

Wolfgang Wessels, The European Council: a denaturing of the Community or indispensable decision-making body? (1988)

Caption: In this article, published in 1988, Wolfgang Wessels, Director of the Institut für Europäische Politik in Bonn and Head of the Department of Political and Administrative Studies at the College of Europe in Bruges, analyses the development of the role and activities of the European Council 12 years after its creation in 1974 and considers the consequences of its establishment for the institutional balance of the Community.

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The European Council: A denaturing of the Community or indispensable decision-making body?

Wolfgang Wessels

On the relevance of the European Council

The Need for a Closer Look at a 'Foreign Body'

No 'institution' has influenced Community and Western European policies in the seventies and early eighties more than the European Council. However, the political and academic debate does not live up to this importance.

Since the creation of the European Council in Paris 1974, the Heads of State and Government have dealt with all the vital problems facing Western Europe. They have exchanged views on the major points of their international and economic agenda: ranging from impressions on new US or Soviet leaders to the use of nuclear energy. They have taken important decisions on the institutional framework of the Community (such as on the direct elections to the European Parliament), on the creation of the European Monetary System and on the financing of Community instruments, as well as on the reform of the Common Agricultural Policy (CAP). They have made major declarations on international crisis areas like the Middle East, Afghanistan, Poland, Central America and South Africa, and they have put forward common analyses and assessments on economic and social developments in the European and international economic and monetary system. They have also launched initiatives for new Community policies and for a European Union. Finally the European Council passed the package of decisions which make up the essential elements of the Single European Act, the first major revision and amendment of the Rome Treaties.

The output failure of the European Council is however as impressive: the long and difficult process to reform the CAP, and to solve the budgetary quarrels caused or at least reinforced the overall malaise in the Community. The solutions finally found for those and other problems are incremental steps to mend fences but do not overcome the basic causes of the problems facing the Community. The resistance to seriously tackling integration plans, from the Tindemans Report to the Dooge Committee, has blocked any major progress towards a European Union. The Milan meeting (1985) - ten years after its creation - was the first intensive attempt of the Heads of Government to confront their conceptions about the future direction of the EC and to get beyond declarations. The Single European Act as the outcome of these initiatives was a modest - if not disappointing - step in terms of the goals set by the Heads of Government themselves.

In any case the very existence and activities of these regular summits 'above' or 'beside' the normal institutional set-up influenced to a considerable degree the functions of EC institutions and the EC's institutional equilibrium as well as the procedures of European Political Cooperation (EPC). Given this importance the European Council 'deserves' an adequate analysis of its nature, role and future; although the crucial role of the European Council has been generally accepted - reluctantly even by forces like the federalists who were opposed to the creation of this intergovernmental body - the level of political and academic debate is relatively low compared with, for example, that concerning the European Parliament and the European Monetary System (EMS). Political and academic debates on the European Council are quite often victims of formulas reflecting expectations, hopes, and illusions about the European Council. The real role and impact of the European Council are often disguised by predetermined conceptions about what the Heads of Government declare they do or outside observers claim they should do. In academic literature ⁽¹⁾ there have been a couple of highly interesting, though necessarily limited articles and only one monograph. The Tindemans and the Three Wise Men's Reports (European Parliament, 1982, p. 366; pp. 421-437) contained some remarks about the role and the reform of the European Council, but the subsequent debate on these reports centred on other issues. A report of the EP on the European Council ⁽²⁾ was approved without major discussion and follow-up. Controversy has intensified as a result of the almost parallel projects of Genscher-Colombo and Spinelli; both the Solemn Declaration (Commission of the EC, 1983, p. 24) and the EP's Draft Treaty on the European Union (Commission of the EC, 1984, p. 8) attributed vital though different roles to the European Council in the future institutional system of the European Union, as

did the Dooge Report (Commission of the EC, 1985). The Single European Act was a sort of anticlimax: the European Council was mentioned as a sort of overarching institution though outside the legal system of the Community. No list of functions was agreed upon as was done in the Solemn Declaration. Thus in the Single European Act the Heads of Government have not clarified the nature and role of their 'body', but just confirmed its hybrid character. The debate on the European Council has therefore not been closed by the Single European Act.

Conceptual Models of Community Summitry

Outside or Inside the Community System

The European Council is not the product of one consistent concept or 'grand design' of European integration or cooperation. Summitry has been advocated and evaluated from widely different - even contradictory - models and strategies of European endeavour; thus its role and nature can be and are defined in different conceptual models.

In a model of the European Council as 'decision-maker of last resort', elements of which can be found in the Paris 1972 Summit Declaration as well as in the Draft Treaty of the European Parliament on European Union, the Heads of Government would only be responsible for major constitutional acts towards the European Union, e.g. by shifting competences from the national level to that of the European Union. The pooled sovereignty of member countries would only be used in extreme situations of integrative *sauts qualitatifs* or in real international crisis situations. Then the Heads of Government would fulfil their most useful functions, namely to mobilize as a *deus ex machina* the ultimate resources of national sovereignties.

Regular meetings of those with the ultimate national power would however abuse this potential power of 'last resort'. 'Normal' work would be left to the institutions of the Community or of a European Union.

In a 'presidency model' (which found its clearest expression in the Fouchet Plans (European Parliament, 1982, p. 109) and subsequent French conceptions up to Pompidou ⁽³⁾), summitry would regularly unite the political top; it is understood as a 'natural' and logical consequence that those who are bearing the highest responsibilities for their nation state should get together to talk and decide about the vital questions being treated in the Community and EPC framework. As representatives of the national sovereignties they would meet without any legal constraints to talk confidentially about all European problems -including economic and security questions - and would take decisions by consent. The decisions by a body outside and above the Community institutions would be politically binding on EC and EPC bodies though the summitry itself would not be integrated within a legal system; or at least would not have obligations *vis-à-vis* independent bodies like the EP or the Commission. In this concept summitry by pooling national sovereignties represents the 'European identity' ⁽⁴⁾. Preparation and implementation would be passed to a special high-level secretariat of national civil servants with no independent role of its own but with a strong *de facto* position *vis-à-vis* Community bodies.

The 'parallel model' - expressed in the Benelux contributions to the Fouchet plans (European Parliament, 1982, p. 122) and in parts of the Draft Treaty on the European Union (Official Journal, 1984) - gives regular summitry an important guiding and decision-making role in all areas outside the Community's (economic and social) competences. Heads of Government would deal mainly with foreign policy and security matters; this division of work would prevent any disturbance in the normal functioning of Community (or European Union) bodies and would enlarge common activities in the 'high political' areas of particular national sensitivity.

In the 'Council model' - elements of which can be found in the debates of the European Parliament and in declarations by the summits themselves ⁽⁵⁾ - the Heads of Government would meet regularly as Council of the Community and as the highest body of the European Political Cooperation (EPC) machinery. The European Council would be subject to all Treaty provisions and would form an integral part of the division of powers within the Community institutional system. The overall role of the Heads of Government would then be to make broad package deals on the vital issues in the Community.

As each model implies a different effect on the Community and on Western politics in general, the struggle behind the scene was intensive and the outcome elusive, as so often within the Community.

The Creation of the European Council

Summitry As One Way Out of the Disequilibrium

The creation of the European Council in 1974 was not the result of a clear-cut strategy to implement one of these models but the result of a package deal put together by the new French and German leaders on the organization of Community and Western European politics as well as by elements of Community institutional orthodoxy. At the same time the agreement at the 1974 Paris Summit to establish the European Council reflected trends towards an intensified Western European cooperation and an evolution towards an increased national role for the Heads of Government. It also took account of several quite different experiences of earlier summits. The formula creating the European Council at the 1974 Paris Summit was quite close to the Council model.

Important features of the international environment favouring a European regional diplomacy on the highest political level in the early seventies included a growing economic interdependence of nation-states, for which some of the fixed rules of the post-war system, like fixed exchange rates, could no longer be applied. Thus, the need for constant high-level management by national governments was increased. In this situation of interdependence other powers (US, USSR, OPEC) linked political, security and economic issues and thus bypassed narrow responsibilities of individual ministries and the sectoral Councils of the EC; the Heads of Government, representing general overall competence, were urged to get involved; this international demand for an overall responsibility reduced the utility of the parallel model of regular summitry. Finally other forms of regional summitry, like that of the Arab league, had developed models to which the European Council was already a latecomer.

Besides international pressures, changing constellations within Western Europe gave strong incentives for a Community summitry. The German *Ostpolitik* made the Federal Republic's government look for a West European counterweight and induced other member countries, especially France, to undertake again - as in earlier periods of the Community history - special efforts at further integrating the Federal Republic into some kind of a common framework. These efforts were strengthened by post-Gaullist attempts of France to again use the European Community increasingly for political and economic reasons while sticking to the Gaullist distrust of supranationalism and by the entry of new member countries without supranational visions but with a keen interest in common European stances on international issues. Also the creation of the EPC in 1970 increased the need for more coordination among different avenues and sectors of common West European and Community activities. Even more in terms of stabilizing the *status quo* summitry was perceived as vital: the collapse of the Bretton Woods system and the 1973 oil crisis were traumatic experiences which stimulated member countries to increase common efforts if only to retain the *status quo* of the Community's *acquis communautaire* and the post-war welfare state.

Given these internal and external demands the institutional blockage or vacuum (Tindemans, 1977, p. 3) of the Community's institutional system was considered a major weakness of Western Europe in dealing seriously with the economic crisis and further challenges. Within the possible range of potential options for institutional reforms summitry was proposed as an alternative to more supranational or federal solutions. It became the substitute for returning to the original equilibrium of the Treaty.

The decision for summitry was also caused by the increase in the national roles of Heads of Government. The widespread evolution in the media required the Heads of Government to constantly search for public presentations; the increasing importance of economic policies for winning elections in welfare states made the Heads of Government themselves extremely conscious of their economic performance. International summitry can thus serve both political requirements: by summitry the Head of Government can demonstrate his/her 'historical role' and his/ her 'international reputation' to the national voters and his/her capacity to influence those policies for which the electorate will make the leader responsible.

When Giscard d'Estaing and Helmut Schmidt took office in spring 1974, they were not only confronted with those pressures and features of the international, European and national systems but also with some positive and some negative experiences of the earlier summits in The Hague 1969, Paris 1972 and Copenhagen 1973, while the summits in the sixties (Paris and Bonn 1961, Rome 1967) were nearly forgotten. The experiences of those Community summits demonstrated that two procedural ingredients are needed for a successful meeting: careful preparation and time for a confidential exchange of views. A meeting in an informal setting without adequate preparation - like that in Copenhagen 1973 - would be a rather chaotic event without any result. Meetings with well-prepared documents without giving the leaders the possibility of confidential negotiations - like Paris 1972 - would be a declaratory media event without the Heads of Government mobilizing additional forces; '*deus-ex-machina-meetings*' like Paris 1972, setting goals in timetables without providing adequate institutions, tools and packages for implementation, leave controversies to be resolved by ministers. They give overall guidelines which - though not unimportant - are not enough to guarantee the success in the follow-up of the summits. The lesson became obvious: if Heads of Government have the central responsibility for policies in the national framework, then they need also to be involved directly in those European forums where real and binding decisions are taken. The model of the European Council only as 'last resort' became discredited. To leave the key actors out of the game could only mean additional burdens on Community procedures unless a federal system without a major role for national governments could be established.

Both new leaders - though not necessarily strong Community adherents - realized that the Community could at least fulfil a function of stabilizing inter-European relations and as a coalition in the international system. The political style of both Giscard d'Estaing and Helmut Schmidt, based on common experiences as finance ministers, was to get the responsible statesmen together without civil servants. According to this 'library group' concept, originally applied in the Western summitry (Putnam, 1984, p. 53), the confidential exchanges of views should lead to common positions on all international and European issues; these would then serve as guidelines for the national policies pursued by the statesmen involved. The dynamic force of such a style would be the mutual trust in the colleague to implement the consensus achieved at home and in other international forums. Both leaders considered themselves as intellectually brilliant and forceful statesmen who could make this concept work.

As usual in the Community history those trends, pressures and perspectives were realized within a broad package: the creation of the European Council was among several decisions taken at the 1974 Paris Summit in which different Community controversies were solved, e.g. the creation of the EC's Regional Fund, a strategy for international energy policy, as well as the decision for there to be direct elections to the European Parliament. The exact formula for creating the European Council was based on a compromise between the Presidency and the Council concept, in which the Council concept dominated due to the insistence of those countries stressing Community orthodoxy. The wording to meet, accompanied by the Ministers of Foreign Affairs, three times per year and, whenever necessary, in the Council of the Communities and in the context of political cooperation' ⁽⁶⁾ meant a clear victory for the Council model; other elements of the Paris institutional package underlined this interpretation: an administrative secretariat - not a political one, as the French wanted - was mentioned with the reference to existing practices and procedures; the role of the Commission, according to the Treaty and to EPC documents, was guaranteed, thus again overcoming French resistance. With other institutional agreements - like holding direct elections to the European Parliament, the mandate to the Belgian Prime Minister to develop a report for the European Union, more legislative power for the EP, strengthening the decision-making procedures of the Council, more administrative powers for the Commission - the communiqué of Paris 1974 was strongly oriented towards a Council model. However, as with other institutional agreements -except holding direct elections - the formula on the European Council was hardly implemented except for the paragraph mentioning the participants. The European Council played and plays a role widely different from that which its fathers wanted it to pursue.

On the Roles of the European Council

From Brainstorming and Setting of Guidelines to a de facto Decision-Making Body

The major tasks which the European Council should pursue were formulated by the fathers of the European Council and their descendants in the original formula of the 1974 Paris Summit, in a reform resolution of the European Council on its own working method, London 1977, and in the Solemn Declaration of Stuttgart 1983. In the Single European Act of 1986 the Heads of Government refrained from adding to this list which already included an impressive range of functions:

- exchanging views and achieving consensus positions in a closed circle of responsible statement without formal decisions or public declaration ⁽⁷⁾;
- giving political impetus to the construction of Europe and defining approaches to further the construction of Europe ⁽⁸⁾;
- enlarging the scope of common or coordinated activities by initiating cooperation in new areas of activities ⁽⁹⁾;
- issuing 'general political guidelines for the European Communities and European Political Cooperation' ⁽¹⁰⁾;
- guaranteeing the consistency of European policies both within the EC and between the EC and ECP ⁽¹¹⁾;
- expressing a 'solemnly common position in questions of external relations' ⁽¹²⁾.

A direct decision-making function is mentioned only reluctantly 'when the European Council acts in matters within the scope of the European Communities, it does so in its capacity as Council within the meaning of the Treaties' ⁽¹³⁾. In the London resolution ⁽¹⁴⁾, the Heads of Government acknowledged - with resistance - a certain kind of decision-making role as a disliked Court of Appeal. 'In rare cases the European Council should...decide on questions which have not been resolved on a lower level'.

The real performance of the European Council, however, looks different: the confidential exchanges of views without the foreign ministers take place regularly at the fireside after dinner on the first day. They apparently cover broad fields of interest like East-West topics. In the period between 1980 and 1984, the time allotted for these open discussions decreased.

All attempts to 'give political impetus' in the first ten years failed: the Tindemans Report, asked for by the European Council, was buried with a non-committal formula; the Three Wise Men Report, also ordered by the European Council, got one or two phrases in a communiqué without any follow-up; the Solemn Declaration in Stuttgart enlarged the field of cooperation marginally without setting up new institutional procedures and was in the final analysis more a description of existing practices.

The follow-up of those limited agreements was either ridiculous - like the yearly reports by the Foreign Ministers and the Commission on the progress towards a European Union - or not seriously pursued (like the European Foundation which was not ratified five years after it was agreed upon by the Heads of Government and like a new concertation procedure with the European Parliament which was proposed in the Solemn Declaration in Stuttgart but later on got stuck in the Council and was forgotten in the Single European Act). The deficit between the goals proclaimed by the Heads of Government themselves on the one hand, and the output and implementation on the other, represents the most obvious failure of the European Council.

The Milan and Luxembourg Summits of 1985 were the first meetings devoted totally to the basic integration function. The deliberations on the Single European Act were the first serious attempt to deal comprehensively with the future shape of the European Community. The modest outcome once more illustrated the credibility gap between aspirations of at least some of the Heads of Government and the capacity of the European Council to conclude far-reaching agreements.

The scope-enlarging function was widely used by the Heads of Government: from The Hague 1969, which initiated European Political Cooperation, over the Solemn Declaration of Stuttgart 1983, with its passages on cultural cooperation, to the 1985 Luxembourg meeting which led to including new policy areas in the EEC Treaty.

The European Council did not explicitly assume the coordinating function except indirectly in very few cases, like the Stuttgart mandate, in which several issue areas were politically linked to each other.

The European Council regularly issued general guidelines, especially on economic and social issues. Those resulted, particularly during Giscard d'Estaing's and Helmut Schmidt's reign, from their seminar-like analyses and exhortations. The impact of these deliberations and statements was in most cases marginal as they rephrased existing consensus positions or in cases of disagreements formulated ambiguous compromises. When issuing 'orders' to Community bodies, they did not often bridge existing controversies among member countries on Community policies. Thus, declarations of general principles by the European Council did not normally solve problems.

The declaratory function of expressing common positions was used regularly in international crises - especially in the Middle East, Poland, Afghanistan, Central America and South Africa. The declarations were normally prepared within the EPC procedures. It is difficult to assess the effects of these declarations on third countries; for the Community countries, they represent at least something like a common *acquis politique*.

The performance of the European Council in these self-appointed functions was uneven. The decision-making function, however, developed in a way and with an intensity which was not provided for in the official role definitions; this feature is of major importance for the Community and a major clue for understanding the European Council. Indeed, the European Council became a -if not even *the- de facto* decision-making body of the Community.

From the first meeting of the European Council in Dublin, at which the major details of the corrective budgetary mechanism for the United Kingdom was agreed upon - some called this meeting the conference of pocket calculators - through the Brussels meeting 1978 in which the fine print of the EMS resolutions was clarified, to the Brussels, Fontainebleau and Dublin conferences in 1984, at which quotas and once again, the detailed sums and modalities of the British contribution were negotiated: at practically every session the Heads of Government took concrete decisions on Community matters - or at least tried to. They included policy issues of the *acquis communautaire* - such as the budgetary distribution, the regional and social fund, the internal market, milk and wine quotas; also institutional arrangements -such as the seat of the European Parliament and a secretariat for the EPC - were agreed upon as were problems of the external representation of the Community - such as in the case of the Conference on International Economic Cooperation and Western Summitry; finally the European Council decided or at least advised on constitutional issues - like criteria for membership and enlarging the EC.

In dealing with these issues, the history of the European Council's activities can be roughly divided into four periods: the period of scope enlargement lasted from 1975 to 1979, in which the traditional Community policies - the Common Agricultural Policy (CAP) and the Common Market - were only dealt with marginally; the culmination of the Giscard d'Estaing/Schmidt era was the creation of the European Monetary System (EMS) in 1978/79. From 1979 up to Dublin 1984, the reform of the CAP, the budget and its distribution among Community countries as well as the third enlargement became central topics of the deliberations of the European Council. With Milan and Luxembourg 1985 constitutional decision-making - the integration function -dominated the debate. From 1987 onwards we might expect a fourth phase of Community-centred topics, especially as the package on which the Luxembourg agreements of the Single European Act were based might get stuck. As the reforms of Luxembourg are limited, the call for a *saut qualitatif* will not be muted.

Decision-making Patterns

The European Council as Focus of Intense Bilateral and Community Diplomacy

The decision-making of the European Council has developed certain patterns of high importance for identifying its role within the Community and EPC. As to the legal nature, the agreements of the European Council which took different expressions ⁽¹⁵⁾ are not (and were not) binding. Though accepted as a possibility in the Paris formula and Solemn Declaration, the European Council has never met as a Council in the legal sense. The often detailed decisions of the European Council were transferred into Community

legislation by the Council of Ministers according to the procedural provisions of the Treaty. Thus, the legal requirements were not affected - at least not in terms of formal correctness.

In the bargaining process the Heads of Government dealt with concrete 'technical' details of the issues, quite often against their own doctrine about the role of summitry. Much to their distress they were confronted with technicalities, such as exact figures and formulas; intensive bargaining in relation to the fine print took place in the European Council. Their attempts to give only general guidelines and leave the 'nitty-gritty' to ministers or civil servants proved unsuccessful as the major political controversies came out in the exact wording of central details.

For a success in this bargaining process two complementary channels of preparation were necessary: the normal Community procedures and the informal network of 'multiple bilateralism' among the members of the European Council. The preparation of the European Council was largely embedded in normal Community and EPC procedures; the European Council normally decided on papers which were prepared by the Commission, COREPER and the Council. Special new procedures, like those leading to the Athens 1983 meeting, proved unsuccessful ⁽¹⁶⁾. The political procedure for putting together packages, however, was facilitated by the regular bilateral meeting between the Heads of Government. In the decision-making within the European Council itself no permanent coalitions which would cover all major agenda points can be identified. The Giscard d'Estaing/Schmidt tandem -helped, before the entrance of Greece, by their being placed next to each other at the conference table - certainly influenced the atmosphere, though in questions of substance both quite often disagreed on major points.

The discussion is apparently dominated by the leaders of the three largest countries more than in sessions of the normal Community Council. The President of the Commission, visiting each member of the European Council before meetings, played a useful though not decisive role. In reaching agreements, the role of the Commission is apparently marginal; the Commission's strategy is quite often oriented towards enabling compromises even if they are not fully in line with the Commission's view about Community orthodoxy. Attempts to play the guardian of the Treaty - like in Fontainebleau 1984 against the German agricultural subsidies - were not always successful. Much of the President of the Commission's influence depended on his personality and on the topics of deliberation.

Also the President of the Council, with the help of the Secretary-General of the Council, was able to play an increasingly central role as initiator, package and consensus broker: the history of the EMS, the Stuttgart Mandate and especially the Fontainebleau Agreement give ample evidence of this role, but also of its imperfections.

The doctrine of the European Council on its working style was clear: especially in the heyday of Giscard d'Estaing and Schmidt, the numerous civil servants normally present at Council meetings, were considered to be a nuisance for a free, confidential exchange of views and for taking decisions; banished to the backstage they quite often only received distorted information: only civil servants from the Council Secretariat and the Presidency are allowed in and, since Athens, also the Secretary-General of the Commission. Though the exclusiveness of the political leaders might have helped the intimacy of their deliberations, the implementation and follow-up of these conversations are apparently difficult as the information about what had really been said and decided in the European Council is scarce and sometimes open to varied interpretation.

Shift in the Institutional Equilibrium

The Impact on Other Community Bodies

It was and is still feared that, due to the activities of the European Council, the Commission would lose its right of initiative; that the Council would shift all decisions, normally taken by the ministers, to the Heads of Government; and that the Parliament's rights of control and budgetary co-participation would, *de facto*, be drastically reduced.

In reality there is a mixed picture. In many areas the Community procedures have not been 'disturbed' by the European Council (e.g. steel, fishery and commercial policies). In other policy areas the European Council has dealt with matters in a general non-committal way so that the normal decision-making process of the Community has not really been affected. The Council has been permanently involved in the preparation and has been present - in the persons of the foreign ministers - at the deliberations in the European Council; it has transformed the *de facto* agreements of the European Council into a legal form.

In vital Community policies no clear pattern of a division of labour can be identified. In certain crucial areas - like steel - with high distributional effects the European Council did not really get involved, whereas in other issues of a similar kind - like the CAP - the European Council spent much time. Sometimes the Heads of Government are 'usurping' at the insistence of some of them certain areas in which the ministers seem at the same time glad to shift their responsibilities to the European Council as a court of appeal, though some of the ministers of agriculture felt urged to 'control' the deliberations of their Heads of Government.

As to the Commission its overall role in the Community has changed but not necessarily declined. The President of the Commission has enlarged his field of manoeuvre; he is integrated into the informal network of multiple bilateralism among the Heads of Government. Through this he can directly claim a status similar to that of a Head of Government. Furthermore, the Commission has an additional source of legitimation for starting initiatives in various fields and for pressing on the Council and national civil servants. As for the monopoly of initiative, the Community-related decisions of the European Council are normally still taken on the basis of some Commission proposals submitted to the Council, though the Presidency and the Member Countries have increasingly taken up the role of submitting new concepts and compromises; the Commission clearly plays a less prominent role than in the Council. However, given the lack of clear Treaty obligations in many new areas of Community activities, and given the lack of basic consensus among member countries on major Community activities, it has not been the European Council as such but the whole environment which has caused a different set of functions for the Commission from what was hoped for in Community orthodoxy.

One loser, however, seems to be the European Parliament ⁽¹⁷⁾. Its capacity to make the Community's policies more transparent is made more difficult, although the President of the European Council has reported to the European Parliament since 1981 after each session. The already weak formal power of giving an opinion on legislative acts is even more reduced when crucial points have been decided before the Council takes them up, and some consultative rights - such as that granted on the nomination of the Commission President - are not always respected due to the dynamics of the European Council's working style. The attempts of the European Council to pass over the Parliament's co-decision-making powers on the budget have been rebuked by the EP. In major agreements by the Heads of Government on the budget system the European Council has been careful not to strengthen the influence of the EP. As to co-legislative powers of the EP, the European Council has reconfirmed in the Single European Act that the final say should stay with the Council, i.e. with its ministers.

On the overall Performance of the European Council

Stabilization Via Piecemeal Engineering

The European Council has thus changed the institutional equilibrium by shifting in an unclear pattern the locus of decision-making from the blocked Council of Ministers to an extra-Treaty body. What is then the overall effect of this 'usurpation' on the Community? The European Council should, like all institutional developments of the EC, be analyzed and assessed in the context of the evolution of the overall Community system and its political environment. The major conclusion is that the effect of the European Council is not merely intergovernmentalization of the European Communities but a 'communitarization' of the Heads of Government. Involving the Heads of Government in the Community and making the Community more open to the Heads of Government is a two-sided process which indicates a basic and essential feature of the Community's system in the seventies and eighties.

Major critics, especially those from Community orthodoxy, blamed the European Council for dealing with

too many details which should be left to ministers and civil servants and for concentrating only on issues - like milk - which are of minor importance to Western Europe and for not dealing effectively with crucial questions - like the technological gap and unemployment. By acting this way the European Council is considered to disturb the institutional equilibrium of the Community to the detriment of its overall decision-making capacity. If the Commission's rights of initiative were not reduced and if the Council(s) of Ministers could work without the interference of the European Council or/ and with the easy option of shifting the final responsibility to the Heads of Government, then the Community would work (again) more efficiently. Though valid from the viewpoint of an optimal model for the Community, a closer look at the Community's evolution over the last two decades might lead to a more balanced assessment of the performance of the European Council. As explained above, details are not necessarily only technical, but major controversies in Community policies are quite often reflected in exact wordings and budgetary formulas. Whenever the European Council only gave general guidelines, the formulas used were open to broad interpretation and were on most occasions not strong enough to enable the Council of Ministers or civil servants to take decisions. To concentrate on major issues is, of course, a reasonable demand but the criteria concerning what is really important vary among the Heads of Government. In past years the necessity to reform the Community was seen as a precondition for tackling new challenges. Due to the respective internal political pressure put on them by influential lobbies at home, the Heads of Government are quite often inclined to stress the importance of specific areas beyond objective reasoning. Finally the impact of the European Council is not total and all-embracing; the Commission and the Council could play their traditional role in major areas. The return to the original institutional equilibrium of the Treaties, as asked for, is not feasible especially as the scope of Community activities has grown far beyond the original Treaty provisions.

The European Council's comparative advantages in the bargaining process within the Community system are to be stressed at the same time. If specific Community issues are perceived to be of 'vital' national interest, then the Head of Government will prefer to play, and will like to be seen playing, a vital role in them. In this case it is preferable to have the actors directly involved and have them take direct responsibility for Community affairs rather than leaving them in their own capitals from where they could block the negotiation process by 'vetoes' from the outside and thus complicate the whole decision-making process. For Heads of Government at the conference table of the European Council references back to their national governments are quite difficult. At the same time the Heads of Government are in the best position to formulate those overall package deals which are the basic ingredients for progress in Community policies and the integration process. For other ministers - even in meetings of the General Council - the making of those cross-sectoral package deals is more difficult, especially in relation to their national colleagues, who are carefully observing that there is no trespassing into their area of competence and influence.

Let us look at this overall performance also from a more basic and general point of view. The role and performance of the European Council are not the result of accidental misguided actions but reflect the basic feature of a mixed national/ Community system which can be characterized as a 'pooling of sovereignties' or - to use an analogy of systems with several independent levels of government - as 'cooperative federalism' (Wessels, 1984; Bulmer and Wessels, 1987). The European Council is not the creator of this system but is its most significant expression and a major promoter. This system has its roots and constraints in the interdependence of Western European welfare states.

The Community of the seventies and the first half of the eighties can no longer be characterized as a system with a clear division of powers between the national level on one side and the Community on the other. The enlargement and growth of Community activities due to increased factual interdependences were not accompanied by an equivalent legal transfer of competences. Only some use has been made of Article 235 of the Rome Treaty. There has not been a strengthening of independent European bodies in decision-making or in decision implementation. Furthermore, original 'exclusive' Community responsibilities in the commercial and agricultural fields were undermined, e.g. by the management committees. Thus, for major issues facing Western Europe, national and Community instruments and procedures for problem-solving were linked together - see as indicators, for example, the mixed treaties (O'Keefe and Schemers, 1983) and formulas like 'the Council and the Ministers convened in the Council \ Both the national and the Community level were more and more bound to work together and have been consequently connected in complex administrative and political structures and procedures. A pooling of sovereignties can be discerned in two

dimensions: horizontally member countries work together more closely in an increasing number of areas, and vertically the links between the national and the Community level are spread over a growing number of areas and made more intensive as for example the number of committees indicates ⁽¹⁸⁾. The Single European Act has not changed but confirmed this basic feature.

Analogous to developments in existing federations, the Community system could thus be characterized as 'cooperative federalism'. Significant elements of these systems are policy networks which are dominated by sectoral clusters of the political elite, bureaucrats, interest groups and partly by parliamentary committees. The time-consuming bureaucratic bargaining process is so complex that parliaments and public lose control and the output is sub-optimal (Scharpf, 1985, pp. 323-356).

With the European Council, the Heads of Government finally created their own direct network after nearly all the other actors in the political system had installed their regular Community circles. With their 'private club', some top politicians tried to reduce the 'unduly' bureaucratic influence in this web and to gain control over the inherent dynamics of this system. Thus, the European Council is first of all a mirror and a product of this system. In this system of a cooperative federalism the European Council reinforced some features while it tried to correct others. By scope enlargement the Heads of Government underlined the importance of the Community system for Western Europe reinforcing the growth of the system.

The European Council has reacted seismographically to all major internal and international crises and challenges. Though the Heads of Government found few constructive answers, they at least prevented the existing Community, and the web of bilateral relations, from deteriorating or collapsing under the stress of economic and political challenges - thus the European Council has stabilized the Community system. By being the ultimate resort of decision-making it streamlined some of the diffused procedures. By failing to create a European Union, the European Council did not provide the Community system with the institutional, legal and financial resources to make this system more efficient.

This continuous piecemeal engineering led to the historical performance of the European Council as a reactive stabilizer of Western Europe in the first ten years of its existence.

On the Future of the European Council

To look into the future is a scientifically difficult task with no certainty in the prognosis. At the same time, these intellectual exercises are necessary to point to possible consequences of decisions or non-decisions taken today. As a means to stimulate our reflections we use different scenarios for the future Community system.

In a scenario of an overloaded Community in crisis, characterized by national divergences in the reaction to economic recession and international tensions, the European Council could become the crisis manager of last resort, although its capacity to overcome divergent national positions should not be overestimated. The Heads of Government will not be able to achieve miracles if the heterogeneity among the members grows. The long experiences of working together in the European Council will, however, help the Heads of Government to pursue a crisis management.

In a scenario of a dynamic Community in a positive environment characterized by convergent federally-oriented concepts in a period of economic growth and with the right - not divisive - external challenges, the European Council could play a role *féderateur*, for example by facilitating a *saut qualitatif* like the Draft Treaty of the EP and by then reducing the role of summitry to interventions in particularly important events.

In a scenario of a Community in turbulent waters, characterized by a mixed pattern of convergent and divergent national positions, the European Council will remain a central focus of the mixed national/Community system. Attempts to exclude the Heads of Government from the Community decision-making will be futile and unproductive as this would reduce the capacity of the Community system to react to internal and external challenges.

For the near future, the present position of the European Council is stable. It is a cornerstone of the system of a 'cooperative federalism'. The experiences with and the outcome of the Single European Act confirm this assessment: the Heads of Government have agreed on decisions the implementation of which will come back on the agenda of the European Council in the next years. Even a more intensive use of majority voting in the Council will not reduce the European Council's role in putting together the package especially between the internal market on the one hand and social and economic cohesion on the other. Issues like the EC's financial system, which were not tackled in the Single European Act, will automatically bother the Heads of Government, as will the demands for more institutional reforms. The Single European Act is thus not a turning point in a history of the European Council which would drastically change the role of the European Council.

As mirror of the mixed system pragmatic adaptations appear useless, radical changes appear unrealistic. In terms of small pragmatic steps, none of the suggestions presented at the moment promise to overcome the basic weakness of the European Council, namely the shortcomings of the Heads of Government to together produce constructive packages (Bulmer and Wessels, 1987).

The exhortations directed to Heads of Government to set clearer priorities for their work and make better personal preparations for the meetings are well-founded but given the constraints of Heads of Government will not lead to a different working style ⁽¹⁹⁾.

More procedural rigidities for preparing and implementing meetings of the European Council can be introduced; the Heads of Government will not wish to become slaves to complex procedures. The mixture between careful preparation and adequate flexibility is difficult to achieve.

These procedural devices include:

- a short non-binding *résumé* beyond the present final declaration could be established by the Council Secretariat to help reach a common interpretation and more efficient implementation, though this might lead to long debates about exact wording;
- reports on the implementation of decisions of the European Council could be established by the Commission or the Secretary General of the Council so that the Heads of Government are confronted with the national and Community-wide follow-up of their decisions - though few direct effects can be expected from this list of 'sins';
- given national instabilities, a one-year-presidency for the European Council could lead to even more stagnation. The mobilization effects of the Presidency would be reduced as each government will only take up this responsibility every twelve years;
- the delegation of certain tasks from the Presidency to other members of the European Council could be of help for a limited issue but could not replace the President's role as initiator and 'package broker';
- a troika formula for the Presidency of the European Council would also be only of a limited value, as it cannot be expected that one Head of Government could remain active for eighteen months provided that he or she stays in office;
- to elect a President of the European Council by its members from the group of elder statesmen would reduce the mobilizing effect of the Presidency and the leverage a President can invest in his office;
- to elect a President of the European Council by popular vote would change the character and functions of the European Council which would also need reforms in the whole institutional set up of the Community;
- to install the President of the Commission or the Secretary-General of the Council as President of the European Council cannot be recommended. The trade-off between more continuity and expertise on the one hand and the personal mobilization of national leaders on the other shows a positive balance for the latter. The President of the Council should use all the experience and insight of both the Commission President and

the Secretary-General so that political weight and expertise are combined;

- a permanent secretariat for the European Council would not be a helpful device. It is of great value for the European Council as well as for the Community system to have preparation and implementation integrated so far as possible in the normal Community and EPC procedures. An additional bureaucratic channel will only increase the complexity and might lead to more bureaucratic 'in-fights';

- to strengthen the organizational side of the preparation and the control of decision implementation, the task of the General Secretariat of the Council could be increased, whereas in matters of substance for preparation and implementation the role of the Commission could be increased. Both improvements would largely depend on the personalities of the persons at the head of both institutions.

All these procedural changes and amendments cannot replace the role of the active package-dealers within the European Council, who can only be successful if there are enough convergent interests.

To reform the present institutional set up into a different EC system would - at least as far as the experiences of the last ten years show - require a major bold step by the Heads of Government, including a large reduction in their own position and strength. Looking at the present situation this act of self-sacrifice does not appear to be near.

Twelve years after its creation the European Council has developed some role patterns different from those which were intended. With some variations this kind of European Council will stay with us, indispensable for vital decisions of the EC - yet at the same time a mirror of the EC's basic weaknesses.

Bibliography

[...]

Notes

⁽¹⁾ See the individual bibliographies in this volume.

⁽²⁾ See Antonozzi Report, Doc. 1-739/81 (European Parliament, 1982, p. 484).

⁽³⁾ See his remarks made in a Press Conference on 10 July 1969.

⁽⁴⁾ This concept came up again in the EP's resolution on European Union of September 1983 and disappeared in the final version of the EP's Draft Treaty establishing the European Union.

⁽⁵⁾ See, for example, the Paris 1974 Declaration (European Parliament, 1982, p. 274) and the Solemn Declaration of Stuttgart (Commission of the EC, 1983, p. 24).

⁽⁶⁾ See text of the Paris Summit 1974 (European Parliament, 1982, p. 274).

⁽⁷⁾ See the London 1977 Statement of the European Council on the Organization of the European Council (Commission of the EC, 1977).

⁽⁸⁾ See the Solemn Declaration of Stuttgart (Commission of the EC, 1983, p.24).

⁽⁹⁾ Ibid.

⁽¹⁰⁾ Ibid.

⁽¹¹⁾ See the Paris and London Documents, op. cit. (notes 6 and 7).

⁽¹²⁾ See the Solemn Declaration of Stuttgart (Commission of the EC, 1983, p. 24).

⁽¹³⁾ See the Solemn Declaration of Stuttgart and the Paris Document, op. cit. (notes 12 and 6).

⁽¹⁴⁾ See the London Statement of 1977, op. cit. (note 7).

⁽¹⁵⁾ See the contribution by Jacqu6/Simon in this volume.

⁽¹⁶⁾ See the contribution by Bonvicini/Regelsberger in this volume.

⁽¹⁷⁾ For a different interpretation, see the contributions by Jacqu6/Simon and Bonvicini/Regelsberger in this volume.

⁽¹⁸⁾ Between 1970 and 1985 the number of committees has approximately increased three times; see item 251 of the respective EC budgets.

⁽¹⁹⁾ See the contribution by Jacqu6/Simon in this volume.