THE PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

Bernhard Schloh*

INTRODUCTION

A recognition of Peter Herzog's distinguished career would be remiss without a discussion of the European Community, a topic which has long been of great interest to him. It is thus appropriate to discuss recent developments in a major institution of the European Communities. "The Council of the European Union" is, since a number of years, the official name of that institution of the European Communities, and of the European Union, in which the Member States are represented by members of their governments. In the English language, this institution is often called "the Council of Ministers."[1] The presidency of this Council is held in turn by one of the Member States, on a rotational basis.

In the 1950's six Western European countries - France, the Federal Republic of Germany, Italy, Belgium, the Netherlands, and Luxembourg - established amongst themselves the three European Communities: The Treaty of Paris of 1951, brought about the European Coal and Steel Community (ECSC);[2] and the two Treaties of Rome of 1957, established the European Economic Community (EEC)[3] and the European Atomic Energy Community (EAEC, or EURATOM).[4]

Each of the three "founding treaties" set up four institutions.[5] The first Community institution that each of these treaties provided for was an institution in which the Member States were represented by a member of their governments, called the "Council" (in the case of the ECSC, its name was the Special Council of Ministers").[6]

The other institutions were: firstly, a parliamentarian body, called the Assembly (in the case of the ECSC its name was "Common Assem-

---

1. FIONA HAYES-RENSHAW & HELEN WALLACE, THE COUNCIL OF MINISTERS (1997). *See also* MARTIN WESTLAKE, THE COUNCIL OF THE EUROPEAN UNION (1995). Both treatises present excellent insights.

2. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [ECSC TREATY], 261 U.N.T.S. 167.

3. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY], 298 U. N.T.S. 1.

4. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY [EURATOM TREATY or EAEC TREATY], 298 U.N.T.S. 167.

5. ECSC TREATY art. 26; EEC TREATY art 4; EURATOM TREATY art 3.

6. ECSC TREATY art. 7; EEC TREATY art. 4; EURATOM TREATY art. 3.

bly"), and which is now known as the European Parliament; secondly, a High Authority of the ECSC and two Commissions of the other two Communities; and thirdly, a Court of Justice.

The two Treaties of Rome of 1957, were accompanied by a Convention on Certain Institutions Common to the European Communities[7] which replaced the three Assemblies by a single Assembly (now the European Parliament), and the three Courts of Justice by a single Court of Justice of the European Communities.

Some years later, in the mid-1960's, the "Treaty Establishing a Single Council and a Single Commission of the European Communities," commonly called the Merger Treaty,[8] "merged" firstly, the three Councils into one, and secondly, the High Authority and the two Commissions into one Commission of the European Communities. Since July 1, 1967 there has thus been a "Council of the European Communities."

Making a large jump in time into the 1990's, it can be seen that the "Treaty on European Union" (TEU, the Treaty of Maastricht)[9] established the term "EUROPEAN UNION" in the legal language. The Treaty says that the Union "shall be founded on the European Communities."[10] The European Communities are now commonly called the "first pillar" of the Union. Two other pillars are also set up: the second pillar is the Common Foreign and Security Policy (CFSP, Title V TEU); and the third pillar is the Cooperation in the fields of Justice and Home Affairs (JHA, Title Vl TEU). Both the second and the third pillar are not organized as Communities but are constituted as Intergovernmental Cooperations. Immediately after the entry into force of the Treaty of Maastricht (November 1, 1993), the Council of the European Communities changed its name to the Council of the European Union.[11] The recently signed Treaty of Amsterdam - with its full name the "Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing

---

7. Convention Relating to Certain Institutions Common to the European Communities, Mar. 25, 1957, 298 U.N.T.S. 267.

8. Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 8, 1965, 1967 J.O. (152) 1 [hereinafter Merger Treaty]. The preamble of the Merger Treaty, and its Article 32, show well that the merging of the three Communities into a Single European Community had been foreseen for the future. It did not happen.

9. Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 1 [hereinafter TEU]. The name of this Treaty is aptly "Treaty on European Union," rather than ". . .Establishing a European Union." Although the word "establish" is used in the first article of the Treaty (TEU *supra*, art. A, this Treaty having lettered articles), the word "on" is said to carry better the implication that establishing a European Union is an ongoing process which has not yet come to its term.

10. TEU, *supra* note 9, art. A.

11. Council Decision of Nov. 8, 1993 concerning the name to be given to the Council following the entry into force of the Treaty on European Union, 1993 O.J. (L 281) 18.

the European Communities and certain related acts" (signed at Amsterdam, 2 October 1997)[12] does not change anything as to this name.

The Council of the European Communities, as it was known for a quarter of a century before November 1993, and the Council of the European Union, as has been known since (both shall be referred to as the "Council") was and is thus an institution of the European Communities in which the Member States are best represented, by members of their governments. Whether the Council is also an institution of the European Union is an interesting question, and the "new" name of the Council might lead rapidly - too rapidly - to a certain answer. But the Treaty of Maastricht does not contain a list of institutions, like the EC Treaty does. Instead, Article C paragraph 1 of the TEU provides that: "The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire.*"[13]

This must mean the single institutional framework as pre-existing in the European Communities. The Treaty of Maastricht brings no new institutions (whether the "European Council" is one such institution will be discussed later), and moreover, no clause in the Treaty says that the Union "shall have legal personality."[14] The Treaty of Amsterdam has not remedied this situation. As the subjects of the second and the third pillars are dealt with by the governments "in intergovernmental cooperation," and as there is no doubt that the Council is made up by members of these governments, it seems possible to say that the Member States/ governments make use of the existing Council also in matters of these two pillars. Is the Council an institution "on loan" to governments for their cooperation? Interesting as this question is, it is not necessary to address this question here.

The European Economic Community (EEC), now renamed the European Community (EC),[15] and EURATOM have entered into force just

---

12. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, 1997 O.J. (C 340)[hereinafter Treaty of Amsterdam].

13. TEU, *supra* note 9, 1992 O.J. (C 191). Note the French formulation in the English language text.

14. *See, e.g.*, TREATY ESTABLISHING THE EUROPEAN COMMUNITY art 210,: Feb. 7, 1992, 1992 O.J. (C 224) 1, [1992] C.M.L.R. 573 (1992) [hereinafter EC TREATY].The Community shall have legal personality. This is the version of the EC Treaty as amended by TEU art. G.

15. *See* TEU, *supra* note 9, art. G, para. A. The Treaty of Maastricht dealt with some new subjects which do not have an immediate link to "economic" matters in the EEC Treaty. *See, e.g.*, EC TREATY art. 3, lit. (p). "a contribution. . . to the flowering of the cultures of the Member States." *See also* Title IX, EC TREATY art. 128, Culture.

40 years ago. The Council has thus been in existence for four decades (as for the ECSC some years longer), and one of the "original" Member States, Luxembourg, has just finished "its tenth presidency." None of the three "new" Member States - Austria, Finland, and Sweden - which joined the Union in 1995[16] have yet had a presidency. The other Member States which joined the Communities in the 1970's and 1980's: Denmark, Ireland, and Great Britain, (officially the "United Kingdom of Great Britain and Northern Ireland") in 1973;[17] Greece in 1981;[18] and Spain and Portugal in 1986[19] - have had their experiences. In the middle of the 1970's when the United Kingdom prepared itself very seriously for its first presidency which was to come for the first semester of 1977, two British researchers published their preliminary findings of a project on the "evolving role of the Presidency of the Council,"[20] and within that study they identified "five distinctive functions of the Presidency of the Council" - it seems that this grid basically can still be used today!

Helen Wallace and Geoffrey Edwards noted these functions of the Presidency:

as manager of Council business;

as a source of political initiatives;

as a package-broker in negotiations;

as a point of contact with other Community institutions; and

as a representative of the Community in external relations.

In the following pages, the first three of these functions will be grouped under the heading "The Presidency of the Council, internally," with two subheadings: General considerations, and; Specific comments respectively. The fourth will be enlarged to allow a discussion of the presidency of the European Council, and the fifth has obviously to deal with the European Political Cooperation (EPC) and the CFSP.

---

16. Act Concerning the Conditions of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the Adjustments to the Treaties on Which the European Union is Founded, 1994 O.J (C 241); *See also* Council Decision adjusting instruments concerning accession of new Member States to European Union, of 1 January 1995, 1995 O.J. (L 1) (adjusting for Norway)[hereinafter 1995 Accession Act].

17. 1972 Act of Accession, 1972 J.O. (L 73); *See also* Adaptation Decision of Jan. 1, 1973, 1973 O.J (L 2), recognizing Norway's non-ratification of accession.

18. Act Concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties,1979 O.J. (L 291) [hereinafter Act of Accession for Greece].

19. Act Concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties, 1985 O.J. (L 302) [hereinafter Act of Accesion for Spain].

20. Helen Wallace & Geoffrey Edwards, *European Community: The Evolving Role of the Presidency of the Council*, *in* INTERNATIONAL AFFAIRS 535, 537 (1976).

A word of caution as to terminology: Wallace and Edwards, twenty years ago, used the term "European Community" (in the singular) in the title of their article, as a political term embodying all three Communities. That was done, and accepted, to describe the "common political finality" of all three Communities. No misunderstanding between any of these three was possible, especially since one was called the European Economic Community. Now that the latter has been renamed "European Community" we must use another term for that expression of "finality" - perhaps Union, or Communities, or something different still!

The Presidency of the Council, Internally: General Considerations

It is appropriate to start with some words as to what the Council does, and how it is composed. This order of discussion also corresponds to the order of the EC Treaty section on the Council, on which this article will now concentrate.[21]

According to Article 145 EC Treaty, the Council shall:

- ensure coordination of the general economic policies of the Member States;

- have power to take decisions.

Both tasks are attributed to the Council to "ensure that the objectives set out in this Treaty are attained," and the Council shall fulfill them "in accordance with the provisions of this Treaty."[22]

For these reasons, and because Article 4, paragraph 1, second sentence of the EC Treaty establishes the important principle that "Each

---

21. The EAEC/EURATOM Treaty was signed in Rome on the same day as the E(E)C Treaty and has an identical institutional setup. That is, however, not true as to all methods of decision-making: The cooperation and codecision procedures, in which the European Parliament takes part in decision-making under the EC Treaty, apply only there. Illustrative in this respect is the Judgment of the Court of Justice in Case C-70/88, European Parliament v. Council, 1990 E.C.R. I-4529, 63 C.M.L.R. 91 (Chernobyl II).

The ECSC Treaty presents a number of particularities, compared to the EC Treaty (apart from the overwhelming role of the High Authority there), and some will be mentioned later in a note. The ECSC Treaty has to do with narrow specific sectors of the economy, only coal and steel. Moreover, contrary to the two Treaties of Rome which are "concluded for an unlimited period," the ECSC Treaty says: "This Treaty is concluded for a period of fifty years from its entry into force." EC Treaty art. 240; Euratom Treaty art 208, ECSC Treaty art. 97. The Treaty of Amsterdam replaces this wording by, "This Treaty shall expire on 23 July 2002." Treaty of Amsterdam, *supra* note 12, Part Two: Simplification. It is assumed that a future Treaty revision conference will, in due time, incorporate what has to be saved into the EC Treaty.

22. This article will not deal with the problem of how far the principle of subsidiarity might affect these powers. *See* EC Treaty art 3(b), para. 2 (as amended by the TEU, *supra* note 9), and the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Amsterdam, *supra* note 12. 1997 O.J. (C 340) 105.

institution shall act within the limits of the powers conferred upon it by this Treaty," it is then necessary to turn to specific articles of the Treaty, to see whether an institution, here the Council, has received a power to act, and under what conditions it may act. These articles normally spell out, as to the "power to take decisions," that the Council may only act on the basis of a proposal from the Commission, and that the European Parliament has to be involved by way of a consultation, or by another procedure, in deciding under which voting pattern the Council has to act,[23] and what form the act finally has to take.[24]

For the last ten years Article 145 of EC Treaty has a third indent: The Council shall confer on the Commission, in general, powers for the implementation of the basic acts adopted by it, the Council. The "Single European Act," of 1986 (SEA),[25] the first one of the great "constitutional revisions" of Community law (the others being the Treaties of Maastricht and of Amsterdam) had brought that amendment. This indent is the legal basis for the Council decision of July 13, 1987, laying down the procedures for the exercise of implementing powers conferred on the Commission, the "Comitology Decision."[26] In the context of the Treaty of Amsterdam, the Conference (that is the Treaty revision body) has called on the Commission to submit to the Council by the end of 1998, a proposal to amend this Council decision.[27]

As to the composition of the Council, Article 146 paragraph 1, of the EC Treaty originally said: "The Council shall consist of representatives of the Member States. Each Government shall delegate to it one of its members."[28]

The Treaty of Maastricht has changed this formulation to the following: "The Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State."[29]

The Council is thus that institution (of the Community / the Communities) in which each Member State is represented by one person who is a member of its government, or of a government existing in that Mem-

---

23. EC TREATY art. 148.

24. *Id.* art. 189.

25. Single European Act, 1987 O.J (L 169) 1, [1987] 2 C.M.L.R. 741 [hereinafter SEA].

26. Council Decision of July 13, 1987, laying down the procedures for the exercise of implementing powers conferred on the Commission, 87/373/EEC, 1987 O.J. (L 197) 33.

27. Treaty of Amsterdam, *supra* note 12, at 137.

28. Several articles of the EEC Treaty, concerning the Council and the Commission, had been repealed, and the matter had been regulated in the Merger Treaty. Merger Treaty, *supra* note 8. With the Treaty of Maastricht, they "have come back" into the EC Treaty. TEU, *supra* note 9. (Citations within the Merger Treaty omitted).

29. TEU, *supra* note 9.

ber State. In the latter case, that person is "authorized to commit the government of that Member State." Those Member States which are organized centrally send a member of their government. Other Member States which are federally organized can now send a member of the central government, or one of the States/Lander governments. Their actions however must bind the central government, or perhaps better: the Member State as a whole. For example, in the Federal Republic of Germany there is no Federal Culture minister in the Federal government, but there are 16 Lander Culture ministers. In sessions of the Council dealing with culture, one of them, perhaps the president of the Lander Culture Ministers Conference, may sit and act, and the results bind the Federal Republic of Germany, as they bind other Member States.

A "minister" is thus a member of a government, as a member of the Council has to be. It is not important for what ministry/department that person is responsible, as is the title of that person. For example, in practice, German "Staatssekretare," high officials who are not members of their governments, have been sent, and have been accepted by the others as members of the Council.

In the EC Treaty section on the Council, there are only two articles which use the term "President" expressly. The first is Article 146, paragraph 2, which determines who amongst the members of the Council is the President at a particular moment. This disposition originally had a "general" formulation, followed by a specific one - determined by the names of Member States -, and thereafter, returned to a general formulation (different than the original one).

The original formulation of the EEC Treaty, of 1957, in its - at that time - unofficial English version, was: "The office of President shall be exercised for a term of six months by each member of the Council in rotation according to the alphabetical order of the Member States."

The British, Danish, and Irish accession, in 1973, brought this formulation - now in official English: "The office of President shall be held for a term of six months by each member of the Council in turn, in the following order of Member States: Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, Netherlands, United Kingdom."

From this list of the Member States it can be seen that the rotation according to the alphabetical order refers to the names of the Member States in their own language, i.e., (Germany = Deutschland), and to their official designation (United Kingdom, not: Great Britain). But the office is (still) held by a "member of the Council."

The accession of Greece, in 1981, just interposed the addition of Greece, between Germany (Deutschland) and France (Greece = Ellas).

In 1986, Spain and Portugal acceded, and their names were added in the appropriate places (Spain = Espana). At this time, this list of twelve names, covering presidencies in the Council for six years, was called "a first cycle of six years," and an additional sentence was added: "- for the following cycle of six years: Denmark, Belgium, Greece, Germany, France, Spain, Italy, Ireland, Netherlands, Luxembourg, United Kingdom, Portugal."

This "second cycle" corresponds to the first one, with the modification that the two Member States named for a particular year are now "inversed." Thus, Denmark now held the presidency of the Council for the first half of a year, and Belgium for the second. For 1997, the Netherlands held the presidency for the first half of the year,[30] and Luxembourg for the second half of 1997. Why the inversion? The Communities had an even number of Member States, and those presidencies which had had long and cumbersome agricultural price discussions in the first half of the year foresaw that they would have to chair those again, after six years. Others foresaw that they would have to conduct the budgetary discussions in the second half of the year again (the Communities financial year runs from 1 January to 31 December).[31] The "inversion" was the answer.

Looking to the end of the list of the second cycle, one is right to assume that the member of the Council coming from the United Kingdom will preside over the sessions of the Council during the first semester of 1998. As to the second semester, the answer will be given further down.

The Treaty of Maastricht reiterated the ideas of the first and the following cycle, with one modification. The introductory words are now: "The office of President shall be held in turn by *each Member State in the Council* for a term of six months, in the following order . . ." instead of: ". . . for a term of six months by *each member of the Council* in turn . . ." (italics added). The presidency in the Council is, by this formulation, more linked to the Member State, and less so to the member of the Council coming from a certain Member State.

The final word as to rotation of the presidencies has come with the accession of Austria, Finland, and Sweden, in 1995 (not accompanied by Norway). Article 146 paragraph 2 of the EC Treaty, in its new formulation, no longer gives a list of Member States, and thus returns to the starting point of 1957, but at the same time brings a new change - abol-

30. This led to the holding of the Intergovernmental Conference in Amsterdam in June 1997, which led to the Treaty of Amsterdam.

31. EC TREATY art. 203, para. 1. (as amended by TEU, *supra* note 9, art. G).

ishing the idea of rotation according to an alphabetical order. The new formulation is: "The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously."

On January 1, 1995, when the three new Member States joined the Union, the Council made such a decision, by which the two Member States "in the chair of the Council" for 1998 are now the United Kingdom and Austria (instead of Portugal); for 1999, Germany and Finland; followed by Portugal and France in 2000.[32] The reason for this shuffle lies in the idea of "Troika," that the Presidency shall be assisted if need be by the previous and next Member States to hold the Presidency,[33] and that at least one of the three should be one of the "larger ones." This idea will be discussed later.[34]

The other instance where the EC Treaty speaks of the President of the Council is much easier to understand. From its beginning in 1957, and still today, Article 147 of the EC Treaty says: "The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission."[35]

This would seem obvious, or otherwise it would be doubtful whether such a rule should belong to the "constitutional law" of the Treaty,[36] or whether it should rather find its place in the Rules of Procedure. This rule is repeated in the Rules of Procedure.

This remark leads to the Rules of Procedure of the Council. Article 151 EC Treaty says that the Council "shall adopt its Rules of Procedure." The Council has done this. In the early months of 1958 the Council of the EEC adopted its Provisional Rules of Procedure[37] - but they were never officially published.[38] In 1979, the Council adopted its Rules

---

32. 1995 O.J. (L 1) 220.

33. TEU, *supra* note 9, art. J.5, para. 3.

34. At the end of the discussion on the rotation of the Presidency of the Council it might be added that the ECSC Treaty had such a rotation according the alphabetical order of the Member States, but in the French language - that language being the only authoritative one of that Treaty. The Federal Republic of Germany (Germany = Allemagne) thus held the first presidency of the ECSC Council in the summer of 1952 (chaired by Chancellor - and Foreign Affairs Minister - Adenauer). And the term period was three months, not six.

35. EC TREATY art. 147.

36. The "Draft Treaty Establishing The European Union" which the European Parliament adopted in February 1984, before the end of its first five year period of service after the direct elections of 1979 ("Spinelli draft") did not contain such a clause. 1984 O.J. (C 77) 33.

37. The Council of the EAEC at the same time also adopted provisional Rules of Procedure. The Rules of Procedure of the Special Council of the ECSC existed (although provisionally) since 1952 in the form of 14 short articles. *See* WESTLAKE, *supra* note 1, at 129.

38. The interested reader could find this text in several treatises.

of Procedure (RP) and published them in the Official Journal.[39] Its twenty articles deal with the convocation of the session, the provisional and the definite agenda, that the sessions shall not be public, the manner of voting, the "written decisions," the minutes of the session, etc. A number of articles prescribe the form and details of legal acts, like Regulations, their publication or notification. Finally, the Committee of Permanent Representatives finds its place in the RP, as does the Secretariat General of the Council (by the Treaty of Maastricht, they both now figure in Article 151 EC Treaty). At the end, the final article provides that "Correspondence to the Council shall be sent to the President at the address of the General Secretariat." - that means: Brussels. (The present wording is: ". . .at the address of the Council."

These Rules of Procedure of 1979 were slightly amended once, in 1987, as to when and how the President would be required to open voting procedures in the Council,[40] which says much about the power of the President before that time not to let the Council vote on a matter.

After the entry into force of the Treaty of Maastricht (November 1993) the Council, now called the Council of the European Union, adopted, by its Decision of 6 December 1993, its Rules of Procedure anew, replacing those of 1979/1987.[41] With one minor modification - the "quorum" of Council members required to be present at the moment for voting has been changed from six to eight, following the accession of the last three Member States.[42] These are the Rules as they exist today. The Rules of 1979 covered three pages of print in the Official Journal - those of 1993 eight. Though the basic structure is still the same, new rules on "open debates" of the Council, on "transparency," and on the form of acts of the "second and third pillars" had to be added.

In 1996/97 the Council published - under the responsibility of the General Secretariat - a "Council Guide," to facilitate the work of the Presidency and of the delegations of the Member States, in three sections.

- Presidency Handbook,
- Comments on the Council's Rules of Procedure,
- Delegates' Handbook.[43]

There is much practical help assembled in this Guide for the President of the Council.

---

39. Rules of Procedure adopted by the Council, 1979 O.J. (L 268) 1.

40. 1987 O.J. (L 291) 27.

41. Council Decision of Dec. 6, 1993, 1993 O.J. (L 304) 1 [hereinafter RP Council].

42. 1995 O.J. (L 31) 14.

43. Office for Official Publications of the European Communities, Council Guide 1996 (three sections) (Luxembourg 1997).

Before turning to the "Specific comments" - which will be much shorter than the "General considerations" - the following points may be made: The President of the Council of the European Union holds an office of the European Communities (or: in the European Union), but he/she is not elected into that office. This is different from, for example, the President of the European Parliament, elected by the members of the parliament (for 2 1/2 years),[44] or the President of the Court of Justice who is elected by the Judges, and not the Advocates-General (although they too are members of the Court, for three years, renewable).[45] The President of the Council is not appointed either, for example "by common accord of the governments of the Member States," as the Judges and the Advocates-General are. He/she is not nominated and appointed in a special procedure giving specific rights also to the European Parliament, as is the case with the President of the Commission.[46] The President of the Council completes no tangible act of appointment. He/she receives no salary from the Communities/Union.

He/she has taken no oath of office, contrary to the presidents of the Court of Justice or the Commission. To be more precise, he/she may well have taken an oath of office, as a member of the government of a Member State, for example to contribute to the well-being of that country. How can that be combined with the well-being of the Union, and might there be a conflict, for any member of the Council, and particularly for its president? The answer here seems to lie in Article 5 EC Treaty: Member States shall take all appropriate measures to fulfill their Community obligations, and facilitate it's tasks, and abstain from contrarian measures. The Council is the place where Member States' and Union's interests meet, with the possibility of conflict also, but such a conflict must be resolved "in favor of the Community." Who then appoints/nominates/names the President of the Council? It is the president of the government of the Member State who is up to preside over the Council in the system "of rotation" (which soon, as of 1 July 1998, is a different one!).

One final, and puzzling, note: There is just one Council, one institution with that name, but there is a plurality of presidents of the Council! The Council sits in different compositions - the Foreign Affairs ministers, those of Agriculture, of Finance, of Cultural Affairs, and so on. And each Council has its president!

---

44. EC TREATY art. 140 (as amended by the TEU, *supra* note 9). The period of 2 1/2 years, half the term of five years for which the members of the European Parliament (EP) are elected, is fixed by the Rules of procedure of the EP.

45. EC TREATY art. 167, para. 5 (as amended by the TEU, *supra* note 9).

46. *Id.* art. 158, para. 2 (as amended by the TEU, *supra* note 9).

THE PRESIDENCY OF THE COUNCIL, INTERNALLY: SPECIFIC COMMENTS

Wallace and Edwards, cited above, with approval, have written that the Presidency has to act: - as manager of Council business; - as a source of political initiatives; - and as a package-broker in negotiations.

The Presidency as manager of Council business: The Presidency convenes the Council sessions, normally 14 days before its beginning. The calendar of possible sessions, and their dates, has already been made known half a year in advance. The Presidency fixes the provisional agenda (at the beginning of the session, the Council adopts its definite agenda). In deciding what points to put onto the provisional agenda, the Presidency receives help particularly from two sides:

Firstly, from the Committee of Permanent Representatives (CRP, or "Coreper"). Since 1958 the CRP has been in existence, and its place in the different "constitutional texts" has been constantly "upgraded." According to Article 151 of the EC Treaty, this committee "shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council."

This committee is composed of national officials who work in their national permanent representations, in Brussels. Each head of such a representation has the title of ambassador because he comes from the foreign service of his Member State, not because he is accredited to somebody. There is no formal procedure of accreditation (to the Communities/to the Union), and there is therefore no place for a request of "agrément." A simple information that "Ambassador X is the head of our permanent representation as of . . ." is all. The committee sits in two formations, Part II, composed of the Permanent Representatives (Ambassadors) and dealing mainly with institutional matters, and those destined for the "General Affairs" Council (External Relations), Finance ("Ecofin") matters, etc. Part I is composed of the Deputy Permanent Representatives who sometimes come from their foreign services, but sometimes also from the Ministry of Economic Affairs. They deal particularly with economic matters and the Internal market. The curious numbering of the two parts seems to reflect that in the very beginning Part I had to report to Part II. Soon thereafter the practice was established that every Part prepares independently from the other part "its" Councils (but Part II can, from time to time, reshuffle the distribution of the packages!).

"Preparing the work of the Council" is then the first task of Coreper. As the Commission has the "right of initiative" in all Community matters, that is the right to submit a "proposal" in legislative matters, the Coreper organizes and oversees that such a proposal is

discussed in the appropriate working group (in which the delegations of the Member States, together with the Commission services, are represented, under the chairmanship of an official of that Member State which holds the presidency in the Council), and that a solution to the problem under discussion is as much advanced as possible, in the working group first, and then in Coreper. If total agreement is reached along this way, the Council can approve the result, and adopt the act in question, "without discussion." That is called the "procedure of A-points."[47]

When problems remain, chiefly political ones which require discussion in the Council, Coreper will advise the Presidency to put them on the provisional agenda of the next Council session. The Council thus gets the problem(s) normally only after ample preparation and with accompanying reports ("documents") which describe the problem, the attitude of the national delegations, and preferably also the possible outcomes. These documents are sent out to the governments of the Member States together with the provisional agenda so that the members of the Council can prepare themselves for the session.

The second large source of help for the Presidency consists of the General Secretariat of the Council. This is an independent international secretariat of now about slightly over 2,000 officials of the Communities, recruited from all 15 Member States, about 250 "grade A" administrative officials, 500 linguists who translate all provisional and definite texts into all eleven Communities languages (the linguists who are interpreters for the meetings of the Council, committees and working groups are administered not by the Council, but by the Commission), more than 1,000 "clerical," secretarial persons, and others. All secretariats for all meetings in the framework of the Council are provided by this General Secretariat, and the reports ("documents") are written by these people. In addition to the reports, written for the Council, and thus available to all members of the Council, the Presidency organizes, before each session, "briefings" in which its Permanent Representative, and the General Secretariat of the Council, and sometimes the Commission, participate. At this occasion, the Secretariat provides the Presidency with "Notes for the President" which contain useful additional information as to the state of an agenda point and possible developments, including suggestions as to how the Presidency could proceed in the Council session. It is evident that the Commission is also at the disposal of the Presidency, and obviously its own home administration in its capital. It has often been said, and rightly so, that a president of the Council should spend some hours of preparation and discussion in Brussels (or in Luxembourg, in the

47. RP Council, *supra* note 41, Art. 2, para. 6.

months of April, June, and October when the Council meets there) before the Council session starts.

Once a Council session starts, the President is still "the manager of Council business." He/she decides who gets the floor first. Normally the Commission, ever-present in Council's sessions except on rare occasions, or the president of Coreper, presents the topic, and then the President decides on a *tour de table*, or attributes the right to speak individually to the members of the Council.

The president calls the vote. It seems to be one of the great secrets in which way the Council votes, unjustifiably so. Article 7 paragraph 2 of the Rules of Procedure, taken together with the "rotation of the Presidency," discussed above, says that the members of the Council shall vote in the order in which they come up for the presidency, "beginning with the member who, according to that order, follows the member holding the office of President."[48]

The President's "home delegation" thus has the advantage of having the last vote. (Note that the text of 1993, speaks of members of the Council, not Member States being members of the Council.)

Many of these decisions of the Presidency, including this one on calling – or denying - a vote, could be overruled by the Council itself, deciding - as a procedural decision, Article 148, paragraph 1 of the EC Treaty - by simple majority.[49] But such a development is rare, and the power of the Presidency is great. Once the decision has been reached, the President of the Council will announce it as such. Once the decision is translated into all eleven Communities languages, and that text has been adopted "in the languages of the Communities" the president will sign it, and have it published in the Official Journal, or notify it to whom it is addressed.

What if the Council is unable to reach a decision ? Again, the President of the Council is in the forefront. He/she has to serve "as a package-broker in negotiations."

It is not possible to generalize how a president should proceed, and how different presidencies have acted in the past. The president could try to solve the problem by making suggestions to the delegation(s) which cannot adopt the proposal of the Commission as it has developed until the session of the Council. The president could invite the Commission to come forward with its suggestions. Both approaches could occur in the ongoing meeting. The president could also interrupt the session and have private talks with one, more, or all delegations, with or without

48. *Id.*, Art. 7, para. 2.
49. EC TREATY art. 148, para. 1.

the presence of the Commission. The session could be resumed after an hour, or after a month. The president could bind the problem together with others into a package, and try to have them all adopted in a "package-deal." Here it becomes evident that a president must be neutral and impartial, and the position of spokesman of his "home delegation" has been given, during the presidency, to his deputy. (It seems only fair to assume that a presidency cannot totally abstract itself from the interests of its home country.)

The president could also try its "compromise solution" in one, more, or several Council sessions within its six month period. An example of this is furnished by the adoption of the EC-Bananas market organization. The Commission had made its proposal in the summer of 1992. The consultation of the European Parliament followed. The Council, in the composition of the Ministers for Agriculture, discussed this topic at several sessions in the fall of 1992. This occurred after ample preparation by the "Special Committee on Agriculture" (existing since 1960; not mentioned in the Rules of Procedure of the Council) which takes the place of the Committee of Permanent Representatives for the bulk of the agricultural problems. In a four- day session in December a "political compromise" involving bananas and other agricultural, and agricultural monetary points, seemed near. But no decision was made.

In a new four-day session in February 1993, and after more alterations in the package, the presidency called for a vote, at midnight of 12/13 February. Immediately before the vote, the member of the Commission responsible for Agriculture declared in the Council session that the compromise text of the presidency about which the Council was about to vote, corresponded to the political compromise of December and constituted now the proposal of the Commission.[50] Thereafter, the Council voted and adopted the (modified) proposal of the Commission by qualified majority[51] - three members of the Council voting "against" - which was sufficient to carry the decision, considering the legal basis of Article 43 of the EC Treaty.[52] Here, the decision-making in the Council, conducted by its presidency, had been "intertwined" with the legal requirements set up by the Treaty. Whereas the legal acts of the Council in the Common Agricultural Policy can be adopted by "qualified majority" (which, in the system of the Treaty, operating a system of the "weighing of the votes" of the members of the Council, means "by 62 out of 87,

50. Judgment of the Court of Justice in case C-280/93, Germany v. Council, 1994 E.C.R. 1-4973, 5039, 5053, para. 33.

51. EC TREATY art. 148, para. 2.

52. Council Regulation No. 404/93, 1993 O.J. (L 47).

votes" - at the present time), this is only true when the decision of the Council is in conformity with the proposal of the Commission. This is nowhere said in the EC Treaty, but the existence of such a basic rule can be deducted from the clear formulations used in Article 189a of the EC Treaty (formerly Article 149 of the EEC Treaty):

> 1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, . . .
>
> 2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.[53]

Without a Presidency compromise, and without the accompanying modification of the proposal by the Commission itself, there would not have been a Council regulation setting up a bananas market organization because unanimity could not have been reached.[54]

Another example shall illustrate the power and the obligations of the presidency, this time in a particularly difficult institutional matter. In the preparation for the last accession of new Member States to the Union[55] (which occurred in 1995) some "old" Member States became aware that the simple reiteration of Community principles could lead to results which they did not want. "Since the beginning," Article 148 of the EC Treaty provides that the Council decides in three different manners of voting.[56]

If the specific Treaty article, conferring a power of decision onto the Council, says nothing more, "the Council shall act by a majority of its members."[57] This majority, or "simple majority" system is extremely seldom in the Treaty, but it still has a large place in the procedural decisions of the Council, provided for in its rules of procedure.[58]

The unanimity requirement, provided for in the Treaty for "sensitive" matters - the harmonization of some sorts of taxes is one example - presents the particularity that abstentions "by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity."[59]

---

53. EC TREATY art. 189a.

54. EC TREATY art. 148, para. 3.

55. Since the entry into force of the Treaty on European Union applicant European States can only accede to the Union, TEU, *supra* note 9, Art. O; 1995; Act of Accession, *supra* note 16.

56. EC TREATY art.148.

57. *Id.* art.148, para. 1.

58. *See, e.g.*, RP Council, *supra* note 41, art. 2, para. 5, first sentence. The agenda shall be adopted by the Council at the beginning of each meeting.

59. EC TREATY art. 99.

The voting system most typical for the European Communities is that of "qualified majority," which is linked to a system of weighing of the votes for the different members of the Council/ Member States. The "larger" Member States have 10 votes each (8 for Spain), and the others 5, 4, 3, or 2 votes. 62 votes are required, positively expressed, out of the 87 votes available, for the adoption of the act of the Council.[60] The number of votes thus attributed corresponds very roughly to the millions of inhabitants of the Member States: Over 50 million - 10 votes; below 15 million - 5 votes, or less. There are no Member States in the category "in between," with the exception of Spain. It can easily be seen that the "smaller" Member States have received a larger number of votes than "equal - or representative – distribution" would accord them. This deliberate system of protection of smaller Member States would, if some even "smaller" Member States would join the Union, result in decisions to be taken by qualified majority for which the number of votes would have been reached, but a corresponding majority, or qualified majority, of millions of inhabitants of the Member States would not support these acts. (This problem is sometimes discussed under the heading of "double majority.").

This is the background of the so-called Ioannina compromise:[61]

If members of the Council representing a total of 23 to 26 (25) votes indicate their intention to oppose the adoption by the Council of a Decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law,[62] a satisfactory solution that could be adopted by at least 68 (65) votes.[63] During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wider basis of agreement in the Council. The Members of the Council (who thought of a Pencil?) lend him their assistance.

---

60. The weighing of the votes was different from 1958. Until the first accession, the three original "large" Member States had four votes each, Belgium and the Netherlands two each, and Luxembourg one. Twelve votes made up the qualified majority. *See* the curious "majority of nine votes" which was not changed at the accession of 1973 E(E)C TREATY art. 44, para. 6 (probably considered obsolete already then). The Treaty of Amsterdam, *supra* note 12, repeals Art. 44 as a measure of "Simplification," 1997 O.J. (C 340) 60. It is evident that at each accession, new votes have been attributed, and "the quotient" has been adapted.

61. 1994 O.J. (C 105) 1 (1994) (amended because of the non-accession of Norway) 1995 O.J. (C 1) 1. *See* Council Guide, *supra* note 43, sec. 2, p. 23; HAYES-RENSHAW & WALLACE, *supra* note 1, at 56, 313; WESTLAKE, *supra* note 1, at 94.

62. Such as in EC TREATY arts. 189b and 189c.

63. The numbers in brackets are those now applicable, after Norway did not accede to the European Union.

In the present context, it is important to note that it is the President of the Council who is entrusted, and charged, with the task to reach a decision in the Council. The Treaty of Amsterdam upholds "the Ioannina Compromise until the entry into force of the first enlargement," that is the first enlargement of the European Union after 1997.[64]

The Presidency has also to act "as a source of political initiatives." Nowadays every Member State coming up to the presidency presents a program of what it wants to achieve during that period. Sometimes it puts such initiatives into the framework of the European Council. It may well be that it is not alone in this effort, but that the Commission and/or the European Parliament also advance political initiatives. May it suffice here to refer to the following chapter.

The Presidencyof the Council as a Point of Contact with Other Community Institutions: Additionally: The Presidency of the European Council.

It is evident from the foregoing that the Council is in close contact with other institutions of the European Communities, and that it is often the presidency which is representing the Council therein. As to the Commission - in legal terms the "Commission of the European Communities," whereas in political terms it wants to be known under the denomination "European Commission," - the whole Community system is one of closest cooperation between the Commission and the Council. That is most evident on the legislative side - the Commission proposes, the Council decides, - but also on the political one: The Presidency of the Council can simply not launch a great political initiative before having first discussed it with the Commission (and vice versa). The programming for the six months to come requires it also. For a number of years now, a new Presidency invites the Commission to its capital for a first meeting with its government - a good example of such contacts.

These very intense contacts extend over the whole presidency period. Political and legislative contacts exist in the same intensity with the European Parliament. It is there that the presidency presents its "program" when it starts, and its results when it ends its six month period. The political debate is conducted there, and the public gets a good deal of information from it. The President of the Council takes part in the

64. Declaration relating to the Protocol on the institutions with the prospect of enlargement of the European Union, annexed to the Treaty of Amsterdam, *supra* note 12, 1997 O.J. (C 340) 142. *See also* 1997 O.J. (C 340) 111. The special case of Spain, mentioned in the Declaration, refers to the fact that Spain has been allotted 8 votes now, and not 10, as the other "larger" Member States.

monthly sessions of the European Parliament and answers questions. The different presidents of the different Council compositions appear once or twice during their presidency before the relevant commissions of the Parliament.

The various "constitutional revisions" of the founding Treaties have considerably enlarged the role of the European Parliament in the legislate process. Whereas in the beginning the European Parliament was only "consulted," and the result for the consultation, the "opinion," was not legally binding on the Council,[65] its role is now stronger in the cooperation and the codecision procedures.

The cooperation procedure introduced by the Single European Act was originally set out in the EEC Treaty.[66] It is now regulated by Article 189c of the EC Treaty. It consists in particular of two readings in the European Parliament, and in one instance the Parliament can force the Council to muster unanimity, whereas otherwise it could act by qualified majority.

The codecision procedure has come with the Treaty of Maastricht, and Article 189b EC Treaty describes its rather difficult steps. Here the European Parliament and the Council are co-legislators, and the results of their common efforts are Joint acts "of the European Parliament and the Council." In this procedure there is a "conciliation committee," composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament. The Committee is chaired jointly by a Vice-President of the European Parliament and a Minister from the Member State holding the Presidency. There seems to be always such a committee in session, and contacts between the presidency of the Council and the European Parliament are very strong.

For example, under the new dispositions for the setting up of an Economic and Monetary Union, introduced into the EC Treaty by the Treaty of Maastricht, the Presidency of the Council receives an active role vis-a-vis the European Parliament and the European Central Bank.[67] There is also an active "trialogue."- meetings between the presidents of the European Parliament, the Council and the Commission, in order to overcome possible obstacles.[68]

---

65. In the Common Agricultural Policy the input of the European Parliament is still that of "consultation." EC TREATY art. 43, para. 2, sub-para. 3.

66. EEC TREATY, art. 149, para. 2(new) (as amended by Merger Treaty, *supra* note 8).

67. Let it suffice to refer here for example to EC TREATY arts. 103, para. 4 and 109b, para. 1.

68. WESTLAKE, *supra* note 1, at 44.

The presidency of the European Council has evolved considerably in its political significance over the last two decades. The European Council is not an institution of the Community/Communities, and is not named as one.[69] It has its background in the "summit" conferences which were held, although scarcely, in the sixties, and got some formalization at the "last summit" in Paris in December 1974, when the Heads of State and/or Government of the Member States of the European Communities resolved to meet in future several times a year "as Council." That became soon the "European Council,"[70] with a first legal description of its composition in Article 2 of the Single European Act of 1986. This article is now superseded by Article D of the Treaty on European Union.

Notwithstanding the express mention of the European Council in the Treaty on European Union, it seems difficult to call it an institution of the European Union, as that entity does not (yet) have legal personality. Article D confirms the composition as "the Heads of State or Government of the Member States and the President of the Commission," and the rhythm of meetings ("at least twice a year").

But Article D also adds three things, firstly a description of its tasks: "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof."

Secondly, the European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

Thirdly, Article D brings a clarification of previous practice which falls into the orbit of this article: "The European Council shall meet (at least twice a year), under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council."

The sessions of the European Council are of the highest importance for the development of the European Union. The "impetus" and the "general political guidelines" come from here. For example, the willingness to enlarge the Union toward Central and Eastern European Countries, and the conditions for accession, were declared in a European Council session in Copenhagen in 1993, and the starting time for these negotiations, in 1998, were decided at the European Council session in

69. The Treaty of Maastricht gave the Court of Auditors the status of an institution of the Communities, which makes them five now: *See* EC TREATY art. 4.

70. *See generally* for background and developments until 1991: JAN WERTS, THE EUROPEAN COUNCIL, (1992).

Luxembourg, in December of 1997. The "Treaties Revision Negotiations" which have led to the Treaties of Maastricht, and of Amsterdam, though technically conducted in the framework of a "conference of representatives of the governments of the Member States"[71] were held, as to their last two important days of negotiations, at the sessions of the European Council in Maastricht, in December 1991, and in Amsterdam, in June of 1997, respectively. (The representatives - often different ones - of the Member States have returned once more to those places, two to four months later, to sign the new Treaties, which in the meantime had been translated into all official languages. At the moment of the signature of these treaties, the Netherlands were no longer in the chair of the European Council sessions.)

In every case it was "the Presidency" which led these discussions and negotiations. It seems therefore that the presidency of the Council, and of the European Council[72] has to take political initiatives, and constantly does so.

The Presidency of the Council as a Representative in External Relations

It is difficult not to write a full new article on this topic - so much material is available for consideration. As that is not the intention here, the presentation has to be condensed to the extreme. The Presidency of the Council has had slow beginnings in this area. In the 1960's the European Economic Community lived in a transitional period originally envisaged to last 12 years, which it did from 1958 to the end of 1969.[73] During the transitional period, there was not yet a common commercial policy (Art. 113 EEC Treaty), but a leading up to it, shown by article 111 paragraph 1, sub-paragraph 1, of the EEC Treaty:

"Member States shall coordinate their trade relations with third countries so as to bring about, by the end of the transitional period, the

---

71. EEC Treaty art. 236; TEU, *supra* note 9, art. N, para. 2.

72. The reader may be tempted to mistake the Council, or the European Council, for the Council of Europe - until he reads Art. 230 of the EC Treaty: The Community shall establish all appropriate forms of cooperation with the Council of Europe. The Council of Europe, in Strasbourg, is the oldest and largest European organization. Its statute dates to 1949; it has 40 member states, and it is perhaps most known for its European Convention for the Protection of Human Rights and Fundamental freedoms of 1950, and its mechanism of protection. *See also* TEU, *supra* note 9, art. F.

73. EEC Treaty art. 8; this article later became EC Treaty art. 7 (and EC Treaty art. 8 was used for the formulation of the Citizenship of the Union). The transitional period of the EEC Treaty is now definitely a matter of the past: The Treaty of Amsterdam, *supra* note 12, repeals art. 7, as a measure of Simplification. 1997 O.J. (C 340) 58.

conditions needed for implementing a common policy in the field of external trade."[74]

Again a word as to terminology: The EEC Treaty employs the terms commercial policy as a heading before article 110 and common commercial policy in article 113, relating them to external trade. The term External Relations is not used in this treaty - but in the EAEC/ EURATOM Treaty as chapter heading before its article 101. External Relations in the orbit of the European Union is then something different from, and additional to, the common commercial policy (EC).

It would not be just, however, to deny the Council all powers in commercial policy matters before the end of the transitional period. Article 111, paragraph 2 of the EEC Treaty provided already for tariff negotiations with third countries in respect of the common customs tariff, to be negotiated by the Commission and concluded by the Council (Articles 111 and 114), exactly as we see it today in Article 113 paragraph 3 (and Article 228). The Dillon and Kennedy rounds of GATT were conducted in the 1960's. The Commission took part in these negotiations-as did the Council, for the more political matters. During this time, the Council established a small outpost/antenna of its Secretariat General in Geneva, and has always kept it staffed with a small number of officials, the only one of its kind until 1994 when another one, at the United Nations in New York, was established. At that time, the legal position of the European Economic Community with GATT had not yet been clarified, which has had to do with a stronger involvement of the Council, alongside the Commission.

During the 1960's also, some important association agreements[75] of the European Economic Community - with Greece, with Turkey, and with the African States and Madagascar (the conventions of Yaounde), respectively have been concluded in the form of mixed agreements, meaning that in addition to the Community and the respective "third country/countries," the Member States of the Community were contracting parties also.[76] In meetings the Member States then "spoke with one voice," through the representatives of the Member States having the

74. EEC Treaty art. 111 was repealed already by the TEU, *supra* note 9. In the ECSC Treaty, the matter of commercial policy is in principle reserved to the Governments of the Member States (without the limitation to a transitional period). ECSC TREATY art. 71, para. 1. *See also* EC TREATY art. 232, para. 1. The EAEC/EURATOM Treaty does not have a commercial policy proper. *See* EURATOM TREATY art. 101 - 106; *See also* EC TREATY art. 232, para. 2.

75. E(E)C TREATY art. 238.

76. There is no definition of the term "mixed agreement" in the EC Treaty. The nearest allusion can be found in Art. 102 of the EAEC Treaty: If, in addition to the Community, "one or more Member States are parties" to an agreement, they shall conclude before the Community does.

presidency in the Council - the same person as the President of the Council!

Things changed considerably with the Summit meeting of the Heads of State or Government of the Member States at the Hague in December 1969, at the end of the transitional period. There the first enlargement got the "green light," and the Heads of State or Government instructed the Ministers of Foreign Affairs to study the best way of achieving progress in the matter of political unification.[77] This is the source of the Davignon Report (1970) and eventually, the beginning of the European Political Cooperation (EPC). In the beginning, the Member State having the presidency in the Council had to provide for political cooperation, as a topic different from and additional to EEC matters, by its own Ministry of Foreign Affairs, and their officials, in its own capital. In this context, it is often cited that the Council of the Communities held a session in July of 1993 in Brussels, under the Danish presidency, and then they all took a plane to Copenhagen to hold a meeting on EPC matters. (It should not be overlooked, however, that at that time Denmark was represented in the Council, generally by its minister for Foreign Trade, whereas its spokesman in the EPC, and chairman of the meeting, was its Minister of Foreign Affairs. As the Member States have full freedom to decide who shall be their representative, the "normal" representative of the Federal Republic of Germany in the Council was at first the Minister of Economics, and since the early 1970's the role has gone over to the Minister of Foreign Affairs. Since that time, the members of the "General Affairs" Council are all ministers of Foreign Affairs in their home governments).

The Single European Act of 1986, was a big step forward. The word "single" in the title of this revision treaty is generally explained by the fact that here, in addition to the revision of the EEC Treaty as to a larger role for the European Parliament, etc., the European Cooperation in the sphere of foreign policy has been formulated, for the first time in a Treaty, and that both objects of this Act have been assembled, "under one roof." Title III (Article 30) of the SEA, certainly presented some particularities, for example, in that it always spoke of "the High Contracting Parties" - not of the Member States, and that it used for the first time the word "consensus,"[78] and that it established a secretariat based in Brussels. It also said: "The Presidency of European Political Cooper-

77. WERTS *supra* note 70, at 35.

78. The term "consensus" is defined in United Nations Convention on the Law of the Sea, art. 161, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF.62/122, *reprinted in* United Nations, Official Text Of The United Nations Convention On The Law Of The Sea With Annexes And Index, U.N. Sales No. E.83.V.5 (1983), 21 I.L.M. 1261 (1982).; *See also* the Agreement

ation shall be held by the High Contracting Party which holds the Presidency of the Council of the European Communities."[79]

The Secretariat presented a special pattern, that apart from its secretary general, it was made up of five persons (and five secretaries) coming from the foreign service of their states for a particular two and a half year rotation: for one year prior to the presidency, during the six month presidency, and for one year after the presidency. The Secretariat sat separately in an aisle of the Secretariat General of the Council's building, and the Foreign Ministers held separate meetings from the Council, but well Brussels or Luxembourg.

Article 30, paragraph 12 of the SEA looked like a normal review clause when it entered into force on July 1, 1987: "Five years after the entry into force of this Act the High Contracting Parties shall examine whether any revision of Title III is required."

At that time nobody could foresee the disintegration of the Soviet Union, and what it meant for world politics. Less than five years later, the Treaty of Maastricht, in Article P, paragraph 2, formulated that specific articles "and Title III of the Single European Act. . .are hereby repealed." The place of the European Political Cooperation has now been taken over by the "Common Foreign and Security Policy," Title V of the TEU.

Since the entry into force of the Treaty of Maastricht, on November 1, 1993, there has existed the "Common Foreign and Security Policy."[80] This matter was not integrated into the Communities, (as was done with the establishment of the economic and monetary union, which the Treaty of Maastricht inserted into the EC Treaty) but was kept as an "intergovernmental cooperation." This differentiation can be seen clearly in Article A, paragraph 3 of that Treaty: "The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty."

The plural forms used in the second half of this sentence allude to Title VI of the TEU, "Provisions on cooperation in the fields of justice and home affairs."[81] Article K.1 lists areas covered as: Asylum policy, visa policy, immigration policy, . . . and police cooperation (Europol). Thus, these policies are also intergovernmental cooperation, and the Council of the European Union, and its presidency, are active here. Be-

---

Establishing the World Trade Organization, *opened for signature* Apr. 15, 1994, Art. IX, para. 1, note (1), 33 I.L.M. 1144 (1994) (entered into force Jan. 1, 1995) as "absence of formal objection."

79. SEA, *supra* note 25, art. 30 para. 10 (a).

80. TEU, *supra* note 9, Title V, arts. J-J.11.

81. *Id.* Title VI, arts. K-K.9.

cause these policies are more concerned with internal matters of the Member States, than with "external relations," they will not be discussed substantially here.

The new Treaty of Amsterdam will in substance conserve the basic structure, as the two titles will remain in intergovernmental cooperation, and not be integrated into the Communities, but with considerable modifications. Both titles will be fully reformulated: the new Title V will in the future contain (or not!) Articles J.1 through J. 18; and the new Title VI will contain Articles K.1 through K.14, supplemented by the new Title VIa, "Provisions on Closer Cooperation," Articles K.15 through K.17. Moreover, the name of Title VI will be changed to "Provisions on Police and Judicial Cooperation in Criminal Matters." The parts concerning "Visas, Asylum, Immigration and Other Policies related to the Free Movement of Persons" will be "split off" and integrated in Part Three of the EC Treaty as new Title IIIa.

Finally, to make matters easier to understand (or more complicated?), the Treaty of Amsterdam decided that the Treaty on European Union and the Treaty establishing the European Community "shall be renumbered,"[82] and that "lettered articles" will be abandoned. Titles V and VI will in the future consist of Articles 11 through 28, and Articles 29 through 42, respectively. Articles 146 and 147 of the EC Treaty, on the rotation of the presidencies of the Council and on the convocation of a session of the Council, will in the future be Articles 203 and 204 respectively.[83] The reader will have noticed that these "new numbers" have not been used in this article, since the Treaty of Amsterdam has not yet entered into force, and the old numbers still carry all their meaning. One day, however, we will have to use the new numbers.

Some examples illustrate the role of "the Presidency" in Common Foreign and Security Policy (CFSP) matters:

> 1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.
>
> 2. The Presidency shall be responsible for the implementation of common measures; in that capacity it shall in principle express the position of the Union in intergovernmental organizations and international conferences.[84]
>
> The presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy

82. Treaty of Amsterdam, *supra* note 12, art 12.

83. *See* "Tables of Equivalences referred to in Article 12 of the Treaty of Amsterdam," Treaty of Amsterdam, *supra* note 12, 1997 O.J. (C 340) 85, 86.

84. TEU, *supra* note 9, art. J.5, paras. 1, 2.

> and shall ensure that the views of the European Parliament are duly taken into consideration.[85]

The "troika" referred to above, in the context of the rotation of the Member States in the Presidency of the Council, has its formulation in paragraph 3, Article J.5 of the TEU:

> In the tasks referred to in paragraphs 1 and 2, the Presidency shall be assisted if need be by the previous and next Member States to hold the Presidency. (The Commission shall be fully associated in these tasks).[86]

From the future modifications brought about by the Treaty of Amsterdam, only these shall be noted here:

The full association of the Commission in the tasks of the Presidency is confirmed, followed by: "The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency." - which means the end of the "troika."[87]

There will in the future be a High Representative for the common foreign and security policy, who will be the Secretary-General of the Council.[88]

If agreements with one or more States or international organizations in implementation of this Title will be necessary, the Council may authorize the Presidency to open negotiations to that effect. The Commission will assist the Presidency "as appropriate."[89]

Conclusion

The Presidency of the Council (of the European Communities / European Union) has undergone, over the last forty years, quite a remarkable development. In the beginning, at the conception of the European Coal and Steel Community, all the interest centered on the High Authority, and the Council was barely present. With the Communities "of Rome," the Council(s) became present, but the presidency was barely perceptible. Over the last ten years, through the European Council and the three "Revision Treaties," the presidency of the Council has become politically and legally a very important "power player" in the European Communities / the Union - so much that legal texts use the term "The Presidency" without the necessary addition, "of the Council," and the press is tempted to make "the Presidency of the European Union" out of

85. *Id.* art. J.7, para. 1, first sentence.
86. *Id.* art. J.5, para. 3.
87. *Id.* art. J.5, Treaty of Amsterdam, *supra* note 12, art J.8.
88. Treaty of Amsterdam, *supra* note 12, art J.8, para. 3 (new).
89. *Id.* art J.14, para. 1 (new).

it. If it were necessary to furnish proof of this development, one could point to publications like the General Report on the Activities of the European Union.[90]

It is hoped that this article has been able to contribute to a better understanding of the presidency of the Council, a body which might have needed some clarification, and might possibly need further ones.

90. Commission of the European Communities, General Report on the Activities of the European Union, ch. 5, Role of the European Union in the World. (1996)