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The Commission's Role in the IGC's Drafting of the Treaty of Amsterdam

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Abstract

This essay shall attempt to describe initially how the Commission approached the Amsterdam negotiation in the first place. It will explore the institutional issues that it addressed and the strategies it implemented. It then evaluates the likely impact of the new provisions of the Treaty of Amsterdam upon the Commission.

THE COMMISSION'S ROLE IN THE IGC'S DRAFTING OF THE TREATY OF AMSTERDAM

*Michel Petite**

INTRODUCTION

After a long last night at the end of the Maastricht negotiation, one head of government willingly and loudly declared to the press, which loved it, something like, "game, set, and match." This comment suggested that he or his country was a winner, and, consequently, that there were losers. An intergovernmental conference ("IGC"), however, bears only remote resemblance to a game of tennis or the Superbowl. While it is still hard to discern who the losers were in Maastricht, at the time the risk of being identified as one of them may have made the ratification of the Treaty on European Union[1] ("TEU" or "Maastricht Treaty") less serene.

It seems that, possibly on account of the Maastricht experience, politicians abstained from any warrior declarations after the Amsterdam negotiation. The Treaty of Amsterdam[2] (or "Amsterdam Treaty") was greeted by commentators with scepticism for failing to reach agreement on some issues that had been exposed to the most intense media coverage. These issues received this exposure because they supposedly pitted the large states against the smaller ones. But politicians know that the Treaty of Amsterdam, like its predecessors, marks another stage in the process of European integration. The Treaty of Amsterdam will be followed by other treaties, for which dates are already scheduled, and the Amsterdam Treaty probably simply

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

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

represents the most to which the Member States were prepared to agree upon among themselves at a given moment.

There is a danger in trying to describe the Treaty of Amsterdam from the point of view of a particular institution or a particular Member State. Where there is simply progress as a whole, suggesting winners and losers is risky. For example, the amendments in the Treaty of Amsterdam that enhance the function of the European Parliament[3] and attempt to improve decisions in foreign policy[4] were not extorted from the Member States. These amendments came as a result of the conscious and shared view that the time had come for a proper and mature lower chamber, which Europe could not do without, and that foreign policy under the Maastricht Treaty had been unconvincing and needed a serious review.

This essay shall attempt to describe initially how the Commission approached the Amsterdam negotiation in the first place, and then, evaluate the likely impact of the new provisions of the Treaty of Amsterdam upon the Commission.

I. *HOW TO POSITION THE COMMISSION IN AN INTERGOVERNMENTAL CONFERENCE?*

Anyone who took part in the Maastricht and Amsterdam negotiations can attest that the very function of the Commission in an IGC is less than obvious. According to Article N of the Maastricht Treaty,[5] it is quite simple. The Commission is an official

3. *See, e.g.*, Treaty of Amsterdam, *supra* note 2, art. 2(40), O.J. C 340/1, at 44 (1997) (replacing art. 158(2), para. 1 of Treaty establishing the European Community ("EC Treaty")) (requiring Parliament's approval of nominated President of Commission); Consolidated version of the Treaty establishing the European Community, art. 214(2), para. 1, O.J. C 340/3, at 268 (1997), 37 I.L.M. 79, 123 (not yet ratified) [hereinafter Consolidated EC Treaty] (art. 158(2), para. 1 of EC Treaty), *incorporating changes made by* Treaty of Amsterdam, *supra*. By virtue of the Treaty of Amsterdam, articles of the EC Treaty will be renumbered in the Consolidated version of the Treaty establishing the European Community. Treaty of Amsterdam, *supra*, art. 12, O.J. C 340/1, at 78-79 (1997).

4. *See* Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 9-16 (1997) (replacing tit. V of Treaty on European Union ("TEU")); Consolidated version of the Treaty of European Union, tit. V, O.J. C 340/2, at 155-62 (1997), 37 I.L.M. 67, 70-73 (not yet ratified) [hereinafter Consolidated TEU] (tit. V of TEU), *incorporating changes made by* Treaty of Amsterdam, *supra*. By virtue of the Treaty of Amsterdam, articles of the TEU will be renumbered in the Consolidated version of the Treaty on European Union. Treaty of Amsterdam, *supra*, art. 12, O.J. C 340/1, at 78-79 (1997).

5. TEU, *supra* note 1, art. N, O.J. C 224/1, at 99 (1992), [1992] 1 C.M.L.R. at 739.

party at an IGC and, therefore, fully participates in it. But the Commission does not sign the resulting new treaty, and for that reason the exercise remains an "*inter-governmental*" conference.

In practice, however, the Commission's function in an IGC raises strategic problems as to the position that the Commission should represent. First, should the Commission act as the depositor of an ideal European construction? The Commission would then repeatedly call for total integration and distance itself from any compromise or less-than-perfect solution. Although this strategy is utopian in character, it does have a certain tactical side, as the May 1968 students in Paris discovered when they advocated, "Be realistic, ask for the impossible." There is a certain charm in this uncompromising approach. Moreover, under this approach the long-term objective is never forgotten.

A long-term vision of Europe represents an underlying issue in any IGC, but the issue of the precise nature of such a long-term vision of Europe is extremely divisive for the Member States. As a result, there has been, since Maastricht, at least an implicit agreement not to raise this issue and to proceed with an apparently practical, step-by-step approach.

Moreover, an effort by the Commission to act as the depositor of an ideal European construction creates two risks. The first risk is that the gap between an "ideal" position and a "realistic" one could be so large that the Commission would simply be viewed as out of touch and consequently marginalized in the IGC negotiations. The second risk created by this approach is that, because an ideal project might ultimately include a sort of supranational kind of government constituted in the form of the Commission or some derivative of it, some IGC participants would see the Commission as defending corporatist, vested interests. The Commission has been criticized in the past for such *pro domo* pleadings, usually described, ironically, as the Commission "acting as a sixteenth Member State."

The issue of the Commission's function in an IGC raises other strategic problems as well. Abandoning the ideal for the practical, should the Commission simply act as an "honest broker," reconciling conflicting views? Certainly not, because this difficult role is already played by the rotating presidency of the Council. It is always confusing to have two intermediaries. Moreover, a Commission attempt to act as an "honest broker"

would make it very hard for the Commission to have any political voice of its own.

Thus, instead of seeking utopia or serving as an "honest broker," the strategy taken by the Commission for the Amsterdam negotiations was one that could be described as striving to attain "the highest possible realistic line." It was not aiming at identifying a "least common denominator" among the Member States, but at trying systematically to raise the outcome of the conference above what would be comfortably acceptable. This strategy was embodied in the two main texts of substance produced by the Commission: its May 1995 report on the functioning of the Maastricht Treaty[6] and its February 1996 Opinion on the Intergovernmental Conference.[7] The Commission strategy implied the taking of a number of choices in advance and the drawing of deliberate tactical consequences from the choices. Inherent in the strategy was the concentration on a few key issues in order to attain maximum efficiency. These key issues are described below.

II. *KEY INSTITUTIONAL ISSUES*

The two issues of highest priority were easily identified. First, the need for more efficient decision-making, particularly in the perspective of the forthcoming significant enlargement of the European Union. Improved decision-making necessarily requires a maximum use of qualified majority voting[8] ("QMV"), and a reduction in the use of unanimous voting. The Commission took a maximalist position at the outset, drawing on the mathematical reality that the difficulty of achieving unanimous agreement rises exponentially with any increase in the number of participants taking part in a decision. Thus, in a Union with thirty Members, reaching a unanimous decision would not be twice as difficult as achieving unanimity with fifteen Members,

6. Commission's Report for the Advisory group, adopted on May 10, 1995. Ref. ISBN 92-827-4179-6.

7. Commission's Opinion. To strengthen the political Union and to prepare the enlargement, adopted by the Commission on February 28, 1996. Ref. ISBN 92-827-5858-3.

8. *See* Treaty establishing the European Community, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 573 [hereinafter EC Treaty], *incorporating changes made by* TEU, *supra* note 1 (setting forth weighted votes of Council for qualified majority). For a discussion of qualified majority voting, see GEORGE A. BERMANN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 52-53 (1993).

but instead would be approximately forty million times more difficult. If such were the case, even amendments to the Treaty would become improbable in the future. There was, therefore, a case for arguing for the total elimination of unanimous voting procedures.

But total elimination of unanimity for action in certain fields was clearly requesting too much. Nobody could envision anything other than requiring unanimity for Treaty amendments, even for amendments to provisions of a trivial regulatory nature, which abound in the Treaty. Also, the ministers of finance rallied together to maintain the need for unanimous action for all fiscal matters. This rally even included ministers representing States that objectively had the least to gain from maintaining unanimity. Further, these ministers insisted upon maintaining unanimity for fiscal issues, even when they relate to attaining the internal market rather than concerning national budgets. For example, unanimity is presently required when eliminating the existing areas of double taxation for businesses established in more than one Member State, or upon efforts to improve of to simplify rules concerning indirect taxes, even though they are already highly harmonized.

Many will agree that the modest degree to which the Amsterdam Treaty expands the fields of qualified majority voting in the Council represents a disappointing outcome. The inability to achieve more constitutes a threat for the future.

The call for the second institutional priority, a more democratic functioning of the institutions, could be heard from many sources. This demand came not only from the European Parliament, but also from almost all Member States, from the Constitutional Court of Germany, various non-governmental organizations, and simple good sense. Naturally, the Commission also sought a more democratic system of institutional structures and operations. It was absolutely clear that any extension of the Community order would require a more proper and classically democratic system. Failing this, we would undoubtedly face major constitutional problems in Member States and eventually bring the European construction to a halt.

In the Treaty of Amsterdam, enhancement of the democratic process was mostly achieved through a very profound review of the role of the European Parliament in its legislative ca-

pacity. Three problems were tackled in this respect and the solutions of these problems included: the extension of the co-decision procedure to new fields of legislative action,[9] the removal of the Parliament's so-called "unfair" third reading in the Treaty of Maastricht's co-decision procedure,[10] and new provisions intended to achieve more "transparent" governance.[11] The Commission supported and sometimes engineered the above solutions.[12]

In doing so, the Commission took one necessary precaution. The Commission made sure that its monopoly power to initiate the legislative process, from which much of its political power derives, would not be endangered. If the Commission were to lose its present power to issue the critical draft of any legislative proposal, then the general balance between the three

9. Treaty of Amsterdam, *supra* note 2, art. 2, O.J. C 340/1, at 26-48 (1997) (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 3, 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).

10. *Compare* Treaty of Amsterdam, *supra* note 2, art. 2(44), O.J. C 340/1, at 46 (1997) (replacing art. 189b(6) of EC Treaty); Consolidated EC Treaty, *supra* note 3, 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 8, art. 189b(6), O.J. C 224/1, at 66 (1992), [1992] 1 C.M.L.R. at 695.

11. *See* Treaty of Amsterdam, *supra* note 2, art. 1(4), O.J. C 340/1, at 7 (1997) (replacing art. A, ¶ 2 of TEU) (stating that "[t]his Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken *as openly as possible and* as closely as possible to the citizen") (italics indicates language added by Treaty of Amsterdam to art. A, ¶ 2 of TEU); Consolidated TEU, *supra* note 4, art. 1, ¶ 2, O.J. C 340/2, at 152 (1997), 37 I.L.M. at 68 (art. A, ¶ 2 of TEU); Treaty of Amsterdam, *supra*, art. 2(45), O.J. C 340/1, at 46 (1997) (inserting art. 191a into EC Treaty); Consolidated EC Treaty, *supra* note 3, art. 255, O.J. C 340/3, at 282 (1997), 37 I.L.M. at 130 (art. 191a of EC Treaty on access to documents); Treaty of Amsterdam, *supra*, Declaration on Article 191a(a) of the Treaty establishing the European Community, O.J. C 340/1, at 137 (1997); *id.*, Declaration on the provisions relating to transparency, access to documents and the fight against fraud, O.J. C 340/1, at 140 (1997).

12. See its document on the extension of the co-decision procedure. SEC (97) 1411 (July 24, 1997).

political institutions—the Council, the Parliament, and the Commission—would be profoundly altered.

On the whole, the Commission's power of legislative initiative was never seriously questioned—despite some efforts from Germany—for two main reasons. First, the Parliament was wise enough not to request any such power of legislative initiative. Parliamentarians knew that if they did, so would the Council. If both the Parliament and the Council shared the power of legislative initiative with the Commission, the Commission's role would be drastically weakened, upsetting the present balance of institutional power. A proper and distinct right of initiative for the Parliament and Council would be logical only if and when the Commission were given proper and full governmental powers.

Second, and more generally, during the Amsterdam Treaty negotiation, and in sharp contrast with those on the Maastricht Treaty, the Commission as such did not come under attack, or, when it did, the Commission always found overwhelming support. Part of the reason why the Commission's power of initiative was never really disputed may have been that many Member States took issue with the abrasive way in which some large states approached the question of their representation in the European Union—the so-called large versus small Member States issue. These Member States may well have concluded that their best protection against a *directoire* of a few large countries lay with a strong Commission. Presumably, the Member States also concluded that, if this were the case, they had better insist on retaining the present structure in which every State has at least one Commissioner within the body of the Commission.

III. *OTHER INSTITUTIONAL ISSUES*

In contrast with its deep concern about the proper resolution of the two issues discussed above, the Commission took the view that two other conspicuous institutional issues, namely, what should be the total number of Commissioners and how the system of weighted votes in the Council should be modified, were grossly overvalued. Several large Member States made the re-weighting of votes a top priority. Their position made some sense in the context of future enlargement because the new Member States would be almost entirely small in population and economic importance. Thus, enlargement of the Union would

have the mechanical effect of significantly diluting the representation of the large states in the Council.

The issue of proper representation is very familiar to our American colleagues. In the debate on the U.S. Constitution, a participant protested: "How unreasonable and unjust that Delaware should have a representation in the Senate equal to Massachusetts or Virginia? The latter of which contains ten times her numbers, and is to contribute in that proportion?"[13] Furthermore, James Madison confirmed in a famous letter of November 1787 to Thomas Jefferson that "this issue created more embarrassment, and a greater alarm for the Convention, than all the rest put together."[14]

Indeed, the larger Member States sometimes presented their position in an abrasive way and soured the debate on the issue, which naturally deteriorated into a political conflict. But strangely enough, whatever voting formula for the Council may be adopted in the next IGC, this formula will probably not drastically change the present landscape. It has been estimated that none of the Council voting formulas envisaged during the last IGC would have produced any change in the final outcome in decisions taken by the Council over the past three years.

The question of the desirable maximum number of Commissioners is more serious, and the case seems strong for slimming down the size of the present Commission. But it finally appears that the principal issue is only whether the large Member States will retain their present second Commissioner. In other words, the issue will probably be whether a Union composed of twenty Member States will have a Commission consisting of twenty or twenty-six Commissioners? This sort of issue is important, but decidedly not fundamental.

It would have been another matter if the tempting idea, put forward by France, to create a "managerial" Commission with much fewer Commissioners than Member States, had taken off. But this suggestion proved unacceptable to almost everybody:

- unacceptable to the new Member States, Sweden, Finland, and Austria, because they had only just emerged from ratifi-

13. Debate on the Constitution, Letter from the "Federal Farmer" to "the Republican," N.Y., Nov. 8, 1787.

14. Debate on the Constitution, Letter from James Madison to Thomas Jefferson, N.Y., Oct. 24, 1787.

cation debates where their ability to appoint their own Commissioner played an important role in achieving a successful popular vote, so that they could not now change their position on this;

- unacceptable to the smaller Member States because they suspected that any missing Commissioners would be their own Commissioners; and
- unacceptable to Germany and the United Kingdom if it implied that they would have no Commissioner for some period of time. In fact, the French proposal would have been acceptable to them only if they were assured a permanent seat in the Commission while other Member States would rotate, a kind of U.N. Security Council system that few were prepared to envisage.

Finally, the Commission submitted the issue of strengthening the role of its President. The Commission felt that this change was necessary regardless of whether the number of Commissioners was altered. The IGC achieved a relatively easy agreement on two main improvements:

- the President would have a much greater say in the appointment of the Commissioners because he or she would have to approve them,[15] and
- the President would be able to allocate and to reshuffle the portfolios of the other Commissioners much more easily.[16]

IV. *THE STRATEGY OF THE COMMISSION ON SOME ISSUES OF SUBSTANCE*

Other participants in this symposium cover in-depth some of the issues concerning the substantive fields of operation of the European Union. This allows me to touch briefly on three of them: foreign affairs, justice and home affairs, and flexibility.

A. *Common Foreign and Security Policy*

With regard to modifications in the common foreign and

15. *See* Treaty of Amsterdam, *supra* note 2, art. 2(40), O.J. C 340/1, at 44 (1997) (replacing art. 158(2), para. 2 of EC Treaty); Consolidated EC Treaty, *supra* note 3, art. 214(2), para. 2, O.J. C 340/3, at 268 (1997), 37 I.L.M. at 123 (art. 158(2), para. 2 of EC Treaty).

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

security policy,[17] the Commission felt uneasy. This area did not seem prepared for any radical changes and the IGC did not make any. Common foreign and security policy remains a separate, intergovernmental pillar. The necessity for unanimity remains, although at least the solution called for in vain by the Commission at Maastricht was finally endorsed, namely, that implementing action can be decided by qualified majority voting.

Eventually, the IGC agreed upon many other improvements, but these are mainly of an administrative nature. One argument that the Commission repeatedly made was that there must be consistency between the economic and diplomatic sides of foreign policy. Because foreign policy is presently split between two separate pillars, there is a constant risk that the right hand will ignore what the left hand is doing. But this obvious argument did not succeed because a few member States saw this argument as an attempt to blur the line between the pillars and to weaken the diplomatic, intergovernmental one. The main discernible result of this campaign is a new version of the *troika*,[18] which will now consist of the Council Presidency, the Secretariat General, and the Commission, instead of the previous *troika* consisting of the past, present, and future Council Presidencies.[19] While this new *troika* is an interesting combination, it remains to be seen how much it will be used.

B. *Justice and Home Affairs*

In contrast, the Commission thought from the outset that major modifications could be achieved in the area of justice and home affairs.[20] Despite the very sensitive nature of the area and the traditionally rather conservative administrative bodies involved, there seemed to be a set of favorable circumstances. All European states currently give a high priority to internal security. Issues such as international crime, immigration, and asylum policy are on the top of governmental agendas everywhere. In

17. *See* TEU, *supra* note 1, tit. V, O.J. C 224/1, at 94-96 (1992), [1992] 1 C.M.L.R. at 729-34 (Provisions on a common foreign and security policy).

18. *See* Treaty of Amsterdam, *supra* note 2, art. 1(10), O.J. C 340/1, at 13 (1997) (replacing art. J.8 of TEU); Consolidated TEU, *supra* note 4, art. 18, O.J. C 340/2, at 159 (1997), 37 I.L.M. at 72 (art. J.8 of TEU);

19. No legal base in the previous Treaty.

20. *See* TEU, *supra* note 1, tit. VI, O.J. C 224/1, at 97-98 (1992), [1992] 1 C.M.L.R. at 735-38 (Provisions on cooperation in justice and home affairs).

addition, the prospect of enlargement of the Union to include East European states naturally posed sensitive issues with regard to the free movement of people, resulting in a perceived necessity to improve the *acquis* in the field of justice and home affairs before the enlargement negotiations were started.

There was also a consensus that the Maastricht "third pillar" had been a failure. Many, including the Commission, insisted that the third pillar had not only been a failure, but a total failure. And more interestingly, they offered to demonstrate that one of the main reasons for this failure lay in the Maastricht treaty, which had retained as the legal mechanism for action a tool that was far too weak, namely the old classical international convention, so painfully signed and so rarely ratified. Perhaps—and this is an entirely personal and unkind shadow of a thought—the IGC negotiators, who were the ministers of foreign affairs, desiring to achieve presentable results in Amsterdam, were more willing to consider transfers of power to the Union from the portfolios of their colleagues, the ministers of interior, rather than transfers of their own competencies.

Finally, there was the need to do something about the Schengen Agreement,[21] which had gradually developed outside the EU Treaty framework, initially among six, but now expanded to thirteen Union States. The risk of letting two different and parallel legal orders develop, that of the Schengen Agreement and that of the EU Treaty, was easy to identify.

Thus, when confusion reached a peak, a few simple ideas served to clarify a very complex issue. First, it was useful to stress that most of what should be co-ordinated between Member States was already in the course of preparation either in the Council or in the Schengen context. The proposed changes would not be a revolution involving brand new issues or new untried grounds. Second, the progress made to date under the Schengen Agreement was attained in a highly opaque manner, without the involvement of any democratic control, sometimes through highly disputable administrative agreements. The same criticisms could largely be made with regard to progress under

21. Schengen Agreement Between The Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers, June 14, 1985, 30 I.L.M. 68, 73 (1991).

the third pillar. If the attempt was to be made to improve either the Schengen structures or that of the third pillar and to introduce parliamentary and court controls, then it would be easier and cleaner to look for solutions in the proper and classical Community order rather than in some *ersatz* imitation of it.

Put these ideas together and the best solution is to "*communautarize*" the whole area, Schengen included, which would be thus integrated in the European Community Treaty framework. This approach would transfer the fields of asylum, immigration, judicial civil law, and visas to the Community, while leaving criminal law and police issues to cooperation within an improved intergovernmental framework. The status of the United Kingdom and Ireland, the two Union States that had not joined in the Schengen Agreement, would become covered by the first illustration of the new system of flexibility, discussed below. The above description represents, broadly, the framework that was ultimately set out in the Treaty of Amsterdam and its Protocols.

C. *Flexibility*

The much-debated subject of flexibility deserves a few observations. The concept was immediately divisive. Some, in particular those who had reasons to believe that they might be left out on some issues, saw in it a fragmentation bomb. Others felt that the concept was essential to the progress of a cohesive Europe. Within the Commission, it was difficult to decide one way or the other, but clearly caution was necessary.

A further twist was that the more flexibility was discussed within the IGC, and the more that it appeared that flexibility might apply in sensitive Community fields such as taxation, industrial policy, or social policy, the more flexibility made sense—but not for foreign affairs, where other devices were specifically elaborated. As a matter of caution and to prevent any abuse or uncontrolled use of flexibility, however, the IGC finally agreed on a key point: the Commission should have the power to review any use of flexibility in a field of Community competence. Ultimately, the IGC decided that this flexibility or "closer cooperation" will be governed by very strict, but not unattainable, conditions. The Council can only act to permit an instance of flexibility after the Commission has made a proposal to this ef-

fect, which will or will not be made depending on whether the Commission believes that the Treaty conditions are met.

CONCLUSION

The paragraphs above provide a slight caricatural insider's view of the strategy, and sometimes of the tactics, of the Commission. On the whole, the Commission took the view that the Treaty of Amsterdam was going to be a milestone along the road to European Union, not an end product. Commentators who were expecting some great institutional overhaul before the next enlargement of the Union have been disappointed and have, for the moment, written off the attainment of the Treaty of Amsterdam. But it has to be said that, after two years of work and reflection, proper solutions in the great institutional debate have proved to be curiously elusive.

A few things that will considerably shape any future institutional discussion seem quite certain. First, nobody wants to start with a *tabula rasa* out of which a brand new system would be built. To depart radically from the recipe of a success story seems unwise. Second, the issues postponed in the Amsterdam IGC—the re-weighting of the votes in the Council and the fixing of the number of Commissioners—do not require any radically new system either. These issues can probably be solved when pressure mounts to do so immediately before the next enlargement. Third, there is no magic formula that can confound mathematics. The functioning of the European Union will inevitably be more difficult with twenty-one or thirty Member States, than it was with the initial six or even with the present fifteen. Accordingly, most of the modifications that urgently need to be made represent only fine-tuning. This adjustment applies particularly to any modifications made to the Council, the institution that will be most affected by the next enlargement. Ultimately, there is one single major reform that ought to be made—a change to the general use of majority voting for all Community matters. It is here that modifications of the Treaty on European still has far to go: in the short term majority voting may prove possible in the field of justice and home affairs, then to be progressively introduced for foreign policy decisions, and finally become the mode for the amendment of the Treaty itself. Europe will then have a proper constitution.