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# Reforming the Treaty on European Union: the Legal Debate

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## Main text

There is something seductive about Intergovernmental Conferences: full of (rarely fulfilled) promise and tantalising possibilities. And it is to these that the published proceedings of the Asser Institute's 1995 Annual Colloquium on European law are devoted, covering "suggestions for revision of the Treaty on European Union". The wider, non-academic debate on the 1996 Intergovernmental Conference (IGC) is fuelled by contributions from the ill-defined but obvious camps of the pro and anti-integrationists but this cleavage has not been overtly manifested in academic writings, where the discourse is, generally, generous to the integrationist cause (if not uncritical of many of the more recent developments). This loyalty is all the more marked when dealing with the subject of the IGC, as it divorces any such discussion from the "political realities" of that process. The proclaimed aim of these papers is to make suggestions to feed into the IGC negotiations and to make "amendments which are realistic" (p. 57). This outlines the framework of the book, allaying its output to the impersonal IGC machine with a collection of serious contributions consciously writing for this (presumed) audience, with a position that proffers advice for (assumed) further levels of integration.

It is a lengthy, impressive and often stimulating work (like previous Asser Institute collections). Its title implies that it is exclusively focused on law related aspects of reform of the Treaty on European Union ("TEU"), but its wide breadth of papers extends discussion well beyond legal implications and not all contributors are lawyers. The first part of the book, the Framework of the Revision Debate, has four lengthy and thought-provoking essays on some of the major issues which ought to dominate the TEU revision, influenced as it is by the mantra of the need to be "more efficient, more democratic, more transparent" as the Union attempts in this IGC to put on a face for the faces that it had not tried very hard to meet in the past. Bruno de Witte's essay offers an interesting perspective on the constitutional development of the European Union and a critique of the IGC process itself proposing alternatives to Article N TEU. Some of his arguments are elaborated on in other essays in this section: the possibility of the European Union advancing without common accord considered in Ehlermann's piece on Increased Differentiation; the secrecy of the Article N procedure is one of the issues covered by Deirdre Curtin in her strongly argued proposals on democracy and transparency. Joseph Weiler's inspirational paper adopts a different register and his cutting analysis of

European Union citizenship perceptively challenges much of the predictable language of "IGCing". He also succeeds in rendering the simple reiteration of the phrase "the High Contracting Parties" scathingly ironic.

The second section covers General Institutional Questions, where important but familiar areas are discussed. There are worthy articles on decision-making in the Commission and the Council, questions of democratic representation, the role of the courts and the hierarchy of norms. The final section is loosely headed the Powers of the Community and Union. Amongst those selected for discussion are EMU, CFSP, JHA but the section opens with two articles on some constitutional aspects. Petersmann makes an important connection between European Union foreign policy, citizenship and Community interest. The pieces on CFSP *per se* adopt a different perspective as they are by "practitioners" rather than academic writers. The Third Pillar receives comprehensive and incisive treatment in the pieces by Fernhout and Errera. Some of the articles are "short of visionary material" (p. 365), but the whole is a valuable source book encompassing different theoretical perspectives on and approaches to the IGC.

All the papers are usefully accompanied by Comments. Snyder's discussion on the constitutional culture of the European Union is of interest and Heller's remarks on CFSP and JHA articles are also good. He examines the role of the security community and recalls the forces underlying the Third Pillar's facile grouping of "crime, drugs and migrants" (p. 405). He also notes that the kind of internal travel limits to which noncitizens are subject in the European Union was declared unconstitutional in the United States in the 1920s, a reminder that the concept of "unconstitutionality" (as opposed to constitutionality) is barely developed. Some issues that are not covered in great depth (and which are focused on in the Reflection Group's Report) include enlargement and employment. The final section concludes with a succinct and optimistic summary and commentary, which ends by stressing the need for original thinking and new concepts to emerge from the IGC (p. 479).

The book has a well-organised structure and is clearly presented. The Reflection Group's Report is usefully annexed. Given its price, this work will not have a student market, but it is an essential library purchase. It makes a timely contribution not just to the IGC debate but to wider considerations on the future of the Union and how this will be framed. It is a significant doctrinal accompaniment to the constitutional development of the European Union.