligations. It is extraordinary that the British Government has been so reluctant to test this simple legal position.

Spain has changed greatly since the 1960s and is now a democracy, a NATO ally and EU member. However, this does not alter international law or the rights of the people of Gibraltar. Diplomatic expediency should not and cannot be allowed to get in the way of fundamental human rights.

Tony Lodge is Political Secretary to William Cash, MP, and a former Editor of the European Journal. He is a member of the European Foundation's UK Advisory Board. He visited Gibraltar in February 2002 and writes here in a personal capacity.

RESEARCH ROUNDUP

by Allister Heath

EUROPE IN FIGURES

Public awareness of the main statistical indicators remains very poor. It is widely believed that unemployment is higher in the UK than it is in France, for instance, or that European economies are booming. The data contained in this month's *Research Roundup* help paint a more accurate picture.

ECONOMIC GROWTH

Germany has been in recession over the last 12 months, according to the latest available figures from the Organisation for Economic Co-operation and Development (OECD). Germany's Gross Domestic Product (GDP) is down 0.1 per cent over the last four quarters. Italy's GDP grew by a paltry 0.7 per cent during the same period, France's by 1.0 per cent, Belgium's by -0.5 per cent and the Netherlands' by 0.3 per cent. In contrast, the UK grew by 1.5 per cent. The euro's whopping devaluation has thus been insufficient to boost the eurozone economies, whereas the strong pound has failed to halt the British economy. The picture is not all bleak in Europe, though: Spain's output grew by a relatively impressive 2.3 per cent during the last twelve months.

UNEMPLOYMENT

One fact stands out of Table II on OECD unemployment data. The latest available figures (which unfortunately go back to November 2001 for the UK) show that Britain's rate of unemployment is now lower than that of both the United States and Japan. The UK can also boast a smaller proportion of its labour force unemployed than Germany, France and Italy.

AN AGEING POPULATION

Secular falling birth rates and increased life expectancy have led to a steady increase in the number of older citizens. The ratio of the population aged 65 and over to the population aged 15 to 64 has shown a small but steady rise since 1960. For OECD countries as a whole, the ratio has risen from 13.8 per cent in 1960 to 19.6 per cent in 2000 and is predicted to hit a record

Table I
Gross Domestic Product, Volume
Percentage changes from previous period,
seasonally adjusted, at quarterly rates

	1999 Q4	2000 Q1	2000 Q2	2000 Q3	2000 Q4	2001 Q1	2001 Q2	2001 Q3	2001 Q4
Canada	1.3	1.5	0.5	1.1	0.4	0.3	0.2	-0.1	0.5
Mexico	1.4	2.3	1.8	1.2	-0.5	-0.4	-0.2	-0.5	-0.4
United States	2.0	0.6	1.4	0.3	0.5	0.3	0.1	-0.3	0.4
Japan	-1.3	2.0	0.8	-0.7	0.3	1.0	-1.2	-0.5	-1.2
Korea	2.9	2.3	1.9	2.5	-1.2	1.2	0.3	1.3	1.6
Australia	1.3	0.5	1.1	0.3	-0.4	0.6	1.1	1.1	1.3
New Zealand	1.3	1.2	-0.4	0.9	0.3	0.2	1.8	0.2	0.6
Austria	0.4	0.4	0.7	0.3	0.6	0.9	-0.6	-0.3	0.2
Belgium	1.8	0.2	1.0	0.8	0.9	0.2	-0.5	0.0	-0.2
Denmark	1.5	-0.2	1.6	0.3	0.7	-0.6	0.3	0.5	0.1
Finland	1.5	2.1	0.9	1.6	0.7	0.0	-1.8	1.4	-0.5
France	1.2	0.8	0.9	0.6	1.0	0.4	0.2	0.5	-0.1
Germany	0.8	1.0	1.2	0.1	0.2	0.4	0.0	-0.2	-0.3
Italy	1.0	0.8	0.3	0.5	0.8	0.8	0.0	0.1	-0.2
Netherlands	1.3	0.8	0.6	0.5	0.7	0.0	0.3	0.0	0.0
Norway	0.9	0.5	-0.6	0.7	0.3	0.3	0.3	1.0	0.2
Spain	1.1	1.2	1.0	0.4	0.8	1.0	0.2	0.9	0.2
Sweden	1.1	0.8	1.2	0.6	0.3	0.4	0.0	0.1	0.3
Switzerland	1.0	0.7	0.5	0.6	0.6	0.4	0.1	-0.1	0.0
United Kingdom	0.8	0.4	1.1	0.7	0.5	0.6	0.5	0.4	0.0

Source: OECD, Quarterly National Accounts database, 29 March 2002

Table II
OECD Standardised Unemployment Rates - percentage of civilian labour force

	2000						2001					
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
OECD-Total	6.2	6.2	6.2	6.3	6.3	6.4	6.4	6.5	6.6	6.8	6.8	6.9
EU15	7.7	7.6	7.6	7.6	7.6	7.6	7.6	7.6	7.6	7.6	7.6	7.7
Euro area	8.4	8.4	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.4	8.4
Major seven	5.6	5.6	5.6	5.7	5.7	5.8	5.9	6.0	6.1	6.3	6.4	6.5
Canada	6.9	6.9	7.0	7.0	7.0	7.1	7.1	7.3	7.2	7.4	7.6	8.0
Germany	7.7	7.7	7.8	7.8	7.8	7.9	7.9	7.9	7.9	8.0	8.0	8.1
France	8.6	8.6	8.6	8.5	8.6	8.6	8.6	8.6	8.6	8.7	8.8	8.9
Italy	9.8	9.7	9.6	9.5	9.5	9.5	9.5	9.4	9.4	9.3	-	-
Japan	4.8	4.7	4.7	4.8	4.9	4.9	5.0	5.0	5.3	5.4	5.4	5.5
UK	5.1	5.0	4.9	4.8	4.9	5.0	5.0	5.0	5.0	5.0	5.1	-
USA	4.2	4.2	4.3	4.5	4.4	4.6	4.6	4.9	5.0	5.4	5.6	5.8

Source: OECD

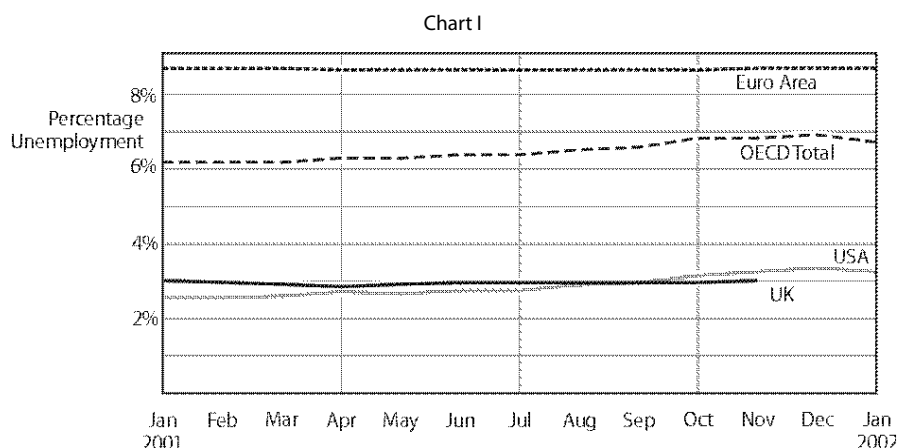


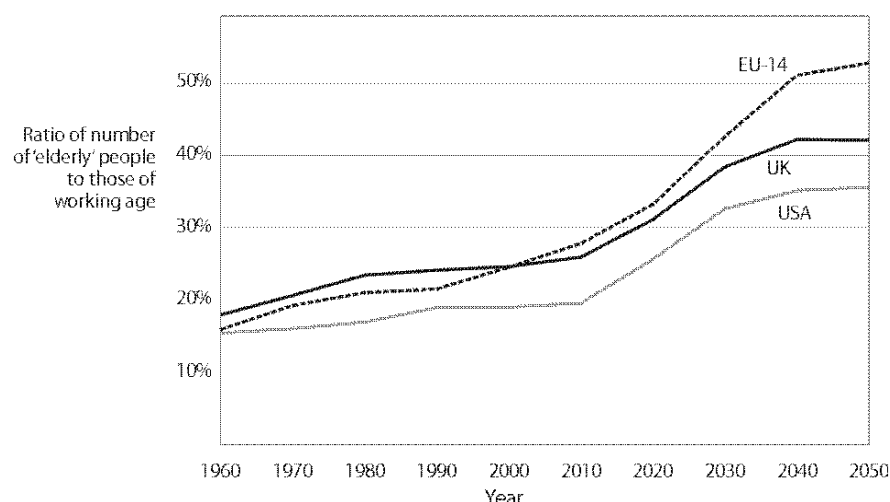
Table III
Estimate and Projection of the Proportions of 'Working Age' and 'Elderly' people
Ratio of number of people aged 65 and over to those aged 15 to 64, percent

	1960	1970	1980	1990	2000	2010	2020	2030	2040	2050	'Trend' Over 65s	'Trend' Under 15s
United States	15.3	15.9	16.9	18.9	19.0	19.5	25.6	33.6	35.1	35.5	1.72	0.74
Japan	9.0	10.3	13.4	17.2	25.0	33.8	43.8	46.0	54.3	58.4	2.96	0.75
Germany	17.1	21.7	23.7	21.7	24.0	29.6	33.0	43.3	49.6	48.7	1.84	0.76
France	18.8	20.7	21.9	21.3	24.4	25.3	32.2	38.7	43.4	44.2	1.69	0.80
Italy	14.1	16.9	20.4	22.3	26.9	31.4	37.4	49.1	64.4	65.7	2.31	0.66
United Kingdom	18.0	20.6	23.5	24.1	24.6	25.9	31.2	38.3	42.3	42.2	1.60	0.81
Canada	12.7	12.7	13.8	16.5	18.7	20.7	28.0	37.3	39.8	40.1	2.16	0.73
Australia	13.8	13.3	14.7	16.7	18.0	19.8	25.9	32.2	36.1	37.5	1.94	0.75
Austria	18.3	22.9	24.0	22.1	21.5	24.0	28.5	40.3	50.5	53.7	1.74	0.72
Belgium	18.5	21.2	21.9	22.6	25.2	26.0	32.6	42.6	47.7	48.3	1.75	0.78
Czech Republic	13.4	18.2	21.2	18.9	19.5	21.9	31.8	37.7	47.0	60.6	2.05	0.59
Denmark	16.5	19.0	22.2	23.2	22.7	25.8	32.2	38.4	43.1	40.3	1.70	0.83
Finland	11.5	13.8	17.7	19.9	22.2	25.4	36.5	43.5	43.5	44.0	2.20	0.80
Greece	12.6	17.4	20.5	20.4	26.7	30.3	35.0	42.3	54.3	64.5	2.16	0.63
Hungary	13.8	17.1	20.8	20.1	21.5	23.0	29.1	31.9	38.6	48.2	1.76	0.67
Iceland	13.9	15.0	16.1	16.5	17.5	18.3	23.9	31.6	36.2	38.5	1.86	0.65
Ireland	19.4	19.4	18.3	18.5	16.8	18.2	23.4	28.3	32.5	40.0	1.55	0.67
Korea	6.1	6.0	6.1	7.2	9.4	13.1	17.5	27.7	37.5	41.7	3.67	0.54
Luxembourg	16.0	19.4	19.9	19.3	21.3	23.5	28.8	37.1	42.9	45.2	1.80	0.88
Mexico	9.1	8.6	7.4	6.9	7.6	9.0	11.7	16.2	23.5	30.0	2.42	0.48
Netherlands	14.8	16.2	17.4	18.6	20.3	23.0	31.7	43.0	51.4	49.1	2.17	0.70
New Zealand	14.8	14.2	15.7	17.0	17.7	18.9	24.1	30.4	33.5	34.3	1.76	0.72
Norway	17.6	20.6	23.4	25.2	23.8	24.3	31.1	38.3	43.8	42.2	1.60	0.82
Poland	9.5	12.7	15.4	15.5	17.5	17.7	25.4	31.8	34.8	44.8	2.08	0.62
Portugal	12.7	14.8	16.4	20.5	23.2	25.2	29.2	35.9	47.5	56.3	2.09	0.60
Spain	12.7	15.7	17.0	20.7	24.9	27.0	31.6	42.3	59.9	72.0	2.32	0.56
Sweden	18.1	20.9	25.4	27.7	27.1	29.7	37.5	43.4	47.3	46.5	1.69	0.85
Switzerland	15.2	17.5	20.8	20.9	21.7	24.8	31.4	44.3	53.1	53.2	2.05	0.78
Turkey	6.4	8.1	8.4	7.1	8.8	9.7	12.1	16.9	23.0	30.2	2.37	0.55
OECD Total	13.8	15.4	16.8	17.7	19.6	21.7	26.9	33.5	38.7	41.2	1.90	0.71
EU-14 (excluding UK)	16.0	19.1	21.1	21.5	24.5	27.8	33.2	42.5	51.1	52.8	1.95	0.72

Source: OECD, using figures from the UN Population Division, *World Population Prospects*

Note: The "Trend for over 65s" is the change between ratio of people 65+ to those aged 15 to 64 calculated on the average estimate during 1960 to 2000 and the average projection for 2010 to 2050. It provides a rough measure of the rate at which the proportion of 'elderly' people is expected to increase. Similarly, the "Trend for Under 15s" is a guide to the anticipated decrease in the proportion of children relative to people of working age.

Chart II
Increase in the number of elderly people relative to number of working age



41.2 per cent in 2050. At the same date, the ratio in the UK will have reached 42.2 per cent, according to the predictions, and 35.5 per cent in the US. These compare favourably to figures for the EU-14 countries (excluding the UK) which are forecast to rise from 16.0 per cent in 1960 to 52.8 per cent in 2050. In addition to its demographic advantage, the UK makes much greater use of private funded pensions.

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The European Union Tax Cartel is Bad for the US Economy

by Dr Véronique de Rugy

BECAUSE it is increasingly easy for investment funds to cross national borders, politicians must exercise a degree of fiscal discipline to attract jobs, capital, and entrepreneurs instead of losing them to another country. The United States is the world's biggest winner in this process, which is known as 'tax competition'.

America's relatively modest tax burden, combined with privacy laws for foreigners seeking to escape oppressive fiscal systems, has helped attract more than \$9 trillion of foreign investment to the US economy. That inflow is a key source of American prosperity because the money is put to work for the nation and produces more jobs, higher standards of living and general prosperity.

Naturally, high-tax nations resent tax competition. Most European politicians, for instance, get upset when their taxpayers shift their money to low-tax jurisdictions like Switzerland and the United States. They even have a plan – the European Union's 'Savings Tax Directive' – that would allow them to impose their burdensome tax rates on income earned in places like America.

The Directive rests upon a dangerous idea. In effect, the EU wants US financial institutions to serve as vassal tax collectors for Europe's welfare states. Moreover, the EU is interfering with US tax policy by asking the World Trade Organisation (WTO) to rule that some provisions of the US tax code are impermissible because they create too much tax competition. If implemented, the 'Savings Tax Directive' would undermine the right of the United States to set its own tax policy.

America should reject those schemes. Unfortunately, some of the bureaucrats at the Treasury and the IRS want to help prop up Europe's over-taxed economies. Almost

a year ago, the IRS issued a proposed regulation (REG 126100-00) that would force US banks to report the bank deposit interest they pay to non-resident foreigners. The purpose of the regulation is to help foreign governments collect tax on US-source income.

That would be a major mistake. America does not share common interests with high-tax nations. It makes perfect sense for uncompetitive, overtaxed nations to try to set up a tax cartel and slay tax competition. After all, high tax countries suffer from tax evasion, capital flight and brain drain.

CONSIDER FRANCE: According to the French tax authority, 25,000 taxpayers – many of France's most talented workers – leave the country every year for tax reasons. Further, the estimated level of tax evasion is a whopping 17 per cent, higher than most developed countries. Numerous studies have also shown that over half of France's underground economy is tax driven, and that tax avoidance is widely practiced. With a tax burden of 45.5 per cent of GDP (including a top personal income tax rate of 54 per cent and an average VAT rate of 19 per cent), it is little wonder.

To prevent more erosion of its tax base, France has two options. First, cut tax rates. This is what the Irish government did in the 1990s, copying 'Reaganomics'. Ireland's approach was a big success. As a result, it now enjoys the second-highest living standards in the EU.

France's second choice is to use international bureaucracies like the EU to undermine tax competition. Not surprisingly, this was the preferred choice, not only of France, but other high-tax nations like Germany and Sweden. Those regimes want

to buttress their tyrannical tax systems by gaining the power to tax income earned outside their borders. That would require a global tax cartel and a systematic elimination of financial privacy.

This tax cartel would have a terrible effect on US economy. A study by the Center for Freedom and Prosperity highlights how international tax harmonisation schemes would undermine America's competitive advantage. Much foreign investment is attracted by low tax rates. With few exceptions, the US government does not tax the investment income of foreigners and does not report this income to foreign governments. Low taxes and financial privacy really make the US a tax haven for taxpayers around the world.

IF THE EU WINS, the US economy will lose savings and investment because foreign governments will get the power to tax income earned in the United States. The US economy would suffer at a time when it needs foreign capital the most. At a minimum, the EU tax cartel would drive \$1 trillion out of the country. That translates into fewer jobs and lower incomes for Americans. For the sake of American taxpayers, the Bush Administration should continue to reject the EU's 'Savings Tax Directive'.

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... news in brief

Karzai wants Germans to run Afghanistan

The interim leader of Afghanistan and former consultant to the American oil company UNOCAL, Hamed Karzai, has asked the German government to take over the command of the international protection force in his country. Karzai told the German Foreign Minister that his people would welcome such a step. Moreover, he suggested that the area covered by the force should extend from beyond a few streets in Kabul to cover the whole country.

Fischer responded by saying that German troops were already

overstretched with their commitments in the Balkans, and in the fight against terror, and that Germany was therefore likely to remain within its present role in the force which is currently led by Britain. (Britain is to abandon this role by June.) As far as the extension of the area of operation was concerned, Fischer said the UN Security Council had to decide about that. Fischer emphasised the long-term commitment of Germany to financing the reconstruction of Afghanistan. Germany has promised to spend 320 million euros on schools, the police, the legal system and on reinstating women's rights. [*Handelsblatt*, 13th March 2002]

The Defects of German Corporate Governance

by Dr Elaine Sternberg

CONTRARY TO MUCH PUBLIC OPINION, and despite recent legislative improvements, as a means of securing genuine corporate governance the German system is both theoretically and practically inferior to the traditional Anglo-Saxon model.¹ The few genuine advantages that the German system does afford are compatible with, and could be better secured within, the Anglo-Saxon model. The German disadvantages, however, go far beyond most of the same democratic deficits, directors' defects, and shareholders' shortcomings as the Anglo-Saxon system.² They are integral parts of a larger system that reflects a profound distrust of, and lack of respect for, individual liberties.

Claims to the superiority of German corporate governance are *prima facie* dubious. Problems at major German companies that have been serious enough to attract international media attention have included embezzlement, uncontrolled trading, fraud, insider trading, massive hidden losses and industrial espionage. Compared with Anglo-American companies, German companies have also been markedly disappointing in delivering shareholder value.

These results are, however, hardly surprising considering the very low priority given to shareholder value in Germany: the main function of shareholding there is instead to cement relationships and consolidate power. It is indicative that, despite the need to attract investors to what was Europe's largest ever initial public offering, the Deutsche Telekom prospectus put 'generating attractive returns for shareholders' *fifth* in the company's list of objectives. When shareholders rank so low in corporate priorities, it is hardly surprising that 'Germans spend more money on bananas than they do on equities'.³

The most distinctive feature of the German model of corporate governance is the two-tier board structure, which is required by German law: German companies⁴ must have both a management board and a supervisory board. The management board consists of executives of the company and is responsible for managing it; the supervisory board, which may not include executives, is responsible for appointing and supervising the management board. Though the supervisory board is elected at the general meeting of shareholders, between 33% and

50% of directors must by law be employee representatives. Supervisory boards also typically contain representatives of firms with close functional relations with the company, including suppliers, customers and bankers.

OSTENSIBLE SUPERIORITY

CONSIDER THE WAYS in which the German system of corporate governance is commonly believed to be superior. Whereas, it is asserted, ailing Anglo-Saxon corporations are forced into bankruptcy by their bankers, German companies are routinely rescued by them; whereas Anglo-Saxon companies constantly have to defend themselves from 'immoral' takeover bids, German companies can concentrate on perfecting their products; whereas Anglo-Saxon workers live in fear of redundancy, German workers enjoy secure jobs for life. The standard argument is that the German system should be preferred because it is 'long-termist' and 'inclusive' in its outlook. Unlike the Anglo-Saxon system, which is claimed to be damagingly 'short-termist' and adversarial, the German system, it is alleged, is better at achieving consensus and social stability.

The first thing to be noted about this argument, is that its premises are highly questionable. The 'evils' that it associates with the Anglo-Saxon system – notably 'short-termism' and takeovers – are not necessarily, or even typically, immoral.⁵ And the benefits that the argument claims for Germany are not available to significant subsections of Germany's population: German guest workers have no job security. Furthermore, even when the supposed benefits are available, they are at best a mixed blessing. They are achieved at the cost of a paternalism and comprehensive protectionism that not only undermines accountability and shareholder value, but also inhibits innovation and infringes individual liberty. It is no coincidence that activities as fundamental and as personal as shopping and contraception are highly restricted in Germany.

Moreover, even if – counterfactually – its premises and conclusions were true, the standard argument offered by proponents of the German system is only remotely about corporate governance. Corporate governance refers to ways of keeping

corporate actions, agents and assets directed at achieving the corporate objectives established by the corporation's shareholders and set out in the Memorandum of Association or comparable constitutional document:⁶ corporate governance is strictly about means, not ends. The typical case for the German system, however, is about ends, not means. Usually, champions of the German system are simply endorsing a set of broad 'inclusive' social, economic and political values – consensus, community, harmony – that they associate with post-war Germany.

FOR THIS APPROACH to constitute a valid argument in support of the German system of corporate governance, its proponents would have to show three things. First, they would have to establish that the 'inclusive' values were indeed the most important values, necessarily to be preferred to those others – including justice and individual liberty, for example – with which they are often incompatible. This requires more than showing that the 'inclusive' values are sometimes, or even commonly, favoured. It requires demonstrating that the 'inclusive' values *should* be preferred, that they are *morally* superior.

Once that was established, proponents of the German system would further have to show that the 'inclusive' values were genuinely better served in Germany. And third, they would also have to demonstrate that the 'inclusive' values were a necessary consequence, or at least a necessary concomitant, of the German model of corporate governance.

Until and unless that ambitious project is undertaken, however, the evaluation of models of corporate governance depends on assessing them as means. It requires gauging them all against the same list of straightforward criteria,⁷ which measure the extent to which the models enhance or undermine accountability to the official corporate objectives set by shareholders.

The German system does seem, at least initially, to have two features that offer improved accountability to shareholders. First, thanks to the two-tier board structure, the German system apparently provides a clear separation between the responsibilities of directors and managers. Such clarity is indeed a good thing, but it

could be achieved as well by having a unitary Anglo-Saxon board consisting exclusively of non-executives. There is no requirement, in principle or in law, to have executives on the board; their talents and expertise could be fully captured for the company by including them on executive committees of various sorts. To the extent, therefore, that a sharp separation of responsibilities were truly wanted, it could be obtained perfectly well within the Anglo-Saxon system.

A second German mechanism that ought to strengthen accountability to shareholders, is the fact that members of the German management board owe their positions to the supervisory board, and not *vice versa*. In principle, this should help to ensure the independence of the supervisory board, because the appointments of supervisory directors do not depend on the management. And it should also help improve the quality of the management board, which must satisfy the standards set by independent supervisors. Admirable though those objectives are, however, they could equally well be achieved within the Anglo-Saxon system. They would result if appointments of senior executives required board approval, and if directors were nominated as well as elected by shareholders. Although the latter is illegal in some jurisdictions, these mechanisms are nonetheless perfectly compatible with the Anglo-Saxon model.

And theory differs from practice in both systems. Even enshrining German corporate governance requirements in law does not prevent nominations for the board of supervisors actually coming from German management boards... it does not even prevent members of the management board from nominating themselves.⁸ When that is so, then supervisory independence and management competence can be compromised as badly as when executives influence the choice of Anglo-Saxon board members. Once again, therefore, there is no reason to prefer the German model.

ACTUAL INFERIORITY

MOREOVER, there are many reasons why the German model is inferior to the Anglo-Saxon system. Consider conflicts of interest. Although German supervisory boards have no executive members, supervisory directors are typically chosen either to reinforce relationships with firms that work closely with the corporation, or to comply with the legal requirement for

worker representation; directors from both groups are expected to promote their constituency's particular interests.

Accordingly, supervisory directors normally have personal, professional or commercial interests that directly conflict with those of the company's shareholders. Directors from banks, for example, are likely to have a vested interest in promoting debt-supported size rather than profitability in the companies they control. Suffering from such structural conflicts of interest, supervisory directors can be seriously constrained from providing necessary criticism, or even useful supervision, of the management board. Although such conflicts of interest occasionally afflict Anglo-Saxon companies, they are endemic in Germany.

They do, however, tend to be evaluated differently. The same features that commentators criticise in the Anglo-Saxon system as conflicts of interest, likely to undermine directors' independence and ability to monitor effectively, are praised as signs of 'inclusiveness' and sources of consensus and stability when they occur in Germany. This is evidence not of the superiority of German corporate governance, but of the operation of a damaging double standard.

FURTHERMORE, German supervisory boards are rendered unsuitable by German law for exercising effective supervision. Appointments to supervisory boards are necessarily subject to veto by the other directors:⁹ the directors who represent competing interests are unlikely to approve committed proponents of shareholder value.

The legally-stipulated size of German supervisory boards also makes it difficult for them to function effectively as supervisory bodies. Required to have between twelve and twenty members, supervisory boards have indeed been so unwieldy that legislation has been proposed¹⁰ to reduce their size, in the hope of increasing their professionalism. Another impediment to proper supervision comes from the large number of directorships¹¹ which members of German boards, particularly bankers, typically hold: the attention available for each company is necessarily diluted. Even if just two directorships are held, however, the result is likely to be not just a conflict of interest, but a positive conflict of obligation,¹² as the fiduciary duties to different groups collide.

Moreover, supervisory directors tend to be chosen not because they have any particular skill in directing companies, but because they represent particular interests. Consider bankers: however popular they are as supervisory board members,¹³ their presence is no guarantee of competent supervision.¹⁴ Given their traditional risk aversion, bankers are indeed likely to be even less well suited than fund managers for directing complex commercial risks. This may help explain why so many German companies have been disaster-prone.

German supervisory boards are also deprived of a standard monitoring tool available to Anglo-Saxon boards: information. Barred by law from having any involvement in the daily operations of the company, supervisory board members are wholly dependent on information provided by the management board. But German financial statements are not designed to provide relevant and reliable information on company performance. Structured more to satisfy creditors and tax authorities than to enlighten shareholders, German financial accounts typically paint a picture that is substantially different than that which results from the application of US or UK accounting standards; they obscure, rather than disclose, how well shareholders' objectives have been served. Moreover, before the 1998 enactment of the *KonTraG*, auditors of German companies were by law appointed by, and reported to, the management board, not the supervisory board. Until and unless more transparent financial statements become the rule in Germany, German corporate governance is at a distinct disadvantage.

Another fundamental defect of the German model of corporate governance is the extent to which it disregards the legitimate demands of shareholder democracy. Minority shareholders have few rights. Plural voting rights are only now being phased out. Until the *KonTraG*, shareholders of German companies were routinely prevented from exercising more than 5–10% of the company's voting rights, regardless of the percentage of equity that they owned. Such limitations hurt all shareholders: they not only directly disenfranchised major shareholders, but helped insulate German companies from the beneficial effects of takeovers. They also reinforced bank domination of German companies.

Banks influence German companies in three main ways. They directly own between 5–7.5% of the shares outstanding.

They have representatives on the supervisory boards of most companies. And in their capacity as voting agent for other shareholders, banks exercise control over c. 50–55% of the shares of German companies.¹⁵ Although voting agents are required to solicit the views of the beneficial owners, in the absence of instructions they are relatively¹⁶ free to vote the shares in their own interests. At least prior to the *KonTraG*, in 22 of the 32 largest German companies, the banks regularly controlled enough votes to appoint all the shareholder representatives to the supervisory board.¹⁷ But as already indicated, banks' interests are often at odds with those of the shareholders; banks are not necessarily disposed or equipped to protect shareholders' interests.

Even more significantly, banks' freedom to vote the shares they administer applies even in respect of their own AGMs. Consequently, the banks which control so much of German industry are themselves effectively free of shareholder control.¹⁸ Other companies may be accountable to the banks, but the banks appear not to be accountable to anyone. Far from improving accountability to shareholders, the German system thus effectively eliminates it for a major section of the economy.

BUT THERE IS an even more fundamental defect of the German model: it actively prevents shareholders from determining corporate ends. The restriction starts with the German constitution,¹⁹ which requires that property be used to serve 'the public weal', i.e., the interests of the German state. The fundamental free-market presumption, that property may freely be used to serve its owner's interests, is therefore denied at the outset.

The inclusion of employee representatives on the supervisory board is specifically intended to prevent corporations from pursuing courses of action that lack employee support; so is the veto that employee representatives are allowed over the appointment of non-employee representatives to the supervisory board. Employee advocates, and proponents of stakeholder theory, applaud such measures as providing protection for employee interests. But by limiting corporations to those ends endorsed by employees, the German legal requirement constitutes an explicit restriction on the corporate ends that shareholders may choose. As has been argued more comprehensively elsewhere,²⁰ the price of such limitations is very high indeed: what is

at stake is nothing less than private property and individual liberty.

In summary, it is hardly surprising that the German model is defective in holding corporations to their owners' objectives: protecting the rights of owners has little or no place in the German system. In line with German culture, the German system is neither designed to nor used for protecting property rights. A fundamental reason for preferring the Anglo-Saxon system to all the others is that it alone respects the property rights that are so essential for protecting individual liberty.

¹ For a fuller description of the Anglo-Saxon and German models of corporate governance, see Robert Monks and Nell Minnow (1995), *Corporate Governance*, Oxford: Blackwell, ('CG'), and Elaine Sternberg (1998), *Corporate Governance: Accountability in the Marketplace*, London: Institute of Economic Affairs, ('CGAIM').

² For a full discussion of these problems, see Sternberg, *CGAIM*, especially Chapter 4.

³ Norbert Walter, chief economist at Deutsche Bank, addressing a pensions conference; quoted in Cohen, Norma, 'Restrictionist governments may fail to see the folly of their ways' *Financial Times*, 24 June 1996, p. 22.

⁴ All AGs and GmbHs with more than 5,000 employees; Monks, *CG*, *op.cit.*, p. 287.

⁵ Sternberg, *CGAIM*, *op.cit.*, Chapter 3.

⁶ For a full discussion of this conception of corporate governance, see Sternberg, *CGAIM*, *op.cit.*; Elaine Sternberg (1998) *Stakeholding: Betraying the corporation's objectives*, London: Social Affairs Unit; and Elaine Sternberg (1999) *The Stakeholder Concept: A Mistaken Doctrine*, London: The Foundation for Business Responsibilities (this latter publication is available online from the Social Sciences Research Network on <http://ssrn.com>).

⁷ See Elaine Sternberg, *CGAIM*, *op.cit.*, Chapter 4.

⁸ Consider Hilmar Kopper, Chairman of the management board of Deutsche Bank. Having retired early in recognition of the disasters suffered by the bank during his management of it, he put himself forward to become head of Deutsche's supervisory board... Gapper, John and Fisher, Andrew, 'Deutsche's model of the universal banker', *Financial Times*, 31 October 1996, p. 17.

⁹ Nicholas Kochan and Michael Syrett (1991) *New Directions in Corporate Governance*, London: Business International Limited. It may, however, be possible to override an employee veto in the second round of elections, which requires only a simple majority.

¹⁰ Subsequently blocked by the trades unions... Norman, Peter, 'Bonn backs reform of shares rules', *Financial Times*, 7 November 1997, p. 2.

¹¹ Reduced to 10 per person by the *Gesetz zur Kontrolle und Transparenz im Unternehmensbereich* ('KonTraG'), ratified 5 March 1998.

¹² Consider, for example, the case of Deutsche Banker Ulrich Weiss: during the Pirelli takeover bid for Continental, he was both chairman of Continental's supervisory board, and the director of Deutsche Bank with special responsibility for Italy...; see Kochan, *op.cit.*, p. 67. For a discussion of conflicts of interest and conflicts of obligation, see Elaine Sternberg, *Just Business: Business Ethics in Action* (London: Little, Brown & Co. 1994, London: Warner paperback 1995; second edition, Oxford: Oxford University Press 2000) pp. 100–102.

¹³ According to a report from the German Monopolies Commission (quoted in Kochan, *op.cit.* p. 71), 75 out of 84 firms had a banker on the supervisory board. In 31 cases, the banker was the chairman of the board; in 18 of those 31 cases the bank was Deutsche Bank.

¹⁴ The supervisory boards of the disaster-prone KHD and Metallgesellschaft were headed by Deutsche Bankers; the collapsed Schneider property empire, Daimler-Benz, and Volkswagen also are or have been under the supposed supervision of the country's premier bank/ shareholder.

¹⁵ In 31 of the 32 largest German companies, banks control more than 50% of the votes. Baums, 'Corporate Governance in Germany: The Role of the Banks', *American Journal of Comparative Law*, 1992, p. 503; reported in Du Plessis, Jean, 'Corporate Governance and the Dominant Role Played by the Banks in Germany', *The Corporate Governance Quarterly* (HK) 2(1), March 1996, p. 25. See also Kochan, *op.cit.*, pp. 68–70.

¹⁶ Although banks that own more than 5% of a company's equity and vote those shares are banned by the *KonTraG* from exercising open-ended proxies granted by clients, banks that desist from voting their own shares, or have specific instructions from the clients, may vote the proxies.

¹⁷ Baums, *op.cit.*, p. 507.

¹⁸ Most banks are, indeed, either member-owned cooperatives or municipally-owned savings banks; 'Built in Bavaria', *The Economist*, 26 July 1997, p. 91.

¹⁹ Article 14(2). Charkham, *op.cit.*, p. 10.

²⁰ Sternberg, *CGAIM*, *op.cit.*, Chapter 6, and Sternberg, *The Stakeholder Concept: A Mistaken Doctrine*, *op.cit.*

Dr Elaine Sternberg is the author of Just Business: Business Ethics in Action (second edition, Oxford University Press, 2000) and of Corporate Governance: Accountability in the Marketplace (Institute of Economic Affairs, 1998). © 2002 Elaine Sternberg.

The Flawed WTO Tax Decision

by Dr Daniel J. Mitchell

IN A RECENT DECISION, the World Trade Organisation (WTO) sided with the EU and ruled that a section of US tax law is an unfair trade subsidy.

According to the Geneva-based institution, America's treatment of corporate income from exports (as governed by ETI – the Extraterritorial Income Exclusion Act) violates trade rules.

In many ways, this is a troubling decision. Most importantly, a dangerous precedent has been established. What happens, for instance, when the French argue that America's low tax rates are an export subsidy? As the *Wall Street Journal* stated on 17 January 2002, *"Once tax policy is on the table, there's no end to what the WTO might meddle in. Which may be exactly what some Europeans want. Saddled with their own anti-competitive, high-tax regimes, they would love to use the global trade bureaucracy to force Britain, the US and other lower-tax countries to become just as uncompetitive."*

The decision also reeks of hypocrisy and double standards. The WTO has decided America cannot choose how to tax certain types of income, but European governments are allowed to rebate the value-added tax (which can reach 25 per cent) on exported goods.

In the final analysis, however, the WTO decision is good news. Why? Because the WTO has given US policy makers a reason to junk worldwide taxation of corporate income and instead implement a territorial tax system. A territorial system is based on the commonsense notion that a government should impose tax only on income earned inside its borders, which is in stark contrast to a system – like America has now – that imposes tax on income earned in other jurisdictions. Territorial taxation is good tax policy for several reasons:

ATERRITORIAL SYSTEM will make American companies more competitive. When an American-based company tries to

compete overseas, it is hobbled by the fact that foreign profits are subject to the US corporate income tax (minus a credit for any taxes paid to the country where the money is earned). This may not make much difference when the company is operating in a high-tax environment like France, but there are many jurisdictions that have very low corporate income taxes. And worldwide taxation makes it difficult for US companies to compete in places like Ireland and Bermuda. The fact that policymakers created ETI, and its 'foreign sales corporation' predecessor, is good evidence that they understand that worldwide taxation harms America's export-oriented companies. A territorial system will stop companies from fleeing America.

In recent years, major corporations such as Accenture, Ingersoll-Rand, Tyco and Fruit-of-the-Loom have shifted their headquarters out of America. In every case, protecting shareholders from worldwide taxation was a major reason for the move. Indeed, America's punitive system of worldwide taxation helps explain why a recent merger resulted in Daimler-Chrysler and not Chrysler-Daimler. Simply stated, worldwide taxation is a burden that is driving American companies to other nations. Bermuda, a fiscal paradise that does not tax either personal income or corporate income, is a favourite destination. A territorial system will significantly reduce compliance costs. The current worldwide tax regime is one of the most complicated parts of the Internal Revenue Code. Internationally active companies have to file tax returns overseas. But they also must list all their foreign earnings when preparing a US tax return. In an effort to minimise double-taxation, they get to claim a dollar-for-dollar credit for the taxes they pay to foreign governments. But the paperwork burden generated by this process is extraordinary, especially because of the myriad rules and restrictions associated with foreign tax

credits. Last but not least, a territorial system is clearly WTO-compliant.

Indeed, most of our trading partners in Europe already have territorial tax systems. European governments may impose oppressive tax burdens on productive activity inside their borders, but at least they are smart enough not to hamstring their companies that are competing for business in other nations. This is one of the few aspects of European taxation that is more pro-competitive than the American tax system.

THE BUSH ADMINISTRATION has already issued some very positive statements about territorial taxation, as have important lawmakers such as Ways and Means Chairman, Bill Thomas. These officials should not hesitate to turn these good words into concrete action. Territorial taxation is pro-tax reform and pro-competitive. It also is the only reasonable response to the WTO. The only other two options – repealing ETI, which would impose a big tax increase on US export-oriented companies, and doing nothing, which would allow the European Union to slap steep tariffs on a wide range of American exports – are clearly not very attractive.

Shifting to a territorial system is the only good response to the most recent WTO decision. Best of all, it will be a fitting revenge against the tax-harmonising bureaucrats at the European Union. The EU began this attack on America's tax code in hopes of forcing America to raise corporate taxes and become less competitive. But if US lawmakers shift to territorial taxation, the Brussels-based paper-pushers will have given us lemons and we will have turned them into lemonade.

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... news in brief

Did things turn Nazi in Neuötting?

Several members of the Christian Social Union, the Bavarian branch of the Christian Democratic Union, have been arrested after someone shouted "Sieg Heil!" to celebrate an electoral win in Neuötting. Several witnesses claimed to have heard the infamous Nazi slogan coming out from a private room in a beer cellar near Passau. It is an infraction of

paragraph 86 of the German penal code and thus a criminal enquiry is now under way. The people who claimed to have heard the cry were Social Democrat members in an adjoining room. The newly elected Mayor, Frank Springer, said the accusation was a baseless calumny. He claims his colleagues were shouting the old carnival cry "Inn-Inn, Hei-Hei". He threatened to take legal steps if the criminal enquiry proves groundless. [*Handelsblatt*, 4th March 2002]

BRUSSELSBOURGER

by Matthew Elliott

A ROSE BY ANY OTHER NAME

AS WE APPROACH SPRING, Brussels-bourgers are focused on the 'Future of Europe' Convention which began its work at the end of February 2002. Under the Chairmanship of the former French President (1974–1981) and President of the International European Movement (1989–1997) Valéry Giscard d'Estaing, the Convention will prepare the foundations for the 2004 Intergovernmental Conference (IGC). Much of the initial debate has covered the rules of procedure, in particular the power of the Chairman in relation to the ruling body of the Convention. The Laeken Declaration named the ruling body the 'Praesidium'. The initial rules of procedure drawn up by Giscard d'Estaing used the term 'Bureau'. Several Praesidium members were reported to have seen the term 'Bureau' as an attempt to reduce the status of the ruling body to the advantage of the Chairman, since Giscard d'Estaing was not particularly convincing when he said that he found 'Praesidium' an ugly word in French (*Bulletin Quotidien Europe*, 28 February 2002). In the event, the rules of procedure presented to the inaugural meeting of the Convention reverted to the term 'Praesidium'. But were the unnamed Praesidium members correct in seeing a 'Praesidium' as being more important than a 'Bureau'? If they had consulted a good dictionary of politics, they would have found that whereas a Praesidium was merely a standing committee in the former Soviet Union, the Politburo was the nearest it came to having a cabinet.

METRIC MUDDLES

ON THE FIRST DAY of the 'Future of Europe' Convention, MEPs were e-mailed a joint 'Declaration of Associations' from the branches of the European People's Party (EPP): the association of Small and Medium Sized Enterprises (SME-Union); the European Union of Christian Democratic Workers (EUCDW); the Youth of the EPP (YEPP); the EPP's Women Association and the European Local and Regional Government Association (ELRGA). Their message started with the proclamation that "the Convention on the Future of the

European Union constitutes a milestone on the way to a political union." East Midlands MEP Roger Helmer (EPP-ED, UK) replied with the rejoinder: "This is why I (and most right-thinking people) reject it absolutely. But thank you for making the objective so clear." Another thought occurs to Brusselsbourger: Shouldn't it be kilometrestone?

GENEVA DECLARATION

IN a further individual submission to the Convention entitled 'The Future is Ours', the YEPP claimed that "the single market and more recently, monetary union, have secured prosperity for Europe's citizens." The Declaration was drafted at their Council meeting in Geneva in Switzerland.

DO AS WE SAY ...

THE EUROPEAN COMMISSION has warned the Czech Republic that it will have to increase the number of women involved in politics if it wants to become a full member of the EU. A Commission delegation highlighted the fact that only 13 per cent of politicians in the Czech Republic are female, in comparison to nearly a third of Members of the European parliament. The delegation claimed that "the position of women can be improved if the Czech Republic harmonises its law with EU legislation" (CTK Czech News Agency, 7 March 2002), suggesting that European integration inaugurates greater equality.

... NOT AS WE DO

MEANWHILE, at the first session of the 'Future of Europe' Convention, the European Lobby for Women distributed postcards showing a set of weighing scales with the men, on one side, outweighing a token female, on the other. The caption says: "The future of Europe: do we have the right equilibrium? No! Tip the balance for equality in Europe!" Of the 105 full members of the Convention, only 16 (15 per cent) are women. On the Praesidium, only 2 of the 12 members (16 per cent) are female.

HUSH!

IN the European parliament's plenary session in March 2002, MEPs passed an amendment to the Commission's directive

on the "minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise)". The Council agreed to the Commission's proposal to reduce maximum noise levels for places of work from 90 decibels to 87 decibels, but the European parliament's Employment and Social Affairs Committee sought to strengthen the proposals. Knowing that the parliament was on equal standing to the Council on this issue, the Committee tabled an amendment limiting noise levels to 83 decibels. Whatever the eventual outcome of this tussle under the co-decision procedure, the directive will adversely affect the leisure and entertainment industry. Because sound is measured on a logarithmic scale, reducing the permissible level of sound by even three decibels represents an actual decrease of 50 per cent. Pubs, clubs, concert halls and sports stadiums will all be affected; but what will it do to the work of the European Union?

- Public scrutiny of Council meetings will still be allowed because the noise level outside the conference hall is 0 decibels.
- The hushed voices of Commission officials, at 30 decibels, will continue unabated as they discuss Paul van Buitenen's latest dossier.
- Unfortunately, MEPs and their staff will no longer be able to enjoy the nightlife in Brussels and Strasbourg, because the noise levels in a busy bar represents approximately 90 decibels.
- Europhiles will be pleased to know, however, that the roar of disapproval from the Irish electorate will be silenced when the Nice Treaty is superseded by the 2004 Intergovernmental Conference (IGC).

Incidentally, the rapporteur for the European parliament amendment to the directive was Helle Thorning-Schmidt (PES, Denmark), the daughter-in-law of the British Commissioner Neil Kinnock and substitute member of the 'Future of Europe' Convention. On the official Convention website, the Danish socialist was initially listed as a man (*EUobserver.com*, 7 March 2002). Perhaps this reflected the level of common sense in her amendment.

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The EU: the European Miracle in Reverse

by Professor Gerard Radnitzky

THERE IS A CLOSE LINK between freedom and prosperity. Indeed, growth and prosperity have always followed from institutional arrangements that foster economic freedom – namely those which protect private property, freedom of contract and free, private markets; which are open to the world; and which accept the equality of all (including political rulers) before the law.

This observation holds true between countries and over time, and it can be *explained* – otherwise we could not claim that the two variables are intertwined. This relationship enables us also to make predictions ‘in principle’ – of the sort that the political economist and Nobel laureate F. A. Hayek called a “*pattern prediction*”. Such predictions are scientific so long as no precise details are stated.¹ I will apply these general considerations to the European Union: this essay’s title reveals my main thesis.

THE EUROPEAN MIRACLE

HISTORY OFFERS MANY EXAMPLES of different institutional arrangements bringing about the success of some societies and the failure of others. The insight into the link between freedom and prosperity is well known to good economists.² Politicians all too often neglect it: even those that are not ignorant of economics and history will often shut their eyes whenever that insight conflicts with their personal short-term interest, which is generally winning the next election. The classical and oft-cited example of an institutional set-up leading to growth and prosperity, and hence to power, is called the “*European Miracle*” from the title of Eric Jones’s famous book of 1981.³ Given that a miracle is, by definition, something that cannot be explained, a better name for the phenomenon would be the ‘Eric Jones effect’.

Until the year 1500, China, a closed, over-regulated and centralised society, was the world’s most accomplished civilisation in science, technology and organisational knowledge. At the time, Europe lagged far behind the Chinese. The technologies relevant to the Europeans’ great voyages of discovery were imported.⁴ Yet, four hundred years later Europe ruled the world.

How could this have happened? To try to explain this monumental change, in

keeping with methodological individualism and rational choice theory, I will analyse the incentive structure faced by individual actors to understand their motivations and how these brought about a transformation in Europe’s fortunes. The right question to be asked is: “*What was (or would have been) in the interest of individual decision makers?*” Investigating the initial conditions we find that Europe’s luck was its diversity – geographical diversity, linguistic diversity, and a diversity of capabilities and incentives. This diversity meant differences in relative productivity and hence an intensification of the division of labour.

Furthermore, there existed several powers of approximately equal military potential. This ensured continuous rivalry, not only in the form of economic but also of military competition.⁵ Following Ronald Findlay’s ‘systemic’ view, I take ‘Europe’ or ‘the West’ as a unit of analysis (other units would be East Asia, the Arab world...). By contrast, the ‘national’ view takes nation states as units of analysis, and thus looks at the consequences of events for individual nations and at the motivation of national rulers. Systemic analysis highlights the fact that the West had multiple competing centres and was therefore characterised by locational competition, something which is particularly important for innovators. Since the various political units were in almost ceaseless conflict with each other, in order to survive each of the Western states had quickly to adopt the innovations of its rivals. The systemic view acknowledges and emphasises that the key comparative advantage of the West was its “*comparative advantage in violence*”, in the words of the Nobel laureate in economics Douglass North. Thus it focuses on the long history of naval rivalry in the North Sea and the Atlantic. By contrast, conventional historians tend to ignore the economic significance of the use of force. A successful combination of commerce with warfare in an independent polity (such as that witnessed in the mercantile republics of Venice and Genoa, with the Dutch in the Atlantic...) was very rare outside Europe. Provided that there is a rough balance of commercial capabilities between rival countries, the military edge of one party may be decisive. The military revolution of early modern Europe is a product of the rivalry that existed between

the ascendant nation-states. It caused them to make significant innovations in strategy and tactics as well as in armaments and logistics. The situation of economic and military competition forced rulers to guarantee economic freedom to traders and investors. They did so out of sheer self-interest as economic growth was a source of military power.

The riches of the New World as well as domestic resources had to be discovered, developed, and exploited. This led to the emergence of an intercontinental network of production and trade which stimulated technological progress and investment in Europe and the New World (globalisation is indeed hardly a new phenomenon). On the supply side the overseas territories provided the Continent with raw materials. On the demand side they provided markets for the new manufacturing industries of Europe, opportunities for profitable investments and later became the destination for a massive emigration from Europe of entrepreneurial, hard-working people. The Dutch displaced the Iberian powers, which, like France, were centralised and bureaucratised. The episodes of plunder and violence, especially by Spain, of the Indies and the Americas proved to be a horrendous and wasteful mistake. The outward looking maritime states set the pace of economic development, rather than inward looking land-based states such as the Habsburg Empire, Prussia, and even France to a certain extent. Agrarian states including Russia, Poland and Hungary lagged far behind. Only the outward-oriented, non-centralised Low Countries and later Great Britain – first with its intellectual revolution in the form of the Scottish Enlightenment, led by scholars such as David Hume, Adam Smith, Adam Ferguson; and then with its Industrial Revolution – were able to initiate the modern industrial world.⁷

DIVIDED WE STAND

WITHOUT competition and relatively secure property rights there would have been no ‘miracle’, and Europe would have stagnated at about the level it had reached in 1500, just as the Chinese empire failed to progress. Findlay concludes that the motto for the European states system should be: “*Divided we stand, united we fall.*”⁸

Several episodes in modern history have also been called 'Miracles', such as the 'German Miracle', which occurred following that country's post-Second World War economic reforms. Similar developments have occurred in Japan, in East Asia and even in the Peoples' Republic of China.⁹ In each and every case, institutional reforms protecting private property and civil liberties, freedom of contract, free private markets and increased openness to the outside world have been rewarded by growth and prosperity. But it is the European Miracle that exemplifies this relationship best of all.

Economic integration is clearly beneficial to all the nations concerned. But who profits from *political* integration? Why should leading national politicians want to induce nation-states to form a political union – be it a confederation of sovereign states, a big multi-national superstate or a 'judicial' entity like the present EU, which belongs neither to the first nor to the second category? Absolute size does confer certain advantages in military conflicts. But national politicians will only have an interest in the promotion of political integration if they hope that they themselves may become members of the new EU political class which eventually will 'rule' Europe. They are likely to support centralisation in Brussels and subjection to decrees from the EU bureaucracy, as this means less citizen control through elected national parliaments of the rulers and of the influential, big rent-seekers.

THE BATTLE OF ARMINIUS

SO FAR, all attempts to rule 'Europe', defined as the western rim of mainland Eurasia, have failed. The Romans made the first attempt. Their *Pax Romana* ended with the Arminius battle held in the Teutoburger Wald in the year 9 of our calendar. Arminius' victory destroyed the myth that Rome was invincible.¹⁰ The importance of that event can hardly be overstated.¹¹ It may well be the most important event of Europe's whole history. Without it Europe would have become a European Empire: there would have been a precursor to the EU almost two millennia ago. In the event, the regions east of the Rhine missed out on Roman civilisation. But this turned out to be a price worth paying, because otherwise unification would have caused Europe to stagnate indefinitely, just as was the case with China. In the end the Roman Empire destroyed itself by over-taxing its citizens

and by introducing a burgeoning redistributive state (the infamous *panem et circenses* or bread and circuses) – the parallels with the EU are quite obvious.

What about other attempts? Charlemagne did not really wish to build a European empire, since he divided his legacy among his three sons. The Holy Roman Empire (which later became the German Nation or Germano-Roman Empire) was fatally weakened in the Thirty Years War. The emperor of the Casa d'Austria was interested only in his dynasty, not in the 'Reich'. Bismarck did not harbour any aspirations to European supremacy; he did not even annex Austria. Adolf Hitler's 'fortress Europe' was but a short episode, and Stalin made it only to a line from the Baltic to Berlin to Trieste or Sofia.

FRANCO-GERMAN ALLIANCE

FRANCE aimed at European supremacy ever since becoming a nation-state. This ambition led to a series of wars starting with Louis XIV's in the latter part of the 17th century and ending with Napoleon's defeat at Waterloo in 1815. In both the First and the Second World War, France had to be rescued by American intervention, which turned out to be a humiliating experience. Eventually France abandoned all hope of achieving European supremacy *directly* by military means. It changed its strategy to an *indirect* approach: shrewdly and clandestinely imposing its 'model' (*étatisme, centralisme, dirigisme*) on the evolving and willing EEC. The French displayed brilliant negotiating skills. Their politicians and bureaucrats repeatedly demonstrated considerable ability to bully their European counterparts. Overall, they have been successful – take the CAP, the composition of the personnel of the EU Commission and the EU Court in Brussels.

The French strategy was willingly accepted by the Germans, thus creating a Franco-German axis. Big business and the banks in Germany wanted a big market with Brussels in control – less parliament and less Bundesbank. Germany's ordinary citizens also had much less commitment to freedom and more of a tradition of subservience to the ruling elite than, e.g., the British or the French.¹² This process was not just a German capitulation to a power-hungry France. Rather it was the emergence of an 'axis Berlin-Paris', with the two core powers planning to rule their neighbours, regardless of any resentment in Rome, Madrid, Stockholm or London.

French politicians, working with German industry and the banks, aimed to get rid of the German Bundesbank. They worked together with a series of submissive German governments, from Adenauer to Kohl.¹³ This is well documented. The French politicians were more outspoken than their German colleagues. For instance, Alain Juppé, former Foreign Minister in the Balladur cabinet, claimed that Maastricht would give Germany the right relationship *vis-à-vis* France: German proficiency would be more than compensated by French genius.¹⁴ Balladur's attitude towards the market order can be seen from his dictum: "What is the market? It is the law of the jungle ... the struggle against nature."¹⁵

DESTROYING THE BUNDESBANK

GERMANY'S submissiveness is equally well documented. For instance, Germany's former President Richard von Weizsäcker once boasted that: "In Maastricht we have rightly ratified the overall political [gesamtpolitischen] wish of the French no longer to be dependent on the Bundesbank with its dominating D-Mark."¹⁶ Roman Herzog reached the zenith of submissiveness when during his time as German President he made the euro a taboo subject which was not to be questioned or discussed during general election campaigns. In any other democratic country this would have caused an outcry – but not in Germany. However, it was not only submissiveness which caused Germany's behaviour. Several interest groups with close connections to Helmut Kohl, including major banks and large industrial firms, wanted to get rid of the German Bundesbank. These groups, as well as the German government itself, had all been suffering from huge amounts of debt and felt that they needed 'inflation relief' to reduce the real value of their Deutsche Mark-denominated liabilities – at the expense of citizens and small savers. Hence, they supported Chancellor Helmut Kohl's bid to destroy the Bundesbank. Furthermore, large banks are the main creditors of states, many of which are *de facto* bankrupt: Belgium, Greece, and Italy are three prominent examples. If government debts are 'socialised' (*vergemeinschaftet*) within the whole of euroland, the banks' chances of getting some of these debts repaid increase. Moreover, the major European banks, and in particular the German banks, have large holdings of weakly performing Eastern European investments. The banks were

playing paymaster to Eastern Europe not only during the Brezhnev and Gorbachev eras but they have continued that practice even after the fall of communism. *Mutatis mutandis*, this applies also to big industrial firms. Hence, they would all stand to benefit from a dose of 'inflation relief'.

That the British kept a certain distance between themselves and the European project is understandable. They have arguably always been more open and less *dirigiste* than continental Europeans. There appears to be a basic difference in mentality between the Anglo-Saxon world and the Continental, which is demonstrated *via* their respective basic principles of morality. In the Anglo-Saxon world the basic rule has been that "everything is allowed that is not explicitly forbidden". On the continent the basic rule is that "everything is forbidden that is not explicitly allowed". To this the Germans have implicitly added "and what is allowed is compulsory [Pflicht, a duty]".

In summary, it is most fortunate for Europe that Charles V, Philip II, Napoleon Bonaparte, Adolf Hitler, and Joseph Stalin proved unable to impose a unified bureaucratic order on the whole of Europe. Undeserved luck, certainly, but Fortuna is capricious.

HAYEK VERSUS DELORS

HALF A MILLENNIUM after the discovery of America, Western Europe found itself at a crossroads: the choice was between a 'Hayekian Europe' and a 'Delorsian Europe'.¹⁷ The first possibility was a multiplicity of states engaging in political competition at all levels, including currency, tax and inter-jurisdictional competition. Such a regime would be characterised by openness to the world and co-operation whenever it was deemed useful. This set-up would have a high potential for evolutionary discovery, a process similar to natural selection – versus a centralised superstate under an interventionist corporatist regime, implementing a constructivist design: *dirigisme, planification pure à la Française* ("l'EU c'est moi").

The choice was made. The current shape of the EU appears largely the unintended consequence of actions by members of the *classe politique* acting as rational maximisers of what they regard as their personal interest – power and income. The wider public, meanwhile, was indifferent, cynical or brainwashed. A maximum gain for the *classe politique* can be reached in a regime

approximating a totalitarian state. The tendency is clearly visible. In their words they will continue to invoke 'democratic values'; in their deeds they will be interventionist, intensifying redistribution, tightening controls and the monitoring of the citizens. It is a safe prediction that a power-hungry political elite will consistently attempt to reduce personal freedom. They will conduct a 'war against privacy'. Ideally their subjects should be 'transparent', with as little privacy as possible. Of course, there should be no financial privacy (*Bankgeheimnis*). Thus, the EU is bullying Switzerland and Liechtenstein. The Federal Republic of Germany stands as a warning: it is in the process of becoming a surveillance state, with characteristics which include the 'thought police' (*Gesinnungsstaat*). When crossing the German border, the maximum amount of cash (or jewels) that people may carry must not exceed €15,000 or its equivalent; on discovery the 'incident' is reported to the local tax authorities.¹⁸ The EU is on the road to a 'New Totalitarianism'. The tax cartel of states is a mechanism which enables the European political class quietly to exploit its citizens without recourse to violence. The result is a 'Fortress Europe' characterised by political rent creation which fosters a dependency culture.¹⁹

Brussels will push through one 'social charter' after another, invent more and more 'social rights', and abolish more and more freedom in the name of 'social justice'. The EU will be marked by protectionism, regulation of labour markets, excessive size of the EU federal government and bureaucracy, confiscatory taxes, interventionism, and politicised courts. The European Court of Justice is an example; it is accountable to no one.²⁰ The EU has become an entity that as such will be progressively inimical to liberty. Freedom will be curtailed by salami tactics, which is the normal way, as F. A. Hayek told us in the *Road to Serfdom*.

How could Helmut Kohl & Co. manage to get rid of the Bundesbank and establish the euro? Today that feat would be impossible. Euroland is not the first multi-government monetary union. None were successful. For instance, Singapore and Malaysia had a single currency from 1962 to 1971/72. It collapsed because of divergent macroeconomic policies and differing productivity trends – ultimately because the two independent governments were not prepared to give up sovereignty and because the social

institutions of both countries failed to converge. Who can guarantee that euroland will not repeat that experience?

As pointed out above, it is imperative to focus on the personal interests of the key individuals involved when explaining the development of political entities ('functional' explanations are spurious). Contrary to what is generally believed, the driving force behind the decision to abolish the Deutsche Mark was the then German Foreign Minister Hans-Dietrich Genscher rather than Chancellor Helmut Kohl.²¹

GENSCHER'S PLAN

SINCE the Bundesbank was an independent institution, Kohl and Genscher could not control it. In fact, monetary policy and economics did not interest them, and they were ignorant of both fields. They were, however, keenly interested in joining in the game of foreign and defence policy, which they perceived to be an area where one can dabble without possessing any special knowledge. Genscher was particularly interested in his personal influence in Europe. He "was prepared to offer France the bait of diminution of German national sovereignty in monetary policy, an area that did not interest him a great deal, in order to increase Germany's diplomatic weight."²² Genscher and Kohl thus decided to hand over a national policy instrument they did not control in exchange for being admitted as major players in the game of European construction. They could not care less about what the German people were thinking, what was in the interest of citizens, or about the warnings of the economist elite. Kohl actually despised "economics and all that nonsense" (as he once said). In addition, remember that in Germany 'democracy' means nothing more than allowing the people at regular intervals to change the relative numbers of backbenchers. In fact, it is fair to say that Germany's leading politicians despise the people: plebiscites were and are unthinkable for them. So Kohl and Genscher offered France the Bundesbank as bait.

This master plan did not work out exactly as intended, because they used up this bargaining chip during the negotiations over German unification. France's then President, François Mitterrand, did what he could to hinder German unification, but he was *de facto* powerless. He could, however, have frustrated Genscher's desire to participate in the European game of foreign policy. Mitterrand's and Kohl's closest

foreign policy aides testified that “*French reticence vis-à-vis unconditional reunification led to the single currency.*”²³ Roland Vaubel points out that Margaret Thatcher was disappointed by Mitterand’s changed attitude, and he asks whether she did not understand “*that Mitterand had made his separate peace with Kohl in exchange for the mark?*”²⁴

After the French effort to achieve ‘more equitable burden-sharing’ had failed, a Franco-German Economic and Finance Council was set up. However, the President of the Bundesbank rejected any *non-voting* membership, and the Bundesbank successfully asserted its exclusive statutory responsibility for monetary policy in 1988.²⁵ In this situation, discussions took place between the French and the German foreign ministers (Roland Dumas and Hans-Dietrich Genscher). The two postulated that the single market needed a European monetary area with a central bank to complement it.²⁶ Genscher seized the initiative with his *Memorandum on the Creation of a European Monetary Area and a European Central Bank* of 26 February 1988. Although it was originally intended for internal discussion in his Party, the FDP (Liberal Party), it was forwarded to the Bundesbank the same day. Genscher proposed to the European Council in Hanover on 27–28 June 1988 that they should establish a body to work out the principles. The proposal made allowance for the misgivings of France and other member states about the dominance of a Bundesbank motivated solely by the goal of price stability, in line with its statutory responsibility. In Hanover the Council appointed a study group under the President of the EC Commission, Jacques Delors. The Delors Committee presented its *Report on Economic and Monetary Union in the European Community* in April 1989; the Report was accepted by the Council for further negotiations on 26–27 June of that year. In the end the French had won, and the Bundesbank with its long commitment to price stability was doomed.

SLEIGHT OF HAND

THE MAASTRICHT TREATY was a jurists’ trick. It explicitly rules out the ‘socialising’ of state debts within euroland. But this prescription for currency management was undermined by the guidelines of the European Central Bank (ECB), which explicitly permit the Bank to accept non-marketable demands such as

state debts as security for the issuance of new money. This means that a commercial bank may present to the ECB its loans to, say, the Greek state and thereby acquire fresh euros, as Josef Schueßlburner has pointed out.

The German government tried to make the euro more palatable to an unwilling population by claiming that the European Central Bank would be even more independent than the Bundesbank. However, the ECB suffers from crucial structural and institutional weakness: it is not a centralised decision maker, something which is a *sine qua non* for success in currency dealings. Instead, the ECB is a club of national central banks with different economic and political interests. During its early decades, management of the US dollar was conducted according to similar rules – until it came to a crisis. Powers were then centralised in the hands of the New York Federal Reserve Bank. As Wolfgang Kasper has argued, such an agency is indispensable in the quickly changing world of money. The alternative is indecision, foul compromise and inflation, as Bernard Connolly has pointed out.²⁷

Also the claim that the ECB will be composed of responsible, seasoned bankers is open to doubt. The Bundesbank itself has been eroded; Karl Otto Pöhl was the last of its Presidents who embodied the ‘spirit of the Bundesbank’. It is instructive to read Roland Vaubel’s²⁸ devastating criticism of the position of Otmar Issing, who is a member of the Executive Board of the ECB and was previously a Board Member of the Bundesbank.²⁹

Why should the political class in Europe wish to replace national autonomy with a centralised, all-pervasive political authority, the European super-state? Because its members are recipients of the rents generated by European political activism. No wonder that they behave like the priest of a new political religion,³⁰ the custodians of the Holy Grail of ‘European values’: ‘democracy’ and political correctness. Conformism to this secular religious ideology becomes a moral imperative; heretics are persecuted.³¹ The word ‘democracy’ has to be taken with a pinch of salt. For instance the currency issue was not put to a popular vote in Germany, where an overwhelming majority wanted to retain the D-Mark. Anybody requesting a plebiscite on as fundamental a question as that of the monetary constitution and the choice of a currency was labelled an “*enemy of Europe*”. In Germany the ruling cartel of political

parties successfully prevents political competition; whereas in commercial markets cartels do not last, the longevity of the cartel is assured under political markets. For some time to come non-centralised Switzerland with its referenda may remain as an oasis, once again surrounded by totalitarians.

Competition is not only the best but also the only way to curb power. The EU will systematically attempt to restrict or even eliminate competition at as many levels as possible. Centralisation will continue – the ratchet will move up a few notches – and power will drain slowly away from the states and be transferred to a super-state in Brussels. With the transfer of powers to make collective decisions from national to supranational institutions, the similarities between the EU and the former USSR will become even more conspicuous.³² The politburo has moved from Moscow to Brussels with its 20 unelected Commissars.

The only force which can exert real discipline on a federation or on an emerging multinational superstate is the fear of the secession of several member states. There is no formal right to secede from the EU; the European political class has every reason to rule it out *a limine*. A state that were to want to secede would most likely be called a ‘terrorist state’. Within the EU even the exit option – voting with one’s feet – becomes pointless if the state to which one flees has the same laws and regulations as all the others.

AN END TO COMPETITION

CURRENCY COMPETITION has been eliminated. Fiscal harmonisation is on the agenda. Tax competition is deemed ‘harmful’ by the finance ministers of the high-tax states. But the low-tax states will be reluctant to join the tax cartel. The social-democratic Constitution of the emerging EU multinational superstate will solve this ‘problem’ by drawing fiscal powers away from the member states and also imposing an EU tax system.

Jurisdictional competition will also be abolished. This is because in a system characterised by individual liberty, capital mobility, free trade and the international division of labour will soon discipline a government that has high taxes, restrictive labour laws and a host of counterproductive regulations, burdensome state and welfare arrangements. Countries with institutions that promise better returns to mobile investors will attract capital (including human capital), and hence will prosper. As

such capital movements would discipline the ruling class, the EU wants to reduce jurisdictional competition. The euro-fanatics try to discredit the less interventionist and socialist political regimes by calling jurisdictional competition 'social dumping'. After the end of the Cold War, in the 1990s, 'overt socialism' collapsed and 'creeping socialism' had to be marketed under a new guise in its stead. One of the EU's stated aims is "to close the prosperity gap". The EU believes that this can be achieved by imposing high and uniform welfare provisions and ecological standards across the whole of Europe.³³

A perfect example of the EU's arrogance is its attempt to limit economic freedom in other countries. A case in point is the Kyoto Protocol's bid to make Australian metal processors and metal industries less competitive.³⁴ The EU even tries to impose its environmental standards, which are designed for a densely populated continent, on New Zealand's metal industry.

DECLINE AND FALL

IN THE CURRENT INTELLECTUAL CLIMATE, the mass marketing of politics by the state-owned media will bring about a situation in which the public passively accepts the degree of freedom the EU government is prepared to grant it.³⁵ Again the Federal Republic of Germany serves as a warning: not only governmental but also non-governmental censorship has been conspicuous, particularly in the writings of modern history and its treatment in the media.³⁶ The public will wait for permission granted 'from above' – slavery can best be marketed by calling it 'liberty'. Brainwashed by both the electronic and print media, the public forgets that freedom is not given but has to be 'taken' by those with a modicum of courage and self-confidence.³⁷ To the more tangible, visible costs of the EU should be added the enormous opportunity costs; costs in the form of what 'Europe' could have achieved if it had institutions favourable to economic freedom and openness.

In this context it will be interesting to observe how the EU will fare in indices rating economic freedom and prosperity such as the Fraser Institute's *Index of Economic Freedom of the World*. In recent years, key European countries have lost ground in economic freedom ratings. In 1970, Germany was the 7th freest economy, by 1999 it had dropped to 15th. In the World Competitiveness Report (World Economic Forum in Geneva) it rated 3rd worldwide in

1990 and 1st in Europe; by 2000 it had dropped to 15th. During the same time, France went from 16th to 34th; Belgium from 2nd to 20th; the Netherlands from 5th to 9th. Many other EU countries have stagnated in the international league tables: Italy was 23rd in 1970 and 24th in 1999; Spain went from 25th to 29th; Greece from 31st to 38th. Over the same period, there were also a few marked improvements: the UK rose from 27th to 4th and Ireland progressed from 23rd to 6th. The economic consequences of such improvements in economic freedom are well known and should surprise no one.³⁸

But which policy design will win the upper hand under EU 'harmonisation': the 'Anglo-Saxon model' or a combination of the 'Rhenish model' of increasing control with Mediterranean *dirigisme*? It will be interesting to see how the EU fares in the 2002 Index.

The Maastricht Treaty is succeeding in creating an artificially 'harmonised', bureaucratised European welfare state, a taxing cartel of states, a protectionist 'fortress Europe' (similar to that of which Hitler dreamt). This artefact will not be able to meet the challenge of the economically dynamic USA and Pacific Rim states. A new era may begin, an era of a united European welfare state failing to keep up with competition in America and the Far East. This conclusion is a scientific 'pattern prediction': if it is not restrained, the EU will eventually lead to the unravelling of the 'European Miracle'.

¹ Thus, in 1920 the Austrian economist Ludwig von Mises predicted the fall of the Soviet Union, because he recognised that that system was untenable in the long run. Had he specified a date for the collapse of the USSR, he would have turned his *prediction* into a *prophecy*, since the date when a particular event will happen depends essentially on the initial conditions (singularities). These are influenced by human action, which cannot be predicted – after all, 'action' means that an individual could have behaved otherwise. Moreover, actions often have unintended and unforeseeable consequences.

² I take this to be an analytical sentence: an economist who denies this link I would not call a 'good economist'.

³ E.L. Jones (1981) *The European Miracle: Environments, Economics, and Geopolitics in the History of Europe and Asia*. (2nd Edition 1987). Cambridge, MA: Cambridge University Press.

⁴ The compass, stern-post rudder, gunpowder (Chinese cuisine) and cannon came from China; the lateen sail and knowledge of the winds and currents of the Indian Ocean came from the Arabs.

⁵ W. Kasper and M.E. Streit (1998) *Institutional Economics – Social Order and Public Policy*. Cheltenham: Edward Elgar. See Chapter 12.

⁶ R. Findlay (1992) "The roots of divergence: Western economic history in comparative perspective", *American Economic Review* 82(2): 158 – 161 (May).

⁷ P. Bernholz, M. Streit, and R. Vaubel, R. (eds.), (1998). *Political Competition, Innovation and Growth*. Berlin: Springer. See the articles by de Vries and Pollard on pages 209–222 and 223–238 respectively.

⁸ Finlay, *op. cit.*, p. 161.

⁹ W. Kasper (2001–2002) "Economic freedom watch", *Policy* (Australia) 17(4): 37–43.

¹⁰ J. Baechler (1995) *Le capitalisme I: Les Origines*. Paris: Gallimard. See p. 308.

¹¹ Baechler writes: The date of 9 April should be considered by Europeans as the most important date of their whole history. "*La date de 9 apr. J.-C., ... ou d'Arminius anéantit les trois légions ... devrait être choisie par les Européens comme la plus importante de toute leur histoire.*" See Baechler, *Le capitalisme*, *op. cit.*, p. 328.

¹² Subservience to the state and its elevation, e.g., in Hegel to "God's idea on earth" ("*Der Staat ist die göttliche Idee wie sie auf Erden existiert*") led to eponyms like 'state slaves' or '*maladie allemande*' (Raymond Klibansky).

¹³ Helmut Kohl was certainly the best Chancellor the French had ever had and will ever have.

¹⁴ *Libération*, 6 September 1992.

¹⁵ Quoted from an interview in the *Financial Times*, 31 December 1993.

¹⁶ *Die Woche*, 19 September 1997, translation by Gerard Radnitzky.

¹⁷ G. Radnitzky (1991) "Towards a Europe of free societies: Evolutionary competition or constructivistic design", *Ordo. Jahrbuch für die Ordnung der Wirtschaft und Gesellschaft* 42:139–169.

¹⁸ The 'war against privacy' has a long tradition in Germany: one of the slogans of the National Socialist German Workers Party was: "*We do no longer have private people*" [*Privatleute haben wir nicht mehr*]. Capital flight was punishable by death.

¹⁹ As Bismarck shrewdly commented: dependent people are easier to rule. The Swedish Social-Democratic Party designed the 'Swedish model' – the advanced welfare state – to foster such a culture, because it offers the best guarantee to be re-elected.

²⁰ A. Evans-Pritchard "Now it's blasphemy to

- mock Europe", *The Spectator*, 10 November 2000.
- ²¹ R. Vaubel (2001) "The Road to Maastricht: Negotiating Economic and Monetary Union (review article)", *Economic Affairs*, September 2001. London: Institute of Economic Affairs. See p.61.
- ²² B. Connolly (1995) *The Rotten Heart of Europe: The Dirty War for Europe's Money*. London: Faber and Faber. See p. 74.
- ²³ See Jacques Attali (1998) *The History of the Euro* as well as Horst Teltschik's diary of 1991: 329 *Tage*, p.61 and his book *Verbatim* of 1995, vol.3, pp.353 f.
- ²⁴ Vaubel, *op. cit.*, p.62.
- ²⁵ See P. Bernholz (1999) "The Bundesbank and the process of monetary integration in Europe." in Deutsche Bundesbank (ed.): *Fifty years of the Deutsche Mark, Central Bank and the currency in Germany since 1948*. Oxford: Oxford University Press, Chapter 15, pp. 731–789; see also *Historisches Archiv der Deutschen Bundesbank*.
- ²⁶ Bernholz (1999), *op. cit.* See the interview by Peter Bernholz of Hans Tietmeyer on 9 July 1995.
- ²⁷ Connolly, *op. cit.*
- ²⁸ R. Vaubel (2000) "Commentary on Issing" in: *Hayek, Currency and competition and European Union*, Occasional Paper 111. London: Institute of Economic Affairs. See p. 62.
- ²⁹ When secession rights were discussed at the 2001 regional meeting of the Mont Pèlerin Society, Peter Schmidhuber, a former banker at the Bundesbank caused a murmur by claiming axiomatically: "The EU is for ever."
- ³⁰ This term and concept were introduced by Erich Voegelin in 1938 and by Raymond Aron in 1939 [*religions séculaires*]; see also H. Bouillon, (ed.) (2001) *Do Ideas Matter?* Brussels: Center for the New Europe, pp.43 ff.
- ³¹ See Evans-Pritchard, *op. cit.*
- ³² See B. Vandulet (2001) "Macht und Ideologie in Europa: Wie die EU regiert wird"; *Deutschland-Brief* (August/September), pp.6–13.
- ³³ See A. de Jasay, "Europe's Social-Democratic Government", *Wall Street Journal Europe*, 5 December 2000. In the apt wording of A. de Jasay, "all but a few are moving towards this socialist superstate with their eyes wide shut."
- ³⁴ W. Kasper (2001–2002) "Economic freedom watch", *Policy* (Australia) 17(4): 37–43. See p.42.
- ³⁵ Admittedly, there is increasing resentment among young people in Italy, Sweden, Spain and even in Germany as books and periodicals testify.
- ³⁶ See the work of the human rights analyst Alfred de Zayas.
- ³⁷ A. de Jasay (1997) *Against Politics*. London: Routledge. See especially the section on liberties versus rights.
- ³⁸ J. Gwartney and R. Lawson (2001). *Economic Freedom of the World, Annual Report 2001*. Vancouver, Canada: Fraser Institute. See Chapter 5.

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Ships Passing in the Night

by John Rennie Stewardson

DURING THE FIRST WEEKS after the introduction on 1 January 2002 of the euro as the everyday currency of the twelve members of Economic and Monetary Union (EMU, that flightless bird), we have been hearing many and varied views about its reception by the people. Although the cost of the introduction has amounted to scores of billions of pounds sterling for the EU membership as a whole (including preparations in the UK, it should not be forgotten), the peoples' use of the euro as a currency is only part of the picture, and I suggest that we should all be pondering the wider considerations.

THE GOVERNOR of the Bank of England, Sir Edward George, has said that a single currency is not necessary for a single market, but that once it is in place it will lead to political union. Also, history has shown that when monetary unions have been set up between non-federated states, they have failed after a few years. There are several examples of this from the 1850s onwards. Indeed, it has since the 1940s been the desire of many socialist-communists leaders of several Western European countries to create a federal union first, to be followed by economic and monetary union, but they calculated that the peoples

of Europe were not prepared to accept federal union. So these politicians planned to lead their people "slowly and unconsciously" towards integration and political union. By the roundabout way of the innocent-seeming Common Market through the Single Market and on to Economic and Monetary Union, and then the trap would snap shut and their goal would be achieved. But it is becoming more and more widely recognised that monetary union is a mere stratagem masking the purpose of bringing about integration and federation. Leading figures have been saying this for many years all around the EU (except in the UK), and Romano Prodi, Commission President, said it again on the BBC on New Year's Eve 2001/02.

However, Gordon Brown and Tony Blair are still clinging to their charade of the five economic tests as their criteria for the UK's readiness to join EMU Third Stage, subject to a referendum. These tests are purely subjective and are largely unmeasurable with precision. Also, even if compliance with the Treaty convergence criteria is deemed to be achieved, the Treaty requirement of sustainability of compliance cannot be calculated for several years. This is because, assuming no untoward economic shocks occur, the UK economic cycle has of

recent times spanned about 8 or 9 years, and our own performance over such a time should be the minimum realistic assessment period. This accords more with Gordon Brown's thinking which reportedly centres around 2008 or 2009 for entry, whereas Tony Blair is keen on 2003. Meanwhile, in mid-January 2002, Gus O'Donnell, the head of macroeconomic policy and international finance at the Treasury, and his predecessor Sir Alan Budd, have firmly stated that economics can never be "clear and unambiguous", that there is always room for disagreement, and that the decision to join will ultimately be political.

In January 2002, Romano Prodi reminded the Government that the UK should join the Exchange Rate Mechanism (ERM) for two years before joining the Third stage of the EMU, although this requirement was waived in the case of Italy and Finland when they joined the euro. Prodi has spoken of it as a Treaty obligation on the UK to join the ERM first, but Article 1(6) of the Resolution of the European Council on the new ERM states that participation is *voluntary* for member states outside the euro area. Prodi's statement reawakens dreadful memories of the UK's two ruinous years of 1990–92 when it was a

member of the ERM for the first time. During those fateful two years we suffered a huge rise in business bankruptcies, over 60,000 homes were repossessed, the value of 1¼ million homes fell below their mortgage levels, unemployment nearly doubled, and the cost to the nation of the failed venture was estimated to be between £68 and £79 billion. The whole disastrous blunder was a shot in the dark. Next time, if there is one, there will be no excuses.

Several of the twelve members of the EMU fudged their economic figures straining to meet the convergence criteria for joining and were allowed in by a complaisant Commission exerting a cynical elasticity on the Treaty requirements. Now, three years on, we see from the Commission's *EU Economy Review 2001* that the inflexible nature of the 'one-size-fit-all' exchange rate and interest rate regime of the European Central Bank (ECB) is causing serious problems for at least five states: Spain, Holland, Finland, Ireland and Portugal. The *Review* describes the condition of Portugal as "alarming".

IT IS A CONSTANT SOURCE OF AMAZEMENT to many that the Commission and the twelve members could ever seriously believe that the 'one-size-fits-all' exchange rate and interest rate system of economic governance would be suitable and effective. The Twelve (as indeed the 15, or later the 20, or 27) are all countries entirely different from each other in every way including their economic cycles, so divergence was always bound to happen, and happen repeatedly. The imagery of states joining the EMU and steadily 'sailing in convoy' at a common speed and course is the merest fantasy and is not remotely in touch with reality. It is highly improbable that all twelve will ever converge together, but if they do so at some point, it will be for a fleeting time. A few of the twelve may converge for slightly longer, but that too is sure to pass. The economic cycles of the Twelve are specific and individual to each state and cannot be wrenched into conformity with all the others. As we have been seeing recently, the biggest and most powerful member, Germany, is virtually in recession, with unemployment at over 4 million, and is undergoing its worst economic performance since 1993, and it badly needs lower interest rates. On present form, Germany is getting closer to infringing the Growth and Stability Pact under the Treaty, and if it does so, it could be liable to fines of up to 10

billion euros. (It should be added that, according to *The Economist*, whilst Germany's unemployment in March 2002 is at 9.6%, France's is at 9.0%, and Spain's is at 12.8%.) By contrast, Ireland, one of the smallest members, is in real need of higher interest rates, to curb inflation. These members, like all the others, can do very little about it, having been deprived by the ECB of the control mechanisms of exchange rates and interest rates. So, staying with the maritime imagery for a moment, it is not a case of the eurozone members 'sailing in convoy', but rather being 'ships that pass in the night'.

Adding a stir to the EU cauldron, some eurosceptic noises this January have been coming from Italy, Germany and France. Italy's Prime Minister Silvio Berlusconi, himself a non-federalist, has some in his cabinet who, according to reports, have been rocking the boat. Antonio Martino, the Defence Minister, suggested that the euro could end in failure and perhaps even jeopardise European peace. Eulio Tremonti, the Finance Minister, made derogatory remarks about the euro, as did Umberto Bossi, Minister for Institutional Reform. In Germany, Edmund Stoiber, Bavarian State Premier for nine years, was nominated in January 2002 to challenge Chancellor Schroder in the September 2002 elections. Stoiber is eurosceptic, anti-federalist, pro-freemarket, against EU tax-harmonisation and has strong reservations about the euro and enlargement. Developments on the German scene in the next few months should be interesting. In France, Professor Jean-Jacques Rosa, a eurosceptic economist of the National Foundation of Political Sciences was quoted in January 2002 as expressing the following view: "*Economists have been saying for years that the euro would eliminate major variations in prices across Europe. I don't know whether they really believed it or whether it was pure propaganda. Now customers can see for themselves that it is a ridiculous and impossible idea. If you have independent states with their own fiscal policies, tax regimes, salaries and customer habits, then the euro will never be worth the same in each of them. The only way it will is if you create a European Superstate controlled centrally – and that will never work.*"

SUPPORTING THE FEDERALIST LINE, at the end of 2001 Hans Eichel, the German Finance Minister, was reported as saying: "*The currency union will fall apart if*

we don't follow through with the consequences of such a Union. I am convinced we will need a common tax system." He also said it was clear that if the UK were to join the euro, it would have to agree to co-ordinate its tax policies with those of its EU partners. This view accords with Romano Prodi's attitude that the euro would create a situation allowing the EU to impose a range of economic policy harmonisations that it had hitherto found it politically unacceptable to introduce. Other sources see potential dangers for the euro, for instance, the Organisation for Economic Co-operation and Development (OECD) believes that the euro's success depends on major structural reforms to push forward a flexible and open economy. The OECD report in mid-January 2002 reveals that far from converging, EU economics have been *diverging* since the Third Stage of monetary union began three years ago. It questions how a single currency can operate properly in a zone where sudden changes, such as increases in the oil price, can lead to asymmetric shocks which affect some countries and regions more than others. The Report says that the introduction of the eurozone remains stifled by cumbersome administration reputations, rigid labour markets and high operating costs. This concern is shared by the Bank of England's director for Europe who warns of the risks of joining a 'one-size-fit-all' monetary policy with sterling over valued and European markets remaining unreformed and inflexible. Even Gordon Brown at the G7 meeting of industrial nations in April 2001 observed that matching the eurozone's 2% inflation target "*would risk lower growth and higher unemployment.*"

Coming back to the introduction on 1 January 2002 of the euro as the everyday currency for the eurozone, the media have been full of comments on the various aspects of this event and have given great importance to it. But from the political perspectives, the euro-for-shoppers-and-travellers is as a grain of sand compared with the mountain of problems and disadvantages which would follow in the train of joining the Third Stage of EMU if the UK were to take that disastrous course. First of all, how will the Government attempt to satisfy itself, and the country, as to the fulfilment of the bogus five economic tests? The Budget Economic and Fiscal Strategy Reports in 2000 and 2001 said the determining factor is the national economic interest and whether the economic case for

joining is clear and unambiguous. At this point we should recall the Treasury officials' view mentioned earlier, as well as the Treaty requirement of "a high degree of sustainable convergence". Then, how would the Government deal in the position if it purported to be satisfied on the five economic tests? What forms of enquiry would be allowed, and by whom? Would thought and detailed debate be given time in both Houses of Parliament? How would the Referendum Questions be drafted, tested and debated, and by whom? Would ample time be allowed for that process to be checked and challenged by all the appropriate people? If after unrelenting propaganda and persuasion from the Government the people yield and say 'Yes' to the referendum and the UK were to join the eurozone, would we be required to join the new ERM for the two-year period beforehand? And, of critical importance, would we be likely to be allocated an appropriate exchange rate, with probably differing views in the Commission and amongst the various member states as to what that rate should be? This went terribly wrong in 1990 when we first joined the ERM, and it would be devastating if it happened a second time. As part of the joining routine, we would have to hand over forever our foreign reserves (of the order of £26 billion) for the ECB to manage and use as it sees fit, and subscribe to the ECB's capital, and make further payments if called upon to do so.

AS THE UK HAS REMAINED OUTSIDE the Eurozone (which started with the Third Stage of EMU on 1 January 1999), it may not be widely realised that the Commission and the Council have been overseeing the economies and finances of all member states for many years. During the First Stage of EMU, started in July 1990, every member state had to adopt measures and 'multiannual programmes' to ensure lasting convergence. In the second stage, which started in January 1994, those

requirements were reinforced and all member states were required to "start the process leading to the independence of its Central Bank". Bank independence was an early initiative of Gordon Brown, in obedience to the Treaty, soon after Labour gained office in May 1997. Since then many of the Chancellor's actions and decisions have tacitly been taken with the Treaty framework of requirements very much in mind. The latest Council opinion on the updated convergence program for the United Kingdom 1999/2000 to 2005/2006 was issued in February 2001, continuing their monitoring vigilance.

If this Government were to take us into the euro, in addition to being thenceforward under ECB control regarding exchange rate and interest rate, and even more under the scrutiny of the Commission, we would be subject to the progressive harmonisation of a range of taxes including VAT, corporate, capital and ultimately income tax. Increasingly every aspect of our economic, monetary, fiscal and social policy would be controlled. The EU federalists are using the 11 September situation and also the approach of the enlargement issue as stimuli to hasten steps toward further integration. Amongst these will surely be the removal of more vetoes, 30 or 40 which disappear in every treaty, the objective of the Commission being qualified majority voting (QMV) by member states on all decisions. If the UK were to join the euro and these changes occurred, we would become, more completely than we are already, a mere province in the EU, and our influence in the wider world would be eroded. Our national stance in the world scene on issues such as Foreign Affairs, or Defence, or Police and Crime, or the Environment would not be propounded by a UK Government Minister but by an appointee of the Council advised by the Commission. In fact, this has already happened in the case of Trade, where the EU spokesman is the French Commissioner

Pascal Lamy, depriving the UK of its national status at meetings of the World Trade Organisation. A likely consequence at some stage is that the UK representatives on the UN Security Council, the G7 group of industrial countries, the World Bank, the International Monetary Fund (IMF) and other bodies would likewise cease to act and would be replaced by representatives of the EU.

OVER THE NEXT SEVERAL MONTHS it will be interesting to see how the euro performs in relation to sterling, the dollar and the yen, and whether and how it is influenced by the newly introduced notes and coins for use by the general public. In the UK various polls show that a continuing solid majority of the population do not want to join the euro, and important indicators such as employment levels, economic performance, and inward foreign investment support the view that we are safer and better outside the euro than in. Perhaps prompted by the polls and these indicators, in late January 2002 more than 30 Labour MPs and Peers signed a letter urging the Prime Minister to defer a referendum on the euro until after he has kept his pledges on health, education, and transport. The thrust of their message is that the huge economic expense of joining the euro, this "costly distraction" as they call it, would make it impossible for the government to improve the public services before the next election.

There are always many imponderables in the EU scene, and perhaps the only certainty is that a state of flux will continue.

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... news in brief

Commission claims to be dealing with its aid problems

In January 2002, the European Commission was the object of an outburst by the coordinator of the Stability Pact for the Balkans, Bodo Hombach. He accused the bureaucratic process of gigantic delays in distributing aid. These were indeed quite stupendous. It took nearly two years for food aid to be delivered and nearly four years for activities connected to human rights to get under way. It took over six and a half years for aid to reach Latin America and over 8 years for aid to reach the Mediterranean.

Now the whole aid effort has been centralised in an organisation called EuropeAid, which now disburses nearly 6 billion euros per year. Yet despite the alleged improvements, EuropeAid still has some 20 billion euros stuck in the bureaucratic works. This money is the funding for projects that have never come to fruition. For the Balkans, the amount of aid money which remains to be liquidated – i.e. money which has never reached the Balkans – is just under 1 billion euros. There are therefore thousands of projects which have been announced and agreed to but which have simply never been implemented. [Laurent Zecchini, *Le Monde*, 12th March 2002]

BOOK REVIEW

The Marshall Plan: Fifty Years After

Martin Schain (ed.) Palgrave, 2001, 297 pp., ISBN 0-312-22962-3, £30.00

Reviewed by Alex Wieland

UNTIL NOW, it has been largely accepted that the Marshall Plan, the programme devised by the United States government to aid the recovery of Europe after the Second World War, was one of the primary building blocks in the creation of the European Community. In fact, its impact on the formation of the EC has been vastly over-estimated according to Michelle Cini in her essay in this new study of the Marshall Plan.

Nearly fifty-five years after its launch in 1947, the European Recovery Program, more popularly known as the 'Marshall Plan' after its progenitor US Secretary of State George C. Marshall, continues to spark significant controversy. The long-term impact of the Marshall Plan upon the shape of post-war Europe and its relations with the United States up to the present day has continued to be the subject of furious scholarly debate. Eschewing standard discussions of the economic aspects of the Marshall Plan, *Fifty Years After* focuses much of its attention on its often-overlooked security dimension. Some of the essays presented in this volume take an unflinchingly 'pro-European' line, viewing the Marshall Plan as a golden opportunity for the construction of an autonomous European security system with the complete blessing and approval of the United States; more sceptical historians challenge this long-cherished image of the Marshall Plan as a key initial step on the path to European security integration. Yet, if there is a common theme among all the contributors, it is the desire to dispel what they believe to be popularly-held myths about the nature of the Marshall Plan, its implications for Western European and (by extension) Transatlantic security, and US policy motives which formed the backbone of the entire programme.

On one end of the spectrum is Jolyon Howorth, currently Jean Monnet Professor of European Politics at the University of Bath and formerly an instructor at the Western European Union's Institute of Security Studies in Brussels. His interpretation could be classified as being avidly pro-integration. He claims that it was the avowed intention

of the Marshall Plan and the "idealistic" US foreign policy planners in Washington who conceived it, to build a Europe that was not only economically self-sufficient and a direct competitor of the US, but also politically and militarily independent of American control.

Howorth states that "*the entire diplomatic and institutional nexus stemming from the Marshall Plan, including the drafting of the Brussels Treaty, the establishment of the OEEC, and all that followed in their wake, was explicitly predicated on the belief that Europe should recover her autonomy*" and that reconstruction would not be a ploy to rebuild Europe in "*the American image*" (p. 42, 43). This is to say that the US planners hoped to create a European defence system that would not be subject to direction of the Pentagon or the Truman administration and would be left to the control of the Europeans themselves. In essence, it was to be a supranational "*embryonic ESDI [European Security and Defence Initiative]*" built around a solid Anglo-French military alliance which would provide much of the system's planning and direction (p. 46). Therefore, in Howorth's opinion, the Marshall Plan presented a golden opportunity for 'Europe' to take control of its own defence.

Yet, according to Professor Howorth, this was also an opportunity that Europe missed, as the United States started to become more actively involved in Western European defence in the late 1940s. For the author, this shift in US policy towards the creation of a Transatlantic alliance ultimately culminating in the foundation of NATO in 1949 was not, as widely held, due to concerns over escalating Cold War tensions and fears of imminent Soviet invasion. Rather, he contends that it was British "*hostility*" to integrating its armed forces with those of its Continental neighbours and the UK's ultimate "*failure to play the European role that history and geography had carved out for her*" which torpedoed American interest in seeing the development of an independent and autonomous

European defence system (p. 49, 58). Indeed, Howorth claims that it was Whitehall's inclination to skirt the idea of integrating its forces which propelled it to hide behind the "*disingenuous*" argument that deep UK involvement in a European-controlled system would conflict with Washington's views and would force an American return to pre-war isolationism. Therefore by dragging its feet, London was able to shake US confidence in its original plans, compel the Americans to abandon their hopes for a Euro-directed defence initiative, and force the Truman administration's shift toward favouring a more Transatlantic partnership.

THIS INTERPRETATION suffers from numerous flaws, however. To begin with, Howorth's case that American foreign policy behind the Marshall Plan was heavily influenced by 'idealistic' notions of creating a reconstructed competitor of the United States is weakened by his choice of sources. Primarily, he draws his evidence for this contention from statements made by people *outside* the Truman foreign policy team at the time of the Plan's formulation, people like *Foreign Affairs* editor Hamilton Fish Armstrong and former Secretary of War Harry Stimson. While both were certainly respected observers of US foreign policy at the time, neither individual's statements can be considered, by themselves, to be definitive gauges of Administration thinking on the future of European defence. All that these comments prove is that there existed some current of 'idealism' in foreign policy thought on Europe, though not necessarily in the government itself. By relying on them, Howorth undermines the basic validity of his argument that America was *officially* committed to fostering an independent and autonomous Europe in command of its own defence.

Furthermore, to contend that the decision to shift to a Transatlantic alliance as the basis of European defence was *solely* the result of 'unwarranted' and 'obstructionist' British Euroscepticism is completely to

ignore the profound impact of Cold War considerations upon US attitudes toward Western Europe. He acknowledges that the underlying American idealism behind the security dimension of the Marshall Plan came under "great strain" in the period between the Plan's introduction in 1947 and the signing of the North Atlantic Treaty two years later. But he barely hints at the fact that this period saw some of the most pivotal events in the hardening of the East-West split. The Berlin Blockade, the Soviet-sponsored coup in Czechoslovakia, and the civil war in Greece all served to raise fears within the Truman administration that the USSR was committed to dominating the European continent and that, if unprotected, the Western European states faced the prospect of imminent Soviet invasion and occupation. This heavily influenced US moves to introduce countermeasures to its foreign policy, most notably the policy of 'containment' which stipulated that the US would use its resources to counter Soviet expansion anywhere in the world and especially in Western Europe. It was these worries, as much as any concern over intra-Allied squabbles, that compelled the Truman administration to take a more active position on European defence in the late 1940s. This is a position the current US administration continues to maintain with its consistent commitment to NATO and to an American military presence in Europe.

THE ESSAYS by Robert Latham of Columbia University and Michelle Cini, Monnet Senior Lecturer in European Community Studies at the University of Bristol, are far less breathlessly pro-European integration. Instead, they suggest that US motives in the development and implementation of the security dimension of the Marshall Plan were indeed far more complex and complicated. For Cini, the very notion of a direct causal link between the Marshall Plan and the establishment of the

EEC is erroneous. She asserts that such a relationship should not be assumed and "must be detached from the retrospective myth-making that surrounds at least some historical overviews of post-war Europe" (p. 14). She argues that US interests in introducing the Marshall Plan and the post-war security arrangement for the Continent along Transatlantic instead of strictly European lines, were driven more by pragmatism than by 'idealism'. Marshall aid was designed to promote internal Western European co-operation. But, she argues, it was also intended to foster strong collaboration between the US and Europe, a fact often forgotten today (p. 22). Moreover, Washington saw its support for European integration as "necessary for the achievement of American policy objectives in Western Europe" e.g. containing the Soviets, and was therefore a "means to a set of ends" (p. 17).

Latham goes one step further. He argues that security was deliberately placed at the forefront of the Marshall Plan in order to forestall objections from domestic conservative opinion which favoured minimal engagement in Europe or, indeed, anywhere else in the world. Far from being a vehicle for encouraging the Europeans to take command of their own defence, the Plan provided a way for the Americans to take a direct role in conjunction with their European allies to prevent the possibility of a Western European 'drift' into the Soviet camp (p. 69). While this would mainly take place by assuring these states' economic security, escalation of Cold War tension prompted the "need to move substantially beyond economic measures" and to militarise US-European relations along the lines of US containment policy. Moreover, the assumption of this activist role by the United States had the effect of assuaging individual European interests and concerns. For example, US command and leadership suited both Britain and France as this allowed them to focus much of their

political and military attention on Commonwealth and colonial concerns while still assuring their protection from the USSR. In this fashion, Latham asserts, the foundations of NATO and of a Transatlantic defence relationship were cemented. So, instead of the picture of the aloof power that Howorth suggests the United States was at this time, we instead get the picture of an activist US foreign policy that sought to grow and adapt to the changing international political scene in Western Europe.

THE MOST INTERESTING FACET of Latham's contention is his demonstration that the current debate on the future nature of European defence is one that has been simply deferred for the past fifty years. By taking the dominant lead on European defence, the US relieved the Western European states of the pressing need to provide for their own defence. He argues that, "[w]hile Western Europe would exercise influence over the character of NATO strategy and weapons development throughout the Cold War, ultimate responsibility for the production and maintenance of the security system per se, did not lie with these states," but with the US (p. 77). In other words, the Continent was left free to pursue its economic reconstruction whilst largely sheltering under the American defence umbrella. Now, as Latham rightly points out, with the collapse of the Soviet Union and the absence of a new threat of similar size and magnitude, the debate on European defence has returned to much the same place it was in the late 1940s, as the US and the EU grapple and often clash over the future of NATO and the ESDI.

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... news in brief

Russia to join NATO?

The Secretary-General of NATO, George Robertson, has said that a place is being kept warm for Russia to join NATO, and that in future she could sit at the same table as all the others – "between Portugal and Spain". A new treaty is to be drawn up to stipulate the terms of the relationship between NATO and Russia by May 2002, when a NATO summit will be held in Iceland. The German Chancellor, among others, has said that he wishes to see a rapprochement between NATO and Russia. However, the precise content of these new relations remains unclear. Mr Putin wants "an equal partnership", to be as permanent as possible and to cover all

areas. This would effectively mean making Russia a member of NATO without submitting her to any of NATO's rules – an outcome which has little support among other NATO states. Most NATO states do not want to allow Russia to have any right of veto over what the Alliance does. Certainly, they do not want Russia to be able to veto NATO enlargement to include the Baltic states. On the other hand, NATO states are extremely keen to get Russia on board in the 'war against terrorism'. The same goes for non-proliferation and arms control. It is odd that these discussions should be continuing at the very moment when the USA says it still has plans to deploy nuclear bombs against Russia in the case of a conflict with that country. [Andreas Middel, *Die Welt*, 12th March 2002]

CHUNNEL VISION

Blueprint Europe

by Dr Lee Rotherham

Monsieur le Président Giscard d'Estaing,

We have the great pleasure of sending you the latest draft of amendments to the Convention on the Future of Europe.

Les voici, as un ten point plan, pour votre déléctation et dégustation:

PROJECTION

We feel it is time to drop the 'twelve stars on blue' logo as it is already a national flag – and worse, has a eurosceptic red line running through it; the emblem of little Cape Verde off the coast of Senegal. Unlike Portugal, it has eenough economic confidence to keep its escudo, despite a 1997 GDP per capita of only \$833. According to UN statisticians, eight threatened species live there, as opposed to fifteen in the EU, but we do have another dozen applying to join.

ACCESSIBILITY

We can already find every document in the EU world on the web, except the interesting ones. All MEPs are already on line, which in terms of remote public accessibility at least puts them ahead of MPs – most of whom will be totally unaware that a fake Mexican pixel anarchist has e-mailed them a virus with the message, "*Buenos dias, escalvos del capitalismo*" [sic].

NORDICS

We should assess for a wider membership of EMU using the five economic tests, the seven economic dwarves and the four economic Horsemen of the Apocalypse. Francophone West Africa, Kosovo and East Timor have effectively already entered the euro, as have bits of South America, islands off Newfoundland and Australasia, and a chunk of Antarctica. Then there is the Vatican, San Marino and Monaco to complete the zone of economic convergence. So why not use the Commission propaganda machine to roll over the two guys in polo necks with their Labrador who kept the Danish krona?

TRUFFLES

Increased monies must be spent on the (existing) 'Journalists In Europe' programme for healthy indoctrination of the

leading opinion makers of the printed and broadcast word. A special Jean Monnet School for Paparazzi to be established in Milan, with a three week course in Vespa Management While Under the Influence of a Fine Bordeaux.

ALTERNATIVE EMPLOYMENT

In the noblest traditions of grandiose nomenclature, a new PESCATOR programme should be installed establishing final Commission control of the UK fisheries. This five-year plan for vacuuming the North Sea will be followed by the EKETHUMP and LAZARUS programmes reinstalling the British fleet workforce in a waffle factory outside Antwerp.

LATE ARRIVALS

All trains will run on time. Despite Railtrack privatisation having been based originally on deregulation through a Trans-European Network directive from Commissioner Kinnock's office.

OBFUSCATION

Lately released but scarcely noticed has been a new set of regulations on how classified material will be held by the Commission. This includes Top Secret level documents (graded as causing exceptionally serious harm to one or more governments, or to the interests of the Community, if released). Disappointingly, according to HMG, the Commission does not yet hold any. Notably, there are no restrictions on those who have access to these documents from travelling to Havana or Baghdad for their holidays, but the regulations do treat as seriously illegal the releasing of documents of interest to whistleblowers or to those opposing the clandestine fulfilment of Ever Closer Union. This is most unfair as the Marxists can get all the money while the eurosceptics have all the jail time.

OUTRE-COLDSTREAM

We feel it is time to follow the SNP political agenda, grant Scotland independence, and place it immediately under the suzerainty of Brussels. Edinburgh politicians can then bask directly in the reflected glory of three votes in the Council of Ministers and none in the European Central Bank. In compensation, Scotland will gain a chauffeur-driven buggy in the Ryder Cup.

NEO-CLASSICISM

Harmonisation of the confiscation of wealth should continue, to repair the pavements of Brussels (Distrito Federale) and finish building the skyline. We already have a street policy cleverly identified by M. David Wilkinson of *These Tides* as *Façadism* – ripping down old houses while keeping the old frontage, so that to the casual observer the old edifice is still in place. This is seen as a fitting metaphor for the European construct as a whole, destroying democracy and the nation state by means through which the man on the street cannot notice. Subsidies should facilitate this.

SUPERPOWER STATUS

The vigour of the European Union will be demonstrated through an aggressive airwaves policy across the whole planet. As is already known, the TV series *Highlander* (agh, ye'll not be wanting yer head noo) was funded by the Commission back in the 1990s, as an endorsement of infra-continental fraternity, fellowship, and sorting disputes out in a civilised manner. However, this budget should now be increased to immediately facilitate broadcasting of *Gunga Din* and *Carry on up the Khyber* to all in the Tora Bora area as a prelude to an EU motorcycle unit heading East of the Oder sometime in the next decade.

Monsieur le Président de la Convention,

We hope to have full agreement to this ten-point plan before it is released in full translation to the delegates. The only possible downside is the acronym.

Yours federally, ...

Dr Lee Rotherham is Secretary of Conservatives Against a Federal Europe.

THE EUROPEAN FOUNDATION

The *Great College Street Group* was formed in October 1992 in order to oppose the Maastricht Treaty. The group, consisting of academics, businessmen, lawyers and economists, provided comprehensive briefs in the campaign to win the arguments in Parliament and in the country. The European Foundation was created after the

Maastricht debates. Its task has been to mount a vigorous and constructive campaign in the United Kingdom and throughout Europe for the reform of the EC as a community of independent sovereign states. The Foundation continues to establish links with other like-minded institutes across Europe.

Objectives

The objectives of the Foundation, set out in its constitution, are as follows:

- to provide a forum for the development of ideas and policies for the furtherance of commerce and democracy in Europe;
- to increase co-operation between independent sovereign states in the European Community and the promotion of the widening and enlargement of that Community to include all applicant European nations;
- to resist by all lawful democratic means all and any moves tending towards the coming into being of a European federal or unitary state and for the furtherance and/or maintenance of such end;

Activities

The Foundation pursues its objectives by:

- organising meetings and conferences in the UK and in mainland Europe;
- publishing newsletters, periodicals and other material and participating in radio and television broadcasts;
- producing policy papers and briefs;
- monitoring EC developments and the evolution of public opinion and its impact on the political process in the main EC countries;
- liaison with like-minded organisations in other EC and EC applicant countries and elsewhere;
- liaison with trade associations and other professional bodies affected by EC action and policy.

The Foundation

The Foundation addresses itself to the general public and to politicians, journalists, academics, students, economists, lawyers, businessmen, trade associations and the City.

It concerns itself with the following main topics:

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- economic and monetary matters;
- foreign policy;
- security and defence;
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- the Common Agricultural Policy;
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