

Історико-політичні проблеми сучасного світу:
Збірник наукових статей. – Чернівці:
Чернівецький національний університет,
2020. – Т. 41. – С. 46-57
DOI: 10.31861/mhpi2020.41.46-57

Modern Historical and Political Issues:
Journal in Historical & Political Sciences. – Chernivtsi:
Chernivtsi National University,
2020. – Volume. 41. – pp. 46-57
DOI: 10.31861/mhpi2020.41.46-57

УДК 327(477:71):061.1ЄС

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Ukraine and Canada: The European Union as a Partner in Negotiation

The European Union as a mode of European Unification is a good example of an international actor channelling negotiation processes in an optimal way. As both Ukraine and Canada will continue and probably intensify negotiation processes with the European Union it seems to be relevant to take a closer look at the EU as a negotiation partner and opponent. Negotiating with the EU is very complicated, first of all because of the complexity of the EU itself.

The European Union is, compared to other collective international actors, a strong transnational organization with international and supranational features. This strength has an impact on the negotiation process and its closure. It is special in the sense of having a strong legal system with the European Court with powers to enforce compliance on the Member States. It's institutions have their own role to play and cannot be ignored. The architecture of the Union consists of a wide range of actors, issues and thereby processes, having consequences for the EU citizens, their governments and those of other countries in Europe and the world, like Ukraine and Canada. The European Union is an actor in its own right on the world stage. As a hybrid international construct – being neither a state, nor a conventional international organization, nor a full supranational body – the EU is a power block that is difficult to be handled. It is a problematic entity, for itself and for third countries. This paper analyses the character and characteristics of some of the key internal and external negotiation processes of the EU, as they have been influenced by the strengths and weaknesses of the organization. Understanding its internal negotiation complexity will help Canada and Ukraine to conduct successful negotiations.

Keywords: negotiation, organization, integration, European Union, Ukraine, Canada.

Європейський Союз як партнер у переговорних процесах з Україною та Канадою

Європейський Союз може слугувати хорошим прикладом європейського об'єднання, або ж європейським актором, котрий оптимально, за своєю природою, спрямовує переговорні процеси. Оскільки і Україна, і Канада продовжуватимуть і, ймовірно, активізуватимуть переговорні процеси з Європейським Союзом, мабуть, доречно уважніше розглянути ЄС як партнера та опонента з переговорів. Переговори з ЄС дуже складні, насамперед через складність самого ЄС.

Європейський Союз, порівняно із іншими колективними міжнародними акторами, є доволі впливовою транснаціональною організацією, що має риси наднаціонального характеру. Ця сутність Європейського Союзу суттєво впливає на процес проведення переговорного процесу та прийняття рішень. Особливого значення в цьому процесі відіграє потужна та дієздатна правова система з Європейським судом, що має повноваження щодо забезпечення дотримання прав держав-членів стосовно ведення переговорів. Думки держав-членів Європейського Союзу не можна ігнорувати, оскільки вони мають свою власну думку та відіграють важливу роль. Архітектурна надбудова Європейського Союзу складається з широкого кола суб'єктів, які розглядають різноманітні кола питань та процесів, що мають наслідки для громадян спільноти, урядів країн-членів, та зрештою інших країн Європи і світу, і зокрема, таких держав як Україна та Канада. Безперечно, Європейський Союз є власним актором на міжнародній арені. Будучи складною гібридною міжнародною конструкцією – ані будучи державою, чи звичайною міжнародною організацією, чи повноправним наднаціональним органом – Європейський Союз є сильним

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та впливовим блоком з яким досить важко дискусювати. У даній статті проаналізовано характер та характеристики деяких ключових внутрішніх та зовнішніх переговорних процесів Європейського Союзу та вплив на них сильних та слабких сторін самої структури ЄС. Їх розуміння та урахування допоможе зробити переговори між Україною та Канадою більш ефективними.

Ключові слова: переговори, організація, інтеграція, Європейський Союз, Україна, Канада.

Agreements between the European Union, Ukraine and Canada

Ukraine, Canada and the European Union (EU) are very much connected by negotiation process between them and by coincidence European Union and Ukraine and the European Union and Canada agreed on free-trade agreements which – provisionally – went into force in September 2017. To many in the EU these agreements were not self-evident for different reasons. There is opposition against the EU-Ukraine pact as some Europeans fear this opens the door for Ukraine to be membership of the European Union and for exactly the same reason there is some opposition in – mostly Eastern – Ukraine itself. The opposition against the EU-Canada pact stems from European anti-globalists who are very much against the creation of a court of arbitration which might force countries to bow to the demands of the big multinationals.

Ukraine and the European Union concluded an Association Agreement in order to create a deep and comprehensive free-trade area. It entered into force on the 1st. of September 2017. The agreement urges the parties to co-operate and converge on areas like economic policy, legislation, equal rights for workers, visa-free movement for people, exchange of information and staff in the arena of Justice, modernization of Ukraine's energy sector, to give Ukraine access to the European Investment Bank, to held regular meetings on summit, ministerial, officials and experts levels. It also promotes a gradual convergence towards the EU's Common Security and Defence Policy. The agreement has three specific features: comprehensiveness, complexity, and conditionality. It is a new type of integration without membership of the European Union².

Canada and the European Union negotiated CETA: the Comprehensive Economic and Trade Agreement which provisionally went into force on the 21st. of September 2017. CETA cuts 98% of the tariffs between Canada and the EU, it makes it easier to exports goods and service, benefitting people and businesses. Furthermore they concluded SPA: a Strategic Partnership Agreement on international peace and security, counter- terrorism, human rights, nuclear non-proliferation, clean energy and climate change, migration and peaceful pluralism and sustainable development and innovation. It should be remembered that Canada and EU have already strong security cooperation as Canada the EU countries – with the exception of Ireland, Cyprus, Malta, Austria, Sweden and Finland – are members of the North-Atlantic Treaty Organization (NATO). Because of the neutral EU countries mentioned before, it is useful to have SPA to complement NATO, also because NATO is not very comprehensive as far as non-military issues are concerned.

Canada was the first Western country to recognize the independence of Ukraine (1991). This has to do with the great number of Ukrainians in Canada due to emigration, mainly in the twentieth century. Canada and Ukraine conducted Free-Trade Negotiations. These negotiations were launched in in June 2010. Furthermore there they concluded a Foreign Investment Protection Agreement (FIPA, 1995), a Bilateral Convention for the Avoidance of Double Taxation (1996), a Bilateral Air Transport Agreement (1998), as well as and CUFTA: a Framework for Conducting Environmental Assessments of Trade Negotiations.

As both Ukraine and Canada will continue and probably intensify negotiation processes with the European Union it seems to be relevant to take a closer look at the EU as a negotiation partner and opponent. Negotiating with the EU is very complicated, first of all because of the complexity of the EU itself. Therefore it is useful to analyse the inner mechanisms and processes of the EU. Understanding its internal negotiation complexity will help Canada and Ukraine to conduct successful negotiations. Although Canada and Ukraine are much smaller than the EU, its construction gives them the opportunity to intervene in internal EU process through bilateral bargaining with individual member states.

² Guillaume Van der Loo, Peter van Elserwege, Roman Petrov, Assessment of an Innovative Legal Instrument, EU I Working Paper LAW, European University Institute, Badia Fiesolana, 2014/1.

The Uniqueness of the European Union and its Processes of Negotiation

In 1998 the *Journal on International Negotiation* published an issue on “Negotiating in the European Union”, one of the earliest analyses of EU negotiation processes as such. According to the journal, “The European Union (EU) is a unique entity – neither a classic intergovernmental international organization nor an ongoing diplomatic negotiation”³. The European Union, in turn, is dependent on “negotiations as a mode of reaching agreements on, and implementing, common policies”⁴. The enigma of the EU process hinges on characteristics that distinguish it from other international negotiation processes.

First of all the intertwining of national and international negotiation processes. “... the EU mainly governs through inter- and transgovernmental negotiations and political competition between states and regions”⁵. Another characteristic of the EU negotiation process, which it shares with other strong international organizations, is its continuity. Thirdly the number of issues dealt with in the Union and the consequences of its decision for the member states are incomparable to other international regimes. Fourthly an important characteristic of the Union is that this coalition of states is more homogeneous than most of the other international negotiation groups. This creates that same integrated-negotiation network discussed previously. The negotiation process of the Union is based on more than a community of interests; it is a community of values as well within a legal framework. This framework is the fifth element distinguishing the Union from other international institutions.

These building blocs distinguish the negotiation processes in the European Union from the negotiation processes in other international settings, though the overall tactical advice for multilateral negotiators applies to EU negotiators as well⁶. Assured outcomes are quite 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. The nature of the outcomes is overwhelmingly positive-sum, while this is by no means evident in other negotiation processes where international economic relations are predominant⁷. The implementation of these outcomes, the strength of the EU institutions in enforcing compliance, is much greater than in, say, negotiations on the environment. The ability of the EU negotiation process to work as a continuous upside-down cascade⁸, where one level facilitates progress on a higher level of negotiations, sets it apart from the regular patterns of international negotiation processes.

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”⁹. Protecting the negotiation process by creating – through that very process – an institutional framework enhancing the effectiveness of diplomatic negotiation is the very essence of the Union. “Negotiations are ubiquitous in the European Union (EU) 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. Giv-

³ J. E. Lodge, Frank Pfetich, “Negotiating in the European Union”, in *Journal on International Negotiation*, 1998, p. 289.

⁴ Ole Elgström, Christer Jönssen (eds.), *European Union Negotiations*. London: Routledge, 2005.

⁵ Tanya Börzel, “European Governance: Negotiation and Competition in the Shadow of Hierarchy”, in *Journal of Common Market Studies*, 48.2, 2010, p. 191.

⁶ Winfried Lang, “Multilateral negotiations: the role of presiding officers”, in Mautner-Markhof, Frances (ed.), *Processes of International Negotiations*, Boulder: Westview Press, 23-42, 1989, pp. 210-211.

⁷ William, I. Zartman, “Conclusion: Discounting the Cost”, in Zartman, William, I., I.W. (ed.), *Preventive Negotiation, Avoiding Conflict Escalation*, Lanham: Rowman and Littlefield Publishers, 2001, p. 327.

⁸ William, I. Zartman, “Negotiating the Rapids: The Dynamics of Regime Formation”, in Spector Bertram I. and Zartman, William I., (eds.) *Getting it Done, Post-Agreement Negotiation and International Regimes*, Washington D.C.: United States Institute of Peace Press, 2003, p. 180.

⁹ J. E. Lodge, Frank Pfetich “Negotiating in the European Union”, in *Journal on International Negotiation*, 1998, p. 293.

en 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"¹⁰.

It has been argued that the European Union is in the end a negotiated system. Negotiations are the main tool in shaping the institutions and regulations of the Union. It would therefore be wise to study the processes of European Union Negotiation in order to achieve a better understanding of the way the EU is created on a day-to-day basis. Negotiation is the life-blood of the Union. One has to analyse 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 member-states should be more than the sum of the products of the individual units shaping the EU. If this should be done through supranationalism or intergovernmentalism or a mixture of the two is another matter. Point is that negotiation is the instrument 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. In a way the process is sandwiched in-between national and international negotiation. 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 negotiation¹¹. 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, being 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 means to keep the machine going. The more formal institutions and regulations are created, the more informal tools are needed.

Virtually every EU activity involves or was set in motion through a process of negotiation "... one could even describe negotiations as a behavioral manifestation of the EU's fundamental identity"¹². The European Union as a process of international negotiation can survive only if a certain quantity and quality of outcomes is reached. In other words, unless effective outcomes to the negotiation process are assured, the building will collapse. While in other international negotiation processes openness – while not preferable – is often unavoidable and for a certain length of time acceptable, this is much less the case in European Union negotiations. There being no increase in the number of decisions to be taken means an actual "decrease" in the Union. Without progress in the integration process, the EU will slide into disintegration. The negotiation process in the Union is therefore of relatively greater importance than negotiation processes in other international bodies. Though not of the same importance and intensity as national negotiation processes, the EU process is of more general value than negotiation processes between states. EU negotiation process can be characterized as having an in-between position.

External Negotiation with Candidate Member States

The external policy of the European Union 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..."¹³. Through the prospect of membership the EU can decisively influence other countries, even on issues that are not relevant for accession. 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

¹⁰ Andreas Dür, Gemma Mateo, "Coosing a bargaining strategy in EU negotiations: power, preferences, and culture", in *Journal of European Public Policy*, 17.5, 2010, p. 615.

¹¹ Paul Meerts, "The Changing Nature of Diplomatic Negotiation", in Melissen, J. (ed.), *Innovation in Diplomatic Practice*, London: Macmillan Press, 1999, p. 79-93.

¹² Andreas Dür, Gemma Mateo, *op.cit.*, p. 615.

¹³ Arzu Kibris, Meltem Baç-Müftüleri, "The Accession Games: A Comparison of Three Limited-Information Negotiation Designs", in *International Studies Perspectives*, 12, 2011, p. 399.

less direct influence on countries” behavior”¹⁴. Fedor Meerts and Thassos Coulaloglu¹⁵ came to the same conclusion, comparing compliance of Estonia, Romania and Ukraine to EU demands. The first two countries 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 the latter. However, after accession they often prevented certain EU proposals in the domain of human rights to be transformed into proposals to be tabled at the OSCE.

Negotiating the enlargement is a very special element in EU negotiation processes¹⁶. The negotiation processes of the 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 not be the last group of countries to join. Other states, like the remaining Western-Balkan countries of – in alphabetical order – Albania, Bosnia, Macedonia, Montenegro, 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. It is nevertheless of interest to look at the negotiation experiences involving the new countries to obtain a better insight into the processes we can expect for the coming five to fifteen years. The accession process provides a good example of the complexity of EU bargaining.

Five directorates-general were involved in the enlargement process, plus the member states, the Council of Ministers, the European Council and, last but not least, the Commission. The Commission is the spider in the web of internal negotiations. It initiates, coordinates, and implements. In doing so, it has its own strategies, as it tries to use the enlargement opportunity to create a more powerful position for itself. Fragmentation and complexity are, however, the most salient features of the Commission, and it has therefore had some problems in negotiating the accession effectively. It tries to solve problems by tactics such as package dealing and side payments but it is not always successful at this as the inner fragmentation of its own sub-institutions makes effective bargaining a difficult task to perform. Furthermore, the Commission spends most of its time on negotiations with its own member states and only 10 percent on negotiations with applicant countries.

In other words, enlargement negotiations are first and foremost internal EU bargaining processes. The result of this is a loss of flexibility in the external process, the internal process being so complicated that EU positions cannot easily be changed. In reality this means that the EU sets the terms and that they are not negotiable, leaving aside some high-level issues which are exceptions. Transitional arrangements and the way of implementing these terms are, however, negotiable. This inflexibility is also shown in the decision that all ten applicants of the most recent enlargement should join at the same time. A staggered admission, though originally advocated by the Commission, proved to be unworkable. After the accession of the ten new states the Union will have an even more complicated internal negotiation process than before. As a consequence the room for real negotiations with the remaining applicants such as Bulgaria, Romania and Turkey will even be more restricted than it has been in the past.

Mutatis mutandis, this may mean that 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. We can already see this process when we observe the difficulties the Council of Ministers has 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 candi-

¹⁴ Julia Gray, “International Organization as a Seal of Approval: European Union Accession and Investor Risk”, in *American Journal of Political Science*, 53.4, 2009, p. 946.

¹⁵ Fedor Meerts and Thassos Coulaloglu (2012), “Between Mediation and Negotiation, HCNM Intervention in Identity Conflicts”, in Zartman, William; Anstey, Mark and Meerts, Paul W., (eds.), *The Slippery Slope to Genocide, Reducing Identity Conflicts and preventing Mass Murder*, Oxford: Oxford University Press, 2012, pp. 306-327; and in: *Canadian Studies*, Chernivtsi, 2011, pp. 51-62.

¹⁶ Alice Landau, “Negotiating the Enlargement”, in Meerts, Paul W. and Cede, Frank (eds.), *Negotiating European Union*, Houndmills: Palgrave/Macmillan, 2004, pp. 199-216.

date members it will be more difficult to accede anyway, as the demands on the EU side have been raised dramatically as a consequence of the accession experiences of the last decade¹⁷.

External Negotiation with Third Parties

The external negotiations of the EU are multilevel, as are the internal ones. To pick-up on a few important realms, first of all the European Neighbourhood Policy labelled as the “Eastern Partnership” with Ukraine, Belarus, Moldova, Georgia, Armenia and Azerbaijan. This initiative from 2003 and thereafter is a reach-out to minimize some of the negative consequences of the enlargement¹⁸, to lower the need for states to become a member of the EU and to attempt stabilizing the regions around the Union. Another levels are the negotiation processes with advanced industrial countries (G7), with advanced and advancing countries (G20), and with developing countries (Lomé and beyond). The EU participates in the negotiation processes with the UN institutions and the UN Family, for example in the WTO. The result of all this is enormous complexity, one reason being that the internal and external processes are becoming intertwined. “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 avoided¹⁹. This has as a consequence a growing linkage between internal and external EU negotiation processes creating evermore complexity.

Common Foreign and Security (CFSP) is one of the most difficult terrains of European policy making as it has to be done by consensus. The effectiveness of the external role of the EU is hampered by this painful internal negotiation process, notwithstanding the attempt to harmonize and centralize by appointing a High Representative with powers inside and outside the Council and the Commission, having her own diplomatic apparatus by means of the European External Action Service (EEAS). Nevertheless, the EU has a role to play and this role is quite a special one. As Karen Smith states²⁰ “... 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.” Namely: the EU is peaceful and legalistic, it has institutionalized dialogues, including the promise of membership – in principle at least, as seen above – and supports NGO’s. Of course many countries in this world pursue this as well, but not so much in a grouping with others like it is done within the European Union.

To measure the influence of the EU 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 inconsequential²¹. “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 ambition scope of this realm, inter alia by means of coalition- and bridge building)”²². In order to respond to this challenge, unity will have to be accomplished and this is EU’s most painful process where it often fails. Most notably at the Copenhagen Summit 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)”²³.

¹⁷ David Phinnemore, “European Union Enlargement: To 27 ... and Beyond”, in *The European Union, Encyclopaedia and Directory 2011*, London and New York: Routledge, 2010, p. 257.

¹⁸ Jackie Gower, “Towards One Europe?”, in Sakwa, Richard; Stevens, Anne, (eds.), *Contemporary Europe*, Houndmills: Palgrave, 2006, p. 73.

¹⁹ Karen Smith, “The External Relations of the European Union”, in *The European Union, Encyclopaedia and Directory 2011*, London and New York: Routledge, 2010, p. 244.

²⁰ Karen Smith, *European Foreign Policy in a Changing World*, Cambridge, Oxford, Malden: Polity Press & Blackwell Publishing, 2003, p. 199.

²¹ Stephan Keukelaire, Jennifer Mac Naughtan, *The Foreign Policy of the European Union*, Houndmills: Palgrave Macmillan, 2008, p. 336.

²² Lisanne Groen, Arne Niemann, Sebastian Oberthür, “The EU as a Global leader? The Copenhagen and Cancun UN Climate Change Negotiations”, in *Journal of Contemporary European Research*, 8.2., 2012, p. 187.

²³ Martin Fernandez “The European Union and International negotiations on Climate Change. A Limited Role to Play”, in *Journal of Contemporary European Research*, 8.2, 2012, p. 205.

Strategies and Tactics in EU Negotiation Processes

Andreas Warntjes²⁴ distinguishes four modes of decision making employed by EU member states and institutions. First 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”²⁵. Second mode is co-operative exchange, or trade-off and package deal, also labelled as 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”²⁶. This mode can also be named “Brusselization”: the dynamics of the processes in Brussels force negotiators to adjust and thereby being more apt to wheel and deal. His last mode is deliberation. “... deliberation establishes through truth-seeking discourse what “the right thing to do” would be”²⁷.

What factors determine the choice of strategies and tactics? Stefanie Bailer²⁸ suggests that voting power, economic size and domestic constraints create the context in which negotiators have to operate. They will look for opportunities for coalition formation to strengthen their power, they will lean on the institutional power they have, use skilled negotiators who are well informed, working on as many levels with as much frequency and reciprocity as possible in order to create optimal effectiveness and defending the interest of their country or institution. Madeleine Hosli and Christine Arnold add to this the observation that “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”²⁹. If this is a rift to be found in other EU contexts remains to be seen, but it does indicate what kind of factors the EU negotiator has to struggle with in attempts to bridge gaps through strategies and tactics.

Thomas Rice and Mareike Kleine³⁰ look at strategy and tactics in EU deliberations from a different angle. They ask themselves “Which institutional scope conditions are conducive to arguing to prevail in multilateral negotiations and, thus, to affect both processes and outcomes?”³¹. They propose five conditions which will strengthen the chances of persuasion as a tactical tool in EU negotiation. First that the likelihood that arguing leads to persuasion will be enhanced in situations of uncertainty. To them uncertainty will be generated, among other things, by institutional settings favouring overlapping role identities. 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. If they are more aware of the preferences of their audiences, they will prefer secretive negotiations. 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, they could not find enough indications supporting the above mentioned propositions.

Perhaps Andreas Dür and Gemma Mateo³² attempt to set the stage for future research in clarifying the question if negotiators will employ tough or lenient strategies and tactics. They hypothesize that those who are powerful, not eager to reach an outcome, being in a position of loss, and/or recently acceded to the Union (in other words not yet being “Brusselized), will opt for a hard bargaining approach. Those who are from a collectivist culture, having a diplomatic tradition stressing consensus,

²⁴ Andreas Warntjes “Between bargaining and deliberation: decision-making in the Council of the European Union”, in *Journal of European Public Policy*, 17.5, 2010, pp. 655-679.

²⁵ *Ibidem*, p. 667.

²⁶ *Ibidem*, p. 670.

²⁷ *Ibidem*.

²⁸ Stefanie Bailer “What Factors Determine Bargaining Power and Success in EU Negotiations?”, in *Journal of European Public Policy*, 17.5., 2010, pp. 743-757.

²⁹ Madeleine O. Hosli, Christine Arnold, “The Importance of Actor Cleavages in Negotiating the European Constitution”, in *International Studies Quarterly* 54, 2010, p. 615.

³⁰ Thomas Rice and Mareike Kleine Rice, “Deliberation in Negotiation”, in *Journal of European Public Policy*, 17.5, 2010, pp. 708-726.

³¹ *Ibidem*, p. 711.

³² Andreas Dür and Gemma Mateo, “Choosing a bargaining Strategy in EU Negotiations”, in *Journal of European Public Policy*, 17.5, 2010, pp. 680-693.

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. Moreover the problem of researchers having access to actual negotiation processes and the factual negotiators has been observed already in the first chapter of this dissertation.

Heather Elko McKibben³³ approach the issue from another angle. They analyze strategic and tactical behaviour on three axes: high versus low politics issues, zero-sum versus positive sum issues, domestic issue salience, as well as in case of issue polarization. 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 (ICG), when the issues are of a foreign and defence policy nature, if they are zero-sum in nature, redistributive, distributive of quota's or commitments that must sum to some fixed amount, and if the issues are domestically / 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.

The Evolution of the EU Negotiation Process

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

The Union is broadening in two ways: by multiplying its policy areas and the number of partners to be integrated. In several waves new countries have entered the ring: Denmark, Ireland, and the United Kingdom (1973), Greece (1981), Portugal and Spain (1986), and Austria, Finland, and Sweden (1995). The 15 then decided to accept 10 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 being the next in line. 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 – this will be a slow process because of the ever tougher conditions for membership as a consequence of rising xenophobia in the Union 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 countries in Europe apart from Russia³⁴.

The EU is not only broadening its horizons; it is also deepening its cooperation in two ways: by covering more and more aspects of the categories 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 beefed up, 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 served by negotiators from the public and – to a far lesser extent – the private sector.

How strong will the EU be, internally and externally? According to Casper van den Berg³⁵ “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.”

³³ Heather Elko McKibben, “Issue Characteristics, Issue Linkage, and States” Choice of Bargaining Strategies in the European Union”, in *Journal of European Public Policy*, 17.5, 2010, pp. 694-707.

³⁴ Jaap de Zwaan, *Europa en de Burger. Hoe verder met de Europese Unie-samenwerking?* Den Haag: Haagse Hogeschool, 2013.

³⁵ Casper van den Berg, *Transforming for Europe, The Reshaping of National Bureaucracies in a System of Multi-Level Governance*, Leiden: Leiden University Press, Doctoral Dissertation, 2011, p. 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 world scale as well³⁶. At the same time 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 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 not be possible. 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*³⁷ attempts to predict some patterns of multilateral decision making by reviewing trends in the “Culture of Negotiation in the European Union”. 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”³⁸. Intensification of the trend of interested consensus-building can be expected³⁹, for example because of ongoing mechanisms like “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 ...”⁴⁰. The role of the Presidency will be more valuable, but if the presidency will not fulfill that role, a “*Directoire*” of the larger Member States is likely to guide a multi-tiered European Union⁴¹. 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 ...”⁴².

Concerning these wider global interests, the question can be asked if more EU grip on its international relations might help to more effectively represent and defend these global interests. Some state that “In practice, the EU’s challenge consists in pushing for the most ambitious margin within the realm of realistically possible agreements ...”⁴³. The problematic word here is of course “realistically”. If the EU overestimates itself while ambitiously striving for the best possible outcome it might lose face if these ambitions cannot be fulfilled. A strive towards an enhanced role of the EU in the world might be supported by further integration and enlargement of the competencies of the Union 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”⁴⁴. 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 *how* negotiators are organizing themselves. The bad performance of the representatives of the Southern African Development Community (SADC) in trade negotiations with the EU was mainly due to “... their own disarray ... In other words, judicious agency still matters, particularly for small states”⁴⁵. In the area of Common Foreign and Security Policy a pragmatic solution for the European Union might be for member states to agree – without chang-

³⁶Thomas Hale, David Held, Kevin L., Young, Gridlock, Why Global Cooperation is failing when it’s Most Needed, Chichester: John Wiley & Sons, 2013.

³⁷ Alain Guggenbühl, “The Culture of Negotiation in the European Union”, in: *The Hague Journal of Diplomacy*, 2013, 8.1, pp. 21-47.

³⁸ *Ibidem*, p. 27.

³⁹ *Ibidem*, p. 32

⁴⁰ *Ibidem*, p. 37

⁴¹ *Ibidem*, p. 42

⁴² *Ibidem*, p. 45

⁴³ Lisanne Groen, Arne Niemann, Sebastian Oberthür, “The EU as a Global Leader?”, in *Journal of Contemporary European Research*, 2012, 8.2, pp. 173-191.

⁴⁴ Louise Van Schaik, *EU Effectiveness and Unity in Multilateral Negotiations*, Houndsmill: Palgrave Macmillan, 2013, p. 209.

⁴⁵ Brendan Vickers, “Between a Rock and a Hard Place: Small States in the EU-SADC EPA Negotiations”, in *The Round Table*, Vol. 100, #413, 2011, p. 195.

ing 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 action⁴⁶.

Policy Recommendations

The negotiation processes of the European Union might be sufficient for managing the common and diverging interests of the EU countries in the first quarter of the twenty-first century. After that, they may hamper further integration as long as these processes are rooted in intrastate negotiations as we know them today. Some argue that the complexity of the process will anyway lead to “gridlock”⁴⁷ while others⁴⁸ are of the opinion that it is “not the numbers of members *per se* but whether they have diverging interest⁴⁹. Anyway, 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 of regionalization, as in the case of the European Union.

The individual EU negotiator will probably become an even more important asset as the process becomes ever more complex and nontransparent. If this is true, then 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 present-day, very modest, European diplomatic program 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, familiarize the new breed of EU diplomats and civil servants with EU-specific negotiation, 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 the effectiveness of negotiation processes⁵⁰.

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 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 member states will have to take special responsibility for the efficiency of the negotiation process through enhanced cooperation between them. They already work much more closely together than their sometimes hefty disagreements on issues such as common foreign and security policy might suggest. Two have a tacit agreement not to support any coalition that might affect the vital interests of each of them concerning issues where qualified-majority voting casts its shadow on the negotiation processes. More guidance for the EU by the major EU powers will, of course, demand a better cooperative process between the two (France, Germany) or the five (plus Italy, Poland, Spain) major players in concert with the Commission, the Parliament, and the smaller EU member states in the Council of Ministers.

The member states of the Union – confronted with Brexit and with world leaders like Trump, Xi and Putin – can hardly escape further integration into the EU negotiation processes if they want to survive in the world outside Europe, however euro-skeptical their populations might be. But it could also be true that the EU as such cannot escape the 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 enig-

⁴⁶ Fred Van Staden, “De EU internationale speler met gebreken”, in Schout, A. en Rood, J. (eds.), *Nederland als Europese Lidstaat: eindelijk normaal?*, Den Haag: Boom Lemma, 2013, p. 56.

⁴⁷ Thomas Hale, *et.al.*, *Gridlock: why Global Cooperation is Failing when it’s Most Needed*, Chichester: John Wiley and Sons, 2013.

⁴⁸ Arzu Kibris, Meltem Baç-Müftüleri, “The Accession Games”, in *International Studies Perspectives* 12, 2011, pp. 399-427.

⁴⁹ *Ibidem*, p. 400.

⁵⁰ Gunnar Sjöstedt, *Professional Cultures in International Negotiation: Bridge or Rift?*, Lanham: Lexington Books, 2003, p. 245.

ma, but it is very much a part of the overall negotiation processes needed to run world affairs in a peaceful and effective way. In that sense negotiation is a central element in international relations, deserving attention by practitioners and theoreticians alike. The role of the diplomat will be scooped out, but diplomacy will stay. It will continue to fulfill its function "... as a practical mode of conducting international relations, as a "torchbearer" ... and as a "thinking framework" about international politics"⁵¹, even in the European Union.

In Conclusion: The European Union, Ukraine and Canada

Ukraine and Canada will use the European Union as a resource of wealth and as a counterbalancing power against their respective mighty neighbors Russia and the United States. It makes sense to draw China into this game as an alternative or as a complementary partner into this political, security and economic process. For Ukraine as it is on the "One Belt One Road": the new Chinese silk road. For Canada as it is, like China, a country on the Pacific Ocean. However, given the non-democratic centralized communist nature of the Middle Kingdom, the EU might be a more attractive ally. It does not pose a threat to the independence of Ukraine and Canada, as China might in the long run. On the other hand we saw how complicated the European Union is, struggling with itself to get its act together. In that sense relationships with China are much more one-dimensional. In other words, Ukraine and Canada are involved in a balancing act in which the EU is only one of the powers to be dealt with. Thereby we should not forget about strong secondary actors like Japan and Brazil who have their role to play as well. Still, Ukraine, Canada and the European Union have a lot in common. In political terms as well as in the domain of security. Canada being, like most EU countries, a NATO member. Ukraine being associated with NATO and becoming more integrated into NATO and the EU, although still without membership. Ukraine's membership of NATO and EU might be realized in the long run, but only if there are substantial changes in the political construction of the Russian Federation. In other words: if there is a change in the power center in Moscow by which Russia will become a truly democratic state. If that happens, Russia will not be a threat to its "Near Abroad" anymore. But how to get there is an open question.

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⁵¹ Corneliu Bjola, "Understanding Enmity and Friendship in World politics: The Case for a Diplomatic Approach", *The Hague Journal of Diplomacy*, 8.1, 2013, p. 19.

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