

**BARGAINING IN THE EUROPEAN UNION:  
THEORETICAL AND PRACTICAL PERSPECTIVES ON  
MULTILATERAL NEGOTIATION PROCESSES**

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**Abstract**

*At a time of visible oppositions and some tensed relations between Member States of the EU, the article aims to advance the study of bargaining and unilateralism in reiterative consensus building processes such as multilateral negotiations within the EU. It examines how bargaining tendencies influence the three dimensions of any negotiation: the architecture of the negotiation; the deal-making and haggling; and the interpersonal level. Using selected theory and research, it identifies the essential elements of a successful bargaining formula applied to EU negotiations. The article proposes to combine principles and techniques originating from game theory; hostage negotiations and crisis bargaining; and military methodology.*

**Keywords:** Bargaining, European Union, Negotiation, Strategy, Council of Ministers.

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## Introduction

Multilateral negotiations between Member States of the European Union (EU) are interstate processes combining diplomacy politics, institutional structures and cooperative regimes, a playing field for salient events, a specific atmosphere, different cultures, and linkages between recurring negotiations<sup>1</sup>. They offer each Member State a special nexus to defend its national interests and implement the recommendation to keep friends or allies close, and enemies or opposing counterparts closer. This article investigates what happens to legislative negotiations and Council processes largely based on consensus building, when tensions increase the appetite, or bargaining tendencies, of both friends and enemies among traditional negotiation partners. Bargaining tendencies refer to the calculations, tactics and moves operated with a view to unilaterally maximize the available gains in bazaar-like haggling; they are referred to as distributive strategies<sup>2</sup>. They contrast with joint problem-solving approaches, also labelled integrative strategies<sup>3</sup>. For several authors, the sources of such tensions lie in the opposition and conflict between Member States which stem from the economic and financial dissimilarities that divide a core and a periphery within the EU. For Magone et al.<sup>4</sup>, for example, the EU suffers from a dualist political economy, where peripheral countries are net EU budget receivers and debtors, macro-economically constrained in the Eurozone, and moderate innovators. Epstein<sup>5</sup> goes as far as pointing at a resilient 'economic backwardness' of Member States of Central and Eastern Europe in this periphery. Two other authors further illustrate this dimension of the conflict by comparing income gaps and relative population size between the

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<sup>1</sup> Daniel Druckman, "Intuition or Counterintuition? The Science behind the Art of Negotiation", in *Negotiation Journal*, no. 4, vol. 25, 2009, pp. 431-448, at p. 434.

<sup>2</sup> Christer Jönsson, "Diplomacy, Bargaining and Negotiation", in Walter Carlsneaes, Thomas Risse-Kappen and Beth A. Simmons (eds.), *Handbook of International Relations*, London: Sage Publications, 2002, pp. 212-234, at p. 212.

<sup>3</sup> Richard E. Walton and Robert B. Mckersie, *A Behavioral Theory of Labor Negotiations*, New York: McGraw Hill, 1965.

<sup>4</sup> José M. Magone, Brigid Laffan, et al., *Core-periphery Relations in the European Union. Power and Conflict in a Dualist Political Economy*, Abingdon and New York: Routledge, 2016.

<sup>5</sup> Rachel A. Epstein, "Overcoming 'Economic Backwardness' in the European Union", in *Journal of Common Market Studies*, no. 1, vol. 52, 2014, pp. 17-34.

centre and periphery in Europe<sup>6</sup>. They expect future ongoing distributional conflicts between paying and recipient Member States that would reach out far beyond the recent rescue packages negotiated so far in the EU. In their analysis of the voting records in the Council of Ministers, Bailer et al<sup>7</sup>. reach two related conclusions of interest. First, the net EU budget contributors are more likely to oppose EU legislation than net beneficiaries. Second, structurally weaker Member States are basically 'appeased' by the subsidies granted to them during the negotiations. In such context, the article focuses specifically on the bargaining tendencies that develop among EU Member States when tensions arise notably from economic, financial, political, or humanitarian situations impinging on the routine negotiation regime in the Council. The article builds into the praxeological method used in an earlier description of the patterns of negotiation in the Council of the EU<sup>8</sup>. It equally relies on the choices of national delegations and individual representatives which have been reported, collected and observed in the framework of legislative interstate bargaining and negotiations within the Council<sup>9</sup>. The article has a threefold objective. First, it aims to use general theoretical lenses to read situations of negotiation where bargaining has become predominant. Second, it seeks to transfer and apply to the EU some theoretical concepts and parameters of bargaining. Finally, it attempts to consolidate the theoretical added value to formulate grassroots recommendations for negotiators engaged in European multilateral bargaining. The article relies on general bargaining theory and extensive research findings developed in many different negotiation formats and designs. In order to better delimitating the bargaining phenomena, the article uses as a main thread a theoretical framework designed by Lax and Sebenius<sup>10</sup>. Their model submits that every negotiation is three dimensional.

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<sup>6</sup> Wolfgang Streeck and Lea Elsässer, "Monetary Disunion: the Domestic Politics of Euroland", in *Journal of European Public Policy*, no. 1, vol. 23, 2016, pp. 1-24.

<sup>7</sup> Stefanie Bailer, Mikko Mattila, et al., "Money Makes the EU Go Round: The Objective Foundations of Conflict in the Council of Ministers", in *Journal of Common Market Studies*, no. 3, vol. 53, 2015, pp. 437-456.

<sup>8</sup> Alain Guggenbühl, "The Culture of Negotiation in the European Union: Reviewing Trends and Predicting Patterns of Multilateral Decision-Making", in *The Hague Journal of Diplomacy*, no. 1, vol. 8, 2013, pp. 21-47.

<sup>9</sup> The author draws on his experience of working closely with national and EU institutions officials in preparing for and performing in negotiation processes; either as representatives in Council preparatory bodies or EU Presidency team members.

<sup>10</sup> David A. Lax and James K. Sebenius, *3-D Negotiation: Powerful Tools to Change the Game in*

The first dimension collates variables relating to the people and processes playing a role at the negotiating table. It covers notably communication, bargaining tactics, cross-cultural manifestations, and trust aspects. The second gathers variables relating to the substance of the negotiation, possible outcomes and alternative plans. This is the drawing board stage of the negotiation where possible deals are designed. The third dimension clusters the variables intervening in the context, set up, and architecture of the negotiation. Away from the negotiation table, they involve preparing the phases of the negotiation and the mandate of the negotiators. The article relies on this 3D optic to study how negotiations and EU interstate decision-shaping are affected by bargaining tendencies. The next three sections will reorder the dimensions of the model to successively examine how bargaining tendencies materialize in the context of negotiations; in the dynamics at the negotiation table; and at the interpersonal level of a negotiation. The article also investigates which delegations have the highest bargaining satisfaction; before concluding by formulating propositions to negotiators on effective ways to approach bargaining and unilateralism in negotiations.

### **Dimension 1: Context and Architecture of Negotiations**

At the end of a 2005 marathon negotiation to drastically reform the sugar policy of the EU, the European Commissioner in charge pictured perfectly the EU negotiation dance and some of its steps. She said the Council had just experienced the usual bargaining, but the outcome reached seemed to have been a reasonable one<sup>11</sup>. There is disagreement and bargaining among Member States, but the process usually leads to an accommodating or interested consensus rarely opposed by national delegations<sup>12</sup>. An interested consensus conventionally aims to accommodate the highest number of interests and policy preferences of the highest number of delegations. In other words, its quintessence is to reduce as much as possible damaging unilateral bargaining objectives, and any resistance to a final negotiation compromise. The analysis of Van Roozendaal et al. confirms that minimal

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*Your Most Important Deals*, Harvard Business School Press, 2006.

<sup>11</sup> *Reuters News*, EU strikes historic deal to shake up sugar policy, 24 November 2005.

<sup>12</sup> Alain Guggenbühl, 2013, *op.cit.*, p. 28.

winning coalitions are a rare phenomenon in the Council<sup>13</sup>. After inspecting the adoption of 118 legislative Proposals in the Council, Arregui and Thomson corroborate that the dissent of delegations at the voting stage is rare; even when the proposals are controversial, and if they face a high salience or opposition. Member States refrain from dissenting explicitly at the voting stage, even when some of their policy demands have not been met<sup>14</sup>. Nonetheless, Member States do not join the consensus to the detriment of their national preferences. The research of Høyland and Wøien Hansen<sup>15</sup> rules out that governments vote dramatically against their initial positions when acting consensually. This calculated equilibrium of national interests and collective outcome mirrors the oscillation between distributive and integrative approaches to negotiation. It is worth noting that the interested consensus building process has not been altered by the enlargement of the EU and the increase in numbers of the negotiating parties. Studying the data on the number and types of legal acts produced by the EU between 1994 and 2014, Toshkov<sup>16</sup> reports that, even though enlargement has possibly added a new dimension of contestation in EU legislative decision-making, it only involves six policy fields and a relatively small share of all legislative negotiations in the Council. The interested consensus based on immediate and future gains, trade-offs and linkages, has endured throughout the increased membership of the EU. In their examination of eight policy sectors between 1984 and 2012, Citi and Justesen<sup>17</sup> also observe an obvious rise of the heterogeneity of national positions with the successive enlargements. Interestingly however, this increased diversity did not alter the consensus

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<sup>13</sup> Peter Van Roozendaal, Madeleine O. Hosli, and Caspar Heetman, "Coalition Formation on Major Policy Dimensions: The Council of the European Union 1998 to 2004", in *Public Choice*, no. 3/4, vol. 153, 2012, pp. 447-467.

<sup>14</sup> Javier Arregui and Robert Thomson, "Domestic Adjustment Costs, Interdependence and Dissent in the Council of the European Union", in *European Journal of Political Research*, no. 4, vol. 53, 2014, pp. 692-708.

<sup>15</sup> Bjørn Høyland and Vibeke Wøien Hansen, "Issue-Specific Policy-Positions and Voting in the Council", in *European Union Politics*, no. 1, vol. 15, 2014, pp. 59-81.

<sup>16</sup> Dimiter D. Toshkov, "The Impact of the Eastern Enlargement on the Decision-Making Capacity of the European Union", in *Journal of European Public Policy*, no. 2, vol. 24, 2017, pp. 177-196.

<sup>17</sup> Manuele Citi and Mogens K. Justesen, "Measuring and Explaining Regulatory Reform in the EU: A Time-Series Analysis of Eight Sectors, 1984-2012", in *European Journal of Political Research*, no. 4, vol. 53, 2014, pp. 709-726.

building mechanisms or the coalitions of Member States established to defend certain policy preferences. The consensus building architecture is evidently challenged by events and situations inciting Member States to step up their negotiating positions and expectations. It may even lead Member States to challenge the decision of the Council in the unusual event of a majoritarian vote imposed on them. Slovakia and Hungary have for example decided to challenge before the European Court of Justice the legality of the 2015 'deal' to establish a mandatory plan to relocate migrants across all EU Member States<sup>18</sup>. This section will study successively how bargaining patterns are particularly enhanced under the pressure from the domestic stage, time factors, and deeply rooted non-negotiable preferences.

### **Home Map and Negotiation Compass**

The crucial bearing of the domestic context on the choice of negotiation strategies and bargaining interactions has long been acknowledged<sup>19</sup>. Research shows also that EU governments experiencing domestic resistance to European integration are more likely to increase their opposition to mainstream consensus building in the Council<sup>20</sup>. Besides, considerable societal and policy differences among Member States put pressure on EU policy-making because of the so-called misfit model. According to this model, Member States usually try to maintain the status quo of their legislation, and reach jointly the lowest common denominator; they are expected to do so because changes induced by EU legislation would incur material and ideational costs at home<sup>21</sup>. In such contexts, one would think that openness and transparency

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<sup>18</sup> Joined Cases C-643/15 and C-647/15, *Slovak Republic and Hungary v Council of the European Union*.

<sup>19</sup> The two-level game theory presented in particular by Putnam stages the international negotiator as both the recipient of the preferences and interests of domestic societal actors, and the compromise builder interacting with international counterparts. See Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-level Games", in *International Organization*, no. 3, vol. 42, 1988, pp. 427-460.

<sup>20</sup> Sara Hagemann, Sara B. Hobolt, and Christopher Wratil, "Government Responsiveness in the European Union: Evidence From Council Voting", in *Comparative Political Studies*, no. 6, vol. 50, 2016, pp. 850-876.

<sup>21</sup> Adrienne Héritier, "The Accommodation of Diversity in European Policy Making and its Outcomes: Regulatory Policy as a Patchwork", in *European University Institute Working Papers*, no. SPS 96/2, 1996, p. 164.

of deliberations would be detrimental to the negotiation process. Studies presented by McKibben confirm that non-cooperative bargaining strategies are more likely to be adopted when negotiations are intensely publicized<sup>22</sup>. When negotiating, governments can indeed purposely choose to exaggerate the magnitude of the domestic opposition in order to portray themselves as unable to make concessions; their objective being to incite their counterparts to show flexibility in order to secure the domestic support for the agreement under negotiation. Research has shown that changing negotiating attitude and using competitive tactics will in fact escalate the tensions between parties, and lead to more impasses<sup>23</sup>. Besides, in consensus driven environments, the cost of obstruction through excessive bargaining increases when circumstances impose on both the EU to act<sup>24</sup> and the Council to come to an agreement. It may lead to what Smeets calls a procedural consensus; a situation whereby Member States decide to abandon any opposing or contested view in the course of Council bodies deliberations to make sure an agreement is reached<sup>25</sup>. This decision is largely motivated by the quality or value of any alternative a Member State may have set against the proposal or compromise text on the negotiation table. The value of an alternative solution can be measured notably by the costs to adjust to the proposed legislation. These costs include usually not only investments in new policies and procedures to produce policy change; they also comprise the effects of domestic political opposition to the change incurred<sup>26</sup>. It has been demonstrated that bargaining may even be used by negotiating parties having no alternatives. The experiments of Schaerer et al. have shown that the absence of alternatives may indeed lead the negotiator to make higher demands and

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<sup>22</sup> Heather Elko McKibben, "The Effects of Structures and Power on State Bargaining Strategies", in *American Journal of Political Science*, no. 2, vol. 57, 2013, pp. 411-427.

<sup>23</sup> Denise Fleck, Roger J. Volkema, et al., "Dancing on the Slippery Slope: The Effects of Appropriate Versus Inappropriate Competitive Tactics on Negotiation Process and Outcome", in *Group Decision and Negotiation*, no. 25, 2016, pp. 873-899.

<sup>24</sup> Sandrino Smeets, "Unanimity and Exposure in the EU Council of Ministers – or How the Dutch Won and Lost the ICTY debate", in *European Journal of Political Research*, no. 2, vol. 54, 2015, pp. 228-304., at p. 290.

<sup>25</sup> Sandrino Smeets, "Consensus and Isolation in the EU Council of Ministers", in *Journal of European Integration*, no. 1, vol. 38, 2016, pp. 23-39.

<sup>26</sup> Javier Arregui and Robert Thomson, *op.cit.*, p. 694

reach better deals<sup>27</sup>. An impasse may actually impose on negotiators to make further efforts, especially if events force them to take position in public; and expose them to the risk of taking the blame for not acting. The judgement on whether the bargaining tendency of a negotiating party is relevant, likely to happen, or realistic, should ultimately be founded on the salience of the issue for the party. A high salience of the interests at stake can lead to quite ambitious 'positioning' and bargaining plans on the part of EU Member States<sup>28</sup>. Take the successful bargaining by the UK of the financial perspectives in 2005, a year of political crisis following the failure of the Constitutional Treaty. While the subject was under domestic scrutiny in the UK because of the high salience of the matter, a majority of other Member States were more eager to recover from the political crisis and restore the legitimacy of the EU. In the June European Council, after he had declined a compromise, the British Prime Minister was severely accused, by the French and the German leaders, of behaving 'badly'. Mr. Blair was told his attitude could cause a second major crisis in the EU, and cast him forever as a demon in Europe's mythology; according to words reported at the time<sup>29</sup>. Britain's negotiating tactic was nevertheless to delay the process as much as possible, so that the first acceptable offer wasn't on the table until the summit was about to end. It implied seriously annoying the counterparts with two unrealistic offers first. The bargaining was successful essentially for the reasons explored in this section. The UK was able to convince its counterparts of its small margin of maneuver at home; it did not share the salience of the constitutional crisis experienced by other Member States; and it had a considerably better alternative since it could afford the political costs of no agreement at this specific negotiation gathering. This all explains why the UK basically had more time.

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<sup>27</sup> Günther Schaefer, Morten Egeberg, Silvo Korez, and Jarle Trondal, "The Experience of Member State Officials in EU Committees: A Report on Initial Findings of an Empirical Study", in *Eipascope*, no. 3, vol. 2000, pp. 29-35.

<sup>28</sup> Frank M. Häge, *Bureaucrats as Law-makers: Committee Decision-making in the EU Council of Ministers*, Abingdon: Routledge, 2012.

<sup>29</sup> <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/europe/4537150.stm>, consulted 30 January 2018.



### The Time Variable

Research has shown governments to be more likely to engage in bargaining when the problem to solve is the most critical because of an urgency to act<sup>30</sup>. Scientific literature sees however more drawbacks than advantages for negotiations subject to stringent time pressure, and bargaining tendencies that claim a swift agreement is needed. After studying the effect of time pressure in 68 episodes of international territorial conflict negotiation, Pinfari<sup>31</sup> concludes that agreements reached under time pressure tend to be more fragile and less durable. Another study indicated that negotiators under high time pressure are less likely to revise their initial distributive negotiation strategy and reach integrative agreements<sup>32</sup>. Conversely, the positive impact of a realistic time pressure is revealed in Moore's studies<sup>33</sup>. They have demonstrated that moderate deadlines improved the outcomes for negotiators who were eager to get a deal. This is particularly valid when negotiators would possess some information about how much time their counterparts really have. Experiments by Gino and Moore<sup>34</sup> indicate that revealing final deadlines in a negotiation can lead to better outcomes for the negotiator with the deadline. Time restrictions, or the necessity to act rapidly, may however affect the quality of the information; whether the information is unavailable, incomplete or even biased. Kahn and Kohls<sup>35</sup> report the results of extensive research having long established that the less relevant information bargainers possess, the tougher the bargaining. This materializes with such negotiating moves as making higher initial demands; fewer concessions; more attempts at deception; taking longer; and ending

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<sup>30</sup> David H. Bearce, Katarine M. Floros, and Heather Elko McKibben, "The Shadow of the Future and International Bargaining: The Occurrence of Bargaining in a Three-Phase Cooperation Framework", in *The Journal of Politics*, no. 2, vol. 71, 2009, pp. 719-732.

<sup>31</sup> Marco Pinfari, "Time to Agree: Is Time Pressure Good for Peace Negotiations?", in *The Journal of Conflict Resolution*, no. 5, vol. 55, 2011, pp. 683-709.

<sup>32</sup> Carsten K. W. De Dreu, "Time Pressure and Closing of the Mind in Negotiation", in *Organizational Behavior and Human Decision Processes*, no. 91, 2003, pp. 280-295.

<sup>33</sup> Don A. Moore, "The Unexpected Benefits of Final Deadlines in Negotiation", in *Journal of Experimental Social Psychology*, no. 40, 2004, pp. 121-127.

<sup>34</sup> Francesca Gino and Don A. Moore, "Why Negotiators Should Reveal Their Deadlines: Disclosing Weaknesses Can Make You Stronger", in *Negotiation and Conflict Management Research*, no. 1, vol. 1, 2008, pp. 77-96.

<sup>35</sup> Arnold S. Kahn and John W. Kohls, "Determinants of Toughness in Dyadic Bargaining", in *Sociometry*, no. 2, vol. 35, 1972, pp. 305-315.

more negotiation sessions either deadlocked, or with members withdrawing from the negotiations. The authors found explicitly that a lack of information relevant to the agenda and to group preparation was a factor increasing sturdiness in bargaining. This information gap may lead to what theory calls today the risk of making 'fuzzy judgement' in negotiation<sup>36</sup>. The risk of excessive time pressure, incomplete information and fuzzy judgement can advantageously be illustrated by the experience of the Dutch Presidency during the 2004 negotiations on software patent; during meetings of the Competitiveness Council. While the minister was briefing the Dutch Parliament on the conclusive results of the negotiations, the Dutch Chamber was informed that the time pressure tactics used had not exactly worked as positively as reported. It appeared that the Danish delegation actually complained for having been coerced to vote in favour of the compromise; the German minister was pressed to accept amendments contrary to the instructions of his Chancellery; and the Polish delegation was not even asked for its opinion before the final agreement was recorded<sup>37</sup>.

### **The Sacrality and Non-negotiable Nature of Interests**

The bargaining tendencies and resistance of negotiating parties may be motivated by deeply rooted interests that are highly political, non-economic in nature, and cannot be traded. Goodin and Brennan<sup>38</sup> refer to differences of 'beliefs' in situations where other interests and goals of the parties might in fact be fully compatible. Theory designates quite appropriately such values and issues as 'sacred' interests. They comply with two main attributes<sup>39</sup>. They are priceless, meaning they refer to whatever is too costly to put under negotiation; they possess moreover an intrinsic value of moral or aesthetic nature. Cultural roots and historical traditions feed such invariable national and non-negotiable interests of Member States in many

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<sup>36</sup> Ewa Roszkowska and Tom R. Burns, "Fuzzy Bargaining Games: Conditions of Agreement, Satisfaction, and Equilibrium", in *Group Decision and Negotiation*, no. 19, 2008, pp. 421-440.

<sup>37</sup> Jennifer L. Schenker, Ministers accused of making unauthorized last-minute deals: EU's software patent policy under siege, *International Herald Tribune*, 8 July 2004.

<sup>38</sup> Robert E. Goodin and Geoffrey Brennan, "Bargaining over Beliefs", in *Ethics*, no. 2, vol. 111, 2001, pp. 256-277.

<sup>39</sup> Kevin Gibson, "Making Sense of the Sacred", in *Negotiation Journal*, no. 4, vol. 27, 2011, pp. 477-492, at p. 483.

different EU policy-making areas. It is argued here that sacred interests will either motivate bargaining tendencies, or fuel a stronger resistance when tensions put pressure on the negotiating parties to compromise. The longest negotiations in the EU, sometimes even aborted, have confronted such constant values pertaining notably to transparency, state interventionism, neutrality, gender equality, or social dialogue. It should be pointed out that a party may claim the supposed 'sacrality' of some interest as a tactical mean to increase its value and trade it off at a higher price. Tenbrunsel et al<sup>40</sup> speak in this instance of 'pseudo-sacred' interests; they are meant to potentially abuse the counterparts. A suspicion has for example emerged during the negotiation over the maximum journey time for animals within the EU. It all started with a public outrage when dozens of pigs had been transported from the UK to Portuguese slaughter houses in quite daunting conditions. Under pressure from animal welfare campaigners, northern Member States raised matters of principle and fundamental values to restrict the journey time of animals. Southern Member States rapidly resisted any limit and denounced the pseudo moral motives presented by their northern counterparts. They argued that the northern, meat-exporting, countries actually had an economic interest to encourage the slaughter of animals in their own abattoirs by making transportation to southern Member States more difficult and expensive<sup>41</sup>. The recommendation of Shapiro<sup>42</sup> in such instance is to distinguish among the three concentric circles of what is sacred, pseudo-sacred, and important. To be successful, bargaining should involve only the two latter groups of interests because they can be related to tangible calculations and the concrete provisions of a compromise text. In contrast, sacred interests are inherently associated to principles of an intrinsic intransigent nature<sup>43</sup>.

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<sup>40</sup> Ann E. Tenbrunsel, Kimberly A. Wade-Benzoni, et al., "The Reality and Myth of Sacred Issues in Negotiations", in *Negotiation and Conflict Management Research*, no. 3, vol. 2, 2009, pp. 263-284.

<sup>41</sup> *Agence France Presse*, EU ministers fail to reach agreement on animal transportation, 22 February 1995.

<sup>42</sup> Daniel Shapiro, *Negotiating the Nonnegotiable: How to Resolve Your Most Emotionally Charged Conflicts*, Penguin Books, 2017.

<sup>43</sup> Lax and Sebenius offer the examples of fairness and ethics; in David A. Lax and James K. Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain*, New York; London: Free Press; Collier Macmillan, 1986.

They usually serve the purpose of delegations aiming at an argumentative and protectionist positioning, without genuine intentions to put such matters under negotiation.

This section is compelled to conclude that it is not easy to predict the *denouement* of a negotiation animated by bargaining tendencies. Bjola proposes nonetheless a model claiming to assist in predicting the outcome of international negotiations taking place in the context of tensions, conflicts or crises. The result will depend mainly on the existence of a momentum and a favourable context to negotiate. The momentum is the factor brought in by the tension or a crisis; it creates the need to negotiate and act. The positive effect of the momentum will depend on the amplitude of the domestic win-set of the actors, a realistic timeframe, the costs of alignment, the value of the alternative solutions, and the presence of uncompromising sacred interests. Bjola's model measures these momentum related variables with the so-called 'Relative Strength Negotiation Index'. The positive impact of the momentum will be either complemented or contravened, respectively by a positive or negative context. Contextual variables include the intention of the parties to solve the problem or to bargain, the consciousness of future negotiation interactions, and the behaviour of the negotiating parties. These contextual variables are measured by the 'Negotiation Conduciveness Negotiation Index' (NCCI). Each time negotiations take place within a negative NCCI context, the potential breakthrough or turning point offered by a tension, pressure or crisis, is likely to fail. The particular negotiating power of a party will depend on whether that party has a possible alternative to what lies on the negotiation table. The value of such alternative can be measured as the adjustment costs for the negotiating party. When talking about governments, they generally prefer to avoid the adjustment costs involved in changing existing policies. These costs include investments in new policies and procedures to bring about policy change, as well as the effects of political opposition to change<sup>44</sup>. From this standpoint, power is not only dependent on the domestic situation, namely the existence and value of alternative solutions or baseline support. It relies of course, additionally, on the existence, strength and sustainability of

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<sup>44</sup> Javier Arregui and Robert Thomson, *op.cit.*, p. 694.

alliances secured with other States<sup>45</sup>. All in all, the size of a negotiating party's win-set is shaped by three factors; the preferences and possible coalitions, the political institutions at the domestic level, and the negotiators' strategies at the international level<sup>46</sup>.

## **Dimension 2: Bargaining Dynamics and Deal-Making**

This section examines the dynamics at the negotiation table when parties adopt or enhance a bargaining attitude. From the opening statements and initial dynamics, to the final agreement, it explores successively the stages of reciprocation; linkages; consensus-building; and ultimate deal-crafting in a context of bargaining.

### **Reciprocity in Bargaining Dynamics**

Experiments conducted by Butt et al<sup>47</sup>. confirm that negotiators tend to reciprocate their counterparts' compromising or dominating behaviours. They will additionally match the size of the concessions offered to them at the negotiation table. Research on trust and reciprocity indicate further that recipients of gifts and concessions are often insensitive to the cost incurred by the giver<sup>48</sup>. What is valued instead is the gesture of confidence or positive reciprocity that would demonstrate a willingness of a party to cooperate and solve a common problem. Negotiators are however all subject to some extent to the 'reciprocation wariness'. This is a belief, observed by Zhang and Han<sup>49</sup>, that caution is required to avoid being

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<sup>45</sup> Jeffrey W. Knopf, "Beyond Two-Level Games: Domestic-International Interaction in the Intermediate-Range Nuclear Forces Negotiations", in *International Organization*, no. 4, vol. 47, 1993, pp. 559-628.

<sup>46</sup> Robert D. Putnam, *op.cit.*, p. 442.

<sup>47</sup> Arif Nazir Butt, Jin Nam Choi, and Alfred M. Jaeger, "The Effects of Self-emotion, Counterpart Emotion, and Counterpart Behavior on Negotiator Behavior: a Comparison of Individual-level and Dyad-level Dynamics", in *Journal of Organizational Behavior*, no. 26, 2005, pp. 681-704.

<sup>48</sup> Deepak Malhotra, "Trust and Reciprocity Decisions: The Differing Perspectives of Trustors and Trusted Parties", in *Organizational Behavior and Human Decision Processes*, no. 2, vol. 94, 2004, pp. 61-73.

<sup>49</sup> Zhi-Xhue Zhang and Yu-Lan Han, "The Effects of Reciprocation Wariness on Negotiation Behavior and Outcomes", in *Group Decision and Negotiation*, no. 16, 2007, pp. 507-525.

exploited by others. It will inhibit the negotiators' cooperative orientation and behaviour, essentially by constraining their first offer and successive reciprocation moves. This preliminary ascertainment points at three key effects of bargaining behaviours on the reciprocity mechanisms in negotiation. First, they magnify the expectation of negotiators to receive positive signals from their counterparts. Second, they increase the reciprocation wariness of negotiators, and discourage their own positive early moves. Lastly, bargaining moves and resulting tensions develop mistrust of negotiators about their counterparts' intentions to reciprocate positively. One way to thwart such a potential negative spiraling is to initiate a positive reciprocation founded on what Thuderoz designates as a 'double revision process'<sup>50</sup>. With the goal to receive in return for giving, one party would deliberately revise its claim and make a concession for the very purpose of inciting the counterparts to operate analogous positive moves. This method was used in the negotiation over a Directive on the volatile organic compounds and their impact on global EU ozone gas emissions in 2003. A compromise text proposed by the Italian Presidency led to the isolation of the German delegation. In a planned move seeking positive reciprocation, the German delegation indicated that it would alter its position, "in a spirit of compromise and if all the delegations show the same spirit of conciliation"<sup>51</sup>. They had particularly in mind to trigger concessions from Member States, such as Greece, that were requesting more lenient limits and exemptions because of more challenging local climatic conditions. Ultimately, Germany managed to reverse its isolation and to secure the adoption of the Directive. A former Permanent Representative to the EU has recently shared his conviction that a confrontational style of negotiation is clearly less effective in the EU proceedings than positive reciprocation. He confirmed that if a member of the Committee of Permanent Representatives is flexible when colleagues have serious concerns on various issues, those colleagues will more likely be flexible towards that member when the member in turn will have an important concern on an issue<sup>52</sup>. He basically described diffused reciprocity, a

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<sup>50</sup> Christian Thuderoz, "Why Do We Respond to a Concession with Another Concession? Reciprocity and Compromise", in *International Negotiation*, no. 1, vol. 33, 2017, pp. 71-83.

<sup>51</sup> *European Report*, Environment Council: Ministers Clinch Deal on Volatile Organic Compounds, 29 October 2003.

<sup>52</sup> Bobby McDonagh, "Inside the Mind of a Permanent Representative in Brussels: Personal

process where no particular exchange of vote or quid pro quo is really identified. It carries however the expectation that favours would be exchanged in later settings or rounds of negotiation; essentially relying on a mechanism of fairness<sup>53</sup>. Another actor of a Permanent Representation has acknowledged that decision-making in the Council would hardly be possible without diffuse reciprocity<sup>54</sup>. The process is a cornerstone of the interested consensus crafted in the reiterative negotiations of the Council. Lax and Sebenius claim that negotiators engaged in many similar repeated encounters may be able to mitigate claiming in subsequent rounds by agreeing initially on a principle for division of gains<sup>55</sup>. Research undertaken with professional diplomats by Druckman and Harris<sup>56</sup> can usefully serve as a summary of the reciprocal interactions likely to be amplified in bargaining interactions. The authors have detected three patterns in particular. First, a preference for an adjustment in the direction of the opponent's previous move; a pattern called cooperative responsiveness. Second, comparable behaviours are desired; adjustments are made in the direction of reducing the apparent disparity in moves or concessions to reach equal exchanges. Third, negotiators are less concerned about their opponent's general strategy than with ensuring that concessions are comparable from one round to the next.

### Linkages

The salience of the issue under negotiation and the existence of valuable alternatives for a Member State are significant variables in a negotiation. They make up the genuine power and capabilities of parties in

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Reflections", in *European University Institute Working Papers*, no. RSCA 2015/50, 2015.

<sup>53</sup> Deborah Welch Larson, "Exchange and Reciprocity in International Negotiations", in *International Organization*, no. 3, vol., 1998, pp. 121-138.

<sup>54</sup> Jakob Lempp and Janko Altenschmidt, "The Prevention of Deadlock through Informal Processes of 'Supranationalization': The Case of Coreper", in *European Integration*, no. 4, vol. 30, 2008, pp. 511-526.

<sup>55</sup> David A. Lax and James K. Sebenius, "The Manager as Negotiator: The Negotiator's Dilemma: Creating and Claiming Value", in Stephen B. Goldberg, Frank E. A. Sander and Nancy H. Rogers (eds.), *Dispute Resolution: Negotiation, Mediation, and Other Processes*, Boston: Little, Brown and Co, 1992, p. 58.

<sup>56</sup> Daniel Druckman and Richard Harris, "Alternative Models of Responsiveness in International Negotiation", in *The Journal of Conflict Resolution*, no. 2, vol. 34, 1990, pp. 234-251.

a bargaining situation. They can be measured by the issue power balance indicator; a mean significantly more relevant to determine negotiating outcomes than the aggregate power balance of all parties<sup>57</sup>. The 'issue power' is composed of alternatives; commitments; and the ability to control the negotiation process. It includes the diplomatic resources dedicated to the tactics deployed to influence the process and achieve the most desired outcome during bargaining. Amid these tactics is the linking of the outcome of the negotiation to other issues negotiated elsewhere that bear more salience and value for the parties. The coupling of issues takes place to discuss them simultaneously; to enlarge the set of negotiation; and to find a joint global settlement on the issues connected deliberately. This method essentially uses 'forced linkages' or 'linkages through leverage'<sup>58</sup>. Take for example the 2013 negotiation on admissible car emissions in the EU. Senior members of the German government informed targeted EU Member States that German car makers could consider reducing, or even drop completely, their production in these countries unless they supported weakened carbon emissions rules compared to the levels proposed by the European Commission. It is reported that Germany even increased its pressure to impose its negotiating positions and interests by reminding Portugal that the €78bn Eurozone bailout had been heavily financed by Germany<sup>59</sup>. There are two conditions for linkages to work in bargaining situations, without harming excessively the negotiation capital of the party using them. First, they ought to be comparable and not totally disconnected in order to be legitimate; they should not be too distant in time; or of dissimilar salience. The central characteristic of linked issues relevant to international bargaining is the degree to which opposing parties consider different issues to be most important to their interests; where 'importance' can stem both from an issue touching on a state's sovereignty, or from its

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<sup>57</sup> Habeeb derives this finding from three historical crisis case studies (the Panama Canal negotiations, the bases negotiations between the United States and Spain, and the Anglo-Icelandic cod war). See William Mark Habeeb, *Power and Tactics in International Negotiation: How Weak Nations Bargain with Strong Nations*, Baltimore: Johns Hopkins University Press, 1988.

<sup>58</sup> James K. Sebenius, "Negotiation Arithmetic: Adding and Subtracting Issues and Parties", in *International Organization*, no. 2, vol. 37, 1983, pp. 281-316, at p. 287.

<sup>59</sup> *Reuters*, 18 June 2013.



salience in a state's domestic politics<sup>60</sup>. The second condition requires that linkages are visible or put on the table, so that the elements of the global package are known to all parties. This condition is confirmed by the studies of Balakrishnan et al.<sup>61</sup>; they reveal that when parties have different priorities across issues, and there is the likelihood that major trade-offs can be made, a simultaneous consideration of the issues offers far greater utility to negotiators than negotiations following sequential agenda items. It should be noted that linkages are also used as leverage by the European Commission to influence the course of negotiations and recalcitrant Member States. It is not rare that representatives of the institution would use the corridors away from the negotiation table to approach the delegates of these Member States, and discuss with them the intentions of the Commission in other negotiations. The institution will particularly operate so if it intends to offer leniency towards the preferences of the Member States in the other dossiers. Take for example the negotiation on the so-called 'chocolate Directive'<sup>62</sup> that was partly triggered by a conformity challenge raised in the framework of the World Trade Organization, as well as legal issues relating to the free movement of goods. The goal of the Directive is to define the requirements cocoa products need to meet before they can be called 'chocolate'; notably as regards the presence of vegetable fat in the products. With the British delegation anxious to authorize the use of genetically modified organisms in the production of chocolate, the Commission discussed the options for the EU to legislate all GMOs; i.e. not exclusively those destined to chocolate production. The Commission further approached several southern Member States to inform them of the options it has been considering to reform the olive oil market they directly benefit from. Additionally, the Commission used towards the obstructing Member States a long time used tactic of institutional leverage. The Commission would accost them to warn of a likely legal proceeding to the European

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<sup>60</sup> Heather Elko McKibben, "Issue Characteristics, Issue Linkage and States' Choice of Bargaining Strategies in the European Union", in *Journal of European Public Policy*, no. 5, vol. 17, 2010, pp. 694-707.

<sup>61</sup> P.V. (Sundar) Balakrishnan, Bruce Patton, et al., "Toward a Theory of Agenda Setting in Negotiations", in *Journal of Consumer Research*, no. 4, vol. 19, 1993, pp. 637-654.

<sup>62</sup> Directive 2000/36/EC of the European Parliament and the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption, OJEC L197 of 3 August 2000, p. 19.

Court of Justice in the event they would they not vote in favour of the new EU legislation. The argument of the Commission was that the allegedly unlawful practices of some Member States would have to disappear, either as a result of the new law, or following a legal proceeding brought against them. In the 'chocolate case', some Member States had decided by themselves on a definition of chocolate; and banned consequently any product originating from another Member State that would not possess their national imposed features. Another manifest 'institutional leverage' was used in 2006 by the Commission to force the adoption of a revised working time Directive. The new law proposed aimed to overcome some urgent public health issues resulting from national infringements. The quasi underground blackmailing of the Commission even became public when the institution declared during a ministerial meeting that it had the proceedings ready to bring 23 out of the 24 Member States to Court<sup>63</sup>. There is definitely some truth in the conclusion of a former Permanent Representative that getting the support of the Commission is sometimes the most important in order to secure influence in the Council's joint decision-making process<sup>64</sup>. The support of the institution is equally critical to build consensus on a compromise text.

### **The Deal**

The bargaining exercise imposes to choose the right negotiation style; calculate immediate and future payoffs; link issues, and secure national interests through consensus or appropriate resistance. These steps are all cogwheels of the process leading to a final agreement or deal. The term 'deal' designates here a single undertaking<sup>65</sup> in which there is no final agreement until every issue on the table is resolved. The notion of single undertaking includes a possible preliminary stage quite indispensable in complex settings and negotiations under tensions; the so-called 'Pre-Settlement Settlement' (PreSS). With a PreSS, negotiating parties initiate complex negotiations by first reaching a binding settlement on some subset

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<sup>63</sup> *Europolitics Social*, Working Time Directive: 23 countries face Commission action if no settlement is reached, 15 November 2006.

<sup>64</sup> Bobby McDonagh, *op.cit.*, p. 6.

<sup>65</sup> James K. Sebenius, *op.cit.*

of issues. It aims to establish a positive spiral of negotiation by agreeing on less contentious issues first<sup>66</sup>. There are numerous formats of single undertakings that fundamentally involve compromises, packages and agreements. Tsebelis and Hahm<sup>67</sup> derive from an ample literature review a classification of negotiation deals that can usefully be drawn on. The first family of deals involves 'compensation'. It is a mechanism securing the participation and support of the 'would-be losers', by including benefits for them in a package deal. The arguments to convince them to adhere to the package deal would be trade-offs, linkages, or side payments. The process of exchanging favours and benefits in a systematic, symmetrical and beneficial fashion is often associated to logrolling. This process does not restrict compromises to a package deal over a particular issue; it extends them to include also the rewards or compensations for those parties offering the most expensive concessions. Since the logrolling logic basically operates without the need of homogenous positions and preferences of the negotiating parties<sup>68</sup>, Heisenberg comes to the natural conclusion that it also governs the interactions within the Council. The logic is one of the reasons why there is 'culture of consensus'<sup>69</sup>. Deals of the second type are based upon 'elimination'. This process aims to discard the issues of contention, also by working out ambiguous legal provisions and least common denominators. The third category identified in the literature groups the 'compromises' as such. While this deal results from the attribution of preferences and salience to the different actors, it may also be founded on different rules and values; notably equity or 'Justice'. Albin and Druckman<sup>70</sup>

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<sup>66</sup> James J. Gillespie and Max H. Bazerman, "Pre-Settlement Settlement (PreSS): A Simple Technique for Initiating Complex Negotiations", in *Negotiation Journal*, no. April 1998, pp. 149-159, at p. 150.

<sup>67</sup> George Tsebelis and Hyeonho Hahm, "Suspending Vetoes: How the Euro Countries Achieved Unanimity in the Fiscal Compact", in *Journal of European Public Policy*, no. 10, vol. 21, 2014, pp. 1388-1411.

<sup>68</sup> Lisa Martin, "Heterogeneity, Linkages and Commons Problems", in *Journal of Theoretical Studies*, no. 4, vol. 6, 1994, pp. 473-493.

<sup>69</sup> Dorothee Heisenberg, "The Institution of 'Consensus' in the European Union: Formal Versus Informal Decision-Making in the Council", in *European Journal of Political Research*, no. 44, 2005, pp. 65-90.

<sup>70</sup> Cecilia Albin and Daniel Druckman, "Procedures Matter: Justice and Effectiveness in International Trade Negotiations", in *European Journal of International Relations*, no. 4, vol. 20, 2014, pp. 1014-1042.

submit that parties may expect two types of Justices when negotiating deals; the Procedural Justice and the Distributive Justice. The former is fairness about the process and the procedures guiding the negotiations; the latter is fairness in the allocation of benefits. It has appeared clearly in this article that the 'EU deal' combines all three formats of single undertakings; it deserves however an additional one. In order to secure the support of the sufficient and highest number of delegations, the EU deal can also rely on 'adaptability' to overcome tensions and impasses yielding from exacerbated bargaining. Reference is in particular made here to the multi-speed formulas designed by the EU to accommodate the incompatible preferences of Member States. Consider specifically Article 20(1) of the Treaty on European Union. It provides for the mechanism of enhanced cooperation allowing a minimum of nine Member States to adopt EU legislation; obviously ultimately only applicable to them. It has been used to overcome several deadlocks. Fourteen Member States apply today EU law on trans-European divorces; 25 have adopted the EU patent regime in March 2011; ten Member States are currently negotiating an enhanced cooperation for a financial transaction tax; earlier, nine Member States had declared themselves ready to go ahead with the Proposal to freeze the quotas of CO<sub>2</sub> emissions. In April 2017, sixteen Member States have notified their intention to use the enhanced cooperation procedure to establish a European Public Prosecutor's Office. The full success of this adaptive deal mechanism depends however on its capacity to meet the expectations for Procedural Justice of the parties left aside or outvoted. 25 Member States seemed appropriately aware of this requirement when they decided in 2011 to use enhanced cooperation to adopt new legislation on the EU patent; even though this legislation could have been adopted by qualified majority, and simply be imposed on the two opposing delegations. Yet, the two Member States left aside decided to challenge the legality of this procedure<sup>71</sup>. Arguably, such situations fuel unpleasant feelings, damage mutual trust and mortgage the future of personal relationships of the negotiators in reiterative negotiations.

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<sup>71</sup> The Court unsurprisingly dismissed their actions, stating that "the contested decision does not damage the internal market or the economic, social and territorial cohesion of the EU"; recalling here an established condition to use the enhanced cooperation. Judgment of 16 April 2013, Spain and Italy v Council, Joined Cases C-274/11 and C-295/11.

### **Dimension 3: The Interpersonal Interactions and Human Variables**

The personal behaviours, motivations, emotions and cognitions are the results of mental and cultural programming of the mind of the negotiators. They compose the 'interpersonal level'<sup>72</sup> of any negotiation which this section intends to explore. Every individual negotiator comes with a psychological preset or motivational construct. It is made notably of the personality, the background, the inclination to trust; as well as social-environmental or cultural factors such as reputation, gender, power or status<sup>73</sup>. These factors all feed the 'negotiation orientation' of any individual as determined by the model of Brooks and Rose<sup>74</sup>. This orientation translates for example into the natural inclination to cooperate, show emotions, be transparent, or communicate extensively. Altogether, this section examines some of the psychological facets, negotiation orientations, personal preferences and expectations of the individuals. Arguably, these variables are all magnified when bargaining dominates negotiation processes. The section also borrows from the theoretical framework of crisis bargaining and hostage negotiation to analyze the predominant variables at play at the interpersonal level of bargaining within Council negotiations. It successively explores the relational dynamics between the negotiators, the value of trust, and the influence of cultural differences.

#### **Relational Dynamics**

The 'negotiation orientation'<sup>75</sup>, or psychological predisposition of the negotiator, crucially conditions the relation with the counterparts. The experiments of Curhan and Elfenbein<sup>76</sup>, on the build-up of individual

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<sup>72</sup> Leigh Thompson, Jiunwen Wang, and Brian C. Gunia, "Negotiation", in *Annual Review of Psychology*, no. 61, 2009, pp. 491-515.

<sup>73</sup> Jeanne Brett and Leigh Thompson, "Negotiation", in *Organizational Behavior and Human Decision Processes*, no. 136, vol., 2016, pp. 68-79. Phyllis E. Bernard partly captures this as the 'soul' of the international negotiator; it covers notably human cognition and cultural intelligence. See Phyllis E. Bernard, "Bringing Soul to International Negotiation", in *Negotiation Journal*, no. April, vol., 2009, pp. 147-159.

<sup>74</sup> Bradley W. Brooks and Randall L. Rose, "A Contextual Model of Negotiation Orientation", in *Industrial Marketing Management*, no. 33, 2004, pp. 125-133.

<sup>75</sup> *Ibidem*.

<sup>76</sup> Jared R. Curhan, Hillary Anger Elfenbein, and Heng Xu, "What Do People Value When They Negotiate? Mapping the Domain of Subjective Value in Negotiation", in *Journal of Personality and Social Psychology*, no. 3, vol. 91, 2006, pp. 493-512.

perceptions and reiterative feelings, confirm the construction of a psychological predisposition of negotiators. Negotiators who have experienced greater subjective value - that is perceptual and emotional outcomes from a negotiation - achieved greater individual as well as joint objective negotiation performance. They have also developed an intention to negotiate again with the same counterpart. The results of the research further suggest that positive feelings matter, and not just positive outcomes of earlier negotiations. Satisfaction with prior negotiation outcomes and frequent exchanges with the same party foster trust, positive affect and affective commitment to the party<sup>77</sup>. Barry et al<sup>78</sup> usefully analyze for that matter the 'affective commitment' that appears in multiple encounters between parties whose interdependence generates the need to negotiate repeatedly. If positive affect facilitates cooperative behavior, one might expect the opposite effect when negotiators experience negative affect. Referencing a study focused exclusively on negative emotion, the previous authors report that angry subjects had less regard for their opponent's interests; they had distorted judgments of the other party's interests, and reduced joint gains ultimately. The process of face-saving is the negotiation mechanism particularly founded on human perceptions that is widely acknowledged to secure positive results; not only in terms of emotions and outcomes, but also as regards the feeling of Justice, and the willingness to engage in future negotiation interactions. The 'face' is here an individual's most sacred possession because it associates with one's self-esteem<sup>79</sup>. When a person's face is threatened in a negotiation, it can tip the balance of his/her behavior away from cooperation towards competition; and unsurprisingly result in fewer agreements<sup>80</sup>. Many situations have been reported where national representatives have felt ignored, isolated or

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<sup>77</sup> Jennifer George, Gareth R. Jones, and Jorge A Gonzalez, "The Role of Affect in Cross-Cultural Negotiations", in *Journal of International Business Studies*, no. 4, vol. 29, 1998, pp. 749-772.

<sup>78</sup> Bruce Barry, Ingrid Smithey Fulmer, and Nathan Goates, "Bargaining with Feeling: Emotionality in and Around Negotiation", in Leigh Thompson (ed.), *Negotiation Theory and Research*, New York: Psychology Press Taylor and Francis, 2006.

<sup>79</sup> Morton Deutsch, "The Face of Bargaining", in *Operations Research*, no. 9, 1961, pp. 886-897.

<sup>80</sup> Judith B. White, Renée Tynan, et al., "Face Threat Sensitivity in Negotiation: Roadblock to Agreement and Joint Gain", in *Organizational Behavior and Human Decision Processes*, no. 94, 2004, pp. 102-124.

coerced by chairpersons operating on behalf of a rotating Council Presidency eager to rapidly come to an agreement. Some of these negotiators have either declared their intention to retaliate, or did actually pay back their former tormenter whenever it was their turn to hold the power of the Presidency. Beyond the substantive facts inherent to these situations, what matters essentially is that those representatives have initially felt to be losing face, both in the Brussels based group and in the eyes of their capitals. While the consensus building method in the Council is designed to avoid the isolation of delegations, it can also be considered to prevent national representatives from losing face and feel irreparably affected. The management of the relational dynamics falls fundamentally in the hands of the chairpersons<sup>81</sup>. They are key to collect the information on the interests of the delegations; govern the logrolling mechanisms; engage in socialization patterns with the other delegates; and influence the affect of the negotiators during their term in office.

### **Affect**

The dynamics of the general interpersonal relationship and the level of Justice in the negotiation process are both nourished by the affect of the individual actors. The affect can suitably be defined as the combined manifestation of a person's emotions, mood, personality traits, and sensitivity to feelings<sup>82</sup>. Intuitively, it is quite challenging to envisage the affect having any other impact on a negotiation than a disturbing or negative one. Research shows however that there are in fact positive sides to the role of the affect as a variable of the negotiation process. Brown and Curhan<sup>83</sup> found for instance that individuals who look forward to a negotiation have more favorable subjective experiences and perform better when their physiological arousal is heightened; mainly indeed because they construe their arousal as positive affect. Laboratory studies have further established that being in a positive mood facilitates problem solving and integrative

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<sup>81</sup> Alain Guggenbühl, "Cookbook of the Presidency of the European Union", in Paul Meerts and Franz Cede (eds.), *Negotiating European Union*, Basingstoke: Palgrave Macmillan, 2004.

<sup>82</sup> Bruce Barry, Ingrid Smithey Fulmer, et al., *op.cit.*

<sup>83</sup> Ashley D. Brown and Jared R. Curhan, "The Polarizing Effect of Arousal on Negotiation", in *Psychological Science*, no. 10, vol. 24, 2013, pp. 1928-1935.

solutions; while reducing the use of contentious tactics during negotiations<sup>84</sup>. Sinaceur et al<sup>85</sup>. found also that communicating anger, rather than curbing it, can be an effective strategy to obtain concessions from negotiation counterparts. Communicating anger will have a positive effect if the counterparts perceive it as a threat of an impasse, or the source of other damaging consequences detrimental to them. These studies show further that communicating anger was more effective later rather than earlier in the negotiation process. In comparable experiments, Kopelman et al<sup>86</sup> similarly conclude that in an ultimatum setting, negotiators strategically displaying positive emotion are more likely to close a deal. They note moreover that the display of positive emotion is a more effective strategy for gaining concessions from the other party in a distributive or bargaining setting. In their experiments, negotiators made more extreme demands when facing a negotiator displaying negative, rather than positive or neutral, emotions. The context of the negotiation is evidently a fundamental determinant of either the negative or positive value of the affect as an impacting variable. It is the nature of the interpersonal relationship with the other party and interpersonal ties than can resist hostile or tensed bargaining conditions, and elicit positive affect<sup>87</sup>. It seems fair to conclude that the context of the negotiation, the general orientation, the perception of face-threat, and the affect of the individual negotiators, all substantially hinge on the level of trust reached in relational dynamics.

### Trust

Trust fundamentally collates confident positive expectations regarding another's conduct. Any conduct negatively perceived will yield distrust as

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<sup>84</sup> Peter J. Carnevale and Alice M. Issen, "The Influence of Positive Affect and Visual Access on the Discovery of Integrative Solutions in Bilateral Negotiation", in *Organizational Behavior and Human Decision Processes*, no. 1, vol. 37, 1986, pp. 1-13.

<sup>85</sup> Marwan Sinaceur, Gerben A. Van Kleef, et al., "Hot or Cold: Is Communicating Anger or Threats more Effective in Negotiation?", in *Journal of Applied Psychology*, no. 5, vol. 96, 2011, pp. 1018-1032.

<sup>86</sup> Shirli Kopelman, Ashley Shelby Rosette, and Leigh Thompson, "The three Faces of Eve: Strategic Displays of Positive, Negative, and Neutral Emotions in Negotiations", in *Organizational Behavior and Human Decision Processes*, no. 99, 2006, pp. 81-101.

<sup>87</sup> Jennifer George, Gareth R. Jones, et al., *op.cit.*



a consequence<sup>88</sup>. Perceptions that the other party has acted in a deceptive manner in a prior negotiation will elicit a negative affect<sup>89</sup>. According to Filley<sup>90</sup>, the compromise building method in bargaining settings needs in particular to review and adjust not only the relational conditions between the parties; but equally their perceptions and attitudes because of the possible variation of trust brought in by bargaining tendencies. Lewicki and Wiethoff<sup>91</sup> offer an interesting perspective to better characterize trust; used so far only as an absolute value. They distinguish a 'calculus-based trust' (CBT) from an 'identification-based trust' (IBT). The CBT is most often associated with workplace relations, where people tend to operate on a reward or punishment system. In contrast, IBT operates essentially in the personal arena, where parties develop knowledge about their respective preferences and decide to mutually assist each other. Often, individuals share common values and have an outlook based on mutual benefit; over time they are able to develop a collective identity. Considering the setting-up, context and deal-making features explored so far, it can safely be stated that EU negotiations involve a combination of both trusts. It should be added that research operated by Sinaceur<sup>92</sup> on other negotiation formats show that tensions among negotiating parties do not lead to mutual distrust, but rather suspicion among them. While distrust or trust involve having respectively negative or positive expectations about the counterparts' motives, suspicion is defined by Sinaceur as the perception of ambiguity about their motives. The difference is crucial because the experiments have shown that suspicion does not prevent a successful outcome of a negotiation. It might even prove to be a positive factor, considering that suspicious parties generally want to know more about their respective positions and

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<sup>88</sup> Roy J. Lewicki, Daniel J McAllister, and Robert J. Bies, "Trust and Distrust: New Relationships and Realities", in *The Academy of Management Review*, no. 3, vol. 23, 1998, pp. 438-458.

<sup>89</sup> Debra L. Shapiro and Robert J. Bies, "Threats, Bluffs, and Disclaimers in Negotiations", in *Organizational Behavior and Human Decision Processes*, no. 1, vol. 60, 1994, pp. 14-35.

<sup>90</sup> Alan C. Filley, *Interpersonal Conflict Resolution*, Chicago: Scott, Foresman, 1975.

<sup>91</sup> Roy J. Lewicki and Carolyn Wiethoff, "Trust, Trust Development, and Trust Repair", in Morton Deutsch, Peter T. Coleman and Eric C. Marcus (eds.), *The Handbook of Conflict Resolution: Theory and Practice*, San Francisco: Jossey-Bass, 2000, pp. 86-107.

<sup>92</sup> Marwan Sinaceur, "Suspending Judgment to Create Value: Suspicion and Trust in Negotiation", in *Journal of Experimental Social Psychology*, no. 46, 2010, pp. 543-550.

motives in order to clear up the perceived ambiguity<sup>93</sup>. One should bear in mind however that because of their cultural background, individuals may have different personal preferences on how much information should be exchanged to build trust.

### **Cross-Cultural Differences**

Even if frequent negotiations or diplomatic settings may attenuate cultural differences through intensive socialization<sup>94</sup>, this section posits that the disparities in representatives' preferences will either surface or be amplified in tension and bargaining conditions. Cultural stereotypes specifically are expected to be magnified; as they are convenient ways for delegates to attribute the blame for any failure in a negotiation to the cultural preferences of their counterparts. Take the meeting reported between the two finance ministers of Germany and Greece in Berlin in the Spring of 2015; the purpose was to prepare an agreement on financial assistance to Greece at the Euro summit scheduled some weeks later. Mr. Schaüble rapidly showed impatience after waiting five minutes beyond the time agreed for the appointment. Shortly after came Mr. Varoufakis, in a dress attire relatively unconventional for diplomatic settings. The Greek minister started communicating on an equally casual tone, engaging in small talk and sharing positive comments on his interlocutor. It is argued here that the reasons behind the fiasco of this specific face-to-face encounter can fundamentally be attributed to differences between the two cultural backgrounds or preferences of the ministers. The German minister complained that 'the Greek' not only came late, but that he started to cajole him with the probable intention to fool him. He was then proud to state he had not been stupid enough to fall for an obvious tactic that did neither respect him, or the rules of the meeting. This section succinctly provides the theoretical lenses not only to read this specific bilateral negotiation; but also to broadly perceive how international negotiations are affected by the enhanced manifestation of cultural differences

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<sup>93</sup> Marwan Sinaceur, *op.cit.*, p. 543.

<sup>94</sup> Zartman and Berman suggest to water down the impact of cultural differences in the event of the emergence of an "international diplomatic culture". See William Zartman and Maureen R. Berman, *The Practical Negotiator*, New Haven: Yale University Press, 1982.

when bargaining increases. It draws on Moore and Woodrow<sup>95</sup> to apprehend culture as the cumulative result of experience, beliefs, values, knowledge, and educational background; acquired or created by groups of people or social organizations over the course of generations. Culture provides models and norms for acceptable day-to-day communication or social interaction. Returning to the interpersonal variables studied in this section, the landmark studies of Hofstede<sup>96</sup> substantiate that individuals have different cultural preferences for the sharing of information, where it should be operated, and by whom. For some, the right information exchanges will feed trust; for others, building trust will need much more<sup>97</sup>. Taking a domestic optic on information processes, Kassim<sup>98</sup> usefully distinguishes the internal coordination of EU affairs and positions within EU Member States between centralized and less centralized systems. This explains partially the amplitude of the freedom left to negotiators to move. Moves and concessions may well be facilitated by the display of anger and emotions in some countries, but not in others<sup>99</sup>. Looking further at the negotiation table, differences are noted by D'Amico and Rubinstein<sup>100</sup> as to who should be at the table; and whether the power and status of the individuals should be matched. Individual negotiators will then experience additional differences about their respective mode of reasoning. Epstein et al.<sup>101</sup> distinguish for example the individual analytical-rational mindsets from the intuitive-experiential

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<sup>95</sup> Christopher W. Moore and Peter J. Woodrow, *Handbook of Global and Multicultural Negotiation*, San Francisco: Jossey-Bass, 2010, p. 5.

<sup>96</sup> Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations*, Thousand Oaks, Calif.: Sage Publications, 2001.

<sup>97</sup> Fons Trompenaars and Charles Hampden-Turner, *Riding the Waves of Culture. Understanding Cultural Diversity in Business*, London: Nicholas Brealey Publishing, 1997.

<sup>98</sup> Hussein Kassim, "Meeting the Demands of EU Membership: The Europeanization of National Administrative Systems", in Kevin Featherstone and Claudio M. Radaelli (eds.), *The Politics of Europeanization*, Oxford: Oxford University Press, 2003, pp. 83-111.

<sup>99</sup> Haljo Adam, Aiwa Shikaro, and William W. Maddux, "Cultural Variance in the Interpersonal Effects of Anger in Negotiations", in *Psychological Science*, no. 6, vol. 21, 2010, pp. 882-889.

<sup>100</sup> Lynne C. D'Amico and Robert A. Rubinstein, "Cultural Considerations When 'Setting' The Negotiation Table", in *Negotiation Journal*, no. 4, vol. 15, 1999, pp. 389-395.

<sup>101</sup> Seymour Epstein, Rosemary Pacini, et al., "Individual Differences in Intuitive-Experiential and Analytical-Rational Thinking Styles", in *Journal of Personality and Social Psychology*, no. 2, vol. 7, 1996, pp. 390-405.

ones. Cross-cultural discussions in fact often oppose negotiators on whether a rational and logic approach should be pursued to collectively take the right decision; or a pragmatic and practical one instead. The choice of the legislative measure needed EU wide is subject itself to major cultural differences among negotiators. Hofstede et al.<sup>102</sup> differentiate for example preferences on the necessity or not to use stringent and elaborated legislative means in policy-making. Communicating about such preferences during bargaining may of course take place in an either diplomatic or not so diplomatic fashion; depending on whether the delegates favour an indirect or rather a direct confrontation of ideas and positions<sup>103</sup>. Tension may also arise from the different relations to time observed across cultures by Rosinski<sup>104</sup>. Some negotiators expect to be devoting whatever time is needed for the activity started, without feeling generally threatened by the clock. Others experience a higher sensitivity to time pressures<sup>105</sup>.

## Conclusions and Propositions

From a bargaining theory perspective, EU multilateral decision-shaping processes are no special breed. Like most negotiations, they tend to oscillate between compromise-building and consensus-based mechanisms on one hand; and on the other, bargaining attitudes and calculations that are more vivid when tensions between the negotiation partners build up<sup>106</sup>. Some UK negotiators taking part in Council deliberations have clearly

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<sup>102</sup> Geert Hofstede, Gert Jan Hofstede, and Michael Minkov, *Cultures and Organizations: Intercultural Cooperation and its Importance for Survival (The Software of the Mind)*, New York: McGraw Hill, 2010.

<sup>103</sup> Jeanne M. Brett, *Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and Make Decisions Across Cultural Boundaries*, San Francisco: Jossey-Bass, 2007.

<sup>104</sup> Philippe Rosinski, *Coaching Across Cultures: New Tools for Leveraging National, Corporate & Professional Differences*, London: Nicolas Brealey Publishing, 2010.

<sup>105</sup> Ian McDuff, "Your Pace or Mine? Culture, Time, and Negotiation", in *Negotiation Journal*, no. 1, vol. 22, 2006, pp. 31-45.

<sup>106</sup> Empirical studies by Olekalns et al. show that negotiators generally swing between competitive -distributive- and cooperative -integrative- attitudes throughout a negotiation process. See Mara Olekalns, Jeanne Brett, and Laurie R. Weingart, "Phases, Transitions and Interruptions: Modeling Processes in Multi-party Negotiations", in *International Journal of Conflict Management*, no. 3-4, vol. 14, 2004, pp. 191-212.

reported on a contiguity of behaviours driven by both competitive and collaborative motives<sup>107</sup>. Fundamentally, bargaining situations impose on EU governments to strike a series of pivotal conciliations and balancing acts. They need to combine domestic gratification with empathy from the counterparts; maximum unilateral bargaining with a mutually satisfactory common denominator for all; and immediate profits with future payoff prospects. In practice, the best players in this bargaining game are the national delegations reaping the highest bargaining satisfaction; it is measured by two main criteria. First, the shortest distance between their initial positions and the final terms of the compromise text agreed in the Council. Second, the number of their most salient interests fulfilled and mirrored in the joint text. With results varying across policy domains, it is on financial issues that Arregui notes the highest bargaining satisfaction; in fact, for eastern and the last acceding Member States<sup>108</sup>. Furthermore, Member States of a small size have obtained more bargaining satisfaction than larger Member States on regulatory issues. An interesting conclusion of the author confirms also that the closer a Member State's negotiating position is from the Commission position, the higher its bargaining satisfaction will be<sup>109</sup>. Cross suggests to gauge the success of Member States differently; and to look rather into some forms of influence.<sup>110</sup> He proposes for that matter to use the engagement and number of 'interventions' of the national delegations. The criteria refer to a national delegation's efforts to make its position known over the course of the negotiations. This covers its number of interventions in multilateral meetings; its relative policy positions in the policy space under negotiation relative to other actors' positions; and the power -or resources- it derives from its size. Generally speaking, the more active Member States are, the more likely they punch above their weight if

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<sup>107</sup> Julian Clark and Alun Jones, "'Telling Stories about Politics': Europeanization and the EU's Council Working Groups", in *Journal of Common Market Studies*, no. 2, vol. 49, 2011, pp. 341-366.

<sup>108</sup> Javier Arregui, "Determinants of Bargaining Satisfaction Across Policy Domains in the European Union Council of Ministers", in *Journal of Common Market Studies*, no. 5, vol. 54, 2016, pp. 1105-1122.

<sup>109</sup> Javier Arregui, *op.cit.*, p. 1118.

<sup>110</sup> James Cross, "Everyone's a Winner (Almost): Bargaining Success in the Council of Ministers of the European Union", in *European Union Politics*, no. 1, vol. 14, 2012, pp. 70-94.

they're small<sup>111</sup>; and vice-versa for large Member States, some of which often feel so powerful that they see no need to address, approach or lobby other delegations. Golub<sup>112</sup> confirms that smaller Member States do particularly well, in particular when one considers the salience for a delegation of the matter under negotiation. The interested consensus driven process described in this article does not prevent some Member States to win considerably more; with countries like France, Italy and Germany doing actually especially poorly. Analyzing decisions adopted by majority votes in the Council, Van Roozendaal et al<sup>113</sup>. reveal that Luxembourg, Ireland and Greece are the Member States having most often participated in winning coalitions. Seemingly, they were willing to sacrifice the most policy congruence in order to be part of the respective winning coalitions. Using more specific criteria, Panke concludes at the limited negotiation effectiveness of the representatives of Hungary, Latvia and Greece<sup>114</sup>. Her studies confirm that bargaining behaviors and distributive strategies are only effective if operated by delegations that have previously secured a sufficient capital of goodwill and offered uninterested mediation efforts to others in earlier rounds of negotiation with their EU partners.

Since strategies to cope effectively with high stakes situations and tensions among negotiation partners are often based on military like reckonings, the military method advocated by Wheeler<sup>115</sup> appears quite appropriate to frame a series of concluding propositions addressed to negotiators engaged in EU multilateral bargaining. The propositions translate the explored findings of negotiation theory and research into recommendations to cope with increased bargaining and unilateralism in times of tensions, competition, opposition, or crisis. The military method selected recommends the four

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<sup>111</sup> Diana Panke, "Negotiation Effectiveness: Why Some States are Better Than Others in Making Their Voices Count in EU Negotiations", in *Comparative European Politics*, no. 1, vol. 10, 2012, pp. 111-132., at p. 112.

<sup>112</sup> Jonathan Golub, "How the European Union Does Not Work: National Bargaining Success in the Council of Ministers", in *Journal of European Public Policy*, no. 9, vol. 19, 2012, pp. 1294-1315.

<sup>113</sup> Peter Van Roozendaal, Madeleine O. Hosli, et al., *op.cit.*

<sup>114</sup> Diana Panke, *op.cit.*, p. 127.

<sup>115</sup> Michael Wheeler, *Performance and the Art of Negotiation*, New York: Simon and Schuster, 2013.

sequenced phases of observation, orientation, decision and action. In the 'observation' phase, negotiators should primarily analyze the interpersonal factors at play. This includes the reciprocation wariness of the players; their expectation for Procedural and Distributional Justice; their cultural preferences, personal affect history, and 'negotiation orientation'. The 'orientation' phase is the time to assess the party's relative negotiating power compared to the counterparts'; by using notably three indicators during a thorough phase of preparation and internal coordination. First, the size of the party's win-set; it is shaped by the national preferences, the support at the domestic level, and the negotiators' strategies as well as coalitions at the international level<sup>116</sup>. Second, the power based on the salience of the issues at stake for the party; also designated as 'issue power'. The negotiation power derives from the value of the alternative solutions and the ability to control the negotiation process, notably through diplomatic resources<sup>117</sup>. The third indicator is the likelihood of linkages. They might be either positive, by offering the party a negotiation benefit in more salient parallel issues; or negative if used as a leverage to force its concessions in the negotiation at hand. During the next and third phase of 'decision', the party will need to settle three items in particular. First, where to position the cursor the furthest between an integrative strategy and distributive bargaining without alienating the counterparts. This includes determining the sacred, pseudo-sacred, and important matters. Second, what issue can be eliminated or compensated for in the deal-making process; bearing in mind that tensions or more serious crises give precedence to these two compromise building instruments. Third, what level of resistance should be demonstrated in a consensus driven environment. It implies deciding either to stay in the silent majority of more proximate Member States that contest less frequently; they are generally supportive of EU legislation. Or join the group comprised of a vocal minority of countries that are less proximate to each other; but are

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<sup>116</sup> Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-level Games", in Peter B. Evans, Harold Karan Jacobson and Robert D. Putnam (eds.), *Double-edged Diplomacy: International Bargaining and Domestic Politics*, Berkeley: University of California Press, 1993.

<sup>117</sup> William Mark Habeeb, *op.cit.*

regularly outvoted<sup>118</sup>. This decision will be dependent upon the receptivity of both the Council Presidency and the European Commission to echo or mirror one's positions and interests in the final compromise text put up for adoption. In the final phase of the 'action', negotiators will need to undertake a series of incremental steps. Negotiators should first play sufficiently 'nice' by sending positive signals to the counterparts; present Confidence Building Measures; and advance a double revision process of reciprocation. They should then engage with the counterparts to maintain the dialogue, investigate their motivations, and share information - notably on any time related deadline; even if the initial behaviour of the counterparts was non-cooperative. Thirdly, all earlier actions should be discontinued as soon as the counterparts would not reciprocate positively. In a fourth stage, cooperation should only be reinstated if the counterparts would this time either do the first move, or repair the damage generated by their earlier bargaining attitude.

All in all, this article has come to identify what could be the essential elements of a successful universal bargaining formula applied to EU interstate decision-shaping and decision-taking processes. It is a balanced mixture of principles, rules and strategic calculations originating from game theory; hostage negotiations and crisis bargaining; and military methodology. The EU bargaining formula discussed in the article should also enable Member States to better control the unilateral aspirations of their respective friends and enemies, whether present or future. In some trivial terms, the formula looks like a recipe to both thrive or survive in bargaining situations taken directly from the Godfather movies.

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<sup>118</sup> Van Aken has examined sixteen years of decision-making in the Council to conclude on the existence of these two coalitions of interests in the Council. In Wim Van Aken, "Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers (1995-2010)", in *Swedish Institute for European Policy Studies (SIEPS)*, no. 2, 2012.



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