

**“Understanding the Dutch Presidency’s Influence at Amsterdam:
A Constructivist Analysis”**

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Abstract: During the Intergovernmental Conference (IGC) on Political Union in late September 1991, the Dutch Presidency of the Council introduced a draft Treaty on European Union text that departed significantly from that of its Luxembourg predecessor. This draft, which presented a unified Treaty structure, reflected the federalist convictions of politicians within the Dutch coalition government. The Dutch Presidency, during the initial months of its tenure, relied more on the Delors Commission than on the Council Secretariat and thereby alienated 10 of the other 11 member states in the Treaty negotiations. What, if any, lessons did the Dutch Presidency learn from this experience that led to its success in the Presidency during the Amsterdam intergovernmental conference in June 1997? This paper draws on social constructivist analysis to present a diachronic study of the role of the Dutch Presidency during Treaty revision negotiations. In this context, its comparative findings shed light on the extent to which the Dutch Presidency fulfilled a “brokerage” function among the IGC participants and the extent to which its respective tenures as Chair shaped distributive or integrative outcomes.

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Introduction

The objective of this paper is to assess, in a diachronic comparison, the roles of the Dutch Presidency during the Maastricht and Amsterdam intergovernmental conference processes.¹ The key research question it addresses is what, if any, lessons did the Dutch Presidency draw from the experience of “Black Monday” on 30 September 1991 that contributed to its success in the Presidency during the Amsterdam European Council on 18-19 June 1997? This paper advances that a social constructivist analysis may provide some preliminary answers to this inquiry.² Why?

Unlike liberal intergovernmentalism, a constructivist history of European integration seeks to explain the occurrence of Treaty changes only with reference to the “feedback effects of previous institutional decisions on the identities and interests of member state governments and societies....”³ Actors’ preferences are not taken as given in social constructivist analysis. In hindsight, it is clear that the Dutch, during the initial months of their Presidency in 1991, were divided in approach, tactics and strategy. The reliance on the national administration, without the input of the Council Secretariat, led to a fundamental miscalculation within the IGC on Political Union. Some Dutch officials within the Netherlands Permanent Representation in Brussels foresaw a fundamental error in judgment as events unfolded.

¹ This paper defines the intergovernmental conference process as that which includes the pre-negotiation, negotiations among the member states resulting in Treaty amendments, and the national as well as European Parliament’s Treaty ratifications. Colette Mazzucelli, *France and Germany at Maastricht Politics and Negotiations to Create the European Union*, (New York and London: Garland Publishing, Inc, 1999), second edition paperback.

² Jarle Trondal, “Is there any social constructivist-institutionalist divide? Unpacking social mechanisms affecting representational roles among EU decision-makers,” *Journal of European Public Policy* 8:1 (February 2001): 1-23.

³ Thomas Risse, “Social Constructivism and European Integration” in Thomas Diez and Antje Wiener, eds., *European Integration Theory*, (Oxford: Oxford University Press, 2003).

This fact suggests there were contested viewpoints within the Dutch Presidency at the time that are rooted in its historical experience of, and identification with, European integration.⁴ The author identifies a learning curve that the Dutch Presidency may have experienced throughout this episode and in the aftermath of the September 1991 confrontation. This analysis traces that learning curve through the period leading into the 1996 process that culminated for the Dutch Presidency with its role in the Chair during the Amsterdam European Council almost 7 years later. In order to provide an explanation of the Dutch Presidency's change in approach, this explanation factors in the interplay between the fundamental characteristics of European Union's daily negotiations and the intergovernmental conferences that have shaped its evolution since the mid-1980s.

The paper initially discusses some of the insights provided by social constructivism that may shed light on its central question in terms of the Presidency's brokerage function and its ability to influence outcomes during IGC negotiations. Next we explore the coalition dynamics that led the Dutch Presidency to play the role that resulted in the "Black Monday" scenario.⁵ This paper subsequently analyzes the opportunities the Dutch Presidency had to take advantage of a learning curve in the run-up to the 1996 process. An analysis of the Dutch Presidency's impact during the

⁴ Mr Max Jensen, "The Presidency of the Council of Ministers of the European Communities: The Dutch and the Presidency," in *The Presidency of the European Council of Ministers*, Colm O Nuallain, ed., (London: Croom Helm, 1985), pp. 209-35; Alfred Pijpers, "The Netherlands: How to keep the Spirit of Fouchet in the bottle," in *National Foreign Policies and European Political Cooperation*, Christopher Hill, ed., (London: Allen & Unwin, 1983), pp. 166-81.

⁵ As a student of comparative politics and Franco-German relations, who is also interested in the dynamics of multilateral negotiations within the European Union, this analysis is my third inquiry into the influence of coalitions on leadership during the intergovernmental conference process. In the case of the Federal Republic of Germany during the Amsterdam European Council, my findings point to the impact of CDU-CSU coalition politics and the personality of CSU leader, Edmund Stoiber. In that case, the central question led me to identify the factors which forced Helmut Kohl to revise his negotiating stance during the Amsterdam European Council on a number of issues all related to the free movement of persons, asylum and immigration. Colette Mazzucelli, "Much Ado about Amsterdam: CDU-CSU Politics, Länder Influence and EU Treaty Reform," *German Law Journal* Vol. 2 No. 15 - 15 September 2001, European and International Law, http://www.germanlawjournal.com/past_issues.php?id=91

Amsterdam European Council follows. In the conclusion, the paper's comparative findings shed light on the degree to which the Dutch Presidency fulfilled a "brokerage" function among the IGC participants and the extent to which its respective turns as Chair shaped distributive or integrative outcomes.⁶

Drawing Lessons in the Chair. Social Constructivism, the Presidency's Roles and a Plea for Diachronic Comparison

The Presidency of the Council is a European institution, whose "overall role, inherent in the office, is not described in the Treaty".⁷ Its role has been defined in large measure by practice although marked aspects of national character can leave an imprint on its tenure.⁸ The Presidency requires its entire national administrative apparatus to prepare, coordinate and implement a six-month agenda. Its working methods are "conditioned by its traditions and culture."⁹ The second paragraph of Article 48 Treaty on European Union (TEU) gives the President the task to "convene a conference of representatives of the governments of the Member States to adopt amendments to the Treaties...".¹⁰ The Presidency is "in the hands of the Council" which may challenge a procedural decision the Presidency makes by simple majority.¹¹

The preceding definition of the Presidency's role underscores that it is likely to learn from experience shaping the initial agenda and defining the parameters of the

⁶ Jonas Talberg, "The Power of the Presidency: Brokerage, Efficiency, and Distribution in EU Negotiations," Paper presented at the EUSA's 8th International Conference, Nashville, March 27-29, 2003.

⁷ Council of the European Union, *Council Guide*, (Luxembourg: Office for Official Publications of the European Communities, 2001), p. 3.

⁸ *Ibid*, p. 4.

⁹ *Ibid*, p. 6.

¹⁰ *Ibid*, p. 4.

¹¹ *Ibid*, p. 6.

debate during successive intergovernmental conference processes.¹² In this institutional context, a social constructivist analysis emphasizes that “social institutions...can no longer be viewed as “external” to actors.” Rather actors, including national governments “are deeply embedded in and affected by the social institutions in which they act.”¹³

This paper takes the premise, advocated by Risse, that the more we insist that institutions, including the European Union, “reflect and build upon previous institutional designs and structures, the further we move away from rational choice approaches....”¹⁴ Its main research agenda underlines that our inquiries must be grounded in analyses of “the institutional effects on social identities and fundamental interests of actors.”¹⁵ Here the plea for diachronic comparison in the case of the Dutch Presidency focuses on continuing struggles, contestations and discourses about “how to build Europe.” The imagery of governments as unitary actors, which always calculate and know their objectives with certainty about the future and their own interests, is open to question.¹⁶

As intergovernmental conferences increasingly display the characteristics of domestic bargaining over time,¹⁷ it is necessary to analyze the European Union as “a two-way process of policy-making and institution-building at the European level” which then feeds back into the member states as an inherent part of their political processes and structures.¹⁸ In this context, rule-guided behavior is distinguishable from strategic and instrumental behavior. In other words, “actors try to do the right thing.” The alternative

¹² Juliet Lodge, “Intergovernmental Conferences and European Integration: Negotiating the Amsterdam Treaty,” *International Negotiation*, Vol.3, No. 3, 1998: 351.

¹³ Risse, “Social Constructivism and European Integration,” (Chapter 9) in Diez and Wiener, eds.

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Mazzucelli, *France and Germany at Maastricht*, identifies this evolution.

¹⁸ Risse, “Social Constructivism and European Integration,” (Chapter 9) in Diez and Wiener, eds.

would be for actors to maximize or optimize given preferences. As defined by March and Olsen, the “logic of appropriateness” that applies in this case entails that actors try to figure out the rule that corresponds most or is the best fit in a given situation.¹⁹

In order to address the key question in this paper, it is necessary to assess whether social norms constitute the “identity of actors in the sense of who “we” are as members of a social community.” Since constructivism maintains that collective norms and understandings define the basic “rules of the game” in which actors find themselves in their interactions, does the IGC process in the EU context define the Dutch Presidency’s interest and its identity as an “engineering” Presidency?²⁰ As Svensson identifies this role, the Presidency as engineer aims or has the chance to influence not only process, but also outcome in negotiation. An engineering Presidency has the objective to be more than the administrator and the facilitator. It plays a leadership role during Treaty reform negotiations.²¹ The pages that follow analyze the roles the Dutch Presidency assumed during the IGCs that led to the Maastricht and Amsterdam European Councils. This includes an assessment of the ways in which the Dutch used the short time period that separated the Treaty reform processes to their advantage.

“Elevating an Idea to The Status of Principle:”²² Constructivist Insights to Shed Light on “Black Monday”

Just over a decade before the confrontation that marked its Council Presidency on 30 September 1991, the Dutch government had sent a note to Parliament to explain the

¹⁹ Ibid

²⁰ Anna-Carin Svensson, “Negotiating the IGCs - The Role of the Presidency,” Paper to be presented at the Third Pan-European International Relations Conference and Joint Meeting with the International Studies Association, Vienna, September 16-19, 1998, pp. 9-10.

²¹ Ibid

²² Jensen, “The Presidency of the Council of Ministers of the European Communities: The Dutch and the Presidency,” p. 234.

government's views about, and intended plans for, the Presidency during the initial semester in 1981. The primary tasks²³ identified by the government were organizational, first and foremost, and involved mediation in the solution of conflicts. Promoting certain initiatives was defined as a third objective with "due regard for the European Commission's right of initiative." This was considered a function that is "more an exception than the rule." The last task was that "of promoting the national interests of the presiding state itself" although it was believed that this should not be overestimated since the Presidency's "influence on the course of events remains rather limited."²⁴

In the Dutch case, an analysis of the institutional effects on social identities and fundamental interests of actors must acknowledge the common historical understanding which serves as a basis for Dutch attitudes vis-à-vis the Presidency of the EC and EPC. It is the concern about domination by the large member states and the fear that Dutch interests will be subordinate to German, French and British interests.

In order to find protection against these threats, the Dutch traditionally sought an independent European Commission as an ally. This Commission would not make proposals without taking Dutch interests into account. It is an ally that must be as strong as possible. If necessary, it must be strengthened at the expense of the Council of Ministers, i.e., of the member states, and, more precisely, the "Big Three." For this same reason, the Dutch traditionally never wanted a European Political Cooperation (EPC) secretariat that might enhance the influence of the major powers.²⁵

²³ Adriaan Schout & Sophie Vanhoonacker, "Towards a contingency theory of the presidency Revisiting Nice," Paper presented at the EUSA's 8th International Conference, Nashville, March 27-29, 2003, identify four tasks, "the organizational and political role" and "also the core tasks of broker and representing the national position/interest," p. 4.

²⁴ Jensen, pp. 224-25.

²⁵ Ibid, p. 232.

Traditionally, those Dutch civil servants and politicians involved in the Presidency believed that its task was to stimulate progress in decision-making and to search for compromises, not to take initiatives. In terms of leadership, the remedy for a weak European Commission, in the Dutch view, is not a strong Presidency. It is a better Commission. The effectiveness of the Presidency is enhanced by a number of factors, including: a strong European Commission; close cooperation with the Council Secretariat; qualified majority voting in the Council of Ministers; and critical selection of chairmen for working groups and other bodies.

In the Dutch experience, Presidents under strict national control are likely to be ineffective and unsuccessful. The condition of freedom of action for a successful Presidency is more often met by smaller member states. The importance of the Presidency should not be overestimated given its narrow margins for new initiatives and action. The Presidency is a liability in that the presiding state has to make more concessions to facilitate agreements. It might be an asset if the presiding country can exert greater influence to formulate common standpoints. Usually the most one can hope for is increased good will.²⁶

In terms of a social constructivist analysis, the essential point to underline is the Dutch historical experience predating the European integration process. This experience must come into play when evaluating the institutional effects on social identities and fundamental interests of actors. It is this historical experience that explains a defensive posture characteristic of the Dutch attitude toward the Presidency.

For this reason, it is important to assess the extent to which Dutch experience in the Chair has established a learning curve. Implicitly this learning curve acknowledges

²⁶ Ibid, p. 233.

that the Dutch interest is not served by insisting that the future of the Netherlands depends on the position of the European Commission. The corresponding acknowledgement to evaluate is the degree to which over time the Dutch accept that a more effective Council structure, including a strong Presidency, is a good thing to strive for in an entity in which states must take decisions.²⁷

Evidence has indicated that the Dutch held fast to the ideal of a supranational Community for at least 25 years to the detriment of proposals to enhance the effectiveness of the Presidency. This ideal, which has been elevated to the status of principle, is one of the most difficult for the Netherlands to abandon.²⁸ In light of this fact, how do constructivist perspectives explain one of the most difficult episodes in Dutch Council diplomacy?

A constructivist analysis underlines that as President a national government is fundamentally influenced by the social environment in which it must act. In the IGC context, the environment is subject to the conditions established by the original Article 236 in the Treaty of Rome. This is a classic Treaty revision formula in which states take the initiative in intergovernmental conference negotiations that are subject to national parliamentary ratification processes.²⁹

During the multilateral negotiations among the 12 member states that led to the Maastricht reforms, the European Commission was able to play a more important role through an “appropriation of the IGC process by the Brussels sub-structure.”³⁰ It was the

²⁷ Ibid, p. 234.

²⁸ Ibid

²⁹ Interview, John Fitzmaurice, Secretariat General, European Commission, Brussels, 10 May 1992.

³⁰ Ibid

Presidency text, and particularly the Luxembourg draft proposal that turned out to be the working basis of the intergovernmental conference, however.

Luxembourg, as the smallest member state, was certainly one of the most communitarian. It set the parameters of its work within Article 236 and the unanimity procedure. The Luxembourg Presidency also worked closely with the Council Secretariat whose work at that time was marked by the “Ersbøll process.” This was characterized by a “hard working channel of communication between the Commission and the General Secretariat of the Council.”³¹

The General Secretariat had experienced 5-6 years of development since 1985. Its growth had expanded significantly as a result of several concurrent factors: the change in the Community structure; the vast legislation for 1992; the overture to the East; the European Economic Area (EEA); and the impending enlargement. The resulting increase in the work by the Commission and the Council was being delegated to the General Secretariat. Its tasks were mostly drafting reports on negotiations in working groups.³² The Secretariat was also acquiring prerogatives and tossing out ideas indicating its increasing independence, especially with regard to the smaller countries. In short, the socialization process that was taking place among officials within the Community institutions, who remained in Brussels, could not be discounted.

The Luxembourg Presidency was strongly supported by the General Secretariat which exercised “shadow power” and played a role in the preparations for the European Council.³³ At the time, the General Secretariat neither played the integrationist card nor supported sovereignty. In terms of impending parliamentary ratifications, the Secretariat

³¹ Interview, Martin Westlake, Secretariat General, European Commission, Brussels, 10 July 1992.

³² Ibid

³³ Interview, Jean de Ruyt, Belgian Ministry of Foreign Affairs, Brussels, 14 May 1992.

knew the limits that populations would accept. Although the Dutch were aware of this fact, some officials considered the Luxembourg Presidency to be in the hands of the Council Secretariat and the French. It was known that Jim Cloos drafted the text for the Luxembourg Presidency working in close cooperation with Niels Ersbøll, Secretary General of the Council of Ministers.³⁴ The French permanent representative to the intergovernmental conference, Pierre de Boissieu, was believed to be the originator of the pillar structure for the Luxembourg draft treaty. In this structure, 2 of the 3 pillars strengthened the intergovernmental nature of the proposed European Union. This gave an important Dutch minister, Piet Dankert, the opportunity to take advantage of the Dutch Presidency's situation to ignore the Council Secretariat and the French as he pushed forward his own draft text.³⁵

During the Dutch Presidency in 1991, the central role of Hans van den Broek and the institutional set-up of the Dutch political system,³⁶ which buttresses the position of the foreign minister, left Prime Minister Ruud Lubbers in a somewhat strained relationship with his colleague. Both men belonged to the same political party, the Christian-Democrats (CDA), and both had international ambitions. To complicate matters the CDA was in coalition with the Social Democrats (PvdA) that favored relations with eastern Europe over the traditional transatlantic links of the Christian Democrats. A key actor, the State Minister for European affairs in the foreign ministry, Piet Dankert, was a former President of the European Parliament and a staunch federalist. His ambition to

³⁴ Interview, Jim Cloos, *Chef de Cabinet*, President Jacques Santer, Secretariat General, European Commission, Brussels, 27 October 1998.

³⁵ Derek Beach, "The Vital Cog: Agenda Shaping and Brokerage by the Council Secretariat in ICG Negotiations," Paper presented at the EUSA's 8th International Conference, Nashville, March 27-29, 2003, provides further insights into the role and impact of the Council Secretariat.

³⁶ Pijpers, "The Netherlands: How to keep the Spirit of Fouchet in the bottle," p. 172.

limit the role of the European Council and to push through a unified Treaty structure critically influenced the IGC negotiations. On the domestic scene, both parties were advocates of reforming the financial situation of the Dutch state. This fact impacted on the work of the Social Democratic finance minister Wim Kok regarding the Presidency's position on cohesion within the context of Political Union and other issues on the Economic and Monetary Union (EMU) agenda.³⁷

Not surprisingly, the Dutch Presidency's text was controversial even before it left The Hague. Dankert, a powerful player in the Dutch coalition government, belonged to a new continental breed of "European affairs ministers" who wield enough power to coordinate policies across several government departments.³⁸ With the foreign minister bogged down in Yugoslav diplomacy, the job of steering the Treaty was given to Dankert, who was close to Lubbers and a Socialist member of the coalition. The Socialists were under pressure to bring down the coalition over disputes about Dutch disability benefits. To keep the government together, the Cabinet gave Dankert most of his own way.³⁹

Moreover, the Dutch Presidency believed that there was German support for their text that would tilt the balance among the member states in its favor. There was German backing, but at the level below foreign minister Hans-Dietrich Genscher. The individual who initially supported the Dutch Presidency's draft was a civil servant in the *Auswärtiges Amt*, the German federal foreign office, Dietrich von Kyaw. However, the weekend before the ministerial meeting, foreign minister Roland Dumas convinced his German counterpart that the Dutch Presidency was showing *trop de zèle fédéraliste*. The

³⁷ Mazzucelli, *France and Germany at Maastricht*, p. 158.

³⁸ George Brock, "Federal Camp Wins First Round," *The Times*, September 26, 1991, p. 11.

³⁹ _____, "Dutch Challenged over Draft for Union Treaty," *The Times*, September 29, 1991, p. 20.

difficult relations between Genscher and van den Broek did not help the Dutch Presidency's initiative.⁴⁰

The "Dankert plan" had encountered initial opposition at the level of the personal representatives who did not want to start work on the basis of a new text. Peter Nieman, the Dutch Ambassador in the Presidency Chair during the intergovernmental conference, relayed this information to his government, but Dankert persisted. The fact that Nieman was unable to convince his government that its actions were heading right into a brick wall illustrates the broad influence that national ministers of European affairs can wield. In this context, the Dutch Presidency's case demonstrates how the requirements of domestic coalition politics can complicate negotiations at the European level. It also shows how transnational alliances can bring out differences of opinion within a member state's government, i.e., the initial support of the *Auswärtiges Amt*, at the level below Genscher, of the Dutch foreign ministry's initiative.

Acquiring Experience on the Maastricht Learning Curve: Taking the High Road to Amsterdam

By some accounts, Black Monday was the result of the complexities introduced by the "human factor" in intergovernmental conference negotiations. This can be explained by the fact that Minister Dankert in The Hague and Ambassador Nieman in Brussels were not on speaking terms.⁴¹ The Hague's refusal to listen to advice from the Council machinery in Brussels illustrates the clear limits to a Presidency's capabilities to act on its own during an IGC process.

⁴⁰ David Buchan, *Europe: The Strange Superpower*, (Aldershot: Dartmouth, 1993), p. 40.

⁴¹ Interview, Matthijs van Bonzel, Dutch Permanent Representation to the European Union, Brussels, 11 March 1999.

In the aftermath of 30 September, the diplomats in the intergovernmental conference took matters into their own hands to resume working at the pace of negotiations to finish during the Maastricht European Council in early December 1991. The impact of this development on the subsequent Treaty was evident. The wording was not clear to the popular majority in each of the member states that had to ratify the text.⁴²

The Dutch Presidency worked for the remainder of its tenure on the basis of the Luxembourg draft text. It was not able to count on the European Commission that had overplayed its hand and was subsequently marginalized during the intergovernmental conference on Political Union. Only Belgium had openly sided with the Dutch. The rule of consensus provided the basis for the Dutch Presidency's learning curve on 30 September. It was illustrated again during the Maastricht European Council.

At Maastricht, on the issue of the social chapter, a series of bilateral and trilateral meetings gave Jacques Delors, Ruud Lubbers and Helmut Kohl the chance to meet with John Major several times. It was Commission President Jacques Delors' powers of persuasion that helped bring Major around to the idea of an Eleven-country opt-in.⁴³ Rather than water down the social plan to suit Britain, the Eleven agreed to go ahead on their own, outside the Treaty on Political Union, leaving the British out. The social chapter was excised from the body of the Treaty and called an "agreement" to be signed by eleven governments. A protocol in an appendix to the Treaty stated that the Eleven would make social policy according to the rules of the "agreement" and authorized the member states to use Community institutions and procedures to do so.⁴⁴ Lubbers acknowledged that "we did the best we could," but the reaction to Major's intransigence

⁴² Interview, Raymond Rifflet, European Commission, Brussels, 26 May 1992.

⁴³ Charles Grant, *Delors: Inside the House That Jacques Built*, (London: Nicholas Brealey, 1994), p. 202.

⁴⁴ *Ibid*

was one of surprise. The argument on the social chapter, which threatened to wreck the negotiations, demonstrated that brokerage tactics needed to be identified to address constructively the classic labor union negotiation strategy adopted by Major. Here the British Prime Minister did not want to “opt-out.” The lesson for the Presidency in the brokerage role was to learn how to convince a heterogeneous group of 11 member states to opt-in to the agreement.

The issue of increasing the powers of the European Parliament at Maastricht also provided a learning experience for the Dutch Presidency. In all negotiations, there is an actor who wants something the most. As France and Germany pursued a game of their own at Maastricht, the United Kingdom was prepared to leave the IGCs without an agreement. Major’s role as a hard-line negotiator was intended to force the others to make concessions to him.

In the context of the European Parliament’s powers, the Presidency learned once again that issues related to institutional and treaty structure reform bring to light the brutal fact of power politics. Although the European Parliament put its fate in the hands of Germany, as leader of the continental coalition, Kohl preferred a modest agreement to either making the issue a breaking point or isolating John Major.

The lesson for the Dutch Presidency was in the way Major turned the situation around at Maastricht. Instead of being on the defensive, Major was able to place the others in that mode. This was a different type of performance than the one given at Milan where Britain had an agenda and was engaged in a more triangular situation with France

and Germany. At Maastricht Britain was a passive actor concerned more about what was not wanted than with its own desired objectives.⁴⁵

The Federal Republic of Germany's late ratification of the Treaty on European Union in October 1993 did not allow much time in the run-up to the 1996 process. The Dutch government used a series of reports as a basis for government policy in a conscientious effort to "avoid Black Monday."⁴⁶ These reports covered such issues as the institutional reform of the European Union, European foreign, security and defense policy, European cooperation in the fields of justice and home affairs and the enlargement of the European Union.⁴⁷

The Dutch government was comprised of liberals, represented by Michiel Patijn, and socialists, represented by Wim Kok. These two ideologies clashed in the IGC and within the government. In the clash, the Dutch used the government as a guinea pig to play with concepts in dialogue and to develop compromise.⁴⁸

As it circulated its own internal reports, the Dutch Presidency was careful to work with the Council Secretariat as well as the Commission. It also developed good relations with the preceding Irish Presidency. In the words of one German IGC participant, the result achieved at Amsterdam is about "the skills of the Dutch President."⁴⁹ In the opinion of another long-time observer of European Union affairs, the Dutch Presidency was operating as the key driving force, particularly in the management function. Timing was critical. Luxembourg, the Netherlands successor in the Chair, did not want to close

⁴⁵ Interview, John Fitzmaurice, Secretariat General, European Commission, Brussels, 10 May 1992.

⁴⁶ Interview, Matthijs van Bonzel, Dutch Permanent Representation to the European Union, Brussels, 11 March 1999.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Interview, Klaus-Peter Nanz, German Interior Ministry, Bonn, 2 November 1998.

the intergovernmental conference under its watch.⁵⁰ The endgame was clearly sought during the Dutch Presidency given the prospect of the May 1997 British elections.⁵¹ Even more key was the prospect of the French elections.⁵² Already in the first Dutch Presidency's draft treaty during February-March 1997, about 90% of the overall result envisaged at Amsterdam was on the table.

In contrast to the 1991 experience, the Dutch Presidency used its time in the Chair wisely from the start to talk with all the main players to the intergovernmental conference. Prime Minister Wim Kok had an excellent team. During the initial two months, the Presidency identified those issues left out by the Irish Presidency, including the incorporation of Schengen into the Treaties.⁵³

During spring 1997, the Dutch Presidency played a double tactical game. The Presidency knew what it could get through during the negotiations. In the Chair, the Dutch also tabled a text relatively late after making the most of the initial two months to listen to the other delegations' concerns in bilateral talks.⁵⁴

These tactics, which represented a 360-degrees turnaround for the Dutch from the previous time in the Chair, also illustrate the increasingly critical brokerage role the Presidency has to exercise during intergovernmental conferences. In contrast to normal Community affairs, in which the European Commission exercises the sole right of initiative, during an IGC only the Presidency can serve as "the motor for advancing the work and ensure the coherence of the negotiations."⁵⁵ In this context, the Presidency first

⁵⁰ Interview, Günter Schaefer, European Institute of Public Administration, Maastricht, 8 March 1999.

⁵¹ Interview, Svend Olling, Danish Ministry of Foreign Affairs, Copenhagen, 8 April 1997.

⁵² Interview, Günter Schaefer, European Institute of Public Administration, Maastricht, 8 March 1999.

⁵³ Bobby McDonagh, *Original Sin in a Brave New World*, (Dublin: Institute of European Affairs, 1998), pp. 173-79.

⁵⁴ Interview, Klaus-Peter Nanz, German Interior Ministry, Bonn, 2 November 1998.

⁵⁵ McDonagh, p. 206.

establishes and then adapts the overall work programme. It is responsible for strategic preparation during an IGC and the conduct of every meeting. The Chair also controls the agenda.⁵⁶

Most importantly, it is the Presidency that prepares and tables the papers for discussion. During the 1996 IGC, occasionally the existence of national proposals significantly influenced the nature of the papers introduced by the Chair. Only very rarely, however, did national proposals “actually form the basis for discussion at a meeting.” When this did occur, proposals brought forward by individual delegations fell outside the scope of the main subjects for discussion and “in relation to which it was not yet clear whether a level of support would develop which would justify the tabling of proposals by the Presidency.”⁵⁷ Given this reality, it is time to analyze the roles the Dutch Presidency played at Amsterdam in two key areas and the ways in which this reflects a learning curve based on its previous experience.

Engineering Success at Amsterdam? Integrating Schengen into the Treaties and Designing Future Contours of Institutional Reform

By all accounts, one of the most noteworthy achievements of the Amsterdam European Council was the progress registered in the area of justice and home affairs, established as the third pillar in the Treaty on European Union. The substantial efforts made by the Dutch Presidency to integrate Schengen into the Union Treaties have been attributed to the persistence of Michiel Patijn, the Netherlands Minister of State for Foreign Affairs. In the words of one of his compatriots, Patijn was convinced that it was

⁵⁶ Ibid

⁵⁷ Ibid

necessary to bring Schengen into the *acquis communautaire* to cope with migration.⁵⁸ Since Patijn was also the Schengen coordinator for the Netherlands, he was able to place Schengen on the IGC agenda. This Patijn accomplished working from The Hague. He was supported in his conviction by the other party in the Dutch government that also underlined the need for the European Court of Justice (ECJ) to have a role in this area.

The Dutch general view was that intergovernmental cooperation was not working. Policy-making was obscure with no influence by either the European Commission or European Parliament. Patijn succeeded in his objectives largely because of his personal commitment. In his view, there was an opportunity to further the integration process that should not be missed.⁵⁹ This was an area in which the Dutch Presidency wanted to take a leadership role because it feared Franco-German initiatives.⁶⁰ In the Presidency's view, in order to avoid a Franco-German directorate, the Presidency should be flexible and introduce creative solutions. In fact, the Presidency's proposals were constructed on Franco-German ideas.

One of the main decisions left to be negotiated during the Amsterdam European Council was the decision-making on the transitional period in the new Title, as set out in Article G. The Dutch Presidency had introduced an ambitious draft. This draft stated that, after a transitional period of three years following the entry into force of the Treaty, the Council shall adopt the measures referred to in this Title acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

⁵⁸ Interview, Matthijs van Bonzel, Dutch Permanent Representation to the European Union, Brussels, 11 March 1999.

⁵⁹ Ibid

⁶⁰ Interview, Matthijs van Bonzel, Dutch Permanent Representation to the European Union, Brussels, 20 May 1998.

During the afternoon of the second day at the Amsterdam European Council, Wim Kok, using his prerogative to engineer an agreement in the Chair, created a crisis atmosphere to achieve a broader scope for decision-making using qualified majority voting (QMV). Kohl initially agreed with Kok's approach, but he later realized that he had gone too far in his agreement. Given *Länder* responsibilities in certain areas, including those related to internal security, Kohl explained that he could not give away competences that were not his to give. Although tensions ran high and explosive tempers flared, the other leaders agreed to cover Kohl in the sensitive area of extension of QMV in Council decision-making.

The Dutch Presidency's ability to reach an agreement that could achieve consensus was a critical factor in its role as engineer at Amsterdam. In an acknowledgement of Chancellor Kohl's delicate domestic situation, a consensus was reached that after a transitional period of five-years, a decision should be taken by the Council, acting unanimously, with a view to apply co-decision in all or parts of the areas covered by the new Title on freedom, security and justice within the European Community pillar.

The other aspect of the Presidency's work as engineer on this dossier relates to the Protocols negotiated during most of the second day to recognize the United Kingdom and Ireland and their particular requirements relating to control of persons at their external borders. Denmark also negotiated a Protocol taking into account its unique domestic situation and the requirements of its national ratification process.

The other dossier on which the Dutch Presidency demonstrated the depth of the learning curve since Maastricht involved the triad of institutional questions to address:

the extension of qualified majority voting; the composition of the European Commission; and the weighting of votes in the Council. Already at the IGC Conclave in Noordwijk, a few weeks before the Amsterdam European Council, the Dutch Presidency knew that an agreement might not be forthcoming on all these points. It was up to the Presidency to prepare the agenda. This prompted the Dutch to distinguish between A and B points in order to understand the issues that needed to be left for the real negotiations in Amsterdam.

According to one participant, at the suggestion of Minister Kok, a list was drawn up using 3 colors: red, indicating that the point needed further debate; orange, indicating a false B point- in other words, although views were exchanged, the point was essentially agreed; and green indicating agreement had already been reached.⁶¹

In the Presidency's view, no country could ever claim a permanent seat at the European Commission. The tactic was to allow Germany more time for its Commissioner. The Presidency and France wanted German support for a rotating Commission with less than 15 members. This objective was linked to QMV and the weighting of votes. At Noordwijk the Federal Republic of Germany was under the pressure of enlargement. Kohl was only interested in the enlargement to Poland, Hungary and the Czech Republic. Chirac supported Kohl to the surprise of the French administration. The Presidency's tactic was broken and the line the administrators were preparing went down the drain.

After Noordwijk the Dutch Presidency expected things to get better in the negotiations. The Presidency's line was to increase the pressure on the smaller states to

⁶¹ Ibid

accept a reweighting of votes. These member states would not continue to have a Commissioner. There would be a price to be paid for the larger states having 1 Commissioner. It is important to consider the psychological environment created in discussions about these points. Was a decrease in votes acceptable because the larger states would lose a second Commissioner?

The French supported the Dutch Presidency regarding a smaller Commission. Even though France could not have a permanent Commissioner, this did not have to be written in the Treaty. France could claim it made the Commission more efficient. Every state could rotate its Commissioner. Kohl, on the other hand, believed that no state should give up a Commissioner, indicating his sensitivity to the smaller members.

Later during the second night of negotiations, these points were not resolved when Spain demanded more weighted votes in exchange for giving up its second Commissioner. The situation came to a head in that Spain was difficult to negotiate with as a special case. Aznar demanded recognition as an equal with France, Germany, Britain and Italy, which, like Spain, had 2 Commissioners. This led Kohl to advocate closing the debate until enlargement.

In part the difficulty may have related to the fact that Kohl did not understand the Presidency's color system that interpreted the A, false B and B points. During the endgame, Kohl wanted explanations, not papers, in the search for an agreement on the points at stake.⁶² Under the severe time constraints imposed by the agenda of the European Council, neither creative thinking nor strategic planning was possible in the explanations or reflections desired by politicians.

⁶² Ibid

By one account, throughout its tenure the Dutch Presidency ran at “high steam.”⁶³ It produced 5 reports even before the IGC began and numerous papers were tabled which kept the personal representatives busy reading although their margin to negotiate was limited. In other words, the Dutch Presidency kept the system of negotiations open by allowing the possibility to present drafts. The Scientific Council for Government Policy, an advisory body to the government in The Hague, investigated topics that the Dutch government did not have time to consider in the IGC context. Nonetheless, the extent to which the proposals drafted can be used determines their degree of influence on decision-making.

In the view of a seasoned practitioner of European diplomacy, since the “Spanish” problem combined the issue of weights and the problem of threshold for a blocking minority, the Amsterdam European Council was faced with “an impossible task in the absence of adequate preparation.”⁶⁴ Here the tendency of the foreign ministers to engage in discussions rather than negotiations left a significant number of points for the European Council to resolve. By one account, the Heads of State and Government were “worn out” after 14 hours of negotiations.⁶⁵

There are some who believe that it is possible to find a compromise in a package deal,⁶⁶ that it was even possible to resolve the points in question at Amsterdam. There are others who contend that a certain delay may be useful, since the size of the Commission may be easier to address when the potential burdens of enlargement on the Commission

⁶³ Interview, Klaus-Peter Nanz, German Interior Ministry, Bonn, 2 November 1998.

⁶⁴ Niels Ersbøll, “The Amsterdam Treaty – II,” *CEPS Review*, No 4 (Autumn 1997): 12.

⁶⁵ David Williamson, Former Secretary General, European Commission, “The European Union in Transition,” European Union Studies Center, The Graduate Center of the City University of New York, 12 December 1997.

⁶⁶ Andrew Moravcsik and Kalypso Nicolaïdis, “Explaining the Treaty of Amsterdam: Interests, Influence, Institutions,” *Journal of Common Market Studies*, Vol. 37, No. 1 (March 1999): 83.

become clear to all concerned. The tasks that are likely as a result of enlargement may require additional resources in the form of a larger number of Commissioners than that envisaged by the Amsterdam decision, which sets the ceiling at 20.⁶⁷

The two points left in abeyance, the size of the Commission and the weighting of votes, illustrated that Political Union is about power and prestige. There was indivisibility in negotiating terms that makes it hard for the Presidency to broker a compromise. How can each state win and go home with gains to present to its public? The differences of perception between the larger and smaller member states are such that these issues are negotiated in zero-sum terms. Does this fact suggest, as some scholars argue, that the “primary lesson of Amsterdam for bargaining theory is thus that no amount of institutional facilitation or political entrepreneurship, supranational or otherwise, can overcome underlying divergence or ambivalence of national interests?”⁶⁸

Conclusions

This paper relies on a social constructivist analysis to make the case that a diachronic comparison of the Dutch Presidency’s roles during the Maastricht and Amsterdam intergovernmental conferences reveals a learning curve that impacted on its actions and influence in the Chair. In each instance, the Presidency aimed to engineer agreements, providing leadership, as well as fulfilling management and brokerage roles.

In the case of Maastricht, the complexities of Dutch coalition politics and the Presidency’s failure to consult with the Council Secretariat led to the “Black Monday” scenario. It is reasonable to argue that this result was rooted in traditional Dutch attitudes about the supranational nature of the European Communities and a reliance on a strong

⁶⁷ Ersbøll, p. 12.

⁶⁸ Moravcsik and Nicolaïdis, p. 83.

European Commission as an ally. In the aftermath of this defeat in Council IGC diplomacy, there was a conscious decision to avoid another such situation in the future.

The lesson 30 September reveals, however, is significant for our understanding of bargaining and influence. This is because the Presidency's failure demonstrates that, with successive IGC processes over time, the real negotiations are increasingly taking place in national capitals where the impact of Europeanization on domestic political structures, in terms of both institutions and administrative cultures, is strengthened as integration occurs. The learning curve that the Presidency experienced relates intrinsically to the socialization process influencing national politicians and administrative elites as they provide a relay between bargaining at home and negotiating the points on the IGC agenda within the Council.

In the Dutch case, the government's judicious use of the time period between the Maastricht and Amsterdam IGCs to develop its position papers and line of negotiation is critical. The experience of "misery" in pillar 3, the failure of its intergovernmental mechanisms in the daily business of Community affairs, led to the Presidency's initiative, spearheaded by Patijn, to persuade the other member states to integrate Schengen, lock, stock and barrel, into the Treaties. The Dutch Presidency's success, and the decisive contributions it made to the final outcome brokering agreement, relates to its ability to conclude the Protocols for Ireland, the United Kingdom and Denmark that allowed the Union to move ahead in this area. In other words, the Dutch Presidency learned to avoid pushing the negotiations to the break point by elevating an idea to the status of principle.

In the high visibility area of institutional reform, the Dutch Presidency worked within the parameters of consensus. The Presidency cooperated with the Council

Secretariat and the Commission, but it placed its own stamp on the work entailed during the negotiations. This is essential in that the role of the Presidency is to identify a commonality of interest among the member states and, when possible, to upgrade this interest at a point just above the lowest common denominator. This is an increasingly difficult task as the Union's membership becomes more heterogeneous and as the points to negotiate are intrinsically about power and prestige.

For this reason, the Dutch Presidency over time demonstrates that its role is not limited to that of manager. Leadership is required and brokerage skills are needed during the intergovernmental conferences. This paper maintains that the lessons the Dutch Presidency draws from each succeeding IGC which it Chairs, and from the steps in integration that result from its decisions, are rooted in a two-way process of policy-making and institution-building at the European level which then feeds back into the member states as an inherent part of their political processes and structures. In this context, the logic of appropriateness entails that as an actor the Dutch Presidency aimed to figure out the rule that corresponds most or is the best fit in the given situation during intergovernmental conference diplomacy.

The conclusion this paper draws is that the Dutch Presidency's brokerage role was strengthened as a result of its successive experiences in the Chair. Through a learning process, which social constructivist analysis highlights, the Dutch Presidency was able to provide a bargaining resource to the European Union during the IGCs that no national government was in a position to offer. The Dutch Presidency's impact in areas like incorporating Schengen into the Treaties is to increase the scope of agreement for common aims that opens a space for integration among the Union's member states.