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The Treaty of Amsterdam in Historical Perspective: Introduction to the Symposium

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Abstract

On February 27-28, 1998, the Center on European Union Law of the Fordham Law School was pleased to present a program, "The European Union and the United States: Constitutional Systems in Evolution," intended to provide a clear description of the impact of the Treaty of Amsterdam upon the European Union (or "EU"), and to enable some valuable points of comparison and contrast between constitutional and legal developments within the European Union and the United States. This symposium issue of the Fordham International Law Journal publishes a series of papers presented at the conference centering on the Treaty of Amsterdam, signed on October 2, 1997, and scheduled for complete ratification and entry into effect in 1999. All of the articles were written by present or former officials of institutions of the European Union who either participated in the preparation of the text of the Treaty of Amsterdam or are well-suited to analyze it. Let me now make a few remarks situating the Treaty of Amsterdam within the context of the constitutional evolution of the European Union. Not only is the study of the European Union one of the greatest practical importance, in view of its major political and economic role on the world stage, but also it is fascinating and rather elusive. The historical development of the European Union is complex, representing a gradual expansion in scope and power through a number of stages, each of which in turn is rather complicated and hard to assess.

INTRODUCTION

THE TREATY OF AMSTERDAM IN HISTORICAL PERSPECTIVE: INTRODUCTION TO THE SYMPOSIUM

*Roger J. Goebel**

On February 27-28, 1998, the Center on European Union Law of the Fordham Law School was pleased to present a program, "The European Union and the United States: Constitutional Systems in Evolution," intended to provide a clear description of the impact of the Treaty of Amsterdam¹ upon the European Union (or "EU"), and to enable some valuable points of comparison and contrast between constitutional and legal developments within the European Union and the United States. The conference proceedings are to be published in a book by Kluwer Law International later this year.

This symposium issue of the *Fordham International Law Journal* publishes a series of papers presented at the conference centering on the Treaty of Amsterdam, signed on October 2, 1997, and scheduled for complete ratification and entry into effect in 1999. All of the articles were written by present or former officials of institutions of the European Union who either participated in the preparation of the text of the Treaty of Amsterdam or are well-suited to analyze it.

Commissioner Marcelino Oreja, whose portfolio included a direct responsibility for the Commission's participation in the Turin Intergovernmental Conference, which drafted the Treaty of Amsterdam, inaugurates the symposium with his reflections on the achievements of the Treaty of Amsterdam, the prospects of further enlargement of the European Union, and their impact on relations between the European Union and the United

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1. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) (not yet ratified) [hereinafter Treaty of Amsterdam].

States. His paper is entitled: *The Recent Evolution of the European Union*.

Five experts coming from each of the institutions have provided articles intended to yield an analytical overview of the Treaty of Amsterdam. Jean-Claude Piris, Director-General of the Legal Service of the Council of the European Union and Legal Advisor to the Intergovernmental Conference (or "IGC"), collaborated with his Legal Service colleague, Giorgio Maganza, to write *The Treaty of Amsterdam: Overview and Institutional Aspects*. This article provides a realistic, authoritative, and balanced appraisal of the impact of the Treaty of Amsterdam on the EU institutions and upon the scope of EU operations.

Michel Petite, a key Commission civil servant who participated intimately in the IGC discussions, has provided an article, *The Commission's Role in the IGC's Drafting the Treaty of Amsterdam*, that evaluates in a very frank manner the major issues and the Commission's contributions to the efforts to resolve them. Member of the European Parliament Laurens Jan Brinkhorst's article, *An Appraisal of the Treaty of Amsterdam from the Perspective of a Member of the European Parliament*, provides a pragmatic critique of the Treaty of Amsterdam's achievements. His comments not only are flavored by his views as an Member of European Parliament, but also benefit from his past experience as Director-General of the Commission Directorate General responsible for environmental protection and consumer rights, and from his earlier service representing the Netherlands within the Council. Finally, Ole Due, former President of the Court of Justice, in his article, *The Impact of the Amsterdam Treaty upon the Court of Justice*, gives a magisterial analysis of the Treaty of Amsterdam's provisions enlarging the jurisdiction of the Court of Justice (or "Court"). He also remarks on the fortunate failure of Court critics during the IGC to achieve any reduction in the Court's role.

One of the most important substantive aspects of the Treaty of Amsterdam is its reshaping of the Social Policy Chapter and its creation of an Employment Title. Patrick Venturini, Counselor in the Directorate General on Employment, Industrial Relations and Social Affairs, has written an able description of the new Treaty's achievements in this sector in *Social Policy and Employment Aspects of the Treaty of Amsterdam*. He also describes the ongoing efforts of the European Council to make the new employment provisions take on a realistic form.

Two major recent developments in EU law have been the elaboration of the principles of subsidiarity and transparency, both intended in large measure to bring the European Union closer to its citizens. Christian Timmermans, Deputy Director General of the Commission Legal Service, has done an admirable job in analyzing the evolution and the content of both concepts. In his article *Subsidiarity and Transparency*, he outlines the efforts of the Commission and other institutions to provide concrete dimensions both to the principle of subsidiarity and that of transparency and notes the provisions of the Treaty of Amsterdam intended to reinforce these efforts. Laurens Brinkhorst, very much interested in particular by the efforts to provide the European peoples with greater access to information about institutional operations and decisions, has critiqued this topic in his article, *Transparency in the European Union*.

The final articles in the symposium deal with another extremely important topic, the impact of the Treaty of Amsterdam on the foreign relations of the European Union. Ambassador Hugo Paemen, Head of the Delegation of the European Commission to the United States and formerly the Commission civil servant overseeing the negotiations leading to the present World Trade Organization, leads off with an excellent article, *The European Union in International Affairs: Recent Developments*. Ambassador Paemen provides a thorough analytical review of the recent evolution of the European Community's external trade powers and of the somewhat limited amendment to Article 113 of the Treaty establishing the European Community² ("EC Treaty") contained in the Treaty of Amsterdam, as well as a description of the complex structure of the Common Foreign and Security Policy.

Jacques Bourgeois, professor at the College of Europe and a leading Brussels practitioner, formerly a senior member of the Commission Legal Service, brings his accumulated experience and expertise to bear in his article, *External Relations Powers of the*

2. Treaty establishing the European Community, Feb. 7, 1992, O.J. 224/1 (1992), [1992] 1 C.M.L.R. 573 [hereinafter EC Treaty], incorporating changes made by Treaty on European Union, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 719 [hereinafter TEU]. The Treaty on European Union (or "TEU") amended the Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty], as amended by Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741 [hereinafter SEA].

European Community. Mr. Bourgeois concentrates on the thorny issue of the extent of the Community's external relations competence within the World Trade Organization ("WTO"), in particular after the well-known Court of Justice Opinion 1/94 on the proper mode of conclusion of the Uruguay Round Agreements.³

Finally, Giorgio Maganza provides a second paper to the symposium, this time *The Treaty of Amsterdam's Changes to the Common Foreign and Security Policy Chapter and an Overview of the Opening Enlargement Process*. His article describes the somewhat modest modifications made by the Treaty of Amsterdam in the structure and operations of the Common Foreign and Security Policy, created by the Treaty on European Union⁴ (or "TEU," "Treaty of Maastricht," or "Maastricht Treaty"). He also describes the launching of negotiations with five Central European countries and with Cyprus for their eventual accession to the European Union, a process that will undoubtedly necessitate further important modifications to the Treaty on European Union.

Let me now make a few remarks situating the Treaty of Amsterdam within the context of the constitutional evolution of the European Union. Not only is the study of the European Union one of the greatest practical importance, in view of its major political and economic role on the world stage, but also it is fascinating and rather elusive. The historical development of the European Union is complex, representing a gradual expansion in scope and power through a number of stages, each of which in turn is rather complicated and hard to assess.

I. ISSUES RELATING TO ENLARGEMENT

The core of the European Union, and still by far its most significant component, is the European Community, formerly known as the European Economic Community ("EEC"), created in 1958 by the Treaty of Rome of March 25, 1957 (or "EEC Treaty").⁵ The European Community's historical progress has been marked both by expansion in the number of Member States, from the original six to the present fifteen, and by three major revisions in treaty structure and scope—the Treaty of Amsterdam being the third such revision.

3. Opinion 1/94, [1994] E.C.R. I-5267, [1995] 1 C.M.L.R. 205.

4. TEU, *supra* note 2.

5. EEC Treaty, *supra* note 2.

The negotiations for the first enlargement of the European Community in 1972, adding the United Kingdom, Denmark, and Ireland to the initial six continental States (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands), undoubtedly raised more difficult issues than any subsequent accession has done. This was because the incremental change from six to nine constituted a fifty percent increase in Community membership. From the outset, the negotiations were conducted on the basis that the applicant countries had to accept the *acquis communautaire*.⁶ This key concept, never successfully translated into English, means essentially that applicants must accept the Community's institutional structure, scope, and political objectives, as well as the major constitutional doctrines of the Court of Justice.

At the famous Hague Summit on December 1-2, 1969, the Heads of Government and State declared that: "In so far as the applicant States accept the Treaties and their political objective, [and] the decisions taken since the entry into force of the Treaties," the negotiations could commence.⁷ Accordingly, the principle of the *acquis communautaire* became an authoritatively-stated condition for the first enlargement and subsequently for any future accession.

Thus, at the time of the first enlargement in 1973, based upon the text of the 1972 Act of Accession,⁸ the *acquis communautaire* could be analyzed as comprising six constituent elements: 1) the Treaties, 2) the institutional structure under the Treaties, 3) the legislation and other acts of the Community, 4) international agreements entered into by the Community, 5) legislation and other acts adopted during the negotiations, and 6) the somewhat vague concept of the "political objective" of the Treaties. In its Opinion prior to the Act of Accession,⁹ the Commission added a seventh element, the "legal order" of the

6. My analysis of the meaning of *acquis communautaire* as the concept has evolved during the various accessions is contained in Roger J. Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 FORDHAM INT'L L.J. 1092, 1140-57 (1995). For additional analysis, see Carlo Curti Gialdino, *Some Reflections on the Acquis Communautaire*, 32 COMMON MKT. L. REV. 1089 (1995).

7. Final Communiqué of the Conference Heads of State or Government on 1 and 2 December 1969 at the Hague, in COMMISSION OF THE EUROPEAN COMMUNITIES, THIRD GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITIES 1969, annex, at 489 (1970).

8. 1972 Act of Accession, arts. 2-5, J.O. L 73/1, at 14-15 (1972).

9. Opinion of the Commission of 19 January 1972 on the Applications for Acces-

Community, including the principles of the direct applicability of certain Treaty provisions, the primacy of Community law over any conflicting national provisions, and the uniform interpretation of Community law—all major doctrines developed by the Court of Justice in the early years of Community law.

Not only in the first enlargement, but also in the subsequent accession negotiations for Greece, Portugal, and Spain, admitted in the 1980s, and for Austria, Finland, and Sweden, admitted in 1995, the new States all formally accepted the *acquis communautaire*. Moreover, the European Council's famous Declaration on Democracy at Copenhagen on April 7-8, 1978, effectively expanded the *acquis communautaire* to include adherence by applicant countries to the "principles of representative democracy, of the rule of law, of social justice and of respect for human rights."¹⁰

The 1993 Treaty of Maastricht incorporated the concept of the *acquis communautaire* as a key aspect of the European Union. Article B sets forth the objectives of the Union, ending the list with: "to maintain in full the *acquis communautaire* and build on it."¹¹ In addition, the first paragraph of Article C states: "The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*."¹² Several of the symposium articles lay emphasis on the continued respect for the *acquis communautaire* that is manifested in aspects of the Treaty of Amsterdam, and as an essential premise in future negotiations with the applicant Central European nations.

Obviously, each time the European Community (now a con-

sion of Denmark, Ireland, the Kingdom of Norway and the United Kingdom, fifth recital, J.O. L 73/3 (1972).

10. 11 E.C. BULL., no. 3, at 5-6 (1978).

11. TEU, *supra* note 2, art. B, O.J. C'224/1, at 5 (1992), [1992] 1 C.M.L.R. at 727. By virtue of the Treaty of Amsterdam, articles of the TEU will be renumbered in the Consolidated version of the Treaty on European Union ("Consolidated TEU"). Treaty of Amsterdam, *supra* note 1, art. 12, O.J. C 340/1, at 78-79 (1997). The Treaty of Amsterdam will renumber Article B of the TEU as Article 2 of the Consolidated TEU. See Consolidated version of the Treaty on European Union, art. 2, O.J. C 340/2, at 152 (1997), 37 I.L.M. 67, 68 (not yet ratified) [hereinafter Consolidated TEU] (art. B of TEU), *incorporating changes made by* Treaty of Amsterdam, *supra*.

12. TEU, *supra* note 2, art. C, O.J. C 224/1, at 5 (1992), [1992] 1 C.M.L.R. at 727-28 (art. C of TEU will be numbered as art. 3 of Consolidated TEU).

stitutional part of the European Union) has been enlarged to include new Member States, a certain modification in institutional structure has occurred. The increase in numbers of the Members of the Commission, the Members of the European Parliament, and the Judges of the Court of Justice, all to reflect the addition of new States, never posed any great problem in past enlargements, but, as noted below, is now becoming an issue in the prospective enlargement of the European Union to include many Central European countries. The Parliament has been able to set a ceiling on its total potential membership, namely 700 MEPs, and this figure has been accepted in the Treaty of Amsterdam. In contrast, thus far the Member States have not been able to agree on whether to keep the practice of permitting each Member State to nominate one Commissioner, with two Commissioners each for France, Germany, Italy, Spain, and the United Kingdom, or to limit the size of the Commission with a view to achieving greater operational efficiency. Likewise, the Member States have not yet decided whether to continue to permit each to nominate one Judge on the Court of Justice and on the Court of First Instance, or to limit the number of judges to prevent the two courts from becoming unwieldy deliberative assemblies. These issues should be satisfactorily addressed before the current negotiations for the admission of six new countries are complete.

Any change in the mode of voting for legislation and other decisions within the Council of Ministers (now formally known as the Council of the European Union) has often been the subject of controversy when new States join. Obviously, the more Member States that there are, the more difficult it is to achieve a consensus when legislations or decisions must be reached by unanimity. Hence, as noted below, successive Treaty amendments have reduced the number of fields in which measures are adopted by unanimous action.

Especially now that most legislation—probably over ninety percent—is adopted by a form of voting known as qualified majority voting (or “QMV”), rather than by unanimous action, the topic has become extremely sensitive. The qualified voting system is a bit arcane. From the inception of the EEC Treaty, the Member States have set a number of weighted votes for each of them, to be used when qualified majority voting is the prescribed

Treaty mechanism.¹³ France, Germany, Italy, and the United Kingdom have always held the maximum weighted figure, ten votes each. As the next largest state, Spain has eight votes, while the medium-sized and smaller states have five, four, or three votes, and Luxembourg has only two votes. These numbers were set in an attempt to take into account each Member State's population and economic power, but only in part. The system obviously gives the smaller and medium-sized Member States a disproportionate vote in comparison with the five largest Member States. If population alone were decisive, Germany should have over 200 weighted votes to Luxembourg's one. Still, while not perfectly democratic, the system is manifestly far more sensible and fair than the United States' constitutionally mandated parity of two Senate seats each for both very large and very small states.

It is easy to see that the Heads of State and Government regard it as essential to set a qualified voting majority at somewhere around the two-thirds mark in order to ensure that a sufficiently large number of Member States back a measure before it can be adopted. On the other hand, the larger Member States clearly do not relish being outvoted. Consequently, they have always sought to have the requisite qualified majority vote to be set at a level at which it is unlikely that too many large Member States can be outvoted.¹⁴ The key issue is, of course: how many is too many? As the articles of Messrs. Piris, Maganza, and Petite describe in some detail, it was hoped that the Treaty of Amsterdam might modify the present qualified majority voting structure in the Council in order to accommodate a large number of

13. The number of weighted votes for each Member State, and the requisite majority for action, is set out in Article 148 of the Treaty establishing the European Community ("EC Treaty"). EC Treaty, *supra* note 2, art. 148, O.J. C 224/1, at 58 (1992), [1992] 1 C.M.L.R. at 680-81. By virtue of the Treaty of Amsterdam, articles of the EC Treaty will be renumbered in the Consolidated version of the Treaty establishing the European Community ("Consolidated EC Treaty"). Treaty of Amsterdam, *supra* note 1, art. 12, O.J. C 340/1, at 78-79 (1997). The Treaty of Amsterdam will renumber Article 148 of the EC Treaty as Article 205 of the Consolidated EC Treaty. See Consolidated version of the Treaty establishing the European Community, art. 205, O.J. C 340/3, at 264-65 (1997), 37 I.L.M. 79, 121-22 (not yet ratified) [hereinafter Consolidated EC Treaty] (art. 148 of EC Treaty), *incorporating changes made by Treaty of Amsterdam, supra*.

14. For a discussion of the debate among the Member States at the time of accession of Austria, Finland, and Sweden concerning the determination of the current requisite 62 vote majority, together with the Council resolution called the Joanina Compromise of March 26-27, 1994, reflecting a political agreement on the use of the new weighted majority vote, see Goebel, *supra* note 6, at 1124-26.

new and relatively small Member States from Central Europe, but that unfortunately did not happen. This issue, then, awaits future resolution.

II. THE SINGLE EUROPEAN ACT

It would take too long to trace here the developmental threads of the late 1970s and early 1980s, but the definite historical landmark from which the European Community has moved forward in its recent revisions of structure is the Solemn Declaration on European Union adopted by the European Council at Stuttgart in June 1983.¹⁵ This declaration affirms the desire "to achieve a comprehensive and coherent common political approach" to the goal of European Union.¹⁶

The first constitutional fruit of the Solemn Declaration was the Single European Act¹⁷ (or "SEA"), produced by the Luxembourg Intergovernmental Conference in the fall of 1985, and formally effective after ratification on July 1, 1987. As in the case of the Maastricht and Amsterdam Treaties, an Intergovernmental Conference, composed of representatives of all the Member States, drafted most of the new Treaty text, but final essential compromises and additions were made by the Heads of State and Government, meeting in the composition of the European Council.¹⁸

The two most important features of the Single European Act related to the institutional structure and scope of the Community. For the first time, the Parliament received a significant share in the legislative process for most internal market measures, through a mode of action called the cooperation procedure.¹⁹ The SEA also made Council decision-making easier and

15. 16 E.C. BULL., no. 6, at 24-29 (1983).

16. *Id.* at 24.

17. SEA, *supra* note 2. The peculiar title, Single European Act ("SEA"), was given to it because it not only amended the Treaty establishing the European Economic Community, *supra* note 2, but also formally created both the European Council, *infra* note 22, and a mechanism for inter-governmental cooperation in foreign affairs, the European Political Cooperation, which subsequently evolved into the Common Foreign and Security Policy, *infra* note 29.

18. 18 E.C. BULL., no. 11, at 18-21 (1985).

19. The current description of the cooperation procedure is contained in Article 189c of the EC Treaty. EC Treaty, *supra* note 2, art. 189c, O.J. C 224/1, at 66-67 (1992), [1992] 1 C.M.L.R. at 696-97 (art. 189c of EC Treaty will be renumbered as art. 252 of Consolidated EC Treaty). Where the procedure is applicable, the Council acts by quali-

more effective by transferring many fields of action from unanimous voting to qualified majority voting.²⁰ The SEA further facilitated the functioning of the Court of Justice by enabling the creation of its accessory body, the Court of First Instance.²¹ The SEA also gave formal treaty recognition to the regular summit meetings of the Heads of State and Government, called the European Council since the late 1970s, describing its role to be to "define the general political guidelines" of the Community.²² Finally, the SEA gave Treaty force to the goal of completing the internal market by December 31, 1992,²³ a decision that greatly enhanced the subsequent political drive to adopt legislation to achieve the single market.

In operation, the Single European Act proved itself to be an

fied majority voting. By an absolute majority vote, the Parliament may amend a draft legislative proposal that has received initial Council approval called a "Council common position." The Commission then revises the draft, either accepting or rejecting Parliament's amendments. The Council may accept the Commission's draft by a qualified majority vote, but must vote unanimously if it wishes to amend the draft. Parliament then has a considerable influence, but not an equal share, in the process of adopting legislation through the cooperation procedure.

20. The principal field of use of qualified majority voting after the adoption of the SEA was in the passage of virtually all the directives intended to achieve the completion of the internal market. Article 100a of the EC Treaty, O.J. C 224/1, at 32 (1992), [1992] 1 C.M.L.R. at 633-34 (art. 100a of EC Treaty will be renumbered as art. 95 of Consolidated EC Treaty), authorized the adoption of such measures by the use of the cooperation procedure described above, *see supra* note 19.

21. Article 168a of the EC Treaty, which was added by the SEA, created the Court of First Instance and authorized the Council to set the Court's jurisdiction. *Id.* art. 168a, O.J. C 224/1, at 61 (1992), [1992] 1 C.M.L.R. at 685-86 (art. 168a of EC Treaty will be renumbered as art. 225 of Consolidated EC Treaty). The Court of First Instance presently acts as a court of appeal, reviewing Commission decisions in competition proceedings when appealed by persons or enterprises, reviewing Community institution staff cases when appealed by Community civil servants, and reviewing anti-dumping and anti-subsidy regulations when appealed by interested parties. An appeal can be taken on questions of law, but not of fact, from Court of First Instance judgments to the Court of Justice.

22. The composition and the role of the European Council in the language added by the SEA is presently contained in Article D of the TEU. TEU, *supra* note 2, art. D, O.J. C 224/1, at 5 (1992), [1992] 1 C.M.L.R. at 728 (art. C of TEU will be renumbered as art. 4 of Consolidated TEU). Note that the President of the Commission joins the Heads of State or Government in European Council meetings. The TEU does not give the European Council any formal capacity to take binding legal acts, but its decisions and resolutions are invariably implemented when appropriate by Council or Commission decisions.

23. SEA, *supra* note 2, art. 13, O.J. L 169/1, at 7 (1987), [1987] 2 C.M.L.R. at 747 (inserting art. 8a into EEC Treaty). Article 8a of the EEC Treaty was renumbered as Article 7a of the EC Treaty by the TEU and will be renumbered again as Article 14 of the Consolidated EC Treaty by the Treaty of Amsterdam.

almost unqualified success. It is true that initially Parliament was not happy with the SEA, which many members regarded as only a half-way house on the road to Parliament's more far-reaching aspirations, and authoritative commentators voiced serious criticisms of the compromises embodied in the SEA.²⁴ In practice, however, the use of the cooperation procedure not only augmented substantially the power of Parliament, but also is generally credited with improving the quality of legislation. The shift to qualified majority voting in the Council for almost all internal market legislation enabled a vast body of new rules to be adopted, many of them in fields where the former requirement for unanimous Council decisions had blocked progress for years.²⁵ Moreover, the Court of First Instance has developed into a judicial body with manifest power and reputation, while alleviating the caseload burden of the Court of Justice. Finally, undoubtedly most prominent in the public eye was the success of the internal market program.

III. THE TREATY OF MAASTRICHT

The definite operational efficiencies produced by the Single European Act and the manifest success of the internal market program led to a willingness of the Member States, incited in no small measure by the leadership of the Commission under its dynamic President, Jacques Delors, to undertake a more far-reaching Treaty revision. The June 1990 Dublin European Council meeting decided that the time was ripe for two intergovernmental conferences composed of Member State representatives, to be held in Rome beginning in December 1990, one to work on political modifications, the other to develop a frame-

24. The most weighty criticism of the SEA came from Judge Pierre Pescatore, a leading constitutional scholar and influential member of the Court of Justice from 1966 to 1984. Pierre Pescatore, *Some Critical Remarks on the "Single European Act,"* 24 COMMON MKT. L. REV. 9 (1987); see Nicholas Forwood & Mark Clough, *The Single European Act and Free Movement*, 11 EUR. L. REV. 383 (1986). For analytical but favorable analyses of the SEA, see George Bermann, *The Single European Act: A New Constitution for the Community?*, 27 COLUM. J. TRANSNAT'L L. 529 (1989); Claus-Dieter Ehlermann, *The Internal Market Following the Single European Act*, 24 COMMON MKT. L. REV. 361 (1987); Hans Joachim Glaesner, *The Single European Act: Attempt at an Appraisal*, 10 FORDHAM INT'L L.J. 446 (1986-1987).

25. By the end of 1992, over 95% of the legislative program set by the Commission's June 1985 White Paper on completing the Internal Market had been finally adopted. COMMISSION OF THE EUROPEAN COMMUNITIES, TWENTY-SIXTH GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN COMMUNITIES 1992, at 35 (1993).

work for an eventual economic and monetary union.²⁶ The two conferences worked intensively for one full year, reporting back to and receiving instructions and proposals from the Member State governments, as well as receiving proposals and comments from the Commission and the Parliament. When the conferences were unable to attain agreement on certain key questions, the Maastricht European Council in December 1991 somewhat surprisingly managed to work out acceptable compromises on most of the unsettled issues.²⁷

Although often misunderstood as creating a European Union, Article A of the Maastricht Treaty makes clear that the Treaty is really still on the road, constituting "a new stage in the process of creating an ever closer union among the peoples of Europe."²⁸ Even so, the Maastricht Treaty represents the most important restructuring of the institutions and expansion of the constitutional dimensions of the Community since its inception. Indeed, the Maastricht Treaty has given a new name to the overall structure, the European Union, and has replaced the traditional term, European Economic Community, by the pithier one, European Community. In fact, the European Community, often called the "first pillar," represents virtually all of the European Union's institutional structure and scope of operations, including the new Economic and Monetary Union. The parts of the European Union that remain outside of the Community are comprised of the other two "pillars," Article J, the Common Foreign and Security Policy,²⁹ and Article K, Cooperation in Justice and Home Affairs,³⁰ which have their own scope and decision-making procedures. Although the ratification process proved surprisingly arduous, especially in Denmark, France, Germany, and the United Kingdom, the Treaty of Maastricht ultimately en-

26. 23 E.C. BULL., no. 6, at 7-10 (1990). The principal agenda items for the two Rome Intergovernmental Conferences were laid down by the European Council at its Rome meeting on December 14-15, 1990. 23 E.C. BULL., no. 12, at 7-11 (1990).

27. 24 E.C. BULL., no. 12, at 7-8 (1991).

28. TEU, *supra* note 2, art. A, O.J. C 224/1, at 5 (1992), [1992] 1 C.M.L.R. at 726-27 (art. A of TEU will be renumbered as art. 1 of Consolidated TEU). The first recital of the TEU's Preamble also refers to the TEU as "a new stage in the process of European integration undertaken with the establishment of the European Communities." *Id.*, first recital, O.J. C 224/1, at 2 (1992), [1992] 1 C.M.L.R. at 725.

29. *Id.* arts. J.J.11, O.J. C 224/1, at 94-96 (1992), [1992] 1 C.M.L.R. at 729-34 (arts. J.J.11 of TEU will be renumbered as tit. V, arts. 11-28 of Consolidated TEU).

30. *Id.* arts. K-K.9, O.J. C 224/1, at 97-98 (1992), [1992] 1 C.M.L.R. at 735-38 (arts. K-K.9 of TEU will be renumbered as tit. VI, arts. 29-45 of Consolidated TEU).

tered into force on November 1, 1993.³¹

The formal name of the Treaty of Maastricht is the Treaty on European Union.³² The United Kingdom's opposition to the use of the adjective "federal" prevented the adoption of the name "European Federal Union," but, objectively speaking, there can be no doubt that the present structure represents a federal constitutional system. In the words of the leading scholar on this subject, Judge Koen Lenaerts, the European Union can be described as a constitutional form of "integrative federalism."³³

Although by far its most important component is the European Community, the European Union's two other structures of intergovernmental cooperation, namely the Common Foreign and Security Policy and Cooperation in Justice and Home Affairs have known a period of considerable development from 1993 to 1998. However, manifest operational difficulties in both these intergovernmental systems led to a willingness of the Member States to consider, and in some instances to adopt, major revisions. In their articles, Messrs. Piris, Maganza, and Petite discuss the complicated transmutation by the Treaty of Amsterdam of most fields of action within the current Cooperation in Justice and Home Affairs into new provisions for Community legislative action. Ambassador Paemen and Mr. Maganza similarly discuss the more modest improvements made by the Amsterdam Treaty to cooperative decision-making under the Common Foreign and Security Policy.

In institutional terms, the most far-reaching attainment of

31. For a brief description of the ratification process and its difficulties, see Goebel, *supra* note 6, at 1110-13.

32. The achievements, compromises, and complexity of the Maastricht Treaty on European Union have provoked a voluminous literature, too numerous for citation here. Two fine constitutional law surveys are 2 INSTITUTIONAL DYNAMICS OF EUROPEAN INTEGRATION (Deirdre Curtin et al. eds., 1994), and LEGAL ISSUES OF THE MAASTRICHT TREATY (David O'Keefe & Patrick Twomey eds., 1994).

33. Judge Lenaerts of the Court of First Instance, who continues to be Professor on the Leuven University Law Faculty, an exceptionally fine comparative constitutional law scholar, has treated the topic of "federal" character of the European Union most recently in *Federalism: Essential Concepts in Evolution—The Case of the European Union*, 21 *FORDHAM INT'L L.J.* 746 (1998). His prior article was *Constitutionalism and the Many Faces of Federalism*, 38 *AM. J. COMP. L.* 205, 206 (1990). My own contribution to the literature is contained in Roger J. Goebel, *The European Community and Eastern Europe: 'Deepening' and 'Widening' the Community Brand of Economic Federalism*, 1 *NEW EUR. L. REV.* 163 (1993).

the Treaty of Maastricht was the creation of a new legislative process, the co-decision procedure,³⁴ which gave the Parliament close to an equal share with the Council in adopting internal market legislation.³⁵ The co-decision procedure largely supplanted the cooperation procedure, although the latter survived in some fields of action. At the Council level, the co-decision procedure mandates qualified majority voting.

The co-decision process has two essential features. First, if the Council and Parliament are unable to agree upon the text of legislation when Parliament has proposed amendments to the Council draft, then a Conciliation Committee representing the two bodies intervenes in an effort to achieve a compromise. The role of the Conciliation Committee resembles the role of Conference Committees of the Senate and the House of Representatives in the United States. The Conciliation Committee cannot bind either body, but does usually determine the text of any legislation eventually adopted. Second, if the Council and Parliament are unable to reach a compromise, then the Parliament can veto the legislation. The veto power is not absolute in practice, however, because the Council can still vote a final time in favor of its text, which is then adopted unless the Parliament votes against the Council proposal by an absolute majority—a negative vote, which is not usually easy to attain.

The co-decision process is presently used to adopt a substantial volume of legislation, most notably the harmonization of rules to achieve the internal market, as well as the measures to achieve the free movement of workers or the right of establishment,³⁶ and measures in the more recent fields of European Community action, namely, education, culture, public health, and consumer protection.³⁷

34. To supplement the brief description of this procedure in the text, see the excellent analysis by Professor Alan Dashwood of Cambridge, formerly in the Legal Service of the Council, namely, *Community Legislative Procedures in the Era of the Treaty on European Union*, 19 *EUR. L. REV.* 343 (1994).

35. EC Treaty, *supra* note 2, art. 100a, O.J. C 224/1, at 32 (1992), [1992] 1 C.M.L.R. at 633-34 (art. 100a of EC Treaty will be renumbered as art. 95 of Consolidated EC Treaty).

36. *Id.* arts. 49, 54, O.J. C 224/1, at 21, 22 (1992), [1992] 1 C.M.L.R. at 612, 614-15 (arts. 49 and 54 of EC Treaty will be renumbered as arts. 40 and 43 of Consolidated EC Treaty, respectively).

37. *Id.* arts. 126, 128, 129, 129a, O.J. C 224/1, at 46-47, 47, 48, 48 (1992), [1992] 1 C.M.L.R. at 660, 661-62, 662-63, 663 (arts. 126, 128, 129, and 129a of EC Treaty will be renumbered as arts. 149, 151, 152, and 153 of Consolidated EC Treaty, respectively).

Because the co-decision procedure has worked quite well in practice, and because the Parliament has continued to press its case for greater powers in order to provide increased democratic legitimacy to the Union, the Treaty of Amsterdam will modify the co-decision procedure to give Parliament a completely equal share in the procedure.³⁸ The Council will no longer have a final chance to adopt its initial text. Moreover, the cooperation procedure is to be essentially replaced everywhere by co-decision. Several of the symposium authors discuss at greater length the importance of this political development.

In terms of scope, the most important achievement of the Maastricht Treaty was to set out complicated provisions for the creation of an Economic and Monetary Union.³⁹ Indeed, the successful progress on this vital augmentation of the scope of the European Community (the Monetary Union is an integral part of the European Community and is not a separate intergovernmental "pillar") undoubtedly influenced the progress made in the IGC that drafted the Treaty of Amsterdam. However, as Messrs. Piris and Maganza note, the European Council excluded the Economic and Monetary Union provisions from the agenda of the IGC, so the Treaty of Amsterdam does not touch this subject.

Undoubtedly, the most important compromise reached in the Maastricht European Council was to permit, by use of a Social Protocol,⁴⁰ all of the Member States except the United King-

38. The new provision setting out the co-decision procedure after the Treaty of Amsterdam is ratified will be Article 251 of the Consolidated EC Treaty, replacing the present Article 189b of the EC Treaty. See Treaty of Amsterdam, *supra* note 1, art. 2(44), O.J. 340/1, at 45-46 (1997) (replacing art. 189b of EC Treaty); see Consolidated EC Treaty, *supra* note 13, art. 251, O.J. C 340/3, at 279-80 (1997), 37 I.L.M. at 129 (art. 189b of EC Treaty).

39. The best single reference source for a detached analysis of the Economic and Monetary Union ("EMU") provisions of the Treaty is RENE SMITS, THE EUROPEAN CENTRAL BANK—INSTITUTIONAL ASPECTS (1997). The late Jorn Pipkorn, formerly the Commission Legal Service's monetary expert, wrote *Legal Arrangements in the Treaty of Amsterdam for the Effectiveness of the Economic and Monetary Union*, 31 COMMON MKT. L. REV. 263 (1994). My own contribution is Roger J. Goebel, *European Economic and Monetary Union: Will the EMU Ever Fly?*, 4 COLUM. J. EUR. L. 249 (1998).

40. The Social Protocol and the implementing provisions of the accompanying Social Agreement, agreed to by all the Member States except the United Kingdom, are annexed to the Treaty on European Union (but will disappear after the entry into force of the Treaty of Amsterdam). For excellent analyses, see Philippa Watson, *Social Policy After Maastricht*, 30 COMMON MKT. L. REV. 481 (1993), and Elaine Whiteford, *Social Policy After Maastricht*, 18 EUR. L. REV. 202 (1993). For a detailed analysis of the EC Treaty's

dom to enact employee rights and other social action measures by a form of qualified majority voting. This unusual structure has worked well in practice, yielding several legislative measures that bind all the Member States of the Community except for the United Kingdom.⁴¹ After the election of the Labour Government of Prime Minister Blair in May 1997, the United Kingdom has accepted all of the legislation adopted through use of the Social Protocol. Moreover, as Mr. Venturini's article indicates, the final sessions of the Turin Intergovernmental Conference revised the social policy chapter of the EC Treaty to enable most future employee rights legislation to be adopted by co-decision, thus abolishing the peculiar mechanism of the Social Protocol.

Although the Maastricht Treaty on European Union made many other significant changes in institutional structure and in the scope of different fields of action of the Union (e.g., formally adding the spheres of environmental protection, consumer rights, health, education, and culture),⁴² the final important modifications that link to the subsequent discussion of the Treaty of Amsterdam are the TEU's emphasis on the protection of human rights and the creation of European Citizenship.

Article F(2) of the TEU makes a solemn declaration:

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.⁴³

social chapter and the legislative measures adopted under it, see my own contribution, Roger J. Goebel, *Employee Rights in the European Community: A Panorama from the 1974 Social Action Program to the Social Charter of 1989*, 17 *HASTINGS INT'L & COMP. L. REV.* 1 (1993).

41. See Council Directive No. 94/45/EC of 22 September 1997 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, O.J. L 254/64 (1994); Council Directive No. 96/46/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP, and the ETUC, O.J. L 145/4 (1996).

42. EC Treaty, *supra* note 2, arts. 130r-130t, 129a, 129, 126, 128, O.J. C 224/1, at 46-52 (1992), [1992] 1 C.M.L.R. at 660-72 (arts. 130r-130t, 129a, 129, 126, and 128 of EC Treaty will be renumbered as arts. 174-176, 153, 152, 149, and 151 of Consolidated EC Treaty, respectively).

43. TEU, *supra* note 2, art. F(2), O.J. C 224/1, at 6 (1992), [1992] 1 C.M.L.R. at 728 (art. F(2) of TEU will be renumbered as art. 6(2) of Consolidated TEU).

Although the Court of Justice has committed the European Community to the protection of basic economic, social, and personal human rights in a variety of contexts ever since the start of the 1970s,⁴⁴ Article F(2) represents the first Treaty articulation of this obligation to protect fundamental human rights. Article F(2)'s language essentially replicates the Court's doctrinal formulation of the principle. Article F(2) is a declaration of constitutional principle and as such has a higher normative value than the more detailed European Council's 1978 Declaration of Democracy, referred to above. However, a peculiar—and perhaps inadvertent—feature of the TEU is that the Court of Justice, pursuant to Article L, does not have jurisdiction to enforce Article F(2).⁴⁵

The Maastricht Treaty also amended the EC Treaty to introduce Article 8, which creates a “citizenship of the Union,” and Article 8a, which sets forth certain rights of citizens of the Union.⁴⁶ The most important of these is the “right to move and reside freely” within the Community,⁴⁷ but also mentioned are the right to vote for the European Parliament and in local elections in the State of residence,⁴⁸ and to petition the European

44. Among the most prominent cases in the Court of Justice's doctrinal development of its protection of fundamental human rights are *Internationale Handelsgesellschaft*, *Nold*, *Rutili*, and *Hauer*. See *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, Case 11/70, [1970] E.C.R. 1125, [1972] C.M.L.R. 255; *Nold v. Commission*, Case 4/73, [1974] E.C.R. 491, [1974] 2 C.M.L.R. 338; *Rutili v. Minister for the Interior*, Case 36/75, [1975] E.C.R. 1219, [1976] 1 C.M.L.R. 140; *Hauer v. Land Rheinland-Pfalz*, Case 44/79, [1979] E.C.R. 3727, [1980] 3 C.M.L.R. 42.

45. Article L of the TEU sets out the jurisdiction of the Court of Justice and does not include Article F of the TEU within its jurisdiction. TEU, *supra* note 2, art. L, O.J. C 224/1, at 99 (1992), [1992] 1 C.M.L.R. at 738 (art. L of TEU will be renumbered as art. 46 of Consolidated TEU). As noted below, the Treaty of Amsterdam's modification to Article L of the TEU will give the court jurisdiction “with regard to actions of the institutions” over Article F(2) of the TEU. See Treaty of Amsterdam, *supra* note 1, art. 1(13), O.J. 340/1, at 23-24 (1997) (replacing art. L of TEU); see Consolidated TEU, *supra* note 2, art. 46, O.J. C 340/2, at 170 (1997), 37 I.L.M. at 77 (art. L of TEU).

46. EC Treaty, *supra* note 2, arts. 8, 8a, O.J. C 224/1, at 10-11 (1992), [1992] 1 C.M.L.R. at 593 (art. 8 and 8a of EC Treaty will be renumbered as arts. 17 and 18 of Consolidated EC Treaty).

47. *Id.* art. 8a(1), O.J. C 224/1, at 11 (1992), [1992] 1 C.M.L.R. at 593 (art. 8a(1) of EC Treaty will be renumbered as art. 18(1) of Consolidated EC Treaty).

48. *Id.* art. 8b, O.J. C 224/1, at 11 (1992), [1992] 1 C.M.L.R. at 593-94 (art. 8b of EC Treaty will be renumbered as art. 19 of Consolidated EC Treaty).

Parliament or the Community Ombudsman.⁴⁹

After this all too cursory survey of the principal modifications made by the Maastricht Treaty on European Union, let me make some final comments on the genesis of the Treaty of Amsterdam.

IV. ON THE ROAD TO THE TREATY OF AMSTERDAM

Although the Treaty of Maastricht constituted the most substantial change in the Treaties to date, the Parliament and some Member States felt that further modifications ought to have been made. Accordingly, Article N(2) of the TEU mandated the calling of another Intergovernmental Conference (or "IGC") in 1996 to examine further revisions.⁵⁰ The principal area of possible revision was seen to be in the scope of the co-decision procedure. Article 189b(8) of the EC Treaty foresaw that the 1996 IGC might widen the scope of the procedure, acting on the basis of a Commission report.⁵¹ Article B of the TEU⁵² also foresaw that the "policies and forms of cooperation" in the second and third pillars, the Common Foreign and Security Policy and Cooperation in Justice and Home Affairs, might be revised.

In hindsight, the drafters of the Maastricht Treaty on European Union were too optimistic in setting the date of 1996 for the next IGC. The ratification of the TEU proved far more arduous and took much longer than expected, so that the TEU only went into effect on November 1, 1993. Moreover, in 1993-1995 the attention of the Community institutions and the Member States was concentrated upon the negotiations for the accession of Austria, Finland, and Sweden and upon the preparatory steps in the creation of Economic and Monetary Union. The modifi-

49. *Id.* art. 8d, O.J. C 224/1, at 11 (1992), [1992] 1 C.M.L.R. at 594 (art. 8d of EC Treaty will be renumbered as art. 21 of Consolidated EC Treaty).

50. TEU, *supra* note 2, art. N(2), O.J. C 224/1, at 99 (1992), [1992] 1 C.M.L.R. at 739 (art. N of TEU will be renumbered as art. 48 of Consolidated TEU, but art. N(2) of TEU, now superfluous, will disappear).

51. EC Treaty, *supra* note 2, art. 189b(8), O.J. C 224/1, at 66 (1992), [1992] 1 C.M.L.R. at 695 (art. 198b of EC Treaty will be renumbered as art. 251 of Consolidated EC Treaty, but art. 189b(8) of EC Treaty will disappear).

52. TEU, *supra* note 2, art. B, O.J. C 224/1, at 5 (1992), [1992] 1 C.M.L.R. at 727 (art. B of TEU will be renumbered as art. 2 of Consolidated TEU). This fundamental article on the objectives of the European Union will be somewhat reworded in Article 2 of the Consolidated TEU after the Treaty of Amsterdam, and the text's reference to possible revisions in the second and third pillars will be deleted.

cations eventually agreed upon in the Treaty of Amsterdam might have been more far-reaching had the Intergovernmental Conference been held a year or two later.

In any event, the European Council and the institutions were determined that the IGC should be well-prepared. The European Council created a Reflection Group⁵³ in June 1995, consisting of two senior representatives from each Member State, chaired by Ambassador Carlos Westerdorp of Spain (currently the European Union's representative in Bosnia, overseeing the peace efforts there). In an extraordinary step, the European Council invited two representatives of the Parliament to participate in the Reflection Group's work, an invitation that Parliament eagerly accepted in an effort to influence the Reflection Group toward greater amenability to further democratization of the institutions. Each of the Community institutions, including for the first time the Court of Justice, was also requested to provide a report with observations on the functioning of the institutions and possible further Treaty changes.

The Reflection Group provided its report, *A Strategy for Europe*,⁵⁴ to the Madrid European Council in December 1995, which made considerable use of it in setting the initial agenda for the 1996 IGC. (The Madrid European Council also took several key decisions on the timetable for progress toward Economic and Monetary Union and the creation of the euro as a single currency in 2002, and deliberately omitted the EMU provisions of the Treaty from review in the 1996 IGC.)⁵⁵ The Turin European Council on March 29, 1996,⁵⁶ set the formal agenda for the IGC, laying stress upon 1) preparations for the future enlargement to include Central European states, 2) bringing the Union closer to its citizens, notably by restructuring the Cooperation in Home and Justice Affairs, 3) making the institutions more democratic, efficient, and transparent, especially by widening the scope of co-decision and examining the modes of Coun-

53. Cannes European Council, Conclusions on the Presidency, E.U. BULL., no. 6, at 16 (1995).

54. E.U. BULL., no. 12, at 9 (1995).

55. The Madrid European Council decisions are set forth in European Union Bulletin. Madrid European Council, Conclusions on the Presidency, E.U. BULL., no. 12, at 24-28 (1995). For a summary, see Goebel, *supra* note 39, at 309-10.

56. Turin European Council, Conclusions of the Presidency, E.U. BULL., no. 3, at 9 (1996).

cil voting, and 4) strengthening the external relations capacity of the Union, especially by improved procedures and structure in the Common Foreign and Security Policy.

The Intergovernmental Conference⁵⁷ opened on March 29, 1996, in Turin (hence its common designation as the "Turin IGC") and presented a draft treaty to the Amsterdam European Council in June 1997, thus working for slightly more than a year. The Commission, under the leadership of President Jacques Santer and Commissioner Marcelino Oreja, was naturally very much involved in the IGC debates and in its drafting process. Jean-Claude Piris, Director-General of the Council Legal Service, acted as the Legal Advisor to the IGC. The Parliament followed closely the evolution of the debates and drafting, providing its views regularly. Although the Court of Justice remained apart, its 1995 report undoubtedly weighed heavily in any IGC consideration of the Court's role and jurisdiction.

Naturally, the IGC work in the period of April through June 1996 under the Italian Presidency of the Council could only be largely preparatory in character. The Irish Presidency, July 1-December 31, 1996, proved to be highly effective in shaping the debate and striving to make progress on the drafting of text in areas where agreement could more easily be reached, while identifying the key issues and arguments on the more thorny questions. At the Dublin European Council in December 1996,⁵⁸ the Irish Presidency presented an excellent draft treaty, which considerably helped to shape the final text (and which many commentators consider to be superior to the final text in some respects).

By an interesting coincidence, the Dutch Presidency supervised the final stages of the Turin IGC in the first half of 1997, just as it had those of the Rome IGC in the fall of 1991. The Dutch Presidency was intent on making as much progress as pos-

57. An Intergovernmental Conference ("IGC") is composed of authorized representatives from each Member State, assembled to review possible Treaty amendments pursuant to Article O of the TEU. TEU, *supra* note 2, art. O, O.J. C 224/1, at 99 (1992), [1992] 1 C.M.L.R. at 739 (art. O of TEU will be renumbered as art. 49 of Consolidated TEU). An IGC functions through frequent, sometimes almost daily, meetings of experts who do the preparatory work and initial drafting, together with regular (usually bi-weekly) meetings of representatives at the ministerial level who decide the more important issues and agree upon the final text.

58. Dublin European Council, Conclusions on the Presidency, E.U. BULL., no. 12, at 12-13 (1996).

sible. It is believed to have been particularly effective in enhancing the role of the Parliament and in achieving the substantial "communauterization" of the Cooperation in Justice and Home Affairs. However, much of the IGC efforts to reach a consensus during the period from January to April was blocked by the intransigence of the United Kingdom's Major Government, which clearly sought to make political capital in the U.K. elections from its resistance to further augmentation of EU scope or power. With the dramatic overwhelming victory of the Labour Party, which left the new Blair Government ample negotiation room, considerable progress was made in May-June, most notably on the insertion of the new Social Chapter and the Title on Employment. However, time pressure now took its toll on the discussions. Despite valiant efforts, the IGC was unable to reach agreement on the thorny issues of the size and composition of the Commission and on the mode of a new form of qualified majority voting in the Council, both critical to facilitating future enlargement by the accession of a large number of relatively small countries (except for Poland). The Amsterdam European Council of June 16-17, 1997, resolved some outstanding issues, usually through the mode of complex Protocols, and, after some sprucing up over the summer, the Treaty of Amsterdam⁵⁹ was signed on October 2, 1997.

It is not the purpose of this brief introduction to analyze or even to describe meticulously the provisions of the Treaty of Amsterdam. The symposium authors do so with great authority and expertise. It is, however, useful to set out a road map of the principal features of the Treaty of Amsterdam.

In terms of institutional structure and operations, undoubtedly the most important achievement of the Treaty of Amsterdam is the modification of the co-decision procedure to put the Parliament on a par with the Council⁶⁰ and to add new legislative fields to those in which the co-decision procedure is used.⁶¹

59. The principle features of the Treaty of Amsterdam are outlined in EUROPEAN COMMISSION, GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN UNION 1997, at 9-12 (1998).

60. Compare Treaty of Amsterdam, *supra* note 1, art. 2(44), O.J. C 340/1, at 46 (1997) (replacing art. 189b(6) of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 251(6), O.J. C 340/3, at 280 (1997), 37 I.L.M. at 129 (art. 189b(6) of EC Treaty), with EC Treaty, *supra* note 2, art. 189b(6), O.J. C 224/1, at 66 (1992), [1992] 1 C.M.L.R. at 695.

61. Treaty of Amsterdam, *supra* note 1, art. 2, O.J. C 340/1, at 26-48 (1997)

The cooperation procedure will now disappear—except in the sphere of Economic and Monetary Union. Based on Parliament's own proposal, Article 137 of the EC Treaty will now set a maximum ceiling of 700 Members of Parliament,⁶² which means that the size of present Member State delegations will have to be reduced when Central European countries are admitted and receive their delegations of MEPs.

The Commission, Council, and the Court of Justice will only be modestly affected by the Treaty of Amsterdam. The Commission President's authority is to be augmented; Article 163 of the EC Treaty will require that the Commission "work under the political guidance of its President."⁶³ The Council will use qualified majority voting in a number of new fields (though none are of primary importance). The Court of Justice will receive jurisdiction in cases interpreting and applying those aspects of the Cooperation in Justice and Home Affairs that are being transferred to Community competence.⁶⁴ The possible use of EU institutions when some, but not all, Member States wish to cooperate more intensively in particular fields of action is covered in new Treaty provisions on flexibility.⁶⁵

As noted above, the initial symposium articles by Messrs. Piris, Maganza, Petite, Brinkhorst, and former Judge Due all deal

(amending extending co-decision procedure under art. 189b of EC Treaty to arts. 6, 8a(2), 51, 56(2), 57(2), 73o, 75(1), 109r, 116, 118(2), 119(3), 125, 127(4), 129(4), 129d, 130e, 130i(1), 130o, 130s(1), 130w(1), 191a(2), 209a(4), 213a(1), and 213b(1) of EC Treaty); see Consolidated EC Treaty, *supra* note 13, arts. 13, 18(2), 42, 46(2), 47(2), 67, 71(1), 129, 135, 137(2), 141(3), 148, 150(4), 152(4), 156, 162, 166(1), 172, 175(1), 179(1), 255(2), 280(4), 285(1), 286(1), O.J. C 340/3, at 185, 186, 194, 196, 196, 203-04, 205, 236, 238, 239-40, 242, 244, 245, 247, 249, 251, 252-53, 254, 255, 257, 282, 293, 294, 294 (1997), 37 I.L.M. at 82, 82, 86, 87, 87, 91, 92, 107, 108, 109, 110, 111, 112, 113, 114, 115, 115-16, 116, 117, 118, 130, 136, 136, 136 (arts. 6, 8a(2), 51, 56(2), 57(2), 73o, 75(1), 109r, 116, 118(2), 119(3), 125, 127(4), 129(4), 129d, 130e, 130i(1), 130o, 130s(1), 130w(1), 191a(2), 209a(4), 213a(1), and 213b(1) of EC Treaty).

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

63. Treaty of Amsterdam, *supra* note 1, art. 2(41) O.J. C 340/1, at 44 (1997) (inserting art. 163, ¶ 1 into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 219, ¶ 1, O.J. C 340/3, at 269 (1997), 37 I.L.M. at 124 (art. 163, ¶ 1 of EC Treaty).

64. Treaty of Amsterdam, *supra* note 1, art. 2(15), O.J. C 340/1, at 31 (1997) (inserting art. 73p into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 68, O.J. C 340/3, at 204 (1997), 37 I.L.M. at 91 (art. 73p of EC Treaty).

65. See, e.g., Treaty of Amsterdam, *supra* note 1, art. 1(12), O.J. C 340/1, at 22-23 (1997) (replacing tit. VIa, arts. K.15-K.17 of TEU); Consolidated TEU, *supra* note 11, tit. VII, O.J. C 340/2, at 169-70 (1997), 37 I.L.M. at 77 (tit. VIa, arts. K.15-K.17 of TEU).

expertly with the modifications that the Treaty of Amsterdam will make to the institutions' structure and operations.

With regard to the scope of action of the European Community, some expansion and increased emphasis has been given in the fields of the environment,⁶⁶ health,⁶⁷ consumer protection,⁶⁸ and culture.⁶⁹ Far more important are the new Social Chapter⁷⁰ and the Title on Employment,⁷¹ both well-described by Patrick Venturini. Another major development is the gradual transfer of the sectors of visas, asylum rights, immigration, and controls on external frontiers to the Community from the prior intergovernmental procedures in the third pillar, Cooperation in Justice and Home Affairs.⁷² These complicated provisions are reviewed to some degree by the authors mentioned above.

Ongoing efforts to promote the principle of subsidiarity led to a protocol on subsidiarity,⁷³ largely replicating the well-known 1992 Edinburgh European Council declaration on the subject.⁷⁴ Similarly, the principle of transparency will receive Treaty force with a new Article 191a of the EC Treaty granting Union citizens and enterprises a "right of access" to Parliament, Council, and Commission documents.⁷⁵ The symposium article of Christian

66. Treaty of Amsterdam, *supra* note 1, art. 2(34)-(35), O.J. C 340/1, at 42 (1997) (amending arts. 103r and 130s of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 174-75, O.J. C 340/3, at 254-56 (1997), 37 I.L.M. at 116-17 (art. 129 of EC Treaty).

67. Treaty of Amsterdam, *supra* note 1, art. 2(26), O.J. C 340/1, at 39-40 (1997) (replacing art. 129 of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 152, O.J. C 340/3, at 246-47 (1997), 37 I.L.M. at 112-13 (art. 129 of EC Treaty).

68. Treaty of Amsterdam, *supra* note 1, art. 2(27), O.J. C 340/1, at 40-41 (1997) (replacing art. 129a of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 153, O.J. C 340/3, at 247-48 (1997), 37 I.L.M. at 113 (art. 129a of EC Treaty).

69. Treaty of Amsterdam, *supra* note 1, art. 2(25), O.J. C 340/1, at 39 (1997) (amending art. 128 of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 151, O.J. C 340/3, at 245-46 (1997), 37 I.L.M. at 112 (art. 128 of EC Treaty).

70. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 35-39 (1997) (replacing arts. 117-120 of EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 136-43, O.J. C 340/3, at 239-46 (1997), 37 I.L.M. at 109-11 (arts. 117-20 of EC Treaty).

71. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 33-35 (1997) (inserting tit. VIa into EC Treaty); Consolidated EC Treaty, *supra* note 13, tit. VIII, O.J. C 340/3, at 235-36 (1997), 37 I.L.M. at 107 (tit. VIa of EC Treaty).

72. Treaty of Amsterdam, *supra* note 1, art. 2(15), O.J. C 340/1, at 28-32 (1997) (inserting tit. IIIa into EC Treaty); Consolidated EC Treaty, *supra* note 13, tit. IV, arts. 61-69, O.J. C 340/3, at 200-05 (1997), 37 I.L.M. at 89-91 (tit. IIIa of EC Treaty).

73. Treaty of Amsterdam, *supra* note 1, Protocol on the application of the principles of subsidiarity and proportionality, O.J. C 340/1, at 105 (1997).

74. Edinburgh European Council, Conclusions on the Presidency, 25 E.C. BULL., no. 12, at 9-10 (1992).

75. Treaty of Amsterdam, *supra* note 1, art. 2(45), O.J. C 340/1, at 46 (1997) (in-

Timmermans expertly analyzes this development, and Laurens Jan Brinkhorst's article provides his critique of the evolution of the principle of transparency.

The Treaty of Amsterdam also places a greater emphasis on rights protection, notably through the insertion of a new Article F.1 of the TEU that enables the Council, acting in its composition of Heads of State or Government, to assess penalties on Member States that violate the principles of democracy, rule of law, and basic rights.⁷⁶ Moreover, the Amsterdam Treaty will expand the jurisdiction of the Court of Justice in Article L of the TEU to cover claims that Community institutions have violated fundamental rights.⁷⁷ Also potentially of high importance is the new Article 6a of the EC Treaty, which will empower the Council to adopt measures to "combat discrimination based on sex, social or ethnic origin, religion or belief, disability, age or sexual orientation."⁷⁸

In the field of external trade relations, the Amsterdam Treaty amendment to Article 113 of the EC Treaty represents only a compromise effort at a solution to the vexing question of whether the Community should speak for the Member States in the fields of international financial services and intellectual property.⁷⁹ Similarly, the relatively modest improvement in decision-making in the Common Foreign and Security Policy and the creation of the post of a High Representative in that field reflect compromise positions.⁸⁰ All of these developments are carefully

serting art. 191a into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 255, O.J. C 340/3, at 282 (1997), 37 I.L.M. at 130 (art. 191a of EC Treaty).

76. Treaty of Amsterdam, *supra* note 1, art. 1(9), O.J. C 340/1, at 9 (1997) (inserting art. F.1 into TEU); Consolidated TEU, *supra* note 11, art. 7, O.J. C 340/2, at 153 (1997), 37 I.L.M. at 69 (art. F.1 of TEU).

77. Treaty of Amsterdam, *supra* note 1, art. 1(13), O.J. C 340/1, at 23-24 (1997) (replacing art. L of TEU); Consolidated TEU, *supra* note 11, art. 46, O.J. C 340/2, at 170 (1997), 37 I.L.M. at 77 (art. L of TEU).

78. Treaty of Amsterdam, *supra* note 1, art. 2(7), O.J. C 340/1, at 26 (1997) (inserting art. 6a into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 13, O.J. C 340/3, at 185 (1997), 37 I.L.M. at 82 (art. 6a of EC Treaty).

79. Treaty of Amsterdam, *supra* note 1, art. 2(20), O.J. C 340/1, at 35 (1997) (inserting art. 113(5) into EC Treaty); Consolidated EC Treaty, *supra* note 13, art. 133(5), O.J. C 340/3, at 238 (1997), 37 I.L.M. at 108 (art. 113(5) of EC Treaty).

80. Treaty of Amsterdam, *supra* note 1, art. 1(10), O.J. C 340/1, at 15 (1997) (inserting art. J.16 into TEU); Consolidated TEU, *supra* note 11, art. 26, O.J. C 340/2, at 161 (1997), 37 I.L.M. at 73 (art. J.16 of TEU); Treaty of Amsterdam, *supra* note 1, art. 1(10), O.J. C 340/1, at 13 (1997) (replacing art. J.8(3) of TEU); Consolidated TEU, *supra* note 11, art. 18(3), O.J. C 340/2, at 159 (1997), 37 I.L.M. at 72 (art. J.8(3) of TEU).

analyzed by Ambassador Paemen and Messrs. Bourgeois and Maganza.

Efforts to simplify the treaties resulted in the deletion of a number of obsolete provisions⁸¹ and the rather controversial decision to renumber all the articles of the Treaty on European Union and the EC Treaty.⁸² Although undoubtedly beneficial in promoting ease in understanding in the long term, the renumbering will create considerable confusion for practitioners, academics, and students in the short term.

The process of Treaty revision and the evolution in the European Union is ever ongoing. The failure to reach agreement on key institutional issues in the Turin IGC resulted in a Protocol on the Institutions with the Prospect of Enlargement of the European Union,⁸³ which mandates another Intergovernmental Conference at least one year before an enlargement that carries the European Union to twenty-one or more Member States. Inasmuch as the current negotiations are with six applicant States, another IGC is highly probable in the near term future, perhaps around 2001-2002. Giorgio Maganza discusses this possible enlargement in his final article. Thus, while the Treaty of Amsterdam marks another important step in the constitutional development of the European Union, its historical evolution is far from complete.

81. Treaty of Amsterdam, *supra* note 1, arts. 6-11, O.J. C 340/1, at 58-78 (1997).

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

83. *Id.*, Protocol on the institutions with the prospect of enlargement of the European Union, O.J. C 340/1, at 111 (1997).