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# CHAPTER X

## The Twenty- First Century: Structure and Negotiation

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## CHAPTER X: THE TWENTY-FIRST CENTURY: STRUCTURE AND NEGOTIATION

The European Union (EU) was selected as the case-study for the twenty-first century in order to demonstrate the connectedness between negotiation and structure. 'European Union is the result of institutional, legal, political, economical and cultural construction that took place in the second half of the (twentieth) century' (Puscas, 2013: 9). As a mode of European unification, the European Union is a good example of an international actor channelling negotiation processes in an optimal way. 'The EU is perhaps the extreme case of a strong institution that should shape negotiation behaviour among members' (Odell, 2010: 625). Compared to other collective international actors, the European Union is a strong transnational organization with unique international and supranational features (Van Staden, 1996: 12). This strength has an impact on negotiation processes and their closure. It has a strong legal system with the Court of Justice of the European Union with powers to enforce compliance on the EU member states. Its institutions have their own role to play and cannot be ignored. The Union's architecture consists of a wide range of actors, issues and thereby processes, with consequences for the EU's citizens, their governments and those of other countries in Europe and the world (Naurin and Wallace, 2008).

This chapter analyzes the character and characteristics of some of the key internal and external negotiation processes of the EU, as they have been influenced by the strength of the organization. It looks in particular to negotiation processes among the member states in and around the European Union's main institutions: the European Council; Council of Ministers and its subdivisions (as well as the Council Secretariat); the European Parliament; and the Commission. Special attention will be devoted to the role of the Presidency of the first two institutions. The chapter will then try to answer the question of to what extent context and process affect further successful negotiations and fruitful outcomes.

Years after the European Union sprang out of the Second World War, in different stages and with a growing number of member states, until it received its present name under the Maastricht Treaty of 1991, which was amended by the Lisbon Treaty in 2009. Ripeness in negotiation is often created by crisis and the Second World War can therefore be regarded as the final wake-up call for Europe. Bilateral relations were not enough to secure peace and prosperity. It was therefore in the countries' interest to take the negotiations further than in the past to the multilateral and even the supranational level. This change of context was facilitated by the threat of the Soviet Union and the United States' support in protecting and restructuring the old continent – through Marshall Aid and NATO – as well as by the growing willingness of the Germans to apologize for their crimes and the increasing readiness of the victims to live with the Germans in harmony.

After all, as analyzed in the preceding chapter, negotiation is also about emotions, values and norms.

### Uniqueness and Strength of the Organization

'The European Union is a unique entity – neither a classic intergovernmental international organization nor an ongoing diplomatic negotiation' (Lodge *et al.*, 1998: 289). It has created different decision-making regimes dependent on the policy domains at issue. In general, the community method applies to all issues related to the internal market. Foreign and security policy stands out as the classical domain of intergovernmental cooperation, with member states retaining their veto power on all substantive subjects (Nugent, 2010). The EU, in turn, is dependent on 'negotiations as a mode of reaching agreements on, and implementing, common policies' (Elgström and Jönsson, 2005). The enigma of the EU process hinges on characteristics that distinguish it from other international negotiation processes. The more it develops itself, the more we can hope for better cooperation among its members and thereby for more effective negotiation and vice versa. 'Intelligence enhances mutual cooperation in the quintessential situation in which its benefits can be foreseen. A society that gets smarter, then, may be a society that becomes more cooperative' (Pinker, 2011: 662).

First, the chapter will discuss the intertwining of national and international negotiation processes, as 'the EU mainly governs through inter- and transgovernmental negotiations and political competition between states and regions' (Börzel, 2010: 191). Another characteristic of the EU negotiation process, which it shares with other strong international organizations, is its continuity. Third, the number of issues dealt with in the Union and the consequences of its decisions for the member states are incomparable to other international regimes. Fourth, an important characteristic of the Union is that this coalition of states is more homogeneous than most of the other international negotiation groups. The Union's negotiation process is based on more than a community of interests; it is also a community of values within a legal framework. This framework is the fifth element distinguishing the Union from other international institutions.

These building blocks distinguish the negotiation processes in the European Union from negotiation processes in other international settings, although the overall tactical advice for multilateral negotiators also applies to EU negotiators (Lang, 1994: 210–211). Assured outcomes are frequent in EU negotiation processes, partly because of mechanisms such as supranationality and the continuous nature of the process. Compared to, for example, environmental negotiations, the level of 'unavoidability' is incomparably higher (Sjöstedt *et al.*, 1993: 303). The nature of the outcomes is overwhelmingly positive, while this is by no means evident in other negotiation processes, where international economic relations are predominant (Zartman, 2000: 327). The implementation of these outcomes and the strength of the EU institutions in enforcing compliance are much greater than in, say, negotiations on the environment (Sjöstedt *et al.*, 1994: 233). The ability of the EU negotiation process to work as a continuous upside-down cascade (Zartman, 2003: 180), where one level facilitates progress on a higher level of negotiations, sets it apart from the regular patterns of international negotiation processes. It is a system of 'multi-level governance' in a 'dense institutional framework'.

How does the European Union manage to be such a relatively strong organization today? According to William Wallace, 'The EU system, through the intensive interactions of transnational and trans-governmental networks that now characterize it, has become a collective system of governance, resting on overlapping elites' (Wallace, 2005: 491). Hosli and Arnold add to this that:

The European 'relative preference for homogeneity' among EU member states [...] might be explained, for example, by a gradual process of socialization of these states into patterns of EU policy-making, 'learning' the culture of negotiation within the European Union, and the gradual development of similar expectations regarding EU integration (Hosli and Arnold, 2010: 617).

The EU can thus be seen as the *sui generis* pinnacle of the developments described and analyzed in the previous chapters of this thesis.

In the academic world, a multitude of theories have been used to explain the – so far – growing integration of (Western) Europe and its downsides (Cram *et al.*, 1999; Hale *et al.*, 2013; and Tallberg, 2010). The trend towards further integration and institutionalization has a positive influence on the effectiveness and thereby the use of negotiation as an instrument in international relations, as was stated in Chapter III of this thesis, but cooperation will not be enhanced automatically.

According to Jeffrey Lewis,

[...] those institutional environments which code higher on a set of four independent variables [...] that is, are highly insulated from domestic audiences, transact with wider scope, high interaction intensity, and/or maintain a high density of norms and group standards [...] exhibit more robust patterns of cooperative negotiation (Lewis, 2010: 648).

Concerning the Council of the European Union, Lewis concludes that more intense cooperation has developed over time, as 'the Council's institutional environments have [...] instilled intrinsic collective preferences for cooperative negotiation' (Lewis, 2010: 660). Brian Hocking expands on the intensity factor by stating that a 'dominant theme in diplomatic change which has considerable significance in the EU policy milieu is the compression of time and space' (Hocking, 2004: 97). On the same note, it could be stated that 'intensified cooperation leads to a greater understanding and the creation of a shared system of values and norms' (Meerts, 2001: 8–9), although it is a slow back-and-forth process (Meerts, 2012: 614–617).

### The Role of the Negotiation Process

Negotiations are a vital instrument in integrating Europe. 'Negotiations are central to the functioning and dynamic development of the European Union. Negotiation is seen as the predominant policy mode and the main source of the EU's successful functioning' (Lodge *et al.*, 1998: 293). Protecting the negotiation process by creating – through that

very process – an institutional framework that enhances the effectiveness of diplomatic negotiation is the very essence of the Union:

Negotiations are ubiquitous in the European Union and essential to its functioning. Virtually every EU activity was set in motion through a process of negotiation. Moreover, in one way or another, these negotiations include every type of actor in the EU, including most notably the governments of the member states, the Union's supranational bodies, and national parliaments, but also civic associations and industry lobbies, at least informally. Given that the EU was born as a voluntary association of sovereign states, one could even describe negotiations as a behavioural manifestation of the EU's fundamental identity (Dür, Mateo and Thomas, 2010: 615).

It has been argued that the European Union is ultimately a negotiated system (Dür and Mateo, 2010a). Negotiations are the main tool in shaping the institutions and regulations of the Union. Negotiation is the life-blood of the Union. One has to analyze it to understand why the Union has been, and will be, forged in a certain way. The Union, after all, is like a group of one-cellular beings (states) that give up part of their autonomy to create a stronger and more potent organism that will serve all. The Union adds value; the whole of all the member states is more than the sum of the products of the individual units shaping the EU. Whether this should be done through supranationalism or intergovernmentalism or a mixture of the two is another matter. The point is that negotiation is the instrument that the constituent parts use to solve the problems that block their coming-together.

The negotiation process in the European Union is a multilateral process of an international nature with supranational elements. The process is sandwiched between national and international negotiation (Putnam, 1988). There is more control than in international negotiation processes, but less than in national processes. Diplomats are present on the scene, like in other international negotiations, but civil servants have slowly but truly become the dominant force, like in national negotiation (Meerts, 1999). In other words, this is a system in transition. It is also in transition in another way. While traditional bilateralism is on the way out through the front door, as it is dominated by the multilateral EU processes, new bilateralism is coming in through the back door as a way to deal with the ever-growing complexity of the multilateral interactions. Bilateral negotiations and lobbying are needed as a means to keep the machine going. The more formal institutions and regulations are created, the more informal tools are needed.

The European Union as a process of international negotiation can survive only if a certain quantity and quality of outcomes are reached. Unless effective outcomes to the negotiation process are assured, the building will collapse. While in other international negotiation processes, open-endedness – while not preferable – is often unavoidable and for a certain length of time acceptable, this is much less the case in European Union negotiations. No increase in the number of decisions to be taken means an actual 'decrease' in the Union, and without progress in the integration process, the EU might slide into disintegration. The Union's negotiation process is therefore of relatively greater importance than negotiation processes in other international bodies. Although it does not have the same importance and intensity as national negotiation processes, the EU

process is of more general value than negotiation processes between states. The EU negotiation process can be characterized as having an in-between position.

### **Characteristics of the EU as a Negotiations Arena**

'EU negotiations are multilateral, multi-issue, recurrent, sometimes informal, subject to a distant shadow of the future, and complicated by the fact that some of the institutions within which they occur are also negotiators in their own right' (Dür, Mateo and Thomas, 2010: 617). According to Perlot, EU negotiations are characterized by consensus-seeking behaviour, issue linkage, specific and diffused reciprocity, as well as the predominance of the shadow of the future (Perlot, 2011: 14). Moreover, because of the supranational character of vital segments of the European Union, the EU negotiation process can be positioned halfway between national and international negotiation. It contains more assured outcomes than in international processes, but fewer than in national bargaining. It is more centralized and controlled, for example, because of the existence of the European Commission, being the guardian of the treaties, than other international negotiation processes. Yet at the same time it cannot match the consistency of the internal negotiation processes of well-functioning national states. However, as this chapter will show, such national negotiation processes are often of an extremely complex nature, and the coordination of internal priorities is one of the main problems faced by the EU member states in shaping their own EU negotiation processes. It should be noted that the supranational character of the Union indeed has a clear impact on the nature of the EU process, but it should not be forgotten that major parts of the EU negotiation processes are still of an intergovernmental nature, particularly foreign and security policy. This intergovernmental dimension, however, is of a more integrated nature than in other international organizations. Because of the very close cooperation among the EU member states and the existence of supranational actors inside the Union who also exert a great deal of influence on the intergovernmental negotiation process, even this part of the process can be seen as unique in the world. Both the supranational and the intergovernmental facets of the EU provide for a negotiation process where outcomes are more secure than in other international forums.

The Union's democratic dimension is another aspect that helps to distinguish EU negotiation processes from others. Indeed, in 'regular' international negotiation processes, the people play only an indirect role through governmental and non-governmental institutions. In the European Union, democratic actors – like political parties – are involved in the negotiation process at the European level, but their influence is to date quite limited. Furthermore, there is a growing involvement of national parliaments through yellow and red card procedures, which can both further and hamper the functioning of the Union. The impact of the Union's representative organs on the processes of negotiation has the effect in general of complicating matters. However necessary from an ideological and democratic point of view (as all EU member states are democracies), this political dimension does not always help to further effective processes and assured outcomes. On the contrary, many perceived assured outcomes have not been achieved because of interventions by politicians – interventions that were often motivated



by national interests that worked against the common European good. The EU process could thus be seen as more puzzling than the 'normal' international negotiation processes.

While international negotiation processes are defined here as inter-state processes (that is, between sovereign actors), the peculiarity of the EU process is its mixed character. Sovereign actors are playing a role that is even more important than that of EU bodies such as the Commission and the European Parliament, but there is a distinct interplay between these two kinds of international actors: the states; and the EU institutions. An example of such a dense negotiation process between states and supranational or international institutions cannot easily be found anywhere else in the world, and the result is a unique process of negotiation in which the states have lost most of their power monopoly. Through this 'enhanced interaction', EU member states and European institutions are negotiating their deals in a multitude of forums in negotiations that are characteristic of EU processes.

The classical Westphalian situation whereby sovereign actors negotiate on a voluntary basis is partly gone in a European Union where a substantial part of sovereignty is pooled in the EU institutions. States cannot act at will – with the exception of the Intergovernmental Conferences (IGCs) – as they have lost the majority of their 'freedom to decide' in negotiating certain issues. In other words, BATNAs (that is, 'best alternatives to negotiated agreements') are often absent (Fisher, Ury and Patton, 1991): if matters are on the agenda, then the alternative of non-negotiation is no longer present. 'Classic' theories do not hold here, and only active pre-negotiation might provide states with something like a BATNA instrument. Even this, however, is hardly true anymore. Essentially speaking, the fact that the EU and its member states share sovereignty in the core areas brushes the BATNA issue aside and enhances the possibility of assured outcomes – or perhaps we should say 'unavoidable outcomes'. A major exception here is the negotiations on Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). In this arena, the negotiations are essentially classic international interactions where BATNAs are of importance.

The European Union is a rich resource of negotiation options and opportunities for coalition-building (Van Schendelen, 2004: 17–34). On the one hand, this provides negotiators with a multitude of options and alternatives that enhances their power positions. On the other hand, it obscures their opportunities because of its ambiguity. Much of the negotiation process in the EU is ultimately about the creation of legislation as a consequence of political prioritization. To set clear priorities, however, negotiators will have to clarify their strategies, and to be successful in implementing these strategies, negotiators will have to master the complexity of the process, not least in dealing with their constituencies (Putnam, 1988). As processes are more complex within EU negotiation than in other international bargaining processes, highly professional negotiators are needed.

Countries are therefore creating a new layer of negotiators between diplomats and national civil servants, and between generalists and specialists. This new type of negotiator, a specialist in Public Affairs Management, could be instrumental in managing the complexity of the European negotiation process. As these negotiators have roles that are specifically linked to the very nature of EU negotiation, their operations will facilitate European integration through negotiation. The growth of European unity is not only shaping a new institution on the world stage, it is also creating a new kind of international negotiator and a new kind of international negotiation process.

What happens at home is vital for understanding the EU negotiation process (Van Keulen, 2004: 35–50). It all starts with insight into the negotiation processes within the member states of the Union – the coordinating negotiation processes at the domestic level. The EU bargaining system is characterized by extraordinary procedural complexity in a heterogeneous playing field that is suffering from increasing politicization. There is procedural clarity at the negotiation table, but not between the different levels of negotiation processes. This is because of the unclear separation of powers within the Union. Although the EU is a complex combination of institutions that should support negotiation processes, the connection between these processes is ambiguous because of the unclear linkages between the platforms on which the negotiations take place (Hooghe and Marks, 2001). A horizontal overview is therefore difficult, thus complicating the possibilities for diagnosing effective package deals among different policy areas.

Vertical insights are also hard to obtain, as the pace of the dossiers is extremely unequal. While some dossiers will make it to the highest levels of EU negotiation platforms, the vast majority will be settled at mid-level platforms, obstructing the opportunities for remaining dossiers to be included in package deals. Package deals are therefore more dependent on the availability of still-negotiable dossiers than on the most effective linkages (Bal, 2004: 131). While this lack of clarity is an obstacle to the creation of clear-cut national strategies for effective negotiations in Europe, it can also be seen as an opportunity for the negotiators. It would be extremely difficult for negotiators to be effective if they had to follow strict procedures that were laid down by the home front, as there are so many unpredictabilities in the EU negotiation process. They would simply lose too much flexibility. The impossibility of rigid mandates being constructed by the ministries back home therefore provides EU negotiators with the flexibility that they need to cope with any surprises in the process on which they are working.

Meanwhile, more and more players from different institutional levels are entering the arena – not only through enlargement of the European Union, but also through the participation of a growing number of regional governmental, non-governmental, public- and private-sector organizations (Van Keulen, 2004: 45). Confronted with the problem of a not-entirely level playing field in Brussels and problematic prioritization at home, the EU member states are clinging to negotiation procedures concerning their own coordination practices, which can no longer cope with the complexity of the EU negotiation process. The ministries of foreign affairs, which were traditionally the coordinators of national EU policies, are overwhelmed by the multitude of actors and issues in the EU negotiation processes. We have here a clear distinction between EU and other international negotiation processes: a quantitative difference with qualitative effects on the bargaining among negotiators, as well as the growing importance of national civil servants on a terrain that is the traditional domain of the international civil servant – that is, the diplomat.

Another differentiating factor between ‘regular’ international negotiations and EU negotiations is the impact of politics. As most EU issues are of an internal and not international nature, parliamentarians and other politicians tend to meddle in the processes managed by the professional negotiators. This, although positive from a democratic point of view, obscures the transparency of the negotiation processes at hand. While diplomats are trained to look for compromises and collaboration, politicians are

often striving for polarization and competition (Nicolson, 1998). In many cases, political intervention therefore creates obstacles to the integrative negotiation that is needed to obtain the desired outcomes of these processes.

### Member States in the EU Negotiation Process

The role of the member states might be less prominent than non-EU negotiators often assume (Langenberg, 2004: 51–70). As EU negotiators are aware, there are only limited possibilities for influencing EU negotiations, and states have to operate within strict legal limits in these areas. Strategic planning is therefore of paramount importance. This brings up the point of qualified majority voting (QMV), a decision rule that has increasingly been applied as a tool for making progress in EU negotiations. Without this instrument, the European Union would not have been as successful in decision-making as it is today. However, the fact that countries can be out-voted puts a great deal of pressure on their negotiators. Coalition-building is one of the answers in this context, as is a change in attitude. Negotiators will have to show an increased willingness to accept compromises, something that is not too common among the actors entering the EU negotiation scene after a new round of enlargement.

Actors in the EU negotiating process are not only bargaining on their needs, but also on their common and opposing values. It should be noted that values do play an important role in EU negotiations. One might describe the bargaining process as an exchange of commodities, but one might also point out that the underlying values should not be overlooked. These values are the objects of the trading process, as well as influencing it. A modest clash of EU civilizations within Europe is one of the characteristics of the EU negotiation processes, such as the cultural differences between the northern and southern member states and those from Central Europe. These differences express themselves in the languages used by the negotiators. In many plenary sessions of EU Council working groups, the countries north of the River Rhine speak in English, while those from within the former Roman Empire use the Latin language that we call French. Moreover, what may be seen as ethical in the eyes of a Swede may be unethical in the perception of a Greek.

EU member states operating in the EU Council of Ministers have different approaches to the process of EU negotiation, not only because of differences of interest, but also because of differences in structure (Bal, 1995; and Bal, 2004: 127–142). In addition different negotiation styles, or the 'software' of negotiations, can be observed. These different styles are not so much a consequence of differences in national culture as a result of national political and bureaucratic structures. For example, the French structure produces effective coordination combined with a reasonable amount of freedom for its well-educated and skilled negotiators. The German system, however, makes life quite difficult for its negotiators. The federal mode obstructs efficient and coherent decision-making at the national level, which leads to constraining German negotiators in their deadlines in Brussels. The British are – in general – well placed for negotiation, as they combine a pragmatic and flexible attitude in the negotiation process with a tough defence of their interests. Spanish negotiators seem to be more effective than their Italian colleagues, mainly because of the strength of their bureaucratic organization. The larger

EU member states share their potential for dealing with the whole range of EU issues in a balanced way, while the smaller member countries – because of the relative smallness of their governmental apparatus – are forced to follow more of a single-issue strategy.

Most EU governments have relatively limited options for influencing EU negotiation processes, with the large ones a notable exception (Tallberg, 2010). As far as the future is concerned, this room for individual needs will diminish further because of the growing importance of the EU institutions, as well as the rising number of member states because of the Union's enlargement process. Strategic planning and the effective use of tactics are therefore important in pushing for the needs and values that the individual states want to fulfil. As mentioned earlier, coalition-building is one of the major options here, but this will, in turn, dilute the individual actor's position (Dür and Mateo, 2010a; Guggenbühl, 2013). This is a strange paradox: a particular position can be successful only if it is compromised upon before the actual bargaining process starts. From the perspective of the common good, this is a wonderful instrument for forcing partners into a given frame, but for those that want to uphold the priorities set by their governments, this dynamic is problematic, to say the least. Prioritizing is important, however, as it will help the individual country to get its act together. After all, how can it concede, if it does not prioritize? On the other hand, in intense negotiation processes such as those in the EU, where negotiators get to know each other and sit around the table together for years, the negotiators are forced to acknowledge the specific needs of their counterparts if they want their opponents to respect their own specific interests. In other words, although there is an ongoing give-and-take process, certain specific interests are respected and will not be out-voted, as this would damage the very integrity of the countries involved. Negotiators can be open to a smooth process of conceding and obtaining only if they feel safe, and they will only feel safe if they can place trust in the ability and willingness of their colleagues to take into account their core interests and values.

The EU member states organize themselves into coalitions. These coalitions 'entail the pooling of power and resources by the constituent parties in pursuit of a desired outcome' (Blavoukos and Pagoulatos, 2011: 561). The coalitions can be based around the north-south cleavage (rich-poor, but primarily Germanic versus Latin cultures). There is a supranationalist-intergovernmentalist axis; an Atlanticist coalition versus a continentalist coalition; there are free-traders versus protectionists; and big versus small countries. Because of the euro crisis, the North-South divide seems to be of importance, and even then its salience is limited: 'no clear cleavage lines can be discerned in EU decision-making, except for a moderate North-South division' (Hosli and Arnold, 2010: 617). It should be noted that these coalitions are becoming more fluid over time, thereby enhancing flexibility and instability simultaneously. All of these cleavages are cross-cutting: one country is always part of more than one 'structural' alliance, and there are countless numbers of different coalitions on different dossiers. The effect of these coalition patterns is twofold: they both slow down and stabilize the EU negotiation processes. They also constitute a negotiation arena that, while securing both European and national interests, does not enhance the strength of the European Union as a global actor.

## Procedures of the EU Negotiation Process

What kind of negotiation does consensus decision-making involve? This is an important topic for the European Union, as the decision-making procedures have an enormous impact on the negotiation processes and their outcomes (Heisenberg, 2004: 93–110). The impact of QMV in the Council of Ministers has been discussed before, but the question remains as to what extent QMV itself affects the negotiators versus the ability of negotiators to use it as a threat while consensus, in practice, remains the rule. One problem with the procedures in the EU is that they are often different from one issue-area to the other, thus limiting transparency and enhancing complexity. It should be noted that consensus decision-making is also the rule in areas where QMV is allowed. One reason for this is the Luxembourg Compromise of 1966, a package deal whereby countries try to avoid using their veto while at the same time trying not to invoke actual voting. Negotiating until general satisfaction is reached has thus become the reality in EU bargaining.

A major difference between EU and non-EU negotiations is the common understanding of EU negotiators that: EU decision-making is a non-zero-sum process; that the Commission is the agenda setter – with the European Council as the major body for strategic decisions – and will therefore enhance the possibility of coordinated solutions; and that the existence of the Court of Justice of the European Union guarantees implementation of the decisions agreed upon by the member states. An additional factor is the long-standing influence of these understandings on the negotiation process and, as a consequence, on the development of an EU negotiation culture with characteristics that cannot be found elsewhere. This evolution of cooperation creates an integrative bargaining process in which non-cooperation and tit-for-tat tactics are rare. As negotiators meet each other on a day-to-day basis, EU negotiations are more personalized than other international negotiations. This, in turn, creates a chemistry that furthers integrative bargaining, just as the collective gathering of information shapes a common referential frame.

The enormous number of issues in the EU negotiation processes provides negotiators, in principle, with numerous possibilities for package deals, thereby facilitating integrative outcomes. As we have seen, however, there are several obstacles on the package-dealing horizon that obscure the negotiators' view. Package deals sometimes work within one and the same dossier area if the deadline is approaching. Package-dealing between dossiers is not really feasible, with the exception of trade-offs at the highest political level (Ball, 2004).

## Institutions in the EU Negotiation Process

The intergovernmental and supranational institutions of the European Union play their own intricate game (Beach, 2004: 71–92). How negotiations were structured and conducted mattered in terms of the supranational actors' ability to gain influence in IGCs. The EU member states often needed the supranational bodies as facilitators in reaching agreements. Although a non-supranational body, the Council Secretariat has been especially influential in this respect, which has to do with its expertise, as well as the fact that it is often ahead of the member states as far as information is concerned. Its skills are needed by the EU member states' negotiators who, especially those from the

smaller powers, often lack the apparatus to match their opponents. They may alternatively use the facilities of the Secretariat, which in turn creates a power base for the Council. Furthermore, trust plays an important role. The legitimacy of the Secretariat puts it in a central role as a neutral broker that can be trusted and will therefore be used by the players. The European Commission, however, has not always had the trust of the other actors, because it is a player itself, with its own interests to defend. As the Commission compensated for this lack of trust by taking extremist positions, the effect has been a further loss of legitimacy and therefore of influence on the negotiation processes in the intergovernmental conferences (Beach, 2004: 90). It could generally be stated that the more complex bargaining processes are, the more institutions are needed to guide negotiators through the 'forest'.

EU member states are consequently becoming more dependent on the institutions that they have created, and they will therefore invest them with more possibilities for influencing the EU negotiation processes. By creating a power base for the common institutions, albeit an informal power base, the common good of the EU may be furthered, but the individual bargaining positions will still suffer. As we have seen before, EU member states already have a diminishing range of options at their disposal because of the growth in the number of participating countries and the decrease in consensus-making in favour of the increasing use of QMV to decide the outcomes of EU negotiation processes. This not only applies to the regular bargaining processes, but also to those outside the normal patterns of EU decision-making, such as the IGCs. This does not mean, however, that inter-state negotiations are on the way out. On the contrary, as the multilateral process becomes more complex and more difficult to manage, bilateralism is on the rise. Countries will compensate for their lack of grip on the formal processes by being more active in the informal circuits, such as lobbying. This will facilitate the European Union's negotiation processes, but it could also enhance ambiguity and will water down transparency. This would create more difficulties for individual actors to establish effective strategies, so that they would have to turn to allies and institutions to compensate for their own negotiating weakness.

However, the institutions might still play an important role, but the trend towards strengthening them seems to be over. The exception is the European Parliament, not only as a consequence of the extension of its power because of the Lisbon Treaty, but also because of a self-propelling dynamic. The United Kingdom has always been anxious about too strong a European Union curtailing its traditional freedom of manoeuvre, but in the wake of the euro crisis, other 'northern states' – such as the Netherlands and even Germany – are becoming slowly but truly more Eurosceptic. The Netherlands, citing the failed 'Maastricht Proposal' in the early 1990s, is now one of the more hesitant countries as far as further integration and enhanced supranationalism are concerned (Van den Bos, 2008: 377). For the process of EU negotiation, this growing distrust in the European Union implies less assured outcomes in a relatively weakened Union. Whether this is good or bad is debatable. According to Louise van Schaik, 'more EU unity can be beneficial for the EU's effectiveness, but can also provoke a negative reaction from negotiating partners. The EU acting as a bloc may cause irritation' (Van Schaik, 2013: 192). In other words, a cohesive European Union might strengthen its influence over non-EU negotiations, but

perhaps also be weakened. Increased cohesiveness and acting as a bloc could therefore diminish its negotiation effectiveness.

### The Presidency in the EU Negotiation Process

Although the Presidency is not an institution of the European Union, it seems relevant to discuss it before this thesis turns to the formal institutional framework (Schout *et al.*, 2004). Since the Lisbon Treaty, the European Council has enjoyed a semi-permanent President of the European Council – the highest political level of the European Union, with a term-in-office of two-and-a-half years and the option of one extra term of the same length. The first President of this kind, Belgium's former Prime Minister Herman Van Rompuy, understood how to play his role: he seems to be in the background, avoids 'egotiation', but is as influential as necessary from behind the curtains. Timing is essential, as is knowing when to pull and when to push, and trying to stay out of the limelight as much as possible in order not to irritate the European heads of state and government unnecessarily. As the European Council represents the EU, the President contributes to the stability of the Union and to the effectiveness of its negotiation processes. Its role was already growing under the old system of the rotating Presidency: 'the Presidency has evolved into the most important institutional mechanism through which EU governments reach efficient bargains' (Tallberg, 2008: 201). The semi-permanency of the position was expected to stabilize the Union further, thereby facilitating more assured outcomes of EU negotiation processes. Another novelty stemming from the Lisbon Treaty was the creation of the High Representative for Foreign Affairs and Security Policy as the permanent chair of the EU Foreign Affairs Council. Former European Commissioner for Trade and British parliamentarian Catherine Ashton was the first chair-holder. This role will also help to enhance cooperation and thereby further EU stability, as the High Representative of the Union for Foreign Affairs and Security Policy presides over the Foreign Affairs Council of the European Union.

The old system of rotating country chairs – every six months – is still in place as far as the other decision-making levels of the Union are concerned. These chairs still play an important role in the EU negotiation processes, as they did at the time before the installation of the semi-permanent Presidency. One important duty of the chair is to guarantee the continuity of, and progress in, the negotiations on the various agenda issues. The country holding the rotating Presidency has a moral and political obligation to be successful during its six months in office. Failures shame the country, which holds responsibility for guiding the Union through its official term. National honour, and therefore the political position of the leader(s), is at stake. This is a strong incentive for a country to invest plenty of energy into its period of Presidency. It is important to be successful and to avoid crisis situations as much as possible, as they might lead to failure. The consequence of this is that countries holding the rotating presidency often adopt a risk-avoidance style, as risk-taking presidencies have – so far – not been very successful. Hobby-horses can be a serious obstacle to effective leadership in the negotiations chaired by the country in charge (Guggenbühl, 2004: 171–198).

The chairing country still has an important role to play, especially when the other actors fail. To be effective, planning is essential. Most countries prepare seriously for their term, and broad layers of the bureaucracy are trained in understanding the issues

at hand and in dealing with them in an effective way. Pathfinders are sent out to gather information in EU capitals in order to obtain a thorough insight into the perceptions of the other EU member states concerning the issues that will be dealt with in the next half year. During its term in office, the chairing country must keep in mind that technical chairing is just not enough. Maintaining order will not – by itself – lead to progress in the negotiation process. So-called ‘corridor work’, informal talks, mediation initiatives between opponents, performing well with the other institutions of the European Union, as well as pleasing public opinion in member states, are all activities that can help the chair to be seen as effective. Some findings of effective EU chairing behaviour will be presented under ‘Unilateral Lessons for Chairing’ in chapter XI.

### The European Council in the EU Negotiation Process

Negotiating European policy in the European Council – the multilateral negotiation between the political leaders of the EU countries plus the Presidents of the Council and of the Commission, and (depending on the agenda) the High Representative and an individual minister or commissioner – is EU negotiation at its highest level (Werts, 2008). This is both because of ‘the elevated status of its participants and the important nature of the matters that come before it’ (Buonanno and Nugent, 2013: 45). The European Council can be regarded as ‘a sort of Board of Directors of the EU’ (Buonanno and Nugent, 2013: 46), with the task to enhance ‘mutual understanding and confidence between governments of the EU Member States’ (Buonanno and Nugent, 2013: 48). This most important negotiation arena of the entire EU, which meets at least twice every six months, is the platform for the final political decision-making in the European Union, and thereby its instrument of last resort in conflict resolution. Its decisions are almost always taken by unanimity (Buonanno and Nugent 2013: 46). Here, the negotiation processes come to an agreement, or failure. This is the place of an ongoing struggle, partly created by the occasional malfunctioning of the Council of Ministers and by the working methods and proceedings of the European Council itself. One side of the problem is that too many issues are not finalized by the ministers and end up on the table of the heads of state and governments. Too many ‘low-political’ topics have to be dealt with at too high a political level. This mismatch has to do with the risk-avoidance attitude of the lower political and diplomatic strata. As well as the problem of the leaders being swamped, there is the question of languages. As the European Union grows, so too will the number of languages in use (Van Grinsven, 2004: 127–142).

More perhaps than on other negotiation levels, the personal qualities of the leaders in the European Council have an impact on the negotiation process, as was highlighted in Chapter IX of this thesis. After all, the leaders are vested with a great deal of power and are therefore highly ‘relevant’ people. Character always counts, and some research seems to indicate that, within the EU, character differences among negotiators have a greater impact on negotiation relationships and processes than culture. But for those who represent the states at the highest levels, personal characteristics may be even more relevant than for other representatives. Earlier in this thesis, we saw the impact of people liking or disliking each other on the relationships between leaders, and therefore between the member states. This had nothing, however, to do with political colour. There have been German *Bundeskanzler* who were able to work very well with French presidents of a different



political inclination while having no chemistry with presidents of the French Republic who were politically close to them. Other elements influencing mutual relationships are the power of the countries involved (size, population and economic performance), as well as the constitutional position and seniority of the leader. However, although the bigger EU member states play a dominant role 'small member states have enjoyed considerable influence over decision outcomes in the European Union' (Thomson, 2008: 255).

### The Council of Ministers in the EU Negotiation Process

The Council of Ministers is – together with the European Parliament – the legislature of the European Union. The Council and the Parliament can be seen as the two houses that have to co-decide on EU legislation (Buonanno and Nugent, 2013: 49–54). If in disagreement, they have to negotiate a common position. Negotiation and mediation in the EU Council of Ministers are important processes in view of the key role that the institutions have to play as concession-making machinery (Elgström, 2004: 111–126). The highly institutionalized character of bargaining in the Council is of importance here. Agenda-setting and initiating, the impact of procedures (including voting rules) on negotiation behaviour and coalition-building, different mediating roles, and the effect of the institutional context on the negotiation process are vital ingredients in understanding the EU menu. Consensus-seeking behaviour and problem-solving approaches in EU bargaining are characteristic for the European Union, because there is a perception on the part of member states that the EU will provide them with mutual efficiency gains on the basis of common values. As far as negotiation is concerned, it is easier to accept a proposal by majority vote than to amend it; the Council adopts a Commission proposal – the *de facto* single negotiation text for the Council of Ministers – by QMV, but can amend it only by unanimity. For the Commission, therefore, agenda-setting is a power resource, as is the prerogative to withdraw its proposals, but this only counts for cases outside the domain of the High Representative for External and Security Policy: 'the Council of Ministers' decision-making and negotiation style is institutionally unique' (Heisenberg, 2008: 273).

Since the Lisbon Treaty in 2009, a qualified majority consists of 55 per cent of the member states, representing 65 per cent of the population, although there is a transitional period and CFSP plus CSDP are largely exempt from it (Buonanno and Nugent, 2013: 49–54). In those EU areas where QMV is possible, constructive negotiations are imperative. Negotiations are primarily problem-solving exercises rather than the construction of minimal winning coalitions. Countries that are sure to be out-voted will normally go with the flow. Furthermore, there is a long-standing Council of Ministers' norm to avoid (out-) voting as much as possible. In practice, consensus is the rule, voting is a last resort, thus negotiation gains in importance. Package-dealing, facilitated by existing cross-cutting cleavages and different coalitions depending on the dossier at hand, is the major tactical device that is used to obtain agreements.

As far as coalition-building is concerned, which is after all a device for structuring the process, the emphasis is more on process coalitions than on voting coalitions. 'Practice teaches us that member states usually opt to pool their voices and to delegate authority to one or more EU negotiator(s)' (Delreux, 2011: 5). Furthermore, the Commission plays a role both as a facilitative and a preventive mediator, removing as many obstacles from the negotiation process as possible, while the chair is more of an ad-hoc mediator. These

mediators are not completely neutral; they have their own particular agendas. Some impartiality is needed, however, and this is one of the reasons why the chair of the Council and the leader of the delegation of the chairing country are always different individuals.

Ministers of the Council constitute the Policy Forum of the European Union, which is the central negotiations arena, although not the highest one. It meets in ten formations: General Affairs; Foreign Affairs; Economic and Financial Affairs; Justice and Home Affairs; as well as Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; and Education, Youth, Culture and Sport. Beneath this lies a system of committees, the first of which is COREPER 2 for the Permanent Representatives of the Member States (that is, ambassadors) and COREPER 1 for their deputies, and then a whole range of working groups where the preparatory negotiations take place (De Zwaan, 1995; Beyers and Dierickx, 1996).

Connected to the Council of Ministers is the Council Secretariat: 'the Council Secretariat plays an important [...] role in ensuring the efficiency of intergovernmental Council decision-making' (Beach, 2009: 234). The Secretariat is also an important support for the European Council and the European Parliament.

### The European Parliament in the EU Negotiation Process

The EEC Treaty gave the European Parliament purely advisory and supervisory powers (Carter, 2011: 221). Through Treaty amendments in 1986, 1993, the Treaty of Amsterdam in 1999 and the Lisbon Treaty in 2009, the European Parliament became a true EU institution with legislative powers. In the context of the ordinary legislative procedure, which in the past was labelled the 'co-decision' procedure, a Conciliation Committee was installed in which the Council has to negotiate with the Parliament if it turns down its amendments. It should be noted here that 85 per cent of legislative proposals are decided upon without the need to conciliate with the Council. Of the remaining 15 per cent, one-quarter of its amendments are accepted as proposed, while another one-quarter are withdrawn, so in approximately half of the 15 per cent of contentious issues a negotiated compromise has been reached (Buonanno and Nugent, 2013: 56). The European Parliament now has a formal role in the EU negotiation system, while it scrutinizes the Commission and the Council within this system. It also has a role to play in the enlargement procedure, so its powers have grown so much that EU member states, the Council of Ministers and the European Commission include the Parliament and the positions of its parties into account. As a consequence, the European Parliament has become a party in the EU negotiation processes.

As the European Parliament is a political institution that is fragmented into political groups, this enhances the democratic level of the European Union, but it also politicizes the negotiation processes, which is not always helpful for closure. After all, Parliament has its own internal negotiation processes, with log-rolling and legislative agreements in full session (Hix, 1999: 79), and thereby adds a new level to the EU negotiation process. The negotiation position of Parliament is still weakened, however, by several flaws (Nugent, 2010: 211–212). It does not have full legislative powers as it lacks the right of initiative, so the Council of Ministers still often decides 'in principle' before Parliament has spoken.

Moreover, the Council does not consult it on all legislative matters, and it does not need to be consulted on Commission legislation.

Although the European Parliament is still not a 'proper' assembly like the national ones, it has become an important player in the negotiation process (Nugent, 2010: 241). The Parliament has also broadened its influence to the EU's external relations and its management: 'the European Parliament was able to co-negotiate the making of [the European External Action Service] and to create a structured relationship between the High Representative and the EEAS that enables extended parliamentary oversight of the institutional setting of EU external relations and diplomacy' (Raube, 2012: 79).

### The Commission as the Initiator, Implementer and Broker

The European Commission is the impartial element in the system of the European Union. It has to defend the EU's interests as a whole. It is supposed to be the motor of European integration, of which it is the initiator and day-to-day driver (Buonanno and Nugent, 2013: 39–60), the epitome of the *community method*. The Commission's President has an important role to play in the other institutions of the Union, but he lacks a privileged position in the realm of CFSP and CSDP, where the governments have the initiator's role. The Commission does not have a leading role in transgovernmentalism, but through issue-linkage, as well as through the High Representative, who is part and parcel of the Commission as its Vice-Chair and Commissioner, but it is nonetheless influential in this area. The Commission also acts as mediator and broker and it has strong executive functions, having close to 30,000 civil servants at its disposal. It is at its best with issues where its power is grounded in the Treaty of the EU, in QMV issue-areas, and in cases where EU member states are of the opinion that issues have to be solved at the EU level, or quarrel among themselves.

These executive functions include developing administrative laws, overseeing the implementation of EU policies by the national governments, and checking their laws, while in some cases it can implement EU policies directly in the national context. Furthermore, the Commission has a leading role in the process of enlargement of the European Union. It is the spin in the web of preparatory negotiations within the European Union. For example, towards the EU applicant countries there is hardly any room for negotiation left, once the European Council has given the green light for accession talks on the conditions of the 'chapters'.

The Commission's negotiation power *within* the Union stems from its information advantage, its prerogative to set the agenda through impact assessments, to withdraw its proposal, and to take judicial steps against member states and the European Parliament. Its *external* power stems again from being better informed than the member states, plus it can exceed its mandate while the member states will be hesitant to criticize the Commission about this for fear of weakening the European Union's power in the eyes of non-EU negotiating powers. The Commission can further strengthen its position in external negotiations by convincing the member states that they have to speak with one voice. 'Yet, the overrepresentation of Europe in many international institutions would further exacerbate if the European Union managed to increasingly "speak with a single voice" by way of more competences or coordination' (Gstöhl, 2009: 403).

## EU Enlargement and External Negotiations

The European Union's external policy is quite effective in negotiations with candidate members:

An applicant first has to be declared as an official candidate, which requires that the country satisfies the political aspects of the Copenhagen Criteria. Then, it has to adopt and implement the *acquis communautaire*, the whole body of the European Union rules and regulations in force (Kibris and Bac, 2011: 399).

According to the Copenhagen Criteria from 1993, later amended at the European Council in Madrid in 1995, the new member state will have to be a European country with stable state institutions, respecting democratic principles, human rights and minorities. An applicant state should have a functioning market economy that can meet competition at the European internal market, and it has to adopt the *acquis communautaire* and apply it accordingly. Even with these seemingly objective criteria, the perceptions of the parties in the enlargement process can differ substantially and will therefore influence the negotiation process (Smolinski, 2010).

The prospect of EU membership can decisively influence other countries, even on issues that are not relevant for accession. However, it loses part of this grip after a country has become an EU member state:

It is interesting to note that the EU effect is strongest in the stages before countries actually become members. When countries have incentives to reform, in order to be deemed acceptable for membership, the EU leverage may be strongest. Once countries actually become members, Brussels has far less direct influence on countries' behavior (Gray, 2009: 946).

Fedor Meerts and Thassos Coulaloglu came to the same conclusion while comparing the compliance of Estonia, Romania and Ukraine to the EU's demands (Meerts and Coulaloglu, 2012: 306–327). Estonia and Romania were much more willing to work with the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) than was Ukraine. However, after accession they often prevented certain EU proposals in the domain of human rights from being transformed into proposals to be tabled at the OSCE.

Negotiating enlargement is a very special element in EU negotiation processes (Landau 2004: 199–216). The negotiation processes of the European Union with applicant states – and the internal negotiations that go with it – are of lasting importance, even after the recent extension of the EU with Croatia, for this will probably not be the last country to join. Other states, such as the remaining western Balkans countries of (in alphabetical order) Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia might follow. Given the present phase of 'Eurosclerosis', this might take a long time, while the accession of the official candidate country of Turkey might never happen, either because of 'fatigue' on the side of the Union, or perhaps more likely on the Turkish side.

With the growth in the number of EU member states, any external negotiations will be more difficult to deal with in terms of alternatives to the positions already taken by the Union. These positions will become more rigid than they are today, especially if external negotiations are about issues that will have a profound impact on the EU. The higher the stakes and the larger the Union, the less flexible the position it will take in negotiations with outside actors. This could seriously complicate its dealings with, for example, its transatlantic partners, and the inflexibilities could add to the present rift that has arisen as a result of different political aims and strategies. This process can already be observed when one looks at the difficulties experienced by the Council of Ministers in compromising on its negotiation outcomes to reach consensus with the European Parliament. After internal negotiations, no space is left for further give-and-take. The bottom line has been reached. For candidate members it will anyway be more difficult to accede, as the demands from the EU side have been raised dramatically as a consequence of the accession experiences of the last decade (Phinnemore, 2011: 257).

President of the European Commission José Manuel Barroso has stressed the importance of Europe playing a global role, noting that this could only be realized if the European Union acted in a united fashion (Giegerich, 2010: 197). The EU's external negotiations are multi-level, as are the internal ones. Here we will focus on a few important realms, first of all the European Neighbourhood Policy. This initiative from 2003 is a case of reaching out to minimize some of the negative consequences of enlargement (Gower, 2006: 73), to lower the need for states to become EU members and to attempt to stabilize the regions around the Union. Another level is the negotiation processes with advanced industrialized countries (for example, the G7), with advanced and advancing countries (the G20), and with developing countries (for example, the African, Caribbean and Pacific group of states – the ACP). The EU also participates in the negotiation processes with the UN institutions and the UN family, for example in the World Trade Organization (WTO) (Young, 2003). The result of all this is enormous complexity, one reason being that the internal and external processes of the EU's negotiations are becoming intertwined. Thus, 'In an age of global markets and communications, it is more than ever apparent that the internal and external development of the EU are inseparable, and that the processes of internalization and externalization [...] cannot be avoided (Smith, 2011: 244). This has the consequence of a growing linkage between internal and external EU negotiation processes, creating ever more complexity.

CFSP is one of the most difficult terrains of European policy-making, as it has to be done by consensus. The effectiveness of the EU's external role is hampered by this painful internal negotiation process, notwithstanding the attempt to harmonize and centralize by appointing a High Representative with powers both inside and outside the Council and the Commission, with her own diplomatic apparatus by means of the European External Action Service (EEAS), which is staffed by diplomats of the EU member states and Commission officials under the authority of a head of delegation (Drieskens, 2012: 57). It is an innovative development: 'For the first time in diplomatic history, a non-state actor has created its own foreign service composed of both a central administration in Brussels as well as external delegations abroad' (Petrov, Pomorska and Vanhoonacker, 2012: 1). After a difficult start, the EEAS is slowly but truly taking shape, but European Union diplomacy is still in its infancy and lacks coherence, unity and effectiveness. Nevertheless,

the EU has a role to play and this role is quite special. As Karen Smith states, ‘the EU may not be so unique in its choice of foreign policy objectives, but the way it pursues them does distinguish it from other international actors’ (Smith, 2003: 199). That is to say, the EU is peaceful and legalistic, it has institutionalized dialogues, including the promise of membership – in principle at least – and supports non-governmental organizations (NGOs). Of course, many countries in this world also pursue this, but not so much in a grouping with others as is done within the European Union.

To measure the EU’s influence on the global system of negotiation processes is, however, hard to measure: ‘The difficulties in determining whether a desired change has been the result of an EU policy as distinct from other actors or factors are not inconsequential’ (Keukelaire and MacNaughtan, 2008: 336). Moreover, ‘In practice, the EU’s challenge consists of pushing for the most ambitious margin within the realm of realistically possible agreements (while working towards upgrading the ambitious scope of this realm, *inter alia* by means of coalition- and bridge-building)’ (Groen, Niemann and Oberthür, 2012: 187). In order to respond to this challenge, unity will have to be accomplished, yet this is the EU’s most painful process, where it often fails. The most notable example of this was at the Copenhagen Summit on Climate Change of 2009: ‘The failure to speak with one voice [...] weakened the EU’s position in front of the international community and gave the chance to other actors to claim for leadership (especially the US)’ (Fernandez Martin, 2012: 205).

Michel Knodt and Sebastiaan Princen have analyzed the external relations of the EU as a three-level game in which the ‘win-set’ – that is, the bargaining range – is shrinking as the negotiations are conducted on a higher external level. They see the ‘win-set’ as being quite large between the individual EU member states, smaller at the internal EU level and smallest in the international arena (Knodt and Princen, 2003: 57). This vision is in line with the work of the father of ‘two-level games’, Robert Putnam, who determined the ‘win-sets’ on three levels as well, although not connecting them to the European Union, which did not exist in its current fully blown version at the time. On the first level, the strategies of the negotiator were of essence; on the second level, the institutions; and on the highest level, the preferences and coalitions (Putnam, 1988: 442).

One way to create a bigger ‘win-set’ in the EU’s negotiations with outside powers is to strengthen the corps that deals with its foreign policy: the EEAS. This could be done through collective training, but, according to Simon Duke, this training should be content-driven, while ‘inculcating an *esprit de corps* [...] should not be the primary purpose of any training design or execution’ (Duke, 2012: 114). David Spence, on the contrary, is in favour of training to further a sense of ‘Europeaness’ among the negotiators representing the Union: ‘Until the European Union’s diplomats and European national diplomats “sing a song from the same hymn sheet”, diplomatic effectiveness will be a hard call’ (Spence, 2012: 133). ‘Yet, the overrepresentation of Europe in many international institutions would further exacerbate if the European Union managed to increasingly “speak with a single voice” by way of more competences and coordination’ (Gstöhl, 2009: 403).

### Strategies and Tactics in EU Negotiation Processes

Andreas Warntjen distinguishes four modes of decision-making that are employed by EU member states and institutions (Warntjen, 2010: 655–679). The first mode is distributive

bargaining: 'In this mode, actors aim to elicit as many concessions from their negotiation partners as possible, while making as few as possible themselves' (Warntjen, 2010: 667). The second mode is cooperative exchange, or trade-offs and package deals, which are also labelled integrative bargaining or value creation. The third one is norm-guided behaviour: 'Through a process of socialization, actors internalize norms which become part of their identity and prescribe appropriate behaviour for certain types of situations' (Warntjen, 2010: 670). This mode can also be named 'Brusselization', as the dynamics of the processes in Brussels force negotiators to adjust and thereby become more ready to wheel and deal. Warntjen's final mode is deliberation: 'deliberation establishes through truth-seeking discourse what "the right thing to do" would be' (Warntjen, 2010: 670).

What factors determine the choice of strategies and tactics? Stefanie Bailer suggests that voting power, economic size and domestic constraints create the context in which negotiators have to operate (Bailer, 2010: 743–757). Negotiators will look for opportunities to form coalitions to strengthen their power, they will lean on the institutional power that they have and use skilled negotiators who are well informed, working on as many levels and with as much frequency and reciprocity as possible in order to create optimal effectiveness and defend the interests of their country or institution. Madeleine Hosli and Christine Arnold add to this the following observation: 'Negotiations on the European Constitution are found to be determined less by general transnational left–right divisions, but cleavages according to the length of EU membership and the size of the EU member states' (Hosli and Arnold, 2010: 615). Whether this is a rift to be found in other EU contexts remains to be seen, but it does indicate what kinds of factors the EU negotiator has to struggle with in attempts to bridge gaps through strategies and tactics.

Thomas Risse and Mareike Kleine look at strategy and tactics in EU deliberations from a different angle (Risse and Kleine, 2010: 708–726). They ask themselves '[w]hich institutional scope conditions are conducive to arguing to prevail in multilateral negotiations and, thus, to affect both processes and outcomes?' (Risse and Kleine, 2010: 711). They propose five conditions that will strengthen the chances of persuasion as a tactical tool in EU negotiation. The first proposal is that the likelihood of arguing leading to persuasion will be enhanced in situations of uncertainty. To them, uncertainty will be generated, among other things, by institutional settings, which favour overlapping identity roles. Second, they state that a transparent negotiation will also be conducive to persuasion, especially if the negotiators are uncertain about the preferences of their constituency. Third, if they are more aware of the preferences of their audiences, they will prefer secretive negotiations. Fourth, arguing will lead to persuasion if expertise and moral competence buttress institutional norms and procedures. Finally, the neutrality of the chair will help to persuade the other negotiators through argumentation. However, after studying the 1996–1997 Intergovernmental Conference and the Treaty of Amsterdam, as well as the European Convention starting in 2002, Risse and Kleine could not find enough indications to support the above-mentioned proposals.

Andreas Dür and Gemma Mateo have attempted to set the stage for future research by clarifying the question of whether negotiators will employ tough or lenient strategies and tactics (Dür and Mateo, 2010b: 680–693). They hypothesize that those who are powerful and not eager to reach an outcome as they are in a position of loss, and/or have recently acceded to the Union (in other words, they are not yet 'Brusselized'), will opt for a

hard bargaining approach. Those who are from a collectivist culture, however, and have a diplomatic tradition that stresses consensus, will be more inclined to use 'soft' bargaining strategies and tactics. They signal the problem of proving this through empirical research, as access to interviewees is often difficult (Van Es, 1996: 275–284; Meerts 1997a; and Elgström and Jönsson, 2005). Moreover, the problem of researchers having access to actual negotiation processes and the negotiators themselves was already noted in the first chapter of this dissertation.

Heather Elko McKibben approaches the issue from another angle. She analyzes strategic and tactical behaviour on three axes: high versus low politics issues; zero-sum versus positive-sum issues; and the salience of the domestic issue, as well as in cases of the polarization of issues (McKibben, 2010: 694–707). She hypothesizes that states are more likely to adopt 'hard' bargaining strategies when they are negotiating over high politics issues, when the negotiation takes place in the context of an intergovernmental conference (IGC), when the issues are of a foreign and defence policy nature, if they are zero-sum in nature, redistributive, distributive of quotas or commitments that must sum to some fixed amount, and if the issues are domestically (that is, electorally) salient. 'Soft' bargaining strategies can be expected if the valuation of issues is different for the negotiation partners, if the issues are very complex, if the set of issues is positive-sum in nature, and if they are on the level of low politics.

Daniel Naurin also undertook something comparable to this. He launched a survey among representatives of all the EU member states, making a distinction between arguing and bargaining. Naurin regards arguing or deliberation as a kind of soft integrative explorative bargaining, while bargaining itself is seen as much more distributive behaviour. He found that 'deliberation seems to be present during less politically heated conditions [... but this was] substituted by bargaining when the process came closer to a sharp decision-making stage' (Naurin, 2010: 33).

### **The Future of the EU Negotiation Process**

The EU started as a confidence-building measure between the French and the German Federal Republic after the Second World War. Both countries wanted, through an economic arrangement (the European Coal and Steel Community), to prevent another war in Europe by creating a stable and secure situation, with economic benefits as a spin-off. Germany and France needed neutral partners to help them forge a durable balance, so Italy and the three Benelux countries (Belgium, the Netherlands and Luxembourg) stepped into the process. This multilateral framework for international negotiation has been expanding ever since. The Union has also enlarged its membership.

The European Union is broadening in two ways: by multiplying its policy areas; and by the number of partners to be integrated. New countries have entered the EU in several waves: Denmark, Ireland and the United Kingdom in 1973; Greece in 1981; Portugal and Spain in 1986; and Austria, Finland and Sweden in 1995. The fifteen members then decided to accept ten new members in 2004: Cyprus; the Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia; and Slovenia. In 2007 Bulgaria and Romania entered, while Croatia followed in 2013, with Iceland the next in line (although Iceland suspended accession negotiations in September 2013). Turkey has been a candidate member for a



long time already and preparatory negotiations for its membership are continuing, but actual membership is not foreseen and might never occur because of developments in Europe and Turkey alike. The EU may end up with some 35 states in the first half of the twenty-first century by absorbing the remaining countries of the western Balkans, although (as stated earlier in this chapter) this will be a slow process because of the ever-tougher membership conditions as a consequence of rising xenophobia in the Union, which is fed by an economic crisis, corruption and underdevelopment in the candidate countries, as well as the growth of minorities within the member states. Nevertheless, some see a need for further enlargement encompassing all of the countries in Europe apart from Russia (De Zwaan, 2013).

The EU is not only broadening its horizons, but is also deepening its cooperation in two ways: by covering more and more aspects of the categories that it sees as its domain; and by strengthening the EU institutions. The supranational elements such as the European Commission, the European Parliament and the European Court of Justice are being strengthened, as are the intergovernmental bodies such as the European Council of heads of states and government leaders, the Council of Ministers and the whole range of working groups and committees that are served by negotiators from the public and – to a far lesser extent – the private sector. It also forces itself to integrate further. By taking the decision to have the Eurozone countries – a European Monetary Union with the euro as the common currency – the EU speculated on the future. Knowing at the turn of the millennium that not all of the conditions could be met to have a stable monetary zone, it trusted in the shadow of the future, but did not foresee the American banking crisis and its consequences for Europe. Becoming entrapped, the Eurozone countries decided to move forward by creating a common European Banking Union to be supervised by the European Central Bank in Frankfurt, as well as a European Financial Stabilization Mechanism. The negative developments were thus used for a positive purpose, if one values further integration into a political union through a banking union as positive.

How strong will the EU be, internally and externally? According to Casper van den Berg,

[...] power is increasingly shared across multiple levels of governance rather than centered just at the national level, power is increasingly shared between state actors, semi-state actors and non-state actors, [...] institutional relations are increasingly determined through negotiations and networks [...] and] the strictly hierarchical and top-down ordering of levels of governance is decreasing in importance, in favor of relatively more equal power distribution between tiers of governance (Van den Berg, 2011: 371).

The EU negotiation process might become so complex that it may, in itself, be an obstacle to further integration, a phenomenon that can be observed on a global scale as well (Hale, Held and Young, 2013). At the same time, however, the possibilities for integrated solutions will be on the rise. The result could be a new balance, where the EU will continue to grow as a system and a process that will be larger than the sum of its parts. At the same time, there will be important issue-areas where the convergence of interests will remain extremely difficult, such as foreign and security policy. This disparity could develop in terms of an internal and an external position of the Union. Internally, more power and

possibilities will be generated. Externally, the Union may remain what it is today, or may even regress slightly: a coalition that cannot get its act together.

Alain Guggenbühl, in an interesting contribution to *The Hague Journal of Diplomacy*, attempts to predict some patterns of multilateral decision-making by reviewing trends in the 'Culture of Negotiation in the European Union' (Guggenbühl, 2013: 21–47). He postulates that the 'negotiation patterns of general consensual cooperation are likely to remain unaffected by the Lisbon Treaty as their logic has persisted over previous enlargement and institutional changes to the voting system. Even the forthcoming enlargements of the European Union should keep these trends' (Guggenbühl, 2013: 27). Intensification of the trend of interested consensus-building can be expected (Guggenbühl, 2013: 32), for example, because of ongoing mechanisms such as 'circular barter', 'log-rolling' and 'diffuse reciprocity'. Under the influence of the Balkan countries, it is expected that 'negotiations among member states (are) becoming influenced to a greater extent by political rationalities protecting fundamental domestic values. This could lengthen deliberations and deal-crafting in the Council' (Guggenbühl 2013: 37). The role of the Presidency will be more valuable, but if the Presidency does not fulfil that role, a '*Directoire*' of the larger member states is likely to guide a multi-tiered European Union (Guggenbühl, 2013: 42). As a fifth trend, 'the Council's diplomatic culture is predicted to intensify in order to absorb the wider global interests and political rationalities of the negotiations' (Guggenbühl, 2013: 45).

Concerning these wider global interests, the question can be asked of whether a greater grip by the EU on its international relations might help it to represent and defend these global interests more effectively. Some experts comment that 'in practice, the EU's challenge consists in pushing for the most ambitious margin within the realm of realistically possible agreements' (Groen, Niemann and Oberthür, 2012: 205). The problematic word here, of course, is 'realistically'. If the EU overestimates itself while ambitiously striving for the best possible outcome, it might lose face if these ambitions cannot be fulfilled. Striving towards an enhanced role for the EU in the world might be supported by further integration and enlargement of the Union's competencies in its external negotiations.

However, a recent study:

[...] has demonstrated that it is too simple to assume that more EU competence in external relations will automatically result in more EU unity and negotiation effectiveness. Just expanding EU legal competences and imposing a supranational EU external representation may not lead to the EU becoming a more effective negotiator (Van Schaik, 2013: 209).

This seems to be true for other international organizations as well. Expanding competencies is not enough, not even for powerful blocs like the European Union. Equally important is the question of *how* negotiators are organizing themselves. The poor performance of the representatives of the Southern African Development Community (SADC) in trade negotiations with the EU was mainly because of 'their own disarray [...] In other words, judicious agency still matters, particularly for small states' (Vickers, 2011: 195). In the area of CFSP, a pragmatic solution for the European Union might be for member states to agree – without changing the formal rules – to consensus minus a tiny minority. If the

overwhelming majority decides to act, a small minority should not be allowed to block a decision on external action (Van Staden, 2013: 56).

## In Conclusion

Negotiation processes in the EU are very divergent. Daniel Thomas and Ben Tonra tried to wrap it all up by distinguishing between seven modes of policy-making and their consequences for negotiation (Thomas and Tonra, 2012: 27). The first mode is competitive bargaining as a consequence of the veto threat, thus coming to closure by the lowest common denominator: deadlock or non-decision. The second and sixth modes are log-rolling, originating from reciprocity, and 'Europeanization', emerging from the internalization of EU norms, which are both concluded by a rather indeterminate agreement. The third mode is cooperative bargaining, originating from the application of EU procedural norms resulting in median compromises. The fourth model is normative entrapment, under the influence of substantive norms and policy commitments, creating a policy outcome that is consistent with prior commitments. The fifth is 'Brusselization' as a consequence of the socialization of EU elites and because of the expanded authority of Brussels institutions. All of these outcomes are highly formalized vague compromises. And last but not least, the seventh model is identity formation, which originates out of the definition of self and distinction from others, resulting in agreements that are consistent with the common narrative of the parties.

The European Union's negotiation processes that are analyzed in this chapter on the twenty-first century might be sufficient for managing the common and diverging interests of the EU countries in the first quarter of this century. After that, however, they may hamper further integration in the multi-level governance system that we call the European Union. Some argue that the complexity of the process will anyway lead to 'gridlock' (Hale, Held and Young, 2013), while others (Kibris and Bac, 2011) are of the opinion that it is 'not the numbers of members *per se* but whether they have diverging interests' (Kibris and Bac, 2011: 400). Regardless, by its inherent nature, the EU negotiation process has – and will have – an enormous impact on the workings of the national negotiations within its own member states, as well as on international negotiations at the global level. The classic international negotiation processes as we have known them since the mid-seventeenth century will change dramatically because of globalization and regionalization, as is the case with the European Union.

The individual EU negotiator will probably become an even more important asset as the process becomes ever more complex and non-transparent. If this is true, the inevitable conclusion is that the European Union and its member states will have to invest more in the human dimension, for example by transforming the current, very modest, European diplomatic programme into a fully fledged training curriculum, or even establishing a European negotiation academy for diplomats and other civil servants. Such an academy would at least have the advantage of being able to enhance the level of the negotiations, to familiarize the new breed of EU diplomats and civil servants with EU-specific negotiations, to create a network within the group, and, most importantly, it might help to create a European diplomatic professional culture. Creating one professional culture will have a

positive effect on the stability and effectiveness of negotiation processes (Sjöstedt, 2003: 245).

There appears to be a need to harmonize policy-producing organizations, most of them ministries. Negotiation will be smoother if the institutions involved are more or less comparable in structure. This may also encompass the creation of uniform EU-coordination agencies in all of the EU member states, either as part of ministries of foreign affairs, or as separate ministries of European integration. It should be added, however, that separate ministries could create more bureaucracy, and experiments with this in some of the aspiring member states have not shown very positive results to date.

It seems to be unavoidable that the larger EU member states will have to take special responsibility for the efficiency of the negotiation process through enhanced cooperation among them, even in a formal sense. They already work much more closely together than their sometimes hefty disagreements on issues such as CFSP might suggest. More guidance for the EU by the major EU powers will, of course, demand a better cooperative process between the three (France, Germany and the United Kingdom) or the six (France, Germany and the United Kingdom, plus Italy, Poland and Spain) major players in concert with the Commission, the Parliament, and the smaller EU member states in the Council of Ministers.

It might be that the member states of the European Union can hardly escape further integration of EU negotiation processes if they want to survive in the world outside Europe, however euro-sceptical their populations might be. Yet it could also be true that the EU cannot escape globalization of the process of international negotiation and will have to adapt to this trend by taking more responsibility in the realm of conflict resolution through international negotiation. After all, the European Union negotiation process may be an enigma, but it is very much a part of the overall negotiation processes that are needed to run world affairs in a peaceful and effective way. Negotiation is thus a central element in international relations, deserving attention from practitioners and theoreticians alike. The role of the diplomat will be scooped out, but diplomacy will stay. It will continue to fulfil its function 'as a practical mode of conducting international relations, as a "torchbearer" [...] and as a "thinking framework" about international politics' (Bjola, 2013: 19), even in the European Union. What can we expect from the EU as a player in its own right, especially in global politics? According to Jan Rood, for the EU to play an effective role in global politics, it should become more coherent in its external actions, should have a common vision and strategy, and should take responsibility and lead where applicable, both through negotiation and – if needed – by deploying military power (Rood, 2013: 14).

