Institutions and enlargement under the Treaty of Nice

Rebecca R. Jones, Ph.D.
Visiting Assistant Professor of Government
Skidmore College
Saratoga Springs, NY

rrjones@skidmore.edu

Prepared for presentation at the European Union Studies Association biannual conference,
Nashville, Tennessee, March 27-29, 2003.

Abstract

The Treaty of Nice was designed to provide a blueprint for reforming the system of governance in the European Union. The initial defeat of ratification in Ireland raised questions regarding the future of the EU and the possibility of enlargement. Ireland finally ratified the Treaty of Nice in October 2002; the Treaty entered into force on 1 February 2003. Will the Nice Treaty become the spearhead for reforms in EU governance? Enlargement will have a profound impact on the governing of the European Union. In particular, the Commission and the European Parliament face almost immediate changes in their relative strengths and roles in the governing structure of the EU. The addition of new member states will require changes to the make up of the Commission, as well as a change and possibly a diminution of its role as a policy-maker. The European Parliament, which has been steadily increasing its role in EU governance, stands poised to become an institution in the mold of its national counter-parts. This paper will examine the proposed changes to the Commission and the Parliament within the context of the Nice Treaty and enlargement.

Section I: Introduction

The Laeken Declaration on the Future of the European Union examined the current and future roles of the EU in the international arena and raised issues and posed many questions with regard to the EU, its structure and politics in light of inevitable enlargement. The Laeken Declaration outlined three basic challenges faced by the EU on the brink of the 21st century: The challenges included how to bring citizens "closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilizing factor and a model in the new, multipolar world" (Presidency Conclusions-European Council Meeting in Laeken 2001). The Treaty of Nice was designed to provide a blueprint for reforming the system of governance in the European Union in light of the expected eastern enlargement. The initial defeat of ratification in Ireland raised questions regarding the future of the EU and the possibility of enlargement. Ireland finally ratified the Treaty of Nice in October 2002; the Treaty entered into force on 1 February 2003. Will the Nice Treaty become the spearhead for reforms in EU governance?

All three challenges outlined by the Laeken Declaration impact EU governance in light of enlargement. In addition to questions of changing or modifying competences, the Laeken Declaration asks questions regarding the distinction between executive and legislative measures, enhancing the authority and efficiency of the Commission, strengthening the role of the Council, the role of the national parliaments, the future role of the European Parliament, increasing the areas where a qualified voting majority applies, and changes to the codecision procedure (Presidency Conclusions-European Council Meeting in Laeken 2001). The addition of new member states will require changes to the make-up of the Commission, as well as a change and possibly a diminution of its role as a policy-maker. The European Parliament (EP), which has

been steadily increasing its role in EU governance, stands poised to become an institution in the mold of its national counter-parts. In this paper I will focus on the organization of politics and the political area of an enlarged EU and examine the proposed changes to the Commission and the Parliament within the context of the Nice Treaty and enlargement.

The Treaty of Nice, which was in the process of ratification at the time of the Laeken conference in 2001, addresses some of these issues and applies them to the current Member States. The Nice Treaty outlines several changes that will be made to the structure and institutions of the EU in light of the inclusion of the post-communist states; there are provisions for changes to the Commission, the introduction of an expanded use of the qualified voting majority in the Council, and the introduction of European-wide political parties in the EP. In addition, the Laeken Declaration provided for the creation of a convention on the future of the EU. That convention, headed by former French president Valery Giscard d'Estaing, has become a constitutional convention and has issued drafts of several articles for a constitution of Europe.

The Treaty of Nice outlines the structural changes that will take place to accommodate enlargement. When Ireland failed to ratify the Treaty in June 2001, enlargement was at risk because only the Nice Treaty contained the necessary language to change the structure of EU institutions, i.e. voting procedures, decision-making processes, etc. Without the ratification of Nice by all 15 Member States, the enlargement of the Union could not take place. The changes in voting procedures, the possibility of the creation of Europe-wide political parties and the changes to the process of enhanced cooperation all require significant alterations in both the actual functioning of the EU institutions as well as the perception of the role of those institutions in governing the EU.

The current enlargement is the fifth since the inception of what has become the European Union. The first enlargement took place in 1973 when the U.K., Denmark, and Ireland joined the then-named European Economic Community. Greece became a Member State in 1981, and Spain and Portugal joined in 1986. The next enlargement occurred in 1995 when Finland, Austria, and Sweden became Member States in the European Union. The most recent and largest single enlargement occurred when, on December 13, 2003, eight applicant states from East-Central Europe and the Baltics along with Malta and Cyprus were formally accepted for membership. All five enlargements followed the same general process of application, opinion of the Commission, the opening of negotiations, conclusion of negotiations, and finally full accession (Avery and Cameron 2001). However, the actual requirements for admission to this unique club have grown more complicated as the *acquis communautaire* has grown and changed. Significant differences between the first four enlargements and the most recent include not only the extraordinary number of states invited at one time, but the fact that the most recently admitted states actually received a direct invitation from the EU to apply for membership.

The Treaty on European Union (TEU) provides the initial legal basis for extending membership in the EU. The treaty states that any European state that respects "the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States" is qualified to apply for membership (Council of Europe 1995). Until the 1990s the EU did not specifically issue membership invitations, preferring to judge individual states at the time of application. However, the collapse of communism brought an unprecedented invitation to the Central and East European states; the EU, perhaps caught up in the moment, announced it would welcome applications from the post-communist states. "The historic decision of Copenhagen in July 1993, which promised

membership to those of the associated countries in Central and Eastern Europe that so desired, was all the more exceptional since none of the countries had yet submitted an application. Within the next two years, all did so" (Avery and Cameron 2001).

Unlike the current enlargement, the previous enlargements did not require a fundamental reworking of the structures and competencies of the institutions of the EU. Adding new members simply meant increasing the number of Commissioners and allocating seats in the European Parliament according to population representation formulas. The unprecedented action in 1993 of issuing membership invitations to the post-communist states started the EU on a course of restructuring its political architecture.

Section II: Institutional Changes

The European Commission, the Council, and Parliament are all directly affected by the changes agreed to in the Nice Treaty, which entered into force on February 1, 2003. The Council in particular is released from the requirement of unanimity on many of its decisions and will move to a process of qualified voting majority (QVM), which will be detailed below. As Peterson and Bomberg (1999) note, the EU has always operated on the assumption that "all steps should be taken to preserve at least the *appearance* of consensus" even when resorting to a "majority rules" voting system. It remains to be seen if institutions will still abide by this "requirement" (Peterson and Bomberg 1999, p.58). The Treaty of Nice changes the definition of a qualified majority, which will dilute, to some degree, the power of the larger states.

From 1 January 2005, "a qualified majority will be obtained if: the decision receives at least **a specified number of votes** (the qualified majority threshold) **and** the decision is approved by a **majority of Member States**" (Secretary-General of the Commission of the European Communities 2001). The catch is that the numbers and percentage threshold apply to

the current 15-member Union; the formulas will have to be re-calculated, as more states become full Members. Depending on the pace of accession, as applicant states sign accession treaties it is expected that the percentage qualified majority threshold will drop slightly at first and then move back up to a maximum of 73.4%; with 27 Member States, the qualified majority threshold will increase to 73.91% of the votes. The final new wrinkle allows for the possibility of a member of the Council to "**request verification that** the qualified majority represents **at least 62% of the total population** of the European Union" on any proposal of the Council (Secretary-General of the Commission of the European Communities 2001). If the 62% threshold is not met, then the proposal will not be adopted. This verification is not an automatic process, but must be requested by a Member State. In its report to the Commission, the Secretariat suggested that this option will not be used very often, but it does provide a brake of sorts on Council proposals should some Member States feel they are being railroaded on a particular issue. One of the few remaining issues that will require Council unanimity is the creation of the rotation system for the Commission once the number of Member States reaches 27. The ability to request a verification of the qualified majority also suggests that the Council will behave in a more "political" fashion in that compromise and bargaining will most likely be employed on some issues in order to reach the necessary threshold for a qualified majority.

Changes for the Commission

Conventional wisdom suggests that in an institutional comparison between the EU and a "normal" nation-state, the Commission, as the policy-making body, would take on the role of executive. However, this is a flawed interpretation because, as Desmond Dinan points out, the Commission "has only limited authority and ability to execute EU policy. The Commission is more accurately and informally called the 'motor' of European integration" (Dinan 1999). The

Commission's role as the "motor" of European integration is not changed much by the Treaty of Nice. Primarily what have been changed under the Treaty are the relationships between the institutions of the EU; internally, the processes of policy-making are not substantially changed. The maintenance of policy proposals at the Commission is done because the Commission, more than the other institutions, has the entire EU as its main concern.

The Treaty of Nice provides for structural changes to the Commission that will take effect on January 1, 2005. Specifically, the Commission "shall include one national of each of the Member States," eliminating the advantage currently enjoyed by Britain, France, Germany, Italy and Spain, which have two members each. The Treaty also caps the number of Commissioners essentially at 26 and provides for a rotation of members once the number of Member States reaches 27. "The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously" (Treaty of Nice 2001). There is no provision for putting together a rotation system prior to the accession of the twenty-seventh member state (Secretary-General of the Commission of the European Communities 2001). In addition, the imposition of a ceiling on the number of members of the Commission has been deferred to a later point in time. When the number of Member States reaches 27, it is expected that the Council, in addition to creating the rotation system, will also revisit the issue of the number of Commissioners. The potential for a delay in the full functioning of the Commission becomes a possibility. Since the rotation arrangement for the Commission requires unanimity on the part of the Council it remains to be seen what effect, if any, the current tensions between Member States will have on the Councils' ability to reach agreement. If there were a delay in the

proper functioning of the Commission, this would negatively impact the policy-making capabilities of the EU as well as leave it without an institution to speak for the EU as a separate entity.

Another significant change for the Commission is the manner of its choosing. Previously the Council, acting unanimously, drew up a list of Commission members and a president and submitted that list to the European Parliament for approval. Under the Nice Treaty, the Council is not required to achieve unanimity in its list of Commission nominees; this is an issue that will require a qualified voting majority process to enact. In addition, the president and members will be presented to the Parliament separately; once the nomination of the President is approved, the Council will send a list of "other persons it intends to appoint as members of the Commission" to Parliament for approval. The Treaty of Nice also increases the powers of the Commission president with regard to the internal organization of the Commission; the president

> will allocate portfolios to the Commissioners and if necessary reassign responsibilities during his term of office; will appoint, after the collective approval of the body, the vice-presidents, whose number is no longer established in the Treaty; may demand a commissioner's resignation, subject to the Commission's approval (Secretary-General of the Commission of the European Communities 2001).

The change in the process for choosing the Commission provides individual members of the Council more control over the members of the Commission. Previously, the entire body was presented as a "take it or leave it" option. The separation of the appointments provides a bit more flexibility for the Council in one way, because it means that if a Member State or States are not entirely happy with the choice of a president, they can be appeased in the choices of the other members of the Commission. Once again, we see the potential for the introduction of more "political" behavior in the actions of the Council. In addition, the method of choosing the

Commission outlined in the Nice Treaty provides the Parliament with more control over the members of that institution and by extension, over the actions of the Commission as well.

The European Parliament

The European Parliament has been viewed in the past as an ineffectual institution that provided a home for politicians who could not make it to their national parliaments. "Even the EP's staunchest supporters concede that the Parliament attracts incompetents and party hacks deemed unsuitable for national office" (Peterson and Bomberg 1999, p.43). However, since its inception as an elected body in 1979, the EP has had one very important power: the authority to censure the European Commission (Hix 1999). From the Treaty of Rome through the Treaty of Nice, the EP has grown "into one of the most powerful institutions in the European Union system" (Hix, Noury, and Roland 2002). The gradual, but steady increase in authority and responsibility has moved the EP closer to its national counterparts in terms of its functions and accountability. Hix (1999) has suggested that between them, the Council and the EP form a classic bicameral legislative body; the Council acts as the upper chamber while the EP acts as the lower chamber. However, the lack of Europe-wide political parties has kept the EP from acting as a fully representative body for European citizens. The different electoral process in each Member State is one of the more notable features of the EP that prevents it from acting as a "normal" parliament (Hix, Noury, and Roland 2002).

The European Parliament gains the most from the provisions of the Treaty of Nice. Nice provides for a cap of 732 members in the European Parliament with provisions for getting as close as possible to that number without violating the limits on the number of representatives allocated to each member state. The Intergovernmental Conference (IGC) introduced the cap of 732 with a concurrent lowering of the number of allocated seats to current Member States

applicable in 2009 (at the expiration of the 2004-09 Parliamentary term). Issues have arisen among the current Member States with regard to the reallocation of parliamentary seats; in the fall of 2002, the Danish presidency suggested that the seats be reallocated on a pro-rata basis, which would bring down the current total of seats to 721. This has caused contention as some Member States charge that political maneuvering is behind the suggestion and others are withholding opinions until there is a clear outline of who gets how many seats (Mahoney 2002).

The 2004 elections do "increase on a pro rata basis the number of MEPs to be elected (in the current Member States and in the new member States with which accession treaties will have been signed by 1 January 2004) to reach the total of 732" (Secretary-General of the Commission of the European Communities 2001, emphasis in original). Some flexibility is built into these provisions allowing for a number of MEPs over 732, as states sign accession treaties after the 2004 European elections and hold national elections for Parliamentary representation. More importantly, a legal base has been created which will allow for the adoption of a statute for European level political parties and rules concerning their funding via a codecision procedure. This provision appears to be designed to address some of the democratic deficit issues raised by the lack of any Europe-wide political parties in addition to providing a more direct link between the EU and its citizens.

The ability to create European-wide political parties has great implications for the power and position of the EP with respect to the other institutions of the EU. The statute introduces the possibility that parties in the EP will be able to function more like parties in national parliaments; coalition building, and the threat of a vote of confidence will provide the EP with the ability to speak with a stronger voice than it has in the past. In addition, the representative character of the

EP will increase as well as European citizens will (hopefully) feel a stronger connection to a parliament that they can influence on a wider and more direct basis.

The fact that parties in the EP originate at the national level (as opposed across national lines) suggests that parties would group themselves according to national interests. However, parties in the European Parliament behave in ways that mirror their national counter-parts; nationality (or region) matters less than ideology. Through an analysis of all roll call votes from 1979 to 2001, Hix *et al* (2002) found that party groups form the dominant political organizations in the EP. These party groups are organized along "ideological rather than national or territorial lines" and the main party groups in the EP show high levels of party cohesion as would be expected in a "normal" parliament. In addition, the study found that any fragmentation *within* party groups was between national parties and not based on ideological differences in the party group. The main point of contention between parties at the European level was ideological and the fact that these patterns held steady over the five parliaments mirrors party behavior in national parliaments as well (Hix, Noury, and Roland 2002). These conclusions imply that the introduction of Europe-wide parties may not change the actual functioning of the EP all that much; what is most likely to change will be the relationship between MEPs and their broader, European-wide constituencies, as well as the relationship between MEPs and their national governments. It is also likely that the introduction of European-wide parties will lower the level of intra-party fragmentation as well. The statute on European-wide parties provides the impetus to move the European Parliament further in the direction of its national counterparts.

Finally, and perhaps most importantly, under the Treaty of Nice the European Parliament is given the ability to declare acts of EU institutions to be void without having to demonstrate a specific concern (a previous requirement), and it will also be able to activate a form of judicial

review by requesting a prior opinion from the Court of Justice on the compatibility of international agreements with the Treaty (Secretary-General of the Commission of the European Communities 2001). The accountability of the EP is also enhanced by this provision. A legislature in a democratic nation-state has the ability to override acts of the executive thus providing a brake on the power of the executive. The U.S. system provides both a presidential veto for the executive and the means to override that veto to the Congress. Even a parliamentary system in which the large amounts of power rest in the hands of the Prime Minister, opposition forces have tools that they can utilize to stop some legislation. The possible creation and ratification of a EU constitution notwithstanding, this provision promises to do the most to close the so-called democratic deficit that has plagued the EU and its institutions for many years.

The combination of the introduction of Europe-wide political parties and the ability to act more independently of the EU institutions promises to bring the EP closer to its national counter-parts in scope and authority. Recently, the Commission issued a proposal for rules on the statute and funding of European political parties, which recommended, "the European Parliament should be responsible for handling the registration of a European party." In order to qualify as a European party, a party must have participated in EP elections (or made a formal declaration of its intention to do so), or must be present in at least three Member States. In addition, all parties must express their support for and commitment to the values of human rights, freedom, democracy, and the rule of law; the Commission recommends that the EP will be responsible for verifying this by a majority (European Commission Press Release 2003).

The funding proposal has raised some contentions among Member States. According to the Commission proposal *any* party that either has members already in the EP or exists in three or more Member States, would qualify for a portion of the €8.4 million that would be allocated

for funding political parties. This raises the possibility that fringe parties, such as the far-right Freedom Party in Austria, which has members in the EP, would receive a share of public money. The general assumption in the Commission proposal appears to be that any party that has already elected members to the EP is therefore supported in some measure by a proportion of European citizens. The either/or nature of this funding proposal, without a concurrent threshold requirement, such as exists in most nation-level parliaments, means that the European Parliament could become fractious and filled with many small parties forcing the creation of governing coalitions comprised of three or more parties along the lines of the Israeli Knesset.

By themselves, the provisions for the statute and funding delegate more authority to the European Parliament than it has previously enjoyed. The funding provisions proposed by the Commission also increase the scope of the EP and add the specific requirement that all parties, even those "with a Eurosceptic platform" will qualify for funding on the same terms as any other party; this ensures at least some representation of the "loyal opposition" view. The recommendations in the Treaty of Nice are in keeping with Article 191 of the Maastricht Treaty, which stated that parties would "contribute to forming a European awareness and to expressing the political will of the citizens of the Union" (Council of Europe 1995). The creation and funding of European parties is designed to help answer some of the concerns regarding the perceived democratic deficit in the institutions of the EU. Interestingly, some of the increased authority of the EP is already evident in the recommendations of the Commission. The proposal states that since the Council was unable to reach agreement (a unanimous decision) on this proposal in 2001, adoption will now rest with the EP and the Council under the codecision procedure (European Commission Press Release 2003). The European Parliament is no longer completely dependent on the Council for decisions on its internal rules and procedures.

Section III: Decision-making procedures

Among the questions raised by the Laeken meeting was the issue of the efficient exercise of competencies among the institutions of the EU and more particularly the application of the principle of subsidiarity in an enlarged Union. The Nice Treaty affects the decision-making procedures utilized between the institutions of the EU in addition to the processes used within each institution. Subsidiarity, codecision, and enhanced cooperation all provide guidelines to the implementation of policies as well as interactions between the institutions of the EU and between the EU and the governments of the Member States.

Subsidiarity

The principle of subsidiarity, which dictates that decisions not reserved to the sole competence of either the Commission or Parliament are to be taken at the lowest possible level, is not greatly affected by the Nice Treaty. Those competences previously reserved for the Commission and/or Parliament remain so and there are no new reserved areas created by the Treaty.

The principle of subsidiarity is central to the maintenance of state sovereignty within the EU. However, as Wallace points out, states now have to decide which issues they want "to define as key to the preservation of sovereignty, autonomy, or national idiosyncrasy" (Wallace and Wallace 2000). McCormick identifies three problems with the concept of subsidiarity. First, it cannot be used to remove or release powers from areas of "exclusive competence" once those powers have been so designated. Secondly, there have been and continue to be no absolutes in the debates over individual actions or EU actions within subsidiarity, and finally, the principle of subsidiarity aims to limit powers through the delineation of competences rather than

through a clarification of the relative powers of citizens, Member States, and institutions (McCormick 1999). The lack of clarification of relative powers is another area that sets the EU apart from national political structures. It is in the clarification of powers that governments are able to clearly and effectively govern. If we assume that ultimate goal is a federal Europe, subsidiarity will almost certainly have to be eliminated, or greatly reduced or altered, in favor of a clear delineation of powers between institutions and actors in the EU.

Codecision

The codecision procedure was put into place by the Maastricht Treaty and enhanced by the Amsterdam Treaty. It is a process which, when required, involves the Council and European Parliament working together through a series of dialogues in order to reach a decision. Codecision gave Parliament the option of voting down the common position of the Council by a majority of its members, effectively ending the legislative process with regard to a particular proposal (Shackleton 2000). The Amsterdam Treaty extended the scope of codecision from 15 to 38 areas of EU activities and removed the Maastricht provision allowing for the reintroduction of a proposal after it failed in conciliation (Shackleton 2000). The growth in cooperative activities between the Council and Parliament described by Shackleton (2000) follows the increase in "political" behavior in the Parliament noted by Hix *et al* (2002).

Peterson and Bomberg (1999) note that codecision increased the power of the European Parliament in some sectors more than others and suggest that the EP is strongest under codecision when it exercises collective judgment on amendments to Council proposals. The Treaty of Nice does not specifically address changes to the codecision procedures, but it is to be expected that the increased role of Parliament will strengthen its hand vis-à-vis the outcome of codecision processes. In particular, the introduction of European political parties will increase

the scope of the EP's constituency giving it a stronger mandate for any amendments to policy proposals.

Enhanced cooperation

Enhanced cooperation was introduced into the decision-making lexicon with the Amsterdam Treaty. It originally stipulated that a majority of Member States (eight in a 15 member Union) had to work together in order to form their own policies; those policies could not be contrary to any of the requirements already laid out in the treaties (Hargreaves 2000). Enhanced cooperation was designed to allow states to work together creating and/or implementing policies that would be more directly beneficial. By mid-2001 there had been only four attempts to use enhanced cooperation and in all cases the attempt was blocked by either an individual member state or by a general lack of political will (In Perspective 2001).

The Treaty of Nice modifies the principle of enhanced cooperation so that the minimum number of states required to establish enhanced cooperation is fixed at eight and it eliminates the requirement that a majority of Member States agree on enhanced cooperation; in addition the veto provision for opposing enhanced cooperation has been eliminated (Secretary-General of the Commission of the European Communities 2001). The strengthening of this provision in the Nice Treaty, specifically the removal of veto capabilities, follows the original intent of the Amsterdam Treaty of institutionalizing the idea of flexibility in EU policy-making and implementation. This change means that the smaller states will have more control over regional or other groupings that will allow them to create and implement policies that work to their benefit. It also means that the larger states will not be able to veto any enhanced cooperation proposal among the smaller states.

Section IV: Conclusions: Enlargement and EU governance

Previous treaties acknowledged the idea that the EU would grow in membership and that provisions would need to be put into place in order to accommodate an increase in the number of Member States; the Treaty of Nice articulates those changes and provisions. In addition, there has been a desire to correct the perceived democratic deficit that plagues questions of legitimacy for the EU. Caporaso argues that the gap is "fundamentally about the relation between executive power and representative legislatures" (Caporaso 2000). The provisions outlined in the Treaty of Nice and the draft articles of a European constitution are designed to answer some of these concerns.

The decision-making provisions in the Nice Treaty take into account the enlargement of the Union to at least 27 members. The December 13, 2002 invitations issued to the ten applicant states means that those provisions will be put to the test in the next year. The next European Parliament elections are scheduled for May 2004 and it is hoped that all ten new members will have signed accession treaties at that point and will participate in the EP elections as full members of the European Union. In addition, the signing of the accession treaties entitles each new member to appoint a member to the Commission. By the end of this round of enlargement the total membership of the EU will stand at 25. The changes outlined in the Nice Treaty will take full effect on 1 January 2005, the same date on which potentially all of the applicant states become full members of the Union.

The increase in number of MEPs will likely make the European Parliament a more formidable institution within the structure of the EU. Assuming that European-wide political parties will become viable players in the European Parliament, that institution stands poised to

take on more of a policy-making role in line with its national counter-parts. Conversely, this will most likely increase the level of EU involvement in national-level policies and perhaps increase the disconnect noted by McKay when European policies clash with national interests and cultures (McKay 2000). In addition, the European Parliament now has more control over the passage of the statute on the creation of European political parties. This gives the EP more control over its own role in the Union.

Many of the provisions of Nice will give smaller states in the Union a greater voice and dilute the voice of some of the larger states. The revised requirements of enhanced cooperation mean that smaller states will be able to come together regarding regional policies without threat of interference from the larger states. Conversely, larger states will not be able to dictate policies to smaller states nor use enhanced cooperation to benefit their interests at the possible expense of their smaller neighbors. The implementation of the qualified voting majority requirement in place of unanimity in the Council ensures that power will be distributed more evenly between the smaller Member States and the larger ones. The dual requirement of QVM – representation of at least 62% of the total European population **and** a majority of Member States – ensures that a few large states will not be able to decide on policy for all members. As well, the ability provided to the EP to come to separate decisions on the president of the Commission and the members of the Commission enhances the authority of the directly representative body over that of the appointed and thus indirectly representative body.

The changes outlined in Nice appear to have more profound effects than originally envisioned. It is more than a simple reorganization of institutions in order to accommodate new Member States. The so-called "democratic deficit" has been an issue that weighs on the minds of policy-makers both inside and outside of the EU. Many analysts have argued that the

democratic deficit of the EU is its largest stumbling block to becoming a fully functioning political institution. The gap may prove to be about more than simply the level of accountability and representation in EU institutions. Shore has investigated the making of a "European character" and come to the realization that there is indeed a gap between citizens of the EU and those who purport to represent them. He also discovered that some of the more conspiratorial aspects of the Brussels bureaucracy are not that far off the mark. Several administrators within the Directorates would only speak with Shore on condition of anonymity (Shore 2000). Shore's findings seem to bear out the fears of a disconnected, unaccountable organization that has taken on a life of its own. Warleigh finds that an emphasis on increasing the role of NGOs to "Europeanize" civil society is misplaced; NGOs are unable to "promote the political socialization of their supporters," a situation that leaves them unsuited for the "task of Europeanizing civil society" (Warleigh 2001). It appears that the specific changes and new requirements outlined in the Treaty of Nice will help to close the democratic deficit gap and provide a stronger, more coherent, link between the institutions of the EU and its citizens where the more subtle efforts have failed.

In contrast, Moravcsik has suggested that "concern about the EU's 'democratic deficit' is misplaced" and argues that the direct election of the heads of government and the direct election of the MEPs provides for a high level of representation and accountability within the institutions of the EU (Moravcsik 2002). The proposed statute for the creation and public funding of European political parties may end up supporting Moravcsik's position, however, the proposal itself is an indication that there are doubts among the Brussels bureaucrats themselves as to the broadly representative character and accountability of the EU institutions. The broad

implementation of the qualified voting majority requirement is an acknowledgment of the need for greater protections for minority positions within the institutions of the EU.

The Convention on the Future of Europe, under the leadership of Valery Giscard d'Estaing, has created a draft constitution with the first 16 articles currently under debate and revision; 1,000 documents with revisions were received by the Convention before they even started their discussion of the draft articles (Mahoney 2003). Overall, the draft constitution provides for a degree of flexibility similar to that currently found in the treaty articles. In addition, there is a reiteration of the division of competences between institutions of the Union maintaining the principle of subsidiarity. The draft constitution allows Member States to act individually to exercise their competence and prevents the Union from exercising its competence in such a way as to restrict the competence of a Member State (The European Convention 2003). Rather than the federal system envisioned by Monnet and Conrad Adenauer at the signing of the Treaty of Rome, the EU appears to be moving toward a type of confederal system.*

This initial draft of the constitution is reminiscent of the Articles of Confederation that governed the fledgling United States immediately following the Revolutionary War. There is a great degree of flexibility given to the Member States and an aversion to the creation of a strong centralized government that could infringe on the exercise of national sovereignty. The Nice Treaty and its specifications for the enlargement of the Union provide for the beginnings of a federation of states, but at the same time is careful to avoid a direct move towards that end. The Treaty of Nice provides for a strengthening of the European Parliament in relation to the Commission and Council and changes the policy-making structures within the Council. At the same time, the accountability of the EU to its citizens is increased. The scope of the fifth

* Shore (2000) quotes Conrad Adenauer regarding the Schuman plan: "I was in full agreement with the French government that the significance of the Schuman proposal was first and foremost political, not economic. This plan was to be the beginning of a federal structure of Europe" (p. 16).

enlargement has meant that the political architecture of the EU must change. The Laeken Declaration recognized the necessity for specific changes to be articulated. The Treaty of Nice formalized those changes.

The Treaty of Nice is designed to provide the procedures and methods for making the necessary changes to the political architecture of the EU. The specific changes outlined in the Treaty only apply to a 15-member Union. The accession treaties for applicant states will establish the number of MEPs, commissioners, Council votes, and the qualified majority threshold for the new states, and the rest of the Union, until the new rules enter into force (Secretary-General of the Commission of the European Communities 2001). Until the entry into force of all of the changes described in the Treaty of Nice, the Union will change the composition of its institutions and the structures of its decision-making processes on what amounts to a piecemeal basis. Changes to the questions in which the Council will be required use the qualified voting majority come into effect immediately; the requirements for obtaining a qualified voting majority do not take effect until 2005. The changes to the process of choosing Commissioners and a Commission president do not enter into effect until 2005 either; in the meantime, the number of Commissioners will grow as each new state signs an accession treaty. A number of changes to the European Parliament will enter into force with the 2004 elections, however, several more will not be implemented until the conclusion of the 2004-2009 parliamentary term. The staggered nature of these changes means that the full effect of the Treaty of Nice will not be felt until 2009.

The rapid progress of the Convention in drafting articles for a possible constitution and holding discussions regarding an early start to the next intergovernmental conference suggests that a constitution of Europe may be ready before many of the changes described in the Treaty of

Nice will be implemented. While the Convention and a more rapidly changing international environment may upstage it, the Treaty of Nice has provided valuable guidelines for the EU as it seeks to change its architecture and its role in the lives of its Member States and in the international arena.

Peterson and Bomberg (1999) argue that the unpredictable nature of the EU is a hallmark of its governing style and a hurdle that will have to be overcome in order for it to function as a "real" government; the upside is that its "capacity for improvisation" is responsible for allowing it to continue to function "surprisingly" effectively (Peterson and Bomberg 1999, p. 58). The changes outlined in the Treaty of Nice and the work of the Convention on the Future of Europe suggest that the latest enlargement has brought home the shortcomings of a continued reliance on an improvised political architecture.

The goal of the EU is the creation of an "ever-closer union" among the Member States. There is no precedent for this kind of supranational organization that seeks to supersede the nation-state. However, almost since its inception, EU leaders have invoked the ultimate goal of a federal Europe. Jacques Delors stated over ten years ago that he envisioned a federation of Europe with the Commission becoming a political executive accountable to the European Parliament with the European Council forming a second chamber of the legislature (Shore 2000). Sometimes it is hard to imagine this grand idea coming to fruition, but the provisions of the Treaty of Nice, ongoing discussion for the enlargement of the Union, and the convocation of a constitutional convention all point to the expected attainment of that goal.

References

Avery, Graham, and Fraser Cameron. 2001. *The Enlargement of the European Union*. Sheffield, England: Sheffield Academic Press Ltd.

Caporaso, James A. 2000. *The European Union: Dilemmas of regional integration*. Boulder, CO: Westview Press.

Council of Europe. 1995. Treaty on European Union.

Dinan, Desmond. 1999. *Ever Closer Union: An introduction to European integration*. Boulder, CO: Lynne Rienner Publishers.

European Commission Press Release. 2003. Commission proposes rules on statute and financing of European political parties. Brussels.

Hargreaves, Gillian. 2003. *Enhanced Cooperation* [Web page]. BBC News, 2000 [cited 11 February 2003]. Available from http://news.bbc.co.uk/1/hi/world/europe/1061789.stm.

Hix, Simon. 1999. *The Political System of the European Union*. New York: St. Martin's Press.

Hix, Simon, Abdul Noury, and Gerard Roland. 2002. A 'Normal' Parliament? Party Cohesion and Competition in the European Parliament, 1979-2001. London: European Parliament Research Group.

In Perspective. 2003. *European Union - Enhanced Cooperation* Columbia International Affairs Online (CIAO), August 28 2001 [cited 2003]. Available from www.ciaonet.org/pbei/oxan/oxa08282001.html.

Mahoney, Honor. *Member States wrangle bitterly over institutions* [http://www.euobserver.com]. EUobserver, October 1 2002 [cited October 3, 2002.

Mahoney, Honor. 2003. *Convention faces change of philosophy test* EUobserver, 2003 [cited February 28 2003]. Available from www.euobserver.com.

McCormick, John. 1999. *Understanding the European Union: A Concise Introduction*. New York: Palgrave.

McKay, David. 2000. Policy Legitimacy and Institutional Design: Comparative Lessons for the European Union. *Journal of Common Market Studies* 38 (1):25-44.

Moravcsik, Andrew. 2002. In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union. *Journal of Common Market Studies* 40 (4):603-24.

Peterson, John, and Elizabeth Bomberg. 1999. *Decision-making in the European Union*. London: Palgrave.

Presidency Conclusions-European Council Meeting in Laeken. 2001. Laeken Declaration.

Secretary-General of the Commission of the European Communities. 2001. Memorandum to the members of the Commission: Summary of the Treaty of Nice. Brussels.

Shackleton, Michael. 2000. The Politics of Codecision. *Journal of Common Market Studies* 38 (2):325-42.

Shore, Cris. 2000. *Building Europe: The cultural politics of European integration*. London: Routledge.

The European Convention. 2003. Draft of Articles 1 to 16 of the Constitutional Treaty. Brussels: The Secretariat of the European Convention.

Treaty of Nice. 2001. Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts. Brussels: Official Journal of the European Communities.

Wallace, Helen, and William Wallace. 2000. *Policy-Making in the European Union*. 4th ed. Oxford: Oxford University Press.

Warleigh, Alex. 2001. 'Europeanizing' Civil Society: NGOs as Agents of Political Socialization. *Journal of Common Market Studies* 39 (4):619-39.