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# The role of supranational actors in EU treaty reform

Thomas Christiansen



**ABSTRACT** Treaty reform, traditionally seen as the preserve of national governments, nevertheless involves supranational actors to a significant degree. This article, having re-conceptualized treaty reform as a broader process which includes, but goes beyond, the negotiations of IGCs, looks in some detail at the respective roles of Commission, Parliament and Council Secretariat in this process. In assessing the contribution which these institutions can make, the article concludes that their involvement is different from that of member states, but that their influence is nevertheless significant, pointing to issues such as the institutionalization of the treaty reform process, the legitimation of treaty changes and their command of specialist expertise in what are highly technical negotiations. Given their particular resources in this respect, supranational actors matter in the treaty reform process and ought to be the object of more systematic empirical analysis in the future.

**KEY WORDS** Constitutionalization; Council of Ministers; European Commission; European Parliament; intergovernmental conferences; treaty reform.

## INTRODUCTION

Why should we look at the role of supranational actors in EU treaty reform? Intergovernmental conferences (IGCs) are 'intergovernmental' and, we are told, their negotiations are 'dominated by national governments' (Moravcsik and Nicolaïdes 1999: 69). Such a conclusion of the analysis of an IGC (in this case leading to the Amsterdam Treaty) is not surprising, given a liberal intergovernmentalist approach which sets out to '{explain} the national preferences of the major governments . . . the bargaining outcomes among them . . . and the choice of institutional solutions to implement them' (Moravcsik and Nicolaïdes 1999: 69: 59). With national governments holding centre stage, other actors – including supranational institutions – end up with marginal roles in the bargaining game. In fact, according to this kind of analysis, 'supranational intervention . . . is generally late, redundant {and} futile' (Moravcsik 1999: 269–70).

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This article takes issue with such a state-centric perspective, not (necessarily) because of a disagreement with its conclusions but because of the limited assumptions on which it is based. There are a number of reasons why these assumptions ought to be questioned, but two are of particular relevance for the purposes here.

First, the focus on 'bargaining' is, in itself, a limited perspective which implicitly privileges the role of national governments in a particular phase of treaty reform. Treaty reform and IGCs are not only about 'bargaining' but are part of a wider process comprising issue-framing, agenda-setting, decision-making (at different political and administrative levels) as well as implementation and legitimation. Indeed, treaty reform is a continuous process in which IGCs and their final 'summits' are particular phases. They may have special significance, but they are, nevertheless, inextricably linked to the developments preceding and superseding them. Arguments about the relative weight of different actors in the 'bargaining' about substantive issues in IGCs neglect this procedural nature of treaty reform and thereby skew the role of other actors in them.

Second, IGCs are *not* an open arena for national governments to debate, and to bargain over, their respective positions and 'institutional choices'. Instead, the IGC is an institution in its own right, in which the behaviour of participants – national as well as supranational – is subject to numerous rules (Sverdrup 2000, 2002; Christiansen *et al.* 2002). There is one well-known and basic rule – the requirement of unanimity among member states in order to reach a decision about treaty change. However, there is a host of detailed rules governing the negotiations, comprising secondary legislation, soft law and administrative practice as well as acquired cultural and social norms. In fact, the pursuit of treaty reform via the IGC-format is in itself an important, albeit implicit, institutional 'choice', deserving analysis of the role of the various actors in the design of the IGC-format.

These arguments justify a call for a more comprehensive approach to the study of treaty reform, one that moves beyond the limitations of traditional approaches by including the study of the role of supranational actors alongside that of state actors. In the following, this article sets out to identify the key supranational actors in European Union (EU) treaty reform and examines their involvement in the process. By way of conclusion, the article assesses the respective contributions made by supranational institutions to the process of treaty reform.

## SUPRANATIONAL AGENCY IN THE PROCESS OF EU TREATY REFORM

This understanding of IGCs follows the broader theoretical approach developed elsewhere in this Special Issue (Christiansen *et al.* 2002). It is an approach which seeks to move the analysis of treaty reform beyond the limitations of traditional, state-centric approaches. This has both structural and actional

implications for the conduct of empirical research, but for the purposes of this article the adoption of such a perspective is relevant and useful because it expands research avenues into the role of agency – that of supranational actors – in treaty reform which are foreclosed by more traditional approaches.

However, it needs to be emphasized that the argument here is *not* one about the dominance of either national governments or supranational institutions in IGC negotiations. Such conclusions are a matter for empirical research in each and every case. The argument here is a conceptual one – that a systematic analysis of the role of supranational institutions in EU treaty reform is not only promising, but indeed necessary. Only the inclusion of supranational actors in the analysis of treaty reform will ensure that the subject is treated in the encompassing manner it deserves.

In the following, the article will look in more detail at the role of the various supranational institutions in EU treaty reform. These include the European Commission and the European Parliament (EP), both of which have representatives participating in the actual negotiations who also have a role to play in the wider process of treaty reform. Perhaps less obviously, this also includes the General Secretariat of the Council of Ministers which, by providing the Conference Secretariat of the IGC, is intimately involved with the running of the IGC.

This inclusion of the Council Secretariat may require further justification since it is usually not regarded as either 'supranational' or as an 'institution'. It is the case that the Council Secretariat is not one of the official institutions of the EU (as listed in Art. 5 Treaty on European Union (TEU)), but merely an organ of the Council of Ministers. However, in spite of the official nomenclature, the Council Secretariat is clearly an institution, possessing a formal structure with a set of internal rules and administrative practices which regulate the work of a body of permanent staff. And it is located at the European level, possessing a high degree of institutional autonomy and may therefore be regarded as supranational. The matter is confused by the fact that the Council of Ministers is generally regarded as an intergovernmental institution, which appears to pitch it against the supranational institutions of the Union. But the status of the Council is not as clear-cut (Christiansen 2001a), and indeed the entire Council, not only its Secretariat, can be seen as supranational (Wessels 1991).

As will be argued in more detail below, the role of the Council Secretariat in IGC negotiations is closely linked to that of the Presidency. The Presidency, of course, carries special responsibility for the IGC, and could also be conceptualized as a supranational institution, even though it is carried out by a national government. The duality of the Presidency as being both supranational and national is exemplified by the different roles played by member state officials or ministers, on the one hand, and Presidency representatives, on the other. However, while the Presidency is a mixed category, it will not be covered here in depth, except where its participation in IGC negotiations has a bearing on the role of the Council Secretariat.

Other supranational institutions also have a role in the wider process of treaty reform, though not in the more narrowly defined proceedings of the IGC. The European Court of Justice (ECJ) has contributed substantially to the reform of the treaties. Indeed, one of the most important developments with regard to the treaty base of the EU – the constitutionalization of the treaties – is due to the case law of the ECJ rather than the decisions taken in the IGC format (Christiansen and Jørgensen 1999). However, a detailed argument on treaty reform as constitutional politics, and on the role of the ECJ in this process, is presented elsewhere in this Special Issue (Greve and Jørgensen 2002) and is therefore excluded from the focus of this article.

Finally, bodies such as the Court of Auditors, the Committee of the Regions (CoR), the Economic and Social Committee (ESC) have a potential role in treaty reform, formally by issuing institutional opinions and discussion papers on the IGC or particular issues under negotiation. The impact of these is doubtful, however, and in any case is different from the direct and personal involvement of representatives of the institutions mentioned above. Both CoR and ESC, as well as the EU's Ombudsman, were invited by the Convention drawing up the Charter of Fundamental Rights to present their views, but that was neither a particular privilege (since numerous other bodies and non-governmental organizations (NGOs) enjoyed a similar status) nor was it formally part of treaty reform (given that the Charter is not part of the EU treaties).

For present purposes, therefore, the article concentrates on the contribution to treaty reform made by the European Commission, the EP and the Council Secretariat – the three institutions which need to be regarded as the three main supranational actors in the process of treaty reform negotiations. However, before examining the role of these actors in the treaty reform process, we need to maintain an awareness of the way in which the negotiations are structured. Of particular significance here is the 'negotiation environment' and the fact that these are 'multi-level negotiations' (Stubb 1998: 15–17).

IGC negotiations are conducted on three different levels – official, ministerial and summit meetings (Forster 1998; Stubb 1998). The dynamics of negotiations on each of these levels are very different. On the political level, the IGC involves meetings of foreign ministers (monthly on the fringes of the General Affairs Council) and summit meetings of heads of state or government (at regular or special European Council). The foreign ministers' meeting is widely regarded as the least effective level, given the lack of time (usually one hour per month) to make headway in the negotiations (Gray and Stubb 2001). Actual political guidance and decisive positioning is therefore left to the European Council where final bargains are struck and where the threat of national vetoes – and of the ultimate failure of the talks – weighs heavily.

On the level of officials – the 'personal representatives of the heads of government' and their advisers – meetings occur on a weekly basis, but contact via e-mail, phone, etc. is practically continuous. Ideas, proposals, drafts and reactions to drafts are constantly being exchanged, and the intensity of these

contacts at the official level may rival or even eclipse the intensity of contact of officials within their institutional bureaucracy (interviews with conference participants). Here negotiations move slowly but methodically through the issues under debate, (re)constructing the agenda, shaping decisions, indeed, where possible, taking decisions in advance of formal approval from the political level. The political level is left to debate, and to decide on, those issues which could not be resolved by officials. While it is the 'grand bargaining' at the political level that is the traditional focus of intergovernmentalist theorizing, the more mundane, slow-moving and technical negotiation at the official level clearly has its place in treaty reform. As we will see below, the difference in the length of these processes – on the official level months or years, on the political level hours or days – has a major impact on the nature of negotiation, and on the role of supranational actors in them. Clearly, EU treaty reform negotiations are more complex, and involve more levels, than the liberal intergovernmentalist image of 'two-level' games suggests (Falkner 2002b).

The analytical challenge in this respect is not in deciding whether the political or the official level of negotiations is more important, but rather to establish the relationship between them. At the extreme, the link is a weak one, whether that is because months of negotiations are 'thrown out of the window' by the European Council (Gray and Stubb 2001: 13) or because the political leaders do not even discuss the issues on which agreement has been reached previously. But apart from such extremes, there are linkages between political and official levels, which means that a comprehensive analysis of treaty reform will need to look at both levels in order to come to a balanced judgement. Thus, in looking at the role of supranational actors in these negotiations, we will also focus on both the official and the political level. Clearly, the opportunities for, and the implications of, their involvement are very different on either of these two levels of negotiation.

## THE EUROPEAN COMMISSION AND EU TREATY REFORM

The significance of the European Commission in the EU's policy process is well documented and widely recognized. Even though the Commission does not actually decide on secondary legislation, its monopoly of initiative provides it with immense power to influence the shape of policies, and thereby have an impact on the process of integration which is independent of that of the member states (Christiansen 2001b). Additional resources, including its relations with interest groups and its role in monitoring compliance with EU legislation also help to put the European Commission at 'the heart of the European Union' (see, for example, the contributions to Nugent 2000 or Holman 2001).

With respect to treaty reform, the picture is different. Clearly, the Commission is not as central here as it is in the day-to-day policy process. There is also much less empirical study of its involvement in IGC negotiations, though

recent research has sought to redress the traditional paucity of research on Commission activity in the context of IGCs, albeit with contrasting results. Whereas liberal intergovernmentalists, as mentioned at the outset, have dismissed the potential of 'informal entrepreneurship' by successive Commission Presidents (Moravcsik 1999; Moravcsik and Nicolaïdes 1999), other authors have painted a more nuanced picture and argued that the Commission's presence in the negotiations makes a difference (Ross 1995; Dinan 2000; Christiansen and Jørgensen 1998; Gray 2001; Budden 2002; Falkner 2002a).

This section, in seeking to conceptualize the role of the Commission in treaty reform, will look at the following aspects: first, the Commission's internal management of participation in the negotiations; second, its potential for influence in the course of the negotiations, distinguishing between the different dynamics of the political and official levels; and third, the Commission's role in the legitimation of the result of any treaty change. The key arguments made here are that the importance of the Commission as an actor in treaty reform is derived from a) its potential for advocacy and leadership before and during the negotiations; b) the involvement of Commissioners and officials in the social process which long-term negotiations constitute; and c) its part in the legitimation of treaty reform and its outcomes. These are arguments which relate to, but go beyond, the recognition of the Commission's role in the liberal intergovernmentalist design (Moravcsik 1999: 276).

The internal distribution of responsibility has changed from one IGC to another, but the Commission President takes overall charge of its negotiating stance. In the past two cases, the IGC was part of the portfolio of a specific Commissioner (Oreja during the 1996–97 IGC, Barnier during the 2000 IGC). In addition to the *cabinets* of the President and the responsible Commissioner who shadow the negotiations, a designated IGC Task Force conducted the day-to-day management of Commission input in the negotiations, overseen by a steering group composed of senior officials. It was on this level that the bulk of internal Commission decision-making took place in these IGCs (Gray 2001).

However, much depends on the Commission President, in order to raise the public profile of the Commission's input, to ensure a coherent and consistent negotiating line and to translate the role played by the Commission on the official level into results on the political level, especially in the context of the European Council. In the aftermath of the crisis of the Santer Commission and the dismissive treatment of the Prodi Commission – and of Prodi himself – by the French Presidency at Nice, the role played by Jacques Delors in IGCs is easily forgotten. Unlike Santer and Prodi, Delors had a close and personal involvement in all aspects of the IGC negotiations, and managed an enormous amount of detail with the help of a small group of close advisers (Ross 1995). In that respect, he provided considerably greater personal input and top-down supervision of Commission involvement in treaty reform than either of his successors.

As a result, the experience of the IGCs leading to the Single European Act (SEA) and to economic and monetary union (EMU) demonstrated not only how the Commission under the resourceful and effective leadership of Delors was able to influence the substantive proceedings in these negotiations, but indeed how instrumental the Commission was on these occasions in launching the process of treaty reform and bringing it to a successful conclusion (Dinan 2000). The 'entrepreneurial success' of the Commission on the occasion of the SEA negotiations is acknowledged even by intergovernmentalists, though here it is considered to be a rare and exceptional event that was not repeated on previous or subsequent occasions (Moravcsik 1999: 299).

In fact, the Commission's very 'right' to participate in an IGC was established in the 1985 IGC. It is still not a formal provision of the treaty, but an established practice. This is due not only to the precedent which Delors established in the course of the SEA negotiations, but also to the acknowledgement among member states that the Commission presence during the IGC is desirable, whatever disagreements individual member states have with the position taken by the Commission on specific issues. But with the waning of the Commission's political weight from the end of the Delors tenure onwards, its ambition – and its influence – in IGCs have also been reduced. Neither the Santer nor the Prodi Commission entered their respective IGCs with anything like the clout of the first Delors Commission. This is, on the one hand, a reflection of the significance of the personal qualities of the Commission President – and Delors' leadership credentials are well documented. Indeed, Delors was particularly strong and influential in European Councils – the arena in which the Commission possesses the least formal powers. But it is also a reflection of the interaction between the general climate of the integration process, and the Commission's place therein, and the fortunes of the IGC negotiations.

It is evident here that the Commission's participation in IGCs has served two distinct functions: on the one hand, to provide substantive inputs to the debate, in order to further the communitarization of the integration project. On the other hand, the Commission can make a useful contribution to the negotiations in its traditional role as a mediator and broker among different member state positions. This twin role, however, creates a tension in the perception – and self-perception – of the Commission's role in the IGC process, as these two roles are, to a significant extent, mutually exclusive: while a well-defined and officially sanctioned position may strengthen the hand of the Commission's negotiators in terms of pursuing that specific agenda, it weakens their ability to mediate between different and possibly opposing positions among the member states. Mediation is an important part of the Commission's role in the IGC, but the explicit statement of aims contained in its Opinion makes it difficult to appear as a mediator, and even more so to act as an 'honest broker' (Gray and Stubb 2001).

This tension between contrasting roles in the negotiations goes some way to explaining the difficulty of assessing the Commission's influence in the IGC:

if 'successful' as a mediator, the Commission may well fail to pursue its own agenda, and vice versa. Statements about the 'success' or otherwise of mediation efforts are therefore very difficult to make, given also that this role can be taken over more effectively by other players, in particular, as we shall see, by the Council Secretariat and the Presidency.

If at all, mediation by the Commission is more likely to occur on the official level, where a number of other factors come into play. On this level, for example, the roles of expertise and of ideas have a greater influence on the course of the negotiations, though this depends on the subject matter under discussion, the dominant negotiating style and the individuals involved in the negotiations. If conditions are right, the possession of specialist knowledge about the issues being debated and the provision of good ideas about possible solutions may be divorced from the power associated with member states.

Admittedly, this may not be the typical situation in the IGC, but nevertheless certain aspects of an IGC have these characteristics. It is in such situations that the quality of arguments rather than the political power associated with those making them carries the day. These are instances in which representatives of smaller member states or Commission officials can be especially effective – if indeed they possess the expert knowledge and/or powerful ideas which can sway the meeting (Gray 2001).

The significance of expertise is evident from the way in which the Commission's input in IGCs has been more effective when substantive issues are being debated in areas in which the Commission possesses prior policy-making experience. Thus, with regard to the SEA IGC and the IGCs on European political union (EPU) (at least in areas of social policy; see Falkner 2002a) and EMU, the Commission played an influential role in the negotiations, whereas – unable to match the expertise available to member state representatives – the Commission was less effective in areas like foreign and defence policy or internal security which were the subject of the more recent IGCs (Dinan 2000). Numerous other factors play into the degree of the Commission's effectiveness in the negotiations, but there is a clear correlation between the tendency of the more recent IGCs to be more occupied with institutional rather than economic issues, and the decline of the Commission's influence in them.

One area which deserves special attention here is that of negotiations about the powers of the Commission itself. Here, one would expect the Commission to be in a particularly strong position, assuming the Commission representatives' privileged knowledge of the operation of the institution, and a coherent view of its role in the EU's institutional architecture.

But in actual fact, there has been no such coherence of view as the Commission has long been divided on the question of its own size, and, as a result, it has been rather ineffective with respect to the issue of reform of the Commission which had been debated in both the 1996–97 IGC and the 2000 IGC. With respect to the question of the number of Commissioners, which

was a central issue in the IGC and such a divisive point at Nice itself, the Commission did not manage to forcefully push a unified position. In fact, in the Commission's own Opinion on the IGC, two 'scenarios' rather than a single position were being presented (Commission 2000). This reflected a College of Commissioners deeply divided on this issue, and an institution that was unable to reconcile these differences and generate an effective negotiating position. As a result, in this area of central significance for its own operation, the Commission was hamstrung and reduced to reacting to the flow of the debate among member state representatives.

A further issue concerns the Commission's role in the advocacy of treaty reform. Before substance is discussed, the case for holding an IGC has to be made in the first place. In 1985 advocacy of an IGC was primarily provided by the Commission and based on the 'need' to re-launch Europe in the face of growing competition from Japan and the US in the global economy. The 1991 EMU IGC followed in a similar mould, and again was based on sustained pressure from Delors to complete the single market with a single currency. The IGC on EPU, on the other hand, was a reaction to the end of the Cold War and to German re-unification. Both Amsterdam and Nice have been presented as responses to the 'need' to prepare the EU for enlargement, though critics have complained that neither treaty reform has fully achieved that aim.

The 'need' for an IGC, however, is a matter of political judgement rather than an objective choice. The national veto, which elevates the position of member states once negotiations have begun, is suspended here: IGCs can be called on the basis of a majority vote. Rather than requiring consensus among member states, the launch of an IGC depends on the generation of sufficient momentum among governments that ensures support among the majority of member states. Pressure for treaty reform can come from a number of quarters, be they national governments, supranational institutions or indeed NGOs and civil society generally, and the Commission has always been at the forefront in making the case for reform.

This is not a formality. In the past, plans for IGCs have had to face scepticism, hostility and opposition from individual member states, and even though the spotlight tends to be on the discussions and the decisions *during* the IGC, the actual calling of an IGC is a decision that is arguably at least as important. In the cases of the Amsterdam and Nice IGCs (and of the IGC 2004) this has been less of an issue since provision for them was made in previous rounds of treaty reform.

Thus, advocacy of treaty reform may have become less important in the course of the 1990s, as the timing of future IGCs has become part of each treaty change, generating a sense of inevitability that one instance of treaty reform will follow the next. By the same token, however, the need to legitimize IGCs has become more important. Citizens wonder why it is that, as soon as one set of treaty changes is ratified and being implemented, discussions about

the next are about to be begin. In fact, in the case of the Nice Treaty, the 'post-Nice process' involving a wide-ranging debate about the future of Europe is in full swing when successful ratification of the treaty is nowhere in sight (thanks also to the Irish electorate).

A quick succession of IGCs can be rationally explained, and may indeed be legally required, because of 'leftovers' – items which cannot be resolved in one IGC and therefore are being postponed to a future IGC. But this is not a practice which is likely to win public approval, nor does it lend itself to the use of national governments who seek to return to the domestic public having gained a favourable outcome at the final summit – rather than having ended up postponing contentious decisions. That is why the image of a 'new' IGC, called because of a genuine need for further reform rather than to continue unfinished business, is a crucial device to legitimate the treaty reform process. And in maintaining the discourse legitimating the calling of an IGC on the basis of a 'need' for reform, and regarding the outcome as a success worthy of ratification, the complicity of the Commission is as important as that of national governments.

Incidentally, this argument about legitimation cuts both ways. Lack of Commission support for the IGC result generally, or lack of sensitivity to the political climate in individual member states during the ratification process, can do much damage to the legitimacy of treaty reform. Thus, on both occasions when electorates have rejected the ratification of treaty change, blame has been put *inter alia* on the Commission: in the case of the Danish 'No' to Maastricht in 1992, Jacques Delors was alleged to have made comments about the further extension of Community competences which were regarded as damaging to the 'Yes' campaign (Dinan 2000: 265). More recently, the Commission was accused of a similar insensitivity to domestic opinion in Ireland when it criticized the Irish government for unsatisfactory fiscal policies in the run-up to the Irish 'No' on Nice in 2001 (Laffan 2000: 5).

These examples demonstrate not only the numerous ways in which the Commission is, directly or indirectly, involved in the process of treaty reform. It also drives home the earlier point about the linkages between treaty reform and policy process. This brings us back to the starting point of this examination of the Commission's role in treaty reform: the centrality of the Commission's performance in the ordinary policy process and in the making of secondary legislation contrasts with its more limited role in the context of IGCs. But there is no water-tight separation between these processes, and to the extent to which developments from one 'spill over' into the other, the Commission will either reap the benefits or, as the case may be, pay the price. Its representatives' familiarity with the organization of the treaties, their knowledge of the substance of EU policies and the policy-making process, and their experience in mediating between conflicting member state positions constitute resources which can be effectively deployed in the IGC negotiations.

## THE EUROPEAN PARLIAMENT AND EU TREATY REFORM

Like the Commission, the EP has a role in IGCs which lacks a strong legal foundation, but is based on established practice. If anything, its foothold on a place at the table is even more tenuous than that of the Commission. Two Members of the European Parliament (MEPs) (one from each of the two large parties) participate in the weekly administrative meetings as 'observers', but have been excluded from the informal sessions which are often more important than the official ones. During the monthly ministerial meetings on the IGC, the EP President will be invited to participate during the official opening, but then has to leave when the actual negotiations start (Gray and Stubb 2001: 7).

In the conference room, the EP observers' resources are more limited than those of any of the other participants, given their lack of access to extensive bureaucracies. MEPs have provided effective input in the negotiations, though this has been limited to the specific areas where issues of particular concern to and expertise of MEPs are concerned. A case in point were the discussions in the 2000 IGC on questions relating to political parties.

The expansion of the EP's legislative powers, from consultation via co-operation to co-decision, in the course of four instances of treaty change has been vast. Twenty years on, the constitutional agenda of the first directly elected parliament, culminating in the adoption of the 1984 Draft Treaty on Political Union, has been largely completed. Crucially, what the Parliament still lacks is a formal role in the treaty reform process, which would allow it to participate as fully in the constitutional politics of the EU as it does in the policy process.

In this respect, the adoption and expansion of a 'convention method' to treaty reform may hold out the promise of greater influence for the EP in the future. Membership of the Convention drawing up the Charter of Fundamental Rights included sixteen MEPs, equalling the combined number of participants representing member states and Commission. The Charter was proclaimed and signed at Nice by Council, Commission *and* Parliament. Details on the constitution and the powers of the convention preparing the 2004 IGC have yet to be decided, but on the basis of the experience of the Charter of Fundamental Rights there is scope for the EP to enhance its role in the treaty reform process, in particular as the agenda shifts to more explicitly constitutional issues. Individual MEPs as well as the Constitutional Affairs Committee have already issued demands to this effect – in the face of opposition from member states and Commissioners (*European Voice* 2001a, 2001b). So far, the EP's influence in treaty reform has largely had to rely on indirect channels. Three such channels can be distinguished and need to be examined in more detail: the party federations linking the EP to national governments, the commitment of individual national governments and parliaments to support the EP's aims, and the wider appeal to European citizens to

expand the EP's powers as part of a drive to enhance the democratic accountability of the EU.

The role of party federations in linking the EP party groups to national parties is increasingly evident. These federations constitute a two-way channel between the national and the European level: political parties in the member states will seek to influence 'their' MEPs, but MEPs in turn will communicate the nature of EU debates, and the need for transnational party positions to their domestic party headquarters. Moreover, party federations have helped to integrate political parties in the EU horizontally, engendering communication and exchange between national parties within the same party families and thereby helping to establish transnational party positions on EU issues. The EP party groups have had a crucial role in the process of the Europeanization of political parties.

With regard to the process of treaty reform, this has meant that party federations have the potential to contribute to the search for compromise solutions in the IGC. With respect to the SEA IGC, for example, research points to the influence exerted by the European People's Party (EPP) over the national governments headed by their constituent parties (Budden 2002). Similarly, in the run-up to Nice, Socialist leaders, including the premiers of eight member states, and including the head of the Socialist group in the EP, met in Biarritz in preparation for the discussion on the IGC and the European Council there (Party of European Socialists 2000). It is difficult to assess the direct impact of such transnational party meetings on the ongoing negotiations, though it can only be supportive of the search for compromise, working as they do as a counterweight to the entrenched national perspectives on the issues under debate.

The EP's constitutional agenda has predominantly focused on the identification of a 'democratic deficit' in the EU. The existence of such a 'democratic deficit' in the EU has long been acknowledged, among observers and policy-makers on the European level as well as on the national level. The issue had been thrown in stark focus when, after 1979, the EP was the only EU institution being directly elected, yet had little say in the making of legislation having a direct effect on European citizens. In response not only to demands from the EP – most explicitly in the form of the 1984 Draft Treaty – but also to a general recognition that the legitimacy of the integration process required greater attention to its democratic credentials, the EP's powers have gradually been expanded.

The EP thus benefited from the effects of a public discourse about the EU's 'democratic deficit'. This discourse has been widespread and deeply entrenched ever since the mid-1980s. As such it is an example of the kind of collective idea, discussed in the Introduction to this Special Issue, which hardly needs to be explicitly invoked – it has become part of the public understanding of the way in which the EU works. Even though the diagnosis underpinning the 'democratic deficit' contains several distinct problems, including, for example, the distance between citizens and EU institutions, the lack of transparency of

the Council of Ministers or the unelected nature of the European Commission, discussion about remedies has concentrated on the expansion of parliamentary powers. Little has changed on these other fronts of the democratic agenda, yet the powers of the Parliament have changed beyond recognition.

Clearly, the EP has benefited from the way in which it (as well as other actors) has managed to establish a link between a general public discourse about European democracy and a specific programme of institutional reform. However weak or ineffective the EP may have been in the proceedings of IGCs itself, it has undoubtedly been successful with respect to agenda-setting. Evidence for this is particularly strong when, as was the case in the preparation of the 1996–97 IGC, the IGC is preceded by a period of institutionalized deliberation about its agenda. Thus, one observer, while admitting the weakness of the EP representatives during the IGC itself, has pointed out that they were 'very influential' in the Reflection Group, and that many of the ideas of the socialist EP representative in the Group were to be found in the Group's report (Stubb 1998: 19).

In the course of IGC negotiations, collective ideas, promoted *inter alia* by the EP, about the need to counter the EU's 'democratic deficit' have had to be translated into political action. Here, all governments, over time, came to accept that something would need to be done about the EU's lack of democratic accountability, in particular after the Danish people's 'No' to Maastricht and the effect that this had on the legitimacy of the integration process more generally. But while all member states have eventually come to agree to (or accept) the need to expand the powers of the Parliament, some have stood out as 'champions' of the EP. Initially, i.e. on the occasion of the 1985 IGC, this was Italy, no doubt also because Altiero Spinelli, the MEP who had masterminded the 1984 Draft Treaty, commanded strong loyalties in the Italian parliament.

The support from Italy included a commitment to ratify the treaty revision arising from the IGC only if the EP itself also gave its approval. This commitment, since then accompanied by a similar pledge from the Belgian legislature, provides the EP with an indirect veto over the results of treaty change. It is difficult to assess the strength of this, as yet, untested, quasi-veto: on the one hand, the EP has tended to make substantial gains in the course of treaty reform but, on the other, the EP has not actually voted against instances of treaty revision even if they did not meet its main demands.

The potential of this 'indirect veto' for the EP has been evident again in the aftermath of the Nice Treaty, which had been criticized by MEPs immediately after the summit (European Parliament 2000: para. 4). More recently, the German EPP MEPs have linked demands for the inclusion of specific aspects of the EP agenda in the debates and negotiations of the post-Nice process with the threat of a vote against the treaty (*European Voice* 2001c). If a majority of MEPs were to back this call, it would drive home two points: first, that treaty reform is not temporally or geographically limited to the IGC conference rooms. The negotiations of one IGC may lead to a treaty change, but their

after-effects have a habit of 'spilling over' into the preparation of the next round of negotiations. Second, that the EP can be an effective player in this process, bypassing its weakness in the IGC conference room by making use of alternative channels open to them.

## THE COUNCIL SECRETARIAT AND EU TREATY REFORM

The EP's role in treaty reform contrasts with that of the Council Secretariat. Unlike the EP, the Council Secretariat does not seek undue public exposure of its role in treaty reform, concentrating instead on working quietly inside the conference room. But, like the EP, the Council Secretariat has gained additional powers and responsibilities in recent rounds of treaty revision, in particular with respect to the establishment of the EU's foreign, security and defence institutions – a development that, while reflecting concern among member states that such powers should not be accrued by the Commission, also underlines the ability of the Council Secretariat to provide institutional solutions in such a context.

Participant observers of the IGCs leading to the Amsterdam and Nice Treaties have already pointed out that the Council Secretariat is, together with the Presidency, 'one of the two key players' in any given IGC (Gray and Stubb 2001: 6). They also remark that there is a 'fluid relationship' between these two actors, where 'on some issues the Presidency takes the lead, {while} on others it is the Council Secretariat which sets the agenda' (page 6).

Staff from the Council Secretariat provide the administrative services for the IGC, in the guise of a 'conference secretariat' (Galloway 2001). As such, its role in the IGC proceedings is similar to that in the context of secondary law-making among the EU institutions, and many of the routines and practices governing the IGC negotiations are 'imported' from the established practices of the Council of Ministers.

In examining the Council Secretariat's involvement in IGCs, a broad distinction can be made: on the one hand, the Secretariat provides logistical support, in terms of provision of meeting space, secretarial resources, etc. On the other hand, there is a more substantive side to the Secretariat's work. This concerns assisting the Presidency in various aspects of its responsibilities. This includes, most notably, the drafting of the agenda and the minutes of the meetings at the various levels of negotiation, the drafting of summary reports and work on the draft treaties – tasks which require a great deal of the 'technical' legal expertise and specialist experience which the staff of the Secretariat possess, but which are also highly sensitive and political.

Arguably the most important aspect of the Council Secretariat's role in IGCs is the provision of legal advice to the conference generally, and to the Presidency in particular. The Council Secretariat's legal service is designated as the legal service of the conference, thus gaining a privileged position, if not a monopoly, with regard to the interpretation of new or revised legal articles being discussed. This puts the legal staff of the Council Secretariat in a crucial

position: in the absence of recourse to judicial review of individual aspects of the negotiation results, the 'legal advice' of the Council's legal service on proposals for draft articles is authoritative and can therefore constitute a constraint on the possibilities for treaty reform.

The Council Secretariat's acquisition of this role as the provider of legal advice to the IGC may seem like a 'natural' choice of governments, but matters are probably less innocent than that, given that such decisions concerning organizational detail are drafted by the Council Secretariat itself. The SEA IGC, convened under the influence of Delors' preferences for a negotiation format, was assisted by a legal service that included the legal advisers of both Commission and Council Secretariat. By the time of the next IGC, the Council Secretariat was made solely responsible for legal advice, and this has remained the practice ever since.

The capacity of the Council Secretariat to intervene in the negotiations – if requested – through the provision of legal advice stands alongside the more general, and substantive, advice which the Council Secretariat staff can, and do, provide in the negotiations. Such an ability to provide advice, and the willingness of the Presidency and the other delegations to accept it, are derived from two aspects of the Secretariat's involvement in IGCs. First, the Council Secretariat acts as the institutional memory of the conference. As the official record-keeper of the conference, the Secretariat has easy access to past discussions, documents and papers, and can use these, as appropriate, in order to influence ongoing negotiations – a resource which it shares with the European Commission (Gray 2001).

A second, related, point concerns the personal experience of the Secretariat staff involved in the IGC negotiations. In contrast to the situation in member states, where political change and administrative turnover in foreign offices tend to alter the composition of national delegations, the staff in the Council Secretariat unit responsible – the 'Directorate for General Political Questions' – have experienced greater continuity and therefore possess greater personal knowledge of past IGC records. Possessing both the institutional record of, and personal insights into, the intricate and complex matters provides the Council Secretariat staff with a valuable resource in the negotiations.

However, statements about the potential influence of the Council Secretariat have to be qualified on a number of counts. First, the opportunities arising for the Secretariat staff to influence the negotiations lie predominantly in the area of fine-tuning the detail of treaty revisions, not in the decisions about the broad outlines of treaty reform. That is one reason why the involvement of the Council Secretariat has hardly reached the public limelight. Nevertheless, such influence in legal detail may have significant political significance and deserves to be addressed systematically in research on treaty reform.

A second, more important qualification concerns the Secretariat's relationship with the Presidency which, as already noted, is a flexible one. Much of what has been said above regarding the significance of the Council Secretariat's role in drafting agendas and meetings, providing legal and other advice, and

fine-tuning the detail of negotiations crucially depends on the permissiveness of the Presidency to provide such opportunities for influence. That is why, ultimately, we can only speak of the *potential* influence of the Secretariat. Formally, the Secretariat is charged with *assisting* the Presidency, and its influence is realized if and when a Presidency does indeed rely on the assistance which the Secretariat can offer.

In the past, this is what Presidencies have usually done, though there are also noteworthy exceptions. Until the French Presidency in the second half of 2000, any period of IGC negotiations had been presided over by one of the smaller states, and these generally welcome the assistance which the Council Secretariat can provide, given the pressure on a country's resources during the Presidency. On that basis, the details of IGC negotiations have usually been managed in 'Brussels', i.e. in close co-operation between the Permanent Representation of the member state holding the Presidency and the staff of the Council Secretariat. This co-operation routinely stretches to the first draft of the minutes of meetings, the conclusions of ministerial and European Council meetings, or even draft treaties being written in the Council Secretariat. Given the significance which is usually attached to the role of the Presidency in steering the IGC, this 'behind the scenes' influence of the Council Secretariat is remarkable, as is the lack of empirical research into the effects of such influence.

The French government, however, in taking over the Presidency in July 2000, decided to move day-to-day responsibility for the IGC from Brussels to Paris, and maintained exceptionally close control over aspects of the negotiations which would usually be done by the Council Secretariat. The French pushed the debate on the substantive issues ahead, but there were also claims that, before and during Nice, the French Presidency was heavy-handed and used – some might say, abused – its privileged position in order to further its particular agenda. In any case, this first IGC Presidency of a large member state demonstrated the ability of the state in question to take over the day-to-day running of the negotiations from the Council Secretariat – as well as the problems which such a strategy entails.

Another example of such a 'nationalization' of the IGC Presidency was the infamous first Dutch draft during the Maastricht IGC on EPU. In drafting the EPU treaty in the Dutch foreign ministry, Dutch Europe Minister Piet Dankert departed sharply from the previous Luxembourg draft and antagonized the majority of member states. In the event, the draft failed in moving the negotiations ahead – in fact, they moved back to the previous text composed by the Luxembourg Presidency *with* the assistance of the Council Secretariat. Such examples are exceptions which serve to emphasize the rule, which is the close co-operation between Presidency and Council Secretariat in the drafting of treaty revisions. And they also demonstrate that a Presidency is actually more effective in moving the negotiations towards a successful conclusion if it relies on the assistance of the Council Secretariat rather than attempting to 'go it alone' (Gray and Stubb 2001: x).

As the EU appears to move to a more open form of negotiating treaty change, via the debate about the future of Europe, and the adoption of a convention method to prepare the 2004 IGC, it might be asked what such changes hold in store for the Council Secretariat. One might assume that a greater degree of openness would diminish the role of the Secretariat, and therefore also its potential for influence. However, the experience of the Fundamental Rights Charter Convention seems to suggest otherwise. Here, again, the Council Secretariat, providing the Convention's secretariat and legal service – as they had done for the Reflection Group in 1995 (Lipsius 1995) – turned out to be an influential player in the proceedings (de Búrca 2000). Indeed, one could argue that because of the higher number of participants, the greater choice of options, and the absence of the Presidency as a pivotal player, a future convention may require more, rather than less, input and 'assistance' from the Council Secretariat.



## CONCLUSIONS

The study of supranational agency confirms the need to analyse treaty reform as a process, to consider its structural elements and the way in which structures interact with action. The present examination of the role of supranational institutions has helped to point to important aspects of the treaty reform process which are only marginally addressed by traditional analyses, if at all. In particular, four areas in which the activity of supranational actors can make a difference have been identified.

First, IGCs have a structure consisting of rules governing the interaction among players. Supranational institutions may not be strong players with respect to the negotiation of outcomes, but they have considerable influence in the setting of these rules, and therefore in the structuring of IGCs. Many of these formal and informal rules rely on established practices governing EU policy-making, and have been 'imported' as a side-effect of relying on the existing institutional structure of the EU. This includes the use of forums like the European Council and the General Affairs Council for the debate of IGC matters, the familiarity of participants – whether representing member states or EU institutions – with existing procedures but also the very involvement of supranational actors in the negotiations which have both an interest in and a habit regarding extending these working methods to the IGC. Thus, Commission President Delors had a major role in the setting-up of the first, major IGC of recent times, not only in terms of substantive issues, but also in terms of the format and the structure of the talks. Without such a strong Commission influence at that time, probably an entirely different format of negotiating treaty reform would have evolved. Less strikingly, but much more consistently, the involvement of the Council Secretariat and of its legal service have ensured that IGC negotiations have remained wedded to the standard operating procedures of the EU, despite their different constitutional status.

Second, a particular aspect of this institutionalization is provision for a process of agenda-setting which is fairly open, and which is also tied to the existing EU policy process. It includes consultation of other institutions, participation of their representatives in arenas of 'structured reflection', such as the Reflection Group or a convention, and also permits them to commission special reports from independent advisers or 'wise men'. This participation in the agenda-setting phase of the IGC in turn provides a privileged platform from which to generate a wider public discourse about the need for, and the aims of, EU treaty reform – an opportunity which Commission and Parliament have used to the full. Even if such ploys do not have a direct effect on the IGC negotiations at hand, they tend to create an air of expectation which means that issues will be addressed in a future IGC.

Third, supranational institutions have a special role in the legitimation of treaty reform, owing to their particular standing among the IGC players. They stand apart because they do not possess formal veto rights over the outcome of the negotiations, but at the same time they can claim to represent the common European interest, and to protect this against particularistic challenges by national governments. Because of this they occupy a certain moral ground (though not necessarily a higher moral ground) which may induce specific dynamics both inside and outside the conference room. On the inside, it strengthens the legitimacy of a country's, or group of countries', negotiating stance if they are able to point to support from the Commission in presenting proposals or opposition to proposals. On the outside, the verdict of Commission or EP on the agreed treaty change as well as their general activity within the EU have an impact, positive as well as negative, on the ratification process.

Fourth, representatives of supranational institutions in the IGC are participants in a social process. IGC negotiations are, after all, not conducted by 'member states' or 'supranational institutions', but by a select group of individuals. Accordingly, a number of observers have pointed to the significance of personal relations among the conference participants (Stubb 1998; Gray and Stubb, forthcoming; Gray 2001). At the same time, the duration and intensity of an IGC engenders among this group an *esprit de corps.* In terms of their unrivalled, specialist knowledge of the substance and working methods of the IGC, and the value which they come to attach to the outcome of treaty reform, this group can be considered as an epistemic community. This development is one particular aspect of the social process of European integration which occurs at the domestic as well as the transnational European level – a process whose relevance for future research is recognized by rationalists and social constructivists alike (Moravcsik 1999: 302; Christiansen *et al.* 2001).

This transnational community of negotiators conducts the everyday IGC proceedings in the face of, at times, opposing political positions imposed by national capitals. Yet they are also operating in an environment in which the continuous and long-term interaction among group members becomes a

unifying element and where ideas and knowledge, independent of their origin, can have an impact on the negotiations – notwithstanding the potential for subsequent vetoes or disagreements on the political levels. Examples of this can be found with respect to each of the three institutions: regarding the Commission in the case of the single market or monetary union; regarding the EP in matters concerning its own competences; and regarding the Council Secretariat with respect to the institutional, procedural and legal matters.

The argument here is simply that the involvement of supranational actors in the treaty reform process matters, and that evidence of their influence can be found along a number of different avenues. This does not elevate them to the status of national governments, and the argument here is *not* that one or the other ought to be seen as the n-th member state in the IGC. However, their participation in the IGC has an influence on the format, the conduct and the dynamics of the negotiations. That is why their role in the treaty reform process deserves more systematic investigation. Here, only the broad outlines of the involvement of Commission, Parliament and Council Secretariat could be provided. Further research along these lines will expand our empirical knowledge about the role of supranational actors in treaty reform, and thus contribute to an encompassing understanding of this process – an aim that is all the more important as treaty reform is set to remain on top of the EU's agenda for the foreseeable future.

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