

### Crafting the common will: the IGC 1996 from an Austrian perspective

Melchior, Josef

Veröffentlichungsversion / Published Version

#### Empfohlene Zitierung / Suggested Citation:

Melchior, J. (1997). *Crafting the common will: the IGC 1996 from an Austrian perspective*. (Reihe Politikwissenschaft / Institut für Höhere Studien, Abt. Politikwissenschaft, 52). Wien: Institut für Höhere Studien (IHS), Wien. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-263829>

#### Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

#### Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

**Crafting the “Common Will”**  
The IGC 1996 from an Austrian Perspective

**Josef Melchior**



# **Crafting the “Common Will”**

## **The IGC 1996 from an Austrian Perspective**

**Josef Melchior**

Reihe Politikwissenschaft / Political Science Series No. 52

**December 1997**

Institut für Höhere Studien  
Stumpergasse 56, A -1060 Wien  
Fax: +43/1/59991-171

Josef Melchior  
Phone: +43/1/599 91-168  
e-mail: mel@ihs.ac.at

**Institut für Höhere Studien (IHS), Wien**  
**Institute for Advanced Studies, Vienna**

The Political Science Series is published by the Department of Political Science of the Austrian Institute for Advanced Studies (IHS) in Vienna. The series is meant to share work in progress in a timely way before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

All rights are reserved.

Die **Reihe Politikwissenschaft** wird von der Abteilung Politologie des Instituts für Höhere Studien (IHS) in Wien herausgegeben. Ziel dieser Publikationsreihe ist, abteilungsinterne Arbeitspapiere einer breiteren fachinternen Öffentlichkeit und Diskussion zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den AutorInnen. Gastbeiträge werden als solche gekennzeichnet.

Alle Rechte vorbehalten

**Editor**

Josef Melchior

## **Abstract**

The paper analyses the negotiations that took place in the framework of the Intergovernmental Conference (IGC) 1996/97 leading to the modification and amendment of the founding treaties of the European communities. Taking the Austrian case as an example the interaction between the various actors at the national and the international level is reconstructed.

The author criticises the “intergovernmental approach” to the analysis of decision making mechanisms in the EU showing that the negotiations did not follow the logic of state power and multilateral bargaining but a “logic of mutual adaptation of expectations and positions”.

The IGC 1996/97 exemplifies the ongoing institutionalisation of peculiar decision making procedures and the proliferation of working methods that were developed in the various arenas of European negotiations. A key element of these methods is the importance of mediating roles like the role played by the Council presidency during the IGC.

It is argued that the Amsterdam Treaty represents some sort of a “common will” rather than a diplomatic bargain between sovereign states. This is due to the particular setting of the IGC 1996/97 and organisational arrangements that undermine the boundaries between the intergovernmental and the supranational, the national and the international arena, between international and domestic negotiations, and between the national and the European interest.



# **Contents**

<b>1.</b>	<b>Introduction</b>	<b>1</b>
<b>2.</b>	<b>Austria and the European Union</b>	<b>3</b>
<b>3.</b>	<b>Preparing for the IGC</b>	<b>5</b>
<b>4.</b>	<b>Defining Austria's Preferences</b>	<b>6</b>
4.1	Bringing Europe Closer to Its Citizens	6
4.2	Efficiency and Democracy	7
4.3	Common Foreign and Security Policy	8
4.4	Weighting the Preferences	8
<b>5.</b>	<b>Evaluating the Amsterdam Treaty from an Austrian Perspective</b>	<b>10</b>
5.1	What Could Be Achieved	10
5.2	Where It Failed	11
<b>6.</b>	<b>The Art of Crafting a Treaty</b>	<b>13</b>
6.1	The Context	13
6.2	The Format of the Intergovernmental Conference	13
6.3	Developing the Agenda	14
6.4	Organizing the Austrian position	15
6.5	Searching for Equilibrium	17
6.6	The Logic of Mutual Adaptation	18
<b>7.</b>	<b>Conclusions and Conjectures</b>	<b>21</b>
<b>8.</b>	<b>References</b>	<b>26</b>
8.1	Documents	28
8.2	Experts interviewed	30





## 1. Introduction

It is commonly held that intergovernmental conferences (IGCs) stand out in the process of European integration. In the framework of the European Union they are of particular significance because states convene to negotiate the basic terms of their cooperation. The revision of the treaties of the European Communities and the European Union signifies that fundamental changes – or at least changes of the fundamentals – are considered. Either the aims the community wants to pursue are at stake, the areas in which the states want to cooperate, the methods and procedures of cooperation or the design of the institutions. Another important aspect of intergovernmental conferences is that they clearly demonstrate the role of the nation-state as the constitutive source of authority in the European Union and as the sole legitimate representative of the European peoples when basic principles are under consideration. The meeting of the representatives of the governments is therefore often perceived as the heyday of national sovereignty.

Seen from the academic perspective of integration theory intergovernmental conferences seem to fit in the categories of a realist view of international bargaining where national preferences and power relations between governments play a decisive role. From this point of view one would expect that in intergovernmental conferences national representatives confront each other, look for overlap of interests and strike all kinds of deals in order to maximize their gains. The final result would then represent the given balance of power between the nations involved. An equal distribution of power would lead to an outcome reflecting – *ceteris paribus* – the lowest common denominator whereas an unequal distribution of power would lead to an outcome that is closer to the preferences of the more powerful.

I would like to take this crude sketch of what intergovernmental conferences are all about as the starting point for the reconstruction of the mechanisms of negotiation that were employed in the IGC 96.<sup>1</sup> By doing this I will be particularly concerned with the analysis of Austria's position and behavior during the conference testing the descriptive accuracy and explanatory capacity of what is usually taken as the “intergovernmental approach” to the study of European integration (as exemplified for instance by the writings of Hoffmann 1995 and Milward 1995).<sup>2</sup>

My principal argument is that the concepts of intergovernmentalism fail to grasp the specific nature of the negotiation process that took place in the IGC 96. The idea I want to put forward is that the negotiation process was guided by “the logic of mutual adaptation”, as I would like

---

<sup>1</sup> The abbreviation is used to identify the Intergovernmental Conference which was opened on 29 March, 1996 with the European Council meeting in Turin and concluded on 17 June, 1997 with the European Council meeting in Amsterdam.

<sup>2</sup> I am not concerned here with the various further developments and refinements of the intergovernmental approach that came along with the theory of international interdependence and regime theory (Keohane 1984 and 1989; Kohler-Koch 1989).

to call it. According to this concept the Amsterdam Treaty should be regarded as the product of a particular form of negotiation that is unique to the European IGCs and different from other forms of multilateral negotiations. The logic of mutual adaptation that accounts for this particularity is based on a set of assumptions and on some specific features of the European Union.

- There is a prior commitment of the governments to the integration process as such that makes the exit option very unlikely to be taken.
- Faced with external challenges the governments are put under pressure to make progress because under such conditions the status quo is perceived as an unfavorable alternative.
- EU negotiations are influenced by a particular time-structure. On the one hand there are strict time-tables that have to be met – like in IGCs. On the other hand the time horizon of the participants in regard of cooperation and negotiation stretches beyond the IGC itself. This means that the behavior of the actors is influenced by prior steps of integration and forces the actors to take into account goals that reach beyond the actual agenda.
- IGCs operate with a very complex agenda that makes a narrow assessment of costs and benefits almost impossible and forces the actors to make “overall assessments”. This increases the likelihood that the outcome will be perceived as acceptable even if one has not consented on some of the issues.

All these elements work together in European negotiations. I propose to analyze the IGC 96 as a process of mutual adaptation of positions and expectations. Following this reasoning I will argue that the Amsterdam treaty represents some sort of a “common will”. To speak about a “common will” is to presuppose, first, that the wish to take common action presides over particularistic interests, and secondly, that the outcome of the negotiations is not only determined by the initial positions of the participants but is the result of the process itself.

The first feature points to the fact that the national positions are defined with a view to finding a common solution. This feature of the IGC is focused in chapters 2 to 4 taking the formulation of the Austrian position as an example. The second feature refers to the peculiar mode of negotiation of the IGC which is described in chapter 5. The Amsterdam treaty took shape in a step by step process in which the presidency of the EU tried to draft a text that is acceptable to all parties involved. The acceptability of any such proposal rested on the very process of

mutual adaptation of positions and expectations during the conference. How this occurs is precisely what the crafting of the “common will”<sup>3</sup> is about.

So let me now turn to the IGC 96 seen from an Austrian perspective. I will sketch the general political approach Austria has taken towards the European Union, describe how its positions towards and during the IGC developed, and how the agreement on the Amsterdam treaty is evaluated. The second part of my paper is devoted to the analysis of the negotiation process as such. I will finish with some tentative conclusions, a critique of some presuppositions of the “intergovernmental approach”, and questions for further research.

## 2. Austria and the European Union

Since 1987 Austria is ruled by a grand coalition of the Social Democratic Party (SPOe) and the People’s Party (OeVP), which is the conservative party in Austria. It took some time until particularly the SPOe had made up its mind and consensus between the two parties was reached in regard of European integration. The wish to join the European Union then became the uniting project over the years despite growing tensions between the two coalition partners. In fact, the major chambers and interest organizations of business and – with some time lag – also of labor were the pioneers of Austria’s integration into the European Union (Talos 1996, 235–257). They were then joined by Austria’s national bank and other public institutions.

In July 1989 the Austrian government applied officially to become a member of the then European Community. In parallel, the Austrian government participated in the negotiations to create the European Economic Area (EEA) between the European Community and 6 member states of EFTA. The EEA took effect in 1994 (vgl. Itzlinger 1996, 51–69). In spring 1993 the negotiations between Sweden, Finland, Norway, Austria, and the European Union were opened and roughly one year later, in March 1994, the negotiations were finalized. In May 1994 the Austrian parliament passed a constitutional law (“B-VG über den Beitritt Österreichs zur Europäischen Union”; 140 pro votes versus 35 contra votes) that enabled Austria to join the European Union. Since the accession to the EU was qualified as affecting fundamental principles of the Austrian constitution a referendum had to be held (Woschnagg 1996, 129–142). In an intense campaign conducted by the Austrian government and supported by the social partners the Austrian political elite argued strongly for Austria’s accession to the European Union. The campaign was successful and won a two thirds majority of the Austrian population voting in favor of the enabling constitutional law (Greiderer/Pelinka 1996, 143–154). This paved the way for the signing of the accession treaty on June 24<sup>th</sup>, 1994 at the European

---

<sup>3</sup> I am grateful to Andreas Schedler for suggesting the term “crafting” to describe this kind of activity. A similar use of the term – although in a different context – can be found in di Palma (1990).

Council meeting in Korfu, the ratification of this treaty in parliament in November 1994, and its coming into force by January 1995 (Woschnagg 1996, 142).

The huge majority in favor of joining the European Union came as a surprise to most observers. The result was taken to support the government's position concerning European integration. In addition, it was seen by the coalition partners SPOe and OeVP as a mandate to cooperate in strengthening European integration as a means of securing economic prosperity, peace and democracy (Ogris 1996, 155–181). Soon after the referendum the government produced a “White Book” (autumn 1994) in which the government declared its policy. In the face of the overwhelming majority for joining the European Union the government stated that it identifies completely with the idea of European integration and that it will strive with all its strength to contribute to its development (White Book 1996, 1). This clear commitment has since then formed the foundation of Austria's policy towards the European Union and also towards the IGC 96.

In October 1994 national elections were held in which the governing coalition suffered some losses but decided to continue its cooperation. In their working agreement of November 25<sup>th</sup>, 1994 the coalition parties concluded that the federal chancellery and the ministry of foreign affairs should be jointly in charge of the preparation for the IGC 96. They also agreed that in all matters regarding European integration the two ministries should closely work together. The political reason for this arrangement was that the federal chancellery was attributed to the SPOe whereas the ministry of foreign affairs fell into the OeVP's political realm. Since the coalition partners could not decide which minister should be responsible for the politics of European integration they decided to split the competence.

They also agreed that the results of the preparatory work will have to be formally adopted by the Ministerial Council. This agreement holds until today although in 1995 there was another national election forced by the junior partner of the coalition (OeVP). The elections did not change the political balance of power significantly. The OeVP gained little (28,3%; +0,6 percentage points) whereas the gains for the leading SPOe were quite impressive (38,1%; +3,2 percentage points). The opposition parties particularly the Greens had to pay for the bill and suffered severe losses (4,8%; –2,5 percentage points) (BKA 1997). In spite of the increasing tensions between the coalition partners the government had already started with the preparations for the IGC.

### 3. Preparing for the IGC

Since 1<sup>st</sup> January, 1995 Austria is a member of the EU. Though it was not directly involved in the first preparatory phase Austria participated in the most important steps of setting up the agenda. Austria was fully involved in the work of the reflection group that became operational in June 1995. It was for the participation in the reflection group that a first paper on Austria's preferences was produced. The “Guidelines to the Expected Themes of the Intergovernmental Conference 1996” were published in spring 1995. On 61 pages the Austrian government declared its positions in regard of the challenges the European Union is facing, in regard of policy options in the first, second and third pillar as well as in regard of institutional and financial matters. Each of the sections starts with a short analysis of the state of affairs and the main problems the EU encounters and closes with the statement of Austria's objectives. A refined and concentrated version of this text was then prepared for the IGC itself. Provisional versions of the text had been sent to all ministries, the governments of the provinces, the association of Austria's municipalities and cities, the national parliament, and the social partners. Certain constitutional provisions guarantee the influence of the governments of the provinces and of the national parliament on positions taken by the Austrian government in regard of European integration.

Art. 23 d of the Austrian constitution provides for the possibility that the governments of the nine Austrian provinces formulate a common position on matters which might touch upon their competencies and which the EU is going to deal with. In this case the federal government is obliged to stick to the provinces' common position. In May 1995 the provinces passed a resolution in which they requested the government – among other things – to support their claims to strengthen the subsidiarity principle and to enhance the rights and competencies of the committee of the regions (Länderpositionen, 5.5.1995). While in the first paper on the expected themes of the IGC these issues had been dealt with only in a general manner the government then adopted most of the demands of the provinces and the association of the municipalities and cities in its position paper for the IGC.

According to Art. 23 e of the constitution the “main committee” (“Hauptausschuss”) of the Austrian parliament is empowered to formulate binding mission statements for the government in EU matters that may affect national law and jurisdiction. Given that the two governing parties enjoy a two thirds majority in parliament and both parties work together in the working group for defining Austria's position it came as no surprise that the parliament did not formulate any binding mandate before the IGC started.

The final text of the “Guidelines” was then again formulated within the two ministries. In spite of the consultation process the comments of the various political actors often were in line with the government's proposals and only marginally altered what shall become Austria's position for the IGC. Nevertheless, the preparatory phase was criticized by some governments of the

provinces because time for commenting on the government's position paper had been rather short. The opposition parties in parliament claimed that no serious effort had been made to discuss the government's proposals for the IGC openly in parliament and to formulate concrete mission statements for the Austrian delegates 1996 (Stenographische Protokolle, 74.Sitzung, 14.5.97, Aktuelle Stunde).

On 26<sup>th</sup> March, 1996 the Austrian Ministerial Council approved the paper that laid down “Austria's Positions of Principle on the Intergovernmental Conference”. A frame of reference was thereby established which provided the Austrian delegates at the conference with clear guidelines that were formally legitimated and confirmed by the government.

## 4. Defining Austria's Preferences

In its position paper of March 1996 the government specified Austria's preferences in three broad areas.

### 4.1 Bringing Europe Closer to Its Citizens

Among Austria's preferences the aim of *bringing Europe closer to its citizens* was strongly emphasized. To achieve this objective Austria argued for the EU to join the European Convention on Human Rights, to incorporate fundamental social rights in the treaties, to develop further the principle of equality between men and women and the principle of non-discrimination. Austria would also welcome any moves to develop Union citizenship.

A long passage was devoted to the questions of *justice and home affairs*. Austria wanted – among other things – to transfer as many tasks as possible into the first pillar with the exception of criminal persecution, to incorporate “Schengen” into the legal framework of the community, to make use of the community framework whenever possible, to gradually expand majority decisions, to define aims and to set time-limits until when certain decisions should be made, to strengthen the role of the Commission and to expand the jurisdiction of the Court of Justice to all matters in the third pillar.

Questions of *employment and social security* were of particular importance for Austria. The incorporation of an employment chapter and of the social protocol into the treaty was a major concern. It argued for closer cooperation and scrutiny of national employment policies. Greater attention should be paid to those issues in all activities and policies of the EU.

In regard of the *environment* Austria listed a number of improvements it wanted to achieve. As a country with one of the highest ecological standards in the European Union it had an obvious

interest in securing its standards and in making Europe's environmental policy more effective and aspiring.

Under the heading of “*transparency*” Austria argued for making Council and other EU documents better available to the public, to open the process of policy formulation for a broader audience, to simplify the decision making procedures and the structure of the treaty, to establish the EU as a legal person and to unify the treaties.

The last chapter under this title is devoted to the question of *subsidiarity*. The government wanted the conclusions of the Edinburgh European Council to be included in the treaty in order to improve its justiciability. In accordance with the demands of the Austrian provinces the committee of the regions should be given the right to sue for breaches of the subsidiarity principle. Individual regions should also have the right to sue for violations of their competencies. In addition, the treaty article on subsidiarity should also refer to the regional and local authorities. The paper said that a huge majority of the members in the reflection group opposed these demands but that the Austrian government will nevertheless speak out on these matters during the conference.

## 4.2 Efficiency and Democracy

Austria declared in its position paper that in general it welcomes any move that would lead to a further “deepening” of the EU. Concerning the *institutions* of the EU the strengthening of the democratic legitimacy by enhancing the role of the European Parliament (EP) was emphasized. The EP is seen as complementing the role of the national parliaments which are considered to stay the primary source of democratic legitimacy in the EU. The codecision procedure should therefore be extended and be made more efficient. Austria was less keen to apply codecision to budgetary matters and opposed it in regard of changes to the treaties. Austria favored instead the admission of an EP representative to future intergovernmental conferences. The president of the European Commission should be elected by the EP from a list submitted by the European Council.

In general Austria was in favor of extending *qualified majority voting* in the Council, particularly in regard of taxes, certain social policy issues, and in the area of legal harmonization. But it also acknowledged that in certain fields unanimity should persist as in fixing the EU's own resources, in sensible areas of secondary legislation, in certain areas of the second and third pillar, and in regard of treaty amendments.

Regarding the *weighting of votes and the thresholds for majority decisions* in the Council Austria took a more conservative stance. It argued that the overrepresentation of the smaller countries contributes to the legitimacy of the EU so the weighting of votes should not be changed. But Austria could conceive of introducing a “population criterion” to secure that any



qualified majority decision is made by countries that represent at least 60% of the population. Austria opposed any decrease in the number of votes that would constitute a blocking minority.

Concerning the *composition of the European Commission* Austria persisted that any decrease in the number of commissioners must not conflict with the principle that each member state has the right to appoint at least one of them.

### 4.3 Common Foreign and Security Policy

The last chapter of the Austrian position paper is dealt with the Common Foreign and Security Policy (CFSP). In this respect the comprehensive nature of security risks was emphasized with a view of enhancing the coherence in the EU's external policies. Austria wanted the preparation procedure for decisions to be improved as well as the implementation of decisions, it favored more effective decision making mechanisms, and argued for bringing EU and WEU closer together. In operational terms Austria favored the creation of a common planning and analysis unit, more qualified majority voting in certain domains (like the implementation of decisions), the introduction of super-majority decisions (unanimity minus one or two) in the non-military areas of the second pillar, and provisions for the EU to issue guidelines and instructions to WEU concerning the so-called “Petersberg tasks”. In any case Austria wanted the treaty to provide for the possibility of “opting out” or “constructive abstention” on all these matters.

### 4.4 Weighting the Preferences

The Austrian approach to the IGC can furthermore be qualified in three respects: (1) in respect of its general attitude towards the conference; (2) in respect to particular priorities it pursued; and (3) in respect of certain outcomes it strove to avoid.

1. Austria adopted a pro-integrationalist approach. Austria favored changes that would communitarianize certain areas of cooperation; increase the coherence of the policies, and move the EU towards a more unified structure; it favored the strengthening of the role of the European Commission and the Court of Justice in all areas of community action; it supported more majority voting, an enhanced role of the European Parliament, and more as well as more efficient codecision procedures.

Unlike many other countries the focus of Austria's position was not so much on the reform of the institutions and the reform of the second and third pillar. In these respects it was open for reform but did not push it. This is partly due to the fact that in regard of institutional matters Austria – as a small or medium sized country – had more to lose than to gain. Concerning the future of Austria's neutrality status and its policy towards NATO there was a latent conflict between the two governing parties, the OeVP and the

SPOe. Therefore Austria could not develop a straight forward strategy in this regard. Concerning the third pillar Austria's position was in line with most of the pro-integrationalist countries.

2. In contrast to the overall agenda Austria's particular interests lay in the field of *employment, the environment and human and citizen's rights*. Dating back to the experiences made during the campaign to join the European Union in 1994 the government was convinced that European integration would only gain the support of Austria's people if the EU could show that it takes up responsibility in areas people are concerned with. So Austria was among the first who pushed for the incorporation of an *employment* chapter into the treaty, for paying more attention to the likely effects of all the EU's policies on employment, for closer coordination of the national policies, and of the economic and social policies at the European level.

The *environment* was the second domain where Austria pursued particular interests. Ecological concerns should play a greater role in all policy fields of the EU, the principle of “sustainable development” should be embodied in the treaties, and it should be possible to maintain or introduce higher national environmental standards.

The third priority area for Austria was the field of *human and citizen's rights*. The reasons for Austria's engagement in this area are twofold: On the one hand, the plea for human rights forms an integral part of Austria's foreign policy tradition. On the other hand, human rights affairs are a main concern of two governmental institutions that played quite an important role during the intergovernmental conference. These institutions are the constitutional service (“Verfassungsdienst”) of the federal chancellery and the office of the legal adviser (“Völkerrechtsbüro”) in the ministry for foreign affairs. Both institutions deal with human and citizen's rights issues as part of their institutional mission and pushed these issues from within the state apparatus. Progress in these areas also fitted into the political agenda of the government.

3. A third category consists of specific issues that would constitute “no-go-positions” for Austria. These positions mainly were of a defensive nature. Austria insisted
  - on unanimity in respect of decisions concerning the common administration of water resources (Art. 130s (2) TEC), in respect of all matters concerning military security (Art. J.8 (2) TEU), and in regard of access of third-country-nationals to the labor market (new title on “Free movement of persons, asylum and immigration”, Art. A and G);
  - on the possibility of keeping or establishing higher national environmental standards (referring to article 100a (4) TEC);
  - on keeping one commissioner for each member-state (Art. 157 (1) TEC); and
  - that the weighting of votes in the Council stays the same (Art. 148 (2) TEC).

These different positions had a particular effect on structuring Austria's expectations towards the conference. The general pro-integrationalist attitude signaled that Austria would agree with most of the proposals in line with the general approach adopted. In this regard the scope for potential outcomes to be perceived as acceptable to the Austrian delegation was rather broad from the very beginning. In the second group of issues Austria would take initiative to win the support of others. By becoming active in certain fields Austria expected that at least some of its proposals would be taken up. The “no-go-positions” define sensible areas in which Austria would fiercely fight to get what it wants. According to this account many sets of options could be perceived as compatible with the “national interest”. Only in rare cases the national position was narrowly determined cancelling and alternative agreements.

## 5. Evaluating the Amsterdam Treaty from an Austrian Perspective

The Austrian government was fairly satisfied with the result of the IGC. In his preliminary résumé in May 1997 the Austrian foreign minister declared in parliament that Europe is taking shape step by step and that the IGC will definitely change the face of the EU. It is moving from a common economic area towards a common currency, a common social space, a common foreign policy and some time in the future also towards a common defense (Stenographische Protokolle, 74. Sitzung, 14.5.97, Aktuelle Stunde).

### 5.1 What Could Be Achieved

The foreign minister expressed his satisfaction that progress could be made in many respects that were important for Austria. He particularly mentioned:

- the incorporation of an employment chapter
- progress in the area of human rights
- the incorporation of the aim of “sustainable development” in regard of the environment
- the inclusion of a general reference to the equality of men and women
- the incorporation of provisions for the protection of animals
- closer cooperation between the police, the justice departments and the courts in the areas of asylum and migration without giving up the possibility to close the borders if the “national interest” so demands. He emphasized that Europol will become operational, that the Court of Justice will be strengthened and that “Schengen” will be incorporated into the treaty
- some achievements in the foreign policy area like a better planning-unit, the establishment of a permanent representative of the EU, and the incorporation of the “Petersberg tasks”
- a slight increase in the scope of codecision between Council and EP, and

- a protocol on the role of national parliaments.

In its official résumé of the IGC presented to parliament on 3<sup>d</sup> July, 1997 the government claimed that it had realized a good deal of its objectives (BKA/BMaA 26.6.97). In the areas of employment, environment, fundamental rights, non-discrimination, and the protection of animals the Austrian government claimed that it was among the first member states to issue proposals for reform that were incorporated into the Amsterdam treaty to a large extent. Of particular importance from a democratic point of view is the reform of the codecision procedure that makes the EP equal to the Council. From an Austrian point of view the agreement reached in Amsterdam was acceptable mainly for two reasons: firstly, the agreement was in line with the Austrian position of principles and secondly, Austria got largely what it wanted in regard of the issues that were sensitive and of high preference like the “no-go-positions” mentioned above.

## 5.2 Where It Failed

That the Amsterdam treaty was not enthusiastically received in Austria is due to the fact that in many areas Austria had become active but did not succeed, and that in many cases the level of Austria's ambition was higher than what finally could be achieved. This is particularly true in regard of fundamental and human rights.

- Austria, for instance, had argued for a comprehensive non-discrimination clause to be incorporated into the treaty. In the end it boiled down to the provision that the Council may unanimously decide on taking actions against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (new Art. 6a TEC).
- Another point was that Austria wanted an upgrading of Union citizenship as to include a provision that would allow 10% of the population out of at least three member states to formulate a petition that should lead to a legal act (according to Art. 138b TEC). This proposal was completely dismissed. The only addition to Union Citizenship is a new paragraph added to Art. 8b permitting the citizens to use any of the twelve official languages of the EU in corresponding with the institutions of the EU.
- Austria had also strongly argued in favor of providing for the possibility for the EU to join the European Convention on Human Rights (Potacs 1996) and to grant it the status of legal personality. In the end the only concession was that the European Court of Justice will be able to take into account the provisions of the Convention in its own rulings in regard of actions of the EU institutions and where the treaties explicitly provide for it (Art. L TEU).

- Concerning the legal personality of the EU only little progress was made. In the second pillar the EU was granted the right to sign international agreements. Such agreements can only be concluded by the Council acting unanimously on a recommendation from the presidency (new Art. J.14 TEU).
- As a matter of principle Austria favored the extension of qualified majority voting. Austria had argued for more majority decisions in the new chapter on free movement, asylum and immigration, in the second pillar and in many more areas of the TEC. In these respects Austria could not satisfy its ambitions.

From this short résumé it becomes clear that the evaluation of the outcome of the IGC depends on the one hand on the actual gains and achievements measured against the list of principles and initial positions, but on the other hand it also depends on the expectations of the actors in regard of what would constitute a realistic compromise. The higher your level of ambition and the higher your expectations in regard of what can be achieved the more likely you will be disappointed in the end.

From the point of view of the Austrian delegation the outcome of the IGC did not come as a surprise.<sup>4</sup> Although in the public and in academic circles the expectations were quite high it was rather clear that the circumstances were not in favor of any big leap forward. The public mood in many of the member countries was turning against the EU as budgets were cut and unemployment was rising. No uniting political project or agenda could be identified that would make the member states pull in the same direction. On the contrary, different opinions abounded in regard of what route the EU should take and on quite a many of the issues put on the table during the IGC. Due to these unfavorable circumstances the expectations were not as high in the Austrian administration as they were in the public.

The failure of preparing for enlargement through institutional reform is generally perceived as the biggest failure of the IGC – not so from within the Austrian administration. Firstly, because the status quo preserves Austria’s privileged position as a small country that is overrepresented in the EU institutions; secondly, because the treaty provides for institutional adjustment in the case that enlargement actually takes place, and thirdly, because preparing for enlargement – although stated as an aim – was not among the issues that were strongly pushed by Austria. The general perception in the Austrian administration therefore is that the IGC made some progress in bringing the EU closer to its citizens and that some of the shortcomings of the Maastricht treaty could be balanced, particularly in respect of the third pillar.

---

<sup>4</sup> The assessment is based on judgements of members of the Austrian delegation at the IGC and members of a working group that was responsible for the coordination and preparation of the Austrian position during the IGC. I would like to express my gratitude to Dr. Stefan Lehne, DDr. Michael Morass, DDr. Michael Potacs, and DDr. Christoph Thun-Hohenstein for their time and cooperation (for details see the list of experts at the end of the article).

So let's now analyze how all this came about, how the conference was organized, how Austria's positions developed during the conference and how the negotiations were conducted.

## 6. The Art of Crafting a Treaty

### 6.1 The Context

The IGC 96 took place in a very peculiar context. First of all, the conference was embedded in the ongoing activities of the EU. Although it had its own arena, its own stream of activities and time-table one cannot neglect its intermingling with the ordinary business of the EU. This is best signified by the fact that the IGC often was only one of many topics on the agenda of the General Affairs Council. When the foreign ministers started to discuss the issues of the IGC they often just changed the room and continued with their deliberations.

It was a deliberate decision of the governments to isolate the agenda in the conference from other important discussions that were going on in the Union (particularly from the preparations for EMU). This decision was intended not to overload the conference with issues abound with conflicts and to keep the agenda manageable. Though this separation of themes seems to have worked properly at the operational level of the conference the other debates had an influence on the overall atmosphere among the major partners, particularly on the relationship between Germany and Britain, and Germany and France. The tensions surfaced in the Summit meetings and could be felt in the public debates that accompanied the conference. This is particularly true in regard of the BSE crisis and the debate about the stability pact.

A third important context variable were the elections in Britain and France. Knowing that there probably will be a new government in office when the IGC is going to be concluded Britain was difficult to deal with because in many areas it opposed “deepening” and the institutional reform of the EU. As the Amsterdam treaty proves Britain was not the only member state that was reluctant in this regard. The elections in France led to the formation of a left-oriented government that in the final phase of the conference put additional pressure on Germany to pay more attention to employment and social policy issues at the European level. It is this context that has to be kept in mind if one analyzes the intergovernmental conference and how it proceeded.<sup>5</sup>

### 6.2 The Format of the Intergovernmental Conference

The IGC involved three different arenas of negotiation. The busiest forum at the IGC was the group of national delegates. They came together in Brussels almost each week for one or two

---

<sup>5</sup> The following analysis is based on expert interviews (see list of experts). The interviews were held in July 1997 and lasted for 75 to 90 minutes. The interviews were taped and transcribed into a dense written version structured by the questions of the interview guide.

days (mostly on Mondays and Tuesdays) starting with March, 1996 and ending with June, 1997. The group of delegates was composed of personal representatives of the foreign ministers who were either (former) diplomats, state secretaries, or junior ministers, and one representative was even a MEP. Most of them served also as permanent representatives of their countries. Austria's delegate to the IGC was its permanent representative in Brussels in the status of ambassador (Manfred Scheich). The Commission was represented by Marcelino Oreja who participated in the discussions but was not eligible to vote (IGC Update 1, 2). In the case of Austria two people from the federal chancellery and the ministry of foreign affairs assisted the personal representative. They were responsible for the coordination of the Austrian position during the conference, for preparing the speaking-notes for the Austrian representative, and for writing the reports that were widely distributed within the state-apparatus after each round of negotiation in Brussels. At this operational level the main bulk of work was done.

A second arena were the almost monthly meetings of the General Affairs Council where the foreign ministers met to discuss – among other things – the more sensitive matters like foreign affairs and military security, institutional questions, or any matter where a deadlock had occurred. During the IGC the foreign ministers came together 13 times. The overall impression is that the Council meetings did not play an important role neither in respect of setting the agenda nor in respect of reaching agreements.

A third arena of negotiation consisted of the bilateral and multilateral meetings of the heads of governments. Particularly the bilateral German-French summits in advance of the European Council meetings were observed with interest. They largely failed in providing major impulses and political direction for the negotiations not at least because of enduring conflicts between France and Germany in various fields (for instance in regard of the employment chapter and the stability pact).

As a result the IGC 96 was lacking political direction. Neither the German-French axis provided the leadership some had expected or hoped for, nor did the European Council meetings. The success of the IGC depended primarily on the progress made in the ordinary conference setting itself. Particular importance is therefore attributed to the procedures and activities at the level of the group of personal representatives.

### **6.3 Developing the Agenda**

The agenda for the conference was finally set up by the work of the reflection group and the Madrid Summit in December 1995 (see also the contribution of Juliet Lodge in this volume). Although there were speculations about many more themes that might come up during the negotiations three crucial themes were identified with which the conference was going to deal:

- bringing the Union closer to its citizens,

- institutional reform, and
- strengthening the EU’s ability to act internationally.

This is where the negotiations started in March, 1996 under the Italian presidency. The first phase was devoted to a review of the positions of the national governments. A second phase started after the Florence Summit of June, 1996 when the incoming Irish presidency was asked to prepare a draft text for a revised treaty. In order to achieve this end the Irish presidency produced so called “presidency notes” that were based on drafts submitted by the Council Secretariat. The role of the member state’s representatives stayed quite the same: they restated their positions and commented on each of the proposals. It was then for the presidency to draw its conclusions. This working method was labeled “successive approximation” by the Irish presidency (IGC Update 5, 2). It resulted in a draft treaty text that was presented to the Dublin European Council in December, 1996.

The draft treaty was quite ambitious and exceeded what could have been expected to be the lowest common denominator. It presented an agreement in rather broad and general terms and a set of options. The details of which were reserved to be worked out at a later stage of the conference. What came as a surprise was that it placed the questions of fundamental rights, free movement, security and the reform of the area of Justice and Home Affairs on top of the agenda. This can be attributed to the growing awareness among the member states that the new treaty has to appeal to the peoples if it should win their support. The structure of the draft treaty also reflected the Irish preferences that lay in the field of employment and internal security (Spring, 17.7.1996).

The difficult task to manage the final phase of the conference fell into the hands of the Dutch presidency. Although the pressure to start bargaining among the governments increased the working method stood roughly the same until the end of the conference except for the European Council meeting at Amsterdam. The working group of representatives continued to review the Irish draft treaty on the basis of proposals of texts from the then Dutch presidency. On the basis of these discussions the Dutch presidency put forward a second draft treaty on 14<sup>th</sup> May, 1997 (Konferenz 14.5.1997). Within one month the final treaty text was then accorded. That the treaty was finalized as scheduled is due primarily to the self-imposed time pressure and the Dutch determination – shared by most governments – to finish the conference in Amsterdam.

## **6.4 Organizing the Austrian position**

In Austria a parallel process was organized that accompanied the working of the group of representatives. Whenever the presidency issued a proposal the two ministries responsible for the coordination of the Austrian position consulted the cabinet of the chancellor, the ministries concerned, the governments of the provinces, or the social partners – depending on the



relevance of the matter to them. Meetings or consultations were often held quite shortly before the Brussels meetings. In addition to these “political” consultations the Austrian position was finalized in meetings with the representatives of the office of the legal adviser and of the constitutional service. This group reviewed the Austrian position especially from a legal point of view and its likely repercussions on the Austrian legal system and constitution. But their role was not limited to these technical tasks. The prominent role of the issues of human and fundamental rights in the Austrian position is partly a result of the initiatives of the legal services within the administration.

A second forum for discussing Austria's position were the almost monthly meetings of all ministries, the representatives of the provinces and municipalities and cities, and the social partners. The purpose of these meetings was to inform the major political actors in Austria about where the conference stands. In this setting the discussion of any particular Austrian position often was not conclusive because of different opinions among the participants. The definition of a particular Austrian position was therefore confined to the smaller group mentioned above.

Austria also produced nine proposals that were distributed among the participants of the conference. These proposals consisted either of an outline of the main content or of specific formulations for a particular chapter Austria had a special interest in. These papers dealt with the Union's accession to the European Convention on Human Rights (Arbeitspapiere Conf/3842/96 and Conf/3843/97), equal treatment (Arbeitspapier Conf/3841/96), employment (Arbeitspapiere Conf/3840/96 and Conf/3975/96), the environment including provisions for the protection of animals (Arbeitspapiere Conf/3852/96 and Conf/3917/96), Union citizenship (Arbeitspapier Conf/3941/96), and fundamental rights (Arbeitspapier Conf/3940/96) (the last two proposals grew out of a joint initiative of Austria and Italy).

Whenever Austria took the initiative it sought to include the major political forces at home. So the proposals were widely distributed among the ministries, the parliament, the provinces, and the social partners. Nevertheless, comments on the proposals were rather rare providing for discretion on the side of the two ministries who took the final responsibility for the formulation of Austria's position. In response to these activities the Austrian parliament issued three statements based on Art. 23e of the Austrian constitution. On 4<sup>th</sup> October, 1996 the “main committee” (“Hauptausschuss”) of the Austrian parliament issued a statement on employment that was reassured by another one dating from 13<sup>th</sup> June, 1997 (Stellungnahme 4.10.1996 and 13.6.1997). On 3<sup>d</sup> December, 1996 the committee called upon the government to work firmly during the IGC to secure respect for the principles of freedom, democracy, and the rule of law, for fundamental rights emphasizing the rights of the handicapped, for non-discrimination, and to prepare the Union for its accession to the European Convention on Human Rights (Stellungnahme 3.12.1996). By doing so the parliament mainly reassured and confirmed the positions the government had already taken.

## 6.5 Searching for Equilibrium

The fate of the proposals and initiatives put forward during the conference depended heavily on how they were perceived by the other governments and on the readiness of the presidency to take them into account in its own drafting efforts. According to the observations of the Austrian participants the Amsterdam treaty – with a few exceptions – was not the product of direct bargaining among the governments. Instead, the presidency of the EU conducted the negotiations in a very peculiar way: It defined the time-table and the agenda for each of the meetings. It drafted the notes on each of the topics that were discussed and delivered the proposals for how to formulate particular treaty provisions. The presidency was supported in this respect by the legal adviser of the Council General Secretariat who drafted the texts for the presidency.

When the presidency had sent out its proposals often just a week ahead of the meetings the participants prepared their comments at home. During the meetings each member state had the possibility to state its position. These statements often did not address any specific formulation but gave an overall and general impression of what stance the respective member state takes on the proposal that was on the table. Although many member states distributed their own proposals on a wide range of topics they were rarely discussed during the meetings. It was the task of the presidency to draw its conclusions in regard of how to adjust the proposed text. The member states reacted to this setting and concentrated their lobbying activities on the presidency. By collecting all the relevant information about the national positions the presidency was well equipped to move on. However, it was not always easy to predict what conclusions the presidency might draw, nor was it easy for the presidency to anticipate whether the delegates would agree with its conclusions.

The second step to come up with a new treaty was to put the pieces together. This was not done by simply summing up the agreements reached until then. According to the estimate of an Austrian participant the Dutch draft treaty of Amsterdam contained provisions 80% of which had not been explicitly consented before – even if this estimate is exaggerated it is quite significant. Even more surprisingly the treaty did not include certain provisions about which consensus had already been achieved, and certain formulations in the draft treaty had not yet been discussed at all. Given this situation the presidency had to carefully draft a text that could be regarded as a compromise between the positions of the governments although the governments did not come up with the compromise by themselves. The proposed compromise was then again assessed and commented on by the member governments. The uncertainty about the probable equilibrium between the positions of the member governments made any such proposal quite risky. It were the Dutch who had already experienced what happens if one miscalculates the “point of acceptability”. In September 1991 the Dutch draft treaty of

Maastricht had been rejected by 10 out of 12 member states forcing them to drop it and to return to the earlier Luxembourg draft (Laursen/Vanhoonacker/Wester 1992, 18). This time the Dutch took a more cautious approach. Nevertheless their first draft paper of May 1997 in many respects was more ambitious than the Irish proposal of December 1996 according to the judgment of an Austrian participant. The success of reaching an agreement during the intergovernmental conference depended to a high degree on the preparatory work of the personal representatives and the political judgment and skills of the presidencies. In this respect the Irish presidency was praised by many observers for its groundbreaking achievements (IGC Update 5, 7.2.1997).

The capacity for striking particular deals among the member governments at the very last moment is limited. If the proposed compromise is unacceptable to one of the governments there is only little time to find a solution during the Summit Meeting. If no compromise can be found, there are only a few options left: to lower the level of ambition, to postpone an agreement on particular matters, or to reject the whole treaty. It seems as if the Amsterdam Treaty fits into this pattern. In Amsterdam only a few issues that were left over from the preparatory discussions could be solved. One major example is the accorded exemption of Great Britain, Ireland and Denmark in regard of the envisaged abolition of border controls for which they agreed on the communitarianization of the respective competencies. The lowering of the level of ambition can be detected in many areas particularly in the replacement of binding legal provisions by declarations of intent that abound in the treaty. The decrease in ambition is also reflected in the substantial provisions on external policy and institutional matters which fall short of what had been envisaged as a necessary step forward. The assessment of the outcome in many of the other areas is less straight forward. In those areas the assessment largely depends on the level of ambition one applies in the first place. The strategy of postponement of agreements was applied particularly in regard of institutional reform.

## 6.6 The Logic of Mutual Adaptation

The above mentioned curtailments were necessary to come up with a revised treaty but they do not explain what has actually been achieved. Rather than looking at the IGC 96 as an arena of confrontation of sovereign governments that tried to maximize their gains I suggest to analyze it as an attempt to reach an agreement that is acceptable to all. Such an agreement would then represent the “common will” of the member states – as I said in the introduction. The logic of mutual adaptation is the way of how to arrive at the “common will”. It consists of an iterative process whereby a final text is approached. Member governments interact indirectly by making use of ad-hoc committees and/or the presidency of the EU. These organs have the informally delegated authority to guide the process by setting the agenda, by issuing proposals and by summing up the discussions during the meetings. Before and after each round of negotiation in Brussels the proposals and results are again discussed at the national level where the member governments decide whom to consult. These steps are repeated until a

solution is reached. This logic of a stepwise approximation is also applied in regard of the substantive issues. To reach an agreement a series of decisions have to be made starting with questions of principle and ending with concrete operationalizations and formulations. In the case of the IGC 96 the logic of mutual adaptation worked as follows:

- The intergovernmental conference was thoroughly prepared by the so called “reflection group”. It consisted of representatives of the member governments and of the main institutions of the EU. After nearly six month of intensive discussions the final report was presented (“A Strategy for Europe” 10.11.1995). It is important to note that the report was written by the chairman of the reflection group, Carlos Westendorp. The report consisted of consented, but also of divergent positions on the various issues. The report explained why a reform of the Maastricht treaty was necessary drawing upon the conclusions of previous European Council meetings and inter-institutional agreements between the European Parliament, the Council, and the European Commission. It laid down the principles and general objectives the governments and institutions of the EU agreed upon and which were going to frame the negotiations in the IGC. It described the context and proposed a format and a time-table for the conference. It also proposed three main themes the conference should limit itself to deal with: the citizen and the Union; external action of the Union, and an efficient and democratic Union. What then follows is a summary of the positions of the governments which emphasizes possible lines of agreement and options that should be explored during the conference. It was at this stage of the process that the mutual adaptation of objectives and expectations already began. The work of the reflection group established a stable general framework and point of reference that helped to orient the preparatory work for the IGC at the national level.
- The report of the reflection group served as the background against which the initial national positions for the IGC were developed. The position papers for the IGC varied widely in regard of their comprehensiveness and in regard of their precision. Whereas some governments produced encompassing documents with several hundred pages (like the Netherlands and Ireland) other position papers had only a few pages. Some position papers were of a general nature whereas others included precise objectives and mandates. As a general rule one can say that the more voluminous papers were also of a more general character. The thinner papers often focused on specific issues the respective government was particularly concerned with (Griller et.al. 1996, 1–10). Only a few of the papers covered nearly all aspects that were finally discussed in the conference. The Austrian position paper can be taken as an example. It is significant that the structure of the Austrian paper closely follows the themes that were proposed by the reflection group. It is an indication of the fact that even the initial position of the Austrian government was defined in the perspective of contributing to the common task of the IGC. A second feature of the national positions was that they consisted primarily of objectives, principles, and options rather than of fixed and detailed prescriptions. Only in certain

areas that were of particular importance to the respective government specific positions were formulated.

- For the logic of mutual adaptation to function a particular approach to the negotiation process was adopted. The negotiations consisted of two phases. In the first phase the general approach to a particular problem was discussed. It was not before agreement on the objectives and the general outline of the respective chapter had been achieved that the discussion moved on. In the second phase the details of each chapter came under consideration. This approach was applied to each of the topics of the agenda as well as to the conference as a whole. The draft treaty of the Irish presidency can be taken as an example. Each chapter begins with a description of the problem which is focused followed by a set of possible solutions and – were available – concrete proposals of the presidency for amendments of the text of the treaties. The structure of the draft treaty reflects the above mentioned approach. It aims at the approximation of the perceptions of the member governments concerning a particular problem. It then moves on to define a set of options that could be considered as legitimate solutions to the problem. Only when there is sufficient convergence in regard of the perception of problems and solutions a specific formulation is proposed.
- The negotiation technique of the IGC is the last element that explains the logic of mutual adaptation. In contrast to traditional intergovernmental negotiations almost no direct bargaining between the participating governments took place. Instead, the negotiations proceeded in an indirect fashion. The role of initiating the discussion was delegated to the EU presidency. The presidency notes were based on the many proposals of the member governments that were fueled into the negotiations. On the other hand, the member governments had to react to the proposals of the presidency that were tabled quite frequently. It was the duty of the presidency to distill some sort of compromise out of the divergent proposals and comments of the member governments. It was the presidency which promoted the process of mutual adaptation and assimilation.

By using the notion of “common will” I refer to Rousseau’s notion of *la volonté generale* in contrast to the notion of *la volonté de tous*. It is to say that the treaty text represents a complex whole that is more than the sum of its provisions. It would have been almost impossible to achieve the same result would it not have been clear to all participants that there are many more issues to be discussed than those which were currently on the table, and that they formed part of a complex agenda. The condition to find a balance by considering a whole bundle of issues increases the likelihood to come to an agreement than the condition to find a balance on each of the issues independently from the others.

This leads to the second feature of the Amsterdam treaty: The treaty is formulated in such a way that each government can identify with certain elements of it. The degree of agreement

differs from area to area. This is necessarily so because the treaty has to take account of the different intensities of preferences of the governments. The art of drafting a treaty text consists of the ability to strike such a balance that an overall assessment of the outcome is positive from the point of view of each of the participating governments. Taking account of the different intensities of preferences across issue areas is also the precondition for what is usually called “the upgrading of the common interest” in neo-functionalist integration theory (Moravcsik 1993, 477). A presidency can for instance give preference to the more integration oriented countries in one area compensating the more hesitant governments in other areas.

A third characteristic that in my opinion justifies to describe the IGC as the “crafting of a common will” is that the setting is such as to veil the exertion of influence and the uneven distribution of power among the participants. By charging the presidency to formulate the proposals and by focusing the discussion on the presidency an open “fight for recognition” (to quote Hegel) can be avoided. Any open confrontation that produces winners and losers might lower the propensity for the less powerful to give up on other issues as well and to continue cooperating. A second effect is that each participant is able to attribute any specific formulation which he finally decides to identify with to his influence given that it is in line with the general approach of the respective party. This allows to conceive the final agreement definitely as the expression of a “common will” rather than the product of concessions of the less powerful to the more powerful. The logic of mutual adaptation gave birth to a treaty text which is as much the result of the approximation of the proposals of the presidency to the positions of the governments as it is the result of the adaptation of the positions of the governments to what was perceived as an acceptable compromise presented by the presidency.

## 7. Conclusions and Conjectures

The findings of this case study raise several questions concerning the set-up of the negotiations in European IGCs, the peculiar distribution of roles among the actors involved, and jeopardize some of the presuppositions of the “intergovernmental approach” to the study of European negotiations.

1. *Blurring the boundaries between intergovernmental and supranational arenas.* It appears that the role of the presidency is crucial to understand how the IGC 96 worked and why such a blurring of boundaries occurred. The presidency is held for six months by one of the member states. During this period the respective government chairs all the meetings of the EU, of the IGC, and it is represented as a party to the negotiations as well. By this arrangement the presidency is somehow neutralized in order to be trusted by the parties not to take advantage of its privileged position. Nevertheless, each presidency develops its own agenda and declares its priorities quite openly. So the neutrality of the presidency is always contestable which puts even more pressure on the presidency

during the intergovernmental conference to convince its partners of its confidentiality, trustworthiness and reliability.

The presidency is not just some sort of a mediator or arbitrator because it is actually interested in producing a certain outcome. The importance of the presidency in the negotiation process and in keeping the negotiations going suppose to attribute to it an even more active role. I propose to conceive of the presidency as a broker or engineer who is engaged in “crafting the common will”. In this respect the role of the presidency in the just finished IGC is to some extent comparable to that of the European Commission in the ordinary workings of the EU: it has a brokering function, it is given a clear mandate, it has some sort of right of initiative, it is determined to achieve a certain output, has quite some room of maneuvering but is in the last instance dependent on the member states. The presidency worked closely together with the legal adviser of the Council General Secretariat like it already did during the negotiations on Political Union in 1991 (Westlake 1995, 43). A closer investigation of how this interaction works is evidently a desideratum in the study of the European IGCs. To what extent the outcome of the IGC is dependent on the particular performance of the presidency and whether it makes a difference if the presidency is held by a small or a large country is open to further investigation.

The above observations suggest that even the IGCs that are usually held to foster traditional diplomatic behavior reflect to an increasing degree the ordinary working methods of the Council as they were described by Hayes-Renshaw and Wallace (1997). The setting of the IGC resembles to a growing degree that of the Council undermining its presumptive pure intergovernmental character.

2. *Blurring the boundaries between international and domestic negotiations.* If one thinks about international negotiations what comes to mind are intense horizontal interactions, bilateral bargaining, coalition formation, the exchange of threats and compensations, the exertion of power, and the like. The IGC 96 stands in sharp contrast to this picture. The negotiations were characterized by a stable structure of interaction centered around the presidency and focused on achieving a common goal. This is not to say that there were no conflicts. The significant point is that these conflicts did not lead to an adversarial style of bargaining and diplomatic maneuvering. Usually the presidency issued a proposal followed by a round of (often controversial) statements by the national delegates. The centralized structure of interaction burdened the presidency – more than a network like setting would have – with the responsibility of finding a compromise. It was complemented by the willingness of the member governments to react to the proposals that were put forward by the presidency rather than to the proposals that were tabled by the other representatives.

The consensus oriented negotiation style that was developed in the recent IGCs reflects the growing awareness of the interdependence of the member states and the institutionalization of intergovernmental negotiations at EU level. Therefore the governments increasingly rely on approved methods for reaching an agreement. To the extent that the exit-option is perceived by the governments as an inadequate response or ineffective the difference between intergovernmental negotiations and domestic negotiations in the framework of a state becomes less striking. They are then both based on the assumption that the participants are confronted with problems they cannot resolve alone, that they at least form a community of interest, and that they are bound together by reciprocal commitments. As a consequence, the negotiations in the IGC 96 tend to resemble the consociational and corporatist styles of conflict resolution that are typically found in consensus democracies (Lijphart 1984; Grande 1985).

3. *Blurring the boundaries between the “national” and the “European interest”.* The “national interest” is the starting point of any analysis of international negotiations. As firm as it stands in many discussions about international negotiations as problematic it is in regard of its actual meaning. The “national interest” is a construct that is composed of positions and preferences, of content and intensities. What counts as the “national interest” is in itself contested and evolving. It is contested at the national level by competing factions and competing interpretations, and what has been formulated as a high priority at home may not show up as a high priority issue at the international level.

Take for instance Austria’s position in regard of subsidiarity and the accession of the EU to the European Convention on Human Rights (ECHR). In the first example the Austrian position was fixed by the common position of the governments of the Austrian provinces and in the second by a statement of the “main committee” (“Hauptausschuß”) of the Austrian parliament. Both positions should therefore be taken as representing the “national interest”. In respect of subsidiarity the government did not identify very intensely with the claims of the provinces whereas in the other case the parliament’s position backed that of the federal government and was strongly promoted from within the administration. The effect in both cases was that the Austrian representative at the conference repeated those positions until the end of the negotiations although it was clear that the chance of realizing them was low. In interpreting what actually happened one could say that Austria insisted on its positions because they were of high priority and represented the “national interest”. In fact, insisting on its positions just meant to fulfill a given legal obligation.

Moreover, what has been laid down as the “national interest” is often defined in quite broad terms. This means that there are different sets of options which are compatible with the initial position. By using its discretion the negotiators adjust their position to the particular situation with which they are confronted. Whether this adjustment is in line with



the “national interest” or not is a matter of a constructive assessment and open to critical interrogation. In any case, it is misleading to contrast the “national” with the “European” interest in a situation in which the Europeanization of politics becomes a means of promoting what ex-post is then called the “national” interest.

4. *Blurring the boundaries between the national and the international arena.* The findings of the case study about Austria’s strategy in the IGC 96 suggest that one central presupposition of the “intergovernmental approach” to the study of the negotiations in the European Union is mistaken, namely that a clear line can be drawn between the national and the international setting. Even in the refined and sophisticated version of – for example – Moravcsic’s “liberal intergovernmentalism” (1993) the separation of these two arenas is taken as an essential premise. In explaining a certain outcome of international negotiations according to the intergovernmentalist approach a two step procedure should be followed: first, one has to identify the “national interest” by looking at how the positions were developed in the national arena; the second step in the analysis then consists in studying how the different national positions are articulated at the international level. Such a design definitely has its merits: it allows for building models that can be tested and for developing strong hypotheses about what can be expected to happen under specified circumstances.

My objection to this approach is basically an empirical one. It concerns the fact that the separation of the national and international arena fails to grasp the peculiar nature of negotiations in the framework of the European Union, and that the suggested methodology is too mechanical. As the case of the IGC 96 shows the two arenas are closely interconnected. What happened in the international arena of the IGC influenced what happened at the national level nearly as much as vice versa. There was a permanent change of levels and a permanent exchange of inputs and outputs. A methodology that reflects the separation of the arenas in a two step approach of analysis may therefore also be misleading. I would rather argue that the analysis of the EU as a multilevel system of negotiation better fits the facts (Jachtenfuchs / Kohler-Koch 1996; Mazey/Richardson 1995; Marks 1993).

5. *Blurring the boundaries between description and explanation.* One conceptual objection against the “intergovernmental approach” is that it conflates description and explanation. As I tried to show terms like “bargaining”, “package-dealing”, “issue-linkage” etc. do not accurately describe what was going on in the IGC 96. It is not to say that it is impossible to reconstruct the outcome of the negotiations by using these terms, but then these terms are used in a metaphorical manner. The negotiations in the IGC 96 did not progress by literally striking deals and by open bargaining among the participants but by a process that can best be characterized by the mutual adaptation of positions and

expectations promoted by the presidency. It was along these lines that the “common will” – materialized in the Amsterdam treaty – was crafted.

## 8. References

- Grande, Edgar (1985). Konfliktsteuerung zwischen Recht und Konsens. Zur Herrschaftslogik korporatistischer Systeme, in: Gerlich, Peter / Edgar Grande / Wolfgang C. Müller (eds.). Sozialpartnerschaft in der Krise. Leistungen und Grenzen des Neokorporatismus in Österreich (Böhlau Verlag) Wien, Köln, Graz, 225–254
- Greiderer, Sylvia/Anton Pelinka (1996). Das Referendum des 12. Juni, in: Rothacher, Albrecht / Markus Zemanek / Wolfgang Hargassner (eds.). Österreichs europäische Zukunft. Analysen und Perspektiven (Signum-Europa-Bibliothek) Wien, 143–154.
- Griller, Stefan / Dimitrios Droutsas / Gerda Falkner et.al. (1996). Regierungskonferenz 1996: Ausgangspositionen (IEF Working Paper Nr. 20), Wien
- Hayes-Renshaw, Fiona / Helen Wallace (1997). The Council of Ministers (St. Martin's Press) New York
- Hoffmann, Stanley (1995). The European Sisyphus. Essays on Europe 1964–1994 (Westview Press) Boulder
- IGC Update (1996/1–4 and 1997/5–6). (Institute of European Affairs) Dublin.
- Itzlinger, Andrea (1996). Österreichs Vorbereitungen auf die Europäische Union, in: Rothacher, Albrecht / Markus Zemanek / Wolfgang Hargassner (eds.). Österreichs europäische Zukunft. Analysen und Perspektiven (Signum-Europa-Bibliothek) Wien, 51–69.
- Jachtenfuchs, Markus / Beate Kohler-Koch (1996). Einleitung: Regieren im Mehrebenensystem, in: Jachtenfuchs, Markus / Beate Kohler-Koch (eds.). Europäische Integration (Leske + Budrich) Opladen, 9–44
- Keohane, Robert O. (1984). After Hegemony. Cooperation and Discord in the World Political Economy (Princeton University Press) Princeton
- Keohane, Robert O. (1989). International Institutions and State Power. Essays in International Relations Theory (Westview Press) Boulder
- Kohler-Koch, Beate (ed.) (1989). Regime in den internationalen Beziehungen (Nomos Verlag) Baden-Baden
- Laursen, Finn / Sophie Vanhoonacker / Robert Wester (1992). Overview of the Negotiations, in: Laursen, Finn / Sophie Vanhoonacker (eds.). The Intergovernmental Conference on

Political Union. Institutional Reforms, New Policies and International Identity of the European Community (European Institute for Public Administration) Maastricht

Lijphart, Arend (1984). *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press) New Haven, London

Marks, Gary (1993). Structural Policy and Multilevel Governance in the EC, in: Calfruny, Alan / Glenda G. Rosenthal (eds). *The State of the European Community*, Vol. 2 (Lynne Rienner Publishers) Boulder, 391–411

Mazey, Sonia / Jeremy Richardson (1995). Promiscuous Policymaking: The European Policy Style?, in: Rhodes, Carolyn / Sonia Mazey (eds). *The State of the European Community*, Vol. 3 (Lynne Rienner Publishers) Boulder, 337–359

Milward, Alan S. (1995). *The European Rescue of the Nation-State* (Routledge) London

Moravcsik, Andrew (1993). Preferences and Power in the European Community: A Liberal Intergovernmental Approach, in: *Journal of Common Market Studies*, Vol. 41, No. 4, 473–524

Ogris, Günther (1996). Österreichs Ja zur Europäischen Union, in: Rothacher, Albrecht / Markus Zemanek / Wolfgang Hargassner (eds.). *Österreichs europäische Zukunft. Analysen und Perspektiven* (Signum-Europa-Bibliothek) Wien, 155–182.

di Palma, Giuseppe (1990). *To Craft Democracies. An Essay on Democratic Transitions* (University of California Press) Berkeley, Los Angeles

Potacs, Michael (1996). Aus der Rechtsprechung der Gerichte der Europäischen Union, in: *Österreichische Juristenzeitung*, 51. Jg., Heft 17, 641–645.

Talos, Emmerich (1996). Interessenverbände und EU-Beitritt, in: Rothacher, Albrecht / Markus Zemanek / Wolfgang Hargassner (eds.). *Österreichs europäische Zukunft. Analysen und Perspektiven* (Signum-Europa-Bibliothek) Wien, 235–257.

Westlake, Martin (1995). *The Council of the European Union* (Cartermill International Ltd.) London

Woschnagg, Gregor (1996). Die Phasen der Integration Österreichs, in: Rothacher, Albrecht / Markus Zemanek / Wolfgang Hargassner (eds.). *Österreichs europäische Zukunft. Analysen und Perspektiven* (Signum-Europa-Bibliothek) Wien, 107–116.

## 8.1 Documents

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3840/96, 16.4.1996). “Beschäftigungspolitik”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3841/96, 16.4.1996). “Gleichbehandlung”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3842/96, 16.4.1996). “Beitritt der Union zur Europäischen Menschenrechtskonvention”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3852/96, 22.5.1996). “Umwelt” Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3917/96, 20.9.1996). “Textvorschläge zum Umweltschutz”, Brüssel

Arbeitspapier der österreichischen und italienischen Delegation bei der Regierungskonferenz (CONF/3941/96, 3.10.1996). “Unionsbürgerschaft”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3940/96, 3.10.1996). “Grundrechte”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3975/96, 8.11.1996). “Vorschlag für Vertragsänderungen im Bereich Beschäftigung”, Brüssel

Arbeitspapier der österreichischen Delegation bei der Regierungskonferenz (CONF/3843/97, 10.3.1997). “Proposed amendments on fundamental rights, non-discrimination and equality between men and women”, Brüssel

“A Strategy for Europe” (10.11.1995). Final report from the Chairman of the Reflection Group on the 1996 Intergovernmental Conference, Madrid

“Austria’s Position of Principle on the Intergovernmental Conference” (orig.: “Österreichische Grundsatzpositionen für die Regierungskonferenz”) (CONF/3857/96, 4.6.1996), Brüssel

Bundeskanzleramt (BKA)/Bundesministerium für auswärtige Angelegenheiten (BMAA) (26.6.1997). Der Vertrag von Amsterdam. Das Ergebnis der Regierungskonferenz 1996/97, Wien

Bundeskanzleramt (BKA) (1977). “Fakten. Das politische System. Ergebnisse der Nationalratswahl 1995” (<http://www.austria.gv.at/fakten/polsystem/wahl95.htm>), Wien

“Guidelines to the Expected Themes of the Intergovernmental Conference 1996” (orig.: “Leitlinien zu den voraussichtlichen Themen der Regierungskonferenz 1996”) (n.d.), Wien

Irish Presidency (5.12.1996). “The European Union Today and Tomorrow. A General Outline for a Draft Revision of the Treaties”, Brussels

Konferenz der Vertreter der Regierungen der Mitgliedstaaten (14.5.1997). “Non-Paper” (Zusammenstellung der behandelten Texte) SN 2555/97 CAB, Brüssel

“Länderpositionen zur Regierungskonferenz 1996” (5. 5.1995), Wien

Spring, Dick (17.7.1996). “Priorities of the Irish Presidency of the Council of Ministers of the European Union” (Statement by the Deputy Prime Minister and Minister for Foreign Affairs of Ireland to the European Parliament). (<http://www.irlgov.ie/iveagh/eu/state/pres1.html>).

Stellungnahme des Hauptausschusses des österreichischen Parlaments (4.10.1996). “Beschäftigungspolitik”, Wien

Stellungnahme des Hauptausschusses des österreichischen Parlaments (3.12.1996). “Grundrechte”, Wien

Stellungnahme des Hauptausschusses des österreichischen Parlaments (13.6.1997). “Aufnahme des Beschäftigungskapitels in den EU-Vertrag”, Wien

“Stenographische Protokolle des Österreichischen Nationalrats”, 74. Sitzung (14.5.1997)

Treaty on European Community (TEC)

Treaty on European Union (TEU)

Weissbuch der Bundesregierung (cit. as “White Book”), Wien.

## 8.2 Experts interviewed

Ambassador Dr. Stefan Lehne, Ministry for Foreign Affairs. Deputy Director General, Economic and Integration Affairs. During the IGC 1996 responsible for the drafting of Austria's position papers and speaking-notes for the personal representative of the Foreign Minister.

DDr. Michael Morass, Federal Chancellery. Deputy Director of the Department for European Integration. During the IGC 1996 responsible for the political coordination and drafting of Austria's positions.

DDr. Michael Potacs, The Federal Chancellery. Constitutional Service. During the IGC 1996 legal adviser to the working group that prepared the Austrian positions.

DDr. Christoph Thun-Hohenstein, Ministry for Foreign Affairs. Director of the European Law Division. During the IGC 1996 legal adviser to the working group that prepared the Austrian positions.