

Analyzing Decision Making during the Intergovernmental Conference Process:

Maastricht and Amsterdam

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Highlighting the Relevance of Three Approaches to Decision Making. This paper combines three approaches¹ to provide an analysis of French and German decision making during the Intergovernmental Conference (IGC) process: Putnam's two-level games; Aberbach, Putnam and Rockman's four images of civil servants; and Jean Monnet's practical and purposeful way of doing things. In this paper, the IGC process is defined as the prenegotiation, IGC negotiation and ratification processes including the member states' and the European Union's institutions. Each approach chosen in this paper can offer the reader **part** of an overall understanding of the IGC process by highlighting the levels of analysis (Putnam's two-level games), the actors (four images of civil servants and politico-administrative interactions), and the different aspects of the negotiating process (Monnet's integrative bargaining, distributive bargaining, attitudinal structuring, intraorganizational bargaining)².

Putnam's two-level games. The two-level games approach is useful due to its focus on both internal bargaining at the domestic level and external negotiations at the international level. In the IGC context, Putnam's approach is essential owing to the fact that decision making in the Council on treaty reform is fundamentally a matter of multilateral negotiations and parliamentary ratification in which political leaders and domestic civil servants play a dominant role. An exclusive focus on the systemic level, characteristic of regime theory, does not explain the reasons why Community member states adopted their respective negotiating positions nor why these positions converged at specific points during the IGCs.³ As most

¹Here an approach is "a predisposition to adopt a particular conceptual framework and to explore certain types of hypotheses toward the generation of theory." As cited in James A. Bill and Robert L. Hardgrave, Jr., Comparative Politics: The Quest for Theory (Lanham, MD: University Press of America, 1981), 24.

²This paper relies heavily on information contained in Chapters I and VI of Colette Mazzucelli, France and Germany at Maastricht Politics and Negotiations to Create the European Union (New York and London: Garland Publishing, Inc., 1997), 3-34 & 173-205.

³Andrew Moravcsik, "Negotiating the Single European Act," in The New European Community, eds. Robert O. Keohane and Stanley Hoffmann (Boulder & Oxford: Westview Press, 1991), 75, points out the need to focus on the international implications of domestic politics in future research

negotiators acknowledge, bargaining among domestic constituents is key to the eventual conclusion of an international negotiation. Moreover, the support of domestic actors is essential to assure subsequent parliamentary ratification of any treaty. Putnam argues that any approach to international negotiation must be rooted in an understanding of domestic politics or the power and preferences of the major actors at the national level.⁴

The crucial element of Putnam's approach is the "win-set," defined for a given domestic constituency as the set of all possible international agreements that would "win" - that is, gain the necessary majority among the constituents when simply voted up or down.⁵ Putnam argues that three sets of factors decide win-set size: Level II or domestic preferences and coalitions; Level II institutions; and Level I or international negotiators' strategies.⁶

Putnam's two-level games also explain an "integrative approach" in that state leaders are forced to balance domestic and international concerns during the negotiating process. The approach is "state-centric," not in "the realist sense of emphasizing nation-states as units" but in that chief executives and state bureaucracies are viewed as "actors whose aims cannot be reduced to reflections of domestic constituent pressure."⁷

The usefulness of Putnam's approach is that it alerts the reader to the fact that leaders often formulate strategy in the face of domestic constraints which sometimes work to their advantage. On the other

on the European Community.

⁴Robert D. Putnam, "Diplomacy and domestic politics: the logic of two-level games," International Organization 42 (1988): 427-460; Peter B. Evans, Harold K. Jacobson and Robert D. Putnam, eds., Double-Edged Diplomacy: International Politics and Domestic Bargaining (Berkeley: University of California Press, 1993); Helen Milner, "International Theories of Cooperation Among Nations: Strengths and Weaknesses," World Politics 44 (1992): 466-496.

⁵Putnam, "Diplomacy and domestic politics," 437.

⁶Ibid., 442.

⁷Peter B. Evans, "Building an Integrative Approach to International and Domestic Politics," in Double-Edged Diplomacy, 401-402.

hand, Putnam's approach illustrates that leaders can use strategies decided on at the European level in order to force domestic policy change on an unwilling political establishment. The phenomenon most distinctive of the two-level games approach is defined by Putnam as synergy, in which international actions are employed to alter outcomes otherwise expected in the domestic arena.⁸

Putnam says that the only formal link between Level I and Level II is the chief negotiator. He also considers the possibility that the chief negotiator's preferences may diverge from those of his constituents. Putnam cites three motives of the chief negotiator: enhancing his standing in the Level II game by increasing his political resources or by reducing potential losses; shifting the balance of power at Level II in favor of domestic policies that he prefers for exogenous reasons; and, finally, pursuing his own conception of the national interest in the international context.⁹

In terms of the IGC process, the three domestic factors which Putnam's approach illustrates are: the structure of domestic preferences; state institutions involved in the Treaty ratification processes; and government strategies to obtain internal support. Each factor is essential in any consideration of the levels of negotiation and the subsequent relations among civil servants, ministers and political leaders which define the IGC process. Moreover, these domestic factors also explain the actions and roles of civil servants involved in national Treaty ratifications. This is particularly true in those cases in which no popular referendum takes place.

Andrews argues that "once attention shifts from the origins of the Treaty to the process of its ratification by the various EC member states, the analytical focus does properly shift from an intergovernmental institutionalist framework to include a greater emphasis on subnational politics."¹⁰

⁸Moravcsik, "Integrating International and Domestic Theories of International Bargaining," in Double-Edged Diplomacy, 26.

⁹Evans, "Building an Integrative Approach to International and Domestic Politics," 457.

¹⁰David M. Andrews, "The Global Origins of the Maastricht Treaty on EMU: Closing the Window of Opportunity," in The State of the European Community, Volume 2, eds. Alan W. Cafruny and Glenda G. Rosenthal (Boulder & London: Lynne Rienner Publishers, 1993), 119.

Using Putnam's approach as a point of departure, in combination with other approaches, this paper makes the case that it is not possible to divorce the analytical framework of IGC negotiations from the political developments or constraints at the domestic level.¹¹ The two must be considered together. *Aberbach, Putnam and Rockman's four images of civil servants*. At the domestic level, this paper focuses on the attitudes and responsibilities of civil servants and their relationships with political leaders. The approach of Aberbach, Putnam and Rockman uses four images to explore the relationships between bureaucrats and politicians in Western democracies.¹² In their book, the scholars argue that the development of politico-administrative hybrids, described as Image IV, characterizes the policy process in recent decades. In the modern state, the "pure hybrid" stands in marked contrast to his Image I counterpart, the classical administrator defined by Max Weber. Image IV only vaguely resembles Image II, in which the distinction is made between the "facts and knowledge" which civil servants bring to their work and the "interests and values" emphasized by politicians.¹³ Image III comes closest to the "pure hybrid" with one crucial difference: "whereas politicians articulate broad, diffuse interests of unorganized individuals, bureaucrats mediate narrow, focused interests of organized clienteles." In other words, "politicians seek publicity, raise innovative issues, and are energizing to the policy system, whereas bureaucrats prefer the back room, manage incremental adjustments, and provide policy equilibrium according to Webster, "a state of balance between opposing forces and actions."¹⁴

In their analysis of Image IV, Aberbach, Putnam and Rockman cite the findings of Campbell and Szabrowski. The latter team's focus on civil servants in central agencies relied on extensive data material

¹¹Andrews makes the argument that this analytical shift is possible.

¹²Joel D. Aberbach, Robert D. Putnam and Bert A. Rockman, eds. Bureaucrats and Politicians in Western Democracies (Cambridge: Harvard University Press, 1981).

¹³Ibid., 6.

¹⁴Ibid., 9.

gleaned from interviews.¹⁵ In other books, Campbell refers to the approach of Aberbach, Putnam and Rockman in his research on the way in which civil servants function in the public policy process.¹⁶ Campbell also cites other writings on French and German civil servants used for this paper. These include Suleiman's books on the French bureaucracy, a journal article by Putnam analyzing senior civil servants in Britain, Germany and Italy and an edited volume on the political role of top civil servants in Western Europe.¹⁷ In addition the more recent literature by Quermonne on the bureaucratic apparatus of the state and Ziller on French and German civil servants¹⁸ is used to analyze bureaucratic preferences during the IGC process based on Aberbach, Putnam and Rockman's approach. Each of these sources illustrates that administrative elites are inherently political in so far as they participate in decision-making processes of a political nature, which is clearly the case for civil servants involved in the European Community. Their importance as a political elite is also highlighted by their crucial position in IGC decision making. Aberbach, Putnam and Rockman's approach is useful precisely because of the light it sheds on both civil servants and their masters. The focus of most writings on European integration has been less on the administrative, technocratic elites involved and more on the input of political leaders.

In the IGC context, politico-administrative hybrids and national civil servants are present in all phases of the negotiation and ratification processes. Moreover, they form a crucial linkage between the national and

¹⁵Colin Campbell and George J. Szabrowski, The Superbureaucrats: Structure and Behavior in Central Agencies (Toronto: Macmillan Press, 1979).

¹⁶Colin Campbell, Managing the Presidency (Pittsburgh: University of Pittsburgh Press, 1986), 206-208.

¹⁷Ezra N. Suleiman, Les hauts fonctionnaires et la politique (Paris: Seuil, 1976); Ezra N. Suleiman, Les élites en France (Paris: Seuil, 1979); Robert D. Putnam, "The Political Attitudes of Senior Civil Servants in Western Europe: A Preliminary Report," British Journal of Political Science 3 (July 1973): 257-290; Mattei Dogan, ed., The Mandarins of Western Europe (New York: Sage Publications, 1975).

¹⁸Jean-Louis Quermonne, L'appareil administratif de l'Etat (Paris: Collection Points, 1991); Jacques Ziller, "Hauts fonctionnaires et politique en République Fédérale d'Allemagne," Revue Internationale des Sciences Administratives 1 (1981): 31-41; Jacques Ziller, Administrations comparées (Paris: Montchrestien, 1993).

European arenas of decision making. Aberbach, Putnam and Rockman's approach adds to and complements that of Putnam's two-level games because these actors often have a crucial impact on IGC decision making. This is due to one important advantage they have over their political masters: continuous day-to-day involvement in the negotiation and ratification processes. The focus on the role of national administrative elites negotiating in the Council machinery emphasizes the intergovernmental nature of the IGC process. National officials are expected to act as an extension of their member state and rigidly follow national instructions when negotiating in Brussels. In this sense, they serve as "infantry" in that their politico-administrative role is that of simply carrying out the instructions from their political masters.

On the other hand, the focus on Image IV hybrids and national civil servants can also be seen in light of a bureaucratic *engrenage* or "interpenetration" in which administrative elites are the two-faced gatekeepers of European policy, looking towards their national as well as the European arena and conducting negotiations between the two. They still operate as an extension of their member state but in a less strictly coordinated way. In other words, these officials aim more at achieving progress during negotiations at the European level than at rigidly defending national interests. Since they must work with a redefined national interest, they can operate more independently and be more flexible than in the intergovernmental model. These officials also take the input of the supranational Commission quite seriously as more like a thirteenth party in the negotiations. Instead of intergovernmentalizing or supranationalizing the IGC process, the role of national officials in this scenario can be characterized as "joint problem solvers."¹⁹ In such a capacity, they can use agenda preparation as a tool to facilitate the integrative bargaining and attitudinal structuring characteristic of Monnet's approach. *Monnet's approach*. It was evident to Monnet how dependent political leaders are on intense bureaucratic preparation. In his eyes, to influence that preparation was to shape, even

¹⁹Sandra Pellegrom, "National civil servants in EC environment policy: a new elite and its role in European integration," Paper presented at the workshop National Political Elites and European Integration, ECPR Joint Sessions of Workshops, Madrid, 17-22 April 1994 (mimeo), 4-5.

to make, their decisions.²⁰ In this paper Monnet's approach is defined as the way in which he assembled people around a table to negotiate a treaty.²¹ In 1950, when Monnet chaired the meetings for the formation of the Coal and Steel Community, he wanted the participants to focus on the common interest, rather than on trades between conflicting interests, and to maximize the advantages of their joint undertaking, rather than to exchange separate gains and losses with each other. He discouraged compromises in which a party would barter a concession on one issue against some advantage on an entirely different issue. Monnet felt logrolling or heterogeneous package deals would not be conducive to a constructive, joint effort on behalf of common objectives.²²

In the words of Monnet's longtime associate, Pierre Uri, his approach involves the use of creative imagination "to find solutions which are not simply compromises where you take 30% of what one side wants and 40% of what the other side wants and forget the rest. Synthesis, in the chemical sense of the term, where the product is different from its components, is quite another matter," he writes.²³ The focus of Monnet's approach is on those "variable-sum" games during which negotiators are engaged in joint problem-solving, trying to maximize their joint gains. Monnet had this type of activity in mind when he spoke of lining up all the negotiators on one side of the table and their problems on the other.²⁴

In this sense, Monnet's approach resembles integrative bargaining, which has been defined as a

²⁰François Duchêne, "Jean Monnet's Methods," in Jean Monnet: The Path to European Unity, eds. Douglas Brinkley and Clifford Hackett (New York: St. Martin's Press, 1991), 189-190.

²¹Pierre Uri, Penser pour l'Action (Paris: Editions Odile Jacob, 1991), 314; Jean Monnet, Mémoires (Paris: Fayard, 1976), 377-382.

²²Fred Charles Iklé, How Nations Negotiate (Millwood, N.Y.: Kraus Reprint, 1987), 118-121.

²³"Address by Pierre Uri," in Jean Monnet: Proceedings of Centenary Symposium organized by the Commission of the European Communities, Brussels, 10 November 1988 (Luxembourg: Office for Official Publications of the European Communities, 1989), 54.

²⁴Robert D. Putnam, "The Western Economic Summits: A Political Interpretation," in Economic Summits and Western Decision-Making, ed. Cesare Merlini (London: Croom Helm, 1984), 46.

sub-phase of the negotiating process.²⁵ Integrative bargaining was originally identified in the writings of an American pioneer in business management, Mary Parker Follett.²⁶ There are several tactical matters involved in integrative bargaining including agenda setting, the search for alternate solutions and reporting of respective preferences or utility functions.²⁷ Certain conditions must also prevail before the integrative bargaining process will function. These conditions have been explained in terms of motivation, information, language, and trust.²⁸

In addition to integrative bargaining, three other sub-processes are inherent in most negotiations: distributive bargaining; attitudinal structuring; and intraorganizational bargaining.²⁹ These sub-processes occur in negotiations even if integrative bargaining does not. Some form of distributive bargaining is found in all negotiations. It involves the compromise tactics that Monnet sought to transcend. Monnet also sought to break the spirit of domination among states. Unlike de Gaulle, he did not reason in terms of the balance of power.³⁰ Thus, attitudinal structuring was for Monnet an inherent part of the bargaining process to create an atmosphere of mutual trust and understanding among conference participants. Intraorganizational bargaining, in which a negotiator at the table has to deal with actors "behind his chair" in the national capital, is an important element in Putnam's two-level games. It is also a facet of bargaining which Monnet dealt with in the Community context.

²⁵Ibid., 45-43.

²⁶An insightful volume on the philosophy of Mary Parker Follett is E. M. Fox and L. Urwick, eds., Dynamic Administration (New York: Hippocrene Books, Inc., 1982). The resemblance between the ideas of Follett and Monnet on integration is striking. Compare Mary Parker Follett, Creative Experience (New York: Longmans, Green, 1924) and Jean Monnet, Mémoires (Paris: Fayard, 1976).

²⁷Richard E. Walton and Robert B. McKersie, A Behavioral Theory of Labor Negotiations (Ithaca: ILR Press, 1991), 145-155.

²⁸Ibid., 155-159.

²⁹Ibid., 380-420.

³⁰Edward Vose Gulick, Europe's Classical Balance of Power (New York: W.W. Norton & Company, 1967).

Scholars have commented on the contribution of Monnet's approach to the democratic deficit.³¹ Paradoxically, although Monnet worked with elites his entire life to promote unity, his was a civilian approach. As Duchêne states, this approach was much closer to the outlook of the citizen than that of the bureaucrat. Monnet worked on the assumption that all parties would benefit from European unity. He used the language of business, of community and of civil politics to make his case for closer integration among the Six.³² Monnet's emphasis on persuading elites had much to do with the closed way in which foreign policy was made in an earlier era. He was sincere in his belief that "We are uniting people, not forming a coalition of states." However, Community policy was, and remains to the present day, highly technical and therefore incomprehensible to the average citizen.

As a result of events beyond Monnet's control, the evolution of Community policy making throughout the 1970s and 1980s was in the direction of increased bureaucratization. The centralization of decision making among political leaders in the European Council and the distance from national parliaments and publics became even greater. Also absent were talented personalities like Pierre Uri who could draft treaty language that was presentable to national publics. The Community became more distant and diverse. The resulting democratic deficit was striking and the search for the general interest became even more difficult.

Monnet's approach uses *engrenage* in a type of open-ended functionalism. *Engrenage* connotes the enmeshment of member units and the "locking-in" of whatever integrative steps are achieved. It is likely to be limited in scope. *Engrenage* may somewhat reduce the alternatives for member units making the costs of opting out of joint policies higher than those of continued involvement. The following pages describe three decisions taken during the Maastricht and Amsterdam IGC processes and then apply the three approaches outlined here to explain the nature of decision making in the European Union.

³¹George Ross, Jacques Delors and European Integration (New York: Oxford University Press, 1995), 98-101.

³²François Duchêne, Jean Monnet: The First Statesman of Interdependence (New York and London: W.W. Norton & Company, 1994), 363.

Highlighting Three Decisions during the Intergovernmental Conference Process

I. The Transition to EMU (Maastricht)

The Maastricht European Council took place on 9-10 December 1991 in a small Dutch town at the crossroads of Europe. The agenda was full despite the fact that civil servants, central bankers, finance and foreign ministers had discussed the finer points of the texts on EMU and political union. Only the decisions that had to be made at the highest political level to reach an accord on the Treaties remained.

One of the most important issues left for the European leaders to settle was the transition to the final phase of EMU. In the multilateral context of negotiations at Maastricht, the bilateral input of France and Germany was decisive to the final outcome. In concrete terms, the success of the Franco-German negotiating line can be seen by comparing the Luxembourg draft treaty in June with the final results obtained in Maastricht. On EMU, no fixed date for the transition to Stage Three appeared in the June text. In the final Treaty text EMU is specifically mentioned in the first, or European Community, pillar. This outcome was by no means a foregone conclusion at the start of negotiations.

Some of the most important meetings of Maastricht took place before the official opening of the European Council. On Sunday evening, shortly after their arrival in Maastricht, Mitterrand and Andreotti met to discuss the decision on the passage to the final stage of EMU. Prior to Maastricht, the finance ministers were convinced that EMU should have strong criteria to fight against inflation, a firm commitment to price stability, and that the proposed ECB should be independent from national governments. These requirements were necessary to retain the support of the Kohl government and the Bundesbank for EMU. The German reluctance to accept any strict timetable for the establishment of a single currency was also well known.³³

During their meeting, the French and Italian leaders decided on a proposal that would require the European Council to set a deadline of 1999 for creating the European Central Bank even if a majority of

³³David Marsh, Die Bundesbank (München: C. Bertelsmann Verlag GmbH, 1992), 313.

member states did not yet fulfill the convergence criteria to make the transition to the final stage of EMU. Both men were concerned that the proposal on the transition to Stage Three put forward by the finance ministers the week before could allow a "loophole" delaying establishment of the ECB well into the next century. That draft would have allowed some European countries to adopt a single currency as early as 1997 only if there was unanimous agreement that economic conditions in a majority of member states were favorable.³⁴ As an alternative plan, Bérégovoy proposed to his colleagues in ECOFIN a procedure that combined a firm timetable for Stage Three with qualified majority voting in the European Council to determine whether sufficient states had met the convergence criteria. This plan, which corresponded to Mitterrand's and Andreotti's line of thinking, underlined the irreversibility of EMU. This principle was key to the negotiation, and to the Franco-German negotiating line, in large part because Kohl wanted an irreversible process as much as his French counterpart. Mitterrand and Andreotti's compromise was designed to overcome Bonn's fears that other European leaders, in their eagerness to gain influence over German monetary policy, might be tempted to play down economic performance as a criteria for membership in the future currency union. By proposing that the European Council decide by majority vote that EMU would start in 1999 even if only three member states fulfilled the necessary convergence criteria, the two leaders were ensuring a deadline for the transition to EMU before the end of the century. Implicitly understood in the proposal, however, was that France and Germany would have to be able to fulfill the strict criteria by the 1999 deadline. Without these two countries, EMU would make no sense. To join, a country would have to focus on achieving at a minimum two essential criteria. It would have to ensure that its inflation rate did not exceed 1.5% of the average of the three lowest member states and hold its budget deficit to within 3% of GDP.³⁵ The French and Italian leaders were certain that the European Council would open the next morning with a serious consideration of their proposal.

³⁴Tom Redburn, "EC Agrees on a Single Currency," International Herald Tribune, December 10, 1991.

³⁵Marsh, Die Bundesbank, 314.

The first issue to be addressed on Monday morning was EMU. Council President Lubbers commented on the good progress made in previous negotiations. Further discussion was necessary at the highest political level, however, before the ECOFIN Council met again to draft the final Treaty provisions. The political leaders had to concentrate on two questions from the Presidency's standpoint: how to guarantee the passage to Stage Three; and how many states were required to make the transition to the final stage?

Chancellor Kohl argued that Stage Three was crucial and should be made "irreversible." There should be no discrimination and no first- and second-class countries. In Kohl's view, adherence to the convergence criteria was fundamental in order for the EMU process to be credible and acceptable. The balance on convergence criteria agreed by the finance ministers must not be altered. The transition to Stage Three should be made in 1996-97 if a majority of states fulfilled the criteria for convergence. For the Chancellor, this majority would represent a critical mass. On the other hand, Kohl stated that in 1998 only those states that fulfilled the convergence criteria would make the transition even if this number did not constitute the majority.³⁶

Like Kohl, President Mitterrand insisted that the Community must agree on the irreversible nature of a single currency. He also staunchly supported the Chancellor's demand that the convergence criteria be met. The President then proposed that a date be fixed to start Stage Three probably at the beginning of 1999. By suggesting the proposal that he and Andreotti had already discussed, Mitterrand combined irreversibility with acceptance of a two-speed EMU. This procedure made it easier for Kohl and Waigel to argue that a key concern of the Bundesbank had been met: namely, that not all states were likely to be ready for EMU at once.³⁷ Mitterrand also argued that the opt-out clause should not be general or indefinite. There were reports, denied by French spokesmen but confirmed by others, that Mitterrand had suggested the need for a

³⁶Redburn, "EC Agrees on a Single Currency."; David Buchan and David Marsh, "Currency union likely to be a tier-full affair," Financial Times, December 10, 1991; Boris Johnson and George Jones, "Kohl 'wants to start train now'," The Daily Telegraph, December 10, 1991.

³⁷Kenneth Dyson, Elusive Union (London and New York: Longman Group Limited, 1994), 157.

time limit on Britain's exemption from EMU. Both the British and Minister Kok dismissed this idea.³⁸

Prime Minister Major called for no coercion and no Stage Three. In his view, any text insisting that all member states participate in the transition to the final stage of EMU was going backwards. Major essentially wanted to get an opt-out clause because Britain was not ready to agree to a single currency. He thought the EMU text was dangerous. Major also expressed fears about the disruptive effect of "too small a group" of countries entering EMU. The Prime Minister argued against a two-speed Europe, in which the poorer EC countries like Portugal and Greece and the political recalcitrants such as Britain, would be left potentially in the slow lane of a fast-track design.³⁹

Gonzalez essentially agreed with Kohl and Mitterrand that the transition to EMU should be irreversible. However, he insisted that no move be made without a cohesion instrument in the Treaty. The Spanish position on this issue was reiterated by the Portuguese, Irish and Greek leaders who all otherwise accepted the proposed text on the final transition.

As the twelve leaders voiced their positions on EMU, Prime Minister Lubbers took notes. In his summary, Lubbers noted that the Spanish and Greek leaders raised the cohesion issue which would be discussed that evening during negotiations on political union. Prime Minister Schlüter stated that Denmark was prepared to participate fully in Stage Three but that he could not predict the results of the referendum on Maastricht. The Portuguese Prime Minister had brought up the issue of cooperation among the participant countries in Stage Three, on the one hand, and the other member states remaining temporarily outside of EMU on the other. In Lubbers' view, this issue would have to be discussed among the finance ministers later in the day. He also emphasized the crucial nature of the convergence criteria for Stage Three and noted the divergences of view on the decision to make the transition. There were those leaders like Kohl and Mitterrand who wanted the European Council to take the decision. Major suggested the possibilities of a general opt-out clause or for the member states to decide on participation in Stage Three when national

³⁸Buchan and Marsh, "Currency union likely to be a tier-full affair."

³⁹Johnson and Jones, "Kohl 'wants to start train now'."

parliaments agreed.⁴⁰

Just prior to the close of the first day of negotiations, the heads of state and government discussed the finance ministers' demand to take part in future discussions on EMU at the highest level in the European Council. Whereas some of the political leaders emphasized retaining their decision-making capacity, others thought there was a good reason to study the finance ministers' proposal. President Mitterrand was quite adamant in his statement that the French finance minister should not be asked to make a decision in the name of France. Major underlined that as Prime Minister he could take decisions contrary to his finance minister but that it would be important for the European Council to be informed about financial matters. Kohl insisted on the necessity for discussion between the heads of state and government and the finance ministers on cost questions, but did not advocate placing clauses as such in the Treaty. Lubbers suggested that the opinion of the finance ministers on matters of EMU be asked during future preparations of the European Council.

In hindsight, the first day of the European Council had produced a "breakthrough" on EMU. The final formula for decision making on Stage Three emerged from last-minute discussions among France, Italy and Belgium, but most importantly supported by Germany. Kohl was given assurances notably by the French that decisions on which states qualify for the demanding disciplines of an irrevocable monetary union would follow strict convergence criteria.⁴¹ In the words of Bérégoovoy's spokesman, the finance minister had led "a very well-conducted tactical battle" to convince other ministers in ECOFIN of the plan.⁴² Kohl then backed Mitterrand and Andreotti's presentation of this decision-making procedure for the transition to Stage Three when he understood that there would be strict implementation of the convergence criteria for countries to participate in EMU. Free of the bureaucratic baggage that so weighed down his British

⁴⁰Agence Europe, les 9 et 10 décembre 1991, 3-4.

⁴¹Robin Oakley and George Brock, "Major stands firm on EMU opt-out clause," The Times, December 10, 1991.

⁴²David Buchan, "'Fast forwards' relish their victory in battle over EMU timetable," Financial Times, 11 December 1991.

counterpart,⁴³ Kohl appeared ready to acquiesce in the inherent contradiction of a Treaty that would set both strict economic criteria and firm dates for the move to a single currency.⁴⁴ At the same time, Germany hardened its stance that the future ECB be sited in Frankfurt.⁴⁵

The Dutch Presidency accepted the majority view on the need for a timetable on EMU. "There was a general acceptance of the need for irreversibility," Kok explained. Britain did not share this view but was in a weak position to resist because Major had obtained an opt-out clause. By late evening, the realization had set in that the deal that would emerge from Maastricht on EMU looked likely to be an amalgam of many things which Britain did not like. The argument was made that this reflected a failure of British negotiating strategy. Had London concentrated less on an opt-out clause, it might have been able to fight for better terms on the transition to a single currency.⁴⁶ Not surprisingly, it took the Presidency until the end of the second day of negotiations to iron out all the details regarding Great Britain's opt-out clause on EMU.⁴⁷

The finance ministers had agreed during the first day of negotiations on a procedure for the transition to Stage Three that reflected the wishes of the heads of state and government. The Maastricht text had already stipulated that not later than 31 December 1996 the European Council should vote on whether a majority of the member states fulfill the conditions for a single currency and should then vote on proceeding with setting a date for the irrevocable fixing of exchange rates. In previous drafts, this vote was to be unanimous, a condition insisted on by the Germans. The draft on the table during the second day suggested that the vote be taken by qualified majority, which in practice normally required the

⁴³The domestic constraints that Major faced included those individuals in his own party and in his Cabinet who were hostile to European integration as well as his dependence on the civil service owing to its thorough preparation of the dossiers on the table at Maastricht.

⁴⁴Philip Stephens, "Major approaches moment of truth on British concessions to partners," Financial Times, December 10, 1991.

⁴⁵David Marsh, "Germans press for central bank in Frankfurt," Financial Times, December 10, 1991.

⁴⁶Andrew Marshall, "Single currency comes a step closer," The Independent, December 10, 1991.

⁴⁷Agence Europe, le 11 décembre 1991, 6bis.

agreement of eight member states in a Community of Twelve. The conditions required for EMU to take place in 1997 were, therefore, a qualified majority vote by the European Council that successfully determined a critical mass of states ready for the transition to a single currency. This critical mass had to contain at least seven member states to constitute a majority.

This draft also stipulated that when finance ministers report to the European Council on the preparedness of the member states for a single currency, they should look at each country on the basis of the criteria, which cover inflation, budget deficits, government indebtedness and currency stability. In light of the proposed procedures for moving from Stage Two to Stage Three, these criteria were all the more important.

The Treaty had always emphasized that the convergence criteria were not mechanical things; there was a strong element of interpretation involved, and the criteria are not the same as immutable conditions. "Decisions will be made on 'the basis of an overall judgement'," Kok was reported to have said the day before. "We're not going to be governed by computers."⁴⁸

The decision to institute majority voting for the first try at EMU in 1996 accentuated the political elements of decision making. By placing more weight in the hands of the European Council, it emphasized the horse-trading that might take place in the immediate run-up to a single currency.⁴⁹ However, unless the heads of state and government could reach a bargain to strengthen political integration, Kohl would refuse to sign a Treaty on EMU at Maastricht. Few member states had heavier domestic stakes in success at Maastricht than the Federal Republic. Kohl, like all of his counterparts, had promised national gains in a stronger Union. Beyond that, most Community officials were convinced that the proposed Treaties probably offered the

⁴⁸Marshall, "Single currency comes a step closer." There are numerous references in the Treaty text that support this view. For instance, Article 1 of Protocol 6, Protocol on the Convergence Criteria referred to in Article 109j of the Treaty establishing the European Community states: "The criterion on price stability referred to in the first indent of Article 109j(1) of this Treaty shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 1/2 percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions."

⁴⁹Ibid.

Twelve's last realistic chance to make progress before the deteriorating situation in eastern Europe had to be tackled.⁵⁰

A review of key EMU provisions on the opt-out for Great Britain was set by the Presidency for the afternoon of the second day of negotiations. At that time, each political leader received a text of the protocol on the transition to Stage Three. Lubbers read the protocol aloud, stressing the irreversible character of movement to Stage Three. The leaders then agreed on the text. Schlüter mentioned the special problem of a Danish referendum on the transition to the final stage. He emphasized Denmark's desire to participate from the start of Stage Three and his unequivocal support for the protocol on transition. To address its domestic constitutional requirements, an additional protocol was granted to Denmark that considers its need for a referendum on the final transition stage.

Major recalled the British position. He thought that the no coercion clause on EMU was a good solution. Unlike Denmark, there was no problem with a referendum on the transition to Stage Three. However, the British could not be bound to move to the final stage. A separate protocol was necessary to address this issue. That protocol, largely inspired by Delors, was attached to the end of the Treaty and only applied to Britain. It would allow the British parliament to decide, independently of the European Council, whether it was going to take part in Stage Three of EMU. This solution on Tuesday evening resolved what Minister Kok called "one of the most important subjects at Maastricht."⁵¹

II. Increased Powers for the European Parliament (Maastricht and Amsterdam)

During the initial day of negotiations at Maastricht, Chancellor Kohl was virtually isolated in wanting more powers for the European Parliament than most other Community leaders were willing to concede. Nonetheless, the Bundestag and Bundesrat insisted on a greater powers for the European Parliament in the proposed Union as a *quid pro quo* for EMU. Kohl could not afford to look "weak-kneed" on this issue at home. To make matters more difficult, he had to contend with increasing skepticism, on the part

⁵⁰Joseph Fitchett, "Halfway home in Maastricht," International Herald Tribune, December 10, 1991.

⁵¹Richard Corbett, The Treaty of Maastricht (Essex: Longman Group, 1993), 42.

of German public opinion, about the surrender of the D-mark.⁵² Kohl made his position clear that he wanted changes in the power of the Parliament before the end of the century. It was essential for the EP to begin legislating with the co-decision procedure before its 1994 general elections.

In Kohl's view, the third reading in the co-decision procedure should be dropped. This would leave Parliament the right to co-legislate with the Council instead of merely brandishing a veto. The latter result would leave a negative impression of the EP's contribution to decision making on Community legislation. Moreover, both Kohl and Genscher argued for an extension of the assent procedure by which Parliament had to agree to any future Treaty revisions.

At this point in the negotiations, the British Prime Minister considered the Presidency text as the basis for a deal. He strictly defended the minimalist position on more rights for the European Parliament and the extension of Community competencies. Major also argued for an intergovernmental chapter, or third pillar, in justice and home affairs. The bottom line was that Major could not accept the inclusion of visa policy, as stated in article 100c, in the Community competencies as proposed by Kohl and Mitterrand.

In comparison to the Luxembourg draft treaty, both Kohl and Genscher did obtain from the Dutch Presidency a slightly closer association for the European Parliament in security and defense matters. However, when viewed alongside provisions in the Single European Act, this step in the direction of closer association was not the significant improvement for Parliament that the Germans wanted in security matters.

In the final Treaty provisions, the Presidency revised the text to read that Treaty amendments would enter into effect only after having been approved by an absolute majority of the European Parliament and ratified by the parliaments of all the member states. The final provisions also indicated that another IGC would be called in 1996 to examine dispositions in the proposed Treaty for which revisions were envisaged.

On Tuesday negotiations focused on the extension of the scope of co-decision to strengthen the European Parliament. Major was willing to accept the application of co-decision in areas like the environment provided that unanimity voting remained the rule in the Council. Delors reiterated his view that

⁵²"Major and Kohl risk isolation at Maastricht," Financial Times, December 9, 1991.

co-decision making in the Parliament would not work with unanimity voting in the Council. Throughout the day, however, Major showed a greater reluctance than other European leaders to surrender sovereignty on sensitive areas including a code of work laws, a strengthened European Parliament and greater competencies for the Commission bureaucracy in Brussels. By trying to reconcile co-decision with unanimity, he attempted to slow down the integration process by complicating its decision-making procedures.

The modest results on increased powers for the European Parliament at Maastricht can be explained as much by the intransigence of the British and the French as by the lack of a common definition of political union among the member states at the table. Moreover, the diverse number of important issues on the table which remained to be settled in two days made it possible to shift the gravity of the negotiation away from the plight of Parliament.

The Amsterdam conference⁵³ was meant to address certain specific issues for which the Treaty on European Union left room to improve on the basis of integration in practice. The role of the European Parliament, particularly the enhancement of its co-decision procedure, was one such issue.⁵⁴ This issue is particularly relevant for the Germans given the steady progress made on Economic and Monetary Union throughout the Amsterdam process. Although EMU was not on the Amsterdam conference agenda, the convergence criteria agreed to at Maastricht, notably a budget deficit not to exceed 3 percent of a member state's Gross Domestic Product (GDP), were always present in the minds of negotiators at the table.⁵⁵ On the issue of the European Parliament, there was almost a unanimous tendency in favour of reducing its numerous procedures to three. The cooperation procedure would most likely be abolished, with the probable exception of EMU and the Social Protocol.

⁵³The Amsterdam process, which includes the pre-negotiation, negotiation and ratification processes in the member states and the European Parliament, is expected to conclude by the end of 1998. This paper refers to the Amsterdam conference to highlight the negotiation phase of the process.

⁵⁴Peter Ludlow, "A View from Brussels," *A Quarterly Commentary on the EU*, No. 5 (July 1997), Brussels: CEPS, 1997, 13.

⁵⁵In the analytical part of this paper, it is argued that the convergence criteria are a "focal mediator" among the member states during the Amsterdam process.

On this issue, the Major government was virtually isolated in its opposition to change although the position of France is well worth consideration. The French stated a preference to retain the cooperation procedure, especially for EMU and the Common Agricultural Policy (CAP), with only a very slight extension of the co-decision procedure in a few specific instances.⁵⁶ On other issues related to the European Parliament, France was also reticent including its resistance to a uniform electoral procedure, to an elimination of the third reading on co-decision if there was no agreement between Council⁵⁷ and Parliament and to apply the assent procedure to Treaty revisions.

The French placed an emphasis instead on strengthening the role of national parliaments in the integration process. This tension between the German support for a stronger European Parliament and the French insistence for increasing the role of national parliaments was not concealed in the Chirac-Kohl letter of 6 December 1995 in which reference is made to a “priority objective” of “consolidating democracy by bringing the Union closer to its citizens.” In this context, both leaders advocate that this objective would “involve the European Parliament having a greater share of responsibility for matters relating to the process of building Europe, as well as closer involvement of the national parliaments.”⁵⁸

At the Amsterdam European Council on 16-17 June 1997, agreement was facilitated on this issue by the majority tendency behind the desire for institutional reform in this area coupled with the Blair government’s willingness to consider some procedural changes with regard to the nature and scope of co-decision. The decision taken at Amsterdam also reflected German and French priorities in a number of ways. First, Amsterdam resulted in a significant extension of the scope of co-decision. The number

⁵⁶European Parliament, “Summary of the Positions of the Member States and the European Parliament on the 1996 Intergovernmental Conference,” Task-Force on the “Intergovernmental Conference, JF/bo/259/96 (Luxembourg: General Secretariat of the European Parliament, 1996), 12-13.

⁵⁷Ibid., 12-14.

⁵⁸“Letter of 6 December 1995 from the President of the French Republic, Jacques Chirac, and the Chancellor of the Federal Republic of Germany, Helmut Kohl, to the President of the European Council, Felipe Gonzalez” as cited online at <http://europa.eu.int/en/agenda/igc-home/ms-doc/state-fr/pos.html>, 3-5.

of treaty articles subject to co-decision will more than double from 15 to 37 (39 at a later date).⁵⁹ Eleven of the new articles were subject to cooperation: non-discrimination on the grounds of nationality (Article 6); implementation of transport policy (Articles 75 (1) and 84); articles resulting from the inclusion in the Treaty of the Social Protocol; decisions implementing the Social Fund (Article 125); vocational training (Article 127(4)); provisions relating to trans-european networks (Article 129d); decisions implementing the European Regional Development Fund (Article 130e); research (Article 130o); the environment (Article 130s(1)); and development cooperation (Article 130w); two to consultation: social security for migrant workers (Article 51); and rules governing professions (Article 57); one to assent: freedom of movement and residence (Article 8a (2)); and eight are entirely new in the Treaty: employment - incentive measures (Article 5); social policy - equal opportunities and treatment (Article 119); public health (Article 129); openness (Article 191 (a)); measures to counter fraud (Article 209 (a)), customs cooperation (Article 116); statistics (Article 213 (a)); and creation of an advisory body on data protection (Article 213 (b)). In 5 years time co-decision would also be “automatically extended to measures on the crossing of external borders of the member states, which would establish the procedures and conditions for issuing visas by member states (B2 (b) (ii)) as well as rules on a uniform visa (B2 (b) (iv)).”⁶⁰

Second, Amsterdam resulted in a reinforcement of the status of the Parliament as an equal partner of the Council. The third reading has been abolished, thus simplifying the procedure and enhancing the leverage of Parliament. This means effectively that in cases where conciliation between Council and Parliament is unsuccessful, the procedure cannot continue and the proposal is dropped.⁶¹ Third, there is the possibility of an agreement at first reading. In effect, the Council no longer needs to adopt a common position

⁵⁹Michael Shackleton, “Codecision and Conciliation: An important series of consequences for the European Parliament,” (Luxembourg: Conciliations Secretariat of the European Parliament, 1997), 1-2.

⁶⁰“The European Parliament as it would be affected by the Draft Treaty of Amsterdam of 19 June 1997,” PE 223.062 (Luxembourg: Directorate General for Committees and Delegations, Committee on Institutional Affairs, 28 June 1997), 1-3.

⁶¹Michel Petite, The Treaty of Amsterdam, Harvard Jean Monnet Working Papers (2/98) as cited online at http://www.law.harvard.edu/Programs/Jean_Monnet/papers/98/98-2-06.html

but may adopt the proposed act at first reading if it adopts all the European Parliament's amendments, or if Parliament has proposed no amendments. Fourth, there is an acceleration of the convening of the Conciliation Committee, which, after the Council's second reading, has to be convened within six weeks rather than "forthwith," as stated in Maastricht.⁶² This last point reflected the unanimous desire of the member states to impose precise deadlines on Parliament. It is consistent with the Community equation of "institutions + fixed dates = politics."

Other important points which reflect an improved standing for Parliament include the fixing of its number at 700 MEPs, even after enlargement (Article 137). In addition, Parliament is to: draw up "a proposal for elections by direct universal suffrage in accordance with "principles common to all member states," (Article 138); lay down regulations and general conditions "governing the performance of the duties of its members, with the approval of the Council acting unanimously;" and approve the appointment of the Commission President, thus bringing the legal situation in line with political realities and increasing Parliament's influence vis-à-vis the Commission.⁶³

The French preference for an increased role on the part of national parliaments in the integration process resonated throughout the Amsterdam conference. The outcome in Amsterdam added a Protocol, annexed to the Treaty, on the role of national parliaments in the European Union. This Protocol is meant to involve national parliaments ahead of Community proposals in order to avoid a possible rejection of measures when European Community (EC) legislation would be transposed into the legal systems of member states. This is significant in the area of justice and home affairs where the Community would deal with matters normally left to national authorities, and for questions relating to subsidiarity. While there was unanimous agreement on the need to inform national parliaments rapidly, there was little desire to create a new body representing national parliaments. France, with its preference for "a strong Europe with weak

⁶²Shackelton, "Codecision and Conciliation," 1-2.

⁶³Petite, The Treaty of Amsterdam, 22-23.

institutions,”⁶⁴ was virtually isolated in its desire to create a second chamber of national parliaments or a high consultative council of national MPs.⁶⁵ Instead according to the agreement in Amsterdam, the Protocol stipulates that a period of six weeks shall elapse between making a legislative proposal under the third pillar available in all languages to the European Parliament and the Council by the Commission and the date when the proposal is first placed on the Council agenda for decision.⁶⁶

A separate part of the Protocol deals with the future role of the Conference of European Affairs Committees, otherwise known by its French acronym, COSAC.⁶⁷ This institution, which dates back to 1989, is formally acknowledged and given the right to make contributions it deems appropriate to the Union’s institutions. In particular, the Protocol envisages COSAC activity related to: 1. proposals in the “area of freedom, security and justice” which could have a direct bearing on the rights and freedoms of individuals; 2. the application of the principle of subsidiarity; and 3. questions regarding fundamental human rights.⁶⁸ The Protocol clarifies Amsterdam’s decision to stress European solutions in that national parliaments are meant to work with the European Parliament, not in place of that institution, in the integration process. Decision making at Amsterdam on institutional reforms was closely related to changes made in the third pillar. Therefore, it is to this issue which we now turn.

III. Communitarization of Articles in Justice and Home Affairs (Maastricht and Amsterdam)

In Maastricht, Chancellor Kohl fought hard to include as much substance in the Treaty as possible

⁶⁴Anand Menon, “France and the IGC of 1996,” Journal of European Public Policy 3 (June 1996): 249.

⁶⁵European Parliament, “Summary of the Positions of the Member States,” 16.

⁶⁶Michael Nentwich and Gerda Falkner, The Treaty of Amsterdam: Towards a New Institutional Balance, European Integration Online Papers (EioP) Vol. 1 (1997) No. 15, 10 as cited online at <http://eiop.or.at/> and Petite, The Treaty of Amsterdam, 27.

⁶⁷Allen Tatham, “The Relationship between the European Parliament and National Parliaments,” No. 181 Budapest Papers on Democratic Transition (Budapest: Hungarian Center for Democracy Studies Foundation, Budapest University of Economic Sciences, 1996), 4-5.

⁶⁸Nentwich and Falkner, The Treaty of Amsterdam: Towards a New Institutional Balance, 10.

in the form of new Community competencies. He wanted a reference to the "federal vocation" of the proposed union in the Treaty, but realized this was a question of differing interpretations of the phrase's meaning by Britain. In Kohl's view, the substance of the text would steer the course toward the goal of a federal union, even if there was no explicit mention of the term in the Treaty. This was one of the reasons why he stood firm on the inclusion of article 100c concerning visa policy in the Community sphere. Mitterrand supported the inclusion of 100c in the first pillar competencies. The combined Franco-German weight behind the proposal was necessary to achieve this negotiating objective against the staunch opposition of Major.

The inclusion of article 100c in the first pillar, or Community competencies, was one of the most sensitive issues during the Maastricht European Council.⁶⁹ In the words of one high-ranking Commission official, discussions at Maastricht ended on this issue.⁷⁰ Major maintained his reserve on this article. Genscher argued for its inclusion so as to open a small door for the gradual communitarization of immigration and visa policies. Elisabeth Guigou supported Genscher's position. Although the French policy on asylum differed substantially from that of the Germans, French leaders understood the explosive nature of the issue in German domestic politics. Their support of German goals on this article indicated French intentions to proceed gradually in the transfer of internal and justice affairs policies from intergovernmental cooperation to Community decision making. Major's desire not to be isolated more than once at Maastricht, led him to concede this issue to France and Germany later on Tuesday. The British Prime Minister had already used up a lot of his European capital on EMU. His friendship with Chancellor Kohl was advantageous for Major, but it was clear that Germany and France were determined not to leave Maastricht without a Treaty. This fact illustrated that the British strategy of holding out until the end had its disadvantages especially since the other European leaders were not as easily swayed by the British position as Major originally thought possible. Playing for time clearly had its limits.

⁶⁹Baudouin Bollaert, "Les neuf 'mines' qui peuvent faire tout exploser," Le Figaro, le 9 décembre 1991, 6.

⁷⁰Interview, David Williamson, Commission of the European Communities, 11 June 1993.

The inclusion of article 100c on immigration and visa policy within the Community sphere of decision making was intended to function as the *passarelle* in the first pillar with a close link to justice and home affairs issues in the third pillar. It was generally believed that decisions taken at Maastricht would reveal the limits of intergovernmental cooperation in the third pillar. This result in turn would prompt further decisions on integration during the 1996 IGC.

During the Amsterdam conference, there was unanimous agreement to improve third pillar instruments. Nonetheless, there was categorical refusal on the part of Denmark and the United Kingdom to communitarize articles in the third pillar, otherwise known as Cooperation in Justice and Home Affairs (CJHA). Progress in communitarization was linked with “flexibility” or an “opting out” clause.⁷¹ Nonetheless, there was a majority tendency to communitarize specific issue areas like visa, asylum and immigration policy as well as rules on crossing of external frontiers, although France consistently attached a reserve to its position. The involvement of national parliaments was one condition which Chirac attached to an acceptance of communitarization in these areas and that of anti-drugs action.

In terms of decision making on CJHA, there was majority support for QMV with the exception of Denmark and the United Kingdom. France linked this issue to the re-weighting of votes in the Council. This was also true for the extension of the Commission’s right of initiative although German, France, Spain and Austria preferred a Commission/Member State co-initiative. A majority trend also favored not limiting new instruments to directives and, in particular, not ruling out the regulation. With regard to the input of the European Parliament, a majority favored not going beyond simple consultation although co-decision could be used for QMV cases.⁷²

A majority trend could also be discerned to reinforce the role of the European Court of Justice in this pillar, to simplify the 5-level structure of negotiation and decision making in the workings of the

⁷¹European Parliament, “Summary of the Positions of the Member States,” 4-5.

⁷²Ibid., 6.

K.4 Committee within the Council⁷³ and to incorporate the Schengen Agreement into the Treaty. On this last issue, certain member states feared that incorporation of Schengen could destroy or reduce its existing *acquis*. The Major government insisted on an opt out and Denmark rejected any form of flexibility.

The possible transfer of specific responsibilities under CJHA to the Community pillar raised questions among the member states about the remaining areas of third pillar responsibility. Proposals under discussion during the Amsterdam conference involved issues such as: “the role of the European Parliament in this area; sharing initiatives with the Commission; qualified majority voting (QMV) within the Council for implementing decisions; use of instruments such as directives; establishing deadlines for the ratification of agreements by the member states.” The majority tendency was for a “marked improvement” in the effectiveness of the third pillar which could take place in stages, like the transition from unanimity to qualified majority decision making.⁷⁴

The decisions taken at Amsterdam on CHJA reveal a great deal about the dynamics of the IGC process. In contrast to Maastricht, there was no single issue like EMU which captured the public’s attention. In the confusion of numerous decisions taken in sensitive areas of political union, the temptation is to focus on that which was not achieved. Yet, after all is said and done, politics is the art of the possible and to govern requires the courage and intuition to make an intelligent decision in the face of domestic constraints. The establishment of an area of freedom, security and justice in the Amsterdam Treaty is significant for the substantial amendments it makes to the reforms introduced at Maastricht. In certain respects these amendments change the Treaty with a view to future enlargements and to the accession of new member states whose citizens have long endured a lack of respect for democracy, human rights, fundamental freedoms, and the rule of law. In other respects, the Treaty

⁷³Jörg Monar, “The Evolving Role of the Union Institutions in the Framework of the Third Pillar,” in The Third Pillar of the European Union, eds. J. Monar & R. Morgan (Brussels: European Interuniversity Press, 1994), 80-81.

⁷⁴European Parliament, “Summary of the Positions of the Member States,” 4.

modifications regarding non-discrimination highlight the role and contributions of the Nordic member states whose respect for the rights of the individual citizen are well-known.

Of particular note is the gradual introduction, within a period of five years, of measures aimed at ensuring the free movement of persons and the establishment of general rules concerning external border control, asylum and immigration in the Community pillar, albeit subject to a number of special provisions regarding voting, the European Parliament and the European Court of Justice. Another significant achievement is the inclusion of the Schengen Agreement in the Community pillar, despite the non-participation of the British and the Irish, and the definition of Schengen as part of the *acquis communautaire*, which prospective members will have to accept in order to accede to the Union. A third important reform is the extension and strengthening of cooperation in the third pillar.⁷⁵

The transfer of powers to the Community will involve “a fundamental change of approach: using directives or regulations instead of conventions; review by the Court, including preliminary rulings, albeit confined to last-instance courts and with an exception concerning the abolition of controls at internal borders; sole right of initiative for the Commission, following a five-year period of joint Member State/Commission initiative; discussion by the Council working parties and COREPER instead of the multiple levels leading up to the K.4 Committee.”⁷⁶

There is also a clear formulation of all the Union’s objectives in justice and home affairs, accompanied by a five-year plan in contrast to the lists of general areas given in the Maastricht text. Using the precedent of the case of the internal market, a precise definition is offered of the Community’s role and the action to be taken at the European level. This formula has the dual advantage of involving a commitment by the member states and of providing reassurance that only essential matters will be harmonized or coordinated, and thus avoiding the “in for a penny, in for a pound” approach.⁷⁷

⁷⁵Ludlow, “A View from Brussels,” 3.

⁷⁶Petite, The Treaty of Amsterdam, 8.

⁷⁷Ibid

The decisions taken at Amsterdam in this area resulted in a very clear structure: “all matters relating to the movement of persons have now been placed in the first pillar, while the third pillar is reserved for matters relating to criminal law and the police.” Improvements in the third pillar include its most prominent innovation, the introduction of a new legal instrument, Article K.6 (2) of the draft treaty. This instrument is meant to create legislation which replaces conventions which have been found to be of limited value when applied between the member states of the Union; although conventions are signed, they are rarely ratified. The new instrument, known as a framework decision, resembles a directive: it serves to approximate laws and is binding on the member states in its application, but leaves the countries free to decide on the means of implementation. The main risk with the new instrument is that it will not be used and that “through force of habit or political insistence on national ratification the convention will remain the preferred option.” With this decision taken at Amsterdam, those engaged in the IGC process hope that the new, more flexible instrument, which gives a greater role to national parliaments via the transposition procedure required in national legal systems, will replace conventions as soon as the Treaty comes into force.⁷⁸

In Amsterdam, the transfer of powers to the Community, an extraordinary achievement, was gained at the cost of the requirement of unanimous decision making for the Council for all of the areas concerned except visas. Kohl’s complications with the *Länder*, and with Euroskeptic Prime Minister Edmund Stoiber of Bavaria in particular, required that instead of these areas passing automatically to QMV after a five-year period, the Council will decide after five years unanimously, but without the need for national ratification, whether some or all of these areas should move to QMV and co-decision. In the event of stalemate among the Fifteen, the Schengen Protocol signed by all the member states except Denmark and the United Kingdom could be brought into play.⁷⁹

Analyzing Decision Making during the IGC Process: Maastricht and Amsterdam

⁷⁸Ibid., 8-9.

⁷⁹Ibid., 9-10.

In this section of the paper, the three approaches defined at the outset are used to contrast the decisiveness of the Franco-German line at Maastricht and its weakness in Amsterdam. The roles of Kohl, Mitterrand and Delors during the Maastricht European Council as well as Kohl, Chirac and Santer during the Amsterdam European Council are also analyzed. In addition, this section explores politico-administrative interactions during the IGC process in comparative perspective. It also argues that the decisions taken by French and German leaders in order to conclude the IGC process are inextricably linked to domestic ratifications in France and Germany.⁸⁰

Putnam's two-level games. Putnam's two-level games is a useful approach to analyze the EMU and political union IGCs for several reasons. First, it helps to explain how domestic constraints can define the essential issues that emerge on each IGC agenda. Second, it reveals how the contours of a state's bargaining position are shaped by international, and national, constraints. Third, the approach also serves the purpose of highlighting the role of the leader at the nexus between domestic and international affairs. It suggests specific reasons, other than domestic pressures, which explain his choice of a negotiating strategy.

The last point makes Putnam's approach particularly relevant to any explanation of Mitterrand and Kohl's individual strategies as well as their joint strategy during the IGCs - although for quite different reasons in each case. In the French case, it was the absence of domestic constraints which allowed Mitterrand a free hand in strategy formulation. In the German case, Kohl's hands were tied owing to the leverage exercised by domestic institutions and party interests. In their development of a joint strategy both leaders were committed to a federal vocation for Europe. Yet, paradoxically, Kohl's domestic constraints re-enforced his position on this issue while Mitterrand's concern for the French domestic political situation made his position somewhat more nuanced. Any analysis of Kohl's strategy, and to a lesser degree Mitterrand's, requires, however, an understanding of the explicit link in each leader's mind between both intergovernmental

⁸⁰Most of the information about the Maastricht European Council was obtained in numerous confidential interviews over a three-year period.

conferences and the domestic constraints this link implied. Writings that seek to apply Putnam's approach exclusively to the EMU conference, leaving out the political union negotiations, cannot take into account the essential nature of the leaders' European strategies, which were influenced to a degree by steps already taken in the integration process. Nor can these writings consider the full range of political constraints involved in the domestic bargaining and ratification processes.⁸¹

Specifically, by setting the EMU and political union agendas and linking issues between the two IGCs, Kohl and Mitterrand responded to national and transnational pressures to develop the European polity. In so doing, both leaders shaped the way in which issues were decided domestically. In the German case, the weakening of the link between the IGCs, otherwise known as *Parallelität*, complicated the domestic ratification process.

Furthermore, the Maastricht process allows us to test empirically several of Putnam's observations about two-level games. In his focus on the strategies of Level I negotiators, Putnam states that they are often badly misinformed about Level II politics. Uncertainties about the size of a win-set can be both a bargaining device and a stumbling block in two-level negotiation. In purely distributive Level I bargaining, negotiators have an incentive to understate their own win-sets. This is plausible since each negotiator is likely to know more about his own domestic level than his opponent does. On the other hand, uncertainty about the opponent's win-set increases one's concern about the risk of involuntary defection. Deals can only be struck if each negotiator is convinced that the proposed deal lies within his opposite number's win-set and thus will be ratified.⁸² In the Maastricht context, it is necessary to emphasize that Mitterrand was quite aware of Kohl's domestic situation, particularly with regard to the Chancellor's

⁸¹Examples of writings that apply Putnam's approach to EMU are Kenneth Dyson, Kevin Featherstone and George Michalopoulos, "The Politics of EMU: The Maastricht Treaty and the Relevance of Bargaining Models" and Dorothee Heisenberg, "German Financial Hegemony or Simply Smaller Win-Sets? An Examination of the Bundesbank's Role in EMS and EMU Negotiations", Papers for delivery at the 1994 Annual Meeting of the American Political Science Association, New York, September 1-4, 1994.

⁸²Putnam, "Diplomacy and Domestic Politics," in Double-Edged Diplomacy, 452-453.

constraints on EMU. This is also true in the case of the Amsterdam process, as the French did not ultimately oppose the German line regarding either institutional reform or communitarization of third pillar issues. Clearly though Chirac does not share the experience of Europe which cemented Mitterrand's relationship with Kohl. The French also find themselves in a more defensive, reactive position because of the increase in German political influence via the EMU process.⁸³

During the Amsterdam conference, there was no linkage between two IGCs for Chirac or Kohl to consider. Moreover, there was a pressure on Chirac which made strategizing difficult at best and impossible at worst. After winning the French Presidency, Chirac tried to reconcile the tension in French European policy in which there is a desire for "a strong Europe," which France could use as a lever to boost its own rank, with "weak institutions," that would give the state the greatest margin of maneuver in its external relations.⁸⁴ This tension was all the more evident given the changing context brought about by the prologue to Maastricht. The transition to the single currency necessitates economic changes in which France struggles to reduce its budget deficit while simultaneously lowering unemployment. This task falls to the Socialist-led government of Lionel Jospin which came to power less than three weeks before the Amsterdam Council. The Socialist's victory ushered in France's third experience with power-sharing between a President and a Prime Minister of different political orientations, known as *cohabitation*.

During the Amsterdam conference, French elites involved in the process were aware of the need to work with the German partner. This realization was complicated by the French ambiguity about how to respond to the German insistence on federal goals for the Union. Here it must be underscored that the Kohl government's federalist ambitions were increasingly subject to internal political maneuvers: the requirements of the *Länder* to ratify the Amsterdam Treaty by a two-thirds majority; and Euroskeptics within the Bavarian wing of the Chancellor's party, the Christian Socialist Union (CSU),

⁸³Menon, "France and the IGC of 1996," 247-49.

⁸⁴*Ibid.*, 238-241.

which is headed by the German finance minister, Theo Waigel. In this context, Chancellor Kohl's domestic constraints are significant to understand both the Federal Republic's European policy making and its relations with France.

Putnam's two-level games points to two strategies which leaders can employ, namely, "tying hands" and "cutting slack."⁸⁵ A strategy of "tying hands" attempts to constrict the domestic win-set. A leader may adopt this strategy to induce his counterpart across the table to compromise at a point closer to the first statesman's preference. Heads of state who adopt the second strategy, "cutting slack," try to expand the domestic win-set to accommodate an international agreement that might otherwise be rejected.⁸⁶ Both strategies can be applied to the IGC negotiations while bearing in mind that tactics, not strategy, were decisive in the final outcome.

The French case. The predominance of the head of state illustrates Putnam's emphasis on a single leader and his ability to define strategy. Although Dumas, Bérégovoy and Guigou all took part in the European Council, Mitterrand was the main protagonist. One of Mitterrand's main concerns was to fix a date for EMU. Although he had considerable autonomy from domestic pressures, Mitterrand's relative bargaining position at the table was by no means weaker than either Kohl's or Major's. IGC negotiations during the Maastricht European Council illustrate that Putnam's discussion of state strength has to be modified in order to take into account French leverage in the Franco-German relationship.

Clearly Mitterrand was aware of Kohl's desire to strengthen the integration process before leaving office. The French President also knew that Kohl was concerned about the commitment of future generations of leaders in a unified Germany to European construction. Mitterrand counted on Kohl's determination to make German unity and European unity two sides of the same coin. This determination made Kohl take courageous choices in the face of domestic opposition. Some of these choices, particularly on EMU,

⁸⁵Evans, "Building an Integrative Approach to International and Domestic Politics," 399-403.

⁸⁶Moravcsik, "Integrating International and Domestic Theories of International Bargaining," in Double-Edged Diplomacy, 28.

supported the French negotiating line. This was a strong line despite the fact that Mitterrand had no domestic constraints. The EMU dossier was thoroughly prepared by civil servants and central bankers with extensive input by Delors. However, the final political decisions were made at the highest level among the heads of state and government. With Mitterrand taking the initiative to assure his German counterpart of the need to respect strict economic convergence criteria, the ball fell into Kohl's court either to accept or reject a fixed timetable. Here it is important to underline that the French President showed astute understanding of the Chancellor's domestic situation. At Maastricht there was no uncertainty regarding the level of apprehension and misgivings about a European currency in Germany. Thus, Mitterrand and Bérégovoy, in an astute tactical move, assured Kohl that strict convergence criteria would be achieved by all participants that met fixed deadlines on EMU.

Mitterrand's proposal on the decision-making procedure to make the transition to Stage Three of EMU put Kohl in the position of "cutting slack" or trying to expand his domestic win-set, in order to accommodate an agreement at Maastricht that both leaders clearly wanted. This was especially true since Kohl was unable to attain a tremendous increase in powers for the European Parliament, the *quid pro quo* for agreement on EMU demanded by the Bundestag.

On two crucial issues in which a potential surrender of sovereignty was implied, namely, EMU and the common visa policy, Mitterrand played a key role. Although Mitterrand realized that these Treaty objectives would require constitutional amendments, he also knew that Maastricht had the potential to divide the political Right at home which would be caught between a desire to preserve national sovereignty and yet not appear anti-European. The main contours of the French leader's win-set were defined by the need for a pillar structure to the Treaty in which the justice and home affairs pillar was subject to intergovernmental cooperation. This was necessary in order to secure domestic ratification.

In contrast to Mitterrand's strategic role, Chirac could not bring the full weight of his position as French President to bear on the Amsterdam conference. Observers and participants alike during the 1996 IGC were amazed at the lack of organization and articulation of French goals. At all levels of

negotiation, from Chirac to his foreign minister, Hervé de Charette, to the minister for European affairs, Michel Barnier, there was a singular lack of coherence in French policy. Defining the contours of the French win-set seemed more a question of accepting the changes with which France could live as opposed to introducing any new grand designs.⁸⁷ In fact the French leadership was willing to “cut slack” at Amsterdam in the areas of institutional reform for the European Parliament and the communitarization of third pillar issues. The extent to which this flexibility was due to the confusion surrounding *cohabitation* or the willingness to work with the German negotiating line is not clear.

To understand the gravity of the situation for French politics, let us recall the enormous institutional advantage a French President derives in foreign affairs under the Constitution of 1958, Chirac’s own familiarity with the Community system and its dossiers, dating back to his role as Prime Minister under the initial experience of *cohabitation* (1986-88), and his penchant as a leader for strong initiatives, as his nickname, “*le bulldozer*,” indicates.⁸⁸ The primary reasons for Chirac’s difficulties have already been mentioned. First, the tension in the contradictory goals of French European policy in the Community context (strong Europe/weak institutions) revives the historic conflict between DeGaulle and Monnet. Specifically, how can Chirac, a French President in De Gaulle’s mold, maximize his leverage on a playing field which is leveled over time by the logic of Monnet’s design? A second, and inter-related, tension involves the French need to address the fundamental question of its relations with Germany and the rest of the Union. What strategic choice is to be made between effective European policies, including a wider Europe capable of keeping the Federal Republic intrinsically engaged, and “the maintenance of intergovernmental, and in some cases unanimous, decision making?”⁸⁹

Third, in the lead-in to the single currency, the traditional French reliance on policies which

⁸⁷Menon, “France and the IGC of 1996,” 248.

⁸⁸These points were made by André Baeyens, “The Chirac-Jospin Cohabitation: Could it Have Implications for Europe?,” Institute on Western Europe, Columbia University, November 25, 1997.

⁸⁹Menon, “France and the IGC of 1996,” 249.

emphasize the role of the state in economic management, known as *dirigisme*, is under a strain given the country's need to reshape the role of the state by means of an ambitious reform of the social security system. Clearly the pace of this reform is set by the need to meet the Maastricht convergence criteria. The criteria are also a factor in Jospin's efforts to cut unemployment. While the Socialist Prime Minister has made small concessions to the jobless, he refuses to give way on higher minimum unemployment benefits so as not to jeopardize France's capability to fulfill the budget deficit criteria.⁹⁰

Instead Jospin counters that France's best hope to help the unemployed is to create more jobs by cutting the legal work week from 39 to 35 hours. A recent study by the Bank of France has cited the creation of more than 700,000 jobs in three years. Another by an OFCE think tank cites a figure of nearly 480,000 jobs. The OFCE study states that 479,000 positions could be the result if all companies with more than 20 staff implement the 35-hour work week in intervals - one third complying this year, a second third next year and the last third on January 1, 2000. The study also maintains that "the budget deficit would grow by only 0.1 percent by 2003 because job creation would cut the overall amount of state aid to the unemployed and increase the number of wage earners contributing to state social security."⁹¹

Given the charged nature of these questions in French society, Chirac is not in a position, as Mitterrand was, to articulate a bold vision for Europe. The French referendum on Maastricht illustrated the danger of exposing European integration to the divisiveness of internal political calculations and the fears of an ill-informed public. Moreover, the threat exists that anti-European feelings will be exacerbated by a perceived connection between European integration and unpopular domestic economic reforms. The economic and political challenges posed by *cohabitation*, coupled with France's prolonged period of soul-searching to define its relations with the Federal Republic and its need to decide how to contribute pro-

⁹⁰ "French jobless plan next big protest on March 7," Reuters, February 4, 1998 as cited online via America Online Version 4.0.

⁹¹ "Studies back Jospin's working week cut plans," Reuters, January 21, 1998 as cited online via America Online Version 4.0.

actively and assertively to a gradually evolving federal Union, stifles Chirac's influence. The President's hesitancy to call a referendum on the need to amend the French Constitution to ratify the Amsterdam Treaty shows the extent to which he considers the need to work with the Germans to stabilize the situation prior to the introduction of the single currency.⁹²

The German case. For Kohl the most pressing issue at Maastricht was the link between EMU and substantial progress on political union. There were a number of domestic pressures that Kohl had to contend with. First, his leadership role at Maastricht, while crucial, was one he shared with his experienced foreign minister. Genscher's pan-European emphasis stood in contrast at times to Kohl's more Atlanticist orientation. Moreover, the foreign minister's ambition to seek a high political profile for his small party, the Free Democrats, was well-known. Second, Kohl was facing a Social Democratic majority in the Bundesrat that demanded integration in line with an unambiguous federal vocation for the proposed Union. Third, an overwhelming majority in the Bundestag, that cut across party lines, favored a greater transfer of powers to the European institutions. Contrary to Putnam's suggestion of an inverse relationship between autonomy from domestic pressures and relative bargaining position internationally, Kohl's vulnerability to domestic pressures did not strengthen his hand at the table in Maastricht. Relatively speaking, his bargaining position during negotiations was weaker than those of his counterparts in the face of British intransigence on EMU and French reluctance to concede too much on the crucial dossier of increased powers for the European Parliament. To explain the Chancellor's actions at Maastricht, in the face of domestic constraints, Putnam's approach must be refined. It should take into account factors like Kohl's personal convictions about European unity owing to the lessons drawn from the German experience of European history and sociological influences dating back to Kohl's childhood growing up in the Rhineland near the border with France.

Nonetheless, Kohl's interests in Europeanizing issues like asylum and immigration, included in justice and home affairs, illustrate a shrewd politician at work. Always fully cognizant of an explosive

⁹²“Chirac, Jospin reject plea for referendum on euro,” Reuters, February 6, 1998 as cited online via America Online Version 4.0.

domestic situation, the Chancellor literally all but wrote the provisions in the third pillar of the Treaty. Kohl also fought hard to obtain the inclusion of Article 100c on visa policy within the scope of the *acquis communautaire*. Here Kohl was "tying hands" in order to convince Major that Maastricht would not be ratifiable without this provision in the Community competencies. The fact that Kohl and Mitterrand forced a concession from the British Prime Minister on this point, in spite of Major's ability to drive a hard bargain across the board at Maastricht, shows its importance for the Germans at the domestic level. This dossier was handled directly from the Chancellor's office with Kohl evading the ministerial bureaucracy in Bonn. Clearly he shifted the balance of power at Level II away from the strict requirements of Article 65 BL, which allows for much leeway in ministerial autonomy, and concentrated the power in his own office. He also used the forthcoming Community policy on asylum to put reform of Article 16 BL, which featured the most liberal asylum policy in Europe, on the domestic agenda. This was in spite of SPD resistance to constitutional reform in the Bundestag.

It was EMU, however, more than any other issue on the table, that allowed Kohl to pursue his own conception of the national interest in the European, and international, context. Here Kohl used what Putnam terms synergy, in which European actions are employed to alter outcomes otherwise expected in the domestic arena. The Chancellor's acceptance of a timetable with fixed dates on EMU was in all ways a personal decision which defied the views of the Bundesbank and the German bureaucracy. It was the ultimate political decision made in what Kohl perceived to be as much the German interest as the European one. By agreeing to make the European Council the ultimate arbiter of the decisions on passage to Stage Three, Kohl was countering the ambition of central bankers at Level II to control state and Community policies.⁹³

At Maastricht Kohl had leeway to accept the timetable in the face of negative press and public opinion owing to the strict economic convergence criteria which would be difficult for most member states, including Germany at that point, to meet. The difficulties he expected to encounter with the Bundesrat and

⁹³Kenneth Dyson, Kevin Featherstone and George Michalopoulos, "Strapped to the Mast: EC Central Bankers between Global Financial Markets and the Maastricht Treaty," European Consortium for Political Research Workshop: The Single Market and Global Economic Integration, Madrid, 17-22 April 1994, 9.

the Bundestag over his inability to secure greater powers for the European Parliament were another matter entirely, however. The link between the two separate but parallel intergovernmental conferences was a *sine qua non* for Kohl right until the final weeks in December. Despite his modest success at Maastricht, his overall long-term strategy was to approach this issue in steps, by obtaining more and more powers for the European Parliament as EMU progressed in successive stages. The unexpected domestic result would be a call for an increase in the powers of the Bundestag on European legislation in order to counter the European Parliament's insufficient input in the policy process. As the chair of the *EG-Ausschuß* in the Bundestag, Renate Hellwig, explained, this outcome was not entirely satisfactory in terms of integration. It was necessary, however, to address the democratic deficit at the national level if sufficient steps were not taken at the European one.⁹⁴

The decisions taken at Amsterdam on institutional reform and CHJA reveal new facets of the interaction between German politics and IGC decision making. Kohl's constraints were greater during the 1996 IGC than at Maastricht in large part because of the dynamics which the Treaty provisions introduced within the Union. The stakes are also higher. As EMU approaches, and as German political influence increases relatively, not absolutely, in the Union's system, domestic actors challenge the Chancellor's vision of a federal Europe. We see this in several ways as a **direct** result of the Maastricht process.

First, the imbalance at Maastricht between the decision to make a transition to EMU and the meager results in powers for the European Parliament opened the door for an increase in the role of the Bundestag in the integration process. However, national parliaments already have numerous responsibilities related only to national legislation. To his credit, Kohl was able to capitalize on the pressure building throughout the Amsterdam conference to increase the powers of the European Parliament to enhance the efficiency of the Union's system. This priority was one which he knew would resonate in the domestic arena to drive the goal forward to a positive outcome.

⁹⁴Interview, Renate Hellwig, *EG-Ausschuß*, Bundestag, 29 April 1993.

As a parliamentary democracy with a firm basis in the rule of law, the Federal Republic has asserted the right of the German Parliament to provide democratic legitimation⁹⁵ and approve European legislation. This was the result of the ruling made by the Federal Constitutional Court on the Maastricht Treaty, dated 12 October 1993. In other words, European legislation can only be implemented in Germany with the approval of the national legislature.⁹⁶ Furthermore, although Kohl still has the support of the Bundestag for his European policy, his majority is much slimmer as the German ratification of Amsterdam moves into a crucial phase. Public debates about EMU are more vociferous as the German society embarks on a much needed debate about the single currency, with perhaps too little societal input, too late. In the minds of some analysts, the challenge to the Euro may well lie with political elites in Germany and France who must explain to disillusioned electorates the merits of EMU amidst rising unemployment.⁹⁷ Here Kohl will need to use all of his political acumen in the Bundestag to convince Euroskeptics in the CSU and the Opposition that Germany actually fulfills the Maastricht criteria and that the single currency is in the German national interest.

The Bundesrat poses an even greater challenge to Kohl because of the strengthened role of the *Länder* in the integration process.⁹⁸ In the last phase of the Amsterdam conference, Kohl was held hostage on a number of issues all related to the free movement of persons, asylum and immigration. The Dutch Presidency texts on these issues initially envisioned an automatic passage from unanimity to qualified

⁹⁵Klaus H. Goetz, "Integration policy in a Europeanized state: Germany and the Intergovernmental Conference," Journal of European Public Policy 3 (March 1996): 27.

⁹⁶European Policy Forum-Frankfurter Institut, Speech by Prof. Dr. Paul Kirchhof, Judge of the Federal Constitutional Court of Germany, "The functions of the European Court of Justice and of the courts in the member states," Friday, 12 May 1995, 1 as cited online at <http://europa.eu.int/en/agenda/igc-home/msspeech/state-de/kirchhof.html>

⁹⁷Henry Engler, "Germany enters long overdue debate on EMU," Reuters, February 9, 1998 as cited online via America Online Version 4.0.

⁹⁸The *Länder* circulated their own position papers during the Amsterdam IGC. For example note, Bayerische Staatskanzlei, "Positionspapier der Europaminister und- senatoren der *Länder* zur Regierungskonferenz 1996," 24 May 1995, 1-11 as cited online at <http://europa.eu.int/en/agenda/igc-home/ms-doc/state-de/240595.html>

majority voting after a three-year transition period. Here Kohl faced pressure from the sixteen *Länder*, which share a responsibility for immigration with the German federal government. In the final days of the conference, Kohl decided to keep a veto-right in this area citing the fact that an average of 45-60 percent of all refugees who sought asylum in the Union remained in the Federal Republic.⁹⁹

There were several factors which came into play simultaneously in the domestic context to influence the result at Amsterdam. First, the deterioration of Germany's public finances hurt Kohl's negotiating hand at the IGC by weakening his coalition government. Second, the Bavarian Prime Minister, Edmund Stoiber, used his Euroskepticism to boost his own leverage and political profile in the Bundesrat by preventing Kohl from agreeing to further advances in European integration. Moreover, the Opposition Social Democrats enjoy a majority in the Bundesrat upon which Kohl depends to make policy. Each of these obstacles forced Kohl to backtrack on any significant extension of QMV at Amsterdam.¹⁰⁰

To complicate matters, Kohl had to counter Stoiber's maneuvers against EMU. By exploiting fears in German opinion that France and Italy could not meet the convergence criteria, Stoiber pleaded for a "controlled delay" in EMU. To save his coalition, Kohl reiterated his strict attitude on EMU. The timing here was particularly sensitive because Kohl's stance collided with Jospin's demand, the week before the Amsterdam European Council, for more time to study the Stability Pact, which includes fines on member states which have an excessive budget deficit once the final stage on EMU is implemented. The dispute on macroeconomic policy on the eve of Amsterdam hindered a positive Franco-German negotiating line. One also has to question how engaged Kohl could have been at Amsterdam with two French leaders of different political orientations present. In contrast to Kohl's ability to work with Mitterrand at Maastricht, the Chancellor was unable to play his own hand at Amsterdam. Unfortunately, the Chancellor was hardly supported by Chirac who intervened rarely in the negotiations or Jospin, who according to one account,

⁹⁹Youri Devuyt, "The Treaty of Amsterdam: An Introductory Analysis," *ECSA Review* X (Fall 1997): 8.

¹⁰⁰Ibid., 7.

“appeared...to be reading a novel during most of the proceedings.”¹⁰¹ After an initial look at the Maastricht experience, it is important to address the contributions of politico-administrative hybrids during the Amsterdam process, especially in light of the difficulties encountered by their political masters.

Aberbach, Putnam and Rockman's four images of civil servants. Image IV is a useful tool to analyze the Maastricht process in terms of the levels of bargaining which took place during the IGCs: working group, civil servant, ministerial and head of state and government as well as the subsequent roles that politico-administrative hybrids and other civil servants played during the national ratifications in France and Germany.¹⁰² This paper explains the relationship between bureaucrats and politicians in the Maastricht context by considering Image IV as its authors intended: as a speculation on the possible disappearance of the Weberian distinction between the roles of bureaucrat and politician in the final decades of the century.

This approach is also important for our understanding of the role of civil servants in democratic government. In a general context, it is necessary to explore the contribution of civil servants to public policy in an era in which many individuals look disapprovingly on the increased role of bureaucracy in modern government.¹⁰³ In the IGC context, it is essential to consider the negative press that the European Community attracts owing to the democratic deficit because of the prominent role of Image IV hybrids and civil servants during the Maastricht process. Specifically, what might the emergence of politico-administrative hybrids mean for the viability of democratic government in the transnational European polity?

The Community decision-making context is characterized by a diffusion of power among institutions,

¹⁰¹Ludlow, “A View from Brussels,” 15.

¹⁰²In the last phase of the EMU conference, the working group was added as a fourth level of negotiations. The national civil servants and Commission representatives which comprised the working group were responsible for discussions on highly technical issues of EMU necessary to achieve accord on a treaty among the member states. There was no parallel working group for the IGC on political union.

¹⁰³Francis E. Rourke, “The 1993 John Gaus Lecture: Whose Bureaucracy Is This Anyway? Congress, the President and Public Administration,” *Political Science and Politics* XXVI (1993): 691; “Who Really Runs Japan? Stay Tuned,” *New York Times*, December 24, 1993; “Japan's Bureaucracy: No Sign It's Losing Any Power,” *New York Times*, February 27, 1994.

member states and interests within the emerging European polity. However, the entire IGC process has resulted in a concentration of power within the Council structure. This leads us to question whether the blurred distinction between civil servants and politicians in the IGC context is a threat to democratic control given the disproportionate influence on the IGC process of a small number of individuals operating in the tightly knit environment of the Council. Although the decisions agreed to in Maastricht were made by elected political leaders, the agenda preparation for a fundamental treaty reform that influences the lives of millions of Europeans, was carried out by a small, non-elected politico-administrative elite with limited input from national parliaments, regional governments or societal interests. This "behind closed doors" phenomenon was typified by the French experience of Maastricht and its consequences were strikingly evident during the national ratification debate.

On EMU, *engrenage* involved "the inclusion of relevant national civil servants (and central bankers) to gain additional information and insights and to establish a solid network of influence" via a socialization process. This socialization process occurred at the European and domestic levels throughout the negotiations and national ratifications. In this sense, *engrenage* is "a two-way process for establishing a set of mutually rewarding interactions."¹⁰⁴ However, it also involves tensions between different levels: political (European Council) and technical (ECOFIN Council); European (Delors Commission) and national (Monetary Committee).¹⁰⁵ The important issue to assess in terms of Aberbach, Putnam and Rockman's approach is whether the role of national civil servants as "joint problem solvers" corresponds more closely to Image IV than the other images described and the implications of this evolution for democratic, as opposed to technocratic, government.

¹⁰⁴Dietrich Rometsch and Wolfgang Wessels, "The Commission and the Council of Ministers," in The European Commission, eds. Geoffrey Edwards and David Spence (Essex: Longman Group Limited, 1994), 213.

¹⁰⁵The ECOFIN Council is comprised of the economics and finance ministers of the member states. The Monetary Committee is made up of senior officials from the ministries of finance and the central banks of the member states. Its task is to prepare the agenda of discussions for the ECOFIN Council. In the Maastricht context, the personal representatives of the finance ministers also sat on the Monetary Committee. This assured the continuity of the negotiation process.

For both Mitterrand and Kohl, the Maastricht European Council illustrated a clear independence from domestic bureaucracies. Key decisions like EMU and provisions on third pillar issues were taken at the highest level with the politicians taking responsibility for their actions in the subsequent ratification debates. The only exception to this rule of politicians bearing the responsibility for Maastricht in the public perception was that of President Jacques Delors. He perhaps more than any other individual involved in the IGCs most closely resembles an Image IV hybrid in the Aberbach, Putnam and Rockman mold. However, Delors' emergence as a politico-administrative hybrid, in which he sought to inform the general public about Maastricht, must be viewed in contrast to his work behind the scenes in the technical work of negotiations in the Council. Clearly Delors was perceived by other heads of state and government as a technocrat who sought to transcend the limits of his role. This was obvious initially in light of Thatcher's criticisms of the Commission President.

Given Delors' unique mix of behind closed doors influence and publicly expressed commitment to European integration, perhaps it is fairest to say that the same remarks made of Monnet could also be applied to him. He was "neither a civil servant nor a politician. He was in a category of his own."¹⁰⁶ Delors' contributions to the Maastricht process on an issue with high visibility in the public eye like EMU illustrates his commitment to European unity as a type of mission to improve the everyday lives of citizens. To his credit, it can be said that he, like Monnet, is a born teacher. Yet Delors had a finer instinct than Monnet for projecting an aura to the public. He used this instinct during his tenure as President both to promote the interests of that institution and to influence the French domestic debate on European integration. For this reason, it can be argued that Delors best fits the Image IV mold of a politico-administrative hybrid.

Delors' role in the Maastricht context promoting integration by means of revisions to the original Treaties makes the further emergence of Image IV hybrids likely. This is significant because the phenomenon of the civil servant acting like a politician *manqué*, eager to promote a personal strategy, is less relevant in most European countries than in the American context. Here the case of Guigou

¹⁰⁶Duchêne, Jean Monnet: The First Statesman of Interdependence, 21.

is also illustrative. Although she represented France as a Minister for European affairs at Maastricht, Guigou's civil-service training would be in a constant state of tension with her political skills when she later presented the Treaty to the French public.¹⁰⁷ The exact nature of her influence on the Maastricht process is difficult to discern. This is because, on the one hand, her responsibilities as Minister for European affairs cut across the EMU and political union negotiations. On the other, her presence was felt in several different places owing to her previous responsibilities as Mitterrand's counselor at the Elysée and as head of the SGCI.¹⁰⁸ Minister Guigou's pedagogical talents in explaining the relevance of European integration for France were colored by a highly technical grasp of complex dossiers. Yet, despite this technocratic background, she was perhaps the most eminently qualified among those in the French political establishment to engage herself in the popular debate on Maastricht because of her intimate knowledge of the Treaty negotiations working at the official and ministerial levels.

Horst Köhler was the higher civil servant in the ministry of finance whose negotiating skills shaped a Treaty text written in German script for the heads of state and government to review at Maastricht. The qualities that distinguished Köhler as a politico-administrative hybrid were both his influence negotiating at the ministerial level, in Waigel's absence, and his adeptness as a communicator explaining the EMU Treaty to the German public. At Maastricht, however, Kohl made the decision on the transition to Stage Three against the judgement of finance ministry officials. This was both an indication of the inherently political nature of the EMU process and the limits to the influence that politico-administrative hybrids possess.

In contrast to the influence of Delors, Guigou and Köhler on EMU, the role of politico-administrative hybrids during the Amsterdam process is of a different nature. First, it should be underlined

¹⁰⁷Christian Lequesne, Paris-Bruxelles (Paris: Presses de la Fondation Nationale des Sciences Politiques, 1993), 75-76.

¹⁰⁸The SGCI (Secrétariat général du comité interministériel pour les questions de coopération économique européenne) is the central administrative apparatus to prepare French negotiating positions regarding Community dossiers on the Council agenda.

that the Amsterdam conference was not a negotiation in the traditional sense. Unlike Maastricht, there was no draft text marked by reservations, counter-proposals or footnotes early in the negotiations. Instead most of the working documents were “position papers” not drafted as legal texts. Meetings were essentially discussions among the delegations during which positions evolved gradually over time.¹⁰⁹ According to one participant, “the real negotiations were taking place back in the national capitals.”¹¹⁰ In the words of another participant, “it was as if each delegation came to Brussels not so much to negotiate a text as to try to bring all the forces roughly into equilibrium and to judge whether the end product would be acceptable.”¹¹¹ The Irish and Dutch Presidencies produced texts just prior to each European Council, Dublin and Amsterdam, so as to try and approximate the balance of interactions among the member states and to give national experts less time to tinker with the results prior to decision making by the Heads of State and Government.¹¹²

Significantly, as in the case of the Maastricht conference, the foreign ministers played less of a role during the 1996 IGC than their personal representatives. This group of personal representatives met regularly for two days a week to work on the IGC agenda. The Group of Representatives’ membership was similar to that of the Reflection Group, chaired by Carlos Westendorp throughout the Fall of 1995, which provided insight and suggestions about the type of issues on the conference agenda. Therefore, the personal representatives drew on expertise about IGC issues acquired over a number of months among officials who included deputy ministers and, in the case of France and Germany, secretaries of state.¹¹³ Second, in terms of technical issues to address, the Amsterdam conference

¹⁰⁹Petite, The Treaty of Amsterdam, 3-4.

¹¹⁰Interview, Sten Frimodt Nielsen, Senior Advisor on EU Affairs to the Danish Prime Minister, Salzburg Seminar, Session #350, “Europe: Consolidation and Enlargement,” Salzburg, Austria, October 15, 1997.

¹¹¹Petite, The Treaty of Amsterdam, 4.

¹¹²Ibid

¹¹³Ibid

involved questions of an institutional and legal, not an economic and monetary, nature. The sensitivity of the markets was not a cause for concern which could be directly related to the IGC. Furthermore, after the Maastricht experience, “a negotiation behind closed doors” was not an option. Transparency was raised in several ways by involving the Presidency in press conferences after weekly meetings, enabling national parliamentarians to summon their representatives during the conference and making a large amount of IGC documentation available online to increase its availability. Thus, independently of the role of politico-administrative hybrids in the Amsterdam process, its transparency was increased by political decision making.

The role of politico-administrative hybrids would come to the fore in the Amsterdam process during the national ratifications in which the same officials whose input was so crucial during the IGC negotiations would then serve a political function by selling the Treaty to national publics. Since there will most likely not be a referendum in France or Germany, these two countries must rely on their political leaders to sell the Treaty. Therefore, it remains to be seen if and when politico-administrative hybrids emerge to influence the ratifications in a significant way.

A distinguishing feature of the Amsterdam IGC was the role played by the civil servants in the Commission and Council Secretariats who were able to cooperate to a larger extent than was possible during the Maastricht process.¹¹⁴ It could be argued that this increased institutional cooperation at the center during the IGC maximized the input of both institutions and helped forge constructive and solid communications in the daily workings of the conference. Nonetheless, the Amsterdam Council suffered from the German Chancellor’s obvious discomfort about not being able to play the role he envisaged there and the impact of his domestic constraints on the IGC process in its entirety. Instead of functioning as joint problem solvers, politico-administrative hybrids may well find their role in the Amsterdam process limited to working within parameters set by the distributive nature of negotiations to ratify the Treaty in the midst

¹¹⁴Interview, Michel Petite, Director, IGC Task Force, European Commission, Salzburg Seminar, Session #350, “Europe: Consolidation and Enlargement,” Salzburg, Austria, October 15, 1997.

of economic and institutional constraints in both France and Germany. It is the nature of negotiations which characterize the Maastricht and Amsterdam processes which we now explore.

Monnet's approach. The Monnet approach is particularly useful to analyze the EMU conference because it brings out the dynamics of one sub-process of negotiations, integrative bargaining. This sub-process involves more than the search for compromise characteristic of classical IGC diplomacy. The creation of a new institution, or context, is emphasized as a part of a common solution to a problem. In this sense, Monnet's approach is in the tradition of neoliberal institutionalism because of its emphasis on "patterns of cooperation and discord that can be understood only in the context of the institutions that help define the meaning and importance of state action."¹¹⁵

In the Maastricht context, Jacques Delors' contributions to the IGC process reveal a great deal about the Monnet legacy to European integration. Here it is important to assess the extent to which Delors used *engrenage* as a means to enable the Commission to play a strategic role on EMU. This role has been defined as that of a "policy entrepreneur" in which the Commission took advantage of existing opportunities to define EMU as a priority on the EC agenda.¹¹⁶ An exclusively intergovernmental institutionalist framework applied to the EMU conference "underestimates the extent to which domestic constraints are in turn influenced by the operation of transgovernmental networks

¹¹⁵Robert O. Keohane, International Institutions and State Power (Boulder & London: Westview Press, 1989), 2. Keohane and Hoffmann offer three propositions about the nature of the Community institutions: "The EC is best characterized as neither an international regime nor an emerging state but as a network involving the pooling of sovereignty; the political process of the EC is well described by the term 'supranationality' as used by Ernst Haas in the 1960s; however, the EC has always rested on a set of intergovernmental bargains, and the Single European Act is no exception to this generalization." Robert O. Keohane and Stanley Hoffmann, "Institutional Change in Europe in the 1980s," in The New European Community, 10; Other scholars who view the Community as more than a regime include Kevin Featherstone and Roy H. Ginsberg, The United States and the European Community in the 1990s (New York: St. Martin's Press, 1993), 68 and William Wallace, "Less than a Federation, More than a Regime," in Policy-Making in the European Community, eds. Helen Wallace, William Wallace and Carole Webb (London: John Wiley & Sons, 1983).

¹¹⁶Stephen George, "The European Commission: Opportunities Seized, Problems Unresolved," Paper presented to the Fourth Biennial International Conference of the European Community Studies Association, Charleston, South Carolina, May-11-14, 1995. The reference to the Commission as a policy entrepreneur on EMU was made during a panel session by Jonathan Davidson.

of elites;"¹¹⁷ within this transnational environment, the Delors Commission seized an opportunity to promote the European interest as a policy entrepreneur. Specifically, it exploited existing opportunities brought about as a result of the dynamics of integration embodied in the Single European Act and aimed to increase the level of integration among the member states by placing other integrative measures on the agenda for EMU.

The decisions on EMU taken at Maastricht traced in a bold manner the line drawn by Monnet's approach. The decision by Kohl to accept a fixed deadline for EMU has been described as a "significant tactical negotiating victory" for the French, "a victory that in turn owed much to Chancellor Kohl."¹¹⁸ This paper argues that the Mitterrand-Andreotti initiative on the basis of Bérégovoy's idea and Kohl's decision to accept it provide an example of integrative bargaining in the Monnet tradition. The conditions of motivation, information, language and trust were all present between Mitterrand and Kohl. Both leaders had the motivation to try to make the integration process irreversible. The two leaders each aimed to give the other enough information about domestic interests to enable each to strike a "yesable" bargain on EMU: in other words, a deal that could be ratified. Mitterrand and Kohl, as bilateral partners, both spoke the Community language on EMU emphasizing it as an endeavor for the European family. And Mitterrand sought Kohl's trust by assuring him that a timetable for EMU would not prevent the achievement of strict convergence criteria.

The blend of convergence criteria and fixed dates is an attempt to achieve a synthesis, or integration, in a bargain which brings together two seemingly irreconcilable ideas. There is a creative tension in the combination "convergence-dates" and the potential for an *élan* to drive the EMU process in a non-linear series of "steps in time." In the Maastricht context, this bargain is more than a compromise in the sense of classic distributive bargaining. It is also more than a "victory" for the French or a "concession" by Chancellor Kohl. The German Chancellor was quite conscious of his own power to

¹¹⁷Ibid., 1.

¹¹⁸Dyson, Elusive Union, 156-157.

conclude, or not conclude, the Maastricht European Council with a decision on EMU. His use of his own power at Maastricht, in the context of both EMU and cohesion, showed him to be a responsible European whose words are backed by deeds.

Kohl may not have been thinking of Monnet the man as he made his decision to accept the 1999 deadline. However, it is clear that there is a Monnet equation in Community affairs of which Kohl was well aware. This equation may be simply stated as "institutions + fixed dates = politics".¹¹⁹ Without a doubt the compromise tactics so illustrative of distributive bargaining were also present at other moments during the Maastricht negotiations. The opt-out for Major on Stage Three was just one example of distributive bargaining on the same issue of a fixed date.

Perhaps Horst Teltschik's comments provide some insight into the relations among the three individuals who worked so hard to achieve integrative bargaining on EMU. He says: "The triangular relationship of Kohl-Delors-Mitterrand was pivotal. Delors mediated between Kohl and Mitterrand and, never afraid of stating his own views forcefully, tried to influence them while doing so. He understood our domestic problems and helped Mitterrand to do so, such as when we wanted the IGC on monetary union postponed until after the November 1990 elections."¹²⁰ Given these comments, it is important to emphasize Delors' role during the IGCs from the standpoint of his commitment to the Monnet approach. On EMU, Kohl and Mitterrand, aided by Delors' initiatives, were trying to focus on the common interest, rather than on trades between conflicting interests, and to maximize the advantages of their joint undertaking rather than to exchange gains and losses with each other. The contrast with the decisions taken on political union, particularly in the area of justice and home affairs, was evident to all the leaders at Maastricht.

However, it is also necessary to underline the creation of a new institution, the European Central Bank, as part of a common solution to the problem of how to create EMU. The workings of the ECB have

¹¹⁹Interview, *Auswärtiges Amt*, 27 December 1994.

¹²⁰Charles Grant, *Delors: Inside the House that Jacques Built* (London: Nicholas Brealey, 1994), 141.

the potential to create a new psychological situation that transcends the old one and enables the Community to define integration in a completely different context. In its emphasis on the creation of a new institution, Monnet's approach is illustrative of a perspective in international relations otherwise known as "neoliberal institutionalism." This perspective does not assert that "states are always highly constrained by international institutions." Nor does it claim that "states ignore the effects of their actions on the wealth or power of other states." Neoliberal institutionalists, like Robert Keohane, do argue, however, that "state actions depend to a considerable degree on prevailing institutional arrangements, which affect: the flow of information and the opportunities to negotiate; the ability of governments to monitor others' compliance and to implement their own commitments; (and) prevailing expectations about the solidity of international agreements."¹²¹

Whether the creation of a European Central Bank will actually be able to redefine the context of integration in Europe in line with the tenets of neoliberal institutionalist thought, or whether internal strife on the bank's board of governors will reflect older suspicions and a return to classical balance of power politics, are questions relevant at present. The strong debate about the candidate to be the first President of the European Central Bank, Wim Duisenberg or Jean-Claude Trichet, and the differences between the Dutch and the French on this issue mark a clear divergence from the way in which positive decisions have been reached on EMU thus far.

The attempt to use Monnet's approach in the creation of EMU illustrates just how difficult it is to achieve integrative bargaining on complex issues, like a set date for entry into Stage Three, among states with such divergent national traditions. In this regard, the German delegation's insistence on a unanimous decision in order to decide on the passage to Stage Three was at variance with Chancellor Kohl's views and those of the other leaders in the European Council. This was because the Bundesbank was quicker than the Kohl government to believe that the goal of EMU was first and foremost the undermining of German power. Wilhelm Nölling, President of the National Bank of Hamburg, stated: "Let us have no illusions - in the actual discussions over the new monetary order in Europe, at stake are power, influence and the pursuit of national

¹²¹Keohane, International Institutions and State Power, 2.

interests."¹²²

Yet, there is little question that the Community's member states are trying to maximize joint gains. Agreement on a fixed date is a necessary point of departure. The use of integrative bargaining to achieve an accord on this point was decisive to the final outcome at Maastricht. The fulfillment of the required convergence criteria and securing the agreement of national parliaments to move on to the final stage are other matters. Of particular relevance here is the issue of whether or not other member states, besides the Federal Republic of Germany, agree to the significant steps on the road to political union, namely increased powers for the European Parliament, in exchange for a green light on the creation of the European Central Bank and a single currency.

The outcome at Amsterdam clearly reflects the desire of the Union's member states to make important decisions on political union. Three of the four sub-processes of negotiations, distributive and intraorganizational bargaining and attitudinal structuring are evident during the IGC process. Integrative bargaining, characteristic of Monnet's approach, was conspicuously absent. Several factors account for this result.

First, in the words of one participant, the formulation of German positions for the Amsterdam conference was much more in the hands of the Chancellor's Office and several key Bonn ministries with a limited role for the German Permanent Representation in Brussels.¹²³ This observation, coupled with the fact that the real negotiations took place in national capitals, limited the opportunities for integrative bargaining to take place. Second, the lack of a strong Franco-German line, owing much more to domestic institutional and economic constraints than philosophical differences, did not provide the focal point around which other positions could converge, as in the case of EMU at Maastricht. This lack of a Franco-German line gave Commission President Jacques Santer less of a mediatory role at Amsterdam. Chirac's distrust

¹²²Marsh, Die Bundesbank, 311-312.

¹²³Interview, General Secretariat of the Council of the European Union, New York Office, July 9, 1996.

of the Commission is another factor which works against a role for Santer as a mediator between the French President and the German Chancellor. Nonetheless, his experience in several important European Councils, late 1985 and early 1991, as Luxembourg Prime Minister suggests a shrewd understanding of IGC negotiations and the ways in which the Commission could enhance its influence without alienating the member states à la Delors during the Maastricht process.¹²⁴

In fact, it is the convergence criteria which, during the Amsterdam process, provide the impetus as a “focal mediator,” the point around which all the member states must orient their economic and institutional policies and which engages them in a dialogue to mediate their differences for the sake of a common goal. Finally, the results of the Amsterdam conference are generally believed to be due in large part to the contributions of the successive Presidencies and the Nordic participants and the flexibility of the Blair government.¹²⁵ These countries do not have a tradition of working at the center of the Union’s system or of being catalysts for integrative bargaining. This outcome stands in marked contrast to the Maastricht process which reinforced “the notion of France and Germany acting at the core of a changing Europe with other states trying to define their status as part of that core or adjust that status if it relegates them to the periphery.”¹²⁶ In the Amsterdam context, it is important to underline that domestic strife and lack of internal consistency and clarity within France and Germany make integrative bargaining less likely, not the inability of the member states to come to an agreement on sensitive issues.

Integrating Levels, Images and Bargains to Analyze IGC Decision Making. The three approaches used in this paper illustrate in the Maastricht context how, on the crucial issues like EMU, increased powers for the European Parliament and article 100c, Mitterrand and Kohl were keeping in mind the requirements of their own domestic interests while simultaneously aiming to expand the contours

¹²⁴Desmond Dinan, “The Commission and the Reform Process” in The Politics of European Treaty Reform, eds. Geoffrey Edwards and Alfred Pijpers (London and Washington: Pinter Publishers, 1997), 209-10.

¹²⁵Ludlow, “A View from Brussels,” 15.

¹²⁶Mazzucelli, France and Germany at Maastricht, 289.

of each other's win-set. Mutual efforts on the part of both leaders to influence the definition of the other's win-set were particularly difficult to achieve for two reasons: the large number of interconnected issues on the political union agenda; and the inextricable link between the EMU and political union conferences which Kohl viewed as necessary to achieve German ratification. It was quite clear during the prenegotiation that, despite their joint letters to the Council Presidency, France and Germany had as many divergent as convergent interests and viewpoints on the objectives of political union. This fact alone makes the agreement achieved at Maastricht significant in terms of each country's willingness to go beyond the purely national interest in the definition of goals for the Union.

The separate preparations for the two IGCs, in terms of the bureaucratic personnel responsible for each conference, impacted on the Maastricht European Council's agenda to the extent that the links between the horizontal issues, which cut across both IGCs, were never very strong. This complicated negotiations during the European Council with numerous *tours de table* during which the Dutch Presidency had to return repeatedly to issues like visa and immigration matters. Such constraints made integrative bargaining on these issues impossible because there was no common definition of the ways in which they fit into the design of political union. Although EMU was defined as part of this larger entity termed political union, it was apparent that the objectives of the part, namely EMU, were clearer than that of the whole.

Certain individuals who had a very clear idea of the issues at stake on both conference agendas, like President Jacques Delors and Minister Elisabeth Guigou, worked hard to try to keep the lines of communication open between the French and German sides and to inform citizens about the results obtained at Maastricht during the domestic ratification processes. These individuals were neither civil servants nor politicians and the tasks demanded of them during the Maastricht process fell in a grey area between two very different worlds. In the case of Delors, in particular, his presence during the Maastricht European Council was felt in the areas of EMU, regarding the opt-out for Great Britain. His role as a "consultant" to the heads of state and government is a testimony to the influence he had

during IGC negotiations in the European Council. Undoubtedly, one of his most significant accomplishments is the fact that he altered the institutional balance which had existed prior to 1985, and, in so doing, carved out a role for the European Commission in the IGC process.

Nonetheless, the decisions taken by Kohl, Mitterrand and the other leaders in the European Council clearly mark the limits of the influence which politico-administrative hybrids possess in the IGC process.

This paper emphasizes the presence of these new actors as linchpins in the sub-processes of IGC negotiations and subsequent parliamentary ratifications - at times serving as a bridge between the domestic and European levels as well as the elite and popular ones, in the case of Köhler and Guigou. Particularly on EMU, the role of these actors was crucial to the outcome because they, like Delors, knew the technical details, or substance of the on-going process inside out, and mastered the personal relations among different levels of negotiation necessary to facilitate a final agreement at Maastricht.

Their role set the stage for integrative bargaining to take place between Kohl and Mitterrand precisely because the careful preparation and attention to detail which characterized the EMU conference engendered the elements of motivation, information, language and trust from the lower levels of negotiation to the highest one. The task which subsequently faced leaders and politico-administrative hybrids alike was to translate these four elements of Monnet's approach to individual citizens and parliamentarians during domestic ratification processes. These same politico-administrative actors had to be involved to bring the IGC process to its logical conclusion with the ratification and implementation of the Treaty.

Each of the three approaches used in this paper has a social-psychological orientation which reflects an emphasis on the role of the individual in relations among nations, also known as the first image.¹²⁷ Two-level games emphasize the strategic aims of the "chief of government." The four images of civil servants make a distinction between ordinary civil servants and those officials who use their

¹²⁷Kenneth N. Waltz, Man, the State and War (New York: Columbia University Press, 1959), 16-41. The second and third images are the internal structure of states and the international system of states, respectively.

influence close to the source of political power to shape policy making below the level of their political masters. Monnet's approach focuses on the capacity of political leaders and higher civil servants to link internal bargaining with European negotiations to find solutions to common problems via bargains that reflect the European, as well as the national, interest.

During the French and German ratification processes of the Maastricht Treaty, the role of citizens, Image IV hybrids and civil servants shaped the course of integration. In the French case, the popular referendum decided the Treaty's fate. Although the decision to call the referendum was taken by the French President, the result was less state driven than originally expected by the political establishment. In fact, the referendum result was rooted in the ambiguities of societal expectations, fears and ignorance about the integration process.¹²⁸ In the German case, ministers, Image IV hybrids and civil servants in the *Auswärtiges Amt* and federal ministry of finance were closely involved in the ratification process; yet, it was their interactions with politicians and civil servants in the Bundesrat and Bundestag that enabled the parliamentary ratification to be completed by the December 1992 deadline.

The three approaches used in this paper were chosen with the goal of explaining an entire learning process. Putnam's two-level games illustrate the extent to which states still matter in European integration while acknowledging that states are not always unitary or rational actors able to implement a precisely defined strategy. Where two-level games part company with the intergovernmentalist approach is in its emphasis on direct communications among transnational actors at the domestic level which can influence a state's strategy at the international one. Here Putnam's approach must take into account that, in the case of the European Community, "the frequency and scope of bargaining enhanced the potential for 'cross-table' alliances between domestic interests to put pressure on their respective governments to adopt mutually supportive policies:" not just between central bankers but between actors

¹²⁸This point is also made by Sophie Meunier-Aitsahalia and George Ross, "Democratic Deficit or Democratic Surplus? A Reply to Andrew Moravcsik's Comments on the French Referendum," French Politics and Society Vol. 11 (Winter 1993): 57-69.

operating at national and Community levels like Roland Dumas and Hans-Dietrich Genscher. Interactions were multifaceted and intense, influencing at times the extent to which domestic leaders could control access to the European level.¹²⁹

Putnam's approach should also emphasize to a greater extent multiple levels, particularly the role of sub-national actors like the *Länder*. This is because these actors influenced both the definition of German goals at the bargaining table and the way in which the national ratification process occurred to obtain their consent to the Treaty. Clearly the decisive role of the *Länder* during the Amsterdam conference illustrate that interactions at three levels of games must be analyzed to provide an accurate explanation of the IGC process.¹³⁰

The use of the four images of civil servants enables us to consider the role of those actors who had perhaps the greatest weight in the overall process as it unfolded from day to day. This approach ties in an analysis of actors at Level II discussed in two-level games and enables us to take a liberal approach at the domestic level by considering the extent to which national civil servants acted in a way so as to facilitate joint problem solving. The difficulty with this approach is that while it allows us to assess the relations between civil servants and their political masters, it does not provide us with the means to get inside the heads of the actors defined as politico-administrative hybrids. Specifically, it does not answer the question: What makes individuals who operate between national and European capitals tick? How they work at the level under the political leadership is important. Specifically, the four images bring out the lack of a single approach which can give us an idea of how civil servants' actions were influenced by the learning curve the IGC process represents.

Aberbach, Putnam and Rockman's approach does allow, however, for a focus on different levels

¹²⁹Kenneth Dyson, Kevin Featherstone and George Michalopoulos, "The Politics of EMU: The Maastricht Treaty and the Relevance of Bargaining Models," 11.

¹³⁰Lee Ann Patterson, "Agricultural policy reform in the European Community: a three level game analysis," International Organization 15 (Winter 1997): 135-65 provides an analysis of domestic (Level III), Community (Level II) and international (Level I) negotiations.

of negotiation and analysis at which the existence of "turf-fighting" among officials representing distinct policy areas, i.e., EMU or political union was apparent. Turf-fighting represents "another dimension of Community bargaining, reflecting the operation of corporate self-interests at the European level." Throughout the EMU process, this difference of interests was apparent between the ECOFIN Council and the Monetary Committee, on the one hand, and the General Affairs Council and the European Council, on the other. Dyson, Featherstone and Michalopoulos argue that it is an "oversimplification" to refer to "Council bargaining" as if it occurred in a single institution.¹³¹ This paper instead emphasizes the importance of understanding the nature of the Council's institutional structure which involves levels of responsibility across functional sectors.

At the level of negotiation, it is fair to say that "turf-fighting" at the European level within the Council structure was mirrored at the domestic level. For example, the French Presidency and Quai d'Orsay had different interests concerning decision making on EMU than the Trésor. It is more questionable to assert that President Mitterrand colluded with Dumas to neutralize the power of the Trésor by insisting that officials from the Quai d'Orsay be in attendance during the EMU negotiations.¹³² In fact, the organization of the two IGCs was structured from the start with the personal representatives of the foreign ministers assigned to take part in both conferences. Moreover, it is not clear that there was always greater institutional capacity for policy coordination at the national level than at the European one, as Dyson, Featherstone and Michalopoulos suggest. The German case illustrates that the policy coordination carried out by national civil servants proved difficult at times. This was due to the diverse personnel working on the IGC process in the Chancellor's Office, numerous ministries involved in EMU and political union negotiations, the Bundesrat, Bundestag and Bundesbank, and the German Permanent Representation in Brussels.

¹³¹Dyson, Featherstone and Michalopoulos, "The Politics of EMU: The Maastricht Treaty and the Relevance of Bargaining Models," 10.

¹³²Ibid., 11.

At the level of analysis, different civil servants, ministers and heads of state and government within France and Germany held competing views concerning various issues on the table which cut across both IGCs, like the voting procedures to enter into Stage Three of EMU or increased powers for the European Parliament. This in turn influenced diplomacy at the state level among the numerous actors within the Community system. The attempt to include within a single text issue areas as diverse as EMU, CFSP and the third pillar led to difficulties in the organization and coordination of bureaucratic personnel throughout the IGC process. This impacted on the conclusion of the negotiations during the Maastricht European Council and resulted in numerous difficulties which citizens later had in understanding the language in which the Treaty was drafted.

Although Monnet's approach employs elites to drive the integration process, it also provides insight into the need for good organization of a limited number of persons in an IGC process and the clear drafting of a treaty text so as to make the result comprehensible to the average person. During the Amsterdam process, the need to simplify the Treaties was initially acknowledged by the Westendorp Group and then reasserted during the Amsterdam Council. The outcome is that there will be a simplification through the elimination of 40 obsolete articles. However, the consolidation process is on hold, in part because certain states, including France, are concerned that a consolidated document would have to be submitted to national ratification procedures, with the risks such a step would entail.¹³³

The problematic aspect of Monnet's approach in the IGC context relates to the increasing expansion of the Community along functional, geographic and linguistic lines. When his approach was first used in 1950, the actors around the table were representatives of a rather homogeneous Community of Six. The challenge of the Maastricht process was how to use the tension between national goals and European interest, which has existed throughout the Community's history, to create an entity within which the evolving system of geopolitical and socio-economic relations would find constructive definition well into the next century. The increased number of issues to negotiate, member states

¹³³Ludlow, "A View from Brussels," 13.

at the table and working languages used each impact on the use of Monnet's approach.

Significantly, this approach enables us to focus on sub-processes of negotiations which also have relevance in the domestic context. Throughout the internal debate which characterized the Maastricht ratification in Germany, attempts at distributive and integrative bargaining, and attitudinal structuring, were present as the representatives of the Kohl government had to strike deals with the Bundesrat and Bundestag to ratify the Treaty. The Amsterdam process reveals the elusiveness of the integrative approach in part because of more distributive negotiations in three level games. The involvement of the *Länder* brings in political actors who are less willing to adapt to the dynamics of IGC negotiations in the Union context or to acknowledge the learning curve which the IGC process represents at the national and Union levels. The focus is rather on augmenting the power base, i.e., in federal-state relations, and maximizing the scope of influence, i.e., EMU and third pillar issues within the Union system, working at the newest level of games.

The Amsterdam conference was in some respects less complicated than its Maastricht predecessor. Thus, there was no need to coordinate across two IGCs. The difficulties at the levels of negotiation within the Council structure were perhaps less problematic from a democratic vantage point. The members of the Group of Representatives were engaged in national capitals to formulate positions while trying to find the point of equilibrium on dossiers which would be accepted in the Union context and “yesable” in the domestic ratifications. In this sense, the IGC was more connected to national political realities, in part to learn from the experience of the initial Danish referendum on Maastricht. However, the lack of involvement by the foreign ministers in Brussels may pose a challenge during the national ratifications if the ministers are not masters of their briefs to sell the Treaty politically.

The Amsterdam process reveals that the actors most engaged in daily negotiations bear a tremendous responsibility to prepare the ground for IGC decisions made at the highest levels. Significantly, the dynamics of IGC negotiations in a larger Union reveal a political willingness to promote solutions which show flexibility and constructive abstentions rather than integrative bargains. In the case of France

and Germany, the weaker phase of their partnership in evidence at Amsterdam illustrates a need to focus on a limited number of issues in the short term to find common ground on which to build in the areas of the single currency and enlargement.¹³⁴ Precisely because the issue of the single currency is so closely linked psychologically to a loss of German identity,¹³⁵ the national veto used in other areas can be understood as a means of self-preservation. At Amsterdam it once again highlighted the distributive nature of decision making as further steps to integration are undertaken. In this context, solutions which enable smaller groupings to move ahead are more difficult to achieve at the political or politico-administrative levels. The mood of defensiveness in France and certain quarters in Germany is one of the strongest obstacles to progress in the Union and the single biggest difference between the outcomes achieved in decision making at Maastricht and Amsterdam.

¹³⁴“Franco-German link needs a relaunch-Moscovici,” Reuters, January 21, 1998 as cited online via America Online Version 4.0.

¹³⁵Prof. Dr. Thomas Risse, “Between the Euro and the Deutsche Mark: German Identity and the European Union,” # PS 1.3 (Washington, DC: Center for Excellence in German and European Studies, Georgetown University, April 1997).

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