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ARTICLE

Consensus and Isolation in the EU Council of Ministers

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ABSTRACT When and how are member states in a small minority or isolated position able to prevail in the EU Council of Ministers? The Council is known for its ability to avoid vetoes and votes. However, we lack a causal mechanism that explains how such a consensus is commonly reached. We argue that while domestic and normative constraints are necessary elements of an explanation of negotiating success, they are insufficient to solve the puzzle of isolation. We claim that success in isolation depends on the ability to avoid exposure at Council level, which in turn is related to the lower levels' effectiveness in preventing matters from reaching the ministers. We test this conjecture by means of a process tracing analysis of three cases of isolation. By analysing how the Council has dealt with situations of twenty-six against one, we come closer to understanding the internal dynamics behind the consensus-reflex.

KEY WORDS: Council of Ministers, negotiation theory, bargaining success, EU enlargement, Western Balkans

Introduction

In October 2010, the Dutch Foreign Minister Rosenthal offered a rather down to earth explanation for finally allowing Serbia to take the next step in its European integration: 'We were isolated'.¹ Media sources claimed that the Minister had simply bowed to the inevitable.² This next step, which was asking the Commission for an avis on Serbia's membership application, could not be held back any longer because of Dutch obstinacy. Both observations were true, but at the same time completely off the mark. Yes, the Netherlands were isolated on the Serbia dossier, but they had been isolated for years. Moreover, there were other Balkan dossiers on which

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other member states were isolated, but there a breakthrough was not achieved. The UK was alone in its position on Bosnia, Herzegovina and Greece was isolated in its position on Macedonia. Apparently, there are different ways in which member states can be isolated in Brussels. And it seems that even in unanimity decision-making, where in theory member states could sit back and safely rely on their veto, such isolation can become untenable.

The EU Council of Ministers is known for its tendency to take decisions by consensus. This ‘consensus-reflex’ has been the subject of heated debate (Aus 2008; Häge 2013; Heisenberg 2005; Mattila and Lane 2001; Tsebelis 2013). The Council has proven to be surprisingly effective in avoiding vetoes, votes and deadlock (Hayes-Renshaw, Van Aken, and Wallace 2006; König and Junge 2009). This behaviour is considered puzzling from a rationalist bargaining perspective, as member states refrain from using resources obviously at their disposal (Aus 2008; Sullivan and Selck 2007). Normative explanations were provided to solve this puzzle (Heisenberg 2005). Member states share a responsibility to keep the process going (Lewis 2005, 949–50). Unmitigated obstruction is therefore considered inappropriate, which implies that obstructers can be stigmatized and shamed into norm compliance (Adler-Nissen 2014; Schimmelfennig 2003). However, the literature does not tell us how such processes aimed at inducing compliance actually work. While the link between normative constraints and consensus behaviour is commonly acknowledged, the mechanism itself remains unclear.

This article seeks to shed light on this mechanism, by studying consensus decision-making in one particular policy field: the EU’s (pre)accession process with the Western Balkans. First of all, we focus on decision-making under the unanimity rule. Previous studies have dealt with legislative decision-making under the qualified majority voting rule. Consensus behaviour would reveal itself in a winning majority handing out unnecessary concessions to a non-blocking minority (Häge 2013; Tsebelis 2013). The logic is different under unanimity, where each member state can form a blocking minority on its own. Here, ‘consensual’ behaviour would be a blocking minority that refrains from blocking (Naurin 2013). It also means that it is the timing of a consensus that needs to be explained, instead of the outcome (i.e. unanimity) as such. Second, in this field, there is less of a prescribed procedure and time schedule for reaching decisions. The emergence of a consensus in the Council can therefore be studied without interference stemming from significant Commission or EP involvement. Third, we limit our attention to cases of (nearly) all against one. We can thus observe how the consensus making mechanism operates under pressure. This article seeks to explain how unanimity can be brought about in spite of persistent opposition.

We start with discussing previous attempts to explain negotiating success in the Council. Two types of explanations have been provided so far: Those focusing on the bargaining resources and constraints of the member states in question, and those focussing on the normative environment in which these negotiations take place. We claim that while bargaining models and normative theorizing provide necessary elements in an

explanation of negotiating success, they are insufficient to solve the puzzle of isolation. We therefore add process elements to the mechanism, more specifically the internal debates about taking an issue to a higher (or lower) level. We reconceptualise these debates as procedural battles whereby the goal is to avoid excessive exposure of their respective ministers. To explain when and how consensus is reached, we will suggest an INUS causal mechanism that takes into account the interplay between the higher and lower levels.

To test our conjecture, we make use of so-called ‘pathway cases’, which are selected because they can provide ‘uniquely penetrating insight into causal mechanisms’ (Gerring 2007, 122). With regard to Balkan enlargement, there are effectively seven countries/cases to pick from. Similarities with regard to the timing and the configuration of players make the exposure mechanism to be particularly visible in three of them. We will analyse these three cases of isolation and use them to explain how consensus negotiations are typically settled. We have reconstructed the internal negotiations on the basis of unique data, consisting of participant observations of one of the authors while working as delegate to the Council Working party on the Western Balkans (Coweb), insider reports of relevant Council meetings at all levels, and in-depth interviews with more than 70 participants to these negotiations.³

Negotiation Theory and the Puzzle of Isolation

EU negotiations are often depicted as two-party games between those that want to move forward and those that are more hesitant (Dür *et al.* 2010; Naurin and Wallace 2008). Schimmelfennig (2003) conceptualized the debate about the eastern enlargement as a battle between ‘drivers’ and ‘brakemen’. Schneider and Cederman (1994) conceptualized European integration as a battle between ‘integrationists’ and ‘laggards’. They explain the stop-and-go characteristics of the negotiations by means of ‘the strategic use of uncertainty’ (Schneider and Cederman 1994, 634). They are referring to delegates’ uncertainty about their counterparts domestic win-set. In their model, laggards can gain an advantage over integrationists if they can make credible threats about the constraints they face domestically.

Bargaining models explain negotiating success by means of the resources and constraints of the member state(s) in question (Arregui and Thomson 2009; Bailer 2004). There are reasons to presume that within the confines of the Justus Lipsius constraints matter more than resources (Bailer and Schneider 2006). Council negotiators usually have limited opportunities to affect the pay-off structure of their counterparts. They moreover lack the means to force each other to accept specific outcomes. When threatening and trading opportunities are limited, domestic constraints become the decisive element in the equation. Common bargaining logic holds that those that are set to gain most from a certain agreement or decision will have to make the most concessions (Moravcsik 1998, 54). Put differently, those who are most satisfied with the status quo will be able to dictate the

terms of any new agreement. This implies that outcomes will be biased towards those that have least to gain from that agreement. The underlying logic is Schelling's paradox of weakness, in which the power of the negotiator rests on a 'manifest inability to make concessions and meet demands' (Schelling 1980, 19). Putnam (1988) built on this understanding in his logic of two-level games. Negotiators are always simultaneously operating on the international level (level I) and the domestic level (level II). Those with a 'small domestic win-set' — meaning those who face severe limits on what they can get accepted back home — have a bargaining advantage at level I. They can credibly threaten with negotiation failure.

Following this bargaining logic, it would seem that a member state can remain in isolation as long as it faces severe constraints on the domestic level. Moreover, such isolation need not necessarily be considered as problematic. Quite to the contrary, the perseverance of the loners reveals the severity of the constraints they presumably face. Reasoning along the lines of Schelling, this would turn them into strong rather than weak players.

Domestic constraints are an important asset in Council negotiations. Few insiders will deny that a member state needs to have something at stake to be considered a legitimate player. But the logical follow-up question is what happens *after* a member state is acknowledged as a player? About what happens at level I, most bargaining models tell us little. The bargaining process itself is commonly treated as a black box into which member states' preferences and capabilities are input (Sullivan and Selck 2007, 1154). Scholars claim that they do not need to engage themselves with 'the fuzzy informality of pre-decision bargaining' (Achen 2006, 88). They argue that the deal that member states will strike is primarily determined by exogenous factors rather than the 'varying ability of individual negotiators to strike a deal' (Bailer and Schneider 2006, 155). While this might be true for the substance of an eventual deal, it does not tell us *when* and *how* such a deal will come about. For our case, it might explain the extent to which Dutch, British and Greek concerns are generally reflected in the Balkan enlargement process, but it does not explain why at specific points in time the Dutch (felt that they) had to give in while the British and Greek isolation endured.

Where bargaining models black-box the negotiating process, normative perspectives have sought to fill the void. Normative theorizing focuses on the social environment in which these bargaining resources need to be employed. Scholars pointed out the distinctive features (or 'sui-generisness') of the Council as a negotiating environment, using insights from the debate on EU socialization (Heisenberg 2005). Over the course of time, an elaborate network of norms has come to guide the proceedings. There is a logic of accommodation at work within the Justus Lipsius, a logic of picking your battles, while allowing others to take the lead in theirs (Aus 2008, 100; Bostock 2002, 231–2). This logic is reflected in the network of norms, which encompass: diffuse reciprocity, thick trust, mutual responsiveness, self restraint in negotiation style (do not rock the boat, do not push for a vote) and above all a shared responsibility to come up with solutions and keep the process going (Lewis 2005, 949–50).

Normative constraints are undoubtedly present and active in the Council, but we still know little about how they affect the negotiating process. The socialization literature primarily focused on role conceptions and dispositions rather than behavioural implications (Checkel 2003; Reh 2012). Scholars have trouble identifying how exactly norm-violating states can be socialized into norm compliance. As Adler-Nissen rightly noted, stigmatization is not a passive process. Rather, norms are constructed in the interaction process between the stigmatized and an ‘audience of normals’. By means of this process, ‘deviant actors help to clarify norms’ (Adler-Nissen 2014, 144, 152). Norms, as standards of (in)appropriate behaviour, are thus essentially contested. This also applies to the standards of appropriateness in the Justus Lipsius. Note that the norm of self restraint and the norm of keeping the process going can collide. If delegates need to show restraint towards the (member specific concerns of) ones in opposition, but at the same time make sure that the machinery does not come to a halt, then how are they to proceed during the negotiations? For our cases, norms as such do not explain how the Council deals with situations in which one or few member state(s) seems committed to a specific battle, while the majority is indifferent. How could the loner(s) ever be induced to settle? And why would the majority be eager to confront the loner? What would they expect to gain from applying pressure like they did with the Netherlands on the Serbia dossier?

The Exposure Mechanism

It seems that domestic and normative constraints are *Insufficient* but *Necessary* parts in (what we consider as) the INUS condition of negotiating success in the Council (Beach and Pedersen 2013, 30). To turn this into a (*Unnecessary* but) *Sufficient* mechanism, meaning sufficient to solve the puzzle of isolation, we need to add another element to the equation. We need to take into account how such a consensus typically comes about. A first thing to note in this regard is that what is called consensus often comes down to an ‘absence of explicit opposition’ (Novak 2013, 1094). Unanimity is reached if opposing member states refrain from dedicating any of their plenary interventions to the matter, thus allowing the decision-making process to proceed. Consensus thus typically refers to procedural acquiescence.

The appropriate way to voice opposition in the Council is through plenary interventions, rather than through vetoes or votes (Novak 2013, 1097). Council plenaries have been irreverently referred to as endless series of seemingly isolated interventions. Such interventions do not just serve to state one’s (usually known) position and look for (equally known) allies. We argue that they should primarily be seen as investments. They serve to signal the commitment there is behind a position. They indicate how far, or more precisely how high up, member states are willing to take matters. Internal debates are driven by a logic of: ‘if you oppose, you have to speak up’ (Aus 2008, 115), which implies that if delegates are confronted on the same matter on multiple occasions, they can be induced to remain silent.

Ministers, ambassadors and even working party members know that they cannot raise their flag too often (Bostock 2002). After all, ‘making an intervention has costs associated with it, in terms of political capital’ (Cross 2011, 51). It is clear that the costs of obstructing are related to the degree to which this obstruction becomes visible, particularly at the higher levels. As one insider explained it:

Commission and Presidency are committed to keeping the process going. Those accused of being in a blocking position constantly find themselves in the dock, having to explain to others what is so terribly important for them.⁴

What determines the degree to which an obstructing member state is confronted? We believe an answer needs to come from an analysis of the lower level proceedings. In previous studies, these lower levels were commonly treated as ‘clearing houses’ or ‘stand in negotiator for their ministers’ (Häge 2008; Van Schendelen 1996). We argue that they have an autonomous role to play in the decision-making process. They effectively determine the *manner* and the *pace* by which an issue is dealt with.

The logic is as follows: while decisions are formally only taken by the ministers (i.e. Council level), most issues enter the arena at working party level. Drivers are those that seek a swift decision, while brakemen want to avoid or delay that decision. In the specific case of isolation, there is only one brakeman. This brakeman preferably would not see the matter reaching the ministers at all. Delegates generally do not control the Council agenda. But through their plenary interventions, they will try to show that there is no point in taking something higher up, because there is still too much contestation at this level (Westlake and Galloway 2004, 266). If a working party delegate or Coreper ambassador commits to a certain position, he/she is actually trying to convey the message that their minister is willing to back them up. The only tangible threat that obstructing delegates have at their disposal is the threat of higher level support. The others do not (yet) know whether such high-level support is indeed forthcoming. Higher level interventions equal higher investments. It could very well be that a minister will decide not to intervene. Conversely, it might be that all concerns are already taken into account at the lower level, so that there is no need to take issues higher up. Obviously, it is more difficult for an isolated member state to ensure that there is sufficient contestation. It typically needs to rely on the solidarity of those who might not necessarily agree with them on a substantive level. But who are at least willing to acknowledge that there is need for further consultations.

A pivotal role is played by the Chair, who sums up the debate and suggests to move towards a decision, thereby checking whether there are delegates who openly object. Such presidential guidance is most effective when those not involved choose to support the Presidency, thus creating something of a critical mass with which to confront the remaining brakeman (Lempp and Altenschmidt 2008, 521–2). Based on the amount of contestation, the Presidency will decide how to proceed. It can decide to drop the matter completely, plan another debate about it at this or at a higher level,

or move towards a decision. Presidencies will generally avoid taken matters to the ministers too soon, as they have no interest in creating divisive debates with uncertain outcomes. On the other hand, taking issues to a higher level can also be a strategic attempt to break the deadlock.

What happens when and if an issue reaches the ministers? It will often be impossible, due to unexpected events or successful activism by the drivers, to keep matters of the ministerial agenda indefinitely. Specifically in cases of isolation, the goal of the loners will be to keep these debates to a minimum. When it nevertheless comes to such a debate, the isolated minister needs to decide whether he wants to invest in the issue. As ministers obviously cannot threaten with high-level support, their goal is to avoid excessive exposure. Success is then about displaying the necessary amount of commitment with the least possible amount of interventions. Thus inducing others to show solidarity rather than apply further pressure to their isolated colleague.⁵ A (consensus) decision can be adopted if there are no more plenary objections.

Our solution to the puzzle of successful isolation would be that a member state can remain in isolation if, and as long as, it manages to avoid excessive exposure. It is not the isolation itself that is problematic, but rather the fact that a member state is repeatedly confronted at the higher level. Lower level debates primarily serve to induce or prevent such exposure.

Three Cases of Isolation

In the previous two sections, we presented an INUS causal mechanism that explains the varying success of member states in isolation. The mechanism acknowledges the importance of domestic and normative constraints but adds to this the factor of exposure. Exposure results from plenary interventions at the ministerial level. The key to avoiding exposure lies in displaying contestation at the lower levels.

For the analysis of the three cases, we employ the method of process tracing, which is particularly suited for finding more general (causal) mechanisms in the particularities of specific cases. We perform an *Explaining-Outcome* type of process tracing analysis which combines insights from different strands of theorizing to arrive at a ‘minimally sufficient explanation for a particular outcome’ (Beach and Pedersen 2013, 18). The purpose is not just to account for the outcome(s), but also to test a theorized mechanism (Beach and Pedersen 2013, 63–4). The explanation might be case-specific, but the mechanism should be wider applicable. The analysis serves to distinguish between the idiosyncratic (case-specific) and the systematic elements in the mechanism. To these systematic elements, we will return in the conclusion.

In the introduction, we presented three Balkan countries eager to take the next step towards EU membership. All three had taken their previous ‘big’ step in 2005. All were counting on taking the next step by the end of 2009. Bosnia was considering an application for membership, Macedonia wanted to start accession negotiations and Serbia wanted to rekindle its

stabilization and association process (SAP).⁶ There were as said three member states, the UK, Greece and the Netherlands, who were alone in considering it too soon for this next step. Lastly, there were also three different outcomes, something that can already be deduced from the December 2009 Council Conclusions.⁷

With regard to Bosnia: ‘The Council calls on Bosnia Herzegovina to meet the outstanding objectives and conditions which remain necessary for the closure of the OHR. The Council stresses that it will *not* be in a position to consider an application for membership by Bosnia and Herzegovina until the transition of the OHR to a reinforced EU presence has been decided.’

With regard to Macedonia: ‘The Council notes that the Commission recommends the opening of accession negotiations ... and will return to the matter during the next Presidency.’

With regard to Serbia: ‘The Council decides that the Union will start implementing the Interim Agreement. The Council will turn to the next issue — ratification of the Stabilization and Association Agreement — in six months time.’

To clarify, the Council decided to block Bosnia, to push for Serbia and (at least) to return to the matter of Macedonia. This formed the prelude to the October 2010 decision to ask the Commission for an avis on Serbia’s membership application, as it was discussed in the introduction. In June 2010, the Council had indeed to ‘returned to’, but not decided anything on opening accession negotiations with Macedonia. By that time, Bosnia had gone back to being the deadlocked dossier it had been before 2009. This of course begs the question: why was the UK more successful than Greece and certainly the Netherlands? Why were the other member states more inclined to put pressure on the isolated Dutch than on the Greeks or the British?

Domestic Constraints and Balkan Sensitivities

The first element in the equation are the domestic constraints the loners (presumably) faced. In our mechanism, these serve as an entrance criterion. An obstructive member state needs to be able to show that it has something (vital) at stake in the matter. The member states that was most constrained in its actions was undoubtedly Greece. The dispute about ‘the Republic of Macedonia’, or as Greece refers to it the FYROM, is about more than just the constitutional name. It is about irredentist claims of Macedonia on a similarly named region in Greece. It is, as Greek delegates never get tired of pointing out, about ‘good neighbourly relations’, rather than just a bilateral dispute. While it is doubtful that they have been able to convince anyone on this, the fact that this is a sensitive issue for Greece is undisputed. In fact, a government had fallen over its stance towards Macedonia.⁸ In 2005, there were still ‘Macedonia is Greek’ rallies in the

city of Thessaloniki. Greek politicians could thus make a credible ‘takeover threat’: if we give in on this issue my government risks losing power (Schneider and Cederman 1994, 635).

The Netherlands faced somewhat lesser constraints in its dealings with Serbia. They could employ what Schneider and Cederman (1994, 637) refer to as the ‘ratification threat’: domestic constituencies will never accept a deal on the matter. Dutch negotiators and Minister Verhagen in particular could refer to intense parliamentary scrutiny on Serbia.⁹ The reason for this scrutiny was Srebrenica. Srebrenica is a Bosnian town where in July 1995 around 8000 Bosniaks died at the hand of Bosnian Serb forces. This was a massacre which *Dutch* UN forces were unable to prevent. Ever since, Dutch politicians have been keen on capturing those responsible, the Bosnian Serb leader Karadzic and General Mladic and delivering them to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Serbia’s (but also Croatia’s) European integration was significantly delayed because of insufficient efforts to cooperate with the ICTY. In July 2008, Karadzic was arrested and transferred to The Hague. But as long as Mladic, undoubtedly the bigger fish, remained at large, the Dutch constraints endured.

The UK was probably the least constrained of the three. There is no doubt that Bosnia was at least initially a sensitive file for the British. Like the Dutch, the British have something of a legacy when it comes to Bosnia, due to their inability to effectively intervene in the third Yugoslav war. This explains why, in the years that followed, the UK played a prominent role in Bosnia and in EU decision-making on Bosnia. British involvement was perhaps best personified by High Representative Paddy Ashdown, who all but governed the country from 2002 to 2006. The Office of the High Representative (OHR) was installed as part of the Dayton Peace agreements to oversee developments in Bosnia. Towards the end of Ashdown’s ‘reign’, a debate started about whether the OHR was keeping Bosnia in the state of a protectorate.

In the Council, a large majority of the member states seemed to agree that the OHR had to go and that Bosnia should be integrated into Europe. The UK was of a different opinion. First of all, it did not agree with the assessment that Bosnia was a (sufficiently) functioning country. Second, it was unsure whether the EU could handle such a complex dossier. Throughout the years 2006–2008, the UK was arguing that the OHR needed to stay to actively induce Bosnia to fulfil the necessary conditions for entering into membership negotiations. By 2009, it had effectively *lost* this argument. Inside the Council, all but the UK considered the OHR to have become part of the problem instead of the solution. Nevertheless, in December 2009, they all chose to show solidarity with, rather than applying pressure to the British. This resulted in the aforementioned Conclusions, which made OHR closure highly conditional and thus unlikely to happen any time soon. The others knew that the ‘outstanding objectives and conditions’ were impossible for Bosnia to meet. Nevertheless, the Council insisted that they should first be met. The UK had somehow got the Council to put itself in a straightjacket. To understand how they accomplished

this, we need to look beyond the domestic constraints, and look at what happened during the actual negotiations.

Normative Constraints and Lower Level Contestation

The second element in the equation are normative constraints. Such constraints become apparent during the lower level negotiations in particular. It is here that the contests take place about whether the norms of restraint and responsiveness should take precedence over the obligation to keep the process going. As we will see, initially all three loners were effective in keeping control over these lower level debates. This however changed in the course of 2008/2009.

The British were undoubtedly in the lead in lower level debates about Bosnia. There would in fact be quite a number of meetings on Bosnia and the OHR in the second half of the decade, with Coweb serving as gatekeeper and the PSC politely listening to the next alarming briefing by representatives from the field.¹⁰ Every once in a while, the Council would reflect on these stocktaking exercises, but then the Conclusions were already agreed at the lower levels.¹¹ There would be only two real attempts to keep the process going. The first one came during the 2008 Slovene Presidency. Slovenia wanted to use Kosovo independence of February 2008 as a focal point for a debate about further EU integration of the Balkans. The UK endorsed the idea but stressed that its main concern was with avoiding further fragmentation of the region. In Brussels, many feared that the Republika Srpska (the Serb part of Bosnia) would want to follow Kosovo's example. The UK was willing to sign an SAA with Bosnia, as long as its concerns would be acknowledged. Which is what happened in March 2008 when the Council welcomed the decision that the OHR 'will remain in place ... until the necessary objectives and conditions are met'.¹²

After March 2008, the UK had to intervene on Bosnia on few occasions. The lower levels were effectively caught up in a complicated debate about operational details of the EU's reinforced presence in Bosnia. A direct debate about the Bosnia's European integration could thereby be avoided. Let the Council first agree on its own future role in Bosnia. In this way, the British were able to *protract* rather than settle the lower level debates.

The second attempt to keep the process going came with the 2009 Swedish Presidency. The Swedes however had to take note of British concerns. Thus, their stated goal became: 'to get the country in shape so that it could apply for membership'.¹³ They were well aware of the 'rhetorical trap' (Schimmelfennig 2003), as this phrasing provided ample opportunity for the British to create the necessary contestation. The UK could focus the debate on the first part: meaning Bosnia's (failing) attempts to become a fully functional state. The Swedish Presidency meanwhile could do little more than to invite the member states to have 'an exchange of views' on the talks taking place between the political leaders of Bosnia.¹⁴ Certainly after these talks broke down, there was little point in having an in-depth debate. The aforementioned December 2009 Conclusions which serve to discourage an application for membership were again decided at committee

level. By means of these two well-timed interventions, the UK was able to get its isolated preference to maintain the OHR formally acknowledged by the Council.

The Greeks had always been in the lead in lower level debates about Macedonia. Others referred to them as lessons in history, with the Greeks as lecturers. The Greeks opted for a strategy of ‘noyer le poisson’, overwhelming the others with information and assessments about Macedonia’s supposedly inappropriate political behaviour. For a long time, this strategy was effective. This was in part because Macedonian politicians were not helping themselves with their nationalist rhetoric and their tendency to name airports and motorways after (the supposedly Macedonian) Alexander the Great. Greece did not have to work hard to keep the issue off the table of the Ministers. This changed over the course of 2009. Macedonia managed to organize proper elections, patch up its reform record and there was even some momentum in the UN sponsored negotiations on the name. This was reason for the Swedish Presidency to put the opening of membership negotiations back on the agenda.

Like the British, the Greeks then tried to keep control over the debate at the lower levels. They invested a lot of resources in a seemingly insignificant debate about ‘the second stage of the SAA’.¹⁵ The details of this debate need not bother us here, seeing that it was too inconsequential ever to reach the ministers. More telling was the fact that Macedonia was again an issue for debate, albeit it (still) at the lower levels. It was the fear of an impending Commission recommendation that made the Greeks so eager to stress their concerns towards their ‘neighbour to the north’. In the catacombs of the Justus Lipsius, Greece now had to openly apply the brake, leading to general feelings of frustration with the others. This, according to insiders, was one of the reasons why the Presidency decided to take the matter to ministers.

The Dutch had always been in the lead in the lower level debates about (the ICTY cooperation of) Serbia. These debates, like the debates on Bosnia and Macedonia, had been going on for a decade. The contours of the debate were always the same. By 2008, insiders could write the report before the meeting even took place. The Dutch would typically begin by framing them as discussions on matters of international justice and the rule of law, the importance of which few would (at least publically) dispute. They would then argue why organizing an effective search for alleged war criminals was an essential part of this. Meanwhile, the assessments on whether or not Serbia was fully cooperating with the ICTY were gladly left to the General Prosecutor (Del Ponte and later Brammertz). As long as the Prosecutor was able to find some things the Serbs were not doing, the Dutch could more or less comfortably remain in isolation.¹⁶

However, by the second half of 2008, these internal debates were beginning to turn sour. Instead of substantive debates there had now been headcounts in which the score was twenty-five against one.¹⁷ This made it difficult for the Netherlands to claim that there was still sufficient contestation. When the 2009 Czech and Swedish Presidencies announced their ambition to get the process going again, the Dutch were forced to openly

apply the brake. Like the Greeks, they had to invest in insignificant debates, in their case on whether or not Serbia was building up ‘SAA track record’ by unilaterally implementing the SAA.¹⁸ Obviously, the Netherlands did not think this was the case. What the Dutch themselves felt was a show of consistency, others began to interpret as an unwillingness to accommodate. There were still few who would question the legitimacy of their concerns. However, what was increasingly questioned was whether it was always appropriate to stress these concerns. This was mostly when Serbia had to come to terms with unfavourable developments in Kosovo, which Serbia still considered as its province. This explains the ‘progress’ Serbia was able to make in the first half of 2008.¹⁹ It also explains the progress in October 2010. It came at a time when the International Court of Justice has just opinionated that Kosovo’s independence ‘did not violate international law’.²⁰ While the Dutch were still fighting their battle over Mladic, they were now interfering with the battles picked by others.

Procedural Battles and High-Level Exposure

The differences between the loners become even more substantial, if we take into account the degree of exposure. Exposure refers to the number of times ministers have had to intervene on an issue. After all, the fact that lower levels are forced to intervene on specific dossiers does not by itself solve the puzzle of unsuccessful isolation. To find such a solution, we need to take into account the costs of such interventions, which increase exponentially with the levels at which they are made.

When comparing the British, Greek and Dutch isolation, insiders refer to the fact that only the last one was openly isolated.²¹ What they mean is that after 2005, Bosnia debates *never* reached the ministers. At best, it appeared as a false B point on the agenda. As said, even the December 2009 Conclusions were agreed at the lower levels. Ministers clearly did not feel the urge to confront the UK on its file. By arguing that taking Bosnia to the Council was premature, the British were most successful in keeping the matter off the ministerial agenda.

Macedonia only started to appear on the ministerial agenda after the Commission’s recommendation to open accession negotiations was out. This was in December 2009 and June 2010. However, *even then* the matter was not actually discussed. It was mentioned in the corridors, touched upon (by the Presidency) at lunch, but it never reached the plenary. The reason it was not discussed was rather straightforward: ‘Not all member states were ready for it, and the mood in the Council was such that they preferred to show solidarity with the member state(s) in question’.²² Difficult to understand, even for the Greeks themselves, was the amount of solidarity they received only after the Commission recommendation was out. Had member states shown such support at an earlier point in time, the Presidency would probably not have taken such a (divisive) issue to the ministers. It was not as if those expressing solidarity (France, Spain, Cyprus, Malta, Portugal and Bulgaria) were all of sudden convinced that Greece had a point. It seems that they simply preferred to show solidarity

with those at the table rather than those in the waiting room. The reason ministers did not show this solidarity before is rather straightforward: There was no need for it.

The matter of Serbia was in fact the only one that was at several occasions put on the ministerial agenda.²³ Even though there was nothing new to say on the matter, the Dutch Minister for Foreign Affairs, Verhagen, was forced to keep investing in it. This was in part due to procedures. It had become part of the Council's standard operating procedures to regularly invite the ICTY's General Prosecutor to the Council to pass judgment on the current level of cooperation. This routine came to provide the Presidency with a way to keep bringing it up. The Netherlands knew they would be regularly confronted. At such moments, others could gently apply pressure and withdraw when hitting upon resistance. It seems that even now few were eager to confront the Netherlands. But because of this routine, it would not really require substantial investments. The others just needed to probe the current level of resolve. In this way, the more diffuse commitment of the many sufficed to overcome the excessive commitment of the one.

Conclusion: Battles of Attrition

This article set out to explain how (potential) vetoes are curtailed in decision-making under the unanimity rule. Whereby we focussed on situations in which only one member state is obstructing. This by comparing cases of successful (the UK), *partially* successful (Greece) and unsuccessful (the Netherlands) isolation. We suggested an INUS causal mechanism, which takes into account domestic and normative constraints, but also looks at the degree of exposure of the loners. This mechanism serves to sharpen rather than radically change our understanding of the internal negotiations. Taking the notion of consensus (redefined as procedural acquiescence) as point of departure, we sought to explain how and when such a consensus is typically reached.

To a considerable extent, the UK, Greece and the Netherlands could all refer to domestic constraints as their reason for being so persistent on the dossier. And, at least initially, they could all count on the others to show understanding for their political sensitivities. In explaining negotiation success, conventional bargaining theory tends to attribute primary importance to the domestic constraints that member states face. However, it does not tell us how such constraints are to be employed in the Level I negotiations.

Conversely, our second type of constraints, the normative constraints operate only at Level I. Strong norms of appropriateness guide internal Council negotiations. Specifically in unanimity decision-making, unwarranted obstructing is deemed inappropriate and therefore costly in the long run. We explained that these internal debates are primarily about creating sufficient contestation, thereby trying to keep matters off the ministerial agenda. The UK, Greece and the Netherlands all tried to keep control of the lower level proceedings. Yet, they were not equally successful. The British were able to keep the debate about Bosnia going, by means of a few

well-timed lower level investments. The Greeks succeeded to keep Macedonia of the ministerial agenda for a long time, but eventually needed to invest a lot in these lower level debates. The Netherlands needed to invest even more frequently in the lower level debates.

The third element in our mechanism is the degree of exposure of the one(s) obstructing. Whether the majority considers it worthwhile to confront the loner, depends on the number of times it already has had to intervene on the matter. Ministers in particular are working with a limited budget of interventions. In this case, the British have had to waste few interventions on Bosnia, and none at the highest level. The Greeks have had to intervene on Macedonia only occasionally, whereas the Dutch have had to intervene on Serbia regularly. It is not the character of the debate that was different, but merely the number of times that the same debate took place.

There is a reason why Council debates are often referred to as battles of attrition. It has to do with the way in which these battles are supposed to be fought. Enlargement might be a rather particular issue area. The latest round of enlargement negotiations is characterized by an exceptionally low degree of urgency, which make it easier (cheaper) for the loners to keep obstructing. However, we can see similar dynamics in the current ‘intergovernmental’ negotiations about the deepening of the EMU (Bickerton, Hodson, and Puetter 2015). Also there, we should focus more on the ‘when and how’ of the decision-making. To give two examples, while it is commonly known that Germany was never in favour of ‘debt mutualisation’ (i.e. Eurobonds) and the Netherlands did not want ‘contractual arrangements’, the more interesting question is how political debates about these matters were constantly avoided or at least postponed.

But we can also look beyond the intergovernmental arena and see that consensus is still the norm in the Council, also in legislative decision-making (Tsebelis 2013). Progress can be made by explaining what distinguishes cases of norm abidance from cases of norm violation. The exposure mechanism contributes to this, by telling us how the Council deals with persistent opposition. In day to day negotiations, there is usually little to trade and no one to convince. Working party delegates, PSC or Coreper ambassadors, in fact even ministers are seldom able to change their counterparts’ reasoning, let alone the interests on which this reasoning is based. But what they can do is force each other to openly commit to/invest in a position. In the normative environment of the Council, such investments are anything, but cheap. Those who have to speak up too often and on too high a level, might come to the conclusion that, in light of the prospected pay-off, the matter is no longer worth investing in.

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Notes

1. NRC, 25 October 2010, 1: 'EU-ministers akkoord over EU-lidmaatschap Servië'.
2. *South Eastern Times*, 26 October 2010: 'Serbia's EU bid gets a green light'. *The Economist* 25 October 2010: 'Tip-toeing closer to Europe'.
3. More information on the methods for data collection can be found on the website: www.ru.nl/fm/smeets.
4. Author's interview, Working party level, 27 September 2010.
5. Author's interview, Hans Dietmar Schweisgut, Austrian Coreper Ambassador, Brussels 28 September 2010.
6. The SAP, of which the Stabilization and Association Agreements (SAA) are the central element, is the necessary preliminary step before the actual accession process starts.
7. 2984th General Affairs Council meeting, Brussels, 7 December 2009. Enlargement/SAP. Western Balkans. Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Serbia.
8. This was the government of Prime Minister, Mitsotakis, which had shown a willingness to discuss a 'compound name' (including the word 'Macedonia'). In September 1993, this led to the downfall of his government and to Greece imposing a trade embargo on Macedonia.
9. Author's interview, Maxime Verhagen, Dutch Minister of Foreign Affairs (2007–2010), The Hague 2012.
10. Author's interviews, PSC and Working party level, 10 September 2010, 3 November 2010. Coweb 3 September 2007, 13 September 2007, 27 September 2007. Internal reports, Dutch Ministry of Foreign Affairs.
11. See for example, 2824th External Relations Council meeting, 15/16 October 2007 and 2831st External Relations Council meeting, Brussels, 19/20 November 2007. (Relations with the Western Balkans. Council Conclusions. Bosnia and Herzegovina.
12. 2859th External Relations Council meeting, Brussels 10 March 2008. Western Balkans. Bosnia and Herzegovina.
13. Author's interview, Working party level, Swedish Presidency, 3 November 2010.
14. 2971st External Relations Council meeting, Brussels, 27 October 2009. Western Balkans.
15. Coweb 26 February, 4 March 2009. Internal reports, Dutch Ministry of Foreign Affairs.
16. For example in the preparations for the February 2009 Council in Coreper 18 February 2009. Internal Report, Dutch Ministry of Foreign Affairs. Author's interview, Carla del Ponte, Chief Prosecutor ICTY, 14 June 2011.
17. Belgium always being a bit ambivalent on the matter. Author's interviews, Coreper and Working party level, 14 June 2010, 7 July 2010.
18. Coweb, 2 October, 14 September, 17 November, 27 November, 1 December 2009. Internal reports, Dutch Ministry of Foreign Affairs.
19. On 29 April 2008, the Council signed a Stabilization and Association Agreement with Serbia, although it would *not* be ratified or implemented until there was full cooperation with the ICTY. 2864th/2865th General Affairs and External Relations Council meetings, Luxembourg, 29 April 2008, Serbia.
20. 3041st Foreign Affairs Council meeting, Luxembourg, 25 October 2010, Serbia.
21. Author's interviews, Council Secretariat (Director) and Working party level, 1 July 2010, 17 May 2011.
22. Author's interview, Working party level, Swedish Presidency, 3 November 2010.
23. Specifically at the Council meetings in January, April, July and December 2008, February, June, December 2009, June 2010, October 2010. Internal reports, Dutch Ministry of Foreign Affairs.

References

- Achen, C.H. 2006. Institutional realism and bargaining models. In *The European Union decides*, eds. R. Thomson, F.N. Stokman, C.H. Achen, and T. König, 86–123. Cambridge: Cambridge University Press.

- Adler-Nissen, R. 2014. Stigma management in international relations: transgressive identities, norms and order in international society. *International Organization* 68, no. 1: 143–76.
- Arregui, J., and R. Thomson. 2009. States' bargaining success in the European Union. *Journal of European Public Policy* 16, no. 5: 655–76.
- Aus, J.P. 2008. The mechanisms of consensus: coming to agreement on community asylum policy. In *Unveiling the Council of the European Union. Games governments play in Brussels*, eds. D. Naurin and H. Wallace, 99–118. Basingstoke: Palgrave Macmillan.
- Bailer, S. 2004. Bargaining success in the European Union: the impact of exogenous and endogenous power resources. *European Union Politics* 5, no. 1: 99–123.
- Bailer, S., and G. Schneider. 2006. Nash versus Schelling? The importance of constraints in legislative bargaining. In *The European Union decides*, eds. R. Thomson, F.N. Stokman, C.H. Achen, and T. König, 153–77. Cambridge: Cambridge University Press.
- Beach, D., and R.B. Pedersen. 2013. *Process tracing methods: foundations and guidelines*. Ann Arbor, MI: University of Michigan Press.
- Bickerton, C.J., D. Hodson, and U. Puetter. 2015. The new intergovernmentalism: European Integration in the post-Maastricht era. *Journal of Common Market Studies* 53, no. 4: 703–22.
- Bostock, D. 2002. Coreper revisited. *JCMS: Journal of Common Market Studies* 40, no. 2: 215–34.
- Checkel, J.T. 2003. 'Going native' in Europe?: theorizing social interaction in European institutions. *Comparative Political Studies* 36, no. 1–2: 209–31.
- Cross, J.P. 2011. Interventions and negotiation in the Council of Ministers of the European Union. *European Union Politics* 13, no. 1: 47–69.
- Dür, A., G. Mateo, and D.S. Thomas. 2010. Negotiation theory and the EU: the state of the art. *Journal of European Public Policy* 17, no. 5: 613–18.
- Gerring, J. 2007. *Case study research. Principles and practices*. Cambridge: Cambridge University Press.
- Häge, F.M. 2008. Who decides in the Council of the European Union? *JCMS: Journal of Common Market Studies* 46, no. 3: 533–58.
- Häge, F.M. 2013. Coalition building and consensus in the Council of the European Union. *British Journal of Political Science* 43, no. 3: 481–504.
- Hayes-Renshaw, F., W. Van Aken, and H. Wallace. 2006. When and why the EU Council of Ministers votes explicitly. *JCMS: Journal of Common Market Studies* 44, no. 1: 161–94.
- Heisenberg, D. 2005. The institution of 'consensus' in the European Union: formal versus informal decision-making in the Council. *European Journal of Political Research* 44, no. 1: 65–90.
- König, T., and D. Junge. 2009. Why don't veto players use their power? *European Union Politics* 10, no. 4: 507–34.
- Lempp, J., and J. Altenschmidt. 2008. The prevention of deadlock through informal processes of 'supranationalization': the case of Coreper. *Journal of European Integration* 30, no. 4: 511–26.
- Lewis, J. 2005. The Janus face of Brussels: socialization and everyday decision making in the European Union. *International Organization* 59, no. 4: 937–71.
- Mattila, M., and J. Lane. 2001. Why unanimity in the Council? A roll call analysis of Council voting. *European Union Politics* 2, no. 1: 31–52.
- Moravcsik, A. 1998. *The choice for Europe. Social purpose and state power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.
- Naurin, D. 2013. *Consensus behaviour in international negotiations: state power, institutions and gender*. Paper presented at the EUSA, Baltimore.
- Naurin, D., and H. Wallace, eds. 2008. *Unveiling the Council of the European Union. Games governments play in Brussels*. Basingstoke: Palgrave Macmillan.
- Novak, S. 2013. The silence of ministers: consensus and blame avoidance in the Council of the European Union. *JCMS: Journal of Common Market Studies* 51, no. 6: 1091–107.
- Putnam, R.D. 1988. Diplomacy and domestic politics: the logic of two-level games. *International Organization* 42, no. 3: 427–60.
- Reh, C. 2012. European integration as compromise: recognition, concessions and the limits of cooperation. *Government and Opposition* 47, no. 3: 414–40.
- Schelling, T.C. 1980. *The strategy of conflict*. Cambridge: Harvard University Press.
- Schimmelfennig, F. 2003. *The EU, NATO and the integration of Europe*. Cambridge: Cambridge University Press.
- Schneider, G., and L. Cederman. 1994. The change of tide in political cooperation: a limited information model of European integration. *International Organization* 48, no. 4: 633–62.

- Sullivan, J., and T.J. Selck. 2007. Political preferences, revealed positions and strategic votes: explaining decision-making in the EU Council. *Journal of European Public Policy* 14, no. 7: 1150–61.
- Tsebelis, G. 2013. Bridging qualified majority and unanimity decision making in the EU. *Journal of European Public Policy* 20, no. 8: 1083–103.
- Van Schendelen, M.P.C.M. 1996. The council decides': does the council decide? *JCMS: Journal of Common Market Studies* 34, no. 4: 531–48.
- Westlake, M., and D. Galloway. 2004. *The Council of the European Union*. London: John Harper.