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The Future of Europe Debate:
Opportunities for British Policy

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Policy Paper 05/01

ESRC "One Europe or Several?" Programme

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ABSTRACT

Yet another phase has been opened in the debate about reforms to the European Union as it faces further enlargement. Another Intergovernmental Conference is scheduled for 2004 and an array of preparatory discussions is under way. The first section of this paper identifies opportunities for British policy to make a mark on the unfolding debate about the 'future of Europe'. It argues that the three core themes of this debate should be: developing responsive and responsible governance; addressing key policy challenges; and engaging neighbours and partners in the 'big' Europe. A great deal of this agenda depends on the day-to-day development of the European Union rather than on radical schemes for institutional redesign. In addition this paper reproduces four articles written over the past eighteen months on the debate before and after the signing of the Treaty of Nice. These all argue that a good deal of the conventional treaty reform process has been misconceived and hence failed to address the core themes outlined in the first piece in this collection.

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        OPPORTUNITIES FOR BRITISH POLICY

Introduction

1.   The European Council in Nice in December launched a debate on 'the future of
        Europe' to culminate in another Intergovernmental Conference (IGC) in 2004.
        Specific issues for discussion were identified by the heads of state or
        government as: the delimitation of policy powers and subsidiarity; simplification
        of the treaties; the role of national parliaments; and the status of the Charter of
        Rights. Apart from the Charter question, the other issues have been around for a
        long time in the discussion of how the European Union (EU) should develop.

2.   The decision to launch this debate stemmed from three different sources. One
        came directly from the choice to keep the Nice agenda narrowly focused, as a
        prelude to the decision to move the enlargement negotiations into a higher gear,
        a choice which left some unfinished business on issues such as subsidiarity, a
        continuing preoccupation of especially the German Länder. A second was the
        persistent aim of many European politicians to determine the long term
        character of the EU as a political framework, to which Joshcka Fischer, the
        German Foreign Minister, had turned attention in his Humboldt speech of May
        2000. A third, related but not identical, concern was that to manage well a much
        enlarged EU would need rather more operational adaptation of the institutions
        than had yet been agreed.

3.   How this 'future of Europe' debate develops depends partly on how the debate is
        framed, partly on where the core issues lie, and partly on how coalitions of
        opinion are marshalled around the options for change. It has been stated that a
        public discussion is to be launched and it is likely that at least some of the
        propositions for the 2004 IGC may be developed through some form of broadly
        based Convention. A major complication in this debate is the outcome of the
        Irish referendum of June 2001, in which a minority of electors chose to vote, but a
        majority of those who did vote rejected ratification of the Treaty of Nice.

4.   The launching of this debate raises important issues for British policy, as for all
        other EU countries, both current and likely future members. Tony Blair had
        already signalled in his Warsaw speech of October 2000 that the British Labour
        Government was keen to contribute to the shaping of the debate. He identified
        in particular two key concerns: how powers are allocated between the EU and
        the member states, i.e. the subsidiarity issue; and the need for national
        parliamentarians to be much more engaged in the EU political process. These
        concerns might be met by agreement on a 'catalogue of competences', on the
        one hand, and, on the other, by the establishment of an additional parliamentary
        chamber in which national parliamentarians would take part. The Warsaw
        speech marked an important step in Britain's official European policy,
        notwithstanding the continuing criticism of the EU from especially many
        Conservative politicians and the UK Independence Party.

5.   This new British willingness to engage in the EU institutional debate has to be
        read alongside the increased involvement of UK ministers in developing

proposals for stronger EU policies in a number of areas. Notably in the field of European security and defence policy British ideas and capabilities are central to the evolving EU debate. In the field of justice and home affairs British policy has become a great deal more supportive of stronger collective action in and though the EU. On the economic front the British Government was a keen promoter of the Lisbon strategy for developing new responses to changes in the global economy and is keen to see this strategy deliver tangible results. British policy is firmly committed to making a success of further enlargement of the EU. Thus we can begin to see the shape of a British approach to the EU that is focused on both constructive institutional evolution and ambitious policy developments.

6. Hence there is a critical window of opportunity for this new approach to be consolidated as the 'future of Europe' debate goes forward, and as key decisions have to be taken over the coming years on specific policy regimes. Of course the continued uncertainty about when and whether the British will take part in economic and monetary union (EMU) casts a long shadow. However, this need not prevent active and thoughtful British contributions on the rest of the EU institutional and political agenda.   Moreover, the window of opportunity is important both as regards the weight of British influence within the EU and as regards British domestic opinion. A British approach that was seen to have substantive impact on the shape of the EU would also help to legitimise the EU domestically as an arena where British concerns and ideas could be seen to be influential. Thus the profile of Britain within the EU could emerge as one of the regime-shapers, rather than in its historical role as a reluctant regime-taker.

Framing the Debate

7. There seem to be three possible ways which the debate might be framed. One would be a strict focus on EU institutional issues. A second would be to focus on both institutional issues and key policy challenges. A third would be to open up the debate to look at the future of Europe -- the continent -- and not only the EU.

    i. To frame the debate as focused only on the institutional issues means, in effect, concentrating on institutional mechanics against the backcloth of the contest between the more and the less integration-minded, and hence those for and against giving the EU a more explicitly 'constitutional' character. Here the key question has to do with the *finalité*, or ultimate end-state, of the EU.

    ii. A frame which has a combined focus on both institutions and policy challenges would open up scope for looking at the match between institutional capacities, on the one hand, and, on the other hand, policy demands and policy options. Here the discussion would have to pay more attention to the 'what is the EU for?' question, in order to drive the assessment of which policy responsibilities should most appropriately be allocated to which level of government (EU, national, sub-national), as well as where the institutional capacities of the EU might need to be reinforced to have a chance of meeting agreed collective policy challenges.

iii.   To frame the debate as really about Europe, the continent, would stretch the discussion to consider 'post-accession' scenarios, opportunities and impacts. In this frame it would be necessary to examine policy challenges not only in terms of the technical adaptation of existing EU policies to enlargement but also the dynamics of what the likely policy priorities of new member states would be and what their likely political and economic personalities would be. It would also be highly desirable to encourage engagement with the consequential question about how an enlarged EU would then fit with its new neighbours and near abroads, and how the new EU members would contribute to this.

8.   The third frame necessarily invites a good deal of speculation, not least since we still do not know when the next round of enlargement will take place, or with which new members. On the other hand the EU is already deeply involved in policies, commitments, and promises to non-candidate European countries. Hence it seems rather important to insist that Europe is still a good deal more than the EU and that the political and economic health of the big Europe would be to the clear advantage of the EU. Much remains to be done to give this big Europe a functioning multilateral system.

9.   From a British perspective the first frame is risky, since it is vulnerable to being reduced into an already familiar pitting of the arguments for and against supranationalism or federalism. It allows little scope for emphasising the dimensions of EU activity where British European policy is most adventurous. The narrow institutional focus also contains some potentially very tricky topics, since both more explicit subsidiarity and more involvement for national parliamentarians can be construed as disinvestments in the EU institutions. Moreover the disengagement of institutions from policy ambitions takes away the policy impulse for reform, which in the past has been the key driver of institutional change. Nice was the first IGC (since the 'technical IGCs' of the 1960s and 1970s) with no policy driver to the institutional discussion.

10.   The second frame has a great deal more appeal as a means of broadening the range of the debate. In key policy sectors -- foreign, security and defence policy, justice and home affairs, and the Lisbon strategy -- an interesting set of policy laboratories has been established, which in turn have generated interesting new and experimental techniques of European governance. These have somewhat different characteristics from those which the traditional EU institutional debate addresses. Here lies some potential for escaping from the 'either supranational or intergovernmental' straitjacket.

11.   Thus the productive way forward might be to try to frame the future of Europe debate in terms of three core themes:

i.   *responsible and responsive EU governance*, to be achieved through substantial improvement in the workings of the EU institutions;

ii.   *key policy challenges*, in particular those that concern the new experiments and which need innovative institutional arrangements -- the

Lisbon strategy, the Helsinki headline goals for security and defence, and the agenda of justice and home affairs, all of which are of considerable salience in the context of enlargement; and

iii. *engaging neighbours and partners in the big Europe*, to be achieved not only by well-crafted EU policies towards individual European neighbours, but also by developing pan-European <u>and</u> multilateral frameworks of partnership.

12. The future of Europe debate would then aim to find ways for the 2004 IGC -- and policy development between now and then -- to produce solid outcomes across these three themes -- for the EU15, for the enlarged EU, for the whole of Europe, and also to enable the EU to be a more effective actor in the global system.

The broader political context

13. Two additional elements in the broader political context are relevant to the 'future of Europe' debate. One concerns values, and the other is a problem of political asymmetry.

14. Issues to do with core values seem to be emerging as increasingly salient both as regards EU enlargement and as regards some key policy challenges. Already the EU has gone some way to laying down in print the core values which EU politicians regard as crucial. The Copenhagen criteria that candidate countries have to embrace are one expression of these values. The Charter of Fundamental Rights is another. The inclusion of nervous clauses in the treaties about the circumstances in which a member state might be suspended is yet another. In terms of policy challenges the whole justice and home affairs agenda, including sensitive issues such as asylum and immigration, makes value choices rather explicit. The EU involvement in south eastern Europe has a strong values dimension. Social and environmental issues raise issues of values, on some of which Europeans typically find themselves at odds with external partners, including the US. These issues of values seem inescapable. They also present political opportunities for EU politicians to change some of the language in which EU policies, both internal and external, are articulated, and thereby to build a stronger platform for public support for the EU.

15. The Nice European Council exposed a problem of political asymmetry in the EU in the sense of the discrepancies of size (and importance) between different countries and how they should be weighted in the EU decision-making process. The next IGC has the issue of subsidiarity on its agenda essentially because German Länder politicians have insisted on this. In the 'old' EU there was a kind of working tolerance of the discrepancy between little Luxembourg and big Germany. Both German unification and the opening up of central and eastern Europe have made such discrepancy harder to tolerate. After all even in the existing EU Wolfgang Clement has as many voters as Wim Kok and Bavaria might to be thought to make at least as much sense as a 'country' as Belgium. Further enlargement makes this asymmetry even more glaring. The rethinking of territorial representation in the EU institutions will need to take account of how local or regional governments in the larger member states of the EU fit into the

European process. Creative propositions are also needed about how to square this with the proliferation of small and very small countries enjoying rights as member states. The Irish referendum result warns us that crude reinforcement of the power of the larger member states is not a sensible way forward.

Core themes

Responsible and responsive governance

16. The EU institutions have come under increasing criticism in recent years, both from those who find them insufficiently developed to bear the weight of a European federation and from those who find their performance disappointing, whether on efficiency criteria or in terms of their democratic deficiencies. These criticisms hold irrespective of the issue of EU enlargement, but coping with enlargement adds to the problems. Irrespective of the prospect of treaty reform via another IGC, non-treaty reform has been identified as a core requirement, in particular in relation to the Council and the Commission. Both British members of the European Commission are closely involved in efforts to take non-treaty reform forward in the Commission – Neil Kinnock dealing with administrative reform of the institution as a whole, and Chris Patten dealing with the management of the EU's external programme delivery.

17. Achieving 'good governance' is a challenge also to the political processes of the member states. Romano Prodi, President of the European Commission, has launched a discussion on 'European governance', on which a White Paper from the Commission was published in July 2001, and around which further discussions are intended.

18. These different reform processes need to be seen as a whole. Those who wish to give a stronger political identity to the EU system as a collective framework need the institutions to work better and to be more democratically underpinned. Those who are more preoccupied with matching institutional capacity to specific policy tasks similarly need the institutions to work better. There is thus the potential for shared ground between the constitution-builders and the pragmatists.

19. This shared ground lies essentially around the concepts of responsibility and responsiveness. The EU institutions have to be able to act -- and to be seen to act -- in a responsible way. This means finding ways of making those involved accountable for the actions taken through EU institutions, and ensuring that those involved behave in a responsible and respect-inducing way, i.e. to high performance standards. Those same people have to be -- and be seen to be – responsive to changing policy demands, to questioning about their behaviour, and to the different constituencies which they serve, including broad public opinion.

20. There is a multiplicity of ways in which the EU process of governance might be made both more responsible and more responsive. The post-Nice agenda contains some suggestions about subsidiarity, simplification of the treaties and the involvement of national parliaments. But these cover only part of a much

larger potential menu. Given that specific decisions on treaty reforms will not be taken until 2004, what seems most important in the short-to-medium term is: first, to link more clearly together treaty and non-treaty reform as a twin strategy for institutional development; and, second, to encourage a process of exploring options, leaving the specification of which options until rather later. Among other things an over-riding priority should be to avoid making an already complex EU system more complex. Lines of responsibility need to be made much clearer and pressures for more responsiveness should be much more direct.

21. In terms of how ideas might be developed in Britain around these issues of responsibility and responsiveness several points are pertinent.

    i.   British institutional practices cannot be exported to the EU unless they can be made to fit with the political cultures of other EU countries. Similarly vice versa -- what might make perfect sense in the context of the German federal state does not necessarily work in other EU countries.

    ii.   Nonetheless, now that the UK has embarked on internal devolution, the various territorial authorities within the UK need to be brought into the debate. There is an obvious difficulty here as regards England, to which devolution has not yet spread.

    iii.   As regards national parliaments and national parliamentarians, there is a compelling case for engaging national politicians much more actively in the EU process, but the incentives for them to do this are not yet clear. Those who seek to achieve this need to acknowledge that one key reason for the public suspicion of the EU process is precisely that it provides opportunities for national governments to collude in Brussels and thereby to escape the regular controls of domestic politics. British ministers would need to lead by example in sharing more of the discussion about EU policy and institutional development with others engaged in British politics.

Key policy challenges

22. As has already been indicated, the EU faces several key policy challenges. Enlargement -- and indeed other circumstances -- compel reform of several existing EU policies: the common agricultural policy, the common fisheries policy, the structural funds, and external programmes (notably vis-à-vis south eastern Europe, the next neighbours and the Mediterranean partners). The establishment of EMU, questions about which corollary policies might be needed and its eventual extension to central and eastern Europe all command attention. All of these will require some adaptation of institutional capacities to underpin the changes in policy content that may emerge.

23. Equally importantly the EU is currently developing important new policies: the Lisbon strategy; the emerging regime in the field of justice and home affairs; and the evolving security and defence policy. Two important features characterise these new challenges. One is that in each -- and differently in each case --

institutional experiments are under way.[1] In the case of the Lisbon strategy this involves new 'benchmarking' techniques and forms of 'soft' policy measures. In the case of justice and home affairs an array of new agencies is emerging together with forms of peer pressure and mutual assessment as mechanisms to encourage cooperation. In the case of security and defence policy a new division of labour has to be crafted with Nato, as well as new collective capacities set in hand for policy planning and policy delivery. The second distinctive feature of all of these experiments is that they are inducing new forms of intensive and transgovernmental cooperation in which the Council and, increasingly, the European Council are acquiring important executive functions.

24. Overall therefore the new policy challenges seem to be inducing already a process of institutional innovation which contrasts with many of the traditional EU institutional methodologies. In particular we should note that the Commission's role is weaker in these areas than in the older areas of EU policy-making and also that new executive roles are being taken on by the General Secretariat of the Council. Over the next few years a kind of stock-taking will be needed of how these experiments are to be consolidated into the EU institutional system. To take one obvious example – the development of the EU justice and home affairs regime is for the moment largely an inter-executive and inter-agency process, one which lacks both judicial and parliamentary review and accountability.

25. The 'future of Europe' debate and the preparation of the 2004 IGC need surely to engage with the institutional issues that emerge from these key policy challenges and thus with the policy issues that lie on the core agenda of the EU's leading politicians. In addition, it should be noted, some of these issues are repeatedly flagged up in cross-EU opinion polling (as, for example, in Eurobarometer) as policy areas where there is considerable public support (including in the UK) for collective European policies. Immigration policy and the challenge of cross-border crime are obvious examples.

Engaging neighbours and partners in the big Europe

26. Generally the questions about how the enlarged EU deals with its various next neighbours are likely to be a continuing key focus of attention. Part of the challenge obviously lies in policy content and the resources that the EU may be under pressure to provide for poorer, often troubled, sometimes difficult neighbours. But there are also issues of institutional design to be addressed. Both as regards economic and trade cooperation and as regards politico-security stabilisation there are strong cases to be made for devising more effective and appropriate multilateral frameworks to link these various neighbours with each other as well as with the EU.

27. This task raises not only a question of design for an external policy. It also raises issues about how to achieve ways of softening the borders between EU and these various neighbours, even though many/most of them may not be plausible candidates for accession to the EU. Hence more consideration needs to be given to how joint arrangements might be developed over which the external

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[1] For further analysis of these experiments see the forthcoming special issue of the *Journal of Common Market Studies*, 39/4, November 2001, on 'The Changing Politics of the European Union'.

partners might share some political ownership without compromising the political autonomy of the EU.

Building a coalition for reform

28. One possible scenario for the direction of the reform debate is that it would revolve around a contest between the maximalist federators and the minimalist intergovernmentalists. It is unlikely that such a contest would be won by either camp, mainly because neither camp looks likely to predominate. But such a context could induce a fierce competition that might absorb a good deal of political energy.

29. A more constructive scenario would be one in which the shared concerns of the more ambitious federators and of the more pragmatic reformists were to produce a shared reform agenda. Such a scenario seems more achievable if both institutional and policy concerns can be pulled into the same frame, as well as linked to the 'post-accession' tasks -- and opportunities -- facing the enlarged EU. It was already decided in Nice that the candidate countries should be associated with the debate on 'the future of Europe'.   Their ideas and concerns also need to be harnessed to the reform agenda.

30. Thus proposals for constructive reform as regards the 'future of Europe' should not be locked into a frame which focuses all of the political attention on the 2004 IGC. Rather they should be gathered together into an overall agenda of both policy developments and institutional improvements, many of which need to be tackled straightaway. This is not intended as a recipe for ad hocery. What is lacking in the current discussions is positive linkage between the policy and institutional experiments already under way and how both are connected to the longer term reform issues. The EU surely needs to demonstrate credibility in the performance of its current tasks in order to earn support for further innovations and for the practical steps that need to be taken to match institutional capacities to policy challenges.

II.   SOME OBSERVATIONS ON THE ILLUSIONS OF INSTITUTIONAL BALANCE
       AND THE REPRESENTATION OF STATES[2]

1.   **Semantics which conceal substance**

The semantics of the debate about the Intergovernmental Conference (IGC) convened in 2000 to reform the institutions of the European Union (EU) deserve attention in their own right. This new IGC is set in train to deal with the Amsterdam 'left-overs', i.e. the issues from which the heads of government resiled in June 1997 in Amsterdam. A key emphasis has been put by the practitioners on concentrating discussion on these few items: the composition of the college of Commissioners, voting weights in the Council, and the possible extension of qualified majority voting (QMV). It has somehow become an accepted conventional wisdom that apparently rather technical alterations in each of these procedures could yield valuable dividends in terms of decision-making efficiency in an enlarged EU. It has also become something of a mantra in the early phases of debate about the IGC that these limited changes can be introduced without disturbing the 'institutional balance', a phrase frequently repeated and rarely defined. It has also so far seemed clear that there is little appetite among the member governments for extensive treaty reform. At the heart of this deliberately restrictive framing of the IGC agenda is an underlying concern about the basis on which the member states themselves are represented in the institutional system of the EU. This is argued by the proponents of this limited set of reforms to be the key issue to be addressed, both to address some difficulties in the current EU15 and to cater for a membership of 20/25/30 members.

But this agenda makes several conditioning assertions, in particular as regards the concept of institutional balance, the centrality of the representation of states, and the link between the tasks facing the EU and the institutional mechanisms available for performing them. Each needs to be questioned.

Institutional balance

This is an old phrase in the practitioner discussion of institutional change in the EU. It suggests that there is a kind of accepted status quo, within which modifications are to be made. Such an argument may be used to reassure -- not much envisaged that is radical, or to dissemble -- pretend that nothing much is at issue, and smuggle through changes that might be radical.

Is there really a 'balance' to maintain or to disturb? If we look back over the history of the EU we can observe quite important changes over time in the relative power of different institutions and in the relationships between them. Thus, for example, by and large the European Parliament has been a 'winner' in successive IGCs, its powers now spreading way beyond those in the early institutional design. On some issues the Commission has gained in influence, and on others the Council. Almost irrespective of treaty changes the European Council has become more important as an 'agenda-setter'

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[2] This article is based on remarks made at a conference held at the European Institute of Public Administration, November 1999. It was published in E. Best, M. Gray and Alexander Stubb, eds., *Rethinking the European Union: IGC 2000 and Beyond*, European Institute of Public Administration, 2000. It is reproduced here with their kind permission.

and as a 'conflict-resolver'. The limited agenda for the IGC 2000 purports to address issues that are within the frame left by Maastricht and Amsterdam.

This is a misleading account of what is being discussed. The focus on the composition of the college of Commissioners has been cast in terms that imply that a primary role of Commissioners is to act as in some sense representatives of 'their' member states. This risks a confusion between the roles of the Commission and the Council, the latter indeed having been invented to represent the member states. It thereby also risks redefining the role of the Commission to a more subordinated and controlled institution. Some might welcome this, but it would be a major change, not a minor one, and it would most likely change the inherited balance between the institutions. In this context we should recall the French proposal to the previous 1996/7 IGC to reduce the size of the college of Commissioners to fewer than the number of member states, a proposal which deliberately sought to emphasise the relative autonomy of the Commission.

The representation of the member states

The debate about the relative voting weights between the member states has been simmering since German unification in 1991 and since the previous enlargement in 1995, when Austria, Finland and Sweden joined the EU. These two events jeopardised the parity between the so-called 'large' member states and introduced three new 'small' member states, thus throwing into question the weighting system devised for the original European Community of Six. There was a muffled discussion of the relative standing of the four large member states in the maastricht IGC in 1990/1, temporarily assuaged by changes to the composition of the European Parliament. The issue erupted again in the inelegant argument in spring 1994 which led to the Ioannina Compromise, when the British and Spanish governments pleaded for protection of their relative influence, especially in that period in terms of their ability to rally blocking minorities. The 'German' question was an important factor in preventing agreement on voting weights at Amsterdam. The British on that occasion safeguarded their position rather by the opt-out from Schengen, as they had on EMU in Maastricht. The Spanish focused on specifics, for example the insistence on unanimity as a precondition for lifting the British and Irish opt-outs from Schengen (with the issue of Gibraltar as the sub-text in the discussion).

This awkward jostling for relative position among the larger member states, and between the larger and the smaller, has acquired a kind of legitimacy in the face of further enlargement. The two very small southern candidates (Cyprus and Malta) and the queue of central and eastern European countries (many of them quite small) seem to make it self-evident that relative voting weights should be rearranged. Two sources of concern run through the discussion. One is that somehow or other the smaller member states might gang up on the larger, if the procedural rules permit this. The other is that 'micro-states' could hold the system to ransom, either by withholding consent on issues subject to unanimity, or by asserting veto power on issues subject to QMV.

Of course, at least in theory, both are indeed risks within the current system. There are a few and serious cases of a smaller member state blocking progress, though on issues which the state in question might claim as 'very important national interests'. Denmark and Greece have provided examples of this. Much more common are the

cases where a large member state has blocked progress. There are on the other hand no cases of smaller governments ganging up on the larger ones. The interests and preoccupations of the smaller member states are quite heterogeneous. Coalitions within the EU generally rally on each side of a debate a mix of larger and smaller member states. Perhaps this would be different in an EU of 25 -- perhaps.

Against this version of the system must be set an important precondition for the overall stability of the decision-making process, namely the need to engage as many member states as possible behind any decision. It is already a problem with the QMV arrangements that some member states (whether large or small) can have their concerns overridden by being outvoted. Such occasions do present difficulties of legitimating the relevant decision in an outvoted member state. It is for this reason that the practice of decision-making in the EU is in practice mostly consensual rather than majoritarian. Rather few decisions eligible for QMV depend on direct voting. On the whole dissident states are accommodated, except where accommodation seriously damages the heart of the regime under negotiation. QMV may be a welcome discipline in conditioning behaviour, but this is not to be confused with explicit and regular voting. Hence the issue in terms of real politics seems rather to be whether or not a form of efficient consensus-building can be maintained in either the current EU or an enlarged EU. One key question here has to do with the way in which the representatives of the member states are socialised into the system, and what the reassurance and trust mechanisms are.

Hence there are some grounds for questioning whether the representation of 'states' is the core issue in the terms that it is conventionally presented. We should perhaps rather be thinking about how to engage the different strands of politics from the member states in the EU process. The language of representation of states is in crucial respects misleading. Though in terms of law it is indeed states which are represented in the Council and the European Council, in practice and in political reality it is the incumbent governments which send their representatives to Council and European Council meetings. We should recall that incumbent governments often find it politically useful to use the EU arena to establish advantage vis-à-vis other political groups in their own countries. We should also recall that there is relatively little opportunity for political groups outside government to feed views into the EU process, except by an indirect route in the European Parliament. In some of the current EU member countries arrangements are made to build a domestic consensus on EU issues, but not in all. In those countries with adversarial systems or with wide swings in the composition of governments, there is evidence of parties outside government being alienated from the EU process -- Britain is the *locus classicus* here.

Thus some attention needs to be given to what mechanisms might be developed for building a wider political base for engagement in the EU process within individual countries. Whether or not this is important for existing member states (the British experience suggests that it might be), this is surely an important factor for the potential new members states, the governments of which are currently negotiating for accession. It is their polities and not only their incumbent governments that need to be reassured about, and socialised into, EU multilateralism. This seems to be a precondition for cultivating a process in which the national political classes develop a sense of shared ownership of the 'European project'. The emphasis on the representation of states does not take us very far in this direction.

2.   The wider picture

Institutions do not operate in a vacuum. What is lacking in the discussion about the short list of Amsterdam left-overs is a sense of what tasks need to be performed through the EU system, and what underlying principles need to be inserted or strengthened. Three different stories are interwoven in the current discussion. One is about enlargement; another is about evolving policy tasks; and a third is about variations between countries within the EU family. It is hard to make sense on the details of institutional reforms without relating them to the political and policy purposes that they have to serve.

A better starting point would be to consider in what direction the enlarged EU may be heading and to help to endow it with an institutional framework fitted to help it on the next stage of the journey. One large component of the next stage of the journey is enlargement to include over the next decade or so an unknown number of new members with very different political and economic baggage from the incumbents. A core consideration should surely be to think of a configuration for the EU that will allow the new members headroom to develop their own trajectories of transformation and modernisation. Thus we should not seek to cramp them too much by imposing 'our' template on them. Our objective should be to maximise their chances of becoming successful members of the EU family. Thus we need to pay much more attention to their patterns of political and economic development, and to assume that they will have their own differentiated preferences -- and legitimately so.

Another large component of the next stage of the journey requires much more honesty about our own experience and requirements among the existing membership. It seems fairly evident that there are enduring country differences of preference, priority and approach. Take Ireland and the Netherlands as two examples of current member states that have followed successful and distinctive patterns of development within the EU. They have ensured that they have headroom for their own national experiments, while also being effective family members.

In addition we need to recognise the limits to EU 'governance'. The current system suffers from overstretch, an incapacity to deliver effectively and appropriately within the member states (or to external partners) the policy regimes that are in principle attributed to the EU. Some of us have been making this observation since long before it became fashionable to do so! There are important respects in which the EU institutions are failing to satisfy their friends, let alone their critics. Yet criticisms can also be laid at the door of the member states -- part of the current problem has to do with the way in which national agencies import (and manipulate) EU policy regimes. Some of the transmission systems between the two arenas perform poorly. In particular we should note that a great deal -- perhaps too much -- rests on the way in which incumbent governments handle European policy and the weakness of the channels for informing, let alone involving, other parts of the political process in the member states. National parliaments are at a distance from the process, which has the additional result of squeezing opposition parties out of the discussion. Local and regional levels of government are only erratically engaged, and when they are it is often in poorly delivered spending programmes or insensitively constructed regulation.

Reform of the Council is as important as reform of the Commission. In particular the segmentation of the Council is at last being acknowledged as a key problem -- one which reflects malfunctions at the national level at least as much as in Brussels. In addition the least transparent part of the process is the part that is played out before dossiers reach the ministerial level -- opaque both in Brussels and in most national capitals.

The European Parliament has gained in powers, usefully putting much more pressure on the Council to explain itself more fully, but it suffers from its disjunction from the live politics of the member states. This is one of the hardest problems to resolve, especially in a system which is veering so much towards taking the representation of states, rather than electorates, as the core criterion for engaging politicians, and, as we noted above, especially incumbent governments.

Those national organisations that find their way to Brussels can generally get a fair hearing. The problem is the discrepancy between those who do and those who do not find their way to Brussels. Much of the debate about legitimacy and transparency stems from the unevenness of access to the EU decision-making process, relatively easy for incumbent governments and directly affected socio-economic interests, and to some extent regional authorities in cohesion countries. It is the other sections of society and politics that find access harder and for whom trust in the process is harder to achieve.

Thus, on the one hand, we need to be more specific about the different modes of policy development in the EU. Different modes of policy may need to be served by differentiated institutional arrangements. On the other hand, we need to reflect on ways of addressing some of the wider issues of building confidence in the EU process as a whole. The narrow IGC agenda is too heavy-handed to address the first concern. It is too narrowly construed to address the second concern.

3.   **The EU institutions operate in several distinct modes**

There is not a single predominant mode of EU policy-making, but several quite different modes, each implying different kinds of relationship between the member

states and the EU institutions.[3] Prescriptions for reform need to take these differences into account. A remedy appropriate in one case may be inappropriate in another. The different modes may be summarised as follows:

i. *The traditional Community method* – i.e. the mode associated historically with the common agricultural policy, with (in theory at least) a clear common policy regime hierarchically superior as the framework for the member states, although very dependent on national agencies for its implementation.   We should note that this mode is quite unlikely to be widely extended to other areas of policy, also that in the case of agriculture the trend is towards more variation among, and more 'ownership' of, policy at the national level.

ii. *The EU regulatory mode* – i.e. the mode associated initially with European competition policy and then, in a different variant, with the development of the single market. Here the regimes depend on rule-setting collectively, often with forms of mutual recognition of national regimes within some specified limits. This has been one of the great successes of the EU, but is now meeting some new challenges. In the case of competition policy a new division of labour between the EU and national agencies is being developed, with its shape not yet clear. In the case of market regulation, we are encountering some extremely tricky issues mostly relating to the non-market factors that constrain market regulation. Food standards are the current dramatic example of tension between the national and European levels of regulation. There are some big issues here about trust, expertise, and independence.

iii. *The EU distributional mode* -- i.e. the delivery of spending programmes, where the capabilities of the European delivery mechanisms have been much criticised, and where the records of national and sub-national agencies are very diverse. Experience varies a good deal among the different EU spending programmes, and hence all generalisations should be treated with caution. However, there is much room for improvement at both national and European levels. We should note here the emerging discussions both on how to improve programme delivery and on whether and how to 'decentralise' programme delivery and management.

iv. *The new emphasis on benchmarking* – much of the new policy development is not via common regimes but by comparing national practices, looking for best practice, and establishing benchmarks. Here the techniques being developed are those traditionally associated with the OECD rather than the EU, and the discourse is more about experiments than about imposed templates.   Some interesting innovations are under way in the form of 'mutual assessment' or peer review.   These imply quite different ways of working for both the Commission and the Council, as well as a format for policy development which engages the member governments and national agencies in rather direct exchanges with each other. This benchmarking mode seems to be

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[3] For a longer explanation of these different policy modes, see H. Wallace and W. Wallace (eds.) *Policy-Making in the European Union* (Oxford: Oxford University Press), 4th edn., 200, Chapter 1.

emerging as a preferred route in some of the newer policy areas of European involvement.

v.   *Intensive transgovernmentalism* -- the recent emergence of new forms of transnational regime-building in very important new areas of EU policy, notably -- EMU, defence and security, and justice and home affairs. The institutional and political methodologies here are strikingly different from those outlined above. The intensity of cooperation is striking in all three areas, and the ambitions are stretching, in areas traditionally jealously guarded as subject to national sovereignty. Member governments are apparently mostly prepared to go a long way towards pooled regimes. In the case of EMU this involves delegation to a new collective agency, the European Central Bank, although still resting on the linkages among national central banks. In the other areas (defence and JHA) the new pooled regimes so far look less like delegation and more like the direct engagement of national agents in the operation of the emerging regimes. Here the new role of the Council Secretariat in providing the locus of interchange is particularly interesting.

4.   **What is to be done? Some guiding principles...**

   o   Avoid polarising mechanisms and encourage consensus-inducing mechanisms.

   o   Find ways of enlarging the involvement of a wider range of national political actors in the EU process, i.e. well beyond the ministers and officials who currently predominate.

   o   Build trust through improving the quality of regulatory surveillance and programme delivery.

   o   Set clear targets for improving the performance of both the Council and the Commission, much of which depends on sustained practical endeavours.

   o   Recognise that many of the problems attributed to the EU institutions are problems at the country level, and locate there the search for some of the remedies.

   o   Resist the temptation to over specify the institutional arrangements, since some elasticity is needed both to facilitate experimentation in the different policy modes and to allow headroom for constructive country variations.

   o   Give the potential new member states some scope for defining their own ways of building bridges to the European arena and for learning the habits of multilateralism.

   And hence in the IGC

- o Avoid becoming bogged down in arguments about voting rules in the Council, especially when so many of the newer areas of policy development depend less on direct decisions or legislation and more on regulation, benchmarking and new forms of pooled regimes.

- o Concentrate instead on getting the Council to avoid the perils of segmentation and on making clearer the exercise of political responsibility by Council members.

- o Do not add to the treaties arrangements that emphasise the representation of states as such, since this encourages a kind of competitive egotism.

- o Do look for ways of widening political access (and not only cosmetically) to the process for other vectors of opinion from the member states – parliamentarians, perhaps regional authorities and so forth.

- o Consider ways in which the tensions between European and national regulators might be mitigated, and achieve effective and trusted European regimes -- food standards are an obvious case in point, where new institutional procedures are needed.

- o Consider whether there are arrangements functionally equivalent to those in operation for EMU (the triangle of ECB, Ecofin, and the Economic and Financial Committee) that might be further developed in other sensitive policy areas.

- o Make sure that any new arrangements are subjected (in advance of being agreed) to stringent tests as to whether the proposed change would be amenable to systematic scrutiny -- an accountability test, and would encourage good quality management -- a performance test.

- o And give any national agencies that would be affected by any proposed changes the chance at least to express an opinion on what is proposed, i.e. an impact and feasibility test [tired negotiators in nocturnal sessions of IGCs are capable of producing pretty odd ideas].

III   THE INTERGOVERNMENTAL CONFERENCE: MEMORANDUM OF EVIDENCE[4]

1.   The new Intergovernmental Conference (IGC) has been opened with a narrow, or 'focused', agenda of the so-called Amsterdam 'left-overs'. These comprise: the composition of the college of Commissioners; the weighting of votes in the Council of Ministers; and possible extensions to qualified majority voting (QMV). This cluster of issues is essentially all to do with the representation of member states in the existing and enlarged European Union (EU). This agenda does not address wider issues about the good governance of the EU in terms of either its democratic performance or its effectiveness.

2.   Some of the questions of good governance do not require treaty reform, but rather sustained practical efforts, in particular to improve the functioning of the Commission and the Council. Public attention is more focused on the potential for reforms to the Commission. The functioning of the Council is less well understood by those outside, since the Council is a more arcane and private institution, in spite of the efforts made to improve its transparency. It can be argued with some justification that the malfunctioning of the Council is just as much responsible for some of the deficiencies in the workings of the EU as a whole as are the problems within the Commission. Reforms to the Council need to include an onslaught on the segmentation of the Council into so many separate compositions and lines of responsibility. These militate against 'joined-up' government and make for poor coordination of the Council's work. In addition the fact that so much of the Council's decision-making actually takes place below the level of ministers makes it hard to achieve visible transparency and demonstrated accountability. The new impulses to develop a Common European Security and Defence Policy (CESDP) are welcome in their substance, but will make it even harder for the General Affairs Council (of foreign ministers) to coordinate on other areas of EU work. In addition it should be noted that the explosion of new Council work is especially around the development of the area of freedom, security and justice, often called justice and home affairs (JHA), the province in the UK of the Home Office and the Lord Chancellor's Department.

3.   The Amsterdam 'left-overs' do little to address directly the issues relating to the functioning of the Council. In so far as there is a bias in the declared focus to the IGC agenda it is towards concentrating attention on the role of member states in the system. This rather leaves it to the member states themselves, or the current governments of the member states, to shape the development of the process – for good or for ill.

4.   Some other issues may well creep on to the IGC agenda. These could well include:

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[4] This memorandum was submitted to both the Foreign Affairs Committee of the House of Commons and the Select Committee on the European Union of the House of Lords in February 2000.

i.   extensions to the powers of the European Parliament in tandem with any extensions to QMV in the Council (a logical corollary of QMV);

ii.   practical reforms to the Court of Justice and the Court of First Instance, to deal with the substantial and increasing workload of litigation (a welcome development);

iii.   the results of efforts to develop the new CESDP, including changes to the Western European Union, to the extent that they might imply treaty modification;

iv.   a discussion of flexibility, or enhanced cooperation' as an apparent means to enable a vanguard group of member states to pursue new areas of policy cooperation, especially in an enlarged EU; and

v.   potentially the Charter on Fundamental Rights, should its drafting lead to heavyweight propositions for treaty incorporation.

5.   Of these (i) and (ii) are in themselves fairly straightforward. Also (iii) could be a sensible way forward, provided that discussions on institutional procedures do not get in the way of the important discussion of substance, and provided that recognition is given to the consequential workload for foreign ministers. It becomes increasingly unrealistic to expect foreign ministers to carry the load of coordination the rest of EU business, and in any case there is a drift towards the European Council, i.e. prime ministers, as primary coordinators. The two tricky issues are those in (iv) and (v).

6.   Do these reforms add up to a coherent and productive way forward? Do they address some of the challenges of improving the governance of the EU? Would they equip the EU better to deal with the undoubted challenges of a much enlarged membership? It is hard to answer any of these questions positively. To situate this 'not convinced' point of view in context, a few remarks are needed on the current functioning of the institutions. The college of Commissioners was not designed as an institution to 'represent' states, but as an institution to provide collective and independent guidance on EU policy development and management. The Council of Ministers does not explicitly vote all that often. Implicit voting is much more the practice, as a tool of building consensus and persuading individual governments to consider the collective concerns of the EU as a whole. There is simply no evidence for small member states ganging up on large member states; coalitions are built on issues and approaches which cut across the membership of the EU. As the British Government now regularly notes, it is extremely unusual for the British Government to be outvoted in the Council. There may well be a few areas where QMV could be introduced to replace current unanimity provisions, but there are only a very few where this is likely to be persuasively advocated, though taxation issues represent a particularly controversial example. Hence it is not evident that the Amsterdam left-overs make for an agenda that addresses all that much of the working reality of the EU institutions.

7.   Indeed it can be argued that this declared agenda might cause more problems than it resolves. Thus, for example, the proposal to accept that each member state should have one and 'its' Commissioner risks distorting the role of the Commission and pushing it towards being a body in some sense

'representative' of the member states, the core function of the Council. This might well neither help the Commission to reform itself into a high-quality collective agency nor facilitate the work of the Council as the core representative body.

8. Similarly the proposed alterations to voting weights in the Council (whichever of the various formulae emerges as the favourite) might serve more to polarise views in the Council than to facilitate constructive consensus-building. It seems rather obvious that all member states need to be reassured that the system works equitably and even-handedly, rather than by the pressures of the larger countries to coral the smaller. This issue becomes even more important as and when new countries join the EU.

9. Thus as regards the composition of the Commission and the reweighting of votes in the Council, it is hard to conclude that these would add up to qualitative improvements other than at the margins. And on some readings the 'nationalisation' of the Commission and a more polarised practice of vote-taking in the Council could be harmful.

10. Possible extensions to QMV take us on to different territory. There are relatively few areas of EU policy-making that lend themselves to QMV, beyond those where QMV is already the established rule. Disputed areas include taxation and parts of the subject matter of the area of freedom, security and justice. Both are tricky for the UK and concern areas where there are current and/or recent examples of controversy. In both areas we should note that some other governments also have inhibitions about QMV, and hence that there is no reason to suppose that the British need be isolated. As a broad operating principle one might commend that framework decisions on new policy areas remain subject to unanimity, while in well-established areas QMV might be acceptable for detailed policy implementation.

11. However, two different considerations need to be brought into play. One concerns how far the EU agenda should be loaded with new policy commitments at all, beyond those currently in view. There are strong grounds for arguing that the malfunctioning of both the Council and the Commission are the result of overload in both institutions. In any event in a much enlarged EU (whenever that occurs) the case will be even stronger for not overloading the system while trying to incorporate successfully new member states. The other consideration concerns the currently expanding areas of EU policy. Most of these (EMU, CESDP, JHA and the Lisbon agenda) are subjects that do not fall into the traditional Commission-Council format of decision-making. On the contrary they rely on the careful building up of new areas of expertise and linkages for both institutions, whether to take on delicate new functions (CESDP or JHA), or to take on the benchmarking role envisaged for employment and social policies. In both of these sets of domains non-treaty reforms seem much more relevant than treaty changes.

12. The poisoned chalice in the offing is flexibility. This has two potential sets of difficult consequences, quite apart from the evident difficulties in the Amsterdam IGC in finding formulae that could be made to work sensibly. One danger is that flexibility becomes a vehicle for extensive opting out of collective regimes by one

government after another. Thus a reform ostensibly designed to facilitate initiatives might turn out to be the driver of a large wedge between the real insiders and the rest. The UK has no interest in the development of mechanisms that create first and second class members of the EU. The second danger is that flexibility is used as a tool to deny the new member states a real voice in the EU process. This is not a good basis on which to accept new member states unaccustomed to the give-and-take of constructive consensus-building. The much-quoted argument that the central and east European countries will not be fully operational members of the EU risks becoming in a counterproductive way a self-fulfilling prophecy. Mechanisms of inclusion seem much more important than mechanisms of exclusion. In this context the Commission proposal that enhanced cooperation might be pursued with as few as a third of the member states seems an improvident suggestion.

13. The discussion of the Charter on Fundamental Rights is still at too early a stage for its shape to have become clear. Given both developments in and vis-à-vis Austria and the envisaged arrival of central and east European member states in the EU, we should expect a lively discussion on ways of embedding fundamental rights more thoroughly into the ET treaty framework. This subject therefore needs a more extended discussion within the UK.

14. More generally as regards enlargement, the Amsterdam left-overs do not provide a prescription for managing better a much enlarged EU. Indeed it could be argued that some versions of their potential consequences (e.g. on flexibility) might work with the opposite effect. On the other hand, those who support enlargement have no interest at this stage in a protracted institutional debate around inappropriate and ill-thought out propositions. Hence a very modest set of reforms this year is probably the least-worst outcome, and indeed it would be no disaster if some of the Amsterdam left-overs continued to be left aside.

IV   NICE AND AFTER....[5]

A long weekend in the south of France as the winter months draw in sounds magical. Yet this was not quite the atmosphere of the European Council meeting held from 7-10 December 2000, when the European Council met to conclude the recent Intergovernmental Conference. On the contrary the mood was irritable and the negotiations fierce, with, so it seems, unusually blunt arguments among the participants. It is always dangerous to predict how the impacts of an IGC will work out in practice – after all almost everyone misread the significance of the Single European Act, negotiated in 1985. Yet some features of the process that produced the Treaty of Nice already stand out in sharp relief.

The Framing of the Agenda

The deliberately constrained scope of the IGC produced, as they say, a very focused agenda -- a handful of core institutional issues, with no package of policy proposals that would offer mitigating substantive benefits to the member states. Everything was left to depend on questions of power, especially the relative power of the member states -- and on worries about the potential power of the not-yet-member states. Already at Maastricht in 1991 the question had hovered in the debate of whether a much larger Germany deserved an explicit increment of voting power. Already the ugly squabble that produced the Ioannina Compromise in 1994 had made explicit the question of how many votes were needed to BLOCK, rather than to ACCEPT, collective decisions. Already in Amsterdam in 1997 the then member governments had gagged on the issue of relative power as represented by the allocated voting weights in the Council of the European Union and by the composition of the College of Commissioners.

In Nice -- and disturbingly in the preparatory conclave in Biarritz -- a sharp divide had emerged between the 'larger' and the 'smaller' member states. That tension erupted in the closing stages of the Nice European Council, to be sharpened by the argument, led by the French, uncomfortably in the Council presidency, about whether Germany should be treated as larger than the other large member states. The out-turn is an extraordinarily complex formula for reaching decisions in the Council (as and when it votes): a rather large proportion (73.4% or thereabouts) of reweighted votes; a majority of member states; and consenting states representing at least 62% of the population of the EU. No simplification of procedures to be found here, no lightening of the constraints on agreement.

The Methodology of the IGC

As the name suggests, these events show the EU in its most unvarnished intergovernmental mode of decision-taking. 'Chief executives' from the member states meet to make strategic bargains on the basis of rationally constructed strategies – perhaps. Nice was marked more by confrontation among these chief executives than by collusion. Top politicians battled over four days and nights, increasingly weakened by sleeplessness, to find mutually acceptable formulae. Since the heart of the agenda was about their relationships with each other, it was hard for anyone else to get a look in.

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[5] This was a contribution to *Euroscope*, the termly newsletter of the Sussex European Institute, 13 December 2000.

The Commission was distanced from the process and other political actors were kept well beyond arm's length.

Maybe this is only what one should expect of an exercise to draft an international treaty. But this time observers of the IGC had another model to observe. The Charter on Fundamental Rights, also tabled in Nice, was drafted by a very different process, involving not only governmental representatives but also national and European parliamentarians. While views vary about the Charter, its content, status and method of invention, its mode of drafting does produce for the first time in the EU a functioning alternative to the European Council.

Bad guys and good guys ....

Nice was different from previous recent IGCs in that this time there was less prior indication of particular member states with systematically 'singular' or 'exceptionalist' positions. At Maastricht and Amsterdam, after all, British governments had many points of root-and-branch opposition to some of the key proposals on the agenda. In Nice the British government had several tightly articulated defensive concerns -- what they had chosen to call their 'red lines', especially related to extensions of qualified majority voting. But otherwise the British were set on course to play a constructive role in the middle of the pack. Moreover the British were parents of one of the most important policy initiatives under discussion, namely the development of autonomous European defence capabilities.

Thus the difficult issues became more visibly exposed and to a wider range of both defensive responses and biased propositions. On the few critical policy questions put forward for extensions of QMV there were a plurality of objectors -- the French on aspects of trade in services and intellectual property matters (notably audio-visual and cultural), the Spanish on the rules governing allocations from the structural funds, as well as the British, Swedish and Irish on taxation and social security. Complex articles bear the marks of these battles, with one or two of the governments from smaller member states labouring to salvage a strengthening of the collective rules, as the Finns did on trade issues.

Predictably the hardest fights were over the distribution of voting weights in the Council and over ways in which additional criteria might help particular countries. This had been a carefully prepared section of the draft treaty, with many person-hours and considerable ingenuity devoted to producing 'rational' formulae as an aid to decision-makers. When it came to the crunch rational criteria gave way to special pleading, as new variants of the proposals were produced to justify this or that government's acute concern. Thus the imperfect correlation between voting weights and population size reflects the variations of success of individual member governments in pressing their cases. On the one hand the population rule as well as the weighting that emerged protect the larger countries. On the other hand the governments from the smaller countries added the caveat that there must be a majority of member states as well. Here we should note not only the French reluctance to accept a stronger influence for Germany but also the way in which a group of smaller countries banded together in an effort to protect their scope for influence.

Charting the road map for enlargement

The preamble to the Nice Treaty has enlargement of the Union as its predominant focus. Thus valuably the Treaty includes an extensive reform to the system of European courts to manage the increasing workload. This is perhaps the most important reform in terms of the qualitative improvement to the functioning of the system. And of course an agreement at Nice as such had become a necessary condition of proceeding with the critical parts of the accession negotiations.

Beyond these points it is less clear that the Union's institutional house has been set in order. No strategic decision was taken about how to adapt the composition of the College of Commissioners. Instead there is to be a slide towards a more 'representative' college, with one commissioner from each member state, and with a deferred and unanimous procedure for a possible reduction, once the membership of the Union reaches twenty seven. Even less elegantly voting weights have been assigned to a further twelve potential member states (the question of Turkey was avoided). Absent from the room governments from these countries could not defend themselves against those incumbent members which sought to assign lower values to their voices. Poland was eventually accorded the same voting weight as Spain, in line with its population size, and similarly Lithuania got a weighting appropriate to its size, but Romania and Latvia fared much less well.

Here we can see how power and representational considerations overshadowed more practical measures that might enable a much larger Union to function efficiently. Here 'non-treaty reform' is left to bear the burden of adjustment and thus much rides on the internal reforms now being led by Neil Kinnock within the Commission and another attempt at internal reform of the Council after the slender changes made in mid-2000.

Yet another IGC

It was also agreed in Nice that another IGC would be convened in 2004. It will be charged with the 'Nice left-overs', to include another look at the distribution of policy competences between the Union and the member states, the status of the Charter on Fundamental Rights, the possible 'simplification' of the treaties, and the role of national parliaments in the institutional architecture. Oh, and by the way, the European Council did remember at the end that there were also some issues of democratic legitimacy, accountability and transparency that would till need to be addressed.

V   NICE VOTES IF YOU CAN GET THEM[6]

This article was published in German in *Integration* (Berlin), April 2001, and the original English text is reproduced with kind permission of the publishers.

A few 'left-overs' from Amsterdam, and a straightforward and parsimonious Intergovernmental Conference(IGC) -- this was the supposed scenario for a tidy meeting of the European Council in Nice in December 2000. The business neatly done, the path would then be cleared for the next rounds of enlargement of the European Union(EU). At the heart of the negotiation lay a set of tricky issues about representation and power. These were centred on the relative weight of the various member states within the key decision-making organs of the EU, in particular the Council and the Commission.

Optimists believed throughout many of the preceding months that a fairly clear trade-off could be made. It would be conceded that each member government would retain the right to nominate one, but only one, member of the European Commission, and in return the governments from the smaller member states would concede that their relative voting power would be reduced in the Council of Ministers.

The more sanguine wondered why a set of issues which had evaded resolution in Amsterdam should suddenly be made malleable in Nice, especially when the negotiators would have had so much more time to contemplate the range of possible outcomes. Among the more curious features of the IGC was the zeal with which national negotiators experimented with a variety of more or less sophisticated formulae for setting 'objective' parameters for possible new voting rules. Seasoned observers of previous IGCs commented that to construct a stable bargain required a wider array of issues out of which to devise a widely based exchange of benefits and costs.

As the IGC proceeded efforts were made to add some additional issues to the agenda. Extensions of policy scope had been more or less ruled out in advance. A detailed discussion of the important European defence initiative was pursued (relatively constructively) through other channels. The debate on 'enhanced cooperation' was revived, its teeth drawn by the absence of concrete proposals as to the specific policy arenas to which it would be applied. A great deal was left to hang on the core set of issues about relative political power.

In many ways it was a false issue. By custom and practice the EU institutions have operated more by consensus-building than by confrontation. Of course fierce arguments frequently take place about policy choices and institutional rules, occasionally with very sharp battles and sometimes with isolated member governments fighting hard to defend specific and singular positions. Yet the reflexes of the process have been to structure negotiations towards compromise and towards accommodating the particular concerns of individual member states. Moreover the coalitions -- and hence the voting alignments -- have mostly been 'issue-driven' rather than 'power-driven'. Thus -- to be more specific -- there has been no systematic alignment of the smaller member states against the larger, or *vice versa*. To the extent that there has been a 'power-driven' coalition it has been the Franco-German couple, an alliance resting rather on a desire to exercise joint strategic direction of the EU than on easy

[6] For *Integration* (IEP, Berlin), April 2001

agreement between them on policy questions.

These points notwithstanding, the Nice agenda revolved around this troublesome set of issues. Indeed by ruling out a more wide-ranging debate the heads of state or government had left themselves with little room for manoeuvre or for 'creative' bargaining. A whole range of further issues hung in the air, notably about whether or not the EU system needed a more fundamental reform. Indeed the absence of a broader agenda for the IGC 2000 was to provoke during the year the well-publicised interventions of a number of political leaders designed to shape the 'post-Nice' agenda, a debate now opened by the commitment to a successor IGC in 2004.

The outcome of Nice

The outcome of Nice was to change significantly the voting rules and weights in the Council of Ministers. Gone was the single short scale for weighting the votes of the different member states. In its place from 1 January 2005 would be a new, much elongated scale (see Table X), which was intended to pay more attention to the wider range of difference imputed to the relative size and importance of different countries. However, this new scale still gave the same number of weighted votes to Germany as to France, Italy and the United Kingdom, even though Germany has a population roughly a third as large as the other three larger member states. To offset this discrepancy a 'demographic safety net' was added. Any decision will have to win the backing of governments representing countries that cover 62% of the population of the EU. This condition can be prevented by only the three largest member states voting against a proposal. However, this decision prompted an understandable concern on the part of the numerous smaller member states. Hence a further safety net was included, namely that any decision must win the support of a majority of member states.

The scales laid down made provision for an eventual EU of up to 27 member states, thus all of the current candidates with the exception of Turkey. Turkey had been included in the papers prepared under the Portuguese presidency for the Feira European Council of June 2000, but disappeared from the subsequent preparatory papers during the French presidency. What was less clear -- and took a further two days of tricky discussion after Nice -- was quite how the enlargement adaptations would be introduced, depending on when which candidates might accede. A complex formula was produced by permanent representatives. Per contra any enlargement earlier than 2005 would be subject presumably to the 'normal' adaptation of voting weights that has been practised for previous enlargements.

Character of the bargaining

Three key features marked the character of the bargaining. One concerned the tempo of the bargaining; a second had to do with its temper; and a third was about tractability. The issues about relative voting weights had been pretty much clear since Amsterdam, at least as far as an EU of fifteen countries was concerned. In the two and a half years from June 1997 to December 2000 their salience had grown sharper not softer.

First then the tempo of the negotiation. The passage of time had hardened bargaining positions all round. Not only had the question of the larger size -- and weight -- of Germany been thrown into relief, with the German expectation of heavier weight more

explicitly articulated, but the tension between larger and smaller member states also became more systematically orchestrated. Coalitions emerged around these two groupings. Officials from the five larger countries discussed together their preferred outcomes in order to ensure that at least it would be clear that they would combine to put pressure on the governments of the smaller member states. This division into camps became rather explicit around the moment of the informal 'conclave', held in Biarritz in November 2000. Although there were persistent differences of view between the representatives of the larger countries, officials from the smaller countries became increasingly resentful of this collusive pressure.

In addition by December 2000 the prospect of enlargement had changed from the abstract to the concrete as a further pressure on the negotiators. Suddenly enlargement had become a pending reality rather than a hypothetical scenario. This added the further complication that almost prevented agreement, as negotiators from incumbent member states struggled to envisage how the newcomers would fit into not only the formal rules but also the informal processes of intra-EU bargaining. EU leaders had declared in advance that an agreement would have to be found on the issues. Their representatives had spent many hours in discussion in the months preceding the Nice European Council, well aware that that they could only sketch options in advance of the 'end-game'.

The temper of that end-game turned out to be quarrelsome. All the best efforts of sophisticated pre-negotiation had not prevented a fierce argument. Over the years there had been many animated arguments at European Council meetings. Veterans of the 1980s had experienced unpleasant and acrimonious exchanges on the budgetary system of the EU. Veterans of the 1990s had keen memories of difficult debates on a range of challenging subjects. What was striking about Nice was just how focused the bad temper was on a single main issue, namely the relative power of the different member states, with few other issues available to provide compensations for the relative costs and benefits of changes from the status quo.

The power issue pitted most of the governments against each other in a zero-sum competitive confrontation. Thus not only was there a Franco-German competition, but also a Belgian-Dutch competition. In addition some governments, for example the Greek, found themselves unexpectedly vulnerable as the competitive pressures generated proposals that put their relative power at risk.

The third and related feature of the bargaining was about the tractability -- rather lack of tractability -- of the negotiation. As already observed, a key problem was that there was so little room for manoeuvre -- not much scope here for an inclusive package deal. To the extent that the 'shadow of the future' played into the discussion, it was a black shadow of the complications that lay ahead, rather than the more promising potential for delayed enhancements of position, even if the immediate decisions were hard to swallow.

Moreover the power issue made every participant a fierce partisan of one or another outcome, and hence there was relatively small opportunity for the creative brokering of compromises. Typically in tough EU negotiations either the Council presidency or the Commission is the usual source of mediation or arbitration. In the event the Commission officials present were allowed little room for constructive intervention. And,

as the luck of the presidency rotation would have it, the French representatives had a particularly partisan brief, complicated by the cohabitation of opposing parties in the two key offices of French president and prime minister.

Making decisions easier – or harder?

On the face of it the content of the bargain reached seems clearly to make Council decision-making harder not easier. Instead of a single criterion for achieving a qualified majority agreement, there are now three criteria.   Quite how these will work out in practice is hard to gauge. Already there is a good deal of speculation about both theoretically possible combinations and plausible probable combinations.   The commentary produced immediately by the European Parliament (Secretariat for the Committee on Institutional Affairs) provides an excellent guide through this particular maze.

Theoretically much of the speculation is about what would be required to constitute a blocking minority under one or other criterion. Indeed the positions of negotiators in Nice seems to have been more about safeguarding the scope for saying 'no' than about how to achieve 'yes' in the negotiations on those issues subject to qualified majority voting. Thus the British negotiators on their return to London pointed out that the new rules meant that decisions would continue to be impossible against the will of [the] three large states. It is to be expected that the coexistence of three criteria will incline government representatives to be even more alert than they have been under the pre-Nice rules to the arithmetic of voting.

Which combinations of countries or likely strategic or tactical coalitions are plausible under the new rules is another matter. Those theoretical speculations that rest on the arithmetic set out the possibilities in terms of relative voting weights, yet this has not been the basis of actual voting in the past. Rather few decisions rest on closely fought and explicit votes, and coalitions have in the past been mainly issue-based -- thus net spenders versus net payers in terms of the EU budget, or more liberal versus more protectionist, or more versus less agricultural countries, or greener versus 'dirtier' countries, and so forth.

A sanguine interpretation would be that, Nice notwithstanding, these coalitions will continue much as before, at least as far as the existing member states are concerned. After all their substantive policy interests are likely to be the predominant influence on day-to-day decision-making.   Since in practice the application of qualified majority voting, even with the modest extensions made at Nice, is essentially on substantive day-to-day issues, there is perhaps little grounds to expect behaviour to change fundamentally at this level of decision-making.

A more conditional interpretation would start from the presumption that Nice is more than an incident, but rather the signal of a change in approach towards bargaining derived from relative position. Or, to put it another way, the behaviour associated with strategic bargaining, always, so some argue, a feature of macro decision-making, may now spread across a wider range of policy issues. Not only might we expect the governments of larger member states to be more collusive more often, but also we might expect governments from the smaller countries to collude more often with the aim of protecting their collective positions. If this latter were to be the outcome, then Nice

would have proved the catalyst for the precise behaviour that the larger member states had been keen to avoid.

What does seem plausible is that there may now be more governments disinclined to have confidence in the common sense of issue-based coalitions leading to more or less sensible outcomes. Hence, once the dust of Nice has settled, we may find that the extension of majority voting may look less attractive than it has in the past to some of its traditional supporters.

Nice may well have claimed two other casualties, namely the Franco-German couple and the brokerage role of the Commission -- at least up to a point. It has never been the case in the EU that the French and German governments have been automatically aligned partners. However, Nice was unusual in finding the two governments so much at odds on so critical an issue. The proposals that moved around the room were not based on a shared view between the two, but rather had to struggle to find the agreement of both. It remains to be seen how far this rupture is curable and whether or not alternative dyads and triads come into play.

As for the Commission, its voice in the Nice discussions was heavily constrained, partly by the contingencies of the way in which the French presidency handled the protracted meeting and partly as a result of the eroded standing of the Commission in recent years. In a context where so many of the dynamic areas of policy development are in policy fields outside the orthodox 'Community models' of common policy or collective regulation, the challenge for the Commission to establish influence is considerable.

Assumptions about new members

A key purpose of the Nice negotiation was to determine how the candidate countries would be included in the various EU institutions.   Here the meeting of the European Council was less than edifying in its behaviour. In the preliminary prenegotiations the Intergovernmental Conference had more or less attempted to follow consistent lines in allocating the numbers to candidate as well as incumbent members. Consistency began to erode as the competitive egotism was played out among the current member states. Hence suggestions were mooted by the French presidency that Poland, with a population much the same size as Spain, should nonetheless have fewer weighted votes, or that Lithuania, with a similar population size to Ireland should have fewer votes, or that Romania should somehow be wished into a smaller size. Proposals of a similar kind permeated the suggested allocations of seats in the European Parliament to the new members.

Pierre Moscovici, the French Minister for Europe, was at pains in one of the press conferences to explain that it had been a mere 'technical mistake' in one of the documents that had accidentally down-graded Poland. Behind these efforts at soothing speech lay a more deliberate nervousness about facing up to the imminent new members as 'normal' member states. In the event most, but not all, of the mooted anomalies were removed from the allocated Council voting weights. Many, however, remain in the allocations of numbers of MEPs to individual countries, where correlations with population size are at best approximate, and at worst casually disregarded. The rescue of Poland and Lithuania in terms of Council voting weights had much to do with the speed with which their officials were able to mobilise even from outside the

negotiating chamber. The Romanians, though marginally rescued by the Belgian prime minister, nonetheless came out of the bargain less favourably than even rough equity would have merited.

Overall the candidate countries have some real grounds for concern at the way in which they were dealt with by their prospective partners. Moreover one could easily observe the way in which some of the current member governments aimed to establish credit for the last minute rescue moves that were made in order to win gratitude from the candidates.

It should also be noted that one candidate member was absent from the formal calculations. The IGC had calculated during the French presidency on the assumption of 27 eventual member states, excluding Turkey from the arithmetic. This reflected the reality that the Turkish application for EU membership had gained 'candidate status' only in Helsinki in December 1999, but had not yet produced an 'accession partnership' to trigger substantive accession negotiations (this was eventually agreed in mid-December). This technical explanation is well in keeping with the conventions of EU procedures, but is an explanation that carries less persuasion in the tangled politics of the EU-Turkey relationship, which was, for other reasons, going through a difficult patch in November/December 2000. The fact that Turkey's population size is much the same as that of Germany would have made its case particularly difficult to include in the already harrassed bargaining at Nice.

Intended -- and -- unintended consequences

The main intended consequence of Nice was to clear the path for enlargement, by resolving the business left over from Amsterdam. As became clear during 2000, the IGC was not addressing more fundamental questions about how to reform the European Union's institutional architecture in a broader sense, hence the proliferation of speeches and speculation about further waves of reform that might be needed. Indeed the Nice European Council admitted this by also committing EU leaders to reconvene for yet another IGC in 2004. On that occasion representatives from new and candidate countries will have some voice in the discussion, quite how much voice depending on where they have each reached in their accession negotiations.

This iterative approach to IGCs and institutional reform may seem like a familiar pattern -- business as usual. Yet this recent IGC and the outcome of Nice do not conform to the business as usual pattern in so far as the narrow institutional focus provoked so competitive an approach to bargaining that they may have changed the rhythm more fundamentally. Moreover, given that one of the most clearly signalled issues for the 2004 IGC is 'subsidiarity' and the assignment of powers between the EU and the member states, there is some grounds for concern that this might only add another dimension of power-driven bargaining to the process.

If part of the purpose of the 2000 IGC and its Nice conclusion was to encourage the candidate members to prepare for constructive and collectively-minded multilateralism, then it can hardly be judged to have been a success. Nice showed a kind of 'disinvestment' in confidence-building mechanisms and a kind of weakening of trust among the members of the EU club. Not only on the specific issue of Council voting weights and rules but also on other issues the discussion was about how to deal with

the awkward or the unpalatable. Thus proposals for enhanced cooperation rested on the assumption that it might be necessary to bypass the awkward member states. Moreover anxiety about national representation propelled the unsatisfactory discussion at Nice about the composition of the College of Commissioners.

These emphases on representation and power somewhat distracted attention from the question of non-treaty reform. In terms of the day-to-day functioning of the EU practical and pragmatic reforms to the Council and the Commission may be more important than treaty amendments. Yet during 2000 the Council's own internal deliberations on non-treaty modifications bore very little fruit, while the progress of reforms to the Commission still move very slowly. No signals came from Nice about the pertinence of either trajectory of institutional improvement.

On the other hand, Nice may have released two forces of dynamic change. First, the tensions in of the Franco-German relationship may open up a new 'inner' politics in the Council in which there may be an opportunity structure for a variety of other coalitions. Perhaps other combinations of governments will more often contribute to agenda-setting and agenda-management. Second, the character of the deliberations at Nice does little to commend the orthodox procedures of an IGC. Such may not be a novel observation, but the difference in 2000 was that the way that the Charter of Rights was drafted provided a contrasting example of a more broadly based procedure for drafting a quasi-constitutional document. Although not everyone was pleased with the resulting text, this alternative methodology provides a precedent to which appeal can be made.

One final observation. The Nice outcome on Council voting is of direct relevance to those areas of EU activity to which the orthodox conventions of the 'Community method' apply. Yet the most vigorous areas of current policy development in the contemporary EU are being mostly addressed by quite different institutional methodologies. Economic and monetary union is being pursued in significantly different ways. The 'open method of coordination', as proclaimed in the Lisbon strategy, operates by exchanges of examples and experiences among member governments. The defence initiative is being taken forward by essentially consensual and functional processes. A good deal of the agenda in justice and home affairs is being taken forward by coordination, by deliberation and by new agencies. In all of these policy domains the impact of Nice may prove at best marginal.

APPENDIX

VOTING WEIGHTS AND REPRESENTATION IN AN ENLARGED EUROPEAN UNION.

a) Council voting weights for a membership of 15 countries

	Population		Votes until January 2005	Votes from January 2005
	Number	Per cent		
Germany	82038	21.86	10	29
United Kingdom	59247	15.79	10	29
France	58966	15.71	10	29
Italy	57612	15.35	10	29
Spain	39394	10.50	8	27
Netherlands	15760	4.20	5	13
Greece	10533	2.81	5	12
Belgium	10213	2.72	5	12
Portugal	9980	2.66	5	12
Sweden	8854	2.36	4	10
Austria	8082	2.15	4	10
Denmark	5313	1.42	3	7
Finland	5160	1.37	3	7
Ireland	3744	1.00	3	7
Luxemburg	429	0.11	2	4
Total EU15	375 325	100.00 %	87	237
Qualified majority	–	–	62	169
% of votes	–	–	71.28 %	71.30 %
Blocking minority	–	–	26	69
% of votes	--	--	29.88%	29.11%
Smallest possible % Of population	–	–	12.30 %	13.79 %

From January 2005 decisions need also a majority of member states and 62% of the EU population.

b) Council voting weights for a membership of up to 27 member states

	Population		Votes in Council
	Number	Per cent	
Germany	82038	17.05	29
United Kingdom	59247	12.31	29
France	58966	12.25	29
Italy	57612	11.97	29
Spain	39394	8.19	27
Poland	38667	8.04	27
Romania	22489	4.67	14
Netherlands	15760	3.28	13
Greece	10533	2.19	12
Czech Republic	10290	2.14	12
Belgium	10213	2.12	12
Hungary	10092	2.10	12
Portugal	9980	2.07	12
Sweden	8854	1.84	10
Bulgaria	8230	1.71	10
Austria	8082	1.68	10
Slovakia	5393	1.12	7
Denmark	5313	1.10	7
Finland	5160	1.07	7
Ireland	3744	0.78	7
Lithuania	3701	0.77	7
Latvia	2439	0.51	4
Slovenia	1978	0.41	4
Estonia	1446	0.30	4
Cyprus	752	0.16	4
Luxemburg	429	0.09	4
Malta	379	0.08	3
Total EU27	481 181	100.00 %	345
Qualified majority	–	–	258
% of votes	–	–	74.78 %
Blocking minority	–	–	88
% of votes	–	–	25.50 %
BUT declaration says:			
Qualified majority for EU27	–	–	255
% of votes	–	–	73.91 %
Blocking minority	–	–	91
% of votes	–	–	26.37 %
Smallest possible % of population	--	--	11.62%

Plus majority of member states at least 62% of population

c) Number of Members of the European Parliament

	Population		Pre-Nice	Under Treaty of Nice
	Numbers	Per cent		
Germany	82038	17.05	99	99
United Kingdom	59247	12.31	87	72
France	58966	12.25	87	72
Italy	57612	11.97	87	72
Spain	39394	8.19	64	50
Poland	38667	8.04	64	50
Romania	22489	4.67	44	33
Netherlands	15760	3.28	31	25
Greece	10533	2.19	25	22
Czech Republic	10290	2.14	25	20
Belgium	10213	2.12	25	22
Hungary	10092	2.10	25	20
Portugal	9980	2.07	25	22
Sweden	8854	1.84	22	18
Bulgaria	8230	1.71	21	17
Austria	8082	1.68	21	17
Slovakia	5393	1.12	16	13
Denmark	5313	1.10	16	13
Finland	5160	1.07	16	13
Ireland	3744	0.78	15	12
Lithuania	3701	0.77	15	12
Latvia	2439	0.51	10	8
Slovenia	1978	0.41	9	7
Estonia	1446	0.30	7	6
Cyprus	752	0.16	6	6
Luxemburg	429	0.09	6	6
Malta	379	0.08	6	5
Total EU27	481181	100.00 %	874	732