

The Maastricht Model
A Canadian Perspective on the
European Union

Peter M. Leslie



Institute of Intergovernmental Relations
Queen's University
Kingston

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Institute of Intergovernmental Relations
Queen's University
Kingston, Ontario
K7L 3N6



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Foreword

This report updates an earlier report, *The European Community: A Political Model for Canada?* That report was published by the Government of Canada in 1991 before the negotiations for the treaty on the European Union (the Maastricht Treaty) had been completed. Events since 1991, including the negotiation, ratification, and implementation of the treaty, have required a complete rewriting of the earlier report.

This report, like the 1991 report, was written by Peter M. Leslie of the Department of Political Studies at Queen's University. Both provide detailed background information on the European Union and assess its relevance in a Canadian context.

The views expressed in this report are those of the author and do not necessarily represent those of the Government of Canada or the Institute of Intergovernmental Affairs.

Preface and Summary

The creation of the European Union (EU) in 1993 was an important event for Canada. Bilateral relations with individual European states are now to a large extent conducted through the Union, particularly in economic affairs. In multilateral trade negotiations, the EU speaks for all 15 of its member states; indeed, during the Uruguay Round of negotiations of the General Agreement on Tariffs and Trade, Canada joined with the United States, Japan, and the EU to form the Quadilateral Group of Trade Ministers, which had a large role in shaping the conduct of the negotiations. Not only is western Europe an important trading partner for Canada, but relations between the EU and the United States on the one hand, and between the EU and the rapidly growing economies of Asia on the other, profoundly affect Canada's place in a rapidly changing world trade order.

The European Union is also of considerable interest to Canadians for reasons of domestic politics. Some intellectuals and politicians, mainly or exclusively from Quebec, have come to regard the EU as proof that national states can achieve a high degree of economic integration while retaining their political independence nearly intact. According to these individuals, the member states of an economic union may enter into a form of political association that will serve their mutual interests while preserving the sovereignty of each. With this aim in mind, it would appear that some of those who are committed to Quebec's secession from Canada have turned to the EU for inspiration regarding a form of economic and political partnership that might be established between an independent Quebec and the remainder of present-day Canada. The institutions that some envision, including a ministerial council assisted by a permanent secretariat, a parliamentary assembly, and a tribunal with binding authority, match quite closely — though certainly not exactly — the institutions of the EU. The apparent parallels make it useful to inquire into the feasibility of borrowing and adapting institutional forms that have been developed in western Europe.

The present report aims to respond to Canadians' interest in the European Union, whether as a trading partner, as a political entity that is helping to shape the world that soon will enter the 21st century, or as a type of political and economic association among formally independent states. It supplies basic information about the EU's structure and operation, as detailed in the Treaty on the European Union. This treaty, generally known as the Maastricht Treaty, was agreed to in principle by European leaders at Maastricht in the Netherlands in December 1991, was signed in 1992, and was ratified and put into effect in 1993.

Chapter 1 argues that any exposition of political institutions (including, of course, those of the European Union) is likely to be uninformative or misleading if inadequate attention is paid to the historical, social, cultural, and economic context.

For this reason, the chapter refers briefly to the emergence of the EU from the early postwar period, noting its origins in the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community (Euratom), all created in the 1950s. It is pointed out that the Maastricht Treaty contains a road map and even a rough timetable for the further development of the EU. However, it is suggested that achievement of the goals inscribed in the treaty will depend on contingencies such as future relations between France and Germany. The long postwar Franco-German partnership may remain strong, but other scenarios are possible. Their partnership could decay not only as a result of changes in the domestic politics of both countries, but also as a result of political and economic developments in other western European states, and indeed in eastern Europe and the Mediterranean basin. If this happened, the institutions of the EU would work very differently than they do now and might prove to be ineffectual in relation to purposes they have served in the past.

Chapter 2 outlines the main institutions of the European Union, or of the European Community, which is its main pillar. The main point is that a powerful set of institutions has been created to form policies in common, applying to the whole Union, but the member states themselves control the policy-making process. The European Commission is a powerful body that is capable of acting independently of the states, but the most important legislative institution, the Council, consists of ministers delegated by the states. These ministers negotiate major policy decisions, always speaking on behalf of their respective national governments. In expounding the structure and working of the institutions (the Commission, the Council, the European Parliament, and the European Court of Justice), special attention is paid to the issue of supranationality, or the limiting of state sovereignty.

Chapter 3, the longest chapter, surveys the issue of state sovereignty more fully. It does so by examining the policy role of the European Union in relation to the conduct of external economic relations; market regulation and economic development (industrial policy, sectoral policies, regional development); general economic management: fiscal and monetary policy and the question of economic and monetary union; Social Europe; environmental protection; mobility rights, immigration, and internal security (Justice and Home Affairs); and the aspirations for establishing the Common Foreign and Security Policy. A few comparisons are made between the policy role of the member states and the policy role played, in Canada, by the provincial governments. In addition, the principle of subsidiarity is quickly surveyed. Throughout the chapter, constraints and limitations on the policy capacity of the member states are explored. It is shown that, in some respects, the policy capacity of the Canadian provinces is greater than the policy capacity of the member states of the EU.

The final chapter, Chapter 4, explores the possibility of transposing some features of the European Union's institutional structure to Canada, or to a new

Canada-Quebec economic and political association. Comparison is made among different forms of economic integration: a customs union, a common market, and a monetary union. It is argued that extensive policy making in common is needed to achieve all but the most rudimentary forms of integration; European experience clearly establishes this. Furthermore, for making decisions applying compulsorily to all participating states, effective political machinery is required. In the event of Quebec's secession, could the EU system be adapted to underpin a bilateral relationship between an independent Quebec and what remains of Canada? Or more simply: would "Maastricht for two" be workable or desirable? On this, the report is unequivocal: the answer is no.

Readers who are interested primarily in the relevance of the Maastricht model, if Quebec should embark on the road to secession, may turn directly to Chapter 4. However, this chapter does presume broad acquaintance with the political institutions and the policies of the European Union. Readers having such knowledge may appropriately use the earlier chapters for reference only, an approach that is facilitated by many paragraph cross-references embodied in the text. An alternative approach for readers pressed for time is to skim the first three chapters on the basis of the brief marginal notes that indicate the subject of each paragraph. It will then be possible to read Chapter 4, returning as necessary to particular paragraphs in the earlier chapters, using the cross-references.

I want to record my thanks to Armand de Mestral and to officials of the Bank of Canada for their comments on early drafts of this report. None will be fully satisfied with my responses to their helpful suggestions and criticisms, but this report is substantially improved as a result of their generosity and insights.

Peter M. Leslie
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Chapter 1

The European Union: An Economic and Political System in Evolution

Introduction

- 1 *The European Union: a supranational organization,*

The European Union (EU) is a highly advanced form of economic and political association among the countries of western Europe, excepting only Switzerland and Norway. Its 15 member states have established a set of institutions for adopting and implementing common policies in several fields, as set out by treaty. The states have agreed that certain of their powers as national states may be subordinated, or the preferences of national electorates set aside, through an EU-level process for making decisions that are legally binding. This process involves a great deal of negotiation among governments. Decisions are sometimes, but not always, based on unanimity; in other cases a qualified majority rule applies; in still others, decisions are made by an appointed body, the European Commission, which is not controlled by the member states. Reflecting these features of the decision-making process, the EU is frequently called a supranational organization, and some see it as an emerging federal system.

- 2 *but not a super-state*

Notwithstanding its supranational character, the EU does not constitute a level of government or a super-state set above the national states that adhere to it; rather, it is a vehicle through which national states work together, with the assistance, prodding, and participation of an appointed body, the European Commission, to achieve common purposes. "Common purposes" is an elastic concept, being stretched all the time. Thus, under the Maastricht Treaty (Treaty on the European Union: signed 1992, ratified 1993), the member states are committed to further extending and strengthening the EU's capacity to implement European-level policies across a wide spectrum.

3 *Origins of the EU; the Maastricht Treaty; the European Community (EC) as one of the EU's 3 pillars*

The European Union came formally into existence in 1993, although most of its essential features had already developed over the preceding 35 years or more. Its founding instrument was the Maastricht Treaty, which not only created the European Union but amended the terms of three earlier treaties dating back to the 1950s. The three treaties in question were constitution-like documents for antecedent organizations with identical membership — the European Coal and Steel Community (ECSC: Treaty of Paris, 1951), the European Economic Community (EEC: Treaty of Rome, 1957), and the European Atomic Energy Community (Euratom: also Treaty of Rome, 1957). Under the Maastricht Treaty, the EEC was renamed the European Community (EC), bringing official terminology into line with established usage. In effect, the EC is now a composite of the three Communities, and as such is sometimes described as the main pillar of the European Union, covering its economic aspect. This includes market regulation, sectoral policies (especially in agriculture), coordination of fiscal and tax policy, economic development, and foreign trade. The two other pillars deal with the non-economic aspects of the Union: the Common Foreign and Security Policy (ultimately involving, the Europeanists hope, a common defence policy), and Justice and Home Affairs (internal security, including related matters such as immigration). All three pillars operate through a common set of institutions.

4 *Only the EC is truly supranational*

The European Community is the only pillar that is truly supranational: only the EC has the power to override national policies and laws. The other two pillars work on the principle of intergovernmentalism or consultation that may lead, at least sometimes, to joint action. But in these fields all decisions are made on a unanimity basis, and they are not legally binding even on those states that have assented to them. Outside of economic affairs, no sanctions may be imposed on member states for behaving inconsistently with an agreed policy.

5 *Goals for the further development of the EU: towards political union?*

Perhaps the most significant aspect of the Maastricht Treaty is that, like earlier treaties aimed at the construction of Europe, it not only creates institutions and rules for a supranational organization, it also sets out an agenda for the future. It maps out a set of steps yet to be taken for extending or deepening the integration process. Thus the EU is a political system in evolution, and Maastricht sets out goals for its further development. It establishes a process for building "an ever closer union," a term first used in the Treaty of Rome (1957), but now, in the Maastricht Treaty, picked up and used with renewed emphasis. The goals to which the states are committed under the treaty include a monetary union (single currency) by 1999, more effective and more democratic political institutions, and an expanded role in foreign

affairs. The Maastricht Treaty is considered by its more enthusiastic supporters to be the basis of a political union, or a federal state, to be negotiated at an Intergovernmental Conference in 1996. Sceptics, however, see Maastricht as the high-water mark of the integration process, and foresee now — indeed, some hope for — a period of stagnation or decline.

6 *The EU policy process: negotiation among the states*

The European Union, or at least its European Community pillar, is an extraordinarily powerful organization. It is the vehicle through which common policies are put in place, mainly on the basis of negotiation among the member states. Since the essence of a negotiating process is making tradeoffs and accepting second-best outcomes — provided the participants see them as preferable to inaction or paralysis — EC/EU member states sometimes end up agreeing to decisions that they view as contrary to their interests or preferences. The clearest cases of the subordination of national interests to a wider European interest occur when individual states are actually outvoted in the decision process, as is possible in some aspects of policy within the EC. In practice, this rarely happens. More commonly, a state that knows it would be outvoted does not insist on holding a formal vote, and even in those fields where unanimity is required, i.e., no dissenting votes, states are generally reluctant to exercise the veto that is theirs by right. Each state is a participant in a continuing decision-making process involving a lot of give and take: a state that loses today on one issue may emerge a winner tomorrow on another. Thus the EC policy process, in which all states from time to time find themselves in a minority position, imposes significant limitations on national sovereignty or national decision-making power.

7 *The extent of EC competences*

It is noteworthy that in some respects the role and powers ("competences") of the European Community are as great as those of the Canadian Parliament, or even greater. And EC competences will be further expanded under the Maastricht Treaty. However, one must be cautious about making comparisons between the governmental systems of Canada and those of the EC/EU. The powers vested in Canadian governments (federal and provincial) are solidly entrenched and are available for use by the governments possessing jurisdiction, whereas the competences of the EC are subject-areas where joint action may be undertaken if the states collectively want it. In Canada the federal and provincial governments tend to act independently of each other and frequently challenge and oppose one another. Institutionally they are separate. In the EC, by contrast, most or all major decisions are made by the member states, though on the basis of a proposal by the Commission. The institutions of the EC are the vehicle for this, with

the important exception of the Commission (paragraphs 16, 24-25, 32-33). They do not constitute a repository of power independent of the member states.

Origins and Development

8 *The EU as a historically unique system*

One cannot understand how the European Union works — what makes it a workable system — if one does not take account of the historical context in which it has developed. Relevant historical events or factors include:

- the immediate legacy of the Second World War: the yearning for a stable peace in western Europe, the need for economic rebuilding, the domestic political instability of several western European countries, and the emergence of the Cold War;
- the growing economic rivalry between the United States, Japan, and western Europe during the 1960s and afterwards;
- the collapse of Communism in eastern Europe in 1989, leading to economic restructuring and political instability there, with potential effects throughout western Europe as well.

9 *The founding of the European Communities: the complementarity of national interests*

The key to the progress of economic and political integration in western Europe has been the following: that France and Germany have had distinct but complementary national goals since the late 1940s.

- In the early years of peace, political authorities in the three western zones of occupied Germany aimed for the creation of a West German state through the political and economic unification of the three zones, relaxation of the controls imposed by the occupying powers (including, of course, France), and admission of the new state into the society of nations. Participation in international organizations would help gain, or would be a symbol of, recognition and acceptance by other states. In addition, Konrad Adenauer and other political leaders in West Germany wanted, just as leaders in other countries did, to ensure that the re-emergent state was economically and politically tied in with other states with longer liberal democratic traditions. Thus, for Germany, political motives were probably paramount in the integration process. The same considerations applied to a lesser degree to Italy.

- France, Italy, and the Benelux countries (Belgium, the Netherlands, and Luxembourg) could rebuild their economies and advance the process of industrialization only by creating close economic ties with the new West German state. As soon as the British, French, and American occupation zones were economically unified in 1948, the area became an economic powerhouse. West Germany offered, for all the countries of western Europe, the most rapidly growing market; equally important, it was a significant supplier of industrial goods. Moreover, in the case of France, a particular objective of postwar planning was to shift a large part of the work force from agriculture to industry. This objective could not be achieved without gaining access to West German resources, particularly coal (which was also important for Belgium).
- In all six states (West Germany, France, Italy, and the Benelux countries), far-sighted leaders understood that, in order to create a lasting peace among former belligerents, it would be necessary to rebuild the economies of western Europe on an integrated basis, binding all states together in a common enterprise. To the achievement of this goal, the United States added external pressure in the form of Marshall Plan aid, which originally was to be conditional on the states' presenting a single coordinated reconstruction plan rather than a series of separate national plans. In this, the United States was motivated to an important degree by the belief that rapid economic growth, facilitated through integration, would be an effective antidote to the threat of political subversion from strong Communist Parties in France and Italy.

10 The European Communities: the ECSC, the EEC, and Euratom

It was, then, an intricate array of forces that led the six states to agree to create the European Coal and Steel Community in 1951. The ECSC was empowered to allocate resources, production, and markets for coal and steel on a supranational basis. These industries were not only the vital ones for the process of reconstruction and industrialization, but would also be the core industries for any future program of militarization. It was therefore essential to bring them under international control, and this was accomplished by creating the ECSC. Six years later, in 1957, the same group of states took another major step towards integration when they signed two Rome treaties, one creating the EEC, and the other, Euratom. These two new Communities had an institutional structure similar to that of the ECSC, which thus turns out to have been, both in time and in structure, a precursor of the present-day European Union.

- In all three Communities a Franco-German bargain provided the essential underpinning, but the bargains would not have been possible without the participation of the other four states, especially Belgium and the Netherlands. These four states played a vital mediating role in the Franco-German relationship.

11 The EEC: a single market, with common policies in agriculture, etc.

Of the three Communities, the European Economic Community was the most important. It was the main vehicle for the economic and political integration of western Europe, and today, as the European Community, it still plays that role. Its essence is the commitment to establish and preserve a single market within which goods, services, capital, and labour move without restrictions imposed by national laws, regulations, or administrative practices. This was the initial intent in forming the EEC and has remained the basic underlying principle of economic integration in western Europe. However, for the France of the 1950s — and to some extent still today — the degree of market integration brought about through the EEC was acceptable only in combination with the implementation of a set of common policies to be formulated by the EEC as a whole. These policies limited, channelled, and constrained market forces. Agriculture was the most important of the areas on which a common policy was to be formulated, financed, and applied; and even today the Common Agricultural Policy, though battered by British opposition to its extravagant cost and by the Uruguay Round of GATT negotiations, remains an essential component of the "EU bargain." Among the wide range of other policies formulated and in some cases financed at the Community level one finds: regional development, transport, energy, supervision or control of working conditions, enforcement of product standards, common rules on competition and state assistance to industry, and environmental protection.

12 Widening and deepening

The development of the EEC/EC has involved the interweaving of two processes, widening and deepening. (In 1967 the institutions of all three Communities were merged into a single system, and it subsequently became conventional to refer to the Community in the singular.)

- Widening or geographical expansion has occurred through a series of four enlargements, each resulting in the accession of between one and three new member states. Membership has grown from the original six to the present 15 in the following steps:

1973: Britain, Ireland, and Denmark
1981: Greece

1986: Spain and Portugal

1995: Austria, Finland, and Sweden

- Almost as significant as the accession of new member states has been the extension of Community rules and practices to several neighbouring states through a series of treaties of association. These treaties have been of various types, offering partial guarantees of market access, provided the associated states adopt the same system of market regulation as applies to the member states themselves. Thus, in several policy fields EC rules (generally called the *acquis communautaire*) apply beyond the borders of the EC/EU itself. This has been an essential feature of the widening process, especially as some associate members have later acceded to full membership — as is officially anticipated for several of the eastern European states. This holds out the prospect of a 20- or 25-member EU by early in the 21st century.
- Deepening has not been a steady process; rather, it has proceeded through a series of advances and setbacks, or alternating periods of optimism and pessimism, *élan* and retreat. It has involved the building of central institutions, the implementation of common policies, the extension of Community competences into new fields such as environmental protection, and the increasingly rigorous application of common market principles, creating a single internal market for goods, services, capital, and labour.
- Although widening and deepening are frequently contrasted with each other, in practice both have tended to go forward together in a series of package deals. Member states that have wanted policy reforms or institutional changes have sometimes withheld their assent to expansion until their objectives, furthering the process of deepening, have been met. Thus the new member states have had to agree to a set of policies adopted by the older states as a condition of admission. In this way the threshold for admission has been rising steadily over the years and will continue to do so.

13 *Intra-EC coalitions
of states*

At every stage or phase of the Community's development, the state of the Franco-German alliance — so critical for the founding of the three Communities in the 1950s — has been of vital importance. When France and Germany have been in disagreement, the Community has lapsed into a phase of stagnation or backsliding (as happened noticeably during the 1970s, with the appearance of a large number of non-tariff barriers). On the other hand, when France and Germany have been in agreement, they have frequently been successful in bringing

other states on side for a new set of initiatives. Britain, the reluctant partner among the large states, has repeatedly had to agree to new advances in the integration process (as it belatedly realized it would have to do, when in 1961 it initially decided to apply for membership) because it has been afraid that the train would leave the station without it. On several occasions it has recognized that it could not afford to stand on the sidelines, watching integration go forward among a core group of states on the basis of a treaty it refused to sign. Italy has generally been a proponent of further integration, whenever France and Germany could agree on new steps to be taken. Other states, smaller or less economically powerful, either have been enthusiastic participants (the Netherlands, for example) or have bargained for special concessions to meet national interests.

14 Global events and domestic politics

The history of European integration shows that forms of economic and political association work as they do, and evolve as they do, because of the interaction of global events and the domestic politics in each of the states. This is shown in the following cases:

14.1 The Single Market program and the Single European Act

- The Community was relaunched in the mid-1980s after a period of "Europessimism" during which non-tariff barriers multiplied. The relaunch occurred in large measure because competition from Japan and the United States demanded it. A more fully integrated Community would be a stronger competitor in a globalized economy. Thus external economic pressures reinforced domestic pressures for deregulation and the extension of markets, leading to the dismantling of economic barriers among the member states. To achieve this goal, common policies in several areas were required, as were new limitations on the policy-making capacity of each of the member states. The steps that were proposed (and mostly implemented) were described as the Europe 1992 or Single Market program. Its aim was to create "a market without internal frontiers," dismantling all border controls among member states by January 1, 1993. To facilitate the reforms, institutional changes — notably the extension of "qualified majority voting" (paragraph 23.2) — were made through a set of treaty revisions known as the Single European Act (SEA), negotiated in 1985 and ratified in 1986 (paragraphs 23, 49-53). At this stage of the integration process, however, neither monetary union nor the pursuit of extensive social objectives received unanimous support from the member states, and they did not figure in the SEA.

14.2 The impetus behind the Maastricht Treaty

- The desire for creating a monetary union and for the extension of Community action in the social policy field remained strong in

some states, and these subjects were taken up during the Maastricht Treaty negotiations. Partial agreement on them was reached — leading, as it turned out, to intense national debates over ratification in 1992 and 1993. Also important in the Maastricht negotiations, indeed perhaps the main impetus behind them, were the uncertainties unleashed by the collapse of Communism throughout eastern Europe in 1989. The reunification of Germany upset the delicate political balance within Community institutions, and the potential for greater political instability throughout the former Communist bloc imparted urgency to the establishment of the Common Foreign and Security Policy for western Europe, as well as to the achievement of domestic security objectives through cooperative action in Justice and Home Affairs.

14.3 Post-Maastricht

- Since 1992, monetary instability and the incapacity to act decisively in the former Yugoslavia have cast doubt on the ability of the European Union either to achieve monetary union or to implement the Common Foreign and Security Policy. With a change in political generations in France and presumably soon in Germany, and under the pressure of policy failures, the solidity of the Franco-German coalition within the EU seems uncertain. While important institutional innovations were included in the Maastricht Treaty (see Chapter 2), the way the new institutions will actually work will necessarily depend on the continued viability of the Franco-German coalition and other political factors, perhaps especially in Britain — influenced, as always, by external economic and political events.

15 Summary: the importance of the historical context

One conclusion to draw from this brief survey of the origins and development of the European Economic Community (today, the EU) is that an analysis of institutions is likely to be uninformative or misleading if inadequate attention is paid to the historical context. However, no one should ignore the fact that institutions do help shape decisions or policies by making some of them politically feasible and others not. While it is the historical context (domestic politics, external and internal economic and political events) that determines the dynamics of the system, it is also important to know how the system is structured. This is the subject of Chapter 2, which examines both the present structures and various proposals for their rebuilding or reform.

Chapter 2

Institutions and Policy Processes in the European Union

16 *The EU as a
supranational and
intergovernmental
organization*

The 15 member states of the EU have erected a set of supranational and intergovernmental institutions for the governance of the Union.

- Decisions that alter the institutions, membership, or financing of the EU, or otherwise have effects similar to constitutional revision, are taken by the European Council, or European summit, consisting of the heads of state or government (paragraphs 17-18). The European Council, normally meets twice a year, and deals with a range of high-profile issues having the most far-reaching political effects. The European Council is an intergovernmental institution, a vehicle for building consensus among governments rather than for majority decision-making.
- Legislation is enacted through a complex of institutions of which the most important is the Council of Ministers (paragraphs 22-23), also known as the Council of the European Union, or simply as the Council (which is how it is designated in the treaties). The Council, not be confused with the European Council, meets over 80 times a year. Also integral to the legislative process are the European Commission (paragraphs 24-25, 33) and the European Parliament (paragraphs 26-28). The Commission, Council, and European Parliament are supranational institutions that have powers of decision potentially overriding the wishes of individual member states.
- The Commission is an appointed body of 21 members mandated under the EC Treaty (i.e., the Treaty of Rome as amended by several subsequent treaties including the Single European Act and Maastricht) to act independently of the governments that have in practice appointed them. It possesses a range of decision-making and administrative powers under the treaties. The Commission and

its staff ("the Brussels bureaucracy") have responsibility for seeing that EC legislation, as well as the terms of the treaties, are observed by the member states.

- When negotiations between the Commission and member states do not ensure compliance with Community legislation, or full observance of the terms of the treaties, litigation may ensue. Thus enforcement may fall to the European Court of Justice (paragraph 34), in conjunction with national courts.

Overall Policy Direction in the European Union

17 *The European Council*

It is the meetings of the European Council that determine whether major new steps in the integration process, both widening and deepening, are to be taken. In the words of the Maastricht Treaty: "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof." (Article D) But of course the European Council does not act in a vacuum. The proposals it considers are drafted either by the Commission, or by the secretariat of the Council of Ministers (composed of political advisers and a staff of about 2,000), or by formal intergovernmental conferences in which the states are represented by their foreign ministers or special negotiators. Treaty revisions require not only unanimity in the European Council but subsequent ratification by national legislatures, which in some countries can only be done after a positive referendum result. The practice of holding referendums may, in future, make treaty revisions increasingly difficult to achieve, as national electorates become steadily more resistant to endorsing what their political elites tell them they should do.

18 *Bargaining in the European Council*

Except on certain procedural matters, the European Council always acts by unanimity. However, that does not mean that all states will necessarily be enthusiastic about all decisions. The smaller states, especially, can be discouraged from exercising a veto in the European Council, because an obstructionist stance results in reduced influence and credibility overall. Even a large state like Britain may be forced, and on several occasions has been forced, into significant compromises. But the compromises may come only after a long delay, in some cases lasting years, as with conflict over the principles for

financing the Community. A long period of holding out by one or more states can result in stagnation or reversal of the integration process. A logjam may be broken, though, if new and urgent issues come on the agenda, changing the dynamics of the negotiating process. The linkages made since the mid-1980s between the Common Agricultural Policy, the financing of the Community, the removal of internal barriers, and the conduct of GATT negotiations provide an illustration of this. One may anticipate links between major questions of the EU's agenda for the late 1990s (monetary union and fiscal policy within member states) and the relationship between expansion to the east, development assistance to countries in the Mediterranean basin, the finances of the Union, further reforms to the agricultural policy, and structural funds or regional development programming in countries and areas now significantly dependent on Community support (Ireland, Greece, Portugal, Spain).

Governance of the European Community

19 *The EC: instrument of the economic union*

The main pillar of the EU, as has been noted, is the European Community or, strictly speaking, the three Communities taken together. The Maastricht Treaty states: "The Union shall be founded on the European Communities, supplemented by the policies and forms of co-operation established by this Treaty." (Article A) The economic union, the most highly developed aspect of the EU, is implemented through the EC.

20 *EC decisions bind the member states*

EC decisions are binding on the member states, in accordance with the principle that Community law overrides national law when the two conflict, and that some Community laws apply directly, without complementary legislative or administrative action by the states. This is not true of decisions made under the other two pillars of the EU: the Common Foreign and Security Policy and cooperation on Justice and Home Affairs. In these fields EU policies are established by unanimity, either in the European Council or the Council of Ministers, through a process of intergovernmental cooperation or consultation. No mechanisms exist to ensure the consistency of national policy with the policy of the EU in these areas. Accordingly, the distinction between EC institutions and policy, and those of the EU as a whole, is an important one to make, indeed to emphasize. In the remainder of this chapter almost all attention is focussed on the European Community as such, not on the more broadly defined EU.

21 *The EC is not a federation*

Notwithstanding the breadth of Community competences, and the intention to expand them further under the Maastricht Treaty, the Community is not federal (nor, of course, is the EU as a whole). The EC has no central government with its own electoral and fiscal base. The European Parliament lacks the powers of a national parliament, and the EC (like the EU as a whole) is still dependent on negotiations among the member states to finance its activities. It is also dependent on the states in the realm of policy implementation, or the application of Community law. These three matters — legislation, finances, and policy implementation and enforcement of EC law — are taken up in the succeeding paragraphs, which also set out the institutional structure of the Community.

Legislation

22 *The Council of Ministers*

The EU's legislature is the Council, although the European Parliament also has a significant voice in legislative decisions, and in some legislative fields a "co-decision" procedure (paragraph 26.3) applies; and here, as also with the "assent" procedure (paragraph 27), the European Parliament may exercise a veto. The Council is a 15-member group composed of ministers designated by the member states. In fact, there are several Councils, because membership varies according to the business at hand. Of greatest importance is the General Council, composed of foreign ministers, which deals with the broadest political questions, and is a sort of shadow of the European Council itself; second in importance is the Council of Economic and Finance ministers (Ecofin); probably third is the Agriculture Council. All of these meet about monthly; less frequent meetings are held by 17 other groups of ministers, e.g., on the Internal Market, Fisheries, Transport, Labour and Social Affairs, Consumer Protection, Health, Education, and Culture. Some of these meet only once or twice a year.

23 *Voting by qualified majority (QM)*

In some subject areas, the Council must act by unanimity; in others, only a "qualified majority" is needed — almost a three-quarters majority, within a weighted voting system in which the larger states cast a larger number of votes than the smaller ones. The range is from 2 to 10 per state; there are 87 votes in all. Under the qualified majority rule, a measure passes if it receives 65 votes, and fails if it receives 61 or fewer; if the vote is between 62 and 64, there is political agreement (i.e., not written into the treaty) to delay "for a reasonable period of time" in order to find a compromise that can be adopted by at least 65 votes. Thus a qualified majority is achieved when a minimum number

of states — between 9 and 13, depending on size — vote together. No combination of only two states, even the largest, constitutes a blocking minority.

23.1 Where the QM rule applies

- Prior to 1987, with the coming into force of the Single European Act (a revision of the Rome Treaty), unanimity was generally required for Council decisions. However, the unanimity rule has been sharply restricted by the SEA and by Maastricht. Today qualified majority voting is the normal rule within the EC, exceptions having to do mainly with fiscal matters, mobility rights and other EU-wide rights of EU nationals, and decisions of constitution-like effect (extending Community competences where action is not specifically authorized in the treaty — paragraph 85). (Unanimity is also required for the two non-EC pillars of the European Union: Justice and Home Affairs, and the Common Foreign and Security Policy.) However, on subjects where qualified majority voting usually applies, if the European Parliament opposes or amends proposals being considered by the Council, the Council may have to act by unanimity (paragraph 26.2).

23.2 The QM rule and the political process

- Now that qualified majority voting has supplanted unanimity as the usual decision rule in the Council, the political process within the EC has changed considerably. A unanimity requirement encourages decision making according to a lowest-common-denominator approach; however, with qualified majority voting, attention shifts to building coalitions that will be adequate to support a desired policy innovation. It is quite clear that the Single Market program (paragraphs 14.1, 49-55) could not have been put into effect without the introduction of qualified majority voting under the SEA. Now, with further extensions of this procedure under Maastricht, the politics of the EU have been transformed. One indication of this is that, among lobbyists or interest organizations, the tactics of opposition to Commission proposals have changed. When unanimity applied, opponents had only to find one state that would block action by the Council; now they need several. The difference is between finding out where or how to exercise a veto, and acting in a longer-term context, building and reshaping coalitions in a complex, continuing political process.

24 The Commission: composition

Although the Council plays the central role in the legislative process — or, through the Council, the states do so — the states cannot themselves make legislative proposals. This is exclusively within the

power of the Commission, which is the conscience and protagonist of the economic union. Accordingly, the Commission is far more than a secretariat to the Council of Ministers, though also far less than a political executive within a parliamentary system. According to treaty provisions, its 21 members "shall be appointed by common accord of the Governments of the member States," in each case for a fixed term of four years. In practice, each member state appoints (according to its size) either one or two Commissioners. The President of the Commission, a key figure, is appointed by unanimous decision of the European Council, subject to the assent of the European Parliament. The President participates in meetings of the Council and of the European Council, and assigns other commissioners their duties as heads of directorates-general (essentially, government departments or ministries). The entire Commission must receive the endorsement of the European Parliament, which also has (but has never exercised) the power to censure the Commission as a whole, forcing its resignation. However, unlike a Westminster-style parliament, a change in the composition of the European Parliament cannot force the appointment of a new Commission of a different political coloration. The EC Treaty stipulates that the commissioners "shall ... be completely independent in the performance of their duties; ... they shall neither seek nor take instructions from any Government or any other body." As a practical matter, the Commission cannot be said to be politically responsible to the European Parliament, or to the Council of Ministers, or even to the European Council.

**25 The Commission:
role**

The Commission is the supreme policy-proposer for the EU, and also exercises considerable power of independent decision.

- It helps set the agenda for the European Council; in this, it and the secretariat of the European Council are rivals. The Commission was the main initiator of the Single Market program, and of the project for economic and monetary union (EMU); it has also been an active participant in debates over institutional reform and treaty revisions.
- The Commission enjoys sole right of initiative in the Council of Ministers. It may withdraw or amend a proposal at any time; this makes the Commission President a very effective participant in the Council, indeed, more powerfully situated than any minister. By implication, it gives the Commission a veto that, in the case of agenda items requiring only a qualified majority, no member state possesses. In addition, many EC regulations are adopted by the Commission without reference to the Council (paragraph 33).

26 The European Parliament

Although directly elected since 1979, the European Parliament (EP), even today, has not fully outgrown its original status as a consultative or advisory body to the Council. Its powers were strengthened under the Single European Act, and further strengthened under Maastricht. It has now gained the power to block certain items of legislation absolutely. However, its legislative role varies according to the subject of the proposed legislation. In fact, today there are three legislative procedures, each applying to a particular range of subject-areas, and each prescribing a specific role for the EP.

26.1 The consultation procedure

- The European Parliament is least powerful where the consultation procedure applies, i.e., where its original role still obtains. Under this procedure, legislative proposals originate with the Commission (as is the case with other procedures as well), which asks the EP for an opinion. On the basis of its opinion, the Commission may amend the proposal it has laid before the Council, but it need not do so. Nor need the Council wait for the Parliament's opinion before voting on the measure — generally by unanimity, but sometimes by qualified majority. This procedure applies in areas that include: Community revenues ("Own Resources"), treaty amendment, fiscal harmonization among the states (indirect taxation), approximation or harmonization of laws among the states, various aspects of economic policy, and the two non-EC pillars of the EU under the Maastricht Treaty — the Common Foreign and Security Policy, and Justice and Home Affairs.

26.2 The cooperation procedure

- The European Parliament's role is greater where the cooperation procedure applies. This procedure originated in 1986 with the passage of the Single European Act, notable for its introduction of qualified majority voting in the Council on those matters to do with the internal market (i.e., those related to the Single Market program). This innovation was counterbalanced by added powers for the EP: if an absolute majority of MEPs (members of the European Parliament) rejected a Commission proposal, the Council could act only by unanimity; a qualified majority was insufficient. In other words, the Parliament could hand every state a veto in the Council. However, under the cooperation procedure, if unanimity in the Council can be obtained, the Council can override any negative vote in the EP. The cooperation procedure still applies in fields that include at least aspects of the following: regional development, vocational training, transport policy, economic and monetary policy, environment policy, development cooperation, and the European Social Fund (paragraph 74).

26.3 The co-decision procedure

- In some fields the cooperation procedure has now, under Maastricht, been supplanted by a new co-decision procedure that greatly complicates the legislative process and may give the Parliament a significant new degree of power. Where the co-decision procedure applies, the EP has gained nearly — but not fully — co-equal status with the Council. Its essence is that if the Council and a majority of members of the European Parliament disagree, a conciliation committee may be appointed to reach a compromise position (essentially like a conference committee in the United States, when the Senate and House of Representatives pass different versions of a bill). Ultimately, though, if a majority of MEPs — not just a majority of those voting — reject the conciliation committee's compromise, the proposal fails altogether. In other words, the Parliament has, in some cases, acquired an absolute veto over a Commission proposal. The fields where co-decision applies include: operation of the internal market, the free movement of persons, education and culture, public health, consumer protection, and environmental action programs.

27 The assent procedure

An assent procedure was also introduced, along with the cooperation procedure, by the Single European Act; its use was expanded under Maastricht. It is a single reading procedure, and does not allow the European Parliament to amend a proposal by the Council. However, it does give the Parliament the power of veto. As a rule, the EC Treaty specifies the assent procedure when a decision is called for on the result of a complex negotiation (e.g., on treaties of accession or treaties of association with non-member states), or where a detailed program of action is proposed (e.g., on the allocation of structural funds for regional development). The assent procedure also applies to measures to promote the free movement of persons among member states.

28 Role of the European Parliament: summary

The cooperation procedure and, even more so, the co-decision procedure have added significantly to the powers of the EP. However, amendment or rejection under either procedure requires an absolute majority of members, not only a majority of those voting; this is a significant hurdle to the exercise of its powers. The assent procedure is another case altogether. In some instances, the assent must be by a majority of those voting, and in others, a majority of members. The latter rule (which applies, for example, to ratification of treaties of accession) makes it relatively easy to mobilize a blocking vote. But because the consequences are so drastic, the

power that the rule seemingly confers may not be all that significant. Overall, the voting rules may be less important than a legalistic exposition of them might suggest; in legislative matters one of the Parliament's main functions, perhaps in the long run its most important one, is to help shape public opinion. (Budgetary matters are another question, addressed in paragraphs 30-31.)

29 *The Economic and Social Committee*

One of the original EEC institutions was the Economic and Social Committee, an advisory body consisting of representatives of employers, workers, various occupations, and the general public. Between six and 24 members are drawn from each member state. They are officially appointed by the Council, but in practice by governments of the member states individually. For some legislative proposals, consultation of the Economic and Social Committee is required, along with the consultation, cooperation, or co-decision of the European Parliament.

Finances

30 *Sources of EU revenues*

The bulk of EU revenues are supplied by the member states on the basis of unanimous multi-year agreements. The latest such agreement was reached (in its main outlines) by the European Council in December 1992 and was adopted in 1993. It runs until 1999. Over the life of this agreement revenues will rise from 1.20 per cent to 1.27 per cent of gross national product (GNP) across the EU. Today about half of the revenues come from a value-added tax (VAT, equivalent to Canada's GST); by 1999, though, the VAT will supply only about a third of the total. The other principal fiscal resource is a levy on each state, set at a fixed percentage of GNP; this levy now yields about a quarter of the total, but will provide almost half of all revenues by 1999. Other sources are customs duties (less than 20 per cent of the total, and declining) and agricultural levies (about three per cent).

31 *Disputes over revenue matters*

The lack of a truly independent revenue base leaves the EU subject to periodic crises in the European Council as the states quarrel over winners and losers from the EU budget. Not only the sources of revenues but also the main items of expenditure come within the ambit of the European Council's discussions. Historically, the greatest conflict has arisen over financial grievances voiced by the United Kingdom. A five-year battle over the British budgetary question was finally resolved at the European summit in December 1984 with an agreement to rebate part of Britain's net contribution. Without this agreement it would not have been possible to move ahead on other

major agenda items; thus the agreement was a prerequisite to negotiating the Single European Act and launching the Single Market program. Similarly, a 1988 agreement to double EC spending on regional development was necessary to gain the southern states' assent to proceeding further, through a series of Community directives, with the removal of internal economic barriers as called for in the Single Market program. Both disputes also contributed to reform of the Common Agricultural Policy. They made it clear that the EC's budgetary problems could not be resolved by continuously expanding revenues; spending would have to be cut, and the only budget item big enough to make a difference was farm subsidies. In 1984 agricultural price supports accounted for over 70 per cent of Community spending; this figure is expected to drop to 45 per cent by 1999.

Policy Implementation and Enforcement of EC Law

32 *Implementing EC policies: national states and the Commission*

Responsibility for implementing EC legislation rests mainly with the member states. One reason for this is that the Commission's administrative resources are spread very thin; although complaints about the intrusiveness of "Brussels bureaucrats" are rife, there are simply not enough of them to play much of a direct role in administration. A second reason is that much EC law is formulated as a statement of general principles that must then be fleshed out and applied within each state by follow-up legislation, regulation, and administrative action. National law must not only be in conformity with EC law (including the treaties themselves), but must actively apply it. The Commission has responsibility for seeing that the states do so. Apparent non-compliance may result in negotiations between the Commission and the relevant governments, backed up by the potential for litigation. Ultimately Community legislation is enforced through national courts and the European Court of Justice, a Community institution.

33 *Directives and regulations*

Directives, of which there are about 120 a year, are the most general form of Community legislation. In a limited range of subjects, the Commission has the power to make directives without reference to the Council, but most directives can only be enacted by the Council on the basis of a Commission proposal, subject to the requirements of whatever procedure (consultation, cooperation, or co-decision) is stipulated by the treaty for the subject at hand. Directives require

each state to achieve a specific result (e.g., apply a certain principle), but leave them latitude to choose how to do it. In other words, follow-up action on the part of the states is ostensibly required if a directive is to be implemented in practice. Regulations (about 4,000 a year) tend to be narrower in scope; many are more administrative than legislative in character; most are passed by the Commission and do not have to come before the Council, and all have effect without follow-up measures by the states. The apparently clear distinction between directives and regulations, though, is sometimes blurred in practice because some directives are very detailed, and all of them set time limits within which states must take appropriate action. If a state unduly delays implementation, or does not act in full accordance with the terms of the directive, the European Court of Justice may simply apply it anyway, as it does regulations.

**34 Primacy of EU law;
the Court of Justice**

In cases of conflict, Community law overrides the law of member states; even national constitutional principles may be infringed by EC law. Community law is backed up by the European Court of Justice, which has played a major role in ensuring compliance with Community policy, and even in extending its scope. The Court of Justice, not to be confused with the European Court of Human Rights, is composed of jurists appointed by agreement among the states.

**34.1 Incompatibility of
Community and
national laws**

- The Court may declare national legislation and administrative acts incompatible with Community law on the grounds that they violate treaty provisions, EC directives, or EC regulations. It may require member states to take action to fulfil their obligations under the EC Treaty or to bring their law or administrative practice into conformity with EC directives. Under the Maastricht Treaty the Court has the power to levy fines against member states for failure to live up to their obligations.

**34.2 Initiating legal
proceedings**

- The Commission may launch judicial proceedings against a member state to require it to fulfil its treaty obligations (which include implementation of directives), but will do so only after more informal means have failed. Judicial proceedings may also be initiated by another member state, although (with rare exceptions) they must first refer the matter to the Commission for an opinion. Usually referral effectively transfers full

responsibility to the Commission. The Commission always formulates a reasoned opinion on an alleged infringement of the treaty or of Community law, gives the state a chance to reply, and attempts a negotiated solution. Legal proceedings are a last resort, and will be instituted only when other avenues of action have failed to resolve the problem.

34.3 Cooperation with national courts: preliminary rulings

- Where Community law is invoked in proceedings before the national courts, the European Court of Justice also may decide, through a preliminary ruling, on the validity of national law, national administrative acts, or national treaties. The Court's rulings are preliminary, not in the sense of being tentative — indeed, they are final, and are binding on national courts — but in the sense of being sought and rendered before the national court reaches decision. Preliminary rulings come into the picture if arguments are raised in the national courts regarding the application of treaty principles, or the consistency of national law with Community acts (directives, regulations, decisions). When such arguments are made, the national court is entitled to ask the Court of Justice for an interpretation; a court of last instance (i.e., final appeal) is obliged to do so, if it considers that a decision on the validity of the impugned national law is necessary in order to give judgment. If so, the national court will suspend proceedings, and resume them only after the preliminary ruling from the European Court of Justice has been obtained.

Issues: Policy Effectiveness and the "Democratic Deficit"

35 Evaluating EC institutions and policy processes

The foregoing survey of EC institutions and policy processes leaves two fundamental questions about existing arrangements unexamined. One is whether the EC system is an effective one — are the institutions and processes adequate for the purposes of the Community? — and the other is about democracy. Does the EC have, as many have alleged, a "democratic deficit" — meaning, are the institutions too closed to public input, and the policy processes too elite-driven, especially when EC law can override the laws of national parliaments or even infringe principles of national constitutions?

36 Policy effectiveness

The question of policy effectiveness can really only be answered on the basis of a survey of what the EC does across a range of policy fields. It is necessary to see what goals have been achieved in each field, what has been attempted but not accomplished, and what objectives have not even been pursued because the prospects for making headway are too slim. What seems remarkable is how much is actually accomplished, given an institutional structure and a decision process where the main actors are the national governments, each responsible to its own electorate. It is a system that seems to be structured for non-decision. Power is highly diffused within the system, even though (as argued above) qualified majority voting has made an enormous difference. It is a matter of public record that the Commission regularly makes proposals that the Council does not consider, or on which no action is taken. Some items have languished on the Council's agenda, in one form or another, for 15 or 20 years. One has to ask about the significance of this. And yet, the accomplishments are there for all to see. As argued in Chapter 1, the way the EC has worked is probably explained as much by the historical context (the factors that build up alliances or political coalitions among governments, with France and Germany at the core) as by the institutional structure. Perhaps the most appropriate conclusion is this: as the context has changed and ambitions have grown, the institutions have been adapted to the minimum extent needed — just enough to facilitate common action where truly essential, while leaving the member states with large segments of their traditional powers and policy role diminished but still, in vital respects, intact. How this has played out is surveyed in the next chapter.

37 A democratic deficit?

A second area of concern about institutional and procedural aspects of the EC is the existence of what many have termed a democratic deficit. Complaints about this have focussed on the following:

- The main legislative power is still vested in the 15-member Council which is not directly elected and as a rule can override opposition within the directly elected European Parliament.
- The Council meets behind closed doors, probably the only legislature in the world to do so. After the voters of Denmark rejected the Maastricht Treaty in a first referendum in June 1992, the Danish government requested the European Council to amend or clarify the treaty in order to meet opponents' objections. Among other things, Denmark demanded that the

proceedings of all European Union institutions be made more open and transparent. In response, the European Council's Edinburgh Declaration of December 1992 promised that there would be regular open debates on major issues of Community interest, and that major new legislative proposals would be, whenever appropriate, the subject of a preliminary open debate in the Council, although actual negotiations on legislation would remain confidential. However, the holding of open debates would be subject to a procedural decision, to be taken by unanimity. This requirement presumably makes the commitment to greater openness a complete sham, except in one not insignificant respect: when a formal vote is taken in council, the record of the vote — including an explanation, as delegations may request — "shall be published."

- EC directives require national legislatures to modify existing laws and/or pass new ones; a member state may be judged in default of its treaty obligations if it fails to implement the directives, regardless of the ability of national governments to obtain passage of the required legislation, and even regardless of national constitutions.
- The Council may, by unanimity, bring about a form of constitutional change by taking "appropriate measures" that exceed its powers under the treaty, so long as those measures are judged necessary to obtain the objectives of the Community (paragraph 85).
- Sole right of legislative initiative is possessed by an appointed body, the Commission, which has acquired a uniquely strong position as mediator and even arbitrator among viewpoints of the national governments, when the Council is empowered to act by qualified majority; because the Commission may withdraw a proposal at any time, and because amendments to a Commission proposal require unanimity, the Commission President is not only a de facto participant in the Council, he or she is the only participant who (as long as unanimity is not required) has the power of veto.
- The Commission exercises, independently of the Council, extensive discretionary powers relating to the application of the treaty and the enforcement of common market rules; these powers include prosecution of member states for infringement of the treaty or of Community directives, a limited power of

regulation, and the approval — or otherwise — of state aids to industry.

- The Commission is not politically responsible to any elected body.

Complaints on these matters are being pressed with increasing insistence, and are supported by the European Parliament and the Commission. For the EP, the preferred solution is to strengthen its own role and powers, correspondingly reducing the role of the Council and thus the importance of bargaining among the states. An alternative approach, leaving the role of the states intact but seriously complicating the process of negotiation in the Council, is to involve national parliaments more in the negotiation process. This could be done by enabling them to control their ministerial delegates on the Council. The latter approach has, to date, been most fully developed by Denmark, but its generalization to all the states of the Union would probably bring the operations of the Council to a grinding halt, because ministerial delegates would be effectively prevented from engaging in give-and-take bargaining.

The Prospect of Reform: The Intergovernmental Conference (1996)

38 *Maastricht: commitment to hold a new IGC in 1996*

As has been emphasized, the European Union is a political system in constant evolution, with the most important advances in the integration process taking the form of treaty revisions. These are akin to formal constitutional change. At every stage, the more ambitious Europeanists have been disappointed with the inadequacy (in their eyes) of the changes made. The limited achievements of the Maastricht Treaty were, for them, a particular disappointment. But they did succeed in inscribing into the treaty a commitment to holding a new intergovernmental conference (IGC) in 1996, to consider and propose new changes, foreshadowing further treaty revisions.

39 *The prospect of enlargement, and the urgency of institutional reform*

In large measure, the impetus for the intergovernmental conference comes from concerns about the policy effectiveness of the Union, and about the democratic deficit. However, there is another factor, probably even more potent: recent developments in eastern Europe,

and the prospect of further enlargements of the Union. With the collapse of communism, there are strong security reasons for wanting to support the transition of neighbouring states to economic liberalism and political democracy. Steps have been taken in this direction through the negotiation of treaties of association (Europe Agreements) with Poland, Hungary, the Czech Republic, Slovakia, Rumania, and Bulgaria. These and other states see themselves as candidates for future admission as full members of the Union; Cyprus and Malta also have already applied, as has Turkey (though it has been rebuffed); and several other countries, notably the Baltic states, Slovenia, and Croatia, also see themselves as future candidates. In 1993, the European Council declared that "the associated countries in Central and Eastern Europe which so desire shall become members of the European Union," and the criteria for membership were:

- stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;
- existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; and
- ability to take on the obligations of membership, including adherence to the aims of political, economic, and monetary union.

Although one may be sceptical about the ability of even Poland, Hungary, and the Czech Republic to meet all these criteria in the near future, it is not impossible that they should do so, and many assume that it is a matter of time (less than a decade) before they are admitted as members. Their size, and their poverty relative to even the poorer members of the existing EU, suggest that if the obstacles to membership are indeed overcome, radical transformations of EU institutions, policies, and political processes would be necessary. A wholesale revision of the EC Treaty would probably be required, partly because of the increased number of states (to 18 or even to 25, as compared with the original six), and partly because of the fiscal and political pressures that would be created with the accession of several new — large and poor — member states.

40 ***Institutional
change: two
general
conclusions***

It is beyond the parameters of this report to speculate about the changes in internal political coalitions that further enlargement of the European Union would bring about, or even to speculate about the sorts of institutional changes that might have to be put in place prior to the opening of serious negotiations with new prospective members. Only two general points need be made:

- It would be necessary to reconsider the relationship between the main institutions of the Union: the Council, the Commission, and the European Parliament. Some urge this anyway, even without reference to the prospect of further enlargement. However, if enlargement seems likely, a new balance between EU institutions becomes almost imperative. The number of units in the EU (not to mention relative size and wealth, economic base, etc.) is absolutely essential to understanding how that system works, or could be made to work. The same is true in other complex systems (federations, etc.): the number of units is critically important in determining how the system works.
- No productive thinking about the way that the present institutions work, or about the prospect of institutional redesign, is possible without considering the historical, geographical, cultural/ideological, and economic context. As has been emphasized elsewhere in this report, the institutions and processes of the European Union are specific to the situation of western European countries during the postwar period. Their prospective transformation as they, and the world, enter the 21st century will similarly affect the development of the EU's institutional framework in the years ahead.

Chapter 3

The European Union and National Sovereignty

41 *The pooling of sovereignty*

The preceding chapter showed that the European Union is controlled, at least in the main, by the governments of its member states. This chapter presents the other half of the complex constitutional structure of the EU: how the policy capacity of the states is narrowed by their membership in the Union and specifically in the European Community. The chapter shows that the states are accepting more and more limitations on their power of independent decision. They have indeed (as the jargon puts it) pooled their sovereignty in several important respects. Although they have not transferred sovereign powers to a new order of government, each has given up sovereignty, or a degree of independence, nonetheless.

42 *Supranationalism (context and motives)*

Some loss of independence is inherent in any form of economic association, or indeed under any treaty, especially one based on the principle of supranationalism, as in the EU. For the 15 member states, supranationalism is tolerable because only through the pooling of sovereignty can national goals be achieved. Security objectives, including those arising from the current threat of political instability in eastern Europe and the Mediterranean basin, are intertwined with economic ones. And the national states of the EU are incapable of dealing adequately with either their security or their economic problems except jointly through a complex institutional structure that has been evolving with many advances and setbacks since 1951. As noted in Chapter 2, development has proceeded furthest in relation to economic goals, for which the six original member states created the European Economic Community in 1957.

43 *Forms of economic association*

When compared with other forms of economic association, or of economic integration, the EEC (now EC) ranks high. The following is a fairly standard list, or at least a classic one, of forms of integration.

43.1 Free trade area

- The basic form of economic association is a free trade area, usually limited to industrial products (i.e., generally excluding agricultural goods and tradable services). Tariff barriers are eliminated and non-tariff barriers are minimized among the participating states. However, each state conducts its own trade policy, including the setting of tariffs vis-à-vis third countries (non-participating states). A consequence is that complex rules of origin must be formulated and applied to determine when a product originates within the free trade area and is thus to be admitted tariff free into all member states. Without rules of origin, third countries would simply export into the lowest-tariff member state in order to gain access to other, relatively high-tariff states.

43.2 Customs union

- The next step up is a customs union, which incorporates a free trade area, but makes provision also for a common external tariff and ideally for a common set of non-tariff barriers. In other words, there is a single trade policy, necessitating political machinery to decide what that policy should be. This is particularly important, for example, in negotiations among members of the General Agreement on Tariffs and Trade and its successor, the World Trade Organization, where many politically sensitive tradeoffs must be made. However, there are compensating advantages: in trade among the member states of a customs union, administrative hassle is avoided, and each of the states may acquire greater clout internationally by being part of a larger grouping — provided its interests are adequately supported by the other member states.

43.3 Common market

- A common market goes beyond a customs union. It provides for the free movement not only of goods, but of services, labour, and capital. In other words, it applies not only to what is produced but to factors of production as well. A common or at least a harmonized regulatory framework is required, for example, to set labour standards, establish rules for bankruptcy, provide a uniform competition policy, and generally to oversee the conditions under which people and firms do business. These are politically sensitive matters requiring strong political institutions to address them.

43.4 Monetary union

- A monetary union establishes either a common currency (the usual interpretation) or an inalterably fixed relationship between national currencies, so that they become, in effect, interchangeable. A central bank or its equivalent is needed to manage the supply of money, which involves partial control of interest rates and credit.

44 Economic union and the range of common policies needed for various forms of economic association

Some listings of forms of economic association add a fifth category, that of economic union. This is distinguished from the others by the fact that it requires a wide range of common policies for regulating economic activity within the union and has a positive role in implementing an industrial policy, promoting regional economic development, redistributing wealth, and so forth. However, it is a mistake to suppose, as some have, that no common policies are needed with the four other, less fully developed forms of economic integration. Mention has already been made, in the preceding paragraphs, to common policies needed to implement a customs union, a common market, and a monetary union. In fact, common or at least compatible policies are needed to implement even the most rudimentary form of economic association, a free trade area. Today, the main form of protection for traded goods is no longer tariffs, but a wide range of non-tariff barriers, including product standards and subsidies. If such activities are neither constrained by common rules when they are undertaken at the state level, nor shifted upwards to the union level, competition will be judged to be unfair, and free trade will become a sham. For this reason, it is a matter of political judgment, or preference, how dense the web of common policies must or should be within any given economic association, even a free trade area.

45 Forms of economic association in practice: the example of the NAFTA

It is unlikely that today any economic association among states would exactly fit any of the standard forms, as described above. For example, the North American Free Trade Agreement between Canada, the United States and Mexico incorporates not only the principles of a free trade area, but also, in certain respects, the principles of a common market — since some of the most important provisions concern trade in services, the movement of capital, and temporary movement of labour. The side deals on labour standards and on the environment also go far beyond what one would normally consider to come within the ambit of a free trade agreement. On the other hand, in some respects the NAFTA is deficient as an instrument or guarantor of free trade. Canada's attempts to negotiate a subsidies code and insert it into NAFTA's predecessor, the Canada-U.S. Free Trade Agreement, did not succeed, and the NAFTA abandons the commitment to develop such a code in the future. Instead, under both the FTA and the NAFTA, each member state continues to apply its own trade remedy laws, such as anti-dumping duties, countervailing duties, and emergency measures. Only their application is subject to prescribed dispute settlement procedures. It has been implicitly judged that a free trade area can operate without common rules on some of the most important non-tariff barriers, a striking feature of the NAFTA that many Canadians have found worrisome. This is another way of saying that

the NAFTA, while going beyond the establishment of a free trade area, at least in some respects, falls short of implementing the principle of free trade. If policy harmonization occurs, as some predict, it will come about not through joint decision making but through Canada and Mexico adapting their policies to a U.S. model. Perhaps one should not expect otherwise in an economic association where one participating state can wield, by far, more market power than the other member states combined.

46 *The EU contrasted with the NAFTA*

The European Union goes beyond the NAFTA in every dimension. As a free trade area and common market, it not only prohibits national policies that discriminate in any way against goods, services, labour, or capital from another member state, but, under the Single European Act and the Single Market program, the European Union provides for a wide range of common policies that have permitted the removal of internal frontier, i.e., border controls among member states. As a customs union, it negotiates on behalf of the member states in the GATT/World Trade Organization and in all bilateral discussions and disputes, thus ensuring a common commercial policy. The goal of forming a monetary union, first seriously put forward in 1970, has yet to be achieved, but, as has been noted, is provided for in the Maastricht Treaty. The target date, for those states that expect to participate, remains 1999; and preliminary if somewhat shaky steps towards the goal of monetary union have already been taken (paragraphs 58-65).

47 *Limitations on national sovereignty*

Realization of any or all of these objectives requires that participating states (the member states, and even, to a great degree, the states with association agreements) give up some aspects of national independence. The institutional aspect of this process was examined in the previous chapter, where it was noted that many matters are now decided in the Council of Ministers by qualified majority, that European Community law takes precedence over national law, and that the Commission and the Court (with the support of national courts) together ensure that the primacy of EC law is made effective. In this chapter the limitations on national sovereignty are explored in a more detailed way, looking at various areas of government activity. The following areas receive attention:

- the conduct of external economic relations;
- market regulation and economic development (industrial policy, sectoral policies, regional development);

- general economic management: fiscal and monetary policy, and the question of economic and monetary union;
- Social Europe: working conditions, citizen entitlements and the welfare state;
- environmental protection;
- mobility rights, immigration, and internal security (Justice and Home Affairs); and
- the Common Foreign and Security Policy.

External Economic Relations

48 *Common commercial policy*

The EC Treaty provides for a common commercial policy, a matter that is within the exclusive competence of the Community, which is a "person" at international law. The scope of Community competence is broadly stated, covering: "...the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies." (Article 113) The Commission has responsibility for making policy proposals to the Council, and the Council may authorize the Commission to conduct international negotiations on behalf of all the member states. The Council retains ultimate control over the negotiations by issuing directives, and by appointing a committee to oversee the conduct of the negotiations. Agreements "shall be concluded by the Council on behalf of the Community," on the basis of a qualified majority. (Article 114) Although, as in the case of the Uruguay Round Final Act, it is the member states that ratify international trade agreements, it appears that failure to ratify an agreement approved by qualified majority would be considered to be a breach of treaty obligations. It is likely that, in practice, the larger member states could veto a trade agreement, but the smaller ones probably could not. However, this is a matter of Community practice rather than of Community law.

Market Regulation and Economic Development

49 *Regulation; the 1985 Commission white paper*

Market regulation has multiple purposes, including the protection of public health and safety, and of the environment. But some forms of regulation, notably those setting standards for high-technology products such as telecommunications equipment, may also be used as an element in an industrial strategy. Regulation may also be covertly protectionist, the intent being to reserve national markets for national producers. Thus the problem, even in a free trade area — and more comprehensively in a common market — is to allow regulation aimed at acceptable public objectives, while prohibiting "arbitrary discrimination or ... disguised restriction on trade between Member States." (EC Treaty, Article 36) The essence of the Commission's Single Market program, as set out in a white paper in 1985, *Completing the Internal Market*, was to work out the implications of this distinction.

50 *The white paper: a call for new Community policies and competences*

The white paper noted, "We can either resolve to complete the integration of the economies of Europe; or, through lack of political will to face the immense problems involved, we can simply allow Europe to develop into no more than a free trade area." In other words, the Commission recognized that without a new set of policies jointly agreed among the states, the common market would regress into a free trade area. To achieve the goal of full integration, the Commission proposed almost 300 directives to remove economic barriers among the member states. The symbol of completing the internal market, in itself a major objective of the program, was the proposed elimination of all border controls and inspection stations within the EC.

51 *Economic barriers*

The economic barriers that the Commission sought to remove were both technical and fiscal.

51.1 *Technical barriers*

- The technical barriers category was very large, affecting not only the free movement of goods, but also affecting open competition for public procurement (state purchases) both in goods and services; the free movement of labour, including professional workers; the dismantling of regulatory controls on tradable services and on the movement of capital, the unburdening of transborder business activities; and the creation of Community rules on intellectual property. Concretely, removal of barriers in these areas would involve things such as testing techniques for ensuring compliance with product standards, standardized rules on

tendering for public contracts, harmonization of professional qualifications and cooperation among educational institutions at the technical school and university level, liberalization of banking, insurance, and transport (deregulation at the national level, and some reregulation at the Community level), legislation at the Community level to set common standards for new technologies and services (the information market, etc.), enactment of new Community rules on financial intermediaries and markets, the development of a Community legal framework for cross-border activities by enterprises and for cooperation between enterprises of different member states, and Community patents in relation to items such as biotechnological inventions and computer software.

51.2 Fiscal barriers

- Fiscal barriers were deemed to arise from variations among national states in the value-added tax (VAT) and in excise taxes. The Commission proposed that the VAT be applied to a standardized list of goods and services (i.e., there should be a common base), and that rates vary by no more than 2.5 per cent around a fixed norm (i.e., maximum difference between any two states, 5 per cent). Rules were also proposed for allocating VAT revenues among the states in order to ensure that it remained a tax on consumption rather than becoming a tax on production. In addition, the Commission signalled its intention to propose taxation of corporate profits on a Community-wide basis, rather than separately in each member state (to make the corporate tax system location-neutral, and to prevent tax avoidance by mobile capital).

52 The approximation of laws

These lists of technical and fiscal barriers indicate how deeply the Community would have to become involved in areas formerly of state jurisdiction and policy, if internal border controls were to be eliminated. To bring this about, the EC Treaty was revised in 1987 (Single European Act) and again in 1993 (Maastricht). The treaty now provides for the harmonization or approximation of national laws in order to remove economic barriers. Generally speaking, a qualified majority suffices, although unanimity is required for "fiscal provisions, those relating to the free movement of persons, [and] ... those relating to the rights and interests of employed persons." The treaty provides that with these exceptions, the Council, following the co-decision procedure (paragraph 26.3), "shall ... adopt the measures for the approximation of the provisions laid down by law, regulation, or administrative action in Member States which have as their object the establishment and functioning of the internal market." (Article 100a) This article vastly extends EC competences and the qualified majority

rule, given that it refers not to the subject of legislation, but to the purposes the legislation may be intended to achieve ("purposes" is a much more expansive category than "subjects").

53 *Enactment of the Commission's proposals: the Single Market program*

Under this extremely powerful article, the great majority of the Commission's Single Market proposals were enacted as Community directives by the end of 1992, though less progress was made on fiscal barriers than on technical ones (partly because of the unanimity requirement for directives on fiscal matters). Border controls on the movement of goods were removed as planned by 1993, though controls on the movement of persons remained in place until removed, as regards some but not all states, in 1994 (paragraphs 80-81).

54 *Product standards: Mutual recognition of regulations*

In relation to the free movement of goods, and the issue of product standards, the Commission adopted a three-fold approach. The pre-1987 approach was to harmonize national standards (ostensibly imposed for purposes of public health and safety, consumer protection, and environmental protection) through Community directives. This approach is still available under the EC Treaty (now with qualified majority voting rather than unanimity), but has been supplemented in two ways. One has been self-regulation: devolution of responsibility for formulating product standards to various European standards organizations or producers' associations. The other has been to mandate the principle of the mutual recognition of national regulations. This principle was already, to some extent, being enforced by the courts, but under the Single European Act it was also written into the EC Treaty. The treaty, as modified by Maastricht, now provides that the Council "may decide that the provisions in force in a Member State must be recognized as being equivalent to those applied by another Member State" (Article 100b); the required decisions are made by qualified majority, and are subject to veto by the European Parliament under the co-decision rule (paragraph 26.3). The general rule, then, is that goods lawfully manufactured and marketed in one member state must be allowed free entry into other member states. Exceptions must be endorsed by the Commission "after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade." (Article 100a)

55 *Implications for states' industrial policies: more restrictions than on Canadian provinces?*

The policy thrust of the Single Market program has been partly towards deregulation, and partly towards reregulation at a European level, replacing national regulation. Or rather, national regulations now have to conform to, and to actively apply, overall principles formulated at the European level and incorporated into Community directives.

Given the scope of these directives (which many have found seriously intrusive — for example, there have been widespread objections to directives and regulations on food additives, motor vehicle design, and pharmaceuticals), the economic role of national states has been quite sharply curtailed. Their ability to engage in programs of economic development, or to implement any form of industrial strategy has been seriously restricted. Overall, they probably have less ability to shape the development of their economies; notably in the manufacturing and service sectors, than is the case with the provincial governments in Canada.

**56 Competition policy
at the EC level**

This tentative conclusion is strongly reinforced by Community rules on industrial subsidies (state aids to industry), an aspect of competition policy at the European level. If states are prohibited from imposing countervailing duties and anti-dumping duties against each other, and from controlling access to national markets through a system of emergency or longer-term quotas — as is the case within the EC — then there must be common rules governing competition. Those rules may reasonably cover, as they do in the EC, the subjects of subsidies to industry, acceptable business practices, and takeovers and mergers.

**56.1 State aids and
industrial
restructuring**

- The role of the states in industrial policy is limited, at least to some extent, by Community controls on industrial subsidies (state aids to industry). The EC Treaty (article 92) prohibits state aids that favour certain firms or the production of certain goods, subject to exceptions such as compensation for damage caused by natural disasters and aid to promote development in low-income, high-unemployment areas. The treaty requires states to inform the Commission "in sufficient time to enable it to submit its comments" of any plans to grant or alter aid (subsidies); and it empowers the Commission to rule that a particular subsidy is not compatible with the common market. In that case it must be abolished or brought into conformity with what the Commission deems to be treaty principles; the Commission, potentially backed by the European Court of Justice, may require repayment of non-allowed subsidies — and it has done so in some high-profile cases. A particularly difficult problem is to distinguish regular production subsidies (not allowed) from support for industrial restructuring (permissible if the remaining firms in the industry are expected to become viable). The fact that the Commission has to make such a distinction gives it, at least potentially, a controlling voice in policies for restructuring declining industries. However, it is not clear how much the Commission is really in control of industrial subsidies, and what role remains to the states.

Annual Commission surveys of state aids complain that the amounts of money spent by the states on industrial subsidies have been diminishing only very slightly in recent years, that an increasing proportion of the total comes from the states with the greatest fiscal resources (Germany, France, Italy, and Britain), and that most subsidies go to the better-off, not the poorest, regions. So there seems to be some slippage in the application of the no-distortions rule. Nonetheless, it is clear that in the EU the member states have less latitude to pursue a subsidies-based industrial policy than, Canada's provincial governments have.

56.2 State aids: regional development

- One of the purposes for which state aids "may be considered to be compatible with the common market" is "to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment." (Article 92) This treaty provision makes the Commission automatically a controlling agent for state policies on regional development. In fact it is more than that: it is an active partner of the states in this respect because a quarter of the Community budget (by 1999, a third of total spending) is for regional development purposes (structural funds and cohesion funds). Some of these funds are for the reconversion of declining industrial regions, but most are for the development of non-industrial areas within the states having per capita incomes substantially below the EU average (Greece, Portugal, Spain, Ireland). Proposals for development projects come from the states, but the Commission is actively involved in their design and in monitoring their implementation. However, as with subsidies for industrial restructuring, it is not really clear to what extent the Commission is in control and to what extent the states are able to direct their own policies for regional development — in many instances, with a heavy financial contribution from the EU budget. It does appear, though, that this is one of the policy fields where the EC, through the Commission, is acquiring an increasing degree of control over the policies of national states.

56.3 Takeovers and mergers; cooperation among firms (European consortia)

- The opening of national borders has, in itself, the effect of increasing competition and breaking down cartels. Where national regulations and state subsidies have created national monopolies or created giant firms that have become national champions in the international marketplace, the imposition of EC-level controls on state aids and on public procurement practices has undermined the position of nationally dominant firms. This leaves two main tasks

for Community competition policy, a field that has been within EEC/EC competence from the beginning.

- The first is to prevent the emergence of super-firms or cartels that may acquire a dominant position at the European level. This tendency was, in fact, one of the early consequences of the Single Market program. In order to counteract it, the Council adopted a regulation in 1989 to require prior notification and authorization (by the Commission) of mergers. Control of monopolies has now effectively been transferred from the states to the EC, where the Commission exercises widespread discretionary powers.
- The second task of Community competition policy is, in a sense, the opposite of the first: to promote industrial cooperation among enterprises across member states, in order to create consortia or groups of associated firms that are capable of competing effectively with American and Asian producers. This objective has led to some centralization of the regulation of business practices, although a move to enact a European-level company law (covering matters such as the rights of minority shareholders and of the creditors of subsidiaries) has so far not been successful.

57 Sectoral policies

Specific sectors, the policy role of the states is limited or supplanted by a Community-wide sectoral policy. The most ambitious or far-reaching of these policies are ones that are mandated, or at least sanctioned, by the treaties.

57.1 Coal and steel

- The European Coal and Steel Community, the first major institutional creation of postwar Europe, was established in 1952 to regulate the coal and steel industries on a transnational basis among the six member states. The ECSC treaty prohibits national subsidies, and gives the High Authority (the prototype of the Commission in the EEC and merged with it in 1967) the power to set maximum and minimum prices, to assign quotas and allocate supplies, and to promote the development of the industries through loans for investment and restructuring. In general, the ECSC was set up to transfer the control of these industries from the national level to the Community level. This has happened, but only partly. In the case of coal, a declining industry, state subsidies, though prohibited under the treaty, continued in practice. The Commission has had difficulty in controlling them, due to the severity of political pressures on national states. In the case of

steel, also plagued by over-capacity and competition from lower-priced imports, the EEC effectively displaced national policies after 1973. The Community undertook a process of rationalization involving production quotas, minimum prices, and import restrictions. In effect, it created or sanctioned a European cartel whose activities were regulated by the Commission.

57.2 Energy

- The Community is still a long way from having a common energy policy, although two of the three original Communities (ECSC and Euratom) were specific to the energy sector. Nonetheless both the Single Market program and Community environmental policies have had a substantial effect on national energy policies. Liberalization or deregulation under the Single Market program has somewhat weakened national controls over electricity and natural gas, sectors where national monopolies have been dominant. Efforts are still under way to develop a single energy market across the EU, and to develop and implement a set of policies regarding sources and security of supply. A comprehensive Commission program for an internal energy market was put forward in 1988, but has languished due to opposition within the Council (i.e., among the states). To date, probably the greatest impact on national energy policies has come from Community directives to restrict emission levels of gases linked to acid rain. Attempts to impose a carbon tax in order to reduce carbon dioxide emissions have not succeeded.

57.3 Agriculture

- By far the most ambitious, far-reaching, and costly sectoral policy is the Common Agricultural Policy or CAP. Half the EU budget is spent on agriculture, mainly on price guarantees but partly on restructuring or removal of land from production. The CAP is now closely intertwined with international trade agreements, and the Uruguay Round of GATT negotiations became a major factor in forcing policy reform. As the main object of EU expenditure and a program that has strongly redistributive effects among the member states (some being net beneficiaries, and others net contributors), the CAP is also a major source of controversy among the member states. None of them now has an agricultural policy that is more than a minor variant of Community policy, which controls prices, stockpiles excess production, pays farmers to take land out of production, limits livestock herds and tonnage of produce, and retrain farmers for other occupations.

57.4 Fisheries

- Fisheries policy is also centralized in the Community, effectively setting the parameters within which member states may act.

Territorial waters and the surrounding economic zones no longer belong to the states individually, but are controlled by the Community. The Community sets quotas on the allowable catch, negotiates international agreements on quotas, and allocates them to member states.

57.5 Transportation

- Provisions for a common policy on transportation were included in the Treaty of Rome (1957), but relatively little was done in this field at the Community level. In fact, one of the oddities of the institutional system of the Community was revealed by an action of the European Parliament in 1983, in relation to transportation policy. The treaty mandated action by the Council to formulate common rules applicable to transportation among or across member states, and internationally; but the Council failed to act. So the Parliament, supported by the Commission, brought a case against the Council in the European Court of Justice. The Court's ruling required the Council to open up intra-Community competition in the transportation field. This became one of the objectives of the Single Market program, and the necessary directives were indeed enacted by the Council. More recently, the Maastricht Treaty has mandated the creation of trans-European networks in the areas of transport, telecommunications, and energy infrastructures. This feature of the treaty was accompanied by the publication, in 1992, of Commission proposals for a more proactive role for the Community in transportation policy, focussing on infrastructure development (especially in the poorer regions or countries of the Union), control of subsidies or state aids, standardization of networks, safety regulation, environmental and social aspects of transportation, and research and development.

Fiscal and Monetary Policy: The Economic and Monetary Union

58 No common EC/EU fiscal policy

There is no common EC or EU fiscal policy. The EU budget is too small to have significance as a tool of economic stabilization, and no attempt is made to use the budget for this purpose. The only way, then, to have an EU fiscal policy would be through the close coordination of the budgets of the member states, and this has not been accomplished, or even seriously attempted. Although the six original member states committed themselves under the Rome Treaty to coordinate their economic policies and remedy disequilibria in their balances of

payments, this has remained no more than a verbal commitment. Member states still make their budgetary decisions on the basis of what they judge to be their national interest.

59 *EMU and the budgetary policies of participating states*

This situation will change if a monetary union is established as called for in the Maastricht Treaty, with a final deadline of 1999. Not all states want to participate in the proposed economic and monetary union (EMU), and not all would be allowed to participate, but those that do would have to adopt budgetary policies consistent with principles laid down in the treaty. These principles are essentially those imposed by Germany, if it is to give up the Deutsche Mark in favour of a common currency. As a strong-currency state with an independent and powerful central bank, Germany has been unwilling to participate in a monetary union if other states have budgetary latitude to run deficits that would lead to domestic (intra-EMU) inflation and weaken the common currency on international markets. As the most economically powerful state in the EU, and the state with the leading currency in Europe, Germany has been able to set the conditions under which a common currency would be created. The other states have had to agree to enshrine those conditions in the treaty, and with the creation of the EMU they would have to accept jointly determined fiscal discipline. There would probably not be an EU fiscal policy, but the fiscal policy of each participating state would be closely constrained by the other states.

60 *The EMS*

The decision to proceed to EMU was taken in light of experience with the European Monetary System (EMS), created in 1979. The EMS is a system of jointly determined but movable parities among the currencies of most EC states (though Greece never joined, Britain joined only in 1990, and both Britain and Italy withdrew in 1992). Between 1979 and 1993, for the participating states, the EMS allowed for a 2.25 per cent narrow-band fluctuation around the parity (or, in some cases, a broad band of six per cent on either side of parity) — i.e., two currencies could fluctuate as much as 4.5 per cent in relation to each other in the narrow band, or 12 per cent in the broad band. However, from September 1992 to July 1993, several currencies repeatedly came under pressure, leading to multiple devaluations (Italy, Britain, Spain, Portugal, Ireland) and ultimately to a decision to permit fluctuations of up to 15 per cent on either side of the set parity with the Deutsche Mark (in practice, only the downward side is relevant). Since 1992, the EMS has not much constrained the macroeconomic policies of the member states. However, each state has had to make a policy choice, how closely to align its currency (if it can) with the Deutsche Mark — the advantages of doing so being the

control of inflation, and preparation for eventual membership in the monetary union.

**61 German dominance
within the EMS**

The EMS has been essentially a formalization of a Deutsche Mark zone. From the 1960s onwards, Germany has been able to set its monetary policies to suit its domestic needs (generally speaking, price stability — though recently this goal has been compromised by the economic effects of unification and the huge budgetary drain this has involved), while other states in the zone have had the option of adapting their fiscal and monetary policies to maintain an exchange rate close to the parity figure. The fact that there is strong incentive to do so gives the EMS parities, even today, continuing significance. This underscores an important fact about the EMS: it is an asymmetrical system in which Germany can act, and has acted, unilaterally. Each of the other states has the following choices:

1. to allow the free movement of capital, and implement an independent monetary policy — which requires it to accept periodic realignment of its currency, or simply to adopt a floating exchange rate;
2. to peg the currency (though with periodic realignments), and pursue an independent fiscal and monetary policy — which requires it to restrict the free movement of capital; and
3. to allow the free movement of capital, and peg the currency — which requires it to give up monetary and fiscal independence.

Basically, the EMS has allowed for options 2 and 3. Britain has preferred option 1, staying out of the EMS, except for 1990-92. Only the Netherlands has consistently followed option 3, aligning the guilder with the Deutsche Mark. The other EC states have followed option 3 some of the time, but can be more generally characterized as having chosen option 2, with its periodic realignments. Under option 2, the cumulative devaluation of some currencies in relation to the Deutsche Mark have been substantial; between 1980 and 1992, the Italian lira dropped by about 60 per cent relative to the Deutsche Mark, and the French franc by more than 40 per cent.

**62 The road
to EMU**

Monetary union would permanently eliminate the past pattern of devaluations, doing away with fiscal and monetary independence for the participating states. According to the Maastricht Treaty, EMU is to be achieved in three stages, with stage three beginning not later than January 1, 1999. All EU states are bound by treaty provisions applying

to stages one and two, but not all will proceed to stage three, when the common currency is created. Denmark has said it will not do so, and Britain has equivocated; for some of the other states, the choice may not be available (paragraph 63).

62.1 Stage one

- Stage one began July 1, 1990, i.e., predating the Maastricht Treaty. It was actually part of the Single Market program, and was marked by the liberalization of capital movements among member states. July 1990 was the date at which a 1988 directive on capital markets came into force; it required member states to remove all restrictions on the movement of capital, except in emergency situations. Derogations (declarations that the directive would not apply) were made for Spain, Greece, Portugal, and Ireland. The significance, though, of freeing up the movement of capital can be seen only in light of the EMS. Between January 1987 and January 1990, no realignments had taken place (in fact, in January 1990 only Italy had devalued), and it was believed that a progressive tightening-up of the fluctuation band would be possible. When no fluctuation was permitted at all, and parities were set irreversibly, monetary union would be an accomplished fact, whether or not there was actually a single currency. The test of irreversible parities would be the removal of all controls on capital movements.

62.2 Stage two

- Stage two began January 1, 1994. During this stage the institutions and procedures necessary to create a common currency — mainly, arrangements for the control of national economic policies — are being established.
 - Member states are required to ensure the independence of central banks from political control.
 - The European Monetary Institute (EMI), consisting mainly of central bankers, has been created. Its task is to strengthen the coordination of member states' monetary policies, in part by submitting opinions to governments and to the Council, which in turn "shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors," especially the incurring of excessive deficits. If a state does not act to correct the situation, the Council's recommendations may be made public — in effect, a public rebuke, or statement of non-confidence. This could be extremely damaging to the state thus censured. Thus, the Council, presumably acting on the

advice of the EMI, gains ability to put pressure on member states to adhere to monetary and fiscal policies conducive to monetary stability.

- Governments at all levels are prohibited privileged access to private sector financial institutions, and they cannot obtain overdraft facilities at central banks. These provisions make it difficult or impossible for a state to monetize its debt (i.e., convert debt into money, a step that expands the money supply, with strongly inflationary consequences).

62.3 Stage three

- According to the Maastricht Treaty, stage three, the stage where a common currency is established — the ECU or European currency unit replaces national currencies — is to begin not later than January 1, 1999. In this stage, the participating states are subject to compulsory budget discipline, imposed by the Council, with various sanctions (including fines) for non-compliance. Monetary policy is to be set by the European System of Central Banks, consisting of national central banks and a new European Central Bank. Both the national central banks and the European Central Bank are to be independent of all governments and of Community institutions, and are to ensure price stability.

63 Admission to stage three

The European Council is to determine which states are to be admitted to stage three; the guideline set out in the treaty is that they must meet the following convergence criteria:

- an average inflation rate not greater than 1.5 per cent above that of the three lowest-inflation states;
- a budget deficit of not more than three per cent of GDP, and an accumulated public debt not more than 60 per cent of GDP;
- two years without devaluations, while remaining within the narrow band of the EMS (2.5 per cent of the parity figure); and
- long-term interest rates within two per cent of those prevailing in the three lowest-inflation states.

The European Council's decision will be a political one. The heads of state or government will have latitude to allow non-compliance with the convergence criteria — as they will have to do, if a majority of the member states are to be admitted to stage three (see also paragraph 65).

64 Derogations

States not admitted to stage three, or (in the cases of Denmark and Britain) choosing not to proceed to stage three, are granted derogations. They are not subject to the disciplines to which the participating states are bound, nor do they participate in the governance of the monetary union. They will not vote in Council on matters that do not apply to them, and the number of votes required for a qualified majority is correspondingly lowered.

65 EMU: prospects

The achievement of EMU is an ambitious and risky project. It is clearly controversial in some of the member states, especially Britain and Denmark, and recently in France — in all these states it is feared that adherence to overly strict budgetary policies may lead (in fact have led) to high rates of unemployment. In addition, the practical difficulties involved in proceeding to a common currency are substantial. Many consider the convergence criteria to be overly strict; in fact, not even Germany meets them at present, owing to strong inflationary pressures and budgetary deficits in the five per cent range (where a maximum of three per cent is permitted); both the inflation and the deficit result from the enormous outlays required for economic reconstruction in the former East Germany. Clearly, monetary union cannot come about unless both France and Germany (as well as some others) meet whatever criteria are, in practice, applied. Some states are quite far off target; for example, both Belgium and Italy have an accumulated debt more than 120 per cent of GDP, twice the permitted ceiling under the convergence criteria. Under these conditions, can stability be expected to return to foreign exchange markets, after the multiple devaluations in 1992 and the gutting of the EMS in 1993 (paragraph 60)? With such a poor record, many are sceptical that monetary union will in fact be achieved by 1999, though governments officially adhere to this timetable, which is inscribed in the treaty.

Social Europe

66 Balance of economic and social aspects?

"In the course of the construction of the single European market, social aspects should be given the same importance as economic aspects and [both elements] should accordingly be developed in a balanced fashion." This statement, issued in June 1989 by the European Council, encapsulates the idea of Social Europe, an inevitably imprecise term, but an evocative one that has been rhetorically useful because of its favourable connotations and its appealingly elastic boundaries.

67 Social goals in the EC Treaty

Notwithstanding the imprecision of the term Social Europe, the thrust of the concept is clear. Under this broad heading are grouped several objectives, including notably: full employment, regional development, the improvement of working conditions, union involvement in decision making within the firm, equitable remuneration of workers (and in particular the achievement of gender equality), upgrading workforce skills and the integration of vulnerable groups into the workforce (e.g., the young, the aged, and the disabled), the upwards harmonization of national policies for social security, and environmental protection. All these matters are targeted in the EC Treaty, although a foreign observer should be careful to distinguish stated objectives from accomplished facts.

68 Attitudes of member states

Support for building Social Europe has come mainly from the more wealthy northern-continental states. These states tend to be characterized by a highly developed system of social security, close involvement of trade unions in the formulation of state policy and in the conduct of the enterprises in which their members are employed, and favourable working conditions. For these states, Social Europe is an essentially defensive concept or goal; they do not wish to see past achievements jeopardized through the process of economic integration. However, for the poorer states of the European South (especially Greece and Portugal), an EC-wide commitment to Social Europe has a different significance: for them, it promises more rapid economic development and faster, less painful adjustment to new forms of economic activity. For the rich, Social Europe means the upwards harmonization of policies supporting workers' rights; for the poor, it means fair treatment of migrant workers and a strong commitment to regional development. Progress towards building Social Europe thus depends on achieving an acceptable balance between these objectives and between the regional forces supporting each. In this way there arises an essential complementarity between social and economic objectives.

69 Social goals and EC action

While, in principle, economic and social goals are complementary and should be pursued together, there are serious practical obstacles to doing so. Disparities in wealth, cultural differences, and diversity of policy preference among the states suggest that the setting of EU-wide standards in the provision of public services is, at best, a goal for the indefinitely long term. Cross-national comparability of standards has not been attempted. Nor is it on the current agenda of the Commission or of the European Council. There has, however, been action in two main areas: "economic and social cohesion," involving EU funds for regional development (paragraph 56.2), and "the fundamental social

rights of workers," the subject of what is more commonly known as the European Social Charter (1989) and the Protocol on Social Policy annexed to the Maastricht Treaty.

70 Social provisions in the EC Treaty (SEA, Maastricht); the Social Charter (1989)

A Social Provisions chapter, mainly limited to the statement of broad principles and objectives, was included in the original EC Treaty (articles 117 to 122). It was strengthened slightly by the Single European Act in 1987. Two years later, the European Council issued the Social Charter or Community Charter on the Fundamental Social Rights of Workers, a declaration of policy endorsed by 11 of the member states (Britain dissenting). The Social Charter sets out objectives on freedom of movement, employment rights and remuneration, living and working conditions, social protection (social security benefits), collective bargaining, vocational training, and other matters — but the charter does not bind even its 11 signatories. A statement of somewhat narrower scope is appended to the Maastricht Treaty, in the form of the Protocol on Social Policy. It incorporates the principles of the Social Charter and provides for their implementation through Community institutions, with the Council being empowered to issue the necessary directives. However, Britain, which refused to sign, is exempted from any obligations under the protocol. In consequence, Britain will not participate in deliberations of the Council or vote on agenda items covered by the Social Protocol. The following subjects are covered in the Social Provisions chapter of the EC Treaty, or in the Social Protocol to the Maastricht Treaty, or both:

- gender equality in the workplace;
- working conditions, including health and safety;
- rights of migratory and transborder workers;
- retraining and relocation of redundant workers, training for vulnerable groups (youth, the handicapped, women wishing to return to paid employment, the aged, etc.); and
- the rights of association and collective bargaining.

71 Gender equality

Pay equity ("the principle that men and women should receive equal pay for equal work") has been enshrined in the EC Treaty from the beginning. It is enforceable by national courts on the basis of preliminary rulings obtained from the European Court of Justice. A substantial jurisprudence has been developed. The principle is restated

in the Social Protocol to the Maastricht Treaty, which also permits but does not mandate affirmative action programs in favour of women.

72 Working conditions, health and safety

The Single European Act added a provision to the EC Treaty (Article 118a), empowering the Council to issue directives on the health and safety of workers. The Council acts in this matter by qualified majority under the cooperation procedure (European Parliament). The directives may establish "minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States." This provision was given a more positive aspect under the Social Protocol (Maastricht), which enjoins the Council to "support and complement the activities of the Member States" in several fields, including protection of workers' health and safety, and working conditions. In this, as under the SEA, the Council acts by qualified majority under the cooperation procedure, after consulting the Economic and Social Committee.

73 Migrant workers

One of the principles of the common market is the free movement of labour. Accordingly, the Council is empowered to "adopt such measures in the field of social security as are necessary to provide freedom of movement for workers," and in particular to ensure that benefits earned in one country can be cumulated with benefits earned in another country, and to ensure that benefits may be paid to workers residing in other member states. Both measures support the mobility of labour by reducing the cost to the worker of moving from one state to another to look for work.

74 Workforce training: the European Social Fund

The European Social Fund, provided for in the Treaty of Rome, has the mandate of improving employment opportunities for workers and increasing their geographical and occupational mobility. The Fund's more specific purposes and activities have varied over the years. Initially the Fund was targeted to retraining and relocating redundant workers; later, attention shifted to the under-25 age group, and (in lesser degree) to the long-term unemployed, women wishing to return to work, the handicapped, migrant workers, and those in small or medium-sized firms needing technological skills or management training. Since 1988, Fund resources have been channelled to areas of highest unemployment, lowest GDP, and most rapid industrial restructuring. The Fund subsidizes the labour market policies of member states, and (to draw a Canadian comparison) it is a vehicle for mounting shared-cost programs under which the Community covers 50 per cent of eligible expenditures.

75 *Rights of association and collective bargaining*

Under the terms of the Social Protocol (Maastricht), the Council cannot issue directives on pay, the right of association, the right to strike, or the right to impose lock-outs, but it does provide for Community-wide contractual relations between labour and management. Such agreements may be implemented either in accordance with the national law of member states, or, at the request of both parties, on an EU-wide basis, if so decided by the Council on a proposal from the Commission.

Environment

76 *Reasons for environmental action at the EU level*

Environmental policy, not originally included in the EC Treaty, has become one of the major subjects of Community legislation. There are several reasons for this:

- Environmental regulation may impose substantial costs on producers. States with a relatively good environmental record want to ensure that other member states cannot attract capital and employment on the basis of lax environmental standards. This is a competitiveness issue.
- Product standards may be established for purposes of environmental protection. An example is pollution control equipment on motor vehicles. Having different standards in different countries splinters the European market, may be a covert form of protectionism, and may reduce competitiveness with non-EU producers. A solution is to enact common standards (e.g., on vehicle emissions) applying across the EU.
- Many environmental problems spill across national borders; some are global. Effective action frequently cannot be taken at the level of individual member states.

77 *EC competences re the environment*

The adoption of environmental measures predates the inclusion of clauses in the EC Treaty actually authorizing them. Specific assignment of competence in environmental matters was first included in the treaty by virtue of the Single European Act, and this section was extended and strengthened under the Maastricht Treaty. Under Maastricht, the following objectives are identified:

- preserving, protecting and improving the quality of the environment;
- protecting human health;

- prudent and rational utilization of natural resources; and
- promoting measures at international level to deal with regional or worldwide environmental problems.

The treaty endorses the principle of preventive action, and declares that environmental damage should be rectified at source and that the polluter should pay. (Article 130r)

78 Realizing environmental objectives

With a view to realizing these objectives, the treaty provides that action may be taken by the Community on the basis of a qualified majority in the Council, under the cooperation procedure, but that unanimity is required for provisions primarily of a fiscal nature, matters of land use, and measures significantly affecting a member state's choice between different energy sources and the general structure of its energy supply. There is also provision for the establishment of general action programs to be adopted on the basis of the co-decision procedure. These assign responsibility, as appropriate, to the Community, the national, and local levels of government, and could imply that a state that does not implement the program is in breach of its treaty obligations. The 1993 Environmental Action Program has provisions relating to waste reduction, transportation, risk assessment, energy use, agriculture, and tourism. The program is not purely regulatory, but calls for changes in tax structure and the offering of subsidies under the structural funds.

79 More stringent protective measures

A particular problem may arise if one or more states imposes more stringent measures for environmental protection than has been established under Community legislation. Provision is explicitly made for this (Article 130t), and the principle was reaffirmed at Denmark's request by the European Council in December 1992 (the Edinburgh Declaration). The potential difficulty is that, "Such measures must be compatible with this Treaty" (Article 130t), and the Commission must be informed of them. Conflict could easily arise between more stringent protective measures and the principle of free movement of goods, also enshrined in the treaty. The European Court of Justice would then have to make a ruling on the admissibility of the more stringent measures.

Mobility Rights, Immigration, and Internal Security: Justice and Home Affairs

80 *Free movement; the Schengen Convention*

The free movement of labour is one of the features of a common market, and this principle was written into the Treaty of Rome, 1957 (Article 3). It was strengthened under the Single European Act and the Single Market program, which proposed the removal of border controls on the movement of persons as well as of goods — logically implying that controls would have to shift to the external borders of the Community. This was the objective of the Schengen Convention, signed by West Germany, France, Belgium, the Netherlands, and Luxembourg in 1985, and subsequently joined by Italy, Spain, Portugal and Greece. The agreement was finally implemented in 1994, thus becoming the vehicle for one of the objectives of the Single Market program — Britain, Ireland, and Denmark not participating.

81 *Maastricht re immigration, asylum, and internal security*

The Maastricht Treaty attempted, in effect, to absorb the Schengen Convention and to make it apply to all member states of the Union. Under Maastricht, decisions on immigration, asylum, and internal security may be taken by qualified majority in the Council of Ministers. The treaty also provides that decisions on visa matters be taken exclusively by the Council, initially by unanimity after consulting the European Parliament, but by qualified majority after January 1, 1996. (Article 100c) This provision is complemented by the Maastricht provisions on cooperation in Justice and Home Affairs. The relevant clauses declare that member states shall regard various matters as being "of common interest:" asylum policy, immigration, combating drug addiction, police cooperation (terrorism, drug trafficking), and judicial cooperation in both civil and criminal matters. This part of the treaty (Article K) calls for cooperative action by the states, outside of the EC framework. This means that decisions are to be made by unanimity, and cannot be enforced by action of the Commission and the European Court of Justice. In the language of the EU, the process is intergovernmental rather than supranational. However, Article 100c of the EC Treaty — inserted by Maastricht — provides not only that the Council should make decisions on visa matters, but that most of Article K (asylum, immigration, and aspects of the justice system) may be brought within the ambit of the EC Treaty. If this happens, decisions in these fields will be taken by qualified majority, and the Commission and the European Court of Justice will gain enforcement powers in relation to them.

Common Foreign and Security Policy (CFSP)

82 *Elements of a CFSP*

As already noted, the three pillars of the European Union under the Maastricht Treaty are (a) the European Community or, strictly speaking, the three Communities, (b) cooperation on Justice and Home Affairs, and (c) cooperation with a view to developing and implementing the Common Foreign and Security Policy. The CFSP's objectives (Article J.1) are:

- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its member states in all ways;
- to preserve peace and strengthen international security;
- to promote international cooperation; and
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Member states are committed under the treaty to "inform and consult one another" on the above matters, and may adopt some form of joint action in relation to them.

83 *Prospects for bringing a CFSP partially within the ambit of the EC*

Where the European Council establishes general guidelines for joint action, the matter(s) in question become subject to decision by the Council of Ministers, which will determine whether to act by unanimity or by qualified majority. The usual rule, that Council will act only on the basis of a proposal from the Commission, does not apply in this case, and no reference is made to any role for the European Parliament. The implication of this section of the treaty, then, is that the formulation of the Common Foreign and Security Policy, or aspects of such a policy, may be brought within the ambit of Community action, without further treaty amendments. There are, though, three qualifications to add:

1. There would still be no means of enforcing Council decisions on any subject of joint action, as no reference is made to either the Commission or the European Court of Justice in this regard.
2. Although the CFSP may include "the eventual framing of a common defence policy, which might in time lead to a common defence" (Article J.4), issues having defence implications will not be subject to decision by the Council of Ministers.
3. Given the record of EU states in the former Yugoslavia, the prospects for developing and effectively implementing a CFSP on a supranational basis appear to be distant, even though the treaty makes provision for it, except with reference to defence matters.

Conclusion

84 *The integration process: progressive curtailment of national powers*

The elastic boundaries of current EC/EU competences, and the treaty basis for further extending them in the future, together point to the fact that EU member states may find their powers ever more sharply curtailed by the action of Union institutions as the years pass. This is so across a broad policy spectrum. In a sense, the treaties are open-ended: they formulate principles and objectives, and stipulate that action shall be taken to implement or achieve them. Many of the relevant measures can be taken by the Council by qualified majority, so long as it is acting on a proposal made by the Commission, and so long as the European Parliament does not reject or amend it. Thus the Council may move into new areas, acting by qualified majority, though in some cases an absolute majority of the members of the European Parliament may veto such an attempt.

85 *Opening up new areas of Community action*

The open-ended character of the integration process is underlined by Section 235 of the EC Treaty — there are analogous sections in the Euratom and the ECSC treaties — which reads: "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures." Unanimity is required for this (as noted). Nonetheless, the application of Section 235 provides for a form of constitutional amendment without reference to the legislatures of member states. Section 235 requires no public involvement, other than indirectly through prior consultation with the European Parliament. In the past,

this clause has been used to extend the competences of the Community in several important policy fields. Under it, the first steps were taken towards the achievement of economic and monetary union, the development of a common regional and social policy, a common policy for science and technology, and common environmental and energy policies. An analogous course of constitutional development is now provided for, under the Maastricht Treaty, in various aspects of immigration and asylum policy and internal security, and in various aspects of foreign policy and external security.

86 Subsidiarity

Possibly counterbalancing this thrust towards the continuing expansion of the role of the EU in relation to the member states is the principle of subsidiarity, which proposes retaining or extending decentralized decision making wherever feasible. It is formulated as follows in the EC Treaty (as inserted by Maastricht):

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. (Article 3b)

87 Apparent importance of enforcing subsidiarity

Some people attach great significance to the principle of subsidiarity and especially to the thought that it might become a basis for challenging the ambitions of the Commission. In effect, the principle says that if action is to be taken at the EC level, there must be a demonstrable reason for curtailing the powers of the member states; and the extent of EC involvement must be the minimum needed to achieve the purposes that have been agreed upon. If the European Court of Justice were to become the arbiter of "objectives ... sufficiently achieved," as is conceivable, the EC Treaty could become an instrument of decentralization in some areas, just as it is evidently an instrument of centralization in others. A very practical way in which the principle could become important is in relation to the wording of Community directives: on the basis of subsidiarity, one would expect directives to be as general and non-constraining as possible, leaving plenty of room for adaptation to suit conditions in the various member states.

88 Subsidiarity: a comment

It is far from certain, though, that the principle of subsidiarity has anything like the force that some anticipate it will have. The Council, composed of delegates of the member states, already has every incentive to prevent unnecessary or undesirable centralization, or

(more positively) to preserve the power of the states wherever national interests do not demand the pooling of sovereignty. The Council is already a critic and controlling force in relation to the Commission, except where the Commission is exercising powers conferred directly upon it by the treaties (where subsidiarity could scarcely be invoked). One may doubt, further, that the European Court of Justice would want to assume so obviously political a role, as to make itself the arbiter of the appropriateness or necessity of EC action, given stated purposes or objectives. Presumably, in the past, the extension of supranationalism has not proceeded absolutely without reason or justification: where the EC has moved into a policy field, it has been because the reasons for doing so seemed compelling.

Chapter 4

Maastricht in Canada?

89 *The EU as a unique system*

As Jacques Delors, former European Commission president, once said, the European Community (EC) is a UPO — an unidentified political object. He was stressing, as many others have done, that the Community — today, the European Union (EU) is a unique governmental system, not to be fruitfully compared with older, standard categories like "federal state" or "confederation." In response, one might concede that comparisons with other systems are risky, because history, social structure, and culture affect how institutions work, but might still insist that comparisons are informative if one takes sufficient account of contextual factors. This is the approach that has been taken in this report. On the one hand, it has been emphasized that the institutions and processes of the EC/EU have grown out of the particular historical context of western Europe in the latter half of the 20th century, and they have been adapted to that historical situation. On the other hand, an attempt has been made to explore the inner logic of the system: how the parts tie together, or why a given step (for example, the single market, the Economic and Monetary Union) has entailed several others. In other words, this report has explored why reforms have tended to come in tightly bundled packages.

90 *North American comparisons*

Both the historical context of European integration and the inner logic of the institutional system that has been built up are pertinent to making comparisons with other complex systems (federal states, supranational organizations, forms of economic association — to establish a free trade area, for example). North American comparisons may be made at several levels: with the Canadian (or American) federal system, with the North American Free Trade Agreement (NAFTA), and with a hypothetical association between an independent Quebec and "Canada" or its various successor-states.

91 *Canada-Quebec
and "the Maastricht
model" —*

The last of these comparisons — an "associated states" concept linking an independent Quebec with a surviving but diminished Canadian state — has recently received a good deal of attention from Quebec secessionists. Clearly, what one might call "the Maastricht model" is attractive to those Quebecers who find the federal system too constraining, but who want to preserve some links with Canada. The Government of Quebec has promised to hold, in 1995, a provincial referendum on the future of Quebec. It has also proposed that a post-referendum Quebec committed to independence would offer Canada a form of economic and political association, presumably nested within the NAFTA (of which both Quebec and the truncated Canadian state would be members in their own right). At least in official documents, comparisons with the European Union have remained implicit, but the institutional arrangements that have been sketched out bear a striking resemblance to those in the EU. There is not enough detail in the relevant documents to be precise about this. However, there are no official sources suggesting that the Parti Québécois (PQ) envisions the creation of legislative, executive, and judicial institutions with anything like the range of powers that have been found necessary in the EU. Although a ministerial council is envisioned, along with a secretariat to assist it, seemingly no attention has been paid to creating a genuine analogue to the European Commission; that is, there has apparently been no recognition of the need for a bureaucracy with the size, powers, and capacity to play a supervisory and negotiating role vis-à-vis the governments of Quebec and Canada if the economic union is to function effectively. In brief, the political aspect of the association that has been envisioned for Canada-Quebec is less well developed than the supranationalism that exists today in western Europe, while the economic aspect is in some respects more fully developed than in the EU of 1995 (in particular, the persistence of the monetary union is proposed and assumed).

92 *potential difficulties*

As might be inferred from the preceding parts of this report, experience in the EC/EU indicates a number of potential difficulties that would have to be resolved if an attempt were made to link Quebec and the new Canada through a Maastricht-inspired form of economic and political association.

93 *Secession
scenarios*

Some of the greatest potential difficulties of "Maastricht in Canada" are not appropriate to this report. However, it may be useful to note (briefly, at least) that the PQ and its allies have assumed that, as soon as the province signals its intention to secede, Canada will be ready to sit down and negotiate a two-member economic and political association. This assumption, however, is unwarranted. There is no one

with the constitutional authority or the necessary political base to enter such negotiations on behalf of Canada. It is a near-certainty that provinces would insist on being involved in any bargaining with Quebec in order to protect or advance their own interests. They would refuse to stand aside while a federal government bargained on their behalf. For its part, the federal government would probably have no incentive (not even from financial markets) to negotiate a break-up. Of course, this is speculative, but behind speculations such as these lies the greatest problem of all: there is no guarantee that, if Quebec secedes, the rest of Canada will in fact remain within a federal system of essentially the current design. Many insist that it will not and should not. If, therefore, one were to gauge the potential attractions and difficulties of creating a Canada-Quebec association, it would be necessary to take account of the following possibilities: (1) that the remaining provinces and territories of Canada would regroup into (say) four or more regional states, Quebec thus being one of several successor states; and (2) that Canada — while surviving as the predecessor state, assuming the privileges and obligations of existing treaties and other international agreements, as well as bearing ultimate responsibility for the public debt of present-day Canada — would be transformed into a much more decentralized system than exists today. As numerous commentators have remarked, if Quebec ever appears to be irrevocably committed to independence, the rest of Canada would probably be far more preoccupied with its own political arrangements than with any agreement it might strike with the future independent state of Quebec.

94 *Quebec as one of several member states?*

Under either of the above scenarios — the splintering of Canada into several fragments or its radical decentralization — the present-day European Union might indeed become a model for creating a multi-member economic and political association. Quebec would become one of several member states. There are two reasons, however, for not speculating about this here. First, none of the contemporary political leaders of Quebec has shown any interest in it. They probably realize that Quebec's influence is stronger within the present federal system than it would be if Quebec had to bargain directly with the governments of nine other provinces (plus the territories) in order to achieve its economic goals. In other words, Quebec would be participating in the new supranational organization on terms less favourable than those it enjoys within the present federation. Second, the dominant position of the United States in North America would make any regional grouping of states on its perimeter an extremely fragile entity. To weave fantasies about the relations among the states that are situated on the northern rim of the United States without taking

account of bilateral relations between each of them and the U.S. would be futile. Certainly there could be no fruitful comparisons with the European Union, where leadership has been assumed by the economically and politically most powerful states on the continent.

95 *Maastricht in
Canada: the
continental context*

The problem of the fragility of a regional grouping of states arises whether Quebec is seeking economic and political association with several other successor-states of Canada, with a barely federal or confederal system (a system with a central political authority mainly controlled by the states), or with a truncated but still clearly federal Canada. One may reasonably conclude that those who are showing interest in a Maastricht-inspired form of economic and political association linking Quebec and Canada are neglecting some of the most important economic and political facts of life in North America. It is not suggested that secessionists have failed to factor in the NAFTA when they think about Quebec's economic future — on the contrary, they emphasize the opportunities it offers. But they seem not to have reflected on how the NAFTA (or simply the presence of the United States) might affect the working of any Quebec-Canada economic/political association. Fragmentation would be a strong possibility, since all the provinces or former provinces of Canada would be more concerned about their ties with the United States than about their ties with each other.

96 *The internal logic of
the EU system*

Although the NAFTA clearly would affect the stability and effectiveness of a Maastricht-type relationship between Quebec and Canada, this issue cannot be addressed in this report. This survey of the European Union allows no more than a consideration of "Maastricht in Canada" as if there were only two entities to take into account: an independent Quebec and a Canadian federation from which Quebec has seceded. What follows is an attempt to trace the internal logic of the EU system and to apply that logic to an imagined Canada-Quebec pairing of associated sovereign states.

97 *Economic
association:
beyond free trade?*

The basic question for Canada and an independent Quebec to resolve, as regards economic association, would be how far to go beyond free trade. The NAFTA is an existing structure, and presumably the United States would be willing to negotiate membership terms with a sovereign Quebec. It is doing this now with Chile, and (somewhat ominously) is taking advantage of the moment to reopen certain features of what at present is a tripartite agreement. One could expect the same scenario to play out with an independent or soon-to-be-independent Quebec; in the end, Quebec and Canada would both belong to an expanded and modified NAFTA. This would establish

free trade between them on the same basis as applies between Canada and the United States, Mexico, and — perhaps by then — Chile. The question for both Canada and Quebec would be whether to create a more advanced form of economic association than a renegotiated NAFTA would provide. Would there be a customs union, with a common external trade policy? Would there be free movement of persons/labour and (beyond what is in the NAFTA) of services and capital? Would internal borders be totally open, without controls or inspection? Would there be a monetary union? The utility of the EC/EU comparison is that it shows what the western Europeans have found it necessary to do in order to develop a customs union and common market, to remove internal frontiers, and (in anticipation of 1999) to create a monetary union. In Canada, these aspects of the present economic union would not automatically remain in place — by inertia, so to speak — after secession by Quebec; they would have to be created. The experience of the EC/EU speaks to the problems involved.

Customs Union

98 *Forms of protection*

A customs union calls at the very least for a common external tariff. That was an adequate definition in 1957, when the Treaty of Rome was negotiated. Protection meant mainly tariffs; in fact, one of the principles of the General Agreement on Tariffs and Trade (GATT) was to convert import quotas into equivalent tariffs, and this had become a feature of the postwar trading system. However, in the 1990s (to say nothing of what we may anticipate for the 21st century), protectionism expresses itself through many policies other than tariffs. Today, protectionism takes the form of restrictive technical standards, regulations that affect the provision of (and therefore trade in) services, and contingent protectionism or the selective erection of trade barriers according to the policies of exporting states and the viability of various industries in importing states. The instruments of contingent protectionism are countervailing duties (to neutralize the effects of a public subsidy to the exporting firm), anti-dumping duties (to neutralize allegedly unfair trading practices by firms and public agencies), voluntary export restraints or managed-trade agreements among states (generally in violation of GATT/World Trade Organization rules), and safeguard measures (quotas or temporary levies to protect declining industries or industries subject to sharply increased import competition). International trade negotiations increasingly focus on such issues. Tariff levels still matter, but have receded markedly, while contingent protectionism has increased. A

customs union that provided for only a common policy on tariff levels would have little significance in today's world. The conduct of external trade relations now covers the gamut of policies affecting trade, and a customs union must be able to get the member states to commit themselves correspondingly.

99 *The EU's common commercial policy*

As already indicated, this is the case with the EU's common commercial policy (paragraph 48): Whatever becomes the subject of international trade negotiations automatically comes within the competence of the EC: the Council takes control, and the Commission is the policy proposer and negotiating agent. Member states are bound, under the terms of the EC treaty, to implement agreements approved by the Council on the basis of a qualified majority. There is thus a close relationship between the implementation of a common (external) commercial policy and the centralization of control over the working of the internal market, as well as various sectoral policies, notably agriculture.

100 *Political ramifications of a Canada-Quebec customs union*

In the case of a Canada-Quebec customs union, the future trade negotiations that will matter most are the following: (1) those concerning the expansion of the NAFTA, and (correspondingly) the potential renegotiation of existing rules and commitments; and (2) those affecting the global trading system, or World Trade Organization rules. The scope of both the NAFTA and the Uruguay Round Final Act is clear indication of how deeply trade negotiations today are intertwined with other aspects of economic policy. They go to the heart of industrial policy, policies on investment and industrial organization (monopolies and mergers), sectoral policies, and policies for economic development, including regional development. International trade regimes now permeate, shape, and constrain all domestic economic policies. The conduct of trade negotiations on behalf of any economic association therefore requires coordination of economic policies and agreement on economic priorities, both sectorally and regionally. Examples of importance to Canada include policies in relation to agriculture, energy, cultural industries, and the auto sector — all of which have strong regional effects and could be expected to generate conflict between the two states.

Common Market

101 *Common policies in a common market*

An economic association that creates or sustains a common market provides for the free movement of capital and of labour/persons. To some extent these objectives can be reached by prohibiting

discrimination (for example, under a treaty or agreement that establishes binding dispute settlement procedures), but more positive measures may also be judged necessary or desirable. In the European Union, parts of the Single Market program have been directed towards this end (removal of various technical barriers — paragraph 51.1). Enhancement of the free movement of persons has also been a primary goal of the 1989 Social Charter, of the Protocol on Social Policy appended to the Maastricht Treaty; and of Community involvement in work force training through the European Social Fund (paragraphs 70-74). As Chapter 3 has made clear, there is a huge volume of EC legislation covering a wide segment of the policy spectrum.

102 *Canada: the operation of the common market*

In Canada the free movement of persons is guaranteed in the Canadian Charter of Rights and Freedoms (Article 6, on mobility rights). In addition, Section 121 of the Constitution Act, 1867 provides that the goods of each province shall be "admitted free into each of the other Provinces." More generally, the shortcomings in the operation of the common market have recently been addressed in the Agreement on Internal Trade, signed in 1994 by the Government of Canada and the governments of all provinces and territories. Comparison with the EU, however, is instructive. Mobility rights under the Charter go further than anything in the European Union. Section 121, by contrast, is a free trade clause rather than a common market clause, and in any case it has not been much relied upon by the courts in deciding matters of jurisdiction. Moreover, and most significantly, the Agreement on Internal Trade allows for many more exceptions than are permissible under the terms of the EC treaty, and enforcement is far weaker. One of the stated objectives of the agreement is to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada," and subsequent modifications to the agreement may tighten up its provisions. However, even with a great deal of tightening up, the force of the agreement can be no more than to prevent certain forms of discrimination. It does not provide for policy coordination or harmonization, still less for joint decision making across the wide range of matters that have come, in the EU, within the ambit of the Single Market program.

103 *Federalism, secession, and the Canadian common market*

The key point is this: the operation of the Canadian common market, with all its deficiencies, is rooted more in the exercise of federal constitutional powers than in any of the above-listed instruments. The long list of federal economic powers, including those covered by the sweeping Section 91.2 — "The Regulation of Trade and Commerce" — has served to limit the growth of interprovincial barriers, even

though the federal list of exclusive powers must be read in conjunction with the provincial list. Provincial powers include those mentioned in the far-reaching Section 92.13 — "Property and Civil Rights in the Province" — which gives provinces control over most of the law of contract and therefore over wide areas of economic exchange, including most labour contracts. Thus the boundaries of federal and provincial jurisdiction have been set at the interface between the two sets of exclusive powers. However, if Quebec were to secede, obviously federal powers would no longer apply in Quebec, and an alternative basis for the operation of the Canadian common market would have to be created if the common market were to survive. A stronger Agreement on Internal Trade, adapted to the new situation, could help, and this has been proposed by the Parti Québécois. But no agreement along these lines, however carefully crafted, could substitute for policy coordination or joint policy-making of the kind that, in the EC, formed the substance of the Single Market program. It is almost inconceivable that the common market could survive Quebec's secession without some effective means (machinery, process) through which the participating states could pool their sovereignty.

The Issue of Border Controls

104 *Conditions for avoiding border controls*

It will be recalled that, when the Commission proposed the Single Market program in 1985, with the target of dismantling internal frontiers by the end of 1992, it declared that the EC states faced a choice between full integration of their economies or regression "into no more than a free trade area" (paragraph 50). Adoption of the Single Market program signalled the states' recognition that, without a wide range of common policies and policy harmonization, non-tariff barriers would continue to proliferate. The degree of integration already built up was at risk. This is the situation that Canada would face in the event of secession by Quebec.

105 *Border controls and a Canada-Quebec economic association*

An economic association that is no more than a free trade area retains (or erects) border controls. Inspecting goods at the border is necessary if there is no common commercial policy; otherwise, goods may be imported into low-protection states and may be exported into high-protection ones. True, if Canada and an independent Quebec each had its own trade policies (that is, if both were unable or unwilling to form a customs union), the two states would still start out with the same tariff schedule and, in general, the same set of trade remedy laws (contingent protection). However, without mechanisms in place to ensure that the commercial policies of the two states did not diverge,

they would surely do so. Problems would emerge most quickly and acutely with regard to textiles, automobiles, agriculture, and the services sector. Each country would be subject to pressures from its own electorate, and in trade matters, as in management of their domestic economies, the two would go their separate ways. And what would apply to relations with a third country would apply also to relations between the two states themselves: each would need assurance that the other was operating by the same rules of competition (the subject of trade remedy laws) and, in the absence of such assurance, border controls are the only recourse. Border controls are also required if states do not have harmonized labour and immigration policies.

Monetary Union

106 *Monetary union and budgetary controls*

Plans to create a monetary union among at least some of the EU states envisage that the participating states will be subject to compulsory budget discipline imposed by the Council (paragraph 62.3); this is provided for in the Maastricht Treaty. Since there is also to be a degree of harmonization of tax systems, states will have less latitude than at present to determine the overall size of their budgets (spending), and will have very limited capacity to implement a national fiscal policy. By contrast, in Canada no such budgetary or policy constraints are imposed on provincial governments, which clearly would find such limitations on their autonomy intolerable. But Canada is already a monetary union. How can Canada get along without Economic-and-Monetary-Union-style controls on provincial budgetary practices, and would such controls continue to be unnecessary if Quebec were an independent state linked to Canada in a monetary union?

107 *The Canadian federation as a monetary union*

At least part of the answer to the first question — how Canada can operate as a monetary union without having any controls over provincial budgets — may be that the Canadian federal system builds in mechanisms of adjustment to correct for regional imbalances. While the federal budget is smaller than provincial and municipal budgets combined, especially if provincial Crown corporations are added, it is still almost twenty times the size of the EU budget as a percentage of gross domestic product (GDP). Through the tax system, and through transfers to provincial governments and other regional spending, the federal government operates a huge system of interregional transfers. Most significantly, the size of the transfers varies as regional economic conditions change. Thus, if a province's economy slumps (if the price of an important resource product falls sharply, for example), the fiscal

transfers system that is a prominent feature of Canadian federalism absorbs part of the shock, reducing the need for a stimulative provincial fiscal policy. That, however, does not address what is really the main issue: the capacity of a large provincial government to implement a provincial fiscal policy that counters the thrust of federal policy. This has happened in the past, and it does create difficulties for monetary management. If a province the size of Ontario or Quebec were to run large budgetary deficits, this would raise overall levels of aggregate demand in Canada. This would put upward pressure on wages, prices, and interest rates, which in turn would probably necessitate action by the Bank of Canada to further raise short-term interest rates, keeping aggregate demand in check and buoying up the exchange value of the Canadian dollar. It appears, then, that the answer to the first question is twofold: first, there *are* difficulties flowing from the size of provincial budgets and the potential for the larger provinces to expand aggregate demand and destabilize the dollar, but those difficulties are tolerated because there is no politically acceptable solution; and second, the system works, though less than optimally, partly because of taxation and interregional transfer mechanisms that are inherent in the present federal system.

**108 A Canada-Quebec
monetary union?**

The second question is whether budgetary controls would be considered unnecessary (as at present) if Quebec were an independent state linked to Canada in a monetary union. It is important to be clear what is meant here. At issue is not whether an independent Quebec could use the currency of another country (whether Canada or the United States) as legal tender and as the unit of account. Such arrangements do exist elsewhere, though typically for micro-states that have made themselves appendages of large ones. Rather, what is meant is a monetary union supported by links between Quebec and Canadian financial institutions — probably a necessary condition for the union to survive potential crises during the transition period and subsequently. Depositors and creditors in Quebec financial institutions would need to be confident that the union was a permanent one, and that it would not be weakened by the taxing and spending policies of the Quebec government.

- There can be no guarantee that such confidence could be created (that is, that it would survive secession), but an essential if not necessarily adequate step would be to ensure that Quebec financial institutions remained within the Canadian Payments Association and had access to a reliable lender of last resort, ideally the Bank of Canada. Such links would imply, or require, a common regulatory framework. This, in turn, might make it possible to

continue the present deposit insurance arrangements, under which the Quebec Deposit Insurance Board (insurer to Quebec financial institutions other than the chartered banks) is backstopped by the Canada Deposit Insurance Corporation. A serious problem, however, is that close institutional arrangements, as described, could be built up only if there were confidence that the monetary union was permanent — a circular situation in which permanence would depend on the institutions, and the institutions could be put in place only if there were assurance of permanence.

- Also at issue here, as in the European Union, would be the links between government and various financial institutions, and the control of national budgets. The Economic and Monetary Union requires both that national governments lose any pre-existing special borrowing privileges from national financial institutions and that the budgetary policies of member states be subject to controls imposed by the Commission and the Council. There is probably a lesson here for Canada and an independent Quebec. Specifically, it is difficult to see how Quebec could be allowed to participate in the Canadian monetary union without provision for control of its budgetary policy. The closer the institutional links between the Quebec government and Quebec financial institutions, and the closer the links between Quebec and Canadian financial institutions, the more insistent demands for budgetary control would be. Canada would have a strong incentive to impose on Quebec the same conditions as Germany has imposed on other EU states — they give up fiscal independence. Germany does not want to support a European monetary union that, in the absence of guarantees on fiscal policy, could end up replacing the Deutsche Mark with a weaker, more inflationary European currency (paragraphs 59-61). It demands such guarantees — and so, probably, would Canada vis-à-vis a newly independent state of Quebec.

Political Association

109 *Preserving the
Canadian economic
space (summary)*

The preceding paragraphs have shown that a Canada-Quebec economic association or economic union strong enough to preserve the existing Canadian economic space intact would comprise several elements:

- There would be a customs union with a common commercial policy and therefore with a single agency to conduct international

trade negotiations and to ratify agreements. Both under the NAFTA and under the World Trade Organization, negotiations and agreements can be expected to cover such a wide range of issues that it will be impossible to make a clear distinction between trade policy and management or control of the domestic economy.

- There would be a common market, providing for free movement of services, persons and capital, as well as of goods. As demonstrated by the European Union, to achieve this degree of economic integration a wide range of policies must be decided in common, or mechanisms must exist to ensure harmonization of policies in areas as diverse as consumption taxes, product standards, subsidies to economic enterprises of all kinds, working conditions, and environmental protection. However, even if the many loopholes in Canada's 1994 Agreement on Internal Trade were plugged and it were rigorously enforced, the agreement would not be adequate to prevent the emergence of barriers inconsistent with a common market.
- The common or agreed regulatory framework for economic activity, required to make a common market work, would be sufficiently well developed to allow for open borders (absence of controls).
- If the Maastricht provisions on monetary union are any guide, there would have to be controls on member states' budgetary policies to ensure the stability and strength of the common currency.

In each of these areas, both Canada and Quebec would necessarily be restricted in their economic policies, essentially as the EU states are today (Chapter 3). The constraints within which both would have to operate, at least if they followed the Maastricht model, would leave them with less control over their economies than the provinces of Canada — including, of course, Quebec — have today.

**110 *Managing an
economic union:
the political stakes***

The issues that would arise in the management of an economic union would be politically explosive, especially when overlaid by the fiscal burdens of servicing the national debt inherited from the past (at a cost of about one-third of current federal tax revenues). In view of the conflicts that would inevitably be engendered over the very fundamental political decisions that would have to be made, it is evident that a strong governmental framework — with legislative,

executive, and judicial institutions — would have to be created. The Maastricht model, though probably more than the PQ would propose or accept, would be a minimum requirement. What would be its implications? Would Maastricht-type institutions have adequate policy capacity, and would they be considered by citizens to be sufficiently democratic? Both problems are viewed seriously in the European Union (paragraphs 35-37). If EC-type institutional structures were transposed to Canada (or Canada-Quebec) — where, of course, they would be compared with the existing federal system — they would almost certainly lack legitimacy on both counts. In particular, the role played by the Commission or its Canada-Quebec analogue would be viewed as deeply undemocratic, and the means of implementing joint decisions (or common policies) would scarcely be acceptable.

Maastricht for Two?

111 *Give and take in the EU*

The difficulties of making Maastricht-type institutions work in the Canada-Quebec context would be especially great, given that what is envisioned is an association of only two states. In the EU, the essence of the political decision-making process is the give and take that is involved in continuing, multi-issue negotiations among multiple partners. Introduction of the qualified majority voting rule led to the success of the Single Market program, and it was the key reform in the relaunching of the Community in the mid-1980s. Today, qualified majority voting lies at the heart of the institutional system in the EU; without it, the institutions and processes would lack the flexibility to work effectively.

112 *"Maastricht for two"* — a *non-starter*

A two-member association cannot have such flexibility. A proportional weighting of votes (by population) could not be acceptable to the smaller state, as it would be outvoted every time. To the smaller state, then, the only conceivably acceptable voting rule would be unanimity, as Quebec secessionists have proposed. This would give each state an almost comprehensive veto over the other's economic policies. In the Canada-Quebec case, Quebec would gain a voice equal to that of the nine provinces and two territories combined. This would be so obviously unacceptable to Canada as to be not worth discussing. "Maastricht for two" is an impossible concept.

Conclusion: Maastricht in Canada?

The following points, made earlier in this chapter, deserve emphasis:

- The Parti Québécois has assumed that, as soon as the province signals its intention to secede, "Canada" will be ready to sit down and negotiate a two-member economic and political association. This assumption is unwarranted. There is no one with the constitutional authority or the necessary political base to enter such negotiations on behalf of Canada. Provincial and territorial governments would insist on being at the bargaining table. This makes a two-unit economic and political association, Quebec and Canada, extremely unlikely.
- In a multi-member economic and political association along Maastricht lines, Quebec would be participating on terms less favourable than those it enjoys within the present federation.
- The economic dominance of the United States in North America would have this result: all future successor-states to the present Canadian federation would be more interested in securing their access to the U.S. market than to each other's markets. This would fragment any economic and political association created to link the various (two or more) successor-states of Canada. Their bargaining power vis-à-vis the United States would be correspondingly slight.
- A renegotiated NAFTA would be a vehicle for ensuring free trade between Quebec and the other successor-state(s) of Canada — that is, to the extent that trade between Canada, the United States, and Mexico is truly free today. A NAFTA expanded to include Quebec, or a Canada-Quebec free trade agreement along NAFTA lines, would be an economic association far less developed than the economic union that is currently sustained by the Canadian federal system.
- The history of the EC/EU shows that the western Europeans have found it necessary to create a political framework comprising legislative, executive, and judicial institutions in order to develop a customs union and common market, to remove internal frontiers, and to create a monetary union. In Canada these aspects of the present economic union would not automatically remain in place — by inertia, so to speak — after secession by Quebec; they

would have to be created. The experience of the EC/EU speaks to the problems involved.

- For the following reasons, any economic association going beyond free trade would require a strong political authority to make it work: (1) high political stakes are involved in framing and implementing a common commercial policy (the essential feature of a customs union); (2) to make a common-market work, a great deal of policy-making in common is required, more or less replicating the present economic powers of the Government of Canada; and (3) to prevent the erection of border controls, the participating states would require assurance that both were operating by the same rules of competition, and there would also have to be harmonization of policies on labour and immigration. The potential for controversy on all of the above matters is considerable. Divergence of economic interest among Canada's successor-states participating in an economic association that aimed at more than free trade would place a heavy strain on any political institutions that were created, and would require a correspondingly robust political structure comprising legislative, executive, and judicial institutions.
- If Quebec wished to join a Canadian monetary union — with its financial institutions gaining credit facilities, directly or indirectly, at the Bank of Canada — Canada would impose conditions that would probably be unacceptable to Quebec: that it gain control of Quebec's budgetary policy. Otherwise the Canadian dollar would be at risk. This is the lesson to be drawn from Germany's attitude to monetary union in western Europe, and from the convergence criteria that are to be imposed on all participating states.
- Under a Maastricht model of political and economic association, the participating states would have — certainly in some respects, and perhaps generally — less control over their economies than the provinces of Canada have today. Under "Maastricht in Canada," Quebec would have less, not more, control over its economy.
- In the European Community, the qualified majority voting rule has been essential to recent successes. But qualified majority voting requires more than two states. With only two states, the smaller one (Quebec) would demand parity in voting, and the larger one (Canada) would insist on proportionality — otherwise Quebec

would gain a comprehensive veto over Canada's economic policies. "Maastricht for two" is an impossible concept.

Appendix B

Glossary

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|---------|------------------------------------|
| CAP | Common Agricultural Policy |
| CFSP | Common Foreign and Security Policy |
| EC | European Community |
| ECSC | European Coal and Steel Community |
| ECU | European currency unit |
| EEC | European Economic Community |
| EMI | European Monetary Institute |
| EMS | European Monetary System |
| EMU | Economic and Monetary Union |
| EP | European Parliament |
| EU | European Union |
| Euratom | European Atomic Energy Community |
| IGC | Intergovernmental conference |
| MEP | Member of the European Parliament |
| NTB | Non-tariff barriers |
| QM | Qualified majority |
| SEA | Single European Act |
| VAT | Value-added tax |