

***POLITICS AND POLICY MAKING AT THE  
1996-1997 EUROPEAN UNION  
INTERGOVERNMENTAL CONFERENCE***

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***PhD***

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*Brendan Smith*

London,  
19 June 1999.

*Abstract*

The thesis analyses the negotiations at the 1996-97 Intergovernmental Conference (IGC) of the European Union (EU) and outlines an array of ideas, interests and issues at stake for the actors involved. The thesis has three objectives: (1) to explain the 1996-97 IGC negotiations which led to the Amsterdam Treaty, (2) to identify the key players throughout this process and (3) to examine the concept and characteristics of the EU IGC. This thesis aims to provide both breadth and depth in its analysis, presenting an overview of almost all the significant topics on the IGC agenda while focusing on three major issue areas: institutional reform, Justice and Home Affairs (JHA) and Common Foreign and Security Policy (CFSP). At the same it concentrates on the governments of Britain, France and Germany, while outlining the positions of all other governments and the European institutions.

The thesis has three basic lines of argumentation. The first argues that the 1996-97 IGC was an incremental process where member governments often had poorly defined objectives, leaving the process to drift along with little direction for the greater part of the sixteen months. In turn governments either drifted into agreement without being fully aware of the consequences of their decisions, or they postponed taking decisions on difficult and divisive issues until a future IGC or the post-negotiation phase. The second argument relates to the key players in the IGC process. While all member governments played a role in the IGC process the most influential actor was the Dutch Presidency, followed by the Irish Presidency and the French, British and German governments. Given that the Presidencies played such an important role it is also possible to gain some insight to the 'behind the scenes' role of the Council Secretariat. Finally, there were also occasions when the Commission also proved influential. The third strand of argumentation relates to the concept of the IGC, arguing that since the first Conference the IGC has evolved, being gradually institutionalised into the European Union.

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***CHAPTER I***

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*List of abbreviations*

AE	Agence Europe
BSE	Bovine Spongiform Encephalopathy
COREPER	Group of Permanent Representatives
CDU	German Christian Democratic Union
CEC	Commission of the European Communities
CMLR	Common Market Law Review
CSU	German Christian Socialist Union
DMark	Deutsche Mark
EC	European Community
ECSC	European Coal and Steel Community
ECJ	European Court of Justice
EDB	European Daily Bulletin
EDC	European Defence Community
EIU	Economist Intelligence Unit
EP	European Parliament
EPC	European Political Community
EMU	European Monetary Union
ER	European Report
EU	European Union
FCO	Foreign and Commonwealth Office
FDP	German Free Democrat Party
FT	Financial Times
IGC	Intergovernmental Conference
IHT	International Herald Tribune
IT	Irish Times
HMSO	Her Majesty's Stationery Office
JCMS	Journal of Common Market Studies

***List of abbreviations***

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JEPP	Journal of European Public Policy
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organisation
OOPEC	Office of Official Publications of the European Communities
OUP	Oxford University Press
PPU	Policy Planning Unit
QMV	Qualified Majority Voting
RIIA	Royal Institute of International Affairs
RPR	Rassemblement Pour la Republic
TEC	Treaty of European Community
TEU	Treaty on European Union
UDF	Union pour la Démocratie Française
UK	United Kingdom
WEU	Western European Union

## **INTRODUCTION OBJECTIVES, METHODOLOGY, STRUCTURE, ARGUMENT AND SOURCES**

The 1996-97 Intergovernmental Conference (IGC) of the European Union (EU) was the third major constitutional reform of the treaties within an eleven-year period. The subject of this thesis is the IGC which was convened in late March 1996 by the European Council of Turin and which culminated in the Treaty of Amsterdam, with the conclusion of the IGC by the European Council of Amsterdam on 18 June 1997. The final text of the treaty was signed by Foreign Ministers of Member States on 2 October 1997, but the focus of this thesis ends at Amsterdam.

### **1. OBJECTIVES**

The thesis has three objectives.

1. The first and primary aim is to explain the 1996-97 process of negotiations which led to the signing of the Amsterdam Treaty in June 1997.
2. Secondly, and related to this examination of the process, it aims to identify the key players throughout the negotiations.
3. Thirdly, the thesis aims to examine the concept of the EU IGC as it has developed since the first conference on the European Coal and Steel Community.

There are three reasons for writing this thesis. Firstly, research on the previous Intergovernmental Conferences has tended to focus more on the end game and the results of the process. There have been few attempts to analyse the negotiations from the start of the IGC to its end, taking on board the various range of proposals submitted by governments. This thesis attempts to provide a holistic analysis of this IGC, starting with the Maastricht treaty up until the formal conclusion of the negotiations at Amsterdam in June 1997. Secondly, the literature dealing with IGCs has tended to be

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limited in its analysis, both in terms of the number of Member States and the number of issues under negotiation at the Conference. This thesis aims to provide both breadth and depth. It provides an overview of almost all the significant topics on the agenda, from the setting of the agenda in the post-Maastricht stage up until the conclusion of the Amsterdam Summit in June '97 while focusing on the three major issue areas of institutional reform, Justice and Home Affairs (JHA) and Common Foreign and Security Policy (CFSP). At the same it concentrates on the governments of the three largest Member States: Britain, France and Germany, while outlining the positions of all other governments and the European Commission (CEC) and European Parliament (EP). In the detailed negotiations on the three case studies reference is made to all players that proved influential in shaping the final treaty. Thirdly, this was the third IGC in a ten-year period and the final set of treaty amendments at Amsterdam made reference to another IGC in the near future.<sup>1</sup> Therefore there is a need for further research on what has evolved into a frequent process. This thesis attempts to contribute to the literature.

## **2. METHODOLOGY**

Qualitative research techniques have been employed in carrying out and writing up the research.<sup>2</sup> Two methods were used. Firstly, the wealth of data on the IGC was analysed. As described below in the section on *Sources*, this included material from primary and secondary sources, ranging from official publications from both the Member States and the institutions to newspapers articles. This allowed for a general understanding and explanation to be built up on the 1996 IGC. Once the general framework of the negotiations was constructed, it was possible to look at the details of the data which in turn filled in the bigger picture, while raising a whole series of questions as to the objectives of different governments and the reaction of others. It was at this stage that the second technique of qualitative research, namely, unstructured interviewing, took effect. The interviewing of those officials involved in the negotiations and the preparation of positions for the delegations of their respective governments and the Commission was crucial in understanding the 'twists and turns'

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<sup>1</sup> See Protocol No.7, TEU.

<sup>2</sup> See G. King, R.O. Keohane and S. Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research*, Princeton: Princeton University Press, 1994.

to the IGC. It provided a 'sense and feeling' of what actually went on in the negotiating rooms and the less formal settings. However, given that the thesis deals with the three large areas of institutions, JHA and CFSP, it was important to have identified specific issues to discuss with the IGC negotiators. I have carried out over forty interviews in Dublin, London, Paris, Bonn, Brussels and The Hague. (See appendix 1).

In meeting the three objectives as outlined, the thesis deliberately divides the empirical from the theoretical analysis. The aim here is to have the greater part of the thesis focus on an empirical analysis of the negotiations. The theoretical implications of these empirical findings are dealt with in the final chapter. While the primary objective is to explain the 1996-97 IGC negotiations, the thesis is clear in its criticism of the two previous theoretical approaches that have been used to explain IGCs, namely rational choice perspectives (focusing primarily on Andrew Moravcsik's liberal intergovernmentalism) and the more idealistic neofunctionalist perspectives. The empirical findings of the thesis suggest that the process of an IGC is neither as clear cut nor as structured as the above two theories suggest, but rather is an incremental process.

### **3. STRUCTURE**

The thesis is divided into four parts. The first part contains two chapters dealing with the concept of an IGC. The second part has two chapters which consider the pre-negotiation stage, while providing an overview of the negotiations. The third part includes three chapters which explore the negotiations on three areas: on the institutions, justice and home affairs, and common foreign and security policy. The fourth and final part has one chapter, drawing together the findings of the previous analysis into a series of conclusions.

The thesis focuses in particular on the approach of the governments of Britain, France and Germany, given that successive French and German governments have provided the impetus for European cooperation, while successive British governments have

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seemed indifferent or hostile to the proposals that flowed from this impetus.<sup>3</sup> However, the approaches and attitudes of the governments of the other Member States and the Commission are considered where relevant, particularly those of the Dutch and Irish Presidencies. In this respect the thesis aims to provide an assessment as broad as possible on the IGC negotiations and the players involved while not compromising on the depth of the analysis. The contents and structure of the following chapters aim to strike this balance.

**Chapter I** aims to come up with a series of defining features for the IGC. In doing so it also examines how the process of the IGC has evolved and has gradually become institutionalised into the EU. Throughout the thesis the institutionalisation of the IGC relates to the process whereby the Conference is becoming a regular part of the European Union, occurring side-by-side to the normal business of policy-making *within* the EU. This chapter captures the basic features of an IGC and it allows for the examination of the process of previous IGCs in the following chapter, while also setting the thesis up to return to consider what the 1996-97 IGC tells us about the further evolution and institutionalisation of this process.

**Chapter II** aims to examine the previous IGCs. In doing so it firstly considers the rational choice approach by Andrew Moravcsik and the neofunctionalist approach adopted by Ernst Haas et al. in explaining the IGCs. It then goes on to look at the participants and process of negotiations at previous IGCs, critiquing Moravcsik's approach and that of the neofunctionalists. It is at this stage that the four defining features, as outlined below, can be identified from previous negotiations. The chapter proposes that these four features define the negotiations at the 1996-97 IGC. Therefore, this chapter provides the roadmap for the rest of the thesis.

**Chapter III** considers how the agenda for the 1996-97 IGC was set. It takes a close look at most of the issues that made it on to the agenda while examining the attitude of the British, French and German governments along with the European Parliament and Commission in the run-up to the start date of the Conference on 28 March 1996.

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<sup>3</sup> On France and Germany see P. McCarthy (ed.) (1993) *France-Germany 1983-1993*, London: Macmillan, 1994; F.R. Willis, *France, Germany and the New Europe 1945-1963*, Stanford: Stanford University Press; References on British Hostility; On Britain and EC see Stephen George, *An Awkward Partner: Britain in the European Community*, OUP, 1994.

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**Chapter IV** presents an overview of the negotiations on most of the major issues. It describes the mechanics of the process, looking at the levels of negotiation, the key meetings and individuals, and the general development of the Conference agenda. It also briefly examines the style of the negotiation process. Finally, the chapter places the IGC in context with the other business of the EU, while at the same time taking on board domestic distractions that pre-occupied governments, particularly the French, German and British governments. This chapter is important in providing an introduction to the negotiations before moving into the detailed examination in the third section of the thesis.

**Chapter V** is the first of the three chapters focusing on the detail of the negotiations. This chapter aims to explain the negotiations on four of the main areas of institutional reform in the first pillar: the extension of QMV, a re-balancing of the voting arrangements in the Council, Commission re-sizing and the extension of co-decision. As with the **Chapter VI & Chapter VII** the chapter focuses on the positions adopted by the British, French and German governments before going on to consider the main events of the negotiations, primarily under the Irish and Dutch Presidencies.

**Chapter VI** focuses on justice and home affairs under the third pillar of the Treaty of European Union. It outlines the negotiations behind the communitarisation of certain parts of the third pillar through the creation of an area of free movement and security under what is now Title IV TEC. It examines the approach governments took on shaping the remainder of Article K, Title VI TEU, in what was described as the flanking measures to Title IV, with a focus on judicial and police cooperation and anti-crime measures. Finally this chapter examines the incorporation of the Schengen *acquis* into the European Union, a process that was closely related to both of the previous issues.

**Chapter VII** is the final chapter of this third section. The aim of this chapter is to examine the negotiations on WEU-EU relations, the common strategy, the policy planning capability, Mr. CFSP and the decision-making within the second pillar. Throughout the three chapters in this section the four defining features as outlined in **Chapter II** prove very useful in explaining the process of the negotiations.

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**Chapter VIII - Conclusions** summarises the argument of the thesis bearing in mind the three objectives as set out above. It attempts to demonstrate how ineffective both neofunctionalism and intergovernmentalist perspectives are in explaining this IGC. In turn this reinforces the incremental nature of this IGC. The chapter also examines the contributions that the 1996-97 IGC makes to the evolution and institutionalisation of the IGC. Finally, it considers the implications of the thesis findings on European integration and policy-making.

#### **4. ARGUMENT**

On the first and primary objective of explaining the process of negotiations at the 1996-97 IGC negotiations, this thesis argues that there were four features that defined this process. It was not a case of these four features being present in the same proportion or manner across the three main areas of reform that the thesis focuses upon. There was variation depending on the particular issue. These four defining features were as follows:

1. **Ambiguity of Objectives** – This appeared in two forms. Firstly, member governments had often poorly defined objectives on specific issues. They would express support on something, for example an extension of QMV, without outlining the details of this support in a non-paper. Secondly, there was no well-defined overall theme or grand objective that drove the negotiating process along.
2. **Lack of Direction** – With poorly defined objectives on both the ‘grand’ level and on specific issues there was a lack of direction in the negotiations. Lack of direction relates to an absence of negotiations on a particular issue that would move the process along in some direction from what had been previously discussed. This was usually due to the lack of initiatives from the delegations of member governments that would provide some detail and substance on which to negotiate, or an inability or unwillingness of the Presidency in Office to take the initiative and provide direction.
3. **Unintended Outcomes** – Given that member governments often held unclear and contradictory objectives, with little direction on certain issues, it was often a case

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that governments drifted into agreement, without fully appreciating both the precise contents of that which they had agreed to, and the domestic implications of their decision. In other words, for some governments the outcomes on certain treaty articles was something that they had not intended or anticipated.

4. **Postponement** – There were other issues during the IGC negotiations that were too sensitive for governments and their negotiating delegation not to give due attention to. However, again as a result of having poorly defined objectives or due to the absence of a consensus, governments postponed taking a decision on an issue, postponing it for another IGC or until the post-negotiation stage. This left governments disguising their fundamental differences in treaty language that meant something different to each participant.

The thesis argues that the presence of these four features gave rise to an incremental style of negotiating. The member governments were involved in an incremental process, slowly sorting out their priorities with later positions contradicting earlier ones as they edged their way to a final package at Amsterdam, sometimes drifting into agreements or postponing issues for another time.

As the negotiations on the range of issues are examined over the following chapters, a variety of circumstances explains why these features arise: the timing of the IGC; political distractions at the domestic and European level; the negotiating styles of certain member governments, to the timing of general elections. Though, as is tentatively revealed in the examination of previous IGCs in chapter II, and as is argued in the final section of the thesis it was also due to the special nature of EU IGC negotiations. Governments, along with the European institutions, operate within an EU system with a reasonably well-established process of policy-making.<sup>4</sup> However, during an IGC member governments are continually called upon to renegotiate on the rules of policy-making and the agenda of integration in what is a state-to-state process of negotiation. Therefore, governments are caught between acting for a sovereign state and as an actor in a confederation like the EU. Indeed, they play both roles at once. While the confederation has a well-established process of policy-making there is not a

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<sup>4</sup> On policy-making in the EU see for example Desmond Dinan, *Ever Closer Union*, London: Macmillan, 1994; Laura Cram, *Policy-making in the EU*, Routledge, 1997; Helen Wallace & William Wallace, *Policy-making in the European Union*, OUP, 3<sup>rd</sup> Edition, 1996.

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similar structure to the IGC negotiations, or consensus among governments on what the EU entity, as a whole, is evolving into. Therefore governments are left muddling through such treaty reform processes in the manner described in the following chapters.

On the second objective relating to the key players at the IGC the thesis presents six arguments.

1. The Dutch Presidency was a key player in the process. Across the three main areas discussed in the third section of this thesis the Dutch Presidency was involved in most of the big initiatives. The Irish Presidency was also influential on certain issues but it had the tendency to avoid taking the initiative or pushing for further negotiations on the more divisive and difficult issues on the IGC agenda. While at times this reflected the lack of initiatives from the member governments there were the occasions when the Irish gladly side-stepped sensitive issues leaving them for the Dutch. Throughout what was the longest IGC so far, it is also possible to get a feel for the role that the Council Secretariat played in this process in helping the Presidencies carry out their duties.
2. The only other player to match the Dutch Presidency in launching initiatives was the French government and its delegation. Nevertheless, it was to prove largely unsuccessful in shaping the treaty along the lines it desired, given a series of internal divisions and domestic distractions at the crucial stages in the process.
3. The British government's role for much of the process was rather limited, given the deep divisions within the Conservative government over Europe. Yet, the timing of the British general election and the extent of the divisions within the Conservative party were strongly influential in shaping the overall negotiations, notably the length of the negotiations, and the approaches of other governments to outlining their objectives, particularly on institutional matters.
4. The German government was at its most influential in the later stages of the process reflecting the nature of German style of negotiating, and also the extent of the domestic political divisions and constraints that undermined the German

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negotiating team's attempts to present a coherent position in the earlier stages of the Conference.

5. The detailed analysis across the three main issues discussed in Section III also reveals that there was no substantive Franco-German partnership that proved influential on any particular issue or in the overall dynamics of the Conference, while the European Commission's influence was limited and the European Parliament's almost non-existent.
6. Finally, there were also times when no player was taking the initiative or acting as the principal negotiator shaping an issue, until the conclusion at Amsterdam. This ties in with the lack of direction in the process.

On the third objective relating to the concept of the IGC the thesis argues that since the first Conference on the ECSC the IGC has evolved, being gradually institutionalised into the EU. The 1996-97 IGC contributes to this evolutionary process, further institutionalising the Conference to the extent of making it a regular part of the EU. The evolutionary nature of the IGC is something that is firstly raised in Chapter I and returned to again in Chapter VIII.

## **5. SOURCES**

The greater part of the research for this thesis was carried out shortly after the conclusion of the IGC in Amsterdam in June 1997. In attempting to describe the IGC process and understand its mechanics, four basic sources were used: (1) Conference documentation and official publications from Member States and the Institutions, (2) news material, (3) academic books and articles, and (4) interviews with negotiators and other observers of the IGC process.

1. The official documents and position papers from the Member States and institutions provide the back-bone of the analysis. Particularly crucial were the CONF documents that the Member State delegations presented throughout the negotiations. The CONF documents usually outlined a government's position and proposals for reform or a proposal from a Presidency. It was government officials

together with those from the European Parliament, the Commission and the Council Secretariat which provided copies of CONF documents and other sensitive and confidential materials. Without their generosity this thesis would be much the poorer.

2. *Agence Europe (AE)* and *European Report (ER)* provided a daily and twice-weekly account of the happenings at the IGC meetings of personal representatives, foreign ministers and within the capitals of the Member States. These reports were backed up by, at times rather limited but none-the-less useful, reports from the quality press services from several of the Member States and the institutions. (see Bibliography)
3. The secondary sources of books and articles were especially useful when considering previous IGCs and devising the theoretical framework. There have also been several publications that have touched on the IGC negotiations and these also proved useful in the empirical analysis.
4. As briefly mentioned above, the primary and secondary documentation has been supplemented by over 40 interviews. Every interview was conducted on the basis of anonymity so the thesis in no way attributes or footnotes a particular interviewee, though a list is attached in Appendix 1. It has been possible to validate the information that was gathered through the interviews in a number of ways. Firstly, interviews were only carried out after a detailed understanding of the negotiations was established. Therefore it was possible to tell when an official knew what he was talking about. Secondly, information from one official was always cross-referred with other officials. In that way it was possible to identify the bias of certain officials and any slant which they may have deliberately put on their account of the negotiations.



***PART I – THE IGC***

## CHAPTER I

### DEFINING AN IGC

#### INTRODUCTION

This is the first of two chapters that look closely at the concept of an IGC up until, and including, the Maastricht IGC. The aim of the chapter is to define an IGC. In doing so it also examines how the process of the IGC has evolved. From the start it is necessary to be clear that this chapter and the following are only concerned with what can be described as EU IGCs, that is, IGCs from the European Coal and Steel Community onwards. It suggests that three types of IGCs are identifiable: the legal IGC, the specific IGC and the constitutional IGC. The central argument of the chapter is that there has been an institutionalisation of the constitutional IGC, the 1996 Conference being the third such IGC in a ten-year period. By firstly defining what constitutes an IGC, this chapter provides the necessary background for the next chapter, which takes a closer look at the defining features of the *negotiations* at an IGC. Secondly, given that the IGC is being described as an evolutionary process, the final chapter of the thesis returns to consider what the 1996-97 Conference tells us about the process.

The chapter is divided into three parts. The first part of the chapter defines and briefly considers the legal and specific IGCs. The second part examines the development of the constitutional IGC up until Maastricht. The final part of the chapter re-caps on how the constitutional IGC has been institutionalised into the EU framework.

#### 1. DEFINING AN IGC – THE THREE CATEGORIES

##### **Legal & Specific**

In defining an IGC it is necessary to commence with a consideration of the treaty article upon which this acronym has been and continues to be based. Initially this was

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Article 236 of the Treaty of Rome, since repealed and replaced with Article N at Maastricht.<sup>1</sup> Article 236 TEC provided for ‘a conference of representatives of the Governments of the Member States’ that would determine ‘by common accord the amendments to be made to this treaty’.<sup>2</sup> From this and other treaty articles it is possible to recognise three different forms of ‘a conference’, later dubbed an IGC.

The first relates to a narrow legalistic definition of the process confining itself to the words of Article 236, and any change to the treaty pursuant to the said article. By this definition any use of Article 236 constituted an IGC. Examples of such IGCs would be the series of brief meetings during the 1960s and 1970s e.g. the 1962 Convention on the Netherlands Antilles and the 1975 protocol on the European Investment Bank. By adopting such a definition certain conferences lasted only hours, for instance that on the Merger Treaty. The bulk of the work had been carried out before the formal convening of the IGC. It was a similar case with the 1970 and 1975 budgetary treaties.<sup>3</sup>

The second form of an IGC rests on those articles that make specific reference to possible treaty amendments. From the Rome Treaty as amended up until the TEU there are several examples of such articles. Article 33(8) TEC allowed for the possible amendment of Article 33 regarding global quotas and measures having equivalent effect. Articles 165 and 166 allowed for an increase in the number of Judges and Advocates-General. Amendments pursuant to these two articles in turn required changes to paragraphs two and three of Article 167 respectively. Given the precise wording in these two articles it was not actually necessary to call for a Conference under Article 236. Article 228(5) on agreements ‘between the Community and or more States and international organisations’ called for the use of Article N should the same agreement require treaty changes. Prior to Maastricht it was Article 238 that dealt with such change pursuant to the then Article 236. The Maastricht treaty also introduced a series of Articles referring to a specific treaty amendment. Article 189b(8) TEC, Article B TEU and Article J.4(6) TEU referred specifically to Article N(2).<sup>4</sup> However

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<sup>1</sup> Now Article 48 TEU.

<sup>2</sup> *Treaties establishing the European Communities*, Luxembourg: OOPEC, 1987.

<sup>3</sup> See Geoffrey Edwards & Alfred Pijpers (eds.) *The Politics of European Treaty Reform*, Pinter, 1997 p.5; Roy Pryce, *The Dynamics of European Union*, Routledge, 1987, p.139.

<sup>4</sup> Article J.10 also seemed to make tentative reference to the same Conference.

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actual changes to these articles came within the third type of IGC. (See Below) Finally, and most importantly Article O made reference to the amendments that would be necessary on enlargement. Prior to Maastricht such amendments came pursuant to Article 237. The successive enlargements of the Community and Union have been the most commonly convened of the second type of IGC.<sup>5</sup>

## **2. THE CONSTITUTIONAL IGC**

This third form of an IGC was first convened, *under Article 236*, with the IGC on the Single European Act.<sup>6</sup> It has been developed further by the Maastricht IGC up until the 1996 conference. From the SEA and Maastricht IGCs it is possible to describe this IGC as having a dual purpose which provides the substance for its definition. By means of a series of treaty changes it firstly sought to outline a set of policy objectives to be pursued over the years, while secondly providing the necessary institutional and procedural changes for the realisation or the effective functioning of these same objectives.<sup>7</sup>

The Single European Act, as its name suggests, brought together under one roof the economic aspects of the European Community and the foreign policy and anti-terrorist procedures of European Political Cooperation (EPC) which had grown up over the previous fifteen years. At the same time it provided a framework setting out the guidelines on future Community action in both policy areas under Article 8a TEC (now Article 14 TEC) and Title III (Article 30) of the SEA. Guidelines for future policy directions were flanked with a series of institutional changes, for example the introduction of Article 149 (now 251 TEC) on cooperation procedure and Article 100a (now Article 95 TEC) introducing QMV for matters under Article 8a. A similar scenario was evident at the Maastricht IGC. There was a framework outlining the three

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<sup>5</sup> Loukas Tsoukalis, *The EC and its Mediterranean Enlargement*, London: Allen & Unwin, 1981; Lyn Gorman and Marja Liisa Kiljunen, (ed.) *The Enlargement of the EC: Case Studies of Greece, Portugal and Spain*, London: Macmillan, 1983; Jürgen Donges, *The Second Enlargement of the European Community: adjustment requirements and challenges for policy reform*, Tübingen: Mohr, 1982; Geoffrey Edwards and William Wallace, *A wider EC?: issues and problems of further Enlargement*, London, 1976; John Redmond (ed.), *The 1995 Enlargement of EU*, Aldershot: Brookfield, 1997.

<sup>6</sup> The italics is to place an emphasis on the fact that this was the first time a constitutional IGC was convened under Article 236 but as is shown below it was not the first constitutional IGC.

<sup>7</sup> Juliet Lodge also places such an emphasis on the institutional reform flanking 'other guiding principles'. See Juliet Lodge, 'Intergovernmental Conferences and European Integration: Negotiating the Amsterdam Treaty', *International Negotiation* 3, 1998a, p.357.

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stages of EMU in 102a – 109m TEC (now Article 98 – 124), while the newly created pillar II established a Common Foreign and Security Policy pursuant to Article J TEU. At the same time as defining new policy directions governments negotiated on the necessary changes to the workings of the institutions, for example the co-decision procedure was introduced under Article 189c and there was a further extension of qualified majority voting, e.g. Article 103 (now Article 99), Article 7b (now repealed) and 7c (now Article 15).

Both IGCs involved much more than mere treaty changes. This form of an IGC can be described as a ‘constitutional IGC’, its definition under Article 236 resting on the two features as described above; a policy initiative(s) flanked by institutional reform. By describing this type of IGC as a constitutional reform reflects the present situation and thinking as regards the treaties. Whatever the intentions of the founding fathers, what has since developed resembles a constitution much more than an international treaty.<sup>8</sup>

### **Article 236 - An Insufficient Definition**

However, confining the definition of an IGC to Article 236 leaves a large gap in the explanation of the process of European integration. It suggests that there were no constitutional IGCs prior to the Single European Act. Therefore the definition of the IGC has to be taken further, extended beyond Article 236. But in moving beyond Article 236 it is necessary to extend on the definition as it stands. For a process to be classified as a constitutional IGC prior to the first convening under Article 236 there also had to be a clear attempt to either amend the existing Treaties of Rome or formulate a new treaty. Therefore a constitutional IGC has three characteristics. It is a process that either amends the existing treaties or formulates a new treaty, which in turn outline policy objectives to be implemented along with a series of institutional adjustments. By this definition it is possible to recognise four constitutional IGCs prior to the SEA, two of which were successful in creating a treaty and two of which failed to do so.

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<sup>8</sup> See J. Weiler, ‘The Transformation of Europe’, *The Yale Law Journal* 100:8, 1991, pp.2403-2483; J.H. Weiler & U. Haltern “Constitutional or International: The Foundations of the Community Legal Order and the Question of Kompetenz-Kompetenz”, in A.M. Slaughter, A. Stone & J.H.H Weiler (eds.), *The European Courts and National Courts. Doctrine and Jurisprudence* (Oxford: Hart Publishing), 1997; E. Stein ‘Lawyers, Judges and the making of a Transnational Constitution’, *The American Journal of International Law* 75:1, 1981, pp.1-27.

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## Two Successes – ECSC & EEC

The negotiations on the ECSC and Treaties of Rome were conducted through intergovernmental conferences. The three defining features of the process had a strong presence throughout the negotiations. While the various participants involved in the negotiations from the six Member States had their own perspectives as regards the policy objectives of the ECSC, the negotiations aimed to establish a treaty and in the end this treaty did set out the basis for the pooling of sovereignty and establishment of a common economic community on what at this time were acknowledged as the primary resources for waging war.<sup>9</sup> The sixth paragraph of the preamble claimed that the six were ‘Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community ...’. Article 2, having legal effect, made similar claims. The same paragraph was equally clear, as was Title Two, that these policy objectives would only be achieved if flanked with the necessary institutional structure. Article 3 ECSC outlined the general functions that the institutions should pursue.

The Spaak Report was presented as the basis for treaty negotiations at the Conference of Foreign Ministers in Venice in May 1956. The negotiations that would eventually culminate in the Rome Treaties were officially opened on 26 June 1956 in Brussels. The Report, the approach taken by governments during the negotiations and the eventual treaties suggest that this was an IGC. The Spaak Report proposed ‘that an overall integration of the economy should be the aim, with the exception of the atomic energy sector, for which a separate organisation was to be created’.<sup>10</sup> The eventual treaties were a reflection of the mix of policy and institutional initiatives during the Conference. Article 2 ECT remarked that via the establishment of a common market there would be ‘a harmonious development of economic activities’. Article 3 ECT proceeded to outline the areas where this cooperation would arise, e.g. the removal of obstacles to the free movement of persons, service and capital; the pursuit of a common policy in agriculture and transport. The necessary institutional framework to fulfil ‘the tasks entrusted to the Community’ were listed in Article 4 EEC Treaty. A

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<sup>9</sup> See Pierre Gerbet, ‘The Origins: Early Attempts and the Emergence of the Six (1945-52), in Pryce, 1987, pp.35-52.

<sup>10</sup> Hanns Jürgen Küsters, ‘The Treaties of Rome (1955-57)’, in Pryce, 1987, p.85.

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similar scenario can be found in Articles 2 & 3 of Title One of the Treaty Establishing the European Atomic Energy Community.<sup>11</sup>

## Two Failures – EDC/EPC & Fouchet Plan

The project to establish a political and defence community from approximately 1951-1954 and the Fouchet Plan negotiations from 1960-62 showed signs of the three features of a constitutional IGC despite failing to provide for either the ratification of a new treaty or a series of amendments to the existing Treaties of Rome. Firstly, most governments involved in both processes negotiated with the shared understanding that the aim was the formation of a new treaty. On the EDC Cardozo remarked that ‘A treaty-making diplomatic conference was eventually convened in Paris on 15 February 1951 ...’.<sup>12</sup> In turn pressure, notably from the Italian government, for a political dimension to the defence project lead to the start of further negotiations in early 1953 on another potential treaty between the same six governments and ECSC members on a political community.<sup>13</sup> It was a similar case with the French lead negotiations on the Fouchet Plan despite the hostility of the then Dutch and Belgian governments.<sup>14</sup> Secondly, both processes sought to break new ground providing a framework for future policy decisions. Thirdly, these policy initiatives were to be flanked with the necessary institutional machinery. For example Parts II & III of the ‘Draft Treaty embodying the Statute of the European Community’ March 1953 dealt with institutional issues and policy respectively.<sup>15</sup> It was this treaty with a series of position papers from the governments that was to act as the ‘essential reference point’ in the negotiations on EPC that were to last from September 1953 to March 1954.<sup>16</sup>

The French proposal in 1961 with the Fouchet Plan included provisions on common foreign and defence policy, and cooperation on scientific and cultural matters. There was also an institutional framework. Being purely intergovernmental it was be constituted by a Council of Heads of State and Government, Council of Foreign

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<sup>11</sup> See *Treaties*, 1987, pp.393-4.

<sup>12</sup> See Rita Cardozo, *The Project for a Political Community (1952-54)*, in Pryce, 1987, pp.49-77; Also see E. Furdon, *The European Defence Community: A History*, London, 1980.

<sup>13</sup> Ibid.

<sup>14</sup> Pierre Gerbet ‘A Search of Political Union: The Fouchet Plan Negotiations (1960-62)’, in Pyrce, 1987, pp.109-12.

<sup>15</sup> Assembly Document 15R, March 1953.

<sup>16</sup> Pyrce, 1987, pp.64 -71.

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Ministers, a Political Committee and the EC's parliamentary assembly. The proposed inclusion of the parliamentary assembly in the institutional make-up re-emphasises that while this process in no sense involved the Treaty of Rome it was closely related to the extent of incorporating the EC's parliament. The presence of these three defining features suggests that these processes were IGCs. A series of other features further strengthens this description.

The 1950s project on the political community involved 64 individuals from the various member governments, from experts to the actual ministers that would make the final decisions.<sup>17</sup> The everyday affairs of the Fouchet Plan negotiations were managed by the Intergovernmental Committee on Political Union. As Gerbet remarked such meetings were 'chaired by diplomats ... who were to seek to reconcile opposing ideas but were not in a position to make final decisions'.<sup>18</sup> This is typical of the procedures during the SEA, Maastricht and Amsterdam IGCs, the diplomats moving the process along before handing over the final package to the Foreign Ministers and Heads of State and Government. These two features were also present during the Fouchet negotiations. For example on 18 July 1961 a meeting of Heads of State and Government at Bad Godesberg sought to breathe new emphasis into the process.<sup>19</sup> By 19 October France had submitted a draft treaty. Some time later in January 1962 the other five member governments made further submissions.<sup>20</sup>

### **Moving Away from the Constitutional IGC**

The attempt to create a new treaty with the Fouchet Plan epitomised the nature of European integration at this time. There was not a consensus on the present Community-oriented path under the Rome treaties. More specifically the French government was not satisfied with the approach being taken by the other five. This was what had prompted the Fouchet plan; a French attempt to organise European cooperation along French lines that would have placed the state at the heart of the process. The failure of the Fouchet plan entrenched a long-standing opposition between the French and the other five members. It made difficult any future

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<sup>17</sup> Ibid.

<sup>18</sup> See Pryce, 1987, p.115.

<sup>19</sup> Ibid. pp.117-118.

<sup>20</sup> Ibid.

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constitutional compromise resulting in a situation where up until the early 1980s there was an absence, at any one time, of the three features of the constitutional IGC; that is treaty formation or reform that aimed to outline a set of policy objectives flanked by institutional reform. Yet, it was the very developments up until the 1980s that provided the basis for the start of an institutionalisation of the constitutional IGC into the European Community process at the SEA IGC.

Despite the extensive divisions among member governments – after the Fouchet debacle – on the principles upon which European cooperation would proceed, member governments would on occasion come close to holding an IGC, only for one of the three defining characteristics to be missing. The European Summit meetings, later the European Council, provided the basis and focus for a variety of proposals. The Hague Summit of 1-2 December 1969 set the process in motion. Described as the triptych Summit it focused on completion, in the sense of putting the Community's funding on a more concrete basis, furthering the process of European integration, and finally enlargement. At the meeting agreement was reached on the financing of the Community by its own resources by 1975. Further development was to be pursued on two fronts; with instructions to the various Foreign Ministries to table proposals on political unification, in essence a common foreign policy, by July 1970, and similar instructions on EMU. The final declaration at the Summit remarked that 'the Community has today arrived at a turning point in its history'.<sup>21</sup> The resulting Werner Report of October of the same year advocated a phased approach to EMU, with the necessary institutional changes.

Therefore the Hague Summit outlined policy objectives or directions, launching what was termed European Political Cooperation and getting EMU underway. At the same time it established a semi-formal institution in the form of the European Summit meeting. However, any discussion on its institutional implications or the possibility of incorporating this within the existing treaties or a new one was avoided. At best it could be described as an informal IGC.

The Paris Summit meeting of October 1972 continued the reflective process. The creation of a European Union by 31 December 1979 was proposed with the completion

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<sup>21</sup> EC Bulletin, 1/1970.

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of EMU by 31 December 1980. It suggested the creation of a European Monetary Cooperation Fund by April 1973 and a Regional Development Fund to be established by end of 1973. Improvement in the Community's decision making procedures was also to be realised by mid-1973. The Paris Declaration of 19-20 October 1972 suggested that 'all the relationships between Member States were to be converted into a European Union'.<sup>22</sup>

The Paris Summit of 1974 saw the institutionalisation of the European Summit meeting with the creation of the European Council. This institutional development did not require any changes to the treaty. Indeed given that the creation of the European Council was a French led project it had undertones of Fouchet, attempting to bring a stronger intergovernmental element into the dealings between the Member States.<sup>23</sup> With the more Community oriented Member States suspicious that this new institution might compete and undermine the role of the Commission any treaty change would not have been forthcoming. The same Summit meeting continued with the probing into the various approaches on integration. It called on Leo Tindemans, the then Belgian Prime Minister, to draft a report on the characteristics and requirements of a European Union.

Tindemans' final report called for a break from both the Community structure and the political cooperation that had since developed. It advocated a new phase in European integration with the possibility of a new treaty.<sup>24</sup> The Tindemans report outlined the three necessary features of a constitutional IGC; treaty change or creation, guidelines of a future policy or policies approach, and the institutional mechanisms necessary to realise these policies. However, the economic and political conditions at this time were not conducive to any attempt to embark on such a serious constitutional exercise.<sup>25</sup> Indeed the Community had failed to reach agreement in respect of areas under its competence and this did not bode well for any further steps forward at that moment. There was also a further complication in any potential constitutional reform process. The 1973 enlargement and the membership of the United Kingdom and Denmark had introduced another two intergovernmentalist members.

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<sup>22</sup> *EC Bulletin* 10/1972; Also see Pyrce, 1987, p.131.

<sup>23</sup> See Alain Guyomarch et al., *France in the European Union*, Macmillan Press, 1998, p.27.

<sup>24</sup> Report by Mr. Leo Tindemans to the European Council, 'European Union', *EC Bulletin*, Supplement, 1: 1976; Jacques Vandamme, 'The Tindemans Report (1975-76)', in Pryce, 1987, p.159.

<sup>25</sup> *Ibid.*, p.166.

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Despite this, the process of assessing the need for reform of the European Communities continued with the Brussels European Council of December 1978 requesting 'three wise men' to prepare a report on the political reform of the EC. However, two features of this request reflected the cautious mood that continued to exist. Firstly, while being invited to make recommendations this was confined to the Community's decision-making process. Secondly, the proposals were to be made 'on the basis of, and in compliance with, the Treaties'.<sup>26</sup> This was taken to mean that the European Council was not anticipating any treaty changes.<sup>27</sup> Its comments at Luxembourg on 1-2 December 1980 epitomised the approach that was taken regarding such reports. The Heads of State and Government remarked that the report would 'continue to be a fertile seedbed of ideas and suggestions on which Institutions and the Member States may draw'.<sup>28</sup> Tindemans, the Three Wise Men, and later the Genscher-Colombo initiative were attempts to seek out a common or new ground that would bring some form of reconciliation to the differences between member governments.

The reflection on the workings of the European Communities and EPC continued with the Genscher/Colombo proposals on European Union. This initiative was taken outside any institutional framework or indeed the forum of the European Council. Instead the initiative was launched by the German Foreign Minister at the FDP party conference on 6 January 1981 with the Italian Foreign Minister Emilio Colombo lending his name and support to the project at a later stage. As was the case with the previous committees and reports the eventual 'Solemn Declaration on European Union' that was concluded at Stuttgart provided further momentum that would eventually culminate in the convening of the first constitutional IGC under Article 236. From the initiative's launch Genscher seemed to have adopted a realistic approach, remarking in his speech that the aim was to contribute a further building block to an eventual union of the Community and that of political cooperation.<sup>29</sup>

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<sup>26</sup> EC Bulletin, 12 – 1978, p.97.

<sup>27</sup> See A.N Duff, 'The report of the Three Wise Men', *Journal of Common Market Studies (JCMS)*, 14:3, March 1981.

<sup>28</sup> See AE, 03/12/1980.

<sup>29</sup> Niels von Hansen, 'Plaidoyer für eine Europäische Union', *Europa Archiv* no. 5/1981, pp.141-8.

The initiative did display certain defining features of a constitutional IGC. There was a simultaneous consideration of both policy and institutional reform.<sup>30</sup> In what became established procedure with the IGC on the SEA, it was not Coreper or the Political Committee that handled the negotiations leading to the final Solemn Declaration, but rather an *ad hoc* group of personal representatives of the Foreign Ministers that reported directly to the ministers.<sup>31</sup> Nevertheless, it was clear from the attitudes of most governments that from the outset and indeed throughout there was no fundamental or common basis for treaty reform.<sup>32</sup> Firstly, the proposal was downgraded from its initial description as an act to a Solemn Declaration. Secondly, there was strong opposition to some of the proposed institutional reforms which would have required treaty reform.<sup>33</sup> As with the Three Wise Men's Report there was an understanding that suggestions would remain inside the framework as provided by the existing treaties. The eventual report called for a greater respect of the decision-making procedures as laid down in the treaties.<sup>34</sup> However, the Declaration in its final provisions stated that 'not later than five years from signature' the Heads of State and Government should review the Declaration considering 'whether the progress achieved should be incorporated in a Treaty on European Union'.<sup>35</sup> Again it hinted at a pursuit of treaty reform or creation sometime in the near future.

The resolution of the long-standing British budgetary problem at Fontainebleau on 25-26 June 1984 and the extent to which this facilitated for further consideration of the future of the European Communities was reflected in the establishment of an ad hoc committee, generally termed after its chairman as the Dooge Committee. It was given a mandate 'to make suggestions for the improvement of the operation of European cooperation in both the Community field and that of political, or any other, cooperation'.<sup>36</sup> Again it displayed certain features of a constitutional IGC. The committee discussed both policy objectives and the means and methods to achieve these objectives. The final report reflected this. It was divided into three sections; the

<sup>30</sup> See Pauline Neville-Jones, 'The Genscher/Colombo Proposals on European Union', *Common Market Law Review(CMLR)*, 1983, 20: 659-660 & 663-683.

<sup>31</sup> *Ibid.*, 1983, p.662.

<sup>32</sup> *Ibid.* pp.657-699.

<sup>33</sup> See Bonvicini in Pyrce, 1987, p.184; Ferdinando Lay (ed), *L'iniziativa italo-tedesca per il rilancio dell'Unione europea. Origini e sviluppi della dichiarazione di Stoccarda*, padova, 1983.

<sup>34</sup> Solemn Declaration on European Union EC Bulletin, vol. 16, 6/83, pp.24-29.

<sup>35</sup> *Ibid.*

<sup>36</sup> *AE*, 28/06/84.

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first dealing with 'priority objectives' i.e. substantive policies, the second dealt with decision making and the third was pre-occupied with an outline for implementing the report, in essence, on achieving the policy objectives previously outlined.<sup>37</sup>

The attitude and expectations of a number of governments at the time of establishing the committee certainly suggested that the process was aiming to achieve more than the previous procedures that had given rise to Tindemans' Report and the Three Wise Men's Report. The European Council in its conclusions at Fontainebleau had remarked that the committee would consist 'of personal representatives of the Heads of State and of Government, on the lines of the Spaak Committee'.<sup>38</sup> However, this procedure must again be seen differently from a constitutional IGC. As before, the committee was not convened to make treaty amendments or establish a new treaty. Rather the Dooge Report under its third and final section dealing with the methods of realising the Committee's findings called for an intergovernmental conference as the appropriate approach.<sup>39</sup> This recommendation was taken up by the European Council at the Milan summit meeting on 28-29 June 1985 with the unprecedented decision to convene the first constitutional IGC under Article 236. Again the 'Dooge process' was a step towards an eventual IGC. At best it could be described as an influential component of the pre-negotiation process.

At the same time as the initiatives from the various European Councils contemplated the need and form of any future constitutional reform the European institutions, notably the European Parliament and its 1984 Draft treaty on European Union, also fed into the eventual SEA IGC. The Draft Treaty was endorsed by five national parliaments, with this positive reception contributing to an emerging acceptance of the need for treaty change.<sup>40</sup> Equally important in shaping the consensus that some form of treaty change was necessary was the further enlargement of the Community from nine to twelve. This made institutional reform an imperative, especially the extension in the use of QMV.

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<sup>37</sup> Ad Hoc Committee on Institutional Affairs, *Interim Report to the European Council* (Dublin, 3-4 December 1984); Report to the European Council (Brussels, 29-30 March 1985).

<sup>38</sup> *Ibid.*

<sup>39</sup> See 'The Dooge Report', *Report to the European Council*, Ad hoc Committee for Institutional Affairs, Brussels: OOPEC, 1985.

<sup>40</sup> Richard Corbett, *The European Parliament's role in closer EU Integration*, Macmillan Press, 1998; Christopher Greenwood, 'Constitutional Reform in the EEC', *Cambridge Law Journal*, 46:1, March

<b>Table 1 – Constitutional IGC</b>		
1. Seeking to initiate or amend policy, setting out the agenda for Secondary Measures.	2. Includes Institutional reforms generally perceived as necessary to make the policy amendments possible.	3. Aims to amend or create a treaty.

### **3. INSTITUTIONALISATION OF THE CONSTITUTIONAL IGC**

The failure or inability of the governments to act on the Tindemans Report's suggestion for a new treaty saw an increase in the likelihood that any potential future changes would take the form of amendments to the Rome treaty.<sup>41</sup> At the same time the development of the European Council as the directing body for both the economic and political approaches to European cooperation suggested that there would eventually be some form of change to bridge the gap between the two levels. The report of the Three Wise Men, the Solemn Declaration on European Union and the Dooge Report together with various proposals from Member States, e.g. the London Report 1981, called for a greater degree of harmony/cooperation between the two spheres of the Community and that of EPC.<sup>42</sup>

The Dooge Report marked the high point of the years of constitutional reassessment that avoided or teetered on treaty amendment. The conditions for this change were ripe by the mid 1980s. After Fontainebleau there was a sufficient degree of agreement among governments to embark on treaty reform. Yet, despite the previous calls for treaty reform there were few expectations from Member States that the substantive negotiations would be carried out based on Article 236. This was understandable since this was the first constitutional IGC under Article 236. In fact this deft move by the Italian Presidency caught the British government, in particular, unaware. The British along with the Greek and Danish governments opposed the convening of an IGC based

<sup>41</sup> 1987; Juliet Lodge, 'The Single European Act: Towards a New Euro-Dynamism?', *JCMS*, 24:3, 1986 p.207.

<sup>42</sup> See Vandamme, in Pyrce, 1987, p.159.

<sup>42</sup> On London Report see D. Allen, R. Rummel, W. Wessels, (eds.) *European Political Cooperation*, London: Butterworth, 1982.

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on Article 236. However, given that an IGC could be convened by a majority vote, the three governments eventually had to go along with the process.<sup>43</sup>

This use of Article 236 to initiate the SEA Conference marked the beginning of an institutionalisation or regularisation of the constitutional IGC process into the EU. The constitutional IGC was now rooted in the treaties. Article 102a paragraph 2 of the SEA referred to a future IGC in the context of EMU. The wording of the same paragraph reconfirmed the role of this process. The outlining of a future policy matched with the necessary institutional changes was reflected in the statement that 'Insofar as further development in the field of economic and monetary policy necessitates institutional changes, the provisions of Article 236 shall be applicable'. Article 30 paragraph 12 on EPC also called for the 'High Contracting Parties' to 'examine whether any revision' of the title on EPC after five years from entry into force of the treaty was required. The Maastricht IGC five years later delivered on these words.

The TEU further institutionalised this IGC process on three levels. The first level concerned the manner in which future IGCs would be convened. Based on the Maastricht treaty it might be necessary to consult the ECB 'in the case of institutional changes in the monetary area', a carry over from the SEA. The second level of institutionalisation was the shift away from the loose wording of Article 102a as regards the timing of the future conference to the date fixing of Article N(2). The third level of change saw Maastricht shaping the agenda of a future Conference, e.g. through Article 189b TEC (now Article 251) on the institutions and Article J.4(6) (now Article 17) and J.10 TEU on CFSP.

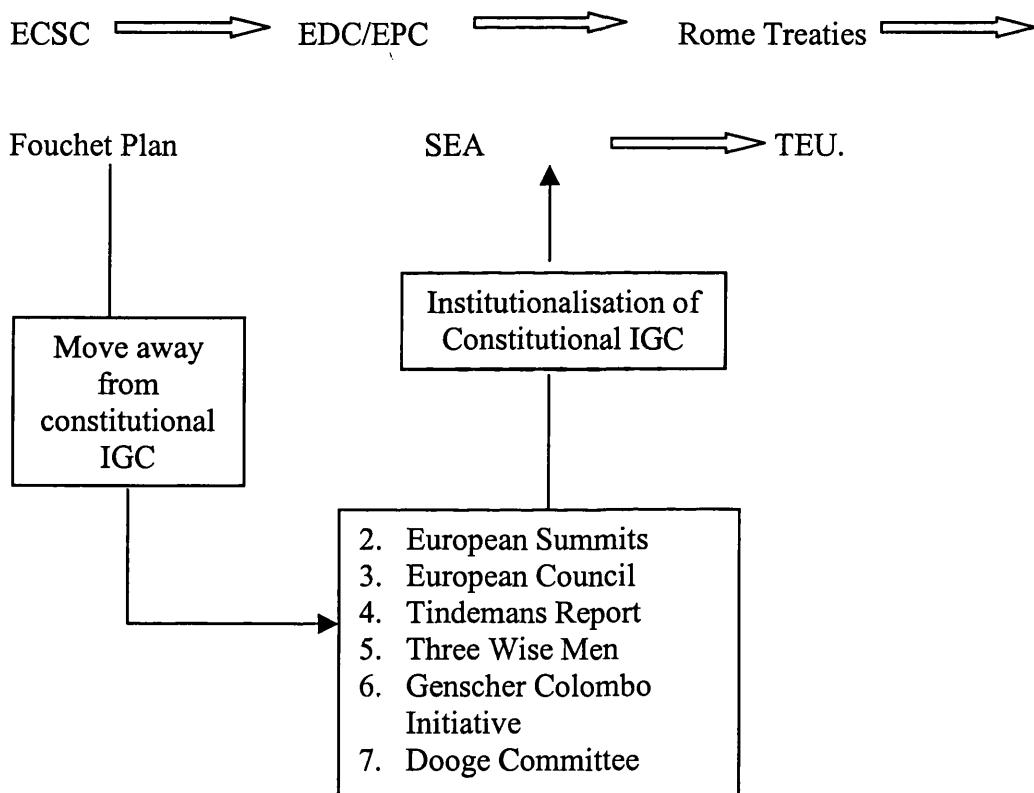
This process of institutionalisation of *ad hoc* levels of decision making has not been confined to the IGC. As briefly mentioned the meetings between Heads of State and Government have been gradually institutionalised to form the highest level of policy-making in the EU. The European Summit meetings were given semi-institutionalised status in 1974. The normalisation of this new institution continued firstly, with an evolution in its role. While being 'a sort of European Ministerial Court of Appeals for the difficult issues that normal Council meetings were unable to solve' it established itself as a forum for setting objectives on the general direction of European

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<sup>43</sup> See Corbett, 198, pp.212-215.

integration.<sup>44</sup> Secondly, it has become a regular part of the EU policy-making machine. Heads of State and Government meet in June and December of each year as a Member State's six months as President of the Council draws to a close. There are also anything up to a further two informal European Council sessions during these six month periods. This has led to a codification in this level of policy-making, with Article 2 SEA making the first treaty reference to the European Council. The Maastricht Treaty extended on its role, for example through Article J.3 TEU. Therefore within the EU policy-making process there is a tendency for certain *ad hoc* procedures such as the European Council or IGC to evolve, being integrated alongside the other procedures of the Union.

Figure 1 – Evolving IGC



## CONCLUSION

The aim of this chapter was to identify the defining features of an IGC. In doing so it claimed that it is possible to recognise three types of IGC; legal, specific and constitutional. The constitutional IGC is most relevant for this thesis given that the 1996-97 IGC falls into this category. Therefore the development of this constitutional

<sup>44</sup> Guy de Bassompierre, *Changing the Guard in Brussels*, The Washington Papers/135, Center for Strategic and International Studies Washington, 1988, p.78; also see Johnston, Mary Troy, *The*

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process was considered. It was argued that with the SEA and the TEU IGCs there has been a growing institutionalisation of the constitutional Conference. This is reflected in the frequency of these Conferences since the return from the constitutional rift of Fouchet in 1961. There have been three in the past ten years, or four since there were technically two at Maastricht, EMU & EPU. The language of certain treaty articles and the use of Article 236 and Article N<sup>45</sup> also suggests that the process is being institutionalised. Having arrived at a definition of the IGC it is possible to take a closer look at the defining features of the negotiations during this process. The following chapter takes up this theme. At the same time the institutionalisation of the process is returned to in the final chapter which considers what the 1996-97 IGC tells us about the evolutionary nature of the process.

## CHAPTER II

### SETTING A FRAMEWORK ON THE IGC NEGOTIATIONS

#### INTRODUCTION

The concept of an IGC having been defined, and its development since the first Conference described, this chapter aims to establish a framework upon which to examine the 1996-97 IGC. It intends to do this by examining how the negotiations of previous IGCs have been explained by focusing on the two theoretical frameworks from a rational choice perspective, primarily Andrew Moravcsik's liberal intergovernmentalism, and that with a more idealistic perspective, namely neofunctionalism. Explanations of the actual negotiations at an IGC have for the greater part drawn from either one of these two theories. It should also be noted that this section is not attempting to provide a complete overview of the previous constitutional IGCs as identified in the previous chapter. Rather as the title suggests the aim is to establish a framework upon which to examine the 1996-97 IGC.

The chapter is divided into three parts. The first two parts examine the central features of intergovernmentalism and neofunctionalism and how they explained previous IGCs. The third section sets out to consider the defining features of the negotiations at previous IGCs while at the same considering the accuracy and usefulness of the previous two theoretical approaches.

This chapter argues that despite the institutionalisation of the IGC and the presence of certain features common to negotiations within the Community framework the IGC remains largely unregulated by any body of rules of procedures. This undermines the usefulness of the rational choice perspective of liberal intergovernmentalism and neofunctionalism in explaining the negotiating process at an IGC. Instead the chapter goes on to argue that the negotiations at an IGC have been defined by four features; an ambiguity or lack of clarity on objectives, a lack of direction, unintended outcomes and

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postponement. These four features reflect the incremental nature of the IGC process. In turn the fluidity as regards participation at an IGC also contributes to this incremental style.

### **1. RATIONAL CHOICE**

A rational choice explanation of the previous IGCs depicts an ordered process with actors making informed and calculated decisions, pursuing well-defined objectives. This was how Milward explained the process giving rise to the 1957 Rome Treaties.<sup>1</sup> The frameworks of the Rome treaties allowed European nation states, weakened by the war, time to re-organise and re-develop. But their goal was not a federation, it was a more historically specific coalition of self-interests. It provided a politico-economic framework to control a renewed Germany, after American pressure had ensured that a weak Germany was a non-runner. For France the Treaty of Rome promised, perhaps, a chance to control German renewal more subtly than occupation ever could. For Germany it was a dignified ascent towards respectability and renewal after the abyss of fascism. For the Benelux countries it was a promise that there would be no return to the pre-war protectionism that had so devastated their export based economies. For the Belgians it was a look away from simmering internal division. For Italy it was a means of attaining French and German markets so badly needed to recover. Therefore the creation of the Treaty of Rome was for reasons of national self-interest, with governments able to define these interests and achieve them.

Andrew Moravcsik provides the most comprehensive explanation, based on a rationalist framework, of the negotiations at the intergovernmental Conferences leading to the Rome Treaties 1957, the Single European Act 1986 and the Treaty on European Union 1992. He remarks that 'European integration resulted from a series of rational choices made by national leaders who consistently pursued economic interests'.<sup>2</sup> Moravcsik says 'national leaders', as his emphasis is on Member States. As will be shown, he describes the role of supranational institutions as minimal. Initially he employed the term 'intergovernmental institutionalism' to explain the bargaining

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<sup>1</sup> A.S. Milward, *The European Rescue of the Nation State*, London: Routledge, 1992; Milward, Brennan & Romero, *The Reconstruction of the Nation State*, London: Methuen, 1984.

<sup>2</sup> Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, 1998, p.3.

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process at the SEA IGC. Intergovernmental institutionalism was made up of three components: intergovernmentalism, lowest common denominator bargaining, and attempts to limit any transfer of sovereignty away from the state. Intergovernmentalism left Heads of State and Government, together with ministers, initiating and negotiating the 'major initiatives' of the EU. In negotiating, these governments view 'the EC through the lens of [their] own policy preferences', leaving Moravcsik to describe EC politics as 'the continuation of domestic politics by other means'.<sup>3</sup>

As regards the nature of this negotiation Moravcsik claims that 'the bargains struck in the EC reflect the relative power positions of the Member States'.<sup>4</sup> This leaves the smaller states being 'bought off with side payments' with the bargaining being reduced to 'the lowest common denominator of large state interests', essentially between France, Germany and Britain.<sup>5</sup> He perceives it as inevitable that the governments of these states, in negotiating, aim to 'safeguard their countries against the future erosion of sovereignty', by maintaining a unanimity requirement on 'sovereignty-related reforms' and 'avoid[ing] open-ended authority to central institutions that might infringe on their sovereignty'.<sup>6</sup>

He builds and extends on this with his notion of liberal intergovernmentalism. Moravcsik describes this approach as a combination of 'a liberal theory of national preference formation and an intergovernmentalist analysis of interstate bargaining and institutional creation'.<sup>7</sup> Again Moravcsik depicts a rational process with governments firstly defining their interests, and then engaging in a bargaining process to realise those interests. He says 'Intergovernmentalist theory seeks to analyse the EC as the result of strategies pursued by rational governments acting on the basis of their preferences and power'.<sup>8</sup> The rational actions of these governments are 'constrained at home by domestic societal pressures and abroad by their strategic environment'.<sup>9</sup>

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<sup>3</sup> Moravcsik, 'Negotiating the Single European Act: national interests and conventional statecraft in the European Community', *International Organization*, 45:1, Winter 1991, p.25.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. p.25-26.

<sup>6</sup> Ibid., p.27.

<sup>7</sup> Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', *JCMS*, 31:4, 1993, p.38.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid. p. 474; Also see Cram, 1997, p.24.

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Moravcsik's more recent explanation (1998) of the process of European integration up until Maastricht again suggests that it has been an ordered process with clearly defined stages. Based on his five case studies, three of which included the IGCs on the Rome Treaty, the Single European Act and Maastricht he claims that

collective decisions of national governments can be analyzed by assuming that each first formulates national preferences, then engages in interstate bargaining and finally decides whether to delegate or pool sovereignty in international institutions'.<sup>10</sup> Moravcsik claims that 'influence [of an actor] cannot be analyzed without first knowing what underlying objectives actors seek to realize'.<sup>11</sup>

In effect, the bargaining process consisted of three stages. Firstly, governments framed well defined national preferences. Secondly it was on the basis of these preferences that governments engaged in interstate bargaining. Thirdly, Moravcsik says that 'governments debate institutions only once they strike a substantive bargain'.<sup>12</sup> Again, such an explanation highlights the rational nature of Moravcsik's perspective.

As to the framing of the national preferences this involves 'domestic political systems generat[ing] a set of stable, weighted objectives concerning particular "states of the world" which governments pursue with the maximum efficiency afforded by available political means'.<sup>13</sup> On the factors that shape national preferences he claims that it is 'a question of what is the precise nature and relative weight of geopolitical and economic motivations'.<sup>14</sup> Moravcsik concluded that 'the most persistent and powerful sources of varying national preferences concerning integration ... has been economic in particular commercial interest'.

During the negotiations themselves Moravcsik considers the Member States as unitary actors vis-à-vis other states. Even when disaggregated with competing and contradictory positions being promoted from different agents of the state, he claimed that the unitary actor perception of the state still applied if divisions did not

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<sup>10</sup> Moravcsik, 1998, p.473.

<sup>11</sup> Ibid., p.21.

<sup>12</sup> Ibid., p.22.

<sup>13</sup> Ibid., p.23.

<sup>14</sup> Ibid.

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'significantly alter their respective influence on the national negotiating position'.<sup>15</sup> He claimed that even in Germany where these contradictions among ministries and agencies are most apparent that it has a 'stable *net* position on something like monetary discussions'.<sup>16</sup> Moravcsik claims that his case studies supported his intergovernmentalist approach. He says 'the historical record consistently confirms intergovernmental theory'. Again the underlying features of this intergovernmental theory reinforces the rational nature of the negotiating processes. Moravcsik says that 'information and ideas ... were widely available and symmetrically distributed among states'.<sup>17</sup> Governments acted as effective entrepreneurs with 'national negotiating positions ... follow[ing] ... a steady path toward compromise'.<sup>18</sup>

On the outcome of the negotiations Moravcsik claims that 'negotiation agreements appear to be efficient ... because preferences were transparent'.<sup>19</sup> Moravcsik goes as far as claiming 'I can identify not even one single case in EC history in which the interstate bargaining outcome was, given the preferences across outcomes actually held by national governments, Pareto-suboptimal'.<sup>20</sup> The distributional outcomes of the negotiations 'mirrored the relative bargaining power of governments'. He concludes that 'Governments were consistently constrained by credible threats to veto which reflected the domestic ratifiability of agreements'.<sup>21</sup> As negotiating tools governments used threats of exit and exclusion, 'which altered the negotiated outcome to the extent those threats were credible and costly'.<sup>22</sup> Finally he claims that tactical linkages or package deals were not a common feature of the negotiations, being used 'to balance out benefits rather than to impose losses'.<sup>23</sup>

As to why governments pooled and delegated sovereignty in common institutions Moravcsik claimed that his 'five case studies reveal strong support for an explanation resting on the need to bolster the credibility of interstate commitments with a secondary yet significant role for ideology'.<sup>24</sup> Again it is a rational calculated decision

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., p.479.

<sup>18</sup> Ibid., pp.67 & 497.

<sup>19</sup> Ibid., p.481.

<sup>20</sup> Ibid., p.482.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., p.483.

<sup>24</sup> Ibid., p.486.

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with the emotional ideological influence being confined to decisions where risks and consequences are modest. Governments are aware of what they are doing and the consequences and implications of their decisions both on a domestic and European level. He describes on the SEA how governments 'have carefully calculated the consequences of delegation and pooling for their substantive interests'.<sup>25</sup>

## 2. NEOFUNCTIONALISM

Moravcsik in outlining the case for his rational explanation of European integration aims to demonstrate the ineffectiveness of the neofunctionalist approach.<sup>26</sup> Neofunctionalists built on the functionalist writings of David Mitrany. The latter claimed that interdependence and the increasing inability of states to provide welfare satisfaction to their populations would lead to function specific supranational organisations.<sup>27</sup> The neofunctionalists argued that competing expectations and goals among sovereign nations could be satisfied on the basis of concession swapping on a variety of sectors. Hence the creation of the Treaty of Rome. Rather than this being a case of mere cooperation between nation states, it was a process that would culminate in an international organisation that would move 'beyond the nation state'.<sup>28</sup> The two most prominent theorists Ernst Haas and Leon Lindberg, differed on certain aspects of this process.<sup>29</sup> The former placed greater emphasis on the transfer of loyalties, the latter on decision making. Despite these differences the two approaches shared certain important traits. Both saw integration as a process requiring institution building with changes in the actions and expectations of the political actors. Central to the neofunctionalist perspective was the notion of spill-over. Corbett remarks that

the central argument of neofunctionalism is that integration in one sector will automatically spill over into integration in other sectors and that as this process continues, political actors will incrementally shift the focus of

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<sup>25</sup> Ibid., p.487.

<sup>26</sup> See Moravcsik, 1993, pp.30-36; Moravcsik, 1998, pp.489-494.

<sup>27</sup> It should be noted that Mitrany was more concerned with peace and not regionalism or federalism. He feared that this would merely give rise to the dangers of nationalism on a larger scale. See D. Mitrany, *A Working Peace System*, London: RIIA and Broadwater Press, 1944, pp.5-7; D. Mitrany, 'The Prospect of Integration: Federal or Functional', *JCMS*, 4:2, 1965, pp.123-34.

<sup>28</sup> Leon Lindberg & S. Scheingold, *Europe's Would-be Polity*, NJ: Prentice-Hall, 1970, pp.118-9.

<sup>29</sup> Ernst Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-57*, London: Stevens, 1958; Leon Lindberg, *The Political Dynamics of European Integration*, Stanford, CA: Princeton University Press, 1971; Leon Lindberg and S. Scheingold (eds.), *Regional Integration*, Cambridge: Harvard Press, 1971.

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their activities, their expectations and even their loyalties to the new integrated institutions and procedure.<sup>30</sup>

Therefore, while Moravcsik referred to 'rational choices' with governments pursuing 'weighted objectives ... with the maximum efficiency afforded by available political means', a neofunctionalist perspective claims that governments' behaviour is shaped by the consequences from prior integration or cooperation on an issue area, some of which may have been unforeseen or even unintended. This is termed functional spill-over, a process 'whereby successful integration in an area of lesser salience would lead to a series of further integrative measures in linked areas so that the process would become increasingly involved with issues of greater political importance'.<sup>31</sup> For the neofunctionalists the process of European integration does not begin and end with the rational pursuit of 'weighted objectives'. The new central authority, namely the European Commission would have a key role to play in this process of spill-over. The Commission would build up direct links to interest groups, politicians and bureaucracies by putting direct pressure on national governments, while at the same time political parties, government departments and interest groups would defend the previously integrated areas and push for further integration.<sup>32</sup> This spill-over process was described as one of 'incremental decision making', Taylor remarking that 'Most politicians, ... hav[ing] no overall plan ... were, therefore, vulnerable to the pro-integration pressures which had been generated within their national administrations', as the integrative process edged along.<sup>33</sup>

Sandholtz and Zysman adopted some of these features in their explanation of the negotiating process of the Single European Act.<sup>34</sup> The factors that have received particular focus have been the role of EC institutions, transnational interest groups and somewhat related to the supranational institutions, the role of individual leaders such as

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<sup>30</sup> Corbett, 1998, p.23.

<sup>31</sup> Paul Taylor, *The Limits of European Integration*, London: Croom Helm, 1983, p.9.

<sup>32</sup> For further accounts on neofunctionalism see J.S. Nye (ed.), *International Regionalism*, Boston: Little, Brown, 1968; Charles Pentland, *International Theory and European Integration*, London, 1973; Paul Taylor, 'New Dynamics of EC Integration', in Juliet Lodge (ed.), *The European Community and the Challenge of the Future*, London: Pinter, 1989; Dorette Corbey 'Dialectical functionalism: stagnation as a booster of European Integration', *International Organization*, 49:2, Spring 1995.

<sup>33</sup> See again Taylor, 1983, p.10.

<sup>34</sup> For other examples on using neofunctionalist model see T. Pederson, 'Political Change in the European Community: The Single European Act as a Case of System Transformation', in M. Kelstrup (ed.) *European Integration and Denmark's Participation*, Copenhagen: Copenhagen Political Studies Press, 1992, pp.184-209; G. Ross, 'European Community Politics and the New Europe', Cambridge Mass., mimeo, 1992.

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Commission President Jacques Delors and Internal Market Commissioner Lord Cockfield. Sandholtz and Zysman remark that 'First, 1992 emerged because the institutions of the European Communities, especially the Commission, were able to exercise effective policy leadership'.<sup>35</sup> They then go on to say that 'To be sure the Commission did not act alone; a transnational industry coalition also perceived the need for European-level action and supported the Commission's efforts'.

Ken Endo remarks that 'An examination of the process running up to the adoption of the SEA showed that Delors as Commission President was deeply involved in drafting the SEA and thus helped to lift ... the unanimity rule in the Council meetings'.<sup>36</sup> Endo's conclusions on the SEA support other features of the neofunctionalist perspective. He refers to what can be described as close collaboration between the Luxembourg Council Presidency, the Bonn-Paris axis and the Institutional Group within the Commission.

Finn Laursen considers the usefulness of both the intergovernmental institutionalist and supranational institutionalist approaches in explaining the Maastricht IGC.<sup>37</sup> On Moravcsik's approach he initially agrees that 'it seems to explain important parts of the outcome of the Maastricht negotiations'.<sup>38</sup> However, he goes on to claim that 'an intergovernmental realist model is insufficient for an explanation of at least parts of the Maastricht Treaty'.<sup>39</sup> Laursen then goes on to consider the usefulness of a variety of other approaches, (each with a supranational flavour). For example he claims that the relentless nature of Ernst Hass' neofunctionalist 'spill-over' played its part in shaping the agenda, approach, and ultimately the outcome of the IGC.<sup>40</sup> Nevertheless, during the IGC Laursen admits that the Commission's role was limited.<sup>41</sup> Ken Endo's explanation of the Commission's role in the Maastricht negotiations depicts a similar scenario. He refers to an overcrowded agenda at Maastricht that constrained the setting

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<sup>35</sup> W. Sandholtz & J. Zysman, '1992: Recasting the European Bargain', *World Politics*, 46, 1989, p.96.

<sup>36</sup> Ken Endo, *The Presidency of the European Commission under Jacques Delors*, Macmillan Press, 1999.

<sup>37</sup> Laursen & Vanhoonacker (eds.), *The Intergovernmental Conference on Political Union* (1992) Martinus Nijhoff Publishers, p. 229.

<sup>38</sup> *Ibid.*, 1992, p.232.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, 1992, p.238.

<sup>41</sup> Lindberg & Scheingold, 1970, pp. 118-9; Laursen & Vanhoonacker (eds.), 1992, p.243; Also see Robert Wester, 'The United Kingdom and European Political Union', in Laursen & Vanhoonacker, 1992, pp.189-205.

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of priorities. This did not cater for the necessary close network between officials of the Commission, the Council Presidency and Secretariat that a neofunctionalist perspective prescribed. Indeed at one stage Endo refers to Delors being 'virtually excluded from a sweeping treaty revision'.<sup>42</sup>

### **3. DEFINING FEATURES OF THE NEGOTIATIONS AT A CONSTITUTIONAL IGC**

#### **Introduction**

The third and final section of the chapter considers the features of the negotiations of previous constitutional IGCs. Given that there has been a gradual institutionalisation of the Conference it firstly commences with a consideration of the Community features of the process. It then goes on to consider participation at a Conference before concluding with a set of features that define the negotiations as an incremental process. Throughout the analysis below there will be a critique of both the intergovernmentalist and neofunctionalist explanations outlined in the first and second sections. It should also be noted again that this section is not attempting to provide a complete overview or explanation of the previous constitutional IGCs as identified in the previous chapter. Rather as mentioned in the introduction the aim is to establish a framework upon which to examine the 1996-97 IGC.

#### **Community features**

An IGC is a multilateral negotiation, not a one-off negotiation but rather, as demonstrated by the previous chapter, a recurring process. Using the terminology of Ruggie (1993) it fits the criteria of what he describes as restricted multilateral negotiations.<sup>43</sup> Restricted multilateral negotiations involve a limited number of participants, with a degree of intimacy and mutual familiarity among these same participants. Therefore the process in certain respects resembles or includes some of the features that have been described as typifying negotiations within the European

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<sup>42</sup> Endo, 1999, p.215.

<sup>43</sup> John Ruggie (ed.), *Multilateralism Matters: the theory and Practices of an Institutional Form*, New York Columbia University Press 1993.

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Community.<sup>44</sup> For example it is largely the same group of officials from the Foreign Ministries and the Commission and Council Secretariats involved in both Community processes and IGCs. As is mentioned in further detail in Chapter IV, the central group of negotiators, the Group of Representatives of the Foreign Ministers, included several Permanent Representatives of the Member States who also meet at least once a week in COREPER II. Therefore it is important to remember that the IGC process takes place simultaneously with other EU business. To a certain degree it is like having another issue on a week's agenda for both ministers and officials. Indeed at times the other issues on the agenda of governments both at a domestic and European level can prove to be considerably distracting, taking away from the IGC negotiations. This was particularly the case at the 1996-97 IGC. However, despite the similarities with normal EU negotiations there remains within the process a degree of fluidity that is not the case with normal EU policy-making. As mentioned, an IGC is largely unregulated with no detailed set of procedures or rules outlining in any precise manner how the negotiations should proceed, as would be the case with say taking a decision under the cooperation procedure or co-decision procedure within the EU structure. This has the potential to give rise to an unstructured process of negotiation and it is this fluidity that is very much apparent during this IGC.

### Participants at an IGC

From a reading of Article 236 TEC or Article N TEU the central role clearly rests with the group of 'representatives of the governments of the Member States' which is convened by the Council Presidency with the aim of 'determining by common accord the amendments to be made to those treaties'.<sup>45</sup> It is an *intergovernmental* Conference and therefore the governments of the respective Member States should play the leading role. Indeed taking a look at the structure and organisation of the negotiations during the SEA IGC and the TEU IGC the Member States dominated at all levels. For example at the 1985 IGC one working group made up of the Permanent Representatives to the EEC worked on the reforms of the ECT while another involving the political directors of each Foreign Ministry worked on EPC. At the TEU 'personal

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<sup>44</sup> See Juliet Lodge, 'Negotiations in the European Union: The 1996 Intergovernmental Conference', *International Negotiation*, 1998b, 3: pp.486-8; Helen Wallace & Fiona Hayes-Renshaw, *The Council of Ministers*, Macmillian, 1997, pp.253-4.

<sup>45</sup> Now Article 48 TEU.

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representatives' of the Foreign and Finance Ministers carried out the detailed work. At both the SEA and Maastricht IGCs the Foreign Ministers were generally responsible for the proceedings up until when the final package was handed to the Heads of State and Government for final political agreement to the new treaty amendments.<sup>46</sup>

Though, the same article makes reference to the Commission, the Parliament and the Central Bank. The Commission may submit proposals on amending the treaty and thereby initiate the process. Equally the European Parliament and, where necessary, the Commission and the Bank have to be consulted. While there are no guidelines outlining the role and extent of the Commission and Parliament's influence there are equally no specific restrictions setting out the limitations of the same institutions. This has therefore meant that even with the more recent institutionalisation of the Constitutional IGC, a fluidity persists as regards the players involved in this process and those having an influence on the final outcome.<sup>47</sup>

### Commission & Parliament

While the central role rests with the Member States it was not surprising that, given the role played by the Commission and Parliament at other levels of policy-making in the EU, this would extend to the IGC. The role of both institutions in the process has depended on a variety of other factors, notably the personalities in both institutions, the amount of room that governments have been willing to allow them, and the extent to which the governments and in particular the Presidencies take the lead as regards tabling proposals and pushing a key proposal to the centre of the negotiations. For example the European Parliament's 1984 European Union Treaty contributed to the process leading to the SEA.<sup>48</sup> This was the culmination of years of work initiated by the 'Crocodile Club' and pursued under the leadership of Altiero Spinelli in the European Parliament's institutional Committee.<sup>49</sup> Despite the lack of any formal role for the Parliament in the IGC process the MEPs attempted to push their ambitious proposals by

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<sup>46</sup> See Richard Corbett, 'The 1985 Intergovernmental Conference and the Single European Act', in Pryce, 1987; See, Corbett, 1998.

<sup>47</sup> See Thomas Christiansen & Knud Erik Jørgensen, 'Negotiating Treaty Reform in the European Union: The Role of the European Commission', *International Negotiation*, 3, 1998, p.440.

<sup>48</sup> Pierre Pescatore, 'Some Critical Remarks on the Single European Act', *CMLR*, 24 pp.9-18; See Juliet Lodge, *JCMS*, 24: 3, p.207; J.W. De Zwann, 'The Single European Act: Conclusion of a Unique Document', *CMLR*, 23 p. 73; Richard Corbett, 'The 1985 Intergovernmental Conference and the Single European Act', in Pryce, 1987, pp.238-72, esp. p.238 & 267.

<sup>49</sup> See Otto Schmuck, 'The European Parliament's Draft Treaty Establishing The European Union (1979-84)', in Pryce, 1987, pp.188-217.

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lobbying national parliaments, in some instances meeting with success.<sup>50</sup> The Parliament's influence also manifested itself in the ratification stages of the SEA. It expressed its opinion on the results of the IGC in a Resolution of 16 January 1986. While its final position on the process did not in any way prevent the changes from being introduced, the reception given by the Parliament was important for those Member States that attached conditions to their acceptance of the Single European package. For example, the Italian government made it clear that its acceptance depended not only on what its national parliament said, but also on the MEPs.<sup>51</sup>

As the neofunctionalists have suggested, the Commission has played a vital role in the process.<sup>52</sup> Cockfield described the first Commission that Delors presided over as a Golden Age.<sup>53</sup> While the Internal Market Council was set up in January 1983 it failed to acquire a high profile.<sup>54</sup> Instead it was the 1985 Commission White Paper on the Completion of the Internal Market that proved most decisive. At an early stage in the negotiations the Commission also concluded a document calling for the '*Unicité*' of the conference proceedings. It called for the formal incorporation of European Political Cooperation into the treaty structure. While the Commission's suggestions initially met with reservations among the Member States the concept of '*Unicité*' was endorsed at the ministerial conference on 16 and 17 December 1985 in Brussels. With the conference only lasting from September 1985 to January 1986 the Member States were slow to lodge their official positions. Instead for a considerable part of the time they relied on the Commission to initiate and instigate action. The latter submitted many position papers on the internal market, research and technological development, the environment, cohesion, culture and monetary policy. Indeed the final provisions on the internal market, cohesion, the environment and on research and technology were for the greater part modelled around Commission proposals.<sup>55</sup> The Commission also appealed directly to individual agents as means of gaining and nurturing support.

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<sup>50</sup> See House of Lords (1984-1985), *European Union* HL 226 (London: HMSO); Interview.

<sup>51</sup> See Margaret Thatcher, *The Downing Street Years*, London: Harper Collins, 1995, p. 555.

<sup>52</sup> de Zwann, 1986, p.754; Lodge, 1986, p. 209; Axel Krause, *Inside The New Europe*, New York: Harper Collins, 1992; Collette Mazzucelli, *France and Germany at Maastricht: Politics and Negotiations to Create a European Union*, Garland, 1997.

<sup>53</sup> Lord Cockfield, *Bilan d'une renaissance Le Programme 92*, Address to the Séance Acaémique, Brussels, 17 December 1992.

<sup>54</sup> Ibid.

<sup>55</sup> See Corbett in Pryce, 1987, pp.247-250.

Moravcsik attempts to dismiss the role of the European Commission and Parliament. Firstly he asks ‘why is the SEA the *only* major example in EC history in which ... the Commission and Parliament proved influential’.<sup>56</sup> As regards the Commission and Parliament’s role at previous Conferences the answer is straight-forward. This was the first successful constitutional IGC since the Treaties of Rome. It was not possible for either Commission or Parliament to influence the EEC and EAEC IGCs since they did not exist. The High Authority and Common Assembly established under the ECSC Treaty were only a few years old. However, the ECSC’s Common Assembly did play a role in the EDC/EPC negotiations. Together with members from the Council of Europe’s Consultative Assembly it drafted and agreed to a treaty that formed the basis for negotiations between governments in early 1953.<sup>57</sup> As for the Fouchet Plan in 1961 the very objective of what were French-led negotiations was to steer future cooperation away from an institutional set-up with a strong supranational characteristic to an intergovernmental structure. As mentioned, the influence that the European Commission or European Parliament can wield depends on the attitudes of the governments. At the Fouchet IGC there was no room for the European Commission, while the European Parliament was still very much a fledgling institution only being directly elected for the first time in 1979. Also, given that the SEA IGC was the first constitutional IGC convened under Article 236, the reference to the Commission in this Article strengthened its case for involvement. Moravcsik’s description of the supranational entrepreneurs of the Commission and Parliament during the SEA IGC as ‘“managers” of domestic and transnational “social networks” devoid of ‘any unique ability to intervene at an international level as policy initiators and mediators’ fails to recognise the influence of the Commission throughout the process in moving the negotiations along and providing, as mentioned, the basis of many treaty amendments. It is true that it also played a role as a “manager” of “transnational networks” such as interest and business groups but its role was not confined to this.

At the same time it would be wrong to suggest that with the institutionalisation of the constitutional IGC and the greater use of Article 236 that the Commission or Parliament would necessarily have an influential role in future Conferences. The IGC does not have the clearly defined set of procedures as the co-decision or cooperation

<sup>56</sup> Moravcsik, 1998, pp.483-4.

<sup>57</sup> See Cardozo, 1987, pp.54-61; Also see Raymond Rifflet, *La Communauté Politique Européenne*, Conseil Belge du Mouvement Européen, Bruxelles, 1957.

procedure in normal EU business, which outlines in detail the role for both institutions. The IGC is much more fluid than this. This was aptly demonstrated at the IGCs leading to the Maastricht Treaty where neither the European Commission nor the European Parliament projected the same influence as during the SEA. Ken Endo's assessment has already been mentioned. Similar assessments have been given by others. Middlemas remarks that 'Having been hyperactive in the preparatory period, the Commission appeared to miss several chances of imprinting its own agenda, possibly because Delors and the college were preoccupied with the many separate issues ...'.<sup>58</sup> Christiansen and Jørgensen claimed that its involvement in negotiations on EPU 'proved counterproductive'.<sup>59</sup> The series of European Parliament reports, including the Martin I & II reports did not have the same impact in this IGC as had been the case during the SEA IGC.<sup>60</sup> The same could be said for the business groups that worked closely with the Commission and proved influential on the internal market programme, largely through the European Round Table in the earlier period from 1982-84. Business groups did not seek to exert the same influence and interest in the Maastricht process.<sup>61</sup> Middlemas remarks '... managements across Europe did not seek direct inputs to the IGC and appear not to have followed their course in detail'.<sup>62</sup>

### Council Secretariat

The intergovernmental and the neofunctionalist perspectives both ignore the influence of other institutional actors in the IGC, particularly the Council Secretariat and the Office of the Presidency. Neither of these actors are mentioned in Article N TEU, or what is now Article 48 TEU, rather their influence has evolved. Since a Conference proceeds simultaneously with other levels of policy-making it is an extra strain for the already over-burdened Foreign Ministries of the Member States. This has, in particular, provided the Council Secretariat with the ability to leave its mark on the conference

<sup>58</sup> Keith Middlemas, *Orchestrating Europe: The Informal Politics of European Union 1973-1995*, Fontana Press, 1995, p.191.

<sup>59</sup> Christiansen & Jørgensen, 1998, p.443.

<sup>60</sup> Toussaint Report on the Democratic Deficit, Catherwood Report on the Cost of Non-Europe, Garaziani report on the First Year's Application of the SEA, culminating in the Herman Report on European Union.; Minutes of the EP, 14 March 1990 OJ C96 p.114; Minutes of the EP, 22 Nov. 1990 (OJ C324); Emile Noël 'Reflections on the Maastricht Treaty', *Government and Opposition*, 27:2 pp. 148-158, esp. pp.152 & 154.

<sup>61</sup> See Middlemas (1995), pp.137-138; 'Europe's Internal Market', *Economist*, July 9, 1988; *Europe 1990*, Brussels: Chez Philips S.A.; See Sandholtz & Zysman, 1989; A. Krause, 'Many Groups Lobby on Implementation of Market Plan,' *Europe*, July/August 1988; R.V. Tulder & G. Junne, *European Multinationals in Core Technologies* New York: John Wiley & Sons, 1988, pp.214-15.

<sup>62</sup> Middlemas, 1995, p.164.

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proceedings given its close liaison with the Presidency on the drafting of the treaty articles. Firstly, it is the Council Secretariat that makes the first draft of a Presidential paper on an IGC issue which is then passed to the Presidency for its comments and returned to the Secretariat for rewriting. These Presidential papers usually form the basis for negotiations during the IGC, incorporating the suggestions from the other governments and the Commission. Secondly, with its depth of expertise and greater knowledge and understanding of the intricacies and complexities than most Member State Foreign Ministries, the Secretariat, while again with a largely undefined role, has sufficient leeway to pursue its own interests.<sup>63</sup> As one official remarked during the 1996-97 IGC the Presidency 'relies significantly – if it is sensible – on the expertise, legal knowledge, experience and commitment of the Council Secretariat'.<sup>64</sup>

Its influence as an actor in the process depends on other factors, particularly the nature and size of the Member State holding the Presidency. The presence of the smaller Member States in the Presidency's chair, as was the case during both the SEA and Maastricht, has seen over-stretched Foreign Ministries becoming somewhat dependent on the Secretariat.<sup>65</sup> The Commission itself recognises the influence that the Council Secretariat wielded in the negotiations. However, given the difficulty in researching on its precise role at an IGC negotiation there is a lacuna in the literature on the Council Secretariat. While this thesis focuses primarily on the role of Britain, France and Germany in the 1996-97 IGC negotiations the influence of the Council Secretariat is noted where relevant.<sup>66</sup>

### Presidency

Similarly the Office of the Presidency cannot be overlooked when considering the participants that may shape an IGC. While diverse assessments exist on the influence of the Presidency on policymaking in the EU, previous IGCs have shown that a Presidency can leave its mark. (see below) For Member States and particularly for a smaller Member State the primary objective is a successful Presidency. This firstly

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<sup>63</sup> Interview, Also see Bobby McDonagh, *Original Sin in a Brave New World*, Dublin: Institute of European Studies, 1998.

<sup>64</sup> *Ibid.*, p.77.

<sup>65</sup> Interviews.

<sup>66</sup> For a good account of the Council Secretariat's role in the negotiations on flexibility at the 1996-97 Intergovernmental Conference see Alexander C.G. Stubb, *Flexible Integration and the Amsterdam Treaty: Negotiating Differentiation in the 1996-97 IGC*', PhD, London, 1998.

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requires it to ensure that 'the basic technical tasks of management [are] carried out with thoroughness and care'.<sup>67</sup> This calls for a business-like approach, 'keeping the machine turning smoothly'.<sup>68</sup> With an IGC on top of the usual duties of the office this can be a demanding task. However, failure to execute the managerial and administrative duties would certainly see a Presidency leave its mark on the results of an IGC for all the wrong reasons.

While a Presidency is limited in what it can pursue and achieve by a variety of factors, e.g. current Community context, domestic preoccupations, administrative resources available, and international commitments, it will also have its agenda and list of priorities that it aims to deliver upon.<sup>69</sup> Again when presiding over an IGC in a tactful manner, it can steer the negotiations in a particular direction. Tact and subtlety are essential when attempting to mould IGC negotiations. It is less a case of the Presidency actually setting an agenda that the others follow, and more a case of engendering support on an issue that it feels can be successful.

An example of where the Presidency attempted to change the course of an IGC without the necessary preparation to ensure that there would be support for its new approach was the Dutch proposal, during the Maastricht IGC, abandoning the Luxembourg Presidency's pillar structure of the treaty, replacing it with a unitary structure.<sup>70</sup> In what was later described as Black Monday the Dutch proposal failed to gain support from other governments except Belgium.<sup>71</sup> While this lack of support was for practical rather than ideological reasons – a consensus that at such a late stage in the process there was insufficient time to use a new draft as a basis upon which to negotiate – it was an example of an attempt by a Presidency to take the Conference in another direction. In

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<sup>67</sup> Geoffrey Edwards & Helen Wallace, *The Council of Ministers of the European Community and the President-in-Office*, A Federal trust Paper, London, 1977, p.20.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid, pp.63-73; also see Johnston, Mary Troy, *The European Council: Gatekeeper of the European Community*, Boulder, Co: Westview Press, 1994.

<sup>70</sup> See Wester, 'The Netherlands and European Political Union', in Laursen and Vanhoonacker, 1992, pp. 163-72.

<sup>71</sup> See 'The Dutch Draft Treaty towards European Union', *Europe Documents*, No. 1734, 3 October 1991; D. Buchan and D. Gardner, 'Dutch to Reassess Political Union Plan', *Financial Times (FT)*, 01/10/91; S. Rozemond, *De gang naar Maastricht*, Den Haag: Nederlands Instituut voor Internationale Betrekkingen, 1991.

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this case the insensitivity of the Dutch approach sharpened differences between the member governments rather than acting as a basis for eventual agreement.<sup>72</sup>

There are more positive examples of Presidential influence. The Italian Presidency, during the SEA IGC, proved itself adept at reading the mood and sensing the majority support that existed among member governments for significant treaty changes. Its call for an IGC under Article 236 proved successful. Though, as already mentioned, the role and influence of a Presidency during an IGC depends on a variety of factors. For example it can be particularly difficult for a government of a large Member State to use the Presidency in an attempt to function as an honest broker seeking a consensus. This is a task that a smaller Member State can deliver on. While the Presidency deserves to be recognised as a participant in its own right it is not possible to define in any precise terms its exact role and influence at an IGC. Again the process is too fluid for such precision.

#### Franco-German Axis

Finally, any attempt to understand the nature of IGCs would be wholly incomplete without examining the role that the Franco-German partnership has played. The Franco-German partnership that has lain at the heart of the present European structure since its inception has also sought to provide the lead and initiative during an IGC. However, due to the characteristics of the relationship its influence can be somewhat unpredictable.<sup>73</sup> Successive French and German governments have been committed to 'leading' Europe. There is a common acknowledgement of the special place of the relationship in the European integration project. Despite this, the governments of both Member States have disagreed rather deeply on what they wanted 'Europe' to become, both working from a different set of assumptions. Therefore this underlying contradiction in the relationship has meant that the initiatives at the IGC have been rather loosely defined, in an attempt to use vague language to cover inherent disagreements. For example the defence initiative at the Maastricht IGC and the eventual Article J.4 of the TEU with its commitment to 'a common defence policy ...

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<sup>72</sup> See Buchan & Gardner, 1 October 1991; David Buchan & Ronald van de Krol, 'Dutch EC plan goes into the bin', *FT*, 03/10/91.

<sup>73</sup> On Franco-German relations see Simonian, Haig, *Privileged Partnership: Franco-German relations in the European Community (1969-84)*, Oxford: Clarendon Press, 1985; Wolfgang Wessels, (eds.) *Motor fuer Europa? Deutsch Bilateralismus und europaeische Integration*. Bonn, Europa Union Verlag pp.145-157.

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which *might* in time lead to a common defence' disguised the French and German differences over the role of NATO in this project.

Franco-German papers have been a repeated feature in the three IGCs since 1986. At the Milan Summit in June 1985 a draft Franco-German text on European Union was referred for consideration to the General Affairs Council. By Dublin I European Council meeting on the 28<sup>th</sup> April 1989 Kohl and Mitterrand had written a letter proposing a second IGC on European Political Union. In December 1990 Kohl and Mitterrand had written a letter to the Italian Presidency calling for a 'true security policy that would ultimately lead to a common defence'.<sup>74</sup> This structure would be built around the rejuvenated WEU, which would eventually merge with the EC/EU.

There was a keen sense of awareness between Kohl and Mitterrand during both the SEA IGC and that on Maastricht of the importance and influence of their role. As the two IGCs in 1991 culminated in the Maastricht treaty Kohl remarked 'For myself and the President [Mitterrand], it is clear: we want the ratification of Maastricht. The process must not be stopped. We want to expand but also deepen the Community.'<sup>75</sup> He continued 'While we are both alive, François and I have to make Europe's unification irreversible ... our successors will never manage it.'<sup>76</sup>

However, there have been times when the deep divisions are more apparent and this can compromise the relationship's influence at an IGC. At the 1985 IGC Dinan questioned the usefulness of the relationship claiming 'that neither France and Germany collectively nor France and Germany individually provided much leadership in 1985, the crucial IGC year'.<sup>77</sup> While Mitterrand and Kohl made a public display of their commitment to European unification on the eve of the Maastricht summit, without of course specifying on the details, in the run up to the commencement of the IGC the mood was completely the reverse. At the end of a Franco-German Summit in October 1990 Mitterrand remarked that 'there will be no lack of conflicts, rivalries and misunderstandings [in the future],' going on to say 'Indeed, I don't know why I speak

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<sup>74</sup> See 'La Lettre commune de MM. Kohl et Mitterrand', *Le Monde*, 9-10/12/90.

<sup>75</sup> 'Bonn and Paris pile on the Pressure', *Guardian*, 23/9/92.

<sup>76</sup> *Der Spiegel*, 28/09/92. p.18.

<sup>77</sup> Desmond Dinan, 'Reflections on the IGCs', in Pierre-Henri Laurent & Marc Maresceau, *The State of the EU Vol.4: Deepening and Widening*, Lynne Rienner, 1998, p.27.

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in the future tense'.<sup>78</sup> Despite the three Franco-German letters and other bilateral initiatives that provided an impetus to the TEU negotiations the French and German governments remained divided on the definition of political union throughout.<sup>79</sup>

The Franco-German relationship also involves cooperation across ministries and between officials that functions somewhat independently of the elites' relationship, thereby providing for a degree of stability and continuity. Yet, strained relationships between elites constrains cooperation at other levels, just as difficulties between ministries and officials would similarly impose constraints on the elites. The effectiveness of the partnership at the IGC also depends on the state of relations between the various levels. Therefore, while on the surface German and French governments assume the leadership mantle it is a much more complex set of relations beneath the rhetoric that determines their influence.

### Summary

Article 236 TEC as it was before Maastricht, Article N TEU as it was after Maastricht and Article 48 TEU as it is now clearly state that at an IGC the Member States and their representatives are the primary participants in the process. However, this has not meant that the European Parliament and Commission have not played a significant role. At the same time any examination of the key participants should not begin and end with these two institutions and the Member States. Instead the Council Secretariat, the Presidency and the Franco-German axis also have to be considered as participants in an IGC process. Nevertheless, the role that each of these actors play in an IGC process has varied. It has varied given that the roles are undefined and therefore subject to change. Given that there is a degree of fluidity as regards the participants in an IGC it is not surprising that a similar fluidity is identifiable in the negotiations.

### **Negotiations at an IGC**

#### Ambiguities

In describing the process of IGC negotiations both the intergovernmental and neofunctionalist approaches are undermined by the deterministic character of their

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<sup>78</sup> 'A Relationship in the Balance', *Economist*, 6/10/90, p. 53.

<sup>79</sup> See Mazzucelli, 1997, p.170.

explanation. Moravcsik refers to governments making rational choices, with these choices being defined as national preferences, which were followed by interstate bargaining. When this rational bargaining process begins governments pursue their well-defined objectives with 'maximum efficiency'.<sup>80</sup> The neofunctionalist claim that the agenda and negotiations are determined by the spill-over effect of cooperation on another issue, with both national and supranational officials recognising the necessity of further cooperation and integration on these new issues. However, neither national nor supranational officials embark on a negotiating process such as an IGC with clearly defined objectives suggesting that the negotiations will be rational and ordered, or one where actors recognise and accept the inevitability of further integration. Lindberg's critique of Moravcsik stresses this point. He says

All of these approaches of a rationalist kind tend to reason backwards: the outcome is obvious once you understand the underlying distribution of preferences, or of preference ordering. I really do not think this is the case. I think that governments perhaps do not really know what their preferences are. Even if they do it is not clear that they can find an area of agreement. We know that preferences are not stable. We know that in certain cases a proposal, a well-chosen proposal from the Commission, can change the whole structure of bargains and bring in new issues'.<sup>81</sup>

Lindberg's suggestion is particularly appropriate for this thesis where governments rarely defined their preferences and on occasion the Commission took the initiative, prompting the Presidency into action. At the same time it is misleading to consider the negotiations of previous IGCs such as those on the ECSC and EEC as undisputed first steps towards a European federation. Corbett takes this line when he claims 'Initially, there can be no doubt that the ECSC was set up by a determined federalist push ... as a first step toward European federation'.<sup>82</sup> William Wallace takes a more measured approach than Corbett's suggestions of 'no doubt'. Wallace claims that 'a certain mythology has grown up around the "grand design" of European integration allegedly

<sup>80</sup> See Moravcsik, 1998, p.23.

<sup>81</sup> See Leon Lindberg, 'Comment on Moravcsik' in Simon Bulmer & A. Scott, *Economic and Political Integration in Europe: Internal Dynamics and Global Context*, Oxford: Blackwell Publishers, 1994, pp.83-84.

<sup>82</sup> Corbett, 1998, p.41.

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shared by the “far-sighted” statesmen who negotiated and signed the Treaties of Paris and Rome’.<sup>83</sup>

There has been a certain degree of ambiguity to successive IGC negotiations. This has been represented in two forms. Firstly, member governments have embarked on negotiations without having clearly defined objectives; rather, these are formed as the negotiations proceed. Secondly, governments embark on the process without a grand design or agreement on the overall theme that drives the negotiations, or in some cases without a consensus on the underpinning objective of these negotiations, apart from aiming to amend existing treaties or establish a new one.<sup>84</sup> While there is a reasonably well established process of policy-making within the EU, governments have not negotiated the treaty amendments to this policy-making structure on the basis of a blueprint or a vision mapping out the future direction that the EU is to take. Indeed Jean Monnet in his historic declaration on the 9 May 1950 remarked that ‘Europe will not be made at once or according to a single overall plan’.<sup>85</sup> Referring back to Wallace again on the Treaties of Rome the former says ‘In reality, the Treaties registered a limited consensus among the signatories ...’.<sup>86</sup> Certain individuals or agencies within a government may have well constructed ‘grand designs’ such as Belgium’s Henri Spaak at the negotiations on the Treaties of Rome. However, this did not mean that such a perspective was consistently and rationally pursued as a government’s position. Indeed at the 1996-97 IGC there were similar individuals with ‘grand designs’ such as the Dutch junior Foreign Minister Michel Patijn, but this did not mean that the Dutch either as a national delegation or a Presidency consistently pursued a clear line.<sup>87</sup>

There are further examples of this kind of ambiguity, or lack of clarity, in the objectives of governments at the other IGCs. The very failure of both the EPC/EDC IGC and the Fouchet plan was, not only a reflection of the absence of any consensus on a compromise treaty, but also of governments that had not thought through their positions

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<sup>83</sup> William Wallace, ‘Less than a Federation, More than a Regime’, in Wallace et al. *Policy-making in the European Community*, Wiley, 1983, p.411.

<sup>84</sup> This is not to suggest that there were no proposals on the table that sought to outline in a new treaty a set of policy objectives flanked by institutional reform, the two other defining features of a constitutional IGC. However it was not an ordered process of negotiations on these policy issues and the institutional reform.

<sup>85</sup> See Gerbet, 1987, p.46; also see Jean Monnet, *Memoirs*, London: Collins, 1976.

<sup>86</sup> Ibid.

<sup>87</sup> See pp. 232-3.

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with a clearly defined bottom line that they were confident of having incorporated in a final treaty and, most importantly, agreed to by national parliaments. For example on the EDC the Netherlands did not participate fully in the negotiations until some nine months after the convening of the Conference in February 1951.<sup>88</sup>

While two decades after the constitutional rift at the negotiations over the Fouchet Plan there was a growing consensus on the necessity for a new round of treaty amendments, governments in the early stage of the process were ambiguous as regards the specific objectives. As mentioned above this played into the hands of the Commission. Indeed, Pescatore remarked on the SEA negotiations

As for the Governments, none of them followed a clear line: some seemed to be moderately inclined towards the Parliament's plans, others were concerned with high technology and research, others with environment and all had to cope with acute problems of unemployment and economic crisis.<sup>89</sup>

The description of the final act as 'a flood of verbose vagueness ... the worst piece of drafting I have come across in my practice of European Affairs' was a consequence of the loose and rather jumbled negotiations.<sup>90</sup> Helen Wallace claimed that on the eve of the SEA IGC 'the signals emanating from Brussels and national capitals were ambiguous and contradictory'.<sup>91</sup> It was not until the post-negotiation or implementation stage that governments, through the Council, were clearer on the economic aspect of the SEA project. By 1990 over half of the Cockfield proposals on the Commission's 1985 White paper on the Internal Market had been agreed to.<sup>92</sup>

### Indirection & Unintended Outcomes

As a consequence of this ambiguity as regards participants' objectives and the overall theme of the negotiations the IGC process has also been characterised by a sense of indirection or drift. Küsters remarks on the Treaties of Rome that 'The negotiations

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<sup>88</sup> Cardozo, 1987, p.51.

<sup>89</sup> Pescatore, 1987, p.14.

<sup>90</sup> Ibid. p.15; Also see Pierre Pescatore in de Ruyt, *L'Acte Unique Européen*, Université Libre de Bruxelles, 1986; Pierre Pescatore, 'Die Einheitliche Europäische Akte, Eine ernste Gefahr für den Gemeinsamen Markt', *Europarecht*, 1986, pp.153-169.

<sup>91</sup> Helen Wallace, 'Making Multilateral Negotiations work', in William Wallace (ed.) *Dynamics of European Integration*, London: RIIA, 1990, p.220.

<sup>92</sup> Ibid. p.221.

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themselves gained momentum only slowly'.<sup>93</sup> This has left governments on occasion either agreeing to outcomes that were not always intended or anticipated, or postponing an issue in delicately-phrased treaty language until another IGC. For example the 1957 IGC concluded with two treaties, the better known treaty establishing the European Economic Community, and the less well-known European Atomic Energy Community. Member governments intended to establish a common market on nuclear materials, with the promotion of research, uniform safety standards, free movement of nuclear specialists and capital for investment in the field of nuclear energy. (Article 2, Title I) Yet, the outcome was very different. The EAEC was a non-starter, a failed treaty from a successful IGC. The unintended outcomes persisted for some years afterwards, perhaps most dramatically when looking at Article 9(2) of Chapter I, Title 2 of the Treaty on the promotion of research on nuclear activities. This article called for 'An institution of university status [to] be established; the way in which it will function shall be determined by the Council, acting by a qualified majority on a proposal from the Commission'. This institution was eventually established in 1972 but not as a research centre on nuclear activities but rather as the EUI on social sciences.

There are other examples of negotiations culminating in unintended outcomes. With the IGC on the Treaties of Rome there was sufficient consensus among negotiators leading to an eventual treaty. This was not the case in 1953 or 1961 during the negotiations to establish a political and defence community. When embarking on the Fouchet Plan despite the early reservations from certain governments and lack of clarity among governments on the objective of the negotiations none expected an outcome that would exacerbate and consolidate the divide between the French government and the other five members on the fundamentals of European Cooperation.

Given the rational nature of Moravcsik's explanation he seeks to dismiss any likelihood of unintended outcomes. He claims that 'the historical record reveals that the consequences of major decisions were in fact foreseen and desired by national governments'. He goes onto say that 'even where this was not the case, my analysis reveals, nearly all government were generally well aware of the likely short – and long – term policy consequences of integration, good and bad'.<sup>94</sup> Again resorting back to

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<sup>93</sup> Küsters, in Pryce, 1987, p.88.

<sup>94</sup> See Moravcsik, 1998, p.491.

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Lindberg and Wallace's earlier comments suggesting that in hindsight, almost by a process of reverse engineering, or 'reason backwards' the mythology of rationality can be constructed. Moravcsik claims that the Thatcher government during the SEA IGC carefully calculated 'the likely voting outcomes of all 279 proposals in the Single Market white paper'. While he correctly remarks that the Thatcher government conceded to the extension of QMV under Article 100 to achieve its economic objectives, it did not or could not anticipate the outcome of its agreement, namely that the momentum built up with the construction of the internal market would strengthen the basis for a single currency. This is certainly not a case of a government being 'well aware' of 'the long term policy consequences of integration, good and bad'.<sup>95</sup> The SEA made reference to a potential IGC on EMU under Article 102a(2) but again a British government did not anticipate or intend this to form the basis for another IGC in 1991. In her memoirs Thatcher remarks how at the Luxembourg European Council in December 1985 she was 'dismayed' that the Germans had 'shifted ground' to include monetary matters in the treaty.<sup>96</sup> However, she goes on to say that 'I was ... able in a side discussion with Chancellor Kohl to reduce the formula to what I considered insignificant proportions which merely described the status quo, rather than set out new goals'.<sup>97</sup> This sits uneasily with Moravcsik's claims that governments 'almost never misperceived the direction of future change'.

While the EMU IGC was rather technical and reasonably well ordered, based on the text prepared by the Delors Committee of Central Bank Governors the negotiations on Political Union were ambiguous and at times lacked direction.<sup>98</sup> There was no real consensus on what was meant by the term Political Union.<sup>99</sup> Any attempt to define the concept would have revealed the depth of the differences between governments, most probably delaying the conclusion of the process. Without established parameters on the notion of Political Union, governments simply packed the conference agenda with a plethora of issues. Dinan proposed that 'Progress at the IGC was impaired ... by the number and diversity of agenda items'.<sup>100</sup> An insight into some of the approaches adopted can be found in the words of one German civil servant who described German

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<sup>95</sup> Ibid.

<sup>96</sup> Thatcher, 1995, p. 555.

<sup>97</sup> Ibid.

<sup>98</sup> See Corbett, pp.308-309; See Dinan in Laurent & Maresceau, 1998, p.32.

<sup>99</sup> Mazzucelli, 1997, p.170

<sup>100</sup> Dinan in Laurent & Maresceau, 1998, p.35.

efforts as aiming to get 'as much as possible for Europe'.<sup>101</sup> Forster and Wallace claimed that 'Given the length and complexity of the IGC process, the outcome of the year long negotiations could scarcely be described as the product of rational actors pursuing defined national objectives'.<sup>102</sup> They go on to say that 'no governments had entirely coherent positions'.<sup>103</sup> Mazzucelli remarked that 'Throughout 1991, the personal representatives were faced with an unwieldy conference agenda that hindered their ability to draft a coherent text'.<sup>104</sup> This was reflected in the final text at Maastricht. It included protocols on the acquisition of second homes in Denmark, on interest-free credit facilities in the Portuguese territories of Azores and Madeira, and a protocol proclaiming that the none of the treaties would 'affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland' on the protection of the unborn.<sup>105</sup> Certain attached declarations were equally bizarre, for example, those on cooperation with charitable associations, the protection of animals and the use of languages in CFSP. While it may be the case that the attached protocols and declarations allow 'member governments to avoid the appearance of failure', the trivial or rather odd content of some reflect the lack of clarity in the process.<sup>106</sup> This was again reflected in some of the last-minute adjustments that were made. For example before the ratification of Maastricht but after the conclusion of the IGC, governments felt obliged to somewhat qualify Protocol No.17 on Article 40.3.3 with a Solemn Declaration signed by the foreign ministers. This was due to the change in the domestic situation in Ireland.<sup>107</sup> It was little wonder that De Boissieu, a key participant for the French at both Maastricht and the 1996 IGC remarked on the absence of any 'balance' to the negotiations.<sup>108</sup>

### Postponement

Given the ambiguity in objectives and the indirection, notably in the earlier stages of the process, the IGC also presents itself as a mechanism for postponing disagreements by shelving clearer definitions of treaty compromises until a later date, very often

<sup>101</sup> Ibid. p.170.

<sup>102</sup> Anthony Forster & William Wallace, 'The IGCs and the Renegotiation of European Order After the Cold War', Laurent & Maresceau, *The State of the EU* Vol. 4, p.343-4.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid. p.171; Also see Anthony Forster, *Britain and the Maastricht Negotiations*, Macmillan: London, 1999.

<sup>105</sup> Protocol No.17 to Treaty of European Union.

<sup>106</sup> Lodge, 1998b, p.501.

<sup>107</sup> See Gerard Hogan & Gerry White, *The Irish Constitution* (J.M. Kelly), 3<sup>rd</sup> edition, Dublin: Butterworths, 1994, pp.803-5.

<sup>108</sup> See Mazzucelli, 1997, p.170.

another IGC or as the treaty provision is implemented. Examples of this can be found in both the SEA and the TEU. Article 99 TEC (now article 93) introduced by the Single European Act postpones confronting the differences on tax harmonisation, with member governments only obliged to take decisions so far as they are necessary 'to ensure the establishment and functioning of the internal market' while any measure requires unanimity in the Council. Article 3b of the TEU on subsidiarity avoided providing a detail-specific outline on where the Community was to act and where the Member States held jurisdiction. At the same time the openness of the definition allowed for both British and German governments to be sufficiently satisfied that their perception of the EU had been provided for within the new treaty amendments. For the British Article 3b represented a reassertion of national influence, a direct challenge to the previous claims by Commission President Jacques Delors that within ten years '80% of economic legislation, perhaps even tax and social will come from the EC'.<sup>109</sup> For the German government the principle of subsidiarity was a central feature of a federalist form of governance, another part of Chancellor Kohl's objective of an economic and political union.

The Member States at the SEA avoided confronting the issue of setting out the specific objectives of EPC. A somewhat similar scenario prevailed at Maastricht on defence matters pursuant to Article J.4. The objectives of the newly-'established' CFSP were vaguely set out in Article J.1(2) but without any prioritisation as regards the Union's interests. In the same title Article J.4 referred to 'the eventual framing of a CDP, which might in time lead to a common defence' but without any details on how this would be realised. There have been other uses of this postponement mechanism outside of the IGC framework, most notably in the period between the failure of the Fouchet Plan and the convening of the SEA. For example, the Werner Plan outlined a three-stage process for EMU, leaving the third stage to be defined precisely at a later date.<sup>110</sup> As mentioned this has also been a tool used in Franco-German bilateral relations and it has become increasingly apparent with the enlargement of the EEC from six to nine, from nine to twelve and from twelve to fifteen. Indeed as examined in the following chapter, the Maastricht treaty's Article N.2 and the related articles were an explicit

<sup>109</sup> See Jacques Delors, *Speech to European Parliament, 6/7/88*; Charles Grant, *Delors: Inside the House Jacques Built*, Brealy, 1994, p.88.

<sup>110</sup> See William Wallace, 'The Sharing of Sovereignty: the European paradox', *Political Studies*, Special Issue, Summer 1999.

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acknowledgement of the discussions and decisions governments had postponed during the IGC. As the negotiations of this IGC are examined in detail a similar scenario is also revealed.

At the final meeting of an IGC member governments sign up to a package, with certain new amendments, which they have not yet fully appreciated, or perhaps understood. As well as this being the basis for difficulties when it comes to giving effect to a treaty provision, it is also the basis for successful policy implementation and further integration. The following chapters on the 1996-97 IGC show that despite the ambiguity, lack of direction and unintended outcomes that characterised the process when Amsterdam was finally agreed, the treaty did make significant or at least potentially significant changes.

### **An Incremental Process**

These four defining features of the IGC also suggest that the process is a fluid one. Unclear objectives from governments leaves the process lacking direction particularly in the earlier stages. At the same time there may be instances when the early fog in the negotiations does not lift on a subject under discussion and participants drift into an agreement without fully appreciating or comprehending the implications of their decision. On other issues governments opt for loose language rather than coherent definitions, in essence postponing agreement on the fundamentals for another IGC or to the post-negotiation or implementation phase. The IGC process is rarely a forum where governments or institutions embark on 'grand designs' or with well defined objectives which they can pursue with 'maximum efficiency' in an 'interstate bargaining' process that culminates in a substantive agreement which is in turn followed by debate on institutional reform. Wallace captures it eloquently when he says of European negotiations that 'Reality is of course, never as neat as this; politics is always messy ...'.<sup>111</sup> An IGC is a messy process. As one participant in the 1996-97 IGC remarks

governments and their negotiators do not always know what they want and the situation changes unpredictably with the dynamics of the negotiations where written and oral proposals are floated around the table by all the

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<sup>111</sup> See Wallace, in Helen Wallace et al., 1983, p.415.

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participants at frequent intervals<sup>112</sup>

The member governments are involved in an incremental process, slowly sorting out their priorities. In sum this incremental style of negotiating with ambiguity, lack of direction, unintended outcomes and postponement that winds its way to an eventual package of treaty amendments, some of which were notably significant will run as a *leitmotif* throughout the analysis of this IGC. It will explain how the negotiators arrived with the final package at Amsterdam. In turn, this will allow for a more detailed look at the weaknesses of an intergovernmental or neofunctionalist approach in explaining an IGC process at a later stage in the thesis.

## **CONCLUSIONS**

This chapter had two aims. The first aim has been to examine the defining features of the IGCs defined in the previous chapter. Secondly, in establishing a set of features, the chapter sets out a roadmap for the rest of the thesis on how the 1996-97 negotiations proceeded. It began with a consideration of the rational choice explanations, primarily that of intergovernmentalism expounded by Moravcsik and the more idealist explanation by neofunctionalism. This allowed for a benchmark against which the later framework could be developed. After setting out the approach by these two theories the chapter turned to examining the defining features of the previous Conferences. In doing so it was firstly possible to identify the weaknesses of the supranational explanation of neofunctionalism and particularly the rational choice explanation by Moravcsik. Secondly, out of these criticisms a fluid process of negotiations was identified. This depicted the IGC as a process where there was a high degree of fluidity as regards participation and the role of an influential actor at a Conference. In turn it suggested that IGC negotiations are an incremental process, with governments edging along to a final treaty. Rather than it being a case of governments setting out to construct supranational designs or with clearly-defined objectives which they pursue in a rational and ordered manner to the final treaty, IGCs have been characterised by ambiguity, indirection, unintended outcomes and postponement. It has not been a case of these features being equally distributed across all issue areas or from each and every participant. There is variation in this but they are recurring features in the negotiations

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<sup>112</sup> See Stubb, 1998, p.32.

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that in turn leave the participants edging along, giving the overall incremental style to the process.

As the thesis proceeds in its examination over the next two parts it is these four features and this incremental process that proves to be the way that yet another IGC negotiation proceeds. The final chapter will consider the added value of this approach with a further comparison with Moravcsik's intergovernmentalism and the neofunctionalist perspective.

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***PART II – OVERVIEW OF 1996-97 IGC***

## **CHAPTER III**

### **THE PRE-NEGOTIATION STAGE: SETTING THE AGENDA AND DEFINING THE APPROACH**

#### **INTRODUCTION**

This IGC differs from all previous Conferences in that it has been the only one that has had its timing predetermined by another treaty, namely by Article N(2) of the Maastricht Treaty. This chapter has three aims. The first is to consider how the agenda for the 1996-97 IGC was set. The second aim is to take a close look at the issues that made it onto the agenda and the third and final aim is to exam the attitude of the British, French and German governments along with the European Parliament and Commission in the run up to the start date on 28 March 1996. There is a focus on Britain, France and Germany given that the thesis throughout concentrates on these three Member States, while the European Commission and Parliament have been particularly influential in the pre-negotiations at previous Conferences, notably the SEA.

The central argument of this chapter is that member governments had little enthusiasm for holding an IGC in 1996. They were committed to it by Maastricht. As a result there was a lack of interest when it came to setting the agenda. Therefore there was ambiguity, firstly in the overall theme or objective of the IGC, and secondly among the member governments in outlining their positions on the specific issues that should be discussed at the Conference. Governments did not prioritise effectively when it came to setting the agenda; rather a more open approach was taken. This was hardly surprising given the domestic political situations that left some of the governments distracted in their preparations for the IGC. Indeed, even before the IGC had started, there was talk of postponement, with certain officials commenting on a 'Maastricht III'.

The chapter is divided into three parts. The first part examines how the Maastricht negotiations and eventual treaty began the agenda setting process. In doing so it takes a look at the specific treaty articles through which member governments postponed a particular issue until the 1996 Conference. It also considers the influence of the Maastricht ratification process in shaping governments' approach in preparing for the 1996 Conference. Finally it examines the reports of the Council and Commission on the functioning of the Treaty on European Union and their general failure to make clear suggestions on what should be included in the agenda for amending at the Conference. The second part of the chapter considers in more detail the issues that governments focused upon in preparation for Turin. It examines how enlargement failed to become the overall theme that would drive the preparations while considering the role of the Reflection Group, and notably, its failure to provide for a more focused set of conclusions on how to go about making changes rather than merely documenting the differences between governments. Finally it looks at the specific topics dealt with by the Reflection Group, the official position papers from the member governments and the European Commission and Parliament. The third and final part of the chapter looks at the attitudes of Britain, France, Germany, the Parliament and Commission towards the IGC. In doing so it focuses more on how these actors perceived and approached the IGC, having already dealt with their objectives on the specific issues in the previous section.

## **1. THE MAASTRICHT INFLUENCE**

### **Specific Articles**

As described in *Chapter I*, one of the features of the IGC negotiations was the tendency to postpone disagreements by leaving a clearer definition of a contentious issue until a later date. Therefore it was during the Maastricht negotiations that the framework for the 1996 IGC began to evolve. Article N(2) demanded the convening of a conference to examine the provisions as specified throughout the TEU. The decision to include Article N(2) was taken late on in the Maastricht debate.<sup>1</sup>

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<sup>1</sup> Mazzucelli, 1997, p.169.

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The specific articles from the TEU Treaty revealed the careful construction of compromises between the contradictory positions at Maastricht. Article J.4(6) stated that ‘the provisions of this Article [J.4] may be revised as provided for in Article N(2)’. With Article J.4 dealing with defence aspects of CFSP, it would mark a return to the debate on relations between NATO, WEU and the EU. Article J.10’s reference that ‘on the occasion of any review of the security provisions under Article J.4’, the IGC ‘shall also examine whether any other amendments need to be made to provisions relating to the common foreign and security policy’ brought the whole nature of CFSP onto the agenda, reflecting the expectations at this time for CFSP to be a central issue on the agenda of the next IGC. However, since Article N(2) referred to a general Conference, further references to a range of issues can be identified in the treaty language.

Article 189b(8) suggested that the powers of the European Parliament could ‘be widened, in accordance with the procedure provided for in Article N(2) ...’, marking a return to the debate on the power struggle between the Council and the European Commission and Parliament. Article B placed the pillarised structure of the Union on the agenda, the 1996 Conference having to assess ‘to what extent the policies and forms of cooperation introduced by this treaty may need to be revised with the aim of ensuring effectiveness of the mechanisms and the institutions of the Community’. This would re-open a debate on the merits of the ‘temple’ structure as opposed to the tree structure, a discussion that member governments had avoided at the Maastricht IGC. When the Dutch Presidency introduced their revised approach replacing the Luxembourg pillar structure with a unitary structure there was little time for member governments to discuss the two options. Therefore all member governments, except the Belgian, rejected the proposal. But, not all of them were opposed to a unitary treaty structure in principle, rather, most of them felt that the introduction of such a proposal so late in the negotiations could jeopardise their ability to successfully conclude with a set of treaty amendments. This struggle between the pillars, community and intergovernmental would underpin the negotiations on the third pillar at this IGC.

Article N(2) itself left a considerable scope for the 1996 conference since the revision was to be ‘in accordance with the objectives set out in Articles A and B’. These objectives included the promotion of ‘balanced and sustainable’ economic and social

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progress through EMU, an effective foreign policy, a stronger sense of citizenship, and closer cooperation on justice and home affairs. This loose language of the treaty left a lot of room for manoeuvre when it came to setting the agenda. Finally Declaration 1 and Declaration 16, attached to the Maastricht Treaty, earmarked civil protection, energy and tourism together with a hierarchy of Community acts for consideration during the 1996 negotiations.

### Ratification Crisis

Maastricht proved crucial in shaping the approach and agenda of the 1996 IGC in two further ways. Firstly Article N(2) had not anticipated the ratification crisis and the ensuing consequences. The creation and inclusion of this article was based on the original assumption that in 1996 governments would be reviewing a TEU that had been three to four years in operation. The ratification crisis that hit the Maastricht project completely undermined this assumption. The rejection by the Danish people of the treaty in the first referendum forced its government, and indeed the other member governments, to reshape the package that would be presented in a second referendum.<sup>2</sup> In the end the TEU only came into effect by November 1993, months behind schedule. For the member governments the question became – how was it possible to identify the range of issues that needed reforming after only two years since its implementation? This was particularly difficult with CFSP and JHA, which the Member States had been slow to use.<sup>3</sup>

Secondly the force of post Maastricht shocks left governments more cautious about embarking on further treaty reform. Shocks were not confined to the initial Danish ‘No’ vote. The French electorate agreed to Maastricht only by a one percent majority, though this was somewhat a reflection of the dissatisfaction with President Mitterrand, who became personally involved in the campaign in support of the treaty.<sup>4</sup> The final result left divisions across the political spectrum and society on the merits of the Treaty and it certainly did not whet the French political elite’s appetite to return to a

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<sup>2</sup> See Finn Laursen ‘Denmark and the ratification of the Maastricht Treaty’, in *The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications*, edited by Finn Laursen & Sophie Vanhoonacker (eds.), EIPA, 1994, p.61-86.

<sup>3</sup> See chapter VI, pp. 174-77 & pp. 195-96; chapter VII, pp. 216-20.

<sup>4</sup> See Philippe Keraudren & Nicolas Dubois, ‘France and the Ratification of the Maastricht Treaty’, in Laursen & Vanhoonacker, 1994, p.61.

‘Maastricht II’ negotiation. Chirac’s *Rassemblement Pour la République* (RPR) which took office in 1994 with the *Union pour la Démocratie Française* (UDF), while officially supporting the treaty, was considerably divided over it, with convincing and determined opposition coming from Philippe Sequin and Charles Pasqua, divisions which would reappear in the pre-negotiations to the 1996 reform.<sup>5</sup> (see below). The German government was similarly not keen to embark on another set of reforms. The Federal Constitutional Court had been clear as regards the need for a strengthening of the democratic basis of the EU before there could be further integration.<sup>6</sup> The Bundesbank and public associated giving up the DMark with the Maastricht treaty, while the Länder began to question more openly and vigorously the erosion of their domestic powers, demanding a greater role in the decision-making process related to EC matters.<sup>7</sup> In Britain Prime Minister John Major was left to strong-arm the Euro-rebels within the Conservative party into accepting the treaty or run the risk of a defeat in a confidence vote, and ultimately a general election.<sup>8</sup>

The ratification did not pass off smoothly in some of the other Member States. For example, facing unemployment of more than 20%, and after making several devaluations to the peseta, Spaniards increasingly questioned the benefits of EU membership.<sup>9</sup> While the ratification passed off without much debate in The Netherlands, some claimed that ‘proof of a similar kind of endorsement by the Dutch population at large [was] more difficult to find’.<sup>10</sup> In Portugal the possibility of holding a referendum on Maastricht divided the politicians before being eventually dropped. The ratification process also brought to light divisions between the political parties over the European Union that had not been apparent up until this time, the eventual opposition to the treaty by the Christian Democrats coming somewhat as a surprise.<sup>11</sup>

<sup>5</sup> Ibid., 1994, p.155.

<sup>6</sup> On ratification of Maastricht in Germany see Rita Beuter, ‘Germany and the Ratification of the Maastricht Treaty’, in Laursen & Vanhoonacker, 1994, pp.87-112.

<sup>7</sup> Ibid.

<sup>8</sup> Economist Intelligence Unit – 1<sup>st</sup> Quarter 1995.

<sup>9</sup> See Sophie Vanhoonacker ‘From Maastricht to Karlsruhe: The Long Road to Ratification’, in Laursen & Vanhoonacker, 1994, p.7. For detailed account on the ratification of the treaty see in same edition Alberto Gil Ibáñez ‘Spain and the Ratification of the Maastricht treaty’, pp.129-47.

<sup>10</sup> See Arthur den Hartog, ‘The Netherlands and the Ratification of the Maastricht Treaty’, in Laursen & Vanhoonacker, 1994, p.225.

<sup>11</sup> See Clotilde Lopes Marinho, Portugal and the ratification of the Maastricht Treaty’, in Laursen & Vanhoonacker, 1994, pp.231-244.

Most governments did not want this IGC, and would have preferred to reschedule for a later date.<sup>12</sup> However, this would have required an amendment to Article N(2) – a legal IGC – and therefore unanimous agreement. The Conference's postponement would have suggested crisis within the Union, a perception that all governments wanted to avoid in the wake of Maastricht. This was particularly the case given that the Conference was billed as a preparation for enlargement. (See below). While such an overall theme to the negotiations did not develop, the postponement of the IGC would have been a very public and dramatic confirmation of the lack of consensus among EU governments on this crucial issue. The second option was to continue the drift towards the IGC with an open approach as to what would be discussed at the Conference. In effect governments took up this option. Therefore they drifted towards the IGC without an overall theme to the negotiations.<sup>13</sup> This left certain senior diplomats predicting that the Conference would be 'long, slow and small', speculating that there would be a 'Maastricht III' in 1999-2000.<sup>14</sup> Even before 'Maastricht II' had begun to deal with the postponements from 'Maastricht I' there was talk of another IGC, a Maastricht III.

### Functioning of TEU

The Council and Commissions' reports on the functioning of the TEU in late 1995 were very tentative in their assessment of the Maastricht Treaty, providing little in the way of direction or feedback on future reforms. On CFSP the Council's report remarked that 'assessments of the initial performance of the CFSP differ'.<sup>15</sup> On decision making within the second pillar governments merely remarked that 'the procedures are still at an early stage and must be improved'.<sup>16</sup> Governments did agree on making 'better use of the General Secretariat of the Council' on CFSP matters. On security and defence it merely remarked on the projects the WEU had been involved in through CFSP. On JHA a similar picture was painted, the report stating that 'the

<sup>12</sup> Interviews.

<sup>13</sup> Ian Davidson, 'The absent agenda: EU Member States have failed to reach agreement on the aims of next month's intergovernmental conference', *FT*, 21/02/96; Lionel Barber 'Who's afraid of the IGC?', *FT*, 09/10/95; 'Message from Messina', *FT*, 02/06/95;

<sup>14</sup> Lionel Barber 'Opportunity for fine-tuning', *FT*, 10/05/95; Edward Mortimer 'Detour on the road', *FT*, 22/11/95.

<sup>15</sup> *Report of the Council on the functioning of the Treaty on European Union*, Luxembourg: OOPEC, 1995, p.29.

<sup>16</sup> *Ibid.* p.31.

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matters covered by the Title (asylum, border controls, immigration, combating international crime and police cooperation) are very sensitive and time has been very short to allow a true assessment'.<sup>17</sup> The report went on to say that 'Extremely limited use has been made of the new instruments provided for in Title VI'.<sup>18</sup> On the efficiency of the EU's institutional structure the report claimed that 'the continued extension of qualified-majority voting is a positive factor' without going on to explain how this was so. However, it did claim that 'the juxtaposition of a large number of procedures sometimes makes it difficult for the functioning of the Union to be properly understood by the outside world'.<sup>19</sup> The report made a similar assessment as regards the European Parliament and co-decision, and claimed that the usefulness of this procedure was being undermined by its complexity.

The Commission's assessment of Maastricht's implementation made similar references to 'the unavoidable running-in period of a treaty which has not long been in force'.<sup>20</sup> It was more forthright in identifying failures in the treaty, notably failure to use QMV in CFSP, the complexities of the decision making procedures, and the inadequacies of the provisions on justice and home affairs.<sup>21</sup> It also made similar criticisms as the Council on the complexity of the decision-making system, calling for greater simplification of the procedures, the one single area where both reports made similar recommendations, though without going into detail.

## **2. EVOLUTION OF THE AGENDA**

### **Enlargement – An Overall Theme?**

The one 'grand idea' that governments may have seized upon in defining an overall objective or theme for the negotiations was that of Eastern enlargement. There had been attempts to use this to provide a focus for the negotiations, as the Conference that prepared for enlargement. All the governments and the institutions in their official position papers made reference to a future enlargement, but usually in an imprecise

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<sup>17</sup> Ibid. p.35.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid. p.15.

<sup>20</sup> Commission of the European Communities (CEC), *Report on the operation of the Treaty on European Union*, Brussels, 1995 pp.63-72.

<sup>21</sup> Ibid. pp.47-50.

manner. For example the French paper made no specific reference to enlargement, while the Belgian, Irish, British, Austrian and Portuguese simply referred to the concept of enlargement. The Netherlands and Germany emphasised the importance of an 'Eastern expansion' while the Nordic members claimed that the Baltic states were equally important. Italy and Greece feared that pre-occupation with enlargement to the East may mean that Mediterranean enlargement is ignored, while Luxembourg called for a case by case approach to all applications.<sup>22</sup> The timing and extent of any enlargement was still some way in the future.<sup>23</sup> As one senior Commission official remarked 'We don't know whether we should be designing a Union for 18 members or 25 members. It makes a big difference.'<sup>24</sup> The Spanish government suggested that it was not a question of when enlargement would take place, but rather how.<sup>25</sup> This required the IGC to deal with the issues at hand. However, the 'how' would only be decided with a clearer picture on the 'when'. Malcolm Rifkind's words to the House of Commons reflected the extent of the differences on enlargement when he claimed that 'it is not because in 7 or 8 years we will be admitting new Member States that we should change our rules today'.<sup>26</sup> The uncertainty and deep differences between governments on enlargement, as to when it would occur and its extent, undermined the possibility of it becoming the driving theme.<sup>27</sup>

### European Councils

Instead the lack of an overall theme and the loose nature of the Maastricht references left the governments continuing with their open approach on setting the IGC agenda. The agenda was enlarged at various European Council meetings. The Presidency conclusions at the Brussels European Council in December 1993 included a Declaration on the necessity of the 1996 IGC to examine QMV and Commission

<sup>22</sup> See EP, *White Paper on the 1996 Intergovernmental Conference, Volume II*, Luxembourg, OOPEC, 1996.

<sup>23</sup> Lionel Barber, 'Brussels keeps shut the gates to the east', *FT*, 16/11/95; Lionel Barber, 'Bonn seeks to limit next round of EU expansion', *FT*, 14/12/95; Caroline Southey, 'Compromise on expansion', *FT*, 18/12/95; Lionel Barber & David White, 'Kohl summit success on enlargement', *FT*, 18/12/95; Quentin Peel & David White, 'Gonzalez warns EU on enlargement plan', *FT*, 06/12/95.

<sup>24</sup> 'Countdown to 1996: EU returns to launch pad for take-off', *FT*, 02/06/98.

<sup>25</sup> *The 1996 Intergovernmental Conference: starting points for a discussion*, 02/03/95.

<sup>26</sup> *AE*, December 1995

<sup>27</sup> 'Just do it – Germany's attitude to eastern Europe joining the EU and NATO', *Economist*, 15/07/95; 'The EU goes cold on enlargement', *Economist*, 28/10/95; 'Arguments for enlargement', *Economist*, 03/08/96; 'For a bigger, better Union: The European Union needs to speed up its opening to the East', *Economist*, 03/08/96.

membership.<sup>28</sup> A similar proposal was made in another Declaration at the informal meeting of the Council of Ministers at Ioannina in March 1994 that was convened to deal with the crisis on the size of the blocking minority.<sup>29</sup> At the Madrid European Council meeting on 15 and 16 December 1995 the Council called for a focusing of the IGC 'on necessary changes' rather than 'a complete revision of the Treaty'. The meeting reiterated the three main areas for reform similar to the Cannes European Council of 26 and 27 June 1995: Europe and the citizen with emphasis on security, solidarity, employment and the environment; institutional reform, the goal being to improve the efficiency and democracy of the union; and external action, that would be dominated by the second pillar on CFSP.<sup>30</sup> Maastricht's influence is clearly recognisable across the three areas. The promotion of Europe and the citizen was a response to the ratification crisis. It was an attempt to make the Union more accessible and relevant to the citizen and bridge the gap that many governments believed to have arisen between the public perception, understanding and purpose for the EU and that held by the political elite in national capitals and Brussels.<sup>31</sup> On CFSP and institutional matters Maastricht had made direct references, while the European Council meetings, as described above, extended on some of these issues.

### Reflection Group

Further to the additions made by the various European Councils, the Heads of State and Government in Corfu in June 1994 agreed to the establishment of 'a Reflection Group to prepare for the 1996 Intergovernmental Conference', to begin in a years time.<sup>32</sup> It is important to recognise that this group was not given a mandate to negotiate but rather as the Group itself remarked it was to identify the 'real' problems facing the EU and suggest various options for dealing with them at the IGC.<sup>33</sup> It was a think-tank. Both the approach and eventual results of the Group reflected the unfocused nature of the IGC agenda, the extent of the divergence and ambiguity within government positions, and their unwillingness and inability to provide the necessary clarity on

<sup>28</sup> See *Presidency Conclusions*, European Council of Brussels, December 1993.

<sup>29</sup> On the blocking minority see *Economist*, 26/02/94, p.51; *Economist* 19/03/94, p. 64; *Economist*, 02/04/94, p.55.

<sup>30</sup> See *Presidency Conclusions*, Madrid European Council 15 and 16 December 1995

<sup>31</sup> See 'The Challenge', Reflection Group Report (SN 519/95 Reflex 20).

<sup>32</sup> European Council of Corfu, 1994, p.15.

<sup>33</sup> See *Reflection*, 1995.

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which the negotiations would be based. Just as the post-Maastricht phase left governments unsure of their approach, the Reflection group was a continuation of this drift in the pre-negotiation process.

The Reflection Group consisted of a representative from each Member State, the Commission and two MEPs. (See Appendix 2) The Irish, Spanish, French, Dutch, Swedish and British governments appointed Ministers of State. The Danish government appointed a former Secretary General of the Council, the Greek a retired ambassador, the Finnish a former minister, Luxembourg and Austria appointed a serving ambassador and permanent representative respectively while Italy sent a senior foreign ministry official. Both the Portuguese and the Belgian governments appointed academics. The diversity of the group is important since it did not engender any form of cohesion in the group. The academics were keen to reflect in depth, the politicians to score political points that would have a domestic use while the foreign office officials more or less towed the government line, setting out early on their positions of negotiations for the IGC.<sup>34</sup> The European Parliament was successful in securing a place in the group given that the group was not established to negotiate or to officially set the agenda for the negotiations.

The convening of the group in June 1995 coincided with the Spanish Presidency of the second half of that year, though it officially started in the final month of the French Presidency. The group was chaired by Carlos Westendorp, the Spanish European Affairs minister. The Spanish Presidency had identified eight areas for consideration by the group. These included the challenges and objectives facing the Union and the IGC; an institutional balance that proved adaptable in an enlarged Union; the necessary changes to each institution; development of concept of European citizenship; development of cooperation on Justice and Home Affairs; improving coherency of the EU's external policy through a strengthened CFSP; the examination of existing European security and defence dimension and a reconsideration of the instruments at the Union's disposal.<sup>35</sup> The group met three times a month, usually in Brussels. Throughout the first two months of June and July the topics were addressed on the basis of a questionnaire drawn up by the Presidency. By August the Spanish

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<sup>34</sup> See Stubb, 1998, p.131.

<sup>35</sup> See McDonagh, 1998, p.36.

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Presidency on its own initiative drafted an interim report which formed the basis for the rest of the meetings. The final report was completed on 5 December 1995 and submitted to the Madrid European Council of the same month. It had two parts to it. The first and shorter part was titled *A Strategy for Europe*. This part introduced the issues that would be expanded upon in the second part of the paper. The second and lengthy part was titled *An Annotated Agenda*. It was divided into the three areas that the Madrid European Council reconfirmed as the focus for the IGC which also represented an amalgamation of the eight areas that the Spanish had identified at the start of the Group's work; making Europe more relevant to its citizens; enabling Europe to work better and preparing for European enlargement – essentially institutional reform – and giving the Union a greater capacity for external action.

While the European Council at Madrid described the report as 'a sound basis for the work of the Conference'(p.41) it was a further reflection of the lack of consensus among member governments on a more focused agenda, with clear objectives for the Conference.<sup>36</sup> This was something that the representatives avoided yet again. The final report shied away from placing an emphasis on any series of options that the IGC should pursue. Rather it was left with outlining the differences using formulations such as 'a broad majority', 'some members' or 'one member', which was usually Britain. This did not augur well for the IGC.<sup>37</sup>

Criticism of the Group's performance and results came from its own members. The Belgian representative Franklin Dehousse remarked that there was not a lot of 'reflection' within the Group, with most representatives being 'satisfied with explaining – and repeating, repeating, repeating – their national position'.<sup>38</sup> He claimed that 'the preparation of the enlargement was not ambitious enough'. One observer suggested that this was due to the fact that most members were junior Ministers, State Secretaries or Ambassadors unwilling to 'upset their more senior political masters'.<sup>39</sup>

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<sup>36</sup> Ferdinando Riccardi, 'Work in advance of the 1996 Conference does not encourage optimism', *AE*, September 1995; Ferdinando Riccardi, 'The report by the Reflection Group on the 1996 IGC is disappointing in that it can but reflect the disappointing result of its work', *AE*, December 1995.

<sup>37</sup> Lionel Barber 'Splits surface over report on EU future', *FT*, 06/12/95; Lionel Barber and George Parker 'Divisions surface over plans for EU enlargement', *FT*, 05/06/95; Lionel Barber, 'Countdown to 1996', *FT*, 01/08/95.

<sup>38</sup> F. Dehousse, 'The enlargement of the European Union and the institutional reforms', in G. Herolf (ed.), *EU Enlargement and Flexibility*, Stockholm: Swedish Institute of International Affairs, 1998.

<sup>39</sup> Youri Devuyst, 'Treaty reform in the European Union: the Amsterdam process', *Journal of European Public Policy (JEPP)*, 5:4, December 1998, p.616.

Indeed at the very first meeting the chairman Carlos Westendorp reminded members of the group that they were *personal* representatives of foreign ministers and should speak on a ‘personal’ basis as much as possible, especially given that it was a process of reflection than negotiation.<sup>40</sup> Dehousse’s criticisms did not end with the process but extended to the results. On the Group’s report he claimed that ‘From the standpoint of prospects, [it] is very bad … It demonstrates that the Member States are not ready to proceed with the reforms they advocate’. His forecast that ‘This conference will be extraordinarily difficult to manage ....’ was an accurate description of what was to come.<sup>41</sup> Bobby McDonagh, an official from the Irish Foreign Ministry, while acknowledging the usefulness of the process in clarifying important issues also admitted that during the sessions he felt ‘there was no sense of an agenda being driven from any particular direction.<sup>42</sup> He went on to say ‘I had no sense of a clear overall Franco-German approach which in the past has often acted as a “motor” for the development of the European Union’.<sup>43</sup> Such was the disdain with the result and approach by the Reflection Group expressed by some that it was suggested that a separate treaty or protocol on political union be formed by those genuinely willing.<sup>44</sup>

## National Positions

### Introduction

Further to the Reflection Group Report all governments, the European Commission and Parliament published either one or a series of position papers outlining their objectives and aims for the IGC. This following section considers the approach of all governments and the institutions on most of the major issues that were mentioned in their position papers and which fell under the three subject areas specified by the Cannes and Madrid European Council and the Reflection Group Report. Given that this chapter aims to provide such breadth in its analysis, the contents of the Reflection Group Report, rather than being considered separately, are mentioned where relevant in the headings below. The following analysis of member governments’ positions not

<sup>40</sup> See McDonagh, 1998, p.34.

<sup>41</sup> *La Libre Belgique*, 08/12/95.

<sup>42</sup> McDonagh, 1998, p.42.

<sup>43</sup> *Ibid.* p.37.

<sup>44</sup> ‘Emile Noel Launches The Idea Of A Distinct Treaty On Political Union’, *AE*, 27/11/1995; For an alternative perspective of the Reflection and the IGC see Josef Melchior, ‘Crafting the Common Will: The IGC from an Austrian Perspective’, *International Negotiation* 3: p.378.

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only reveals the extent of the differences in their approaches on the issues, but also a situation that would persist well into the IGC where governments acknowledged the necessity of change or reform, while, at times, failing to outline in any detail how this could be achieved.

### Institutional Reform

All governments considered some form of institutional reform necessary to maintain an effective and democratic structure in an enlarged Union.<sup>45</sup> A clear majority did call for an extension of QMV.<sup>46</sup> However, it was a case of avoiding any recourse to details. On the possible alternatives to an extension of QMV in Title V and VI such as a super-qualified majority, positive abstention, a qualified majority with a minority dispensation or consensus minus one the Reflection Group admitted that 'None of these have been explored in depth'. (Para. 101) Any attempt to define in a specific way the areas would have revealed considerable differences. For example the Irish (March '96), Italian (March '96), Luxembourg (June '95), French (February '96), German (March '96), Dutch (March '96), and Portuguese (March '96) position papers were not specific on the areas where any extension of QMV would apply. The Commission and

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<sup>45</sup> See Government policy paper addressed to the Belgian Parliament on the 1996 IGC; *Memorandum on the IGC from the Governments of Benelux*, 7 March 1996; The Netherlands, *European Cooperation in the fields of Justice and Home Affairs. Third Memorandum for the 1996 Intergovernmental Conference* (23 May 1995); Communication of March 1996: 'From Madrid to Turin: the Netherlands' priorities for the 1996 IGC; Germany, *Germany's objectives for the Intergovernmental Conference*, 26 March 1996; CDU, CSU and FDP coalition agreement for the current legislative period. Point VIII on 'Europe and Foreign Policy - Security and Defence', 11 November 1994; Joint declaration of 15 July 1995 by the German and Italian Foreign Ministers regarding the 1996 Intergovernmental Conference; Italy, *Position of the Italian Government on the IGC for the revision of the Treaties*, 18 March 1996; Austria, *Austria's positions of principle on the Intergovernmental Conference*, 26 March 1996; Portugal, *Portugal and the IGC for the revision of the Treaty on European Union - Foreign Ministry document*, March 1996; Sweden, *Communication of the Swedish Government of 30 November 1995 on the 1996 IGC*; Denmark, *Agenda for Europe: the 1996 Intergovernmental Conference. Report of the Danish Foreign Ministry*, June 1995; *Bases for negotiations: an open Europe. The 1996 IGC. Memorandum of the Danish Government*, 11 December 1995; Greece, *Towards a citizens' Europe - democracy and development: Memorandum for the 1996 IGC*, January 1995; *Memorandum of the Greek Government of 24 January 1996 on the IGC: Greece's positions and comments*; Spain, *The 1996 Intergovernmental Conference: starting points for a discussion*, 2 March 1995; *Elements for a Spanish position at the 1996 Intergovernmental Conference*, 28 March 1996; France, 'Memorandum on France's guidelines for the 1996 IGC', *Le Figaro*, 20 February 1996; Ireland, *White Paper on Foreign Policy: 'External challenges and opportunities'*, 26 March 1996; Luxembourg, *Luxembourg Government memorandum of 30 June 1995 on the 1996 Intergovernmental Conference*; Finland, *Memorandum of the Foreign Ministry of 18 September 1995 on the views of the Finnish Government concerning the 1996 Intergovernmental Conference; Finland's starting-points and objectives for the 1996 IGC - report of the Finnish Government*, 27 February 1996; Britain, *A Partnership of Nations: The British Approach to the European Union Intergovernmental Conference*, March 1996.

<sup>46</sup> 'Mr Westendorp's interim report notes that a majority of the reflection group supports extension of qualified majority', *AE*, 04/09/1995.

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EP called for a general extension but again no specifics were mentioned.<sup>47</sup> The Belgian (July '95) and Finnish papers (February '96) were equally unclear on its extension, referring only to social and environmental issues. Denmark (December '95) and Sweden (November '95) referred only to environmental matters, while the Spanish paper (March '96) was adamant that unanimity would remain the rule on the environment, going on to list some of the other exceptions to any extension, e.g. decisions of a fiscal or social character, decisions on Structural Funds and 'quasi-constitutional decisions', while implying that this was not an exhaustive list. Only the Belgian (December '95) and Italian (March '96) governments referred to a possible extension to fiscal matters. The Greek paper (January '96) was similarly vague taking a rather cautious approach of not dismissing an extension as long as there was also an extension of co-decision. This was a marked shift from the earlier Greek position in 1995 that called for the replacement of the present system with the 'federal state model' (as exists in the US). The Austrian government called for a partial revision, article by article, while the British Conservative government opposed any extension on the grounds that unanimity is not incompatible with effective decision-making and is the best means of preserving vital national interests.

The Parliament and Commissions' Opinions had made clear that any extension of QMV would require some method of reform of the voting system in the Council. The logic behind this argument was that the addition of small-and-medium sized Member States would see a decline of representativeness in terms of population, i.e. the minimum percentage of the Union population needed to achieve a qualified majority would continue to decrease, undermining the influence of the bigger, more populated Member States as well as the democratic principles of the Union's most powerful institution. The lack of consensus on the details of this reform was stark. Germany (1996), The Netherlands (1995), Italy (1996) and Denmark came down in favour of a double majority, though the Dutch government was a little more reserved in its March '96 paper. However, the Finnish (September 1995 & February 1996), Luxembourg (1995) and Swedish (1996) governments' position papers opposed placing an emphasis on population criteria, claiming that the European Parliament was the institution that

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<sup>47</sup> CEC, *Reinforcing Political Union and Preparing for Enlargement*. Luxembourg: OOPEC, 1996; European Parliament, *Resolution on Parliament's opinion on the convening of the Intergovernmental Conference*. Luxembourg: OOPEC, 1996.

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represented the people.<sup>48</sup> Spain (1996), France (1996) and Britain (1996) expressed support for a re-weighting of the vote distribution. The Spanish government came the closest to providing details on any future approach with its proposition that two extra votes be given to Germany, France, Britain, Italy and Spain, and with the next enlargement Poland. The Irish (1996) government's paper was unclear on the approach to be taken, while the Portuguese and Austrian papers were explicit in their support for maintaining the smaller states' extra representation. Both the Belgian and Finnish governments suggested that there was no need to change, maintaining the existing set-up until the next enlargement. Even before the negotiations officially commenced postponing any decision was being mooted as an option.

A similar diversity existed on reducing the size of the Commission. While there was recognition on the need to maintain an efficient Commission in an enlarged Union it was a case of open-ended agreement on a vague principle with little attempt to tackle the details. The Reflection group report cited a combination of the positions that governments and institutions outlined in their official papers.<sup>49</sup> Denmark and Luxembourg saw little need to reduce its size, which was hardly surprising, given that both states feared losing their right to nominate a commissioner. Indeed, the Irish government White Paper, rather than outlining an approach on reforming the Commission, simply stated its opposition to forgoing its right to appoint a Commissioner. Fears such as these from the governments of the smaller Member States were made all the more real given that the British government had proposed restricting the automatic right to appoint a representative to the five larger Member States. The European Parliament was clear in opposing this but offered no alternative. The Spanish, Italian (March 1996), French and Dutch governments' papers considered having a future Commission with fewer members than states. The official position papers from the German, Greek, Dutch, Austrian, Portuguese, Finnish, Belgian and Swedish governments supported having one Commissioner per Member State. Though, there were further divisions on this option. For example the Italian government's paper from June 1995 claimed that a situation where there was one commissioner per Member State would require senior and junior members, somewhat similar to another suggestion from the British Conservative government of voting and

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<sup>48</sup> See *Reflection* Para. 104-105; Also see Luxembourg's Prime Minister Jean-Claude Juncker, *El País*, 17 April 1995.

<sup>49</sup> See *Reflection*, Para. 116–118.

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non-voting members or Commissioners without portfolio. However, the Finnish government had come out strongly against any ranking, for fear, as a new comer, of being among the second rank.

On the reform of the European Parliament, and, in particular, the likely extension of the co-decision procedure, the pre-negotiating trend was similar to that which was maintained throughout the IGC until the change in government in Britain. All the Member States agreed to some form of extension, though they differed on the specifics, except for the then British government that opposed such suggestions on principle. The Danish, Irish, German, French, Austrian, Swedish and Italian papers were notably unclear on the extension of the procedure. The Austrian government's papers (1996) only mentioned extending to environmental matters. Both the Italian and German Foreign Ministers had earlier signed a joint declaration calling for co-decision on all legislative matters. Yet, neither of the later official positions from the respective governments referred to this. The Greek, Finnish and Portuguese governments in principle expressed support for an extension, while claiming that there would be some exceptions. However, they failed to be specific on where these restrictions would apply. The Spanish and Dutch simply and without any qualification referred to replacing the cooperation procedure with that of co-decision, while the Luxembourg paper called for its application to all areas in which the Council decides by qualified majority.

#### Flexibility and the Core Europe

On flexibility and the core Europe it is worth taking a more detailed look at governments' positions for two reasons. Firstly, in the run up to the start of the IGC in March 1996, it was the one issue that struck a debate between governments on the direction of the EU. Secondly, it epitomised the extent of ambiguity on this issue and in the pre-negotiations in general, with governments failing to think through their positions, acting in a reactive manner, with very different conceptions of the same issue.

The debate on flexibility was launched by what can be described as a skilfully drafted paper from two high ranking CDU/CSU politicians, Wolfgang Schäuble and Karl

Lamers.<sup>50</sup> The September 1994 paper was skilfully drafted because it succeeded in gaining a reaction from the other member governments, forcing them into setting out their positions on the nature of future integration. There were two key components to the Schäuble and Lamers paper. Firstly the paper called for the institutionalisation of flexibility with the strengthening of a 'hardcore' of the EU. The paper claimed that any other approach would give rise to à la carte integration. The paper placed monetary union and integrated defence cooperation at the core of both economic and political union. In doing so it claimed that only five members would form part of this core; Germany, France and the three Benelux countries. This point proved particularly controversial. The objective for Schäuble and Lamers was to allow the process of European integration to continue without being held up by Member States that were either not willing or simply not able. Therefore taking the two core policies of monetary and defence union it was possible to recognise the future structure of Schäuble and Lamers EU. Finland, Sweden, Ireland and Austria would be both willing and able to meet the EMU criteria, while opting out on defence. At the other end of the spectrum Italy, Spain, Greece and Portugal would be willing and able to continue with deeper political integration but would not meet the Maastricht criteria on EMU. Finally the UK would be unwilling to join the core. The second important objective outlined by the paper was to 'raise the quality of the Franco-German relations to a new level'.<sup>51</sup> This was a particularly astute move. With Franco-German cooperation lying at the heart of the 'hardcore' this was an attempt to reassert the importance of this partnership while at the same time asking questions of the French. Indeed the paper asked questions of all governments.

The British Prime Minister responded to the Schäuble and Lamers paper in September 1994 where he called for a 'Europe that works' with a desire for 'greater flexibility' and a Europe with 'a strong sense of shared purpose and common enterprise'.<sup>52</sup> Major even referred positively to the Schäuble and Lamers paper that also spoke of the importance of flexibility. Though, he warned of the danger of a 'hard core' EU. He claimed that 'there ... should never be an exclusive hard core either of countries or of policies. No Member States should lay claim to a privileged status on the basis of their

<sup>50</sup> See 'Überlegungen zur europäischen Politik', position paper of CDU/CSU; Also see *Blätter für deutsche und internationale Politik*, 10/1994, pp.1271-80.

<sup>51</sup> Schäuble & Lamers, 1994, p.4.

<sup>52</sup> John Major, 'Europe – A Future That Works', Leiden, 7 September 1994.

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participation in some of them'. His position was echoed in other sections of the Conservative elite. Leon Brittan at the Conservative Party Conference in October 1995 remarked that 'The notion that you can select ... a small group of Member States which take the lead in everything, and whom the other Member States must either simply follow or else aspire to join, is clearly not going to be accepted'.<sup>53</sup> A paragraph on flexibility was included in the government's White Paper while the Foreign Secretary in a speech in March 1996 re-emphasised the necessity and usefulness of flexibility, making reference to the Leiden speech.<sup>54</sup> In essence the British government wanted a flexible Europe without the hardcore. While recognising the usefulness of this approach from a domestic perspective – flexibility would give Britain an opt-out ability, there was a fear that on the European level Britain might be locked out of key issue areas in the future.

The French also responded with their conception of a flexible Europe with Prime Minister Balladur's concept of Europe structured around three circles.<sup>55</sup> This provided for a circle of the EU members, a smaller circle within this involving certain EU Member States, allowing for closer and better structured cooperation e.g. on EMU or defence matters. A Member State would join a group when they were able to do so. The final circle would include those countries outside the EU, operating within a framework based on a series of agreements. This approach had more of the flexibility behind it than the more fixed nature of the hard core approach. Balladur's proposals were consistent with the traditional Gaullist policy on Europe.<sup>56</sup> Whatever the number of concentric circles France would be at the centre of all levels and not merely the core. At the same time, Balladur's paper and, indeed, the French political elites' reaction to Schäuble and Lamers was an attempt to reassert some leadership in the Franco-German partnership.

It was not only a case of Britain and France adopting a different perspective on a flexible approach. The Benelux members, as core members, were divided on what

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<sup>53</sup> See Leon Brittan 12 October, Speech/95/203; Also see Vaughn Miller, *The 1996 Intergovernmental Conference: Background and Preparations*, Research Paper 94/115, 21 November 1994 p.15.

<sup>54</sup> See Malcolm Rifkind, House Of Commons, 21 March 1996 IGC White Paper Debate.

<sup>55</sup> See Eduoard Balladur in *Le Figaro*, 30/08/94; Eduoard Balladur, 'Pour un nouveau traité de l'Elysée', *Le Monde*, 30/11/94.

<sup>56</sup> R. Tiersky, 'France and European Integration: A Few Thoughts on Gaullism and Giscardism: 1962-1981', paper delivered at the fifth ECSA International Conference, Seattle, Washington, 1997.

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exactly Schäuble and Lamers had meant. The Luxembourg government had little to say on it, accepting the paper while registering some concerns on the nature of the core.<sup>57</sup> The Belgian government's thinking was closer to that outlined by Balladur in that it stressed that the core should be open to other governments.<sup>58</sup> The Dutch were concerned about the potentially negative consequences to the internal market, while acknowledging that some form of flexibility was necessary.

By the start of the IGC in late March there was general support for the concept from a majority but without a clear understanding on what this would mean in practice. While no government supported an à la carte approach, the government papers from Spain (1995), Greece (1996) and Portugal (1996) were more or less opposed to flexibility. The Finnish (1996), Italian (1996) and Austrian (1995) papers recognised the necessity for flexibility but they outlined strict criteria that would apply to its usage. The Benelux paper (1996) also called for the fulfilment of certain conditions.

#### Common Foreign and Security Policy

On CFSP, government papers firstly outlined a variety of reasons explaining the ineffectiveness of CFSP since its implementation. For the Irish and Dutch (1995) governments it was due to the lack of running-in time of a new part of the treaty after Maastricht. The German, Greek, Dutch and Luxembourg governments along with the European Parliament had claimed that it was 'a lack of political will and inertia of attitudes' that proved the problem. The governments of Belgium, Greece, Spain, Austria, Italy, Luxembourg and Finland together with the Commission went further, faulting the institution's input and the whole pillar structure, the first four members calling for the communitarisation of the second pillar.

There were also marked divisions on reforming this pillar. For example it is possible to group the Member States into essentially three positions as regards decision making. Greece, Belgium, Germany, Ireland, Finland, Italy and The Netherlands favoured a general extension of QMV, excluding military matters. Sweden and Britain saw no need for any change as regards extending on the use of QMV. The French government in its official position did not call for any extension in the second pillar while signing

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<sup>57</sup> See Stubb, 1998, p.112.

<sup>58</sup> See Jean-Luc Dehaene, Speech at the College of Europe in Natolin, Warsaw, 13 January 1995.

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up for a greater use of QMV in Franco-German declarations, most notably at Freiburg. This kind of contradiction was an inherent part of the Franco-German partnership, which is examined below. A variety of other ad hoc arrangements were considered. For example Spain and Luxembourg proposed the introduction of constructive abstention, should the general rule on unanimity be maintained. The Dutch government as well as supporting QMV proposed taking certain decisions by consensus minus one. The Portuguese government was also cautious, opposing a general extension, preferring instead that member governments select a number of subjects to which QMV would apply. The Austrian government's paper proposed a staged move to QMV for joint actions, starting with unanimity minus one.

The Reflection Group and several member governments in their separate position papers referred to the possible personification of CFSP, an earlier French idea that sought to raise the profile of European foreign policy. A detailed account of French objectives is given in chapter VII. While the Reflection Group Report referred to the possibility of this being an exclusive role for the Commission, no government was so emphatic in its official position paper. In fact the position papers of the Belgian, Danish and German governments failed to mention the position. The other governments outlined a variety of options.

While preference for placing any new position within the Council was generally expressed governments were divided on whether to create an office for a potentially high profile political figure, or to vest any new functions in the office of the General Secretariat of the Council. The Netherlands (1996), Germany and the EP opposed the concept of a political 'Mr or Mrs CFSP' or High Representative, while Finland claimed that such a position would not be helpful. Ireland called for the Council Secretariat to take up a higher profile. Similarly for Luxembourg, Austria, Britain and Greece it was to be a Secretary-General, an official, accountable to the Council. Sweden did not oppose representation by a personality but shared similar concerns as the Finnish government that this position should not create confusion or divisions within the existing institutional structures. Italy and France were willing to see a 'personality' take the position and play a higher profile. Portugal along with Spain and the Commission expressed support for giving the Commission a greater role in what

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amounted to a 'joint Commission-Council High Representative'.<sup>59</sup> The diversity within positions had left the Reflection group admitting that 'There is no consensus on the personification of CFSP'.

There was a general consensus on the usefulness of some sort of a policy planning and early warning capability; without the right of initiative, located within the Council and with close links to the General Secretariat of the Council. However, there was little consensus on the details of the unit. Only the Greek, Austrian, Portuguese, Irish, Swedish and Luxembourg papers along with the Commission called on the European Commission to be closely associated with this process, while only the Luxembourg paper, the Franco-German paper at Freiburg, the Benelux Memorandum and the Commission Opinion specifically mentioned involving the WEU. Neither did the Reflection Group or the Member States and institutions make any concrete reference as to the number of participants in such a unit, a decision that would ultimately influence the way in which the unit would function. Some governments were particularly unclear in their opinion papers, barely mentioning the unit, notably the Belgian, Spanish, and Danish. This was also the case with the European Parliament's opinion. At the other extreme the Italian government put considerable thought into this issue with some of its papers containing the most novel suggestions. In its paper of 23 May 1995, it proposed that an elected representative nominated and approved by the European Parliament would chair the General Council meetings. This would relieve the Presidency of its immediate and direct responsibility over CFSP, though the elected representative could be assisted by a Vice-Presidency from the Member State holding the Presidency. In its March 1996 paper the Italian government had dropped this idea, proposing instead a European External Policy Committee involving the Presidency, Commission and CFSP Secretary General.

On defence a majority of Member States proposed in various forms significant changes in the relationship between the WEU and the EU. Again it is possible to identify three position groups; Denmark effectively favoured the status quo; the Portuguese, Finnish and UK papers called for what was described in the Reflection Group as 'reinforced

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<sup>59</sup> The Commission had opposed the idea in mid 1995 before coming up with an alternative in December 1995, see 'European Commission Distances Itself From Mr Chirac's Idea Of Giving European Council "A Face And A Voice", *AE*, 01/09/95; 'Commission Prefers "Council/Commission Duo" Rather Than Mr Or Mrs CFSP', *AE*, 06/12/95.

partnership' and the final group, including Luxembourg, Finland, Sweden and Austria that called for the WEU to remain autonomous while the Union took on a greater role in the Petersberg tasks. Given the sensitivities surrounding its neutral status the Irish government's paper concluded that it was too early to establish a negotiating position, confining itself to the loose commitment to play a constructive part in revising what it considered as the relevant parts of the treaty. While a majority of member governments expressed support for the eventual merger of the WEU and EU, there were differences over the pace at which this would proceed. Government papers from Belgium, Germany, Spain, France, Italy, Greece and The Netherlands along with the European Parliament sought to promote convergence between the EU and WEU, with full integration as the final goal. However, a memorandum from the Benelux countries and the Commission's official opinion suggested that IGC could set a timetable for full integration.<sup>60</sup> The Benelux paper went a great deal further than the government's separate position papers, and in the case of The Netherlands it was a reflection of the divisions within the government that were felt during the IGC.

### Europe and the Citizen

The other issues which governments focused upon generally fall under what was described at the Cannes and Madrid European Councils as 'Europe and the citizen'. This emphasis was a response to the Maastricht crisis, an attempt in the words of the Reflection Group Report 'to make Europe the affair of its citizens ... serving the citizens' interests and perspectives for the future should be the main guiding principle for the envisaged reform'.<sup>61</sup> The issues that received the most attention in member governments' position papers were third pillar matters, employment, openness and transparency, human rights and equality.

### *Third Pillar*

On third pillar matters all governments recognised 'a demand on the part of the public for greater security', that the State by itself could not 'fully guarantee the internal security of its citizens', and that again it was 'the citizens calling for better handling of the challenge posed to the Union by the growing migratory pressures'.<sup>62</sup> All governments accepted that the framework provided for under the third pillar had not

<sup>60</sup> Commission Opinion, Feb. '96, Para. 35.

<sup>61</sup> See *Reflection*, Paragraph 29.

<sup>62</sup> *Ibid.* pp. 24-26.

been effective in some way during its admittedly short period of implementation.<sup>63</sup> But, governments could not agree on the reasons for this. Belgium, The Netherlands, Germany, Luxembourg, Greece, Spain, France, Ireland, Portugal, Austria the Commission and Parliament claimed it was a problem 'that some provisions of this Title are inadequate and clearly deficient in operation'.<sup>64</sup> Denmark, Britain, Sweden and Finland claimed that in what was an area of particular national sensitivity 'the lack of progress was not necessarily attributable to the intergovernmental nature of cooperation'. Even within these groups there were stark differences. For example the Conservative government's White Paper essentially saw a streamlining of the complex Maastricht framework as the way to resolve the many difficulties and facilitate for a better functioning pillar.<sup>65</sup> The Swedish and Finnish papers, while not recognising anything inherently wrong with the pillar structure, called for a stronger role for the institutions.

The transfer of certain third pillar issues to the first, which is termed as communitarisation throughout this thesis, was referred to by most governments. However, support for such a move was diverse. For example, the governments of Belgium, The Netherlands, Germany, Italy, France, Austria, Portugal, along with the Commission and Parliament had called for matters relating to the crossing of external frontiers to be transferred to the first pillar. The Austrian paper seemed to go further suggesting that matters relating to action against crime, terrorism and drug trafficking 'should be dealt with on the basis of supranational co-ordination of legal and police authorities'. While the French paper also supported communitarisation it suggested that police cooperation should remain part of the third pillar. Denmark, Greece, Spain, Ireland, Sweden, Luxembourg and Finland hinted at the possibility of transferring but their position papers were unclear on the specifics. The British government wished for no transfer at all. On the prioritising of the agenda any serious consideration of Schengen's incorporation into the European Union was suggested by only six governments; Belgium, Luxembourg, The Netherlands, Italy, Spain and Austria. This stands in stark contrast to the closing months of the negotiations under the Dutch

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<sup>63</sup> Ibid.

<sup>64</sup> See *Reflection*, Para. 45.

<sup>65</sup> Ibid.

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Presidency when the incorporation of the *acquis* moved centre stage in the negotiations.<sup>66</sup>

On police and judicial cooperation in the fight against crime all government papers made reference to this but in an imprecise manner. For example the Belgian, Spanish (1995 & 1996), Dutch, French, Luxembourg, Austria and Swedish papers along with the Commission's Opinion called for greater police and judicial cooperation on fighting crime but they failed to provide any details on giving effect to this objective. The Danish and Italian papers were particularly vague. The Irish paper merely stated that Dublin had not yet arrived at a position on reforming the procedures in the fight against crime. Only the German and Finnish governments along with the European Parliament (1995) referred to the need to fully adopt and implement the Europol Convention with the objective of eventually having in place a fully operational Europol. This stood in stark contrast with the British paper which acknowledged the growing importance of Europol but only in a support capacity to national police forces. However, there was support for the introduction of some Community features on these police and judicial matters. Belgium, Benelux, Greece, Spain, France, The Netherlands, Portugal, Finland, the EP and Commission called for the Commission to have a right of initiative on criminal matters and police cooperation, while Belgium, Greece, Spain, Luxembourg, Portugal suggested a role for the Court of Justice, though the papers were unclear as the nature of this role.

*Employment*:- At the Madrid European Council, Heads of State and Government remarked that employment 'creation is the principal social, economic and political objective of the European Union and its Member State' building on the strategies outlined at Essen and the Cannes European Councils.<sup>67</sup> This was a response to the increasing levels of unemployment. Increasingly austere economic packages from governments that sought to meet the qualifying criteria for the 3<sup>rd</sup> stage of EMU left most governments along with the Commission and EP acknowledging the need for a greater balance in the EU's economic policy, with the possible introduction of an employment chapter into the treaties. Indeed Italy, Austria & Sweden called for it to be a main theme at the IGC negotiations. The position papers from these three member

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<sup>66</sup> See chapter VI, pp.204-13.

<sup>67</sup> European Parliament, *Briefing no 37: Employment and the IGC*, OOPEC, 1996.

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governments along with those from the Finnish, Portuguese, Spanish and Danish governments called for greater coordination between finance and employment ministries. Yet, position papers from the German, French and Irish governments barely mentioned a new employment chapter. Indeed the German and Irish were very sceptical of the idea while the British Conservative government was completely opposed to it. Even within the group of members supporting the chapter there were considerable differences. The Finnish government went as far as suggesting that careful consideration should be given to the possibility of establishing new funds for these initiatives. The Spanish and Austrian governments suggested that the objective of creating a high level of employment be incorporated into the objectives of the Union, while the Danish government took it a step further calling for a provision that pledged to keep unemployment below a certain level.

*Transparency*:- In an effort to make the dynamics of the EU more understandable for the general public, a more transparent European Union was an issue that most government position papers expressed support for in some form. Again it was a concept with a variety of different meanings for the different governments. For the Finnish and particularly Swedish governments it was an important issue that required 'an openness of administrative action', with council meetings in public when acting as a legislator, clarity in decision-making and open access for the public to EU documents, and a simplified treaty structure. The Portuguese, Dutch, Spanish, Danish, Italian and Irish papers made similar suggestions but with no details on the type of documents that there would be greater access to, or the manner in which the treaty would be simplified, apart from reducing the number of decision-making processes. At the same time as the French and German position papers made little mention of the issue, the British government warned that complete openness could lead to real negotiations being conducted in the 'corridors of power'.

*Human Rights*:- The Austrian, Finnish, Swedish and Italian governments were also keen to strengthen the treaty articles on the protection of fundamental human rights. Governments differed on the detail. The Finnish, Austrian and Swedish papers also expressed support for a treaty provision ensuring gender equality while recommending EU accession to the European Convention on Human Rights. The Belgian and Spanish papers were more flexible being equally open to a list of fundamental rights and

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freedoms to be incorporated in the treaty. The Commission and EP wanted both options. Italy and Greece expressed support for this option, while Denmark wanted any list confined to the preamble of the treaty. The Dutch (1995 & 1996) papers supported strengthening the treaty provisions but called for caution. The German and French government's papers on the eve of the Conference did not refer to the matter while the Irish government's White paper was noticeably unclear. The British Conservative government expressed opposition to the creation of any new EU guaranteed rights.

*Environment:* Environmental protection was a particular concern for Denmark, Sweden, Finland, Austria, the Netherlands along with the Commission and EP. Their papers called for the integration of environmental policy into other Community policies with the principle of sustainable development underpinning future EU policy in all sectors. However, other government papers were unclear on providing for a better level of environmental protection, most notably the Greek, Italian, Luxembourg, Portuguese and Belgian. The Irish government paper seized on the nuclear issue and concerns over the safety of British nuclear reactors. The French, German and British papers were open on the matter failing to mention the need for higher standards, while the Spanish claimed that there was no need for change to the existing provisions.

*Subsidiarity:-* This principle was somewhat similar to flexibility in that there was a diversity among governments as to what precisely it meant. For example the Greek, Luxembourg and Irish papers along with the Commission and EP were unclear on how to proceed with any reform. The German and Danish (June '95) papers referred to a 'subsidiarity list', while Spain and Portugal opposed this idea. France and Austria also called for a strengthening in the principle, claiming that it was for the national parliaments to be consulted on all matters relating to the principle, while the Dutch felt in applying the principle it required the Commission to argue its proposals more effectively. Italy feared that over-emphasising the principle could undermine the Commission's powers to submit proposals. Finland and Sweden saw no reason to change the current definition and terms of the principle as set out in Article 3B TEU, while Denmark in its March '96 felt it needed to be better defined. Finally the British government's White Paper was imprecise on its objectives merely stating that it would put forward proposals on entrenching the principle in the Treaty as the negotiations progressed.

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*Tourism, Energy and Civil Protection*:- Despite Maastricht's reference placing tourism, energy and civil protection on the IGC agenda little interest was expressed from the member governments or the institutions on these issues. Position papers from Denmark, Luxembourg, Sweden, France, Germany, Ireland and the Commission failed to mention the areas at all. The British, Belgian, Dutch, Finnish and British governments' papers expressed opposition to any such extension to these areas. The Spanish paper on the eve of the IGC felt it was unnecessary to include such new policy areas in the treaty. The Italian, Greek and Portuguese governments were vague in their support for treaty articles on all three areas, providing no details. The Austrian government also acknowledged its support for new Community powers on energy and civil protection while rejecting any need for a treaty article on tourism. (June 1995) Only the European Parliament (March 1996) presented a position of note on energy, calling for the energy aspects of ECSC Treaty and Euratom Treaty along with other considerations to be integrated into a common energy policy framework.

*Hierarchy of Acts*:- There was a similar lack of interest on Declaration 16 on the hierarchy of Community acts. Once again most member governments paid no attention to this. Denmark, Luxembourg, Sweden, France, Germany, Ireland, Greece and The Netherlands (1996 Paper) along with the Commission failed to mention the issue in their position papers. The British and Spanish government expressed opposition to the idea while the European Parliament, Austria, Finland, Belgium and Portugal called for the IGC to consider it but without providing any detail on the structure of any future hierarchy. Only the Italian government as it had done at Maastricht provided any detail on the nature of its proposed hierarchy. (March 1996)

### Summary

The previous two sections of this chapter firstly considered the influence of the Maastricht Treaty, including its ratification and implementation, on shaping the agenda for the 1996 IGC. Secondly, it examined how the agenda was set focusing on the conclusions of the relevant European Councils, the Reflection Group and the position papers adopted by the member governments and institutions. This revealed the extent to which the Maastricht process left governments unsure of the objective of this IGC. It lacked an 'overall theme', enlargement failing to inspire governments. In turn a rather open approach was taken on setting the agenda with both the Reflection Group

Report and those from the governments dealing with a broad range of issues. The Reflection Group failed to provide any impetus in the pre-negotiations, being more of a reflection of the differences between Member States that were further highlighted in comparing the positions of each government across the various issues, positions that were very often poorly defined and lacking in detail.

### **3. ATTITUDES AND APPROACHES TO THE IGC**

#### **Introduction**

Having dealt with the shaping of the agenda and the issues that governments were focusing on during the pre-negotiations, the following and final section considers the attitude of the French, British and German governments to the IGC, together with the European Parliament and Commission. It has already been explained above, that the thesis throughout focuses on the British, French and German governments. The following section also considers the attitude of the Parliament and the Commission in an attempt to gain an insight into the approach of the two supranational institutions to the IGC. Two characteristics are identifiable in the following section. Firstly a series of domestic political divisions left the British, French and German governments considerably distracted in their preparations for the IGC. In turn the Franco-German partnership also failed to provide any impetus or leadership in the run up to the Conference. Secondly while the Commission's approach towards the IGC limited its role in the pre-negotiations, the European Parliament spent much of the time in the run-up to the start of the IGC attempting to carve out a role for itself in the eventual Conference.

#### **Britain**

The British government had been deeply split on European institutions and policy ever since Maastricht and the fall of Margaret Thatcher on this emotive issue. Given the gradual erosion of the government's majority and the leadership challenges, it was very often held to ransom by a vocal, organised, and considerably disruptive minority

of 'Eurosceptics'.<sup>68</sup> Therefore Prime Minister John Major's Conservative government played down any expectations it had for the conference.<sup>69</sup> This manifested itself on two levels, reducing the importance of certain chapters of reform and playing down the relevance of the whole process. Doubt was in particular expressed on the need for institutional and procedural reform in the second pillar. Foreign Secretary Malcolm Rifkind remarked that the defence debate had to remain 'rooted in the real world'.<sup>70</sup> This meant that 'any proposals for change' should be 'workable and effective' or 'credible and practical', as well as ensuring that the recommendations on wider institutional and procedural reform remained modest.<sup>71</sup>

Given the questioning of the importance of the content on the IGC agenda, it was inevitable that the significance of the whole debate was similarly questioned. Rifkind remarked that it was 'not likely to be the defining event for the European Union in the 1990s', lacking 'a big idea'. John Major made similar remarks saying 'I do not believe that it will make huge changes ... I doubt whether any serious significant changes will be proposed'.<sup>72</sup> This was confirmation of his previous claims that 'the high tide of federalism...is now on the decline. I have no intention of adding to it in the 1996 IGC ...'.<sup>73</sup> Former Foreign Secretary Douglas Hurd remarked that the IGC 'will not be the defining event of the 1990s'.<sup>74</sup>

The government White Paper made similar suggestions though in a different tone, describing the IGC as a 'preliminary step' on the new agenda before devoting a paragraph to the other areas not on the agenda but requiring reform, and the 'sensible' approach that should be taken at the IGC.<sup>75</sup> The government's low-key approach was

<sup>68</sup> See EIU Country Report – United Kingdom – 2<sup>nd</sup> Quarter 1994; EIU Country Report – United Kingdom – 1<sup>st</sup> Quarter 1995; EIU Country Report – United Kingdom – 3<sup>rd</sup> Quarter 1994; See Heather Grabbe and Kirsty Hughes, 'The British Debate', in *The 1996 IGC – National Debates (2)*, Discussion Paper 67, RIIA, 1996, pp. 51-53.

<sup>69</sup> See *Partnership of Nations*, 1996; For Labour party see Kevin Brown, 'Blair to urge early enlargement of EU', *FT*, 30/05/95.

<sup>70</sup> Malcolm Rifkind, 'Change And New Challenges in Foreign Policy', The Lord Mayor's Easter Banquet, Mansion House, London, 17 April 1996.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Hansard*, 1 March 1995 cc1052-1154; Vaughne Miller, Tom Dodd & Fiona M. Watson, *Towards the IGC: Enter the Reflection Group*, Research Paper 95/76, 20 June 1995 p.13

<sup>73</sup> 'Major Confirms his Opposition to a "Constitutional" change in 1996', *AE*, 09/01/95; Also see 'UK government begins organizing for Maastricht revision', *AE*, 27/01/95.

<sup>74</sup> Speech to Deutsche Gesellschaft für Aussenpolitik, 28 February 1995, p.17; Also see Kevin Brown 'Hurd Sets Out Five-Point Plan For EU Conference', *FT*, 22/06/95.

<sup>75</sup> See *Partnership of Nations*, 1996.

met with criticism.<sup>76</sup> The Prime Minister's reluctance, along with other senior cabinet members, to publish a white paper on the IGC confirmed the full extent of the divisions within the party.<sup>77</sup> The 'Eurosceptics' within the party wished to see the government provide a clear outline of its position, which it could be held to. The eventual decision to publish the report reinforced the perception, particularly of the Prime Minister, as continually ceding ground to the 'Eurosceptics' within the party.<sup>78</sup>

### Germany

As was the case throughout the IGC there was no coherent position from the federal government during the pre-negotiations.<sup>79</sup> In framing its position, it was not simply a case of the federal government devising the German approach. The Länder had their own list of demands, pushing for a strengthening in the principle of subsidiarity with a clear separation of competencies, including those under the third pillar.<sup>80</sup> Neither was it simply a case of submitting such positions to the federal government; the Länder were represented by Bavaria and Rhineland-Palatinate in the German IGC delegation. As shown in the following chapters, on certain issues the Länder were effective in leaving their mark on the final treaty.

Kohl's emphasis bore certain similarities with the approach taken during the Maastricht IGC, namely an IGC with the two heads of EMU and EPU. Kohl on several occasions reiterated the importance of the link between monetary and political union that formed the basis of the German government's thinking at the Maastricht IGC.<sup>81</sup> In the Franco-German joint position on Europe on 11 October 1995 published in *Le Monde* and *Frankfurter Allegemeine* Kohl remarked that 'In the final analysis, popular

<sup>76</sup> 'The "European Policy Forum" Calls on the British to form an Anti-Federalist Alliance with Paris', *AE*, 09/01/95.

<sup>77</sup> Robert Peston 'PM reluctant to detail UK's negotiating stance', *FT*, 15/12/95.

<sup>78</sup> Robert Peston, 'Major concedes white paper on EU stance', *FT*, 19/01/1996.

<sup>79</sup> On German preparation for the IGC see Josef Janning & Franco Algieri, 'The German debate', *The 1996 IGC – National Debates (1)*, Discussion Paper 66, RIIA, 1-22.

<sup>80</sup> See 'Enstchließung des Bundesrates, Forerungen der Länder zur Regierungskonferenz 1996', Bundesrat, Drucksache 667/95 (Beschluß), 15 December 1995; Also see Europaministerkonferenz, 1995, 11. Europaministerkonferenz am 14-15 September 1995 in Berlin. TOP 3.2. Forderungen der Europaminister und -senatoren zur Regierungskonferenz '96, Berlin. p.14.

<sup>81</sup> The Economic and Monetary Union – The goal is a political union. Progress toward economic convergence Special No. 4424 (e) 15.03.1996; Also see Lionel Barber, 'New shapes in the stars: Changes in EU decision-making and institutions will be on the agenda at the Turin conference that opens on Friday', *FT*, 26/03/96; 'Kohl gegen den Währungspopulismus der SPD', in *Neue Zürcher Zeitung*, 09/11/95.

approval of Economic and Monetary Union will depend on the ability of the 1996 Inter-Governmental Conference to achieve parallel political progress'.<sup>82</sup> This suggested that the Maastricht goal of monetary and political union that had been only tentatively developed was to underpin the thinking of his IGC. However, domestic pressures would force the Chancellor to revise his approach at a late stage in the process.

The more 'Eurosceptic' CSU took a measured approach. Theo Waigel called for a cautious extension of QMV.<sup>83</sup> The CSU was forced to adopt this more 'Eurosceptic' stance given the situation in its stronghold Land of Bavaria. The CSU Prime Minister of Bavaria, Edmund Stoiber was taking a more critical line on certain elements of the federal government's European policy, notably the application of the criteria for the third stage of EMU. This criticism struck a note with the Bavarian and German public while introducing tension between the CSU and CDU.<sup>84</sup> While emphasising the link between institutional and general treaty reform and ensuring that the policy-making process was more efficient the FDP Foreign Minister Klaus Kinkel was also cautious in his description of the IGC as 'only the first step'.<sup>85</sup> Yet, key figures within the German government approach continued to promote the more ambitious approach.<sup>86</sup> For example the CDU's influential foreign policy spokesman, Karl Lamers, in an interview with *Le Soir* remarked that an IGC result lacking in comprehensive reform of the EU could bring into question plans for monetary union, a philosophical approach that was similar to that held by Kohl. Yet, the array of signals coming from Bonn continued, with some officials suggesting that the IGC as a whole should be postponed.<sup>87</sup>

The Schäuble and Lamers paper as discussed above precipitated tensions and divisions within the federal government. The CDU/CSU's partners, the FDP expressed public dislike to the suggestion of such a clear divide in the Union. Their leader Klaus Kinkel

<sup>82</sup> Also see Vaughne Miller & Tom Dodd, *Towards the IGC: Weighing the Options*, Research Paper 95/123, 05/12/95.

<sup>83</sup> 'Waigel urges restrictions in EU majority voting', *FT*, 13/06/95.

<sup>84</sup> 'Helmut Kohl's one-man band', *Economist*, 07/09/96; 'Stoiber Criticises France, Italy, EU Commission in Single Currency Row', *Frankfurter Allgemeine*, 08/11/96.

<sup>85</sup> Speech by Klaus Kinkel, *The European Union in the 21st century – more of the same?*, Oxford, 17 January 1995; Also see Klaus Kinkel, *Declaration*, 21 February 1995.

<sup>86</sup> 'Pale reflections: The argumentative European Union', *Economist*, 10/06/95.

<sup>87</sup> 'According To Bonn, Intergovernmental Conference Will Begin In 1996', *AE*, 14/02/95.

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found it irresponsible for Germany to be sending out such signals as regards a two speed Europe as the EU prepared to enlarge.<sup>88</sup> This was despite the fact that the FDP would similarly recognise the need for different speeds of integration, though in a more subtle manner.<sup>89</sup> Kinkel's pro-integration deputy, Werner Hoyer, in an attempt to placate the British government remarked that at both the Reflection Group and the IGC he would oppose any thinking on flexibility that worked from the premise that 'If they don't want to, we will go ahead anyway'.<sup>90</sup> Kohl was cautious in the early days after the paper was released but he tentatively supported the paper and its objectives while criticising the choice of words. Indeed another position paper from the CDU/CSU, a year later avoided using the word 'hardcore'.<sup>91</sup>

### France

In the immediate post-Maastricht stage the French right was preoccupied with securing the Presidency after their success in the Parliamentary Assembly. The RPR and UDF coalition government's term was not due to end until 1998. Nevertheless, the internal wrangling had begun as regards the RPR and UDF's choice of candidate for the Presidential election. Fielding two candidates in Balladur and Chirac confounded splits and divisions in the right, divisions that would eventually undermine the new government under President Chirac and Prime Minister Juppé. Struggling to reconcile the electoral promises to fight unemployment and social exclusion with his determination to qualify for the third round of EMU, together with the ever increasing criticisms from within the government Chirac was forced into change. In an attempt to heal old divisions, in early November 1995 he formed a new and more streamlined government. Alain Juppé remained as Prime Minister but there were several pro-Balladur ministerial appointees. Yet, these attempts to shore up confidence in an RPR led government proved unsuccessful.

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<sup>88</sup> See *Handelsblatt*, 22 September 1994; See Miller, Paper 94/115, 1994.

<sup>89</sup> 'The FDP in favour of "gradual integration", *AE*, 28/03/1995.

<sup>90</sup> Quentin Peel 'Germans seek four-year EU agenda', *FT*, 13/09/95.

<sup>91</sup> Edward Mortimer, 'Euro-structures under one roof: The EU needs a single foreign ministry, not the half-baked compromise set out at Maastricht', *FT*, 03/05/95; Judy Dempsey and Michael Lindemann, 'CDU seeks majority voting in EU foreign policy', *FT*, 14/06/95; 'Tactful Germany', *FT*, 14/06/95; 'Ever closer, more tactfully: Germany and the EU' *Economist*, 17/06/95.

The approach on 'Europe' was one of the divisive issues between the RPR and UDF.<sup>92</sup> The divergent assumptions between the more Gaullist oriented RPR and the more integrationist UDF contributed to the poor preparations in the government's approach on the EU on the eve of the IGC.<sup>93</sup> The French political elite had attempted to define its position in the wake of the strong federalist tenets of Schäuble and Lamer's 1994 paper. In an interview with *Liberation* the structure of Chirac's outline of French concerns on Europe related to the Conference in only a vague manner.<sup>94</sup> He described the first concern of the government was that of renovating the European architecture making reference to CFSP, the institutions and reinforced cooperation. The second aim was the realisation of EMU and the third a fulfilment of the social aspirations of the people. Both the first and the third aims were IGC related. However, in a further interview in *Le Monde* Chirac described three problems that would arise with any future enlargement; economic regarding the measure of support the new states would require on membership; financial as regards the nature of the budget and finally the institutional questions as to how the decisions will be made in such an enlarged Union.<sup>95</sup> Only this last issue was firmly on the IGC agenda. A further reflection of the lack of focus on the IGC from the French political elite was the absence of significant changes to the government's official position paper from its circulation to political leaders and experts in November 1995 and its publication in February '96.<sup>96</sup>

In an effort to cultivate the image of a French government committed to holding a successful IGC Michel Barnier, as Minister of State for European Affairs, on repeated occasions referred to difficulties that would have to be overcome during the Conference. In January 1996 he remarked that 'This conference will be difficult, there will be, perhaps, crises'.<sup>97</sup> It was Barnier again who warned at the debate before the French National Assembly on 13 March that the 'The risks of blockage are numerous'.<sup>98</sup> At the same time, he called for French resolve in defending and pursuing

<sup>92</sup> See Keraudren & Dubois, in Laursen & Vanhoonacker, 1994, p. 154; See Guyomarch et al., 1998 pp.83-88.

<sup>93</sup> David Buchan, 'French set to air some grievances', *FT*, 11/03/96.

<sup>94</sup> *Liberation*, 25/03/96.

<sup>95</sup> *Le Monde*, 24/03/96.

<sup>96</sup> For an account on the development of the French position in the pre-negotiation stage see Laurent Cohen-Tanugi, 'The French Debate', *The 1996 IGC – National Debates (I)*, Discussion Paper 66, RIIA, 1996, 23-36; A. Menon, 'France and the IGC of 1996', *JEPP*, 3:2, 1996.

<sup>97</sup> Une interview du Ministre des Affaires Européennes, 'Il ne faut surtout pas construire deux Europe', *Le Figaro*, 11/01/96.

<sup>98</sup> *Debat A L'assemblée Nationale Sur La CIG Discours Du Ministre Delegue Aux Affaires Européennes, M. Michel Barnier Declaration Du Gouvernement*, Paris, 13 March 1996.

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what the French government sought to present as its ambitious programme for reform.<sup>99</sup> As would also be the case throughout the IGC there was a gap between the government's rhetoric and its ability to take the lead throughout the negotiations. This was reflected in the section devoted to Europe in Prime Minister Juppé's government programme that was presented to the National Assembly on 23<sup>rd</sup> May. He remarked that the IGC may not deal with issues that were of greater priority.<sup>100</sup>

There were also contradictions within the French approach. For example on the eve of the IGC the Foreign Minister's outline on France's position on Europe proposed the evolution towards 'two Europes'. This was a more simplified version of former Prime Minister Edouard Balladur's concentric circles approach, an approach endorsed by Chirac and RPR.<sup>101</sup> One Europe would bring together all the countries of the continent, the second one being a 'more active pole, more welded together, going further and faster, probably more integrated'.<sup>102</sup> However, there was an element of uncertainty as to the exact meaning and applicability of this approach. Several weeks after de Charette's outline, Michel Barnier, as minister of state, opposed the idea in a similar interview with *Le Figaro*.<sup>103</sup> While admittedly he was referring to France's desire to avoid building a superior Europe vis-à-vis an inferior, the Quai d'Orsay felt the need to clarify stating the primacy of the Secretary of State over a minister of state while stipulating that 'France does not have two foreign policies'.

### **Franco-German Partnership**

The Franco-German axis around which much of the past achievements and progress on integration had been realised also failed to provide the necessary dynamism or leadership, even in the sense of agreeing bilaterally and attempting to draw some of the other governments along. Szukala and Wessels remarked that on the eve of the Conference within the French and German political elite of both Member States that

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<sup>99</sup> For French positions see above on 'National positions'. Also see Chapters V, VI & VII.

<sup>100</sup> 'Mr Juppé announces proposals to strengthen the council, clarify relations with the Commission and step up democratic control, with greater involvement of National Parliaments', *AE*, 24/05/95.

<sup>101</sup> See Edouard Balladur in *Le Figaro*, 30/08/94; see Balladur, *Le Monde*, 30/11/94.

<sup>102</sup> Hervé de Charette, 'L'Europe Nouvelle', *Le Figaro*, 20/12/95; Also see *European Daily Bulletin (EDB)*, N°6651 – 24/01/1996.

<sup>103</sup> Une interview, 11/01/96.

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‘there was little clarity and considerable muddle’.<sup>104</sup> While there have always been differences on the detail and emphasis, there was a trust and implicit understanding between Kohl and Mitterrand. Kohl’s comments at the Maastricht IGCs highlighted this trust.<sup>105</sup> One of the features of this partnership has been the close relations between the French President and the German Chancellor. This has attempted to cover deep differences between both governments’ approaches on Europe, while providing a continual driving force for European integration. However, the degree of trust and understanding that provided a basis for these successive partnerships was at this stage absent between President Chirac and Chancellor Kohl. As the Economist Intelligence Unit (EIU) commented in early 1996 ‘Mr. Kohl’s greatest problem is that France is unlikely to be as trusty an ally under Mr. Chirac as it was under Mr. Mitterrand on the majority of German concerns’.<sup>106</sup>

There were many issues, unrelated to the IGC, which strained Franco-German relations and ultimately any co-ordinated approach to the IGC. During the pre-negotiation period the German government on several occasions expressed concern as regards the French government’s willingness and capability to meet the Maastricht criteria on EMU. In late 1995 the EIU remarked that ‘Relations with France continued to absorb a great deal of attention ... and considerable concern reigns in Bonn as to the sustainability of the *franc fort* policy’.<sup>107</sup> The fundamental basis of the EMU project and ultimately Franco-German relations would be considerably undermined should the French be left behind.<sup>108</sup> Bonn’s concern was at times justifiable. For example, at the Cannes European Summit, Chirac proposed to establish a committee to consider the consequences of a two-speed process towards monetary union. This proposal came after bilateral talks with John Major where Chirac sounded circumspect about the EMU timetable.<sup>109</sup> Yet, with Juppé as Prime Minister, over time Kohl and Waigel’s concern shifted from questioning French willingness towards the project to their ability to qualify.

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<sup>104</sup> For a good synopsis on Franco-German relations since Maastricht see Andrea Szukala & Wolfgang Wessels, ‘The Franco-German Tandem’, in Edwards & Pijpers (eds.), 1997, pp.74-100.

<sup>105</sup> See Chapter II, pp. 44-46.

<sup>106</sup> EIU Country Report 1<sup>st</sup> Quarter 1996, p.14

<sup>107</sup> Ibid.

<sup>108</sup> Judy Dempsey, ‘Germans seek pointers on French policy’, *FT*, 18/05/95.

<sup>109</sup> EIU Country Report, 3<sup>rd</sup> Quarter 1995, p.12.

Chirac's decision, on coming into office, to test French nuclear weapons on French Islands in the South Pacific also proved embarrassing for the German government, the latter being forced to steer the line between condemnation and condonation, though officials within the Auswärtiges Amt. did little to hide their disdain towards this action.<sup>110</sup> This not only saw a direct strain on Franco-German relations but given the open criticism from the European Parliament and Commission, the German government was under significant pressure to adopt a similar line.

The concern that surrounded Chirac's arrival presented a further preoccupation hindering Franco-German attempts to gather momentum in the pre-negotiation stage. Chirac's gesturing to John Major's government, particularly his comments 'I know and understand the British analysis and view of the single currency', and his description of the Franco-German alliance as necessary but insufficient was met with concern in Bonn.<sup>111</sup> Chirac also commented on the common ground that both the British and French governments shared on institutional matters and CFSP. Given the close cooperation on Bosnia, with French and British troops serving under each other's military command, and in light of the British government's sympathetic stance regarding the French nuclear testing, there was certainly a recognition at the Franco-British summit in November 1995 of a common basis on foreign policy issues with the potential for further cooperation.<sup>112</sup> As one British official commented 'Our aim is to guide, to turn it [France] more to British interests'.<sup>113</sup> As with the other issues, referred to above and below, it facilitated for a certain unease at the highest level of the Franco-German relationship.

While there has been a certain depth to the Franco-German relationship, thereby ensuring continuous cooperation at various other levels, independent of relations at the highest level, the latter sets the mood and atmosphere within which the overall relationship operates.<sup>114</sup> Indeed, even at the official level there was a recognition of the

<sup>110</sup> 'Toute seule en Europe?', *Economist*, 14/10/95.

<sup>111</sup> David Buchan, 'France and Britain to co-operate more on EU', *FT*, 12/06/95.

<sup>112</sup> Lionel Barber 'All to play for in EU love triangle: Is Britain forging a relationship with France to rival the Bonn-Paris axis in the European Union', *FT*, 04/11/95; Also see Dominique Moisi, 'A French balancing act – France will have to work on a bilateral basis with Germany if the UK threatens an EU stalemate', *FT*, 22/03/96; Also see 'The British government plan for the IGC – debate in the French Parliament next year', *AE*, 22/06/1995.

<sup>113</sup> Ibid.; For the futility of such attempts see 'An uncertain partnership', *FT*, 31/10/95.

<sup>114</sup> See Peter Norman 'MPs unite to deepen Franco-German relationship', *FT*, 13/10/95.

difficulties in the relationship. Several high ranking French officials commented that they did not have common interests or positions but they work closely with the Germans since they continue to recognise them as the strongest in the Union, going on to describe the relationship as 'a marriage of convenience'.<sup>115</sup>

There was a rhetoric of cooperation.<sup>116</sup> In his '*L'Europe Nouvelle*' article, Hervé de Charette outlined the two objectives of the French government's European policy, the fulfilment of the second resting on continued French and German cooperation.<sup>117</sup> Michel Barnier in the months preceding the IGC said of the Franco-German relationship that it 'is of paramount importance, justifiably because it alone is capable of convincing and rallying all Europe, ...'.<sup>118</sup> Similarly Chirac's pledge at the Strasbourg summit, days after his coming to office, to maintain the strong franc was a further attempted gesture to reassure the German government of continued French support for EMU.

On core IGC issues there were attempts, as with the previous IGCs, to arrive at a series of common positions. In an interview with *Le Figaro* in early October Foreign Minister Kinkel remarked that 'We will be in Paris very soon for intense preparation of this position'.<sup>119</sup> In the more immediate lead up to the IGC Kohl and Chirac tried to strengthen their relationship with a Franco-German position on the IGC at their meeting on 25 October. They aimed to have this ready by the Madrid European Council in December. At a meeting in Baden-Baden on 7 December 1995 Chirac and Kohl advocated the introduction of a flexibility clause to allow those that desire further integration to pursue their goals.<sup>120</sup> The approach hammered out for the Madrid European Council focused on four issues; CFSP, justice and home affairs, institutions and the citizen.<sup>121</sup> Yet, there was little substance and depth to this initiative. On CFSP the paper commented that 'the Union must be able to have a common foreign and

<sup>115</sup> Interviews.

<sup>116</sup> Point VIII on 'Europe and Foreign Policy – Security and Defence' in Federal Government's European Policy Guidelines 1994. Also see 'Kohl opens his arms for union', *The Economist*, 27/05/95.

<sup>117</sup> Hervé de Charette, '*L'Europe Nouvelle*', *Le Figaro*, 20/12/95.

<sup>118</sup> See 'Une interview' 11/11/96; Also see *EDB*, N°665, 24/01/96.

<sup>119</sup> *AE*, 09/10/1995; Also see 'Juppé and Kinkel reaffirm that France and Germany would speak as one', *AE*, 12/01/1995; *Le Monde*, 12 January 1995; *Frankfurter Allgemeine*, 12/01/95.

<sup>120</sup> David Buchan, 'France and Germany gear up for next IGC', *FT*, 02/12/95; Also see Ian Davidson 'Orthodoxy reversed: The big idea at the EU Intergovernmental Conference will be a move towards faster integration for an inner core', *FT*, 06/03/96.

<sup>121</sup> 'President Chirac and Chancellor Kohl propose including General Clause in treaty for greater Cooperation between states with will and capacity', *AE*, 12/95.

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security policy that is more visible and determined ... an approach that better ensures the effectiveness, continuity, coherence and solidarity with its action'. On delivering such a policy it merely acknowledged that 'thought will have to be given to the adjustments that would enable giving the CFSP the means and instruments corresponding to our ambitions ...'. The bland rhetoric was even greater on JHA, calling for the 'the creation of a uniform area in Europe where freedom of movement is guaranteed by a common approach'. Similar language was used on institutional reform, describing the need for change as 'indispensable' but failing to expand on the nature of this change.<sup>122</sup>

This lack of detail on the specific mechanics was a typical feature of these attempted common positions, again an attempt to cover the underlying differences between the two governments.<sup>123</sup> For example it was widely reported that the Chirac and the foreign ministry were much more sympathetic to the extension of QMV. Yet, Chirac was merely committed to the 'generalisation' of QMV. The Minister for Europe, Michel Barnier, when pushed for more specifics, whose response while positive was imprecise, stated 'We are very open to majority voting in virtually all areas'.<sup>124</sup> Even his support for the principle stood awkwardly with his comment months earlier suggesting that the British and French governments were 'in agreement' on their opposition to the extension of QMV's usage.<sup>125</sup>

At the Freiburg summit on February 27 1996 both agreed to submit a joint initiative on CFSP in Turin on 29 March.<sup>126</sup> This included the German formula termed the 'coalition of the willing' that would allow the EU to launch operations under CFSP without the agreement of all Member States. While a Member State would not be forced to participate if it disagreed with the majority on a peacekeeping mission, it should not block the action and, more controversially, should contribute towards its costs. Kinkel said the initiative showed again that Franco-German cooperation was the driving force of European integration.<sup>127</sup>

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<sup>122</sup> Ibid.

<sup>123</sup> Peter Norman, 'Chirac to find relief in spa town', *FT*, 07/12/95.

<sup>124</sup> See EIU Country Report, 4<sup>th</sup> Quarter, 1995, p.11.

<sup>125</sup> See Buchan, 12 June 1995.

<sup>126</sup> See *EDB*, N°6676 – 28/02/1996; N°6677 – 29/02/1996.

<sup>127</sup> Ibid.

Despite these initiatives there were still considerably different perceptions on CFSP matters. For example in the text from the Freiburg summit reference was made to ‘overcom[ing] the rigidity inherent in unanimity’, with ‘recourse to qualified majority voting for decisions at the implementation stage’.<sup>128</sup> The federal government in its March 1996 IGC paper referred to a general extension of QMV, with ‘unanimity being retained for certain areas, such as the projection of operational capacities’.<sup>129</sup> At the same time the French government’s official stance on CFSP at the IGC failed to mention any extension on QMV.<sup>130</sup> The Freiburg conclusions also proposed the setting up of an advanced research and analysis unit, which would comprise staff from the Member States, the Commission and the WEU Secretariat and would be attached to the Council Secretariat. The French paper failed to mention this, concentrating instead on having a strong personality as a Mr./Ms. CFSP, something that was left deliberately vague in Freiburg conclusions that merely referred to a ‘new post’. Finally while the February paper and the German government’s position paper made reference to incorporating the Petersberg tasks into the EU, this went unmentioned in the French paper.

### **European Commission**

One of the principal characteristics of the SEA IGC was the important role played by the Commission in both the pre-negotiations to the process and during the Conference itself. However, the Maastricht IGC had also demonstrated the extent to which as Middlemas described it, a ‘hyperactive’ Commission during the pre-negotiations was notably ineffective during the negotiations. This left the Commission under the leadership of Jacques Santer adopting a different approach and attitude to the 1996-97 IGC. Rather than perceiving of the IGC as another opportunity to pursue a grand vision under the public limelight as at Maastricht, the Commission deliberately opted for a more subtle strategy behind the scenes.<sup>131</sup> As will be shown across the following section on the negotiations there were limited occasions when this paid off. Though, at a time when member governments were reluctant to embark on another set of treaty reforms the Commission under its new President Jacques Santer was defining a more

<sup>128</sup> Ibid.

<sup>129</sup> See, *Germany’s Objectives*, 1996.

<sup>130</sup> See, *Memo*, 1996.

<sup>131</sup> Interviews.

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low key approach that meant it would be less active than it had been during the pre-negotiations of the two previous IGCs.

Indeed on the several occasions when Santer acknowledged the importance of the Conference it was usually within the context of the ‘great debates’ or the ‘quadruple challenge[s]’ that the Union faced as the end of the century approached.<sup>132</sup> When Santer attempted to raise the profile of the Conference and stave off thinking along the lines of holding what was described as a ‘light IGC now’ followed by a further Conference before enlargement, it was not matched by the activism from the Commission that had been the case in the past.<sup>133</sup> In turn this led to suggestions that the role and influence of the Commission was being undermined by Santer’s style of leadership.<sup>134</sup>

### **European Parliament**

It is possible to describe the European Parliament as presenting the most coherent and constructive approach in the pre-negotiation stage. This was firstly due to the united and focused front that was presented by Elmar Brok and Elisabeth Guigou at the Reflection Group and throughout.<sup>135</sup> At the same time the fact that this stage would represent the height of the parliament’s influence throughout the process, it was to be expected that they would aim to make the most of it. As with previous IGCs the parliament provided much intellectual background with a series of reports and papers: European briefings on almost every major issue on the IGC agenda and related to it, Resolutions on the convening of the IGC, the progress of the Reflection Group, and the parliament’s position itself.<sup>136</sup>

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<sup>132</sup> Speech By Jacques Santer to the European Parliament, Work Programme, Strasbourg, 15 February 1995; Speech by Jacques Santer to the Transatlantic Policy Network, Le Cercle Royal Gaulois, 30 November 1995; Speech By Jacques Santer to Davos World Economic Forum, Switzerland, 28 January 1995.

<sup>133</sup> See Address by Jacques Santer to the Corporation Of London ‘*Europe’s Future – My Vision*’, London, Guildhall, 4 May 1995; Address by Jacques Santer to the Confederation of British Industry, London, 16 May 1995; Address by Jacques Santer President of the European Commission to the Trade Union Congress Brighton, 11 September 1995.

<sup>134</sup> ‘In Santer’s style: Europe’s Commission. Is Jacques Santer too nice?’, *The Economist* 07/13/96.

<sup>135</sup> Interview.

<sup>136</sup> Caroline Southey, ‘Strasbourg calls for more power’, *FT*, 18/05/95.

However, the EP was not merely focusing on the agenda for the IGC. It was to spend much of its time from late '95 up until Turin in March '96 attempting to gain a place at the negotiating table. The limitations on the Parliament's influence became apparent with its failure to gain observer status for the duration of the Conference. This was despite having a place at the table during the Reflection Group. Initially in its December 1995 resolution it was somewhat vague on the precise nature of its involvement, merely stating that it should be 'to the greatest possible extent'. Yet, President Hänsch stated the position clearly at a later stage, that '... the European Parliament, can help to make the outcome more acceptable to citizens ... the European Parliament must be allowed to send observers to the Conference'.<sup>137</sup> This was also one of the pre-occupations of the Italian Presidency and the European Commission, in the form of its President and the Commissioner responsible for IGC matters, Marcelino Oreja, in the weeks preceding Turin.<sup>138</sup>

The main opposition to the Parliament's involvement in the IGC process came from the French, British and for a time Portuguese governments. On several occasions the European Parliament's President Hänsch remarked that the European Parliament had the support of thirteen members to send observers to the IGC meetings of personal representatives, referring implicitly to the opposition from the British and French governments. Despite President Hänsch's claims that the majority of governments were in favour of the EP having observer status at the Conference no government in its position paper made reference to the EP's role during the IGC. This was also the case with the Reflection Group Report which actually made specific reference on how the Conference should proceed.<sup>139</sup>

In the weeks preceding the convening of the Conference in Turin the Italian Presidency through its Foreign Affairs Minister, Susan Agnelli pushed strongly for observer status for the Parliament. The Commission was equally supportive while at the meeting of foreign ministers in early March 1996 Klaus Kinkel regretted the position of the French and British. The German and Italian governments have in the past been supportive of the European Parliament, the Italian government declaring at Maastricht

<sup>137</sup> *EDB*, N°6687 -14/03/1996.

<sup>138</sup> See *EDB*, N°6658 – 02/02/1996; *EDB*, N°6687 – 14/03/1996; *EDB*, N°6696 – 14/03/1996; See also Speech by President Santer to the European Parliament (17/1/95).

<sup>139</sup> See 'Section D – What Kind of Conference', Reflection Group Report, 1995.

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that it would refuse to ratify the treaty unless the Parliament supported it.<sup>140</sup> The French objected for two reasons. Firstly, it was a consequence of Gaullist tendencies within the government that were an underlying influence throughout the negotiations, at times shaping the French position on certain issues, and in this instance minimising the role of the European Parliament. Secondly, French objections lay in the nature of the policy-making process of the Fifth Republic. A weak national assembly was determined not to see the European Parliament have more rights than national parliaments on participation. The desire of the French national assembly to exert its influence on the European stage as compensation for its weak standing at home saw the French government adopting an ambitious position on the role of national parliaments.<sup>141</sup> British objection had somewhat similar ideological undertones, while being shaped by the disproportionate influence of the Tory Euro-sceptics. Malcolm Rifkind said at the informal meeting of foreign ministers at Palermo on 11 March that he was comfortable with the Parliament being briefed as well as forwarding its proposals, but participation in the conference was not warranted as the process was intergovernmental as its name indicated. The final compromise package provided a once a month meeting between the IGC personal representatives and the European Parliament's personal representatives.<sup>142</sup>

## **CONCLUSIONS**

This chapter had three aims. Firstly, it sought to examine how the agenda for the 1996-97 was set. Secondly, it aimed to describe the issues that made it onto the agenda. Thirdly, it attempted to outline the attitudes of the British, French and German governments along with the European Commission and Parliament towards the start of the IGC in Turin on 28 March 1996.

The central argument of the chapter was that governments did not want to have this IGC. Maastricht or more specifically Article N(2) TEU required them to hold a Conference in 1996. Therefore there was ambiguity in the pre-negotiation stage on the two levels. Firstly, there was no overall theme or objective that provided a focus for

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<sup>140</sup> See Thatcher, 1995, p.555.

<sup>141</sup> See, *Memo*, 1996.

<sup>142</sup> See *EDB*, N°6696 – 27/03/1996 for full details of EP involvement.

governments. Enlargement came close but failed to provide the spark. Secondly governments were often ambiguous as regards their objectives on the broad range of issues that formed part of the agenda.

The broad range of issues that made it onto the agenda was a result of the open approach taken by governments. While the lack of an overall theme was one casual factor in governments taking such an approach, the ratification crisis and delayed implementation of Maastricht also left governments unsure and somewhat weary as they embarked on this third round of constitutional reform within a ten year period. The result was that governments did not prioritise effectively either through the Reflection group or their official position papers.

The attitude of the French, German and British governments together with the Parliament and Commission towards the IGC provides further explanation on the open approach on setting the agenda. The three governments, in particular, had to contend with considerable domestic distractions that undermined their efforts for a more focused approach in the run up to the IGC. In turn, there was even talk in the pre-negotiations of the possibility of postponement for another IGC should the Conference encounter difficulties on certain issues.

Therefore, to conclude, the pre-negotiations showed signs of ambiguity in defining objectives and a lack of focus, if not even direction, in shaping the agenda. In turn certain officials mooted the possibility of postponing issues for another IGC. These are the defining features that chapter II concluded would be strongly present throughout the IGC process. The manner in which governments set the agenda and the attitude and approach they adopted in the run up to the agenda reinforces the likely presence of these features in the negotiations. The following chapter introduces the IGC negotiations across all the issues setting the thesis up for the detailed examination in Section III.

## **CHAPTER IV**

### **OVERVIEW OF THE IGC PROCESS**

#### **INTRODUCTION**

The IGC began with the convening of the negotiations at the meeting between Heads of State and Government together with the Foreign Ministers in Turin, Italy on the 28 March 1996. The Conference concluded in Florence, Italy in the early hours of Wednesday morning, 17 June 1997. This chapter presents an overview of the IGC process. In doing so it has two aims. Firstly, it aims to outline the development of the mandate presented at Turin, focusing on the issues that governments were committed to, and which dominated the agenda. Secondly, it aims to describe in general terms the nature of the negotiations over the sixteen months, while at the same time also attempting to identify any significant meetings or individuals which stood out as particularly influential in the process. This sets up the thesis for the more detailed examination in the following section. These two aims are dealt with in the second and third sections of the chapter. Before going on to present this overview the first section of chapter introduces the three levels of negotiations and outlines the negotiating styles of the three member governments; Britain, France and Germany, which are the focus of detailed examinations in Chapters V, VI and VI.

The central argument based on the second and third sections is that, even with a general overview of the process, it is possible to recognise the four features that defined the negotiations; ambiguity in governments' objectives, a continuation from the pre-negotiations; a lack of direction in the process which in turn left governments drifting into unintended outcomes or postponing issues for another IGC. At the same time it is also possible to recognise the influence of key individuals, notably those within the Dutch Presidency and to a limited extent the Irish presidency that proved skilful in bringing the negotiations along, even though only a small number of member governments provided detailed papers of their positions on key issues.

The fourth and final section of this chapter presents another equally important argument. In chapter II the importance of placing the IGC in context with the other business of the EU was emphasised, while at the same time taking on board domestic distractions. Indeed this was also important in explaining the pre-negotiations as described in the previous chapter. With the 1996-1997 IGC it is crucial in understanding the structure and flow of the negotiations that a series of both distracting and overshadowing events, domestic and European, are noted. In fact events such as the timing of the British general election and the divisions within the British Conservative government proved to be considerably influential in shaping the IGC. The fourth section considers the influence of the general elections in Britain and France along with the effects of the race to qualify for the third stage of EMU, the EMU/employment debate and the BSE crisis. As well as this section proving important in explaining the general dynamics of the negotiations, it is useful as a reference point for later chapters where the influence of these events on the IGC process is mentioned where relevant.

## **1. BACKGROUND**

### **Three Levels of negotiation**

Before considering how the negotiations at the 1996-97 IGC were conducted it is necessary to describe the different levels at which the negotiations took place.<sup>1</sup> There were three levels in all: Heads of State and Government in the form of the European Council, the foreign Ministers, and finally the personal representatives of the Foreign Ministers. The highest level was that of the European Council which shaped the agenda in the pre-negotiation stage and had the final word on any reform at Amsterdam. The second level was made up of the Foreign Ministers of each government. This group met once a month, as provided by the Madrid European Council.<sup>2</sup> The Foreign Ministers had 'responsibility for all proceedings' no matter what the issue at hand, the objective being to maintain a coherency and, in the

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<sup>1</sup> McDonagh, 1998, pp.17-21.

<sup>2</sup> See, *Madrid*, 1996.

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negotiations, a coherency it was felt would have been undermined if responsibilities were divided across a range of ministries.<sup>3</sup>

The bulk of the work was carried out by Ministers' representatives to the IGC, along with a representative from the Commission, Marcelino Oreja. (See Appendix 3) As with the Reflection Group there was a diversity in the make up of the group of personal representatives. Germany, France, the Netherlands, Portugal and Sweden appointed Ministers of State; Belgium, Spain, Luxembourg, Austria, Finland, Britain and later France their permanent representatives; Denmark, a former permanent representative, Greece for a time an MEP and later a Foreign Office official, Italy a former Foreign Office official. This formed the third level in the process, one that also had its foundations in the conclusions to the Madrid European Council in December 1995.<sup>4</sup> The representatives met for one day about every two weeks during the Italian Presidency, from the convening of the Conference in Turin on 28 March until the Florence Summit in mid-June. The Irish Presidency intensified the pace of the negotiations with the personal representatives meeting for up to two days per week. It was this level that proved most influential in gradually shaping the package, given their frequent dealings with it. The monthly meeting of the Foreign Ministers reviewed what had been negotiated in the previous weeks and the general direction that the IGC was taking across the various areas of reform. As mentioned in the previous chapter the European Parliament was not an actual participant at the IGC.<sup>5</sup> It made its contributions through a once-a-month meeting between the IGC personal representatives and the Parliament's IGC Representatives, Elmar Brok MEP and Elisabeth Guigou MEP. The Presidencies also kept the Parliament informed, organising regular briefing sessions with the same representatives. Finally the President of the Parliament consulted with Heads of State and Government at European Council meetings and with Foreign Ministers at General Affairs Council meetings.<sup>6</sup> However, no officials from any of the member governments described the Parliament as exceptionally influential on any of the issues including co-decision.<sup>7</sup> Indeed one official from the Finnish delegation remarked how the note-takers would

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<sup>3</sup> McDonagh, 1998, p.20.

<sup>4</sup> See, *Madrid*, 1996.

<sup>5</sup> Chapter III, pp. 96-98.

<sup>6</sup> *Ibid.*

<sup>7</sup> Interviews.

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lay down their pens when the EP's representatives entered the negotiating room to express its opinion.<sup>8</sup>

## Negotiating Styles

Given that the thesis focuses on the approaches of the German, French and British governments it is necessary, for two reasons, to briefly outline the negotiating styles of the three Member States. Firstly, not only does it provide a context which enhances our understanding of the negotiating approaches of the three governments but secondly these negotiating styles also shaped the four features which defined the negotiations. In examining this style particular attention is given to the manner in which the administrative systems of the three Member States formulate and present a national position on an EU issue.

### German Style

When commenting on the IGC negotiations one German official remarked that the federal government held a deliberately incoherent position for much of the process. This is consistent with the German negotiating style at the EU level. The structuring of the policy-making system places an emphasis on the diffusion of power.<sup>9</sup> In a federal system this provides for an influential state level of government or in the German case, the *Länder*.<sup>10</sup> The German Constitution, through Article 23 of the Basic Law provides the *Länder* with a significant role in European policymaking, particularly after the ratification of the Maastricht Treaty, with an effective veto over any further sovereignty transfers to the EU institutions and a much greater role in framing European policy in Germany.<sup>11</sup> This was also reflected in this IGC with officials from Bavaria and Baden-Württemberg representing the *Länder* on the German IGC delegation. As is shown in the following chapters the *Länder* were particularly influential throughout the negotiations. However, it is not simply a case of a division of power and influence between the Land and federal level but also across the federal ministries and indeed within the various ministries. Under the principle of ministerial

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<sup>8</sup> Stubb, 1998, p.19.

<sup>9</sup> See Simon Bulmer & William Paterson, *The Federal Republic of Germany and the European Community*, London: Allen & Unwin, 1987, p.17.

<sup>10</sup> Ibid., pp. 185-200.

<sup>11</sup> See Charlie Jeffrey, 'The Territorial Dimension', in Gordon Smith, William E. Paterson & Stephen Padgett, (eds.) *Developments in German Politics 2*, Basingstoke: Macmillan, 1996, pp.91-2.

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autonomy (*Ressortprinzip*) with such powerful ministries there tends to be a series of conflicting and contradictory positions on a single issue.<sup>12</sup> It is only towards the end of a process such as the IGC, as it reaches its climax, that it is possible to recognise a coherent German position rising out of the earlier contradictions. In a process such as an IGC, Chancellor Kohl had been instrumental in the final stages in bringing together previously competing positions or, indeed, rising above some of them and defining another approach.<sup>13</sup> While at this IGC there was a considerable degree of incoherency and contradictions in the German position, Kohl was not able to rise above these competing domestic constraints as he has done in the past and as will be shown in the following chapters. This caught several of the other delegations by surprise.

### French Style

The French negotiating style lies at the other end of the spectrum to the open and contradictory German approach. While there may be internal conflicts within and between ministries as is often the case between the Quai d'Orsay and the Elysée, the manner in which the French define and present their policy positions differ in two distinct ways from that of Germany. Firstly, while there is usually an inter-ministerial discussion on defining a French position on a foreign policy matter – on European issues the coordinating role falling to the Secrétariat Général du Comité Interministériel (SGCI) – in practice the Presidency is generally pre-eminent in foreign and defence policy.<sup>14</sup> Secondly, should it be a case of the Elysée having to impose its thinking on the Foreign Ministry or other ministries it is often difficult to recognise any divisions within a French position. Officials are very keen to present a united front despite disagreeing or being wholly against what they are defending. There is not a similar style of open contradiction or incoherency as is the case with the German negotiators.

Yet, this is not to suggest that there is no incoherency at all in the French system. Given that it is very tightly structured around the Elysée a French policy position can be prone to sudden shifts that may leave a later position at odds with an earlier one. There were examples of such incidences during the IGC when President Chirac took a

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<sup>12</sup> Ibid., pp.27-31.

<sup>13</sup> Ibid., p.27 & pp.37-39.

<sup>14</sup> See Guyomarch et al., 1998, pp.43-72; Peter A. Hall, Jack Hayward & Howard Machin, *Developments in French Politics*, Basingstoke: Macmillan, 1994, pp.201-204.

different line from what French officials and ministers had spent months developing and defending. One Dutch official remarked how the French position on Commission resizing, which had been reasonably well defined early on in the IGC, was dropped after Chirac took up a different position during the Noordwijk Summit in May 1997. There have been previous examples of the French Presidency upsetting the balance at IGC negotiations with sudden shifts. For example during the Fouchet IGC agreement seemed possible in the early days of January 1962 until De Gaulle on 18 January suddenly hardened his position on a political union to the opposition of the other negotiating governments.<sup>15</sup> An even more dramatic example during this IGC that impacted on the French government's approach on the WEU was Chirac's public request that with the Europeanisation of NATO the command of AFSouth should be reserved for a European. This would blow open what had been a very cautious and gradual return over the previous years of the French military into NATO. Also the Elysée tends to be less concerned about the details of a proposal and the possibility of a successful implementation, focusing instead on presenting a 'grand ligne', cultivating the perception among other states of an active French foreign policy.

### British Style

The British style lies between the tight rigour of the French and the more open approach of the Germans. Responsibility for the conduct of British foreign policy lies with the Foreign Secretary and the Foreign and Commonwealth Office (FCO). However, the actions of the Foreign Secretary are subject to approval by the Cabinet and the Prime Minister.<sup>16</sup> The FCO, along with the whole Whitehall structure has been described as an 'official machine with a political layer on top'. While the 'official machine' usually strives to "know their minister's mind" and to take his assumed preferences into account in formulating and implementing policy, the administration also aims to maintain a continuity in British foreign policy irrespective of the changes in government.<sup>17</sup> The Foreign Office aims to formulate and implement policy in an efficient business-like manner; co-ordinating with other Departments in Whitehall and presenting a coherent position on an issue.

<sup>15</sup> Gerbet, in Pryce, 1987, pp.120-123.

<sup>16</sup> See William Wallace, *The Foreign Policy Process in Britain*, London: RIIA, 1976, p.21.

<sup>17</sup> *Ibid.*, pp.51-52.

Though, for much of this IGC there were deep contradictions between this normal approach by the administration and that taken by the ‘political layer on top’. As mentioned in the previous chapter the Conservative government was deeply split on European institutions and policy, a vocal and well organised minority of ‘Eurosceptics’ making it very difficult for the Cabinet to present a coherent European policy that could be presented and defended by the IGC negotiating delegation from the foreign office. As several of the members on the negotiating delegation claimed it was difficult to identify what could be termed as the government’s mandate, being resigned to sticking closely to what was a bland White paper or as one official remarked saying ‘no, no, no’ to everything.<sup>18</sup> Therefore the Conservative government’s internal divisions brought an unusual twist to the normal business-like manner in which the Foreign Office operates. While the Labour government’s positions on certain issues, as described over the following chapters, were at times similar to those of the outgoing Conservative party, it re-introduced a sense of normality and stability in the manner in which British European policy was formulated and presented by the foreign office and its team of negotiators at the IGC. The Foreign Secretary’s reference to ‘constructive engagement’ sat comfortably with the business-like approach of the Foreign Office.

## **2. THE ISSUES AT THE CONFERENCE**

### **Introduction**

This section presents an overview of the issues on the IGC agenda. Firstly, it considers how the mandate for the negotiations was set. It then goes on to outline in detail the contents of the mandate. Finally, it outlines the broad range of issues that governments expressed interest in during the negotiations. This analysis reveals that firstly, governments were slow in defining the mandate. Secondly, when the Italian Presidency eventually presented the mandate at Turin it was open-ended in a manner similar to the Reflection Group’s report. It merely listed the issues that the Conference would deal with, failing to be more focused on how the IGC should go about making reforms. Governments could not be more focused on how they were going to deal with these issues since most at this stage had not sorted out their priorities. Finally, as has

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<sup>18</sup> Interviews.

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been the case with previous IGCs, the agenda became over crowded with governments tabling proposals on issues that were not mentioned in the mandate.

### Arriving at a Mandate

The Italian government assumed the Office of the Presidency in January 1996. The approach taken by the Italian Presidency in setting the agenda for the IGC to be convened at the Turin Summit was similar to that of the Reflection Group, three broad areas of reform focusing on Europe and the citizen, the institutions and external relations. As mentioned above, the European Council at Madrid in December 1995 had called on the Conference to focus on these three issues. Though, such were the differences between member governments that the summit conclusions only outlined the general objectives for the Conference. Once again it was a case of postponing agreement on the details for the IGC mandate until a later date under the Italian Presidency.

On the 8 January 1996 the European Union's Secretariat of the Council received from the Italian Presidency a draft for revising the Maastricht treaty. This marked the launching of the formal procedures that would initiate the conference. The Italians went on two trips of the national capitals in an attempt to gather the opinions of the different members on the IGC mandate so an agreed document would be in place by the Turin Summit. However, at the Council of foreign ministers meeting on February 26 the members were still split over preparations for the Turin Summit.<sup>19</sup> On March 9-10 at the informal meeting of EU foreign ministers in Palermo the Presidency remained unclear on the mandate for the start of negotiations.<sup>20</sup> In fact, it was not until the Turin Summit that the Presidency managed to define the mandate.

It was possible to get an insight to the Presidency's priorities and the shape of the mandate from the speech of Foreign Affairs Minister, Susanna Agnelli, to the European Parliament on the 13 March. She described the priorities of the IGC as citizens, institutions and CFSP. She called for the IGC to make a 'better list' of citizen's rights and duties with a deepening of 'the European model of society'.

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<sup>19</sup> *ER*, 18/02/96.

<sup>20</sup> *ER*, 13/03/96.

Particular emphasis was placed on employment and the need to 'apply the classic Community model to certain third pillar issues'. She described it as impossible to 'maintain such a high number of areas for which unanimity is required', describing QMV as the norm except for a few 'constitutional' exceptions. Reform of the Commission and the voting procedures, as well as a simplification of the treaties, were also emphasised. The inevitability of flexible integration was acknowledged. On CFSP Agnelli called for better 'visibility' on CFSP representation and implementation and the need to move away from the 'rigidity of unanimity' as a 'growing consensus' emerges on a planning and analysis instrument. She said the merger of the WEU into the EU framework was necessary before calling for the EU to become more like the US 'in terms of cohesion and common foreign policy'.<sup>21</sup>

The eventual mandate was divided into the three sections on Europe and the Citizen, institutional reform and External Action. Under the title of *Europe and the Citizen* it called on the IGC to consider whether and to what extent to strengthen the protection of fundamental rights by the European Union. On Justice and Home Affairs the mandate provided little insight as to the direction that the negotiations should take. Instead it merely called for better defined objectives, methods and instruments, better protection against international crime, and coherent and effective asylum, immigration and visa policies. On employment it called on the IGC to 'examine how the Union could provide the basis for improved cooperation and coordination aimed at reinforcing national policies'.<sup>22</sup> It also placed 'compatibility of competition with the principles of universal access to essential services in the public interest' on the agenda, together with a re-examination of the status of the remote territories and islands of the Union. These issues had been particularly promoted by the Spanish and French governments, respectively.<sup>23</sup> The mandate briefly mentioned the need for the IGC to consider how to make environmental protection more effective and coherent at the level of the Union, with a view to a sustainable development. Finally it called on the IGC to 'ensur[e] the most suitable application and realization of the principle of subsidiarity' while introducing greater transparency and openness in the workings of the Union with the possibility of 'simplifying and consolidating the Treaties'.

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<sup>21</sup> EDB, N°6687 – 14/03/1996.

<sup>22</sup> European Council, *Presidency Conclusions*, Turin European Council, SN 100/96, 29 March 1996.

<sup>23</sup> See again *Starting Points*, 1995 ; *Elements for*, 1996; *Memo*, 1996.

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Under the title *The Institutions in a more democratic and effective Union* it called on the Conference to consider simplifying and making more transparent the legislative procedures, widening the scope of co-decision, the role, membership and election of the European Parliament, the role of national parliaments, the possibility of extending QMV, the weighting of votes in the Council, the composition of the Commission and the role of the Court of Justice and Auditors. It also suggested examining the means 'of improving the clarity and quality of legislation and of stepping up the campaign against fraud'. Finally, it called on the governments to study the possible introduction of a flexibility clause. On this the Italian Presidency set out several conditions or markers for the negotiators. Any discussions on closer forms of cooperation was to proceed on the basis of being open to all, compatible with the Union's objectives and *acquis communautaire*, avoid discrimination and respect the single institutional framework in existence.

Under the heading *Reinforcement of the Union's capacity for external action* the mandate firstly set out the objectives of CFSP, which included developing the Union's political weight to equate with its economic strength, a coherency in external policy across all pillars, while respecting the role of the Commission and a readiness to develop a common defence policy in the framework of pursuing a common defence. It called on the negotiators to consider the possibility of appointing a Mr./Ms. CFSP while at the same time enhancing the 'tools' or the machinery of the pillar in achieving the specified objectives of CFSP. On defence matters the Italian mandate was a little more specific. It called for a clearer definition of the relationship between the EU and the WEU, the aim being to improve the operational capacity of the Union with specific reference to the WEU's Petersberg Tasks. Finally it referred to the potential for closer cooperation on armaments.

Overall the Turin mandate was very open as regards the direction that IGC should take. The fact that it made few suggestions on the more specific approach that the Conference should take within the three broad areas reflected a continuing lack of consensus among governments on the details for reform. In this sense it was similar to the Reflection Group, but even less certain in that it only made tentative suggestions on the possible directions for governments in one area, namely WEU-EU relations and the 'improvement of the operational capability' of the Union with 'specific reference

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to the ... Petersberg tasks', while setting out several conditions on discussing flexibility.<sup>24</sup>

### **Development of the Mandate**

The Conference proceeded with delegations tabling proposals mostly on those issues mentioned in the Turin mandate. However, the submission of position papers on nuclear energy (CONF/3877/96 – Ireland), animal protection (CONF/3887/96 & CONF/3983/96 – Britain), political parties (CONF/3920/96 – Greece), young people (CONF/3812/97 – Greece), culture and multilingualism (CONF/3819/97 – Greece), sport (CONF/3917/97 & CONF/3927/97 – Portugal) and the family (CONF/3924/97 – Spain) reflected the extent to which governments did not feel confined to the Turin mandate, as has been the case with previous IGCs, notably that on EPU back in 1991.<sup>25</sup> Also, just as chapter III referred to the diversity of declarations attached to the Maastricht Treaty the final treaty at Amsterdam included an equally diverse range with fifty seven declarations annexed to the final text and the Conference taking note of a further eight, including issues such as sport and the status of churches and non-confessional organisations. In another sense, the diversity of the submissions to the Conference and the contents of some of the final declarations again depicted the lack of a well-defined theme to the negotiations and how the process had evolved from the more limited suggestions of Articles 189b(8) and J.4(6) TEU and the two attached declarations; Declaration No.1 on civil protection, tourism and energy and Declaration No.16 on the hierarchy of Community Acts. Indeed governments failed to act on the Maastricht recommendations in the two declarations as had generally been the case in the run up to the IGC. There was little to no discussion on either topics. Only Greece made a submission on tourism (CONF/3933/96), Belgium (CONF/3992/96) on energy and Spain on civil protection (CONF/3929/96).

As becomes apparent over the following chapters very often the submissions by delegations were little more than a repetition of what had previously been outlined in governments' position papers on the eve of the Conference. Depending on the Presidency's approach a government paper may be discussed at a meeting between

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<sup>24</sup> *ER*, No. 2131, 03/04/96, p.5.

<sup>25</sup> See again Macuzelli, 1997, p.171.

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personal representatives, though generally each Presidency preferred to draft their own paper on a specific issue that reflected the various options on the table. Appendix 4 provides a list of the main documents submitted by the member governments across the main areas of the agenda as the IGC proceeded. It is possible to get an overall perspective on the various issues that some member governments were committed to.

While negotiations on CFSP, JHA and the institutions are discussed in the third section of the thesis, a brief outline is given of those governments that submitted papers on these and other issues during the sixteen months. On justice and home affairs the Irish government submitted two papers dealing with social exclusion. The Spanish delegation on two occasions submitted a very similar paper on internal asylum. As is shown in chapter VI the British Conservative government was keen to maintain the existing arrangement under the third pillar, while the French submitted a very detailed paper in February 1997. The German government was particularly committed to ensuring the communitarisation of customs cooperation, while both the Commission and the Benelux submitted papers before the end of 1996 outlining a new title on justice and home affairs in pillar one. On CFSP the British Conservative government submitted proposals on two key areas of Mr. CFSP and the policy planning capability. This was an attempt to make good on Douglas Hurd's words four years earlier on showing that an intergovernmental CFSP was workable. The other big initiatives came from the group of five (Belgium, Luxembourg, France, Germany and Spain) on WEU-EU relations; the French delegation on Mr. CFSP, and the Finnish and Swedish on the Petersberg Tasks.

On institutional reform the member governments submitted few papers of note. The differences over enlargement, as mentioned in the previous chapter, meant that it failed to provide the inspiration among governments to reform the institutional structure. The few key papers were the Commission's outline on co-decision and its own restructuring and the French delegation's on the composition and organisation of the Commission. Instead governments left much of the work to the Dutch Presidency, which attempted to reach a compromise on an area where governments showed little enthusiasm. The British and German governments continued their Maastricht debate on subsidiarity, culminating in a Protocol on the application of the principles of subsidiarity and proportionality. The British and French governments were keen to

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have a clearer outline on the role and jurisdiction of the Court of Justice, while it was the French government that pushed on a role for national parliaments though it did not submit any further official papers during the Conference to re-emphasise its earlier position. Amsterdam introduced a new draft Protocol on the role of national parliaments. On flexibility, which should have seen a widespread submission of papers from governments given the potential implications of any treaty amendment, the debate was largely confined to a few key players, notably France, Germany, Britain, Italy and the Dutch Presidency. The final result at Amsterdam was a sophisticated combination of three forms of flexibility; the general enabling clauses from Articles 43-45 TEU and the specific enabling clauses on the first and third pillars (Article 11 TEC) and (Article 40 TEU); the constructive abstention through Article 23 TEU on CFSP and the pre-defined flexibility under Protocols No.2 on incorporating Schengen, Protocols No.3 on UK and Ireland on border control, Protocol No.4 on the UK and Ireland in Title IV and Protocol No.5 on the position of Denmark.

Moving into the other areas of the negotiations, on transparency in the operations of the EU's institutional mechanisms, on ensuring greater public access to official documents and simplifying the treaties, it was a case of the Nordic members (Sweden, Denmark and Finland) pushing the hardest on these issues as their earlier position papers had signalled. Sweden tabled three papers on the subject with the other two states along with the British government also submitting a negotiating paper. The result was an amendment to what is now Article 1 TEU and the creation of Article 225 TEC requiring the Council to outline within two years the procedures on gaining access to documents. Declaration No.39 also requires the institutions to set out guidelines to improve the drafting of Community legislation. It was a somewhat similar pattern on strengthening the environmental protection provisions of the treaty, the same four, Denmark, Sweden, Britain and Finland submitting negotiating papers along with the Belgian and Austrian delegations. As mentioned in the previous chapter, the Danish delegation was particularly keen for changes on this topic.<sup>26</sup> The end result was changes to Article I TEU and the inclusion within Article 2 TEC of 'a high level of protection and improvement of the quality of the environment' as a principle of the European Community. There were also a series of amendments to Article 95 TEC on the Approximation of Laws.

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<sup>26</sup> See Chapter III, p.82-3.

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As expected and as their governments had made clear in the run up to the Conference Austria and Sweden were committed to creating an employment chapter. The Belgian government was also keen on this and while the French government did not submit a paper on it, the arrival of the Jospin government brought a new dimension to this part of the agenda, as is described below. The result was a new title, Title VIII TEC on employment. The Austrian government, participating in its first IGC, also submitted a further four papers along with Italy, Spain, Sweden, Belgium, Germany and Finland on strengthening the existing provisions on the protection of fundamental human rights and non-discrimination between men and women. The amendments at Amsterdam included a new Article 7 TEU on suspending the voting rights of a Member State in breach of Article 6(1) TEU which describes human rights and fundamental freedoms as principles upon which the Union is founded. The final draft also included a corresponding amendment to Article 7 TEU within the European Community (Article 309 TEC).

### **3. OVERVIEW OF NEGOTIATIONS FROM TURIN TO DUBLIN TO AMSTERDAM**

#### **Introduction**

While the previous section focused on the issues on the IGC agenda this section does two things. Firstly it presents a general overview of the negotiations under each Presidency and secondly it attempts to identify what could be described as key meetings and individuals of the sixteen months' process. This section presents several arguments. Firstly, for much of the Italian and Irish Presidencies the negotiations lacked direction on the key issues such as institutional reform, flexibility, JHA and WEU-EU relations. Governments were slow in outlining their objectives, or rather they were slow in providing the necessary detail to their rather vague positions outlined in the weeks and months running up to the Conference. Secondly, this left some governments mentioning postponement and another IGC. Thirdly, on some issues, notably institutional reform, the lack of direction persisted in the early months of the Dutch Presidency. This made postponement almost inevitable. However, the Dutch Presidency was astute at moving things along on other issues but often at the expense of clarity on what was being discussed and what were the intentions of other governments. Fourthly, over the sixteen months it was difficult to identify any series of

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decisive meetings that turned the negotiations one way or another, except for the meeting between Heads of State and Governments at Noordwijk on 23 May '97. The general absence of these kind of meetings reflects the extent to which the process was an incremental one, the negotiations slowly edging along, rather than there being many sudden twists and turns. It also reflects the extent to which the negotiations were shaped by meetings on other issues and events that did not form part of the IGC agenda. The final section of the chapter focuses on this. Finally, as was the case with previous IGCs, there were individuals who did stand out, proving influential in what is very often a dull process.

### **Italian Presidency**

The Italian Presidency laid the ground work for the Irish and Dutch Presidencies. The overall goal was to hand over to the Irish Presidency with the preparatory work complete and the stage set for a draft treaty by December 1996. The Italian Presidency lost momentum with a general election in April 1996. At a time when the "Clean Hands" investigation was shown not to be completely successful – with the uncovering of a corruption scandal in the state railway system – Italian concerns were focused on the shape of the next government and its ability to survive.<sup>27</sup> While weak coalitions have been a characteristic of post World War II Italian politics, even after the 1993 electoral reform, familiarity did not mitigate against the negative effects on the Italian Presidency. A change in personnel in mid stream of a Presidency always left the incoming administration struggling with the issues and the process in general.

One official described the Italian Presidency's approach on the IGC as similar to that of treading water, a lot of effort with little forward movement.<sup>28</sup> The Italian Presidency during its three months went over all the items on the agenda. This amounted to little more than governments repeating their previously outlined positions.<sup>29</sup> Much of the IGC under the Italian Presidency involved a continuous rehearsing of positions. As regards the general attitude of the delegations towards the negotiations it was a case of avoiding any serious engagement on the details. The lack-lustre performance was acknowledged from those involved in the process. One official remarked that 'At Turin

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<sup>27</sup> See Patrick McCarthy, 'Italy at a turning Point', *Current History*, March 1997.

<sup>28</sup> Interviews.

<sup>29</sup> Ibid.

things just seemed to die, it was a watershed, people's ambitions had just seemed to drop'.<sup>30</sup> Chirac called for the conference to 'change into a higher speed' requesting the draft treaty in December to have 'options' while at the same time being 'sufficiently precise'. Santer remarked at the European Parliament session in Strasbourg on 19 June 1996, 'Let's be frank, the outcome so far is hardly dazzling. The Italian Presidency began work with a great deal of commitment, and it is not its fault if the process is lacking in dynamism'.<sup>31</sup> He questioned the negotiators' clarity of objectives and the urgency which they approached the IGC. He made a similar warning as did Commissioner Oreja regarding the necessity to avoid becoming entrapped in the belief 'that we have lots of time'. He concluded with a call 'to move into a higher gear'.

Despite the lack of direction, the Italian Presidency at the Florence Summit remarked that the Florence Report on some issues 'identifi[ed] first solutions'. This was the comment of the new Italian Under-Secretary of State for Foreign Affairs, Piero Fassino, on 18 June in Florence. He went on to say that it facilitated for the next Presidency to have in place a draft text of the eventual new treaty by December 1996.<sup>32</sup> A similar perspective was given in the Presidency's conclusions. It described the 'analysis of issues' as being 'sufficiently advanced' that it was now time to seek 'balanced solutions'.<sup>33</sup>

### **Irish Presidency**

The slow start to the Conference and the little headway that was made by the Italian Presidency was evident from the assessment of the incoming Irish Presidency. For the Irish Presidency it was a case of starting from 'largely a blank piece of paper'.<sup>34</sup> While acknowledging the ground work carried out by the Italian Presidency, the discussions under the Irish Presidency were not based upon an Italian text.<sup>35</sup> In fact, Bruton commented that the immediate aim of the Irish Presidency was to get the Union's

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<sup>30</sup> Ibid.

<sup>31</sup> EDB, N°6752 – 20/06/1996.

<sup>32</sup> EDB, N°6754 – 22/06/1996.

<sup>33</sup> European Council, *Presidency Conclusions*, Florence European Council, SN 300/96, 21-22 June 1996; See supplement to ER N°2143 – 26/06/96.

<sup>34</sup> Interviews.

<sup>35</sup> Ibid.

‘decision-making [process] moving again’.<sup>36</sup> The Irish Presidency sought to push the process along to actual negotiations, moving towards genuine trade-offs or providing the basis for such trade-offs in the future.<sup>37</sup> While the Irish Presidency would provide for some direction on certain issues, it also avoided the more difficult and controversial ones, leaving them for the Dutch Presidency. Indeed this is a feature that will be very apparent in the following section of the thesis. The Presidency would repeatedly use the argument that the negotiations were not ready for any significant move on the sensitive issues such as decision making procedures, often citing the British Conservative government as an obstacle. However, as is mentioned in the final section of this chapter and throughout part III of the thesis, the British often presented themselves as a useful scapegoat behind which other member governments could hide their lack of clarity and ambiguity on their objectives.

The mandate at Florence to submit a draft treaty to the Dublin Summit in December did provide a focus for the Conference. The Presidency’s approach and attitude was geared towards delivering on this draft treaty.<sup>38</sup> There was some consensus within the Irish team that it was more than merely an issue of concluding a draft treaty. While the document in one sense reflected the current state of the negotiations, the chairman of the Group of Representatives Noel Dorr claimed that the aim was also to move beyond this, recognising and setting the foundations for agreement in certain areas that would be realised under the Dutch Presidency.<sup>39</sup> Dorr’s deputy in the Department of Foreign Affairs, Bobby McDonagh claimed that the Irish Presidency sought to capture the ‘upper-end of realism’ in the December draft.<sup>40</sup> Similarly the Taoiseach John Bruton remarked that the process had to ‘unblock some decisions’ all of which may not occur within the period of the Irish Presidency but ‘it could move things forward quite a bit afterwards’.<sup>41</sup>

<sup>36</sup> ‘Building up a New Momentum’, *Irish Times (IT)*, 02/07/96. For similar positions see Dick Spring, T.D., Speech to the IBEC Kerry region annual general meeting *The 1996 IGC and beyond: The future of the European Union from an Irish perspective*, 22 May, 1995; Dick Spring, *Ireland’s Presidency of the European Union: A Mid-term Perspective*, 7th November, 1996, Chatham House, London.

<sup>37</sup> Anna-Carin Svensson, *The IGC 1996-97 – The Role of the Presidency*, Presented at 26<sup>th</sup> ECPR, Warwick, March 23-28 1998,

<sup>38</sup> Interview

<sup>39</sup> Interviews; also see ‘Irish Presidency Releases Its Paper On The Main Points Of The New Treaty’, *AE*, 6/12/96; Anna-Carin Svensson, 1998, p.21

<sup>40</sup> Interviews.

<sup>41</sup> ‘Bruton keen to convey EU aims in simple terms’, *IT*, 03/07/96.

Noel Dorr described the Presidency's tool of negotiation as one of 'successive approximation'.<sup>42</sup> This entailed the Presidency presenting papers to the delegations that reflected and took into account the results of the previous meeting on the topic with further suggestions aiming to secure a greater acceptance among the delegations, each text getting closer to one on which there would be general agreement.<sup>43</sup> The Taoiseach remarked that, after clearing the backlog arising from the BSE dispute (see below), the Presidency would then persuade Member States with divergent views on Europe's role to 'approximate them to a greater degree'.<sup>44</sup> However, this approach came in from some criticism from the other governments. Firstly, there were the claims from other delegations, particularly the French, that 'successive approximation' was not a process of negotiation. The criticisms ranged from claims that the Presidency's papers were presented as *fait accompli*, unwilling to incorporate changes or suggestions from other delegations to accusations that it was overly influenced by the Council Secretariat or the domestic implications of a rift with the British government.<sup>45</sup>

It was certainly the case that there were mixed results from this successive approximation approach. The November 18-19 meeting of personal representatives saw the Presidency putting on the table a new title on 'An Area of Freedom and Security', to be followed by changes on police cooperation in the third pillar. While this reflected one of the first signs of a significant step forward on a major issue, it also epitomised the extent to which the Presidency allowed the negotiations to drift on the more sensitive issues. Firstly, as was reflected in the December draft, the Dutch Presidency would be left to complete the more sensitive matters on the third pillar, such as the role of the institutions and the place of any new title within the treaty structure. Secondly, by focusing on the third pillar, little was achieved on the other two chapters on institutional reform and CFSP. The Presidency's papers on CFSP largely repeated those of the Italians, except on decision making, while a suggested approach on a reformed rule of co-decision amounted to the only significant paper on institutional reform. (See Below)

<sup>42</sup> Interview, see Svensson, 1998.

<sup>43</sup> Interviews.

<sup>44</sup> See again *IT*, 02/07/96; Dick Spring, 22/05/95; Dick Spring, 07/11/96, London.

<sup>45</sup> Interviews.

The draft treaty of December 1996 told a similar story. It divided CFSP into two chapters, one on objectives, means and structures, and a second on Security and Defence. Of the first of these chapters the most significant changes suggested included a stronger role for the Commission under Article J.5, a Declaration on policy planning and early warning capability, and the new Article J.8a on decision making that would bear much similarity with the final outcome in Amsterdam, making room for consensus-minus-one, easier access to QMV but with the national policy card in the form of the Luxembourg Compromise always available. On implementing instruments three suggestions were made; systematic cooperation, common positions and joint actions.<sup>46</sup> As is shown over the following chapters the draft treaty talked around the issues on security and defence, a sensitive matter for a neutral Member State as Ireland.<sup>47</sup>

The lack of progress on institutional matters was reflected in the absence from the draft treaty of proposed provisions on the sensitive issues of institutional reform; size and composition of the Commission, extension of qualified majority voting, weighting of votes in the Council. This was also the case with flexibility. On such institutional matters Dorr claimed that the aim was to strike a balance between a non-confrontational paper and an approach limited to the smallest common denominator, the suggestions on institutional matters representing the extreme end of the former example.<sup>48</sup>

The Presidency's reluctance to tackle in a vigorous manner these contentious issues also reflected the continued unwillingness among the other governments to engage in a frank discussion at this stage in the negotiations.<sup>49</sup> As mentioned in the pre-negotiations, and as the mandate for the Conference was outlined, governments for the greater part had not thought through in detail their exact positions and objectives. They had not sorted out their priorities. This was still the case on many of the issues at this stage in the negotiations. For example on JHA only eight papers were submitted by the Netherlands, Benelux, Britain, Spain, Germany, Denmark, Belgium and the

<sup>46</sup> See CONF 2500/96, pp.67-76.

<sup>47</sup> Ibid. pp.80-86.

<sup>48</sup> See 'New Treaty', *AE*, 06/12/96.

<sup>49</sup> Ferdinando Riccardi, 'The Reform of the Treaty gains Little ground in Dublin', *Europe*, December 1996.

Commission. No papers were submitted on the institutions, while Britain submitted two of the nine papers on CFSP, Italy, Greece, Finland, Germany and Sweden taking the rest. On flexibility only the French, German and Portuguese governments submitted proposals of any detail. In turn the Franco-German joint letter from early December offered nothing new on these key areas, the vague and contradictory language disguising fundamental differences between the two governments.<sup>50</sup> Member governments and the Presidency seemed more comfortable with the 'softer' issues on the agenda such as transparency, strengthening the provisions in protecting human rights and the environment and a more rhetorical chapter on employment. The provisions in the draft treaty on these issues were very similar to those in the final treaty at Amsterdam. Yet, the fact that these issues were pushed by few member governments Austria, Sweden Denmark and Belgium on the Employment chapter,<sup>51</sup> Austria and Italy pushing on human rights provisions and Sweden on transparency, with few submissions to come during the Dutch Presidency reflected the extent to which the other governments were not particularly focused or interested in these issues.<sup>52</sup>

Even though this process was to a large extent a continuation of Maastricht, governments were showing little determination to address these difficult issues. Indeed, the inherent feature of these constitutional bargaining processes to postpone confronting divisive issues was yet again apparent even at this stage in the negotiations. Kohl referred to the possibility of holding a third IGC 'if all the problems are not resolved with Maastricht II'.<sup>53</sup> Santer and the Commission again expressed concern at the lack of pace to the whole process, as did the President of the European Parliament, who particularly regretted the talk of another IGC in the middle of the present one.<sup>54</sup> In late October, Prime Minister Jean Luc Dehaene of Belgium commented on how 'Negotiation is taking place in a conservative, if not reactionary, atmosphere, some wanting to go back to earlier decisions'.<sup>55</sup> Dehaene's dismay came

<sup>50</sup> Press and Information Office of the Federal Government, 13 December 1996.

<sup>51</sup> The arrival of the Jospin government in early June complicated the final deal on employment but did little to change the substance of the chapter. (See below)

<sup>52</sup> Interviews.

<sup>53</sup> 'Helmut kohl envisages a "Maastricht III"', *AE*, 03/10/96.

<sup>54</sup> 'Concerned by the Slowness and Certain Developments in the Work of the IGC, the European Commission Intends to take New Initiatives', *AE*, 04/09/96; 'Hänsch shares in Santer's Perplexities over a "second" IGC', *AE*, 19/09/96.

<sup>55</sup> 'For Prime Minister Dehaene, the IGC takes place in a "Conservative, if not Reactionary Atmosphere', *AE*, 22/10/1996.

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after the informal European Council meeting in Dublin in October '96 that aimed to provide an impetus and focus to the negotiations. However, as explained below such a negative perception of the progress could be somewhat expected given the pre-occupations at this time; the conclusion of the stability pact on EMU, the continual struggle to meet the Maastricht criteria and the continually antagonistic approach of the British Conservative government on a range issues from BSE, and the Working Time Directive to fishing quotas.<sup>56</sup>

At the Dublin II summit on 13-14 December '96 Heads of State and Government were generally robust in their defence of the process so far, Chirac's remarks on the draft treaty 'You'll see, it will work' epitomising this.<sup>57</sup> Though, only days earlier the French Foreign Minister had described the Irish proposal as the 'exact reflection of the mediocrity of the work so far', declaring that 'Things are not going well' and that France would not accept 'pseudo-reform'.<sup>58</sup> Indeed the fact that John Major described the Council meeting on the draft text as 'the most substantial' discussion he had heard on the content of the Intergovernmental Conference reflected the lack of substantial progress on a range of issues across all pillars.<sup>59</sup> This was a reflection of the close cooperation between the British and Irish governments in the weeks before the Dublin draft. Both governments were all too aware of the negative impact a fall-out on the European agenda would have on both governments attempts to manage the peace process in Northern Ireland.<sup>60</sup> As one Irish minister remarked Major was willing to do the Irish a favour, and minimise the attacks on their draft treaty.<sup>61</sup> The looseness of the treaty language and the absence of any detailed proposals on the hot institutional issues meant Major could be kept on board. However, as is shown over the next three chapters it also suited the Irish Presidency not to push for change on these sensitive issues.

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<sup>56</sup> See below for BSE and Working Time Directive; On fishing quotas see 'The United Kingdom firmly raises the problem of quota misappropriation', *AE*, 10/06/96; 'Spanish shipowners feel Britain is exaggerating the quota hopping problem', *AE*, 26/07/96.

<sup>57</sup> *Ibid.* p.5.

<sup>58</sup> 'Opening of the "Conclave" on the Irish Presidency Document', *AE*, 07/12/96.

<sup>59</sup> 'European Council in Dublin', *AE*, 06/12/96 p.2; Also see 'EU/IGC – Draft Treaty', *AE*, 10/12/96.

<sup>60</sup> Interviews.

<sup>61</sup> *Ibid.*

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### Dutch Presidency – Moving to the End Game

The Dutch Presidency's bottom line was securing a treaty by Amsterdam, no matter the substance.<sup>62</sup> The diplomatic embarrassment of Black Monday at Maastricht was particularly influential on the overall Dutch approach. This left the Dutch Presidency keen to ensure that they would handle the whole process much more efficiently this time around. In an attempt to avoid a similar debacle at this Conference they restructured their internal organisation. The Prime Minister's office charged itself with the over-all co-ordination of the negotiations, with the Secretary General for Economic Affairs (Geelhood) acting as Kok's overall supervisor. While the Ministry for Foreign Affairs managed the IGC on a daily basis, in the lead up to Amsterdam the Prime Minister office's became more involved in the detail of the process.<sup>63</sup>

The Presidency recognised the difficulty of the task of concluding at Amsterdam. In its programme for the IGC it claimed that it would 'do everything in its power to accomplish the task it has been set' but at the same time acknowledged that this was 'not enough to guarantee' that the IGC would finish on time.<sup>64</sup> This was a recognition of the considerable differences that continued to exist over essential issues, the lack of progress and direction on key issues such as the institutions and CFSP during the Italian and Irish Presidencies. It was also an acknowledgement of the continued uncertainty in the end game. This uncertainty related to firstly, whether there would be a change in government after the British election expected in early May, and secondly, given this change, the likelihood of securing agreement in such a short time period from early May to mid-June, the suggested time that the Turin Summit made as regards the IGC's conclusions. The Dutch Presidency was very keen to have the Conference conclude under its supervision, not having to reschedule for a later date during the Luxembourg Presidency.

The general approach of the governments had not changed sufficiently in the early stages of the Dutch Presidency. At the 40<sup>th</sup> anniversary of the signing of the Treaty of Rome the Presidency declared it their intention to complete the reform of the 2<sup>nd</sup> and 3<sup>rd</sup> pillars within a month leaving institutional matters for the final days. This was as

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> See 'Programme of Dutch Presidency', *AE*, 20/12/96.

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much a recognition of the lack of consensus among member delegations as it was a recognition of the futility of negotiating with the British administration on such a sensitive matter. Dutch Foreign Minister van Mierlo admitted as much when he claimed that the institutional matters would only be decided by the heads of Government and State. He said, 'The Heads of State and Government, who perhaps have more authority, will have to find a solution'.<sup>65</sup> He spoke of handing to the European Council 'manageable dilemmas'.

On justice and home affairs it was a case of some deft manoeuvres from the Dutch Presidency that laid the way for an eventual agreement. Indeed it was the lack of focus from certain governments due yet again to domestic distractions that allowed the Dutch Presidency to reach agreement. As is shown in the following chapters, this was particularly the case on the incorporation of Schengen and also on the extent of the communitarisation of third pillar matters. At the same time the Presidency pressed hard to provide sufficient 'opt-outs' for those governments, notably the British, Irish and Danish that continually expressed a lack of interest or general reservations on core changes to the third pillar. Internal divisions within the Dutch government did not allow it to take a similarly active stance on CFSP matters as on JHA.

Some time after the government concluded its four official position papers in 1995 the right wing liberals, the VVD, began to adopt a more sceptical approach towards the European Union. On EMU they feared the implications of joining with the weaker currencies such as the Italian Lira and the Spanish peseta.<sup>66</sup> As regards the integration of the WEU, the government in its position paper had made it clear that it supported this approach. However, as the IGC proceeded the VVD drew back from the previous official position. This was particularly evident during budgetary debates in the Dutch parliament where certain members of the VVD, claimed that the WEU could in effect be abandoned or its development forgotten about.<sup>67</sup> On the institutional front there were similar signals of reluctance. Within the VVD there was a certain unwillingness as regards extending QMV and the possible negative implications that this could hold.

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<sup>65</sup> EDB, N°6966 – 01/05/1997.

<sup>66</sup> Interviews; On the Dutch preparations for IGC see M. Kwast-van Duursen, 'The Dutch Debate: A Shifting Policy on Europe', in *The 1996 IGC National Debates (1), Discussion paper 66*, London: RIIA, 1996.

<sup>67</sup> Interviews.

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This more pragmatic or sceptical form of thinking from the VVD was expressed by Michel Patijn. Responsible for European matters in the Dutch foreign ministry he ran the Presidency and the IGC on a daily basis. While Dutch vigour would not by itself have delivered an ambitious treaty on these particular issues the domestic situation and internal divisions weakened any attempt to do so.

As the end game approached, there was a collective awareness among governments of the negative implications of failing to meet the June deadline and concluding with a 'successful' treaty. Yet, even at this stage there was not a great deal of reaction from governments. There was no concerted submission of detailed negotiating positions from member governments, either on JHA, institutions or CFSP. Indeed this was also the case on the other IGC issues. On the employment chapter there were no further position papers. On human rights there were only two papers, from the Italian government and the European Parliament. Britain was the only government to push on subsidiarity and Finland on transparency.

Therefore, the Dutch Presidency was given a particularly free hand in presenting draft proposals to the other delegations. This raises the question on whether these proposals were adequately discussed by the delegations. One Austrian official estimated that, in the final draft presented by the Dutch, 80% of the provisions had not been consented to, and in some cases, not even discussed beforehand. Indeed, as is shown in the following section of the thesis, the Dutch Presidency was particularly astute at presenting papers and bringing member governments along without there being common agreement or awareness of the implications that would arise with the changes.

The weakness of the IGC approach on making treaty changes was mentioned at the Amsterdam European Council.<sup>68</sup> The nature of the IGC to postpone dealing with divisive issues was directly addressed by the Irish Prime Minister John Bruton. He criticised the increasing tendency of postponing decisions and problems until a later IGC. He suggested that such a culture was very much precipitated by Maastricht. He described such an approach as a mistake creating 'false expectations' on the Member States' ability to settle particular issues. He was resigned to the comment that

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<sup>68</sup> 'Severe Judgement from most Political Groups which note the Intergovernmental Negotiation method is limited', *AE*, 19/06/97.

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‘unfortunately, it is the way we proceed in these negotiations’. He said ‘it is necessary to review the way intergovernmental conferences function’ with the need to avoid leaving the European Council to do so much in such a short period.<sup>69</sup> The frustrations expressed by the Dutch Presidency, Chirac and Dehaene amounted to a similar criticism of the approach that the governments had taken throughout the IGC, lacking in direction that left the negotiations drifting to a confusing conclusion and postponing decisions.<sup>70</sup>

### Key Meetings & Individuals

Despite the fact that there were three levels to the negotiations; Heads of State and Government, the Foreign Ministers and the personal representatives, there were few meetings that can be singled out as particularly influential. Starting with the European Council there were two further summit meetings in Dublin on 5 October 1996 and Noordwijk in May 1997 to complement those at Dublin in December 1996 and Amsterdam in June 1997. The Dublin I summit was built up as a means of providing a fresh impetus to the process where Heads of State and Government would engage in what President Jacques Chirac described as a ‘frank discussion’, on issues from the three major areas of the Conference: Europe and the citizen, institutional reform and an effective external policy. To facilitate for this openness and ‘frank discussion’ the meeting finished without making formal conclusions.<sup>71</sup> The May meeting at Noordwijk was necessary given the tendency of the member governments to postpone any serious negotiating on sensitive issues, most notably institutional matters, until after the 1 May British elections. (See Below) Therefore there was a heavy workload to go through within a six to seven week period. As is shown in chapter V the meeting at Noordwijk was particularly crucial in shaping the final position on the future size of the Commission and the re-weighting of council votes.

The absence of any meetings between Foreign Ministers that could be described as major turning points for the Conference reflected the rather limited role that the Foreign Ministers’ once-a-month meeting played in the whole process. Squeezed between the Heads of State and Government that had the final say on the package,

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<sup>69</sup> ‘The Fifteen Reach Consensus on ‘Amsterdam Treaty’, *AE*, 18/06/97.

<sup>70</sup> *Ibid.*

<sup>71</sup> *ER*, No. 2162, 02/10/96, p.3.

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while providing over-all direction, and the personal representatives that would have a better grasp on the nuances of the negotiations, the Foreign Ministers failed to carve out an influential role for themselves.<sup>72</sup> Indeed, the one meeting of note confirmed this. At the fortieth anniversary of the Treaty of Rome on 25 March '97, the Dutch Foreign Minister, Hans van Mierlo, remarked that sensitive issues such as institutional reform were better dealt with by the Heads of State and Government that had the authority to make decisions.

It was less a case of any one of the series of meetings between the personal representatives acting as a major turning point in the Conference. The very role and function of the personal representatives was not to provide dynamic shifts and turns to the process. Rather the weekly meetings, which aimed to have in place a document reflecting the agreement, reached on the range of issues on the agenda. This was then handed over to the Heads of State and Government for their further amendments and final political approval.

The ensuing detailed examination of the negotiations on CFSP, the institutions, and justice and home affairs reveals that at certain moments in the process and on certain issues there were influential individuals. For example, Noel Dorr as the chairman of the group of personal representatives during the Irish Presidency was generally acclaimed by officials from most of the Member States and the Commission and Council Secretariat as an astute manager of the process, moving the negotiations along to a draft treaty by the Dublin European Council meeting in December 1996. The Dutch Minister of European Affairs, Michel Patijn also left his mark on the process in the same position as chairman of the group of personal representatives from January 1997 to the conclusion of the negotiations. However, his personal touch extended beyond managing the meetings and the progress of the Conference to taking the lead for the Dutch Presidency on the incorporation of the Schengen *acquis*.<sup>73</sup> As the negotiations reached their climax in June '97 the politicians took on the key roles. The Dutch Prime Minister Wim Kok as the President in Office gradually became more involved in the day to day operations of the IGC as Amsterdam approached. As becomes apparent over the rest of the thesis, the French President and Prime Minister

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<sup>72</sup> On this point see McDonagh, 1998, p.20.

<sup>73</sup> See chapter VI, pp. 204-13.

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Jacques Chirac and Lionel Jospin, the German Chancellor Helmut Kohl and the British prime Minister Tony Blair would all play their part in shaping the final treaty.

#### **4. THE OVERSHADOWING EVENTS**

##### **Introduction**

Over the following three chapters the detailed nature of the negotiations on a selection of topics from the three areas on institutions, CFSP and JHA are examined, revealing the extent of the lack of direction of the Conference, the ambiguity that left governments drifting into agreement or postponing issues for another Conference. However, before proceeding with this analysis it is important that the IGC negotiations are placed in context.<sup>74</sup> The necessity of doing so has already been mentioned in Chapter II when considering the defining features of the negotiations. Certain domestic and EU situations shaped the very structure of the IGC and at times these issues eclipsed the very negotiations, helping to explain the presence of the four features in the negotiations, particularly why there was a lack of focus from governments and ultimately indirection. Any examination of the twists and turns to the IGC needs a much broader focus than the specific IGC meetings. This following section considers the influence of the British and French general elections the qualification for the third stage of EMU, employment and EMU and the BSE crisis.

##### **British & French Elections**

An understanding of the British and French domestic politics in the run-up to the parliamentary elections is essential in explaining the development of the Conference. The British general election was critical to the approach taken by governments and their delegations. It shaped the whole IGC process in several ways. The expected change of administration and the arrival of a more united and less confrontational Labour government left the other governments less inclined to push for agreement and reveal their negotiating hand on the more sensitive issues early on in the IGC. Officials claimed that there was no incentive to push the negotiations along on institutional and

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<sup>74</sup> Juliet Lodge places a similar emphasis on considering the IGC negotiations in context. See Juliet Lodge, 1998a, pp.482-6.

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CFSP matters since most realised that this would be detrimental to the whole IGC process, given the continually weakening position of the British Prime Minister.<sup>75</sup> It was in no government's interest to precipitate an unnecessary crisis in Westminster, something that an early draft proposal with significant extensions, say, in the use of QMV was likely to give rise to. One official suggested that the IGC could have been completed by December 1996 but for the 'British situation' and the realisation that even fewer significant changes would have been agreed to under the then Conservative administration.<sup>76</sup> Yet, the timing of the British general election also presented an excuse for governments behind which they could hide their poorly defined objectives. The arrival of the Labour government exposed the extent to which there was lack of consensus among governments on their priorities on certain issues. Finally because governments adopted this approach of waiting for a Labour government it left them with much to do at a late stage in the negotiations.

Throughout the IGC the French government was beset with internal divisions and wrangling as in the pre-negotiations. There was further opposition to the government's economic programme. While this was at its most visible with the striking French lorry drivers, much of the opposition very often came from the RPR's coalition partner, the UDF, and from within the back-bench ranks of the RPR. On May 28 1996 Balladur organised a public debate about economic policy. In attendance was Phillippe Séguin, president of the National Assembly. Both claimed that an alternative approach was required to that which was being pursued by the Juppé government. But, there was no form of unity in this opposition, with Séguin calling for a greater role for the state, and Balladur a more restricted one.

Considering the French commitment on EMU and the realisation that further tough and austere measures were necessary for France to qualify, and given the expected opposition from certain sectors of the public and from within the RPR itself, President Jacques Chirac decided that an early general election scheduled for May 1997 was necessary for an RPR government to have a clear mandate as regards meeting the Maastricht criteria. The inevitable loss of seats would be offset by a more streamlined

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<sup>75</sup> Interviews.

<sup>76</sup> Ibid.

and united government.<sup>77</sup> Chirac was attempting to consolidate the government's weakening position. By early May a series of polls had indicated that the French left were level with the government parties.<sup>78</sup> The eventual success of the Socialist party and the arrival of the Jospin government while late in the negotiations added a further dimension to the IGC process.<sup>79</sup> Firstly, the Socialist government upped the stakes in the already intense debate on EMU, as is described below. Already proving the most demanding issue on the EU agenda at the level of Head of State and Government, at ministerial level and other levels it further dominated in the final stages of the IGC negotiations, a crucial time in any negotiations but especially with this IGC with much of the delicate negotiations left to late on in the process. Secondly, there was a last-minute change in approach of the French negotiation team and the French government as regards certain issues on the IGC agenda. The most obvious example of this was the employment chapter. This added to the already overcrowded list of issues that needed resolving during the Amsterdam Summit, though in the end there was little substantive change in the chapter from what had been set out much earlier in the negotiations. In the more general sense there was an unhelpful air of uncertainty as to what the overall French position would be and how the two heads of the executive would operate.<sup>80</sup> This was not only confined to the IGC but also extended to all European issues and in particular EMU. Again, it was an added burden at a critical stage in the process. Thirdly, as is shown in later chapters the results of the general election were unexpected, especially the magnitude of the Socialist win and the collapse of the RPR, leaving the French political elite in a state of shock, and yet again distracted at a crucial stage in the IGC process.

### Qualifying for EMU

The Maastricht IGCs were the highlight of the long-standing link between the political and economic and monetary aspects of the process of European integration. However, at this IGC it was not only a case of that link being somewhat weakened, rather the very implementation of EMU overshadowed the IGC. There were several dimensions

<sup>77</sup> See EIU Country Report – France – 2<sup>nd</sup> Quarter 1997; Lara Marlowe, 'Coalition presented as force of modernity', *FT*, 23/04/97.

<sup>78</sup> David Buchan, 'French polls: Left level with coalition', *FT*, 06/05/97.

<sup>79</sup> Barry James, 'Right Faces Living With the Left', *International Herald Tribune (IHT)*, 26/05/97, p.9.

<sup>80</sup> Interviews.

to the EMU debate. Firstly, there was the question of the ability of Member States to meet the qualifying criteria. There were several similarities in the situations faced by the French and German governments. The doubts as regards the ability of either members to meet the Maastricht criteria heightened.<sup>81</sup> Both governments responded by means that precipitated further criticism. The Juppé government shifted pension funds into government coffers, while attempting to sell off state shares.<sup>82</sup> The German Finance Ministry in an attempt to meet the 3% figure on the budget deficit initially proposed a privatisation of the greater part of Deutsche Telekom. This was followed by the much more controversial proposal from Theo Waigel's finance ministry to re-value German gold reserves. This met with stiff opposition from the Bundesbank and a tense stand-off that in effect ended in defeat for the government's proposal, less than four weeks before the Amsterdam Summit in June '97.<sup>83</sup>

The pressure on the German government with its, at times, mixed defence of the strict Maastricht criteria was particularly great.<sup>84</sup> This left Chancellor Kohl particularly constrained, unable to coordinate and pursue the political end of European integration at this IGC. Even his announcement on 3 April '97 of his intention to run for the chancellery in 1998 was met with open criticism from within the ranks of the CDU.<sup>85</sup> By this stage, with the IGC reaching a climax, he was unable to rise above, or bring together, the domestic differences as he had done so often in the past, for fear of exasperating the delicate position on EMU.<sup>86</sup> The manoeuvring and refining by the SPD of its position on the Euro in particular the Gerhard Schroeder element in the party together with the earlier criticisms from the CSU and Edmund Stoiber was to undermine the federal government's efforts. While recognising that outright opposition to the Euro amounted to electoral suicide Schroeder and Stoiber were determined to have it both ways, welcoming the Euro, while criticising the federal government's

<sup>81</sup> 'Germans look for EMU flexibility', *IT*, 28/03/97; Barry James, 'France to Freeze Budget to Meet Maastricht Limits', *IHT*, 08/08/96.

<sup>82</sup> Barry James, 'EU Allows France To Juggle Budget: Single-Currency Maneuver Disturbs Germans and Others', *IHT*, 01/11/96; Barry James, 'Giscard Gives Conditional Nod to France's EMU Deal', *IHT*, 11/10/96.

<sup>83</sup> Stephanie Flanders, 'Germany's cross of gold', *FT*, 02/0697.

<sup>84</sup> See 'Bavarian Authorities want Pre-EMU Convergence "Monitoring"', *Frankfurter Allgemeine*, 13/11/96; Peter Norman, 'Bonn increases deficit forecast to 2.9%', *FT*, 27/01/1997; 'Germany hoping for the best', *FT*, 29/01/97.

<sup>85</sup> EIU Country Report – Germany 2<sup>nd</sup> Quarter 1997, p.12; See John Schmid, 'Much Distress in Europe', *IHT*, 30/04/97.

<sup>86</sup> Interview; 'Poll shows lack of support for Kohl's re-election', *IT*, 05/0497.

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approach.<sup>87</sup> Much of this criticism focused on the consequences of the fudged qualification criteria.<sup>88</sup> More specifically the fear among the public, the opposition and Bundesbank was that the acceptance of the less rigorous Southern European Member States, namely Italy, Spain and Portugal, could undermine the credibility of the project and give rise to a soft Euro. The German government had to recognise and understand these fears while at the same time balancing them with the Trojan efforts made by Spain, and Italy, in particular, to meet the magic figures of Maastricht.<sup>89</sup>

The debate as regards monetary discipline extended beyond the final stages of the transfer to the Euro, concern focusing on the willingness and ability of certain Member States to maintain similarly rigorous control on public spending and budget deficits. This fear was particularly expressed from within Germany.<sup>90</sup> The worry as before, was the possibility that the Euro would be undermined with a more relaxed approach from those Member States, particularly Italy, that had taken exceptional steps to meet the criteria. The submission of the Stability and Growth Pact, to the Dublin European Council in December 1996 sought to deal with this issue.<sup>91</sup> Indeed the conclusion of this pact after two years of negotiations was an equally major preoccupation for the Irish Presidency as preparing the draft treaty.<sup>92</sup> Again it was a case of the deep differences between the French and German approach to European integration having to be reconciled. For the French it was a case of having to swallow the bitter pill of German monetary policy, an independent central bank. The French put greater emphasis on the growth side of the pact, while the German government emphasised the stability which it would provide.<sup>93</sup> The German government was adamant about the need for a tough enforcement mechanism that would ensure that Member States kept

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<sup>87</sup> EIU Country Report (Germany), 2<sup>nd</sup> quarter, pp.10-12; EIU Country Report (Germany), 3<sup>rd</sup> quarter 1996, p.10

<sup>88</sup> *Ibid.*

<sup>89</sup> 'Kohl on Italy', *AE*, 07/02/97; Andrew Hurst 'Odds Shorten Dramatically on Italy ERM Move', *Reuters*, 22/11/96; 'Italy pins EMU hopes on mini-budget', *IT*, 19/04/97; Edward Luce, 'Odds shorten on Rome joining front-runners in EMU Stakes', *FT*, 15/07/97; Barry James, 'Spain's New Leader Vows to Meet Criteria For Single Currency', *IHT*, 04/05/96; 'Smiling Spain', *FT*, 09/04/97; David White, 'Spain: Recovery helps prospects for membership of EMU', *FT*, 11/06/97.

<sup>90</sup> Lionel Barber & John Kampfner, 'Germany: Tough terms set for EMU deal', *FT*, 13/12/96.

<sup>91</sup> 'From Stability Pact to EMS 2', *AE*, 30/11/96.

<sup>92</sup> Interviews.

<sup>93</sup> 'Kohl and Chirac still divided on stability pact', *Telegraph*, 14/06/97.

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their government deficits and their inflation rates low.<sup>94</sup> The French government was less eager to push for such strict criteria.<sup>95</sup>

### EMU & Employment

A further feature of the EMU debate that was to heighten tensions between the French and German governments with a direct spill over into the IGC negotiations related to the issue of employment. The high levels of unemployment across many of the EU states had left several governments, as described above, calling for an EU initiative to tackle this problem, with a specific employment chapter providing a basis for future policy. There was also the ideological argument that it would provide a balance to the monetary orientation of the treaty. Indeed this justification was tentatively presented by the new Labour government in Britain in its support for a new chapter on employment.<sup>96</sup> However, the arrival of the Socialist Jospin government in early June 1997 further complicated the negotiations on the employment chapter and the progress to the third stage of EMU, at a time when the IGC was reaching its climatic end.

Entering office on the back of pledges to tackle unemployment and promote growth, the Socialist government expressed difficulties with the Growth and Stability Pact that was agreed in principle in Dublin six months earlier.<sup>97</sup> The legal text of the pact was due for final approval at the Amsterdam Summit meeting. While not calling for a renegotiation, France's Finance Minister and Prime Minister suggested a 'new balance' was needed between the old pursuit of monetary stability and the requirement to tackle the unemployment problem.<sup>98</sup> There were similar calls for greater co-ordination in economic policies, as required by Articles 102 and 103 of the Maastricht treaty.<sup>99</sup> On the proposed employment chapter for the treaties the French suggested that it allow for the creation of funding or subsidy programmes. There was not sufficient support among governments for this form of an employment chapter. The German and

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Robert Taylor, 'Britain ready to sign employment chapter', *FT*, 29/05/97.

<sup>97</sup> Lionel Barber 'Budget rules: Paris seeks EMU pact delay', *FT*, 10/06/97; Lionel Barber, 'Jospin signals doubts over EMU', *FT*, 09/06/97.

<sup>98</sup> Ibid.; Edmund Andrews, 'France Puts Brakes on the Euro: Paris Won't Be Ready to Ratify Pact Next Week', *IHT*, 10/06/97.

<sup>99</sup> Patrick Smyth 'French seek time to ratify currency stability', *IT*, 10/06/97.

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the new British government agreed to the principle of the chapter but on condition that it made no such commitments to spending.<sup>100</sup>

The German government also agreed at the Amsterdam Summit to a resolution fleshing out existing provisions in favour of greater co-ordination of macroeconomic policies via EU finance ministers.<sup>101</sup> This, together with the creation of a Stability Council with limited powers, allowed for limited French success in what was always an issue of ensuring some form of a political counter weight to an independent Central Bank.<sup>102</sup> The agreement to establish a Stability Council, despite its limited powers, was a further example of this preoccupation. Again it was a case of a compromise with little substance covering the deep differences between the two governments.

### **BSE Crisis**

As the IGC convened in Turin the EU was reeling from the announcement by the British government that there might be a link between the mad cow disease and its human equivalent CJD. The central plank of the Union's reaction was the imposition of a world-wide ban on British beef and by-products. The British government's response was one of non-cooperation on EU affairs until the ban was lifted. In the House of Commons Prime Minister John Major said that there would be no progress on the IGC negotiations until the ban on the by-products was lifted and a framework laid out for the total lifting of the beef ban. He expected the Florence Summit of June 1996 to be 'dominated by this issue' saying 'it could not proceed with our normal cooperation'.<sup>103</sup> On Thursday the May 23 at the close of the cabinet meeting the Foreign Secretary remarked on the government's policy that 'We do not know if this will run for days, ... even two to three months, perhaps even longer. The policy will continue until the objective achieved'.<sup>104</sup>

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<sup>100</sup> Peter Norman, 'EU treaty: Germany drops objection to jobs chapter', *FT*, 12/06/97; See Robert Taylor, 29/05/97.

<sup>101</sup> Lionel Barber, 'Stability pact: Paris and Bonn reach compromise again', *FT*, 17/06/97; Lionel Barber, 'Stability council': Euro-zone watchdog to lose its teeth', *FT*, 19/03/97.

<sup>102</sup> *Ibid.*

<sup>103</sup> *EDB*, N°6732 – 22/05/1996.

<sup>104</sup> *EDB*, N°6735 – 25/05/1996.

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The effects of the British policy were evident in its refusal to sign the European Convention on Insolvency Procedures thereby preventing its ratification.<sup>105</sup> Further examples of measures blocked included EU decisions on the elections in Albania and human rights in Burma, a declaration on political dialogue with Korea and a regulation on humanitarian aid.<sup>106</sup> Further to this non-cooperation the British government issued proceedings in the European Court of Justice to have the Commission's Decision annulled on the ground that there was no serious risk to human or animal health.<sup>107</sup>

In preparing for the Florence Summit the Italian Presidency not only had the task of handing over the negotiations to the Irish Presidency but it was seeking to avoid a disaster at the summit while managing the frantic efforts to reach a compromise and restore normality to all the levels of EU decision making. Four days before the summit of 21 June at a meeting of Foreign Ministers, or their representatives, Rifkind said 'that much work remains to be done'.<sup>108</sup> In the end, it was a compromise circulated by the Presidency on the basis of the Commission's proposal, a series of British proposals, and a last minute suggestion by John Major permitting beef exports to third countries that so wished, that led to Rifkind's statement on Friday afternoon 21 June that 'The policy of non-cooperation will cease now'.<sup>109</sup>

Despite the ending of the policy of non-cooperation by June the focus of the member governments had been shifted away from the IGC process as the Conference got under way. The repercussions of the beef crisis continued to be felt throughout the IGC process, further complicating the UK government's relations with the other members. In turn it exacerbated the divisions within the Conservative party. At the height of the crisis in mid 1996 the morale of the anti-EU camp was boosted with the formation of a Referendum Party by a French MEP, Sir James Goldsmith, that supported a referendum of some form on the UK's relations with the EU.<sup>110</sup> This seemed to inspire certain elements within the Conservative party to make similar suggestions. Bill Cash, MP for Stafford, tabled a similar motion in the House of Commons, on a possible

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<sup>105</sup> EDB, N°6734 – 24/05/1996.

<sup>106</sup> EDB, N°6736 – 28/05/1996.

<sup>107</sup> 'Beef Ban : UK Takes its Case to European Court' Ministry of Agriculture, Fisheries and Food, Press Release 174/96, 24/05/96.

<sup>108</sup> EDB, N°6750 – 17/06/1996.

<sup>109</sup> See *Florence*, 21 and 22 June 1996.

<sup>110</sup> Robert Peston, 'Billionaire financier demands Tories and Labour pledge referendum on EU', *FT*, 30/08/95.

referendum, with 74 Conservative MPs voting for the motion. Former Prime Minister Margaret Thatcher expressed support for Bill Cash's cause donating a considerable sum of money to the European Foundation that was chaired by Cash. The government's inability to secure a date for the lifting of the EU wide ban was a constant reminder to the Eurosceptics of what they considered as an 'intrusive Brussels'.<sup>111</sup> Previous suggestions from the Prime Minister that the conditions of the Florence plan would be satisfied by November 1996 gave rise to considerable criticism of the government during a House of Commons debate on 16 December.<sup>112</sup>

Yet again on the defensive, and in an effort to appease the Eurosceptics, Major went on the offensive against the European Court of Justice's ruling of the same month requiring the British government to implement a directive setting a work limit of 48 hours per week for certain employees.<sup>113</sup> Major remarked that there would be 'no end' to the IGC negotiations unless the employment decision making process was reformed. He called for an amendment of Article 118a with the introduction on unanimity to replace QMV as provided by Article 189c.<sup>114</sup> He also suggested that the directive should be adopted according to Article 2 of the then Social Protocol thereby allowing Britain to opt out.<sup>115</sup> In this instance, the government's approach did not reach the same proportions as with BSE, the government continuing to negotiate and work at the IGC meetings while demanding changes. In the end the whole campaign lost steam, given the considerable flexibility within the directive, allowing employees to work longer hours if they so wished.<sup>116</sup>

## CONCLUSIONS

This chapter set out to provide an overview to the IGC process from the start of the Conference in Turin in March 1996 to its conclusion in Amsterdam sixteen months later in June 1997. After giving some background on the various levels at which the IGC negotiations were conducted, and the negotiating style of the three governments

<sup>111</sup> Barry James, 'U.K. Refuses To Endorse EU Steps to Rescue Beef Brussels Maintains Worldwide Embargo On British Exports', *IHT*, 04/04/96, p.1.

<sup>112</sup> See *Hansard*, Debates Column 634-646, 16 December 1996.

<sup>113</sup> 'Make it work in Europe', *FT*, 14/11/96.

<sup>114</sup> 'Employment law: UK threatens EU clash', *FT*, 13/11/96.

<sup>115</sup> 'London Proposes a Protocol Over The "48 Hours" Directive and Changes to Certain Treaty Articles to Ensure that All', *AE*, 16/11/96.

<sup>116</sup> See Giles Radice, 'Disastrous reaction to work directive', *FT*, 14/11/96.

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that are the focus of this thesis, namely Britain, France and Germany, the overview was broken down into two parts. Firstly, the issues that governments were committed to and which dominated the agenda were outlined. Secondly, the actual nature or style of the process was examined, as well as the key meetings and individuals throughout.

The chapter argued that with governments slow and unclear in both outlining their objectives and defining the mandate for the Conference, there was little direction on major issues such as WEU-EU relations and the institutional reform up until the end of 1996. At times this early fog in the process persisted into the Dutch Presidency right up until Amsterdam. As described above and as becomes more apparent in the next section, this left governments either drifting into decisions which they did not intend, failing to contemplate the implications of their decisions or deciding to postpone an issue for another IGC. However, in the midst of this drift in the negotiations it was also possible to recognise the influential role played by the Dutch Presidency in the IGC.

A second argument, and one, which is equally important in understanding the process of the negotiations, formed the subject matter of the final section of the chapter. Outlining the context in which the negotiations took place helps explain why the process lacked direction at the times it did and why governments were distracted at critical stages that left them drifting into decisions. Indeed, the focus on qualifying for EMU, EMU and employment, the BSE crisis and the British and French general elections revealed not only the extent to which other issues overshadowed the IGC but also how the very structure and length of the process was determined by an issue totally unrelated to the IGC agenda, namely the timing of the British general election. The political context in which the IGC took place is something that is returned to periodically over the next section.

This chapter paves the way for a more detailed examination of the negotiations in the following section. Chapters III and IV in this section have attempted to provide some breadth to the analysis of both the pre-negotiations and in an overview to the negotiations. Both chapters have considered and examined the major issues that all the member governments were committed to from when they presented their position papers in late 1995 and early 1996 right through until Amsterdam.



***PART III – THE NEGOTIATIONS***

## CHAPTER V INSTITUTIONAL REFORM

### INTRODUCTION

In the pre-negotiation stage institutional reform had been built up as one of the core issues for the IGC. Yet, there was little consensus on how this would be achieved with many governments failing to outline their objectives in any detail.<sup>1</sup> This chapter aims to explain the negotiations on four of the main areas of institutional reform in the first pillar: the extension of QMV, a re-balancing of the voting arrangements in the Council, Commission re-sizing and the extension of co-decision.

The chapter is divided into five parts. The first part briefly examines the underlying relationship between the three main areas of the chapter: extensions of QMV, vote re-weighting in the Council, and Commission re-sizing. The second, third and fourth parts examine these three areas, firstly introducing the topic and the features of the negotiations before going on to outline the positions of the British, French and German governments. Finally each section ends with an examination of the negotiations, usually dividing them up between the Irish and Dutch Presidency, but, where relevant, referring to events under the Italian Presidency. The final part of the chapter examines co-decision, firstly outlining the features of the negotiations, extending on these through an examination of the process under the Irish and Dutch Presidencies. Given the lack of attention that member governments gave to co-decision the British, French and German governments' positions are outlined as the negotiations are examined.

There were several strongly identifiable characteristics to the negotiations on these four areas concerning the institutions. Firstly given that enlargement failed to evolve into an overall theme to the negotiations, institutional issues did not fire governments'

<sup>1</sup> See again chapter III, p. 69-72.

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emotions. Again, governments preferred to postpone making changes on the re-sizing of the Commission and re-weighting of the Council votes for another IGC. On these two issues in particular member governments had been reluctant to clearly define and outline their objectives. Very few papers were submitted. Secondly, the Irish Presidency was particularly ineffective across all four areas. This was due to the tendency for this Presidency to leave the more divisive and difficult issues to be tackled by the Dutch Presidency. In doing so it claimed that it was too early to push for change on such sensitive issues that would cause considerable problems for an embattled British Conservative government. However, at times, as will be argued in the following chapters, it suited the Irish government not to push a particular issue. The British Conservative government also presented the other governments with a ready made excuse for their own failure to outline their objectives up until December '96.

This left the Dutch Presidency and the French government making most of the running on institutional reform with some, though limited, influence from the European Commission. These initiatives were very often to little avail and indeed, the French proposals, while sophisticated were usually met with hostility from the small Member States that considered them as attempts to undermine their influence in the future institutional structure. The German government's position was also at odds with that of the French, most notably on Commission re-sizing and re-weighting of Council votes. Thirdly, it was not completely a situation where governments postponed reforms until a later IGC. Rather on co-decision, where there was a significant extension, it was more a case of the personal representatives and later the Heads of State and Government failing to attach importance to this issue, signing up to agreement without being fully aware of its contents and the implications of an outcome that was not intended.

## 1. LINKAGE

The Maastricht Treaty had tentatively placed institutional reform on the 1996 Conference agenda through what was then Article 189b(8) TEC. As mentioned in chapter III, the European Council at Brussels and Ioannina placed it firmly on the

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agenda.<sup>2</sup> This was unsurprising for two reasons. Firstly, at a constitutional IGC any outlining of policy objectives was flanked by changes to the institutions and their operations, as described in Chapter I. Secondly, attempts, though ineffective, to establish enlargement as the overall theme driving the negotiations raised the questions regarding the effectiveness of the institutional structure, with the need for change to cope with new members.

The pre-negotiations reflected the diversity among governments on the central issues of re-weighting votes in the Council of Ministers, restructuring the Commission with the objective of making it more efficient and extending the use of QMV. In turn there was not even agreement on the most fundamental feature of the negotiations on the institutions. The three most contentious issues that lay at the heart of the chapter on institutional reform were linked in such a way that progress on one depended on and influenced the other. The negotiations on re-weighting of Council votes, the restructuring of the Commission and the extension of QMV cannot be considered in isolation.

Senior members of the British negotiating delegation commented that the linkage between the three areas of reform did not come to the fore during the debate.<sup>3</sup> Instead any possible linkage bubbled beneath the surface while the three issues of QMV, re-weighting and Commission resizing were dealt with separately. Yet, for other member governments movement on one of the three issues was not possible without change in another. The Belgian delegation, and in particular Prime Minister Jean-Luc Dehaene made continual references to the necessity of approaching the reform of each area, bearing in mind the two other issues.<sup>4</sup> As mentioned below Dehaene was particularly adamant that any re-weighting of votes required an extension in the use of QMV. Similarly Werner Hoyer, Minister for European Affairs and the German government's personal representative remarked on 13/14 January '97 that Germany could accept the extension of QMV with certain qualifications. This came in the form of linking the

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<sup>2</sup> See pp.64-66.

<sup>3</sup> Interviews.

<sup>4</sup> Ibid.

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extension to re-weighting and a change with subsidiarity.<sup>5</sup> The varying perspectives on the underlying tenets of the debate on these three issues displayed a significant difference in understanding at a basic level. Linkage is a tactical matter in any negotiations, a British Conservative government being reluctant to see any progress on re-weighting of votes in the Council being linked to an extension of QMV, the former which it was interested in, the latter it opposed. However, it was not only a case of member governments having different preferences on linking issues, there was not even a consensus on how the negotiations proceeded on these three issues and how the different governments approached them.

## **2. QUALIFIED MAJORITY VOTING**

### **Introduction**

As has been the case at the IGC on the Single European Act and the Maastricht IGCs, a further extension of QMV was one of the major institutional issues on the 1996 agenda. Again it was a case of providing for a more efficient process of taking decisions, especially in an enlarged Union. However, as mentioned in chapter III, enlargement failed to provide the spark that some government and the Reflection Group reports had suggested.<sup>6</sup> The following consideration of the negotiations on this issue suggests three things. Firstly while all governments, except the British Conservatives, had described their positions as one favouring an extension in the areas of application of QMV, few were able to present detailed non-papers on the specific issues where QMV would be extended. This lack of clarity in member governments' objectives was not so apparent until the arrival of the Labour government in Britain. The Labour government's willingness to consider extending QMV further in the first pillar revealed the extent to which the other governments failed to sort out their priorities. Secondly, while governments failed to identify the difficulties within the German position on QMV until late in the process it was not simply a case of Kohl being unable to deliver. There was a general lack of consensus among governments. Thirdly, for the greater part of the negotiations there was little direction. The Irish Presidency failed to push the negotiations along. Therefore, it was left to the Dutch

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<sup>5</sup> Ibid.

<sup>6</sup> See pp.62-64.

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Presidency, using a Commission paper, to make some attempt to reach for a consensus, though with little success.

### **German Position**

To start with, the distractions and pre-occupations of the Federal government seemed to mislead the other member governments. Initially the positions that came from the German delegation during the negotiations were for the most part consistent. On 24 July 1996 the German delegation reiterated the previously stated position supporting the general extension of QMV with some exceptions. Throughout the debate various German sources described these exceptions; Articles 201 and 209 (finances), Article 235, tax and constitutional issues;<sup>7</sup> Own Resources, and industrial policy;<sup>8</sup> Article 99(2) (indirect taxation) and 130s(2) (town and country planning).<sup>9</sup>

However, there seemed to be only a limited awareness from the other governments as regards the difficulty and divisions within the German position, particularly between the federal government and the Länder governments. This was unsurprising given that the German government failed to sort out its preferences. While there was a reasonably coherent line from the Auswärtiges Amt., this did not reflect the positions of the other German ministries responsible for some of the issues where an extended use of QMV could apply.<sup>10</sup> The Länder, which had their representatives on the German negotiating delegation were also opposed to having their influence and power in shaping German policy at future Council of Ministers meetings being undermined by QMV. The reason that these different strands were not so apparent to the German government relates to the negotiating style of the Germans. As mentioned in Chapter IV, the German approach throughout such a Conference is to allow for incoherency and contradiction between the different ministries and between the Länder and federal level. As the IGC would reach its climax at Amsterdam a more coherent and definite German position would evolve. Chancellor Kohl has, in the past, been instrumental in bringing together the different strands and presenting a strong German position. This was expected on QMV, both from within the German chancellery and the Auswärtiges Amt. and more

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<sup>7</sup> Statement by Hoyer, 30 May 1996; Interviews.

<sup>8</sup> Statement by von Dewitz, 24 July 1996; Interviews.

<sup>9</sup> Statement by Hoyer, 5 May 1997; Interviews

<sup>10</sup> Interviews.

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importantly from the other delegations in the negotiations. Kohl was expected to push on QMV.<sup>11</sup>

In the end at Amsterdam there was confusion, surprise and dismay at Kohl's inability and unwillingness to apply QMV on the more sensitive issues of 'industrial policy, cultural policy, [and] mutual recognition of diplomas'.<sup>12</sup> Kohl was too weak to deliver on QMV. He was unwilling to upset Länder that had already proven critical of the federal government's approach on EMU in the preceding weeks, especially the attempts to re-value German Gold reserves.<sup>13</sup> Indeed the last minute reversal and freezing by Kohl came after a meeting with Edmund Stoiber of Bavaria. Bavaria represented the Länder on the German delegation, while Stoiber, as mentioned in chapter III and IV, was particularly critical of the federal government's policy on monetary union.<sup>14</sup>

### **British Position**

The Conservative government stuck closely to its White Paper mandate, which claimed that no extension of QMV was necessary.<sup>15</sup> The few occasions that the British government referred to QMV revealed nothing different from the White Paper. For example in the House of Commons debate on 30 October 1996 David Davis refuted claims that continued adherence to unanimity was 'holding up Europe'. At the first meeting of EU Foreign Ministers under the Dutch Presidency on 13-14 January that discussed QMV Patijn in response to a question regarding the British position remarked that 'he did not hear Mr Davis say today things totally different from what he has said until now'.<sup>16</sup>

The Conservative government also emphasised the lack of constructive negotiation on QMV.<sup>17</sup> During the Irish Presidency the time given to QMV and certainly the progress

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<sup>11</sup> Ibid.

<sup>12</sup> Lionel Barber, et al., 'EU treaty: Leaders agree to delay institutional reforms', *FT* 18/06/97; Mark Brennock 'Conference fails to agree on essential reforms', *IT* 19/06/97.

<sup>13</sup> See again chapter IV, pp. 128-131 & chapter III pp.86-6.

<sup>14</sup> Ibid.

<sup>15</sup> See *Partnership of Nations*, 1996.

<sup>16</sup> 'Patijn Group Raises Problem of Qualified Majority Vote and Composition of European Commission', *AE*, 15/1/97.

<sup>17</sup> See c.627-628, 16 December 1996 *Hansard*; Malcolm Rifkind, c. 433, 12 December 1996; Also see CONF 3978/96.

made on this topic was limited. Not only did the absence of any proposal, even a cautious one suggest so, but there was a distinct unwillingness among the Member States to submit 'ideas on where qualified majority voting should be extended, ...'.<sup>18</sup> The Conservative government recognised that this unwillingness stemmed from the expectations these same members held for a change in the British government before the conclusions at Amsterdam. There was also a feeling from within the British delegation that the British government was frozen out of any negotiations between the other delegations at this time. The Foreign Secretary claimed so, while negotiators from other delegations made similar reference to such a practice.<sup>19</sup> This was a further display of the haphazard approach that was taken on negotiating. The Conservative government was removed from what little talk there was, while at the end of the process British government approval, whether Conservative or Labour was necessary to secure an eventual treaty.

The arrival of the Labour government certainly marked a change in the nature of the negotiations on QMV and the eventual treaty outcome. The new government accepted the need to extend QMV in areas such as 'social, industrial, regional and environmental policy', while maintaining unanimity on 'fiscal policy, social security and budgetary questions'.<sup>20</sup> This shift in the long held British position on QMV revealed the lack of clarity among the other member governments on the precise issues where QMV would be extended. The long-standing scapegoat that the other governments intermittently used to explain failures to reach agreement on a range of issues had now left. As one Spanish diplomat commented 'All those countries which have been hiding behind the British will have to show their hands .... Now we are going to have some fun'.<sup>21</sup> This 'fun' would reach a height, after Kohl's suggestion that extensive changes on QMV may not be possible.

<sup>18</sup> Malcolm Rifkind, Column 440 December 12 1996, Hansard Reports.

<sup>19</sup> George Parker, 'Rifkind says EU talks 'on hold until election,' *FT*, 28/12/96.

<sup>20</sup> See Labour's Strategy for a new Europe, 1995; See Lionel Barber & Neil Buckley, 'European Union: Delight in Brussels as Britain turns on charm', *FT*, 06/05/97.

<sup>21</sup> Lionel Barber, 'New Labour, new Europe', *FT* 06/05/97.

## French Position

As would be the case on several issues during the IGC, the manner in which the French delegation presented the government's position would prove detrimental to the overall French objectives. This essentially related to the French style that made a proposal seem more like a *fait accompli*, rather than approaching the sensitivities of other states, notably the smaller members in a delicate and tactful manner. This only fostered a certain mistrust from the governments of the smaller Member States. There was a recognition within the French government of the need for change and the extension of QMV in pillar one. The extent of their commitment manifested itself in their willingness to apply its ambit to the more sensitive issues of culture, structural and cohesion funding and fiscal issues.<sup>22</sup> The scepticism from the other member governments was due firstly to the French position that any extension of QMV would equally require a re-weighting.<sup>23</sup> As described below the French government's suggestions on re-weighting were also received with much scepticism. For the governments of the smaller Member States the French proposals were perceived as favouring the larger members. Secondly, other delegations found it difficult to accept that the French government was genuine as regards extending the application of QMV, the French being labelled as naturally and continually opposed to QMV.<sup>24</sup>

## The Negotiations

### Irish Presidency

The lack of drive and, ultimately, progress during the Irish Presidency had been preceded with an initial approach under the Italian Presidency to tackle the matter on article-by-article basis. The Irish Presidency changed tactics, seeking to initiate discussion by submitting in mid-September an informal questionnaire to all the Member States requesting non-binding answers as to the new areas that would be covered by QMV. However, the responses were 'partial and not encouraging'.<sup>25</sup> One German observer commented on how each federal ministry perceived itself as the only one returning negative responses on matters within their jurisdiction, the extent of the

<sup>22</sup> Interviews.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> McDonagh, 1998, p.18.

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opposition only being realised on compiling of the answers by the Auswärtiges Amt.<sup>26</sup> Indeed, it was a case of the various sections of the national administrations protecting their own powers.<sup>27</sup> Governments had declared that they were, in principle, in favour of more QMV but extensive reservations existed in practice. Member governments had not sorted out their priorities sufficiently to propose detailed measures in a non-paper. The British Conservatives had been right in their suggestion that there was a lack of clarity among governments on the specifics.

The discontinuity in the presidential approaches did little to facilitate for progress. As was often the case at the IGC the change in approach with each Presidency was close to starting from scratch. The Dutch Presidency was to later dispense with the idea of circulating a questionnaire on the basis that it was more worthwhile to pose more penetrating questions. The Italian Presidency had been asking penetrating questions almost a year earlier with its case-by-case approach. Such a chop and change approach only added to the disjointed nature of the process. The lack of progress was demonstrated in the Dublin draft with a mere two pages outlining two opposing views on the extension, followed by three suggestions on ‘the possible avenues of approach if progress is to be made on this issue’.<sup>28</sup> After ten months it was still a case of making *suggestions* on the possible avenues of the approach. The Irish Presidency claimed it was futile to push the negotiations along, using as it so often did on institutional issues the rationale that any ambitious moves in this direction would be met with opposition from Westminster, and might even precipitate a crisis in the deeply divided Conservative government. However, as mentioned in chapter IV the Irish Presidency did not push what were reluctant governments, preferring to hide behind an embattled British government and hand over to the Dutch Presidency and leave it to present any detailed paper.

### Dutch Presidency

The Dutch Presidency did present a non-paper on 11 February 1997 outlining its approach on extending QMV with a list of the possible areas where it could be applied.<sup>29</sup> (This paper is discussed below) However, by the 40<sup>th</sup> anniversary of the

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<sup>26</sup> Interview.

<sup>27</sup> See Devuyst, *JEPP*, 1998, p.627.

<sup>28</sup> CONF/2500/96, p.106.

<sup>29</sup> For full details see CONF/3814/97.

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signing of the Treaty of Rome there was a noticeable change in Dutch presidential tactics as regards institutional reform and QMV. Van Mierlo at the ministerial session in Luxembourg on 29 and 30 March admitted that the institutional matters would most probably be decided by the heads of government and state. He said 'The Heads of State and Government, who perhaps have more authority, will have to find a solution'.<sup>30</sup> He spoke of handing to the European Council 'manageable dilemmas'. This further epitomised the lack of direction in the process. The foreign ministers did not have the confidence to reach agreement. The very concept of 'manageable dilemmas' highlights the deadlock and the indirection in the process, an indirection that would only heighten given the pressure that had been put on a two-day council meeting.

Despite van Mierlo's claims by the end of April, the Dutch Presidency presented a further list on the areas of extension.<sup>31</sup> Firstly, the April proposal rolled back from the February paper of QMV on any extension to the approximation of laws for the common market under Article 100 and actions outside the structural funds under Article 130b.<sup>32</sup> Secondly, there were only two areas where there was an extension in the use of QMV from the February paper. While in the February paper unanimity was the rule on quasi-constitutional issues such as citizenship (Article 8e), rules governing languages of the institutions (Article 217), own resources (Article 201), accession of new Member States (Article O para.1), structural funds (Article 130d) and taxation (Article 99), the April paper applied majority voting to a new Article 99(2) on indirect taxation.<sup>33</sup> The other proposed extension was to measures on social security under Article 51. This was further to the February paper's proposals to extend on issues such as culture, industry, research and environmental taxation.<sup>34</sup>

Several points are worth noting here. Firstly, inspiration for the further extension to Article 51 and the creation of Article 99(2) came from a detailed Commission non-paper submitted on 8 April.<sup>35</sup> The Commission was both organised in presenting a coherent position and influencing the Presidency to adopt two of its proposals.

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<sup>30</sup> EDB, N°6966 – 01/05/1997.

<sup>31</sup> See CONF/3893/97, 30/04/97.

<sup>32</sup> Ibid.

<sup>33</sup> For further details see CONF/3814/97 Annex 1, pp. 1-2; CONF/3893/97, Annex p.2

<sup>34</sup> Ibid.

<sup>35</sup> See CONF/3860/97, 08/04/97.

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However, the Dutch Presidency's was pushing against the odds on its proposed changes. Almost all governments were against extending QMV to taxation issues. As mentioned in chapter III on the pre-negotiations only Italy and Belgium referred to a possible extension of QMV to fiscal matters. Indeed the Italian government in the only detailed paper of its kind from any of the Member States during the Dutch Presidency restated its position on this.<sup>36</sup> Both of the April proposals on Article 51 and 99(2) would fail to make the final treaty.

The lack of progress on where to extend continued up until Amsterdam, a 'feeling of crisis' being used to describe the meeting of Permanent Representatives on the 5-6 June in Brussels, the negotiations on extending QMV being at a total impasse.<sup>37</sup> This feeling of crisis would continue right up until the early hours of the morning in Amsterdam, as Kohl, and as already stated to the surprise of the other governments, succumbed to domestic pressure and back-tracked on an issue where he had led the charge in the past.<sup>38</sup> Nevertheless, Kohl's difficulties should not be over-emphasised. There was a general lack of consensus among the governments. Even by March '97, the Austrian, Swedish, Spanish, and Danish governments was still referring to a case-by-case approach, while the Belgian, Irish, Luxembourg and Portuguese referred to a 'general' extension.<sup>39</sup> Again, there was no mention of the specifics. During the Dutch Presidency no government's delegation except for the Italian submitted a detailed paper outlining where their government was willing to extend, and the Italian proposal of April '97 was for the greater part similar to that of the Presidency from February of the same year and unlike the Commission proposal it had little influence on the Presidency's list issued at the end of April. While Kohl had clearly outlined his opposition to any extension on issues such as culture (Article 128), industry (Article 130) and measures on professions in Member States (Article 57(2) there were a further thirteen articles that the Dutch Presidency had included in its February and April papers that failed to make it into the final draft.<sup>40</sup> Therefore it was not just a case of the German

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<sup>36</sup> See CONF/3863/97, 08/04/97.

<sup>37</sup> ER N°2230 – 07/06/97, pp.3-4.

<sup>38</sup> See AE, 19/06/97.

<sup>39</sup> See CEC, *Note à la l'Attention de Mmes et MM les Directeurs Généraux et Chefs de Service*, SEC (97) 524, 12 March 1997.

<sup>40</sup> Right of movement and residence (Article 8a), measures in social security necessary to provide freedom of movement (Article 51), social security (Article 121), Environment (Article 130s(2), Appointment of the Secretary-General of the Council (Article 151(2), Determination of classes of action or proceedings heard by the Court of First Instance and approval of its Rules of Procedure (Article 168a(2)(4), Amendment to Title III of the Statute of the Court of Justice and adoption of its Rules of

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government blocking an extension. Indeed eight of these had been dropped by draft treaty in early June, including the proposed new Article 99(2) on indirect taxation.<sup>41</sup> This left the extension confined to imports of raw materials (Article 45(3)), certain aspects relating to the right of establishment (Article 56(2), and on certain aspects of research Article 130i&o. There are a further fourteen new first pillar provisions where QMV will apply.

### **3. RE-WEIGHTING**

#### **Introduction**

The rationale behind a re-calibration of the Member States' voting weights in the Council of Ministers, together with a resizing of the Commission was based on the argument that the current system was inappropriate and likely to paralyse the EU with the next enlargement. The addition of small and medium sized Member States would see a decline of representation in terms of population, i.e. the minimum percentage of the Union population needed to achieve a qualified majority decreases, undermining the influence of the bigger more populated Member States. As mentioned in chapter III such a situation, it was argued, would be undemocratic and unacceptable to the larger members.<sup>42</sup>

The following examination of the negotiations on re-weighting reveal features somewhat similar to the those on QMV. Firstly, there was little progress or direction in the process under the Irish Presidency. Again this reflected the lack of initiative from the member governments in presenting detailed papers outlining their objectives. Secondly, it was the Dutch Presidency and the French government that presented proposals in late May '97 in an attempt to make changes to the system. However, the French and Dutch attempts were met with considerable opposition and suspicion, most notably from the governments of the smaller Member States, which perceived these proposals as attempts to undermine their position in the Council of Ministers. Thirdly, as the Amsterdam Summit approached, and during the two-day meeting, there was a

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<sup>41</sup> Procedure (Article 188), Appointment of members of the Court of Auditors (Article 188b), Appointment of members of the Economic and Social Committee (Article 194), Appointment of members of the Committee of the Regions (Article 198a), Approval of the Rules of Procedure of the Committee of the Regions (Article 198b), Financial Regulation (Article 209).

<sup>42</sup> 'Essential Elements', *AE*, 05/6/1997.

<sup>42</sup> See pp. 69-72.

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considerable degree of confusion as regards what was discussed and how the final decision was reached on postponing re-weighting for another IGC.

### German Position

The German position was not straightforward. Instead, as with many other issues throughout the IGC, varying positions were expounded at the federal level. In the lead-up to the Florence Summit in June 1996 different German sources made it known that the introduction of a double majority was not a priority, pushing instead the concept of a blocking minority threshold, or a simple statement in the Treaty that a majority of the Union's population should never be overruled.<sup>43</sup> While Hoyer continued to refer to the restoration of the minimum minority needed for a qualified majority to the previous 65% of the EC-12, change was evident by early April 1997.<sup>44</sup> Foreign Minister Kinkel remarked that Germany could accept a population criterion of 60%. In the same statement he seemed to prepare for a double majority of states and population.<sup>45</sup> Yet, certain Commission officials closely involved with the IGC process claimed that the German delegation was open throughout on opting either for a re-weighting or a double majority.<sup>46</sup>

### British Position

The British Conservative administration favoured a straight re-weighting as opposed to a second population-related criterion.<sup>47</sup> The Labour Party in its 1995 strategy paper for a new Europe while accepting some degree of 'over-representation' for smaller states claimed to equally support a direct re-weighting or a double majority of states and population.<sup>48</sup> Though, on coming to office the Labour government had not arrived at a clearly-defined position. In its non-paper dated the 16 May 1997 outlining its bottom line on the IGC issues the government seemed unprepared. The paper stated the government 'would not insist on a pro rata relationship between the weighting of votes

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<sup>43</sup> Statement by Hoyer, 2 May 1996; Statement by Hoyer, 30 May 1996; Statement by Von Plötz (member of IGC team), 7 June 1996. Interviews.

<sup>44</sup> Statement by Hoyer, 18 February 1997, Interviews.

<sup>45</sup> Statement by Kinkel, 7 April 1997, Interviews.

<sup>46</sup> Interviews.

<sup>47</sup> Ibid.

<sup>48</sup> See *Labour's Strategy for a new Europe*, p.11

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and population', while acknowledging that 'we need a deal which is better than at present and which restores some of the democratic legitimacy lost over the years'.<sup>49</sup>

### French Position

In its official paper in February 1996 the French government had not outlined a position.<sup>50</sup> However, as the negotiations progressed the French position can be identified as having two central features. Firstly, whatever the outcome, maintaining a parity with Germany on vote re-weighting in the Council was essential. Secondly, as would be the case on Commission resizing there was an inherent tendency in the French proposals to promote the role of the larger Member States at the expense of the smaller. This left the French government pushing for a re-weighting in the later stages of the Conference.

### The Negotiations

#### Irish Presidency

The absence of any in-depth negotiation during the Irish Presidency on re-weighting of voting in the Council was very much reflected in the Dublin draft treaty. The Presidency admitted in rather imprecise terms that only 'aspects' of re-weighting had so far been discussed at the Conference.<sup>51</sup> This came as no surprise, since there was 'wide agreement among delegations' that such matters 'should be left with certain other sensitive institutional questions to be settled, perhaps together, towards the closing stages of the Conference'.<sup>52</sup>

The conclusions in the Dublin draft treaty were largely similar to those suggestions in the presidential note of 10 September.<sup>53</sup> This note included an outline of the two general perspectives on re-weighting. The first suggested that no change was required since there was little proof of distortions between population and number of votes or, equally, that there existed a defined bloc of less populated states. The second approach

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<sup>49</sup> See Position of New British Government on IGC Issues, Non-Paper, 16 May 1997.

<sup>50</sup> See *Memo*, 1996.

<sup>51</sup> CONF 2500/96, p.110.

<sup>52</sup> *Ibid.*

<sup>53</sup> See CONF/3900/96.

claimed that the current system could not be maintained, particularly with future enlargements, since the further increase in the number of less populated states would bring the population level required for a decision to be taken to an intolerable low. Both the September and December papers proceeded to outline the two options on the table for the Conference should the governments decide to amend. As outlined in government and institution position papers, and in the Reflection Group's report a year earlier, the two options were a form of double majority in terms of vote and population, or the more direct amendment with an increase in vote numbers between the number of votes and population.<sup>54</sup> Given the absence of negotiations or a willingness from the delegations to work on re-weighting the Presidency attempted to repackage the status of the negotiations to suggest progress, but was left restating and repeating, again reflecting the lack of direction at this stage. For example the Franco-German joint letter to the Dublin II European Council merely called for a review that would 'guarantee a representative balance of Member States, particularly with a view to enlargement'.<sup>55</sup> Again there was nothing specific in this request. This left the December draft repeating the pros and cons of the two possible approaches that could be taken by governments.<sup>56</sup>

### Dutch Presidency

The drift in the negotiations on vote reforming in the Council in effect continued in the early stages of the Dutch Presidency. There was little attempt to provide direction on this issue either from the Dutch or any of the other member governments.<sup>57</sup> The Presidency's two papers on re-weighting in early February and April respectively, merely extended on the debate and outline as provided for in the Irish draft treaty. Again it was a case of repeating the options on the table, though the February draft did include tables outlining the evolution of qualified majority expressed as a percentage of the total population of the Union, and the evolution of blocking minority in terms of population, including extrapolations as regards the nature of the situation in a Union of twenty six.<sup>58</sup>

<sup>54</sup> See Chapter III, pp.69-72.

<sup>55</sup> See again Federal Government, 13 December 1996.

<sup>56</sup> See CONF/2500/96, p.109.

<sup>57</sup> See CEC, *Note à l'attention*, 12 March 1997.

<sup>58</sup> See CONF/3815/97.

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The Presidential note of 11 April called on the Foreign Ministers to focus again on the pros and cons of dual majority and re-weighting and the form that should be taken on either approach.<sup>59</sup> However, the Presidency in the person of Hans van Mierlo, after the meeting of foreign ministers, placed the onus on the heads of government and state to resolve such matters, recognising the existing difficulties that required the authority from the highest level for the necessary changes to be made.<sup>60</sup> This authority was to come at the crucial Noordwijk meeting on 23 May. It did not come in the sense of resolving the issues, rather it marked a climax in the indirection bringing to an end any realistic possibility of change, thereby leaving a postponement as the likely outcome.

#### Noordwijk – Dutch & French Proposals

At Noordwijk the Presidency attempted to engender a consensus among the other governments on its proposal on re-weighting.<sup>61</sup> Its re-weighted system gave the four larger Member States 25 votes; Spain 20; Netherlands 12; Greece, Belgium and Portugal 10; Austria and Sweden 8; Ireland, Finland, Denmark 6 and Luxembourg 3. It was a proposal that came in for heavy criticism from several of the other delegations.

The Belgian government was particularly aggrieved by the fact that The Netherlands would have an extra two votes more than Belgium in the Council of Ministers. The Dutch negotiating delegation did not expect or anticipate this reaction from the Belgian government and in particular that from the Belgian Prime Minister, Jean-Luc Dehaene.<sup>62</sup> The Dutch officials described it as a mathematical necessity that their government should receive twelve votes, given the formula that they chose on re-weighting. The Belgium delegation's grievance lay firstly in the manner in which the Dutch handled their proposal on re-weighting. Given the close cooperation that had proceeded over the previous months on the IGC, the Belgian Permanent Representative expected prior notification of the proposal. Belgian officials claimed that this notification should have come at the meeting between Dehaene and Kok several days prior to the actual release of the document.<sup>63</sup> However, the Dutch Prime Minister was unlikely to have been aware of such a proposal. In fact such was the

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<sup>59</sup> See CONF/3858/97.

<sup>60</sup> See, *AE*, 30/4/97.

<sup>61</sup> *ER*, No. 2227, pp.1-4.

<sup>62</sup> Interviews.

<sup>63</sup> *Ibid.*

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confidence of the Dutch delegation on the reasonableness of the figures that they felt it was unnecessary to refer such a matter to their Prime Minister.<sup>64</sup> This was despite the changes which the Dutch government had made to its internal organisation in an attempt to avoid similar mistakes as Maastricht's Black Monday. Chapter IV mentioned how the arrangement was such that the Prime Minister's office would be better informed of its officials' operations on the IGC.<sup>65</sup>

The dispute continued with what was the main thrust of the Belgian government's grievance with the Dutch proposal. Applying the formula the Dutch used on re-weighting to each and every Member State required any German government to have a greater number of votes in the Council than the French. For the Belgian negotiators and government the Dutch proposal was unacceptable until the newly weighted figures reflected the population difference between France and Germany.<sup>66</sup> Yet, the French and German governments had stated that should any form of re-weighting arise, both Member States would have equal voting weight in the Council.<sup>67</sup> The British Conservative government had also called for the voting power of the big four to remain equal.<sup>68</sup> The Dutch respected this wish but claimed that it formed no basis for a similar arrangement between The Netherlands and Belgium.<sup>69</sup>

The extent of the gap between the two governments' understanding of the situation was again evident, given that the Belgian government saw the Presidency's proposal as a betrayal of the case for the smaller Member States. But for the Dutch negotiators the proposal, by giving more votes to The Netherlands, would strengthen the hand of the smaller states. This confusion and bad feeling on what had previously been close cooperation was a further example of the fluid nature of any division between the small and large Member States. While there was obviously no overt organisation of either the smaller Member States against the larger, or vice versa, it was also the case, by way of the above examples, that any attempts to do so would have been seriously undermined.

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<sup>64</sup> Ibid.

<sup>65</sup> See again, pp.120-1.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> See *Partnership of nations*, paragraph 25, 1996.

<sup>69</sup> Interview.

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Both Belgian and Dutch officials claimed that it was the very close cooperation that had proceeded in the previous months on IGC matters that had given rise to a certain casualness on keeping the other side informed, working on the expectation that their support was guaranteed.<sup>70</sup> While the Dutch government had been very keen to avoid a repeat of any of the diplomatic errors of the Maastricht IGC there was a recognition from officials that given the breadth of the agenda and the considerable work that remained in the other major chapters of JHA and CFSP that there was an inevitability that certain confusions and misunderstandings would arise.<sup>71</sup>

The diversity of understandings and perceptions on the Presidency's proposal continued. The Spanish government was equally dissatisfied with the figures, being granted five votes less than the four larger members on an issue where it had been sensitive about its status, leaving it with an uneasy feeling that it could conclude with a bad deal all round, especially if it was also to lose a Commissioner.<sup>72</sup> For officials in the British negotiating team the Dutch Presidency's proposal was deliberately slow in the pace of its suggestions and nature of negotiation and secondly, in stark contrast to the Belgians it was considered as biased towards the smaller Member States. The suggestion was that the Dutch were most concerned with ensuring a greater influence for themselves in any future re-weighting.<sup>73</sup>

Chirac also tabled a proposal at Noordwijk that sought to strengthen the hand of the larger Member States. It gave the four big Member States 25 votes, Spain 20, The Netherlands 10; Greece, Belgium and Portugal 9; Austria and Sweden 7; Ireland, Finland, Denmark 5 and Luxembourg, 3.<sup>74</sup> The French approach on institutional affairs continued to be greeted with suspicion from the smaller Member States. The French government claimed that it was not a matter of small versus large Member States. Instead the aim was to distribute extra votes to all Member States while at the same time arriving at an equilibrium between a blocking minority and a majority vote.<sup>75</sup> This was in contrast to the approach taken by some of the other larger Member States, notably Italy, which in an earlier proposal had mooted the idea of raising the voting

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Interview.

<sup>73</sup> Ibid.

<sup>74</sup> ER, N°2227, p.1-4.

<sup>75</sup> Interviews.

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weight of the four most populous countries from 10 to 12 and from 8 to 9 for Spain, while making no further changes.<sup>76</sup> However, as is demonstrated in the following chapter on CFSP and as is shown below on Commission resizing, there was a deep agenda in the French proposals that sought to provide a greater role for what the French perceived as the 'serious' larger states. As was reflected in the run up to the Conference, it was this agenda that the smaller Member States feared, the Portuguese and Austrian papers going the furthest, claiming that there was a need to maintain this extra representation for smaller states.<sup>77</sup>

There was also a grievance within the French delegation regarding the approach the German government took on reforming the voting process. For some of the French negotiators the German government was exclusively interested in the system of double majority. This was presented as being small Member State friendly. Certain French officials claimed that the German approach placed greater emphasis on the second feature of the proposed system, namely the population criterion. The claim was that this was detrimental to the smaller members on two levels: firstly, it undermined their ability to defend and realise their interests, and secondly, it reduced their value and effectiveness as allies to the other larger members.<sup>78</sup> In the pre-negotiations the Finnish, Luxembourg and Swedish governments had also expressed opposition to a population criterion.<sup>79</sup> French concerns were less for the smaller Member States, but rather they feared that a double majority emphasising a population criterion would challenge the equal status between France and Germany in the Council voting system. Both the Quai d'Orsay and the Elysée were adamant on defending this parity.<sup>80</sup>

### Amsterdam Approaches

Despite the negative feelings towards the Dutch proposal at Noordwijk it remained on the negotiating table being part of the Presidential draft in early June.<sup>81</sup> Even by about the 13 June, when the Presidency had all but conceded that any change to the actual treaty was no longer possible, the Dutch stuck somewhat doggedly to their earlier position, again at the expense of causing further consternation from other Member

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<sup>76</sup> See CONF/3863/97, p.4.

<sup>77</sup> See again Chapter III, p.71.

<sup>78</sup> Interviews.

<sup>79</sup> See again Chapter III, p.71.

<sup>80</sup> Ibid.

<sup>81</sup> See 'Essential Elements', *AE*, 5/06/97.

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States. With further revisions to the draft treaty the Presidency included a Protocol on the institutions after enlargement. It provided for the Dutch figures on the re-weighting to come into effect on addition of between two and six new members. A year before membership reached twenty another IGC would be convened to review the institutional structure and decision making process. The Luxembourg Prime Minister Jacques Poos rejected the first part of the proposal. By this stage the Dutch had antagonised both Benelux partners, despite the Belgian Prime Minister's attempts to proclaim otherwise.<sup>82</sup>

The negotiations continued into Tuesday night at the Amsterdam Summit, with a heightening in the confusion and the diversity of perceptions. As before there was deadlock.<sup>83</sup> The actual path towards the eventual protocol that leaves a re-weighting until the next enlargement and for another IGC was somewhat unclear. Firstly, there was a definite shift towards the double majority option. Chirac, as before was particularly opposed to this. (See above). Indeed he was surprised by this shift, given that, as the French had stated before, it was not in the interest of the smaller Member States to opt for the double majority. Yet, the smaller Member States remained suspicious of French motives. Despite this, Chirac claimed to have convinced the other governments of the dangers of this solution, including the deadlock given that a minority of Member States in a decision could be a majority population-wise.<sup>84</sup> In the end it was Kohl who called for the eventual protocol postponing any change, followed by the British and then the French, along with the other governments. Jean Luc-Dehaene claimed that 'France and Germany alone were opposed to the double key solution, with the way out of the impasse being a protocol temporarily freezing the problem'.<sup>85</sup>

There was time for further confusion at the Amsterdam Summit. For certain ministers and officials of the smaller Member States there were attempts by the governments of the larger Member States, particularly Italy, to settle the issue of re-weighting as separate from Commission re-sizing. Opposition to such manoeuvring came not only from the smaller Member States wishing to maintain the link between the two issues,

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<sup>82</sup> See 'News of the week from', *AE*, 16 to 22 June 1997.

<sup>83</sup> See 'Treaty of Amsterdam', *AE*, 17/06/97.

<sup>84</sup> The fifteen reach consensus on "Amsterdam Treaty", *AE*, 18/06/97.

<sup>85</sup> *Ibid.*

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but any attempt by the larger members to seriously push this issue was undermined by the Italian government itself. Their initial support was withdrawn as the German government agreed to Spain having the same number of votes as the other large Member States.<sup>86</sup>

For the Finnish negotiators at Amsterdam, their President, Prime Minister and Foreign Minister held the key that could have undone the deadlock on re-weighting and Commission resizing. They claimed that they had tacit agreement from the other delegations for a doubling in the number of Council votes for all Member States with the five largest states – France, Britain, Germany, Italy and Spain receiving a further four votes. At the same time the future Commission would include one Commissioner from each of the Member States.<sup>87</sup> However, Finnish officials claimed that their Prime Minister failed to submit the proposal to the Dutch Presidency until midnight on the night of Tuesday 17 June. By that time Kok expressed a great tiredness from the previous hours of attempting to finalise a draft treaty, preferring to leave such a matter for a later date.<sup>88</sup> The Dutch Presidency recognised attempts by the Finnish to push for change on institutional matters at a late stage, without being able to recall the details.<sup>89</sup> Few others involved at Amsterdam could recall the Finnish proposal or making any agreement to it.<sup>90</sup> Again this reflected the confusion and what was poor preparation from both the Presidency and the Council Secretariat in keeping the member governments informed of what was on the table and the direction that the negotiations were taking.

#### **4. COMMISSION RESIZING**

##### **Introduction**

The rationale given by most governments in their official position papers on the eve of the IGC, and in the Reflection group report, for a reduction in the number of Commissioners related once again to the claim that in an enlarged Union a

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<sup>86</sup> Interviews.

<sup>87</sup> Ibid.

<sup>88</sup> See *AE*, 18/06/97.

<sup>89</sup> Interviews.

<sup>90</sup> Ibid.

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continuation with the present approach on nominating Commissioners would lead to an over-sized and inefficient Commission. However, as mentioned, enlargement failed to provide the spark for governments to engage in ambitious change on extending QMV and re-weighting and it was a similar case on Commission re-sizing.

Firstly, there was little progress or direction on Commission resizing until the Dutch Presidency. Secondly, while the proposal from the European Commission in March 1997 was quite similar to the final protocol at Amsterdam, it was the French delegation and the Dutch Presidency up until the Noordwijk meeting which pushed for a smaller Commission and the removal of the guaranteed representation for each Member State. Yet, it was the third feature of the negotiations on Commission re-sizing, namely the suspicion among the smaller Member States towards the French government's motives for a smaller Commission, together with the vocal British and German opposition to relinquishing guaranteed representation, which left member governments postponing any change for another IGC through Protocol No.7 of the Amsterdam Treaty.

### **French Position**

The French delegation adopted what was considered by the other delegations as an extreme position on Commission re-sizing.<sup>91</sup> Firstly, Commission re-sizing was considered by the French President to be of critical importance.<sup>92</sup> This re-sizing was to come in the form of a reduction in the number of Commissioners and a break from the previous approach of permanent representation for each Member State. While being an issue of importance for Chirac it was a matter that had been discussed among the various ministries for some time. There was broad support within the French administration for such a reform.<sup>93</sup>

### **British Position**

An efficient Commission had been the approach the British Conservative government and the foreign office had manoeuvred themselves into in the pre-negotiation stage.

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.; Also see 'Mr. Barnier says that the European Commission should stick strictly to its role of execution', *AE*, 16/10/95; *Memo*, 1996.

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The Conservatives up until the White Paper were prepared to give up one of their Commissioners.<sup>94</sup> This changed with their March White paper. While the paper supported a reconsideration of the manner in which the Commissioners were appointed it also expressed support for the larger Member State's maintaining their two Commissioners.<sup>95</sup> During the negotiations the position was not to give up the second Commissioner but there was always the un-stated possibility of this changing in the future should the need arise, and something could be delivered in return, most likely a re-weighting, though this was not official policy.

From the new Labour government's approach on Commission resizing it seemed that little preparation had been given to this matter. One Foreign Office official suggested, while Labour had seen the advantage of the two Commissioners policy when in opposition, their arrival to power with such a huge majority and with the prospects of being in power for a considerable time meant they began late in the day to reconsider the necessity of having two commissioners.<sup>96</sup> Indeed its pre-negotiating paper recommended no changes as regards the number of Commissioners that came from the larger Member States. The May '97 position paper confirmed this. While claiming to understand the 'positions of smaller countries' as regards having a Commissioner the paper went on to say that the government 'would not ask any country to give up its Commissioner'.<sup>97</sup> If it did come to Britain having to forgo a Commissioner then 'a significant return' would be required.<sup>98</sup> This, it was proposed would come in the form of a re-weighting and a specific status for the remaining UK Commissioner such as a Vice President. The Labour government's approach on this issue conflicts with the perception of British Foreign Office officials of institutional negotiations without any linkage, though admittedly this form of linkage from the Labour government obviously came very late in the negotiations.

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<sup>94</sup> Interviews.

<sup>95</sup> See *Partnership of Nations*, 1996.

<sup>96</sup> *Ibid.*

<sup>97</sup> See again Non-Paper, 16 May 1997, p.3.

<sup>98</sup> *Ibid.*

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## German Position

The German foreign ministry had been clear that the German government was unwilling to renounce on permanent representation. Werner Hoyer remarked that Bonn found the concept of a 'Commission without a German Commissioner' inconceivable going even further saying that 'it would not be good, not even for the smaller countries'.<sup>99</sup> Kinkel claimed that the German government considered it an imperative to have a Commissioner given its population and budgetary contribution.<sup>100</sup> This was an understandable position. Indeed the fact that it was prepared to go down to one Commissioner was a major concession.

## Negotiations

### Irish Presidency

The Irish draft treaty provided a summary of the diverse range of positions that the Presidency had been aware of during its six months. It essentially repeated the issue at hand, namely the desire by a significant number of governments to reduce the size of the Commission on the grounds that the current system would become unmanageable with further enlargements. The two broad possibilities outlined by the December draft treaty were a Commission with a membership smaller than the number of Member States or with a number equal to the number of states.<sup>101</sup> Within these two groups the draft suggested a number of further options: a fixed number somewhere between 10-20, a membership that worked on a rotational basis, senior and junior Commissioners and two Vice Presidents with their own team of Commissioners.<sup>102</sup> The Irish Presidency's failure to push the agenda along on restructuring reflected the lack of consensus among the member governments to engage in a discussion at this stage. At the same time, as a small Member State it was not in the interest of an Irish government to push the debate on any reconsideration of the guaranteed representation in the Commission. As with WEU-EU relations, the Irish Presidency availed of the lack of willingness of the other member governments to engage in discussions and submit negotiating papers. It gladly side-stepped the issue.

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<sup>99</sup> Ibid. p.2

<sup>100</sup> Statement by Kinkel, 6 April 1997.

<sup>101</sup> CONF2500/96, p.114

<sup>102</sup> Ibid.

### Dutch Presidency

At the end of the March meeting (40<sup>th</sup> anniversary), van Mierlo claimed that there was a majority of Member States that were convinced that the present Commission structure and work practice was no longer viable. There was nothing new in such a claim. The Reflection Group report of December 1995, in essence, came to similar conclusions. Van Mierlo proceeded requesting the Commission to inform the IGC of the number of portfolios it felt necessary for its effective functioning. The Commission had made its position clear on several occasions both in its February 1996 opinion and in a March 1997 submission; one Commissioner per Member State with a procedure for reviewing the Commission's membership above a certain number of Member States, with this procedure being triggered when the number exceeds 20.<sup>103</sup> The eventual protocol attached to Amsterdam somewhat reflected these wishes.

During the Dutch Presidency the divisions between the French and German governments on the issues of Commissioners were all too obvious. The French government continued to push for a Commission of between ten and twelve, despite German opposition. In a letter dated 21 March 1997 to the Secretary-General of the Council, Jürgen Trumpf, the French Permanent Representative, Pierre de Boissieu, on behalf of the French delegation claimed that 'An analysis of the Commission's powers suggests that some ten functions, ... may be distinguished. France therefore proposes a Commission of 10 members, which would be raised to 12 in the event of there being more than 20 Member States'.<sup>104</sup> Hervé de Charette made similar claims.<sup>105</sup> His Junior Minister Barnier also held to this line. In its proposal of a Commission of ten, the French negotiators were adamant that this ten need not necessarily include a Commissioner of French nationality.<sup>106</sup> One of Chirac's closest aids, when pushed by the Dutch Presidency on the matter, remarked that, 'Even if we would have eleven Luxembourgers that is fine with us but no one Commissioner per Member State'.<sup>107</sup> Though in practice it was highly unlikely that one of the ten at any one time would not have been French.

<sup>103</sup> Commission Opinion, 1996 Para. 42; CONF 3839/97, p.4.

<sup>104</sup> See CONF 3852/97, p.2

<sup>105</sup> See AE, 25/03/97.

<sup>106</sup> See ER, N°2221 – 03/05/97, p.4.

<sup>107</sup> Interviews.

The Dutch government in its official position paper on the institutions had declared itself willing to accept a reduction in the number of Commissioners to the extent of having fewer Commissioners per Member State on condition that all Member States renounced permanent representation.<sup>108</sup> While the senior officials and politicians in the Dutch delegation were unsure of French motives on Commission re-sizing, there was a concerted attempt to work with the French delegation, and use the weight, and what Dutch officials considered as the credibility that a large Member State provides in attempting to slowly bring other governments on board. This was an approach that the Dutch Presidency was to use with more success on the third pillar, again involving the French government. The Dutch Foreign Minister, van Mierlo, termed this the 'judo move'; guiding the weight of a large Member State along the lines of the Dutch Presidency's objectives, in this case the mobilisation of support for a smaller Commission, in an attempt to foster further support for the Presidency's objectives.<sup>109</sup>

The Presidency tabled a proposal on 24 April 1997 that went in some direction to renouncing a permanent representation to the Commission.<sup>110</sup> It consisted of two options, a Commission of fifteen or a Commission of twenty. In both instances until the figures of either fifteen or twenty were reached the Commission would include a representative from each state. The difficulty and weakness of the proposal lay in the absence of any mechanism within the proposed amendments to Article 157 that would determine the distribution of positions after the number exceeded either the fifteen or twenty members and the guaranteed representation had been removed. The two proposed declarations that would be attached to the treaty merely called for any method that would be established at a future date to be constructed 'by the principles of equality and alternation between Member States'.<sup>111</sup> Again it was a case of avoiding the contentious issues, leaving them for the post-negotiation phase.

By early May the Dutch Presidency claimed to have the French government and the governments of the Benelux on side as regards renouncing claims on permanent representation. The Italian government also seemed to be prepared to remove the guarantee of permanent representation with its suggestions that any future Commission

<sup>108</sup> See *Fourth memorandum*, 1995.

<sup>109</sup> Interviews.

<sup>110</sup> CONF 3887/97, 24/04/97, pp.4-5.

<sup>111</sup> *Ibid.*, Annex III, p.6.

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could be limited to either fifteen or twenty.<sup>112</sup> The Spanish government which during the pre-negotiations had hinted at a future Commission with fewer Commissioners than Member States did not follow through on its earlier position. However, the credibility of the Presidency's claims on the Benelux are questionable. The Luxembourg government had been very clear throughout that it would not be willing to forgo its right to a Commissioner, though it admitted that it would create problems in a Union of twenty five, but this was something that would be addressed at a later stage.<sup>113</sup> At the Dublin summit in December, the Belgian Prime Minister, Jean-Luc Dehaene was more flexible when he acknowledged that 'Belgium could accept sacrifices concerning the composition of the European Commission'.<sup>114</sup> Though, this was only if there was a general strengthening of the supranationality of the treaty.

In any case the Presidential and French momentum was stopped in its tracks at Noordwijk on 23 May. At this meeting Kohl was emphatic as regards the need for a permanent representation for Germany.<sup>115</sup> This was a position that was quickly supported by most other governments. As mentioned in chapter III and as was reflected in the Commission's internal review of government positions in mid-March, few governments except the Dutch, French and Belgian were interested in relinquishing guaranteed representation.<sup>116</sup> Chirac abandoned the previous French government's position, coming to an agreement with Kohl that effectively secured a presence for all Member States in the Commission. On the composition of the Commission and future enlargements three stages were proposed. The Commission was to remain at twenty up until the next enlargement. With the next enlargement there would be one Commissioner per Member State. With the arrival of further members the whole institutional structure would come under review.<sup>117</sup> With the German government emphatic on maintaining a German presence in the Commission this legitimised the case for all other governments to follow with similar claims. Indeed the proposal at Noordwijk formed the eventual protocol at Amsterdam.

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<sup>112</sup> CONF/3863/97, p.2.

<sup>113</sup> 'Mr. Kasel summarizes Luxembourg's Priorities', *AE*, 5/02/97; Interviews.

<sup>114</sup> See Ferdinando Riccardi, December 1996.

<sup>115</sup> *ER*, N°2227, p.1-4.

<sup>116</sup> See CEC, *Note à la l'Attention*, 12 March '97; also see pp.71-2.

<sup>117</sup> *ER*, N°2232 – 14/06/97, pp. 4-6.

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### Explaining French Motives

In one meeting at Noordwijk, Commission resizing had been effectively decided with a somewhat dramatic French U-turn and the collapse of the Dutch Presidency's strategy. As mentioned in chapter IV, and as will be described in chapter VI and VII, this was all too typical of French foreign policy. While French positions were presented and supported in a very tight manner, just as on NATO reintegration they were prone to sudden shifts at the whim of the President and the Elysée.

The other member governments and institutions had been at odds as to the French motives on a ten-person Commission. The suggestions varied with claims from the Irish Presidency that the French government realised that its suggestions would not be acceptable to the other members. A Commission without a French commissioner would be much less effective and less well regarded in France and amongst the other members.<sup>118</sup> The feeling within the British delegation ranged from dismissals as French gamesmanship to the belief that, while guaranteed representation may have been abandoned, a French permanent presence would be assured under a gentleman's agreement.<sup>119</sup>

Further suggestions from within the Commission itself proposed that the French have at every IGC submitted an unrealistic proposal.<sup>120</sup> This cultivates the image of the concerned European, and as the Member State willing to take the initiative and lead. Such an approach would also give the French command of the agenda, with its ideas and proposals marking the way for future change. This was the more positive tone from certain Commission officials. Others were more critical, being suspicious of the French position and its possibility to undermine the Commission.<sup>121</sup> The manner in which the French government presented and handled such a sensitive issue did little to alleviate the suspicion, instead adding to the misunderstanding between the various governments.

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<sup>118</sup> Interviews.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

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While it was highly likely that, as the British officials claimed, an agreement, either during or after the conclusions of the IGC, would provide the larger Member States with a continued but not necessarily a guaranteed representation, the French government's position up until Noordwijk may also have been shaped by the restructuring undertaken after the SEA on relations between French ministries and the European Commission. The French have been keen to develop closer links and contact between Commission officials at the level of General Directorate and level A administrators and French officials in Paris. In this way the French have a direct line and an established contact to the highest level of officials within the Commission. With the establishment of personal contacts and channels the post of Commissioner, while of political importance, was less essential in the everyday contacts between the Commission and Paris.<sup>122</sup> Therefore should a period arise in the future when the French government may not have a French-nominated Commissioner in Brussels it would be less detrimental for the French than for the other larger Member States which have not undertaken a similar restructuring.<sup>123</sup>

As was the case on the other institutional matters, there was the feeling from within the French foreign ministry that there was a failure on the French government's part firstly to tactfully explain their proposals and generate support for them, particularly among the small Member States, and secondly to emphasise the benefits for all in downsizing the Commission.<sup>124</sup> In a similar manner to re-weighting there was a frustration from some of the French Foreign Ministry officials involved in the IGC at the inability of the governments of the smaller Member States to recognise that with a larger Commission the justification for a treaty amendment to Article 189a (now Article 250) allowing the Council to change a Commission proposal by QMV was strengthened. There had also been suggestions in the pre-negotiation stage that even a one-Commissioner-per-Member-State would not be acceptable without a move to qualified majority voting *within* the Commission.<sup>125</sup> Again for the French officials this undermined the role and power of the Commission and ultimately the position of influence and security that a smaller Member State sought to ensure for itself through a guaranteed presence in the Commission.

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<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> See Reflection Group Report, paragraph 117.

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This frustration for certain French officials was even greater given that the French claimed that it was the German government that pushed for an amendment to Article 189a, a German government that continually cultivated the image and was generally considered as being small Member-State-friendly. The French government had a strong case here. While it wished for a smaller Commission, any amendments under Article 189a would continue to require unanimity. While the German government defended its right to appoint a Commissioner, it repeatedly called for the use of QMV on amending Commission proposals up until about the end of 1996. Hoyer first mentioned it on 3 June.<sup>126</sup> On 7 June Von Plötz, as a member of the IGC team, defended the government's position claiming that it did not seek to weaken the Commission. However, Hoyer failed to defend the proposal in a meeting with the European Parliament on 23 September. By the end of October he was less emphatic on the need for a change on Article 189a merely remarking that it was a principle that needed reconsideration.<sup>127</sup>

## Summary

With the French and German governments adopting diverse positions and the British government, as with so many other issues in the IGC, at best distracted and more likely opposed to any change there was little leadership or common ground on which to build a consensus. The French proposals, which were the most ambitious and radical on the table, were viewed with suspicion by many of the other member delegations. There was little incentive for the other member delegations to push for a change to the permanent representation. In the midst of this lack of direction the Dutch Presidency sought to use the French momentum in an attempt to sell the idea of a smaller Commission without a representational guarantee. The Dutch Presidency, while being, to a certain degree, unsure of French aims, concluded that there was a genuine concern and belief that a smaller Commission would facilitate for a more efficient Commission.<sup>128</sup> Yet, the Chirac U-turn together with the general apathy from the other governments unhinged the Dutch Presidency's attempts at securing a smaller Commission, leaving the final treaty with a protocol suggesting that with the next

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<sup>126</sup> Interviews.

<sup>127</sup> Ibid..

<sup>128</sup> Ibid.

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enlargement one Commissioner per Member State would become the norm, provided there was some form of re-weighting.<sup>129</sup>

## **5. EXTENSION OF CO-DECISION**

### **Introduction**

The potential strengthening of the role of the European Parliament in the first pillar with an extension in the application of co-decision was on the whole met with much surprise, even from within the European Parliament.<sup>130</sup> It left the European Parliament being described as the ‘winner’ in the negotiations on institutional reform. Yet, the following examination of the negotiations reveals that, rather than there being a group of member governments or the Dutch Presidency to drive the negotiations along on extending co-decision, it was a topic that failed to engender much reaction among the negotiators on all three levels. All governments, in their pre-negotiating positions had described themselves as willing to consider an extension, except for the British Conservatives. Yet, the Danish, Irish, German, French, Swedish, Austrian and Italian governments had been completely unclear on how this would proceed.<sup>131</sup> Despite this the personal Representatives, based on a paper from the Dutch Presidency were able to arrive without much disagreement at a final proposal that was passed on to Heads of State and Government at Amsterdam. However, at the European Council level little attention was given to this list of extension. Therefore governments drifted into agreement without being fully aware of its contents or implications on future decision making in the EU.

### **Negotiations**

As the IGC proceeded the nature of the co-decision extension was gradually established. In July 1996 the Commission, in accordance with Article 189b(8), submitted a report on widening the scope of the co-decision procedure.<sup>132</sup> Such a

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<sup>129</sup> See Protocol No. 7 – Institutions with the Prospects of Enlargement of the European Union.

<sup>130</sup> Interviews.

<sup>131</sup> See Chapter III, pp.72-3.

<sup>132</sup> See Commission, *Opinion*, 1996 Para. 22; ‘In its report on Co-decision, The Commission distinguishes the Legislative Areas (that must come under Co-decision) from the others’, *AE*, 04/07/1996.

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widening in the scope was to apply to all legislative work of the Council as opposed to executive duties. The Commission claimed that instruments could be described as legislative in nature if they were directly based on the treaty, were binding, determined essential elements of Community action, and were general in scope.<sup>133</sup>

The Irish Presidency proposed several options to the negotiators on extending: a case-by-case approach, a movement of issues dealt with under the cooperation procedure to co-decision, application to all measures adopted by QMV or a general extension of co-decision to all legislative acts.<sup>134</sup> The Dublin draft treaty showed that there had been little agreement on the extension by December but the Presidency recommended that the future discussions should proceed 'by reference to accepted criteria as suggested by the Commission and the European Parliament rather than on a case-by-case basis'.<sup>135</sup> The pairing of Elmar Brok and Elisabeth Gigou had proven beneficial in that they made a more focused and structured presentation of the European Parliament's opinion than the larger committee approach at Maastricht.<sup>136</sup> The EP in its opinion paper had called for an extension of co-decision to all legislation, specifically mentioning the social spheres, employment, and certain aspects of taxation, the environment and common commercial policy.<sup>137</sup> But, the role of the European Parliament should not be over-estimated. As mentioned, no officials from any of the member governments described the Parliament as exceptionally influential on any of the issues including co-decision.<sup>138</sup>

The Dutch Presidency suggested that the starting point should be a consideration as to whether the co-decision procedure could be applied for adopting legislative acts currently subject to the cooperation procedure. In turn, the Presidency suggested extending the process to other areas. In both instances its suggestions included a list of the proposed areas of application.<sup>139</sup> Examples of Articles where a move from cooperation procedure to co-decision procedure was suggested were Article 6 on discrimination, Article 75(1) and Article 84 on transport policy, Article 130s on

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<sup>133</sup> See CONF/388296.

<sup>134</sup> *ER*, N° 2179, 29/11/96.

<sup>135</sup> CONF 2500/96, p.100.

<sup>136</sup> Interviews.

<sup>137</sup> See EP *Opinion*, March 1996.

<sup>138</sup> *Ibid.*

<sup>139</sup> CONF/3816/97, 11/02/97, p.2.

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environment and Article 118a on social policy.<sup>140</sup> Other areas that formed a working basis for a potential extension were Article 43 on CAP, Article 51, 55, 57 and 100 on the internal market.<sup>141</sup>

This formed the working basis on an issue that raised little opposition, in principle, on an extension from the fourteen governments. The British negotiating delegation, as was the case throughout the Conservative government's term, remained steadfast to its White Paper position expressing opposition to any extension of parliamentary powers. The Labour government in its pre-negotiation paper suggested that 'All decisions taken on legislation by qualified majority vote ... should be subject to a simplified form of co-decision'. The German government through Von Plötz on 16/17 September 1996 had already given support, in principle, to the Commission report on co-decision, while not agreeing with every element of the extension. Hoyer reiterated this position in the early stages of the Dutch Presidency, providing a more concrete list of areas for extension.<sup>142</sup> Michel Barnier in the weeks preceding Amsterdam restated the French government's support for an extension, within the context of an overall advancement on institutional matters.<sup>143</sup>

The agreement in principle, the presence of a rather clear position from the Dutch Presidency on the areas where such an extension would take effect, and the willingness to negotiate suggests that the process on widening co-decision's application was well-ordered with a significant and adequate number of member governments aware of their goals and the direction of the negotiations. However, the success of co-decision and the ensuing perception of the European Parliament as a 'winner' was primarily a result of the lesser importance that the member governments attributed to co-decision.

It was this attitude that left it very open as to when and at what level the extension of co-decision was decided. Some officials, notably from the Finnish delegation and the Dutch Presidency, suggested that it had been decided by the end of February 1997, while others claimed discussions on the topic continued until well after this date. The Commission in its internal review of government positions in mid-March described the

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<sup>140</sup> *Ibid.*, p.4

<sup>141</sup> *Ibid.*, p.5; See 'Essential elements', *AE*, 5/06/97; Also see CONF/3894/97, 30/04/97.

<sup>142</sup> Statement by Hoyer 13/14 January 1997; Statement by Hoyer 18 February 1997.

<sup>143</sup> 'Extending co-decision depends on other institutional progress', *News report*, 28/05/97.

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German, Spanish, French, Irish, Portuguese and Swedish governments as still being open to a case-by-case analysis on the whole issue, while there was no clear line from the Finnish and Italian governments.<sup>144</sup> In fact, certain member governments were unaware of the content of the eventual treaty proposal. This was admitted by one Prime Minister at Amsterdam.<sup>145</sup> Further examples suggest that co-decision was not given high priority among personal representatives and later Heads of State and Government. As Kohl pushed for a role back on QMV at Amsterdam at that time there was not a concerted effort from any of the governments to make the necessary changes to the articles on the co-decision list where QMV was no longer to apply. Therefore co-decision has been extended on citizenship (Article 8a(2)), now Article 18(2), rules on social security for Community immigrant workers under then Article 51 (now Article 42) and Article 57(2) (now Article 47(2)) on professions in Member States, despite the use of unanimity under these articles. Member Governments were unaware of such a situation, not intending such an outcome to arise. Indeed, the British and French governments suggested change but at a later stage let it drop.<sup>146</sup>

This is not to suggest that it was a case of the newly elected French and British governments having a keen interest in co-decision. The Labour government in outlining the range of its positions on IGC issues in mid May '97 failed to mention co-decision or the European Parliament. In effect, limited importance was attached to co-decision. Throughout the sixteen months of negotiations it was an un-contentious issue where the Presidency expressed a confidence in drafting a list of areas to extend, while the other delegations agreed in principle without paying attention to the detail. At the highest level, among heads of state and government that hammered out the final package it was this lack of interest that facilitated for a successful extension rather than a genuine recognition of the implications of their decision.

## **CONCLUSIONS**

This chapter set out to examine four key areas of negotiations on institutional reform: extension of QMV, a re-balancing of voting in the Council, Commission re-sizing and the extension of co-decision. Across these four areas a common set of features defining

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<sup>144</sup> See CEC, *Note à l'attention*, 12 March 1997.

<sup>145</sup> Interviews.

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the nature of the negotiations was recognisable. Firstly governments were not inspired by institutional reform. In previous IGCs institutional reform has been primarily linked to policy reform at the IGC.<sup>147</sup> While this was similarly the case at the 1996-97 Conference, most governments in their official position papers on the eve of the IGC mentioned the need for institutional changes in preparation for enlargement. However, the bottom line was that there was an absence of consensus among governments on the timing and extent of enlargement for it to drive the negotiations on institutional reform.

This lack of inspiration from governments gave rise to the second defining feature. There was generally little negotiation or direction in the process up until December 1996. This was reflected in the near absence of detailed submissions from delegations and in the failure of the Irish Presidency to take any initiative in pushing the process along. While both the Presidency and other delegations would claim that the time was not right to push for change on institutional matters given the likely opposition from an embattled British government, a deeply divided Conservative party presented itself as a useful excuse behind which governments could hide their own poorly defined positions. This lack of direction gave to the third finding of the chapter, which saw the Dutch Presidency being left with much to do if any agreements were to be reached. While initially the Presidency was a little slow, or even reluctant, to take any initiatives, along with the French government it was the most influential participant on institutional reform. Though, given that most governments even at this stage had still not sorted out their priorities and objectives, there was little possibility of any significant change on QMV, re-weighting or resizing.

On QMV there were only minor changes after a big role back on the Presidency's earlier suggestions. On the re-weighting of Council votes and Commission re-sizing, the smaller Member States reacted negatively to the proposals. Indeed one Dutch official described the Belgian Prime Minister, Jean Luc Dehaene as being 'furious' with the Presidency's proposals. The final decision on these two issues revealed the fourth feature of the negotiations, namely the tendency to postpone difficult decisions until a later IGC given the lack of consensus. Protocol No.7 does just that. The final

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<sup>146</sup> Ibid.

<sup>147</sup> The negotiations on the SEA and the extension of QMV was also a recognition of the need for a greater use of majority voting given that there were two rounds of enlargement since the foundations of the Community.

feature of the negotiating process on the institutional reform suggests that where there was a significant and recognisable change such as the extension of the co-decision procedure; it was less a case of governments intentionally setting out to make these changes, rather given the lack of importance attached to the issue they drifted into agreement without being fully aware of the implications or consequences of their decision. It was an unintended outcome.

## CHAPTER VI

### JUSTICE AND HOME AFFAIRS

#### INTRODUCTION

While the Maastricht Treaty did not specifically call for a review of the third pillar, as described in chapter III, the European Councils at Cannes and Madrid under the title of *Europe and the Citizen* referred to improving security *within* the EU.<sup>1</sup> In turn, governments in their official position papers and Reflection Group considered changes to the third pillar. As the IGC concluded at Amsterdam the major reforms introduced in the treaty were on third pillar matters. This chapter aims to look at the negotiations behind some of these changes. It focuses on three major areas of reform: firstly, it outlines the negotiations behind the communitarisation of certain parts of the third pillar through the creation of an area of free movement and security under what is now Title IV TEC. Secondly, it examines the approach governments took on shaping the remainder of Article K, Title VI TEU in what were described as the flanking measures to Title IV, focusing in particular on judicial and police cooperation and anti-crime measures. Thirdly and finally, this chapter considers the incorporation of the Schengen *acquis* into the European Union, a process that was closely related to both of the previous issues. On all three areas there is firstly a re-cap on developments since Maastricht. This is, in most cases, followed by a consideration of the British, French and German government's positions. Finally the negotiations are examined, usually focusing on the influential events under the Irish and Dutch Presidency, but also on the Italian when dealing with communitarisation.

From this analysis it is evident that the defining features that have been prevalent in the previous chapter are equally present throughout the negotiations on Justice and Home Affairs. This chapter presents several arguments. Firstly, on each of the three areas

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<sup>1</sup> See pp.64-9 & pp.78-80.

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member governments were slow to outline in detail their objectives. Indeed some failed to do so at all. Therefore, until late 1996 there was indirection in the negotiations. Nevertheless, this also provided the opportunity for the European Commission and the Council Secretariat to make a very direct input into the negotiations with what was the former's most influential paper throughout the negotiations. Secondly, while the French government sought to shape the changes that the third pillar would undergo, it had not thought through its priorities on the pillar. Therefore at Amsterdam it found itself being presented with outcomes it had not intended or anticipated. The German government and its typically incoherent positions early on in the process matured on one or two occasions late on in the process, shifting the process in a different direction, demonstrating the fluid nature of the IGC. Thirdly, the Irish Presidency as before used the lack of initiatives from the other member governments as a justification for not pushing the process along on significant, but all too often controversial, issues. Yet, there were times, particularly on crime and security and police cooperation where the Irish Presidency's drafting was very similar to the final treaty at Amsterdam. Fourthly when the Irish Presidency did not push the agenda along the Dutch proved to be both skilful and determined in concluding a package at Amsterdam that included significant changes. Indeed the Dutch Presidency was the most influential participant on JHA, particularly on Schengen.

## **1. COMMUNITARISATION OF THIRD PILLAR**

### **Background**

At Maastricht, governments had come down in favour of an intergovernmental pillar on justice and home affairs. However, this in no way meant that governments had settled on the form of cooperation. It was as much a case of the pillarised structure to the treaty being accepted by default at Maastricht as it being a reflection of the objectives of member governments. All governments except the Belgian felt that there was insufficient time to negotiate on an alternative before the conclusion of the IGC at Maastricht. As with CFSP, the success of the framework laid out in Maastricht would determine the extent of the member governments' desire for change.

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Any assessment of justice and home affairs since Maastricht must also focus on Article 100c TEC which had placed visa policy as part of the first pillar. It is possible to compare the success of the initiatives under Article 100c with the list under Article K.1 of Maastricht. Shortly after Maastricht came into effect the Commission proposed a regulation on third country nationals in need of a visa on entering the Union.<sup>2</sup> It contained a list of 129 countries and was to be adopted by the Council no later than 31 December 1994. While not being adopted until September 1995 with a reduction in the number on the list to 101, it still was a reasonable success, though on a limited and relatively uncontroversial subject.

On the list of nine matters of common interest under Article K.1; asylum policy, border controls, immigration policy, drug addiction, fraud, judicial cooperation in civil and criminal matters, customs cooperation and police cooperation there was little success. Firstly, the only joint action to enter into effect by 1996 was one that aimed to ensure students from third countries residing in a Member State visa-free access throughout the Union.<sup>3</sup> Member governments went for the 'soft' options such as resolutions, as opposed to taking joint actions. For example, there have been resolutions on the minimum guarantees for asylum procedures and burden sharing with regard to the admission and residence of displaced persons on a temporary basis.<sup>4</sup> (June 1995) Yet, even member governments struggled to reach agreement on certain resolutions, most notably on the definition of a refugee, and a reinforcement in security of the external borders.<sup>5</sup> Gavin Barrett remarks on Article K.1 that 'Progress in this respect has compared very unfavourably with the level of activity which has been capable of being achieved in the context of the European Community'.<sup>6</sup>

As with CFSP and the first pillar there was room for much conflict between the third and first pillars. Doubt was expressed by some observers as to the clarity of the divisions between the intergovernmental procedures provided for the first six issues

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<sup>2</sup> OJ C 11/6-15/1/1994.

<sup>3</sup> OJ L 327 19/12/1994.

<sup>4</sup> Emek M. Uçarer, 'Europe's search for policy: the harmonization of asylum policy and European integration', in Emek Uçarer & Donald Puchala, *Immigration into Western Societies: Problems and Policies*, Pinter, 1997.

<sup>5</sup> See Elspeth Guild & Jan Niessen, *The Developing Immigration and Asylum Policies of the European Union*, Kluwer Law International, 1997.

<sup>6</sup> See Gavin Barrett, 'Cooperation in Justice and Home Affairs in the European Union – An Overview and a Critique', in Gavin Barrett (ed.) *Justice Cooperation in the European Union*, Dublin: Institute of European Affairs, 1997, p.17.

under Article K.1 and what could be a role for the Community on the same issues. Panariello remarks that policy on asylum, crossing of external borders, drug addiction and fraud 'were all to be found among the policies identified by the Commission in its 1985 White Paper as matters which should be harmonized through Community legislation'.<sup>7</sup> The Commission also claimed that one of the joint actions should have been dealt with by Article 100c. There were similar jurisdictional problems when it came to a new convention on controlling persons crossing external frontiers. Also the governments at Maastricht had not streamlined and codified the previous *ad hoc* procedures into an efficient system. Firstly, the Article K.4 committee which was to coordinate policy under the title and present opinions to the Council sat uneasily with the normal Community procedure which used COREPER. Secondly, while Maastricht was a form of codification of informal structures that had evolved over the 1970s and 1980s, Justice and Interior Ministers were unaccustomed to the working methods and disciplines of the Council. The Commission was equally unsure of its role in an intergovernmental pillar and was reluctant to use its new powers of initiative in a robust manner.<sup>8</sup>

At the same time the flow of immigrants that came with the opening of frontiers on the EU's Eastern flank at the end of the Cold War persisted. This coincided with a rise in the flow of asylum seekers from Africa and the South. The Yugoslav war and the flood of refugees brought home to the German government in particular the need for a more coherent approach on asylum and refugee policy. By 1992 the EU Member States were dealing with up on half a million refugee applications per year, a doubling in figures from 1988.<sup>9</sup> The other EU mechanisms in place were proving ineffective. The Dublin Convention of June 1990 only dealt with procedural matters on applying for asylum determining which state should deal with the application. There was no harmonisation on substance. Indeed, by 1996 the Dutch and Irish governments still had not ratified the convention, while Finland, Austria and Sweden had not signed it. Given that there was no role for the ECJ to settle disputes over the interpretation of the Convention it

<sup>7</sup> Philippe A. Weber-Panariello, *The Integration of Matters of Justice and Home Affairs into Title VI of the Treaty on European Union: A Step towards more Democracy*, EUI Working Paper RSC No. 95/32, p.33.

<sup>8</sup> See John Adrian Fortescue, 'First Experiences with Implementation of the Third Pillar Provisions', in Roland Bieber & Jörg Monar (ed.), *Justice and Home Affairs in the European Union: The Development of the Third Pillar*, European Interuniversity Press, Brussels, 1995 (19-28).

<sup>9</sup> Chris Bourdouvalis, 'The European Union and the immigration problem: small steps and possible solutions', in Uçarer & Puchala, 1997.

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lacked uniformity across the Union. In turn this had lead to unilateral responses. The tightening of German criteria for asylum in July 1993 saw the number of asylum seekers plummeting from around 37,000 per month to 10,000.<sup>10</sup> This proved somewhat ineffective since the problem shifted from Germany to the Netherlands. In any case 1996 Germany still accepted more than half of all asylum-seekers in the EU and more than the entire United States.<sup>11</sup>

As was mentioned in chapter III on the pre-negotiations, this situation left all governments and the Reflection Group focusing on a change of some form to the third pillar. With the intergovernmental third pillar proving effective, the 1996 IGC presented an opportunity for those preferring a supranational approach to argue their case. This left a possible communitarisation of visa, asylum and immigration, in other words a transfer of these issues to the first pillar, at the heart of the debate on justice and home affairs. It should be noted at this stage that while Article 100c TEC dealt with visa policy it was limited by Article K.1(2) and (3) TEU. These two articles dealt with the crossing by persons of external borders and immigration policy which also encompassed visa policy, hence the reference to communitarisation of visa policy and border control at the 1996 IGC.<sup>12</sup>

### French Position

The French government did not have clear objectives on communitarisation. This was due to the divisions between the Elysée, the Quai d'Orsay, the Justice Ministry and the Ministry of the Interior, the change in government in June '97 as the Conference reached its climax, and finally it also reflected the French style of negotiating, emphasising the 'grande ligne' without having clear objectives on the detail.

The French government's position on communitarisation evolved and changed during the negotiations. Initially the French government was very sure as regards the

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<sup>10</sup> Kohl described this move to a more restrictive approach 'as an important precondition for the fact that Germany can fully participate in a common European immigration and asylum policy'. See Uçarer E.M., 'Europe's search for policy: the harmonization of asylum policy and European integration', in Uçarer & Puchala, 1997, p.289 and 'Kohl views 1993 achievements, 1994 tasks', *International Intelligence Report*, January 3, 1994.

<sup>11</sup> See Uçarer, 1997.

<sup>12</sup> For more details on this see Diarmuid McGuinness and Eileen Barrington, 'Immigration, Visa and Border Control in the European Union', in Barrett, 1997, pp.155-171.

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communitarisation of the third pillar. Its February '96 memorandum setting out its guidelines for the 1996 IGC, rather than outlining communitarisation as a possibility, took it for granted that it would happen, focusing instead on the necessary security precautions to be adopted as and when asylum and immigration were brought within the Community sphere.<sup>13</sup>

During the Irish Presidency Michel Barnier presented a compromise approach on certain aspects of the third pillar to the National Assembly Delegation on the EU. He suggested creating what was described as a 'pillar 1a', a compromise between maintaining the status quo on the 3<sup>rd</sup> pillar and a full move of key issues such as asylum, immigration and visa policy to the first pillar. He suggested fixing common objectives for Union action in six major areas: asylum, immigration, drugs, organised crime and money laundering, and terrorism. These policy areas would formulate the new pillar. While this proposal would not have been the same as placing these issues under the Community framework it proposed a dual right of initiative for both the Council and the Commission, with consultation of national parliaments.<sup>14</sup> This position seemed to reflect the long-standing French resistance to supranational control. This new pillar would still in essence be an intergovernmental pillar with no role for the European Parliament or Court of Justice. However, the French government had not considered whether such an approach was workable. As one official in the Dutch Presidency remarked, there was no interest from any of the member governments to create another pillar, the general consensus being that since Maastricht, it had proved difficult to adapt to the third pillar structure, and a fourth would only have further complicated matters.

While this French proposal met a quick end, the French launched another in the early stages of the Dutch Presidency.<sup>15</sup> As with its November paper this proposal attempted to present a balance between an intergovernmental approach and one providing for a greater role for the Community institutions and procedures. Yet, it reflected the contradictions within the French position, with the Foreign and Justice Ministries taking a more Community-oriented approach than the Interior Ministry. As is described below, these contradictions, along with a distracted Elysée, would result in

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<sup>13</sup> *Le Figaro*, 20 February 1996.

<sup>14</sup> 'Proposals by Benelux on Crossing of External Borders, Immigration and Asylum', *AE*, 23/11/96.

<sup>15</sup> See CONF/3824/97.

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the French accepting a much more communitarian package at Amsterdam than it advocated throughout the process.

## German Position

### Introduction

The entire workings of the third pillar was of considerable concern for the German government at both Länder and federal levels. The flood of refugees from the Balkans war brought home to the German government, in particular, the need for a common and co-ordinated approach on asylum and refugee policy. The extent to which certain Länder governments felt over-stretched was reflected in the decision by Bavaria and Baden-Württemberg in November 1996 to send Bosnian refugees back home against their will.<sup>16</sup> In late 1996 the German and Bosnian government signed an agreement to repatriate more than 300,000 refugees from the conflict in former Yugoslavia. Manfred Kanther (Interior Minister) estimated that up to 90,000 would be back in Bosnia by 30 June 1997.

As on most other issues the German government did not have clear and stable objectives and priorities until late in the process. As with QMV the eventual German position would be met with surprise from the other member governments. The German delegation's negotiating ability on asylum, visa and immigration was undermined by internal divisions within the Auswärtiges Amt., between the Foreign and Interior Ministries and between Länder and federal level. These divisions are examined below. They suggest two things. Firstly, they left the German delegation ineffective for the greater part of the process. Secondly, as Kohl sought to bring the different strands of the German system together it was the Länder that proved effective in putting the brakes on any ambitious programme for communitarisation.

### Auswärtiges Amt.

At the general level there was agreement within the Auswärtiges Amt. on the communitarisation of certain features of the third pillar. During the Italian Presidency Hoyer suggested that any transfer should focus on visa, asylum and immigration policy. (21 May 1996) While later welcoming the Irish Presidency's approach, Hoyer

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<sup>16</sup> 'German State Starts Sending Bosnian Refugees Home', *Reuters*, 22/11/96.

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(27-28 January 1997) and Kinkel (24 February 1997) emphasised the importance of considering the issues which should be communitarised at the present time, in the future, and those which should remain in the Third Pillar but with more integrationist elements. Hoyer emphasised the necessity of granting the Court of Justice an extensive jurisdiction in the third pillar. The ECJ would have jurisdiction to give preliminary rulings on the legality of framework decisions, as well as on their validity and interpretation. It was recommended that national courts should be required to refer cases to the ECJ when this was necessary to enable them to pass judgement.<sup>17</sup>

Hoyer suggested that those areas transferred to the Community pillar would have to be subject to a dual right of initiative from the Member States and the Commission for a period of time. (27-28 January '97) Support for such an approach was also expressed by Kinkel after the Presidency's February proposal. (24 February 1997) Hoyer, Kinkel and Silberberg, (member of the German delegation) also agreed on the immediate use of QMV on visa policy. (Hoyer 3-4 March 1997) (Kinkel 24 February 1997)(Silberberg 8 April 1997)

Given the burdens that Germany had taken up after the Yugoslav crisis and the collapse of the Communist regimes to the East, the Auswärtiges amt. and the federal government also placed a strong emphasis on a fairer system with a greater degree of burden sharing among Member States promoting a balance in receiving refugees and displaced persons.<sup>18</sup> However, there were divisions on the details with some officials, notably Silberberg, opposed to the suggestions coming from others in the Auswärtiges Amt. on a minimum standard for the reception of asylum seekers to be part of the first pillar.

These contradictions over the details continued with fundamentally different positions within the Foreign Ministry on asylum law and policy. Hoyer on 24 September 1996 called for the transfer of asylum law but not policy.<sup>19</sup> He seemed to have changed his position, or at least was less clear for a time as to where asylum policy should lie. On the same day as the Irish Presidency's proposal for a new title on an area of *Freedom, Security and Justice*, in November '96 Hoyer welcomed the approach, going on to

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<sup>17</sup> Interviews.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

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suggest that QMV should apply to asylum policy, but unanimity should apply to asylum law and customs cooperation. His suggestion that all Community instruments should be available in this new area would seem to suggest that asylum policy as well as the law should fall under the first pillar, though this was somewhat unclear.

This position not only conflicted with the stance he previously adopted but also with the other officials within the Auswärtiges Amt. involved in the framing and coordination of the German approach. On 24 February 1997 Kinkel was clear in his preference for the Dutch paper over the Irish approach, stating that the rules on external frontiers, visa policy, immigration, asylum policy, customs cooperation and the fight against racism and xenophobia, and fraud should be transferred to the Community pillar along with much of judicial cooperation. He even went as far as to suggest that there should be minimum criminal standards.<sup>20</sup> Kinkel seemed more definite and confident of the need to have asylum policy as part of the first pillar.

On 8 April 1997 Silberberg outlined the difficulties that could arise with asylum issues.<sup>21</sup> He suggested that while asylum policy would be transferred to the first pillar, any decisions would be taken by unanimity. Any use of QMV in the initial stages after the title came into effect could give rise to constitutional difficulties. This stands in direct contradiction to the confused positioning of Hoyer, who, while being sure of the need for asylum law to form part of the first pillar, wished for unanimity to apply to such matters and QMV to asylum policy, despite the lack of clarity on which pillar the latter would belong to.

There were also contradictions on the potential communitarisation of criminal law standards. Hoyer and Kinkel on 27-28 January and the 24 February 1997 respectively supported such harmonisation in any new article under the TEC.<sup>22</sup> Hoyer repeated his position on 3-4 March favouring a communitarisation of all areas of customs cooperation including criminal aspects.<sup>23</sup> The official submissions from the German delegation, though long winded and convoluted supported such a position, particularly

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

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the January '97 proposal.<sup>24</sup> As before, Silberberg was to adopt a more cautious approach. He supported the communitarisation of customs cooperation but not to the same extent as including criminal aspects.<sup>25</sup> The differences with Hoyer continued as the Minister for State circulated a draft article of the 4 March '97 creating Community competence to combat cross-border crime.<sup>26</sup> This included both criminal and civil judicial cooperation. Yet, Silberberg stated a month later that any new Article would have to be absolutely clear that there was no Community competence over police and judicial cooperation in criminal matters.<sup>27</sup> These differences within the Auswärtiges Amt. hindered the German delegations negotiating ability. The German delegation failed to submit a detailed paper outlining clearly its position and the functioning of any new community title on asylum, immigration and visas. Instead there were only two very similar papers in October 1996 and January 1997 that dealt with a communitarisation of customs cooperation.

### Interior Ministry

The divisions within the German position continued. The approach by the Ministry of the Interior on third pillar issues bore certain similarities to that of the approach from the British Conservative and Labour government. Its perspective on third pillar issues focused more on issues of law and order, being more restrictive rather than oriented towards an open concept of migration and the free movement of persons.<sup>28</sup> This reluctance within the interior ministry was also due to the fact that the European orientation of the ministry is some way behind that of the other German ministries, given that it was the Ministry for Economic Affairs that was primarily concerned with the free movements up until the ratification of the Maastricht treaty.<sup>29</sup>

### Länder

The Länder presented another perspective in the overall German position and one that would prove very influential as the Conference neared its end in Amsterdam. There had been tension within the Bundesrat as regards the best approach to be taken on asylum and immigration. In its pre-negotiation debates at the Berlin Conference on 15

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<sup>24</sup> See CONF 3938/96, 02/10/96 & CONF/3807/97, 29/01/97.

<sup>25</sup> Interviews

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

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September 1995 the majority of Ministers of the Länder for European Affairs expressed clear support for the communitarisation of immigration policy. However, this demand was not upheld, essentially because of the veto by Bavaria and Baden-Württemberg.<sup>30</sup> This was reflected in the new resolution on reforming the Maastricht treaty.<sup>31</sup>

The determining influence of the Länder rested on two principles. The first has already been mentioned in the context of QMV. The Länder were sensitive as regards the erosion of their powers aiming to protect the regional levels of government from an undue centralisation of decision-making capacity. The second feature of Länder influence was specific to asylum and immigration. While the federal government determined the procedures for asylum entry and general immigration law and policy, it was the Länder that was required to take up the inevitable financial burden of admitting refugees and asylum seekers. Therefore it was keen to maintain some form of control on any new EU policy on asylum. The Länder influence was all the stronger, given that its representation on the German IGC delegation came from Bavaria and Baden-Württemberg, the two Länder most opposed to any form of communitarisation. Given that the Federal Government was pressurising the Länder to reduce spending in an effort to meet the EMU criteria, the state level of government was in a strong position in seeking its demands. As is shown below it was the Länder that brought the final twist to the German position.

### **British Position**

The Conservative government in its White Paper addressed the problem of immigration, visa and asylum policy as an international one, requiring cooperation at many levels rather than exclusively the European. As with CFSP the White Paper referred to the successes of the Maastricht approach. This was similar to the attempt to talk up the success of the approach on CFSP with the aim of satisfying the advice given at Maastricht by the then Foreign Secretary, Douglas Hurd. Just as the British government had five years to prove that the intergovernmental approach on CFSP

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<sup>30</sup> 'The Länder to present the Bundesrat with a Resolution Stipulating what they Expect from the Maastricht Revision - Differences between Länder over some Issues', *AE*, 27/09/95.

<sup>31</sup> *Ibid.*

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could work the same applied to the third pillar. Given the generally poor performances of the third pillar since Maastricht, as described above, the Conservative government was in a weak position to defend the status quo.

The UK delegation submitted a position paper on 23 September 1996 that closely reflected the White Paper objectives.<sup>32</sup> Firstly there was no mention of any form of communitarisation. Secondly Article Ka sought to establish clear parameters of cooperation.<sup>33</sup> The EU was only to be used in addressing serious threats or to take action where there were clear and identifiable benefits for EU citizens, following the guiding principles of subsidiarity. The paper emphasised that any action should have a cross-border element. Finally cooperation was not to be confined to EU Member States but rather extended to 'establish close cooperation with the relevant authorities in third countries, . . .'.<sup>34</sup>

The Conservative government's bottom line was to avoid any movement of 3<sup>rd</sup> pillar policies to the first. The Irish draft treaty was presented to the House of Commons with the Foreign Secretary Malcolm Rifkind reiterating the government's opposition to any communitarisation.<sup>35</sup> The Prime Minister and Foreign Secretary described the government's position on this as unshakeable and they sought to highlight that it was not simply a case of British opposition but rather as the Irish Presidency's Report stated 'A number of Member States have indicated that they do not accept the transfer of any matter at present dealt with under Title VI to the Treaty on European Union'.<sup>36</sup> The Prime Minister's and Foreign Secretary's reports on the actual Dublin II meeting were of a similar nature, describing the British opposition as regards any transfer to the first pillar as 'unshakeable'.<sup>37</sup>

The Labour Party in its 1995 strategy paper on Europe was also opposed to any transfer of visa, asylum and immigration matters to the first pillar.<sup>38</sup> For tactical electoral reasons the party did not spell out a very different approach on the EU to the

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<sup>32</sup> CONF/3913/96.

<sup>33</sup> Ibid. Article Ka, p.6.

<sup>34</sup> Ibid.

<sup>35</sup> See Column 433, Hansard Reports, 12 December 1996.

<sup>36</sup> CONF/2500/96, p.24

<sup>37</sup> See, Hansard Reports, Cc. 433, 1996.

<sup>38</sup> Labour Party, 1995, p.15.

Conservatives before the May general election. Nevertheless, the new British government revealed itself to be much more adaptive and flexible on this issue of communitarisation than the Conservatives. While preferring to keep cooperation on an intergovernmental basis, the new Foreign Secretary Robin Cook remarked that this issue was ‘not approach[ed] … on the basis of “religious fundamentalism”’.<sup>39</sup> The Labour government was prepared to approve closer cooperation among the other member governments should they so desire.

Neither the Conservative or Labour governments pushed for changes on the third pillar. The Conservatives government was largely responsive. While realising a defence of the status quo was difficult to justify, it proposed an improvement of the intergovernmental structure without any major changes and certainly without any form of communitarisation. The Labour government was equally un-enthused by the removal of internal borders and the establishment of a common policy on immigration, visa and asylum. However, rather than aiming to prevent such a creation it only sought to opt out.

## Negotiations

### Italian Presidency

From an early stage in the negotiations the Italian Presidency claimed that there was general support for placing some of the third pillar matters within the Community sphere. Yet, there were no detailed papers from any of the member governments that sought to outline what this precisely entailed. Instead there was little consensus among the governments on the specifics. At a meeting between personal representatives on April 1-2 Germany, Spain, Italy, and the Benelux called for greater application of QMV in the third pillar. The Portuguese were less enthusiastic, while the Swedes felt that only decisions on implementation should be taken by QMV. The role of the ECJ in the 3<sup>rd</sup> pillar proved equally contentious. Germany and the Benelux wished for a permanent and effective role. The Swedish and Irish delegations suggested a case-by-case approach, while the Spanish representative insisted that its role be limited to the communitarised areas.<sup>40</sup> After a meeting of the representatives of the EU foreign

<sup>39</sup> ‘Cook urges EU to set its sights on new goals’, *FT*, 16/06/97; Also Doug Henderson, Minister for Europe, ‘Britain and the EU - a fresh start’, Brussels, 05/0597.

<sup>40</sup> *ER*, 2122, 05/04/97, pp.1-2.

Ministers on 21 and 22 May '96 Fagiolo remarked on the third pillar that there were clearly 'elements of common interest' for all EU members with a 'strong majority' of delegations in favour of placing certain aspects under the Community system. He remarked that 'There are three areas in particular, but they are not the only ones, in which there seems to be the greatest convergence among Member States for a transfer from the third pillar of the Treaty to the first pillar: visas, asylum and immigration'.<sup>41</sup> This was typical of a lot of the negotiations on communitarisation under both the Italian and Irish Presidencies. Both Presidencies repeated that there was consensus among the greater number or majority of Member States on the need for a transfer of visas, asylum and immigration, but few Member States presented detailed non-papers on the issue.

### Irish Presidency

The Irish Presidency did not table any detailed paper on the third pillar in the early months. Indeed it would be November before it would make any such submission. This was due to the Irish government's difficulties as regards its Common Travel Area with Britain and the possible effects a transfer of issues to the first pillar would have on this arrangement. (See Below) The Presidential papers from July and September repeated what had been discussed under the Italian Presidency, a general commitment from member governments to communitarisation and a co-ordinated fight against crime through a reformed third pillar.<sup>42</sup>

It was the Commission that made the first move with a detailed plan on communitarisation in its draft proposal on 18 September. It established an area of *Freedom, Security, and Justice* placed firmly within the first pillar. By incorporating matters of visas, asylum, and immigration policy into the TEC the Commission's proposal also focused on drug trafficking and dependency, economic and financial crime and large scale fraud.<sup>43</sup> However, the Commission failed to provide a clear structure on the role of the institutions. The Commission's paper together with what the Presidency described as a 'working paper' from the Council Secretariat formed the basis for discussions at a meeting of the personal representatives at the end of

<sup>41</sup> See CONF 3860/1/96, 17/06/96; Also see 'Mr Fagiolo says a Majority of Member States favour placing certain Third Pillar Matters under the Community System', AE, 22/05/96.

<sup>42</sup> See CONF/3866/96, 09/07/96; See CONF/3908/96, 18/09/96, p.6.

<sup>43</sup> See CONF/3912/96, 18/09/96.

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September. It is important to stress here that the 'working paper' came *direct* from the Secretariat rather than it being a case of the Secretariat firstly writing a proposal, sending it to the Presidency for its comments before returning to the Secretariat for a re-write based on the Presidency's suggestions. The Presidency was quite clear that 'on the basis of those contributions' from the Commission and the Council Secretariat, it was in a position, by the middle of November to complete its first detailed outline on reforming the third pillar.<sup>44</sup>

As with the Commission proposal, the Presidency's paper suggested that the Community would deal with border controls, immigration policy and policy regarding nationals of 3<sup>rd</sup> countries, action in relation to drug abuse, and strengthened cooperation by customs authorities. The paper tentatively suggested that internal borders for visas should be abolished within one year of entry into force of the Treaty, two years for measures on asylum and three years for provisions on immigration.<sup>45</sup> The Presidency's paper also avoided making firm suggestions on the institutional framework for the new title. Again this was consistent with the Presidency's tendency to dodge the whole issue of institutional reform across all three pillars. While the Commission's proposal was influential on the general style and layout of the Presidency's paper, the latter relied heavily on the Council Secretariat's 'working paper' in outlining the specific details on what exactly the communitarisation of asylum, immigration and visa entailed.<sup>46</sup>

The personal representatives examined the Presidency's paper at a meeting on 18 November.<sup>47</sup> At the meeting the representatives failed to reach agreement on the nature of the institutional changes needed to allow this new title to function effectively. Contention focused on the mode of decision making: QMV or unanimity, the right of initiative, a joint role by the Presidency - Commission, the Commission under 100c or the Commission and the Member States together, and finally the role of the national and European Parliaments in the policy-making process.<sup>48</sup>

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<sup>44</sup> CONF/3976/96, 11/11/96.

<sup>45</sup> Ibid.

<sup>46</sup> See in particular CONF/3908/96 & CONF/3976/96.

<sup>47</sup> 'Dorr Group Examines Different Issues Related to Third Pillar', *AE*, 20/11/96; *ER*, N°2176 – 20/11/96, pp.1-2.

<sup>48</sup> Ibid.

By this stage the debate between the supranational and intergovernmental approaches to the third pillar was coming to life. On 22 November the Benelux countries introduced another detailed set of proposals on the 3<sup>rd</sup> pillar. They proposed a new treaty title called 'The Crossing of External Borders, Immigration and Asylum'. The Benelux proposals provided for these matters to be dealt with under the Community framework. This was not surprising. The Benelux and the three members in their earlier position papers had expressed strong support for communitarisation and the extension of supranational control. Indeed, there was a throw back to the Maastricht struggle between supranational and intergovernmental control given that it was only the then Belgian government that supported the Dutch draft treaty that sought to replace the 'temple' with the 'tree' structure before being abandoned.

The Benelux text provided the European Parliament and the Court of Justice with a role in this new title.<sup>49</sup> The proposal also suggested a new Title VI on 'Police and Judicial Cooperation' that would remain intergovernmental. This was a very detailed title calling for cooperation among the police forces under Europol, for cooperation on trials, and for multi-annual programmes on the priorities at that time. The ECJ would rule on disputes between Member States, or between Member States and the Commission. However, the report was unclear on the exact decision making method.<sup>50</sup> The Danish permanent representative and member of the IGC personal representatives group hit back on the Benelux's pro-Community stance. In a position that was similar to the British Conservative stance, Niels Ersboell, the personal representative, said that his country could not accept giving certain policies under the third pillar a Community dimension, but that it would be possible to considerably improve the functioning of these policies even without transferring them to the first pillar of the Treaty.<sup>51</sup> He agreed that intergovernmental cooperation under the third pillar needs to be 'improved enormously', noting that, for example, the Commission could be much more active in this field, without needing to alter the Treaty.<sup>52</sup>

<sup>49</sup> See 'Proposals by Benelux', *AE*, 23/11/96.

<sup>50</sup> *Ibid.*

<sup>51</sup> 'Denmark could not Agree to Issues under the Third Pillar becoming EU Competencies', *AE*, 21/11/96.

<sup>52</sup> *Ibid.*

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It was at this time that the French government aired its proposal on an alternative pillar, making this suggestion from the premise that it sought to offer a way out from the two opposing approaches of a complete transfer of visa, immigration and asylum policy to the first pillar and a continuation of the intergovernmental approach of the third pillar. It was also a case of French attempts to head off a potentially strong role for the Court of Justice, European Parliament and Commission, while at the same time having a French paper forming the basis of a new treaty structure, though this failed to gain any support.

As the December draft approached, the Irish Presidency revealed that it was not going to push for any further negotiations on communitarisation. Noel Dorr remarked 'we made substantial progress by working carefully in this field which deeply affects the sovereignty of the States'.<sup>53</sup> At this stage in the negotiation process, Dorr said the main concern as regards the third pillar was whether further ideas needed to be put on the table than those presently under discussion in order to provide better machinery in the fight against crime. (See below).

The Irish draft pulled back from the November proposition that brought asylum, visa and immigration policy into the first pillar. It was open on whether the title would form part of the first or third pillar.<sup>54</sup> This was a reflection of its ambivalence towards a new title that would remove internal border controls. With the British government adamant that it would not participate in such a project the Irish government was aware that this made its participation untenable since it would undermine the Common Travel Area between the two countries if the Irish were to be part of this new Area, though it did not oppose the transfer in principle.<sup>55</sup> The draft under Article G was also open on the decision-making procedures for the title.<sup>56</sup> Therefore, as had been so often the case on institutional matters, the Irish Presidency left the Dutch to table firm proposals on this issue. The only two changes of significance from the earlier presidential paper went some way to satisfying both French and German demands. Article A(2) allowed for 'the suspension of cooperation under the new title by a member due to maintenance of law and order and the safeguarding of internal security'. Secondly, on receiving

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<sup>53</sup> 'Dorr Group Concludes Work', *AE*, 4/12/96.

<sup>54</sup> See CONF/2500/96, p.22.

<sup>55</sup> See McDonagh, 1998, pp.169-170.

<sup>56</sup> See CONF/2500/96, p.28.

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asylum seekers and refugees into the EU it called for a balance of effort between Member States, a provision that the German government had been keen to have included.<sup>57</sup>

### Dutch Presidency

*Introduction*:- In shaping the final package from January 1997 until the Amsterdam Summit, the Dutch Presidency and the French and German governments were particularly influential. The British and Irish governments were also successful in having a protocol written into the final treaty providing for an ‘opt-out’ on Title IV with the possibility of opting in at a later date.<sup>58</sup> As was the case with the Schengen *acquis* these protocols were necessary in attempt to maintain the common travel area between the UK and Ireland. Similarly the Danish government’s wish not to be part of a visa, asylum and immigration policy or for that matter any part of the Schengen *acquis* that was in the first pillar was also recognised in a protocol attached to the final treaty.<sup>59</sup>

As suggested from the examination below, in the early stages the Dutch continued with the same uncertainty as the Irish Presidency regarding the location of the new title. A French proposal in February 1996 proved influential in shaping the Presidency’s March 1997 draft. Yet, the French negotiators objectives continued to be muddled due to domestic divisions, and they eventually agreed to a much more communitarian package than expected. While the German government’s position had been ambiguous and convoluted the influence of the Länder on the German government’s position was very apparent in the final stages at Amsterdam, rolling back on some of the new features proposed by the Dutch in one of their final drafts in early June ‘97.

*Negotiations*:- The Dutch Presidency placed particular importance on reforming the third pillar. There were three reasons that explain this approach. Firstly, there was, as mentioned, the influencing features from Maastricht. The Dutch government and senior officials to Michel Patijn saw the first pillar as the rightful place for justice and

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<sup>57</sup> Ibid., Article C(2)(b), p.25.

<sup>58</sup> See Protocols No. 4 TEU.

<sup>59</sup> See Protocols No. 5 TEU.

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home affairs.<sup>60</sup> It was a case of unfinished business from Maastricht. Secondly Dutch foreign policy has traditionally placed a strong emphasis on cross-border cooperation on legal and judicial matters with the International Court of Justice sitting in The Hague. With the headquarters of Europol also in The Hague, the Dutch were keen to promote stronger cooperation on fighting crime, especially with the eventual removal of internal borders. Thirdly, apart from the genuine belief in the importance of supranational nature of cooperation on justice and home affairs, the Presidency and particularly the influential and skilful Michel Patijn and his closest officials Matthijs van Bonzel<sup>61</sup> and Thomas de Bruijn<sup>62</sup> realised that this was one area along with Schengen where the Dutch Presidency could make very noticeable progress and changes to the treaty. Therefore their motivations for change were to a certain degree shaped by their desires for a successful Presidency.

By the 10<sup>th</sup> ministerial session on 24 February the Dutch Presidency had not given any new direction to the placing of the new area of *Freedom, Security and Justice*. In its working paper for this meeting it merely stressed again the willingness of Member States to extend community procedures to the third pillar. The Dutch approach was divided into three parts. Part A and B outlined the general goal of developing the Union as an area of freedom, security and justice. The few changes that were introduced by the Dutch were typical of the fluid nature of the negotiations. For example, while the Irish draft was clear as regards the time-tabling of the implementation of the JHA amendments, the Dutch proposal was completely open on this matter.<sup>63</sup> Similarly the Presidency confined itself to merely commenting on the large majority that preferred communitarisation without being more specific as to the nature of this support. Under Article H it attempted to outline a coherent decision making procedure, but loosely defined the role of the European Parliament and the Court of Justice.<sup>64</sup> The Presidency's paper was equally unclear in part C on the fight against crime, police and judicial cooperation and the approach to be taken under Article K.3 as regards decision making as well as the role for the Court of Justice.<sup>65</sup>

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<sup>60</sup> Interviews.

<sup>61</sup> Member of Dutch IGC team.

<sup>62</sup> Director, Department of European Integration, Ministry for Foreign Affairs, The Hague.

<sup>63</sup> See CONF/3823/97.

<sup>64</sup> Ibid. Article H, p.11.

<sup>65</sup> Ibid., p.17 & 18.

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After commanding the Irish Presidency on its draft treaty, while at the same time calling for greater progress, the French delegation submitted a position paper on JHA, building on the Irish draft.<sup>66</sup> The structure and language of the paper saw an emphasis being placed on community procedures but with a few notable exceptions. Firstly, the French called for a five-year period over which to establish the area of free movement of persons, asylum and immigration.<sup>67</sup> Secondly, while the procedures and conditions on establishing and maintaining such an area were set out in this new title the proposal did not specifically state that this title would form part of the first pillar. Other delegations were confused by the lack of clarity from the French.<sup>68</sup> Though the decision to remove the internal borders after five years would be taken 'on the basis of a detailed report by the *Commission* on implementation of the preparatory flanking measures' relating to security and crime, it was one that was confined to a unanimous decision by the Council.<sup>69</sup>

A more Community-oriented approach was reflected in the dual initiative for the Member States and the Commission outlined in Article G of the paper.<sup>70</sup> In acting on a proposal the Council was also required to consult the European Parliament.<sup>71</sup> Further signs of a Communitarian approach can be found in the recommendation to normalise the use of QMV.<sup>72</sup> Nevertheless, what the French gave with the right hand they took back with the left. The whole cooperation under the new title could be put on hold indefinitely for reasons of public policy or national security, echoes of the French approach on Schengen where the French have consistently used this guard in avoiding any implementation of the Schengen Convention it signed up to. Finally there was no role provided for the Court of Justice within this new title.

As mentioned this approach by the French reflected the divisions within the French government. While there was a strong emphasis from the foreign and justice ministries together with the on taking up a communitarian approach on JHA, the French position was not solid on this. The Ministry for Internal Affairs was reluctant to see any such

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<sup>66</sup> See *AE*, 16/12/96; CONF 3824/97.

<sup>67</sup> CONF 3824/97, Article C(5).

<sup>68</sup> Interviews.

<sup>69</sup> CONF 3824/97, p.6, Author's emphasis.

<sup>70</sup> *Ibid.*, p.7

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

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extension while the Elysée also expressed reservations. There was disquiet from within the Interior Ministry regarding what was considered as an overly ambitious French approach that would be difficult to implement.<sup>73</sup>

When the Dutch Presidency brought forth its March draft the proposed new title on *Freedom, Security and Justice* was part of the first pillar. The Dutch draft picked up on several of the French suggestions. Concerned with security implications of free movement for all people, including third country nationals, the French paper suggested replacing the one, two and three-year transitional periods outlined in the Irish draft on Articles B (asylum) and Article C (visas) with a five-year period.<sup>74</sup> The Dutch Presidency draft made this change. The Dutch Presidency, to the satisfaction of the French, also placed a greater emphasis on flanking measures and cooperation in fighting crime through Article A of the March draft.<sup>75</sup>

The influence of the French proposal contrasts with that from the Italian delegation at this time which suggested dropping any time frame for implementing any new title, while at the same time calling for a greater emphasis on the protection of fundamental human rights and fighting fraud and drug addiction.<sup>76</sup> It also called for the immediate use of QMV and co-decision in the title. These demands were ignored. While governments would eventually agree to the EP having a consultative role during the transitional period, with the Commission having a joint role with the member governments in launching initiatives there was little common ground for the immediate use of QMV or co-decision, except for the two areas on the list of third countries needing a visa on entering the Union and the rules on the format of these visas (Article 62(2)(b)(I) and (iii), both issues having been dealt with previously under 100c TEC.<sup>77</sup> Indeed, as is described below, the Germans would keep the whole issue of QMV and the transition period alive up until the final stages of the Conference.

As the negotiations reached their climax at Amsterdam, two changes in the domestic situation undermined the earlier French influence leaving them to accept a much more

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<sup>73</sup> Interview

<sup>74</sup> See CONF/3824/97, p.2.

<sup>75</sup> See CONF/2500/96 ADD.1, p.15.

<sup>76</sup> See CONF/3840/97, 06/03/97, pp.1-10.

<sup>77</sup> See CEC, *Note à l'attention*, March 1997.

pro-Community package under Title IV than would have been expected. Firstly, the Interior ministry was losing out to the more Community oriented stances of the Justice and Foreign Affairs ministry.<sup>78</sup> Its influence was waning at the critical stage. Secondly, the French general elections had brought about a shock result. Chirac was in cohabitation with the new Socialist Prime Minister Jospin. French officials and officials from other delegations, especially the British referred to a lack of political leadership as Amsterdam approached.<sup>79</sup> Jospin and Chirac were not focused on the detailed changes that the Dutch Presidency presented. This left the French drifting into an agreement on visa, asylum and immigration (Article 62 & 63) which were firmly placed in pillar one, which provided for a strong role for the Court of Justice, (Article 68) and which had a weakened opt-out facility for national security and public policy reasons (Article 64(2)) than the French originally desired. From the end of April '97 onwards as the negotiators at the political levels – the Heads of State and Government together with the Foreign Ministers – began to take on a greater role in the negotiations, the French were not focused. They had failed to anticipate and recognise the more communitarian approaches of the Presidency's proposals, signing up to a package with certain features that they had not intended.

While the attempts to shape the reforms to the third pillar culminated in an unintended outcome for the French government, the ambiguity that had shrouded the German position for much of the process began to lift. This revealed how fluid the negotiations were given that it caught the other governments by surprise. It was at this stage that the reticent Länder, as described above, proved influential. The Presidency's March draft and those from early June provided for an automatic ending to the transitional period. At Amsterdam Kohl insisted on a decision by unanimity to end the five-year transitional period. The Länder sought to maintain control on any *potential* move to QMV and co-decision. Similarly the three year transitional period under Article G, as outlined in the Dutch draft of March '97 under which decisions would be taken by unanimity, was extended to five years in the run up to Amsterdam.<sup>80</sup> This was again due to pressure from the German government that was in turn under pressure from the

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<sup>78</sup> Interviews.

<sup>79</sup> Ibid.

<sup>80</sup> See *ER*, N° 2228, 1997, pp.1-2.

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Länder to maintain a greater deal of control on this policy area.<sup>81</sup> The final wording of Article 67 reflected the Länder' preferences.

### Summary

The process of establishing a new title subject to some Community procedures and located within pillar I of the TEU was initially characterised by ambiguity. Member governments and the Irish Presidency were slow to provide the details on an issue that was repeatedly described as having the support of a large majority of governments. Chapter III on the pre-negotiations also mentioned how governments referred to the need and the possibility of transferring third pillar matters to the first, though their papers were unclear on what this precisely meant.<sup>82</sup> The Commission and the Council Secretariat were the first to provide any details. In turn the Irish Presidency and more so the Dutch built on this. Yet, as the process neared its end, the uncertainty and divisions in the German governments objectives, which had hampered the delegations' attempts to provide a coherent position earlier in the negotiations were replaced with a cautious welcome to the new title followed by Kohl's insistence that more checks were in place over the transitional period. While the German position became clearer, the French contradictions persisted with domestic distractions proving costly as they agreed to the new Title IV on *Freedom, Security and Justice*.

## **2. CRIME AND SECURITY**

### Background

The growing pre-occupation with crime in the early 1990s was related yet again to the changes in Eastern Europe and the opening of the borders after the collapse of Communism. With the rising flows of people and of goods across the EU's internal borders came a rise in transnational crime.<sup>83</sup> This required closer cooperation among national law enforcement agencies and the transformation of the European Drugs Unit into EUROPOL supplementing the slow procedures of INTERPOL. The Maastricht treaty sought to give a basis to the informal cooperation among police forces,

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<sup>81</sup> See CONF/2500/96 ADD.1, p.21; CONF/4002/97 p.22; See "Treaty of Amsterdam", AE, 17/06/97.

<sup>82</sup> See pp.18-80.

<sup>83</sup> See R. Clutterbuck, *Terrorism Drugs & Crime in Europe after 1992*, London: Routledge, pp.108-118; M. Den Boer & N. Walker, 'European Policing after 1992', *JCMS*, 31:1, 1993.

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intelligence services, customs and immigration services and their supervising ministries that grew up in the 1970s and 1980s.<sup>84</sup> More intensive patterns of working together, with new multilateral conventions and new institutions, necessitated government attention to reassure their publics about these new developments. As Guyomarch remarks

the government of almost every EU Member State has become increasingly afraid of its inability, acting alone, to deal with the effects of the removal of internal border controls on persons and goods and the ending of national controls on capital movements.

At the same time Anderson presents an elaborate argument outlining the limitations of the competence of the EU in criminal justice matters.<sup>85</sup> Den Boer also referred to Title VI as a 'compromised construction'.<sup>86</sup> Therefore governments sought to address this issue of enhancing cooperation in the fight against crime at the IGC, though as mentioned in chapter III few governments had well defined objectives on how to go about making this reform.<sup>87</sup>

### Introduction

The negotiations on crime and security received strong support from both the German and French governments, though there remained fundamental differences in their conceptions on the role for Europol. In turn the German government did not have the same influence in shaping the final package at a late stage in the negotiations as it did on communitarisation. Instead the two Presidencies, the Irish and the Dutch, were particularly influential in shaping the final amendments to Article K. As with the transfer of asylum, visa and immigration policies from the third to the first pillar it was very much a case of the Dutch Presidency preparing a package that both suited it domestically and which caught the French government by surprise.

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<sup>84</sup> See Malcolm Anderson and others, *Policing the European Union: theory, law and practice* (Oxford: OUP, 1995), ch.7.

<sup>85</sup> M. Anderson & Monica den Boer (eds.) *Policing Across National Boundaries*, London: Pinter, 1994, Chapters 6 & 7.

<sup>86</sup> Monica Den Boer, 'Police Cooperation in the TEU: Tiger in a Trojan Horse?', *CMLR*, 1995, 32, p.562.

<sup>87</sup> See pp.78-80.

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### German Position

The German government's coalition agreement from November 1994 on the third pillar focused in particular on completing and implementing the EUROPOL Convention. In outlining the government's philosophy behind its priorities a secure Europe was mentioned that would be achieved by developing EUROPOL.<sup>88</sup> In its official position submitted on the eve of Turin, the federal government again stressed the need for effective action on transnational crime and drug trafficking.<sup>89</sup> This could only be secured via closer police cooperation that would eventually lead to a European force with operational powers.

On 4 March 1996 Hoyer circulated within the Auswärtiges Amt. a draft article suggesting a Community competence to combat cross-border crime. He also suggested that it was essential to have a clear reference giving EUROPOL operational powers. This would be facilitated for via the approximation of laws.<sup>90</sup> A similarly forward and ambitious approach was also expounded by the Foreign Minister Klaus Kinkel the previous week. He suggested using QMV on such issues. However, there was the opposing view from within the Foreign Ministry, primarily headed by Silberberg. While he suggested that QMV should be used in such areas, he stated that the German approach should make it clear to the other delegations that there should be no future Community competence over police and judicial cooperation in criminal matters.<sup>91</sup>

### British Position

The approach taken by both the Conservative and Labour governments on communitarisation and the proposed dismantling of internal borders to establish an area of *Freedom, Security and Justice* constrained their approaches on policing and crime in two ways. Firstly, since the Conservative government for the greater part removed itself from the negotiations on communitarisation, its influence and the relevance of its position on the flanking measures that were being vigorously pursued by the French delegation was similarly reduced. The same was to apply to the Labour government.

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<sup>88</sup> See *Point VIII*, 11 November 1994.

<sup>89</sup> See *Germany's objectives*, 26 March 1996.

<sup>90</sup> Interviews.

<sup>91</sup> Ibid.

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Secondly, given that both parties' positions favoured an intergovernmental approach based on unanimity with Westminster in full control of British borders, their proposals on police cooperation were always going to be limited.

Both parties supported greater cooperation between national police forces.<sup>92</sup> In outlining the successes of the third pillar, the Conservative's 1996 White Paper concentrated on the signing of the Convention on Europol and the growing importance of Europol, but only in a support capacity to national police forces.<sup>93</sup> Any cooperation would be on an intergovernmental basis. On the eve of Turin the government repeated its determination that any police cooperation would remain intergovernmental, an exclusive concern for the Member States. It continued to refuse to recognise and apply the Protocol to the Europol Convention providing a role for the Court of Justice. One British official commented that 'We are looking for arguments of substance that demonstrate the need to include the court, not theological arguments that define positions ahead of the IGC'.<sup>94</sup>

### **French Position**

As mentioned in the previous section the French government was particularly concerned with ensuring that there were sufficient measures to flank any removal of internal borders. These flanking measures would focus on two levels: the strengthening of the external borders and greater cooperation between the national police forces and Europol in the fight against crime.<sup>95</sup> The periodic bombing in the heart of Paris in 1996 had focused both the public and political elites' attention on the need to combat international crime and terrorism.<sup>96</sup>

As with the British this cooperation was to proceed on an intergovernmental level with Europol acting in a support capacity. However, the French government expressed a willingness for the Commission to be given powers of initiative in this area, while

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<sup>92</sup> See *Partnership of Nations*, 1996; *Strategy for a New Europe*, 1995, p.15.

<sup>93</sup> See *Partnership of Nations*, 1996, paragraphs 52-53.

<sup>94</sup> See Emma Tucker, 'UK stonewalls over setting up Europol: British stance foreshadows battles at IGC', *FT*, 20/03/96; European Parliament, *Briefing No. 26: EUROPOL*. Luxembourg: OOPEC, 1996; Interview.

<sup>95</sup> See *Memo*, 1996.

<sup>96</sup> See EIU Country Report - France - 1<sup>st</sup> Quarter 1997.

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acting in tandem with the Member States. It also proposed that national parliaments participate in the drafting of legislative texts together with the 'High Parliamentary Council' where the proposed legislation affects civil or criminal law.<sup>97</sup> The extent of French concerns on ensuring close cooperation on fighting crime was reflected in their proposal that a principle under international law that allows acts to come into effect without waiting for the instruments of ratification to be deposited should be used in this context. Nevertheless, the French government's ability to push the negotiations along on this subject was undermined by its approach on cross border cooperation up until this time. A series of high profile confrontations between the French police and politicians and their Belgian counterparts depicted the French as treating cooperation on combating crime as one way traffic, availing of hot pursuit into Belgium but failing to make the necessary legal changes allowing for hot pursuit by the Belgian authorities into French territory.<sup>98</sup> This culminated in a somewhat bitter exchange between the French and Belgian interior ministers.<sup>99</sup>

Finally the French government and notably President Chirac were determined to strengthen any new title in the first pillar and what remained of an intergovernmental third pillar in the fight against drugs.<sup>100</sup> However, as was the case in the transfer of asylum, immigration and visa issues to the first pillar, the French government had not clarified and worked through in detail how it wanted to deal with this issue. The Dutch Presidency proved skilful in capitalising on this lack of clarity, as is shown below.

## Negotiations

### Irish Presidency

Throughout the Italian Presidency and for the earlier part of the Irish the negotiations lacked direction. No delegation tabled a detailed non-paper and there were no notable discussions at either the personal representative level or among foreign ministers.

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<sup>97</sup> The French proposed that 'High Parliamentary Council' which would comprise two representatives from each Member State, together with an institutionalised COSAC, being consulted on all matters relating to the principle of subsidiarity. See *Memo*, 1996.

<sup>98</sup> Hot pursuit refers to the ability of police officers to continue a pursuit of a suspect that may have committed a crime in one Member State after the suspect has cross the border into another Member State.

<sup>99</sup> See *AE*, 20/04/95; 'Mr Pasqua Says France will Respect its International Commitments "Without Reserve"', *AE*, 24/04/95; 'Ministerial Meeting on Friday to be Dominated by Problems Encountered in the Implementation of the Convention', *AE*, 27/04/95.

<sup>100</sup> Interviews.

Nevertheless, while the Irish Presidency had hesitated on the location of any new title on *Freedom, Security and Justice*, it eventually proved very influential in shaping the core parts of what was left of pillar III. The Irish Presidency had geared itself towards improving the provisions on crime. The Taoiseach had listed the three goals of the Irish Presidency as being ‘safe streets, sound money and secure jobs’.<sup>101</sup> The Foreign Minister promoted a similar theme on the lead up to the Presidency and throughout his office. He declared that ‘There are a great many items on the Union’s agenda, but we have chosen to devote special attention to two - employment and drugs’.<sup>102</sup> He described these issues as ‘vital barometers of the Union’s wellbeing’.<sup>103</sup> There was a strong consensus within the Irish Rainbow Coalition of Fine Gael, Labour and Democratic Left on the need to tackle an increasingly high level of organised crime in the capital city of Dublin. The shooting dead of a well-known and respected investigative journalist, Veronica Guerin in July 1996 focused public and media attention on the problem. Given the international nature of this crime, much of it drug related, the Irish government had a favourable domestic environment and an interest to push the debate forward on third pillar matters.

The fact that it was not until late November that the Presidency began to consider detailed and specific changes reveals the lack of initiative among the other delegations. Again it depicts how governments had not sorted out their objectives in any sufficiently detailed manner. Even by November only two delegations submitted papers of note, namely the Spanish, with their concerns on cooperation against terrorism and the Belgian delegation’s submission that was similar to the earlier Benelux memorandum with its more supranational emphasis. Articles K.1a and K.1b of the Irish draft treaty dealing with the objectives of cooperation on crime & police cooperation respectively, remained largely unchanged until the final draft at Amsterdam. The Irish draft struck a balance providing for closer cooperation between national police forces while at the same time calling for this cooperation to involve Europol, with the latter’s powers being gradually increased over a five year period.<sup>104</sup> There was something in this for the French, British and Germans. However, consistent with the negotiations elsewhere on the treaty, the Irish Presidency avoided making

<sup>101</sup> ‘Bruton keen to convey EU aims in simple terms’, *IT*, 03/07/96.

<sup>102</sup> See again *IT*, 01/07/96.

<sup>103</sup> *Ibid.*

<sup>104</sup> See CONF/2500/96, Articles K.1a & K.1b, pp.33-35.

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proposals on the institutional and decision-making issues in this area. Again it was left to the Dutch Presidency.

### Dutch Presidency

The February proposal from the Dutch Presidency introduced cooperation between national judiciaries on criminal matters under Article K.1c. This formed Article K.3 in the March draft and the final treaty with its form and contents for the greater part remaining unchanged. The only three papers of detail came from the Italian, French and German delegations. The Italian paper focused on the institutional features of what remained of the third pillar. It called for the widespread use of QMV with a role for the Court of Justice similar to that under pillar I. The paper gave the Commission a right of initiative with a consultative role for the European Parliament.<sup>105</sup> While there would be sufficient agreement among governments for the Commission to have a joint role of initiative, there was not sufficient support among governments for QMV to be used in the third pillar. The French paper as described below was clear that unanimity would remain the norm.<sup>106</sup> The final treaty also provided the EP with a consultative role under Article 39 TEU reflecting the support that several governments gave to this idea in their official position papers at the start of the Conference. However, as was the case on extending the parliament's powers on co-decision the issue of a consultative role in the third pillar raised little debate over the sixteen months.<sup>107</sup> As for the Court of Justice, its specific role was part of a struggle between the French and Dutch approach on fighting crime, specifically drug-related crime.

The French continued their emphasis on the need for strong flanking measures in fighting crime, with closer cooperation between national police and judicial forces with Europol acting in a support capacity.<sup>108</sup> Their paper recommended the continued use of unanimity; Article K.3 confining QMV to joint actions of an operational nature, though the same Article also provided the Commission with a joint initiative role and a consultative role for the European Parliament. Yet, it was at this stage that the contradictions and lack of clear objectives within the French position were most apparent. With its tough policy on drugs, the French paper set out a series of much

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<sup>105</sup> See CONF/3840/97, Article H, p.9.

<sup>106</sup> See CEC, *Note à l'attention*, March '97.

<sup>107</sup> Interviews.

<sup>108</sup> See CONF 3824/97, pp.12-13.

stronger articles than the Dutch or Irish Presidency's papers. The Dutch government was taking a more liberal line on the drugs issue, preferring to deal with it as a public health matter under Article 129, while keeping any criminal policy as an intergovernmental matter. This was consistent with a liberal Dutch domestic policy on drugs. A comparison between the French and Dutch papers highlight their different approaches. French amendments to Article A of the Irish draft called for measures in the fight against drug *addiction* as well as trafficking.<sup>109</sup> The Dutch proposal confined itself to trafficking.<sup>110</sup> While the French sought to replace Article E of the Irish draft which dealt with cooperation on drugs and drug-related crime with the 'corresponding provisions in Articles A and K', the Dutch paper simply dropped the Article.<sup>111</sup> The trend continued throughout Article K. The French paper again called for 'priority measures' on drug consumption as well as trafficking.<sup>112</sup> It also provided a detailed outline on the drugs policy to be adopted by the Member States.<sup>113</sup> The final significant change proposed by the French paper came with Article K.4 which outlined a role for the European Court of Justice in regulating disputes between Member States on measures taken under Article K.<sup>114</sup>

However, the final result at Amsterdam was more of a victory for the Dutch Presidency than the French government. Firstly, the Dutch managed to confine references to criminal matters on drugs to the intergovernmental pillar of Title VI, rather than making reference to fighting the problem in Title IV as the French would have preferred. Secondly, the fight against drugs outlined in Title VI was confined to matters of trafficking rather than consumption. As mentioned the French were keen to tackle consumption as a criminal matter, the Dutch were not. Consumption was dealt with as a public health matter under Article 129 TEC. Therefore the Dutch Presidency was comfortable with the ECJ having a role under Article K. Belgium, Greece, Spain, Luxembourg, Portugal in their earlier position papers at the start of the negotiations had also briefly mentioned the possibility of the ECJ having a role in the third pillar,

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<sup>109</sup> Ibid., p.4

<sup>110</sup> CONF/3823/97, p.6.

<sup>111</sup> CONF 3824/97, p.7.

<sup>112</sup> Ibid., Article K & Article K.1.

<sup>113</sup> Ibid., Article K.1b, p.13

<sup>114</sup> Ibid., pp.16 & 17.

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while the Commission in March '97 claimed that all governments except for the British and Greek were prepared to accept such an extension in the Court's powers.<sup>115</sup>

While the role for the Court of Justice outlined in Amsterdam was optional, reflecting long term British preferences, the final treaty provided for a much stronger Court than the French had advocated back in February '97. Having already signed up to a potentially strong role for the Court under Title IV and having lost out on its objectives for a stronger drugs policy, the French failed to sign up to accepting the ECJ's jurisdiction under Title IV (Article K). The divisions between the Foreign Ministry and the Interior Ministry over the whole restructuring of the third pillar, the preoccupation among the political elite to the surprise election result and in turn the poorly defined objectives, yet again left the French government with an outcome that it had not intended. France was not alone in balking at the changes on the table at Amsterdam. Despite the Commission's earlier claims on the ECJ only Belgium, Germany, Greece, Luxembourg, Austria and the Netherlands signed up for the Court's role under Article 35 TEU.

The German delegation submitted a paper somewhat late on in the negotiations on 9 May.<sup>116</sup> The paper focused specifically on police cooperation. As mentioned above, the German government attached particular importance to this issue. The proposal failed to change Article K.1 and K.2 of the Dutch Presidency's March draft, which had in turn been closely modelled on the Irish Presidency's conclusions. The German proposal went further than the second paragraph of Article K.2 (now Article 30 TEU) in providing powers for Europol. For example, the Germans wanted Europol to be able to obtain any information, from both public and non-public sources, on its *own initiative* in any of the Member States. It also sought to make it compulsory for Member States to distribute information among themselves and Europol. Most emphatic of all was its call for the Council not to merely 'promote cooperation through Europol' but to equip it with full operational powers.<sup>117</sup> Such a call for a strong Europol at such a late stage in the negotiations was particularly unacceptable to both the French and British, which, as mentioned above, supported further police cooperation while emphasising that between national forces with Europol acting in support. Indeed Finland was the only

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<sup>115</sup> See CEC, *Note à l'attention*, 12 March 1997.

<sup>116</sup> CONF/3910/97, 13/05/97.

<sup>117</sup> *Ibid.*, Article K. 2(1).

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other member government that had specifically called for a fully operational Europol in its position paper from March '96. The German paper proved ineffective.

### **3. SCHENGEN AND BORDER CONTROLS**

#### **Background**

The Schengen Agreement made up of the original Convention signed on 14 June 1985 and the Schengen Implementing Convention of 19 June 1990 'effectively acted as a substitute for reform at EU level in the area of border control'.<sup>118</sup> The EU's own External Borders Convention was deadlocked with disputes between Britain and Spain regarding Gibraltar, and disputes over the role of institutions. In some respects Schengen competed or overlapped with the structures under Pillar III, given that it aimed to create a common territory without border controls with harmonised rules on the crossing of common external frontiers, visa policy and movement of third country nationals inside the Schengen area. However, despite the fact that not all Member States were Schengen members, Articles 134 & 142 of the Schengen Implementing Convention required the Convention to be compatible with Community law while envisaging that the European Communities would eventually achieve an area without internal borders.

Within the Schengen Area there were considerable difficulties with implementing the agreements. The Benelux, Germany, Portugal and Spain implemented the agreement while the Nordic common transport area was in essence absorbed into the Schengen system by 1996. France, while being an original signatory, continually delayed implementation, as did Italy and Greece, given that they were frontline states with a poor system and record in monitoring their borders. The UK and Ireland continued to remain outside the area.

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<sup>118</sup> Gavin Barrett, 1997, p.14. On Schengen see Monica den Boer (ed.), *Schengen, Judicial Cooperation and Policy Cooperation*, Maastricht: EIPA, 1997.

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## Introduction

In the pre-negotiation stage (see Chapter III) there was little mention of bringing the Schengen *acquis*, or body of rules into the European Union. The Reflection Group mentioned the possibility but few official position papers referred to this, and those that did, were rather hesitant and unclear.<sup>119</sup> Therefore the incorporation of the Schengen *acquis* into the European Union was not only the most significant change introduced by the Amsterdam Treaty but also one of the most unexpected. As the examination of the negotiations below shows, this was an issue on which the Dutch Presidency yet again dominated. The German government along with the Italians were the only other two members to come close to outlining in any detail their preferences on this issue. Even then there were the inevitable contradictions in the German position. Throughout the negotiations no member government submitted a Conference document on Schengen, except for the Dutch.<sup>120</sup> Therefore until the Dutch Presidency there was almost a total absence of discussion on Schengen. The Dutch brought direction to, and skilfully conclude the incorporation of, what had been for the Dutch government a clearly established objective from the outset. Yet, this would come at the expense of any clarity as to what exactly the Schengen *acquis* entailed and without any appreciation of the consequences of such a move. This was a matter that the Presidency preferred to leave to the post-negotiations.

## French Position

The French government was fundamentally ambiguous on Schengen. While the French had been part of the original group establishing Schengen, successive French governments failed to fully implement the Convention. This was due to several factors. Firstly, as mentioned in chapter IV, the French, while signing up to agreements and conventions, are less willing or, at times, able to implement these decisions.<sup>121</sup> Secondly, the French government doubted the security and integrity of certain parts of the external borders, particularly the Italian and Spanish borders.<sup>122</sup> Thirdly the French

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<sup>119</sup> See pp.78-80.

<sup>120</sup> The Italian and German ideas did not make it into an actual position paper.

<sup>121</sup> See pp.104-5.

<sup>122</sup> Interviews.

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government expressed outright opposition to the Dutch government's drugs policy.<sup>123</sup> On the eve of the full implementation of the Schengen convention in June 1995, the French government unilaterally extended its period of non-implementation for a further six months. The wave of terrorist bomb attacks in Paris provided a weightier justification for the French government's actions.<sup>124</sup>

As mentioned above, the French position throughout the IGC focused on the need for strong and effective external borders before it was possible to abolish internal borders. Adopting a similar approach and line as within the Schengen structure, the French made little running on a change in the status quo as regards incorporating the *acquis*. In its position paper (February 1996) at the start of the Conference it made no reference to Schengen and it did not submit any papers on the subject throughout the negotiations.

### German Position

The German approach on Schengen was also loosely defined. There was no mention of any incorporation of Schengen in the federal government's pre-negotiation position papers or in the position paper of the Länder.<sup>125</sup> This was again a reflection of the lack of priority that was attached to such a move at that time. A similar state of affairs that existed on the third pillar was equally identifiable between the Interior, Justice and Foreign Ministries on Schengen. The Interior Ministry and the Länder governments expressed concern regarding the permeability of the external borders. The Interior Minister Kanther cited the Italian borders as a particularly weak point, while others including certain individuals in the SPD recommended the maintenance of border control with Austria, given that it was 'under considerable migratory pressure' with its four eastern European neighbours.<sup>126</sup>

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<sup>123</sup> 'Cautious Progress by France towards Lifting Controls, Rapprochement over Drugs', *AE*, 20/12/95; 'Belgian Interior Minister, Mr. Vande Lanotte, convokes the French ambassador following the words of President Chirac', *AE*, 20/09/95.

<sup>124</sup> 'France reintroduces Controls, at Airports, of Passengers Travelling in the Schengen Area', *AE*, 28/07/95.

<sup>125</sup> Bundesrat. Enstchließung des Bundesrates, Forerungen der Länder zur Regierungskonferenz. Drucksache 667/95, 1996; see, *Germany's Objectives*, 1996.

<sup>126</sup> See EU News of the Week, 15-21/05/95; EU News of the Week, 23-29/06/97.

However, as the negotiations commenced support was expressed from within the Auswärtiges Amt. for an incorporation of the *acquis*. Yet, the German government had not a clear objective as to how the *acquis* would be incorporated. Initially support was expressed for the phased approach on integrating the *acquis* as set out in the Dutch paper of 15 July 1996 (CONF/3872/96).<sup>127</sup> Nevertheless, on 18 November 1996 Hoyer remarked that its incorporation should come by flexibility, rather than the third pillar, and its *acquis* should be left intact. Similarly, in a joint article in the *Frankfurter Allgemeine*, 21 February 1997 and *La Stampa* 22 February 1997 the German and Italian Foreign Ministers remarked that, while it would be preferable to have everyone at the same level on Schengen, a flexibility mechanism might be necessary on incorporating into the treaty. At a later stage in the negotiations another German-Italian initiative focused on the pillar which the *acquis* would form part of. The first pillar was suggested on the basis that Schengen's effectiveness and dynamism would be improved through the Community methods and procedures.<sup>128</sup>

### **British Position**

The Conservative and Labour governments' opposition to any incorporation stemmed from the myth on border control. Westminster's exclusive domain on maintaining border control formed the backbone of both the Conservative and Labour governments' approaches on the third pillar. This amounted to a myth in so far as much scepticism surrounded the actual benefits of such an approach on border controls.<sup>129</sup> Yet, it was an issue that was pursued and defended by both parties in a strong fashion. There was a high degree of continuity between the two governments on this issue.

The Conservative government adopted the expected hard-line approach. At the parliamentary debate on 16 December 1996 on the Dublin II European Council meeting, the Prime Minister and Foreign Secretary were at pains to reassure their own backbenchers, particularly the Eurosceptics, on their willingness to maintain control of UK borders. While the Prime Minister gave 'categoric [SIC] assurance[s] on that point', the Foreign Secretary remarked that the government did 'not [have] the

<sup>127</sup> Interviews.

<sup>128</sup> 'Germany And Italy Adopt A Common Position On The Schengen Agreements', *AE*, 1/03/97.

<sup>129</sup> See Britain: 'The island view: Immigration controls: Britain and Schengen', *Economist*, 07/06/97.

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slightest intention of conceding one inch'.<sup>130</sup> As with the debate on the European Union four days prior, Rifkind was selective in his focus on the draft treaty remarking 'that if the Schengen agreement was ever incorporated into the European Union there would have to be "provision for opt-outs"'.<sup>131</sup> However, from the Foreign Secretary's comments and based on paragraph 51 of the government's White Paper, it was clear that the Conservative government was prepared to allow for closer cooperation among the other member governments, while the British opted out. This line was again repeated by David Davis on his return from the 11 January '97 meeting of personal representatives. He welcomed 'the fact that Mr. Patijn should have recognized that the United Kingdom should keep its right of control over its own borders,' going on to claim that it 'demonstrates that the other Member States recognize the importance that the United Kingdom attaches to retaining its border-controls'.<sup>132</sup>

The Labour party in its 1995 paper stated that 'Labour does not believe that Britain should participate in the Schengen Agreement'.<sup>133</sup> The Labour government attempted to set its position off from the Conservatives by claiming that they would secure in writing what the Conservatives had failed to achieve after eighteen years in office. The new Foreign Secretary, Robin Cook, remarked on the Amsterdam summit, at the House of Commons debate on European Union on 9 June, that the Labour government would obtain 'a legal basis beyond challenge in the European Court of Justice for Britain to maintain its external border controls, which the Conservative Government never secured in 18 years'.<sup>134</sup> As he left for the Amsterdam Summit, Cook re-emphasised the need for 'a legally watertight provision for Britain's external border controls and control of our immigration', while Blair stressed the importance of the exemption being written into the treaty, declaring that without such a provision 'our ability to control our own borders would be eliminated'.<sup>135</sup> This determination would see it secure two opt-outs from both the relevant articles under Title IV and the Schengen *Acquis*.

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<sup>130</sup> Hansard Column 627, 16/12/96.

<sup>131</sup> Ibid. Column 434.

<sup>132</sup> AE, 12/12/97.

<sup>133</sup> Labour, 1995, p. 15.

<sup>134</sup> See Column 806, Hansard Reports, 09/06/97.

<sup>135</sup> 'Britain: Cook urges EU to set its sights on new goals', FT, 16/06/97; Hansard Reports, 18/06/97.

The Labour government's approach on border control was important in another sense, namely, defining their relations with the rest of the European partners. It has already been described how the Labour government's arrival had been met with expectations from other member governments that there would be a significant change in the British approach.<sup>136</sup> Labour had been keen to satisfy those expectations.<sup>137</sup> At the same time, as an inexperienced government party, it was equally keen to build on its image as a tough and serious negotiator.<sup>138</sup> It had sought to set a somewhat similarly balanced approach during the election campaign.<sup>139</sup> Negotiations on Schengen and border control were centre pieces of this balanced image, a marked contrast to the extreme approach of the previous Conservative administration.

### Negotiations

The incorporation of Schengen was a Dutch-led campaign from the very outset of the negotiations, or more accurately, a campaign led by the Secretary of State for European Affairs, Michel Patijn. Similar reasons, as with its preoccupation on the transfer of asylum, visa and immigration to the first pillar, explain the Dutch approach. Those close to Michel Patijn expressed the view that the Dutch conception from the very foundation of Schengen was that it should eventually be incorporated into the EC/EU's institutional structure.<sup>140</sup> There was also the political mileage that would come with this achievement. In no other area of reform at the IGC did any single actor dominate a portfolio as the Dutch did with Schengen. As one British official remarked, 'The Dutch were in complete control of Schengen'. Indeed, this was acknowledged by all those interviewed.

### Irish Presidency

The Dutch delegation on 15 July 1996 had submitted a proposal on incorporating Schengen into the European Union.<sup>141</sup> In its proposal it suggested a three-stage approach to be followed in order not to force such incorporation into the Union. The proposal was

<sup>136</sup> See again Barber & Buckley, *FT*, 06/05/97; Barber, 06/05/97; Tom Buerkle 'Hopes Rise That Britain Will Warm To Europe', *IHT*, 03/05/97.

<sup>137</sup> See again Doug Henderson, 'a fresh start', 05/05/97.

<sup>138</sup> Robert Peston, 'Blair: British interests come 'first, second and last'', *FT*, 10 May 1997; 'Ending Britain's self-imposed exclusion', *IHT*, 23/05/97; 'Britain Signals New Era With EU', *IHT*, 06/05/97.

<sup>139</sup> Robert Peston, 'New stance: Labour leader scorns EU 'superstate'', *FT*, 22/04/97.

<sup>140</sup> Interview.

<sup>141</sup> CONF/3872/96.

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discussed at the personal representatives' meeting of 18 November 1996. Yet, there was little willingness from the Irish Presidency to push the debate along on an issue where the difficulties were very apparent for the Irish government, given the common travel area between Ireland and Britain, and the position taken by the British Conservative government and the Labour party on Schengen. Ireland, along with Britain, was neither a member of Schengen nor was it supportive of its introduction into the European Union. Given that Ireland and Britain share a common travel area, it would have been inconceivable for the former to sign up to an *acquis* with the latter adamant on maintaining control of its borders. As mentioned above, an opt-out would be necessary.

The absence of any discussion on the incorporation of Schengen into the European Union up until the December draft was not solely due to a reluctance from the Irish Presidency. No other member government submitted a detailed paper on Schengen. The Italian Presidency, in its conclusions at Florence, had included an outline draft protocol on incorporating Schengen but it together with the Dutch proposal was barely discussed, and from accounts from certain officials they were barely aware of the presence of these documents.<sup>142</sup> Indeed, Bobby McDonagh of the Irish Foreign Ministry remarked that 'in the absence at that time of clear signals of interest from ... Member States' the one proposal that was submitted lay dormant'.<sup>143</sup> In turn the draft treaty was left significantly devoid of any detail on a Schengen incorporation. It dealt with Schengen in two sentences, describing its possible incorporation as 'An important issue requiring further consideration by the Conference', going on to mention that 'it might be done in a phased way with a provision for opt-outs'.<sup>144</sup> To conclude, the Irish Presidency was content to use the lack of initiative from the other member governments in a manner that suited its own domestic situation.

### Dutch Presidency

Holding the Presidency allowed Michel Patijn to build on the July 1996 proposal on Schengen. The Dutch success in having the *acquis* incorporated was due to several factors. Firstly, the Dutch were very particular in running the show. This was reflected in the tension that arose between the Presidency and the Council Secretariat. On the incorporation of the *acquis* the Dutch Presidency departed from the established

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<sup>142</sup> For Italian Presidency's proposal see CONF 3860/1/96 ADD 1, p.12-13.

<sup>143</sup> See McDonagh, 1998, p.174

<sup>144</sup> CONF 2500/96, p.38.

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drafting practices: the Council Secretariat making the first draft, passing it to The Hague for the Presidency's position and suggestions, before being returned to the Secretariat for the necessary changes to be incorporated. Certain Dutch officials suggested that the Secretariat was reluctant to agree to the approach proposed by the Presidency, in particular regarding the Schengen Secretariat being absorbed into the Council Secretariat.<sup>145</sup> Therefore the Dutch did almost all the drafting on Schengen. The Presidency effectively froze out the Secretariat. The Council Secretariat acknowledged that this was the case, criticising the Presidency claiming that it was not receptive to its advice and was very often unavailable.<sup>146</sup>

Secondly, the Presidency moved very quickly to deal with any criticisms to its approach. There were efforts from within the British Foreign Office that sought to pressurise the newly appointed Foreign Secretary to urge his fellow foreign ministers to be more thorough in their approach on incorporating Schengen.<sup>147</sup> The Irish Foreign Ministry similarly attempted to bring to the attention of the Presidency the potential negative implications of its actions as regards a grand incorporation, McDonagh remarking that 'it was not clear at the outset how it would work in practice'.<sup>148</sup> Yet, neither government was in a position to persuade, given that they would not be part of the new arrangement. Even when the British and Irish governments requested a copy of the Schengen *Acquis*, the Presidency, despite the difficulties in locating and assembling the document, forwarded a twenty thousand page copy of what it claimed to be the *acquis*.<sup>149</sup>

On 4 February 1997 the Presidency tabled a non-paper that aimed to 'examin[e] the techniques through which a possible incorporation could be achieved'.<sup>150</sup> Two options existed. The 'enabling clauses' flexibility approach that was simultaneously being negotiated could be applied to the Schengen *acquis*, or what the Dutch termed the 'predetermined' flexibility approach would see the full *acquis* being incorporated into the Union by means of a protocol. The Presidency's commitment to incorporating the *acquis* was such that the draft protocol attached to the proposal included complicated

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<sup>145</sup> Interviews.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.; Also see McDonagh, 1998, p.176.

<sup>148</sup> Ibid.

<sup>149</sup> Interviews.

<sup>150</sup> CONF/3806/97.

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clauses, necessary to accommodate the Nordic Travel Area and the British and hence Irish resistance to abandoning frontier controls.<sup>151</sup> This would be the approach that would eventually win favour in its final 5 May paper on Schengen.<sup>152</sup> This paper was very similar to the final protocol that would be attached at Amsterdam, except for further additions on the role of the Court of Justice and the need for a separate agreement between Ireland, UK, Norway and Iceland.

The Dutch Presidency was able to maintain such tight control due to the lack of initiative from any other member government. There were no submissions during its Presidency proposing an alternative approach or suggesting a balanced consideration of the potential difficulties of the process e.g. the nature of the arrangements with Norway and Iceland on what exactly the Schengen *acquis* included. As with so many other issues at this IGC, few governments had clear objectives on the necessary detail on what they wanted. However, given that the Italian and German governments came the closest to presenting a detailed position, while Belgium, Luxembourg, Austria and Spain had briefly acknowledged their support for the incorporation of the *acquis* in their earlier position papers during the pre-negotiations, the Dutch Presidency was able to use this tentative support, build on it through bilateral meetings with each delegation in the latter half of April '97 and bring all, except Britain, Denmark & Ireland along with its approach. The Greek government ratified the Schengen Convention on 11 June 1997 and was comfortable with the Presidency's approach, while as mentioned above, the Nordic bloc had been absorbed into the Schengen area.<sup>153</sup> The French government as on the other issues in justice and home affairs signed up to the incorporation of the *acquis*, Chirac and Jospin distracted with their unexpected cohabitation and unaware, as with most of the other governments, of the domestic implications of the changes, namely the potential constitutional difficulties that would come with the ratification and implementation of these treaty amendments.

Member governments drifted along, or rather they were steered along, by a skilful Dutch Presidency into accepting what was the most significant amendment from the

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<sup>151</sup> Ibid. pp. 3-4 & 8-11; Also for succinct account see McDonagh, 1998, p.175. The Nordic Travel Area, which provided a common transport area and free movement between Nordic countries, included both Iceland and Norway, both of which are Schengen members but not members of the EU.

<sup>152</sup> See CONF/3896/97.

<sup>153</sup> See AE, 12/06/97; Athens Times, 12/06/97; Athens Times 13/06/97.

1996-97 IGC. At no stage in the negotiations from January to June '97 did member governments establish what exactly the Schengen *acquis* entailed. Indeed officials within the Dutch Presidency admitted that when they requested a copy of the *acquis* from the Schengen Secretariat the latter were similarly unsure of what this included. Again, this was a reflection of the informal nature of cross border cooperation among police forces, immigration services and their supervising officials and ministries that had evolved over the previous decades. Indeed, 15 months after the Amsterdam Treaty had been signed and after most Parliaments had completed the process of ratification, the British Government in response to a strongly-worded House of Lords Committee Report on Justice and Home Affairs delivered declared that 'It would...appear premature to publish a series of texts purporting to form the Schengen *acquis*'.<sup>154</sup> Negotiations on what had been decided at Amsterdam continued well beyond the coming into force of the Treaty, without sufficient legal clarity on what had been decided on a late night in Florence on 21-22 June 1997.

## **CONCLUSIONS**

This chapter was divided into three sections that aimed to explain the negotiations on the communitarisation of asylum, immigration and visa policy, reforming crime and security in the third pillar, and the incorporation of the Schengen *Acquis* into the TEU. The central argument in this chapter was that across these three areas the negotiations were defined by ambiguity and indirection, which in turn gave rise to unexpected changes and outcomes, or the postponement of crucial issues until the implementation of the treaty.

On communitarisation and crime and security governments had been slow to provide detailed position papers building on their earlier more general support for change. On Schengen, only the Dutch government submitted a detailed plan early-on in the negotiations on incorporating the Schengen *acquis*. Therefore on the first two issues it was not until late in the Irish Presidency, towards the middle or end of November '96, that the negotiations were given some direction. It is worth restating that, on communitarisation, the Commission and Council Secretariat led the way. The Irish Presidency built on this with a series of other proposals from the French, Benelux and

<sup>154</sup> Para.10 of Government Response to Lords 31st Report, Sept.1998.

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Danes. The Irish Presidency's Articles K.1 and K.2 on the objectives of cooperation on crime and security and police cooperation would undergo little change over the Dutch Presidency and in the final treaty at Amsterdam.

The Irish Presidency had been reluctant to confirm the transfer of asylum, visa and immigration policies to the first pillar as well as putting forward proposals on the institutional set-up. This left the Dutch Presidency playing a crucial role on all three issues, but most particularly on the incorporation of the Schengen *acquis*. Even in early '97 there were few expectations of the Schengen *acquis* being incorporated into the treaties. What was even more unexpected was the manner in which this was achieved, with the Dutch in complete control, with what seemed like a deliberate policy of avoiding any consideration as to the contents of the *acquis* or the implications for the European Union or the Schengen area. These were matters that were left to be decided after the IGC had been signed and the treaty concluded. It was a case of postponement.

Schengen was not the only issue where governments stumbled into agreement, or, in the case of Schengen, were led into agreement without anticipating the consequences of their decisions. France and Germany were the other main players on reforming the third pillar. The internal divisions and contradictions in their positions proved particularly influential on the result at Amsterdam. For the French government these internal divisions left it signing up to a Title IV on visa and asylum, without fully appreciating or expecting such a strong role for the supranational institutions, particularly the Court of Justice. On title VI, while proving influential in the early stages of the Dutch Presidency, it was a similar case of domestic distractions that left the French again with a package of changes that it had not expected. For the German delegation it was more a case of proceeding through a thick fog for much of the negotiations with little input – as was the case on other issues such as the extension of QMV – before eventually arriving with a position largely shaped by the Länder which took the other governments by surprise.

The past two chapters on institutional reform and justice and home affairs have displayed, to varying extents, the four features of ambiguity, indirection, unintended outcomes and postponement. These four features reflected the incremental nature of

the IGC process, governments slowly sorting out their priorities after a period of indirection. Yet, sometimes they failed to clearly define their objectives drifting into agreement or postponing for another time. It now only remains to examine how the negotiations on CFSP proceeded. This is the subject of the following chapter.

## **CHAPTER VII**

### **COMMON FOREIGN AND SECURITY POLICY**

#### **INTRODUCTION**

Articles J.4(6) and Article J.10 of the Maastricht Treaty were very clear in placing CFSP on the agenda of the 1996 IGC. The same two articles also reflected how Maastricht had postponed certain divisive issues such as WEU-EU relations and the application of Community procedures for another IGC. The primary aim of this chapter is to examine the negotiations on WEU-EU relations, common strategy, policy planning capability, Mr. CFSP, and decision making within the second pillar. This analysis is carried out by dividing the chapter into three sections. The first considers the relationship between the WEU and the EU. As with earlier chapters, the positions of the British, French, and German governments are initially outlined before examining the negotiations, usually from June 1997 onwards, though, where relevant, events under the Italian Presidency are referred to. The second section considers the negotiations on the proposed new machinery to CFSP; the Policy Planning unit, common strategy and Mr. CFSP. Both section one and two begin with an outline on the developments of CFSP since Maastricht. This provides a clearer understanding as to the shaping of the agenda and the positions that governments adopted. The third section examines the negotiations on decision making, focusing on QMV and its related issues. Each section outlines the features that underpinned the negotiations on each area. A pattern similar to the previous chapters can be identified.

Firstly, there was much postponement of discussions and taking of decisions on particularly difficult issues. It was a case of postponing either for a future IGC or until the implementation of the particular treaty article. Secondly, there was no member government, Presidency or group of governments that dominated the agenda. The French came the closest to attempting to steer the process along, most notably on the

new machinery in the form of the PPU, High Representatives and common strategy. Nevertheless, a coherent French position was at times non-existent, as on the WEU, while its manoeuvring on the other issues raised considerable suspicion among the other members that the French were attempting to re-run parts of the failed Fouchet Plan from the 1960s. Thirdly, the French position was further weakened given that there was very little solid ground between the French and German governments across the pillar. Fourthly, given that there was little leadership, the process tended to lack direction in places, notably on extending QMV and WEU-EU relations.

## **1. NEGOTIATIONS ON WEU-EU RELATIONS**

### **Background**

Article J.4(1) and (2) of the TEU widened Member State foreign policy cooperation to 'include all questions related to the security of the Union, including the eventual framing of a common defence policy ...'. The WEU was designated as the institution that would 'elaborate and implement decisions and actions of the Union which have defence implications'. This final version in the Maastricht Treaty reflected the underlying differences between the French, British and other member governments at this time. As already stated, Maastricht postponed dealing with these differences until a later date. In the period between the ratification and implementation of Maastricht to the convening of the 1996 IGC these differences evolved, shaping the approaches taken at the Conference.

At the time of the Maastricht IGC and up until 1993 the French approach on European security and defence was considerably influenced by Gaullist tendencies that have left successive governments hostile to a US-led NATO.<sup>1</sup> There were several examples of this. Firstly, the Franco-German brigade formed in 1987 was expanded with the creation of the Eurocorps in the autumn of 1991.<sup>2</sup> While the corps was to be used 'for the common defence of the allies according to Article 5 of the Washington Treaty or of

<sup>1</sup> See Yves Boyer, 'WEU: A French perspective', in Anne Deighton (ed) *Western European Integration 1954-1997: Defence, Security, Integration*, Oxford, 1997, p. 63-71.

<sup>2</sup> See G. Stein, 'The Euro-Corps and future European Security Architecture', *European Security*, 2:2, Summer 1993.

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the Brussels Treaty' it did leave the way open for a European military structure outside that of NATO.<sup>3</sup>

Secondly, there was the initial competition between the WEU and NATO in responding to the disintegration of Yugoslavia. The French in particular pushed for a response by the WEU. In July and August 1992 both organisations decided almost simultaneously to dispatch both naval and ground forces as part of a UN peacekeeping operation.<sup>4</sup> Yet, it was French experiences in the Yugoslav crisis in particular, together with the Gulf War, that brought home to them the weaknesses of the WEU. Instead, the close cooperation with the British, as mentioned in chapter III, strengthened the logic of a rapprochement between WEU and NATO. At the same time preparations were underway for the reform of the French armed services closely modelled on the earlier British approach.<sup>5</sup> France had also been edging closer to NATO. Under the Defence Minister, François Léotard, in April 1993 France decided to participate fully in NATO's military committee on matters relating to NATO's peacekeeping role. Mitterrand and the Élysée were somewhat more reluctant on this rapprochement with NATO.<sup>6</sup> However, with the election of Jacques Chirac in May 1995, as France's new President, there was a significant shift in the French government's attitude towards NATO. This reached its height on 5 December 1995 with the announcement by the French government that it would join part of NATO's military integrated structure.<sup>7</sup> Nevertheless, the French Defence Minister, Charles Millon, was to make clear that the French expected significant changes to NATO in return.<sup>8</sup> Chirac was to do likewise in front of a joint session of the US Congress.<sup>9</sup> This change required a genuine 'Europeanisation' of the Alliance within both the command structure and operationally, with a more capable WEU.<sup>10</sup> The French government was in a position of pursuing this 'Europeanisation' as the IGC commenced, and the French approach on

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<sup>3</sup> Communiqué, Franco-German Council, La Rochelle, May 1992.

<sup>4</sup> See Yves Boyer, 1997, p. 65.

<sup>5</sup> See Diego Ruiz palmer, 'De Metz à Creil: les structures de commandement françaises de l'après-guerre froide', *CREST*, October 1995.

<sup>6</sup> See 'Transatlantic relations in the wake of the Brussels summit', *NATO Review* 42:2, April 1994; See Mitterrand's interview on foreign policy to *Le Figaro*, 09/09/94.

<sup>7</sup> See G. Wyn Rees, *The Western European Union at the Crossroads: Between Trans-Atlantic Solidarity and European Integration*, Westview Press, 1998, p.82.

<sup>8</sup> See Charles Millon, 'France and the renovation of the Atlantic Alliance', *NATO Review*, May 1996; also see Hervé de Charette, 'France for a streamlined NATO: Setting the record straight', *IHT*, 10/12/96.

<sup>9</sup> See Chirac speech in February 1996, before a Joint Session of the US Congress.

<sup>10</sup> See Robert P. Grant, 'France's New Relationship with NATO', *Survival*, 38:1, Spring 1996, 58-80; also see P.H. Gordon, 'Recasting the Atlantic Alliance', *Survival*, 38:1, Spring 1996.

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EU-WEU relations throughout the IGC was closely linked to its relations with NATO.<sup>11</sup>

The change in the French government's attitude towards NATO was made possible given the favourable approach of the Clinton administration on the European Security and Defence Initiative.<sup>12</sup> At the 1994 NATO Brussels Summit Washington gave its 'full support to the development of a European Security and Defence Identity'.<sup>13</sup> The expectations from Washington was that greater integration among European governments would lead to greater burden sharing. Nevertheless, this defence initiative was in no way to undermine NATO, the US government's two concerns being that, firstly, the European governments would arrive at NATO meetings presenting a pre-determined position or *a fait accompli* to the North Americans, and secondly, that there could be an over emphasis on the EU's role at the expense of other important allies, notably Turkey. While welcoming the French government's rapprochement with NATO, the US government was wary of the latter's motives. Indeed, the French government's manoeuvring also placed the German government in a difficult position. While it saw no contradiction between strengthening the WEU and preserving the Atlantic Alliance, there was suspicion from Washington that the French might have been seeking to lure the Germans into structures, even within NATO, that might seek to undermine it.<sup>14</sup> Therefore, the German government had to be careful in its balancing act between the Alliance and the WEU.

The British government's approach on European security and defence matters in the post Maastricht years provided some reassurance for the US government. Three objectives are identifiable as regards the relationship between the EU, WEU and NATO.<sup>15</sup> Firstly, NATO was to remain as the centre piece in pursuing British and European security and defence interests. Secondly, the British Conservative government was weary of the WEU undermining the role of NATO. It is possible to

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<sup>11</sup> On French relations with NATO see Jacques Isnard, 'La France tente d'obtenir un grand commandement de l'Otan', *Le Monde*, 21-22/07/96; Jean-Dominique Merchet, 'La France cherche un nouveau poste à l'OTAN', *Libération*, 23/09/96.

<sup>12</sup> See Geoffrey van Orden, 'An EU Perspective on the ESDI', in Deighton, 1997, p. 125.

<sup>13</sup> See Declaration of Heads of State and Government, 10-11, January 1994.

<sup>14</sup> See G. Wyn Rees, 1998, p.63; see G. Wyn Rees, 'Constructing a European Defence Identity: The Perspective of Britain, France and Germany', *European Foreign Affairs Review*, 2, 1996, pp. 231-246.

<sup>15</sup> See Alyson Bailes 'Western European Union and contemporary European Security: a British Perspective', in Deighton, 1997, pp. 47-61; G.W. Rees, 'Britain and the Western European Union', *European Security*, 5:4, Winter 1996.

identify two ways in which this could arise. There were the possibilities of continued attempts from other EU governments to foster closer relations between the two institutions with the eventual goal of integrating the WEU into the EU, providing the latter with a definite defence identity, and with a more influential role for the European Parliament and Commission. The British government also sought to avoid the position where the WEU would be recognised as the institution to deal with the softer features of security and defence, essentially those termed the Petersberg Tasks. This would have left NATO focusing almost exclusively on its collective defence function. Hence the British government's insistence that NATO would assume the leadership in crisis management in Bosnia with the deployment of IFOR in 1995.<sup>16</sup> Despite this reticence on the WEU's relationship vis-à-vis NATO and the EU the British government's third objective was to ensure that the operational capability of the institution was enhanced. This was to allow for the use of NATO assets in launching some European operations in the WEU forum such as evacuations or blockades. The North Atlantic Council in 1994 had agreed to this based on the concept of 'separable but not separate capabilities'.<sup>17</sup> As the British government assumed the Presidency of the WEU in the beginning of 1996, it sought to maintain its balancing act between the WEU, EU and NATO, making practical suggestions in its Birmingham Declaration in May 1996 that sought to enhance the WEU's operational features.<sup>18</sup>

The operational relations between the EU, WEU and NATO in the post-Maastricht phase also shaped the approach that the three governments adopted on defence matters at the IGC. As mentioned, the Gulf War and the disintegration of Yugoslavia demonstrated the limitations of the WEU to respond to high intensity conflicts, even in the form of crisis-management. Instead it was left the much more limited missions such as the creation of a civil administration in Mostar.<sup>19</sup> At the same time NATO was proving itself to be reasonably successful in re-defining its role after the Cold War. In Bosnia it demonstrated that it had the ability to adapt to the task of peacekeeping, deploying military forces and on occasion using it in punishing Serb aggression in the

<sup>16</sup> On the rejection of the WEU assuming a similar role see Michael Portillo, WEU Assembly, Paris, 5 December 1995 (FCO Verbatim No. 85, 5 December 1995).

<sup>17</sup> See Declaration of Heads of State and Government, 10-11, January 1994.

<sup>18</sup> Alyson Bailes, 1997, pp.54-7.

<sup>19</sup> See Richard G. Whitman, 'Creating a Foreign Policy for Europe? Implementing the Common Foreign and Security from Maastricht to Amsterdam', *Australian Journal of International Affairs*, 52:2, 1998; G. Van Orden, 1997, pp. 123-125.

Summer of 1995.<sup>20</sup> The EU had also been reluctant in utilising its powers as provided by Maastricht. It was only in June 1996 that the EU under Article J.4(2) called on the WEU to prepare a plan to evacuate EU citizens whose safety is threatened in third countries.<sup>21</sup> And the EU did not issue the WEU with an operational request until the closing stages of the IGC, in May 1997, with the EU advising the WEU to prepare itself for a military operation in the Great Lakes region, though in the end no action was taken.<sup>22</sup> As mentioned, this only sought to prove for the German and British governments the primary position of NATO in providing for European security, with the French coming round to this way of thinking.<sup>23</sup> It was against this background that governments began to negotiate yet again on WEU-EU relations.

## Introduction

Bearing in mind the developments on defence matters since the TEU, the examination below of the negotiations on defence reveals the following features. Firstly, there were only two submissions of any note throughout the sixteen months of negotiations; the Finnish/Swedish paper on the Petersberg tasks and the paper outlining the details on phased integration of WEU from the French, German, Belgian, Spanish, Luxembourg and Italian delegations. Secondly, despite these proposals involving eight member governments, no government or coalition of governments pushed the negotiations on WEU-EU relations along. This was due to the divisions and inherent weakness within the group of six, most notably within and between the French and German government and within the Dutch government. Thirdly, while during the Italian Presidency the negotiations reflected little more than shadow-boxing, with much restatement and repetition of positions outlined earlier by member governments, the Irish Presidency, as a neutral state, was reluctant to push any negotiations in the direction of developing an EU defence capability. Therefore the Dutch Presidency was left to do a very similar job as it had done at Maastricht, namely drafting a delicately-worded clause that would

<sup>20</sup> See K. Kaiser, 'Reforming NATO', *Foreign Policy*, No. 103, Summer 1996; P. Cornish 'European Security: The end of Architecture and the new NATO', 72:4, October 1996; J. Solana 'NATO's role in Bosnia: Chartering a new course for the Alliance', *NATO Review*, 44:2, March 1996.

<sup>21</sup> Whitman, 1998.

<sup>22</sup> *Ibid.*

<sup>23</sup> See A. Moens 'The European Security and Defence Identity and the non-concert of Europe', *European Security*, 2:4 Winter 1993; A. Moens 'Behind complementarity and transparency: The politics of the European security and defence identity', *Journal of European Integration*, 16:I, 1992.

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mean different things to different governments, yet again disguising the fundamental differences and postponing EU-WEU and ultimately NATO relations for another IGC.

### German Position

The German government in its pre-negotiation papers supported the gradual integration of the WEU in the medium term.<sup>24</sup> The feeling within the German government and ministries as regards the integration of the WEU ranged from one of apathy to a more cautious welcoming of closer cooperation between the WEU and EU to, at times, an unchecked optimism. As would be the case on many issues throughout the IGC, this left the federal government's position considerably disjointed.

In early 1994 the Foreign Minister, Klaus Kinkel, had expressed annoyance with what he considered as Volke Rühe's interference on foreign affairs matters. This persisted up to the IGC with very divergent and openly contradictory positions on crucial issues such as NATO and EU enlargement. Rühe, as Defence Minister gave priority to NATO's eastward expansion. Kinkel played down the necessity of NATO's expansion for fear of upsetting Russia, placing greater emphasis on enlarging the EU.<sup>25</sup> Though inter-ministerial disputes are a common feature of the German political landscape, this particular dispute not only undermined attempts to come up with a coherent position on the IGC, but since they were cross-party, it gave rise to tensions within the coalition.

As Defence Minister, Rühe had been particularly successful, handling sensitive situations such as German involvement in Bosnia with considerable deftness. This success left Rühe convinced of the utmost importance of NATO; hence his eagerness for its expansion, and his near indifference as to the possible integration of the WEU into the EU. This is not to suggest that the defence ministry as a whole was unconcerned with the WEU. In June 1995, Rühe himself had remarked that the IGC 'should not preclude the higher aim of a Political Union and the development of a European defence'.<sup>26</sup> However, he also said that 'this cannot be achieved during the Intergovernmental Conference; we should proceed with realism and pragmatism'. Any

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<sup>24</sup> See Joint declaration of 15 July 1995; Freiburg Seminar, 27/02/96; *Germany's Objectives*, 1996.

<sup>25</sup> Michael Lindemann and Edward Mortimer 'Front row defender – Volker Rühe', *FT*, 10/02/95.

<sup>26</sup> 'According to Mr. Rühe, the IGC has to open serious defence perspectives' *AE*, 08/06/95.

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merger was for sometime in the future. During the negotiations Rühe took somewhat of a back seat on any strengthening of relations between the EU and WEU.<sup>27</sup>

There were divisions within the Auswärtiges Amt. between an Atlanticist and European approach on any proposed integration. The Atlanticists took up a cautious approach on integrating the WEU. They emphasised that it was necessary to make a distinction between the push to bring the Petersberg tasks into the EU, which was a question of the WEU using NATO assets, and the issue of collective responsibility, which was a matter for NATO. They claimed that it was necessary to make clear in the reformed treaty that the use of military means under CFSP was to be limited to the Petersberg tasks. While advocating that such facets of the WEU become an integral part of the EU, they did not advocate in any way support for the subordination of the WEU to EU.

Werner Hoyer, as State Minister and the Foreign Minister's Personal Representative at the IGC, promoted what was a much more ambitious position and Europeanist approach supporting a complete integration of the WEU into the EU. Nevertheless, there were times when Hoyer contradicted his own position. On the 14 and 15 May 1996 (respectively) Hoyer remarked that by integrating the WEU into the EU the revised treaty at the end of the IGC should include a clause providing for the collective defence of the Union.<sup>28</sup> This stood at odds with what the Atlanticists had expounded several weeks later, as described above, regarding the potential conflict between a principle of collective defence for the EU and that provided by Article V of NATO. In early 1997 Hoyer seemed to have recognised the delicacy of the situation. At the end of July of the previous year he had already called for a closer dialogue between the EU and NATO.<sup>29</sup> In March 1997, when commenting on the common position under negotiation between the six member governments regarding the WEU's integration, he remarked that Member States with Article V obligations would still need a NATO Council decision before committing non-EU NATO members. While once again emphasising that Article V needed to be addressed with great care, his position was still somewhat at odds with the caution expressed elsewhere.

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<sup>27</sup> Interviews.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

In its October '96 submission to the Conference the German delegation's paper sat somewhere between the two camps.<sup>30</sup> The WEU remained outside the EU, without an actual commitment to its integration, while there would be a 'gradual framing of a common defence policy'. Yet, there were two features in the paper that reflected a more pro-WEU stance. Firstly, it stated that the European Council 'shall define the principles of and guidelines for' a Common Defence Policy that 'shall also apply in relation to the WEU'.<sup>31</sup> In defining 'the principles and guidelines' of the WEU the European Council was not confined exclusively to the Petersberg tasks. Its mandate would 'apply *especially* to operations which fall within the range of responsibilities contained in the Petersberg Declaration of the WEU', but not exclusively.<sup>32</sup> Secondly, the German paper introduced constructive abstention in launching military operations. The proposed new Article presented the opportunity to launch a military operation by the WEU based on a decision of the Union taken by a qualified majority. Those who abstained from the decision would 'not be obliged to participate in the implementation of the decision'.<sup>33</sup>

Throughout the Dutch Presidency the German position seemed to swing towards a phased integration, though, given the divisions within the German camp, it was not an approach that was pursued with vigour. There was not sufficient unity within the German position. In the last weeks of March and throughout April there were attempts from the Auswärtiges Amt. to redress any possible negative effects the proposed integration of the WEU would have on NATO. Yet, this was as much an attempt to shore up the differences with a further series of reassurances rather than a coherent position from the Auswärtiges Amt. On the 40<sup>th</sup> anniversary of the Treaty of Rome Kinkel remarked that it was time for a clear step forward and for integration of the WEU into the EU. He claimed that non-NATO members of the EU should have no difficulty with Phases II or III of the phased integration. Phase III would give non-members a full role in defending their own territory within a framework for EU defence.<sup>34</sup> Hoyer followed suit on Kinkel's emphasis, claiming that the proposal for WEU incorporation would strengthen the Atlantic Alliance rather than weaken it.

<sup>30</sup> See CONF 3972/96, 30 October 1996.

<sup>31</sup> Ibid., Annex, Article J.4(1), p.2.

<sup>32</sup> Ibid., Article J.4(2), p.2.

<sup>33</sup> Ibid., Annex, p.3.

<sup>34</sup> Interviews.

There was no ground for US concerns that future Baltic membership of the EU would lead to membership of NATO by the back door, or that there would be caucusing by the Europeans in NATO. Hoyer also remarked that the German government had discussed WEU incorporation with the Russians, the latter expressing no grave misgivings.<sup>35</sup>

### British Position

The fundamental bases of the Conservative and Labour governments approach were the same; opposing the integration or subordination of the WEU into the EU.<sup>36</sup> Nevertheless, the eventual changes introduced in the new treaty would not have been possible without the arrival of a Labour government. In both its White Paper and the Annex D to the paper the Conservative government was firm on the WEU remaining as a separate entity, a European pillar to NATO.<sup>37</sup> However, in what was an official position that pandered considerably to the 'Eurosceptics' in the party there were positive elements which sought to have the WEU act 'in a reinforced partnership with the European Union'.<sup>38</sup> As mentioned above the Conservative government was interested in developing the operational capabilities of the WEU. Therefore its position paper also focused on the practicalities that would enhance the WEU's planning capabilities, such as the creation of a WEU body at Head of State and Government level involving full members, associate members and observers that would meet back-to-back with Heads of State and Government meeting in the European Council.<sup>39</sup>

Despite these suggestions, a worsening in the government's domestic situation with a continual erosion of its support and credibility in the face of an increasingly hostile and vocal group of 'Eurosceptics' left it unwilling to approach the negotiations on defence in a constructive and determined manner. One senior official described the actual mandate that was pursued throughout the negotiations as 'no, no, no' to any suggestion of change, including the language and not merely the actual procedures and policy. While the negotiations on defence matters were in any case limited, the Conservative

<sup>35</sup> Ibid.

<sup>36</sup> *Partnership of Nations*, 1996; Labour, *Future of the European Union*, 1995.

<sup>37</sup> Also see *Memorandum on the UK Government's Approach to the Treatment of European Defence Issues at the 1996 Intergovernmental Conference*, Madrid, 14 November 1995.

<sup>38</sup> *A Partnership of Nations*, 1996.

<sup>39</sup> Ibid., Annex D.

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government failed to push for the limited but constructive changes on EU and WEU relations that the White Paper indicated. Given the sensitivities surrounding an issue such as defence there was little chance of a weakened government taking the lead and pushing for even practical and procedural changes. This would have given the 'Eurosceptics' further grounds upon which to attack an embattled Conservative leadership.

The Labour government did show some change from its pre-negotiation position. Initially it concentrated on 'strengthening the Western European Union as the European pillar of NATO', focusing on the 1992 Petersberg Declaration and crisis intervention that would involve using NATO assets.<sup>40</sup> The IGC was called upon to 'examine ways in which links between the two bodies could be improved'.<sup>41</sup> In its non-paper after entering government it maintained its position as regards both organisations remaining separate, reaffirming its broader commitment for any development of an ESDI to be within NATO. However, the paper went further in that the government was 'prepared to write Petersberg tasks into the Treaty and include among issues covered by CFSP, with WEU implementing decisions with defence implications'.<sup>42</sup>

### French Position

The French government in its February 96 memorandum called for steps to be taken to bring the WEU under the aegis of the EU. Though, given the recent rapprochement of the Chirac and Juppé administration towards NATO, as described above, the French had not clearly established their objectives on EU-WEU relations. Initially the closer and better relations with NATO were considered as leaving the Chirac administration distracted and less concerned or focused on subordinating the WEU to the EU.<sup>43</sup> A more sophisticated interpretation can be identified. Conscious of the potential domestic fallout from France's rapprochement with NATO, Chirac needed to have something in return to show that there had been a genuine change in NATO. This would come in the leadership by the French government in devising a blueprint for WEU integration into

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<sup>40</sup> See Labour, *The Future of the European Union*, 1995, p.15.

<sup>41</sup> Ibid.

<sup>42</sup> See Non-paper, 16 May 1997.

<sup>43</sup> Ibid.

EU, a recognition of the political, as opposed to the military, importance of the WEU in providing a European identity to NATO. The decision of the North Atlantic Council in Berlin in June 1996, that NATO would remain 'one system capable of performing multiple functions' avoiding the creation of separate command arrangements for European-only operations, seriously undermined French attempts to bring the same military prowess to the WEU as NATO.<sup>44</sup> However, the European identity that a closer relationship between the EU and WEU would bring was politically important for the Chirac government. Therefore the French government's momentum on integrating WEU was directly proportionate to the success of its NATO policy. The latter had already begun to falter in the latter half of 1996 with the public dispute between Chirac and Clinton over the transfer of leadership of NATO's southern command to a European individual and the French preference for an enlargement of NATO to more than three states. Indeed, Chirac's manoeuvring on the Southern Command was particularly disruptive to the gradual and meticulous approach from French politicians and officials on bringing France back into NATO. Chirac upset this approach. In turn the French did not push for the subordination of the WEU into the EU. With the collapse of the RPR and UDF government at the national elections on 6 June, it was difficult to recognise a clear line from the French on WEU-EU-NATO relations. The relationship with NATO continued to deteriorate up until the NATO summit in July 1997.<sup>45</sup>

## Negotiations

### Italian Presidency

It was at this stage that the first of only two substantial documents relating to EU defence matters and the WEU was submitted by the Swedish and Finnish governments.<sup>46</sup> The paper ruled out any incorporation of the WEU but called for a strengthening in links between with the EU with the latter through the former taking on a greater role in crisis management, conflict prevention and armed peacekeeping.

<sup>44</sup> Ministerial Meeting of the North Atlantic Council, Berlin, 3 June 1996.

<sup>45</sup> Ronald Tiersky, 'French Gamesmanship and NATO's Future: The Context of "AFSOUTH"', *French Politics & Society*, 15:2, Spring 1997; Paul Taylor, 'Chirac tells Clinton NATO Command Issue "Capital", *Reuters*, 02/12/96; Emmanuel Jarry 'Chirac says Europeanising NATO still difficult', *Reuters*, 03/12/96; John Vinocur 'Fellow Europeans Steer Clear of French Contrariness at Madrid Summit' *IHT*, 10/07/97.

<sup>46</sup> 'The IGC and the Security and Defence Dimension towards an Enhanced EU role in crisis Management', *Memorandum From Finland And Sweden*, 25 April 1996.

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These suggestions would be carried in various forms in Presidential papers up until their eventual incorporation in the Amsterdam Treaty, reflecting the consensus among governments on this issue, though in an internal Commission document in March 1997, while all governments agreed on their incorporation, none expanded on what this exactly entailed.<sup>47</sup>

Returning to WEU-EU relations, the lack of any development beyond the positions outlined by the governments on the eve of the negotiations was reflected in the Presidential notes at the end of April. The Presidential note of 26 April was detailed and included proposed treaty amendments. Given the early stages of the negotiations these merely reflected the variety of options that lay open to governments. On the gradual integration of the WEU and EU there was the suggestion of an amendment to the then Article J.4(2) with an addition to the words 'which is an integral part of the development of the Union', to the effect of integrating the WEU into the EU.<sup>48</sup> The paper also held as an option, somewhat similar to the later German proposal, that the European Council would provide guidelines along which the WEU would act. A further suggestion was to replace the word 'request' under Article J.4(2) with 'instruct' or 'can instruct'.

The paper was stark as regards the implications of a full integration of the WEU; the EU assuming all the functions of the WEU with the prior relations between the WEU and NATO being replaced by those between the EU and NATO.<sup>49</sup> However, the paper reflected the possible alternatives within this option. While incorporating Article 5 of the Brussels Treaty, it held open the possibility of non-participation by those members who did not wish to be part of any collective defence. A final approach suggested that rather than incorporating various articles of the Brussels Treaty, a distinction would be made as regards the Petersberg tasks and that of collective defence, the former being incorporated into Article J.4, while the latter was annexed to the treaty by means of a protocol.<sup>50</sup>

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<sup>47</sup> See CEC, *Note à l'attention*, 12 March '97.

<sup>48</sup> CONF/3829/96, p.3.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., p.6.

The Presidency's second paper of the same date was again a case of outlining a variety of options, that at times bordered on semantics. On Article J.4(1) it suggested that the wording 'eventual framing of a common defence policy' allowed for the 'implementation of this action' to be put off, given the presence of the word 'eventual'. It proposed the deletion of the word 'eventual' and for reasons of consistency with the WEU declaration from Maastricht suggested that any new Article should be clear that it was a common defence policy that would be established 'within the European Union'. It was similar reasons of clarity and precision that lay behind its suggestion that the wording 'which might in time lead to a common defence' be replaced by 'with a view to a common defence', being described as 'replacement of a possibility by an objective'.<sup>51</sup> The Presidency's paper continued to focus on less contentious issues of clarify existing texts e.g. suggesting an extended Article J.4(4) to cover neutral states and a clarification of Article J.4(5) to ensure that any closer cooperation between two or more Member States was confined to defence matters, as opposed to all security issues.<sup>52</sup>

By the 15 May 1996 the personal representatives had completed their overview of the three major chapters as outlined by the Presidency.<sup>53</sup> At the same meeting the role of the WEU and its status vis-à-vis the EU were discussed. Again it was a case of outlining a range of possibilities e.g. a subordination of the WEU to the EU, a less ambitious strengthening of the relationship between the two, or the inclusion of the objective of the WEU's integration, but with an open time frame. On a more positive note the neutral countries reiterated their willingness to co-operate and contribute in varying ways to the working of the WEU. Fagiolo, as the chairman of the IGC personal representatives for the Italian Presidency described this as 'a very great opening'.<sup>54</sup> However, as was generally the case during the Italian Presidency no delegation, except for the Finnish and Swedish submitted a detailed paper on their objectives.

<sup>51</sup> CONF 3828/96, 26/04/96, p. 2.

<sup>52</sup> Ibid., p.4.

<sup>53</sup> EDB, N°6728, 15/05/96.

<sup>54</sup> EDB, N°6729, 16/05/96.

### Irish Presidency

The Irish government was in a difficult position on defence matters, being neither a member of NATO nor of the WEU. As a neutral state it was not in the interests of the government to vigorously pursue reforms or push for the integration of the WEU. At the same time, it had to discharge its presidential duties and avoid any clear pursuit of a national interest. The Irish government had been under considerable domestic pressure. The Foreign Minister, after repeated accusations from opposition parties that the Labour Party and the government as a whole were weakening the Irish position on neutrality, hinted at the possible necessity to veto any attempts to integrate the WEU.<sup>55</sup> Yet, the Irish government and the neutrals as a whole were not keen to vigorously defend their position preferring to let the British make the running.<sup>56</sup> In the end the Irish Presidency would strike a balance between these two competing pressures in the Dublin draft, but a balance that suited both it and the British government.

The Irish Presidency, like the Italian, issued notes outlining the options for the EU in security and defence matters focusing on the Petersberg tasks and their consequences for the EU/WEU relationship.<sup>57</sup> On Article J.4(1) the Presidency's notes of July 1996 reflected that there were three proposals on replacing the phrase 'which might in time lead to a common defence'. They included 'with a view to a common defence', 'leading in time to a common defence', and 'in the perspective of a common defence'.<sup>58</sup> This continued emphasis on the wording of the ambition to a common defence was a reminder of the extent of the shadow-boxing within the negotiations on this issue and the lack of direction on the real issue of EU-WEU relations. Of more substance in the Presidential paper was the presence of only one possibility as regards changing Article J.4(2). In its description of 'decisions and actions ... which have defence implications', the paper included 'decisions of the Union on humanitarian and rescue tasks, peacekeeping, and crisis management'.<sup>59</sup> The Irish Presidency ignored the other tasks from the Petersberg Declaration. Paragraph II.4 and I.2 of the Declaration also mentions 'tasks of combat forces' and 'conflict prevention', issues that cut close to the sensitivities of neutral Member States. On the bigger question of EU and WEU

<sup>55</sup> Mark Brennock, 'FF says Spring undermining neutrality', *IT*, 16/04/97; Patrick Smyth 'Spring warns Irish veto on EU merger with WEU', *IT*, 26/03/97.

<sup>56</sup> Interviews.

<sup>57</sup> CONF/3869/96, 16/07/96.

<sup>58</sup> *Ibid.*, p.2.

<sup>59</sup> *Ibid.*, p.3.

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relations, two alternatives were suggested that again seemed to reflect an Irish preference as regards the pretext on how the negotiations should proceed from here on, rather than reflecting other governments' preferences, though it was difficult for the Presidency to recognise these preferences given the delegations continuing failure to outline them. Firstly, there was the suggestion of a mere fostering of closer relations or secondly, the protocol option on a mutual defence commitment that left Member States opting in.<sup>60</sup>

On the basis of a meeting between personal representatives on 22/23 July, the Presidency drafted a further paper at the end of September.<sup>61</sup> There were few changes. The new wording of Article J.4(6) called on the EU to 'foster closer *institutional* relations with the Western European Union ...', the only change coming with the word 'institutional'. (emphasis added) The Presidency claimed that 'this formulation reflects comments expressed on the previous version of the text'. However, it equally reflected the lack of any change from the previous discussions among personal representatives. It made similar reference to the protocol on collective defence commitments.

After the Dublin I summit on 5 October the role of the WEU arose for discussion several days later. While Noel Dorr commented that the Presidency felt 'encouraged ... to draw up texts as refined as possible' by early December, the draft treaty only tentatively suggested changes, and the proposals put forward were very similar to the earlier papers. The Presidency opted for a '*progressive* framing of a common defence policy *in the perspective of* a common defence'.<sup>62</sup> It also extended on its incorporation of Petersberg tasks to include 'combat forces in crisis management'. On Article J.4(2) it was still a case of 'closer institutional relations'. As mentioned above, this wording suited the British Conservatives, and the Danes who were not full members of the WEU, along with the neutrals; Finland, Sweden, Austria and Ireland.

### Dutch Presidency

The Dutch Presidency's non-paper of 4 March demonstrated further the drift in the negotiations.<sup>63</sup> It called for the submission of proposals on CFSP for a meeting of

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<sup>60</sup> Ibid.

<sup>61</sup> See CONF/3936/96.

<sup>62</sup> CONF/2500/96, pp.83-89.

<sup>63</sup> See CONF/3833/97, 04/03/97.

personal representatives on 10-11 March. Despite it being almost three months since the presentation of the Irish draft, it continued to form the basis for discussion at a meeting in mid-March. Nevertheless, this prompting from the Dutch led to the second substantial proposal of the negotiations on defence matters. The French government's proposal of 10 March supported by the Germans presented a more definite approach to EU/WEU relations.<sup>64</sup> The French proposal formed the basis for the three-phase approach that was supported by six Member State governments. Klaus Kinkel on behalf of the six members of France, Germany, Luxembourg, Spain, Italy and Belgium submitted the detailed outline of the plan to the Dutch Presidency on 21 March.<sup>65</sup> In the first phase the WEU's independence would be maintained, but closer cooperation would be encouraged and facilitated by WEU participation in the centre for analysis and prevention of crisis. In the second phase the EU would mandate the WEU to conduct Petersberg missions. In the third phase there would be a complete integration of the WEU into the EU.

The Dutch government, as it was holding the Presidency, felt itself unable to lend its name to this document. This was also a reflection of the divisions within the Dutch government and Foreign and Defence Ministries that were somewhat similar to those that divided the Auswärtiges Amt. The strong Atlanticist feelings of the political directorate of the Foreign Ministry seemed more dominant at this stage in the IGC. Further to this the VVD party (right wing liberals) within the coalition drew back from the government's earlier position paper supporting a gradual integration of the WEU.<sup>66</sup> This was particularly evident during certain budgetary debates in the Dutch parliament where certain members of the VVD, claimed that the WEU could in effect be abandoned or its development forgotten.<sup>67</sup> Therefore the proposal would lack the Dutch Presidential drive that had proven so influential in the other chapters of reform.

In turn, the French and German governments were not in a position to push the plan along; the French being somewhat in a mess with Chirac upsetting the delicate approach on NATO reintegration, which had a negative impact on the other part of the plan which was to use an integrated WEU as proof of a Europeanisation of the Atlantic

<sup>64</sup> EDB, N°6931, 10/03/97; See CONF/3855/97, 24/03/97.

<sup>65</sup> CONF/3855/97; See Philippe Lemaître, 'Les quinze débattent de la mise en place d'une politique de défense commune', *Le Monde*, 25/03/97.

<sup>66</sup> Dutch Government Memorandum, 30/03/95; *From Madrid to Turin*, March 1996.

<sup>67</sup> Interviews.

Alliance. The long-standing divisions within the Auswärtiges Amt. between an Atlanticist and Europeanist approach undermined German attempts to take the lead on the initiative, especially with Kohl in such a weak domestic position. This, therefore, left Belgium, Luxembourg, Italy and Spain to promote the plan. Spain, as a relatively new member of WEU, lacked influence.<sup>68</sup> The first two, while founding members, are militarily weak and were not in a position to make a credible call for an integrated WEU and a fully operational defence arm for the EU. Indeed, the Belgian government's intentions were questionable. One senior Belgian official claimed that the proposal on integration was as much an effort to pressurise the governments of the neutrals and Britain, the aim being to win concessions elsewhere, while presenting a blueprint for something that would be fought for again sometime in the future.<sup>69</sup> Doubts can also be expressed as regards the Italian government's commitment on this issue. In an early proposal from the Italian delegation in October '96 it 'referred only to the '*prospect* of eventual integration'.<sup>70</sup> The same proposal did refer to a possible protocol that would set out the phases in integrating the WEU. However, it failed to provide any details on this phased integration. Further to this, it also referred to possibly postponing the whole issue of integrating the WEU for another IGC in 2002 based on a report from the Council to the European Council.<sup>71</sup>

The outline for integration met further criticisms. The WEU Assembly questioned the motives and effectiveness of the proposal on phased integration. In a report on the WEU and the IGC, it criticised the proposal for arriving too late in the negotiations. It went on to argue that a submission earlier in the process would have facilitated for a compromise with those members opposed to phased incorporation.<sup>72</sup> In Paris on the 3 June the Assembly's President, Lluis Maria de Puig at the opening of the Spring session described that six's initiative as 'ill-timed'.<sup>73</sup> He criticised the drafters of the proposal to integrate the WEU as being unrealistic saying their approach was obviously going to arouse opposition which could have been limited if the document had been 'more modest'.<sup>74</sup>

<sup>68</sup> Interviews.

<sup>69</sup> Ibid.

<sup>70</sup> See CONF/3965/96, 25/10/96, Article J.4, p.6.

<sup>71</sup> Ibid.

<sup>72</sup> See EDB, N°6979, 23/05/97.

<sup>73</sup> EDB, N°6987, 04/06/97.

<sup>74</sup> Ibid.

Despite these problems and criticisms, the Dutch draft of late March somewhat reflected these latest manoeuvres on integrating the WEU. On the relationship between the WEU and the EU there was a marked change from the Irish draft. Article J.6(2) referred to 'the objective of gradual integration of the WEU into the Union'.<sup>75</sup> This contrasts with the Irish version that has the WEU merely 'foster[ing] closer institutional relations with [EU]'.<sup>76</sup> At the ministerial meeting in the Hague on 20 May van Mierlo broke down the positions on the WEU-EU relationship into three groupings. The first group (Benelux, Spain, Portugal and Greece) wanted an objective of integrating the WEU into the EU in the future. Notably among this group, only The Netherlands and to a some extent Spain had both the tradition and capability of projecting a considerable military force. The second group (France, Germany and Italy) wanted the treaty to decide the stages involved in the integration. The third group that wished to maintain the status quo was made up of the UK and Denmark, and the four neutrals.<sup>77</sup>

Even had there been a significant push from the French and Germans along with the Benelux, Italians and Spanish for a detailed plan in the treaty outlining the steps to the full integration of the WEU, the British government, with the neutrals and Denmark hiding behind it always posed an obstacle. The Labour government in its May non-paper claimed to be 'nervous of loose talk of the EU becoming a defence organisation'.<sup>78</sup> In a letter from its embassy in The Hague to the Dutch Foreign Ministry it reiterated its opposition to the EU becoming a defence unit. It argued that members should and would act consistently in both organisations.<sup>79</sup> The letter called for a replacement of the aspiration of Article J.6(2) TEU with a more concrete outline as regards using the WEU as an operational defence capability, the aim being to prevent integration but not to undermine the WEU or the EU's ability to use it.<sup>80</sup> Again this was consistent with the balancing act between the EU, WEU and NATO.

The British government had some reason to be concerned. The Presidency, in its final drafts on 5 and 13 June respectively, continued to refer to the goal of the gradual integration of the WEU into the EU, while referring to the 'important contribution' of

<sup>75</sup> *ER*, N°2210, 26/03/97 p.14.

<sup>76</sup> See CONF/2500/96, p.84.

<sup>77</sup> *ER* N° 2225 pp. 1-2, 21/05/97.

<sup>78</sup> See Non-Paper, 16/05/97, p.2.

<sup>79</sup> Interview; Letter from British Ambassador to The Netherlands, 5 June 1997.

<sup>80</sup> *Ibid.*

the six Member State's proposal on phased integration of the WEU within a fixed timetable. The Presidency remarked that it was considering 'an appropriate approach allowing for elements to be taken up that appear in this contribution'.<sup>81</sup> It was only over lunch on Tuesday 17 June that the Presidential draft replaced the phrase 'the goal being gradual integration' with a less emphatic wording that closely resembled the final version. Article 17(1) postponed the WEU-EU-NATO debate for yet another IGC. It represented another balance behind which the fundamental differences remained concealed. For the British government, the neutrals and Denmark, the fact that pursuant to Article 17(1) any integration remains only a possibility, with the eventual decision resting with the European Council, guaranteed the separate identity of each organisation. The Protocol to Article 17 and the Declaration on the WEU only sought to enhance the effectiveness of relations between the EU and NATO in the framing of a European Security and Defence Identity, rather than outlining the stages to an eventual integration.<sup>82</sup> For those members proposing the phased integration the eventual results at Amsterdam did reflect a setback from the earlier position suggested by the Presidency at the end of March, but they perceived the same treaty articles, protocol and declaration as another step along a difficult path to eventual integration.<sup>83</sup>

The other changes introduced at Amsterdam by Article 17 can be traced to the variety of options outlined in the early Italian and Irish Presidency's papers; the replacement of the word 'gradual framing of a common defence policy' with 'progressive framing'. It was no longer a case of 'which might in time lead ...', rather it 'might lead' to a common defence. This pondering with what were little more than cosmetic changes continued in the weeks preceding the Amsterdam meeting, the Presidency in its draft treaties making reference to the various word options.<sup>84</sup> The broader array of Petersberg tasks, including missions involving 'combat forces' that had been present in the Irish draft were maintained under Article 17(2). Finally it was the European Council that would set these guidelines for the WEU with all Member States entitled to participate in their implementation.

<sup>81</sup> See 'Essential Elements', *AE*, 13/06/97.

<sup>82</sup> Interviews.

<sup>83</sup> *Ibid.*

<sup>84</sup> See *AE*, 05/06/97; *AE*, 13/06/97.

## **2. CFSP PROCEDURES**

### **Background**

In 1992, after the conclusion of the IGC on EPU, the then British Foreign Secretary, Douglas Hurd, remarked that 'We have four years to demonstrate that the intergovernmental model can work'.<sup>85</sup> As the Maastricht Treaty came into force in November 1993, the Belgian Presidency set about to meet this challenge, asking the Council of Ministers to outline the basis for taking joint actions in five areas.<sup>86</sup> However, this initial impetus was to be lost through 1994. Instead governments continued to show a preference for taking initiatives unilaterally or as part of an *ad hoc* cooperation. Examples included the formation of the Contact group on Bosnia, that essentially left Britain, Germany, France and Italy setting the EU policy on the former Yugoslavia. The Greek government's position on the Former Yugoslav Republic of Macedonia and the French initiatives on Rwanda further undermined the development of a common foreign policy. What would become apparent with the implementation of the second pillar was the extent of 'the credibility gap between the ambition of the vocabulary and the reality of practical policy'.<sup>87</sup>

The absence of a substantive debate on long-term foreign policy options left the process as a reactive rather than a pro-active one. The greater number of the thirty-seven joint actions adopted from 1994 to 1996 were mostly reactions to situations in the Balkans, Middle East or Africa, failing to deliver on the wishes of the European Council in Lisbon in June 1992 for a process that was less reactive to situations being more active and influential in shaping the international environment and setting a policy.<sup>88</sup> Very often member governments simply failed to respond or responded in a way that was inappropriate. For example, the EU failed to reach common positions on key issues such as the escalation of violence in Algeria, while it took the Union over a month to respond and define its position – eventually only in the form of a Declaration

<sup>85</sup> Anthony Forster & William Wallace, 'Common Foreign and Security Policy: A New Policy or Just a New Name?', in Wallace & Wallace, 1996, p. 431.

<sup>86</sup> See Roy Ginsberg, 'The EU's CFSP: the Politics of Procedure', in Martin Holland (ed.) *Common Foreign and Security Policy: The Records and Reforms*, Pinter, 1997; Günter Burghardt, 'The Potential and Limits of CFSP: What Comes Next?', in Elfriede Regelsberger et al. (eds.) *Foreign Policy of the European Union: From EPC to CFSP and Beyond*, Lynne Rienner Publishers, 1997.

<sup>87</sup> Burghardt, in Regelsberger, et al. (eds.), 1997, p. 326.

<sup>88</sup> See European Council, *Presidency Conclusions*, Lisbon European Council, 1992; Whitman, 1998.

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– to the use of troops by the Russian Federation in Chechnya in December 1994.<sup>89</sup> Perhaps an even more dramatic example of the limitations of the process was the failure of the EU in April 1997 to reach a common position on a resolution proposing the condemnation of China before the UN Commission on Human Rights.<sup>90</sup> What were primarily French objections, though Spain, Italy and Germany had raised earlier objections to the Dutch led initiative, brought the credibility of the CFSP process to a head.

In other instances, initiatives under the second pillar appeared to compete with similar types of action that could be taken under the first pillar, or, in the words of one commentator some joint actions ‘simply … provide[d] a CFSP label to what would be largely possible to achieve with Community instruments … with limited added value’.<sup>91</sup> Examples included joint actions increasing humanitarian aid in the former Yugoslavia, providing financial support for a Palestinian police force, and on anti-personnel mines. At the same time, the financing of joint actions led to further competition between the first and second pillars. With Article J.11(2) TEU requiring the European Community’s budget to deal with the administrative costs of CFSP there was the possibility of the European Parliament exerting a greater influence than that catered for in Article J.7 TEU. Indeed, the extent of this influence was exacerbated with greater, than originally expected, use of the Community’s budget for operational spending.<sup>92</sup> This lead to a growing concern among the more intergovernmental Member States of a ‘contamination’ of the workings of the second pillar by the first.<sup>93</sup>

In the run up to the IGC, the member governments responded to this situation with a series of proposals, either through the Reflection Group, or, in their official position papers that aimed to improve the machinery of the second pillar, in an effort to make future policy initiatives more effective.<sup>94</sup> Three of the more significant suggestions were the proposed introduction of the common strategy, another policy instrument that would function alongside the already present joint actions and common positions; the

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<sup>89</sup> See Whitman, 1998, p.170.

<sup>90</sup> Patrick Smyth, ‘Condemnation of French move to block motion’, *IT*, 07/04/97.

<sup>91</sup> Burghardt, in Regelsberger, et al., 1997, p.330.

<sup>92</sup> Elfriede Regelsberger, ‘*The Institutional Setup and Functioning of EPC/CFSP*’, in Regelsberger et al., 1997, p. 81

<sup>93</sup> See Ginsberg, 1997.

<sup>94</sup> See again pp.73-7.

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creation of the office of 'Mr/Ms. CFSP', an appointed representative that would raise the profile and visibility of CFSP; and the strengthening of the focus on planning and prevention with a new unit that would provide the future CFSP with a more pro-active ability allowing it to move away from its reactive past.

## **Introduction**

The negotiations on the three issues are considered separately below. Across all three areas it is possible to identify common features running through the process. Firstly on the policy-planning capability and the common strategy, member governments failed to define their objectives with any detail. Therefore the negotiations proceeded without any government, or the Presidency bringing, key issues to the centre of the discussions. Since the negotiations avoided what would have been divisive issues, it was yet again a case of postponing confronting these matters, not until another IGC, but rather until the post-negotiating phase when the new tools would be called into use. Secondly the French government was the most active member on these issues, particularly on the common strategy and the High Representative which were French-led. Yet, this gave rise to problems. Just as there had been deep suspicion among the smaller Member States regarding many of the French proposals floated on institutional reform, there were similar suspicions that the French proposals on CFSP also sought to undermine the standing of the smaller states, carrying echoes of the failed Fouchet plan from the 1960s. Thirdly, as was generally the case during the negotiations the French and German government were at odds with obviously different approaches on reforming the CFSP machinery, which reflected their fundamental differences on CFSP.

## **Policy-Planning Capability**

### German Position

While there was widespread support from the various levels in the German policy-making process for a planning unit, little came from the various German sources as regards the detailed characteristics of such a unit. The Auswärtiges Amt. avoided making any specific reference to the actual numbers that would go to make up the unit. It was at best vague, though it was possible to recognise potential tensions within the ministry. A senior official remarked on 11 July 1996 that the unit would be made up of

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one secondee from each Member State.<sup>95</sup> While Hoyer had remarked on 6 May that the unit should be made up of officials from the Member States, the Council Secretariat and the Commission, he called for, at a later stage, a unit that would be *small* and flexible, designed to strengthen continuity and react quickly.<sup>96</sup> He also seemed to be suggesting that there would be a certain degree of flexibility on the actual numbers involved in the unit at any one time. He stated that the Secretariat should be able to draft in experts from Member States when needed.

### British Position

The British Conservative government set out its position in July 1996 with a note to the other delegations.<sup>97</sup> The government was clear that any new policy-planning unit would include only five or six officials from the Foreign Ministries of the Member States, the Commission and the WEU. It did not at this stage specify as to the Member States that would contribute such officials.

### French Position

The French government equally supported the formation of this new unit but, as described below, the approach it adopted on the unit as a separate entity and as regards its relationship with the High Representative gave rise to suspicion and grievances from other governments.<sup>98</sup>

### Negotiations

As mentioned in Chapter III, the proposed introduction of a planning unit was for the greater part welcomed by most member governments. However, the difficulty for member governments, as on most IGC issues, was expanding on this support in principle with a greater clarity on the details. The four functions outlined in the Irish Presidency's note of 16 July for the policy-planning and early warning unit remained essentially the same in the final version at Amsterdam.<sup>99</sup> Over a further year of negotiations there were few new ideas on strengthening and widening the functions of the prospective unit. There was also little attempt to address in a more precise manner

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<sup>95</sup> Interview.

<sup>96</sup> Ibid.

<sup>97</sup> CONF/3894/96

<sup>98</sup> See Freiburg seminar, 1996; Interviews.

<sup>99</sup> See CONF/3869/96, p.2.

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the actual breakdown of the numbers that would make up the unit. Indeed the Presidency's draft text of 16 July merely stated that 'the Secretariat may draw on personnel from the Member States, the Commission [and the WEU]'.<sup>100</sup> The Commission in a submission at the same time was equally imprecise, suggesting that the unit be 'made up of balanced contributions from the Member States and the Commission, as well as the Council Secretariat itself'.<sup>101</sup>

On the basis of discussions in late July the Presidency paper at the end of September suggested an alternative approach, with a new Article under title V that left the unit 'under the responsibility of the Secretary-General of the Council'.<sup>102</sup> The council would decide 'on the remit and staffing at a later date'.<sup>103</sup> This was somewhat similar to the Italian proposal in early October of that year.<sup>104</sup> The other notable change in the Presidency's paper was the inclusion of the Commission as a possible source for the unit's staff. By the Irish draft in December there was a subtle change in the wording on staffing. While again there were no specifics as regards the number in the unit, the previously loose language that said the policy-planning capability 'may draw' from the above list was replaced by the definite '*shall consist* of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU'.<sup>105</sup> (author's emphasis)

Under the Dutch Presidency discussion of the specific make-up and number was similarly avoided.<sup>106</sup> In the Commission's internal review of member governments' positions in mid-March there was no reference to the number that would form the unit.<sup>107</sup> The absence of any substantial negotiation on what was later to amount to a crucial and divisive issue reinforced several features of the negotiations. For example, as was the case on the extension of the powers of the European Parliament, there was little awareness among negotiators, foreign ministers and Heads of State and

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<sup>100</sup> Ibid.

<sup>101</sup> CONF/3889/96, 25/07/96.

<sup>102</sup> In the previous July paper the Secretary General was also described as being responsible but not by means of a separate article but rather based on the Declaration.

<sup>103</sup> See CONF/3935/96, p.3

<sup>104</sup> See Article J.5b, CONF/3965/96, 25/10/96, p.8.

<sup>105</sup> See CONF/2500/96, p.74.

<sup>106</sup> ER N°2210 – 26/03/97, p.17.

<sup>107</sup> CEC, *Note à l'attention*, 12 March 1997.

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Government alike of the significance and implications of such an issue as the make-up of the unit.

The failure of the negotiators to confront these issues and reach agreement disguised deep divisions and different perceptions. French and British Foreign Office officials suggested that there was a consensus among the delegations regarding the necessity for the unit, based on the recognition of the need to strengthen the effectiveness of CFSP.<sup>108</sup> The same officials suggested that their understanding of effectiveness was a PPU with a small staff dominated by the larger Member States.<sup>109</sup> Indeed the British were clear in outlining their position on this. There was a considerable degree of frustration with what they considered as the self-serving interests of the smaller Member States that were raised after Amsterdam in an attempt to secure a position in the unit.<sup>110</sup> The feeling was that this did not serve the best interests of an effective CFSP. Nevertheless, this was interpreted by governments of the smaller Member States, supported by Germany, as French and British attempts to undermine their interests, the larger Member States shutting them out of a potentially dynamic unit. These tensions and differences were not addressed during the negotiations even though the details on the staffing of the unit are crucial to its functioning and effectiveness. Again they were postponed not for another IGC but until it was time to establish the PPU.

### **Common Strategy**

The French led negotiations on a Common Strategy and Mr. CFSP were similarly disjointed. Firstly, the French government and the negotiating delegation were unclear as to what a Common Strategy entailed.<sup>111</sup> Secondly, and as was the case with the French government throughout the IGC, the manner in which they presented their position did little to allay any possible suspicions and potential misunderstandings from other governments. The paper of 10 March 1997 that made the first reference to Common Strategies was in name Franco-German, though written by the French. Given that it sought to introduce a new category of decisions, the French and German

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<sup>108</sup> Interviews.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

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governments should have briefed the other delegations beforehand. Hoyer recognised this, when on the same date, he remarked that the Franco-German draft should not be seen as an exercise excluding others. All Member States were welcome to contribute.<sup>112</sup> At such a late stage in the negotiations, certain governments felt this approach was too complex, with the addition of the common strategies to the joint actions and common positions.<sup>113</sup>

The French delegation's ability to push its agenda on the Common Strategies was not helped by the uncertain position within the German government on this and other CFSP matters. The French had little option but to take the lead given the divisions within the federal government.<sup>114</sup> The inability of the French and German governments to construct a genuine and united common position on Common Strategies was due to the differences in their respective approaches on such strategies. For the German government a common strategy would allow for decisions on broad guidelines to be taken at Council level by QMV.<sup>115</sup> This was unacceptable for the French emphasis on European Council and unanimity. As one German official put it, it would be inconceivable for a French Foreign Minister to report to his President that France had been outvoted on a foreign policy matter in the Council of Ministers.

It is difficult to identify any political leadership from the Conservative government on this issue. By this stage the general election was less than six weeks off. The Labour government had no stance on this issue. However, officials within the FCO were clear on their objectives; to maintain unanimity in creating these strategies and to tie the French and German governments to a tight and limited definition.<sup>116</sup> This they claimed to have achieved with Article 13 Title V TEU. The same officials understood a Common Strategy to be little more than a joint action. Their understanding, yet again, differed from both the German and French. The French Foreign Ministry considers the Common Strategy as a useful introduction with the possibility of evolving into something like a foreign policy doctrine for the EU.<sup>117</sup> As with the policy-planning and early-warning capability, governments avoided any detailed and thorough debate,

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<sup>112</sup> Statement by Hoyer, 10 March 1996, Bonn.

<sup>113</sup> ER, N° 2226, 24/05/97, pp. 1-4.

<sup>114</sup> Interviews.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

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firstly, on the wisdom of introducing another form of decision and secondly, on the function of this new tool. The Member States signed up to another unclear and ill-defined amendment, with their own separate sets of understandings. It is left to the post-negotiation and implementation phase to define in any precise terms this new concept of a Common Strategy.<sup>118</sup>

### **Mr. CFSP/High Representative**

#### French Position

The appointment of a Monsieur/Madame PESC or a High Representative of the Union was a long-standing French proposal.<sup>119</sup> This figure would be appointed for between three to five years, having both an organisational and representative role in the area of the CFSP. While the Council Secretariat would be strengthened to provide assistance for such an individual, the European Council would appoint and dismiss the person.<sup>120</sup> In its IGC memorandum the French government suggested that this figure would replace the existing rotating six-month Presidency.<sup>121</sup> In its June paper the government had rolled back from this more extreme position, emphasising that the new office 'must not upset the present institutional balances or undermine the powers conferred on the various institutions of the Union ...' with 'basic responsibility' remaining with the Presidency. At the same time, the French were adamant that the office would be held by a high profile figure, an individual with political clout rather than an official: 'the High Representative must be a figure of authority and credibility ... That is why care should be taken to select a person of real stature, not to say international renown'.<sup>122</sup> The French government felt this was necessary, given that the same proposal provided for the possibility of the High Representative participating in negotiations with third countries, as well as follow up function on the implementation of joint actions.<sup>123</sup> French officials denied that the government had already established that this was a job for former President Valery Giscard d'Estaing.<sup>124</sup>

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<sup>118</sup> For Common Strategies see Article 13 Title V TEU.

<sup>119</sup> See Monar, 1997, p.423.

<sup>120</sup> See *Memo*, 1996.

<sup>121</sup> *Ibid.*

<sup>122</sup> CONF/3863/96.

<sup>123</sup> *Ibid.*, p.4

<sup>124</sup> Interviews.

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As on other issues the French government's lack of tact on presenting its proposals was met with suspicion from the smaller Member States. Despite changing its position at a later stage, the French government had initially proposed to replace the six-month rotating Presidency with a 'High Representative of the Union'.<sup>125</sup> Throughout the IGC it remained critical of the Troika.<sup>126</sup> This amounted to an implicit, and at times explicit, charge that the smaller Member States in the Presidency were unable to provide effective leadership in CFSP.<sup>127</sup> This left the governments of several of the smaller Member States with the impression that the objective was to sideline their participation in crucial areas.

This suspicion and confusion regarding French motives was further heightened given French criticism of the Commission's role in the second pillar. In the lead-up to the IGC and throughout the negotiations, the French government claimed that the Commission had at times been slow to implement Council decisions taken under CFSP, citing examples from Bosnia. They sought an article that would tighten the overall pillar structure requiring the Commission to improve its role of applying Council policy.<sup>128</sup> Again the reaction from the smaller Member States was sceptical with a strong desire not to see the Commission challenged.

### German Position

The German government had not been enthusiastic about the concept of a High Representative. In its pre-negotiation papers it avoided the issue, with only a vague reference to a 'new post' in the joint Franco-German statement at Freiburg in February '96. This reflected Franco-German differences on the whole approach to the post. The German government wished the new job to be filled by an official rather than a potentially high-powered political figure. The rationale behind this was to avoid any potentially damaging competition that may have upset the institutional balance, undermining the role of the Presidency. However, for officials within the French Foreign Ministry, it was a case of the German Foreign Minister, Klaus Kinkel, being determined not to see any political figure take up a position that may have competed with his office. There was unity and consistency within the German approach. On

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<sup>125</sup> See *Memo*, 1996.

<sup>126</sup> See *AE*, 26/04/95; *Memo*, 1996; *AE*, 10/12/96.

<sup>127</sup> *Ibid*; Interview.

<sup>128</sup> See Freiburg summit, 1996.

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repeated occasions Hoyer and Kinkel along with other senior officials on the negotiating delegation (Brewer, Kölsch) claimed that the Council Secretary General could be appointed as the High Representative if given a deputy.<sup>129</sup>

### British Position

Together with the policy-planning capability the British Conservative government displayed a genuine interest in some form of representation for the second pillar. In their White Paper they described themselves as 'ready to look at the idea of appointing a single figure to represent the foreign policy of the Union to the outside World'.<sup>130</sup> In a further submission in late July, the British government said that the High Representative would have the rank of Secretary General. He would report to the Council, working closely with the Presidency and the Political Committee. As with the German government, the British were concerned that any new position would be firmly rooted in existing structures, the Presidency remaining in overall charge. The primary function of the Representative was the formulation and preparation of questions relating to CFSP discussed by the General Affairs Council. As with the French proposal, representation abroad of agreed EU policies, monitoring implementation of agreed measures and conducting political dialogue with third countries were other possible functions.<sup>131</sup> The Labour government's pre-negotiation paper made no mention of any representation on the second pillar.<sup>132</sup> However, its non-paper on the IGC in late May '97 suggested that it was close to the Conservative government's position. The only reference it made to the High Representative was to make clear that the position would be under Council control.

### Negotiations

Initial Presidential papers from the Italians repeated the variety of options open to governments to strengthen the visibility and coherency of CFSP; a reinforcement of the powers of the Presidency, a tandem representation by the Presidency and the Commission, a Mr. CFSP, either an official or a political figure, and finally an American style National Security Council made up of representatives from the

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<sup>129</sup> Interview; Statement by Hoyer 6 May, 22 July & 8 October 1996, Statement by Kinkel 28 October 1996; Also see 'Mr Rifkind voices doubts about "Constructive Abstention" and says "Mr CFSP" should be a Senior Official', *AE*, 5/03/96.

<sup>130</sup> See *Partnership of nations*, 1996.

<sup>131</sup> *Ibid.*

<sup>132</sup> See Labour, 1995.

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Presidency, Mr. CFSP, the Commission and the WEU. (Italian proposal)<sup>133</sup> In its first paper the Irish Presidency continued with the same openness on the possibilities; a Secretary-General responsible for CFSP, a High Representative, or a special representative/envoy depending on the circumstances.<sup>134</sup> However, its October paper – after a series of submissions from the French, Germans and the Commission, which had adopted a favourable position on the Secretary-General being responsible for CFSP ‘under the authority of the Presidency’<sup>135</sup> – provided for the Secretary-General of the Council to ‘assist the Presidency in preparing the work of the Council and in co-ordinating and following-up implementation of policy decisions’. It also provided for the appointment of ‘a special representative’ on ‘particular policy issues’. The contents of the December draft were largely similar.<sup>136</sup>

The Dutch Presidency did make two significant changes to the approach in its March amendments. Firstly, the Secretary-General was to be appointed for a five-year term. Secondly, this was a decision that would be taken by qualified majority by the Council, as opposed to the European Council.<sup>137</sup> There were further changes right up to the Amsterdam Summit. The French government proved somewhat effective in salvaging what it could from its preferred approach of creating a high-profile position. Firstly, specific reference was made in the final treaty to the position of High Representative. Secondly, while, as previously suggested, this position would be held by the Secretary-General of the Council, the introduction of a deputy Secretary-General ‘responsible for the running of the General Secretariat’ raised the Secretary-General’s profile from a mere manager of the daily affairs of the Council.<sup>138</sup>

Yet, the suspicion from the other member governments as regards French motives and objectives undermined the original French preference and, more importantly, it did little to foster further discussion on the more precise functions of the eventual High Representative. The lack of support from the German government has been mentioned, while chapter III on the government positions on this issue before the IGC revealed the near total-absence of support for a high-profile figure. The Italians were the only other

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<sup>133</sup> CONF/3825/96, 24/04/96, p.1-2.

<sup>134</sup> CONF/3868/96, 16/07/96, p.4.

<sup>135</sup> CONF/3889/96, 25/07/96, Annex p.1

<sup>136</sup> See CONF/2500/96, Article J.8b, p. 73.

<sup>137</sup> See Article J.14, CONF/2500/96 ADD.1, p. 42.

<sup>138</sup> See Article 18, Title V, TEU; Article 207 TEC.

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government that would have brought greater weight and legitimacy to the French position. They had held a similar position in the pre-negotiations on the need for a political figure.<sup>139</sup>

### **3. DECISION MAKING**

#### **Introduction**

The reform of the decision-making process was essentially a question about extending the use of QMV. The Maastricht Treaty under Article J.3 had been very tentative in providing for QMV. Under Article J.3(1) the Council decided by consensus whether 'a matter should be the subject of joint action'. Even after deciding in principle on the need for a joint action, a consensus was still required in defining the scope, objectives, duration and means of implementation of this joint action. In fact under Article J.3(2), a unanimous decision was required 'in defining those matters on which decisions are to be taken by a qualified majority'. As described in Chapter III on the pre-negotiations, there was a feeling among many governments that the second pillar had not facilitated for an effective foreign policy given this almost total reliance on unanimity. However, given the sensitive nature of foreign policy, any reform of decision-making could not be confined to a question of extending QMV. The very mention of QMV brought a whole series of other possibilities to the fore.

The negotiations on decision making in the second pillar had two distinct features. While it was usually a case that the lack of direction in the negotiations persisted up until December 1996 or the early stages of the Dutch Presidency, the opposite was the case with decision-making procedures on CFSP. The components were already in place by December 1996 and there was little substantive negotiation from January 1997 to the conclusion of the Conference at Amsterdam. From an early stage it was evident that the framework that would be put in place would be one that had a piece of everything: unanimity, QMV, enhanced cooperation in the form of constructive abstention, and, in 'worst-case scenarios', an emergency brake in the form of the 'Luxembourg Compromise'. This reflected the variety of options mentioned in

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<sup>139</sup> See p.76.

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government's official position papers at the start of the Conference.<sup>140</sup> Secondly, given that no government submitted a detailed paper on the extension of QMV or its related features the Irish Presidency was reasonably skilful in using the meetings between the personal representatives along with their presidential papers to arrive at a compromise that had something for everyone.

### German Position

The push for some form of extension of QMV came in particular from the Germans, though, as mentioned in chapter III, Greece, Belgium, Ireland, Finland, Italy and The Netherlands had expressed a similar support in their position papers in early '96.<sup>141</sup> There was a sense of frustration within the federal government on the success of CFSP since its foundation in Maastricht.<sup>142</sup> Officials within the Auswärtiges Amt. vented a more specific annoyance towards the approach of Greek governments on EU relations with Turkey, and its attitude during the Yugoslav war, especially on the Former Yugoslav Republic of Macedonia.<sup>143</sup> This left the various factions within the federal government and ministries presenting a united front supporting a greater use of QMV. On several occasions during 1996 Hoyer and Kinkel along with other members of the negotiating team promoted what can be described as QMV with a German mechanism.<sup>144</sup> This sought to normalise decision-making by QMV, excluding matters of defence, but if one Member State called for unanimity it would only be possible to reject this request if a qualified majority opposed.

From government papers before the commencement of the IGC at Turin, it was apparent that the Germans would ideally prefer not to incorporate an opting-out clause into the second pillar. Nevertheless, at an early stage in the negotiations, Hoyer acknowledged that constructive abstention was worth considering further.<sup>145</sup> Later statements from the Auswärtiges Amt. provided the details on the German position.

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<sup>140</sup> Ibid.

<sup>141</sup> Judy Dempsey and Michael Lindemann, 'CDU seeks majority voting in EU foreign policy', *FT*, 14 June 1995.

<sup>142</sup> Interviews.

<sup>143</sup> Ibid.

<sup>144</sup> Statements by Hoyer, 6 May 1996; Von Plötz, 6 June 1996; Hoyer, 23 July 1996; Hoyer, 8 October 1996; Kinkel, 28 October 1996.

<sup>145</sup> Statement, Hoyer, 6 May 1996.

Constructive abstention would only apply when decisions were taken by consensus.<sup>146</sup> While a Member State could opt out from being part of a particular decision, this was on condition that the same Member States provided political and financial solidarity.<sup>147</sup> Most importantly, and reiterated by Hoyer in early October, was the bottom line that whatever the abstention arrangements, they should not prevent the adoption of decisions.<sup>148</sup>

### **British Position**

The British Conservative government was clear as regards its opposition to any use of QMV or constructive abstention. The White Paper claimed that 'CFSP will only carry weight internationally if it represents a genuinely common policy, not a majority one'.<sup>149</sup> The Labour party initially held a somewhat similar line believing '... that decisions must continue to be taken by unanimity', while opposing 'proposals to allow some Member States to opt out of some joint actions'.<sup>150</sup> However, it was to change its position in government. The strong desire to break with the Conservative past and pursue a 'constructive engagement' provided it with a degree of flexibility that was unavailable to the Major government, given the internal divisions. Its bottom line sought to maintain the national veto with QMV usage curtailed to implementation and those decisions flowing from the what the British officials perceived as the tightly defined Common Strategy. At a meeting of Foreign Ministers in The Hague on 20 May 1997, Robin Cook claimed that the UK was 'interested in constructive abstention'.<sup>151</sup>

### **French Position**

Initially the French government presented a position on extending QMV that to some extent mirrored that of the German Federal government. There was a general consensus within the government that the limited use of QMV contributed to CFSP's

<sup>146</sup> Statement by Von Plötz, 6 June 1996 & Werner Hoyer, 23 July 1996,

<sup>147</sup> Ibid.

<sup>148</sup> Statement by Werner Hoyer, 8 October 1996.

<sup>149</sup> Ibid.

<sup>150</sup> See Labour, 1995. p.14

<sup>151</sup> 'Conclave of Foreign Ministers sheds Light on CFSP – Total Stalemate Remains on Integration of WEU', AE, 21/0597.

poor operational record.<sup>152</sup> The French government's concerns on the more precise details of the extension were reflected at the Freiburg meeting on CFSP between Mr Klaus Kinkel and Mr Hervé de Charette on 27 February 1996. The proposals of this meeting would bear much similarity with the eventual changes made at Amsterdam. However, the French February memorandum failed to make any reference to QMV.<sup>153</sup> Of particular importance for the French government was the limitation 'of recourse to qualified majority voting for decisions at the implementation stage'.<sup>154</sup> The Auswärtiges Amt. was fully aware of the need for the French President to have the final word on setting policy.<sup>155</sup> It was unacceptable to the French government that the French Foreign Minister could at a future date be outvoted on substantive matters of CFSP.<sup>156</sup>

### Negotiations

The reforms laid down in the Irish draft treaty of December '96 in essence completed the negotiations on the decision-making mechanism for pillar II. The Presidential notes of 16 July 1996 contained the variety of options that would provide the mix for the eventual framework; an initial statement that abstention does not prevent the adoption of a decision, the initial steps towards a generalisation of the application of QMV and a constructive abstention clause.<sup>157</sup> The September paper considered the possibility of extending the use of QMV by combining it 'with an explicit recognition of a Member State's right to invoke an essential national interest in order to oppose the use of QMV in a specific case', with three alternatives as to what would happen should such an incident arise.<sup>158</sup> The December draft incorporated the third of these options, providing Foreign Ministers with the possibility to vote by qualified majority to refer the matter for decision to Heads of State or Government. Therefore under Article J.8a of the Irish draft unanimity remained the norm with QMV confined largely to measures implementing previously agreed decisions, though a consensus was not required when

<sup>152</sup> Interviews.

<sup>153</sup> See *Memo*, 1996.

<sup>154</sup> See *Freiburg Summit*, 1996.

<sup>155</sup> Interview

<sup>156</sup> See 'Mr Barnier Favours Maintaining Unanimity In CFSP, But With "Flexibility", *AE*, 10/07/95; 'European Commission Distances Itself from Mr Chirac's Idea of Giving European Council "A Face And A Voice", *AE*, 01/09/95.

<sup>157</sup> CONF/3868/96, p.7-8.

<sup>158</sup> CONF/3935/96, 30/09/96, p.9.

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deciding to take a decision by QMV, as was the case under Maastricht. Finally, constructive abstention allowed for enhanced cooperation among member governments. To conclude the December draft allowed for enhanced cooperation to be decided by a qualified majority while there was the emergency brake with the codification of what was *de facto* the Luxembourg compromise.<sup>159</sup> There were only two further changes of a technical nature in the final draft at Amsterdam.

Initially the March draft from the Dutch Presidency broke the link between the proposed new use of QMV and the escape clause based on the national interest. With the arrival of the common strategy to the negotiating table QMV was to be used when taking decisions implementing common positions or joint actions, and for 'all decisions taken in the framework of a common strategies'.<sup>160</sup> [sic] However, while QMV applied to all decisions except those setting out common strategies, common positions and joint actions the Dutch draft removed the safety mechanism of the national veto, preventing its use in specific circumstances for reasons of national policy.

The very presence of QMV with constructive abstention in the Irish draft and, more so, the Dutch Presidency's decision to remove the Luxembourg compromise with its March draft, reflected the extent to which the British delegation was isolated from the negotiations at this time. The Conservative government had been clear in its opposition to any form of QMV or constructive abstention.<sup>161</sup> There had been no change in this position; rather there was no political direction outlining a constructive response to these Presidential drafts despite the fact that the March draft had left open the use of constructive abstention on defence and military matters.<sup>162</sup> The arrival of the Labour government restored a sense of political leadership and this manifested itself in the restoration of the 'Luxembourg compromise' in the Presidential note at the end of May. There were no further attempts to change the substance of the Dublin draft. The two technical changes referred to above firstly included a clarification on where exactly QMV would apply, namely decisions flowing from a common strategy, and on measures implementing joint actions or common positions, (Article 23(2) and secondly

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<sup>159</sup> See CONF/2500/96, Article J.8, p.78.

<sup>160</sup> CONF/2500/96 ADD.1, Article J.12, p.41.

<sup>161</sup> See *Partnership of Nations*, 1996.

<sup>162</sup> *Ibid.*

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a sentence making clear that the QMV provision did not apply to military or defence matters.

## **CONCLUSIONS**

This is the final chapter in the group of three case-studies. It was divided into three sections which examined the negotiations on the WEU, the reform to the CFSP machinery and finally reforms to the decision-making process. As has been the case throughout the two previous chapters on institutions and justice and home affairs a similar set of features defined the negotiations on CFSP. There was ambiguity in governments objectives, in turn a lack of direction in the negotiations, and eventual postponement.

Several arguments have been presented around these features. Firstly, there was no government or Presidency to push the negotiations on integrating the WEU into the EU. Instead, with a steadfast opposition to such a proposal from the British and neutrals, along with divided and ambiguous positions held by the French and German governments, the process drifted along to the inevitable postponement to another IGC. There were similar examples of postponing divisive issues on the make up of the newly-created PPU and the meaning and objective of the common strategy. Member governments will return to these questions as these treaty provisions and protocols are implemented.

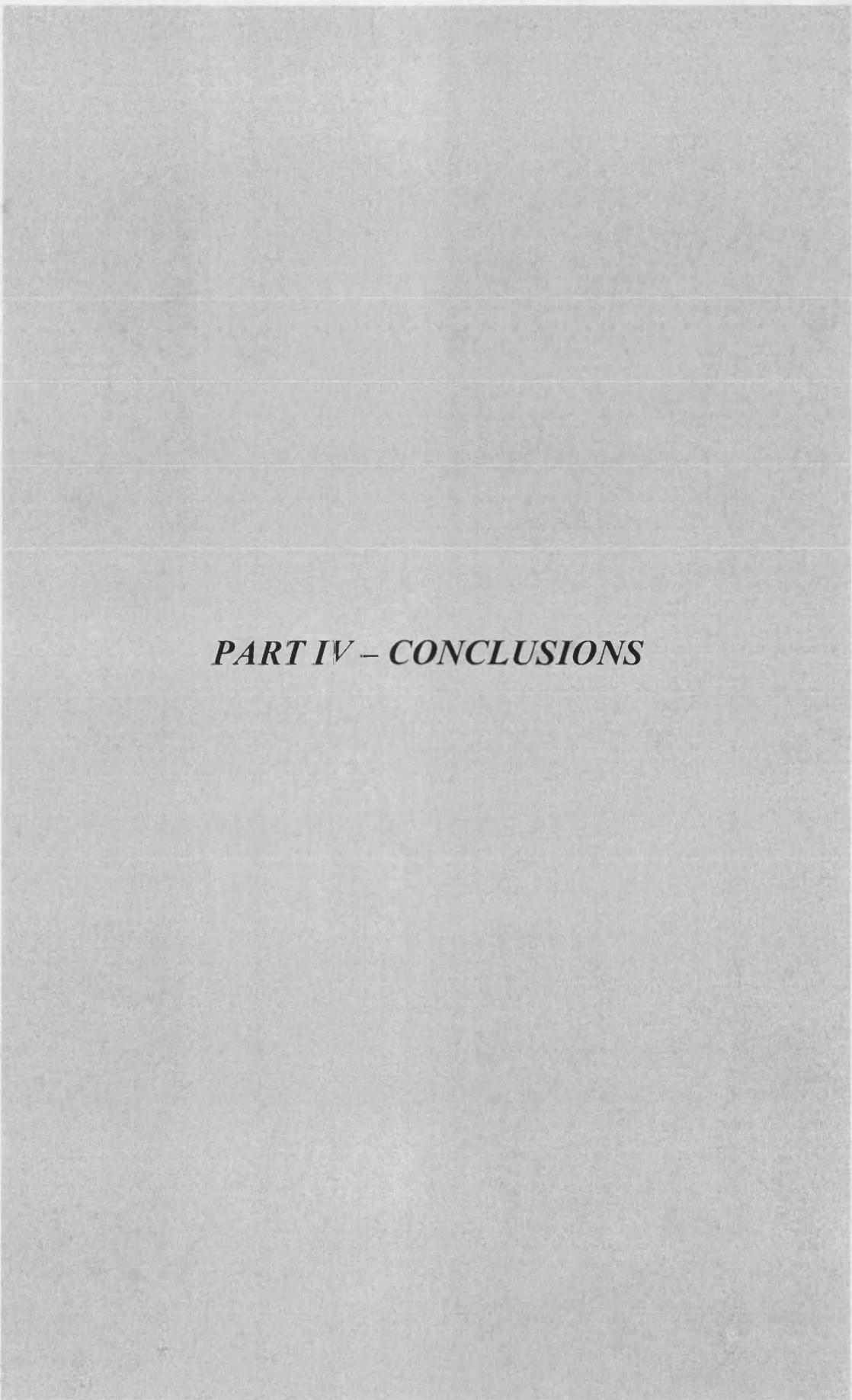
Secondly, it was difficult for delegations to negotiate the details on the reforms to the machinery of CFSP, given their suspicions to what many perceived, particularly the smaller Member States, as French attempts to repackage and re-float ideas from the 1960s Fouchet Plan. With the French pushing the hardest to introduce these new changes, there was a deep assumption within the French government's thinking that a 'serious' CFSP would only be possible with a 'serious' group of Member States making most of the decisions. Such a group did not include Luxembourg, Belgium or the reticent neutrals.

Thirdly, on the decision-making process within CFSP the German government emphasised the need for a general extension of QMV, except on defence and military matters. However, the German delegation knew that the French could not accept a

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general extension of QMV beyond implementing measures. Given that the French and German governments were in agreement on very few issues on CFSP, the Germans were reluctant to push on QMV. Despite the absence of detailed non-papers from any of the government by December 1996, the Irish Presidency had an almost complete new article in place, leaving the Dutch Presidency with little to do.

This chapter brings to a close the analysis of the negotiations at the 1996-97 Intergovernmental Conference of the European. It is now necessary to return to the three objectives as outlined in the introduction, and to present the findings of this research based on these objectives. The final chapter in Section IV takes up this challenge, bringing together the threads of the various arguments presented over the three preceding sections.



***PART IV – CONCLUSIONS***

## **CHAPTER VIII**

### **CONCLUSIONS ON THE 1996-97 IGC**

#### **INTRODUCTION**

The primary aim of this thesis has been to examine the process of negotiations at the 1996-97 Intergovernmental Conference of the European Union. Chapters III, IV, V, VI and VII sought to provide a comprehensive explanation of the negotiations, from the very conclusion of the Maastricht Treaty to the conclusion of the IGC in Amsterdam in June 1997. This explanation was provided by examining the agenda setting process, followed by a general introduction and overview of the whole negotiation process, before proceeding with a detailed analysis on the institutions, justice and home affairs, and the common foreign and security policy. The second aim was to identify the key participants or players throughout the negotiations. The analysis of the process across the same five chapters in section II and III, notably section III, referred to the key participants at the various stages in the process and on the various issues. The third objective was to define and identify the characteristics of an IGC as it evolved from the first Conference on the ECSC in 1952. Chapters I and II began this examination and the conclusions will bring it to a close.

The central argument of the thesis, as set out in the introduction and built on in chapter II at the end of the first section, was that the 1996-97 IGC negotiations were an incremental process with four defining features: ambiguity or lack of clarity among governments on their objectives, lack of direction on certain issues, unintended outcomes for governments, and a tendency to postpone divisive issues either for another IGC or until the implementation of the treaty reforms. The member governments were involved in an incremental process, with governments either slowly sorting out their priorities, with later positions contradicting earlier ones as they edge their way to a final package at Amsterdam or, in certain instances failing to sort out their priorities and drifting into agreement or postponing for another time. The second

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argument related again to the 1996-97 IGC process and the key players across the various issues on the Conference agenda. It was argued that on certain issues no government delegations nor the Presidency were pushing the negotiations. Hence the drift or lack of direction. However, while all delegations played a role in the IGC, the most influential participants, providing initiative were principally the Dutch Presidency and the French government and, to a more limited extent, the British and German governments along with the Irish Presidency, the Commission and Council Secretariat. The third line of argument that was presented in Section II of the thesis suggested that an IGC is an evolving process that has been gradually institutionalised into the European Union.

This chapter aims to bring together these arguments that have been developed throughout the thesis and make a series of conclusions. In doing so it is divided into five sections. The first section returns to the process of negotiations at the 1996-97 Conference summarising on the presence and the circumstances providing for the four features as outlined. The second section draws together conclusions on the second objective and argument of the thesis relating to participation at the IGC. In turn, the third section considers the usefulness of the liberal intergovernmentalist and neofunctionalist perspectives in providing an adequate explanation of the IGC negotiations. Both perspectives are unable to provide a satisfactory account of the process. Instead, as the four defining features of the negotiations suggest it was an incremental process, an incrementalism that differed from that inherent within neofunctionalism. The fourth section considers what this IGC tells us about the evolutionary process of the Conference and its future role in European integration. Since the fourth section concludes that there has been a further institutionalisation of the IGC, the final section examines the implications of this on the *entire* process of European integration .

## **1. FIRST OBJECTIVE – NATURE OF NEGOTIATIONS AT THE 1996-97 IGC**

It is essential in understanding the process of an IGC that it is examined from beginning to end. Stubb remarks that 'Assessing an IGC by looking only at the final bargain which takes place among the Heads of State or Government in a European

Council is like evaluating a pyramid by looking at the final stone in its construction'.<sup>1</sup> This thesis set out to provide as broad an assessment as possible, while not compromising on the depth of the analysis. The breadth was achieved by examining the setting of the agenda from the conclusion of Maastricht onwards, examining most of the major issues that governments focused upon, (Chapter III) while following up with an overview on the whole process, as well as focusing on the detailed negotiations on the three major areas on the agenda. As regards the participants in the process, an overview of their positions on all major issues on the agenda was presented in Chapter III, while the rest of the thesis looked in detail at Britain, France and Germany, while always conscious of the influence of the other players on a specific issue. In carrying out what aimed to be a comprehensive consideration of the IGC four features underpinned the whole process.

### **Unclear/Ambiguous Objectives**

Taking a holistic approach, there was no clearly established or accepted 'grand' objective for the Conference. There was nothing that all governments agreed to as driving the process. Again, this is somewhat in keeping with previous IGCs, as mentioned in chapter II. Enlargement came the closest to providing this 'grand idea'. Yet, there was no consensus on the two fundamentals of an enlargement process; when it would take place, and the extent of the intake of new members.<sup>2</sup> Nowhere were the consequences of this more apparent than on reforming the institutions. Much of the institutional reform had been billed by governments in their position papers as necessary to maintain an efficient and workable institutional mechanism in an enlarged Union. Though, on those very issues directly associated with this, namely Commission re-sizing and a re-weighting of votes in the Council, governments failed to make the changes.<sup>3</sup>

Leading on from this absence of an overall theme and as a consequence of the post-Maastricht process, governments embarked on an IGC with a large and unwieldy agenda and with poorly defined objectives on the range of issues. However, given that it was still early days in an IGC, that was expected to continue until after the British

<sup>1</sup> Stubb, 1998, p.264

<sup>2</sup> See Chapter III, pp.63-4.

<sup>3</sup> See again, chapter III, 69-72.

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general elections which had to be held within the first six months of 1997, there was time for governments to sort out their priorities into well-defined objectives. While there were some examples of this, it was not a consistent feature of the negotiations. There were repeated instances across the three major issues on the institutions, JHA and CFSP where governments objectives were notably unclear. On QMV, many governments had expressed support for an extension, yet few governments submitted any non-paper detailing the specific issues they were willing to extend on. Indeed, the German government was particularly unclear on its objectives, catching the other governments by surprise. A similar situation persisted on Commission re-sizing and re-weighting of votes, particularly the latter. While most governments' papers referred to the need for change there were few submissions, except notably from the French and the Dutch Presidency that aimed to give effect to these ideas, adding detail to the general commitments. This was a little less the case on the partial transfer of third pillar issues to the first, though again it was a case of most governments being unsure as to what the communitarisation of immigration, asylum and visa policy entailed. On Schengen, only the Dutch in their capacity as a negotiating delegation submitted a detailed paper outlining two possible approaches on incorporating the *acquis*. Yet, this was the single biggest change introduced by the Amsterdam treaty.

### **Lack of Direction**

As a consequence of this absence of clarity, the process was often marked by indirection. There were several features to this indirection. Firstly, it was most notable during the Irish Presidency. During the first two and half months of the IGC which proceeded under the Italian Presidency, there were limited expectations for clearly defined and outlined objectives. It was still early days in the process. Though, the mandate handed to the Irish Presidency at Florence in June 1996 called for the Presidency to have in place a draft treaty by the end of that year. Therefore the failure of governments to take initiatives and submit detailed proposals at a time when the Irish Presidency suggested that they were moving into the real negotiations meant that the indirection was more apparent. On issues such as the institutions, particularly Commission re-sizing and re-weighting of Council votes along with WEU-EU relations and Schengen, there was little to no negotiations. In other words there was no further progress on these issues from what governments had *already* suggested. There

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may have been repetition and restatement of previous positions but no change in the status of the negotiations.

Secondly, while this lack of direction in the negotiations was due to the failure of member governments to launch detailed initiatives it also reflected the approach of the Irish Presidency on these issues. On repeated occasions it failed or avoided instigating debate and pushing the negotiations along in a manner that the Dutch Presidency took upon itself. This was particularly noticeable on matters relating to institutions and decision making, both within the first pillar and the third pillar, and on defence aspects of CFSP. The rationale justifying this approach focused on what was termed in chapter IV as the ‘British situation’. Officials within the Irish Presidency claimed that the time was not ripe for either its Presidential papers or a draft treaty to make proposals on such sensitive issues. The argument, as mentioned throughout the thesis, was that the member governments were aware that this would be met with considerable opposition from the British Conservative government with the potential of precipitating further crisis within an already embattled Conservative administration. Given the expectations for an election victory by a more accommodating and reasonable Labour party, a delay in negotiating on these sensitive issues until a new British government arrived was presented as an astute and necessary negotiating tactic.

Nevertheless, this did not offer a completely plausible explanation for the indirection on these issues. There were two further explanations. Firstly, member governments used the British, or rather the confrontational attitude of the British Conservatives, as described in chapter II and elsewhere, presented the other governments with an excuse for failing to outline their own priorities. This was most apparent on extending QMV, the more accommodating approach of the Labour government revealing the extent to which the other governments had failed to define their positions. Secondly, the Irish Presidency was in a sense relieved with the other delegations’ reluctance to provide any initiative. As mentioned in the various chapters it suited the Irish Presidency that there was little movement on Schengen, integrating the WEU and Commission re-sizing. Ireland is not a member of either Schengen or the WEU, and as a small Member State it was not in its interests to push on a Commission re-sizing.

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There were exceptions to this form of indirection. On the decision-making process in CFSP and police cooperation it was during the Irish Presidency that the complex set-up was pieced together with the December draft proving almost identical to that at Amsterdam. There was also little change on the softer ‘issues’ such as transparency, equality and human rights from the December draft. Finally the indirection in the negotiations sometimes persisted right throughout the early months of 1997. For example, this was the case with the re-weighting of Council votes. It was not until the end of May at the Noordwijk European Council meeting that detailed proposals were tabled.

### **Unintended Outcomes**

Given that member governments often held unclear and contradictory objectives, in a process that at times lacked direction, it left some governments drifting into agreement without fully appreciating both the precise contents of that which they had agreed to, and the domestic implications of their decision. In other words, for some governments the outcomes with certain treaty articles were something that were not intended or anticipated. For example, the extension of co-decision was not considered as a high priority issue by many of the governments or their delegations. Therefore a package was put together by the personal representatives without a great deal of difficulty. However, Heads of State and Governments’ failure to give the necessary attention to the list of new areas where the procedure would apply meant that on several articles where co-decision applied, *unanimity* as opposed to QMV was to be used in the Council of Ministers, a situation that no government delegation claimed was planned or expected.

On the third pillar, notably the role of supranational institutions in the new Title IV TEC and the reformed Article K TEU the French government, while being one of the most active in tabling detailed proposals ended up accepting changes without appreciating their domestic implications. As mentioned, this, in some respect, reflects the French style of negotiating, signing up to agreements with little reflection on their implementation. But, it was also a case of a government not intending the negotiations to be taken in a more Community-oriented direction. Internal divisions within the French position and domestic distractions after the general election result in early June

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left the French drifting into an agreement. Schengen was another example of where the absence of well-defined objectives from member governments, along with the Dutch Presidency's control on this issue, left nearly all governments signing up to an agreement with little reflection on the significance and implications of incorporating the *acquis*. Indeed, there was not even a consensus on what the *acquis* entailed. It was an outcome that few governments had anticipated or expected right up until the early stages of the Dutch Presidency.

Drawing a comparison between the formal close of the negotiations of the previous IGC at Maastricht in December 1991 and the final outcome at Amsterdam in June '97, there was also a considerable gap between what governments had then intended the 1996 IGC to be about, and what came to dominate the agenda and the significant changes in the final treaty. Article J.4(6) and J.10 TEU had called for a reassessment of the relationship between EU and WEU, while Article 189b TEC paved the way for institutional matters. The three chapters from section III and the final treaty of Amsterdam revealed the extent to which justice and home affairs, together with Schengen, formed the major changes in the final treaty. Indeed chapter IV also mentioned how other minor issues that Maastricht intended the 1996 IGC to deal with were barely mentioned throughout the sixteen months, notably tourism, energy and civil protection.<sup>4</sup>

### **Postponement**

While governments drifted into some agreements without appreciating their potentially significant implications, on other issues they avoided taking decisions, preferring instead to postpone them for another IGC or for some time during the post-negotiation phase, just as previous IGCs had done. Chapter IV mentioned how participants, sometimes even before the IGC was underway, would refer to another IGC or 'Maastricht III' that could negotiate and take decisions on those issues that the 1996-97 IGC failed to reach agreement on. In a style somewhat similar to Articles J.6(4) and Article J.10 of the Maastricht amendments, Protocol No.7 of the Amsterdam Treaty made reference to a future IGC after postponing any change on Commission re-sizing or a re-weighting of votes in the Council. This was the most clear-cut postponement of

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<sup>4</sup> See p.110.

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a contentious issue for another Conference. However, there were other more subtle examples. The relatively minor changes introduced by Article 17 on WEU-EU relations builds on the delicate wording of Article J.4 of the Maastricht Treaty. It amounts to an effective postponement of any change for another IGC on the current EU-WEU-NATO relations. Article 17 disguises the fundamental differences between governments on a European defence identity. There is the vague commitment to ‘closer institutional relations with WEU’ but integration is termed a ‘possibility’ just as ‘the progressive framing of a common defence policy’ ‘might lead to a common defence’. At Maastricht, it was ‘the eventual framing of a common defence policy, which might in time lead to a common defence’. (Article J.4(1) This debate is primed for another IGC.

The other form of postponement was until the post-negotiation phase when the implementation of the treaty would begin. It was a case of governments avoiding confronting, negotiating and deciding on crucial components of a particular issue. There were several examples. On the policy-planning capability governments avoided a specific consideration on the staffing of the unit, particularly on the size of this unit. Given that any new unit aimed to make CFSP more efficient, and given that the size of the unit would influence its functions, governments should have addressed this during the negotiations. Instead, Amsterdam concluded with governments having conflicting conceptions of how this new unit would operate and what an efficient CFSP entailed. It was a somewhat similar situation with the common strategy. There was no attempt to define in any specific terms what a common strategy entailed or what its objectives were. As was the case with the introduction of the joint action at Maastricht, this is something that will be decided as governments embark on using the new strategy. Just as they held different conceptions on the PPU, and in some ways with Mr. CFSP, so too when Amsterdam concluded, the British, French and German governments each had its own idea of what a common strategy would be.

## **2. SECOND OBJECTIVE – KEY PLAYERS IN THE PROCESS**

Chapter II referred to the fluidity as regards participation at previous IGCs.<sup>5</sup> It mentioned how it was necessary to extend a focus beyond member governments to include other actors such as the European institutions, the Presidency and the Council Secretariat. This proved particularly important for this IGC.

### **Presidencies**

The second objective of the thesis was to identify the key participants or players during the negotiations. If one were to identify what could be described as a key player in the 1996-97 process, the Dutch Presidency would come closest to qualifying as this. As was mentioned and demonstrated on the three areas of reform; institutions, JHA and CFSP, the Presidency chairs the meetings at all three levels, and most importantly for the IGC at the level of personal representatives. In turn, the Presidency sets the agenda for these meetings, usually presenting position papers which it drafts with the aid of the Council Secretariat. The Dutch Presidency can be described as a key player in two senses, firstly in launching key initiatives, particularly on institutional reform and the third pillar and secondly in that it was reasonably skilful in using the Office to good effect in leaving a very definite mark across the treaty, notably on the third pillar and Schengen.

The Dutch Presidency was particularly active on the more sensitive issues, but these were issues that the government was generally interested in. On Commission re-sizing it sought to use French support in pushing for an end to guaranteed representation for each Member State. This was a policy objective that the Dutch government's official position paper also supported. The Dutch government was also keen on re-weighting the votes in the Council. Even here, despite the lack of initiatives from the member governments in outlining their preferences, the Presidency pushed for change, though its proposal, somewhat similar to that on it's the structure of the treaty during the 1991 IGC, provided for more division than consensus. It also pushed on extending QMV in the first pillar.

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<sup>5</sup> See pp.37-46.

The Dutch Presidency, in what their Foreign Minister, Hans van Mierlo described as the ‘judo move’, was particularly astute at using the French government’s support for changes on the third pillar as a basis upon which to push for even more ambitious reform. The Presidency’s approach on incorporating the Schengen *acquis* reflected the measures which the Dutch government was prepared to take in pursuing what was yet again a stated government policy. Schengen had received so little attention up until the end of 1996 that many officials at that time considered it inconceivable that the final treaty would provide for its absorption into the EU. The Dutch went to extraordinary lengths to achieve their objectives; freezing out and ignoring the advice of the Council Secretariat, and reacting swiftly to quell the calls from the Irish and British governments for a more measured consideration of the feasibility of such a change. The Presidency generally handled the process in such a way that there was almost a total absence of consideration or consensus on the actual contents of the *acquis* or the implications of its incorporation on the functioning of the two pillars, the first and the third of the Treaties and, at the same time, the Schengen area which included non-EU members. However, the Dutch Presidency was much less influential on CFSP. This was due to internal divisions within the government, most particularly over the future role of the WEU.

It is also possible to interpret the Irish government’s use of the Office of Presidency as somewhat skilful even though much of the lack of direction in the negotiations was during the second half of 1996, with the Irish Presidency to some degree responsible for this. Firstly, it did present a draft treaty by December ’96, as required by the Florence European Council. Secondly, there were issues where the Presidency’s draft was similar to the final text at Amsterdam, most notably on police cooperation and decision making in CFSP. Thirdly, and most importantly, as already mentioned in this chapter the Presidency used both the lack of initiative from the other member governments and what has been described as the ‘British situation’ to good effect in excusing its failure to provide any direction on issues that the Irish government was not keen on. (See above) This was skilful in that the Irish Presidency was able to do this while at the same time being generally considered a success by all the other

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member governments and the institutions, except for the French Foreign Ministry which had grave misgivings on the Irish performance.<sup>6</sup>

### French Government

After the Dutch Presidency, or at times along with the Presidency, the French government was another key player, being very active in taking initiatives and in attempting to steer the process along its desired path. Despite the French delegation's energy in submitting proposals and new ideas, the general result at Amsterdam did little to suggest a French success. There were several reasons. Firstly, it relates to the style of French foreign policy. French officials admitted that too often their proposals were presented almost as a *fait accompli*, failing to acknowledge the sensitivities of other member governments.<sup>7</sup> The governments of the smaller Member States and the Commission officials gave a similar assessment. Secondly, there was a deep-seated suspicion, again principally from the small Member States as regards the motives and objectives of several French proposals. For the smaller states these proposals constituted a concerted attempt to undermine their status and influence in the European Union. It was not surprising that the French proposals were interpreted in such a way. Their papers on re-sizing of the Commission and re-weighting of votes sought to remove the guaranteed representation for each state in nominating a Commissioner, but it was likely that in practice the larger would always be in a position to make an appointment. At the same time the larger Member States would have a stronger hand in the Council. On CFSP, French criticism of the Troika and the Commission, along with its suggestions for a strong representative figure for the pillar again unnerved the smaller Member States. These proposals from the French smacked of the failed Fouchet Plan and there was certainly a deep-seated assumption within the French delegation and from the Foreign Ministry that CFSP should be run by the larger Member States.<sup>8</sup> Therefore the French proposals ran into considerable and determined suspicion that undermined their efforts to engender support for their ideas. Thirdly, the internal divisions within the government between the Interior Ministry and the Elysée and Foreign Ministry, together with the domestic distractions after the surprise general election result in the run up to Amsterdam, meant that the French failed to grasp the

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<sup>6</sup> Interviews; also see p.120.

<sup>7</sup> Interviews.

<sup>8</sup> French officials made this very clear during interviews.

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detail of the changes introduced in the Dutch Presidency on the third pillar. Again this was an issue on which the French had been pushing, with several earlier papers.

### **German Government**

The previous three chapters suggest that the occasions when the German government had a visible influence on the direction of the negotiations usually came as the negotiations reached a close. This, in some respects, reflected the nature of the German foreign policy process as described in chapter IV. On the greater number of issues discussed in this thesis, it was difficult to recognise what could be described as a coherent German position that was carried throughout the process. Instead, there were open divisions within the Auswärtiges Amt., between the federal ministries and between the government at the federal and Länder levels. However, as the process neared Amsterdam, a clearer line came from the various positions that had earlier contradicted and competed with each other. As with the extension of QMV and the formation of a new title on asylum, immigration and visa policy, the position eventually taken up by the Germans was not what the other member governments had anticipated. Domestic constraints had left Kohl with few alternatives. As mentioned, this reflected the fluid nature of the process while at the same time the German government was usually successful in gaining the concessions it demanded, though it did have the notable failure with its proposals on Europol in early May '97.

### **Franco-German Axis**

Chapter II referred to the contradictions in the Franco-German partnership that at the same time has seen both governments taking on a leadership role at an IGC, though, at times, their differences were more apparent than their joint leadership.<sup>9</sup> As far as key participants are concerned, this IGC is noted not only for the gap in French and German objectives but also for the failure of either government to present common positions. There is little need to repeat the detail of the differences, as the previous three chapters have expanded on them. On these three issues there were only two occasions when the French and Germans attempted to present a common front. Both of these came on CFSP matters. The first was on the blueprint for the phased integration

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<sup>9</sup> See pp.44-46.

of the WEU which also included Spain, Luxembourg, Italy and Belgium. As mentioned, there was no determined or co-ordinated attempt from any of the signatories of this paper to promote this proposal. Both the French and German governments had their domestic difficulties, while, at the same time there remained their fundamental differences as regards their perception of the future role and relationship between the EU-WEU and NATO. The other area of focus for Franco-German cooperation was on the machinery of CFSP, notably the common strategy. Again there were difficulties. The Germans were reluctant partners in what was a French-led idea.<sup>10</sup> They were weary of French attempts to re-float ideas from its Fouchet Plan that had the potential to upset the institutional workings of the second pillar. On institutional reform the differences between the French and German approaches were always going to be apparent, given that on Commission re-sizing and the re-weighting of Council votes, French ideas were rejected outright by the German government as completely unfeasible.

At the official levels within the Quai d'Orsay and the Auswärtiges Amt., there were few attempts to deny that there was little Franco-German cooperation on the IGC. This was particularly expressed from within the French Foreign Ministry. One high level official described Franco-German relations 'as a marriage of convenience'.<sup>11</sup> There was not even the same amount of rhetoric of cooperation or, at least it did not take on the same profile as in previous IGCs. The French expressed particular difficulties in completing the Kohl-Chirac letter on the eve of the Dublin II Summit.<sup>12</sup> This was reflected in the final letter, where there were clear contradictions. On Justice and Home Affairs the letter initially called for 'a Community policy on external borders, visas, immigration, asylum and customs cooperation', while later describing 'Cooperation on justice and home affairs [as] a relatively new area in which further experience is required before we can ultimately decide where communitarization [SIC] would provide the best answer to a problem'.<sup>13</sup> On police cooperation the same letter referred imprecisely to a future Europol with operational powers, though it failed to outline what was meant by this term, reflecting French difficulties with such a concept.<sup>14</sup> Foreign Ministers Hervé de Charette and Klaus Kinkel also spoke of joint initiatives

<sup>10</sup> Interview

<sup>11</sup> Ibid.

<sup>12</sup> Press and Information Office of the Federal Government, 13 December 1996.

<sup>13</sup> Ibid.

and common positions at the start of the Dutch Presidency, with the Franco-German ‘determination to work on the major deadlines’ taking ‘the form of precise actions ... expressing common views on other aspects of the IGC’.<sup>15</sup> Yet, these ‘common views’ did not materialise. Instead, the final stage to the IGC in the run-up to Amsterdam was marked by a return to a similar tension and suspicion between the two governments as had been the case with the election of President Chirac and an RPR-led national assembly during the pre-negotiations. However, on this occasion Bonn’s concern was focused on the new Socialist government of Lionel Jospin. (See chapter IV) While the faces had changed, the primary concern remained the same, namely France’s commitment to EMU.

### **British Government**

Just as the German and French governments struggled with a difficult and constraining domestic environment the British Conservative government had an even graver domestic situation.<sup>16</sup> This severely limited the role of the British delegation in the negotiations. On nearly all issues they stuck very close to their March ‘96 White Paper. Indeed this left the Foreign Secretary Malcolm Rifkind to suggest that they were being left out of some of the negotiations. This was also reflected at the official level within the British IGC delegation. Yet, as mentioned in Chapter IV and throughout the thesis, this did not mean that the British government did not shape the process. While it may have been the case that they provided little influence on the specific IGC issues, the political situation in Britain determined the very structure and length of the process. On repeated occasions, officials from the Irish Presidency or the other delegations would refer to waiting until after the British elections before it would be possible to seriously discuss certain issues, most notably institutional reform. Others suggested that the negotiations could have been concluded much earlier but for the fact that member governments were waiting for a change in the British administration in the hope of concluding with significant changes to the treaty. When the Blair administration did arrive it showed itself to be influential in several regards. Firstly, the good-will which, came with its ‘constructive engagement’, at times exposed the lack of consensus and failure of the other governments to define their positions. This

<sup>14</sup> Ibid.

<sup>15</sup> AE, 20/01/97.

<sup>16</sup> See again chapter III, pp.84-86 & chapter IV, pp.126-7.

was particularly apparent on extending QMV. Secondly, the Labour government was able to deliver on policies that shared similarities with the previous Conservative administration e.g. on the WEU and maintaining control of its borders, while, at the same time, being more accommodating agreeing to other changes such as the incorporation of the Petersberg tasks into the EU along with the Schengen *acquis*.

### **Council Secretariat, Commission and European Parliament**

The thesis did not set out specifically to examine the role of these three actors in the IGC. This requires further and more focused research. Nevertheless, it is worth making a few comments on their influence in the process. As already mentioned in chapter II, the Council Secretariat in most cases works closely with the Presidency and, given that the Presidencies, notably the Dutch, played such an important role in this IGC, this also left the Secretariat's officials in an influential position, since they assisted in the drafting of proposals. As the Presidency changed hands three times over the sixteen months of negotiations, the presence of the Secretariat in the background provided some continuity in what has been the longest IGC so far. Indeed, Commission officials claimed that the Irish Presidency was over dependent on the Council.<sup>17</sup> While the Presidency denied this, Bobby McDonagh acknowledged that they 'worked very closely with the Council Secretariat'.<sup>18</sup> The one clear example of direct input from the secretariat during the Irish Presidency was the detailed outline on what exactly a transfer of asylum, immigration and visa policy to the first pillar entailed. This, together with the Commission's paper, formed the basis for the Presidency's proposal on communitarisation, the latter openly acknowledging this. During the Dutch Presidency, the extent of the Council Secretariat's determination to shape the final outcome was revealed on the incorporation of the Schengen *acquis*. The Dutch Presidency claimed that it had to break with the normal drafting procedures involving the Secretariat because the latter refused to incorporate the former's suggestions.

The Commission had its representative, Marcelino Oreja Aguirre, attending the weekly meetings with the personal representatives of the Foreign Ministers, while Jacques Santer attended the European Councils at Turin, Florence, Dublin in October '96,

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<sup>17</sup> Interviews.

<sup>18</sup> McDonagh, 1998, p. 77.

Dublin in December '96, Noordwijk in May '97, and then finally Amsterdam. However, the Commission's role during the sixteen months, and indeed in the pre-negotiations was rather limited. As mentioned in chapter III, this somewhat reflected the new style of the Santer Commission. Having said that, the Commission's influence cannot be discounted. The Commission did table several influential papers on the transfer of third pillar issues to the first, Commission re-sizing, and extension of qualified majority voting. These proposals came at a time when there was little initiative from the member governments. Indeed, this was somewhat similar to the situation at the SEA when governments were initially reluctant to submit proposals.<sup>19</sup> As mentioned, the Commission's detailed proposal on communitarisation back in September 1996 was actually the first of its kind and it prepared the ground for the Irish Presidency. The Dutch also acknowledged the inspiration that the Commission's April '97 paper on extending QMV, provided the Presidency in drafting a later proposal, though the Commission's suggestions were eventually dropped. Finally as mentioned in chapter V Protocol No.7 which postponed Commission resizing for another IGC, resembled that which the Commission proposed in March '97.

It is important to stress again, as mentioned in chapter IV and the final section of chapter V, that there was little evidence to suggest that the European Parliament had an influential role across the range of issues examined during the negotiations, even when it came to the extension of co-decision. The EP failed to get observer status during the negotiations, and, as one member of a negotiating team commented 'The European Parliament made occasional guest appearances, but their input in the actual IGC was very limited'.<sup>20</sup> The Parliament was able to play a more active role in the pre-negotiations, having two very able representatives in Elmar Brok and Elisabeth Guigou on the Reflection Group.<sup>21</sup>

<sup>19</sup> On Commission at SEA, See again pp. 38-41.

<sup>20</sup> See Stubb, 1998, p.19.

<sup>21</sup> See chapter III, pp.96-98.

### **3. THEORETICAL IMPLICATIONS**

These summaries on the defining features that underpinned the IGC and the role and behaviour of the participants during the negotiations bring to a conclusion the first two objectives of the thesis. At this stage it is necessary to consider the theoretical implications of these findings. Just as chapter II focused on how both intergovernmentalism and neofunctionalism had been used to explain the previous IGC processes, identifying the weaknesses of the two theoretical perspectives, the following section considers how well the same approaches explain this IGC. The following analysis reveals that, just as with the earlier IGCs, both perspectives fail to adequately explain the 1996-97 negotiations. This, together with the findings from the first and second objective, suggests that the 1996-97 IGC can best be described as an incremental process.

#### **Intergovernmentalism**

Chapter II outlined the central features of Andrew Moravcsik's intergovernmentalist approach, focusing on his most recent explanation of European integration, including the Rome, SEA and Maastricht IGCs. In examining its effectiveness on the 1996-97 IGC, it is necessary to briefly recap on these features, while at the same time, taking into account the recent intergovernmentalist description of the negotiations behind the Amsterdam treaty by Moravcsik & Nicolaïdis.<sup>22</sup>

- Firstly and most importantly, Moravcsik's liberal Intergovernmentalism is an interpretation based on a rationalist framework. An IGC proceeds on the basis of governments making rational choices and decisions.
- Secondly, the process of negotiations involves several stages, each following on from the other; national preference formation is followed by interstate bargaining which concludes with a policy agreement or in Moravcsik's words a 'substantive

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<sup>22</sup> Andrew Moravcsik & Kalypso Nicolaïdis, 'Explaining the Amsterdam Treaty: Interests, Influence and Institutions', *JCMS*, 37:1, 1999.

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bargain’ which in turn opens up the way for a potential pooling of sovereignty in international institutions.<sup>23</sup>

- Thirdly, as Member States engaged in this rational intergovernmental process, Moravcsik claimed that each state can be considered as a unitary actor. He described the negotiations as processes where governments pursue their well-defined ‘national preferences’ with ‘the maximum efficiency afforded by available political means’. On the outcome of the negotiations he claims that ‘negotiation agreements appear to be efficient ... because preferences were transparent’.<sup>24</sup>
- Fourthly, given that it is a well-ordered, rational process with governments pursuing clearly-defined objectives, it was also a case of governments being aware of the consequences and implications, and therefore the precise content of their decisions and agreements. This extended both to changes on policy and the institutions. It is worth repeating Moravcsik’s words on this. He claims that ‘the historical record reveals that the consequences of major decisions were in fact foreseen and desired by national governments’, going onto say that ‘even where this was not the case, my analysis reveals, nearly all government were generally well aware of the likely short – and long term policy consequences of integration, good and bad’.<sup>25</sup>
- Fifthly, throughout this process of European integration and more specifically throughout the IGCs, it was a process where intergovernmental actors i.e. Member States, dominated as opposed to the supranational institutions such as the European Parliament and Commission.

There was little evidence throughout the IGC that in anyway lent support to these characteristics, except to a limited extent on the fifth in the above list. One of the defining features of the IGC, both in the pre-negotiations and throughout the negotiations on CFSP, JHA and the institutions, was the regular failure of governments to provide detailed outlines of their objectives. Therefore, it was difficult to identify

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<sup>23</sup> Moravcsik, 1998, p.473.

<sup>24</sup> Ibid., p.481.

<sup>25</sup> Ibid., p.491.

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what Moravcsik would describe as the ‘national preference’. Even when governments did sort out their objectives, this often did not happen until well into the sixteen months of negotiation. This was particularly the case with the German federal government’s positions on QMV and the transfer of immigration, asylum and visa policy to the first pillar. This was a reflection of the style of German foreign policy formation and the specific domestic circumstances that shaped the government’s positions.<sup>26</sup>

The French government’s ‘national preference’ was also somewhat fluid but in a different manner from the Germans. The French u-turned on their original position on Commission re-sizing, while having unclear and contradictory aims on justice and home affairs. On the EU-WEU relationship French objectives were fundamentally unclear. Therefore, not only was it difficult to recognise a ‘national preference’ where governments had a clear line on an issue, but when this did occur, it very often evolved during the process rather than being defined before hand. Moravcsik was clear, that before engaging in negotiations, governments defined their positions. Equally it was not a case of a substantive bargain being struck and then followed by a final stage to the negotiations which considered the necessary institutional changes. For example, as Chapter IV on CFSP attempted to demonstrate, governments had all but agreed on the new institutional and decision-making set-up on CFSP by December 1996, apart from some minor details, while they remained far apart on making changes on security and defence policy. Similarly extending co-decision and the role of the European Parliament was a process that some suggested neared completion in the early stages of the Dutch Presidency. The reason that little negotiation took place on the institutional structure under the reformed third pillar and institutional changes on the first was due to other factors, such as the expectations for a new British government and the approach taken by the Irish Presidency in leaving these sensitive issues for the Dutch Presidency, rather than it being a case of governments deliberately waiting to strike a bargain on substantive issues. As mentioned on several occasions, the negotiations did not proceed in such an ordered manner.

There was equally little evidence to support the third feature of Moravcsik’s theory on the unitary nature of the state as a negotiator engaged in concluding efficient

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<sup>26</sup> See chapter VII, pp.179-183.

agreements. At this IGC, as in previous, internal divisions within member governments were crucial in shaping the negotiations and the final treaty amendments. Moravcsik claims that, even when a state is disaggregated with competing and contradictory positions being promoted from different agents of the state the unitary actor perception of the state still applied if divisions did not ‘significantly alter their respective influence on the national negotiating position’.<sup>27</sup> He also overplays the importance of the ‘unicity’ of the negotiations.<sup>28</sup> This related to ensuring that the negotiations took place within a single structure, overseen by the Foreign Ministers. While this may have given the perception of each state functioning as a unitary actor, such were the intensities of the competing and contradictory positions within some governments that, on certain issues, it was not clear what was the national negotiating position, if indeed there was one at all. For example, the divisions within the Auswärtiges Amt., between the Auswärtiges Amt. and the Interior Ministry, and between the federal government and the Länder governments left the German delegation failing to present any detailed position paper on the communitarisation of the third pillar throughout the negotiations. It was not until the closing stages of the negotiations that the Länder made their influence felt, though they were represented on the German negotiating delegation throughout. However, up until this time it was difficult to identify who had the upper-hand. Moravcsik and Nicolaïdis fail to acknowledge the complexities and differences within the German position when they claim that Germany ‘was the most adamant promoter of EU involvement’ in immigration matters.<sup>29</sup> This may have been the case, but it did not mean that it had a clearly defined set of objectives that it pursued in an efficient manner. The same two authors make a similar mistake regarding the French position on the WEU, their mistake being failure to recognise the complexities and confusion within the French government’s position as regards NATO-WEU-EU relations, as described in Chapter VII.<sup>30</sup>

Where there was a definite government line it was often undermined by internal differences. For example the divisions between the French Interior, Justice and Foreign Ministries on the communitarisation of the third pillar undermined what was a clear line by the government on their drugs policy. In the end the French failed to deliver on

<sup>27</sup> *Ibid.*, p.23.

<sup>28</sup> See Moravcsik & Nicolaïdis, 1999, p. 66; See McDonagh, 1998, p.208.

<sup>29</sup> Moravcsik & Nicolaïdis, 1999, p. 63.

<sup>30</sup> *Ibid.*

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their ambitious drugs policy while accepting a stronger Community approach than they had aimed for on the new title IV on *Freedom, Justice and Security*, and the reformed Title VI on police and judicial cooperation in criminal matters. There were other examples of a government of a state failing to act as a unitary actor. For example the hostility and doubt that had opened up in the Dutch government, particularly amongst the right wing liberals – VVD, as regards the role of the WEU in a European defence identity undermined the governments earlier outlined policy on WEU-EU.<sup>31</sup>

Moravcsik refers to how governments during the negotiations on his five case studies which included the IGCs on the Rome Treaties, the SEA and Maastricht pursued their ‘transparent preferences’ with ‘maximum efficiency’. The absence of ‘transparent preferences’ has already been dealt with above. In turn, given the failure of governments to define their preferences or objectives, it was difficult for them to pursue them with ‘maximum efficiency’. Indeed as the second defining feature of the IGC negotiations suggested, rather than governments taking initiatives and pursuing their objectives, there was often a drift or lack of direction in the process, with little negotiation. Terms such as ‘maximum efficiency’ and ‘stable weighted objectives’ reflect the rationalist nature of Moravcsik’s perspective, a rational perspective which has so far proven unsuitable in explaining this IGC.

A fourth significant conclusion that Moravcsik drew from his five case studies suggested that member governments were very much aware of not only the content of their agreements but also they had ‘foreseen and desired’ the consequences of their decisions. The third defining feature on unintended outcomes of this IGC suggests otherwise. Governments stumbled into certain agreements with little or no contemplation of the consequences of their decisions. Nowhere was this more apparent than on the incorporation of the Schengen *acquis*. Firstly, it was almost impossible for governments to assess the implications of such a move, given that there was not even agreement on the content of the *acquis* or where the different components of the *acquis* would be placed, in the first or the third pillar. Secondly, Schengen was a separate structure with some EU members, Ireland and Britain not being Schengen participants while non-EU members such as Iceland and Norway were members. In turn there had been little debate leading up to the IGC and right and throughout the Dutch Presidency

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<sup>31</sup> See chapter VII, p.232.

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in January '97 on the possibility of absorbing the *acquis* into the Union. Again this reflects the absence of any weighty consideration of the implications of such a 'major decision'. Thirdly, the Dutch Presidency managed the whole incorporation in such a way that they suppressed any attempts by the Council Secretariat, and the Irish and British governments that emphasised the potential negative implications of the Dutch Presidency's actions, one official remarking that 'it was not clear at the outset how it would work in practice'.<sup>32</sup> For Michel Patijn the primary objective was that Amsterdam provide for an incorporation. All other matters were of secondary importance.

There were other situations where governments made agreements without appreciating what it was that they were agreeing to. The French signed up to the final set of amendments on the transfer of third pillar matters to the first without fully comprehending the extent of the role for supranational institutions and procedures. It was only in the post-negotiating phase that the French realised what they had agreed to, and how the outcome was not as they had anticipated.<sup>33</sup> It was a similar situation with the reformed Title VI on judicial and police cooperation on criminal matters. It was not an outcome that the French had intended. As mentioned they pushed for a strong and broad emphasis on fighting drugs trafficking and *addiction*, with a very definite but limited role for the Court of Justice. They found themselves agreeing to a package that provided for a much stronger role for the Court of Justice while being much weaker on a drugs policy. It was also very apparent that governments were unaware of the details as regards the extension of co-decision. Their failure to make the necessary changes on its application to correspond with the reduction in the extension of QMV highlights the extent to which they were not focused on the issue. Again, if governments were not even aware of the details of an issue, it was even more unlikely that they had thought through the likely implications of the agreement on future process of decision-making across the various policy sectors of the European Union.

The fifth conclusion which Moravcsik drew from his five case studies related to the key players in the process of European integration. Moravcsik claims that his research

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<sup>32</sup> See McDonagh, 1988, p.176.

<sup>33</sup> Interviews.

shows that the European Parliament and Commission had a rather limited role in earlier IGCs. Moravcsik and Nicolaïdis give similar assessments of this IGC. They claim that at the IGC there was ‘little evidence that either the Commission or Parliament provided either initiatives or compromise proposals that were unique and thereby altered the outcome of the negotiations’.<sup>34</sup> Despite the fact that this thesis focuses primarily on the role of the governments in what is, in any case, an intergovernmental process, it is not possible to simply dismiss the role of players other than the Member States. Firstly, as mentioned above the Commission tabled several papers on the transfer of third pillar issues to the first, Commission re-sizing, and the extension of QMV. While it is largely irrelevant whether the contents of the paper are, in the words of Moravcsik and Nicolaïdis ‘unique’, since it is not always necessary for a proposal to be unique so as to be influential, the Commission’s detailed proposal on communitarisation back in September 1996 was actually the first of its kind. Secondly, it is not simply a case of supranational actors such as the Commission or Parliament having a role vis-à-vis the intergovernmental actors in the form of member governments. It was more sophisticated than this. As argued, the influence of the Council Secretariat needs to be recognised and further researched, given that it makes the first draft of a proposal before sending it to the Presidency for the latter’s input. Finally, the Office of the Presidency needs also to be considered as an actor in its own right during an IGC. The influential role of the Dutch Presidency and to a lesser extent the Irish Presidency again brings another dimension to the debate on influential players at an IGC.

### Neofunctionalism

Taking the two central features of the neofunctionalist perspective, firstly, a process of spill-over ‘whereby *successful* integration in an area of lesser salience would lead to a series of further integrative measures in linked areas’<sup>35</sup> (author’s emphasis), and secondly, the central role that the European Commission would play in this process, it is difficult to find any use for this perspective in explaining the 1996-97 IGC. While it was possible for Delors to refer to the internal market leading to the Single European Act which in turn ‘prompted the implementation of common policies in related fields’

<sup>34</sup> Moravcsik & Nicolaïdis, 1999, p. 70.

<sup>35</sup> Taylor, 1983, p.9.

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with monetary union ‘promot[ing] economic union with the same spill-over effect’, the same cannot be said for this IGC.<sup>36</sup> This relates to the central difference between this IGC and all previous Constitutional IGCs. Article N(2) TEU did not refer loosely to a possible IGC in the future as was the case with Article 102a of the SEA or for that matter Protocol No.7 of the Amsterdam Treaty. It called for an IGC to commence in 1996. By this reason alone it cannot be proposed that the 1996 IGC came about as a result of a spill-over from integration in a previous sector.

Just as a neofunctionalist perspective fails to explain why the 1996 IGC was convened it similarly fails to explain the shaping of the agenda, and outcome of the negotiations. Taking the three major issues which this thesis focused upon: CFSP, JHA and institutions, their presence on the agenda and the approach that governments adopted on these same issues was not due to what could be described as a spill-over from another sector of integration. Firstly, CFSP and in particular, WEU-EU relations were on the agenda because of Articles J.10 and J.4(6) respectively. Again, as described in Chapter III, it was the Maastricht Treaty that shaped the agenda rather than a spill-over effect. Secondly, on the specific proposals that were proposed e.g. a policy planning capability, a Mr. CFSP, a common strategy and the greater use of QMV it was not a case of governments conceiving of these as the next necessary steps to be taken in response to the closer integration from Maastricht. Instead, it was a case of attempting to enhance the CFSP’s machinery in response to its poor performance after Maastricht.

A similar explanation can be given of the proposals to move asylum, immigration and visa policy from the third to the first pillar. As described in Chapter VI, under Article K.1 TEU, there had been little progress in advancing cooperation on these three policy issues. Governments were not responding to the need for further integration based on the success of earlier cooperation. Therefore, the eventual creation of a new Title IV on visa, asylum and immigration in the first pillar was also not a consequence of a spill-over. Nevertheless, it can be suggested that there was a tentative link, or what could be described as a spill-over, from what would amount to greater integration on asylum, visa and immigration policy under Title IV and the changes on judicial and police cooperation on criminal matters, in what remained of Article K Title VI. Given that under Title IV an area of *Freedom, Justice and Security*, was to be established with the

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<sup>36</sup> Jacques Delors, ‘A New Frontier Takes Shape’, *Europe Magazine*, December 1990.

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eventual removal of all internal borders after a transitional period (Article 61 TEC), it could be argued that closer cooperation and integration on another sector, namely fighting crime, was necessary. However, as mentioned in the introduction to ‘Crime and Security’ in Chapter VI there was already a recognition among governments of the need for better cooperation on crime irrespective of the proposal to create a new area of freedom, security and Justice. While a neofunctionalist perspective on the approach taken on judicial and police cooperation makes some headway the same cannot be said for Schengen. There was little mention of incorporating the Schengen *acquis* until the Dutch Presidency in January 1997. The Dutch were not responding to what could be described as a spill-over rather they had their own set of reasons for promoting Schengen, as described in chapter VII.

Finally on institutional reform in the first pillar, the proposed re-weighting of Council votes and the possible reduction in the number of Commissioners were not in any way linked to new policy initiatives under the Treaty of Rome. Again, it was not a case of integration in a policy sector spilling over into the institutional sector. Instead, it was a tentative reference under Article 189b in Maastricht, which was built upon by European Councils at Brussels and Ioannina, which placed these issues firmly on the agenda, on the basis that change was required to ensure that there was an efficient institutional framework after the future enlargement. On the extension of QMV and co-decision, it is possible to make another tentative suggestion that the cooperation on those issues where there was no QMV or co-decision had left governments recognising the necessity for change. Therefore, integration on a previous policy sector, while not spilling over into another policy sector, spills over into the institutional workings of the original policy. Yet, there are difficulties with this argument. Firstly, there was very little change as regards the extension of QMV, hence in the end there was little spill-over and secondly one of the defining features of the negotiations on co-decision was the lack of attention that member governments gave to this issue. It was not a case of governments considering it necessary or inevitable change, reacting to a spill-over. Briefly looking at the other issues on the IGC agenda such as employment, transparency, human rights, equality, as Chapter III argued these issues were on the agenda as a response to the Maastricht ratification crisis, an attempt to make the treaty more relevant to the citizen. As was generally the case across all of the issues, it is difficult to recognise any evidence of spill-over.

The second central feature of neofunctionalism provided an important role for the European Commission in this process of spill over. While the Commission and to a lesser extent the European Parliament played this role during the SEA IGC, its role was much more limited at this IGC, as mentioned above. Christiansen and Jørgensen attempt to argue that it had a much more influential role in the negotiations, yet they fail to present any convincing evidence to support their claims, being confined to merely remarking on how it took a much more low key approach than at Maastricht, promoted the Conference to the general public ‘receiv[ing] some 4000 NGO submissions to the talks’ and had a technical expertise that made it ‘disproportionately important in influencing the shape of the draft treaties’.<sup>37</sup> They claimed that the ‘Commission worked closely with the Council staff to ensure a smooth running of the proceedings’.<sup>38</sup> The contrary was the case. Commission officials commented how the Council Secretariat jealously guarded its privileged position as writer of the Presidency’s proposals.<sup>39</sup>

As mentioned in Chapter II, during the IGC on the SEA, the Commission was successful in working closely with business groups, a partnership which was influential in shaping the internal market programme, largely through the European Round Table in the earlier period from 1982-84, though also during the IGC. Again this delivered on the neofunctionalist predictions of loyalties shifting to the supranational institutions such as the Commission. However, as was the case with the Maastricht IGC the Commission did not play such a role at the 1996-97 negotiations. Indeed while a host of interest groups submitted papers to the Reflection Group on the IGC, there was no evidence to suggest that any particular group or groups had a noticeably influential role on the process or outcome of the negotiations.<sup>40</sup>

### An Incremental Process

While Moravcsik’s intergovernmentalist perspective claims that ‘European integration resulted from a series of rational choices made by national leaders’, and

<sup>37</sup> Christiansen & Jørgensen, 1998, p.449.

<sup>38</sup> Ibid.

<sup>39</sup> Interviews.

<sup>40</sup> In none of over forty interviews could any of the interviewees recall an interest group having an influence on the process.

neofunctionalism claims that integration in one sector inevitably or eventually gives rise to or spills-over into another with the Commission taking a lead role, the findings of this thesis has suggested something much different. Firstly, on participation at the Conference, member governments dominated, while the Commission on a few isolated issues was influential. It was the Office of the Presidency that presented the Dutch and to some extent the Irish governments with the opportunity to be in the driving seat. Secondly, the four defining features of the negotiations, as summarised above, reflected the extent to which the 1996-97 IGC was an incremental process. It was a case of muddling through. The negotiations did not proceed on the basis of clarity. Some governments on certain issues did not know what they wanted. At other times, few or no governments had thought through their objectives and how to achieve them. In turn there was indirection in the process. This was particularly the case up until December '96, though it persisted on some issues right up until the Noordwijk meeting in May '97, e.g. on re-weighting of Council votes. The combination of unclear objectives and considerable domestic distractions left some governments, and on certain issues, all governments, drifting into agreements that they had neither intended nor adequately considered. On other occasions governments reached for postponement for another IGC or until the post-negotiations/implementation phase.

Given that the neofunctionalist explanation and predictions for European integration have a strong element of incrementalism running through them, it is necessary to re-emphasise the subtle but important differences between the kind of incrementalism as used to describe the IGCs in this thesis and that within neofunctionalism. Initially, it could be said that there are strong similarities. For example, while Ernst Haas remarked on the role that elites played in the 'expansive logic of sector integration',<sup>41</sup> he also claimed that progress within this process of political integration was not *dependent* on such support since 'sector integration ... begets its own impetus ... even in the absence of specific group demands and their attendant ideologies'.<sup>42</sup> In other words the spill-over to new areas was somewhat automatic, the integration process edging along in an incremental manner, with officials and politicians not always comprehending the dynamics of this change. There was a strong emphasis throughout sections II and III of this thesis on governments entering into decisions and reaching

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<sup>41</sup> *Ibid.*, esp. p.292.

<sup>42</sup> *Ibid.* p.297.

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outcomes that they had not intended, similar to Haas's claims on neofunctionalism. However, there is a very important difference between these two forms of incrementalism. Haas claimed that 'the end result of a process of political integration is a new political community, superimposed over the preexisting ones'.<sup>43</sup> Haas's incremental process had direction, an end result that would eventually be reached. The incrementalism described in this thesis, as one of the four defining features emphasised, does not imply an actual direction in the process of European integration, but rather the emphasis is on a policy drift.

Yet, Leon Lindberg's strand of neofunctionalism also avoided focusing on 'an end point' to this incremental process.<sup>44</sup> Therefore, it would seem possible that the form of incrementalism described in this thesis, while being fundamentally different to Haas is more compatible with Lindberg's thinking. But there are several further subtle distinctions. While Lindberg may not have focused on where this incremental process would finally end, there was still the underlying assumption that this was a process that had direction. For example, in describing 'political integration' he, as with Haas, referred to political actors that would 'shift their expectations and political activities to a new center'.<sup>45</sup> He referred to 'the logic of integration',<sup>46</sup> while the concluding chapters of Lindberg and Scheingold's 1970 work sought to explore whether the 'Community [was] likely to continue to grow', and in what manner.<sup>47</sup>

There was also the assumption that 'central institutions' such as the Commission would evolve and play a key role in the process.<sup>48</sup> Again, given that these institutions were there 'to *represent* the common interests' the process had a sense of direction. The incrementalism described in this thesis does not place such an emphasis on the 'Community method' of integration, with the Commission having a lead or vital role. As described throughout, the Commission during this IGC was one of several players, within an EU of 15 members that is considerably different from that anticipated by

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<sup>43</sup> Haas, 1958, p.16.

<sup>44</sup> Lindberg, 1963, pp. 3-13; see also Lindberg & Scheingold, 1970, p.24 & p.109.

<sup>45</sup> Lindberg, 1963, p.5.

<sup>46</sup> *Ibid.* p.252.

<sup>47</sup> Lindberg & Scheingold, 1970, p.250.

<sup>48</sup> Lindberg, 1963, p.252; also see Lindberg & Scheingold, 1970 p.117.

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either Lindberg and Haas. Indeed, Lindberg touched on how ‘by increasing the membership of the Community … the integrative processes might be slowed down’.<sup>49</sup>

The notion of spill-over also lends this sense of direction to the incremental process of neofunctionalism. Integration, or as Taylor described it, ‘successful integration’ would culminate in a series of further integrative steps in linked areas.<sup>50</sup> There was a logic to the process, whether this integration would occur automatically or needed to be activated is not important in this instance as both forms are different from the concept of incrementalism as used in the thesis. In his conclusions to his 1963 book Lindberg remarks on how ‘an ever-widening circle of actors finds this system [of spill-over] to be an effective, logical, and appropriate framework in which to pursue its goals …’.<sup>51</sup> Again there is the assumption of direction in his claims. While Lindberg later referred to the notion of ‘spill-back’ and ‘output failure’, their effects on the process of integration should not be overstated.<sup>52</sup> ‘Output failure’ occurred when ‘a commitment was accepted but where the [Community] system was unable to produce an acceptable set of policies and rules’ while ‘spill-back’ referred to ‘a situation in which there is a withdrawal from a set of specific obligations’ with ‘the scope of Community action and its institutional capacities decreas[ing]’.<sup>53</sup> While output failure was more a reflection of a slow-down in integration on a particular area, rather than a lack of direction in the whole process, the implications of ‘spill-back’ on the direction of integration seemed much more negative. However, Lindberg and Scheingold were quick to acknowledge that ‘While spill-back does entail risks for the system as a whole, it is likely to be limited to the specific rules in question’.<sup>54</sup> Therefore, the crucial role of spill-over in providing direction to the process of integration continued. As the previous section in this chapter has sought to demonstrate there was little evidence to suggest that spill-over had any significant influence in setting the agenda for the Conference or determining the final outcomes in the Treaty of Amsterdam. There was not a similar form of linkage between related areas underpinning the incrementalism described in this thesis. In turn, there was little in the way of direction in this kind of incremental process.

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<sup>49</sup> Lindberg, 1963, p.294.

<sup>50</sup> Taylor, 1983, p.9.

<sup>51</sup> Lindberg, 1963, p.293.

<sup>52</sup> See Lindberg & Scheingold, 1970, p.137.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

#### **4. THIRD OBJECTIVE – EVOLUTION AND INSTITUTIONALISATION OF THE IGC**

Chapter I set out to define an IGC. There have been no previous attempts to make such a comprehensive definition of this process. The chapter concluded that there were three types of IGC; legal, specific and constitutional. The constitutional IGC was most relevant for this thesis and therefore Chapter I took a more detailed look at this type of Conference. This depicted a process that had evolved since the first IGC on the European Coal and Steel Community up until the Maastricht Conferences. The final part of this chapter and the thesis considers whether the 1996-97 Intergovernmental Conference of the European Union marks another step in the evolution of this process.

The conclusion of the Maastricht Treaty revealed the extent to which there had been an institutionalisation or regularisation of the Conference into the European Union. Article N(2) specified when the next IGC would take place, the third IGC within a ten year period. This was the significant difference between this IGC and previous constitutional IGCs. The Amsterdam treaty continues with this institutionalisation of the process, but there have been two significant departures. Firstly, the new Article 48 which replaces Article N does not include a specific reference as to when the next IGC would start. Instead, Protocol No.7 on the institutions referred to a future ‘conference of members of governments of the Member States’ that would carry out a ‘comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions’ a year before the membership of the EU exceeds twenty.<sup>55</sup> Again it was open as regards the timing of the Conference, though it did state that this Conference should be convened ‘at least one year before the membership of the European Union’. The problems over the ratification of Maastricht had made the 1996 start date for this IGC wholly unsuitable. Governments did not want to be faced with similar difficulties at a future IGC.

The second difference from Maastricht is that Protocol No.7 merely refers to a future IGC on institutional matters. Therefore should the next IGC deal exclusively with these two institutional matters of Commission re-sizing and re-weighting of Council votes, it cannot be described as a constitutional IGC. By definition a constitutional IGC has

<sup>55</sup> Protocol on the Institutions with the Prospect of enlargement of the European Union, Treaty of Amsterdam.

three defining features. Firstly, it aims to make a series of treaty changes. Secondly, these changes set out policy objectives to be pursued or implemented after ratification. Thirdly, these policy objectives are flanked with reformed institutional procedures to facilitate for their implementation. Protocol No.7 only makes reference to the first and third features. Therefore should this future IGC restrict itself to these institutional questions it amounts to a ‘specific’ IGC as opposed to a constitutional. Yet, it is still possible that while protocol No.7 would form the premise for a future IGC since it would be convened under Article 48, there would be much room for other issues to form part of the mandate and find their way on to the negotiating agenda, taking what may have been intended to be a specific IGC to the level of a constitutional Conference. Indeed at the time of writing the British government was pressing for another Conference to begin in March 2000 and end in September of the same year, dealing with the institutional matters as recommended by protocol No.7, while returning to the discussions on the relationship between the EU-WEU.<sup>56</sup> This would qualify as a constitutional IGC. The French government has also mooted the possibility of a limited IGC from about October to December 2000 with a bigger IGC with a full agenda sometime in 2002-3.

The constitutional IGC is now becoming a regular part of the EU. It is no longer the exceptional event. Instead it is part of the ‘normal’ EU business, as described in chapter II and as this IGC reinforces. Forster and Wallace remark that ‘IGCs in the Community policy process seem to be following the path that meetings of heads of government took, from exceptional events to an increasingly institutionalized element in the negotiation of the major package deal’.<sup>57</sup> However, as suggested in Chapter II and reflected in the analysis of previous IGCs and in turn through the primary and secondary objectives of the thesis, while there has been an institutionalisation of the constitutional IGC, it remains considerably unregulated as regards the manner in which it should proceed. As demonstrated, this allows for a considerable degree of fluidity, both in the sense of participation at an IGC and secondly, in the nature of the negotiation process. Dinan captures this fluidity when he describes IGCs as ‘inherently unwieldy’.<sup>58</sup>

<sup>56</sup> Interviews.

<sup>57</sup> Anthony Forster & William Wallace, ‘The IGCs and the Renegotiation of European Order After the Cold War’, Laurent & Maresceau, *The State of the EU Vol. 4*, p.341.

<sup>58</sup> See Dinan in Laurent & Maresceau, 1998, p.38.

While doubts were expressed at the end of the Amsterdam European Council on the entire approach of the IGC and whether this was the mechanism that should continue to be used in reforming the treaties, it is highly unlikely that it will be dropped or replaced.<sup>59</sup> The suggested alternatives have included a constituent assembly or an independent group of ‘Wise men’ that would identify the areas for reform, presenting a series of amendments which governments would then decide upon, as opposed to negotiate upon. There is one convincing reason why none of these options will replace the IGC. This is a process of constitutional reform. No other level of decision-making shapes the European Union more than amending the primary law. Governments will not delegate this responsibility to either a group of individuals or the European Parliament and Commission or indeed have the recommendations of any of these bodies restricting its role in the process in such a formal and obvious manner. Dinan suggests that the solution to the unwieldy and inefficient nature of the IGC is for the Conference to return to its ‘former role as a means of ratifying agreement already reached by the member states on specific issues’.<sup>60</sup> However, Dinan misses the point here, since this kind of an IGC, termed by this thesis in chapter II as a ‘specific IGC’ has always existed along-side the constitutional IGC, rather than the latter gradually assuming the role of the former.

While Dinan suggests that there should be a change in the role of the IGC others claim that there will be move away from the traditional preoccupation of a constitutional IGC, namely outlining a set of policy initiatives flanked by institutional reform through a series of treaty reforms. Moravcsik & Nicolaïdis claim that the primary focus of future IGCs ‘will be on the construction of a legitimate constitutional order for policy-making’, as opposed to the expansion of common policies.<sup>61</sup> Ludlow makes a somewhat similar suggestion saying that the EU has moved into the age of the ‘system managers’ away from the previous ‘system building’.<sup>62</sup> These suggestions amount to little more than tenuous predictions. Firstly, it is somewhat artificial to make such a distinction between building a constitutional order and the expansion of common

<sup>59</sup> See ‘Severe Judgement’, *AE*, 19/06/97.

<sup>60</sup> See Dinan in Laurent & Maresceau, 1998, p.38.

<sup>61</sup> See Andrew Moravcsik & Kalypso Nicolaïdis, ‘Keynote Article: Federal Ideals and Constitutional Realities in the Amsterdam Treaty’, in Geoffrey Edwards and Georg Wiessala, *The European Union 1997: Annual Review of Activities*, Blackwell, 1997, p.34.

<sup>62</sup> P. Ludlow, ‘The Intergovernmental Conference: An Evaluation’, Brussels: Centre for European Policy Studies, unpublished mimeo.

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policies. The two are not mutually exclusive. Future IGCs can deal with both tasks. Indeed this would not be something new. All previous IGCs have to some degree focused on managing the system as well as ‘system building’. The institutional reforms that flanked the policy initiatives at earlier Conferences have shaped the basis of the constantly evolving constitutional order, while treaty amendments such as those dealing with citizenship of the Union, introduced by the Maastricht Treaty, reflect a pre-occupation with the legitimacy of this order. Secondly, Article 48, the treaty provision that refers to the IGC, remains open as regards the subject matter of any future negotiations. It is not possible to comment accurately on the future focus of a constitutional IGC until the implementation of the Amsterdam Treaty gets underway. To describe Amsterdam as being a harbinger for future IGCs less concerned with the expansion of common policies, as Moravcsik and Nicolaïdis do, fails to recognise the potentially significant policy changes that came with this treaty, notably the incorporation of the Schengen *acquis*, and the new chapters on employment and fundamental rights and non-discrimination. Therefore, for the foreseeable future there is every likelihood that the traditional form of the constitutional IGC will continue.

As to the process of negotiations at these future IGCs, while the 1996-97 Conference did have its unique features, the most apparent being that its timing was specifically provided for at Maastricht, it was not dissimilar to previous Conferences to the extent that there was ambiguity, indirection, unintended outcomes and postponements in the negotiations. Again, this relates to the special nature of EU IGCs, as referred to throughout, namely the lack of a well defined structure to the negotiations, with member governments embarking on this constitutional reform process without a ‘grand-design’ for the evolving EU. It is likely that these defining features will persist with future IGCs.

## **5. IMPLICATIONS FOR EUROPEAN INTEGRATION**

While the primary aim of this thesis has been to explain the 1996-97 IGC negotiations, it would be incomplete without some consideration of the implications of its findings on the process of European integration. This is even more necessary, given that this chapter has criticised both the intergovernmentalist and neofunctionalist attempts to explain this, and previous IGCs. Also, given that the thesis concludes that there

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continues to be an institutionalisation of the constitutional IGC into the European Union, with the further use of this reform procedure in the near future, it is worthwhile to consider how this will shape integration.

Before considering the implications of the thesis findings it is necessary to stand back and place the constitutional IGC in context with the European Union as a whole. The EU is a multi-level entity. The process of integration takes place in different forms at these different levels within the European Union, and the IGC forms part of one level. This notion of a multi-level Union takes on several forms. For some, such as Gary Marks, it is ‘a system of continuous negotiation among nested governments at several territorial tiers – supranational, national, regional, and local ...’.<sup>63</sup> In other words the EU is one component or level in this system of governance. Others, notably Wallace and Peterson place a stronger emphasis on multi-levels *within* the European Union. This is more relevant for this thesis. Wallace distinguishes between four ‘different clusters of EC policymaking’: *constituent*, with high level bargaining leaving ‘the rules and priorities of the system ... under negotiation’; *redistributive*, that leaves ‘system-wide organizations and political coalitions clash[ing] over structural costs and benefits’; *distributive*, where policy networks are created between ‘sectoral organizations ... and with sections of the political legislature and executive’; and *regulatory*, which Wallace describes as ‘being characterized by disaggregated decisions, legal or quasi-legal processes, and specialized interests’.<sup>64</sup>

John Peterson provides a similarly descriptive account of the various levels of analysis in EU decision-making. He refers to three levels: *super-systemic*, where history-making decisions are taken by the European Council, member governments in an IGC or by the European Court of Justice that ‘alter the Union’s legislative procedures, rebalance the relative powers of EU institutions, or change the EU’s remit’; *systemic*, where policy-setting decisions are taken, with the Council of Ministers and COREPER being the dominant actors, while the European Commission plays a crucial role, but not what Peterson would describe as a dominant role; and finally the *sub-*

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<sup>63</sup> Gary Marks, ‘Structural Policy and Multilevel Governance in the EC’, in Alan W. Cafruny & Glenda G. Rosenthal, *The State of the European Community Vol. 2 The Maastricht Debates and Beyond*. Boulder, Co: Lynne Rienner, 1993 pp. 391-410, esp. p. 392.

<sup>64</sup> See William Wallace, in H. Wallace *et al.*, 1983, pp. 403-36; William Wallace, ‘Government without Statehood: The Unstable Equilibrium’, in Wallace and Wallace (eds.), 1996, pp.439-460, esp. p. 446.

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*systemic/meso-level*, where policy is shaped by actors that are ‘formally ‘non-political’: the Commission’s Directorates-General (DGs), national civil servants and private actors who bargain with each other in various types of committee or Council working groups’.<sup>65</sup>

Taking Wallace’s and Peterson’s models, the institutionalised IGC forms part of the *constituent* level of the former and the *super-systemic* of the latter. The IGC can be considered as part of one of the levels of policy-making in a multilevel EU. Therefore, to understand the implications of the thesis findings on European integration as a whole, it is firstly necessary to consider the effects on policy-making at the lower levels of the European Union. It would be too much to draw conclusions about the *entire* process of integration based purely on the IGCs without considering the effects of the incrementalism on the other levels within the EU.

While this thesis has referred to the relatively well-established processes of policy-making at the lower levels in the European Union, it is the series of treaty amendments of the constitutional IGCs that sets the framework within which decisions at the lower levels are taken, namely the *redistributive*, *distributive* and *regulatory* levels or the *systemic and sub-systemic* levels. Therefore, the incrementalism at the *constituent* and *super-systemic* levels has a ripple effect, shaping the parameters within which EU policy and integration proceeds at the other levels. This leaves a strong element of incrementalism running through the *entire* process of European integration and not just within the level of the IGC. In other words, the incrementalism used to describe the 1996-97 IGC, with the four defining features of ambiguity, lack of direction, unintended outcomes and postponement, features that were also present at previous Conferences, shapes European integration on all levels of the EU.

In turn, the effects of this incrementalism are reflected in the general character of the European Union when looking the entity as a whole, taking all levels into account. The EU does not fit traditional conceptions of international cooperation and sovereignty.<sup>66</sup>

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<sup>65</sup> See John Peterson, ‘Decision-making in the European Union: towards a framework for analysis’, *JEPP*, 2:1, March 1995, pp.69-93, esp. pp. 71-76.

<sup>66</sup> See J. Agnew, ‘The Territorial Trap: The Geographical Assumptions of International Relations Theory’, *Review of International Political Economy*, 1:1, Spring, 1994; John Ruggie (ed.) 1993 *Multilateralism Matters: the theory and Practices of an Institutional Form*, New York Columbia University Press 1993.

Sbragia remarks that the EU is a ‘political entity that does not fit any accepted category of governance’.<sup>67</sup> Wallace describes it as ‘less than a federation, more than a regime’ with Amsterdam ‘register[ing] the contradiction of a European political system which has moved far beyond traditional concepts of sovereignty, without developing a consensus on what is emerging in its place’.<sup>68</sup> Neither Member Governments nor the institutions have a clear idea as to where the EU is going. The process of European integration rather than being driven by well-defined objectives and a clear direction is better defined by an incrementalism that tends towards a policy drift leaving the EU as ‘an incomplete political system’ or a ‘quasi-state’.<sup>69</sup> As Forster and Wallace remark ‘Among the most deeply rooted characteristics of European policymaking have been settled preferences for incrementalism over strategic review.<sup>70</sup>

The institutionalisation of the constitutional IGC reinforces the incremental element in the entire process of European integration. It will mean more of the same for the EU. Member governments will be continually called upon to renegotiate on the rules of policy-making and the agenda of integration in what is a state-to-state process of negotiation. They are locked into a process of Intergovernmental Conferences. Therefore, governments are caught between acting for a sovereign state and as an actor in a confederation. Indeed, they play both roles at once. Without a grand plan on what is emerging governments are left muddling through the constitutional reform process, proceeding in an unclear and convoluted manner, neither fully aware of their objectives or the implications of their decisions until the decisions are implemented in the post-negotiations phase at some of the lower levels of policy-making. In turn, just as governments and the European institutions are sorting out the implications of the decisions and amendments of a previous IGC, the same governments are preparing to embark on yet another set of reforms. In an EU of rational actors and coherent governments the process of integration would proceed on the basis of strategic objectives. This is not the case. Instead, domestically constrained coalition governments, and ministries with their own well-developed and often contradictory interests are left making incremental changes. However, while this may leave the EU as a ‘quasi-state’ displaying little direction Forster and Wallace remark optimistically,

<sup>67</sup> William Wallace, 1983, p.403.

<sup>68</sup> Wallace, Summer 1999, p.19.

<sup>69</sup> See William Wallace in Wallace *et al.*, 1996, p.451.

<sup>70</sup> Forster & Wallace, in Laurent & Maresceau, p.342.

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that ‘As with so much in the history of European integration, the observer is struck at once by the fragility of the moving consensus and by the recognition that it nevertheless continues to move’.<sup>71</sup>

## **CONCLUSIONS**

This final chapter sought to bring to a close the primary and secondary arguments that have been developed throughout the thesis; namely that the negotiations at the 1996-97 IGC were of an incremental nature with the Dutch Presidency taking the lead role in the process. This in turn allowed for three further sets of conclusions to be made, firstly regarding the theoretical explanations of the 1996-97 IGC, secondly on the future role of the IGC and thirdly on European integration in general. On the theoretical explanations of the 1996-97 IGC it was argued that neither Moravcsik’s intergovernmentalism nor Haas and Lindberg’s neofunctionalism provided a sufficient explanation of the negotiations at this IGC. Despite the incremental nature of the neofunctionalist explanation of European integration it was shown that this form of incrementalism differed considerably from that which defined the negotiations at the IGC. On the future role of the IGC this chapter concluded that there continues to be an institutionalisation of the constitutional IGC. It is now a regular part of the EU, with two further Conferences expected within a five-year period.

The institutionalisation or regularisation of an incremental process such as the constitutional IGC set the thesis up for a final and tentative consideration on the implications that this holds for European integration. While being important to recognise that integration proceeds in a different manner across the various levels of the European Union it was argued that that the treaty amendments from an IGC set the framework within which the other levels operate. Therefore, the incrementalism from the IGC process extends beyond this level of decision-making, to shape the *entire* process of European integration. The effects of this incrementalism are reflected in the character of the EU. As an entity that does not fit traditional conceptions of international cooperation and sovereignty it continues to evolve with neither Member Governments nor institutions having well defined objectives of what is being constructed. The institutionalisation of the constitutional IGC looks set to continue this

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<sup>71</sup> Forster & Wallace, p.352.

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process of incrementalism, with European integration continuing to edge or drift along in an uncertain manner.

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<sup>1</sup> Where position of an individual is given this is a position that they held during the IGC.

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Stubb, Alexander	Member of Finnish negotiating team in the 1996-97 IGC, Foreign Ministry, 24 October 1997, London.
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Staff	British Embassy to The Netherlands, 15 January 1998, The Hague.
Tranholm-Mikkelsen, Jeppe	Member of the Danish negotiating team in the 1996-97 IGC, Permanent Representation of Denmark to the European Union, 18 June 1998, Brussels.
Wijk, Rob de	Clingendael & Advisor to the Dutch Ministry of Defence, 18 February 1998, The Hague.

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**Members of the IGC Reflection Group<sup>1</sup>****Ministers of State**

Werner Hoyer (Germany)

Carlos Westendorp (Chairman, Spain)

Michel Barnier (France)

Gay Mitchell (Ireland)

Michiel Patijn (Netherlands)

Gunnar Lund (Sweden)

David Davis (United Kingdom)

**Member of EU Commission**

Marcelino Oreja Aguirre (European Commission)

**Senior and retired officials and others**

Franklin Dehousse (Belgium), Professor

Niels Ersboell (Denmark), Former Secretary General of the Council

Stephanos Fagiolo (Italy), Senior Foreign Ministry Official

Joseph Weyland (Luxembourg), Ambassador

Manfred Scheich (Austria), Permanent Representative to the EU

Andre Goncalves Pereira (Portugal), Professor

Ingvar S. Melin (Finland), Former Minister

**The European Parliament**

Elmar Brok MEP (European People's Party)

Elisabeth Guigou MEP (Socialists)

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<sup>1</sup> This list is based on that provided by McDonagh, 1998 p.231.

### **Members of the IGC Group of Personal Representatives**

#### **Ministers of State**

Werner Hoyer (Germany)

Michel Barnier<sup>1</sup> (France)

Michiel Patijn (Chairman, January to June 1997; The Netherlands)

Francisco Seixas da Costa (Portugal)

Gunnar Lund (Sweden)

#### **Member of the European Commission**

Marcelino Oreja Aguirre

#### **Permanent Representatives**

Philippe de Schoueteete de Tervant (Belgium)

Javier Elorza Cavengt (Spain)

Jean-Jacques Kasel (Luxembourg)

Manfred Scheich (Austria)

Antti Satuli (Finland)

Stephen Wall<sup>2</sup> (United Kingdom)

#### **Others**

Niels Ersboell (Denmark)

Yannis Kranidiotis MEP<sup>3</sup> (Greece)

Noel Dorr (Chairman, July to December; Ireland)

Silvio Fagiolo (Chairman, March to June 1996; Italy)

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<sup>1</sup> Later replaced by the French Permanent Representative, Pierre de Boisieu.

<sup>2</sup> Later replaced by Doug Henderson, Minister of State after the Labour entered government after the May '97 elections.

<sup>3</sup> Later replaced by Stelios Perrakis, Secretary General for European Affairs at the Greek Foreign Ministry.

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2. <b>Irish Presidency</b> - CONF/3866/96	2. <b>Irish Presidency</b> - Codecision, Flexibility & National Parliaments - CONF/3985/96	2. <b>Irish Presidency</b> - CONF/3868/96
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6. <b>Britain</b> – reforming third pillar - CONF/3918/96	6. <b>Dutch Presidency</b> - QMV - CONF/3815/97	6. <b>Britain</b> - Mr. CFSP - CONF/3893/96
7. <b>Spain</b> – CONF/3925/96	7. <b>Dutch Presidency</b> - QMV - CONF/3816/97	7. <b>Britain</b> – Policy Planning - CONF/3894/96
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		12. <b>Dutch Presidency</b> – CONF/3897397
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2. <b>Irish Presidency</b> - 3914/96	2. <b>Sweden</b> – CONF/3859/96	2. <b>Irish Presidency</b> – CONF/3948/96
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7. <b>Commission</b> - CONF/3805/97	7. <b>Irish Presidency</b> – CONF/3943/96	<b>European Court</b>
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		5. <b>France</b> - CONF/3853/97
		6. <b>Dutch Presidency</b> -

<b>Environment</b>		
1. <b>Austria</b> – CONF/3852/96 2. <b>Denmark</b> – CONF/3904/96 3. <b>Irish Presidency</b> – CONF/3907/96 4. <b>Austria</b> – CONF/3917/96 5. <b>Britain</b> – CONF/3919/96 6. <b>Sweden</b> – CONF/3922/96 7. <b>Irish Presidency</b> – CONF/3958/96 8. <b>Germany</b> – CONF/3966/96 9. <b>Finland</b> – CONF/3969/96	8. <b>Dutch Presidency</b> – Simplification of Treaty – CONF/3838/97 9. <b>Finland</b> – CONF/3865/97 10. <b>Dutch Presidency</b> – Quality of Legislation – CONF/3878/97 11. <b>Dutch Presidency</b> – Simplification of Treaty – CONF/3901/97	CONF/3898/97 7. <b>Dutch Presidency</b> - CONF/3899/97

### **Chronological overview of 1996-97 IGC**

- **7 December '95** – Chirac and Kohl meet in Baden-Baden to discuss a joint initiative.
- **15-16 December '95** – Madrid European Council.
- **26 February '96** – Council of EU foreign ministers meeting - Split over preparations for Turin Summit.
- **27 February '96** – Franco-German meeting in Freiburg to prepare for the IGC
- **9-10 March '96** – Informal meeting of EU foreign ministers in Palermo - Still unclear on mandate for IGC and involvement of European Parliament
- **21 March '96** – Sweden has a new prime minister. Calls for a new Swedish model to fight unemployment and revive the economy.
- **28 March '96** – British Government releases its package to restore confidence in beef sector and in an attempt to have the export ban imposed on British beef lifted. British Policy of non co-operation to come into effect.
- **29 March '96** – IGC convened & mandate presented.
- **1-2 April '96** – First meeting of Personal Representatives in Brussels. Chairman Fagiolo described it as encouraging. Discuss 3<sup>rd</sup> Pillar reform.
- **15-16 April '96** – Personal representatives meeting - discussed employment, environment, energy, civil protection and tourism, subsidiarity and transparency.
- **21 April '96** – Italy has a new centre left government headed by Romano Prodi.
- **22 April '96** – Foreign Affairs meeting in Luxembourg. Same programme and result as personal representatives from 15-16 April.
- **2-3 May '96** – Personal representatives meet in Brussels. Discuss QMV, Commission, ECJ and flexibility.
- **5 May '96** – Spain's new Prime Minister is sworn in. His conservative government describe participation in EMU as a national objective.
- **7 May '96** – Personal Representatives discuss CFSP.
- **14 May '96** – Defence and Security discussed - role of WEU.
- **15 May '96** – Kohl in extraordinary meeting with the Commission. Recognition of Germany's problems in meeting EMU deadline.

- **6 June '96** – Chirac and Kohl meet in Paris. Express concern as regards the lack of progress in negotiations.
- **21-22 June '96** – Florence European Summit. European Council calls for the Irish Presidency to prepare a draft treaty. British policy of non co-operation comes to an end as compromise on BSE crisis is reached.
- **7-8 September '96** – Meeting of EU foreign ministers in Tralee. Unclear as to whether there would be an extraordinary meeting in October as called for by France.
- **5 October '96** – Special Meeting of the European Council at Dublin Castle. A non binding meeting with Member States expressing particular concern on Justice and Home Affairs. Irish presidency refers to its approximation of texts approach.
- **29 October '96** – Joint Contribution by de Charette and Kinkel on reinforced co-operation.
- **18-19 November '96** – Personal representatives meet in Brussels discuss justice and home affairs and the possibility of introducing Community methods for certain aspects of 3<sup>rd</sup> pillar.
- **3 December '96** – Last meeting of personal representatives under the Irish Presidency. Chairman Noel Dorr remarks that there would be no surprises in the draft treaty due for release on 5 December '96.
- **4-5 December '96** – Irish Presidency releases its draft treaty.
- **9 December '96** – Franco-German Summit meeting in Nuremberg, submit joint letter.
- **13-14 December '96** – Dublin European Council. Apart from presenting and discussing the draft treaty the Irish Presidency also presented the framework for the Growth and Stability Pact along with Dublin Declaration on Employment both of which formed the basis for resolutions on growth, stability and employment at the Amsterdam European Council.
- **20 January '97** – Foreign Ministers meet and re-cap on institutional matters.
- **27-28 January '97** – Personal Representatives in Brussels - Co-operation between police forces and courts under pillar III. Patijn remarks that 'The Intergovernmental Conference is moving, we have entered the final stage'.
- **10-11 February '97** – Personal Representatives of Foreign Affairs - discussed the possibility of incorporating Schengen into treaty. Patijn described this issue as a 'complex' one.
- **17-18 February '97** – Negotiations among personal representatives on institutional matters.

- **24 February '97** – General Affairs Council meeting - Justice and Home Affairs – text for area of freedom, security and justice. Dutch propose and present to the other members a draft on the 3<sup>rd</sup> pillar.
- **1 March '97** – Germany and Italy adopt a Common position on 3<sup>rd</sup> pillar and Schengen.
- **3-4 March '97** – Personal Representatives meet and discuss on Justice and Home Affairs. France stresses link between free movement and flanking measures.
- **10 March '97** – Franco-German initiative on CFSP, including the phased integration of the WEU into the EU and the creation of the Common Strategy.
- **10-11 March '97** - Personal Representatives discuss the possible extension of QMV and the prospects of merger between EU and WEU.
- **25 March '97** – 40<sup>th</sup> anniversary of treaty signing. Presidency hopes to complete the reform of the 2<sup>nd</sup> and 3<sup>rd</sup> pillars within a month leaving institutional matters for the final days.
- **6-7 April '97** – Foreign Ministers in Noordwijk – little progress on reforming EU institutions.
- **9 April '97** – Kohl and Chirac meet in Bonn. Reaffirmed commitment to EMU timetable.
- **29-30 April '97** – Foreign Affairs Council. IGC one of the topics. Focus on CFSP, relations between EU and WEU, re-weighting of votes within Council, composition of Commission. Restatement of earlier positions with little progress.
- **1 May '97** – Labour party sweep to victory in British general election, promising a 'constructive engagement' with its EU partners.
- **5 May '97** – Personal Representatives meeting in Brussels. Henderson as the new personal representative to the British Foreign Secretary outlines government's new approach on Employment Chapter, human rights and non-discrimination, extension of QMV in areas related to the Internal Market e.g. research, regional and industrial policy. Veto to remain on fiscal policy, social security and budgetary questions.
- **14 May '97** – Austrian Foreign Minister tells the Austrian parliament that the government would not tolerate Austria losing a place at the Commission. Similar position to other small Member States.
- **20 May '97** – Meeting of foreign ministers in The Hague, still disagreement on all three areas of CFSP, institutional reform and third pillar matters.

- **23 May '97** – Informal summit meeting of EU leaders in Noordwijk. Particularly influential meeting on re-weighting of votes in the Council of Ministers and Commission resizing.
- **26-28 May '97** – Meeting of personal representatives. Discussion on 3<sup>rd</sup> pillar.
- **30 May '97** – Dutch release a draft treaty.
- **2-3 June'97** – Foreign Affairs Ministers meet in Luxembourg and discuss draft texts.
- **5 June '97** – Socialist victory in French general election
- **5-6 June '97** – Meeting of personal representatives in Brussels. Feeling of crisis expressed on institutional reform.
- **18 June '97** – Fifteen close to consensus on treaty
- **21-22 June '97** – Florence European Council – Amsterdam Treaty agreed.