# THE EU AS AN INTERNATIONAL NEGOTIATOR

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# THE EU AS AN INTERNATIONAL NEGOTIATOR

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The European Union (EU) is a major player in a large number of international negotiations. It has an important role in multilateral trade negotiations and UN conferences. The EU has signed trade-, aid- and cooperation agreements with a large number of regions and countries. It has recently concluded accession negotiations with a number of potential new members. The Union has concluded agreements with numerous states participating in its international crisis management operations, and has negotiated agreements with NATO on the provision of military assets.

It is common to portray the EU as a slow and difficult international negotiator. It is often held that EU negotiators tend to be inflexible and unwilling to make concessions, as their negotiation mandate has been preceded by complicated bargaining between the member states. The EU may often have a 'conservative bias' (Smith 2000) as it tends to protect the lowest common denominator interests of its member states. The institutional complexity of the Union creates problems of synchronization and coordination. Bargaining with the EU is often protracted, as it is a cumbersome process both to produce a common position between the member states and to renegotiate the common mandate if so is needed. The EU is therefore often seen as a foot-dragger in international negotiations.

In this paper we want to problematize this conventional view of the EU as a reactive, conservative international negotiator. We argue that the EU's structural features need not always result in a disadvantage for the Union in international negotiations. We also contend that EU negotiation behaviour to a large extent depends on contextual factors. Are negotiations symmetrical or asymmetrical? Are the intentions of the EU status quo-oriented or change-oriented? All these negotiation-specific factors determine what bargaining pattern we expect to find. In addition to the EU's structural features (actor level characteristics) and the negotiation situation (interaction level characteristics), we also ask if the changing nature and character of

international negotiations in general (at the systems level) may also begin to impact on the conventional view of EU as a passive and inflexible negotiator.

In the following, we start by describing the conventional view of the EU as an international negotiator, stressing institutional-legal and other structural features as well as their effects on EU negotiation positions, attitudes and tactics. The negotiation-specific determinants of EU behaviour are analyzed in the following section. Thereafter, some new trends in international negotiations are outlined, and we raise the possibility that the EU possesses certain traits that make it well-suited to function as a facilitator, rather than a foot-dragger, under these circumstances.

*The institutional structure*

To understand EU negotiation behaviour, it is, first, necessary to highlight the *legal-institutional structure* behind it. The 'standard assumption' is that the EU is handicapped by the complexity of its institutions and by its lack of clear leadership in international affairs (Meunier 2000: 105). First of all, there is the complicated structure of exclusive and mixed competencies. In some areas, for example most trade issues, the EU has been granted exclusive competence. Whether in bilateral or multilateral trade negotiations, Europe formally speaks with one voice. European Commission officials are free to conduct bargaining as they wish within the limits set by a negotiation mandate decided upon by the Council. In international environmental negotiations, where the EU is nowadays recognized as an autonomous negotiator, albeit without voting right, the situation is more complicated. If discussions concern issues under the exclusive competence of the EU, Commission representatives take the floor; in issues under the jurisdiction of member states, they decide and in areas which are under the jurisdiction of both member states and the EU as such - areas with mixed competence in EU parlance - the Union is sometimes represented by the Council Presidency, sometimes by the Commission (Sbragia 1997; Vogler 1999). This is an impenetrable system, which has been widely criticized for its lack of transparency. It is a 'source of confusion and even bewilderment for those who have to deal with it' (Vogler 1999: 26).

The role of the Commission as an independent actor is *per se* a characteristic feature of the EU. The Commission has for instance been called 'a key strategic actor'

in the enlargement negotiations, not only because of its power of initiative but also because it produced the EU overall negotiation strategy and succeeded in selling it to the member states (Friis 1999: 33-34). The Commission, it is claimed, acted as an entrepreneurial leader in the Uruguay round trade negotiations (Coleman & Tangermann 1999). The publication of a Commission green book on the future relations with the ACP countries set the agenda for the ensuing internal EU discussions and constituted the ideational basis for the resulting negotiating mandate ahead of the Cotonou agreement (Elgström 2000).

Another institutional factor of relevance is voting rules. There is considerable uncertainty over what voting rules apply in different areas. Bargaining positions on traditional trade issues are in principle agreed on by majority, but the Council can decide on a case-by-case basis what rule to use in the 'new' areas of services and intellectual property. It has been claimed that when unanimity is used, the chance is higher that the EU will adopt the position of its most conservative member (Meunier 2000). Likewise, rules on the ratification of trade agreements differ depending on whether competence is exclusive (majority voting in the Council) or mixed (where member states use their own national procedures) (Meunier & Nicolaidis 1999). National ratification tends to prolong the process and render agreements more difficult to reach.

*Resources*

The EU is considered a major actor, a key player, in most international negotiations. The Union builds its power position on huge economic resources, linked to a 'powerful legal order' and a 'powerful set of common understandings' (Smith 2000). The EU is the world's largest exporter, and the second largest importer of merchandise goods (OECD 2001). The economic resources, in combination with its high institutional density, contribute to the Union's high visibility and impact in many bargaining contexts. Furthermore, EU proposals often have the advantage of being firmly based on scientific and/or administrative expertise. To add to this picture, the EU itself functions as a forceful magnet, drawing to it states with an interest in some type of relation, be it membership, association or a trade deal (cf. Keohane & Hoffmann 1990: 277; Rosecrance 1998: 16). When the demand for an agreement is

asymmetric, outsiders approach the EU as *demandeurs* or supplicants (Elgström 2000: 178; Friis 1999: 25). Power asymmetries have obvious consequences for negotiation outcomes: we would expect the stronger party to pressure the weaker into concessions.

*Effects on EU negotiation positions, attitudes and behaviour*

The outcome of international negotiations involving the EU is determined by bargaining at two levels: first, the member states have to agree among themselves on the EU's negotiating mandate; second, the EU has to reach an agreement with its partners at the negotiation table (cf. Elgström 2000; Friis 1999: 24). The conventional picture is that the EU in its internal negotiations (which are of course heavily influenced by domestic negotiations within each member state; see Putnam 1988; Evans et al. 1993) tends to end up with advocating the position of its most conservative member (or the lowest common denominator of the members; see Paemen & Bensch 1996: 95) (Scharpf 1988). It is a 'convoy moving at the speed of the slowest vessel' (Vogler 1999: 40). This final agreement is very difficult to unravel. It is the product of long, drawn-out negotiations, often including sensitive concessions in intricate patterns. To later on give in to demands from other actors on one aspect of the total deal would imply reopening the whole package. Therefore, the EU demonstrates a 'conservative bias' in external negotiations (cf. Smith 2000: 811).

Furthermore, negotiating with the EU tends to be time-consuming. Both finding an internal compromise and changing this if so is deemed necessary take long time. All fifteen member states - as well as the Commission - have to arrive at national positions (which means securing approval at the home arena) and thereafter to find a joint standpoint (often by unanimity or consensus). To the extent that outside actors are aware of the rigidity of EU positions and of the time it may take to renegotiate a deal, this in itself creates a pressures for others to concede, especially if they value a quick solution. The inflexibility of its positions may thus give the EU a bargaining advantage, notably in distributive, conflictual types of negotiations.

The institutional complexity of the EU can create coordination and synchronization problems (Forster 2000). In the words of Michael Smith, 'there is a layering of institutions and policy-making contexts, which creates problems of

linkage' (2000: 808). Member states have to coordinate their actions, the Council has to coordinate its policies with the Commission. Coordination also takes place across layers, 'spheres of action and interaction between policy-making actors that encompass varying scopes and extents of authority and policy-making competence' (ibid. p.809). In such coordination negotiations, regional and sub-regional organizations participate together with states and supra-national actors. There is also the challenge of 'consistency'; to pursue consistent policies across all policy areas that can affect other countries ('do EU policies in the agricultural sector contradict its foreign aid policy?'). The question is often posed whether the EU 'speaks with one voice' or not (Allen 1998; Meunier 2000). In foreign policy proper, the EU is represented by the acting Presidency, but the Commissioner for external affairs and the High Representative for the common foreign and security policy also act on behalf of the Union. Henry Kissinger's frustrated plea for a single telephone number to one European foreign policy supremo remains topical.

The existence of several representatives with often unclear competencies makes the EU ill equipped to act swiftly in the crucial final hours of a negotiations when the decisive compromise is constructed (Meunier 2000: 106). It is an immobile, rigid bargaining organization that is often an impediment to effective bargaining with others, especially in problem-solving negotiations where flexibility is of the essence (cf. Paemen & Bensch 1996: 94-95; Vogler 1999: 41; Forster 2000: 789). To change bargaining position, negotiators at the table often have to go back to their principals, who have to find a consensus on a new mandate. Furthermore, it is difficult to conduct negotiations with actors whose precise authority is unclear: will a deal struck with Commission officials at the table be honoured by the member states? In other words, there is a risk for involuntary defection (Putnam 1988).

In brief, the existing literature paints a picture of the EU as a rigid, conservative external negotiator with coordination and synchronization problems. Its capacity to contribute with innovative, problem-solving initiatives is seen as limited. It often acts as a foot-dragger in international negotiations. This is obviously one of the reasons behind the *capability-expectation gap* (Hill 1993; 1998): the EU is claimed to have great difficulties in living up to the very high expectations that other actors hold. These expectations may both concern hopes that the EU should exert a leadership role

in multilateral negotiations and hopes for substantial and quick results in concrete negotiations.

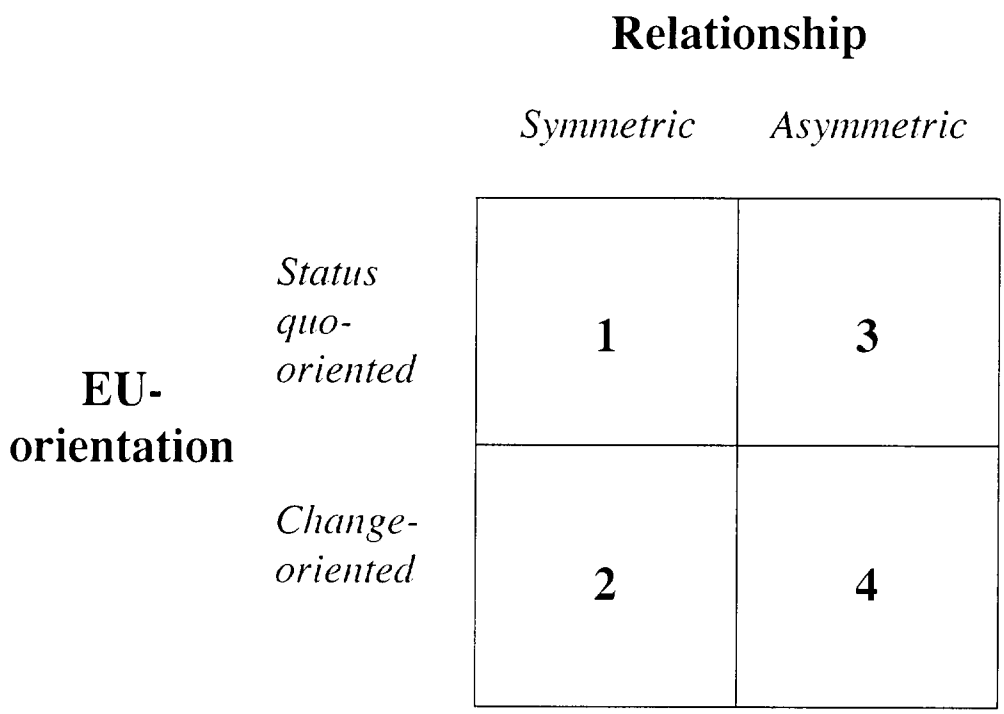
In the following sections, we problematize this traditional view. To a certain extent, we also question its main conclusions. We start by illuminating the contextual nature of EU negotiation behaviour. Depending on the type of negotiations, the EU may be more or less flexible and innovative.

*Negotiation context matters*

In an interesting article, Sophie Meunier (2000) argues that voting rules and negotiating competence determine both the probability that the negotiating parties reach an agreement and the substantive outcome of the negotiations. She further develops this theme by proposing that the institutional design of the EU plays a bigger role when the EU acts as a defender of the status quo in a negotiation than when it acts as a reformer, seeking a change in the policy of the opponents. In the first case, unanimity voting and restricted delegation 'make the EU a tough bargainer: the negotiating opponent cannot obtain more than what the most conservative EU state is willing to concede', while qualified majority voting and extensive delegation mitigate the extremes and render an agreement more likely but deprive the EU of some bargaining leverage, thus leading to a more favourable deal for the opponent. In the second case, involving a reformist EU, institutional design plays a much lesser role (ibid, pp.104 and 131).

One main lesson of Meunier's argument is that the specific negotiation situation matters. The basic orientation of the EU (is it a reformist or a status quo actor?) is one such factor. But there are others, not mentioned by Meunier. The balance of power in a given situation is arguably a key variable. A basic distinction can be drawn between symmetric and asymmetric negotiations. For example, trade negotiations with the United States or Japan – bilateral or within the WTO framework – are basically symmetric, while enlargement negotiations and bargaining with LDCs for aid or trade agreements are basically asymmetric (in the sense that the EU's *alternatives* to an agreement are much better and its *need* for a deal is much smaller than its opponents'; cf. Habeeb 1988). If we combine this with the reformist-status quo dimension, we get the following four alternatives (see figure 1).

Figure 1. Four different types of negotiation situations




Power asymmetry obviously increases the problems opponents have in getting the EU to change its position when it defends the status quo (box 3). But also powerful actors experience severe problems when they engage in such efforts (box 1); US attempts to influence EU agricultural policy is one prominent illustration. In asymmetric negotiations, the chance for the EU to have its way when it challenges existing policy (box 4) is greatly enhanced, compared to a situation where it wishes to challenge another dominant power's policy (box 2). EU negotiations with the ACP countries regarding a revised Lomé convention in the late 1990s is a good example (Elgström 2000). In this case, the EU wanted to totally restructure its aid and trade relationship with its former colonies. Despite strong initial resistance, the EU succeeded in driving home important changes: for the first time, the ACP countries explicitly committed themselves to introduce a reciprocal trade regime, albeit in the future; WTO compatibility has become a keyword; future trade arrangements will be based on regional integration initiatives – all key demands from the EU. It should be added, however, that weaker negotiation partners are seldom totally without influence. Even in cases where the EU defends an existing situation (box 3) – as they in many respects do in accession negotiations - the *demandeurs* have some potentially successful

tactics at their disposal. Applicant countries can thus rely on the highly symbolic importance attached to enlargement. Both member states and Commission wish the EU to be seen as successful and open to all democratic European nations and therefore have difficulties in accepting non-agreement in accession negotiations. Applicants can also refer to concessions given in previous enlargement negotiations, and they can use some members who are sympathetic to their demands as 'Trojan horses' (cf. Friis 1999: 35-38).

The conventional view of the EU as a conservative, difficult negotiator is primarily applicable to situations like the ones in boxes 1 and 3. Here, the Union has strong interests to defend, often of a material nature and based on powerful domestic constituencies. The result is resistance to change and unwillingness to make significant concessions. When Europe is a revisionist actor (boxes 2 and 4), the situation is different. This is in particular the case when the EU is trying to promote *milieu goals* in international negotiations, that is, when the EU attempts to shape or reshape its external environment, by influencing international normative structures (cf. Wolfers 1962: 73-76; Keukeleire 2000). An actor may try to change, or stabilize, the norms and value-systems that dominate its international environment. In these instances, the Union acts as a norm entrepreneur (Finnemore 1996) or 'normative power' (Manners 2002). For example, the EU is active in seeking to spread norms like democracy, human rights, free trade, regional cooperation and peaceful conflict resolution. To do so, the Union primarily relies on *soft power* (Nye 1990), economic or financial instruments and persuasion ('dialogue' in EU parlance), but these tools are often linked to traditional ways of exerting power. The inclusion of conditionality in foreign aid negotiations is one prominent example.

Efforts to pursue milieu goals are more common in asymmetric negotiations (box 4). The promotion of democracy, good governance, human rights and liberal economic ideas are crucial ingredients in negotiations with candidate member states and regional groupings in the Third World. In these negotiations, the EU is an active norm entrepreneur. It may be argued that the EU is especially suited for this role: through its own achievements it can act as a role model for other regional groupings (both with respect to economic integration and peaceful change by democratic means). It has also a tradition of using soft power instruments instead of utilizing force and may therefore be viewed as a benevolent great power. Many outsiders

dearly wish to become insiders; aspirations which give the EU an excellent opportunity to promote its values by a gentle mixture of persuasion and pressure. In fact, the democratization and stabilization of central and eastern Europe is often perceived as a success-story for an active EU foreign policy (Keukeleire 2000: 22).

Lykke Friis and Anna Murphy (2000) have in their analysis of EU decision making during the war in Kosovo demonstrated that the EU is furthermore, under certain conditions, also capable of making *quick* decisions. In crises, the Union may initiate what Friis and Murphy call 'turbo-charged negotiations'. In the Kosovo crisis, the EU rapidly came up with the idea of a 'stabilization pact' for southeastern Balkan. The move was not innovative – the idea was actually retrieved from the existing tool-kit of conflict management solutions – but proved that the EU can sometimes be a flexible facilitator in international negotiations.

We can thus conclude that the EU is not uniformly a passive, inflexible negotiator. Under some circumstances, the EU may take on a leadership role, trying actively to promote values and to spread its preferred policies. In the next section, this argument is extended: we contend that several international bargaining settings are today characterized by uncertainty and complexity and that state interests in these contexts are fluid and malleable. The negotiations are carried out in informal networks and include a multitude of different actors and different issues on several levels. In such situations, the EU may be increasingly adapted to act as a process facilitator and a change agent.

*The changing global context*

By taking into account the changing nature of international negotiations, we open up for questions about the consequences for the EU as an international negotiator. By placing the EU in a changing global governance perspective, some lessons drawn both from the *EU governance* literature and from the more general *global governance* literature can be combined. This, in turn, can generate a few propositions about an ongoing change in the role of the Union in international negotiations.

The question regarding the depth or extent of globalization has lately emerged as one of the most frequently debates issue in social sciences. There is little consensus on the nature of the changes, but many analysts would subscribe to the view that even

if the changes might not fundamentally transform the international system, some trends are nonetheless visible. These trends are often captured in terms of changing 'extensity, intensity, and institutionalization' of global politics (Held et al. 1999: 52). The concrete signs of these changes are manifold, but for the purpose of this paper, some deserve specific mentioning.

Aspects of change that are of immediate interest here are connected to the changing nature of international communication and networks on the global level, and to the changing contents of global issues. The vast literature on global governance has highlighted the fact that we are increasingly witnessing a 'multitude of jurisdictions that is proliferating on the world stage' (Rosenau 1995: 18). New issues are making their way to the global agenda, resulting in a more complex system of international decision making. Previously narrow trade issues are for instance expanding to involve new issues, such as intellectual property rights, defense of cultural diversity, international labour rights and environmental concerns. Thereby, international negotiations are becoming increasingly complex and demand new state strategies for handling multiple issues in many negotiating situations.

International negotiations are, furthermore, no longer the exclusive domain for diplomats from foreign ministries, and officials from domestic ministries are increasingly participating in various international contexts. As the boundaries of what constitutes the domestic and the international become increasingly diffuse, new problems with distribution of authority within governments arise (Held et al. 1999: 53-54). Also, as the diplomats are complemented with, or substituted by, officials from domestic ministries, less experienced in an international milieu, states may encounter problems while these new negotiators learn to handle the complexity of the new situation (cf. Keohane 1989: 188). These problems are facing all states, and the capacity to adjust to these new circumstances becomes one of the determining factors for success in international negotiations.

Within this description of changing global conditions, the EU in itself is first of all a case in point. The EU is often characterized as a *system of multi-level governance* (Hix 1998 and 1999; Jachtenfuchs 1995; Rosamund 1999). Decision making in the EU involves a large number of actors of different types (states, regions, supranational institutions, non-governmental organizations etc.) interacting on different levels. Authority is dispersed, although member states are still the most

influential players. The policy-making environment is complex, uncertain and fluid. In such a system, decisions are often the result of multilevel network negotiations. Many compromises are formed in informal ways, involving mediation by institutional actors or other linking-pin organizations (cf. Jönsson et al. 1998).

Secondly, it is important to have these characteristics in mind also when turning to the question of the EU as an international negotiator. Even if such a question by necessity rather treats the EU as an actor (although not a unitary one) than as a system of governance, some of these features might very well prove to give the Union the upper hand in many international negotiations. We thus propose that some of the EU's structural features – not highlighted by traditional accounts of the EU as an international negotiator – may actually give the Union comparative advantages at multilateral bargaining tables.

*An unusually skilled negotiator?*

In the light of these changes the EU might already be at advantage, irrespective of the specific constellation representing the Union in international negotiations. As all new EU member states have testified, the state administrations have had to adjust considerably to the new circumstances. With participation in committees, working groups and expert groups within the EU bureaucracy, *national officials* from most ministries in all member states are constantly finding themselves in an international, multi-level, network-type of working environment (cf. Beckman & Johansson 1999: 115). The *top-level politicians* from all member states meet regularly in Brussels and other places, to the extent that, as the former Swedish foreign minister Lena Hjelm-Wallén once commented, they often see each other more frequently than they see their own national colleagues in their home capitals (Johansson 1999: 87). The *Commission officials* are perhaps the most experienced of all these groups in relation to handling an extremely complex negotiation environment, given their position and daily work at the heart of the Union.

The implications are that all possible participants in any negotiating delegation from the EU are already highly trained officials, used to managing complex international negotiations *within* the EU. The Union thereby has an unusually large pool of experienced and skilled negotiators, used to an everyday environment that can

most aptly be described as an extreme version of the emerging global situation. By constantly participating in the 'multilateral inter-bureaucratic negotiation marathon' (Kohler-Koch 1995: 181) that the EU constitutes, they are for instance no strangers to the creative use of informal strategies to avoid dead-locks in complicated negotiations (cf Jönsson et al. 1998: 326). The EU can thus be seen as an international actor already quite adjusted to the changing global conditions.

European Union officials are also trained in a relatively non-hierarchical environment compared to officials trained within state bureaucracies. Whereas negotiations within national governments are hierarchical in nature, international negotiations typically lack strong central agenda-setting and coordinating actors. A non-hierarchical negotiating climate is also a reality in many negotiations *within* the EU, although the EU system has developed *de facto* practices in most issue areas over time. The roles of agenda-setter and facilitator most often fall either on the Commission or on the Presidency, or on a combination of both. There are however also considerable possibilities for other active participants to influence both the agenda and the final solution by acting as problem-solvers. These conditions produce experienced EU officials, familiar with thinking about informal strategies on agenda-setting and solutions to complex, multi-level and multi-issue negotiations. In international negotiations, increasingly displaying these same characteristics, often in an even more non-hierarchical structure, this experience can very well prove to be an increasingly important asset.

The relatively non-hierarchical and network-dense features that the EU display can furthermore be seen as a fruitful ground for new and innovative ideas, generated to solve common problems. Three analysts of the EU have pointed out that the EU's own novel and unproven way to monetary union is 'typical of an emerging policy system characterized by innovation and experimentation' (Laffan et al. 2000: 162). If this argument is transposed to the international level, that is, if novelties and innovative solutions can emerge easier in fluid, informal network-based systems than in more traditional hierarchies, the EU's negotiators should be well-equipped to understand and influence this situation. Not only are they familiar with the system, but they should also be able to fall back on novel solutions having already emerged within the EU system.

In certain situations these tendencies should be unusually visible. One such situation is when the international negotiations are concerned with regulatory issues. Negotiations on new international regulations can be assumed to display a higher degree of bargaining in networks than in issues of a distributive character (Jönsson et al. 1998: 333). This in itself should give the EU an advantage in such negotiations, according to the reasoning put forward above. We might however also add two more conditions that further reinforce the strength of the EU in these situations. If we add the fact that the EU already displays the most dense web of regulations between states in the international system today, we can assume that the experiences and new ideas generated in this process can be used by EU negotiators at the international level.

If we furthermore add the fact that the EU constitutes one of the largest markets in the world, it has, by virtue of its economic power, strengths and advantages in setting the agenda for regulatory negotiations. There are already signs that EU directives, on internal market issues, are increasingly being adopted by many third states, including the US and Japan. The EU has thereby already started to serve as an agenda-setter for global standards (Laffan et al. 2000: 120; cf. Rosecrance 1998: 22). In doing this, the EU has furthermore served as a facilitator in the sense that the Union has, as a result of its own lessons internally, a tendency to formulate their directives in a less specific form than the domestic US equivalents. The more generic form of EU directives results in less need to renegotiate the directives as technological changes occurs. Thereby, the spreading of EU directives worldwide can, according to some observers, very well be seen as a solution to governance problems facing both policy makers and the business community (Laffan et al. 2000: 120). In other words, the EU might increasingly gain agenda-setting powers by virtue of its own network characteristics, its immaterial resources, and its *de facto* role as a forerunner in the creation of new international solutions to new problems created by increasing interdependence.

In brief, we argue that some of the EU's unusual structural features combine with novel characteristics of international negotiations, brought about by a changing global context, to produce a bargaining environment where the EU may possess certain advantages. The Union may therefore increasingly play an active and creative problem-solving role in many international contexts. EU decision makers are used to handle complex multi-level negotiations from their internal arena. Being itself a

network organization, the EU is particularly well-equipped to grasp and utilize the potentials of network negotiations. The EU has an image as a 'soft power', to a lesser extent than the USA associated with great power arrogance and coercive behaviour. As international negotiations are increasingly characterized by complexity and multi-level games, and as actors can no longer rely on traditional power assets, we propose that the EU's potential as an international actor will increase. In the future it might also feature flexibility and adroitness in many instances.

However, as observers of the EU's international role constantly point out, the EU is not always unified enough to come across as a coherent actor. A lack of political will is often said to exist when the EU does not arrive at strong negotiation positions or even fails to come up with a common stance. But placed in the changing global environment, even the political will might slowly be changing as well. Individual small and medium-sized states find it increasingly difficult to influence world politics unless they join forces with similar-minded states. The awareness of the benefits from a collective stance is growing, and the European Union is already there to provide the most efficient venue to combine voices ahead of international negotiations. This realization may certainly start to affect the individual member's willingness to make concessions at the preceding intra-EU bargaining stage.

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