

Towards a new method of constitutional bargaining?

**The role and impact of EU institutions in the IGC and convention
method of treaty reform.**

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1 - Introduction

‘We are a Convention. We are not an Intergovernmental Conference because we have not been given a mandate by Governments to negotiate on their behalf the solutions which we propose. We are not a Parliament because we are not an institution elected by citizens to draft legislative texts. That role belongs to the European Parliament and to national Parliaments. We are a Convention. What does that mean?’

Valery Giscard d’Estaing at the inaugural meeting of the Convention on the Future of Europe, Brussels, 28 February, 2002.

Treaty reform has traditionally been conducted by governmental representatives behind closed doors in intergovernmental conferences (IGC’s). In a significant break with this method, the EU Charter was negotiated in a parliamentary-like, open ‘convention’ in parallel with the 2000 IGC. Due to the perceived failure of the 2000 IGC to solve the problems raised by the upcoming enlargement of the EU, and the relative success of the EU Charter Convention, it was decided to create a second convention to prepare the next IGC.¹ This European Convention² is currently debating a draft Constitutional Treaty that will replace the existing treaties, and perhaps relegate an upcoming IGC to being a mere rubber-stamping exercise.

Does this change in the method of negotiating treaty reform matter? This paper investigates the impact of the change in the negotiating context and manner they are conducted for the ability of the Commission, Council Secretariat, and European Parliament to gain influence upon the process and outcomes of treaty reform negotiations. Is the convention method really a new form of constitutional bargaining in the EU, or is it business as usual, where national representatives dictate the broad bounds of the treaty, and where the Presidency, Council Secretariat, and sometimes the Commission can exploit their institutional positions to shift outcomes within these bounds?³

The argument in this paper proceeds in five steps. First, as most theories of integration ignore the impact of actual negotiation processes,⁴ this paper first puts forward in section 2 a bargaining model that theorizes on how treaty reform negotiations can affect how actor bargaining resources and preferences are translated into influence over outcomes. Section 3 briefly reviews how treaty reform

¹ - Hoffmann, 2002.

² - The full name of the second convention is the Convention on the Future of Europe.

³ - See Beach, 2002b, 2003.

⁴ - See the discussion in Beach, 2002b.

negotiations have traditionally been conducted since 1985, and the major innovations introduced with the convention method. The section then develops three ‘ideal types’ of the method of treaty reform negotiations. Thereafter section 4 debates the differences in the *possibilities* for EU institutions to gain influence over outcomes created by the changes in negotiating context. Following this is a brief section on whether the EU institutions were successfully able to translate these possibilities into real influence in the treaty reform negotiations.

The empirical findings show that the change in negotiating context has mattered. This change has different effects for the different EU institutions – significantly strengthening the European Parliament (EP) and Commission, but weakening the Council Secretariat. While the Commission’s possibilities for gaining influence have been in the decline since mid-1991, the Commission has gained a much stronger role in the convention method. Yet there are few indications that the Commission’s actual level of influence over outcomes has significantly increased, and for example in the present Convention there are signs that the ability of the Commission to gain influence has been significantly impaired by its inconsistent positions and internal disagreements.

The Council Secretariat’s role and impact has been in the ascendancy since the 1990-91 IGC’s. The Council Secretariat was also central in the first convention due to its central role in the drafting process. But in the present Convention the Council Secretariat has been the major loser among the EU institutions, with the drafting role being given to a conglomerate Convention Secretariat composed of officials seconded from the secretariats of the Council, Commission and EP, together with several national officials.

In contrast, the EP has been the main winner in the shift from the IGC to the convention method. The EP has had little if any role in past IGC negotiations, whereas the EP has gained an accepted role in the convention method, and has had a large contingent in the conventions.

The conclusion discusses these findings and their implications for the way in which we study treaty reform negotiations in the EU, pointing the direction towards more explicit theoretical models that detail how different negotiating contexts are different, and what impacts these differences have upon outcomes.

Section 2 – A bargaining model for how negotiation processes matter in EU treaty reform

How does the negotiation process affect the ability of EU institutions to gain influence over outcomes in treaty reform negotiations? In this section I will introduce a bargaining model based upon the assumptions of actors being boundedly rationality, and that negotiations have relatively high transaction costs. The model shows how negotiations matter for the ability of actors to translate their bargaining resources into influence over outcomes. Influence is here defined pragmatically as the successful use of bargaining resources to change an outcome to something that it otherwise would not have been in the absence of the action.

The following first discusses the theoretical significance of the bargaining resources possessed by EU institutions (see figure 1). Thereafter two categories of intervening variables than can affect how these bargaining resources are translated into influence will be put forward. In the first category are three contextual variables relating to the nature of the particular EU treaty reform negotiation. These contextual variables define the range of intervening strategies available to EU institutional actors during the negotiation process. The second category of intervening variables looks at how the EU institutions play their cards in the negotiations, focusing on the ability of EU institutional actors to either shape the agenda, or to play a brokering and mediating role in the negotiations.

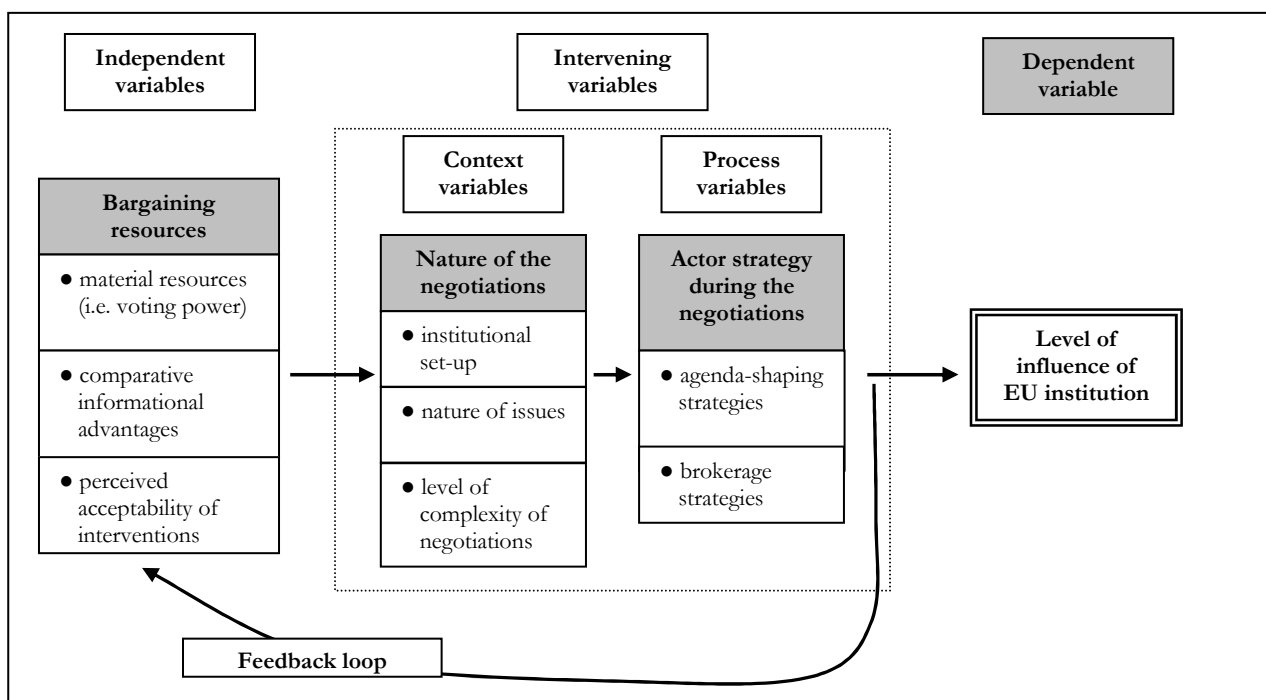


Figure 1 – A bargaining model of the importance of the negotiation process to the ability of EU institutional actors to gain influence in treaty reform negotiations

But first, why should negotiations on treaty reform matter? Most of the literature on European integration has all but ignored the analytical importance of the processes whereby treaty amendments are negotiated.⁵ Existing research has primarily focused on explaining outcomes based upon the input of demands for integration – in effect ‘black boxing’ the importance of the actual negotiation process.⁶ For example, Moravcsik’s liberal intergovernmentalist approach claims to be able to explain IGC outcomes based upon patterns of actor dependence upon agreement (input).⁷ Based upon the Nash bargaining solution drawn from co-operative game theory, Moravcsik argues that actors in treaty reform negotiations split utility gains symmetrically between themselves based upon their relative levels of dependence upon an agreement.⁸

For the Nash bargaining solution to be an accurate explanation of a given bargaining outcome, the following assumptions must hold: first, negotiations must have low transaction costs, with actors having comprehensive rationality coupled with close to perfect information; and secondly that factors intrinsic to the negotiation process itself must not privilege any actor. While these restrictive assumptions are rarely fulfilled in an actual bargaining situation, as Nash himself candidly has pointed out,⁹ Moravcsik has attempted to empirically demonstrate that as the gains of co-operation for governments are high *relative* to transaction costs, this gives governments incentives to provide all of the entrepreneurial functions necessary to reach an agreement, and therefore we can proceed as if the transactions costs were close to zero¹⁰ – in effect ‘black boxing’ the significance of the negotiation process itself.

Yet the reality of treaty reform negotiations seldom lives up to these strict assumptions. Treaty reform negotiations are often, despite extensive preparation at both the national and EU-level, poorly defined negotiating situations, with national representatives possessing incomplete knowledge of their own preferences and those of other actors’, and details of the multitude of complex issues on the agenda.¹¹ This is very evident in the present discussions in the EU Convention, where 1,087 proposed

⁵ - For a more in-depth review of the literature, see Beach, 2002b.

⁶ - There are a few notable exceptions, including Lindberg and Scheingold, 1970, and more empirical oriented works such as Stubb, 2002 and Svensson, 2000. Yet most of the work on treaty reform, be it neofunctionalist or intergovernmentalist, has explained outcomes based upon converging patterns of national interest.

⁷ - Moravcsik, 1993, 1995, 1998.

⁸ - Moravcsik, 1998:61-64.

⁹ - Nash, 1950:155; 1953:130.

¹⁰ - Moravcsik, 1998, 1999a, 1999b.

¹¹ - See Stubb, 2002 for more on IGC negotiations. See Pollack, 1997 for more on daily EU policy-making. For more on complex negotiations more generally, see Midgaard and Underdal, 1977; Hampson with Hart, 1995; and Simon, 1997.

amendments to the first 16 draft articles have been received by the Presidium – creating a situation where few if any members of the Convention have a fully synoptic view of the state-of-play.¹²

And even if we could proceed as if actors were comprehensively rational, possessed close to perfect information, and that the negotiation process itself has low bargaining costs, there are factors intrinsic to the negotiation process, such as the possession of a privileged institutional positions, that potentially can privilege one actor vis-à-vis others. For instance, actors sitting in the Presidium of the EU Convention have privileged opportunities to shape the agenda in comparison to normal members of the Convention (see below for more). Further, how actors play their cards matters. For example there is evidence in the negotiation of the Treaty of Amsterdam in the 1996-97 IGC that France did poorly in the negotiations due to the incoherence and ill-prepared nature of its positions.¹³

It is therefore necessary for analysts of EU treaty reform to open up the negotiation ‘black box’ to investigate how the structure and conduct of the process matters. How then can negotiations on treaty reform matter?

2.1. The independent variables – bargaining resources

Material bargaining resources

As shown by rational choice institutionalism, the potential impact of voting power of actors depends upon the decision-making rules employed in a negotiation. The voting power of a given actor is naturally greater in unanimity than in majority voting, other things equal.¹⁴ Further, despite all actors in both the convention and IGC methods being *formally* equal in the weight of their vote, it is also evident in practice that the *real* weight or impact of actor votes is linked to their perceived economic and political strength. For example, disapproval by either the German or French government has a greater potential impact than a similar disapproval by a small Member State such as Portugal or Denmark. A Commission weakened by political scandals and a weak president has less de facto weight than a European Parliament that enjoys democratic legitimacy.

¹² - See CONV 574/03, ‘Reactions to draft Articles 1 to 16 of the Constitutional Treaty – Summary Sheets.’. Brussels, 21 February, 2003. Also Financial Times, 28.02.03, p. 5.

¹³ - Beach, 2002a:623.

¹⁴ - See Garrett and Tsebelis, 1996 for arguments that support this in the EU context.

Comparative informational advantages

Complex, multilateral bargaining situations such as EU treaty reform negotiations are, despite extensive preparation at both the national and EU-level, often poorly defined negotiating situations, with actors possessing imperfect knowledge of the many complex issues on the agenda, and about their own and the preferences of other actors.¹⁵ One well-informed EU insider has characterized traditional IGC negotiations by stating that, ‘Governments and their negotiators do not always know what they want and the situation changes unpredictably with the dynamics of the negotiations where written and oral proposals are floated around the table by all the participants at frequent intervals.’¹⁶ This is also evident in the present European Convention, where hundreds of detailed proposals have been tabled by members of the Convention on the numerous substantively and legally complex issues on the agenda, and 1,087 amendment proposals have been submitted to the first 16 draft articles, and numerous others have been tabled for the rest of the articles in the treaty.

As actors in treaty reform negotiations realistically only are ‘boundedly rational’,¹⁷ there are natural cognitive limitations upon the negotiating abilities of actors. In such circumstances, the possession of comparative informational advantages, be they substantive expertise or bargaining skills, can potentially be translated into influence over outcomes.

First, not all actors are equal regarding their levels of substantive knowledge of the issues under discussion (content expertise), their analytical skills (process expertise), and their knowledge of the state-of-play of the negotiations.¹⁸ Regarding content expertise, technical and legal knowledge are most relevant in treaty reform. Technical expertise relates to detailed and qualified knowledge of how a certain treaty provision works at present, and/or the anticipated consequences of the changes under consideration. Legal expertise is the possession of extensive knowledge of the body of EU law that can be used to estimate the potential impact and legality of changes in the EU Treaties.

Looking at process expertise, not all national delegations in treaty reform negotiations possess the analytical skills to be able to digest the hundreds of often very complicated and technical proposals on the many different issues under discussion, preventing them from entering into an efficient joint problem-solving effort aimed at finding a mutually-acceptable outcome. In the present European Convention, many delegates have difficulties dealing with the many proposals and amendments that have been distributed in different languages, including Greek and Finnish.

¹⁵ - See Stubb, 2002 on IGC negotiations. See Pollack, 1997 for more on daily EU policy-making negotiations. For more on international multilateral negotiations more generally, see Midgaard and Underdahl, 1977; Hampson with Hart, 1995; Hopmann, 1996.

¹⁶ - Stubb, 2002:27.

¹⁷ - Simon, 1997:94; Jones, 2001.

¹⁸ - Wall and Lynn, 1993; Sandholtz, 1992:27-28; Cox and Jacobson, 1973:20; Finnemore and Sikkink, 1998:899-900.

Finally, turning to the importance of information on actor preferences and the state-of-play of negotiations, there are two reasons why delegates in treaty reform negotiations often do not have detailed information on the nature and intensity of the preferences of other actors on the myriad of issues under discussion. It is difficult for a single delegate without significant back-up services to keep track of different actor preferences on the large number of very detailed issues under discussion – something that is especially evident for national parliamentarians and MEP’s in the convention method. Second, governmental representatives, despite publishing opinions prior to a negotiation and presenting arguments and proposals during the negotiations, are often reluctant to reveal their ‘true’ preferences.¹⁹ National representatives can for instance have strategic reasons for holding their cards, waiting to see how an issue plays out before revealing their hand.²⁰ In such a situation a trusted intervening actor can discuss with each party the nature and intensity of their preference in an attempt to find a mutually acceptable, Pareto-efficient outcome.²¹ But by gaining private information about the zone of possible agreement, the intervening actor can also craft an agreement within this zone that is closest to its own preferred outcome.²²

The perceived acceptability of the actor

Turning to the third category of independent variable, a further type of resource that EU institutional actors can possess is the level of acceptability of their contributions among other actors in the treaty reform negotiations. Levels of acceptance can be based recognition of a broad majority of actors of the utility of the actor’s contributions, and the legitimacy and/or reputation of the actor.²³

The reputation of the EU institutional actor can though be threatened if the actor is perceived by a majority of important actors to be excessively partial either in the way in which they fulfill a specific institutional role (procedural bias), or as regards excessively promoting a particularly unwelcome outcome (outcome bias).²⁴ If an actor is widely perceived to be excessively pursuing its own interests, this may undermine their ability to gain influence over outcomes, for example if Commission

¹⁹ - Metcalfe, 1998:425; Stenelo, 1972:54. Moravcsik, 1999a:279 makes the point that actors that have incentives to withhold information from one another would also have incentives to withhold it from a EU institutional actor. However, in the IGC method for example, the Council Secretariat sits at the center of a web of communications in an IGC, and given its reputation as a trusted insider, national governments often are more open with the Secretariat than they are with other national delegations.

²⁰ - Underdal, 2002: 115.

²¹ - Scharpf, 1997:145; Raiffa, 1982; Metcalfe, 1998:424-425; Stenelo, 1972:54.

²² - Lax and Sebenius, 1986.

²³ - Wehr and Lederach, 1996; Bercovitch and Houston, 1996:25-27; Hampson, 1995:18; Tallberg, forthcoming; Hopmann, 1996:225; Kleibor, 1998.

²⁴ - Bercovitch, 1996b:5. The distinction between perceived acceptability and excessive partiality is an invisible red-line, but the effects of crossing this are often very evident.

representatives are widely seen to be championing a strongly pro-integrative vision in EU defense policy that is far outside of what a majority of members of the Convention are interested in, their contributions are likely to fall upon deaf ears. The level of acceptance is modeled in my bargaining model as a feedback loop from actor strategies during the negotiations back into the perceived acceptability of EU institutional intervention (see figure 1, above).

2.2. The intervening variables

Contextual variables

Looking first at the theorized impact of the structure of the EU treaty reform negotiations, a widely held conjecture in negotiation theory and rational choice institutionalism holds that how negotiations are structured affects how actor bargaining resources are translated into influence over outcomes.²⁵ This is particularly evident when we are dealing with highly institutionalized, multilateral negotiations such as treaty reform negotiations.

First, the institutional set-up of the negotiation can matter in that actors either can start with or gain a privileged position during a negotiation that can be exploited to influence outcomes. Examples of privileged institutional positions in the convention method include being in charge of the formal drafting process of treaty texts (Convention Secretariat together with the Presidium), or by having control of the agenda for each individual negotiating session (Presidium). These different institutional roles affect the opportunities and constraints upon actor strategies for gaining influence. Based upon general conjectures in the negotiation literature, we should expect that the ability of EU institutional actors to translate their bargaining resources into influence increases with the level of their involvement in the negotiation and drafting process.

The nature of the issues under negotiation can also have an impact upon the ability of EU institutional actors to translate bargaining resources into influence. There are two dimensions to the nature of an issue: political saliency and complexity/technicality. First, while we can expect that very salient issues will be kept firmly under the control of national delegations, in less salient issues we would expect that EU institutional actors would have more discretion to shape the discussions and outcome. Second, if we realistically assume that delegates to the Convention do not have perfect knowledge of the often very complex institutional and legal implications of the many issues under discussion due to high information costs and bounded rationality, then we would expect that in

²⁵ - Most prominently, Zartman, 2002. For the rational choice institutionalist position in the EU context, see the works of Garrett, Tsebelis, Pollack, and Tallberg.

complex and/or technical issues that EU institutional actors such as the Commission could more successfully exploit their comparative informational advantages. Therefore we should expect that the ability of EU institutional actors to translate their bargaining resources into influence varies inversely with the level of political salience of the issue, and that levels of influence would increase the higher the technicality and complexity of the issue-area.

Finally, the number of issues and parties to the negotiations also matters, in that both can increase the level of complexity of a negotiation if they increase the number of cleavages in a given negotiation situation.²⁶ In highly complex, multilateral negotiations, with many cross-cutting cleavages, it is difficult for the parties to identify possible agreements, while meaningful communication between parties also becomes increasingly difficult.²⁷ In these types of complex situations the possession of analytical skills and the knowledge of actor preferences is a strategic asset that enables actors to both help the parties find a mutually agreeable outcome and, in the process, also grants them opportunities to influence the final outcome. Therefore we should expect that the ability of EU institutional actors to translate informational bargaining resources into influence increases with the number of issues and parties to a given negotiation.

Process variables – actor strategy during the negotiations

While the contextual variables described above define the range of intervening strategies available, EU institutional actors must successfully use negotiating strategies to translate their bargaining resources and the opportunities raised by the negotiating context in order to gain actual influence over outcomes. In the following two types of strategy are discussed: agenda-shaping and brokerage.

First, EU institutional actors can attempt to set and shape the agenda of the conference through the use of a variety of tactics to manipulate the existing agenda, put new issues onto the agenda, and exclude unwanted issues. Agenda manipulation involves actions to emphasize, de-emphasize, remove, or exclude issues from the negotiating agenda. Formal control of the agenda in the convention method rests with the Presidium, which includes members of the Commission, and EP. This gives EU institutional actors the possibility of manipulating the agenda, by for example emphasizing or removing certain issues in drafts and meeting agendas for the plenary assembly.

Second, EU institutional actors can attempt to play a brokering or mediating role, utilizing their informational bargaining resources to help the parties find a mutually acceptable outcome, which also

²⁶ - Midgaard and Underdal, 1977; Hampson, 1995:28-29.

²⁷ - Hampson, 1995:28-29; Raiffa, 1982; Midgaard and Underdal, 1977; Hopmann, 1996.

gives them opportunities to influence outcomes in the process.²⁸ While there are many different typologies of brokering and mediating strategies, for the present purposes it is most useful to focus on the more active types that attempt to affect the actual content and substance of the negotiations. In the treaty reform context, the most relevant mediating strategies deal with putting forward compromise proposals, and brokering support for certain positions. Crucial in this respect is the possession of extensive and reliable information on the nature and intensities of national preferences, and having a reputation as an honest broker.

²⁸ - Carnevale and Arad, 1996; Young, 1991; Kressel, 1989.

Section 3 – An overview of the three ‘ideal types’ of treaty reform negotiations

Briefly, there have been three major ‘ideal types’ for how treaty reform negotiations have been conducted since 1985. In reality, most negotiations have not been pure ‘ideal types’, but have encompassed elements of several methods. But it is possible to classify the treaty reform negotiations held since 1985 into three broad categories according to how the negotiations are prepared and conducted (see figure 2).

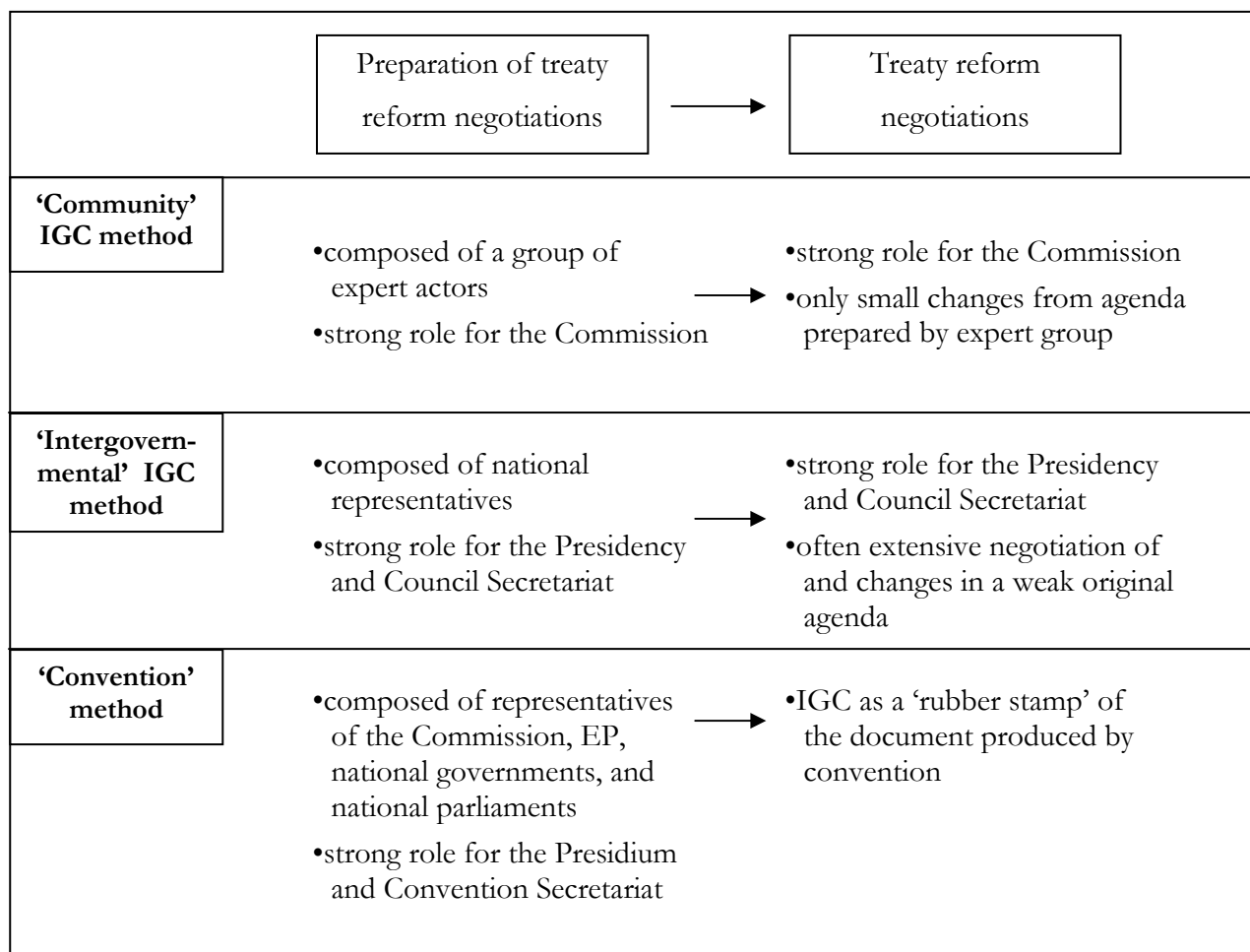


Figure 2 – Different methods of negotiating treaty reform in the EU.

The first category is what I term the *community IGC method*. Here the term ‘community’ does not refer to how decisions are taken within the supranational first pillar, but simply to the resemblance that the treaty reform negotiations have to the roles played by actors in normal community policy-making. The Commission has in this method a strong initiating and brokerage role, especially in the preparatory phase, with the actual IGC often only negotiating small changes in the original agenda from the

preparatory phase. The best example of this type of treaty reform was the 1990-91 IGC that negotiated Economic and Monetary Union (EMU). Here the Commission played a central role in setting the agenda within the so-called 'Delors Committee', chaired by Commission President Delors, and composed of national central bank governors and three independent experts. The final report of the Delors Committee set the agenda of the IGC, and was adopted with only a few amendments by the IGC.²⁹

The second category is here termed the *intergovernmental IGC method*. In comparison to the community IGC method, the IGC in the intergovernmental method is prepared by a group of national representatives, assisted and guided by the Presidency and Council Secretariat. The binding mandates given to the representatives prevent any real discussions in the preparatory stage, and therefore the agenda is often only a mere canvassing of different options that can be discussed in the IGC. Therefore the actual IGC negotiation process is more important in this method, with hard bargaining taking place between national representatives, assisted by the Presidency and Council Secretariat. Perhaps the best example of the intergovernmental method was the negotiation of the Treaty of Amsterdam in the 1996-97 IGC. The IGC was prepared by a group of national representatives working under strict mandates, leading to a report to the IGC that merely depicted different options, and the levels of support and opposition for these options.³⁰ The actual IGC was dominated by national representatives and the Presidency-Council Secretariat team, and the final treaty was to a large extent a product of the dynamics of the actual IGC negotiations.

The third category is the novel *convention method* used in the negotiation of the EU Charter and the present European Convention. In this method of treaty reform, a more representative body is created by the European Council, composed of representatives of the heads of state and government, the Commission, and members of the EP and national parliaments. Within the convention, the Presidium and Convention Secretariat have the key roles of providing guidance and drafting for the large body of representatives. After the convention has produced a final document, this is then adopted by the Member States either acting within the European Council (the EU Charter), or in an IGC that acts essentially as a 'rubber stamp'.³¹

²⁹ - See Beach, 2002b.

³⁰ - See Reflection Group, 1995.

³¹ - Whether the present European Convention's Constitutional Treaty will be adopted as is by the upcoming IGC is strongly debated, but most commentators agree that if the document receives the support of a sizable majority of factors in the convention, it will be difficult for the Member State governments to not adopt it as is (Hughes, 2003; Hoffmann, 2002).

Section 4 - Comparing the possibilities for influence for EU institutions in the convention and the IGC methods

In the following section I will discuss the changes in the possibilities for influence created by the change in negotiating methods. First, the section looks at whether the bargaining resources possessed by EU institutions differ in the different methods of negotiating treaty reform. Second, the section details the impact of the changes in: the institutional roles played by EU institutions; the nature of issues being negotiated; and the level of complexity of the negotiating situation. Section 5 will briefly discuss whether these possibilities have been exploited successfully in the different treaty reform negotiations.

4.a. The bargaining resources of EU institutions under the convention and the IGC methods

Material bargaining resources

Article 48 EU mandates that a final treaty in an IGC must be agreed by ‘common accord’, granting each Member State a potential veto. While both the Commission and European Parliament are named in Article 48 EU, neither has any vote on the final outcome of an IGC, although several Member States including Italy and Belgium have in past IGC’s linked their assent to the final treaty with a favorable opinion from the EP.³² The material resources of the Commission and the European Parliament are therefore significantly strengthened in the convention method, as they are official parties to the convention negotiations, and have a say over the final outcome both within the Presidium and the plenary assembly.

But voting procedures are also less clear in the convention method than in IGC’s. In the Convention on the EU Charter no rules for voting procedures were adopted, and the Tampere Conclusions referred to either a document with multiple options, or a document adopted by consensus. The final charter was adopted without a vote, and there were examples of points which were included in the final Charter that were opposed by members of the convention.³³ In the present European Convention it is stated in the rules of procedure that the final product of the Convention shall be

³² - Maurer, 2002:419-420; 2003:175-176.

³³ - Deloche-Gaudez, 2001. Proposals from two MEP’s to the convention for voting on ‘substantive’ issues by a two-thirds qualified majority were never discussed in the convention (Deloche-Gaudez, 2001:23; Agence Europe, 29.01.00, p. 4).

adopted using consensus³⁴ - but there have been no votes taken in the Convention, and at present it is still unclear as to how large a majority of members of the Convention will be needed for the final outcome to be termed 'adopted by consensus'. But it is probable that for the final outcome to have an impact, and define the agenda for the upcoming IGC, the final Constitutional Treaty should be broadly perceived to have been approved by a majority of significant actors in the Convention, as was the case for the EU Charter.

While the Commission only has two representatives in the Convention, if the Commission as a whole disapproves the final outcome of the present Convention, this would most likely significantly weaken the legitimacy of the final document. The EP has 16 representatives in the Convention that reflect the balance of political parties in the Parliament, but it is unlikely that all of the EP members will approve the final document, given that at least two of the MEP representatives are EU skeptics or opponents of European integration.³⁵ Yet as with the Commission, the backing of a majority of the MEP representatives is also likely to be essential for the success of the final document of the Convention. Further, the material bargaining resources of the EP are further strengthened by the ties that individual MEP's have with national political parties and governments.

Both institutions had one seat on the Presidium in the EU Charter Convention, and have two seats in the Presidium in the current Convention. The Presidium plays a role comparable to that of the Presidency in the IGC methods, controlling the agenda and drafting of texts. This gives both institutions significant material bargaining resources that potentially can be translated into influence over outcomes

The Council Secretariat has no material bargaining resources in either the IGC or convention methods, as it is not an official party to the negotiations in either of the methods of treaty reform, but is merely an assistant to the negotiations.

Comparative informational advantages

The informational advantages of the Commission are similar in both negotiating contexts; although the Commission's advantages are perhaps relatively stronger in the convention method vis-à-vis actors such as MEP's and especially national parliamentarians. The Commission possesses significant informational advantages vis-à-vis most other actors in both IGC and convention methods in most issue areas. Given the central role the Commission plays in the legislative and executive processes in the EU, this provides the Commission with detailed insights into the substantive workings of the EU Treaties that are not

³⁴ - Conv 9/02.

³⁵ - Muscardini (UEN) and Bonde (EDD).

possessed by any other actor. This is especially evident in policy areas that are at the core of the Community, such as free movement-related issues. Furthermore, the Commission has information processing resources that are only matched by the foreign ministries of the largest Member States.

If we canvass the topics being dealt with in the present Convention, the only issue in which the Commission does not have substantive and legal expertise is in aspects of foreign and defense policy that have traditionally been the remit of national governments. And in general, the Convention participants interviewed all agreed that the Commission has been a useful source of substantive and legal expertise.³⁶ Commissioner Vitorino, for example, as Commissioner for Justice and Home Affairs (JHA), has been able to speak with considerable weight in the sensitive issues of JHA and issues relating to the possible incorporation of the EU Charter into the final treaty.

The informational advantages of the Commission are particularly evident vis-à-vis national parliamentarians, who both do not have experience dealing with EU matters, and do not have the back-up of the Commission civil service or of a national government.³⁷ To illustrate the low level of knowledge of many members of the present Convention, a Convention Secretariat official interviewed pointed out that in the Working Group on Legal Personality, when many members heard the Commission representative talking about the Commission negotiating an external agreement on first pillar issues based upon a mandate from the Council, they perceived it as a rash Commission attempt to gain additional powers – not being aware that the Commission was merely rehashing what the status quo was.³⁸

These relative informational advantages of the Commission were even stronger in the Convention on the EU Charter, where the Commission, and especially the Commission's Legal Services, possessed detailed expertise on the legal aspects of the Charter that no other actor in the Charter Convention could match.³⁹

Comparing these advantages with IGC negotiations, while the Commission has enjoyed comparative informational advantages in many of the issues being dealt with, especially those relating to the workings of the supranational first pillar, in more political issues such as foreign policy that have traditionally been the remit of national governments, they possess fewer advantages – if not relative disadvantages.

³⁶ - Series of interviews conducted among national civil servants, Commission and Council Secretariat civil servants, and MEP's and national governmental representatives in Brussels, February 2003.

³⁷ - Interviews with Commission officials, Brussels, February 2003. (COM 1, 2)

³⁸ - Interview with Commission official in the Convention Secretariat, Brussels, February 2003. (COM 1)

³⁹ - Interview with senior Council Secretariat official, Brussels, February 2003. (CS 1)

Another advantage of the Commission is the depth of knowledge and experience with treaty reform negotiations that it has acquired, especially at the civil servant level. In the last two IGC's, and in the conventions, the Commission has created a task force of officials to back up the Commission representatives. Many of these officials have dealt with several treaty reform negotiations, giving them comparative advantages vis-à-vis national civil servants, who often are working in their first treaty reform negotiations due to frequent rotations in national foreign ministries. At the highest level, Commission representative Vitorino took part in the EU Charter negotiations, while Commissioner Barnier was the Commission's representative in the 2000 IGC – giving both Commissioners first-hand experience with treaty reform negotiations. In comparison, many national representatives are dealing with their first treaty reform negotiation, putting them at a relative disadvantage.

In comparison to the Commission, members of the EP delegation lack the backing that the Commission representatives enjoy. MEP's are for the most left on their own regarding gathering and processing of information in the Convention, although some MEP's utilize the resources of their respective national Permanent Representations to the EU.⁴⁰ Despite some MEP's closely following work in IGC's during the 1990's, and gaining observer status in the 2000 IGC, the two conventions are the first real treaty reform negotiations that MEP's have been party to.

While the Council Secretariat cannot match the depth of substantive expertise of the Commission, given that the number of the Council Secretariat's A-grade staff is roughly 10% of the Commission's,⁴¹ in IGC negotiations the Council Secretariat has had strong comparative advantages in brokering compromises and finding zones of agreement in comparison to all other actors.⁴² Yet in the present Convention the Council Secretariat has a significant disadvantage in comparison to an IGC or the first convention. While the Council Secretariat IGC team could draw upon the full resources of the Council Secretariat, in the current European Convention these officials are seconded to the Convention Secretariat, and, upon orders of the Council Secretariat deputy secretary-general Pierre de Boissieu, they are formally separated from the rest of the Council Secretariat.⁴³ They cannot therefore draw upon the substantial informational resources of the Council Secretariat.

The perceived acceptability of the contributions of the EU institutions

While EU institutions have roles in the IGC method, IGC's are by their very definition conferences of governmental representatives – and therefore EU institutions have to be accepted as useful intervening

⁴⁰ - Interviews with two MEP's in the Convention, Brussels, February 2003. (EP 1, 3)

⁴¹ - The *General Report on the Activities of the European Union* lists the size of the staff of both institutions each year.

⁴² - Beach, 2002b:94, 147, 177.

⁴³ - Interview with Council Secretariat official seconded to the Convention Secretariat, Brussels, February 2003.

actors by Member States. The impact of this factor has been most evident as regards the EP, with France and the UK even vetoing direct EP participation in the 1996-97 IGC.⁴⁴ The acceptability of the Commission's role in the past has varied. While the Luxembourg Presidency in 1985 delegated extensive informal agenda-setting powers to the Commission, clearly indicating a high level of acceptance of their role, after the Commission's debacle in the Political Union (PU) IGC in September 1991 they have been a much less welcome guest in IGC's. For example, in the 1996-97 IGC, the legacy of Delors' high profile in the early 1990's, coupled with the extreme positions taken by the Commission in the IGC, led most Member States to see the Commission as being excessively partial to its own pro-integrative agenda in its interventions.⁴⁵ The Commission had if possible an even lower level of acceptance in the 2000 IGC, weakened both by its extreme positions, and the downfall of the Santer Commission in March 1999.⁴⁶

In contrast, in the convention method the level of acceptance of both actors is considerably greater, given that both are full players in the convention method. In the present Convention, while most of the members of the Convention are aware of the Commission's agenda, the Commission is also seen by most participants as a useful source of both expertise and direction.⁴⁷ This acceptance of the Commission was perhaps most evident in the choice of Commission representative Barnier to chair the sensitive discussions in the working group on defense – something that would have been unthinkable in an IGC context. Further, many of the ideas of the Commission that were seen as 'far out' in the 1996-97 and 2000 IGC's are now on the agenda of the Convention, such as splitting the treaties into constitutional and policy parts.⁴⁸ But there is also a clear recognition that the Commission is split internally, and that neither Barnier nor Vitorino are speaking for the Commission college as a whole, weakening somewhat the legitimacy of their inputs as being truly representative of the Commission's views.⁴⁹

MEP's are not seen as a source of expertise by other members of the convention, but they do have the substantial benefit of being directly elected, and therefore have democratic legitimacy in comparison to both the Commission and Council Secretariat.

⁴⁴ - Maurer, 2002; Galloway, 2001.

⁴⁵ - Beach, 2002b:148.

⁴⁶ - Beach, 2002b:178.

⁴⁷ - Interviews with MEP representatives in the European Convention and with national civil servants, Brussels, February 2003.

⁴⁸ - See Commission, 1999, 2000.

⁴⁹ - Interview with EP member of the Convention, Brussels, February 2003; ??? MORE???

While the Council Secretariat has played an accepted ‘vital cog’ role in the intergovernmental IGC method used since the 1990-91 IGC’s,⁵⁰ the Council Secretariat has been relegated from its central role in the present Convention. Whether this reflects distrust of the Council Secretariat’s role in the Commission and EP is difficult to verify, but there is evidence that there was behind-the-scenes jockeying by both the EP and Commission, in collaboration with the Belgian Presidency, in the fall of 2001 to ensure that the Convention Secretariat that was created was a collaborative institution including officials from the EP and Commission Secretariats, instead of being comprised mainly of Council Secretariat officials as was the case in the EU Charter Convention – illustrating perhaps the lower level of acceptability and trust that the Council Secretariat possesses in the convention method.⁵¹

4.b. Comparing the possibilities for influence opened by the change in negotiating context

What impact do the different negotiating contexts have upon the ability of EU institutions to translate their bargaining resources into influence over outcomes in treaty reform negotiations? In the following the impact of the context will be discussed. The section shows that the Commission had many opportunities to attempt to shape outcomes in the SEA and EMU IGC’s that used the community IGC method, whereas in the PU IGC, and the negotiation of the Treaties of Amsterdam and Nice, the shift to the intergovernmental IGC method opened for many possibilities for the Council Secretariat to gain influence. The shift to the convention method has affected the possibilities to gain influence of all three actors, strengthening both the EP and Commission, and in the present convention has significantly limited the opportunities for the Council Secretariat to gain influence (see figure 2).

Institutional set-up

What roles do the EU institutions play in the two negotiating methods, and what potential impact does their institutional position have upon their abilities to translate their bargaining resources into influence over outcomes in the two methods?

Looking first at the IGC methods, an IGC is defined in Article 48 EU as a ‘conference of representatives of the governments of the Member States’. The Commission’s role in the community method IGC’s was relatively strong, but in the past two IGC’s held using the intergovernmental

⁵⁰ - See Beach, 2002b, 2003 for more.

⁵¹ - Interviews with Commission and Council Secretariat officials, Brussels, February 2003. (COM 2, CS 2)

method, the Commission had a relatively weak role.⁵² Article 48 EU gives the Commission the right to put forward a proposal for an IGC, but its actual role is based upon precedence developed since the 1985 IGC.⁵³ This has allowed the Commission to play an active role in IGC's, attending meetings including the European Council Summits, and has allowed it to submit proposals. Additionally, in IGC's national delegations and Presidencies have often turned to the Commission for substantive advice and expertise, for example by inviting an opinion from the Commission on a specific proposal, or by asking the Commission for advice during the drafting process.⁵⁴

Looking at specific IGC's, the Luxembourg Presidency in 1985 delegated informal control of the agenda to the Commission in the 1985 IGC that negotiated the SEA, enabling the Commission to table a series of proposals that set the substantive agenda for the IGC.⁵⁵ Further, the Commission played a key role in the behind-the-scenes drafting process, together with the Presidency. The Commission was in 1988 through institutional politics able to convince Member States to give it a central role in the agenda-setting phase of the EMU IGC, giving Delors the chair of an expert committee that set the agenda for the IGC.⁵⁶ Yet in the parallel Political Union (PU) IGC, the Commission opted for a stronger political role, and eschewed taking part in the drafting process, and was not given a privileged initiating role as in the SEA IGC.⁵⁷ The Commission had a very weak role in the negotiation of both the Treaties of Amsterdam and Nice – in effect playing the role of an unwelcome guest to the IGC's.

The EP has had an almost non-existent role in past IGC negotiations, prevented from attending meetings or submitting proposals, although they did have an observer role in the 2000 IGC. The EP was forced to rely upon: discussions in the margins of IGC's; upon adopting opinions prior to and during IGC negotiations; and attempts to link their assent with the outcome to issues where they had a vote, and that were important to Member States.

The Council Secretariat role in IGC's is based upon mandates given to it by the European Council prior to the convening of an IGC. Its basic function is to offer secretarial assistance to the IGC and the Presidency chairing the IGC; but in practice it plays a very significant behind-the-scenes role that offers it many opportunities to translate its bargaining resources into influence over outcomes.⁵⁸ While the Council Secretariat had a weak role in the SEA and EMU IGC's, the Council Secretariat has had a more central role in the past two IGC's that have been negotiated using the intergovernmental

⁵² - See Beach, 2002b for a comparative analysis of the Commission's role since the 1985 IGC.

⁵³ - Gray, 2002; Dinan, 2000.

⁵⁴ - Beach, 2002b.

⁵⁵ - Beach, 2002b:57-80; de Ruyt, 1987; Ross, 1995:32.

⁵⁶ - Beach, 2002b, chapter 7; Dyson and Featherstone, 1999:712-713; McAllister, 1997:201-202.

⁵⁷ - Interview with former Council Secretariat official, Telephone, January 2002.

⁵⁸ - See Beach, 2003.

IGC method. The Council Secretariat has prepared almost all of the draft legal texts and other documents for the IGC's, and has also offered suggestions and ideas to receptive Presidencies on how to reach an acceptable agreement – though in the 2000 IGC the Paris-based French Presidency that presided over the IGC end-game undertook many of these functions themselves.⁵⁹ Further, the Council Secretariat's Legal Services provided sole legal advice to the IGC in the past four IGC's, giving it a monopoly of authoritative legal advice to the IGC.⁶⁰ The centrality of the Council Secretariat was especially evident in the 1996-97 IGC that negotiated the Treaty of Amsterdam, where both the Irish and Dutch Presidencies as small states were quite dependent upon the resources of the Council Secretariat, giving the Secretariat numerous opportunities to attempt to influence outcomes.

In the convention method, the roles of the Commission and EP have been strengthened, whereas in the convention method, the Council Secretariat has a weaker role. Both the Commission and EP are full parties to the negotiations, and were/are part of the Presidium. In the EU Charter Convention the EP and Commission had one member in the Presidium, whereas they have two seats in the present Convention's Presidium. Especially the seats in the Presidium mark an increase in the institutional role of the Commission and EP, as this opens for a range of potential options to shape the convention agenda by having a strong say in how the negotiations are conducted and what issues are on the agenda. For example, in the current Convention, members of the Presidium were chosen to chair working groups on specific issues in the fall of 2002. As the chair of a working group, they were in charge of the conduct of the meetings of the group, and the drafting of the final report. While these reports then had to be approved by the plenary assembly, by having the chair this opened for significant opportunities for Commission and EP representatives to shape the emerging agenda of the convention.

Yet being in the Presidium can also be strategic disadvantage for the Commission, for once the Presidium has made a decision, both of the representatives of the Commission are then forced to back it in order to preserve the collegiality of the institution. In comparison, while the two members of the EP in the Presidium are forced to support a Presidium position in the plenary, this does not prevent the other fourteen members of the EP delegation from criticizing a Presidium decision.

While the Council Secretariat formed the 'task force' that was entrusted with assisting the Presidium in the drafting of the EU Charter in 2000, and therefore had a very privileged institutional position, the Council Secretariat has been significantly weakened in the present European Convention,

⁵⁹ - See Beach, 2003; Schout and Vanhoonacker, forthcoming.

⁶⁰ - Christiansen, 2002:47.

being relegated to being part of a team of officials drawn from the secretariats of the Commission, EP, and seconded national officials.

The Council Secretariat played a very strong role in the EU Charter, and in many respects had even greater autonomy than it enjoys in IGC's or the current Convention, as its 'master' (the chairman Roman Herzog) was for most of the convention afar in Germany for personal reasons, and not in Brussels as a Brussels-based Member States Presidency in an IGC is, giving the Council Secretariat significant leeway.⁶¹ Further, there were only rarely discussions within the Presidium on issues before the Council Secretariat started to draft texts and papers for the plenary, as the exercise was perceived by most key actors to be about codifying existing rights in European law – enabling the Council Secretariat as will be seen below to interpret existing rights in a manner that reflected its own preferred outcome.⁶²

In the present European Convention the Council Secretariat officials are seconded to the Convention Secretariat, and formally independent of the Council Secretariat itself. Insiders also point out though that deputy Secretary-General de Boissieu actively lobbied to get Sir John Kerr, former UK Permanent Representative to the EU, appointed as head of the Convention Secretariat.⁶³ This was perhaps because Kerr's pragmatic and pro-Council views overlap with the pro-Council preferences of the Council Secretariat.⁶⁴

Another potential channel for Council Secretariat influence has been the use of expert hearings in the conventions. Council Secretariat officials have been used as sources of expertise, but these hearings are similar to committee hearings in national parliaments, and they use multiple experts. In comparison, in IGC's the Council Secretariat's Legal Services has a monopoly on provision of legal expertise.

An institutional factor that might potentially grant the Council Secretariat opportunities to gain influence in the European Convention is if it is put in charge of the 'tidying up' of the final document of the Convention by the European Council after its presentation to the Thessaloniki Summit in June 2003. This could potentially offer the Council Secretariat numerous opportunities to subtly shift outcomes, as it did in the 2000 IGC when entrusted with the task of 'tidying up' the Treaty of Nice. In the 2000 IGC the Council Secretariat significantly shifted the outcome of the IGC in Article 66 EC, which deals with co-operation between departments of national administrations, and between these and the Commission. In Nice the heads of state and government indicated that they wanted to move the article to QMV, but they did not decide whether co-decision with the EP should apply for the Article,

⁶¹ - Interview with senior Council Secretariat official, Brussels, February 2003. (CS 1) Most Presidencies are Brussels-based, centered on the Member State's Permanent Representation to the EU, in contrast to a capital-based Presidency (e.g. the French Presidency in the fall of 2000). Capital-based Presidencies usually do not use the Council Secretariat extensively.

⁶² - Interview with senior Council Secretariat official, Brussels, February 2003. (CS 1)

⁶³ - Interview with Council Secretariat official, Brussels, February 2003. (CS 2)

⁶⁴ - For more on Council Secretariat preferences, see Beach, 2002b; 2003.

merely stating that the mechanism for Article 67 EC should be used.⁶⁵ However they overlooked the fact that Article 67 EC called for co-decision. In the process of tidying up the Treaty in the first months of 2001, the Secretariat first put in a declaration stating that the provision would switch to QMV in 2004 *without* co-decision, and then changed this to a legally binding protocol in the final Treaty text.⁶⁶ While the Secretariat based these changes upon legal arguments, it is not difficult to see it as an example of the Secretariat's interests in strengthening the Council contra other EU institutions (the EP).

In comparison to the relatively weak role of the Council Secretariat in the present Convention, the Convention Secretariat itself plays a central role. The Convention Secretariat has been made responsible for: summarizing discussions in both the working groups and the plenary assembly; summarizing the amendments proposed by members of the plenary to the Presidium's draft treaty proposals; and drafting texts for the Presidium.⁶⁷ The Convention Secretariat was central in the 'listening' phase of the Convention, providing documents and questions to the plenary in order to get the debate started.⁶⁸ The opportunities to shape the agenda are even greater in the drafting phase, where the Convention Secretariat is responsible for distilling the numerous submissions, amendments, and reports from the plenary and working groups into a final Constitutional Treaty. The Presidium and plenary will naturally have to accept Convention Secretariat drafts, but given the complex nature of many of the issues, this opens for many opportunities to subtly skew outcomes. It remains to be seen though whether the Convention Secretariat will attempt to exploit this. Further, it is also difficult to see in which direction the Convention Secretariat would push outcomes given its divergent composition and the lack of a clear institutional identity, in contrast to the clear pro-integrative and pro-Council bias of the Council Secretariat.⁶⁹

Nature of the issues being negotiated

If we compare the nature of the issues being dealt with in two conventions with past IGC's, both the SEA and Treaty of Amsterdam IGC's, together with the two conventions have dealt with numerous relatively technical and non-salient issues with certain exceptions, while the 2000 IGC that negotiated

⁶⁵ - See Article 67 EC in the Treaty of Nice, SN 533/00.

⁶⁶ - Interview with national civil servant, London, April 2002. See the final text of the Treaty of Nice, in which a protocol on Article 66 EC is introduced that is not in the earlier versions of the Treaty. Compare SN/533/00 (provisional text) with the final text that is reproduced in the Official Journal, 2001/C 80/01.

⁶⁷ - One MEP sarcastically stated that the Convention Secretariat's main function 'has been to bombard us with papers' – highlighting though the very real potential for information overload among Convention members. Interview with MEP member of the Convention, Brussels, February 2003. (EP 4)

⁶⁸ - Interview with Council Secretariat official, Brussels, February 2003. (CS 2)

⁶⁹ - Deputy Secretary-General of the Council Secretariat, Pierre de Boissieu, has not made secret his aim of making the Council Secretariat the new Commission within the next decade. Interviews with national civil servants, Brussels, May 2001 and April 2002.

the Treaty of Nice dealt with only a few highly sensitive and simple institutional issues, opening for fewer opportunities for EU institutions to translate their bargaining resources into influence over outcomes.

The SEA IGC in 1985 dealt with predominately low salience and technical decisions – opening for many opportunities for the Commission to influence outcomes – although the issues of foreign policy and social policy were politically sensitive. The EMU and PU IGC's in 1990-91 dealt with extremely complex and sensitive issues. In the 1996-97 IGC in contrast, a vast majority of the over 200 issues that were discussed were both relatively technical and complex, and not politically sensitive. This opened for numerous opportunities for EU institutions to translate informational advantages into influence over outcomes.⁷⁰ Yet one of the key issues - the central institutional triangle of re-weighting of Council votes, number of Commissioners, and the extension of majority voting – was both relatively simple and extremely sensitive, pitting Member States directly against each other. In this type of sensitive institutional issue, 'Compromises did not lie in skillful drafting or the gradual refining of texts. These were points of gut difference and fundamental importance such as cannot be resolved until the end of any negotiation.'⁷¹ Therefore we would expect that EU institutions would be strongly constrained in these types of issues.

There were only a few highly salient issues on the agenda of the 2000 IGC, including the sensitive institutional triangle involved issues that were either zero-sum issues and/or that dealt with sensitive matters of national prestige. Several of the sensitive issues were though also quite complex, such as reforms of social security co-ordination (Article 42 EC) and the common trade policy (Article 133 EC), opening for certain opportunities for EU institutions to gain influence.

Comparing the issues in these two IGC's with the two conventions, the EU Charter Convention dealt with highly complex legal questions relating to jurisprudence of the ECJ, the European Court of Human Rights and the European Convention on Human Rights.⁷² These issues opened for numerous opportunities for legal experts in the Commission and Council Secretariat to exploit their expertise to gain influence. There were though two issues in the Charter negotiations that were also politically sensitive - the questions of the scope of the Charter, especially whether it should include social rights, and whether the Charter should be legally binding.

⁷⁰ - See Beach, 2002b.

⁷¹ - McDonagh, 1998:155.

⁷² - See de Búrca, 2001.

The topics on the agenda of the present EU Convention have been divided into eleven main categories by the Presidium and plenary.⁷³ Perusing the list of topics, issues such as the simplification of the treaties, legal personality, and competence issues are highly complex both legally and substantively, requiring detailed knowledge of the existing *acquis communautaire*.⁷⁴ The Convention has even taken the consequence of the complexity of the complete re-working of the EU Treaties by ‘sub-contracting’ certain aspects of the simplification exercise to a working party of legal experts in the Convention Secretariat.⁷⁵ In these types of issues we should expect that expert actors would have discretion to shape discussions and outcomes.

Yet as the EU Convention is in effect re-negotiating the EU Treaties and the complex web of compromises underlying them, there are many politically sensitive issues being raised. Among these are questions of extending EU competences, particularly in the fields of social policy and defense. Further are the institutional questions such as the external representation of the Union and the possible creation of a European president – issues which have already raised heated political debate throughout Europe, especially after the Franco-German proposals in January 2003.⁷⁶ In these types of issues, we would, other things equal, expect lower levels of influence for EU institutions, given that the final outcome will have to be accepted by the Member States within an IGC, and they will try to keep close tabs on these sensitive issues.

Level of complexity of the negotiating situation

Is the level of complexity of the negotiating situation significantly different in the convention method from the IGC methods? If we look at the number of parties first, the SEA IGC in 1985 had representatives from ten Member States, along with the Commission. The 1990-91 IGC’s had representatives from twelve governments, together with the Commission, whereas the 1996-97 and 2000 IGC’s involved seventeen actors – fifteen national representatives, including the government holding the Presidency; a representative of the Commission; and the Council Secretariat as assistant to the IGC and Presidency. In these IGC’s, all of the actors could sit around a single (relatively large) table.

⁷³ - The Laeken Declaration listed four overall topics to be discussed. These were expanded into six distinct topics by the Presidium, to be dealt with in working groups. Due to pressure from the plenary, five further issues have been added in the summer and fall of 2002.

⁷⁴ - The author has distributed a series of questionnaires to participants in the EU Convention, asking them to classify issues in the Convention according to political salience and technicality. This data will be incorporated into the final draft of this paper.

⁷⁵ - For the preliminary report, see CONV 529/03. Interview with national civil servant, Brussels, February 2003. (MS 1)

⁷⁶ - See *Agence Europe*, 17 January 2003, p. 4; 18 January 2003, p. 4; 21 January 2003, p.4; and 22 January 2003, p. 4. Also ‘Summary report of the plenary session – Brussels, 20 and 21 January 2003.’, CONV 508/03.

This relatively simple situation contrasts sharply with the convention method, where a single negotiating table has been replaced by the conference chambers of the European Parliament in Brussels. In the EU Charter Convention there were a total of sixty-two full members representing national governments, the EP, Commission, and national parliaments, together with the President, Roman Herzog. The current Convention encompasses 105 full members, including representatives of the national parliaments and governments of the accession countries – if we include alternates, who participate actively in the Convention, then the number rises to over 200. In such complex negotiation contexts, it becomes very difficult for parties to identify possible agreements, increasing the demand for leadership and brokerage which can be supplied by EU institutions. This is especially evident in the drafting process in the European Convention, where it is naturally a physical impossibility to have 105 delegates holding the pen collectively.

If we then turn to investigate the differences in the number of issues in past IGC's and in the conventions, both the 2000 IGC and the EU Charter Convention dealt with only a handful of issues. In the 2000 IGC there were two primary cleavages: strengthening EU institutions contra preserving the status quo; and between smaller and larger Member States.⁷⁷ The main questions in the EU Charter negotiations dealt with whether the document should be legally binding, and the nature and scope of EU competences in fundamental rights (especially whether they should be extended to include social rights and more positive rights),⁷⁸ although there were many options on the table, with a total of 205 written contributions and over 1,400 proposed amendments.⁷⁹

The patterns of cleavages in the other IGC's and the current European Convention were immensely complex, with many cross-cutting cleavages. In the 1996-97 IGC for instance, there were numerous cleavages across the over 200 issues, with no clear overlapping cleavages.⁸⁰ The current European Convention is if anything even more complex, with a multitude of cleavages among the 105 members, who represent a much more diverse group of interests than is represented in an IGC.⁸¹ Up until now the strongest cleavage in the Convention has been in the question of social policy, both within the working group on Social Europe and in the plenary debates. But it is still early days in the Convention, given that the convention only now is turning from the deliberative listening and study phases to the drafting phase, and the real strength of different cleavages is likely to become more evident as the Convention enters the end-game in May and June 2003.

⁷⁷ - Galloway, 2001.

⁷⁸ - de Búrca, 2001; Interview with senior Council Secretariat official, Brussels, February 2003. (CS 1)

⁷⁹ - Maurer, 2003:180.

⁸⁰ - See for example European Parliament, 1996a, 1996b.

⁸¹ - Dinan, 2002.

4.c. Conclusions – the possibilities of influence across time of EU institutions

In conclusion, the different methods used to negotiate treaty reform have substantially changed the different possibilities open to EU institutions in their attempts to gain influence over outcomes. These possibilities are depicted heuristically in figure 3, where the specific points of the actors at specific times are intended to be merely illustrative. The figure depicts a *composite* measure of the impact of the three contextual factors, showing how the range of opportunities to gain influence has varied significantly over time and across institutions.

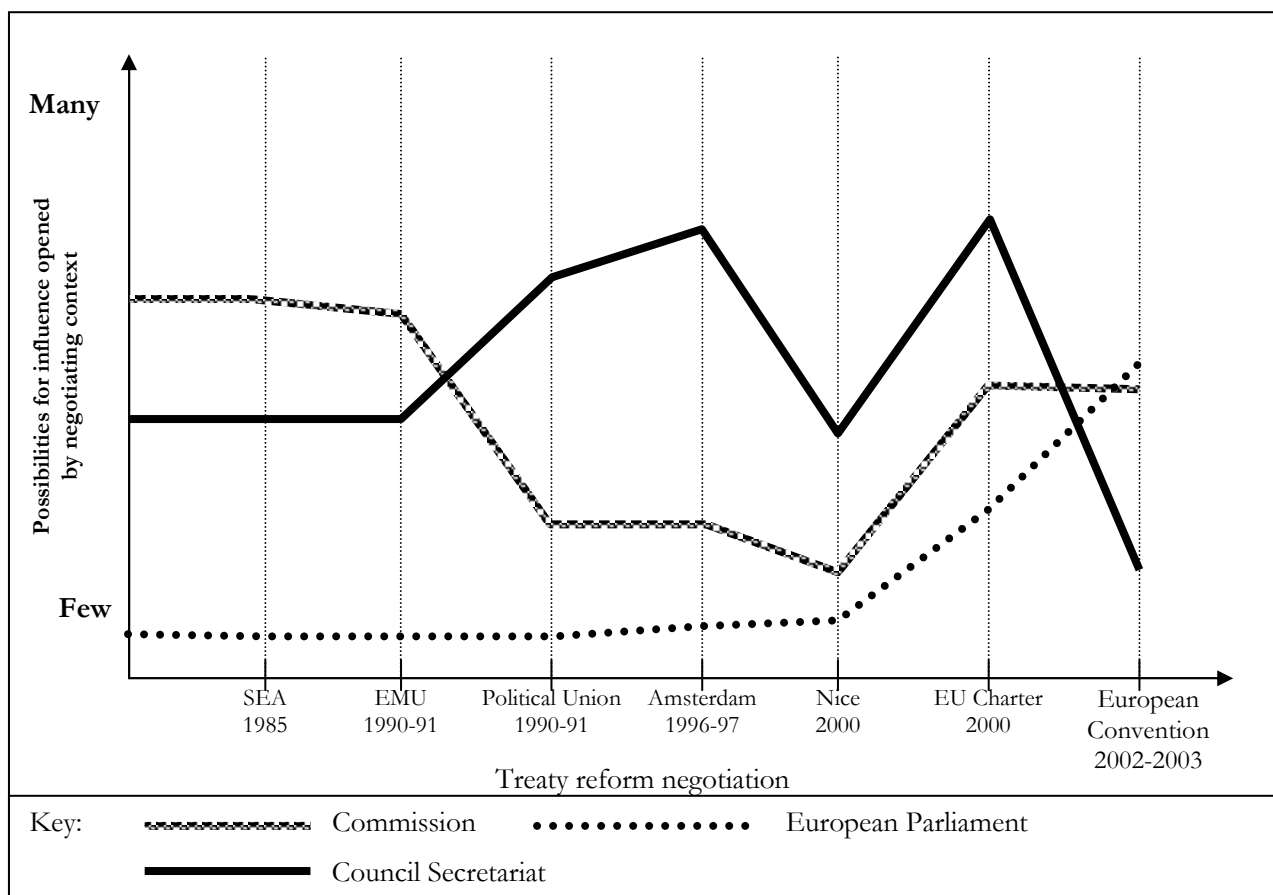


Figure 3 – The possibilities opened by changes in the negotiating context for EU institutions to gain influence over treaty reform outcomes.

The Commission had many opportunities to gain influence in the SEA and EMU IGC's – possessing a privileged institutional position, and where the complexity of the issues gave the Commission relative advantages. In the following IGC's that were negotiated using the

intergovernmental IGC method, the institutional position of the Commission was substantially weakened. Further, the more political issues such as foreign policy and defense were the home turf of national governments, and the sensitivity of many of the issues in the IGC's led governments to keep close tabs on the negotiations – thereby restricting the range of possibilities available to the Commission.

The Council Secretariat in contrast was in a relatively weak position in the SEA and EMU IGC's, but gained a privileged role in the more intergovernmental IGC's. This was especially evident in the negotiation of the Treaty of Amsterdam, where the Secretariat had a very privileged position, the negotiations dealt with many complex issues where the Secretariat had comparative informational advantages, and the complexity of the negotiating situation created a strong demand for brokerage – something that the Secretariat has comparative advantages in providing.

The Council Secretariat also had a strong position in the EU Charter Convention due to its central institutional position, the legal complexity of the issues, and the complexity of the negotiating situation – whereas the Council Secretariat has been significantly weakened in the present European Convention.

The EP's possibilities to gain influence have been very low until the shift to the convention method, being previously forced to adopt declarations and opinions that had little if any impact. In the convention method the EP is a full player, and even has seats in the Presidium chairing the negotiations, and therefore has many opportunities to attempt to gain influence over outcomes.

Section 5 – The impact of strategy in the negotiations

The following section will briefly look at whether EU institutions have been able to translate the possibilities that they possess into real influence over outcomes. It is naturally not enough to have three of a kind in a game of poker to win – one has to know when to hold and fold one's cards to win. Were EU institutions then able to convert the range of opportunities opened by the negotiating context into influence over outcomes in either IGC's or the conventions? The following will first briefly discuss what factors led EU institutions to be successful in IGC negotiations. These results will then be compared with the conventions. Given that the present European Convention is not finished at the time of the writing of this paper, it is naturally impossible to make firm conclusions on actor influence over outcomes, and therefore only tentative conclusions will be made regarding the impact of the process in the European Convention.

The success of Council Secretariat strategies in IGC negotiations

It was seen above that the Council Secretariat had few opportunities to gain influence in the SEA and EMU IGC's. In contrast, especially the context of the 1996-97 IGC opened for many opportunities for the Council Secretariat which were skillfully taken. The Council Secretariat was influential in the 1006-97 IGC due to a combination of its high level of expertise, its reputation as a trusted intervening actor, its privileged institutional position, and the skillful use of pragmatic and behind-the-scenes agenda-shaping and brokering strategies. This was most evident in the negotiation of the issue of flexibility, where Secretariat interventions substantially shifted the agenda away from a form of 'hard core' dealing primarily with CFSP. The Secretariat proved able to significantly shift the agenda through its drafts and proposals that it produced, leading to the creation of a complex legal formula that included many institutional safeguards, and even excluded CFSP!⁸²

When the Secretariat was allowed by the Presidencies in charge of the IGC, the Secretariat also stepped in and supplied brokerage in the IGC negotiations, using a variety of brokering tactics. The Secretariat brokered compromises in Article 133 EC, and in the High Representative for the Common Foreign and Security Policy (CFSP). In both instances, the Secretariat both ensured that a compromise agreement was reached, while also skewing outcomes closer to its own preferred outcome. Tellingly, the final deal brokered by the Secretariat placed the new post of High Representative for CFSP within the Council Secretariat itself by significantly upgrading the post of Secretary General of the Council, thereby also strengthening the institutional prestige of the Council Secretariat in the process.

The negotiation of the Treaty of Nice clearly showed that despite a weak position, the skillful use of appropriate strategies also allowed the Secretariat to influence outcomes. All three contextual variables placed the Secretariat in a weak position (see figure 2). Yet despite this difficult situation, the Secretariat was able to step in and shape the IGC agenda in several cases. For instance, during the Finnish Presidency that prepared the IGC agenda, deputy Secretary-General de Boissieu 'chopped up' the draft Finnish Presidency conclusions, utilizing his institutional position in order to exclude issues that were unwanted by the Secretariat.⁸³ Additionally, the Secretariat was able to successfully insert several of its 'pet projects' in the IGC end-game through clever agenda-setting, such as a declaration on inter-institutional agreements.⁸⁴

⁸² - See Stubb, 2002.

⁸³ - Interviews with national civil servants that took part in the 2000 IGC, Brussels, May 2001 and April 2002.

⁸⁴ - Beach, 2002b:187, 2003.

The success of Council Secretariat strategies in convention method

The context of the first convention negotiating the EU Charter opened for a range of opportunities for the Council Secretariat to gain influence. The combination of its comparative informational advantages in the legally complex issues under discussion, and its privileged institutional position opened many options for Secretariat attempts to influence outcomes.

The Secretariat controlled the ‘input’ and ‘output’ of the convention, and if we compare the first draft of the charter, which the Secretariat drafted quite autonomously, and the final draft, there are few changes, with only eight or nine new articles that were not included in the first draft.⁸⁵ However the level of Secretariat influence here should not be overstated, for the final draft was adopted by consensus, meaning that a significant majority had to be able to ‘find themselves’ in the final Charter.⁸⁶ We can therefore also interpret the lack of changes in the drafts to the successful anticipation by the Council Secretariat of zones of agreement.

However the Secretariat was able to shift outcomes in several key areas.⁸⁷ If we focus on the use of agenda-shaping strategies by the Secretariat, the Secretariat had considerable success with using subtle, behind-the-scenes tactics, thereby gaining considerable influence upon the outcome.⁸⁸ For instance, the Secretariat produced slightly biased briefings asked for by the chair in areas such as the scope of the charter, and the holders of the rights which shifted outcomes closer to the Secretariat’s own preferred outcome.⁸⁹ The head of the Secretariat’s team, Jean-Paul Jacqué, had a restrictive view of what the EC’s competences to promote human rights should be.⁹⁰ This skepticism was then transferred into the drafts that were produced for the convention by the Secretariat, and that then made their way into the final drafts.⁹¹ These restrictive views did not reflect the majority view within the Convention.⁹² Further, perhaps reflecting the Secretariat’s own institutional interests, the Secretariat ensured that the scope of the Charter was limited to the Member States; excluding EU institutions.⁹³

There are fewer opportunities for the Council Secretariat to gain influence in the present Convention, as they have a much weaker position, with few instruments available to attempt to skew

⁸⁵ - Deloche-Gaudez, 2001:27; de Búrca, 2001.

⁸⁶ - Deloche-Gaudez, 2001:29.

⁸⁷ - de Búrca, 2001:134; Maurer, 2003:179-180.

⁸⁸ - Deloche-Gaudez, 2001:14, 27. de Búrca, 2001.

⁸⁹ - de Búrca, 2001:134.

⁹⁰ - Ibid.

⁹¹ - de Búrca, 2001.

⁹² - Ibid.

⁹³ - de Búrca, 2001:136.

outcomes closer to their own preferred vision of the EU.⁹⁴ At present there are no examples of successful Council Secretariat attempts to overcome these deficiencies to shape the Convention agenda.

The success of Commission strategies in IGC negotiations

In both the SEA and EMU IGC's, the Commission successfully used pragmatic agenda-shaping and brokerage strategies to gain significant influence over outcomes. In the 1985 IGC, the Commission successfully lobbied the Member States to take seriously their commitment in the Treaty of Rome to create a functioning Internal Market, exploiting the window of opportunity created to publish its White Paper and link it with the IGC, thereby expanding the zone of possible agreements to include new issues. In the actual negotiations, the Commission put forward a series of pragmatic proposals that aimed at the upper end of what Member States would accept, skewing outcomes closer to their own preferred outcome in areas such as the scope of the Internal Market.⁹⁵ In the EMU IGC, the Commission successfully exploited its institutional position in the agenda-setting phase, creating a final report that formed an authoritative focal point for the ensuing IGC, as it was signed by all of the central bank governors, including the German.

In contrast, the Commission attempted to play a strong political role in the PU IGC, giving up its behind-the-scenes functions in order to act as the 'champion of Europe'.⁹⁶ The strong advocacy of an extreme position in the IGC was most clearly seen in the Commission support for the Dutch first draft treaty in September 1991, which controversially reversed the growing consensus in the draft treaty produced in the preceding Luxembourg Presidency.

The Commission had a weak institutional position in the 1996-97 IGC, but also proved unsuccessful in translating the few opportunities it possessed due to poor negotiating tactics. While the Commission was influential in several low salience and complex institutional issues, the overall picture was one of low Commission influence upon the final Treaty of Amsterdam. For instance the proposals put forward by the Commission were for the most far outside of the zone of possible agreements, and therefore had little impact in most issue areas – most evident in CFSP. This was exacerbated by the low level of acceptability of the Commission's interventions, which also prevented the Commission from playing a brokering role in the IGC end-game.

If anything, things went even worse for the Commission in the 2000 IGC. A variety of factors played in, including a low level of perceived acceptability, the type of issue involved, and poor

⁹⁴ - The Council Secretariat has traditionally supported a pro-integrative and pro-Council view. For more, see Beach, 2002b, 2003.

⁹⁵ - See Beach, 2002b.

⁹⁶ - Beach, 2002b.

negotiating tactics, with top Commission officials blundering the negotiation of several important dossiers.⁹⁷ The Commission had poor relations with the Portuguese Presidency, who believed that the Commission was following a large Member State agenda. The Commission had even worse relations with the French Presidency, which seemed to go out of its way to alienate and exclude the Commission from the negotiations.

Yet this picture of low Commission influence contrasts sharply with Commission influence in the negotiation of judicial reforms within the Friends of the Presidency group. Here clever institutional politics by the Commission ensured the creation of a favorable institutional forum for the negotiations. An ‘epistemic’ community of like-minded actors was created by the Commission, first in the working group prior to the IGC, and then in the Friends of the Presidency. The Commission was interested in having the negotiations held in a ‘technical’ forum among national legal advisers, for it believed that legal advisers would be much less critical of the ECJ and its strongly pro-integrative role than national political representatives, and therefore would agree upon an outcome closer to the preferred outcome of the Commission. Further, the Commission succeeded in securing a privileged position in the group; for example the Commission drafted the agenda for the discussions in both groups.⁹⁸

The success of Commission strategies in the convention method

In the first convention, Vitorino as the Commission representative wanted to incorporate the Charter into the Treaties,⁹⁹ but proved unsuccessful in this. But the Council Secretariat did draw extensively on the expertise of the Commission in social rights¹⁰⁰ - whether the Commission was able to translate this into influence is difficult to determine with the available information though.

In the present European Convention, the Commission was active in setting the agenda for the Convention, and in ensuring that the convention method was used instead of one of the IGC methods.¹⁰¹ Together with the Belgian Presidency, the Commission shaped the Laeken conclusions, and succeeded in expanding the agenda to include issues that were in the Commission opinion in the 2000 IGC.¹⁰² In the present Convention, when the Commission has played a low-profile and realistic role, it has had considerable impact upon the proceedings, being able to shape the agenda to reflect its own priorities. But the Commission has often played themselves out of the picture by not adopting positions in the college, and by pursuing a two-pronged and uncoordinated strategy. This dichotomy

⁹⁷ - Interview with participants in the IGC, Brussels, May 2001 and April 2002.

⁹⁸ - For more on this, see Beach, forthcoming.

⁹⁹ - Speeches annexed to report of the first meeting of the Convention, 17 December 1999, CHARTRE 4105/00.

¹⁰⁰ - Interview with senior Council Secretariat official, Brussels, February 2003. (CS 1)

¹⁰¹ - Interview with Commission official, Brussels, February 2003. (COM 2)

¹⁰² - European Commission, 2000.

has reflected tensions within the Commission, for example between the two Commission representatives and the college of Commissioners, and between the Commission task force and the representatives.¹⁰³ These splits were displayed vividly in December 2002, where on the same day the Commission tabled both a relatively realistic and operational opinion together with a radical draft treaty that was termed ‘Penelope’.¹⁰⁴

While the opinion was produced by the two Commission representatives, the Penelope paper was produced by a team of Commission civil servants directly under the authority of Commission President Prodi, and according to inside sources, it was kept secret from the Commission representatives until after it was published.¹⁰⁵ The Penelope document has been generally ill-received in the convention due to its radical nature, and many members have seen the draft as ‘pre-empting’ their work.¹⁰⁶

In comparison, in issues where the Commission has intervened with well-organized and reasonable positions, it has been able to exploit the negotiating context to gain influence over the agenda. One example was in the working group on ‘Social Europe’. The Commission appointed Commission Secretary-General Sullivan as its representative to the working group. He presented a clear case in the group, and succeeded in putting the issue of public health on the agenda, and shaped the final report of the group.¹⁰⁷ Sullivan argued that the EU should have competence under Article 152 EC to deal with cross-border issues of public health, and especially problems such as communicable diseases and bioterrorism.¹⁰⁸ According to participants in the working group, Sullivan’s argumentation was very persuasive and knowledgeable, and also made clear to skeptics what the Commission did not intend to do with new competences.¹⁰⁹

Another example was Commission representative Vitorino’s chairing of working group on the Charter, where he helped secure final report that reflected the Commission priority of including the Charter as a legally binding agreement into the draft Constitution, while also taking on board British and Irish concerns.¹¹⁰

¹⁰³ - Interview with Commission official, Brussels, February 2003. (COM 2)

¹⁰⁴ - Interview with Irish civil servant, telephone interview, March 2003 (MS 2); interview with Commission official, Brussels, March 2003. (COM 2). See CONV 448/02 with *Feasibility Study: Contribution to a preliminary draft Constitution of the European Union*, European Commission, December 4, 2002 (the so-called Penelope paper).

¹⁰⁵ - Interview with Commission official, Brussels, February 2003. (COM 2)

¹⁰⁶ - Interview with EP member of the Convention, Brussels, February 2003. (EP- 1); *European Policy Centre*, 2002.

¹⁰⁷ - Interviews with EP member of the WG XI on ‘Social Europe’, Brussels, February 2003 (EP 4); Interview with Convention Secretariat official in WG XI, Brussels, February 2003. (CS 2); The final report is CONV 516/1/03 REV 1.

¹⁰⁸ - Working Group XI, Working Documents 37.

¹⁰⁹ - Interview with EP member of WG XI on ‘Social Europe’, Brussels, February 2003. (EP 4)

¹¹⁰ - Interview with EP member of the working group, Brussels, February 2003. (EP 5)

The (lack of) success of the EP's strategies in the IGC method

In comparison to the two other EU institutions, the EP has had very little success in shaping IGC outcomes. This is perhaps ironic, for the EP has been the main institutional winner across the IGC's, with its powers increased from only being consulted by the Council to being a co-legislator together with the Council in the co-decision procedure. In IGC's in general, the EP has often put forward quite extreme policy positions in declarations that have for the most been ignored by IGC participants.¹¹¹

The success of the EP's strategies in the convention method

The manner in which the conventions have been negotiated opens for many opportunities for EP influence, especially as the debates are more open and deliberative than in IGC negotiations. This can be interpreted as a shift to a more problem-solving atmosphere in contrast to tougher bargaining atmosphere that is often prevalent in IGC's, and especially in final European Council Summits concluding IGC's.¹¹²

The EP has in general a much stronger position in the convention method than in IGC's. This is especially evident when groups of MEP's have been able to co-ordinate their positions, enabling them to speak with one voice, thereby providing leadership in a very complex negotiating situation. Further, they actively sought to form coalitions based upon political lines, drawing upon national parliamentarians of similar parties.¹¹³

While the EP did not secure a legally binding Charter – primarily due to the British veto, through agreements to co-operate between two main parties within convention, a majority of MEP's used coalition-building tactics to build support for certain amendments that made their way into the final draft Charter, such as the right to strike and work that were clearly unacceptable to some members of the convention.¹¹⁴

In the present Convention, the EP delegation is one of the driving forces, together with the Presidium.¹¹⁵ MEP's have for example actively used ad hoc coalition-building tactics to attempt to influence the agenda and thereby also outcomes. MEP Andrew Duff has been one of the most active coalition-builders in the European Convention, and has for example recently created a coalition that put forward a contribution to the Convention signed by twelve full members, ten alternates, and three observers. The paper canvasses areas where they all agree, including on generalization of the co-

¹¹¹ - Maurer, 2002; Hoffmann, 2002:5. Although see Vanhoonacker, 1992 for a somewhat contrasting view for the PU IGC.

¹¹² - Hopmann, 1995; Elgström and Jönsson, 2000.

¹¹³ - Maurer, 2003:184.

¹¹⁴ - Deloche-Gaudez, 2001:29-30.

¹¹⁵ - Hoffmann, 2002; Hughes, 2003.

decision procedure, and the election of the President of the Commission by the EP.¹¹⁶ While it is impossible to tell at present whether this will influence the final outcome, it will also be difficult for the Presidium to ignore the ‘common denominators’ that are proposed by such a large coalition.

Yet the relative success of EP tactics in the current Convention will depend largely on whether the MEP’s can work together and follow a relatively modest problem-solving tack that will allow a compromise outcome to be agreed upon by a large majority. In contrast, if the EP increasingly resorts to overly ambitious positions as the Commission did in IGC’s in the 1990’s, there could cut themselves out of influence.

¹¹⁶ - CONV 596/03.

Section 6 - Conclusions

The conclusion discusses these findings and their implications for the way in which we study treaty reform negotiations in the EU, pointing the direction towards more explicit theoretical models that detail how different negotiating contexts are different, and what impacts these differences have upon outcomes.

As existing theories of European integration either discount or ‘black box’ the analytical significance of negotiation processes, this paper first presented a bargaining model that attempts to explain how the context and conduct of the negotiation process mattered for the ability of EU institutions to translate potential bargaining resources into influence over outcomes. Following this three ‘ideal type’ treaty reform methods were reviewed.

This paper examined the impact of the negotiating context and conduct of the negotiations within the three treaty reform methods, and the opportunities and constraints imposed by the institutional context and the manner of conduct upon the ability of the Commission, Council Secretariat, and European Parliament to gain influence. What impact then has the change in negotiating methods had upon their ability to gain influence in treaty reform negotiations? Has the change to the convention method mattered?

Looking first at the bargaining resources of EU institutions in the different contexts, both the Council Secretariat and Commission have extensive expertise that can be brought to bear in treaty reform negotiations (informational bargaining resources), whereas the primary bargaining resource of the EP in the convention method is its democratic legitimacy (level of acceptability), and size of its contingent in the conventions (material bargaining resources).

The context of the three methods opens for different opportunities for EU institutions to gain influence. While the Council Secretariat enjoyed a privileged institutional position in the intergovernmental IGC method, and in the EU Charter convention, in the present European Convention the Council Secretariat’s jobs have been taken over by an ad hoc Convention Secretariat that is formally independent of the Council Secretariat. In contrast, the roles of the Commission and EP are significantly strengthened in the convention method, with the Commission going from being an unwelcome guest in the intergovernmental IGC method used in the 1996-97 and 2000 IGC’s to a full partner in the convention method, even having a seat on the presidium of the conventions. The EP had no role in IGC’s prior to 2000, and only had an observer role in that IGC, but has enjoyed a much more central role in the convention method – gaining a large number of seats, and also gaining places on the presidiums of the conventions. Further, the technical complexity of many of the issues being

negotiated in the two conventions, and the increased complexity of the negotiating situation of over 100 actors in the present Convention, has also opened for numerous opportunities for EU institutions to translate informational resources into influence.

Yet for the institutions to gain influence they had to play their cards successfully in the negotiations. It was found that the Council Secretariat was influential in the 1996-97 IGC and EU Charter convention due to the use of low-profile tactics – for example providing suggestive issue briefings for Presidencies in IGC's, or the Presidium in the Charter Convention. When the Commission used similar low-profile strategies in the SEA and EMU IGC's, they were also relative successful in translating possible influence into real influence. But in later IGC's, and to some extent in the present Convention, the Commission has played its cards poorly, presenting often both extreme and incoherent positions. When the Commission used lower-profile and realistic interventions in the current Convention, they were though able to translate their expertise into influence. Examples of this include Sullivan's interventions in the working group on 'Social Europe' in the present Convention.

The EP had few possibilities to gain influence in IGC's, but has gained many opportunities to gain influence in the convention method. In both conventions the primary method that the EP has used to attempt to gain influence, given that they do not have extensive informational bargaining resources, has been coalition-building tactics aimed at creating support for their own preferred outcomes. Yet as with the other institutions, the relative success of their tactics is also dependent upon whether they adopt moderate positions, or whether they choose to strongly advocate extreme policy positions. For instance, if the EP proves able through coalition-building to achieve a strongly pro-federal final Treaty that reflects its own preferred outcome, it is highly probable that this extreme outcome would be unacceptable to certain Member States (UK, Denmark, France), and that these states would politely but resolutely put the draft Treaty into the bin and start afresh in an IGC context.

Finally, the impact of the change in negotiating method highlights the impact of institutional politics prior to and during treaty reform negotiations. Actions to actually change an unfavorable institutional structure can often be a more effective means of gaining possibilities to influence outcomes than other negotiating strategies.¹¹⁷ If one is unsatisfied with how the game is going, the best strategy is often to change the rules of the game itself.

Concluding, this paper showed how the change in negotiating methods of treaty reform has affected the relative abilities of EU institutions to affect outcomes. When EU institutions had central institutional roles, issues were low salience and relatively technical, and when the negotiating situation

¹¹⁷ - This point is highlighted by Sebenius, among others. Sebenius, 1992, 2002.

itself was highly complex, EU institutions had many *possibilities* to gain influence. Successful strategies to translate these opportunities into real influence over outcomes were usually low-profile – for instance when the Council Secretariat subtly exploited the power of the pen to shift draft texts closer to their own preferred pro-integrative and pro-Council preferences. The argument here is therefore not that EU institutions are necessary to ensure agreement in treaty reform negotiations, but that their interventions can make a difference, though within the broad bounds of what the Member States as the ‘Masters of the Treaties’ will accept.

That changes in the negotiation context and process matter for the relative strengths of actors points to the need for integration theories to open up the ‘black box’ of actual negotiation processes, instead of treating all actors as functionally equivalent, and that treaty reform outcomes are solely determined by patterns of converging actor preferences. Further studies are now needed on the actual causal processes whereby actor preferences and relative power are translated into outcomes through negotiation processes – enabling us to explain with greater confidence which actors win in a treaty reform negotiation, and why.

Section 7 - References

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