

Towards the IGC: The Emerging Agenda

Research Paper 95/27

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The Treaty on European Union which came into force on 1 November 1993 requires a "conference of representatives of the governments of the Member States" to be convened in 1996 to examine certain Treaty provisions and submissions from member states and the EU institutions on the policies and organisation of the Union. A preliminary examination of these submissions will be made by the Reflection Group set up by the European Councils in Ioannina and Corfu in 1993, which is due to start work in June.

This paper supplements Research Paper 94/115, *The 1996 Intergovernmental Conference: Background and Preparations*, 21 November 1994, and is the first in a series of papers on the emerging agenda for the 1996 Conference. It looks at some recent contributions to the debate on the future structure and policies of the EU and also considers the argument over Treaty obligations in the area of border controls.

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Introduction

The Intergovernmental Conference (IGC) due to be convened under Article N of the Treaty on European Union will "examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B". The holding of the IGC is therefore enshrined in the Treaty and various international agreements to which member states are bound under international law.

Library Research Paper 94/115 looked at the background to and preparations for the IGC since the Treaty on European Union (TEU) came into force in November 1993 and considered early contributions to the discussion. Since the beginning of 1995 there have been further contributions to the debate on the future shape of Europe, the speed of integration and the areas in which this should take place. These have taken the form of press or media interviews, as well as speeches in the parliaments of the member states and in the EU institutions.

In the three new member states, committees on Europe have been set up to consider *inter alia* preparations for the 1996 IGC, whilst in other member states with parliamentary committees accustomed to dealing with Community matters there have already been discussions and resolutions on proposals for the IGC. Some of these are considered in more detail below.

I The Conference Timetable

The IGC must be convened in 1996 and the Treaty makes no further timetable stipulations. The Conference may well continue into 1997, depending on the nature of the review. The timing of the Conference has already been challenged by Germany. At the beginning of February Chancellor Kohl was reported to be in favour of opening the Conference in 1996 as stipulated, but delaying serious negotiation until after the British general election. According to *The Guardian*¹ "The German government fears that if the UK election is not held until 1997, a premature attempt to resolve key issues in the IGC could trigger a paralysing crisis in relations with Britain. Senior German sources also say that it will be easier to identify which countries are able to move to a single currency if the decision is delayed".

¹ 14 February 1995.

II The Reflection Group

On 2 June 1995, the Reflection Group established by the European Councils in Ioannina and Corfu in 1993 is due to begin its preparation for the IGC. Heading the Reflection Group will be Carlos Westendorp, the Spanish Secretary of State for European Affairs (Spain will take over the Presidency of the Council in July). The Group's mandate will not be to negotiate but to draw up an inventory of what Mr Westendorp has called "real problems" as opposed to "imaginary problems" to be tackled at the IGC. The exercise should result in a "report mentioning that on such and such an issue, there is a majority that believe one thing, and that one member state believes another"².

The Reflection Group (also known as the Study Group and the Committee of Wise Men) is to consist of representatives of EU Foreign Ministers and two Members of the European Parliament, who will participate in the Group. The full membership of the Group is not yet known, although the following appointments have been made:

UK	David Davis MP (Foreign Office Minister of State)
Germany	Werner Hoyer (Minister for Foreign Affairs)
Spain	Carlos Westendorp (Secretary of State for European Affairs)
Italy	Livio Caputo (Under-Secretary of State for Foreign Affairs)
Greece	Stephane Stathatos (Ambassador)
Denmark	Nils Ersbøll (former Secretary-General of the EC Council of Ministers)
Ireland	Gay Mitchell (Minister for European Affairs)
Netherlands	Mr Patijn (former MEP)
Portugal	André Gonçalves Pereira (former Minister for Foreign Affairs)
EP	Elisabeth Guigou (France, Socialist, PSE)
EP	Elmar Brok (Germany CDU, EPP)

² *Agence Europe*, No 6423, 18 February 1995.

Appointments from Belgium, France, Luxembourg, Austria, Finland and Sweden have not yet been made. It will be seen that the UK is one of several countries which have opted to appoint a junior minister to the group, while other countries have chosen to nominate independent figures - mainly former ministers or officials.

III The Agenda

The Corfu European Council concluded:

The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a revision is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the Institutions and guarantee their effective operation in the perspective of enlargement)³.

Qualified Majority Voting and institutional reform will be high on the agenda as a result of the Ioannina agreement (see above). The Treaty also provides specifically for a review of the Common Foreign and Security Policy and the role of the Western European Union under Articles J4(6) and J(10). Under Article 189b(8), the powers of the European Parliament "may be widened ... on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest". The areas of civil protection, energy and tourism, on which the Commission is to submit a report to the Council by 1996, will also be reviewed at the IGC⁴ together with a consideration of the "classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act".⁵ The pillared structure of the Union will also be discussed under Article B, which states that an objective of the Union shall be:

to maintain in full the *acquis communautaire* and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of co-operation introduced by this Treaty may need to

³ Presidency Conclusions, European Council at Corfu, 24-25 June 1994

⁴ Declaration on Civil Protection, Energy and Tourism, Cm 1934, p.125.

⁵ Declaration on the Hierarchy of Community Acts, Cm 1934, p.127.

be revised with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community.

Article N(1) provides for any amendment of "the Treaties on which the Union is founded" and Article N(2) could cover an extremely wide range of areas which are defined very generally in Articles A and B of the Treaty. They include the promotion of economic and social progress through economic and monetary union, citizenship of the Union, co-operation in justice and home affairs, the maintenance of and building upon the *acquis communautaire*, including revision of the Treaty.

The formal agenda will become clearer once the Reflection Group has started work but there is already considerable interest in the IGC both as an opportunity to revise aspects of the Maastricht Treaty and as a forum for discussion of the future shape of an enlarged Europe. Whether or not the IGC will be a comprehensive revision of Maastricht or will merely seek to review the operation of parts of it is not yet clear, although in view of current problems concerning the timetable for EMU, the need to adapt the structure and institutions of the Union for an enlarged membership and controversy over foreign, security and defence issues, it seems more likely to be the former.

IV The Pace of European Integration

The imagery of building, geometry, gastronomy and transport being used to describe the future organisation and pace of change in the European Union is a response to the ways various member states envisage the development of the EU as it expands in membership and activities. There is little doubt that the structure and operation of the Union will have to adapt to the possibility of a membership of over 20 members towards the end of this century or early in the next. Institutions set up originally for six member states in 1957 have already been straining to cope with the sometimes conflicting interests of twelve (and now fifteen) members. A future membership might include, in an already diverse group, small states such as Malta and Cyprus on the one hand and eastern and central European countries still in the process of moving from a centralised to a free market economy, on the other.

Research Paper 94/115 looks at the various proposals for integration in more detail.

V Preparation for the IGC in the Member States⁶

A. Austria

Article 23(5) of the Austrian Constitution established the main committee to be responsible for European matters. It will hold a preliminary exchange of views and a standing committee to be formed in the spring will continue the preparations.

B. Belgium

Advisory Committees to the Senate and Chamber of Representatives will draw up reports addressed to the Government on guidelines for the IGC. A debate will be held during the first half of 1995. The Chamber Committee will draw up a list of objectives for the Treaty revision which will be submitted to a "National Hearing" comprising associations, political parties, social partners and others) at the end of June 1995. The conclusions of this consultation will be incorporated into a report and resolution which will be considered at the plenary.

The Senate Committee will also draw up a report with a final resolution and will monitor the work of the Reflection Group.

1. Jean-Luc Dehaene, Belgian Prime Minister⁷:

a. **CFSP:**

That is one of the prime challenges we will have to cope with in 1996: how can we provide the CFSP with a motor which is as effective as the one driving the first pillar, that of the economic community. As I see it, only a Commission-type body and only a method which comes very near the Community approach will guarantee both that the action will be effective and that the interests of all will be well-balanced.

b. **The intergovernmental approach:**

The weakness of that method becomes apparent at first glance. As to initiative and implementation, it is self-evident that the big administration will be

⁶ main sources are EP document *EN/DV/266/266913*, 10 February 1995; *Agence Europe*, January and February 1995.

⁷ Speech to College of Europe, see *Agence Europe*, No 6402, 20 January 1995.

predominant, as long as there is no strong Commission-type instrument. As to decisions, there are but two options: - either everything is decided by consensus, which amounts to reducing everything to the lowest common denominator; - or the most powerful states impose their points of view; the others will feel excluded from the decision-making process and will tend to withdraw upon themselves.

c. Sovereignty:

- as to the famous abandoning of sovereignty within the Union, one should not ignore that this has nothing in common with the Brezhnev doctrine! As the Belgian experience ... shows, formally abandoning sovereignty to the EU might often result in a considerable increase of real influence exerted. ... In addition, the Community method provides a great number of guarantees against what I would call abuse of dominant power. ... By the legal conditions it sets, the ECJ and the Community's judiciary as a whole always favour the weakest.

The Commission makes it possible to avoid monopolization of the initiatives and their implementation by the most powerful member states. It is therefore the very existence of the Commission which enables us to react as positively to the role of the engine played by the Franco-German axis. ...

d. Federalism:

Contrary to what some would like us to believe, Belgium is not at all obsessed by the idea of setting up *hic et nunc* a federal Europe. We are no doctrinaires. We are pragmatists (...). We therefore do not, as some, consider that the whole of the Community system should be thoroughly changed in 1996. (...) Like many others, we think that an all too excessive centralization of the power of decision is harmful and that the level at which decisions are taken should be carefully determined, in accordance with the subsidiarity principle.

C. Denmark

Some preliminary discussion of the IGC took place in November and December 1994. The political parties have initiated public discussion. The Social Democratic Party has published its plan for reform of the Treaties and exploratory talks between the main governing coalition parties and the opposition with the aim of presenting a platform for the Conference.

D. Finland

A Government memorandum on institutional affairs was sent to the Finnish Parliament on 14 February for debate prior to the dissolution of Parliament for general elections on 19 March 1995. Then, the matter will be discussed further in parliamentary committee.

E. France

1. Edouard Balladur, Prime Minister

In an interview in the French press on 30 November 1994, which was translated and published in *The Guardian* on 1 December 1994, Edouard Balladur set out his views on the future of Europe.

Although he thought that further enlargement was inevitable, on the question of the extent of enlargement, he said:

Just how far should we push this enlargement? Should it be extended to Russia, Ukraine, Belarus? This is not desirable for reasons of political equilibrium and for strategic reasons. All the nations of Europe, from the Atlantic to the Urals should cooperate as closely as possible on economic as well as security matters but that does not mean that the EU itself should be extended beyond the eastern frontiers of Poland and Romania.

The French Presidency would identify some of the problems to be faced by the IGC together with a response to them. Moves towards federalism would be one of the items questioned and Mr Balladur was not in favour:

An enlarged Europe consisting of a large number of member states could not be federal. That would mean extending considerably the decisions taken on a majority. In this case, the five major states which represent four-fifths of the population and the wealth could be forced into the minority - something they will never allow.

He proposed defining new roles for the European Council and the Council of Ministers and revision of the complex procedures of the EP. Of the Commission, he said that it "should be

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able to fully assume its role without trying to form the basis of a federal executive". He advocated more involvement by national parliaments in the preparation of Community law and the establishment of a second chamber where they might be represented. Voting rights would need to be re-examined to make them more "equitable" and the number of Commissioners reduced, with the larger states having only one instead of two Commissioners.

He called for a definition of competences instead of the "generalities on subsidiarity" in order to avoid "the encroachment of European institutions upon national ones" and for a corresponding "new distribution of charges" to make the budgetary burden more bearable.

Concerned that France would lose its "position of geographical centre" with enlargement to the north and east, and thus become marginalised, Mr Balladur was anxious to establish some objectives. These included deeper Franco-German cooperation, development cooperation links with the UK, particularly in defence matters, and strengthened ties with Italy and Spain, emphasising the role of the Mediterranean countries.

Mr Balladur thought that not all member states could progress at the same rate in the same areas: "It is vital that in economic or military matters states which are able to should join up more swiftly, while others which cannot should join at a later date". He was adamant that France would meet the convergence criteria required to move to the third stage of EMU.

In defence he felt that closer cooperation had to come about with "an affirmation of the role of the WEU, not merely as a pillar of the Atlantic Alliance, but also as an autonomous organisation belonging to European countries which allows them to coordinate their military efforts in joint actions to maintain peace or for humanitarian ends".

On the future architecture of the Union, Mr Balladur favoured three circles:

First, the circle of common law: that is the EU with the Single Market, its common policies and foreign and security policies. This circles should look to enlarge the group of European countries, with the exception of Russia, Ukraine and Belarus. ...

Second, countries outside the EU or waiting for membership will be part of a wider circle, linked to the EU by cooperation agreements or economic or commercial accords; also by political and military agreements depending on the outcome of the stability pact or the partnership for peace.

Third, there will also be tighter circles which will allow for closer cooperation between a limited number of countries. There could be a monetary circle whose members will not necessarily be the same as those of the military circle.

The composition of these circles should be fluid to allow all Eu countries to join.

He was concerned as to what would be the "ruling principles" of the circles and that they should not be too vague.

2. The Catala/Ameline Report

France has been more active than most other EU Member States in its preliminary consideration of IGC issues. The Government put forward the French position on the IGC during the course of a debate in the National Assembly on 14 December 1994. The National Assembly's delegation for the EU has set up a working party on institutional reforms and an initial report was submitted in mid-December 1994 by Mrs Catala (RPR) and Mrs Ameline (UDF). The delegation held a hearing of the two EP Reflection Group members, Guigou and Brok. The final report was adopted on 7 February 1995. The report concluded⁸:

- separate institutions were required for the EU and its monetary and defence sectors. The European Council should assume three separate forms: a European Council of all Member States, a European Council on EMU and a European Council on security;
- The powers of the EP should be redefined and a new ranking of legal instruments adopted but the EP should not be given more powers in the implementing measures in decisions adopted under the co-decision procedure.
- The number of procedures involving the EP should be reduced to four: information, consultation, assent and co-decision. Co-decision should only be extended if the procedure is simplified and the powers of the national parliaments strengthened.
- National parliaments should be involved in the decision-making process before the final decision to adopt by the Council of Ministers. For this purpose, a small interparliamentary committee comprising an equal number of representatives from each member state should be established. This would meet monthly to vote for or against texts without having the power to amend them. This committee could consider the major issues of the Union: Treaty revision, international agreements, enlargement, budgetary and monetary matters, home and justice affairs and defence, based on respect for the principle of subsidiarity and with the possible adoption of a "subsidiarity exemption".

⁸ EP DOC EN/DV/266/266913.

- National parliaments should be involved in the work of the Reflection Group.

3. Philippe Séguin, President of the Assemblée Nationale

M. Séguin disagreed with the "hard core" idea of Chancellor Kohl and of John Major's multi-speed Europe, saying that they would "present the common risk of deepening by different channels the political divisions and the inequalities in development on the European continent"⁹.

From now on Europe must democratise itself and to stop being so embodied in a technocratic system; above all, Europe must break with the federal model which is in complete contradiction with the return of nations, made possible by the disappearance of the Soviet empire. If this reawakening sometimes presents itself in violent forms, as in the former Yugoslavia, it is no less first of all the expression of a desire for sovereignty, of a will to regain control of ones own affairs, which is part of the democratic ideas of Europe.

With the notable exception of Jacques Delors, most Frenchmen with public responsibilities agree in challenging ... the idea of a federal Europe.

M. Séguin proposed a Union charter to which member states would adhere which would pledge the following principles: the sense of equality and solidarity, the balance between the law of the market and social protection, the need to protect both cultural diversity and the environment. He supported the idea of national parliaments ("the first holders of democratic legitimacy") having an active and direct involvement in the institutional revision of the Treaties from the initial negotiating period.

He wanted the *acquis communautaire* and common policies to be preserved, for it is in this *acquis* that is the real "hard core" of the Union.:

The transferred competences must obey the subsidiarity principle, which ought to be defined precisely so that the Union does not exercise competences which would be better carried out by the member states. Subsidiarity must never be a pretext for establishing direct relations between the territorial entities.

Institutional reform constitutes both the precondition and the condition for the joining of new member states. Future members must be associated with

⁹ *Le Figaro*, 7 December 1994.

institutional revision in 1996 - even if via parallel procedures to the main negotiations.

Europe will only progress to the extent that the Franco-German partnership remains the guarantee of its unity and progress. ... Germany must clearly renounce its federalist vision which is no longer realistic, integrate the Mediterranean and African dimension, which is the counterpart of the overture to the north and east, and above all draw practical conclusions from the need for a European defence, both in terms of the organisation of forces and budgets.

This dialogue should not be exclusive. It would be desirable for cooperation between France and the UK to achieve a parallel depth, particularly on questions of defence and security ...

To avoid the potential contradictions between enlargement and the transfer of powers to technocratic organs beyond any political responsibility and democratic control, each one should find its role: the European Council and the Council of Ministers in assuming fully the political direction of the Union; the Commission, whose number should be reduced, of proposing and then - after the political decision - of executing; the national parliaments in exercising collectively control over the development of European norms with the European Parliament.

... the European Council should meet more frequently than once or twice every six months. Initially the European Council could meet every two months. The consequence of this reform would be the election of a president of the Council for a period of up to two-and-a-half years, whilst the president of the various Councils of Ministers would be shared out among the member states who would play a guiding role in each area of competence. The strengthening of the Council of Ministers is indispensable. Sharing the right of initiative with the Commission and reform of the current rotating presidency could contribute to this. This creates the impotence of political power and confers real power on the administrative organ, the Commission.

Voting rules must also be amended in order to avoid systematic blocking of Union action by certain minorities and disparate coalitions. Majority voting can insure efficient decision-taking whilst unanimity and the right of veto in the European Council are now for sensitive subjects like foreign and security policy. In this context, a double majority might be envisaged taking into account both the states and their populations. It would then be appropriate for the permanent representative, the pivot of the system and guarantor of its coherence, to be a minister and member of the government. He would sit at all Councils, perhaps at the side of the competent minister. The Commission must be redefined, beyond its role as guardian of the Treaties, in its role of

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administrative secretariat, the body that initiates and executes Council decisions.

In order to ensure the coherence of Union decisions and their application, he proposed the following measures:

to bring together in the Commission all its different agencies;

to develop the present system of the appointment of Commissioners, which after successive enlargements, would end up as a college nearly 35 members destined to be inefficient. As soon as the Commission is clearly reorientated towards its administrative tasks, nothing will prevent a reduction in the number of Commissioners, whether each country only appoints one Commissioner, or whether the large countries, if they preside over the presidency of the European Council, refrain from appointing one.

M. Séguin proposes that the national parliaments should have the role of a lower chamber and the EP that of an upper chamber. This evolution would be the inevitable consequence of the break with the federalist outline. Once the Commission does not aim to constitute a government, the EP could not claim a monopoly on legislative functions and control. As for procedure, the text agreed by the Council of Ministers would be transmitted to national parliaments who would have one month in which to decide, but without whose ruling there would be a tacit agreement to adopt. During this procedure each national parliament would have a voice equal to that of its government in the Council. A consequence of the new responsibility of the EP with regard to the Commission would be that the Commission would be no more than an administrative body. In addition, national parliaments would strengthen their control over European policy carried out by the governments of the member states, following the example of France in Article 88.4 of its Constitution.

M. Séguin links moves towards economic and monetary union with institutional reform and proposes that because of the serious implications of EMU for many member states, "a consultation of parliaments or interested people should be allowed to take place in those member states that want to before the third stage of EMU".

4. Report by Ives Guéna (Senate)

Mr Ives Guéna (RPR) submitted an interim report to the Senate delegation at the beginning of December 1994, which set out the following proposals:

- a "differentiated Union" model with variable geometry;
- a strengthened role for the Council of ministers and the creation of a Secretariat for the Common Foreign and Security Policy;
- a division between the EP as the legislative body of an Economic Union, and a Chamber of National Parliaments responsible for the deepening of the Union (second and third pillars and possibly Community budget revenue, enlargement, association agreements and the monitoring of subsidiarity).

5. Senator Christian de la Malène, RPR, Assemblée Nationale¹⁰

"While reflection with a view to the Intergovernmental Conference of 1996 is generally continuing on quite a low-key basis in the different capitals, in France, the publication of detailed contributions to this debate continues, in particular by members of the government and the national Assembly".

M. Malène has proposed the creation of "new political structures" including a "real political power at the summit, specialised bodies for the Union's technical aspects and a parliamentary institution worthy of the name". M. de la Malène's proposal envisages a European Council as the highest institutional body, bringing together "the legitimate and actual holders of the executive power in the states of the new Europe", which would operate by consensus but allow a state to abstain from a given joint action. To strengthen the Council, there would be a body similar to the UN Security Council which would bring together the large states as permanent members with the others which would sit in rotation. This European Council would also be supported by a large Secretariat General and a permanent Council of Ministers. The Commission would be charged with implementing the decisions of this Council. Beneath the Council there would be a number of sectoral agencies with more limited powers which would help consolidate the *acquis communautaire* and the gradual integration of new member states at their own pace. The EP would need new, uniform electoral laws weighted more fairly demographically, and would be complemented by a Senate of the Nations.

¹⁰ see *Agence Europe*, No 6389, 30 December 1994.

6. Valéry Giscard D'Estaing, former President¹¹

Until now, the integration approach has been somewhat flexible, trying to pull in all the member states together even though some might not wish to be drawn into it. ... When there were just a few of us, those who did not wish to go any further were always minorities: the United Kingdom and Denmark. ... When there are 25 of us, it will not be the majority that decides how to move; it will be the minority! And this minority will form by itself: we cannot draw up a list of every case.

At institutional level, everything would proceed from the "institution that is federative by nature", the European Central Bank.

7. Mr Lamassoure

Mr Lamassoure, French Foreign Minister, 31 January 1995, told the EP's Committee on Institutional Affairs that the French Presidency wants the June European Council summit in Cannes to go "a little beyond implementing the Maastricht Treaty" and to set out the priorities for the 1996 IGC, ie whether reform will be minimal or the beginning of a "new founder European pact"¹². He set out the timetable for the 1996 agenda, as follows:

1. an assessment phase begun in second half of 1994 to end with the French presidency.
2. initial document being drawn up to be followed by bilateral meetings in "confessional" formula to reach synthesis at April Council.
3. reflection phase, beginning with group to be chaired by Carlos Westendorp and beginning on 2 June 1995.

On the future of the presidency rotation, Mr Lamassoure suggested that to remedy the inconveniences of a rotating presidency, there might be a presidency should last say three, four or five years, and that "there should be as many presidencies as Councils of Ministers". He was perplexed about the notion of a "hard core", asking whether in 1996, if some countries were ready to move to the third stage of EMU but not proceed with the CFSP,

¹¹ Press conference, 10 January 1995, see *Agence Europe*, No 6396, 12 January 1995.

¹² see *Agence Europe*, No 6410, 1 February 1995.

whilst for others the opposite was the case, "shall we wait for everybody or shall we move forward with those who are ready?" (*ibid*). Whatever the outcome, institutional unity should be preserved.

F. Germany

Bundestag committees were formed on 14 December 1994 and the new Committee on European Affairs started work on preparing for the IGC.

1. The CDU/CSU Bundestag Caucus Proposals

The publication of the CDU/CSU Bundestag Caucus paper on the future of the EU was among the first and most significant discussions of the future structure and development of the EU.

The CDU/CSU document was published on 1 September 1994 and attracted considerable comment and criticism, largely from France, but also from Britain and elsewhere. The document begins by defining the major causes of what it sees as a threatening trend towards the disintegration of the Union into no more than a loosely associated, 'glorified' free trade area. The causes include the overstretched institutions, the growing divergence of interests, differing perceptions on issues, a profound economic transformation and "regressive nationalism" (ie a return to the politics of the nation state), the failure of national governments and parliaments to resolve these problems and the timing of the incorporation of eastern and central European countries into the Union.

The document goes on to consider Germany's own particular history and geographical position in Europe, and the importance of closer union to create "security with Germany" rather than "security from Germany". In this context, it makes clear Germany's own special interest in integrating the Countries of central and eastern Europe (CCEE) into the Union, and calls on France to assist in this process.

It proposes a number of measures to achieve a more integrated Europe, including institutional reform, reinforcement of the core (ie the EU countries that are willing and able to press ahead towards integration, see also below), qualified intensification of Franco-German relations, action in areas of foreign and security policy and expansion to the east.

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Its proposals for institutional reform are based on federal lines, similar to Germany's own federal structure. It suggests areas that should be tackled at the 1996 IGC (see above) and then expands on proposals for reform to improve efficiency and democratise the institutions. The Council, it states, should represent a better balance between the principle of equality between member states on the one hand and that of proportionality between the number of votes and population size on the other. (Thus, the earlier Lamers proposals are confirmed in this more recent document).

The document develops views on the need to combine coherence and consistency with flexibility. It recommends the sanctioning of a multi-speed Europe in which those countries that wanted to and were able to progress towards closer union would do so, whilst others would catch up when they could. This would counter the tendency towards a "Europe à la carte". In this context, it also questions the unanimity requirement for Treaty amendments under Article N of the Treaty which could be used to block progress to further integration by other states.

The "hard core" currently consisting of five or six countries (Germany, France, Belgium, Luxembourg and the Netherlands) should be open to any member state "in a position to meet its requirements". It would:

counter the centrifugal forces of the constantly growing Union with a strong centre, and so prevent the separate development of a south-western group susceptible to protectionism and headed to some extent by France on the one hand and a stronger north-eastern group committed to free world trade and headed to some extent by Germany.

The document points out that there is already a hard core of countries set to achieve economic and monetary union and that these countries (the five plus Denmark and Ireland) should harmonise their fiscal, economic and budgetary policies ahead of the rest of the Union and regardless of any formal decisions taken in 1997 and 1999 on the move to stage three of monetary union and the creation of a single currency.

The document places considerable emphasis on the role and importance of the Franco-German alliance, stating:

If German proposals are presented clearly and unambiguously, then France must also make an equally clear and unambiguous decision. France must refute the impression that it permits no justified doubt as to its basic desire for European unification, but continually hesitates when faced with concrete steps

towards integration, since the concept of the inalienable sovereignty of the "nation state" still carries weight, even though that sovereignty long ago became an empty shell.

Drawing attention to the diminishing ability of individual nation states to guarantee their own security and the lack of a guarantee of US support in security disputes, the document emphasises the need for the Union to be able to take collective action in foreign and security matters, in the following areas in particular: the stabilisation of the CCEE, relations with Russia and with the Mediterranean countries, a strategic partnership with Turkey and a reorientation of transatlantic relations.

According to the document, the war in the former Yugoslavia has shown that the time has come for a common defence policy. Europe must take greater responsibility for its own defence in peace-keeping and in the non-nuclear area generally. This would entail transforming NATO into an equally balanced alliance of the US and Canada with Europe "as an entity capable of taking action". The 1996 IGC should also aim to restructure relations between the EU and the WEU under Article J(4.6) of the Treaty and relations between the WEU and NATO. The document suggests the creation of a common foreign and security planning cell with direct access to national decision-makers.

The CDU/CSU propose the acceptance of Poland, the Czech Republic, Slovakia, Hungary and Slovenia into the EU in around the year 2000, but by means of various measures to alleviate the economic burden of their membership on both the old and new member states. Changes in agricultural policy would be one of the priorities and long transition periods would be necessary for the economic adjustment of the CCEE. Other measures would include: the full implementation of the policy of open markets as set out in the Europe Agreements with the CCEE, coordinated trade policy, trade co-operation between the CCEE, participation of the CCEE in areas of the EU's foreign and security policy, "associate partnership" of the WEU as agreed in the Kirchberg Declaration, co-operation of the CCEE in areas of justice and home affairs (ie, immigration, visa and asylum policy and Europol). Envisaged along with this enhanced relationship with the CCEE would be a partnership between the EU and Russia so as to assure the latter that it is recognised as the other major political centre in Europe beside the EU.

The paper proposed institutional changes for the IGC based on the following principles:

- The objective must be to strengthen the ability of the EU to take action and to build it up, both democratically and federally.

- To what end, it is necessary to answer the fundamental constitutional question - Who does what? - in a constitution-like document which delimits the competences of the European Union, nation states and regions in clear language and defines the ideal foundations for the Union.
- This document must be based on the model of a federal state structure and on the principle of subsidiarity. This applies not only to the delimitation of competences but also to the question whether public entities, such as those of the Union, should take on certain tasks or should leave them to social groups All the present institutions, the Council, the Commission, the Presidency and the European Parliament, must be reformed. ... The reforms must be guided by the concept of a new equilibrium in the institutions, under which the European Parliament would progressively develop into a legislature with the same rights as the Council; the Council, in addition to other tasks primarily in the intergovernmental sphere, would take on the duties of a second chamber, ie of a chamber of states; and the Commission would assume the characteristics of a European Government.

On a visit to Paris in December 1994, the parliamentary leader of the CDU, Wolfgang Schäuble, said that he did not support the idea (put forward earlier by President Balladur) of a second chamber of national parliamentarians.

2. Joint Statement by the Foreign Ministers of France and Germany, Alain Juppé and Klaus Kinkel¹³.

The European Union is one of the most important foundations of the new security order in Europe. It can only take on this task if the decision-taking capacity of its institutions is maintained and reinforced. Germany and France want a Union with a capacity for political action. They also support its progressive enlargement. It is in linking these two criteria that the two countries are already preparing in close collaboration for the 1996 Intergovernmental Conference.

France and Germany know that, with regard to this Conference and its preparations, they have no choice ... but to be in agreement. It is good that on both sides there is an awareness of the different starting positions. It is important that, beyond words, the will exists to create

¹³ *Le Monde*, 14 January 1995.

together the institutions that will allow the Union to gain strength and to measure up to the great challenges of our time. For forty years, European integration has seen many examples where Bonn and Paris, thanks to their firm will to progress in a way that will benefit the whole of Europe, have reached agreement although their initial positions had been different. It will be the same in 1996.

3. Bundesrat

The IGC is being discussed by the Länder Ministers responsible for European Affairs and a report is being prepared on which the Bundesrat will take a decision in May 1995. The conference intends to ask the German member of the Reflection Group, Werner Hoyer, to appear before it. The Ministers have asked for an early and comprehensive participation in the preparations for the IGC, saying that the Federal Government should work together with the Länder on the German negotiating position for 1996. They suggested that the Ministers of Bavaria and Rheinland-Palatinate should be the two states to participate in the discussions.

G. Greece

The Committee on European Affairs has set up a working party composed of committee members and two MEPs (who are also committee members) to draft a text to be the basis for discussion in the committee. The committee will then draw up a report which will be submitted to the Parliament.

H. Ireland

A Committee on European Affairs is to be re-established and this will look at proposals for the IGC.

I. Italy

A Chamber of Deputies delegation has had contacts with the EP on the IGC and there is to be broader discussion in the Chamber and the Committee.

J. Luxembourg

The Government will draw up a document on the IGC, which will first be considered by the Committee on Foreign and European Affairs and then go to the Parliament.

1. Jacques Poos, Foreign Minister ¹⁴:

Luxembourg's guidelines for the IGC are to defend what has already been achieved and the balances that have helped make the "Community model" a success. This model should be strengthened "by safeguarding strong institutions for the Union, by improving its democratic functioning, with greater involvement by the public and our parliaments". He felt that the IGC should not "upset the institutional balance which, despite enormous difficulties, has not led us to inaction". Stability, security and development should be offered to European countries wanting to join the Union.

The reforms agreed in 1996 should be inspired "neither by a so-called opposition between large and small - which has never existed - nor by opposition between those who could meet the criteria for the third phase of EMU in 1997 and those who will take longer to respect them". Mr Poos thought that a gradual European defence identity would be a major Conference item.

K. The Netherlands

The Government has informed the two Chambers of its views on the process of European integration. In one of the notes, it told Parliament not to expect the IGC to result in particularly significant results and this was debated in plenary on 14 February. The Government intend to send further notes to Parliament for it to consider before stating its formal position on Treaty revision.

L. Portugal

The Assembly's Committee on European Affairs has adopted a report entitled "Parliamentary Guide to the Revision of the Treaty on European Union at the Intergovernmental Conference in 1996". The report was considered in plenary in a debate on "Portugal in the European

¹⁴ Speech to House of Deputies, 16 February 1995, see *Agence Europe*, No 6423, 18 February 1995.

Union: the present situation and future prospects". The Committee approved a Resolution on the revision of the Maastricht Treaty. The resolution insisted in five principles¹⁵:

1. equality among the member states and the principle of "non-exclusion from the core" should be upheld. Treaty revisions must be approved unanimously and a "hard core" must be rejected;
2. "hypotheses of positive variable geometry", based on the ability and willingness of each member state, must be considered;
3. social and economic cohesion must be maintained in the deepening and enlargement of the Union;
4. the role of national parliaments must be strengthened and their cooperation with the EP enhanced through the Conference of European Affairs Committees (COSAC);
5. the role of the Portuguese language should be enhanced within the Union.

Although the resolution rejected the idea of a hard core, it cited the Schengen Agreement as a good example of variable geometry and maintained that member states should not block the need for deepening the Union expressed by a majority of member states. This majority in turn would have to acknowledge that it would be impossible for some member states to participate immediately in the deepening process in some areas because they would not have achieved the required conditions.

The resolution also confirms Portugal's wish to participate fully in the third stage of Economic and Monetary Union; to reinforce measures for social and economic cohesion and equality of living and working conditions in member states; to define objectives and a clear methodology for the Common Foreign and Security Policy and the WEU; to promote a European unity that respects the diversity of its nation states and their history, language, culture and traditions.

¹⁵ see *Agence Europe*, No 6418, 11 February 1995.

M. Spain

The parliament's Joint Committee on Community Affairs is to give an opinion on the desirability of direct participation by national parliaments in the negotiations on institutional reform and to consider how proposals might be incorporated into the reform process. The joint committee has established a sub-committee to look at preparations for 1996 which has held hearings involving ministers connected with possible Treaty revisions. A final report is expected in April/May. Speaking in Paris on 16 January 1995, the opposition Partido Popular leader Jose Maria Aznar said that national parliaments should have a degree of control over Council decisions, which would be a positive mechanism, complementing the member states' involvement in the shaping of Union decisions.

1. "The IGC of 1996: Elements of a Spanish Position"¹⁶

A Spanish document prepared by Carlos Westendorp, who will be chairing the Reflection Group, set out elements of the Spanish position on the 1996 Conference. Democratic legitimacy, an expression that was much in use at the time of the last IGC, would require a new voting balance in the Council of Ministers. If the Union expanded to include some 30 members, the "large" member states (currently UK, Germany, France, Italy) would include Spain and possibly Poland, which should have 10 votes rather than Spain's present 8 votes.

The document also predicts that the IGC will accept the idea of a "variable geometry", providing there are no irreversible exclusions.

El País also noted the document's suggestion not to question the convergence criteria set out in the Maastricht Treaty and not to introduce new criteria. It recommends the creation of a common European security system with reciprocal security guarantees. Spain, it says, would contribute some 8 per cent of a future European defence budget. It supported maintaining unanimity in the Council for matters such as social protection, direct taxation and the environment, and the need for a Charter of Fundamental Rights and Liberties which would be enforced by the European Court of Justice.

¹⁶ *El País*, 10 February 1995.

N. Sweden

The debate on the 1996 IGC has just started in the Advisory Committee on European Union Affairs.

O. United Kingdom

The Foreign Affairs Committee and the European Legislation Select Committee have started looking at different aspects of the preparations for the IGC. In the House of Lords, an ad hoc committee on European Affairs has been set up to prepare a report on reform of the Treaty.

1. Douglas Hurd¹⁷

Neither Britain nor France joined the European Community in order to assist at the withering away of the nation state. Both our governments are clear in rejecting the notion that the only good European is one who believes in a steady flow of powers to a central European executive and a central European Parliament. We remain nation states with a proud history. We have both put the years of post-Colonial decline behind us. We are both major overseas investors and exporters, and are ready to act vigorously outside the borders of Europe if our instincts or interests require it.

....

We do not believe that it is either necessary or desirable to undertake a massive constitutional upheaval in 1996. It is true that the Treaty of Maastricht was maligned and misunderstood in both our countries. But we can see now that it established an architecture for Europe which, if it can be made to function properly, would suit us both well. We both believe that the Single Market and the common commercial policy require European institutions and European rules which must be strictly applied. We believe that the role of the European Commission, the Council of Ministers, the European Council and the European Parliament and the European Court should be clearly defined. We want them to perform better the tasks with which they are already entrusted. We do not believe that they need justify themselves by constantly reaching out to do more. We believe that the Foreign and Security Policy and Home and Justice matters are best handled not by supranational institutions but by cooperation between governments as set out in the Treaty - a steadily growing cooperation more effective than anything which Europe has dreamt of in the past. Let me emphasise that point: it is **no**

¹⁷ Speech to Institut Français des Relations Internationales, Paris, 12 January 1995.

part of the British agenda that Europe should turn its back on all that has been achieved in these areas and become simply a free trade area.

Mr Hurd spoke about the need for accountable spending and "making the Commission more accountable to the Council of Ministers" in order to avoid fraudulent use of EU funds. On the subject of a "hard core", he said:

Much has been said in recent months about the need for flexibility. We do not like, any more than France does, the concept of a hard core of nations which by exclusive decisions place themselves in a different category from their partners. But flexibility already exists. Britain and France are members of the West European Union, but Denmark is not and Austria and Finland will not be. France is a member of the Schengen Group, but Britain and Ireland, because they are islands, remain outside. The Treaty of Maastricht, by its insistence on convergence criteria, envisages that some countries may proceed to full European and Monetary Union while others do not.

...

We believe that flexibility of this kind is inherent in the task of creating a European Union which does not take the United States of America as a model, but sets out to do something unique which links the identity of European nations with the need for Europeans to work together in ways of which our ancestors only dreamt.

2. Lord Howe¹⁸

Britain seems increasingly reconciled to an opt-out mentality, which foresees a future increasingly detached from Germany. France and the European mainstream. Rather than defining common interests and solutions with Bonn and Paris, the UK is expected to leave it to them to shape their future, and decide later whether to join arrangements which it has played no significant part in moulding. This is a profoundly negative prospect, humiliating to a great nation that aspires to world influence. ...

At the end of this sorry saga, we have a government that threatens to veto any future treaty involving serious institutional change, even when this is essential for the wider EU it claims to favour ...; and proclaims its resistance to the "threat" of a single currency in 1997, even if Britain and a majority of member states meet the convergence criteria. ...

¹⁸ *Financial Times*, 30 January 1995.

The UK commitment to widening the Union without facilitating its decision-making increases the likelihood that France and Germany will go their own way, on their own terms, with a few privileged friends. If we make the EU unworkable, they will find other solutions that exclude us.

3. Malcolm Rifkind¹⁹

Nor is the new Europe going to build on the federalist ambitions of the 1950s and 1960s. The time for that kind of ideological debate has passed. So I welcome the remarks by the French Prime Minister, Edouard Balladur, when he reminded us of the sheer diversity of the European family, questioned whether Europe must evolve towards a federal system and asked us to leave "ancient quarrels" to one side. We now need to build effective mechanisms for cooperation between states. ...

Britain intends to deepen cooperation in the defence field. But the defence of its citizens is the most fundamental responsibility of a national government. We may choose to exercise our responsibilities in coalition with partners, but it is a national government's duty to answer to national parliaments if troops' lives may be at risk. Defence and security should be based on cooperation between nation-states, not dictated by supranational bodies. This will be an unshakeable conviction, on which future British policy will be based.

4. John Major²⁰

A Europe of 15, possibly 20 around the turn of the century and more than 25 beyond that, cannot be the same as a Europe of 6. Talk of fast track and slow track misses the point. We do not all have to do the same things at the same time in the same way and we shall resist pressure to do so. Unless Europe is flexible it will simply grind to a halt. In the negotiations, a balance will have to be found between competing interests.

On British proposals for changing the Union, he said:

We need recognition that those who make the largest contribution and have the largest populations should have a larger say. So voting weight and patterns need to be considered. We need to re-examine and review the institutions of the European Union. To re-enforce the democratic authority of the Council of

¹⁹ Speech at Royal Institute for International Relations, Brussels, 30 January 1995.

²⁰ Conservative Way Forward Dinner, 3 February 1995.

Ministers as the voice of the nation states. To make the role of the European Parliament more relevant. To ensure it exercises effective scrutiny of the Commission's work. And we need also to involve national parliaments more in the legislative process. We need fewer Commissioners and a more efficient, cost-conscious Commission. We need to continue to reduce the burden on business and to oppose unnecessary intervention and regulation. This list is simply illustrative of the matters we must consider as we approach 1996.

VI Views from the EU Institutions

A. The EP's Committee on Institutional Affairs²¹

The Committee discussed the role and appointment of the Commission and the Third Pillar on Justice and Home Affairs with a view to 1996 IGC reforms. The rapporteur, Gianpaolo D'Andrea, concluded in December 1994 that the Commission President should be appointed by the European Council on the basis of personal qualities, and that he should be able to choose the other Commissioners freely. He called for precise rules on incompatibility and ineligibility so as to ensure the independence of Commissioners. The Third Pillar rapporteur, Laurens Brinkhorst, concluded that the Maastricht Treaty did not deal satisfactorily with Third Pillar issues and that action at Union level should be possible. He suggested that the Commission should have the right to legislate in these areas, with a role too for the Court of Justice and the Court of Auditors.

B. European Parliament²²

EP adopted report by Jean-Louis Bourlanges (EPP) on EP consultation procedures for the nomination of members of the Court of Auditors. It called on the Council to 1) respect the criteria defined in its resolution of 17 November 1992; 2) include all information in its possession in the Notification of Candidacy; 3) present the candidates at least 10 weeks before the date set for nomination of the members. The Assent Procedure should be introduced at the 1996 IGC. This would help to avoid upsetting the EU's budgetary control system which could result from the nomination by the Council of a candidate on whom the EP had given a negative opinion.

²¹ see *Agence Europe*, No 6380, 16 December 1994.

²² see *Agence Europe*, No 6403, 21 January 1995.

C. Socialist Group's Reflection Paper on 1996²³:

The reflection paper proposed that economic and social partners should be consulted on Treaty reforms as well as on economic and social policies. The UK's social chapter opt-out should be rescinded and the Social Charter of Fundamental Social Rights imposed on all member states. A European Social Conference should be convened in 1995 with the EU institutions, trade unions and European employers' organisations to define a new European Social Contract.

1. CFSP

The paper proposed the creation of a common reflection and analysis unit of the Council and Commission which would take account of the views of the EP. To decide on what is an "essential common interest", she suggested a reinforced qualified majority vote instead of unanimity, and proposed QMV for common actions such as the imposition of sanctions, sending troops and financial aid, with dissenting minorities able to request dispensation from the common action but without being able to block such action.

2. Defence

Military decisions could be taken by the European Council of the Council of Ministers, with neutral states not taking part in defence or common action decisions, on the basis of proposals from the general staff of, say, the WEU. The EP would have European level parliamentary control of common actions. The Eurocorps should also have a marine and air power.

3. Institutions

The IGC should try to "enumerate as precisely as possible the competences reserved for the member states". There should be a single Treaty with "a single clear and concise text which would contain only a limited number of simplified procedures". These would be reduced from the current twelve to three, as follows:

- a. for legislation: QMV in Council in co-decision with EP.

²³ see *Agence Europe*, No 6410, 1 February 1995.

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- b. for Treaty revision, international agreements, enlargement, fixing level of own resources: reinforced QMV (or unanimity for a transitional period) and EP assent.
- c. for CFSP: reinforced QMV and opinion of EP.

The Commission should retain its right of initiative and use it also in the CFSP and Justice and Home Affairs areas without eliminating the right of initiative of member states. It should also keep its right to execute Council and EP decisions and to verify the application of EC law.

4. Election/appointment of the Commission President

- a. The EP could choose the president from a list submitted by the European Council.
- b. The EP could elect the president.
- c. A single post of President of the Union fulfilling the tasks of both the Commission President and the President of the European Council to be chosen by the European Council and confirmed by the EP.

5. Voting in the Council of Ministers

In an enlarged EU, it should not be possible for a blocking minority to be formed by representatives of less than 10% of the total population. Either a new weighting of votes should be agreed or any QMV should also include a majority of the population. The QMV threshold could be lowered to around 60%.

6. Role of EP

The EP should be consulted "upstream" on the CFSP and the economic guidelines discussed under EMU. The budgetary procedure should be simplified and the distinction between obligatory and non-obligatory expenditure phased out. EP should give its assent to appointments to Court of Auditors and other EU bodies. National parliaments should have a greater role in discussing EU issues and the Treaty should specify that the Council should not

normally proceed to its first reading of a draft until national parliaments have had time to discuss the matter with their governments.

7. Speed of integration

Variable geometry a "last resort", although it might be the only way forward to a stronger political union. It should not lead to a Europe "à la carte" or to "several different institutionalised cores" as there is " a limit to differentiated integration - it is that of institutional unity".

E. Elisabeth Guigou (MEP,PSE)²⁴

The Commission should have its full initiating function in CFSP; decisions should be by QMV; the EP should have a *droit de regard*, but not the last word, through a simple opinion; a super-qualified majority process could be introduced to define the "common interests" of the fifteen member states in foreign policy.

Mme Guigou was not in favour of giving more powers generally to the Commission, but of strengthening its existing ones. In the Council, she thought there should be greater separation between the legislative and the executive functions rather than a second chamber of national parliamentarians.

She was opposed to a Europe of different circles as this would be incompatible with institutional unity. The use of derogations, as used in the Maastricht Treaty, would only be used as a last resort with unanimity the rule for decisions on enlargement, international treaties and own resources.

She called for detailed plans and a strict timetable to accompany enlargement, particularly with regard to economic integration. Political integration might proceed at a faster pace.

²⁴ see *Agence Europe*, No 6395, 11 January 1995.

F. Ardenne Group

A policy document of the "Ardenne" Group (established in June 1993 by Italians working in the EU institutions) reaffirmed its support for an initial hard core of member states pushing ahead towards a federal goal. This core "must be based on a pact aimed at managing together - in a supranational organisation of democracy - economic and monetary policy, internal and external security, social solidarity, protection of human rights, quality of life and the environment"²⁵. This is based on the Spinelli proposals of a Europe of several circles and would comprise a limited integrated circle with common supranational institutions open to all members that share the same objectives and constitutional structure, then a larger circle including all the member states, with a third circle encompassing all of Europe except for the former Soviet Union, and fourth circle for the whole continent, including the former Soviet Union. The 1996 IGC should recognise the Commission's "constitutional" right of initiative, give the EP the "constitutional" right of joint decision-making, and modify the Council of Ministers to include the presence of permanent delegations, representing the regions if appropriate. He proposed the creation of an Interparliamentary Conference of the Union, composed equally of MEPs and national parliamentarians organised in political groups rather than national delegations, which would decide by qualified majority on matters such as new accessions, the level of the Union's own resources.

G. European Commission

1. Commission President Jacques Santer²⁶

The Commission does not want to grab more power at this Conference, in spite of what some ill-informed observers allege. We do, however, want to reinforce the efficiency of our institutions without destroying the essential checks and balances. We might therefore define in even more detail what really needs doing at the level of the European Union. We must reinforce the democratic legitimacy of this Union, including expanding the role of the European Parliament. We might need to consider a multi-speed approach to European integration but without building Chinese walls around those in the vanguard group, to ensure there is no permanent exclusion, discrimination or Europe à la carte. Our voting structures and presidency arrangements will also come under the microscope in the 1996 Conference.

²⁵ see *Agence Europe*, No 6388, 29 December 1994.

²⁶ World Economic Forum, Davos, 28 January 1995 on prospects for the 1996 IGC.

On the subject of EMU, Mr Santer said that "there must be no departing from the path towards economic and monetary union mapped out in the Treaty". He said that the Commission would be preparing a Green Paper on the conditions for transition to a single currency by the end of 1995.

VII Other Contributions to the Debate

A. Peter Sutherland, Director-General of the World Trade Organisation²⁷

Mr Sutherland, a former EC Commissioner from Ireland, rejected the idea of increased intergovernmentalism, saying that past experience had shown that "it cannot be effective". He suggested that it was now time to "reinvent the elegant institutional method of Monnet and adapt it to the new realities". He did not think that the size of the Commission should be reduced so that there were fewer Commissioners than member states, although he was in favour of reducing the number of MEPs in future enlargements of the Union. He supported a greater role for the EP in second and third pillar matters. Mr Sutherland was not in favour of a variable geometry, seeing this as "in some respects a dangerous step towards intergovernmentalism". The Single European Act, on the other hand, had "represented a revival in the process of integration, based upon supranational principles".

B. The Western European Union

With regard to Article J.4 (6) of the TEU (review of prospects for a Common Defence Policy and a Common Defence), the WEU Declaration No 1 made at Maastricht contains a provision for review of the organization relationship with both NATO and the EU in 1996. Planning for this review has begun. In May 1994 at Kirchberg in Luxembourg, the WEU Council instructed the WEU Permanent Council to begin "work on the formulation of a common European defence policy"²⁸. A report containing the Permanent Council's preliminary conclusions on the prerequisites for a Common European defence Policy (CEDP) was presented to the next Council, held at Noordwijk in the Netherlands in November 1994. The document contained a number of recommendations and considerations which would need to be brought into effect before a CEDP could be brought into operation. These included improving the WEU's mechanisms and procedures for reacting to crises. In the first instance, the Permanent Council suggested the establishment of a standing political-military working group on crisis management. They also recommended that the WEU Secretariat should be

²⁷ Jean Monnet Conference, Florence, 10 February 1995.

²⁸ WEU *Kirchberg Declaration*, I/Para 5.

augmented by the addition of a situation centre and an intelligence centre, the latter receiving information from the WEU Satellite Centre in Spain and Member governments²⁹.

Separately, the Council adopted a French proposal to draft a White Paper on European security to be undertaken by the 27 WEU full members, associates, observers and associate partners. This would attempt to find a common analysis of the security problems facing Europe inclusive of the Mediterranean region and agree on a common statement of how they might be resolved³⁰. The Security White Paper will be a priority for the WEU Council. However, the Council also mandated the Permanent Council to continue work on the CEDP in order to produce a comprehensive CEDP Statement in advance of the Intergovernmental Conference in 1996. A WEU Summit may be held in advance of the IGC to finalize such a statement. However, further potentially divisive discussions between senior officials on institutional arrangements within the WEU and between the WEU and EU have been postponed until June³¹.

VIII The Argument over European Treaty Obligations in the Realm of Border Controls - an issue for the IGC?

A. Background

The United Kingdom signed and ratified the Single European Act (SEA) of 1986 following a negotiation in the Intergovernmental Conference similar to the negotiations which preceded the Treaty on European Union and which are due to begin again in 1996. Each of these treaties amended the Treaty of Rome. Obligations entered into under these treaties are obligations in international law and can only be altered by changing the treaties again, for example at the next IGC. However, as with other treaty obligations there is room for dispute as to their meaning.

The SEA included a series of articles which were designed to eliminate all barriers to the European Community internal market by 31 December 1992. In particular, Article 8A (which has subsequently been renumbered at Maastricht and now appears in the Treaty of Rome *as amended* as Article 7A) obliged the Member States to take steps before the 1992 deadline to produce "an area without frontiers in which the free movement of goods, persons and capital is ensured in accordance with the provisions of this Treaty". However, a General Declaration

²⁹ *WEU Noordwijk Declaration*, November 1994.

³⁰ *Noordwijk Declaration*, November 1994.

³¹ *Atlantic News*, 15 February 1995.

adopted alongside the Single European Act (it was annexed to the Final Act of the IGC which produced the SEA) stated that:

Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.³²

It emerged after these instruments had been adopted and during the period in the run-up to 1992 when implementation was supposed to take place through the usual processes of adopting EC directives etc, that the Member States and the EC institutions did not agree over their interpretation. It is generally held that when states conclude legally binding agreements they cannot deliberately intend to create contradictory effects. AG Toth writes of the Declarations attached to the SEA:

It is simply inconceivable that all the parties should agree to one thing in the main body of a treaty and then agree on something else in an annexed text.³³

In the present case there has been a prolonged disagreement about what was meant and intended by Article 7A (as it is now) and this has continued well beyond what was intended to be the deadline for implementation, but no formal adjudication has yet taken place. The European Parliament has now initiated proceedings against the Commission at the European Court of Justice on the grounds that the Commission has failed to ensure the implementation of this aspect of the SEA. Hearings on this will take place during the spring of 1995 and a judgment (on the Commission's liability) may follow later this year.

Several legal issues are involved. One concerns the status of the General Declaration attached to the SEA. Put simply, is it worth the paper it is written on? The other issues are more subtle: Is the internal market with its free movement of persons meant to apply only to the citizens of EC countries (or, since the Maastricht Treaty, to "citizens of the EU")? Or does it apply equally to the citizens of other states legally present in the EC? And is a minimal check designed to distinguish EU citizens from the rest compatible with free movement?

³² *Selected instruments taken from the Treaties*, 1993, Book 1, Volume 1, p764

³³ A.G. Toth, "The Legal Status of the Declarations Annexed to the Single European Act", *Common Market Law Review* 23: 803-812, at 805.

B. The value of the General Declaration

Read in isolation, the General Declaration looks like a strong statement of the rights of the individual Member States to use their own discretion and powers in relation to immigration. However, if it were to be interpreted as giving the Member States *carte blanche*, then it would have the effect of undermining Article 7A, which could not logically have been the intention of the parties. Nor does the language of the Declaration suggest that it was intended to create a derogation from the general border controls regime for individual states. The wording "such matters as *they* consider necessary" might point to the possibility of some states taking a different view of what was necessary from the majority, but this is not the form or the language used for "opt-outs" in EC practice. These have generally been much more specific in relation to a particular country, eg Britain's arrangements concerning the Social Protocol and EMU in the Maastricht Treaty. The SEA General Declaration does not refer to any particular country and if all the parties were to use it to exercise their own judgment over border controls there would be no point in having agreed treaty articles on the subject.

What then was the intention behind the General Declaration and what legal effect might it have? There may be no definitive answer to these questions because it is possible that those involved in the negotiations at the time had different perceptions of the text and its meaning when they drafted and agreed to it. The most likely explanation of its meaning in terms of international law may be that the collective intention of the parties was that the General Declaration should form part of the *context* of the SEA for the purposes of interpretation. Toth argues that, strictly speaking, this could not be so because the parties had agreed that Article 7A should be subject to legal interpretation by the European Court of Justice, whereas they did not make the same stipulation with respect to any of the attached Declarations. However, Toth also recognises that the Declarations attached to the SEA "are not susceptible of precise legal characterisation" and may be regarded as "hybrid measures lying halfway between international and Community law".³⁴

If the General Declaration was meant primarily to assist in the interpretation of Article 7A this does not render it meaningless, but as part of the context of the SEA it would join other texts which the Court might use as aids to interpretation. In a 1981 decision the Court stated:

Every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard

³⁴ Toth, *ibid*, p.811

being had as to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.³⁵

According to Weatherill and Beaumont:

In interpreting an individual Article of the EC Treaty the Court will often set it in its context in the Treaty and construe it in the light of the objectives set out in the Preamble and Articles 2 and 3 of the Treaty. Unlike United Kingdom statutes, the Court is not left to guess at the overall aims of the text it has to interpret.³⁶

When obscure points in treaties have to be interpreted as a matter of international law it is common practice for the International Court of Justice to look at the negotiating records (or the *travaux préparatoires* as they are usually known) and the European Court of Justice has also made occasional use of this approach, but its scope is limited by the fact that the records of IGCs have usually been regarded as confidential.³⁷ This principle came under some strain during the Maastricht negotiations, but there has been no question of full publication. This means that the Court is unlikely to be able to use the negotiating record to establish the intentions behind the General Declaration.

Could the General Declaration stand alone as an international agreement for any purpose other than elucidation of the meaning of the SEA? In theory such a Declaration could have an independent significance, provided that this did not contradict the Treaties. The EC heads of government do occasionally adopt binding agreements at the European Council (eg the Edinburgh Agreement relating to Denmark) and Toth concludes that the SEA Declarations "come very close, as regards their legal nature, to the conclusions of the Presidency of the European Council".³⁸ The Declaration could still have a logical content even if Article 7A were to be interpreted (as the Commission insists) as heralding the end of all internal frontier controls, because it could refer to the continuing rights of states to use powers *other than frontier controls* to control illegal immigration, terrorism, drug trafficking etc.

³⁵ Case 283/81 *CILFIT v Italian Ministry of Health* [1982] ECR 3415,3430 quoted in S. Weatherill & P. Beaumont, *EC Law: The Essential Guide to the Legal Workings of the European Community*, 1993, p.148

³⁶ Weatherill & Beaumont p.148

³⁷ *ibid* p.145

³⁸ Toth, *op cit*, 812

C. Free movement of EU citizens or of all persons?

The substantive disagreement is on this point. While there is some ambiguity about whether the original SEA article was meant to embrace all persons or only EU citizens, the British government holds to the view that free movement applies only to the nationals of member states. This argument depends on the interpretation of the words "in accordance with the provisions of this Treaty" in Article 7A and the General Declaration is used in support of it. The argument is summarised in the second report of the Select Committee on European Legislation for 1992-93³⁹ and also in Library Research Paper 93/7 - *The Maastricht Debate: some immigration aspects*.⁴⁰

While this case could be argued either way, and the European Court of Justice could deliver a ruling at some point which might be influenced by the adoption of new Articles 3(c) and 3(d) as part of the Maastricht Treaty,⁴¹ a difficulty arises from the fact that some check would be required at UK frontiers to distinguish EU citizens from others and this in itself may be seen as a barrier to free movement. Kay Hailbronner writes on this point:

The maintenance of border controls at internal borders runs counter to Article 7A since inevitably no distinction can be made between EC nationals and third-country nationals. Were Member States still allowed to maintain regular border controls and to check whether persons wishing to cross a border are nationals of a Member State and whether she or he constitutes a danger to public order, public security or public health, the free movement of persons across internal frontiers would remain a dead letter.⁴²

The British Government surmounts this difficulty by reducing the inconvenience experienced at the border by EU citizens to the absolute minimum. In its explanatory memorandum to the European Legislation Select Committee it states that Community nationals are not subject to a *substantive* immigration control.⁴³

Whether or not minimal checks are compatible with free movement and the elimination of internal frontiers is again one of the issues on which adjudication by the European Court of Justice might hinge.

³⁹ HC 79-ii of 1992-93, viii

⁴⁰ pp. 6-10

⁴¹ Article 3(d) in particular seems to refer to the movement of all persons within the internal market

⁴² Kay Hailbronner, "Visa Regulations and Third-Country Nationals in EC Law", *Common Market Law Review*, 31: 969-995, 1994, at pp.377-8.

⁴³ HC 79-ii of 1992-93, viii

While the General Declaration might again be cited in support of a particular interpretation of these issues, it does not, for reasons set out above, seem to offer an escape hatch from whichever interpretation is finally adopted by the Court.

D. The future

The UK can continue to resist attempts to abolish internal border controls in the Council of Ministers while it believes that total abolition is not required by Article 7A of the Treaty of Rome. However, should the European Court of Justice rule that the Treaty means what the EC Commission says it means, then Britain would have no veto over this decision because it would flow from an agreement to which Britain assented in 1986. The only remedy would be to seek a further revision of the Community treaties, either at the 1996 IGC, or at a later date. The 1996 IGC is supposed to take the *acquis communautaire* (the achievements of the Community to date) as its starting point but Member States are free to propose treaty amendments at any time under Article N. Any further amendment would have to be agreed by common accord (ie unanimity) between the 15 Member States.

It is not inevitable either that the Court would find in favour of the Commission or that other Member States would necessarily seek a confrontation with the UK in the near future over this issue. It is possible, for example, that they might feel that the full implementation of Article 7A should await the implementation of a more effective regime for the external borders of the Union, notwithstanding the original commitment to complete the internal market by the end of 1992. Despite the absence of any formal "veto" on the interpretation of an existing treaty obligation, they might also feel that it would be politically unwise to use a disputed legal interpretation to overcome the objections of a Member State on such a sensitive issue. Edward Mortimer comments in the *Financial Times* of 22 February 1995:

If other people want a change you do not like, you are in a strong position. It would take a determined alliance of the Commission and the EU governments to browbeat Britain into lifting border controls and there is no sign it is a high priority for them.

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