

**EUROPE UPDATE 2005 – Current Challenges, Future Perspectives**  
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**CLOSING REMARKS**

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It is clear that the EU is a significant global actor that plays a significant policy role across a range of international and transnational issues spanning trade and economics, environmental and security fields. We have heard from the Swedish Minister of Foreign Affairs, Ms Freivalds, about the EU emerging competency (in both senses) in the field of foreign and security policy.

For the past few years, the public debate about the Europe and the EU has been focused, if not fixated, upon the future, especially in the post-enlargement era on constitutional reform and the ultimate fate of the draft constitution. The project has now officially stalled. To use the Commission's own assessment in the recently published Legislative and Work Programme for 2006,:

“it is unlikely that the Constitution will be ratified in the foreseeable future”.<sup>2</sup>

Grim words perhaps. But rather than give up on the task, however, the Commission proposes that efforts must be redoubled and directed to “Plan D” – the plan for

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<sup>1</sup> National Europe Centre homepage: <http://www.anu.edu.au/NEC/index.php>

<sup>2</sup> “Unlocking Europe's Full Potential: EC work programme for 2006” (COM 2005 531), Brussels, 25.10.05 final.

democracy, dialogue and debate. The Commission views the recent referenda rejections as a “wake up call”, rightly reminding us that the future of Europe rests with its peoples, and convincing them that the reforms proposed will produce a more prosperous and secure Union for the benefit of its citizenry. These are reflected in the key strategic objectives of the Commission for the end of this decade, which are: prosperity, solidarity, security and Europe as a world partner.

It is vitally important not to overstate the significance of the rejection of the draft constitution – the document is in many senses a consolidation of past achievements, and none of these are unwound or damaged by the draft’s current state of limbo.

One of the purposes of this Europe Update, manifestly, is to draw lessons from Europe and the EU that are relevant to Australia. Debate in many policy fields in the EU is often about the application of the principle of subsidiarity, and in a field of shared competency it is more appropriate for action by the Community rather than the member states. As a comparative criminal lawyer, I see many similarities and differences. Unlike the EU, Australia lacks the principle of subsidiarity in its constitution to guide the division of powers under its system of ‘cooperative federalism’. This invariably leads to political tussles between federal and state governments on how best to share powers.

The current focus is on how to best fight the war on terror – indeed, today the Federal government is attempting to shepherd through far reaching laws to deal with terrorism. This rests on a consensual referral of powers from the States to the Federal Parliament, and considerable efforts at intergovernmental cooperation.

The EU has a strong commitment to creating an “area of freedom, security and justice” through intergovernmental cooperation. For example, the Commission of the European Communities *Annual Policy Strategy for 2006* proposes the following key security initiatives for 2006:

- Adopt proposals to enable national police forces to operate on the territory of another Member State and on the use of databases for external border control for law enforcement purposes.
- Launch of a computerised system of exchange of information about criminal records.
- Develop and start implementation of an EU Action Plan on Public-Private Partnership for combating organised crime and terrorism.
- Enhance the funding of security research by improving the coordination of existing capabilities across the civil, security and defence continuum.<sup>3</sup>

This work plan will be particularly challenging in the EU context following the recent enlargement, and the need to ensure cooperation between 25 members states. It will also be challenging because in the field of criminal justice, the states (both in Australia and the EU) jealously guard their control over traditional national competencies related to 'law and order'. The need to coordinate nationally and supranationally may lead to ambit claims and political power grabs. The difference, as I see it, is that the EU has a much stronger appreciation that in the coordination and development of security and justice policy that there must strong efforts at strengthening civil society and the rule of law.

Security cannot come at the expense of fundamental human rights and the rule of law. As Paddy Hillyard in a recent essay to note the launch of a new European civil liberties network ([www.ecln.org](http://www.ecln.org)) reflected on the lessons of waging a war on terrorism in the 1970s that dispensed with fundamental rights:

The lessons from Ireland are clear. Widespread violation of human rights in the so called 'war against terrorism' is counterproductive. It erodes democracy by undermining the very principles on which social order is based and alienates the communities from whom the authorities need support in dealing with political violence."<sup>4</sup>

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<sup>3</sup> Commission of the European Communities, *The Communication from the Commission to the European Parliament and the Council: Annual Policy Strategy For 2006*, Brussels, 2.3.2005 COM(2005) 73 final, at p. 8.

<sup>4</sup> P Hillyard, "The 'war on terror': Lessons from Ireland" (2005) *European Civil Liberties Network*, p 4.

There is traditionally a much more friendly approach to civil liberties in Europe, not least because of the central place of the European Convention on Human Rights has played in public discourse in Europe over the past 50 years – in this regard I commend to you the Annual Schuman lecture by Justice Kirby who offered a tribute to the work and influence of the European Court of Human Rights: <http://www.anu.edu.au/NEC/kirbypaper.pdf>. In addition to ratification, evidence of substantial compliance with the Convention is a precondition for EU membership – one of the so-called Copenhagen criteria. The Convention certainly places clear limits on the ability of a member to impinge profoundly on civil liberties: legal doctrines such as proportionality impose on limits on how ‘tough’ domestic lawmakers and law enforcement officials can be.

An example of the Convention in action is the current fate of the UK Bill for preventative detention orders. Concerns about the dubious legality of the preventative detention orders under the Convention has led to the Bill’s withdrawal in recent days and an undertaking to rethink some of these policies. This abandoned UK Bill would however be recognisable to Australians: it has been heralded here by government as “international best practice”, and significantly informed the development of the Bill currently being debated in Australia.

The centrality of human rights and rule of law to public debate in Europe is enviable, and one, I would submit, that Australia’s elected representatives this week would do well to take special heed.

My final job is to thank the multitude of people who made the Europe Update possible. First to the various speakers who travelled from far and wide to share their expertise, especially

- Ms Laila Freivalds, Foreign Minister for Sweden
- Michael Treschow, Chairman of Ericsson.
- His Excellency, Bruno Julien, EU Ambassador to Australia and New Zealand
- Professor Ian Chubb, Vice-Chancellor, ANU
- Dr Coral Bell, Visiting Fellow, Australian Strategic Policy Institute, ANU

- Don Kenyon, Distinguished Visiting Fellow, National Europe Centre
- Associate Professor Philomena Murray, Contemporary European Research Centre, University of Melbourne
- Mr Mitchell Hooke, Chief Executive of the Minerals Council of Australia

And finally, a special thanks to John Gage, Deputy Director and the chair of the update, who with colleagues at the Delegation of the EC and the Embassy of Sweden, devised and developed this program. I am confident that this is the inauguration of what will become a significant annual event for those interested in European affairs. Thank you for your participation.