controversial subjects, the Directive provides that the human body and its elements in their natural state are unpatentable, but that inventions based on an element isolated from the human body may be patentable. Processes for cloning human beings, and the use of human embryos for industrial and commercial purposes are excluded from patentability, as is germ-line gene therapy. The same is true of processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from these processes.[33] The Directive also attempts to clarify the exclusion from patentability of plant and animal varieties under Article 53(b) of the European Patent Convention.[34]

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IV. EXTERNAL RELATIONS

A. The Treaty of Amsterdam

The Treaty of Amsterdam, signed on 2 October 1997 and in force since 1 May 1999, will make important changes to the external powers and procedures of the European Union.

1. Foreign and security policy

The new Title V (Articles 11 to 28—ex Article J) sets out a clearer and more coherent framework for the Union's common foreign and security policy (CFSP). CFSP objectives are not greatly changed, but there is now a clear hierarchy of methods of making policy and law:

- defining the principles of and general guidelines for the common foreign and security policy;
- deciding on common strategies;
- adopting joint actions;
- adopting common positions;
- strengthening systematic cooperation between member States in the conduct of policy.

For each of these five methods clear institutional procedures and duties are set out. There is new provision for the presidency in its role of representing the Union in CFSP matters to be "assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy".

Unanimity in Council voting remains the basic rule, but there are new provisions for "constructive abstention"—a member abstaining "shall not be obliged to apply the decision, but shall accept that the decision commits the Union" and must not obstruct consequential Union action. The Council also has a

33. All ethical aspects of biotechnology are to be evaluated by the Commission's European Group on Ethics in Science and New Technologies. The Directive also acknowledges the need to recognise the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. See also Sterckx [1998] E.I P.R. 123; Nott [1998] E.I.P.R. 347.

34. But now see Nott [1999] E.I.P.R. 33.

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new power to take implementing decisions by qualified majority, but there is a "Luxembourg compromise" escape route for minority States to block any such decision.

Proposals to give the Union international legal personality were rejected, but the Council is given a curious new power to conclude external agreements with States or international organisations. Since the Council does not have international legal personality either, this must mean that it acts as agent for the member States collectively. A member State may subject such an agreement to national ratification. A Declaration (addressed firmly to the European Court) says that neither the new power nor any resulting agreements shall imply any transfer of competence from the member States to the Union.

The procedures for financing the CFSP—which caused endless friction under the Maastricht Treaty—are replaced by a presumption that operational CFSP expenditure will be charged to the Community budget "except for operations having military or defence implications and cases where the Council acting unanimously decides otherwise".

The revised provisions on defence move this sensitive question from the realm of the hypothetical into the framework of CFSP. But the door leading from "common defence policy" to "common defence" remains double locked—requiring first a decision of the European Council and, second, national ratification of any such decision. The Western European Union (WEU) will be "an integral part of the development of the Union providing the Union with access to an operational capability". But integration of the WEU into the Union is subject to the same double lock of European Council decision and national ratification. National policies on neutrality and NATO obligations are not to be prejudiced. The Union may use the WEU for the so-called "Petersberg tasks"—humanitarian and rescue tasks, peacekeeping, crisis management including peace-making—and where this happens, all member States of the EU (including non-members of the WEU) may participate.

2. *Immigration and asylum*

External immigration, visa and asylum policy are of increasing importance in the context of the Union's relations with non-member States. On the entry into force of the Amsterdam Treaty these subjects will move into a new Title IV of the European Community Treaty. Law-making procedures and jurisdiction of the Court will be a hybrid between normal EC and inter-governmental, but will progressively move towards the EC model. The Schengen Agreements on the gradual abolition of checks at common borders, together with their *acquis* of implementing measures, will be integrated as appropriate either into this new Title or into the residual Title VI—the third pillar of the Treaty on European Union—which will now be styled Provisions on Police and Judicial Co-operation in Criminal Matters. The resulting legal maze is too complex to summarise in this note, and will involve the conclusion of special agreements with Iceland and Norway to enable them to continue participation in the Schengen system. Although the Amsterdam Treaty permits the United Kingdom, Ireland and Denmark to maintain a semi-detached approach to the integration and further development of asylum and immigration policies by the Union, all States candidates for admission will have to accept this Schengen-related *acquis* in full.

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3. Human rights

Also of significance for candidates for membership is the extension of Article O (new Article 49) which will make it a legal as well as a political requirement for prospective new members of the Union to respect the principles of liberty, democracy, respect for human rights and the rule of law.

4. External commercial agreements

Finally, the external commercial powers of the Community[1] may be extended, by unanimous decision of the Council, to international negotiations and agreements on services and intellectual property. The demarcation in these areas which resulted from the European Court's *opinion 1/94 World Trade Organization Agreements*[2] (described in the 1997 note) is thus preserved, but the door is left ajar for possible future widening of EC external economic powers. Meanwhile the duty of co-operation between member States and Community institutions in negotiation and implementation of external agreements will remain of crucial importance.

B. Enlargement

Accession applications are under active consideration with Cyprus and from ten Central and Eastern European States: Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic and Slovenia. Successive European Councils at Copenhagen in 1993 and at Madrid in 1995 have elaborated on the criteria to be satisfied by prospective members of the Union. Each applicant State other than Cyprus is already linked to the Community and its member States by a Europe Agreement providing for intensive co-operation in political and economic as well as trade relations. They benefit also from technical assistance through the PHARE programme in preparing for membership and from intensive dialogue at the level of heads of State and ministers. In March 1998 the Council by regulation[3] laid down that for each pre-accession State there should be a Decision and an Accession Partnership to focus on specific difficulties, priorities and objectives. Each Accession Partnership specifies the financial assistance required for the relevant programme, and the Council may withdraw this assistance if commitments in the Europe Agreements are broken or progress towards the membership criteria is insufficient. The Commission's Enlargement Task Force is screening the ability of applicants to accept and implement the Community *acquis*. Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia are on a fast-track procedure towards accession, and substantive negotiations are already well under way.

C. Partnership and Co-operation Agreements

Moving outwards, three of the republics of the former Soviet Union now have Partnership and Co-operation Agreements in force with the Community and its

1. Art.113 (new Art.133) of the EC Treaty.
2. [1994] E.C.R. I-5267.
3. Council Reg.622/98 (1998) O.J. L85.

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member States: Russia,[4] Ukraine[5] and Moldova.[6] Similar agreements have been signed with Turkmenistan, Uzbekistan, Kazakhstan, the Kyrgyz Republic, Georgia, Armenia and Azerbaijan. These represent a new category of EC external agreement, described as being with States "which are not considered to be potential EU members, but are seen as strategically important".[7]

D. Animal Welfare

In January 1998 the Community signed an agreement on international humane trapping standards with Canada and Russia. This establishes standards to ensure a sufficient and improving level of welfare for trapped animals and provides the basis for unrestricted trade in furs and fur products between the parties. It resolves a dispute which went back to the adoption by European Environment Ministers in 1991 of a regulation which not only outlawed leghold traps within the Community but also paved the way to banning fur imports from countries with lower standards of animal welfare.

E. Towards a Fifth Lomé Convention

The Fourth Lomé Convention, revised in 1995 following a mid-term review, will expire in 2001. In October 1997 the Commission sent the Council and European Parliament proposed policy guidelines for the negotiation of a new agreement with the African, Caribbean and Pacific (ACP) States.[8] The Commission called for a stronger political dimension allowing more resources to be devoted to prevention and settling of violent conflicts and stressing the links between political structures, human rights observance and prospects for alleviating poverty and improving health and education. Other guidelines proposed making poverty alleviation the cornerstone of a new agreement, opening up economic partnership, more efficient practical procedures for managing financial and technical co-operation (existing procedures having been shown to be vulnerable to corruption and fraud) and introducing greater geographical differentiation between ACP regions.

F. Sanctions

The measures adopted in response to the use of force against the Albanian community in Kosovo show the Union ensuring the "consistency of its external activities as a whole"[9] by coordinated use of CFSP and EC sanctions. In March 1998 the Council defined a common position on restrictive measures against the Federal Republic of Yugoslavia.[10] This condemned violent repression of the peaceful expression of political views and demanded specific steps towards a

4. (1997) O.J. L327/1.
5. (1998) O.J. L49/1.
6. (1998) O.J. L181/1.
7. Hillion, "Partnerships and Co-operation Agreements between the EU and the New Independent States of the Ex-Soviet Union" (1998) European Foreign Affairs Rev. 399.
8. COM(97)537 final, 29 Oct. 1997.
9. Art.C TEU.
10. Common Position 98/240/CFSP (1998) O.J. L95.

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political solution (such as access for the Red Cross and other humanitarian bodies to Kosovo and public commitment to dialogue with the Albanian community). The Union confirmed the existing embargo on arms exports to the former Yugoslavia,[11] banned supply of equipment which might be used for internal repression or terrorism and imposed a moratorium on government-financed export credit support for trade and investment. Visas would be refused to named Serbian officials having responsibility for repression by security forces in Kosovo. In April the Council, acting under Articles 73g and 228a of the EC Treaty, adopted a regulation[12] implementing those aspects of the common position falling within Community competence.

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11. Common Position 96/184 CFSP (1996) O.J. L58.
12. Reg.926/98 (1998) O.J. L130.

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