T.M.C. ASSER INSTITUUT
The Hague

EU ENLARGEMENT

THE CONSTITUTIONAL IMPACT AT EU AND NATIONAL LEVEL

edited by

Alfred E. Kellermann
Jaap W. de Zwaan
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Constitutional and Legal Policy Institute - Budapest, Hungary
Institute Address: Nador utca 11, H-1051 Budapest, Hungary; Tel. (36-1)3273102; URL: www.osi.hu/colpi; e-mail: colpi@osi.hu
The Constitutional and Legal Policy Institute (COLPI) is the legal institute of the Open Society Institute network, closely affiliated with the Central European University in Budapest. It aims to support legal reform in all countries of Central and Eastern Europe, including all former Soviet republics and Mongolia. Its main activities are related to legal education, and the protection of human rights, rule of law, and democracy. Special attention is being paid to issues of criminal justice and the judiciary. COLPI's activities are not only aimed at research, but it undertakes, in particular, large operational support programmes in cooperation with local Soros foundations in the various countries.

FOREWORD

The subject of this Conference concerns the impact the enlargement of the European Union has on the constitutional provisions of both levels of European administration, the national and the European level.

This subject is the more attractive because the 'constitutional' impact of enlargement is an essential element in the context of the 'rule of law' as one of the general principles of the Union.[1] Here a relationship does exist with objectives such as a good and transparent system of governance, a democratic legislative process, an independent judiciary and an adequate system of legal protection.

As to the national level, the implications membership of the Union has for the constitutional texts of the (candidate) member States have a connection with the fundamental characteristics of Community law such as priority of European law (over national law), direct applicability and direct effect. These principles reflect the interest in ensuring that European law, once applied in the national context by the public authorities or the judiciary, is made fully effective, for the benefit not only of the public authorities but also of the ordinary citizen.

As to the European level, since the Asser Conference was held in December 2000 an agreement has been reached about the terms of the Treaty of Nice. The final outcome of this so-called Intergovernmental Conference 2000, which aimed at providing for an adequate preparation of the working of the institutions in the perspective of the enlargement of the European Union, has been commented upon as a modest step in the process of European Integration.

The IGC 2000 has also called for a new Intergovernmental Conference to be held in the year 2004. As subjects to be discussed in that conference have been selected:[2]

- the establishment and monitoring of a more precise delimitation of competences between the European Union and the member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights of the European Union proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;
- a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
- the role of national parliaments in the European architecture.

[1] Art. 6(1) EU.

[2] See the Declaration on the Future of the Union to be included in the Final Act of the Conference.

Whereas the Asser Conference focused on both levels of government, the national and the Union level, the IGC 2004 will mainly deal with the European level of government.

During our Conference the proposal was made that the Conference should be kept intact as a platform enabling experts from the present and the candidate States to discuss themes of a common interest. The IGC 2000 also has stressed the interest of a public debate to be held between all interested circles: politics, public authorities, academic world and interest groups, about the fundamental themes to be debated in the year 2004.

These new developments in the context of the IGC 2000 thus represent an extra impetus to maintain our Conference as a permanent network of expertise.

JAAP W. DE ZWAAN
Chairman of the Conference

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ABBREVIATIONS

AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
All ER	All England Law Reports
AP	Accession Parnership
BGBl.	Bundesgesetzblatt
Bull EC	Bulletin of the European Commission
BverfG	Bundesverfassungsgericht
CEECs	Central and Eastern European Countries
CFDT	Confédération Française Démocratique du Travail
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
Charter	Charter of Fundamental Rights
CIS	Commonwealth of Independent States
CLJ	Cambridge Law Journal
CLR	Columbia Law Journal
CMLR	Common Market Law Reports
CMLRev.	Common Market Law Review
COLPI	Constitutional Legal Policy Institute
COM	Commission Document
COSAC	Conference of European Affairs Committees in the National Parliaments of the member States
CSCE	Conference on Security and Cooperation in Europe
Dalloz Jur.	Dalloz Jurisprudence
DR	Decisions and Reports
EA	Europe Agreement
EAEC	European Atomic Energy Community
EAGGF	European Agricultural Guidance and Guaranty Fund
EC	European Community
ECA	European Communities Act
ECB	European Central Bank
ECEC	Estonian Constitutional Expert Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECSC	European Conference on Security Cooperation
ECT	European Community Treaty (also TEU)
EEA Agreement	European Economic Area Agreement
EEC	European Economic Community
EFTA	European Free Trade Association
EJIL	European Journal of International Law
ELRev.	European Law Review
EMS	European Monetary System
EMU	European Monetary Union
EP	European Parliament
ERDF	European Regional Development Fund
ERM	Exchange Rate Mechanism

ESCB	European System of Central Banks
ESCU	European Conference on Security Cooperation
ESF	European Social Fund
EU	European Union
EUI	European University Institute, Florence
Euratom	European Atomic Energy Community
Eur. Court HR	European Court of Human Rights
Europol	European Police Cooperation
FIDE	Fédération Internationale pour le Droit Européen
FIFG	Financial Instrument for Fisheries Guidance
FRG	Federal Republic of Germany
GATT	General Agreement on Tariffs and Trade
GDR	German Democratic Republic
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICLQ	International Comparative Law Quaterly
IG	Instrument of Government
IGC	Intergovernmental Conference
IJEL	Irish Journal of European Law
ILO	International Labour Organization
ILM	International Legal Materials
ILRM	Irish Law Reports Monthtly
IR	International Relations
JCMS	Journal of Common Market Studies
LGDJ	Librairie Générale de Droit et de Jurisprudence
LQR	Law Quaterly Review
MEP	Member of the European Parliament
MP	Members of Parliament
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NIS	Newly Independent States
NPAA	National Programmes for the Adoption of the Acquis
NQHR	Netherlands Quaterly of Human Rights
nyr	not yet reported
OGH	Oberster Gerichtshof
OJ	Official Journal of the European Community
ONP Directive	Open Network Provision Directive
OSCE	Organisation de la Sécurité et de la Coopération en Europe
PCA	Partnership and Cooperation Agreements
QMV	Qualified Majority Voting
TEC	Treaty of the European Community
TEU	Treaty on European Union
TRNC	Turkish Republic of Northern Cyprus
VAT	Value Added Tax
VfGH	Verfassungsgerichtshof
VwGH	Verwaltungsgerichtshof
WIPO	World Intellectual Property Organisation
Yale L.J.	Yale Law Journal
YEL	Yearbook of European Law
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

REPORT ON THE CONFERENCE

Alfred E. Kellermann*

CONTENTS

OPENING SPEECH BY L.W. GORMLEY[1]

It is with great pleasure that I welcome participants to the 30th session of the Asser Institute Colloquium on European Law, once again in this magnificent setting at Scheveningen: The Hague on the Sea.

The subject of our deliberations: institutional and constitutional aspects of enlargement raises a number of key issues for the future direction of the European Union itself, as well as major questions for the constitutional order of the candidate countries; it is that second aspect which is dealt with here. The Copenhagen criteria[2] rightly place political and legal aspects at the head of the requirements which the candidate countries must meet. These aspects: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, are now also clearly anchored in the Treaty on European Union, albeit in broader terms.[3]

In such broader terms they serve as touchstones not merely for candidate countries but also for conduct of the existing member States. In the light of the

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[2] Bull. EC 6-1993 point I.13.

[3] Art. 6(1) TEU.

A.E. Kellermann et al. (Eds.), EU Enlargement: The Constitutional Impact at EU and National Level

not infrequently significant success of extremist parties in some of the present member States, the respect for and protection of minorities is of particular importance in assessing conformity with the broad west-European consensus as to tolerance in modern society. A society which is at ease with itself and its component parts is more likely to be a tolerant society. Yet in many areas of Europe (both within the European Union and outside) central problems arise from the perception of uncertainty as to identity, and in many regions the much-voiced anguish caused by the apparent lack of a clear feeling of belonging. Globalisation, and even regionalisation at anything more than the neighbourhood level, have awakened these emotions: the reaction to a feeling of no longer being in control of one's destiny is to seek someone else to blame. In such conditions, intolerance breeds, and the phenomenon of the enemy within is created to shoulder the blame along with the alleged external enemy.

Enlargement of the European Union may well serve to provide a framework within which the feeling of belonging and the sense of identity achieve new dimensions, for the existing member States and their citizens on the one hand, and for the candidate countries and their citizens on the other. That will only come about, however, with a sea-change in the appreciation of the Union in the eyes of its citizens. Central to that sea-change will be a shift in legislative power from the Council to the European Parliament, the seeds of which have already been sown in the systematic improvement of Parliament's voice at every substantive amendment of the Community and Union Treaties. In other words, the peoples of the Union must feel that it has something more to offer them than simply the creation of yet another layer of the political class: unrepresentative, uncontrollable and concerned with its self-perpetuation and its own importance. What is perceived to be lacking are visions and strategies to ensure the well-being of the Union's citizens and its other residents, and inclusive measures designed to bring an end to social, economic and political exclusion. Enlargement may in fact prove to be the catalyst for a complete reanalysis of the role of the member States in the decision-making process, as the present institutional structure becomes ever more unwieldy and inappropriate. In Union-level decision-making circles, however, there is no clear policy consensus: achieving the balance between the cultures of North and South, East and West, and between the interests of the larger member States and those of the smaller member States, is proving an elusive target. Legal structures not only shape and give form to political concepts, they may also serve as models for architectural inspiration. The need for stable institutions guaranteeing democracy is in the first instance addressed to the candidate countries, but it is a need which should not be forgotten at the Union level itself. If the present structure of the Union is an interim phase in its development, it will have to be seen to be democratic and to command the confidence of its citizens before the peoples of candidate countries can really be expected to exchange their present situation for membership of a Union committed to further integration. The need for change and adaptation is therefore not confined to the national level: it indubitably forms

the greatest challenge for the political class at the level of the Union itself.

Within the Union the rule of law itself is a principle which can be used to develop confidence in the minds of citizens in the future European architecture. That itself will demand another sea-change a complete revision of the attitude of the political class to law and legal institutions. Many politicians, particularly those in regional or local assembles, seem to have difficulty in accepting the *acquis communautaire*: concepts such as the uniformity of application of Community legislation, the duty to cooperate, and the obligation to conform to a set of rules once those have been agreed are not infrequently under attack. Thus calls for regional authorities not to be bound by Community measures when they have not participated in the adoption of those measures ignore the essential place of the duties set out in Article 10 EC in ensuring the effectiveness of Community law and the ability of those upon whom it confers rights to benefit therefrom.[4] The low value which some politicians and administrations in the present member States place on compliance with legal instruments (evidenced by the constant stream of infringement proceedings and the increasing recourse to national courts by individuals seeking to establish or use their rights or to obtain damages for loss suffered) does not send a convincing message about respect for the rule of law to politicians in the candidate countries.

Another aspect central to respect for the rule of law is confidence in the proper functioning of the judiciary, particularly in its willingness to take on politicians and the administration. Even in some member States the awareness of the impact of Community law is still developing surprisingly slowly, and there is still a clear need not merely for information multiplication, but for steps to facilitate the appreciation of Community law as an integral and dynamic element within each member State's legal order. Sometimes Community law is perceived as being in this world but not of it, and in certain judicial circles in some member States there is still an astonishing degree of ignorance about its effects. In relation to the candidate countries there may well be problems in effecting the transformation from the judicial culture of the past in order to ensure that judges take full account of the requirements of the Community legal order. Given that national judiciaries in the member States have not infrequently had major problems copping with the impact of Community law, it will be scarcely surprising if there are not still a few hitches in the early years following enlargement. That said, though, the process of training the judiciary and the civil service in the candidate countries is

[4] No matter how appealing such sentiments are to regional politicians seeking to increase their influence, they remain wholly alien to the fundamental concepts of the Community as developed in the case-law of the Court of Justice. Even the FIDE Conference at Helsinki was unfortunately not immune from people seeking to promote such sentiments. While the regional sensitivities on which such sentiments are based may be politically understandable, they would undoubtedly lead the Community ship straight onto the rocks.

proceeding apace, and the new entrants in the next enlargements will in fact be the best-prepared of any new entrants to the Community or the Union.

To a certain extent enlargement issues are often seen as mechanical: the *acquis communautaire* must be taken on board; what can be negotiated is flexibility in terms of transitional periods, assistance in restructuring to meet Community requirements, and little more. The essential changes in the national systems of the candidate countries are discussed in the various papers presented at this conference, in conjunction with experiences of member States which have acceded on earlier enlargements. Yet, as I have tried to highlight, enlargement will bring with it a whole series of challenges, and it is in the discussion of these challenges, as well as in the mastery of more technical detail, that the mutual understanding and exchange of experiences which this conference promotes is at its most useful.

Parallel to the challenges of enlargement, the whole architecture of the Union will have to be rethought. The absence of political consensus about the future direction of the Union means that the prediction that those entering the edifice which the Union represents may well have to wear hard hats for some time to come[5] shows no sign of becoming inaccurate. It is to be hoped that the papers presented here will contribute in a stimulating manner to the debate, and that they may assist the builders in their task, as well as encourage improvement in architectural design.

I. REASONS TO HOLD THE CONFERENCE

The Conference on 'The Constitutional Impact of Enlargement at EU and National Level', held in The Hague on 20-23 September 2000 was the 30th session of the Colloquium on European Law of the T.M.C. Asser Institute, an interuniversity institute founded in 1965 by eight law faculties of the Dutch universities in the field of public international law, private international law, European law and commercial arbitration.

The Asser conferences are characterized by the quality of the legal debates between lawyers and academics that focus on both theoretical and practical viewpoints. These academic debates stimulate brainstorming, as everybody is free to present his own ideas and give his own personal viewpoint.

More than threehundred participants (eighty from the candidate countries) attended this successful conference. The rapporteurs and speakers were representatives from the European institutions (European Commission, European Parliament, European Court of Justice) and representatives of the Governments of the Netherlands and some candidate countries and many representatives of national

[5] Gormley in O'Keeffe & Twomey (ed.), *Legal Issues of the Amsterdam Treaty* (Oxford, 1999) p. 57 at p. 70.

civil, administrative and constitutional courts. Finally, professors and research fellows from universities in Europe, Canada and the United States attended the conference, together with nearly all the law faculties of the Dutch universities.

The first reason to hold a conference on the impact of Enlargement at National Level, was that the EU candidate countries may learn from the experiences and problems which the EU member States have encountered in adapting their constitution or constitutional principles to the legal obligations taken under the EC Treaty since 1958. The candidate countries are obliged in the process of accession (Europe agreements, Agenda 2000) to harmonize and adapt their national legislation and therefore also, as far as necessary, their national constitutions and constitutional practice.

In organizing a conference to analyze the constitutional impact of enlargement at national level there were a number of factors to consider. For example, the accession criteria as formulated by the European Council of Copenhagen in June 1993.

> 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, fundamental rights and respect for and protection of minorities.'

These topics are generally in most states regulated by and protected by the national constitution or national constitutional laws. Therefore, we have to analyze the relevant national constitutional provisions guaranteeing democracy, the rule of law, human rights and protection of minorities. Analyzing the national provisions is, however, not enough. It is also necessary to assess how the democracy works in practice and to evaluate constitutional practice: to what extent are the various rights and freedoms exercised?

Another important reason is that, in parallel with the accession negotiations, one should also keep in mind the constitutional requirements to be met before new Members can join the EU. *In the first place* the accession treaties will need to be ratified by the existing and future member States according to their constitutional requirements. In order to ratify the accession treaties and to accord direct effect and supremacy to EC law, it may be necessary in some candidate countries to adapt their national constitutions and incorporate provisions concerning the transfer of sovereign or state powers to an international organization such as the EU.

In the second place a condition for accession is that the national constitutions of the candidate countries have to comply with the *acquis communautaire* not only in theory but also in practice. The European Court of Justice may, for example, have propounded the theory of supremacy of Community law and repeatedly emphasized its requirements, but its practical application in the EU member States is, however, ultimately dependent on the internal acceptance by the national courts of the member States. A different attitude has further been developed by the national courts between the application of primary or secondary

community law. For non-member States, like the candidate countries, it is clear that the legal effect of these community constitutional principles always depend on the nature and content of their national constitutional provisions and practice and the way it is interpreted by the national judiciary and influenced by national traditions.

The second reason to hold this Conference was to contribute to the legal debate on the drawing up of a Draft Charter of Fundamental Rights of the European Union. This Charter will raise many legal questions concerning its relationship to and impact on other international charters and national constitutions and its impact on Enlargement.

The last but certainly not the least reason to hold this conference was to discuss the Institutional Reform of the EU, a necessity in view of enlargement (IGC) as well as the other 'Constitutional Issues' on the Agenda of the European Council to be held in December 2000 in Nice.

II. INTERNATIONAL LAW IN THE NETHERLANDS

International law merits special attention in the Netherlands. One example of this special notice is the above-mentioned foundation of an interuniversity institute for international law such as the T.M.C. Asser Institute. Since the fall of the Berlin Wall, the Asser College Europe programme, with the financial support of the Netherlands Ministry of Foreign Affairs, has offered postgraduate courses in International Trade and Business Law for postgraduate lawyers from Central and Eastern Europe in The Hague, 'the legal capital of the world' as it has been termed by Boutros Gali.

One of the Copenhagen criteria for accession is, inter alia,. respect for the rule of law. The rule of law is not only European law. Therefore, it is considered that for accession it is also necessary to improve the knowledge of the lawyers, civil servants and judges of the candidate countries in other fields such as public international law, private international law and international trade law as well as public and private national law. Thanks to these post-graduate training programmes many lawyers of Central and Eastern Europe have deepened their knowledge of EU law, international trade law, business law, international arbitration and private international law. Since 1994 more than threehundred scholarships have been awarded within the framework of Asser College Europe to young talented individuals, some of whom are currently engaged in accession negotiations.

As a preparation for accession we are currently offering courses in The Hague as well as in the candidate countries for civil servants, lawyers, judges, (staff) members of parliament (present at this conference were Slovenian, Latvian and Czech members) from many candidate countries in the framework of several Phare projects.

The Netherlands Ministry of Justice is emphasizing the importance of cooperation with the candidate countries and is therefore providing technical assistance in the various fields of law to the countries of Central and Eastern Europe, which gave rise to the realisation of a Phare Project on 'The Reinforcement of the Rule of Law' within the framework of the European Union.

It is worth mentioning that in her Throne Speech on Tuesday 19 September 2000 for the Opening of the Plenary Session of the Dutch Parliament, the Queen of the Netherlands, Beatrix referred implicitly to some of the topics of this conference where Her Majesty said:

> 'Our Constitution has built-in and permanent values. It is also a dynamic document where essential changes in society find their place. The Government is committed that a number of issues are to be incorporated into the Constitution, especially the corrective referendum.
> Europe is no longer foreign territory. Europe is our future where we will find our future opportunities. In the dynamic process of European cooperation far-reaching steps have been made.
> The enlargement with Central and Eastern European countries is a historic task.
> It offers economic opportunities for the candidate-states and the current member States and also [firmly] anchors democracy and stability on our own continent. The thorough preparation for its membership requires hard work for the new countries. The Netherlands supports them in this effort.'

The study of international law always merits special notice in the Netherlands, the country of Hugo Grotius.[6] The evolution of the thinking of Grotius is well known. In *Mare Liberum* he rejects the idea that any part of the sea can be exclusive property and therefore fishing remains free and open to all. This way of thinking may have inspired the principle of equal access by all Community fishermen to the territorial waters and fishing zones of all member States which was a major obstacle on the road to enlargement in 1973. Unlike the original member States the United Kingdom had an old tradition of fishing zones reserved for coastal fishermen.

Other examples of the attention drawn to international law in the Netherlands are Article 90 of the Dutch Constitution: 'The Government promotes the development of the international legal order' and the following passages of the Speech given on behalf of the Minister of the Interior and Kingdom Relations at the Conference on 21 September 2000 (See infra, Article Jit Peters for the full text):

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[6] See, International Law and The Grotian Heritage, A commemorative colloquium held at The Hague on 8 April 1983 on the fourth centenary of the birth of Hugo Grotius, edited and published by the T.M.C. Asser Instituut, 1985. International Law in the Netherlands, edited by H.F. van Panhuys, et. al., Three Volumes, published by T.M.C. Asser Instituut , Sijthoff & Noordhoff – Oceana , 1978 and following years.

'The Dutch constitution
As far back as the early 1950s, a debate took place in the Netherlands on the question of whether to incorporate provisions in the Constitution that would make it possible to give direct effect to rules of international law and judgments handed down by international courts. The point at issue was not really whether direct effect should be possible or indeed permissible in the existing system, but whether the Constitution should say so in so many words.
...
The Dutch Constitution can therefore prohibit judicial review of the constitutionality of Acts of Parliament or treaties (which have been ratified by the legislature either explicitly or tacitly) on the one hand and on the other not only permit but even order that Acts of Parliament and indeed the Constitution itself be reviewed in the light of international law and if necessary be declared inapplicable.'

III. MAIN CONFERENCE QUESTIONS AS DISCUSSED IN THE OFFICIAL SPEECHES

The speakers, rapporteurs, panel members and participants were invited to discuss and answer the main Conference questions in their written papers and contributions to the debate at the conference. The answers may be found in the respective final contributions of the authors to this book.

In the following I have selected some passages of only the official speeches, as far as they could be considered as dealing with the main Conference questions. The selected passages are preceded by the relevant questions. The selected speeches are from M. Gunter Verheugen, the EU Commissioner for Enlargement, M. Richard Corbett, MEP, M. A.H. Korthals, the Dutch Minister of Justice, M. Dick Benschop, the Dutch State Secretary for Foreign Affairs and Jit Peters on behalf of the Dutch Minister of the Interior and Kingdom Relations.

QUESTIONS CONCERNING EU LEVEL

EU Constitutional Order/IGC

1. *What are your suggestions for further development of the Constitutional Order of the Union in the perspective of enlargement, for example: Will the Pillar structure be maintained (intergovernmental cooperation) with the introduction of more or less Community working methods, or is it feasible to further improve the 'constitutional character' of the EU (communautarization)?*
2. *What are your suggestions for EU institutional reform? How to adapt the institutions to make a success of enlargement?*

• Gunter Verheugen in his Dinner Speech

'My view is that the IGC agenda is necessary and sufficient for enlargement. Three of the core IGC items may be known, somewhat misleadingly, as the "Amsterdam leftovers", but they are by no means minor matters. They are politically sensitive issues, which were left over, precisely because they were so difficult to handle.

What we are talking about here is whether in a EU of twenty-eight or more members, each member State should continue to have one Commissioner, with two Commissioners reserved for each of the larger member States. Personally, in the interest of efficiency I would opt for a smaller Commission, which can retain its dynamism when this situation arises, but on this as well as on all IGC matters the decision of course rests with the member States.

Another question is whether the present system of voting in the Council, which is deliberately tilted against bigger countries, can remain as it is in a future Union dominated by small or medium-sized members? My view is that the current imbalance should not be left to deteriorate any further. Adjustments should therefore be made so a country's voting power in the Council will more closely correspond to the size of its population.

Finally, there is the question whether, with an additional thirteen or more potential vetoes in the Council, we can afford to continue having unanimity in important areas of EU decision-making? I am an advocate of a generous extension of qualified majority voting because otherwise the risk of a stalemate in EU affairs will be too great. Not because I believe that the new member States will be less integration-friendly than the existing ones, but because statistically the increase in numbers will inevitably make consensus much harder to achieve.

The increase in numbers also poses the question whether the existing Treaty arrangements for closer co-operation between a limited number of member States should be strengthened. I would be in favour of making closer co-operation more flexible, as long as three conditions are met: closer co-operation must stay within the institutional framework of the Treaties, it must not go against existing Community policies, and participation must be open to all member States able and willing to join. If these conditions are met, closer co-operation will not weaken the EU. It will promote further integration, by allowing some pioneer member State to make the first steps ahead in new areas, whilst others can join later, at their own pace. (...)

If a new IGC were to be launched, it should not be a condition for enlargement. There is a big difference between the present and a possible new IGC: the Amsterdam leftovers and the rest of the Nice agenda concern issues intrinsically linked to the efficient functioning of the EU after enlargement. The post-Nice agenda is different: the wider institutional debate is legitimate in its own right, and the applicant countries should have the opportunity to participate and express their views.'