The European Council in Theoretical Perspectives:

The Principals on a Fusion Path

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Abstract:

Since its creation in the 1970s no other institution has formed the European Union so intensively and continuously like the European Council. This "key institution" of the European Union takes nearly all major decisions for the EU and the institutional architecture and has also an academic value as a key body for testing integration related theories. This paper invites to take up and discuss a broad variety of competing classic theories (realism and intergovernmentalism, federalism, neo-functionalism) and theoretical approaches (constructivism, sociological institutionalism and fusion thesis) to characterize and explain fundamental features of the European Council. By mapping this indefinable "locus of power" in a conceptual ream this paper may also contribute to improve the understanding of the evolution of the EU system in general.

I. Introduction: the European Council as key institution and key variable

Summits are in general fascinating: With epoch making decisions they are supposed to shape the course of history or at least to mark fundamental shift und tectonic junctures.

Regular summits are a relatively new phenomenon. With the seventies they started to become frequent events in both bi-lateral and multilateral compositions. Undoubtedly we observe an inflationary trend of meetings on the highest level. As one among several indicators: the German presidency of the EU runs in the first semester 2007 eight official meetings (European Council meetings as well as third country meetings) on the highest level.

Within this growing patterns of the international life we regard the European Council as case sui generis, as it is an active part within a specific institutional architecture in a political system which this body shapes to a considerable degree. Some features of the internal decision making might be similar to other international summits, however its functions differs considerably from other types of multilateral conferences.

Since its creation in the 1970th no other institution was able to shape the European Union so intensively and lasting like the European Council has done. Different characterization show its importance for the policy-making of the European Union as well as for the construction of the EU-system: Thus this body is characterized as "apex of the EU's institutional system" (Hayes-Renshaw/Wallace 2006: 173), as „centre of collective decision-making"(Tindemans), as „system of collective leadership"(Ludlow 2005) and as "constitutional architect" (Wessels 2005b: 55) as well as „haute tutelle" (Louis/Ronse 2005: 57). The heads of states and governments have taken up a broad and differentiated set of roles (de Schoutheete 2006, Wessels 2007a, Wessels 2007b) such as

- "Agenda setter" and "steering body" (see e.g. table 1 *Agenda of Presidency Conclusions)*; as representative examples see the Tampere, the Lisbon and the latest "Energy for Europe" action programme;
- "Master" of an Economic governance (see table 1 and read the presidency conclusions especially of the spring sessions)
- "Global actor" (see table 1 and read in each post summit document the respective resolutions)
- "Major decision-maker" especially for key positions (President of the Commission, President of the ECB), institutional adaptations (such as the composition of the Council and the location of EU-agencies) and the budget (see Agenda 2007)

- "Constitutional architect" especially for treaty revisions (deepening) and accessions (widening); the heads of states and governments have taking each major step for preparing and deciding de facto both fundamental steps for system changes.

Table 1: Agenda of Presidency Conclusions 1975-2004

Source: Jean Monnet Chair 2007

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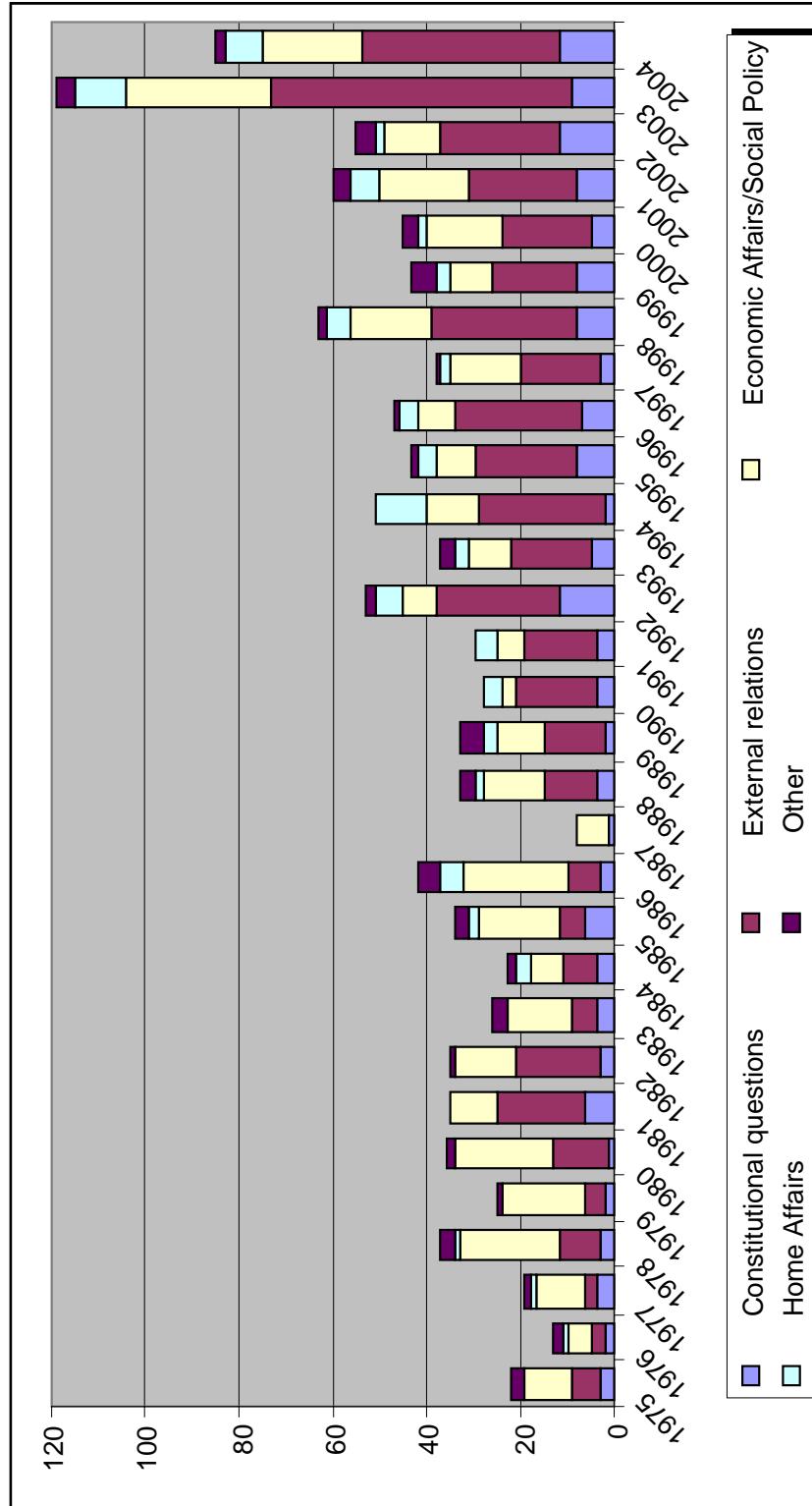
Given this evidence we claim that the European Council is the key institution both in political as in academic terms: This body of the heads of states and governments is one central player.

In view of the academic relevance it is obvious that the emergence and the evolution of the EU-System can not be explored, explained and evaluated without taking the European Council into account: If we want to analyse the process of how the EU was constructed in a dynamic perspective this institution needs to be put in the centre of our academic attention. This desideratum also implies that any macro-political theory for European integration can (and perhaps needs to) be tested by its capacity to explain the fundamental features of this institution in a valid way. This broader effort is rather seldom done. Most contributions concentrate on the working of this institution and propose limited changes in its working mechanism (Schoutheete/Wallace 2002, Ludlow 2005, Schoutheete 2006). Other articles look at the inner life thus the bargaining power within the European Council (Tallberg 2007) as well as at the power of the European Council Presidency (Elgström 2003, Tallberg 2003).

If the EU is sui generis so is the European Council. In a legal reading this body is difficult to define as it is not enumerated among EC organs (Art. 7 TCE), but the masters of the treaty have placed their body outside (or even above?) the checks and balances of the EC architecture in Art. 4 TEU, reason for some critics to recall the statement that "Montesquieu never came to Brussels". According to the difficulties finding an already existing definition for the European Council, this unique body has been described as "locus of power" (de Schoutheete 2006: 45).

Beyond an unclear treaty base this paper claims the emergence and evolution of the European Council and invites us to take up and discuss a broad variety of competing theoretical approaches and expectations. Thus we will exploit a multiple and differentiated set of the *acquis académique*. From a meta-theoretical perspective our offers can be seen – in constructive view - as "narratives" or - in a positivist view – as "theses" for empirical testing. With the term "expectation" we imply some kind of prognosis on the performance which is open to falsification as well as some open or hidden normative preference of what the European Council should do or not.

The starting point is the triangle of conventional integration theories (neo-realism and intergovernmentalism, federalism, neo-functionalism) but novel approaches (constructivism and sociological institutionalism) shall also be included. As their favourite explanation the authors will stress the validity of the fusion theory (Wessels 1997, Wessels 2005a, Miles

2005). This set will explain the puzzle that an institution of an intergovernmental nature also promotes supranational features (Ludlow 2005, de Schoutheete 2006).

For presenting the lines of arguments this paper will follow an "ALIS" scheme[1]. It starts with fundamental *A*ssumptions, looks then at the implied *L*ogics to draw conclusions for the *I*nstitutional architecture and *S*trategies.

II. The offer: a set of characterisations and explanations

1. The conventional reading: The European Council as institutional incarnation of (neo-)realist and intergovernmentalist approaches

The starting point of any deeper look is inevitably a set of explanation which is based on the traditional sources of realist (e.g. Morgenthau 1979, Waltz 1979) and intergovernmenalist (e.g. Hoffmann 1966, Moravcsik 1998). This body of thinking is directly or indirectly implied in most explorations, explanations and evaluations.

The fundamental assumptions are banal: As sovereign states dominate the world - also in the EU-context; the head of states and of governments represent their sovereign states and can be regarded as the "real actors" (Scharpf 1997). As "masters of the treaty" (Bundesverfassungsgericht 1994) they are the "principals" (Moravcsik 1993, Pollack 2003, Kassim/Menon 2003) with ultimate authority based on their national democratic legitimacy.

Based on these assumptions we expect that the logics of their interactions in the European Council are determined by intensive bargaining among the chefs geared to get the highest success in term of realization of national interests. Preferences are prefixed either by liberal deliberations back at home or by geopolitics and some kind of power constellations in the international system. As tough politicians fixed on what they perceive and sell as of national interest (otherwise they are not expected to be elected into their office) they will be resistant to any learning process, which might be expected by deliberations and arguing within their "club".

Following the logic of neo-realist analysis the European Council pursues major functions: this institution achieves an "integrative balancing" (Link 2006: 21) among the member states (among larger states and among states of different power). Though more powerful states will dominate the decision making the European Council signals that they are embedded in some kind of mutual constraints. The European Council is also - more openly - an actor for

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[1] The ALIS-scheme is part of the current Teaching Companion of the Jean Monnet Chair.

"cooperative balancing" towards other major players in the international system. It symbolises the concept of "L'Europe puissance" or of the EU as "a superpower but not a superstate" (Blair 2000). For internal like for external functions the EU with the European Council at its peak is then some kind of alliance "qui dure comme ca dure" (de Gaulle). In view of their strong inclination to safeguard national sovereignty the European Council would remain a body of limited scope. "Vital interests" especially in term of traditional field of state activities (internal and external security, identity creating etc.) remain "domains reserves" of nation states; in this line we expect that the European Council would thus be stronger in "low politics" are than in those of "high politics" (Hoffmann 1966, Nelson/Stubb 2003)

Table 2: The Institutional Architecture: the intergovernmentalist view

Source: Jean Monnet Chair 2007
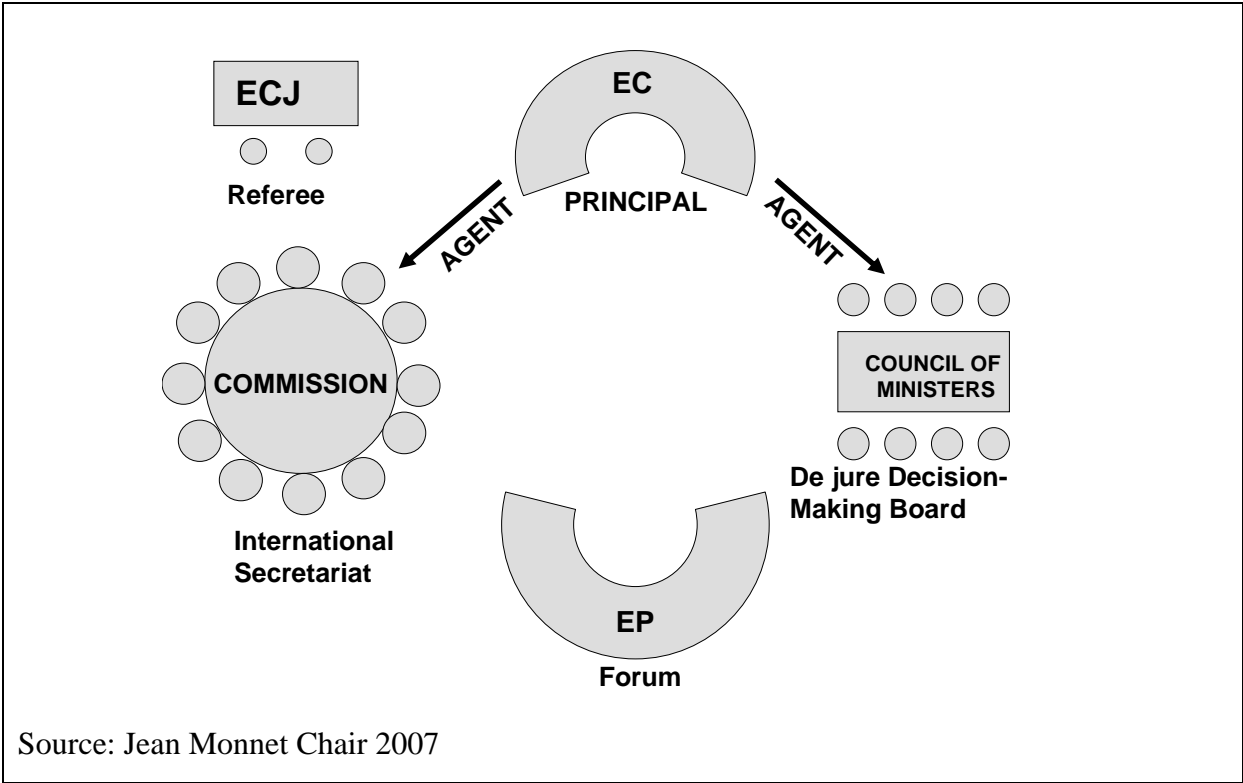
From the logics of national sovereignty and legitimacy follows a specific reading of the EU's institutional architecture (see table 3). Irrespective of the de jure treaty provisions the European Council is de facto the principal to dominate the working of the EU system. The Commission is some kind of Secretariat General to serve as "agent" for the heads of states and governments; the Council of Ministers transfers the political decisions of their "bosses" ("chefs") into legal acts. Not disposing of any real power or any direct legitimacy of its own (no European demos) the EP is a forum for public though irrelevant debates. The European Court of Justice serves as some kind of "referee" for settling disputes of minor political importance. Despite to its general function to promote and protect the legal system, there is no

ECJ ruling that can limit the power of the European Council. Even these institutions might serve a some kind of hidden agent for the more powerful states.

In terms of this view the debate on the strategies will be focussing how to reduce the transaction costs of the bargaining process within the European Council; national prerogatives however set clear limits to make its work more efficiently. Majority voting is not appropriate for the power games because national actors would risk making a loss. A permanent President of the European Council, as proposed by the Constitutional Treaty (see Article I-22 TCE) would serve to reinforce the role of principal vis-à-vis agents (like the Commission or the new creation of the EU Foreign Minister) which is to seen to drift away from the masters voice (Thatcher 1993).

2. *The conventional alternative: a forum for orthodox federalists*

Exploiting the orthodox federalist thinking in the Spinelli tradition (e.g. Pinder 1991) the analysis for the fundamental assumptions and the logics looks in many ways rather similar to those from realist sources, but the conclusions lead to alternative readings for the institutional architecture (see table 3) and different options for future strategies.

Radical federalists evaluate this body as the unhealthy incarnation of an outdated alliance of states and as a serious risk to a real European democracy. You might even call the meeting of the heads of states and governments as a nightmare to those who assess the 19th century Europe of Holy Alliances and of a Concert of Great Powers as the major sources for the two catastrophes of the 20th century.

To end all the futile and risky power games among states the EP being the democratic central body is seen as the key institution in the EU institutional landscape. As the federalist "institution directrice", the EP represents the European pre-existing European "demos" and legitimates the role of the Commission as some kind of government. As member states are already represented the Council as second chamber, the European Council is at least superfluous if not an imminent danger to the appropriate kind of architecture.

For neo-federalists there is only one purpose for the existing European Council: it will make itself superfluous through treaty reforms establishing step by step a federal architecture. At a final stage the European Council might play a role as some kind of "dignified part of government" (Bagehot 1867) with no more real power and influence on the EU's political system. The only remaining task will be the symbolic representation of states.

Table 3: The Institutional Architecture: the federalist view

Source: Jean Monnet Chair 2007
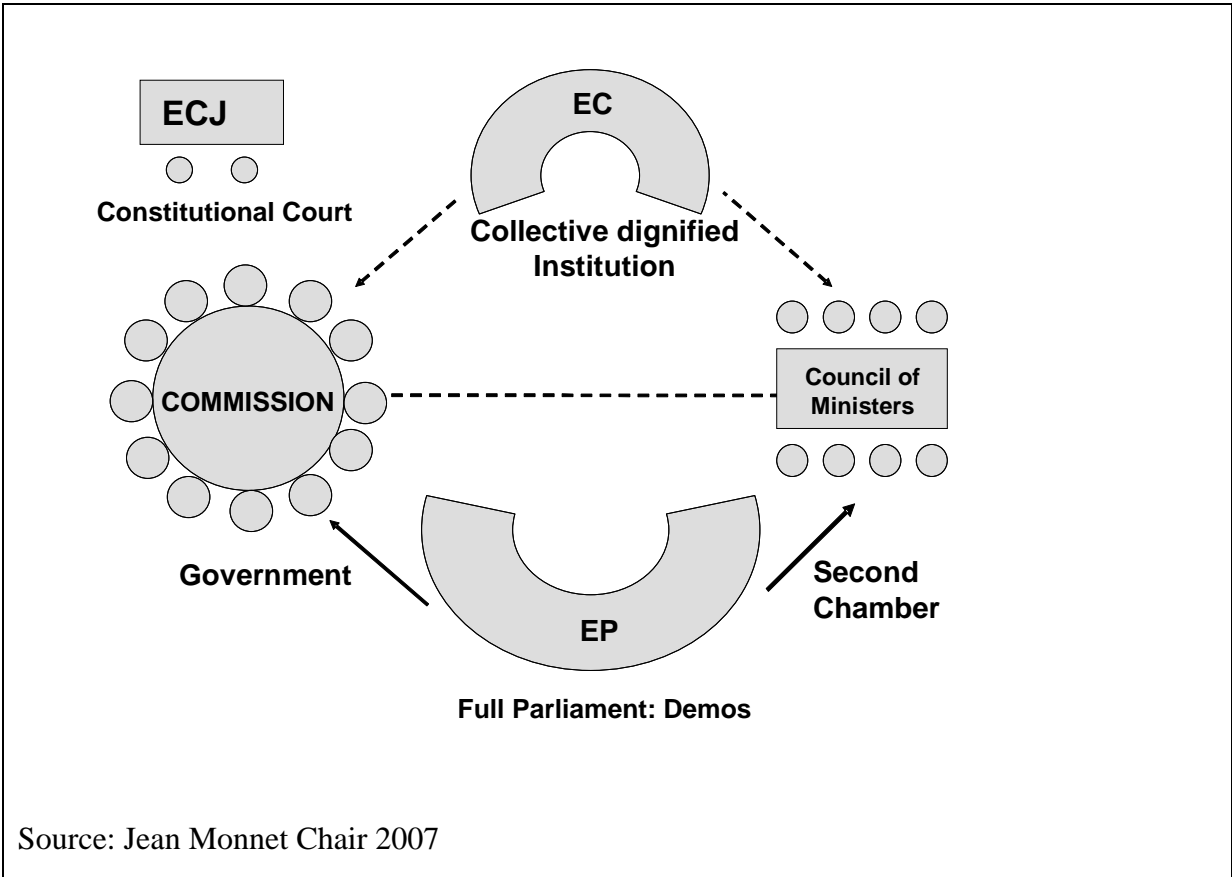
Strategies are therefore to reduce the real power of the European Council especially by reinforcing the EP and strengthening its power. A minor step might also be to integrate the European Council into the quasi-constitutional checks and balances of the EU system by submitting its decision to the scrutiny of the ECJ; one way would be to extend the formula "the Council (meets) in the composition of Heads of States or Governments" (see Article 214 (2) TEC) or to open the possibility to submit all legally binding actions of the European Council to the ECJ (Art. III-365 TCE).

3. An unconventional view from a conventional theory: The European Council as the major agent for a neo-functionalist spill-over

In line with neo-functional assumptions (e.g. Haas 1958, Hallstein 1962) we could link the European Council with optimal problem solving: the heads of states and governments would be interested - willingly or not - to search for reasonable European policy arrangements for global or trans-national challenges.

In view of the logics we expect: once the process has started in one sector the heads of states and governments are "agents" (or victims) of the inbuilt spill-over dynamics. They will be

generally inclined or even forced to extend the scope of the Union's activities to some kind of state like agenda.

In terms of the institutional architecture (see table 4) we expect to witness a close partnership ("unholy alliance") between the Commission and the European Council. The Commission uses the heads of states and governments for launching new ideas (cultivated spill-over) whereas the European Council needs the Commission for their technical advice and for implementing the general directives. Thus the European Commission would not be downgraded to the role of an agent but see its role of European motor strengthened to a considerable degree by the highest national authorities. We expect that the European Council will be instrumental that the spill-over dynamics jump over the threshold between low and high politics.

As for institutional strategies the European Council needs to structure even more its work to be able to design useful functional programmes and take fundamental decision to open and shape new areas of activities (see the Tampere, Lisbon and EPE action programmes). The role of the Commission for preparing the work of the European Council needs to be strengthened.

Table 4: The Institutional Architecture: the view from a neo-functionalist perspective
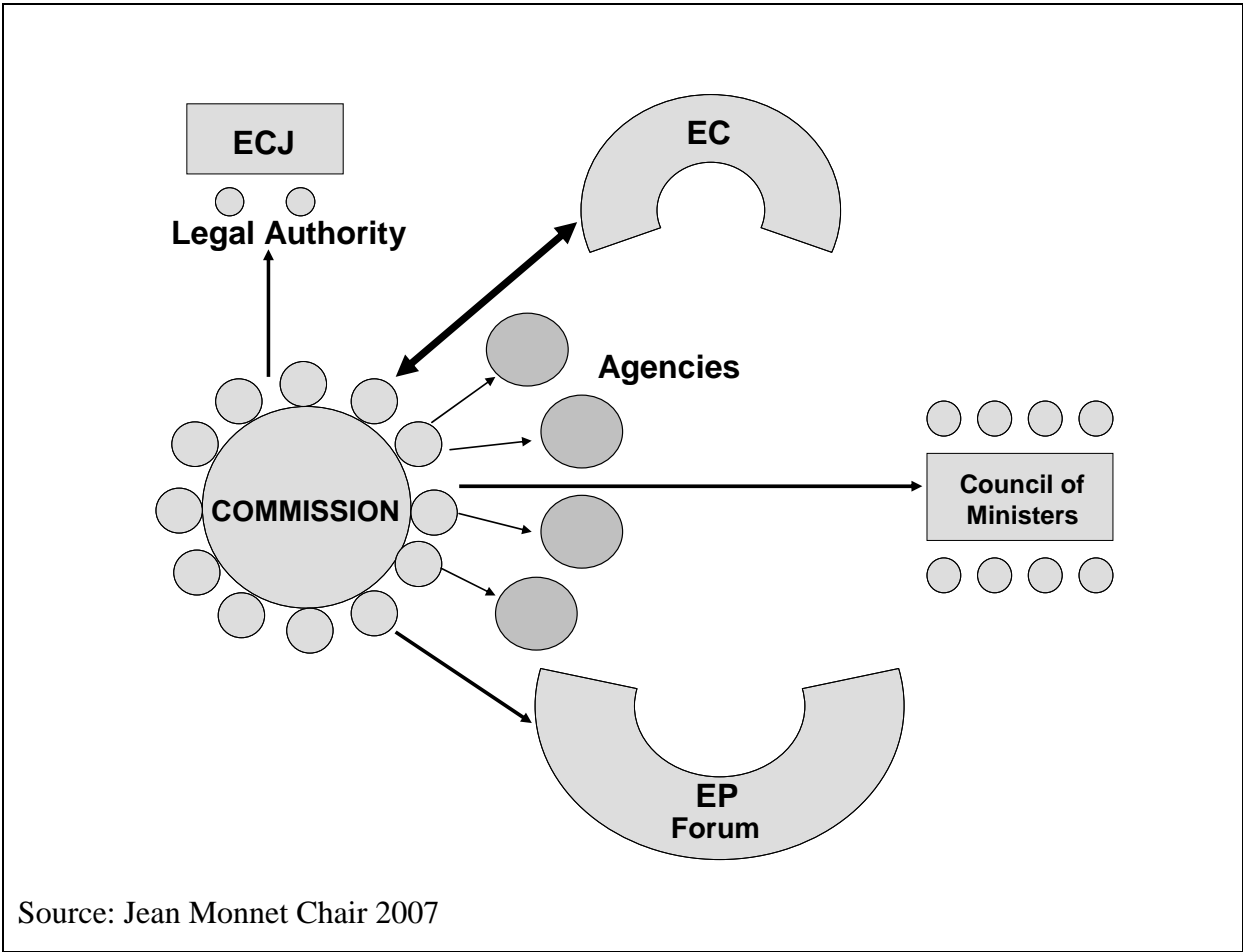
Source: Jean Monnet Chair 2007

4. The European Council as the constructor of appropriate behaviour

Exploiting concepts and findings of constructivist approaches and of sociological institutionalism we assume that the heads of states and governments via their regular and intensive exchanges learn to adapt their preferences. Arguing in the "club" has some lasting effects even if the impact might be only observed in a medium term perspective. As this institution matters it is more than an arena of power games but it shapes the behaviour of its members.

As to the logics we expect: learning leads to establish some kind of appropriate style for the European Council but also beyond for the relations among the members of the Union in general. In terms of the institutional architecture the European Council is an essential perhaps even the core part of intensive European deliberations which extend over several levels and arenas including these of the civil society. For improving the performance the opportunities to deepen intensive deliberation among the key multiplier perhaps around the "fire side" need to be extended.

5. The European Council as the actor of and the indicator for fusion

The fundamental assumption of this reading starts with the evolution of the European nation states over the last centuries and especially over the last post WWII decades (see Rokkan 1975, Tilly 1975, Wessels 1997, Wessels 2000, Miles 2003, Bartolini 2005, Miles 2005, Wessels 2005a, Regelsberger/Wessels 2005) The integration process is an effort for "rescuing the nation state" (Milward 2005) but by trying to do so they change their own nature. The EU-System thus turns out to be a next phase of the evolution of European states.

As for the logics we expect: the European Council constitutes the natural arena and the best locus for dealing with the dual dilemma member states faces: the heads of states and governments have to and want to deal with the issue of where (which level) to tackle major global and trans-national challenges of or to their states. Given growing interdependencies and increasing trends towards globalisation they realise that the nation state is not the optimal problem solving area for vital issues for which they are made accountable back at home by their voters. The EU with the European Council in a pivotal position is a substitute for the de facto losses of national sovereignty. By acting together this group of actors reinforce their powers also vis-à-vis other national actors (like national parliaments and regions).

As for the institutional architecture: Making rational choice for the EU they are confronted with the second dilemma of the fusion. The modalities to prepare, make and implement effective decisions should be done in an efficient way. At the same time the heads of states

and governments have to prevent that the real powers of their nation states are eroded. Thus we expect that the European Council will pursue an inherent and inconsistent double strategy: to reinforce the supranational institutions of the institutional architecture (Commission, EP and Court, also QMV in the Council) and to keep a strong national influence by also reinforcing intergovernmental features (such as the role of the European Council itself, and numerous bodies of national civil servants in all phases of the EC policy cycle). The key indicators for the double strategy and as its consequences the gradual process of 'fusion' between supranational elements and intergovernmental cooperation are the enlargement of scope (the expansion of policy areas towards a 'state-like' agenda) and the respective institutional and procedural differentiation.

Table 5: The fusion ladder

Source: Jean Monnet Chair 2007
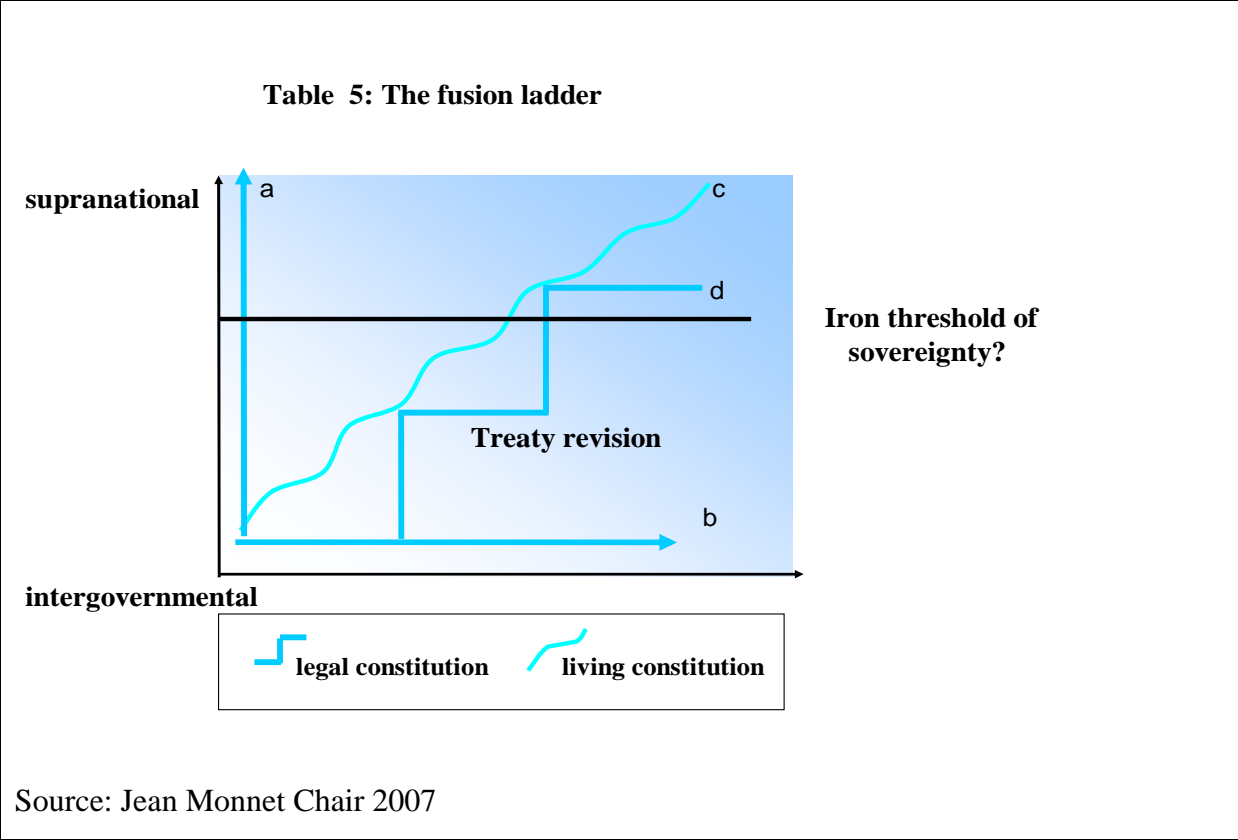
In line with the fusion theory the Constitutional Treaty demonstrates that the EU is constructed by European states to serve their own objectives – in effect, not replacing but supporting them. The thesis claims that beyond the rescue of the nation state, the heads of states and government used the opportunity of the IGC to improve the efficiency and effectiveness of the Union's actions, so as to reinforce the functions of the nation-state that developed over the last centuries, and thereby moving upwards on the fusion ladder (see table 5) and towards the community without, however, relinquishing their say altogether. By reinforcing their own channels of participation, Member States strengthen their 'voice'.

The co-existence of different visions and strategies is not an accident due to decisions in "nights of the long knives" in the "endgames of intergovernmental conferences" but a major factor of explaining the growth and differentiation of the EU System over the decades. This process of fusing resources from the national and European level is supposed to enable many national actors to participate which in turn increase the complexity. Legitimacy of the EU system is thus based on a "consensus model of democracy" (Lijphardt 1999: 42)

As for strategies: the ever existing search for a clear finalité of the EU – with whatever label- is futile. The fundamental dilemmas for the states will not wither away; the European Council will not solve them either once and for all. Like with all previous treaty revisions including the constitutional treaty document the heads of states and governments will only succeed in piece meal engineering (Popper 1959) following basic ingredients of the Monnet-Method.

III. Conclusions

With respect to traditional controversies over intergovernmental or supranational or federal features, the fusion argument claims that the conflictual co-existence of different trends within one and the same constitutional architecture is not a mere coincidence, but a fundamental pattern of the EU construction. Ambiguities in the written text that indicate intra- and inter-institutional tensions are not an accidental by-product of EU summitry; rather, they illustrate a basic logic of increasing the efficiency of the EU institutions, while also preserving a high degree of national participation and influence.

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