

Negotiating Agents and Bargaining Processes:
Maximizing Member State Interests in COREPER

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Abstract: How can rational political actors maximize their interests when bargaining through representatives? This project challenges the conventional argument of the canonical principal-agent and rationalist international relations (IR) bargaining literatures, arguing that the importance of constraining representatives' actions and choices *varies* depending on the type of bargaining process in which they are involved. I argue that in "cooperative bargaining processes", giving representatives a high degree of autonomy will lead to the maximization of interests. On the other hand, in more "competitive bargaining processes", constraining one's representatives will lead to the maximization of interests in decision-making outcomes. Using original interview evidence with member state representatives in COREPER, I demonstrate that agent autonomy is crucial for the ability of deputy and permanent representatives to forward the interests of their principals – the various ministries of their member state – within a cooperative bargaining process.

I. Introduction

How can rational political actors maximize their interests when bargaining through representatives? This project challenges the conventional argument of the canonical principal-agent and rationalist international relations (IR) bargaining literatures, arguing that the importance of constraining representatives' actions and choices *varies* depending on the type of bargaining process in which they are involved.

I argue that in “cooperative bargaining processes”, giving representatives a high degree of autonomy will lead to the maximization of interests. On the other hand, in more “competitive bargaining processes”, constraining one’s representatives will lead to the maximization of interests in decision-making outcomes.

I will evaluate this argument empirically by examining bargaining among the European states in an EU context. This case allows for the examination of this argument across an array of different types of directives, which vary across several alternative explanations of interest. In evaluating this argument, I draw on sixty-six interviews conducted with participants in bargaining in the Committee of Permanent Representative (COREPER) – a central institution in the EU decision-making structure. Given the plausibility of this argument demonstrated by this empirical analysis, I conclude by specifying potential improvements to build upon the first steps taken here in making this argument.

II. Principal-Agent Framework

To analyze the level of constraint exerted on representatives by those they represent, I draw upon the principal-agent model. I argue that utilizing a principal-agent framework to analyze the institutional relationship between representatives and those they represent as one of agent to principals, allows for a more complete understanding of how interests are pursued by

representatives within the decision-making process, as well as making an important contribution to this literature by extending it more clearly into institutional settings involving decision-making and bargaining processes. As Pratt and Zeckhauser argue, “whenever one individual depends on the action of another, an agency relationship exists (Pratt and Zeckhauser 1984, 2). Thus, the principal-agent model is analytically useful for exploring the role of representatives, as those being represented are dependent on the action of their representatives for their interests to be reflected in negotiated decision-making outcomes.

Within the current literature, the principal-agent model is often used to describe an agent in terms of a locus of ‘governance’ (Nicolaïdis 1999) – i.e. in the implementation of (rather than creation of) political agreements – with an agent often providing some regulatory or ‘incomplete contract-fulfilling’ role¹ (e.g. Majone 1996; Pollack 2003). However, as Jensen and Meckling argue, the principal-agent relationship also involves the delegation of some *decision-making authority* to the agent on behalf of the principals (Jensen and Meckling 1976). It is in this decision-making and hence, bargaining, capacity that I utilize the principal-agent model.

In a principal-agent relationship, principals delegate some authority to an agent to act on their behalf (Jensen and Meckling 1976; Pratt and Zeckhauser 1984; Pollack 1997; Pollack 2003; McCarty and Meirowitz 2006). This delegation results in varying degrees of autonomy on the part of the agent in their actions taken on behalf of the principals. However, because the agents *necessarily* have their own interests – part of the assumptions and arguments built into the principal-agent model (Holmstrom 1979; Shavell 1979; Downs and Rocke 1994; Miller 2005) – the potential to abuse their autonomy exists, and the principals will institute oversight

¹ This is particularly characteristic of the current principal-agent literature on the European Union (e.g. Pollack 2003).

mechanisms to prevent this abuse (Pratt and Zeckhauser 1984; Downs and Rocke 1994; Macho-Stadler and Pérez-Castrillo 2001; Pollack 2003).

The principal-agent model, then, highlights two central variables – ‘the degree of agent autonomy’ and ‘principal controls’ – on which I will draw to analyze the institutional positions of representatives. Any principal-agent relationship necessarily possesses these two relational dimensions, but vary on the degree to which they are possessed. I define the degree of agent autonomy as “the range of potential independent action available to an agent²” *within* the decision-making process (i.e. the ability of agents to act autonomously from their principals within the decision-making process) and principal controls as the ability of principals to hold agents responsible for the *observed outcomes* of the decision-making process.³ The degree of agent autonomy thus focuses on the degree of control exerted over agents and their actions *during* the decision-making process, while principal controls are similar to the idea of sanctioning mechanisms, and play a role *after* an outcome has been reached.⁴

² This language comes from the definition of ‘autonomy’ used within the principal-agent analysis in the edited volume Hawkins, Lake, et al. (2006, p.8). However, my conceptualization of the defining variables of the principal-agent relationship differs somewhat from theirs. Because I am interested in decision-making processes, and thus the formation of laws and agreements, the two-stage process of *ex ante* constraints and *ex post* controls is central to my analysis, because it gets at the difference between the available range of actions to agents within the decision-making process itself, and the *ex post* sanctions available to principals based on the agreement that is reached (not the actions themselves that are taken by agents) in this process. In many other settings, this distinction is not as important because agreements and laws are not being taken in these settings, and therefore, these two variables are often compressed into one variable, such as the ‘autonomy’ variable in the analysis in the edited volume Hawkins, Lake, et al. (2006). However, because constraints within the decision-making process and controls after this process based only on the agreement reached can have very different effects on decision-making and the specific actions and strategies adopted by agents, the conceptualization of the principal-agent relationship here specifies a difference between these two variables. Comparing the definition of variables here to the variables specified in their edited volume, I equate autonomy only with the ‘discretion’ aspect of principals’ controls specified by Hawkins, Lake, et al. (2006), and treat the other controls not as another factor in defining the of ‘agent autonomy’ variable, but as constituting a separate variable, ‘principals’ controls,’ which I argue plays a different role in impacting agents’ actions.

³ This distinction centers on the informational asymmetry of a principal-agent relationship (Macho-Stadler and Pérez-Castrillo 2001). Because the specific actions taken by agents are often unobservable, and thus only the outcome is actually observed – principals can often only hold agents responsible based on *observed outcomes* rather than *adopted actions* (Downs and Rocke 1994). This leads to the “principals’ problem” of trying to control agents’ *actions*, as discussed below.

⁴ This corresponds to the idea of *ex ante* and *ex post* controls discussed by Pollack (2003). Following the logic of creating a single variable to represent autonomy given the degree of principal controls, as in Hawkins, Lake, et al.

The focus on much of the ‘canonical’ principal-agent literature (examining the more governance-oriented types of delegation) is in finding solutions to “the principal’s problem” – ways to control the actions of agents *within* the decision-making process itself, and thus limiting their autonomy (Holmstrom 1979; Shavell 1979; Downs and Rocke 1994; Epstein and O’Halloran 1994; Macho-Stadler and Pérez-Castrillo 2001; Bergin 2005; Miller 2005; McCarty and Meiwowitz 2006). This literature often focuses on the manipulation of incentive mechanisms (e.g. Shavell 1979; Macho-Stadler and Pérez-Castrillo 2001) and procedural mechanisms (e.g. McCubbins, Noll et al. 1987) as ways to control agents in institutional settings where principals cannot directly control and monitor agents.

However, outside of the more canonical approach, some principal-agent analysis has focused on the principal’s “other problem” – in particular, problems of the principal’s moral hazard and credible commitment (e.g. Schelling 1960; North and Weingast 1989; Kiewiet and McCubbins 1991; Martin 1992a; Mayer 1995; Stone 2002; Keefer and Stasavage 2003; Pollack 2006). From this perspective, “it is possible for the principal’s pursuit of her own self-interest to be self-destructive” (Miller 2005) – leading to inability to make credible commitments and carry out decisions which may lead to greater overall efficiency exist.

I argue that a similar type of negative relationship between tight principal control and the representation of interests and efficiency in “cooperative bargaining processes”. Principals whose agents are tightly controlled to concentrate on and pursue only the principals’ narrow conception of their own self-interest may lose many possible gains from agreements, often leading to the inefficiency of decision-making outcomes.

(2006), I taken into account the fact that *ex post* may serve as a potential *ex ante* constraint by impacting agents’ expectations of future actions by the principal. In order to capture this potential effect, in operationalizing ‘agent autonomy’ I include a consideration of the agent’s perception of her own autonomy. This is not the *same* as principal controls, but captures *ex ante* effects they may have on agents’ actions *within* the decision-making process.

In making this argument, I first define a “cooperative bargaining process” and fit that conceptualization into the current literature. I then argue that in these “cooperative bargaining processes”, rather than constraining agents, giving agents *autonomy* will lead to a greater representation of principals’ interests in outcomes. I then present discuss the operationalization of these concepts, and then utilize a case of decision-making in the European Union to highlight this argument at work.

III. Conceptualizing “Cooperative Bargaining”

‘Cooperative bargaining’ refers to the cooperative character of the strategic interaction that takes place in the decision-making process. Most definitions and conceptualizations of cooperation in a bargaining/decision-setting are focused on the reaching of an agreement ((Myerson 1991; Young 1991; Sebenius 1992a; Fearon 1995; Muthoo 1999) – i.e. “coordinating on one of the possible equilibrium outcomes” of a bargaining process (Krasner 1991) – or on the time it takes to reach an agreement (Fearon 1998).

It is also important, though, to examine cooperation in terms of the *character of interactions* that take place among the actors in the negotiation of a joint agreement. This is because different types of interactions, I argue, require *different* types of actions on the part of negotiators in order to have the interests they represent reflected in outcomes, which in turn has important implications of for principal-agent relationships. I take defining this cooperation to task in this section, and then relate the conceptualization here into current literature on different bargaining processes.

III.A. “Cooperative Bargaining”

Though cooperation is an important aspect of domestic decision-making, and of coalition formation in particular, the international relations (IR) literature has devoted extensive analysis

to defining and analyzing cooperation, and thus it is this literature upon which I draw to define a process of “cooperative bargaining”.

Now an accepted standard in the IR literature, Robert Keohane (1984) defined cooperation as actors’ mutual adjustment of policies which are in conflict to bring them into conformity with one another.⁵ While this definition describes the enforcement phase of cooperation through policy adjustment, its defining feature of ‘mutual adjustment’ in the face of conflicting interests is generalizable across multiple types of cooperation. I build upon this general definition to derive a more detailed definition of “cooperative bargaining” which can be applied to bargaining processes and the character of the interactions within that process.

Following this general “mutual adjustment” definition, cooperation within a bargaining process – “*cooperative bargaining*” – is defined here as “working or acting together willingly for a common purpose or benefit in the presence of conflicting interests”. This definition thus captures the presence of conflicting interests, the idea of bringing actors’ actions into ‘conformity’ with the idea of a “common purpose or benefit” and the idea of “mutual adjustment” with the idea of “willingly working or acting together”.

As will be discussed in more detail later, the observable evidence of ‘cooperative bargaining’ is connected to the nature of the offers made by the parties. “Cooperative bargaining” is characterized by a series of offers that would be Pareto-superior to the status quo *for those players not making the offer*. Empirically, it will be characterized by the willing offering of concessions (or, potentially, by an offer that is status-quo improving for both (all) players⁶). On the other hand, “competitive (or “non-cooperative”) bargaining” tactics will be

⁵ See discussion on p. 51-54 for description of this definition. See (Milner 1992) for defense of the claim that there is a ‘consensus’ on this definition.

⁶ This type of offer would still be Pareto-superior for the parties not making the offer, and thus fits the cooperative bargaining definition. It is possible, of course, that an offer that is made, while Pareto-superior for parties not

characterized by proposals that are not Pareto-superior to the status quo for the other player(s) – in other words, by “threats”. These two ideal types can be used to construct a scale by weighting and coding different offers to yield a categorization of each bargaining process along a continuum with cooperative and competitive bargaining as ideal types at the opposite poles.

It is the degree of “cooperative bargaining” (as defined in this way) that this project seeks to explain. This project further provides an argument for how cooperative bargaining can be fostered in the face of actors’ conflicting interests in order to achieve long-term, as well as short-term cooperation among the actors.

Given these two different conceptions of cooperation in a bargaining setting, and the importance of distinguishing between them, I use the current term in the literature “bargaining cooperation” to refer to the reaching of a joint agreement and the term “cooperative bargaining” – the dependent variable in this analysis – to refer to the cooperative character of the bargaining *process*.

III.B. Cooperative Bargaining and the Integrative Bargaining Literature

A note should be made that this definition of cooperative bargaining largely parallels the concept of ‘integrative bargaining’ (Walton and McKersie 1965; Lax and Sebenius 1986; Susskind and Cruikshank 1987; Kublin 1995).⁷ Thus, the analysis presented here can largely be interpreted to explain how we bring about an ‘integrative bargaining’ process – as it is conceptualized in much of the literature.⁸ However, for several reasons, I adopt the concept of

making the offer, may *also* be a Pareto-improvement for the party that is making the offer. For more on this type of cooperative bargaining move, see discussions of ‘bridging tactics’ (Pruitt 1981). This type of bargaining move is not required by the definition of cooperative bargaining, but is merely a subset of cooperative bargaining moves in general.

⁷ ‘Integrative bargaining’ is also sometimes referred to in the literature as ‘problem-solving.’ For examples of this usage, see (Hopmann 1995; Elgström and Jönsson 2000). See (Pruitt and Rubin 1986) for the connection between these two terms.

⁸ For examples of a conceptualization of ‘integrative bargaining’ that largely parallels this ‘cooperative bargaining’ concept, see (Hopmann 1995).

‘cooperative’ rather than ‘integrative’ bargaining. A discussion of these reasons, and how the concept of ‘cooperative bargaining’ relates to ‘integrative bargaining’ is helpful not to highlight how this concept relates to the commonly used concept of ‘integrative bargaining’ in the current literature, as well as to better highlight the facets of a cooperative bargaining process.

I adopt the concept of ‘cooperative’ rather than ‘integrative bargaining’ largely to deal with two issues with the concept of ‘integrative bargaining’ as it exists in the current literature. First, the concept of ‘integrative bargaining’ carries with it a large deal of normative baggage that I do not want to have clouding my argument. My argument itself is agnostic about whether one ‘should’ or ‘should not’ engage in integrative bargaining, and is merely an argument about the *conditions* under which we will see ‘cooperative’ (‘integrative’) types of bargaining processes and the implications this has for long-term cooperation. This argument may be of use for those who want to make these normative arguments, but I do not want to get into this issue, or to have it clouding the argument that I am making.

Second, and most importantly, as highlighted by Otomar Bartos (Bartos 1995), “different writers have somewhat different ideas about what this approach, [integrative bargaining], entails and give it somewhat different names” (Bartos 1995, 50). The concept of ‘integrative bargaining’ has several different meanings and interpretations in the various literatures in which it is used, and all of these meanings do not necessarily correspond to what I am attempting to explain in my argument. I thus introduce the term ‘cooperative bargaining’ to capture particular facets of ‘integrative bargaining’, without implying the other meanings which are associated with it.

First, integrative bargaining is sometimes used to categorize a situation defined by the *process* that is taking place, but is sometimes used to define the *constellation of interests*

surrounding a bargain – where ‘integrative bargaining’ is any situation in which common interests exist, and the process that takes place may or may not correspond to the integrative bargaining *processes* discussed elsewhere in the literature (e.g. Goldman & Rojot 2003).

My interest is in the *process* that takes place, and I adopt the definition of a ‘bargaining situation’ that is common in the literature which defines a bargaining situation as one in which both common and conflicting interests *both* exist. The real focus, then, is whether the conflicting interests are the sole focus of the bargaining process or whether this conflicting interest can be overcome in order to allow a focus on the common interests as well. It is this distinction that separates my conception of ‘cooperative’ bargaining from ‘competitive’ (non-cooperative) bargaining.

Second, ‘integrative bargaining’ is sometimes contrasted with ‘competitive’ bargaining and sometimes with ‘distributive’ bargaining. ‘Distributive’ bargaining is not necessarily the antithesis of what I am arguing is ‘cooperative’ bargaining. In a ‘distributive’ bargain, the focus is on movement along a single ‘bargaining space’ continuum. However, this does not necessarily mean that ‘competitive’ processes will result. In particular, cooperative behavior can still be present in this type of situation, most notably in the offering of concessions (Bartos 1995; Druckman and Mitchell 1995). In addition, the distribution of gains from a bargaining process will always be a part of bargaining (Lax and Sebenius 1986; Sebenius 1992a; Sebenius 1992b). So of interest in this project is the character of process that we see characterizing the bargain *overall* – competitive or cooperative.

Overall, ‘integrative bargaining’ is often used to mean several different things – joint problem-solving (Walton and McKersie 1965; Pruitt 1981; Elgström and Jönsson 2000), bargaining that involves ‘search behavior’ (Bartos 1995), multi-issue negotiations (Riaffa 1982;

Gupta 1989), any bargain with common interests (Goldman and Rojot 2003), bargaining focused on common interests (Lax and Sebenius 1986; Elgström and Jönsson 2000), ‘creative’ negotiation processes (Basadur, Pringle et al. 2000; Elgström and Jönsson 2000), ‘bridging’ behavior (Pruitt 1981), a consensus focus (Lewis 2003), positive-sum (v. 0-sum) orientation (Lax and Sebenius 1986; Elgström and Jönsson 2000), focus on absolute (v. relative) gains (Hopmann 1995), the existence of a desire to reach agreement (Lax and Sebenius 1986), etc. So I want to choose a concept – ‘cooperative bargaining’ that is more clear in precisely what is (and is not) meant by the term, rather than implicitly implying these different definitions by the adoption of the term ‘integrative bargaining’, depending on the orientation of the reader.

For these reasons, then, while ‘cooperative bargaining’ largely parallels the ‘integrative bargaining’ concept, I chose to more specifically define what ‘cooperative’ bargaining entails, and how it relates (and does not relate) to the different meanings and implications of ‘integrative bargaining’ in the literatures. I thus adopt the conceptualization of ‘cooperative bargaining’ versus ‘competitive bargaining’ (or ‘non-cooperative bargaining’), though aspects of the ‘integrative bargaining’ can be captured by this ‘cooperative bargaining’ concept.

IV. Agent autonomy and “Cooperative” versus “Competitive” Bargaining

Drawing on this conceptualization of cooperative versus competitive bargaining processes, I argue that in the context of principal controls, agent autonomy is important for the fulfillment of principals’ interests in a cooperative bargaining process while agential *constraint* is important for interest fulfillment in competitive bargaining processes.

The existence of principal controls provides a type of sanctioning mechanism based on the agreement reached among the negotiating agents. Though these controls are not explicitly linked to agents’ actions and strategies within the bargaining process, they provide a way to

ensure that whatever actions and strategies are adopted by negotiating agents, they are largely in pursuit of the principals' interests, rather than the interest of the agents. Within this context, then, I argue that giving agents autonomy to choose their actions and strategies is important in cooperative bargaining processes, while constraining them is important in competitive bargaining processes.

In particular, agent autonomy is important in order for two important types of actions to be taken by negotiating agents, based on this substantive knowledge. First, autonomy allows for the sharing of information about the interests, perspectives and problems underlying stated positions between the agents involved in the bargaining process from which an understanding of each others' underlying interests can develop. Second, autonomy allows negotiating agents to more easily 'give' on certain issues in a bargain.

Consistent with the predictions of prospect theory (Kahneman and Tversky 1979), which argues that rational actors will be risk-averse with respect to gains, but risk-averse with respect to losses, I argue that principals who do not have substantive information and experience in bargaining situations often treat all bargaining settings as involving 'competitive' bargaining processes. They often, therefore, act in a risk-averse way with respect to information-sharing and bargaining strategies. Given this risk-averse stance, principals thus first prefer to protect their private information about their weaknesses and true interests. An agent tightly constrained would therefore be prevented from engaging in the sharing of such information.

In addition, acting in a way consistent with this risk-aversion with respect to bargaining loss, principals approach bargaining with a 'competitive' orientation. Engaging in competitive bargaining strategies in either a competitive or cooperative bargaining process may result in less severe losses than engaging in cooperative bargaining in a competitive bargaining process.

Therefore, the risk-averse principal will likely treat every bargaining setting in a competitively-oriented manner. This is especially likely in the international realm, where relative gains concerns may dominate states' orientation toward bargaining (Waltz 1979; Grieco 1988; Hopmann 1995).

Agent autonomy is important, I argue, because it allows agents to act on their substantive knowledge and experience in bargaining processes. In particular, because agents are participating in the bargaining process, they can identify the character of the interaction taking place, within what are often closed-door settings (Stasavage 2004). They can therefore utilize their autonomy to tailor their bargaining strategies to the process at hand. Thus, in cooperative bargaining processes, an agent with autonomy can share information about the interests underlying a bargain, and to be able to “give” on certain issues.

As defined above, cooperative bargaining, which is centered around the idea that bargaining agents “give” on some issues in order to “gain” on issues that are more central to their interests. The sharing of information is an important step which must precede this bargaining process, because it allows the bargaining agents to identify where potential trade-offs among issues lie. If bargaining agents do not know which issues are more important to the other actors in relation to their own interests, the identification of the particular issues on which to “give” is more difficult (Goldman and Rojot 2003, 53). This is compounded by the fact that principals may often not only want to not share information about their interests, but also to strategically misrepresent those interests (Myerson 1979; Myerson and Satterthwaite 1983; Myerson 1984; Myerson 1991; Talley 1994). Thus, the information sharing allowed by agent autonomy is important for agents to be able to participate and reap the gains of cooperative bargaining interactions among the negotiating actors.

Furthermore, willingly offering concessions – i.e. “giving” – on some issues in a bargain is a defining feature of cooperative bargaining. This is also something that requires autonomy on the part of the agent. Given the principals’ risk-averse orientation to bargaining losses, they are often unwilling to give on any issue in a bargain, even those not central to their interests, in order to avoid appearing ‘weak’ (Morrow 1992) and therefore potentially leading to “losing” on issues of more importance as well. Furthermore, the competitive orientation that stems from this risk aversion with respect to bargaining losses also leads to a general unwillingness to offer concessions in a bargaining process.

Autonomy is thus again highlighted as a central factor for bargaining actors to participate in cooperative bargaining. Bargaining agents who have autonomy are thus expected to utilize their substantive knowledge and past experiences to identify cooperative bargaining situations, and in these situations to share information about their principals’ underlying interests and participate in the cooperative bargaining process by offering concessions on some issues included in the bargain.

By participating in this cooperative bargaining process, agents are able to best achieve their principals’ interests in these situations by having their overall interests reflected in what are largely Pareto-superior outcomes to those produced by competitive bargaining, given the nature of the offers which embody cooperative bargaining. In other words, they are able to achieve agreements closer to their principals’ interests on issues more central to those interests than they would in competitive bargaining on those issues, while offering Pareto-superior agreements to opponent bargaining agents on other issues which are of less importance to their principals’ interests. They are thus able to gain more *overall* and better achieve their principals’ interests in bargaining outcomes.

Conversely, though, I argue that tightly constraining an agent will best achieve the reflection of principals' interests in the agreements reached in competitive bargaining processes. Given their substantive knowledge, agents are able to identify competitive bargaining situations and adjust their bargaining strategies accordingly, as they do in cooperative bargaining processes. In addition, the existence of principal controls will help to ensure that the strategies these agents adopt will be largely consistent with the principals' interests. However, given that agents also possess their own particular interests, the *threats* associated with and adopted in competitive bargaining processes can often not be made *credibly* by agents with a large degree of autonomy.

Agents have their own interests, separate from those of their principals (e.g. Pollack 2003; Miller 2005). In bargaining settings, these types of interests often involve an interest in reaching agreements as well as interests in the relationships that they develop with other negotiators (Lax and Sebenius 1986). Given these interests, the threats of reversion and misrepresentation of interest can not be made *credibly* by agents with these interests. When the time comes to carry through with those threats, it will not be in their own interest to do so – even though it is also in their interests to further their principals' interests.

Tightly constraining agents in competitive bargaining situations can therefore lend these threats *credibility* – and therefore help them to be effective bargaining strategies in these competitive bargaining processes (Schelling 1960). This *credibility* stems from the fact that tightly controlled agents facing principal controls are often unable to act against the principals' specific instructions and positions. Most importantly, principals' interests do not suffer from this *credibility* problem. The interests of principals are often not as focused on the reaching of an agreement, in and of itself. Even though an agreement may be in their interests in the 'absolute

gains' sense, the internal coordination among multiple principals (Babbitt 1999) or the importance of relative gains versus absolute gains (Mearsheimer 1994/95; Hopmann 1995) will often have any interest they have in reaching an agreement, in and of itself, trumped by these other factors. Furthermore, principals do not possess the same type of relationship interests that negotiating agents do. The principals themselves are often not engaged in strategic and interpersonal relationships among themselves. Their instructions and interests are therefore often separate from these types of relationship interests.

Given these interests, instructions from these principals can therefore make credible threats. Thus, tightly constraining agents in competitive bargaining situations can therefore be used to credibly engage in the tactics associated with and successful in competitive bargaining processes.

Therefore, challenging the conventional argument of the canonical principal-agent and rationalist international relations (IR) bargaining literatures, arguing that the importance of constraining representatives' actions and choices *varies* depending on the type of bargaining process in which they are involved.

In cooperative bargaining processes, giving representatives a high degree of autonomy will allow agents to adopt the strategies necessary to successfully have interests represent in the outcomes of this type of bargaining. On the other hand, in competitive bargaining processes, constraining one's representatives will lend credibility and therefore, effectiveness, to the strategies associated with success in these types of interactions.

IV.A. Testable Hypotheses

This argument, then, leads to the following testable hypotheses. I expect that, in the context of principals' controls: (1) In "cooperative" bargaining processes, holding all else

constant, an increase in agent autonomy will lead to an increase in the reflection of the principals' interests in the bargaining agreements reached. (2) In "competitive" bargaining processes, consistent with the bargaining power and principal-agent literatures, holding all else constant, decreasing the level of agent autonomy (i.e. constraining agents) will lead to a greater reflection of principals' interests in outcomes.

These hypotheses can be empirically tested in order to evaluate the argument made here. To do so, though, the concepts of agent autonomy, principal controls, and cooperative bargaining need to be operationalized so that these concepts can be theoretically analyzed and empirically observed.

V. Operationalization of Central Concepts

V.A. 'Cooperative Bargaining' Operationalized

As defined above, 'cooperative bargaining' refers to "working or acting together willingly for a common purpose or benefit in the presence of conflicting interests". The observable empirical evidence of cooperative bargaining has to do with the nature of the offers that are made and observed. Offers that are Pareto-improving for parties other than the offerer constitute evidence for cooperative bargaining; refusal to make any concessions even in the face of others' concessions, tactics aimed at avoiding the need to make concessions, and threats of reversion constitute evidence of competitive bargaining.

"Cooperative bargaining" is characterized by a series of offers that would be Pareto-superior to the status quo *for those players not making the offer*. Empirically, it will be characterized by the willing offering of concessions (or, potentially, by an offer that is status-quo improving for both (or all) players⁹) – and thus will not be a bargaining process in which

⁹ This type of offer would still be Pareto-superior for the parties not making the offer, and thus fits the cooperative bargaining definition. It is possible, of course, that an offer that is made, while Pareto-superior for parties not

bargaining power plays a central role. These types of cooperative moves can be present, even in a ‘distributive’ type of bargaining situation (i.e. one-dimensional with conflicting interests) (e.g. Bartos 1995; Druckman and Mitchell 1995). These concessions can be specific trades or nonspecific. In other words, the trade of concessions can be linked to specific concessions in return or they can be made without the expectation of a specific reciprocal concession, but with the idea that concessions will be made in some way at some point in the future (i.e. diffuse reciprocity).¹⁰

The important factor in the observation and measurement of this aspect of cooperative bargaining would be the importance of ‘willingness’. Concessions brought about by coercive moves such as threats, or strategically misrepresented information would not be aspects of a ‘cooperative’ bargaining process. Thus, the lack of these factors is important. The presence of these types of factors is evidence of ‘competitive’ bargaining.

“Competitive (or “non-cooperative”) bargaining” tactics will be characterized by offers (“threats”) that are not Pareto-superior to the status quo for the other player(s). Empirically, the use of ‘threats’ and the use of other types of tactics designed to elicit unwilling concessions from the other party – in other words, the use and exploitation of “bargaining power” – will characterize competitive bargaining. In addition, given the lack of willing concessions in this type of bargaining, tactics designed to help prevent oneself from making of concessions will characterize “non-cooperative” types of processes. Thus, threatening reversion to a worse point than the status quo absent concessions, exploiting bargaining power, or seeking to construct a

making the offer, may *also* be a Pareto-improvement for the party that is making the offer. For more on this type of cooperative bargaining move, see discussions of ‘bridging tactics’ (Pruitt 1981). However, this type of bargaining move is not required by the definition of cooperative bargaining, but is a subset of cooperative bargaining moves in general.

¹⁰ For discussions of ‘diffuse reciprocity’ see (Elgström and Jönsson 2000; Lewis 2000; Lewis 2005).

winning coalition that leaves some party or parties (outside of the coalition) worse off than before the agreement constitute evidence of competitive bargaining.

In addition, the manipulation of private information designed to prevent oneself from making concessions and eliciting concessions from others also constitute evidence of competitive bargaining. Thus, the manipulation of private information in ‘non-cooperative bargaining’, including commitments, threats, promises, moves to alter the perception of one’s “best alternative to a negotiated agreement” (referred to as the BATNA), moves to alter the others’ perception of their own BATNA, and moves to force the other to reveal his/her interests would also indicate evidence competitive bargaining (Walton and McKersie 1965; Lax and Sebenius 1986).

Using these two characterizations of cooperative and competitive (non-cooperative) types of bargaining, the tactics of the negotiators involved in a bargaining process can be coded as more or less ‘cooperative.’ Combining these together, an aggregate measure of the degree of cooperation displayed within a bargaining process can be made by weighting and coding different offers. This will create a continuum, with ‘cooperative’ and ‘competitive’ bargaining as ideal types – the end-points of the poles as discussed by Gary Goertz (2006).¹¹ This “degree of cooperative bargaining” creates different ‘institutional’ settings in which I argue that *different* degrees of constraint exerted over agents will lead to the maximization of interest in bargaining outcomes.

V.B.: Operationalization of the ‘Degree of Agent autonomy’

The degree of ‘agent autonomy’ refers to the “range of independent action” allotted to the agent by the principal (Hawkins, Lake et al. 2006, 8) within the decision-making process – with greater degrees of agent autonomy categorized as ‘agent autonomy’ and lesser degrees

¹¹ See discussion on p.30-35.

categorized as ‘agential constraint’. Operationally, the degree of agent autonomy embodies three types of observable factors – formal, institutionalized constraints, *de facto* constraints, and the perception that representatives have of the constraints placed on them. In terms of formal constraints, we can look to the explicit or ‘contractual’ delegation of power to agents to examine how much authority they have to take decisions on behalf of their principals. Can the principals veto a decision taken by the agents? In an international setting, does the agent have plenipotentiary powers (the ability to take decisions on behalf of the state)?

In terms of *de facto* constraints, the various ways that principals can exert control over the agents’ actions within the decision-making process should be taken into account. First, an agent with a high degree of autonomy will have input into the instructions they receive from their principals. This can take the form of involvement in the instruction process, or the lack of an explicit instruction process, in which the expectations for agents’ actions are laid out. This may be especially relevant in situations of multiple principals.¹² In situations where disagreement exists between the principals, agents often play a role in coordinating the interests of the various principals, thus having input into the instructions they receive (Cutcher-Gershenfeld and Watkins 1999). Second, and relatedly, a high degree of agent autonomy is characterized by actions taken by agents within the bargaining process that deviate from explicit instructions, or actions taken without direct instructions. In situations of multiple principals, this may again be more prevalent, because agents are often perceived as being neutral with respect to the political battle taking place among these principals (Moe 1987b). They thus may be given greater leeway in deviating from instructions or not given instructions. Finally, a high degree of agent

¹² For explicit discussions of the effect of multiple principals, see (Sebenius 1983; Moe 1984; Moe 1987a; Moe 1987b; Babbitt 1999; Nicolaïdis 1999; Miller 2005). The existence of multiple principals does not affect the fundamentals of the argument being forwarded here, but may play a role in affecting the level of autonomy that agents are given. Additionally, evaluating the ‘overall’ interests of the principals may be more difficult in situations where they possess different interests. It thus raises important implications for the coding of these variables, and will be carefully considered when doing so.

autonomy is characterized by the holding of private information by the agents, which may be shared with the principals or withheld, the use of this private information within the bargaining process, and the sharing of the private information of principals with other agents.

Finally, the level of autonomy that agents perceive themselves as having is another important factor to measure.¹³ This is because despite the formal and *de facto* constraints on agents, their perception of how much autonomy they have may be an important influence in further constraining their actions, or possibly in leading them to adopt actions that exceed what their constraining principals may intend. While this is difficult to measure reliably, because it requires self-reporting, that does not mean that this conceptual facet should be dismissed, and this information can be elicited through interview or survey work.

Where these factors, or several of these factors, are identified, I argue that the institutional relationship between principal and agent is characterized by a high degree of agent autonomy, which I refer to as ‘agent autonomy.’ Where these factors are not present, or very few of these factors are present, I argue that the institutional relationship is characterized by lower degrees of autonomy, or what I refer to here for discussion purposes, as ‘agential constraint.’ In actuality, agent autonomy is a continuum and while the theory is laid out in terms of either/or, in reality, and in coding this variable and testing this argument, it will be treated as a categorical, ordered variable overlying an underlying continuum.

V.C.: Principals’ Controls Operationalized

The concept of ‘principals’ controls’ refers to the ability of principals to hold agents responsible for the outcomes of their actions taken within the decision-making process. It is

¹³ This perception of autonomy may capture *ex ante* effects that *ex post* principals’ controls may exert. Because though, these controls may or may not exert *ex ante* effects, this aspect of autonomy is conceptually distinct from the principals’ controls themselves, for the reasons laid out above. This is designed merely to capture the possible *ex ante* effects that these controls *may* exert.

conceptually distinct from the degree of agent autonomy in that it does not refer to the agents' actions within the bargaining process, but to the ability of the principal to sanction the agent after the fact. If agents abuse the autonomy that they have in the bargaining process to engage in 'shirking' - pursuing their *own* self-interest at the expense of their principals' interests – and the bargaining *outcomes* reflect this, the principals can sanction or remove the agent. Thus, the effect of principals' controls is to prevent agents' use of high degrees of autonomy to engage in 'shirking.' This mechanism is thus conceptually distinct from agent autonomy, as discussed above, which refers to explicit hindrances on the actions taken by agents within the bargaining process of decision-making.

This concept is operationally characterized, first, by a short term of appointment to the agential position and second, by the type of selection mechanism principals use to choose their agents, such as election, appointment, or appointment with a confirmation mechanism. The more direct the appointment mechanism and the more frequently it occurs, the greater the ability of principals to use "continuance or renewal of the appointment" to hold an agent responsible.¹⁴ Most importantly, the concept of principals' controls is characterized by the ability of principals to sanction agents or their ability to override a decision taken by agents, if they do not support them.

VI. Alternative Explanations

While I argue that it is the autonomy of agents in "cooperative bargaining" processes and the constraint of agents in "competitive bargaining" processes that lead to the maximization of interests, there are several other possible explanations for variation in the representation of interests in bargaining outcomes.

¹⁴ In cases of representative positions which may not be as favorably viewed, or are viewed as stepping stones to something more prestigious, the future appointments or elections to other institutions may be used in a similar way.

First, the potential influence of political culture on the adoption of different types of bargaining strategies should be considered. Political culture has been shown to be an important factor in explaining the behaviors adopted within the political life of a state (Pye and Verba 1965; Benedicto 2004). Some political cultures may simply be more cooperatively oriented, while others may be more individualistic and competitive, and this difference in culture, rather than variation in agents' autonomy may explain agents' decision-making strategies and thus the degree of interest maximization in bargaining outcomes. Thus, the political culture from which an agent comes is an important factor that needs to be controlled for in order to have confidence in any relationship found between agent autonomy and the character of the strategies the agent adopts, representing her principals' interests in a decision-making, interest-aggregation setting.

Second, the power of the different principals involved in a decision-making process may lead to the adoption of 'competitive bargaining strategies.' Since relative power – i.e. relative bargaining power – often conceptualized in terms of a state's size and resources in the international relations literature examining the importance of power in decision-making processes – is the most important factor in the maximization of interests in a zero-sum, distributionally oriented, competitive bargain, states with the most power can expect to gain the most from this type of bargain, and thus will be more likely than small states to adopt these types of bargaining strategies, as well as to have their interest maximized through the use of such strategies. Therefore, controlling for the relative size and power of principals is important in order to empirically assess the argument presented here.

Third, the level of politicization of decisions being negotiated may influence the behavior adopted by representatives and thus the way that interests are ultimately reflected in negotiated outcomes. For example, on issues that are highly politicized, representative agents may be

unwilling to compromise on narrow self-interest of their principals, while on issues of lesser politicization they may be more willing to compromise. This may be due to the level of publicity and public scrutiny attached to more politicized issues (Elgström and Jönsson 2000; Stasavage 2004) and/or possible reputational concerns arising with being identified as ‘giving’ on these types of issues.¹⁵ Therefore, competitive strategies and lowest common denominator outcomes may be expected on highly politicized issues, but integrative strategies and agreements above the lowest common denominator may be more likely on issues with a low level of politicization, and thus this politicization factor needs to be controlled for in the analysis of the argument presented here.

Fourth, the type of voting rule used to take a decision may also govern the type of strategies chosen by agents and thus, the way interests are reflected in outcomes. Where unanimity is the voting rule, each representative possesses the ability to veto a negotiated agreement. In these types of decision-making settings, agents may be less willing and likely to engage in cooperative, compromising ‘integrative’ strategies where ‘they don’t have to’ (e.g. Scharpf 1998; Elgström and Jönsson 2000; Michalak 2001).

In addition, this type of decision-making setting may be viewed by agents as giving them more ‘leverage’ for competitive tactics (Krasner 1991), and may therefore lead to the adoption of more competitive strategies within the decision-making process. Under a voting rule where not all representatives have to agree for a decision to be taken, the veto cannot be used to the same degree to influence an outcome, and thus competitive strategies may be less likely, first, because the leverage of the veto is absent, and second, reputational concerns may be a factor in coalition formation, where agents who are seen as uncooperative may isolate themselves from

¹⁵ In some issues, politicization may also bring strong partisan preferences into the decision-making process, which may also lead to less willingness to compromise on these issues.

consideration in the formation of these coalitions (Riaffa 1982; Sebenius 1983; Lax and Sebenius 1991; Moravcsik 1993, 502-504).

Furthermore, in order to create a coalition large enough to vote for an agreement under this type of voting rule, consideration of others' interests, and issue trade-off – all 'integrative,' cooperative tactics – may be seen as tools to form this winning coalition. The voting rule, another potential explanation for the relationships posited, thus needs to be controlled for to have confidence in any findings supporting an explanation stemming from the role of agent autonomy.

Finally, different issue areas may foster different types of bargaining strategies. Issue areas more politically sensitive or more oriented toward 'high' politics (Waltz 1979) may lead to different, and more competitively-oriented types of bargaining strategies (because they are more egoistic and individually oriented in such situations) than more 'technocratic' or economic issue areas – and thus 'technocratic' issue areas are more likely to foster cooperation (Waltz 1979; Lipson 1984; Krasner 1991). That this is expected even within the context of the EU can be seen in arguments that the EU competence should expand and create 'spill-over' effects in the more technocratic issue areas, but not necessarily the more 'high politics' issues (Haas 1958; Stone Sweet and Sandholtz 1997).

All of these alternatives provide an explanation for the same behavior and outcomes predicted by the autonomy and cooperative bargaining theory predicted above. Therefore, in the construction of the research design and choice of cases, these alternatives need to be carefully considered.

VII. Case Selection and Methodology

In evaluating this theory empirically, careful case selection is important because of the nature of the topic – i.e. that information on *all* decision-making processes cannot be obtained. I

thus chose to analyze decision-making in the European Union (EU). First, the EU is an *international* decision-making setting, and one in which the need for tight constraints over state representatives¹⁶ are generally argued to apply. Thus, the EU stems from a category of ‘least-likely’ cases (Eckstein 1975) for an argument about the importance of giving representatives a high degree of autonomy.

In the case of COREPER and the Council Working groups, the member state representatives act as ‘agents,’ representing their member state within the decision-making process of the EU. However, the member states are not unitary actors. In this analysis, I thus treat the various Ministers who make up the government as the principals. They each have their own interests, and depending on the issue area, oversee different decisions taken by their member state representatives.

In addition, bargaining among the EU member states within COREPER takes place across many directives and issues which vary on the alternative explanations of interest here. Examining a general argument that holds in general within COREPER across these different directives, and therefore these alternative explanations, helps to give support to the theory presented here. If this theory holds in this more general evaluation, a more explicit research design which specifically addresses these alternative explanations will be warranted.

The importance of constraining state representatives in an EU context has been demonstrated by previous literature (e.g. Slapin 2006). I therefore briefly demonstrate that these previous literatures examine competitive, rather than cooperative bargaining, and therefore, that their findings lend empirical support for Hypothesis 2. I then take to task the importance of empirically demonstrating the more counter-intuitive argument presented by Hypothesis 1 – that

¹⁶ For examples, see (e.g. Putnam 1988; Hosli 2000; König and Hug 2000; Hug and König 2002; Slapin 2006).

in cooperative bargaining, giving agents autonomy is important for the fulfillment of principals' interests in bargaining agreements.

VIII. Agential Constraint in Competitive Bargaining

Current literatures examining international bargaining often argue for the importance of constraining negotiations' actions and choices. In particular, it is argued that a state whose representatives' actions and choices are constrained within the decision-making process gains greater bargaining power and leverage, and will thus have their interests better represented in bargained outcomes (e.g. Putnam 1988; Hosli 2000; König and Hug 2000; Hug and König 2002; Slapin 2006).

The importance of constraining representative 'agents' to maximize one's interests, which is highlighted by this IR bargaining power literature is further emphasized within the political science literature more generally, as it is a central component and focus of canonical principal-agent arguments: given that agents have their own interests, sometimes conflicting with the interests of the principal they represent, the constraint of agents' actions by the principals is important for maximizing principals' interests (Pratt and Zeckhauser 1984; Downs and Rocke 1994; Macho-Stadler and Pérez-Castrillo 2001; Pollack 2003).

The important role that constraining negotiators plays in furthering member state interests has been made, in particular, in studies examining bargaining in the EU context. Importantly, though, these studies are often focused on bargaining within competitive bargaining processes. Therefore, their predictions are consistent with Hypothesis 2 of the argument made here. Important examples of this argument include Hug and König (2002), arguing that member states with higher domestic ratification constraints were better able to eliminate undesirable issues at the Amsterdam Intergovernmental Conference (IGC) than member states with lower domestic

ratification constraints; and Slapin (2006) who argues that member states with difficult parliamentary ratification pivots tended to perform well at the IGCs leading into the Treaty of Amsterdam.

In these papers – and other works like them – the case being examined is an intergovernmental conference over the construction of a new Treaty for the EU. In particular, both of these main works which examine this agential constraint argument in the EU context examine the bargaining over the creation of the Amsterdam Treaty – a case which is dominated by a competitive, rather than cooperative bargaining process.

As has been argued and demonstrated in literature examining these IGCs in general, they are empirically dominated by bargaining power (e.g. Moravcsik 1998) and threats of reversion to the status quo (i.e. veto threats) (e.g. König and Hug 2000; Dür and Mateo 2006).¹⁷ In addition, Slapin (2006) argues that the IGCs leading into the adoption of the Amsterdam Treaty, in particular, were dominated by bargaining power and these types of characteristics (Slapin 2006).

These characteristics embody what I argue are the empirical indicators of “competitive bargaining” processes. Therefore, the precise cases used to demonstrate the bargaining power and increased interest reflection in bargaining outcomes that stems from constraining negotiators are bargains characterized by competitive bargaining. These case therefore provide support for the second hypothesis presented here.

The more counter-intuitive aspect of this argument, though, needs to be more carefully examined. In particular, negotiations that take place *within* the EU institutional structure, in particular in the Committee of Permanent Representatives (COREPER) have been argued and

¹⁷ König and Hug (2000) argue that in the negotiation of the Maastricht Treaty the ratification phase was used (to varying degrees) as a veto threat in the bargaining process (König and Hug 2000, 102). Dür and Mateo (2006) who argue that EU IGCs in general are characterized by demands backed by credible threats and the threat of the veto (Dür and Mateo 2006, 384).

empirically demonstrated to possess bargaining processes *different* from the types of competitive processes highlighted above (e.g. Lewis 1998; 2002; 2005). I will therefore, first, demonstrate that this institution is a setting in which principal controls exist, as well as one which is largely characterized by what I have defined here as “cooperative bargaining” processes. Therefore, COREPER is an institutional setting in which I argue that agent autonomy (rather than constraint) should lead to the maximization of member state interests in EU decision-making outcomes.

IX. Agent autonomy in Cooperative Bargaining

IX.A. Context of Principals’ Controls

The first control mechanism that member states possess is the power of appointment. The member states alone control appointments and there is no approval process in Brussels. The average appointment is five years, longer than the three- or four-year diplomatic appointments, but several permanent representatives have remained in COREPER for a decade or more. This length of tenure does lessen the impact of control that member states can exert over their permanent representatives.

Despite the inability of the power of appointment to exert absolute control over permanent representatives, it does act as a method that can be used to exercise a degree of control. The process of appointment, as a first stage of control over representatives’ actions, has the effect of creating a sense of responsibility to their member states – a knowledge that their job is to represent the member state interest. “We need to be representatives of our governments. If we fail to be that, we’ll get fired” (Interview with Permanent Representative, May, 2006).

The most important form of member state control is the instruction process. The provision of instructions provides a benchmark against which to evaluate the outcomes of the

actions of member state representatives to ensure that they do not forward their own interests at the expense of those of their member states. Permanent representatives do receive instructions from their national capitals and they are expected to act in the interest of the member states. As one deputy permanent representative described, “Usually there is not a single dossier on which I do not have the input of the capital” (Interview with Deputy Permanent Representative, May, 2005).

To ensure deputy permanent representatives’ compliance with these instructions, member states use the essential control of accountability. This accountability is first present in the reporting process. Representatives in COREPER are expected to be in constant communication with their capital. All those interviewed described strict rules for reporting and transmitting information to their capital. These reporting rules range from rules about specific reporting time periods to specific formats for reports. In addition to reporting, all members of the permanent representations engage in phone calls, emails, teleconferences and other kinds of daily contacts with their capital. “We have to be in constant dialogue with [the capital], and explain what is happening” (Interview with Permanent Representative, June, 2006). As one deputy permanent representative described,

[We are] always on permanent communication with [the capital]. Officially, through reporting, but also, [we are] always on the phone. We even have teleconference facilities with the capital if it’s needed. It’s life, you can say (Interview with Deputy Permanent Representative, May, 2005).

In addition, the arguments forged in COREPER must also be approved at the Ministerial level. “Even an agreement which has been found at the COREPER level still has to be adopted formally as an A-point by Ministers. Of course, most of the time this is an automatic thing. But I just mean that every decision, whether it’s taken at the working group level or the COREPER level, in the end will have to be approved, even if it’s only a formality, by the Ministerial level” (Interview with Mertens Counselor, May, 2005).

The possibility exists, therefore, for a minister to undo a deal made at the COREPER level.

A minister can always make a declaration on an A-point and always ask for an A-point to be taken off the list and become a B-point later on (Interview with Mertens Counselor May, 2005).

Examples of this are extremely rare, but permanent representatives who are overruled by their ministers would quickly lose credibility both within COREPER and within their member state (Lewis 2002). If a permanent representative negotiates a deal within COREPER that departs from his or her instructions, he or she is still expected to “deliver” the member state. Decisions that depart too far from the instructions of the national capital can be rejected by the member state. This would also damage the credibility of the permanent representative both in his or her ability to negotiate within COREPER and within his or her member state to negotiate on its behalf.

Prudent members of COREPER will ensure that these [collective decisions] are agreed [to] by capitals (and imprudent members of COREPER will not be around for long (Bostock 2002, 222).

This analysis demonstrates that the institutional relationship between member state representatives in COREPER and their respective member states fits the structure of a principal-agent relationship. Thus, the deputy permanent representatives of the member states can be understood as ‘agents,’ who are granted a degree of autonomy within the decision-making process of the European Union, but also have controls exerted over them by their member states to prevent this autonomy from being used to forward the agents’ interests at the expense of the interests of their member state.

In this institutional setting, therefore, I would expect that given these principal controls, in cooperative bargaining interactions, agent autonomy, rather than constraint, will lead to the maximization of principals’ interests. It is the demonstration of this argument that I take to task in the remainder of this paper. I first demonstrate that “cooperative bargaining” is largely

present in COREPER. I then draw on interview evidence to demonstrate the importance of autonomy for forwarding member state interests in these cooperative bargaining processes.

IX.B. Cooperative Bargaining in COREPER

An important first step in evaluating Hypothesis 1 of the theory presented here is to demonstrate that negotiations in COREPER are, for the most part, characterized by “cooperative” rather than “competitive” bargaining processes, and thus an empirical setting in which the theory presented here would expect hypothesis 1 to hold. In order to evaluate this institutional setting, and the autonomy and bargaining strategies adopted by the member state representatives, sixty-six interviews were conducted in the Summers of 2005 and 2006. These interviews were conducted with Deputy Permanent Representatives and Mertens Counselors involved with COREPER I, Permanent Representatives and Antici Counselors involved with COREPER II, and in some cases, Working Group representatives who sat in and took part in COERPER negotiations. In addition, individuals from the Commission and Council Secretariat who were involved with COREPER negotiations were also interviewed.

Importantly, this interview evidence first provided evidence in support of the argument made by Jeffrey Lewis (Lewis 1998; Lewis 2000; Lewis 2005) that within COREPER competitive bargaining processes are not the standard mode of interaction. In addition, these interviews provided evidence that these bargaining processes are, in fact, largely consist with “cooperative bargaining” processes, as defined here.

First, these interviews yielded evidence of the *prioritization* of issues in a given bargain “so that those of lesser priority can be traded for those of greater importance” (Interview with Deputy Permanent Representative in COREPER I, May 15, 2006). This type of prioritization can, and sometimes does occur in the capital. Often, though, the member state representative

play an important role in informing the capital that prioritization is necessary (Interview with Deputy Permanent Representative in COREPER I, May, 2005) or in pointing out to the capital what the particular issues of concern are among the various member states in a given bargain, and therefore what they should focus on in their prioritization (Interview with Deputy Permanent Representative in COREPER I, June, 2005).

This “prioritization” provides evidence for the *potential* for cooperative bargaining, but not of the existence of cooperative bargaining itself. Given that issues in a given bargain are weighted according to their importance to a principal’s interests, the potential therefore exists for the negotiating agents to offer concessions (i.e. make Pareto-improving offers to other member states) on issues of lesser importance.

Most importantly, then, the interviews conducted with these COREPER participants provide evidence that these types of offers do occur and are, in fact, the “norm” in COREPER interactions based on these prioritizations of the issues. As one deputy permanent representative from one of the larger, EU-15 member states explained,

If they, [the capital], don’t prioritize, it is the person in the chair who either decides not to negotiate on *all* the instructions; or it is you who while, of course, performing your instructions because you have to, nevertheless choose to put more weight on something than on something else, and then perhaps achieve a result on those particular issues [while giving on the others] (Interview with Deputy Permanent Representative in COREPER I, May 2005).

This sentiment and argument was shared and made not only by the member state representatives of the EU-15, but was reiterated and accentuated by member state representatives from the “less socialized” accession countries less than a year after joining the Union.

A general rule, or technique – what *is* taking place in decision-making in the Council is compromise. It’s the key word – compromise. And in compromise, you always should give up something. You should *always*. And it’s not at all easy. It’s not at all easy to give up different things, different issues (Interview with Deputy Permanent Representative in COREPER I, May 2005).

This idea of compromise and being “giving” on particular issues is the central tenet of what was defined here as a “cooperative bargaining” process. These features of bargaining were

highlighted by all COREPER participants – both old and new – as a norm in the interactions within this institutional setting. This does not mean that there do not exist occasional exceptions to this norm, but this “cooperative bargaining” is a defining *general* feature of these interactions, and deviations from this stand out and are viewed as abnormal within COREPER. As one Deputy Permanent Representative summarized, “the Union is a place where you give and take, and you cannot take all the time” (Interview with Deputy Permanent Representative, May 2005).

Therefore, COREPER is an important institutional setting in which to analyze the main counterintuitive argument forwarded by this project – that in these “cooperative” bargaining processes, agent autonomy will lead to the maximization of principals’ interests. I will therefore evaluate the empirical plausibility of Hypothesis 1, demonstrating how, in this context, agent autonomy, rather than constraint, furthers the representation of principals’ interests overall in cooperative bargaining processes.

IX.C. Autonomy and Cooperative Bargaining in COREPER

I argue that within the cooperative bargaining processes that are largely characteristic of COREPER negotiations, member state interests will be best reflected in bargaining outcomes when their representatives in COREPER have a degree of autonomy. On the other hand, the interests of member states whose representatives are tightly constrained will not be as well represented in the agreements reached in these negotiations processes. I further argue that autonomy and constraint exert these effects via two main mechanisms within these cooperative bargaining processes – their effect on the provision of information and on the ability to offer concessions.

The next section draws upon the interviews conducted with COREPER participants to demonstrate the importance of autonomy for the provision of information as well as for the

ability to credibly offer concessions – and thus to receive concessions as well. In doing so, I also demonstrate that these strategies are important in order to have member state interests taken into account in decision-making outcomes, and the difficulties created by tight constraints over these bargaining agents. I then provide a very brief illustrative example of this logic at work in the case of the Services Directive.

IX.C.1. Autonomy and Strategies to Maximize Member State Interests

The interviews conducted with COREPER participants first demonstrated the importance of sharing information for success in COREPER negotiations and the necessity of autonomy to do so. As one Mertens counselor argued,

You have to understand why it's important for [another member state] to get 'if appropriate' somewhere in the text. You have to understand, otherwise you can't draft. If you don't know what they mean and *why* they want to have a change in the text, you can't negotiate (Interview June 2005).

The main forum in which this information exchange can proceed in the COREPER setting is via informal, bilateral negotiations. These types of informal contacts are important, first, because time constraints on the formal negotiation process prevent all the information and negotiating exchanges necessary to reach an agreement from being able to take place within this formal setting.

If you have an issue, on which each and every member state has an opinion – and this is usually so on legislation – if each [representative] takes five minutes each to explain [his/her] position once around the table, plus the interpretation, the introduction of the Presidency, the Commission, etc. brings you to a time of 2 to 3 hours, in which Ministers exchange views only once, and you haven't even started the real negotiation. So if you want to treat [several] dossiers in every meeting, they have to be prepared; they have to be "precooked" to an extent that quick decisions can be taken. Otherwise the system of decisions by Council will collapse (Interview with Deputy Permanent Representative, May, 2005).

Informal meetings among COREPER representatives are therefore central to the reaching of agreements within this institution. As one Working Group representative described the negotiation process leading up to an agreement reached while he held the Presidency position,

When we started [on this directive], there were 180 footnotes. When we got it adopted, they had all been lifted so it could be adopted. We spent about 100 hours on this formally...ten full day working group meetings, or maybe 11, three COREPER meetings and one Council. The Council only dealt with this

matter for about one hour. But I spent personally, 800 hours on top of that with informal preparation and negotiation. And it was about challenging the delegations about their position, proposing compromises, having lunch with delegations and coffee, sending them proposals by mail, having meetings with the Commission, having meetings with the Council Secretariat who is helping in this process, and also meeting with lobby groups that have an interest in this proposal. And also make sure that the final text that we then were going [forward with] was supported (Interview with Working Group representative, June 5, 2005).

Most importantly, though, while negotiating agents recognize the need to exchange information about the interests they represent in order to reach agreements in cooperative bargaining processes, their negotiation experience allows them to recognize the potential weakening of their bargaining position that may stem from revealing this information. They therefore do not reveal this information without consideration of the context and setting in which they do so.

In the COREPER context, this is especially true. There are often experts from different areas present at the formal meetings. Given that these experts consistently deal with the same types of issues, and may deal with them in future competitive bargaining contexts, COREPER representatives do not necessarily want them knowing the exact interests of their member state on a given issue (Interview with Mertens Counselor, June, 2005). In addition, some “official” positions dictated by the capitals stem from problems of coordination or politics within a federal system or coalition government. Revealing such information about internal difficulties to all COREPER participants may again weaken the negotiating position of the member state within the EU overall.

These problems, though, are not as significant of an issue in bilateral, informal and private exchanges. “In bilateral negotiations, representatives can talk candidly about all these things. ... They allow for the exchange of information about your *real* position, your *real* problems, and your *real* priorities” (Interview with Permanent Representative, June 2006).

However, while these bilateral and informal exchanges are extremely important and central to the cooperative bargaining processes taking place within COREPER, in these informal meetings, “there are no real rules or procedures, and there are no specific instructions” (Interview with Working Group Representative, May, 2005). As several member state representatives described, these informal meetings are “of course, based on the opinion of the capitals we represent”. However, in order to reach successful outcomes and have other delegations take the interests a representative is forward into account, sharing information – especially information that the capital does not want publicly revealed – is an extremely important step. Representatives therefore have to have the autonomy and flexibility in choosing their strategies to be able to do so.

In addition to its important role in the exchange of information for cooperative bargaining, autonomy is necessary for representative to be able to offer concessions on particular issues in a bargain. As described by all those interviewed, autonomy allows for the adoption of these types of strategies in two central ways related to the different ways that autonomy can be empirically operationalized.

First, autonomy in the most straightforward sense can be understood as having flexibility in the instructions received. Most often in the COREPER context, this involves instructions which have provide a “framework” for negotiating. As one Deputy Permanent Representative described, “We take a subject and say, OK, the disposition on this and this subject is X. And within that framework, I have maximum leeway to get to the best possible position for my country. And how I get there is not so much of interest to them” (Interview with Deputy Permanent Representative in COREPER I, May 11, 2006). This type of “framework instruction” allow member state representatives to assess the overall interests of their member state and

pursue the issues most central to those interests, while offering concessions on the issues given less priority. This is a first way that autonomy can be important for being able to offer concessions on particular issues.

I do not allow for detailed instructions from home. They're not saying, for example, well, on actually Article 16.3 you have to do this and this and this. No, that is for me. I know where I have to end up, and if I want to give to [another member state] this particular concession, then [the capital has] to give me that little bit. I'm the one who's negotiating this, and [they] have to trust me that I'll get the best result as possible (Interview with Permanent Representative in COREPER II, May 18, 2006).

Second, autonomy in the sense of having input into one's instructions can be used to communicate to their member state principals the need to give on a particular issue in order to achieve a beneficial agreement overall. The importance of this type of autonomy is empirically demonstrated in the illustrative example given below. The deputy permanent representative from one particular member state had to "convince" his capital to offer a concession to the other negotiating coalition on the screening clause, arguing that this was the "price" necessary to achieve an agreement. That he had the autonomy to do so was an important facet of the reaching of this agreement.

In addition, in COREPER, without being able to have the autonomy to offer concessions in these ways, representatives who are highly constrained are often unable to adopt the strategies, which they recognize from their negotiating experience, to be necessary for best forwarding their member state's interests. As one Mertens Counselor described, "Other countries respect that on certain issues it is important for another country, and they give more flexibility on that issue. And if [our country] wants to get this kind of flexibility on the issues that are most important to [us], then we have to also respect other countries when it's an important issue for them. That is more respected and accepted than when a country rejects everything in all the dossiers" (Interview with Mertens Counselor in CORPEER I, May 22, 2006).

In this way, this interview evidence provides preliminary support for the theory presented here which argues that in cooperative bargaining processes, rather than constraining agents, giving them a degree of autonomy will lead to the maximization of member state interests. A brief example of the negotiation which took place on the Services Directive in the Spring of 2006 provides an illustration of this logic at work in a real case of bargaining within COREPER.

IX.C.2. Example of the Services Directive

The bargaining on the highly politicized directive on the “Freedom of Establishment for Service Providers and Free Movement of Services” (Directive 2006/123/EC), hereafter referred to as the “Services directive”, provides an important illustrative example of cooperative bargaining at work in COREPER and the central role that autonomy played in allowing the exchange of information among the member state representatives as well as in the offering of concessions.

After the second proposal from the Commission, the more liberal member states – which included a large majority of the newer accession states – were unhappy with the replacement of the “country of origin” principle with the “freedom to provide services” principle¹⁸ – arguing that it did not remove to a satisfactory degree the barriers to the provision of services in another member state.

In order to accommodate the view of the new member states, a new Article 41 was proposed concerning screening of legislation, which should be a substitute for the fact that there was no longer a “country of origin” principle. “This article introduced to this the application that the member states should screen all the legislation they have that could be a barrier to free

¹⁸ The “country of origin” principle stated that service providers in other member players would be subject to the rules and regulations not of the country in which they were providing services, but of the country which they came. The “freedom to provide services” lays out the conditions under which member states have to allow services providers to provide their services, and service recipients to receive them. The service provides, under this regulation, would be required to follow the regulations of the country in which services were provided.

movement of services. They also included a notification procedure. And this was the price to the new member states to accept the text as it was” (Interview with Competition Working Group representative, May 31, 2006).

This screening procedure was difficult for several member states to accept, including the more powerful states, France and Germany. However, rather than pushing through the legislation as it was, one of these member state representatives described, “[Our capital] was totally opposed to this transparency/screening clause at the beginning. ... [But] we managed to make [our capital] understand that this was the price to pay [for the agreement on the new text], and that it was not too high a price” (Interview with Deputy Permanent Representative in COREPER I, June 6, 2006). Thus, these two groups willingly “gave” on particular issues – the new and more liberal member states “gave” and accepted for the other member states the “freedom to provide services” principle, while the member states in support of this principle “gave” on the screening procedure.

What is interesting and important in this example is that in addition to demonstrating that these member states engaged in agreeing to Pareto-optimal issues *for the opposing member states*, they did so in a situation which *could* have just as easily been characterized by competitive bargaining. Given the QMV decision rule, the newer member states could have forged a blocking minority and threatened to veto if they did not achieve their goals, as they were extremely close to possessing a blocking minority. In addition, the other member states *could* have taken the go-it-along power they possessed given that the newer member states did not possess a precise blocking minority to push through the legislation without the screening procedure. This case therefore provides an important illustrative example of the adoption of “cooperative” rather than “competitive” bargaining within COREPER.

The importance of autonomy can be illustrated in this example of cooperative bargaining. First, the importance of providing information about the underlying interests of the newer member states was highlighted in the bargaining over the screening clause. As described by the Deputy Permanent Representative who had to argue with his capital to accept this clause, because the representative who was ‘rallying’ the newer member states met with him and described to him the reasoning and interests underlying the need for this screening procedure, “it was, for me, easier to understand really what they wanted, and the importance of this transparency/screening clause to which [my capital] was totally opposed at the beginning” (Interview with Deputy Permanent Representative, June 6, 2006). He was then able to use that information to argue to his capital to accept, and “give” on the screening clause. “That is the usefulness of these discussions.”

Furthermore, autonomy was necessary for each of these various member states to “give” on the respective issues. To “give” on these issues went against the instructions given to these representatives on each of these issues. But at the end, what was achieved was a directive which both sides argued were largely consistent with their central concerns (Interview with Deputy Permanent Representatives May and June 2006), and which was in fact, not voted against by any of the capitals in the Council vote¹⁹.

Autonomy was therefore an important factor in the largely cooperative bargaining process which took place during the Spring of 2006 on the Services Directive. This autonomy was central for the sharing of information and offering of concessions which helped to bring about an agreement which was largely consistent with the interests of all member states – despite their fairly disparate interests in approaching this highly politicized directive.

¹⁹ Two capitals did abstain, but did not vote against the directive.

X. Conclusion

The case of COREPER provides some preliminary evidence for a more nuanced understanding of the connection between the principal-agent relationship between negotiators and those on whose behalf they negotiate. In particular, rather than always tightly constraining these agents, this project provides some support for the argument that the degree of constraint exerted over negotiating agents will best maximize a principals' interests when that constraint is exerted in competitive bargaining process, but not in cooperative bargaining processes.

In addition, as demonstrated by the argument made here, different types of bargaining processes exert potentially important effects on the types of bargaining strategies which will lead to a greater reflection of one's interests in the agreements reached. Given the potential mitigating effect of the character of the bargaining interaction on the strategies and the way that interests are connected to bargained outcomes, this project therefore also argues and provides evidence in support of the need for a better understanding and consideration of the *character* of the bargaining process taking place – both theoretically and empirically.

The empirical example given here, though, is only a first and rough step in demonstrating this argument. In particular, though COREPER is arguably largely characterized by cooperative bargaining, there is likely *variation* in bargaining processes across different directives. Therefore, a next step will be to examine specific directives negotiated in COREPER which capture the different empirical combinations of the alternative explanations of interest and different bargaining processes, and connecting each member state representatives degree of autonomy on that particular directive to the outcomes that result.

Therefore, while this study has provided preliminary and illustrative evidence in support of this argument, these next will provide a more substantial empirical evaluation of the argument

made here. This research program therefore has several important contributions, but also several steps for future research, and a more complete empirical evaluation of the arguments about the character of the bargaining interaction and its implications for bargaining in general, including principal-agent relationships.

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