

Fordham International Law Journal

Volume 22, Issue 6

1998

Article 3

The Amsterdam Treaty: Overview and Institutional Aspects

Jean-Claude Piris*

Giorgio Maganza†

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Jean-Claude Piris and Giorgio Maganza

Abstract

The overall picture presented by the media regarding the two day and two night Amsterdam meeting of the Heads of State and Government in June 1997 was largely negative. The main reason for the negativity was that the Intergovernmental Conference ("IGC"), by failing to agree on Treaty amendments concerning the size of the Commission and the weighting system for qualified majority voting in the Council, supposedly could not produce satisfactory responses as to the need to reform the institutions of the European Union with a view to its next enlargement. Is this picture justified in light of the actual outcome of the IGC? It certainly would be if the IGC's scope had been limited to institutional reform and if the IGC had not produced any concrete results in the institutional field. But neither of these statements is true. One only needs to look at the changes brought about by the Treaty of Amsterdam to appreciate the extent of the reform. The purpose of this Article is to provide such an illustrative overview of the reform, with particular emphasis on institutional aspects. This will be done against the background of the preparation and development of the IGC.

ESSAYS

THE AMSTERDAM TREATY: OVERVIEW AND INSTITUTIONAL ASPECTS

*Jean-Claude Piris**
*Giorgio Maganza***

INTRODUCTION

The overall picture presented by the media regarding the two day and two night Amsterdam meeting of the Heads of State and Government in June 1997 was largely negative.¹ The main reason for the negativity was that the Intergovernmental Conference ("IGC"), by failing to agree on Treaty amendments concerning the size of the Commission and the weighting system for qualified majority voting in the Council, supposedly could not produce satisfactory responses as to the need to reform the insti-

* Director-General of the Legal Service of the Council of the European Union; Legal Adviser to the Intergovernmental Conference that negotiated and adopted the Treaty of Amsterdam.

** Legal Adviser to the Legal Service of the Council of the European Union; Member of the task force for the Intergovernmental Conference that negotiated and adopted the Treaty of Amsterdam.

The views expressed in this paper are the authors' personal views and do not in any way commit the position of the Council of the European Union.

1. The London Financial Times editorial, on the day following the conclusion of the Amsterdam meeting, opened with the following: "No one had great expectations from the EU's Maastricht revision conference. But even the lowest expectations have been disappointed by the paltry results achieved in Amsterdam yesterday morning." See *Europe Becalmed*, FIN. TIMES, June 19, 1997. In a more straightforward way, the Paris Daily Libération carried the following front page heading on the signing of the Treaty of Amsterdam: *Le nouveau traité européen est nul*. LIBÉRATION, Oct. 3, 1997. Fortunately enough, more positive—and more reasoned—comments followed. See Editorial Comments, *The Treaty of Amsterdam: Neither a Bang nor a Whimper*, 34 COMMON MKT. L. REV. 767 (1997); Editorial Comments, *Union Without Constitution*, 34 COMMON MKT. L. REV. 1105 (1997); Elmar Brok, *Kein Papiertiger: Der Vertrag von Amsterdam*, VII WIRTSCHAFTSDIENST 375 (1997); Philippe de Schoutheete, *L'avenir de l'Union européenne*, POLITIQUE ÉTRANGÈRE, No. 3, 1997, at 263; J.H.H. Weiler, Editorial, *Amsterdam, Amsterdam*, 3 EUR. L.J. 309 (1997). The attitude taken by the European Parliament is also worth recalling. In a resolution on the Treaty of Amsterdam adopted on November 19, 1997, the Parliament, regretting that the Intergovernmental Conference ("IGC") had left some institutional issues unresolved, nevertheless stressed that the new Treaty marked a further step towards the construction of a European political union and recommended that the Member States ratify it, O.J. C 371/99 (1997).

tutions of the European Union with a view to its next enlargement.

Is this picture justified in light of the actual outcome of the IGC? It certainly would be if the IGC's scope had been limited to institutional reform and if the IGC had not produced any concrete results in the institutional field. But neither of these statements is true.

One only needs to look at the changes brought about by the Treaty of Amsterdam² to appreciate the extent of the reform. The purpose of this Article is to provide such an illustrative overview of the reform, with particular emphasis on institutional aspects. This will be done against the background of the preparation and development of the IGC.

Quite curiously, this latest revision of the Treaties, while being carefully and lengthily prepared, did not have clearly defined objectives. No previous IGC had been prepared with such attention and over such a lengthy period of time. The contrast with the hastily-prepared 1991 IGC on Political Union, which led to the signing of the Maastricht Treaty³ (or "TEU"), is striking. Things were very different this time. In early 1995, more than twelve months before the planned opening of the IGC, the EU institutions were already assessing the functions of the new-born Maastricht Treaty with a view to possibly reforming it.⁴ Later

2. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) (not yet ratified) [hereinafter Treaty of Amsterdam]. For a general view of the content of the Treaty of Amsterdam, see Sally Langrish, *The Treaty of Amsterdam: Selected Highlights*, 23 EUR. L. REV. 3 (1998); Koen Lenaerts & Eddy De Smijter, *Le Traite d'Amsterdam*, JOURNAL DES TRIBUNAUX DROIT EUROPÉEN, Feb. 1998, at 25; THE TREATY OF AMSTERDAM: TEXT AND COMMENTARY (Andrew Duff ed., 1997); Peter Ludlow, *A View from Brussels, A Quarterly Commentary on the EU* (Center for Eur. Pol'y Stud., Brussels, Belgium), July 1997; Philippe Manin, *The Treaty of Amsterdam*, 4 COLUM. J. EUR. L. 1 (1998); 4 REVUE TRIMESTRIELLE DE DROIT EUROPÉEN (1997) (special issue devoted to the Treaty of Amsterdam).

3. Treaty on European Union, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 719 [hereinafter TEU] (amending Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty], as amended by Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741 [hereinafter SEA]).

4. The report of the Council on the functioning of the Maastricht Treaty has been published by the General Secretariat of the Council, Brussels, 1995. See GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN UNION, REPORT ON THE FUNCTIONING OF THE MAASTRICHT TREATY (1995); see also E.U. BULL., no. 4, at 93 (1995) (carrying, in full, foreword and conclusions of report by the Commission and also referring to contributions by European Parliament, Court of Justice, and Court of First Instance); European

that year, a Reflection Group⁵ debated at length about challenges ahead and options for the forthcoming conference and suggested an annotated agenda for the IGC.

No clear objective, however, had been established for the IGC from the start—neither the accomplishment of the internal market, such as the objective of the Single European Act,⁶ nor establishing an economic and monetary union, one of the major objectives of the Maastricht Treaty—apart from the few follow-up items that were required by provisions of the Maastricht Treaty itself (namely reviewing the common foreign and security policy provisions⁷ and the scope of the European Parliament's legislative powers⁸). Also clear from the start was the need for the EMU chapter of the EC Treaty to remain off the negotiating table, thereby avoiding any possible risk of interference with progress towards the third stage of economic and monetary union.⁹

Several post-Maastricht developments, however, shed more light on the scope of the IGC, indicating some main directions in which to take action. One development was the need to take better account of the concerns of the citizens of the Member States, in other words, to bring the Union closer to its citizens. Paradoxically, the gap between the process of European integra-

Parliament Resolution on the functioning of Treaty on European Union with the prospect of the 1996 Intergovernmental Conference, O.J. C 151/55 (1995) (reporting on functioning of TEU).

5. The Reflection Group was set up by the European Council meeting in Corfu on June 24-25, 1994. E.U. BULL., no. 6, at 18 (1994). It was composed of representatives of the ministers of Foreign Affairs of the Member States and chaired by Ambassador Westendorp of Spain. The Reflection Group submitted a report to the European Council Meeting in Madrid on December 15-16, 1995. E.U. BULL., no. 12, at 25 (1995). The report of the Reflection Group has been published by the General Secretariat of the Council, Brussels, 1996. GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN UNION, REFLECTION GROUP REPORT AND OTHER REFERENCES FOR DOCUMENTARY PURPOSES (1996).

6. SEA, *supra* note 3, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741.

7. TEU, *supra* note 3, tit. V, O.J. C 224/1, at 94-96 (1992), [1992] 1 C.M.L.R. at 729-34.

8. *Id.* art. N, O.J. C 224/1, at 99 (1992), [1992] 1 C.M.L.R. at 739; Treaty establishing the European Community, Feb. 7, 1992, art. 189b(8), O.J. C 224/1, at 66 (1992), [1992] 1 C.M.L.R. 573, 695 [hereinafter EC Treaty], *incorporating changes made by TEU*, *supra* note 3.

9. This led to the absurd consequence that the cooperation procedure, while being abolished all throughout the Treaty establishing the European Community ("EC Treaty"), has been maintained in the Economic and Monetary Union ("EMU") provisions. *See, e.g.*, EC Treaty, *supra* note 8, art. 104a(2), O.J. C 224/1, at 34 (1992), [1992] 1 C.M.L.R. at 638.

tion and the citizens had grown wider during the period of ratification of the Maastricht Treaty, which represented the greatest effort since the signing of the Treaties of Rome to promote a People's Europe.¹⁰ Eventually, the Member States felt the need to address that gap at the EU level, and in concrete terms, by confronting issues such as unemployment, health, environment, equality between men and women, and openness.

Another element that called for action was the need to reform the Union's institutional structure in order to prepare it for an enlarged European Union of twenty-five or more members. Furthermore, while the Reflection Group considered that the IGC should focus on necessary changes rather than embarking on a complete revision of the Treaty, Member States kept piling items onto the conference tables. These items ranged from the status of churches, to animal welfare, to voluntary service activities to sport,¹¹ thereby making the IGC agenda management much more difficult.

Confronted with such a large and diverse agenda, the IGC took some time—after its formal opening in Turin on March 29, 1996—before getting into the real negotiating business. In 1996, the successive Italian and Irish presidencies respectively took stock of the issues on the table and submitted a first outline for a draft revision of the Treaties. In the early months of 1997, the Dutch presidency initiated the final effort to bring the IGC to a successful conclusion in Amsterdam.¹² The Presidency had

10. It is worth recalling that it was the Treaty on European Union ("TEU" or "Maastricht Treaty") that introduced a new Part Two to the EC Treaty specifically devoted to the "Citizenship of the Union," setting out the rights related thereto (right to move and to reside freely within the territory of the Member States; right to vote and to stand at municipal and European elections in the country of residence; right to protection abroad by diplomatic or consular authorities of any Member State; right to petition the European Parliament; right to apply to a European Ombudsman). EC Treaty, *supra* note 8, pt. 2, O.J. C 224/1, at 10-11 (1992), [1992] 1 C.M.L.R. at 593-94. The Maastricht Treaty also introduced specific provisions for Community action in fields such as education, vocational training and youth, culture, and consumer protection to the EC Treaty. *Id.* arts. 126-129a, O.J. C 224/1, at 45-48 (1992), [1992] 1 C.M.L.R. at 657-63.

11. The diversity of the IGC agenda is reflected in the great number of declarations that are attached to the Treaty of Amsterdam (fifty-nine, plus thirteen protocols). *See* Treaty of Amsterdam, *supra* note 2, O.J. C 340/1, at 92-144 (1997).

12. The Italian Presidency submitted a progress report on the IGC to the European Council meeting in Florence in June 1996, which asked the Irish Presidency to prepare a draft outline for the Maastricht Treaty revision for discussion at the Dublin European Council in December 1996. A collection of the most significant documents relating to the IGC proceedings during the Italian, Irish, and Dutch presidencies semes-

to accept, however, that all the problems were not going to be settled because some Member States believed that time was not ripe for decisions as regards certain sensitive issues on the table.

I. THE OUTCOME OF THE IGC: MAIN ASPECTS OF THE AMSTERDAM TREATY

The main changes to the Treaties agreed to in Amsterdam may be grouped into four areas: the subject matters currently referred to under the heading "the Union and the citizens"; the free movement of persons and internal security; the external action of the European Union; and the institutional issues. In this respect, the IGC may thus be regarded as having fulfilled the mandate it received from the Heads of State and Government meeting in Turin in March, 1996: the mandate requested the IGC to focus its work on those areas.

This Article will not dwell on the new employment chapter¹³ and the improved social policy provisions¹⁴ because both will be covered separately.¹⁵ However, their paramount importance to the overall outcome of the IGC should be stressed. They provide evidence that the citizens' concerns are high on the list of the European Union's priorities.¹⁶

ters have been published by the General Secretariat of the Council of the European Union, Brussels, in 1996, 1997, and 1998.

13. New Title VIa as introduced in the EC Treaty by the Treaty of Amsterdam. See Treaty of Amsterdam, *supra* note 2, art. 2(19), O.J. C 340/1, at 33-34 (1997) (inserting tit. VIa into EC Treaty); Consolidated version of the Treaty establishing the European Community, tit. VIII, O.J. C 340/3, at 235-36 (1997), 37 I.L.M. 79, 107 (not yet ratified) [hereinafter Consolidated EC Treaty] (tit. VIa of EC Treaty), *incorporating changes made by Treaty of Amsterdam, supra*. By virtue of the Treaty of Amsterdam, articles of the EC Treaty will be renumbered in the Consolidated version of the Treaty establishing the European Community ("Consolidated EC Treaty"). Treaty of Amsterdam, *supra*, art. 12, O.J. C 340/1, at 78-79 (1997). This title notably provides for coordination at the Community level of the Member States' employment policies, which will have to take account of Community guidelines and whose implementation will be assessed by the Community with a view to ensure consistency.

14. The Treaty of Amsterdam marks the end of the United Kingdom's "social opt-out" and the incorporation of the Maastricht Agreement on social policy into the EC Treaty. See Treaty of Amsterdam, *supra* note 2, art. 2(22), O.J. C 340/1, at 35-39 (1997) (replacing arts. 177-20 of EC Treaty); Consolidated EC Treaty, *supra* note 13, arts. 136-43, O.J. C 340/3, at 239-43 (1997), 37 I.L.M. at 109-11 (arts. 177-20 of EC Treaty).

15. See Patrick Venturini, *Social Policy and Employment Aspects of the Treaty of Amsterdam*, 22 FORDHAM INT'L L.J. S94 (1998).

16. The relevance of the Amsterdam European Council proceedings on growth and employment is generally underscored when assessing the outcome of the Amsterdam meeting. The adoption of two Resolutions, one regarding the implementation of

Equally important are the Treaty changes related to the area of freedom, security, and justice. The so-called “communitarization” of matters such as asylum, immigration, and visas, which presently fall under Title VI of the TEU—the so-called “third pillar”—is a significant step forward. Through these Treaty changes, Community rules and procedures will apply, with some transitional arrangements,¹⁷ to areas directly related to the Community objective of free movement of persons.¹⁸ Although police and judicial cooperation will remain largely “intergovernmental,” nevertheless they will be able to avail themselves of an enhanced range of legal instruments.¹⁹ A larger role

the Stability and Growth Pact, the other on Growth and Employment, greatly contributed to paving the way for the final stage of economic and monetary union, and for unblocking the IGC negotiations, thus allowing the European Union to keep the schedule planned for the opening of the enlargement process. See Resolution of the European Council on the Stability and Growth Pact of 17 June 1997, Amsterdam, O.J. C 236/1 (1997); Resolution of the European Council on Growth and Employment of 16 June 1997, Amsterdam, O.J. C 236/3 (1997).

17. During a transitional period of five years, the Council will act unanimously and the Commission will have to examine any request made by a Member State when it submits a proposal. See Treaty of Amsterdam, *supra* note 2, art. 2(15), O.J. C 340/1, at 31 (1997) (inserting art. 73o(1) into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 67(1), O.J. C 340/3, at 203 (1997), 37 I.L.M. at 91 (art. 73o(1) of EC Treaty). After that period, the co-decision procedure shall apply to all or parts of the areas covered by the new EC Treaty Title if the Council so decides by unanimity. See Treaty of Amsterdam, *supra* note 2, art. 2(15), O.J. C 340/1, at 32 (1997) (inserting 73o(2) into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 67(2), O.J. C 340/3, at 204 (1997), 37 I.L.M. at 91 (art. 73o(2) of EC Treaty).

18. New Title IIIa on Visas, Asylum, Immigration and other policies related to the Movement of Persons, as introduced in the EC Treaty by the Treaty of Amsterdam. See Treaty of Amsterdam, *supra* note 2, art. 2(15), O.J. C 340/1, at 28-32 (1997) (inserting tit. IIIa into EC Treaty); Consolidated EC Treaty, *supra* note 13, 340/3, at 200-04 (1997), 37 I.L.M. at 89-91 (tit. IIIa of EC Treaty). This Title provides for action to be taken to ensure the abolition of any controls on persons, when crossing internal borders, as well as for related flanking measures with respect to external border control, asylum, and immigration. Under the Protocol on the position of the United Kingdom and Ireland, those two Member States are allowed not to participate in the adoption of measures promulgated pursuant to this Title, and are not bound thereby. Treaty of Amsterdam, *supra* note 2, Protocol on the position of the United Kingdom and Ireland, O.J. C 340/1, at 99-100 (1997). They may, however, at any time, notify the President of the Council of their willingness to participate. *Id.*, O.J. C 340/1, at 99 (1997). Special, and rather peculiar, opt-out provisions have also been made for Denmark regarding its non-participation in the new Title of the EC Treaty and in parts of the Schengen *acquis*, which would be determined to fall within that Title. *Id.*, Protocol on the position of Denmark, O.J. C 340/1, at 101-02 (1997). These Protocols, which were tabled at the last minute, could not be properly assessed from a legal point of view.

19. See Treaty of Amsterdam, *supra* note 2, art. 1(11), O.J. C 340/1, at 18-19 (1997) (replacing art. K.6 of TEU); Consolidated version on the Treaty on European Union,

will be played in this area by the European Parliament and the Commission. The Court of Justice itself will also have far wider jurisdiction than it has at present on the acts adopted under the "third pillar."²⁰ The achievements of the Schengen Agreement,²¹ establishing free movement of persons among thirteen Member States, will be incorporated into the framework of the Union.²²

Account has been taken of the specific position of the United Kingdom and Ireland, which will be entitled to retain their own border controls and will not be bound by the new EC Treaty provisions on free movement of persons, but may accept them, at any time, as well as join the Schengen *acquis* and the initiatives building upon it.²³

For sure, such an intricacy of provisions, transitional arrangements, and opt-outs, sometimes cross-referring to one an-

art. 34, O.J. C 340/2, at 164-65 (1997), 37 I.L.M. 67, 74-75 (not yet ratified) [hereinafter Consolidated TEU] (art. K.6 of TEU), *incorporating changes made by* Treaty of Amsterdam, *supra*. By virtue of the Treaty of Amsterdam, articles of the TEU will be renumbered in the Consolidated version of the Treaty on European Union. Treaty of Amsterdam, *supra*, art. 12, O.J. C 340/1, at 78-79 (1997).

20. See Treaty of Amsterdam, *supra* note 2, art. 1(11), O.J. C 340/1, at 19-20 (1997) (replacing art. K.7 of TEU); Consolidated TEU, *supra* note 19, art. 35, O.J. C 340/2, at 165-66 (1997), 37 I.L.M. at 75 (art. K.7 of TEU).

21. Schengen Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers, June 14, 1985, 30 I.L.M. 68, 73 (1991). The Schengen Agreement has subsequently been amended several times, notably to include all the Member States except the United Kingdom and Ireland.

22. Treaty of Amsterdam, *supra* note 2, Protocol integrating the Schengen *acquis* into the framework of the Union, O.J. C 340/1, at 93-96 (1997). Under the terms of the Protocol, the appropriate legal bases (in the EC Treaty or in Title VI of the TEU) for the provisions that constitute the Schengen *acquis* (as identified in the Annex to the Protocol) have to be determined by a unanimous Council decision; pending such decision the Schengen *acquis* shall be regarded as based on Title VI of the TEU. Preparatory work is under way within the Council with a view to preparing that decision, as well as to implementing two other provisions of the Protocol, concerning, on one side, the association of Iceland and Norway to the implementation and further development of the Schengen *acquis*, and, on the other side, the integration of the Schengen Secretariat into the General Secretariat of the Council. *Id.* arts. 6-7, O.J. C 340/1, at 95-96 (1997).

23. Under the Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and Ireland, those Member States shall continue to exercise border controls and to maintain the existing "Common Travel Area" arrangements. Treaty of Amsterdam, *supra* note 2, Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and Ireland, O.J. C 340/1, at 97-98 (1997).

other, is not likely to make this part of the Treaty the best candidate for the "readability award." It is indeed an awful piece of Treaty drafting.

The Treaty changes concerning fundamental rights are of particular importance. Judicial control of respect for fundamental rights is made explicit with regard to action by the institutions,²⁴ and, for the first time, sanctions are made possible, in the form of the suspension of certain rights deriving from the Treaty, in the event of serious and persistent breaches of fundamental rights by a Member State.²⁵ Member States have also agreed on new provisions to combat discrimination and to promote equality between men and women.²⁶

24. See Treaty of Amsterdam, *supra* note 2, art. 1(9), O.J. C 340/1, at 9 (1997) (art. F(2) of TEU); Consolidated TEU, *supra* note 19, art. 6(2), O.J. C 340/2, at 153 (1997), 37 I.L.M. at 69 (art. F(2) of TEU). Article F(2) of the TEU, now renumbered as Article 6(2), which provides that the Union shall respect fundamental rights, as guaranteed by the 1950 Rome European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law, shall be subject to the Court of Justice jurisdiction according to Article L of the TEU as amended by the Treaty of Amsterdam. See Treaty of Amsterdam, *supra* note 2, art. 1(13), O.J. C 340/1, at 23-24 (1997) (replacing art. L of TEU); Consolidated TEU, *supra* note 19, art. 46, O.J. C 340/2, at 170 (1997), 37 I.L.M. at 77 (art. L. of TEU). At present, the Court has no jurisdiction in this respect, although, as shown by a well-established case law, it does not refrain from reviewing the action of the Community institutions in light of fundamental rights as referred above.

25. See Treaty of Amsterdam, *supra* note 2, art. 1(9), O.J. C 340/1, at 9 (1997) (inserting art. F.1 into TEU); Consolidated TEU, *supra* note 19, art. 7, O.J. C 340/2, at 153 (1997), 37 I.L.M. at 69 (art. F.1 of TEU). The far-reaching importance of that provision with regards to the Union's commitment to fundamental rights should be stressed, as it allows action to be taken against a Member State responsible for a serious and persistent breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles on which the Union is founded. Should a determination of a breach be made, the Member State in question, while continuing to be bound by all the obligations arising under the treaties, might be suspended from the benefit of certain rights deriving from the application of the Treaty, including its voting rights.

26. See Treaty of Amsterdam, *supra* note 2, art. 2(7), O.J. C 340/1, at 26 (1997) (inserting art. 6a into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 13, O.J. C 340/3, at 185 (1997), 37 I.L.M. at 82 (art. 6a of EC Treaty). The Community will be empowered to take action to combat a wide range of discrimination, as based on sex, race or ethnicity, religion or belief, disability, age, or sexual orientation. Under Article 119 of the EC Treaty, the Community will be able to take positive action to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The promotion of equality between men and women has also been emphasized in the EC Treaty as a general objective. See Treaty of Amsterdam, *supra* note 2, arts. 2(2)-(3), O.J. C 340/1, at 24-25 (1997) (replacing art. 2 of EC Treaty and amending art. 3 of EC Treaty); Consolidated EC Treaty,

The main changes in the Common Foreign and Security Policy ("CFSP") chapter concern decision-making.²⁷ The role of the European Council will be enhanced in defining "common strategies,"²⁸ and qualified majority voting will become the rule for implementing decisions, although any member of the Council will have the possibility to oppose a decision for important and stated reasons of national policy.²⁹ Moreover, while unanimity remains the rule for all policy decisions, the possibility will be allowed for "constructive abstention," intended to allow a member of the Council to let a decision be taken while not being obliged to apply it, thereby reducing the risk of deadlock.³⁰ These changes, together with the creation of a High Representative for CFSP, who will be the Secretary-General of the Council,³¹ and the setting up of a policy planning and early warning unit in the General Secretariat of the Council,³² are intended to allow for a more effective and coherent foreign policy of the Union, subject of course to the political will to act in common.

Similar changes were anticipated, but could not be made, in the field of economic relations with third countries. No agreement could be found to improve decision-making and representation in order to give the Community the tools to defend the interests of its Member States, in keeping with the evolving needs of multilateral trade negotiations.³³

supra note 13, arts. 2, 3(c), O.J. C 340/3, at 181 (1997), 37 I.L.M. at 80 (arts. 2 & 3(c) of EC Treaty).

27. For an overall presentation of the new common foreign and security policy provisions, see Giorgio Maganza, *The Treaty of Amsterdam's Changes to the Common Foreign and Security Policy Chapter and an Overview of the Opening Enlargement Process*, 22 *FORDHAM INT'L L.J.* S174 (1998).

28. See Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 10-11 (1997) (replacing J.3 of TEU); Consolidated TEU, *supra* note 19, art. 13, O.J. C 340/2, at 156 (1997), 37 I.L.M. at 70 (art. J.3 of TEU).

29. See Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 14-15 (1997) (inserting art. J.13, ¶ 2 into TEU); Consolidated TEU, *supra* note 19, art. 23, ¶ 2, O.J. C 340/2, at 160-61 (1997), 37 I.L.M. at 72-73 (art. J.13, ¶ 2 of TEU).

30. See Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 14-15 (1997) (inserting art. J.13, ¶ 1 into TEU); Consolidated TEU, *supra* note 19, art. 23, ¶ 1, O.J. C 340/2, at 160 (1997), 37 I.L.M. at 72 (art. J.13, ¶ 1 of TEU).

31. See Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 13 (1997) (replacing art. J.8(3) of TEU); Consolidated TEU, *supra* note 19, art. 18(3), O.J. C 340/2, at 159 (1997), 37 I.L.M. at 72 (art. J.8(3) of TEU).

32. Treaty of Amsterdam *supra* note 2, Declaration on the establishment of a policy planning and early warning unit, O.J. C 340/1, at 132 (1997).

33. Member States thus failed to draw any lesson from Opinion 1/94 of the Court of Justice of November 15, 1994, on the competence of the Community to conclude

Finally, the IGC produced an effort of simplification of the Treaties to meet the request for greater readability of the basic texts of the European Union. As a result of that effort, many obsolete provisions have been deleted,³⁴ Treaty articles have been renumbered,³⁵ and a consolidated version of the main treaties is now available to the public.³⁶

On balance, and in light of the IGC outcome as illustrated, the Treaty of Amsterdam can indeed be regarded as a step forward on many substantive issues, although arguably, in some areas, a more decisive step would have been welcome. The emphasis on the fundamental principles upon which the European Union is founded; the progressive shift towards "communitarization" of matters related to free movement of persons; and the larger scope of provisions, be they in the fields of public health or social policy, which are most likely to have an impact on the citizens' everyday life, are many elements to be entered "on the assets side" of the IGC.

II. THE OUTCOME OF THE IGC: INSTITUTIONAL ISSUES

The failure by the Heads of State and Government to agree upon any amendment to the composition of the Commission and to the weighting of votes in the Council cannot by itself be the only measure of the outcome of the IGC on this chapter. It is true that those two issues were rightly regarded as important in order to keep the institutions effective in an enlarged Union, in

international agreements concerning services and the protection of intellectual property, which confirmed that the EC Treaty had not conferred upon the Community such a general competence. Opinion 1/94, [1994] E.C.R. 5267, [1995] 1 C.M.L.R. 205. No agreement could be reached to extend the scope of application of Article 113 of the EC Treaty. All the IGC could agree on is to add an enabling clause to Article 113 to allow the Council to decide unanimously on such an extension, which one could regard as a simplified procedure for amending the provision concerned. See Treaty of Amsterdam, *supra* note 2, art. 2(20), O.J. C 340/1, at 25 (1997) (inserting art. 113(5) into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 133(5), O.J. C 340/3, at 238 (1997), 37 I.L.M. at 108 (art. 113(5), of EC Treaty).

34. Treaty of Amsterdam, *supra* note 2, art. 6, O.J. C 340/1, at 58-69 (1997).

35. *Id.* art. 12, O.J. C 340/1, at 78-79 (1997).

36. Consolidated TEU, *supra* note 19, O.J. C 340/2, at 145 (1997), 37 I.L.M. 67; Consolidated EC Treaty, *supra* note 13, O.J. C 340/3, at 173 (1997), 37 I.L.M. 79. The High Contracting Parties also agreed that the technical work undertaken during the IGC would continue with the aim of drafting a consolidation of all the relevant treaties, including the Treaty on European Union. Treaty of Amsterdam, *supra* note 2, Declaration on the consolidation of the Treaties, O.J. C 340/1, at 140 (1997).

particular by limiting or reducing the size of the Commission and by improving the democratic representation of votes in the Council.³⁷ It is not, however, surprising that some European leaders clearly preferred to wait and see a clearer picture of the next enlargement before committing themselves to reforms that involve acute political sensitivities—consider the importance for “small” Member States of having a national as a member of the Commission—which may have a strong impact on national electorates.

Still, the Treaty of Amsterdam is not silent on those issues. The Protocol on the Institutions with the Prospect of Enlargement offers a sound basis for an agreement.³⁸

Agreeing on the further extension of qualified majority voting may prove harder to achieve because the scope for possible increase is now restricted to certain issues that the Member States regard as sensitive: areas where unanimous voting in the Council remains the rule include State aids, tax harmonization, culture, industry, and structural funds, as well as some specific aspects of the social and environment policies.

On balance, however, it should be readily acknowledged that the IGC outcome is fairly positive for the institutions. It suffices to recall that, when negotiations began, there were clear indications that some Member States would seek to reduce the powers of the most “supranational” institutions or, at least, op-

37. In a declaration attached to the IGC Final Act, Belgium, France, and Italy stated their view that the Treaty of Amsterdam does not meet the need for substantial progress towards reinforcing the institutions; they stressed that such reinforcement—which should also include a larger recourse to qualified majority voting—is an indispensable condition for the conclusion of the enlargement negotiations. Treaty of Amsterdam, *supra* note 2, Declaration by Belgian, France, and Italy on the Protocol on the institutions with the prospect of enlargement of the European Union, O.J. C 340/1, at 144 (1997).

38. Under the terms of the Protocol, the Commission shall comprise one national of each of the Member States upon the entry into force of the next enlargement of the Union (which means that the five Member States now having the possibility of nominating a second Commissioner would give that possibility up); however, this would be subject to the Member States agreeing to amend the majority voting system, whether by re-weighting of the votes or by dual majority, in a manner acceptable to all and notably compensating those Member States that would give up the possibility of nominating a second member of the Commission. Moreover, a new IGC is to be convened at least one year before the membership of the European Union exceeds twenty in order to carry out a comprehensive review of the Treaty provisions on the composition and functioning of the institutions. *Id.*, Protocol on the institutions with the prospect of enlargement of the European Union, O.J. C 340/1, at 111 (1997).

pose any increase thereof. Overall, the institutions have been strengthened and the decision-making process streamlined.

As opposed to other international organizations, the constitutional features of the European Union have been enhanced in the following ways:

- The powers of the European Parliament have been increased:
 - its role as co-legislator has been acknowledged by amendments to the co-decision procedure that will put the Parliament on an equal footing with the Council,³⁹
 - the extent to which the Parliament is involved in co-legislation has been extended by enlarging the scope of the co-decision procedure;⁴⁰
 - the obligation of consultation has been introduced for third pillar measures, whereas the Parliament is only informed at present;⁴¹ and
 - greater powers have been conferred upon the Parliament as to the procedure for selecting the President of the Commission, whose nomination will be subject to approval by the Parliament.⁴²
- The powers of the Court of Justice have also been extended:

39. Under Article 189b of the EC Treaty, as amended by the Treaty of Amsterdam, should the European Parliament and the Council disagree on draft legislation, the procedure would end. See Treaty of Amsterdam, *supra* note 2, art. 2(44), O.J. C 340/1, at 45-46 (1997) (replacing art. 189b of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 251, O.J. C 340/3, at 279-80 (1997), 37 I.L.M. at 129 (art. 189b of EC Treaty). At present, the Council can still confirm its original common position, which is adopted unless the Parliament, acting by a very high majority, votes it down.

40. The co-decision procedure will apply to all areas where the cooperation procedure—which was introduced by the Single European Act—applies at present, except for the Economic and Monetary Union provisions. The co-decision procedure will also apply in a certain number of new areas, where the need for democratic participation in the decision-making process was particularly felt, such as employment, social policy, public health, data protection, transparency, and fight against fraud.

41. See Treaty of Amsterdam, *supra* note 2, art. 1(11), O.J. C 340/1, at 20 (1997) (replacing art. K.6 of TEU); Consolidated TEU, *supra* note 19, art. 39(1), O.J. C 340/2, at 167 (1997), 37 I.L.M. at 76 (art. K.11(1) of TEU).

42. The nomination by the governments of the Member States of the person whom they intend to appoint as President of the Commission will have to be approved by the European Parliament. See Treaty of Amsterdam, *supra* note 2, art. 2(40), O.J. C 340/1, at 44 (1997) (replacing art. 158(2) of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 214(2), O.J. C 340/3, at 268 (1997), 37 I.L.M. at 123 (art. 158(2) of EC Treaty).

- in relation to the safeguarding of fundamental rights;⁴³
 - in relation to the new EC Treaty title on the free movement of persons;⁴⁴ and
 - in relation to third pillar matters.⁴⁵
- The Commission's role of initiative has been preserved; the role of its President has been strengthened, both with regards to the selection of members and to the political guidance of the Institution,⁴⁶ and its internal organization is due to be improved.⁴⁷

43. See Treaty of Amsterdam, *supra* note 2, art. 1(13), O.J. C 340/1, at 23-24 (1997) (replacing L of TEU); Consolidated TEU, *supra* note 19, art. 46(d), O.J. C 340/2, at 170 (1997), 37 I.L.M. at 77 (art. L of TEU); see also note 24.

44. See Treaty of Amsterdam, *supra* note 2, art. 2(15), O.J. C 340/1, at 31 (1997) (inserting 73p into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 68, O.J. C 340/3, at 204 (1997), 37 I.L.M. at 91 (art. 73p of EC Treaty). The Court of Justice shall have jurisdiction to give preliminary rulings on the validity or interpretation of Community acts based on the new EC Treaty Title on Visas, Asylum and Immigration, although the possibility to refer questions to the Court of Justice will be limited to courts of last instance and no referral will be allowed on measures related to the maintenance of law and order and the safeguarding of internal security. Moreover, the Council, the Commission, or any Member State will be able to request the Court to give a ruling on a question of interpretation relating to the new title of the Consolidated EC Treaty ("*recours dans l'interet de la loi*").

45. See Treaty of Amsterdam, *supra* note 2, art. 1(11), O.J. C 340/1, at 19-20 (1997) (replacing art. K.7 of TEU); Consolidated TEU, *supra* note 19, art. 35, O.J. C 340/2, at 165-66 (1997), 37 I.L.M. at 75 (art. K.7 of TEU). While at present the Court has a very limited jurisdiction (in respect of Article K.3 conventions), with the entry into force of the new treaty it will acquire jurisdiction:

- to give preliminary rulings on the validity and interpretation of Title VI acts, subject to declaration of acceptance of that jurisdiction to be made by Member States (Belgium, Germany, Greece, Luxembourg, and Austria already made such declaration upon the signing of the Treaty);
- to review the legality of Title VI decisions; and
- to rule on disputes between Member States regarding the interpretation and the application of Title VI acts or between the former and the Commission regarding the interpretation and the application of Title VI conventions.

46. See Treaty of Amsterdam, *supra* note 2, art. 2(40), O.J. C 340/1, at 44 (1997) (replacing art. 158(2) of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 214, O.J. C 340/3, at 268 (1997), 37 I.L.M. at 123 (art. 158(2) of EC Treaty). The agreement of the nominee for President is required for the nomination of other members of the Commission. Moreover, under the amended Article 163, the first paragraph specifically provides that the Commission works "under the political guidance of its President." See Treaty of Amsterdam, *supra* note 2, art. 2(41), O.J. C 340/1, at 44 (1997) (inserting art. 163, ¶ 1 into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 219, ¶ 1, O.J. C 340/3, at 269 (1997), 37 I.L.M. at 124 (art. 163, ¶ 1 of EC Treaty).

47. Treaty of Amsterdam, *supra* note 2, Declaration on the organisation and functioning of the Commission, O.J. C 340/1, at 137 (1997).

The decision-making process has been simplified by reducing the number of legislative procedures to three⁴⁸ and by extending qualified majority voting. Moreover, the Treaty of Amsterdam has provided for a closer involvement of national parliaments in that process.⁴⁹

Provisions have also been made for the application of the subsidiarity and proportionality principles and for improving the quality of the drafting of Community legislation.⁵⁰

As for institutional changes more specifically related to the prospect of future enlargement, although no agreement could be reached on the reweighting of the votes in the Council nor on the size of the Commission, it must nevertheless be recalled that the scope of qualified majority voting has been further extended, including in CFSP matters,⁵¹ and that the number of Members of the European Parliament will be capped at 700.⁵²

Finally, the possibility will exist for a smaller number of Member States than the full membership to cooperate more closely in specific areas within the institutional framework of the Union. The new "flexibility" provisions represent one of the principal features of the Treaty of Amsterdam.⁵³ Under those

48. The three legislative procedures are consultation, co-decision, and assent. The cooperation procedure, which was introduced by the Single European Act and maintained for certain provisions of the EC Treaty by the Maastricht Treaty in spite of the setting up of a new co-decision procedure, has been abolished (except in for a few EMU provisions that were left untouched by the IGC).

49. The new Protocol on the role of national parliaments in the European Union provides for a six-week period to elapse before the Community institutions take a decision on proposals for Community or Union legislation, thus allowing national parliaments' consultation procedures to take place as appropriate. *Id.*, Protocol on the role of national parliaments in the European Union, O.J. C 340/1, at 113-14 (1997). The new protocol also provides for the Conference of European Affairs Committees ("COSAC") to contribute, upon request or by its own motion, to the institutional debate on issues that might have a direct bearing on the rights and freedoms of individuals.

50. *Id.*, Protocol on the application of the principles of subsidiarity and proportionality, O.J. C 340/1, at 105-07 (1997) (consolidating December 1992 Edinburgh European Council conclusions on those issues); *id.*, Declaration on the quality of the drafting of Community legislation, O.J. C 340/1, at 139 (1997).

51. *See supra* notes 27-30 and accompanying text.

52. *See* Treaty of Amsterdam, *supra* note 2, art. 2(37), O.J. C 340/1, at 43 (1997) (inserting art. 137, ¶ 2 into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 189, ¶ 2, O.J. C 340/3, at 260 (1997), 37 I.L.M. at 119 (art. 137, ¶ 2 of EC Treaty).

53. *See* Treaty of Amsterdam, *supra* note 2, art. 1(12), O.J. C 340/1, at 22-23 (1997) (inserting tit. VIa into TEU); Consolidated TEU *supra* note 19, tit. VII, O.J. C 340/2, at 169-70 (1997), 37 I.L.M. at 77 (tit. VIa of TEU). General provisions in Title VIa set out

provisions, Member States will be allowed, if they so wish, not to do everything together or at the same pace. The need to allow for some flexibility, particularly with the prospect of an enlarged and more differentiated Union, prevailed in the end over the fear of opening the way to a two-tiered Europe, although the very strict conditions that have been set for the operation of the flexibility clauses allow some doubts as to the concrete possibility to make use of them.

III. AN OUTLOOK FOR THE NEAR FUTURE

Considering the timing and context of the IGC, its outcome, as reflected in the Treaty of Amsterdam, should not be regarded as a failure or missed opportunity. If one measures that outcome against the various aims for which the IGC was set: to complete the unfinished Maastricht business on CFSP and co-decision, to bring Europe closer to its citizens, and to prepare the Union for enlargement, one may conclude that the IGC has basically achieved the first two. The Treaty of Amsterdam can be considered as a further step in the continuing process of European integration. Moreover, the Treaty of Amsterdam furthers the objective set out in the preamble of the original Treaty Establishing the European Economic Community of creating an even closer union among the peoples of Europe.⁵⁴

The Treaty of Amsterdam, and the IGC that paved the way for it, also represents a lesson in realism, showing the limits of a process that continues to be based on treaties. The "constitutional charter" of the European Union, as the Court of Justice has defined the founding Treaties,⁵⁵ can hardly be compared

the overall conditions for "flexibility" (in particular, furthering the objectives of the Union, not affecting the *acquis*, concerning at least a majority of Member States.) Specific additional criteria are laid down in new Article 5a of the EC Treaty and new Article K.12 of the TEU. See Treaty of Amsterdam, *supra* note 2, art. 2(5), O.J. C 340/1, at 25 (1997) (inserting art. 5a into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 11, O.J. C 340/3, at 184 (1997), 37 I.L.M. at 81 (art. 5a of EC Treaty); Treaty of Amsterdam, *supra* note 2, art. 1(11), O.J. C 340/1, at 21-22 (1997) (inserting art. K.12 into TEU); Consolidated TEU, *supra* note 19, art. 40, O.J. C 340/2, at 167-68 (1997), 37 I.L.M. at 76 (art. K.12 of TEU).

54. EEC Treaty, *supra* note 3, pmb., at 11. See the first recital in the preamble of the Treaty establishing the European Economic Community of March 25, 1957. *Id.* The objective of creating an even closer union among the peoples of Europe was then confirmed in the preamble (eleventh recital) of the TEU. TEU, *supra* note 3, pmb., O.J. C 224/1, at 3 (1992), [1992] 1 C.M.L.R. at 726.

55. See Opinion 1/91, [1991] E.C.R. I-6079, [1992] 1 C.M.L.R. 245.

with the constitution of a State, although points of similarity may be found with a federal constitution, such as that of the United States. The European Union cannot be assimilated to a State, nor can its institutions be compared with national ones, as people sometimes tend to do. Although it may be a new form of integration among States, clearly distinct from the classical model of international organization, the European Union still remains a union among sovereign States. This should be kept in mind when assessing the results of constitutional reforms or discussing the issue of whether future reforms should continue to be dependent upon the consensus of all Member States.

It is not easy to anticipate how the European Union will evolve over the coming years. The count-down to EMU is on and the prospect for monetary union and a single European currency presently dominates the European political debate. Credit should be given to the Amsterdam meeting for having kept the economic and monetary union on track. A single currency might give further impetus to the process of political integration. In the meantime, the Treaty of Amsterdam will have entered into force, hopefully with fewer difficulties than the Maastricht Treaty.⁵⁶

Enlargement is the next challenge. Negotiations will open soon with six candidate countries, although accession is not expected until a few years after the millennium.⁵⁷ A new revision of the Treaties will have to take place to complete the institutional reform before enlarging the Union. At the same time, other reforms are being discussed, which are closely linked with enlargement (future financing of the European Union's policies, reform of structural funds and of common agricultural policy), the whole being referred to as "Agenda 2000," a talking label for the daunting challenge which the European Union will be facing in the months ahead.

56. Denmark and Ireland held successful popular referenda in May 1998. Ratification in France will require amending the Constitution, as indicated by the *Conseil constitutionnel* on December 31, 1997. OFFICIAL JOURNAL OF THE FRENCH REPUBLIC, Jan. 3, 1998, at 165.

57. E.U. BULL., no. 12, at 1 (1997). The enlargement process was launched by the European Council meeting in Luxembourg on December 12-13, 1997. Id. On the enlargement of the Union, see Maganza, *supra* note 27.